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Legal Review of Breach of Performance Law on Binding Agreement Deeds sale and Purchase of Land and Buildings Made By a Notary

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Abstract. *This study aims to determine and analyze the default on the deed of sale and purchase agreement and to determine and analyze the settlement of default on the deed of sale and purchase agreement. The approach method used in this study is normative legal, the type of research used in this study is normative legal research, the type and source of data used is normative legal research, using the method of collecting primary legal materials, and the legal materials obtained will be analyzed qualitatively. The results of this study indicate that the sale and purchase agreement cannot always run according to the agreement desired by the parties. Sometimes in practice one of the parties in a sale and purchase agreement does not fulfill the promised performance so that according to the law it is considered to have deviated from the agreement which results in a loss for the other party called default. And legal settlement in the case of default on the Sale and Purchase Agreement can be done in 2 (two) ways, namely non-litigation dispute resolution or outside the court by means of arbitration, negotiation, mediation, and conciliation. As well as litigation settlement through the general court process.*

Keywords: *Notary, Sale and Purchase Agreement, Default*

1. Introduction

The rapid development of the Indonesian economy has made the community, especially business actors, both small business actors, medium businesses to large businesses, increasingly aware of legal protection in carrying out their business activities. Legal protection is very important to ensure that legal subjects obtain all their rights. Because all citizens have the same position before the law and government and are required to uphold the law and government

without exception, this is as stated in Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

For business actors, especially large business actors, land and buildings are important factors that drive the progress of their business. Buying and selling land and buildings between business entities is a common occurrence. Buying and selling according to Article 1457 of the Civil Code is an agreement in which one party binds themselves to hand over an object and the other party pays at an agreed price. The wording of the Article imposes obligations on each party in the agreement, namely the obligation of the seller to hand over the goods sold to the buyer and the obligation of the buyer to pay the price of the goods purchased to the seller.

Then Article 1458 of the Civil Code states that a sale and purchase agreement is considered to have taken place between the seller and the buyer if they have agreed and agreed on the condition of the object and the price of the goods, even though the goods have not been delivered and the price has not been paid. However, along with the development of the times, and along with the increasing number of legal problems that arise, the community, especially business actors, are more careful in making purchases, especially the sale and purchase of land and/or buildings. Where in making the sale and purchase, the parties state it in a deed of sale and purchase agreement which is made and ratified before an authorized official, namely a notary.

The authority of a notary in a land sale and purchase agreement according to Article 15 paragraph (1) of the Republic of Indonesia Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, which states that a notary is authorized to make authentic deeds regarding all acts, agreements and provisions required by statutory regulations and/or which are desired by the interested party to be stated in an authentic deed, guarantee the certainty of the date of making the deed, store the deed, provide a grosse copy and extract of the deed, all of which as long as the making of the deeds is not also assigned or excluded to other officials or other people as determined by law.

A deed of sale and purchase agreement made before a notary is a sale and purchase agreement for a land object made between a prospective seller and a prospective buyer made before the signing of the deed of sale and purchase. A deed of sale and purchase for land with a certificate of ownership can be executed before a Land Deed Making Officer (PPAT). Because the object being traded, namely land, is an immovable object whose transfer of rights through a legal act of sale and purchase must be made through a PPAT deed, before being made, the deed of sale and purchase generally needs to fulfill a number of requirements by both the seller and the buyer. Fulfillment of the requirements by the seller is generally related to letters as proof of ownership of the land or a

certificate of inheritance rights that are still being processed if the land to be sold is inherited property.[1]

In practice, the sale and purchase agreement is not always in accordance with what the parties want, and there are various problems. One of these problems is the occurrence of default on the deed of sale and purchase agreement made and legalized before an authorized official, namely a notary. Default is a condition when one party is negligent in fulfilling its agreement.

Subekti in Contract Law explains four elements of default, including: 1)Not doing what was promised or not doing what was promised, 2) Doing what was promised but not as promised, 3) Doing what was promised but being late, 4) Doing something that according to the agreement should not be done.

This is as happened in the decision of the Banten High Court Number 86/PDT/2017/PT BTN, where PT. Swiss German Uni hereinafter referred to as PT. SGU as the Buyer did not fulfill its performance to PT. Bumi Serpong Damai hereinafter referred to as PT. BSD as the Seller, this caused a lawsuit between the seller and the buyer. A study of the default on the deed of sale and purchase agreement is important to know how to resolve and the legal consequences if there is a default on the deed of sale and purchase agreement of land and/or buildings.

Based on the background of the problem above, a research was submitted in order to create a thesis with the title: REVIEW OF THE LAW OF BREACH OF LAW ON THE DEED OF BINDING AGREEMENT FOR THE SALE AND PURCHASE OF LAND AND BUILDINGS MADE BY A NOTARY (STUDY OF DECISION NUMBER: 86/PDT/2017/PT BTN).

2. Research Methods

The approach method used in this research is normative legal or legal research that only examines library materials, so it is also called library legal research. The research materials used in this study are primary legal materials, secondary legal materials, tertiary legal materials. The data collection method used is the collection of primary legal materials carried out by inventorying primary legal materials such as laws and regulations, Decisions of the Panel of Judges at the Supreme Court of the Republic of Indonesia, and other laws and regulations related to the object of research. The legal materials obtained will be analyzed qualitatively.

