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Legal Consequences of a Binding Agreement for the Sale and Purchase of Land Rights Based on a Debt Agreement Between the Parties

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Abstract. *Land is an important component of social life in Indonesia. Land can be utilized through rights granted to its legal subjects. This study aims to analyze the legal consequences of land sale and purchase agreements based on debt agreements for the parties, and to further analyze the notary's responsibility for land sale and purchase agreements based on debt relationships. The method used is empirical juridical, empirical legal research that combines normative legal analysis (statutory regulations) with empirical data from the field (social reality) to understand society. The results of the study show that the legal consequences of the agreement to bind the sale and purchase of land rights based on a debt agreement between the parties based on debt is null and void because it violates the objective requirements of validity and the responsibility of the Notary in making the deed. The Notary is fully responsible for the formal and material truth of the deed he made, ensuring that the deed reflects the actual situation and is in accordance with the law (PPJB) which is based on debt relationships which are often used as collateral for repayment (collateral) by creditors, but is high risk because it is not an official mortgage guarantee.*

Keywords: *Agreement; Consequences; Legal; Sale.*

1. Introduction

Land is a vital component of social life in Indonesia. Land can be utilized through rights granted to its legal subjects. Law Number 5 of 1960 concerning Basic Agrarian Regulations (hereinafter referred to as UUPA) regulates land rights.

Land rights are rights that can be granted and held by individuals, either individually or collectively, and can also be held by legal entities. These land rights are intended to grant the authority to use the land in question.

Furthermore, Article 16 paragraph 1 of the UUPA states that land rights include ownership rights, building use rights, use rights, business use rights, rental rights, land clearing rights and other rights not yet mentioned which will be determined by law.

Land rights can be transferred to another party, the transfer of land rights can be done by means of sale, exchange, gift, division of land plots, customary gifts, income in a company or (inbreng), and testamentary gifts or (legaat).

The transfer that is often carried out by the community is buying and selling. Buying and selling is a legal event in the form of transferring land rights to another party, this is stated in Article 20 paragraph (2), Article 28 paragraph (3), and Article 35 paragraph and Article 33 of the 1945 Constitution regulates the national economy and social welfare. This article is the constitutional basis for the Indonesian economic system which is based on the principle of kinship (3) UUPA which states that ownership rights, building use rights can be transferred and assigned.

The transfer of rights resulting from an agreement in which one party binds himself to hand over an object (land) and the other party to pay the agreed price. A sale and purchase agreement here is an agreement to transfer rights to land, which grants a new right to the land. In addition to being transferable, land can also be used as collateral for debts.

Unlike buying and selling, which involves the transfer of the object of the agreement, debt is usually based on borrowing and lending, which is an agreement between one person and another. The object of this agreement is generally money. One party is the party that provides the money and the other party receives the loan, with the provision that the money borrowed will be returned within a certain period of time based on the agreement together with no collateral or collateral for land rights which is often known as mortgage rights.

In this case, there is a difference in concept between buying and selling and debt agreements, in Article 1457 of the Civil Code it states that "buying and selling is an agreement by which one party binds himself to hand over an item, and the other party to pay the promised price", while in Article 1721 of the Civil Code a debt agreement is an "agreement by which one party gives another party a certain amount of goods and is used up on the condition that the latter will return the same amount of the same kind and the same conditions".

A principle that applies in collateral law is that creditors are not permitted to make agreements to own collateralized objects as a form of repayment of the debtor's debt to the creditor, meaning that the collateral object may not be owned by the creditor.

This is regulated in Article 12 of Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land (hereinafter referred to as UUHT) which states that a promise that gives authority to the mortgage holder to have mortgage rights if the debtor defaults is void by law.

Thus, many people want to avoid this prohibition by making a sale and purchase agreement with the right to repurchase, where the creditor sets conditions for making a sale and purchase agreement for land rights and promises to return the land rights if the debt has been paid off or what is usually called a sale and purchase agreement with the right to repurchase.

2. Research Methods

Approach Method This thesis is written using an empirical juridical approach. Juridical is a library research method that analyzes positive law, principles, rules, and doctrines. Empirical is a legal research method that combines the analysis of written juridical legal norms with social facts in the field (empirical).

3. Results and Discussion

3.1. Legal consequences of a land sale and purchase agreement based on a debt agreement for the parties

As a legal consequence, the Sales and Purchase Agreement (PPJB) used as collateral for debts is often null and void or can be canceled due to legal defects (not meeting the legal requirements of the agreement or made under duress/deceit), so it cannot be the basis for a legal transfer of land rights and gives rise to disputes, even though the debt agreement itself can remain valid and the obligation to pay the debt remains, referring to the court decision that separates the two. PPJB is not a valid collateral tool for land, which should use the Deed of Granting Mortgage Rights (APHT).

