



Functions of the Deed of Sale and Purchase in the Issuance of a Certificate of Title to Land

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ABSTRACT

Buying and selling land is one type of agreement that is often carried out by community members. The deed of land sale and purchase agreement, including the building / house located on it must be carried out by the parties in the presence of an authorized official, namely a Notary / Land Deed Making Officer. To ensure legal certainty of the transfer of property rights to land, it is stated in the form of an authentic deed, for the validity of ownership of the land, it is necessary to prove the existence of a title certificate. The validity of the land sale and purchase deed affects the issuance of a title certificate made by the National Land Agency. In practice, there are often cases related to land sale and purchase deeds as the basis for issuing a title certificate.

INTRODUCTION

Various relationships are carried out by members of the community with each other in an effort to carry out their lives and lives, both in the national, regional, and global scope. One of the most frequent relationships is a *sales contract, sales agreement*, especially a land sale and purchase agreement including buildings/houses on the land. Land sale and purchase agreements, can be made based on authentic deeds (*authentieke acte*) or deeds under the hands (*onderhandeling acte*). The acquisition or transfer of land rights, especially to property rights (*eigendom rights*) certainly aims at legal protection and legal certainty of rights attached to land. Based on the treasury law (*van zakenrecht*) in force in Indonesia, land is classified as permanent or immovable treasury. Legal protection and legal certainty of the treasury owned by a person as a member of society is guaranteed by the country's constitution which specifies that "everyone has the right to the protection of property under his control and has the right to have private property rights that must not be arbitrarily taken over by anyone".

THEORETICAL REVIEW

In practice or fact in society, land sale and purchase agreements, especially those made by Notaries/Deed-Making Officers as authentic deeds, serve an important function in the issuance of title certificates, in addition to potentially being sued by parties who feel aggrieved. Not infrequently in court decisions state that the deed of sale and purchase of land as a basis for deciding the occurrence of wanprestai or the existence of unlawful acts. Notaries/Officers Making Land Sale and Purchase Deeds can have the status of co-defendants or suspects, including the National Land Agency issuing title certificates, as proof of one's ownership of land acquired under a sale and purchase agreement. Based on this fact, the problem that arises, namely the extent of the function of the sale and purchase deed in the issuance of a certificate of title to land? Undang-Undang Dasar Republik Indonesia Tahun 1945, Amandemen IV, Pasal 28G dan H, sebagai perwujudan hak asasi manusia yang dijamin negara.

METHODOLOGY

This research is a type of normative legal research (*doctrinal research*), which is based on *legal norms*, or positive law as secondary data. As understood that "legal research conducted by examining library materials or secondary data is called normative legal research".² The data sources used are in the form of laws and regulations, legal documents, judicial decisions, and are supported by real facts and relevant legal cases. The data analysis method is based on an applicable qualitative descriptive method, which refers to existing data and facts.

RESULTS AND DISCUSSIONS

One of the types of agreements most often carried out by members of the public is a sale and purchase agreement. The positive law stipulates, "That a sale and purchase is an agreement, by which the one party binds himself to give

up a treasury, and the other party to pay the price that has been promised".³ In this case, the main obligation of the seller, which is to hand over the goods, and bear them. On the other hand, the main obligation of the buyer, that is, to pay the purchase price, at the time and place as stipulated according to the agreement. Basically, a sale and purchase agreement involves a seller and a buyer, where the seller is obliged to give up ownership of an object (*zaak, goods*), and the buyer is obliged to pay the agreed price. The obligation for the seller is a right for the buyer; on the contrary, the buyer's obligation is a right for the seller. An agreement that gives rise to rights and obligations for the parties to each other is referred to as a *reciprocal agreement*.

The law governing agreements is civil law (*private law, privaate recht*), which is a regulation that regulates the relationship between people and people, people with things, and people with their families. The relationship between members of the public regulated by civil law is equal or equal, between one party and the other, including the relationship between the seller and the buyer. Precisely the main basis is the law of engagement or the law of treaties / contract law. For this reason, in making a sale and purchase agreement, what is important for the parties to understand is the emergence of their respective rights and obligations. In reality, the emergence of disputes or lawsuits in the future usually stems from the non-performance of each party's obligations. In this case the buyer does not pay the price of the land or the seller does not give up ownership of the land, in accordance with the agreement. As Raymond Wacks stated that "*can the law of contract be properly understood, without an appreciation of the concepts of rights and duties*".

In fact, the parties in entering into land sale and purchase agreements, including houses and objects on them, are not infrequently carried out not based on authentic deeds, which are made before a Notary / Land Deed Making Officer, but only based on deeds under the hands (*onderhandeings acte*). Various factors causing the sale and purchase of land are carried out based on the deed under hand, including factors of ignorance of the law, mutual trust with each other, abuse of selling power by other parties, low costs, local customs, practicality of its manufacture, and various other factors. Difficulties can arise, if the buyer carries out the land registration process to obtain a title certificate at the National Land Agency.

