

Legal Protection for Buyers Who Have Good Faith in Full Payment of Land Rights Without Power of Attorney to Sell from the Perspective of Justice

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Abstract. *Research by discussing the problem of how buyers with PPJB made underhand with full payment not followed by a power of attorney to sell get legal protection against the seller's refusal to appear before the PPAT and what legal steps can be taken by buyers in good faith PPJB made underhand with full payment without a power of attorney to sell for the seller's refusal to appear before the PPAT, with the method of statutory regulatory approach and conceptual approach, a conclusion was obtained: Buyers in good faith with PPJB made underhand with full payment without a power of attorney to sell get legal protection against the seller's refusal to appear before the PPAT, but the legal protection is not intended to appear before the PPAT to make a deed of transfer of rights, because in making a deed of transfer, the PPAT is obliged to request the presence of the parties in this case the seller and the buyer or their attorneys. Legal protection for the occurrence of a sale and purchase agreement as referred to in Article 1457 of the Civil Code, each party has reciprocal obligations or achievements, namely the seller promises to hand over the object agreed upon and the buyer has an obligation to pay the price of the goods. Legal efforts that can be taken by a buyer who has good intentions, the PPJB is made underhand with full payment not followed by a deed of power of attorney to sell due to the seller's refusal to appear before the PPAT, that the buyer in fighting for his rights to ownership of the object of sale and purchase, must file a lawsuit with the District Court on the basis of the seller's default and request that the District Court's decision order the PPAT to make a deed of transfer of rights not based on the power of attorney to sell, but based on the court's decision.*

Keywords: Attorney; Buyers; Protection.

1. Introduction

In social and state life, land has a major impact on economic development, therefore from the beginning to protect the interests of each individual in society regarding land, land ownership rights have been regulated since before Law No. 5 of 1960 concerning the Basic Agrarian Law (UUPA) came into effect. There were two large groups of land ownership rights before the UUPA came into effect, namely ownership rights according to customary law and ownership rights according to western civil law called Eigendom¹. This proves that land is the basic capital for organizing national life.² Because of the very important position of land in human life, ownership, utilization, and use of land receive protection and legal certainty from the government. One of the processes of providing legal certainty from the government is regarding land registration.

In Law No. 5 of 1960 Basic Agrarian Principles Regulations or UUPA, it is stipulated that Indonesian land rights must be registered based on National land law since September 24, 1960. Government Regulation Number 10 of 1961 concerning Land Registration which has been refined into Government Regulation Number 24 of 1997 concerning Land Registration to guarantee legal certainty. Guaranteeing legal certainty through land registration must be proven in a written form that provides evidence that there has been a legal act in the form of transfer of land rights and encumbrance of land rights, the Civil Code (KUHPperdata) regulates a perfect means of proof for parties who carry out legal events or legal relationships, or the occurrence of a legal event between one party and another. The means of proof that is often used is an authentic deed. Article 1868 of the Civil Code states that: "An authentic deed is a deed in a form determined by law, made by or before a public official who has the authority to do so at the place where the deed is made."³

Public understanding of the importance of the procedure for transferring land rights that have been paid in cash by the seller to the buyer to meet with the Land Deed Making Officer (hereinafter abbreviated as PPAT) as per Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration (hereinafter abbreviated as PP No. 24 of 1997), to make evidence of the transfer of land rights, ending in a trial process through the filing of a lawsuit, which takes a lot of time, money and energy. Sale and purchase of land rights as quoted by Boedi Harsono as quoted by Andina Saputri⁴"The sale and purchase of

¹Adrian Sutedi, *Transfer of Land Rights and Its Registration*, (Jakarta: Sinar Grafika, 2008), p. 2.

²Indonesia, 1945 Constitution LN No. 75 of 1959, BN No. 69 of 1959 and its amendments, Paragraph 3

³Civil Code [burgerlijk wetboek], translated by R. Subekti and R. Tjitrosudibio, 37th ed., Jakarta: Pradnya Paramita, 2006, Article 1868.

⁴Boedi Harsono, 2022, *Towards the Perfection of National Land Law*. 1st ed. Jakarta: Trisakti University, in Andina Saputri Damayanti, 2015, "Nominee Agreement in Land Ownership for Foreign Citizens Domiciled in Indonesia (Study of High Court Decision Number: 12/PDT/2014/PT.DPS).*Repertorium Journal*II, No. 2 (2015): Page 102

land rights is based on agreements in general, only there are limitations, namely specifically in the field of land law, as long as the agreement made does not violate or conflict with the provisions of the UUPA".

