

The Sanctions for Cancellation of Land Sale and Purchase Deeds Made in the Presence of Land Deed Making Officials in West Manggarai Regency (Case Study of Supreme Court Decision No.9/Pdt.G/2018/PN Lbj)

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Abstract. *The Deed of Sale and Purchase is an authentic Deed as the strongest evidence which has an important role in every legal relationship in people's lives which can clearly determine rights and obligations so as to guarantee legal certainty and at the same time avoid disputes. If a dispute occurs such as cancellation of an authentic deed. Authentic evidence is the strongest piece of evidence and has perfect evidentiary power in court. This research aims to find out and analyze: 1) To find out and analyze what is the basis for Cancellation of a Land Sale and Purchase Deed made before an Official Land Deed in West Manggarai Regency Based on Supreme Court Decision No.9/Pdt. G/2018/PN Lbj; 2) To find out and analyze the position and legal consequences of canceling a land sale and purchase deed made before an official land deed in West Manggarai Regency based on Supreme Court Decision No.9/Pdt.G/2018/PN Lbj. The conclusions of the research results are: 1) The basis for the cancellation of the Land Sale and Purchase Deed made in the presence of the Land Deed Making Official in West Manggarai Regency stated that Defendant I had committed an act of fraud/deceit in making the Sale and Purchase Deed Number: 39/2015, stated that the Sale and Purchase Deed Number: 39/2015, is invalid and has no legal force; 2) Position and Legal Consequences of Cancellation of the Land Sale and Purchase Deed made before the Land Deed Official in West Manggarai Regency declares that the land sale and purchase is void and the land is immediately transferred to the PLAINTIFF's name.*

Keywords: *Cancelation; Consideration; Deed; Sale.*

1. Introduction

Land is a basic human need that plays a very important role in the needs of life. Therefore, legal certainty in land ownership must be improved. Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA) provides legal certainty for the community to utilize the functions of the earth, water and natural resources

contained therein, especially in this case the government requires every land owner to register their land.¹

The rapid population growth has an impact on the supply of land and buildings as basic human needs due to the population density factor that occurs. Although, in essence, the provision of housing needs is one of the duties and responsibilities of the state, as stated in the 1945 Constitution. For legal subjects to be able to obtain land rights, a certain legal process or act is required, such as inheritance, grants, buying and selling, and so on. In terms of obtaining land rights through a sale and purchase transaction, this is done before a Notary/PPAT (Land Deed Making Official) in order to carry out the transfer and registration of the land at the land office so that legal certainty can be achieved, as regulated in laws and regulations. This is regulated in Law Number 5 of 1960 concerning Basic Agrarian Regulations and in Government Regulation No. 24 of 1997 which explains that one of the objectives of land registration is to realize orderly administration.²

Article 1 point 1 according to PP No. 24 of 2016 definition of PPAT;

"A public official who is authorized to make authentic deeds regarding certain unlawful acts regarding land rights or ownership rights to apartment units."

PPAT (Land Deed Making Official) concurrently holds the position of Notary, the dual position is based on the provisions of Article 7 number 1 of Government Regulation of the Republic of Indonesia Number 24 of 2016 concerning amendments to Government Regulation Number 37 of 1998 concerning Regulations on the position of Land Deed Making Official, which dual position is possible because both have the same position as public officials, although Notary is a public official with broader authority than PPAT (Land Deed Making Official). One of the authorities of PPAT is to make a Sale and Purchase Deed, related to the process of transferring land rights.

It is known that an agreement must have a subject and an object in a sale and purchase, where the subjects are the parties who bind themselves to carry out a legal act, namely the sale and purchase of land. An agreement must also have a certain object, which can be the object of a sale and purchase are movable and immovable goods, one example of an object of sale and purchase of immovable goods is land. The one who has the right to sell a plot of land is of course the legal holder of the rights to the land, who is called the owner. If the owner of a plot of land is only one person, then he has the right to sell the land himself. However, if the land owner is two people, then the two people together have the

¹Boedi Harsono, 2008, Indonesian Agrarian Law, Government Regulation of the Republic of Indonesia, Djambatan, Jakarta, p.52

²Made Ara Denara Asia Amangsa and I Made Dedy Priyanto, Sale and Purchase Agreement (PPJB) in Land and/or Building Rights Transfer Transactions, available at <https://ojs.unud.ac.id/index.php/kerthasemaya/article/download/55865/33022>. Last accessed on October 6, 2023, at 17.00 WIB.

right to sell the land. No one person can act as the seller.³ In the implementation of buying and selling there must be an agreement between the two parties. An agreement occurs on the basis of an agreement between the parties.