Legal Consequences for the Parties:

1. Disputes and Legal Uncertainty: This PPJB is prone to causing disputes due to the existence of a "defective will" (the debtor is forced to "sell" his land even though he only wants to guarantee the debt), making the agreement legally invalid.

2. Cancel forlaw: the judge can declare the PPJB null and void by law because it does not fulfill the objective and subjective requirements (Article 1320 of the Civil Code), especially if elements of deception or bad faith are found (not in accordance with material facts).

3. The Debt Agreement Remains: even if the PPJB is cancelled, the initial debt agreement can still bind the parties, and the debtor is still obliged to pay off the remaining debt, as decided by the judge in several cases.

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4. Legal protection: the land owner (debtor) can file a lawsuit for cancellation, and legal protection can be provided by returning the land rights to the original owner, while still paying the existing debt.

Problems in the PPJB Deed:

a. Misuse of Function: PPJB which is made only as a guise for debt guarantee (not a real sale and purchase) is considered a misuse of formality and is not based on good faith, so it does not have authentic evidentiary power.

b. Notary Responsibilities: Notaries have legal, civil, and administrative responsibilities for the authentic deeds they create to ensure legal certainty. Based on the UUJN and the Civil Code, notaries are responsible for formal/material accuracy, the validity of signatures, the storage of protocols, and the confidentiality of client data. Negligence can result in civil or criminal damages if there is an element of forgery.

Main Responsibilities of a Notary:

a. Legal Responsibility (Civil & Material): Notaries are required to ensure the validity of data, the identity of the parties, and the procedures for making deeds in accordance with the law.

b. Responsibility for the Deed: Responsible for the contents of the authentic deed he/she made, even if the protocol has been submitted.

c. Protocol Storage: Mandatory storage of documents and deeds as state archives

d. Maintaining Confidentiality: Required to maintain the confidentiality of client personal data and the contents of the deed. Electronic Verification: Ensuring the validity of electronic signatures in the context of modern law.

5. Performance and Default

a. Performance

Something that is also called an achievement according to Article 1234 of the Civil Code can be:

1) Give up something;

2) Doing an act;

3) Nodo an action.

Performance (prestatie performance), is the existence of a legal object or something that is bound so that it gives rise to a legal relationship. According to the provisions of Article 1233 of the Civil Code, every obligation arises from contracts and laws. This means that both formally and materially, it is a written regulation. The purpose of Article 1233 of the Civil Code, which is also interpreted as law, includes both statutes (written law) and unwritten law (customary law). This means that obligations can arise not only from agreements or laws, but also from customary law (unwritten law), such as customary land pledges.

b. Default

An agreement creates rights and obligations arising from the agreement, which must be fulfilled by both the debtor and the creditor. The term "performance" can lead to a breach of contract, meaning failure to fulfill obligations, either through negligence or carelessness on the part of the debtor in fulfilling their obligations to the creditor. This breach of contract includes:

1) Fulfilling the obligation but not on time. In other words, being late in fulfilling the obligation means that even though the obligation is carried out or given, it does not comply with the delivery time stipulated in the agreement. Such an obligation can also be called negligence.

2) Nofulfilling the achievement, meaning that the achievement is not only late, but can also no longer be carried out due to:

a) Fulfillment of the achievement is no longer possible because the goods have been destroyed;

b) Achievement is then no longer useful, because the moment of submission has a very important meaning.

6. Fulfilling imperfect performance means that performance is given, but not as it should be.

Agreement Gives Birth to Engagement

The obligation is regulated in Article 1235 of the Civil Code which states "In every obligation to provide something, it includes the obligation of the debtor to hand over the object in question and to care for it as a good housewife, until the handover occurs. Based on this Article, it can be concluded that the debtor has certain obligations before the handover occurs."

This means that an obligation to provide something is an obligation to hand over (leveren) and care for the object (prestasi) until the delivery is made. Thus, the debtor has an obligation to hand over something, which is a basic obligation, and to care for something until the delivery occurs. The sources of obligations are divided into two: obligations originating from agreements and obligations originating from laws.

a. Obligations originating from agreements Obligations originating from agreements are emphasized in Article 1233 of the Civil Code, that every obligation is born either because of an agreement (contract) or because of a law. Agreements are the most important source of obligations;

b. Engagements originating from law.

Law as a source of obligations is divided into two, namely: law alone and law in relation to human actions. An obligation arising from law alone is an obligation whose obligations are directly mandated by law. An obligation arising from law due to human actions is an obligation that arises because of an action carried out by a person and then the law determines the rights and obligations arising from that action. These actions are divided into two types: actions according to law (rechtmatige daad) and actions against the law (onrechtmatige daad).