PPJB deed for land rights that have been fully paid by the buyer to the seller, the seller is required to submit all documents and files related to the land to the buyer as a reference for the buyer in implementing the making of the sale and purchase deed which will later be carried out before the PPAT as well as the process of managing the transfer of the name of the rights from the seller to the buyer as the new owner of the land rights. In PPJB with full payment, the deed of full payment must be followed by a deed of power of attorney to sell, so that if the buyer later makes a deed of sale and purchase before the PPAT, it no longer requires the presence of the seller but is attended only based on the deed of power of attorney to sell that has been made authentically by a notary based on the deed of full payment. So that the buyer in full payment, the deed of full payment must be followed by a deed of power of attorney to sell, so that if the buyer later makes a deed of sale and purchase before the PPAT, it no longer requires the presence of the seller but is attended only based on the deed of power of attorney to sell that has been made authentically by a notary based on the deed of full payment. So that the buyer in the implementation of the making of the deed of sale and purchase and the name change process does not encounter obstacles because they already have complete documents and required files to carry out the legal act of making the deed of sale and purchase before the PPAT and at the same time the name change process by the PPAT to the land office where the land is located.

2. Research Methods

The type of research that will be used in this writing is a type of legal research that is normative juridical. Normative Juridical is a legal research through a problem approach by seeing, examining and interpreting theoretical matters concerning legal principles in the form of concepts, laws and regulations, and related legal systems. In legal research there are several approaches. With these approaches, researchers will obtain information from various aspects regarding the issue being tried to find an answer. The approaches used in the legal approach are the statute approach and the conceptual approach.⁵

In this research, the author uses a statute approach, a conceptual approach, and a case study.⁶ The statute approach is carried out by examining all laws related to the legal issue being handled. The conceptual approach starts from the views and doctrines that develop in legal issues, cases where research is carried out that places something or an object being studied as a case. 3. Legal consequences of a binding sale and purchase agreement without the power to sell

⁵Loc.cit. Peter Mahmud Marzuki, 2009. Page 35.

⁶Loc.cit. Peter Mahmud Marzuki, 2009. Page 95

3. Result and Discussion

Buying and selling as a general agreement, then by reaching an agreement on the main things in the sale and purchase, then at that time a right and obligation have arisen reciprocally, which is known as performance. Performance is an obligation, which means an obligation that must be fulfilled by the parties who make the agreement as the implementation of the agreement. Obligations arising from an agreement according to Article 1234 of the Civil Code, which stipulates that "every obligation is to give something, to do something, or to not do something". Performance according to Abdulkadir Muhammad⁷"obligations that must be fulfilled by the debtor in every agreement". This means that the form of performance in an agreement is to give or hand over something or not do something.

Default according to Abdulkadir Muhammad⁸interpreted as "not fulfilling the obligations that have been set out in the agreement". According to Wirjono Prodjodikoro⁹default means: "the absence of an achievement, and achievement in contract law means something that must be carried out as the content of an agreement. Perhaps in Indonesian the term implementation of a promise can be used for achievement and the absence of implementation of a promise for default"

It is said that there has been a breach of contract, if in its implementation one of the parties cannot fulfill the obligations arising from the agreement made, then if it causes losses to the other party, then it can be said that there has been a breach of promise or breach of contract.

A person is said to have defaulted if¹⁰:

- a. Not doing what he promised to do;
- b. carry out what he promised, but not as promised;
- c. did what he promised but was late;
- d. do something that according to the agreement you are not allowed to do.

The form of not fulfilling the obligation, the form of not fulfilling the obligation is 3 (three) types, namely:

- a. the debtor has not fulfilled the obligation at all
- b. the debtor is late in fulfilling the obligation

⁷Loc.cit. Abdulkadir Muhammad, 2001 : Page 17

⁸Ibid. Page 20

⁹Loc.cit. Wirjono Prodjodikoro, 1997, p. 17

¹⁰Loc.cit. Subekti, 2001, p. 45

c. the debtor is mistaken or improper in fulfilling the obligation.

The above can be explained that default is a condition according to contract law, where someone does not carry out the performance as agreed, and if default occurs, there must be a violation of legal interests, an interest that is regulated and protected by law. Considering that default only occurs in contract law, then the problem of default should be resolved through the legal mechanism of the contract itself, considering that often the problem of default occurs not only because of negligent actions from one party to the agreement, but also intentionally as a response to the actions of the opposing party who has previously defaulted, especially in the case of the implementation of reciprocal agreements.

Default certainly involves a loss, related to the obligation to compensate for the debtor, the law determines that the debtor must first be declared to be in a state of negligence (*ingebrekestelling*). This "statement of negligence" institution is a legal effort to reach a phase, where the debtor is declared to have "broken his promise" (default). This can be read in Article 1243 of the Civil Code which states: "Reimbursement of costs, losses and interest due to failure to fulfill an obligation, will only be required if the debtor, after being declared negligent in fulfilling his obligation, continues to neglect it, or if something that must be given or made within a certain time limit has been exceeded". So, the meaning of "being in a state of negligence" is a warning or statement from the creditor about the latest time the debtor is required to fulfill the performance. If this time is exceeded, then the debtor is in default (default) Article 1238 of the Civil Code regulates how the notification is made. In the case of a "statement of negligence" it is necessary in the case where a person requests compensation or requests termination of the obligation by proving that there has been a breach of promise.