Article 1321 of the Civil Code states that:

"There is no valid agreement if the agreement was given by mistake or obtained by force or fraud."

If the objective requirements are not met, the consequence is that the agreement can be requested to be cancelled by one of the parties to the judge as the existence of a defect in the will of the agreement is a violation of the subjective requirements of the agreement as regulated in Article 1320 of the Civil Code. In making a deed of sale and purchase, the provisions regarding agreements regulated in the Civil Code are guided by. The sale and purchase agreement must meet 4 (four) requirements regulated in Article 1320 of the Civil Code, if these requirements are met, the agreement is valid, these requirements are as follows:

1. agreed those who bind themselves;
2. competent to make an agreement;
3. regarding a particular matter; and
4. a lawful cause;

The implementation of land sale and purchase must be carried out before an authorized official (PPAT). Based on the UUPA, land rights that can be used as objects of transfer of rights are: Ownership rights Article 20 UUPA, Cultivation Rights Article 28 UUPA, Building Rights Article 35 UUPA, Usage Rights Article 41 UUPA. If one of these material requirements is not met in the sense that the seller is not the person entitled to the land being sold, or the buyer does not meet the requirements to be the owner of the land rights, or the land being traded is in dispute, then the land sale and purchase is invalid.⁴

In practice, agreements are often found arising from agreements that contain defects in will. According to Article 1321 of the Civil Code, an agreement contains legal defects (*wilsgberek*) if the agreement is made based on:

1. Coercion (*dwang*);
2. *Dwalling*;
3. Fraud (*bedrog*).

³Effendi Perangin, 1994, *Land Buying and Selling Practices*, Raja Grafindo Persada, Jakarta, p.2

⁴P. Parlindungan, 1990, *Land Registration in Indonesia*, Mandar Maju, Bandung, p.40

Fraud, cheating, trickery in society has often been heard, all three of these aim to deceive the other party, so that the perpetrator of this act gains from the fraud. The settlement of an agreement is often preceded by negotiations, by which one party makes statements about facts, which are intended to persuade the other party to enter into an agreement. If such statements are untrue or false, then this is called fraud or misrepresentation.⁵

According to the provisions of Article 1328 of the Civil Code, if the trickery is used by one party in such a way that it is clear and obvious that it makes the other party interested in making a contract, whereas if the trickery is not carried out, the other party will not make the contract. This fraud is a reason to cancel the agreement.⁶

From the discussion above, if an agreement arising from an agreement then contains fraud, then the party who feels aggrieved can request the cancellation of the agreement in the District Court by filing a lawsuit.

Based on the background above, the problems in this research are as follows:

1. What is the basis for Cancellation of a Land Sale and Purchase Deed made before a Land Deed Official in West Manggarai Regency Based on Supreme Court Decision No.9/Pdt.G/2018/PN Lbj?
2. What is the Position and Legal Consequences of Cancellation of a Land Sale and Purchase Deed made in the presence of a Land Deed Official in West Manggarai Regency Based on Supreme Court Decision No.9/Pdt.G/2018/PN Lbj?

2. Research Methods

This study uses the Normative Legal research method or literature. Data collection techniques in normative legal research are carried out by means of a Literature study of legal materials, both primary legal materials, secondary legal materials, and tertiary legal materials and/or non-legal materials. The search for these legal materials can be done by reading, viewing, listening, or now many searches for these legal materials are carried out through the internet media.⁷ This is analytical descriptive, namely a method or procedure for solving research problems by describing the condition of the object being studied (a person, institution, society, company, agency, etc.), as it is based on actual facts at the present time.⁸

The data collection method is obtained from library research supported by field research. Library research is collecting data by conducting a review of library

⁵Abdulkadir Muhammad, 1992, Contract Law, Citra Aditya Bakti, Bandung, p. 120

⁶Ibid.

