

## Legal Analysis of the Legal Consequences of the Cancellation of the Deed of Land Sale and Purchase Agreement (Case Study of Case Number 154/Pdt.G/2022/PN.Smg)

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**Abstract.** Land sale and purchase is a reciprocal agreement involving the seller and the buyer. The content of the intended promise is where one party carries out its obligations, while the other party acknowledges it or promises to provide compensation if there is a violation of the contents of the contract. The binding is intended as a preliminary agreement of the main intention of the parties to transfer land rights. The research approach method is a normative legal approach. A research method that obtains legal knowledge by emphasizing the provisions of applicable legal regulations. This type of research is by examining library materials or secondary data which include primary legal materials, secondary legal materials and tertiary legal materials, in the form of documents or applicable laws and regulations relating to this approach method. Legal protection for the fulfillment of the rights of the parties if one party defaults in the sale and purchase agreement is very dependent on the strength and binding of the sale and purchase made. The law on Cancellation of the Sale and Purchase Agreement is that the parties can be subject to a fine of an amount that has been agreed upon from the amount that the buyer must pay to the seller or buyer, for each day of delay. Legal Considerations from the Judge on the Cancellation of the Deed of Sale and Purchase of Land Case Number 154/Pdt.G/2022/PN.Smg, According to the author, it is in accordance with the applicable legal regulations as explained by the author previously, where in this case the Agreement ends and as far as necessary both parties release themselves from what is stipulated in Article 1266 and Article 1267 of the Civil Code, and the Seller is obliged to return the money that has been paid by the Buyer after deducting a few percent from the selling price of the land and building as a replacement for the costs incurred by the Seller plus a fine that must be paid by the Buyer to the Seller.

**Keywords:** Buying; Cancellation; Selling.

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## 1. Introduction

A problematic or issue caused by the existence of a legal relationship. A legal relationship provides rights and obligations that have been determined by law, so that if violated, it will result in the person who violates it being sued in court. An ordinary friendship relationship such as breaking a promise to watch a movie together does not have legal consequences. However, non-legally, for example, obstacles and unpleasantness from what was promised can occur. What is meant by problematic is a gap between expectations and reality that requires resolution or resolution. An example is a legal problem that occurs due to legal acts carried out by legal subjects against legal objects, for example all consequences of agreements that have been made by certain parties regarding something specific. With the holding of an agreement, it means that a legal consequence has been born which further gives rise to all rights and obligations that must be carried out by the legal subjects concerned in fulfilling the contents of the agreement.

Land sale and purchase is a reciprocal agreement involving 2 (two) parties, namely the seller and the buyer. Both parties who make the agreement each have the rights and obligations to carry out the contents of the agreement they make as agreed by both parties. The contents of the promise in question are where one party carries out its obligations, while the other party acknowledges it or promises to provide compensation if there is a violation of the contents of the contract.

However, in practice, before the sale and purchase of land is carried out before an authorized PPAT, the parties must first carry out a legal act by making a deed of land sale and purchase agreement before a Notary. The agreement is intended as a preliminary agreement of the main intention of the parties to transfer land rights. This sale and purchase agreement contains promises to carry out the sale and purchase of land if the requirements required for it have been met. The land sale and purchase agreement is an anonymous agreement that appears as a form of development of agreements in society. This is intended by the parties to provide more protection and legal certainty for the parties who make it.<sup>2</sup>

In the era of globalization and investment development today, these relationships are not only in the form of relationships between individual members, but also companies engaged in the property sector to meet the market's need for housing. One of the legal acts related to housing ownership is the legal act of buying and selling. In our society, buying and selling is not something new, because buying and selling has been done since ancient times. In Article 1457 of the Civil Code, buying and selling is defined as an agreement by which one party binds himself to hand over an object and the other party to pay the promised price.<sup>3</sup>

Buying and selling is usually done with an agreement or what is known as a sale

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<sup>2</sup>Parmitasari, 2016. "Legal Relationship Between Vehicle Owners and Parking Managers", Jurnal Juridical, No. 3, Vol. 1, p. 20–36.