According to Civil Law, if the creditor demands fulfillment, then the institution of a statement of default is not needed, because the right to obtain fulfillment already exists in the obligation itself, while the right to request compensation or termination is based on: the debtor has committed a breach of contract. Therefore, here the institution of a statement of default is very necessary. However, in reality in Court practice (*Jurisprudence*), if the creditor demands fulfillment, the institution of a statement of default is also needed.

With the existence of a creditor's default, as the injured party, he has the following rights:

- a. The right to demand fulfillment of obligations (*nakomen*);
- b. The right to demand termination of the engagement or, if the engagement is reciprocal, to demand cancellation of the engagement (*ontbinding*);

- c. The right to claim compensation (schade vergoeding);
- d. The right to demand fulfillment of obligations with compensation;

The right to demand termination or cancellation of the obligation with compensation. The provisions above are in accordance with Article 1267 of the Civil Code, so that it is a form of choice for creditors in filing a lawsuit on the basis of default.

In an agreement, sometimes in its implementation one of the parties does not fulfill its obligations, so that the injured party can sue for compensation on the basis of a breach of promise or default, either by not fulfilling the obligation at all, fulfilling it but late or fulfilling it but not in accordance with what was promised.

Considering the above, it can be explained that in the sale and purchase of land with PPJB made verbally when the payment is paid in full and in accordance with the agreement, Martinah as the seller will help to meet the PPAT against Wariman as the buyer, but in reality after the sale price is paid in full, Martinah's domicile is unknown. In such conditions, Martinah can be said to have broken her promise or breach of contract, namely carrying out an act but not as promised. In such conditions, of course, the buyer in this case Wariman feels disadvantaged because he cannot meet the PPAT to make a deed of transfer of rights as per Article 37 paragraph (1) of PP No. 24 of 1997. Wariman can sue Martinah for compensation on the basis of breach of contract in the form of reimbursement of costs as per Article 1243 of the Civil Code.

Based on the description and discussion of the legal efforts of the PPJB buyer made underhand with full payment not followed by the making of a power of attorney to sell, namely filing a lawsuit for compensation against Martinah, but Martinah's domicile is unknown, then she can file a lawsuit with a decision without the presence of the defendant because her domicile is unknown. The Surabaya District Court in its decision stated that Martinah had committed a breach of contract, the sale and purchase of land rights and buildings on it located in Warugunung, Surabaya City, as stated in the Certificate of Ownership No. 1093 of Warugunung Village, based on the Measurement Letter dated 13-03-2008 No. 13/ Warugunung/ 2008, in the name of Martinah, between Wariman and Martinah was a sale and purchase that was legally valid, stated that Wariman was a buyer in good faith, determined to grant permission and power of attorney to Wariman who acted for and on behalf of Martinah as the Seller to sign the Deed of Sale and Purchase before the PPAT if it turned out that Martinah as the seller was not present or did not appear before the PPAT, while Wariman acted for and on his own behalf as the buyer of the aquo land object, in order to process the registration of land rights or the change of name of the aquo land object at the Surabaya City Land Office I.

The decision of the Surabaya District Court is correct, but at least the parties in making a land sale and purchase agreement with PPJB need to be followed up by making a deed of power of attorney to sell. By making a power of attorney to sell, the sale and purchase process and transfer of name do not have to be by filing a lawsuit on the basis of default, because in any case, without knowing the seller's domicile, the implementation of the decision or execution of the decision will be hampered.

4. Conclusion

A buyer who acts in good faith by paying in full without a power of attorney to sell is given legal protection against the seller's refusal to appear before the PPAT, however this legal protection is not intended to be made before the PPAT. deed of transfer of rights, because in making a deed of transfer, the PPAT is required to request the presence of the parties in this case the seller and the buyer or their attorney. Legal protection for the occurrence of a sale and purchase agreement as referred to in Article 1457 of the Civil Code, each party has a reciprocal obligation or performance, namely the seller promises to hand over the object agreed upon and the buyer has an obligation to pay the price of the goods, deed of transfer of rights, because in making a deed of transfer, the PPAT is required to request the presence of the parties in this case the seller and the buyer or their attorney. Legal protection for the occurrence of a sale and purchase agreement by a buyer who acts in good faith by having paid in full as referred to in Article 1457 of the Civil Code, each party has a reciprocal obligation or performance, namely the seller promises to hand over the object agreed upon and the buyer has an obligation to pay the price of the goods. Legal efforts that can be taken by a buyer in good faith with full payment not followed by a deed of power of attorney to sell due to the seller's refusal to appear before the PPAT, that the buyer in fighting for his rights to ownership of the object of sale and purchase, must file a lawsuit with the District Court on the basis of the seller's default and request that the District Court's decision order the PPAT to make a deed of transfer of rights not based on the power of attorney to sell, but based on the court's decision.

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