⁷Ronny Hanitijo Soemitro, 1982, Legal Research Methodology, Ghalia Indonesia, Jakarta, p. 9.

⁸ H. Hadari, HM. Martini Hadari, 1992, Social Research Instruments, Gajah Mada University Press, Yogyakarta, p. 42

materials or secondary data which includes primary legal materials, secondary legal materials, and tertiary legal materials.⁹Written or image data sources in the form of official documents, books, magazines, archives, documents related to research problems.¹⁰

Data analysis is an activity in research in the form of conducting a study of the results of data processing. The data analysis used by the author in this study uses a descriptive nature, namely the author in analyzing wants to provide a description or explanation of the subject and object of research as the results of the research conducted by the author.¹¹And dThe data that has been collected will then be analyzed qualitatively, namely data analysis that does not use numbers but is based on laws and regulations, the views of sources so that it can answer the problems of this research.¹² All data obtained are systematically arranged, processed, researched and evaluated. Then the data is grouped into similar data, for the purpose of analysis, while the evaluation and interpretation are carried out qualitatively which are recorded one by one to assess the possibility of similar answers. Therefore, the data that has been collected is then processed, analyzed qualitatively and translated logically systematically to then draw conclusions using the deductive approach method. The conclusion is a specific answer to the problem being studied, so it is expected to provide solutions to the problems in this study.

3. Results and Discussion

3.1. Basis for Cancellation of Land Sale and Purchase Deeds made before the Land Deed Making Official in West Manggarai Regency

a. Case Position

The agreement made on January 27, 2015 has been an Agreement between the PLAINTIFF (Mr. HC) and DEFENDANT I (PT. MB) based on the Deed of Joint Agreement Number 30 made before J, SH, M.Kn. Notary/PPAT in East Jakarta City (DEFENDANT II), agreed to conduct the sale and purchase of a plot of land with Certificate of Ownership Rights (SHM) 528/Labuan Bajo located in Labuan Bajo Village (now known locally as Labuan Bajo Village), Komodo District, West Manggarai Regency, East Nusa Tenggara Province, with an area of 17,210 M2 (seventeen thousand two hundred and ten square meters) as stated in the Situation Drawing Number 1216, Dated November 23, 1994 in the Name of the PLAINTIFF (Mr. HC).

⁹Soerjono Soekanto and Sri Mamudji, Op. Cit, p. 39

¹⁰Sudarto, 2002, Philosophical Research Methodology, Raja Grafindo Persada, Jakarta, p. 71

¹¹Mukti Fajar and Yulianto Achmad Op. Cit, p. 183

¹²Bambang Sunggono, 1997, Legal Research Methodology, Raja Grafindo Persada, Jakarta, p. 10

The agreement has agreed on the sale and purchase price of the land at Rp.3,500,000,-/m² (three million five hundred thousand rupiah) per square meter. DEFENDANT I only purchased part of the SHM covering an area of 7,600 m² (seven thousand six hundred square meters) so that the total price purchased by DEFENDANT I is Rp.26,600,000,000,- (twenty six billion six hundred million rupiah) as stated in Article 3 of the Deed of Joint Agreement Number 30, Dated January 27, 2015 made before DEFENDANT II in conjunction with Article 2 of the Sale and Purchase Agreement Number 32, Dated January 28, 2015 made before DEFENDANT II.