An obligation arising from the law, for example, due to a lawful act, is when a person makes what is called a debt-free payment (onverschuldigde betaling) as stated in Article 1359 of the Civil Code. In addition to lawful acts, there are also unlawful acts (onrechtmatige daad). If this act is carried out by a person, based on the provisions of the law, an obligation arises between the perpetrator of the unlawful act and the person who is harmed by the act, as stated in Article 1365 of the Civil Code. In other words, every unlawful act that causes harm to another person creates an obligation for the perpetrator of the act, due to whose fault the loss arose, to provide compensation.

From this definition of a contract, it can be seen that there is a difference between an agreement and a contract. Here, an agreement is understood as one source of a contract. A contract, or verbintenis, implies a legal relationship of wealth or property between two or more people that empowers one party to obtain a performance and simultaneously obligates the other party to fulfill the performance.

Meanwhile, contract law is complementary, consensual, and obligatory. Complementary law means that if the parties make their own provisions, each party can override the provisions in the law. Consensual law means that once an agreement has been reached by each party, the contract is binding and can be fulfilled responsibly. Meanwhile, obligatory law means that every agreed-upon obligation is mandatory and ownership rights will be transferred after the transfer to each party.

7. Collateral in Debt Agreements

A guarantee, or borgtocht, is a separate agreement among other agreements. However, this borg must be distinguished from a material guarantee. A material guarantee is when the debtor or debtor provides an object to the creditor as collateral for the debt. This means that if the debtor fails to repay the debt by the specified time, the creditor can demand the execution of an executorial beslag against the collateral, which can be auctioned publicly to meet the debt repayment.

According to Rachmadi Usman, collateral is the debtor's ability to fulfill or pay off his debt to the creditor, which will be done by holding certain objects of economic value as collateral for the loan or money received by the debtor to his creditor. A collateral agreement is an additional agreement or accessory, namely an agreement that arises from the existence of a principal agreement, while a guarantee agreement is an additional agreement.

As a guarantee that arises based on the law, the burden of general guarantee is not carried out in a specific format or form, either verbally or in writing, the general guarantee will automatically be attached to the parties along with the birth of the agreed principal agreement. Although not agreed in the principal agreement, the general guarantee will be attached and burden the debtor when the debtor does not specify the guarantee specifically (material or personal guarantee) charged in the debt or credit agreement.

Article 1131 of the Civil Code stipulates an obligation for a debtor to provide collateral to a creditor for a debt he has received without any specific collateral, then all of the debtor's assets, both existing and future, automatically become collateral, when the debtor makes a debt agreement even though this is not expressly stated in the agreement. The right to collateral on land is regulated in Book III of the Civil Code regarding the debtor's Security Rights.

Guarantees based on their nature are divided into 2 (two), namely personal guarantees and material guarantees. Personal guarantees are guarantees in the form of a statement of ability given by a third party to guarantee that the debtor will fulfill his obligations to the creditor, if the debtor is in default. Meanwhile, material guarantees are guarantees in the form of assets by separating part of the debtor's assets, the aim of which is to guarantee the fulfillment of the debtor's obligations, if they are in default. In the provisions of the law, material is divided into two, namely movable objects and immovable objects which are included in the guarantee of movable objects, namely pawns and fiduciaries, and guarantees of immovable objects, namely mortgages and mortgage rights.

The Mortgage Law contains a provision stating that the collateral object in the mortgage cannot be owned by the creditor because it will result in the debt agreement with the mortgage right being null and void. Article 12 of the Mortgage Law prohibits the mortgage holder from possessing the mortgage object by way of a promise. This prohibition is to protect the mortgage provider from the power of the mortgage recipient due to their weak economic position. The Mortgage Law does not require any promise that transfers ownership of the collateral from the provider to the mortgage recipient, because basically the granting of the mortgage right is not to obtain ownership rights to the land. If this prohibition is not heeded, the article expressly states that the agreement that has been made is null and void. The guarantee agreement remains valid and binding, only clauses that violate Article 12 of the Mortgage Law are considered never agreed upon by the parties, meaning that the mortgage holder is closed to owning the collateral object. If the creditor wishes to own the mortgage object, it must go through another legal procedure, for example, purchasing the collateral object through an auction or the debtor voluntarily surrendering the land as collateral.

B. Sale and purchase agreement

Article 1457 of the Civil Code defines a sale and purchase as an agreement in which one party binds himself to hand over an object and the other party pays the agreed price. Based on the definition in Article 1457 of the Civil Code, a sale and purchase is an agreement. In the act and legal relationship of a sale and purchase, there is a transfer of land rights, one party hands over the object, in this case the land, and the other party pays for the object of the agreement.