<sup>3</sup>R. Subekti, and R Tjitrosudibio, 2001, Civil Code and Agrarian and Marriage Law, PT. Pradnya Paramita, Jakarta, p. 366.

and purchase agreement. In customary law, a sale and purchase agreement is a real agreement, meaning that the delivery of the promised goods is an absolute requirement for an agreement to exist. In other words, if something has been promised but in practice the object of the agreement has not been delivered, then the agreement is considered non-existent or there is no agreement, and also adheres to the principle of clear and cash, namely that the sale and purchase is in the form of a transfer of rights forever and at that time the payment is made by the buyer by the buyer which is received by the seller.<sup>4</sup>

As we know now, in carrying out the sale and purchase of land rights which are not carried out in cash, it is usually done through a sale and purchase agreement (PJB), which is a legal breakthrough where the contents already regulate the sale and purchase of land but the format is only limited to a sale and purchase agreement, namely a form of agreement which is or can be said to be a preliminary agreement before the actual sale and purchase agreement for land rights is carried out as regulated in the legislation called a deed of sale and purchase agreement (AJB).

Regarding legal protection for the seller, namely by including several requirements, such as asking the buyer to complete the payment according to the agreement followed by cancellation conditions or fines if the payment exceeds the specified time. The policy made by the seller is one of the sanctions given to prospective buyers that they cannot fulfill their obligations.<sup>5</sup>

In practice, most sales and purchase agreements (PJB) are usually made before a notary, to provide more legal force or legal certainty to the agreement made in the future evidence.

In connection with the civil case that has been decided by the Semarang District Court Number: 154/Pdt.G/2022/PN-SMG, dated March 31, 2022, the buyer in this case the Plaintiff as the buyer, namely H. Muhammad Rozi, can file a lawsuit against Defendant I as the seller, namely Sri Mulyati, Defendant II, namely Welly Eko Suprpto, and Co-Defendant, the Semarang City National Land Agency. That between the Plaintiff and the Defendant, a private sale and purchase agreement has been made in the form of a sale and purchase agreement for a plot of empty land according to the Certificate of Ownership Number 01270 in the name of the rights holder Sri Mulyati, the sale and purchase was carried out on October 17, 2010 with an agreed price of Rp. 240,000,000 and has not followed up with the implementation of the sale and purchase before a Notary/PPAT, but the Defendants verbally promised to be willing if at any time invited to the sale and purchase process and change of name. Due to one thing and another, communication between the Plaintiff and the Defendants was lost, until early 2018 the Plaintiff tried to contact the Defendant to be invited to follow up on the

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<sup>4</sup>R. Subekti, 1988. Aspects of National Contract Law, PT Citra Aditya Bakti, Bandung, p. 29.

<sup>5</sup>Dewi, 2020. "Legal Consequences of Cancellation of the Deed of Sale and Purchase Agreement for Costs Incurred in the Presence of a Notary", Journal of Legal Communication (JKH), No. 6, Vol. 2, p. 427-439.

sale and purchase to the Notary/PPAT, but the Defendant no longer resides at the address according to the KTP identity. In this case, the Plaintiff has tried in various ways to find the whereabouts of the Defendant in order to be invited to follow up on the underhand sale and purchase, because the Plaintiff's efforts to find the Defendant were unsuccessful, so there was no other way for the Plaintiff other than to file a lawsuit.

The verdict stated that the Defendants had defaulted/broken their promise because they did not follow up on the sale and purchase process of a plot of land in accordance with the Certificate of Ownership Rights Number 01270 before a Notary/PPAT in Semarang and the process of changing the name of the certificate at the Semarang City Land Agency Office and stated that by law they gave permission to the Plaintiff as the legal owner to file the process of changing the name of the certificate for the land in question, from the original name of Defendant I Sri Mulyati to the name of H. Muhammad Rozi at the Semarang City Land Agency Office and sentenced the Defendants to pay court costs of Rp. 4,330,000.