Members of the public who need legality or validity of the land sale and purchase agreement made, must then go to the Notary / Land Deed Making Officer, to make a sale and purchase deed made by him. A deed drawn up by the seller and buyer in the presence of a Notary/Deed-Making Officer is referred to as an authentic deed, which serves as a means of proving the ownership of the land. Basically, an authentic deed is a deed made in the form prescribed by law, made by or in the presence of an authorized official for it, and performed at the place where the deed was made.⁵ The official authorized to make a land sale and purchase deed that applies as an authentic deed is a Notary/Land Deed Making Officer.

With regard to the official who has the authority to make a deed of sale and purchase of land as an authentic deed is a Notary, as stated by Habib Adjie, "that a notary is a general official who is the sole authority to make authentic deeds regarding all deeds, agreements, and determinations required by general regulations, or by the interested person to be stated in the authentic deed".⁶ Thus the existence of a land sale and purchase deed in this authentic form is very influential as a written evidence, if one day there is another party who does not recognize the validity of the sale and purchase agreement that has been carried out, or who claims to have rights to the land and the objects on it.

The main purpose of the sale and purchase agreement is the handover (*levering*) of property rights from the seller to the buyer. Property rights are the strongest and fullest rights to objects (*zaak, goods*). As it is specified, "that property is the right to enjoy the usefulness of a material thing freely, and to do freely to that material with full sovereignty, as long as it is not guilty of a law or general rule established by a power entitled to establish it, and does not interfere with the rights of others ..." ⁷ Thus in essence, it is only the owner of an object, in this case the owner of the land, including the buildings/houses on it, who can sell it to the buyer. In other words, the main basis for the seller's authority to transfer the objects he controls is proof of property rights.

Indonesia, both juridical and factually, its legal streams are more likely to adhere to the *positivistic* legal stream, as a hallmark of the Continental European legal system, known as the *civil law system*. This national legal system prioritizes written law in the form of laws and regulations. This condition is in accordance with Hans Kelsen's *Stufenbau Theory*, that laws are arranged in tiers from the highest, to the lowest, which boils down to the norm of their base (*grundnorm*), the higher law as the basis for the lower law. This fact of nationally applicable law, it is evident in the provisions on the formation of legislation, that its level or level, which must be obeyed, which applies as a positive law. ⁸

In its order, successive laws are in the form of Basic Laws, Provisions of the People's Consultative Assembly, Government Laws/Regulations in Lieu of Laws, Government Regulations, Presidential Regulations, Provincial Regulations, and Regency/City Regional Regulations. The point is that lower legal regulations should be sourced to higher-level regulations, with the threat of their indiscretion, if contradictory. The basic norm that applies nationally, namely Pancasila as the source of all sources of legal order (*rechts order*), as the precepts are written in the Preamble to the 1945 Constitution, which also applies as a *legal mind (rechtsidee)* in the life of the nation and state. The written law in the form of laws and regulations must be applied in authentic deeds and certificates of title to land.

In the application of the enactment of laws related to authentic deeds and certificates of title to land, including buildings on it, constitutes the authority of the state. Soil is the surface layer of the earth located in the territory of the Unitary State of the Republic of Indonesia, applicable as an object of sale and purchase agreement in social life. The formal basis of the statutory order, including treasury law, binding law, and land law, must be considered in addition to the interests of the individual as well as the public interest. The

element of publication is important for the issuance of a title certificate, which is based on the deed of sale and purchase of land. This condition is consistent with the statement, "that publication as an absolute matter in constituting the existence of legal acts or legal relations".⁹

Legal regulations related to land, mainly the regulation on the basics and basic agrarian provisions, mandate, "that the entire territory of Indonesia is the unity of the homeland of all Indonesian people, united as an Indonesian nation".¹⁰ Based on this provision it implies that the power of the state, which in its application is operationalized by the government, i.e. the Ministry of Agrarian and Spatial Planning / National Land Agency. Thus, the government has the authority to regulate and administer legal relations, namely between people and legal acts regarding land and buildings on it.

National land law, basically boils down to customary law (*adat recht, adat law*). The legal consequence is that the application or execution of a land sale and purchase agreement must be in accordance with customary law. "For this reason, the land sale and purchase agreement, which is set forth in the form of an authentic deed, must be based on the principles or principles of customary law, namely the cash principle and the light principle".^{11th} Based on the cash principle mandates that the surrender of rights by the seller and the payment of the price of the land by the buyer be carried out simultaneously. In this case, cash or cash does not mean that payments and repayments are carried out instantly. That is, the buyer makes payments according to those agreed with the seller, such as payments can be made in installments or in stages. Thus, in buying and selling land in installments (*sales contract by installment*), the cash principle is still fulfilled even though the method or method of payment is in installments.

In addition to the cash principle in the sale and purchase of land, the bright principle also applies, that the land sale and purchase agreement is carried out openly or not covered up, if it is carried out before a Notary / Land Deed Making Officer. The function of buying and selling land carried out before a Notary / Land Deed Making Officer, namely the guarantee of the correctness of the status of the land, the rights holder, and the validity that the implementation of the sale and purchase agreement is carried out in accordance with applicable law. Consequently, the principle of light and cash has been manifested in the land sale and purchase agreement made before the Notary/Land Deed making Officer, and at the same time as evidence that there has been a process of transferring land rights from the seller to the buyer.