The signing of the Deed of Sale and Purchase Agreement Number 32, dated 28 January 2015 between the PLAINTIFF and DEFENDANT I, has been carried out, which was made before DEFENDANT II as per point (3) above, therefore DEFENDANT I paid for the purchase of land belonging to the PLAINTIFF in two stages, namely:

- **The first stage**, DEFENDANT I made a payment to the PLAINTIFF in the amount of Rp. 23,600,000,000,- (Twenty Three Billion Six Hundred Million Rupiah) at the time of signing the Deed of Sale and Purchase Agreement Number 32, dated January 28, 2015, made before DEFENDANT II; and
- **Second Stage**, amounting to Rp. 3,000,000,000,- (Three Billion Rupiah) paid by DEFENDANT I to the PLAINTIFF at the time of splitting the Land Ownership Certificate SHM Number 528/Labuan Bajo into a Building Use Rights Certificate (SHBG) for land measuring 7,600 M² (Seven Thousand Six Hundred Square Meters).

Signing of Deed of Statement Number 34, dated January 28, 2015, between the PLAINTIFF and DEFENDANT I, before DEFENDANT II, which deed states that the PLAINTIFF will split the rights to the PLAINTIFF's land measuring 17,210 m² (seventeen thousand two hundred and ten square meters) into an area of 7,600 m² (seven thousand six hundred square meters) and reduce the Rights to the Certificate to a Building Use Rights Certificate (SHGB).

The PLAINTIFF has filed a request for division on February 11, 2015 with a land area that was previously 17,210 M² (seventeen thousand two hundred and ten Square Meters) to an area of 7,600 m² (seven thousand six hundred Square Meters) and a reduction in Rights from previously a Certificate of Ownership Rights (SHM) to a Certificate of Building Use Rights (SHGB) to the West Manggarai Regency Land Office (CO-DEFENDANT II).

After the division and reduction of the Certificate of Ownership Rights into a Certificate of Building Use Rights Number 00035/Labuan Bajo Village, in the name of HC, the PLAINTIFF with DEFENDANT I made a Deed of Sale and Purchase 39/2015, dated April 30, 2015 before CD, SH, M.Kn. as PPAT, West Manggarai Regency in Labuan Bajo (CO-DEFENDANT I).

Although a Deed of Sale and Purchase 39/2015, dated April 30, 2015 between the PLAINTIFF and DEFENDANT I, for a plot of land with Building Use Rights Certificate Number 00035/Kelurahan Labuan Bajo before CO-DEFENDANT I, has been made, but until now DEFENDANT I has not paid off the purchase price of the entire land amounting to Rp.26,600,000,000,- (twenty six billion six hundred million Rupiah) as stated in Article 3 of the Deed of Joint Agreement Number 30, dated January 27, 2015 made before DEFENDANT II in conjunction with Article 2 of the Sale and Purchase Agreement Number 32, dated January 28, 2015 made before DEFENDANT II. DEFENDANT I has only paid the PLAINTIFF Rp.5,000,000,000,- (Five Billion Rupiah).

Regarding the actions of DEFENDANT I who has not yet paid the payment for a plot of land with Building Use Rights Certificate (SHGB) Number 00035/Labuan Bajo Village in the name of the rights holder PLAINTIFF, the PLAINTIFF has repeatedly asked DEFENDANT I to fulfill his obligation to pay and settle the land with Building Use Rights Certificate (SHGB) as stated in the Deed of Joint Agreement Number 30, dated January 27, 2015 and the Sale and Purchase Agreement Number 32, dated January 28, 2015, however DEFENDANT I has not responded at all to the PLAINTIFF's request.

The actions of DEFENDANT II in legalizing Receipt Number: 001/MIR/2015 dated January 28, 2015 and Receipt Number: 002/MIR/2015 dated April 29, 2015 mentioned in Number (14) above are not in accordance with the actual legal evidence and facts. First, when legalizing the two receipts, only DEFENDANT I was present and not the PLAINTIFF. Based on these legal facts, DEFENDANT II should have doubted the legal truth of the proof of payment because its material truth could not be confirmed to the Plaintiff. Second, DEFENDANT II should have firmly refused to legalize the two receipts because there was an error in the legal basis for issuing the two receipts. In both receipts it is written "Purchase of land according to the Deed of Sale and Purchase Agreement No. 30, dated January 28, 2015" while in fact the Deed of Sale and Purchase Agreement between the Plaintiff and DEFENDANT I is stated in Deed Number 32, dated January 28, 2015. On the other hand, Deed Number 30, dated January 27, 2015 contains the Deed of Joint Agreement. Third, on April 29, 2015 DEFENDANT I only paid the PLAINTIFF Rp.486,528,000,- (Four Hundred Eighty Six Million Five Hundred Twenty Eight Thousand Rupiah) not Rp.3,000,000,000,- (Three Billion Rupiah). In other words, the actions of DEFENDANT II legalized Receipt Number: 001/MIR/2015 dated 28 January 2015 and Receipt Number: 002/MIR/2015 dated 29 April 2015 which were submitted by DEFENDANT I himself to DEFENDANT II.