The problem that arises is that even though it has been used frequently, in fact the sale and purchase agreement has never been regulated in laws and regulations relating to land rights, so that the position and legal force of the sale and purchase agreement is sometimes still questionable regarding the implementation of the sale and purchase of land rights. From the explanation above, it can be seen that even though it has been used frequently, the sale and purchase agreement has never been regulated in laws and regulations relating to land rights.

## 2. Research Methods

According to Soerjono Soekamto, research is a scientific activity based on certain methods, systematics and thoughts that aim to study one or several specific legal phenomena, by analyzing them. Research can be conducted in an in-depth examination of the legal facts to then seek a solution to the problems that arise in the relevant phenomena.<sup>6</sup>

The research approach method is a normative legal approach. A research method that obtains legal knowledge by emphasizing the provisions of applicable legal regulations. This type of research is by examining library materials and secondary data including primary legal materials, secondary legal materials and tertiary legal materials, in the form of documents or applicable laws and regulations related to this approach method.

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<sup>6</sup>Soerjono Soekamto, 2014. Introduction to Legal Research, UI Press, Jakarta, p.43.

### 3. Results and Discussion

#### 3.1. Legal Protection for Buyers in Cancellation of the Deed of Land Sale and Purchase Agreement

The Sale and Purchase Agreement is made in an authentic deed made by and before a Notary, so that the Sale and Purchase Agreement is an authentic deed that has perfect evidentiary power. This provides more protection and legal certainty for the parties who make it. Because the notary in making a deed is impartial and maintains the interests of the parties objectively.

With the help of a notary, the parties making a sale and purchase agreement will receive assistance in formulating the matters to be agreed upon. The authenticity of a notarial deed is derived from Article 1 paragraph (1) of the Notary Law No. 30 of 2004, namely that a notary is made a public official, so that the deed made by a notary in his position has the nature of an authentic deed.

A notarial deed can also contain a story of what happened, because of an act committed by another party before a notary, meaning that which is explained or told by another party to the notary in carrying out his/her position and for which purpose the other party deliberately comes before the notary and provides the information or performs the act before the notary, so that the information or act is confirmed by the notary in an authentic deed. This deed is also called a deed made before (ten overstaan) a notary.<sup>7</sup>

The protective measures that can be taken by each party include:

##### a. Protection for sellers

The protection that can be given to prospective sellers is to ask the buyer to make payment of the price for the agreed object within a certain period of time accompanied by conditions of cancellation. If the buyer does not fulfill the payment as requested and agreed upon then the agreement is binding on the purchase agreement for land rights. that has been made and is accompanied by conditions that are cancelled. If the buyer does not fulfill the payment as requested and agreed upon, the binding agreement for the sale and purchase of land rights made and agreed upon will be void and the seller is not obliged to return the payment that has been paid unless the buyer requests an exception.

##### b. Protection for buyers

Protection that can be done by the buyer in the implementation of the sale and purchase agreement is to first check the existence of proof of ownership of the land/building that is the object of the agreement. The buyer can request that the certificate or proof of ownership of the land title be held by a third party which is usually a Notary or other party appointed and agreed upon by the seller and buyer.

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<sup>7</sup>In Article 165 HIR (Article 285 Rbg, 1868 BW) it can be concluded that authentic deeds can be divided into (1) deeds made by officials (acte ambtelijk, procesverbaal akte) and (2) deeds made by the parties (partijakte).

The buyer asks the seller to guarantee that the object of the agreement is free from claims, lawsuits, and if it is known that there are claims, lawsuits or encumbrances on the object of the agreement, then the responsibility lies with the seller. In addition, the buyer asks the seller to grant an irrevocable power of attorney if all requirements have been met to carry out the sale and purchase, then the buyer can transfer rights even though the seller is not present at the signing of the deed of sale and purchase.