A sale and purchase agreement is a form of nominate agreement, namely an agreement that exists and is regulated in the Civil Code. A sale and purchase agreement is a named agreement or benoemde. A sale and purchase agreement is regulated in Articles 1457 to 1450 of the Civil Code. The definition of a sale and purchase agreement is contained in Article 1457 which reads: "A sale and purchase is an agreement by which one party binds himself to deliver an object, and the other party to pay the agreed price."

A sales and purchase agreement is an agreement between a seller and a buyer, in which the seller agrees to transfer ownership of an item to the buyer, and the buyer agrees to pay the price of the item in cash, as agreed upon. Therefore, the absolute elements that must be present in a sales and purchase agreement are:

1. There isthe relationship between the seller and the buyer;

2. There isthe object of the agreement is the transfer of ownership rights and payment in money.

From this term, it can be seen that there is a reciprocal relationship between two parties who carry out different legal acts, one party carries out legal action to sell, and the other party carries out action to buy.

In a sale and purchase, the parties often create a preliminary agreement to bind the will and agreement of the parties involved. This agreement is usually called a sales and purchase agreement. A sales and purchase agreement (PPJB) is a support agreement that functions as a preliminary agreement and is free in form. In general, a sales and purchase agreement contains promises that must be fulfilled first by one or both parties before the main agreement, which is the final goal of the parties, can be executed. These requirements can of course vary. As we know, for a sale and purchase of land rights to occur before a Land Deed Official (PPAT), the sale and purchase price must have been paid in full. There are also situations where the seller whose land title certificate is in the process of being transferred to the National Land Agency (BPN), but the seller intends to sell the land rights. To overcome this, a sales and purchase agreement is drawn up as a preliminary agreement to temporarily await the fulfillment of the requirements for the main

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agreement, namely the sale and purchase before a PPAT authorized to draw up such an agreement.

The PPJB (Planning for Sale and Purchase Agreement) relating to the transfer of land or building rights is not specifically regulated by law. Therefore, the PPJB is essentially just a preliminary agreement between the seller and buyer, which is a private agreement or a non-authentic deed. A non-authentic deed is a deed drawn up solely by the parties, or prospective seller and buyer, without the involvement of a notary. However, many people now draw up such agreements before a notary. The Sales and Purchase Agreement is regulated using the term PPJB, namely Government Regulation Number 11 of 2021 in conjunction with Government Regulation Number 14 of 2016 concerning the Implementation of Housing and Residential Areas. Article 1 number 10 states, "The Preliminary Sales and Purchase Agreement System, hereinafter referred to as the Sales and Purchase Agreement."

PPJB is divided into two types, namely paid PPJB and PPJB not paid. PPJB paid is a Sales Purchase Binding Agreement where the buyer has paid in full for the object in question and the buyer is given absolute power to guarantee the implementation of the buyer's rights in the sale and purchase transaction and these rights will not end for any reason, this agreement will also not end due to the death of one of the parties but will be passed down to the heirs of each party. While PPJB not paid in full is a Sales Purchase Binding Agreement where the buyer has not paid in full for the object in question and in the agreement there is a clause that regulates if the sale and purchase process is canceled midway due to any conditions.

NO	TAHAPAN KEGIATAN	WAKTU			
		Desember 2024	Januari 2025	Februari 2025	Maret 2025
1.	Pengajuan Judul				
2.	Pembuatan Usulan Penelitian				
3.	Ujian Usulan Penelitian				
4.	Pelaksanaan Penelitian				
5.	Pengumpulan Data				
6.	Pengolahan Data				
7.	Pembuatan Laporan Tesis				
8.	Ujian Tesis				
9.	Revisi dan Penggandaan				

4. Conclusion

The legal consequences of a sales and purchase agreement based on a debt agreement between the parties are the legal consequences of a sales and purchase agreement (PPJB) based on a debt agreement are that the PPJB can be void by law or can be canceled because it contains a defective will (no real intention to buy and sell) and is contrary to the law. PPJB is considered an illegal guarantee mode, so that the principal debt agreement remains valid but the guarantee is invalid. Notary's Responsibility for the Deed of Agreement for Sale and Purchase of Land Rights Based on Debt Receivables Relationship Based on Decision Number 2385 K/Pdt/2016, the notary is not responsible for the deed of agreement for sale and purchase of land rights based on debt receivables relationship between the parties, because the notary does not know and as long as the parties who appear want a sale and purchase agreement, the notary in making the deed is based on the wishes of the parties and in accordance with statutory regulations, so that the deed remains legally valid. In the a-quo case, the notary can be asked for administrative responsibility, namely on formal truth related to the formal aspects of a deed as perfect evidence.

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