In addition, it was also found in the signing of the Deed of Sale and Purchase Number: 39/2015, dated 30 April 2015 which was made before CO-

DEFENDANT I between the PLAINTIFF and DEFENDANT I, namely DEFENDANT I had not fully carried out the performance as stated in the Deed of Joint Agreement Number 30, dated 27 January 2015 and the Sale and Purchase Agreement Number 32, dated 28 January 2015 which was made before DEFENDANT II.

Regarding the actions of DEFENDANT I which did not fulfill the performance as stated in Article 3 of the Deed of Joint Agreement Number 30, dated January 27, 2015 Jo. Article 2 of the Deed of Sale and Purchase Agreement Number 32, dated January 28, 2015, so that the PLAINTIFF suffered material and immaterial losses, which actions resulted in the loss of the PLAINTIFF's ownership rights to a plot of land measuring 7,602 M2 (Seven Thousand Six Hundred Two Square Meters).

b. Case Analysis

Based on the Case Position above, in this case, it is clear that DEFENDANT I has committed deception, coaxing and breach of contract or broken promise regarding the sale and purchase agreement made between the Plaintiff and DEFENDANT I, so that the Plaintiff can sue DEFENDANT I to fulfill the sale and purchase agreement.

Due to the deceitful actions of DEFENDANT I which harmed the PLAINTIFF where DEFENDANT I has not fulfilled his performance to pay off his legal obligation to pay in full for a plot of land with Building Use Rights Certificate (SHGB) Number 00035/Kelurahan Labuan Bajo, dated March 12, 2015 in the name of DEFENDANT I, then in accordance with the provisions of Article 1266 of the Civil Code and Article 1267 of the Civil Code, the PLAINTIFF requests the Labuan Bajo District Court in this case, Your Honor, the Panel of Judges who examined and decided the a quo lawsuit to be pleased to declare null and void by law and/or declared null and void by law for the Deed of Joint Agreement Number 30, dated January 27, 2015 made before DEFENDANT II, Deed of Sale and Purchase Agreement Number 32, dated January 28, 2015 made before DEFENDANT II, and Deed of Sale and Purchase Number: 39/2015, dated April 30, 2015 which made in the presence of CO-DEFENDANT I.

3.2. Basis for Cancellation of Deed of Sale and Purchase

The validity of an agreement refers to several conditions regulated in the Civil Code. As stated in Article 1320 of the Civil Code, the conditions for the validity of an agreement include 4 things, including:

1. Agreement of the binding parties;
2. The capacity of the parties to make agreements/perform certain legal acts;
3. Agreement relating to a certain matter;

4. The agreement is based on a lawful cause/does not violate the law;

Points 1 and 2 are conditions related to the parties making the agreement, namely the agreement between the parties and the capacity of the parties to perform legal acts. Conditions regarding this party are also known as subjective conditions. Meanwhile, points 3 and 4 regulate the object of the agreement which must be specific and the reason for making the agreement which must be in accordance with applicable laws and regulations. These conditions are also called objective conditions.

If an agreement does not meet the subjective requirements, then the agreement can be canceled (voidable). An agreement that does not meet one of the subjective requirements will result in the agreement being invalid so that it can be requested to be canceled (cancelled) by one of the parties. This means that the party who feels aggrieved can request the cancellation of the agreement to the judge through the court process. Meanwhile, if an agreement does not meet the objective requirements, then the agreement is null and void and is considered never to have existed, without the need for a cancellation request to the court.