### **3.2. Legal Considerations from the Judge regarding the Cancellation of the Deed of Land Sale and Purchase Agreement Case Number 154/Pdt.G/2022/PN.Smg**

To declare the nullity of a legal act, we find the terms "null and void", "cancel it" (Article 1449 of the Civil Code), "demand cancellation" (Article 1450 of the Civil Code), "declaration of nullity" (Articles 1451-1452 of the Civil Code), "void" (Article 1545 of the Civil Code), "void and void" (Article 1553 of the Civil Code).

The doctrine of nullity applies to all legal acts, both multiple legal acts and unilateral legal acts. By saying that a legal act is null, it means that because of the legal defect, the purpose of the legal act becomes invalid. The consequences of nullity also apply to void beding, void decisions or void wills. Legal acts can contain defects, the nature of which can vary. The presence of different defects gives rise to different sanctions. The main difference regarding nullity is that it is null and void by law (*van rechtswege nietig*) and can be canceled (*vernietigbaar*).

If the agreement violates objective conditions such as a certain thing or a lawful cause, then the agreement is void by law, whereas if it violates subjective conditions, namely the agreement of those who bind themselves or the capacity to carry out an act, then the agreement can be cancelled.<sup>8</sup>

Legal protection must see the stages, namely legal protection is born from a legal provision and legal regulations provided by the community. Basically, legal regulations are an agreement of the community to regulate behavioral relations between members of the community and between individuals and the government which is considered to represent the interests of the community. In general, protection means protecting something from dangerous things, something that can be an interest or an object or goods. In addition, protection also contains the meaning of protection given by someone to a weaker person.

Based on the research results, the law regarding the cancellation of the Land Sale and Purchase Agreement deed can be identified:

- a. The parties may be subject to a fine of an agreed amount from the amount that the buyer must pay to the seller or buyer, for each day of delay. The fine must be paid immediately and in one go;
- b. The agreement ends and as far as necessary both parties release themselves

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<sup>8</sup>Rutten and Purwahid Patrik, 1996. Basics of Contract Law (Contracts Arising from Agreements and from Law), Mandar Maju, Bandung, p. 46.

from what is stipulated in Article 1266 and Article 1267 of the Civil Code, and the Seller is obliged to return the money that has been paid by the Buyer after deducting a certain percentage from the selling price of the land and building as a replacement for the costs that have been incurred by the Seller plus a fine that must be paid by the Buyer to the Seller.

The refund by the Seller to the Buyer must be made no later than within a certain agreed period of time, for example 21 (twenty one) days after the land and building are sold to another party.

The basic concept of land sale and purchase transactions is transparent and cash. Transparent means it is done openly, the object and subject of the owner are clear, complete with documents and proof of ownership. Cash means it is paid immediately and at once. The taxes are paid, the Deed of Sale and Purchase is signed, to then be processed to change the name on the certificate.

However, in practice, for various reasons, the concept of clear and cash is often not fulfilled. Not fulfilled, does not mean that the transaction cannot be carried out, there are other instruments, namely the Deed of Sale and Purchase Agreement ("PJB") as a binder, as a sign of the sale and purchase transaction, while waiting for what has not been completed. The requirements for the Deed of Sale and Purchase have not been fulfilled, it could be because the payment has not been paid in full/installments, the certificate is still in the process of being divided or other processes, not being able to pay taxes, or other legal conditions.<sup>9</sup>

Deed of Sale and Purchase Agreement where the payment has been made in FULL, but the deed of sale and purchase cannot be made before the authorized PPAT, because there is still a process that has not been completed, for example: still in the process of splitting the certificate, still in the process of merging and various other reasons that cause the Deed of Sale and Purchase cannot be made (usually referred to as: Paid Sale and Purchase Agreement). Meanwhile, if the payment has been paid in full and a Paid Sale and Purchase Agreement is made, then it is accompanied by a Power of Attorney to sell, from the seller to the buyer. So, when all the requirements have been met, without the need for the seller to be present - because he has been represented - has given power, with the wording of the power of attorney to sell to the buyer, the Notary/PPAT can immediately make the Deed of Sale and Purchase to then process the transfer of the certificate name. This power of attorney to sell can be included as a clause in the Sale and Purchase Agreement, or it can also stand alone, in the form of a separate deed.