Furthermore, the Notary/Land Deed Making Officer issues the Land Sale and Purchase Deed, which serves as an authentic deed. As an authentic deed is certainly guaranteed by the law the validity and correctness of its contents. In addition, the existence of a sale and purchase deed that applies as an authentic deed also provides legal certainty for the parties. There is legal certainty over the land sale and purchase deed made before the Notary / Land Deed Making Officer as an authentic deed, in line with Lon Fuller's Theory of Legal Certainty, that there must be certainty between the rule of law, and the implementation of the law, that way positive law can be carried out, if it has

entered the realm of behavior, action, and factors that can influence how the law works. The evidentiary power of an authentic deed is perfect, "i.e. to give between the parties and their heirs, or persons to whom they are entitled, a perfect proof of what is contained therein".¹² authentic deeds may be used as evidence, in the form of writings, in addition to other means of evidence, as it is determined that the evidence consists of written evidence, evidence of witnesses, presumptions, confessions, and oaths. An authentic deed applies as the main evidence, if any other party postulates that he has a right, confirms his rights, or disputes the rights of others, and points to an event, then it is required to prove the existence of such a right or event

The rulings of the judiciary dealing with interesting cases are in Nganjuk, where mutual suing is between the seller and the buyer of the land that stands on it. The seller and buyer of the land make a sale and purchase transaction in the presence of a Notary. The agreed land price has been partially paid by the buyer, and the title certificate in the name of the seller turns out to be paid by the buyer, although the price has not been paid in full. The seller a little later passed away, and the only heir was her husband, as the sole heir. The seller's title certificate by her husband is registered with the Land Agency to be replaced in his name, both the seller's heirs and the buyer, both claim that the land of the object of dispute belongs to him. "The District Court annulled the sale and purchase of the land, while the Administrative Court cancelled the title certificate in the name of the seller's husband".¹³ Thus, the deed of sale and purchase has a very important function over the ownership of land rights, namely the presence or absence of a transfer of property rights to land. The existence of a default on the part of the buyer, resulting in the deed of sale and purchase of the land being cancelled, so that the ownership of the right to the land remains on the side of the seller or his heirs.

Based on the decisions of these judicial bodies, it can be seen that the existence of a deed of land sale and purchase agreement made before a Notary as an authentic deed, affects the issuance or registration of a certificate of title to the land. The deed of sale and purchase is valid as perfect and primary evidence, which affects the validity of the title certificate as valid proof of land ownership. The cancellation of the land sale and purchase agreement resulted in the cancellation of the certificate of title to the land. In essence, the existence of both the sale and purchase deed and the title certificate as a form of legal protection for the subject of rights and the object of rights. This is in accordance with the Legal Protection Theory of Satjipto Rahardjo which teaches that the purpose of law, namely to integrate and coordinate various interests in society, by regulating protection and restrictions, and protecting one's interests by allocating one's human rights based on the power to act in the context of such authority. In line with *Sonya Meier's teachings*, "a contract is that not expressly prohibited by legal provision may nevertheless be held invalid, if it infringes certain standards or value regarded as important in particular society".¹⁴

Thus the deed of sale and purchase of land and the house on it, which is in authentic form serves as the main basis for the presence or absence of the validity of the transfer of property rights. The title to the land remains on the

seller's side, if the sale and purchase deed is cancelled, meaning that the ownership returns to its original state, that the buyer has no legality over the ownership of the land, so the certificate of title to the land cannot be issued by the National Land Agency.

CONCLUSIONS AND RECOMMENDATIONS

A land sale and purchase deed is a written form of a legal act in which the seller gives up ownership of the rights to the land, and the buyer pays the price as promised. A land sale and purchase agreement entered into before a Notary/Land Deed-Making Officer is called an authentic deed, which serves as a means of proving the transfer of land ownership rights, in the form prescribed by law, made by or in the presence of an authorized official for it, and is carried out at the place where the deed was made. The function of the land sale and purchase deed carried out before the Notary / Land Deed Making Officer, namely the guarantee of the correctness of the status of the land, the rights holder, and its validity that the implementation of the sale and purchase agreement is carried out in accordance with applicable law, and at the same time as evidence that there has been a process of transferring land rights from the seller to the buyer, based on legal regulations regarding the sale and purchase of land, both regarding the transaction process, as well as the validity of the certificate documents. The deed of sale and purchase is the main basis for the issuance or replacement of the certificate of title to the land, so that the cancellation of the sale and purchase deed may result in the cancellation of the certificate of title, or the certificate of title cannot be issued by the National Land Agency, because as an authentic deed has perfect and absolute evidentiary power, and provides legal certainty and legal protection for the parties, i.e. sellers, buyers, and other third parties caught in it.

FURTHER STUDY

Furthermore, the Notary/Land Deed Making Officer issues the Land Sale and Purchase Deed, which serves as an authentic deed. As an authentic deed is certainly guaranteed by the law the validity and correctness of its contents. In addition, the existence of a sale and purchase deed that applies as an authentic deed also provides legal certainty for the parties.

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