So that with the cancellation of the Deed of Sale and Purchase Agreement, it means that the legal ownership status of the land has returned to the Plaintiff. As described in Article 1452 of the Civil Code:

"A declaration of cancellation based on coercion, misdirection or fraud also results in the goods and the person concerned being restored to the condition they were in before the agreement was made."

Another consequence that arises is that the issuance of a Building Use Rights Certificate based on a Deed of Sale and Purchase that is declared legally flawed and has been cancelled has no binding legal force because the document that is the basis for its issuance has been cancelled because it contains false grounds.

It should be noted that the Court's decision to declare the Deed of Sale and Purchase null and void does not immediately cancel the Building Use Rights Certificate Number: 00037/Labuan Bajo, but the cancellation must be submitted to the National Land Agency using the basis in the form of this case decision. The further consequence of the cancellation of the agreement is that if after the cancellation one of the parties does not fulfill its obligation to return what it has obtained, then the other party can file a lawsuit. This is solely to carry out the purpose of the cancellation, namely to restore the conditions as before the agreement occurred.

4. Conclusion

As a result of the cancellation of the sale and purchase of land by the Labuanbajo District Court against the deeds above, the Court granted the lawsuit for the

cancellation of the land sale and purchase deed examined at the Labuanbajo District Court and declared the land sale and purchase void and the land was immediately transferred to the PLAINTIFF, as a result of the cancellation of the PPAT deed was carried out by the defendant's mistake, there were elements of deceit and Default (breach of promise) on the agreement stated in the Deed. With the cancellation of the land sale and purchase deed, the defendant must return all that is the plaintiff's right, because the one who has the right to ownership of the land is the PLAINTIFF.

5. References

- Abdulkadir Muhammad, 1992, *Contract Law*, Citra Aditya Bakti, Bandung.
- Bambang Sunggono, 1997, *Legal Research Methodology*, Raja Grafindo Persada, Jakarta.
- Bambang Sunggono, 1997, *Legal Research Methodology*, Raja Grafindo Persada, Jakarta.
- Boedi Harsono, 2008, *Indonesian Agrarian Law, Government Regulation of the Republic of Indonesia*, Djambatan, Jakarta.
- Copy of Supreme Court Decision No.9/Pdt.G/2018/PN Lbj, etc.
- Effendi Perangin, 1994, *Land Purchase and Sale Practices*, Raja Grafindo Persada, Jakarta.
- Government Regulation Number 24 of 1997 concerning Land Registration.
- Government Regulation of the Republic of Indonesia Number 24 of 2016 concerning amendments to Government Regulation Number 37 of 1998 concerning Regulations on the Position of Land Deed Making Officials
- H. Hadari, HM. Martini Hadari, 1992, *Social Research Instruments*, Gajah Mada University Press, Yogyakarta.
- Law Number 2 of 2014. Amendment to Law Number 30 of 2004 concerning the Position of Notary.
- Law Number 5 of 1960 concerning Basic Agrarian Principles.
- Made Ara Denara Asia Amangsa and I Made Dedy Priyanto, *Sale and Purchase Agreement (PPJB) in Land and/or Building Rights Transfer Transactions*, available at <https://ojs.unud.ac.id/index.php/kerthasemaya/article/download/55865/33022>.
- Mukti Fajar and Yulianto Achmad, 2010, *Dualism of Normative & Empirical Legal Research*, Pustaka Pelajar, Yogyakarta.
- P. Parlindungan, 1990, *Land Registration in Indonesia*, Mandar Maju, Bandung.
- Ronny Hanitijo Soemitro, 1982, *Legal Research Methodology*, Ghalia Indonesia, Jakarta.
- S Soerjono Soekanto and Sri Mamudji, 2004, *Normative Legal Research: A Brief Review*, eighth printing, Sinar Grafika, Jakarta.
- Sudarto, 2002, *Philosophical Research Methodology*, Raja Grafindo Persada, Jakarta.
- The 1945 Constitution of the Republic of Indonesia.