In the case of the Power of Attorney to sell as a clause in the Sale and Purchase Agreement, then only the Sale and Purchase Agreement deed is signed. For the type of Sale and Purchase Agreement deed, the Power of Attorney to Sell contained in the Sale and Purchase Agreement deed is absolute, meaning that it cannot be revoked and will not end for reasons regulated in Article 1813 of the Civil Code. It should also be noted that, if this power of attorney to sell is an

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<sup>9</sup>Results of Interview with Notary Aji Pranoto dated December 10, 2024.

inseparable part of the Sale and Purchase Agreement, then in the case of the Sale and Purchase Agreement deed has been signed perfectly without any elements of error, coercion or deception, then the Sale and Purchase Agreement process, which is continued into the Sale and Purchase Agreement and reaches the transfer of the certificate, has indeed run as it should. Except if the power of attorney to sell is made purely for the purpose of selling an asset without being related to the Sale and Purchase Agreement deed. The pure power of attorney to sell can be revoked by using a deed of revocation of power of attorney, in the case that the sale and purchase and transfer of the name have not been carried out.

As the author explained previously, a sale and purchase agreement can be made underhand and an authentic deed but has different evidentiary power. a. Underhand deed Underhand deeds do not have external evidentiary power like authentic deeds which can prove their own validity and have formal revocation power only covering the fact that the information is given if the signature is acknowledged by the signer or is considered to have been acknowledged as such according to law.

Thus, for the sake of legal certainty for each party, the form of the sale and purchase agreement in writing and made before an authorized official will certainly make it easier for the parties to resolve disputes if such matters occur in the future and can be used as a means of proof.

Based on the research results, the law regarding the cancellation of the Land Sale and Purchase Agreement deed can be known:

- a. The parties may be subject to a fine of an agreed amount from the amount that the buyer must pay to the seller or buyer, for each day of delay. The fine must be paid immediately and in one go;
- b. The agreement ends and as far as necessary both parties release themselves from what is stipulated in Article 1266 and Article 1267 of the Civil Code, and the Seller is obliged to return the money that has been paid by the Buyer after deducting a certain percentage from the selling price of the land and building as a replacement for the costs that have been incurred by the Seller plus a fine that must be paid by the Buyer to the Seller.

#### **4. Conclusion**

Protection for the seller. Protection that can be given to prospective sellers is to ask the buyer to pay the price for the object agreed upon within a certain period of time accompanied by conditions of cancellation, if the buyer does not fulfill the payment as requested. The buyer does not fulfill the payment as requested. and it is agreed that the binding agreement for the sale and purchase of land rights that has been made which is accompanied by conditions is cancelled. If the buyer does not fulfill the payment as requested and agreed upon, the binding agreement for the sale and purchase of land rights made and agreed upon will be void and the seller is not obliged to return the payment that has been paid unless the buyer requests an exception. Protection for the buyer Protection that can be done by



the buyer in the implementation of the sale and purchase agreement is to first check the existence of proof of ownership of the land/building that is the object of the agreement. The parties can be subject to a fine of an agreed amount from the amount that must be paid by the buyer to the seller or buyer, for each day of delay. The agreement ends and as far as necessary both parties release themselves from what is stipulated in Article 1266 and Article 1267 of the Civil Code, and the Seller is obliged to return the money that has been paid by the Buyer after deducting a few percent from the selling price of the land and building as a replacement for the costs that have been incurred by the Seller plus a fine that must be paid by the Buyer to the Seller.

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