3. Results and Discussion

3.1. Breach of the deed of sale and purchase agreement in Decision Number: 86/PDT/2017/PT BTN

[1]Muchtar Rudianto, (2010), Sale and Purchase Agreement as a Preliminary Agreement, Jakarta: Rajawali Press, p. 38.

A sales and purchase agreement is a preliminary agreement in a transaction that is not carried out in cash, meaning that there are still things that need to be completed or have not been completed regarding the object of the agreement, whether in the form of documents or in the form of a building that has not been completed and can also wait for the completion of other documents, the purpose of the sales and purchase agreement itself is to bind the parties to remain in the agreement where the content is more about strengthening that the agreement is truly carried out between the parties concerned.

In practice, the sale and purchase agreement is not always in accordance with what is desired by the parties, and there are various problems. One of these problems is the occurrence of default on the deed of sale and purchase agreement made and ratified before an authorized official, namely a notary. Default comes from the Dutch word "wanprestastie", which means failure to fulfill the performance or obligations that have been set for certain parties in an agreement, either an agreement born from an agreement or an agreement arising from law. According to the Legal Dictionary, default means negligence, negligence, breach of promise, not fulfilling one's obligations in an agreement. The general understanding of default is the implementation of obligations that are not on time or are not carried out properly. Default is the implementation of an agreement that is not on time or is carried out improperly or is not carried out at all.[2]

This is as happened in the decision of the Banten High Court Number 86/PDT/2017/PT BTN. Both parties have agreed to make an agreement. The agreement is part of the law of obligations, because obligations can arise due to the existence of the Law of Agreement. Regarding the definition of an agreement in Book III of the Civil Code, it is stated in Article 1313 which states that an agreement is an act by which one or more people bind themselves to one or more people.

The agreement is then stated in the form of a Sale and Purchase Agreement. As previously explained, the Sale and Purchase Agreement is an agreement that is no different from agreements in general. This agreement was born due to the open nature of Book III of the Civil Code, which provides the broadest possible freedom to legal subjects to enter into agreements containing anything and in any form, as long as they do not violate laws and regulations, public order and morality. The sale and purchase agreement is a new breakthrough that was born as a result of the obstruction or existence of several requirements related to the sale and purchase of land rights which ultimately hindered the completion of transactions in the sale and purchase of land rights.

A notary has the authority to make a deed of sale and purchase of land with SHM status, but is not authorized to make an authentic deed of sale and purchase of

[2]M. Yahya Harahap, (1986), Legal Aspects of Contracts, Bandung: Alumni, p.60.

land with a certificate of ownership rights (AJB), because the authority to make a deed of sale and purchase of land (AJB) with a certificate of ownership rights lies with the Land Deed Making Officer (PPAT).[3]In the above case, the deed of the sale and purchase agreement was made before a notary. So that the deed is an authentic deed. A notary is the only public official who has the right to make an authentic deed as a perfect means of proof. A notary is an extension of the state where he carries out part of the state's duties in the field of civil law. The state in order to provide legal protection in the field of private law to citizens who have delegated part of their authority to a notary to make an authentic deed. Therefore, when carrying out his duties, a notary must be positioned as a public official who carries out the task.[4]

In the above case, the Deed of Sale and Purchase Agreement was made before a notary, proven by evidence in the form of Deed Number 017/PPJB/Kavling-CBD/I/10. Thus, the deed of sale and purchase agreement in the above case is an authentic deed that can be used as perfect evidence in court.

Regarding the contents of the deed of sale and purchase agreement in the case above, it turns out that there has been a breach of contract, where the Defendant/Appellant did not carry out his performance. According to the Legal Dictionary, breach of contract means negligence, negligence, breach of promise, not fulfilling his obligations in the agreement. The general understanding of breach of contract is the implementation of obligations that are not on time or are not carried out properly. Breach of contract is the implementation of an agreement that is not on time or is carried out improperly or is not carried out at all.[5]

What happened in the above case was that the Defendant/Appellant did not do what he should have agreed to do. In this case, the Defendant/Appellant did not provide any performance in accordance with what was agreed, namely to make payments for the object of the agreement periodically, even though the Plaintiff/Appellant had made a delivery of the object of the agreement in accordance with the agreement.

What the Defendant/Appellant did also shows a lack of good faith. According to the theory of good faith, each party in a legal relationship, especially in a contract, is expected to act with honest, sincere, and responsible intentions. This theory serves to maintain integrity in the implementation of rights and obligations, as well as to create a fair and harmonious atmosphere between the parties involved. And in making an agreement, one of the principles is the principle of good faith (tegoeder trow), where the principle of good faith can be determined in Article 1338 paragraph (3) of the Civil Code which states that an agreement must be carried out in good faith. This principle of good faith is very

[3]Patahna, M., (2009). Notary Problems, Jakarta: Rajawali, p. 9.
[4]Dody Radjasa Waluyo, (2001), Authority of Notaries as Public Officials, Journal, Media Notariat (Menor) October-December 2001 Edition, p. 63.
[5]Yahya Harahap, Loc. Cit.

basic and important to note, especially in making an agreement, the meaning of good faith here is to act as a good person. Good faith in a very subjective sense can be interpreted as a person's honesty, namely what is in a person at the time a legal act is carried out. While good faith in the agreement must be based on norms of propriety or what is considered appropriate in society.[6]

Default often occurs because the party that does not fulfill its obligations has bad intentions or does not have good intentions in carrying out the agreement. Default can also occur if one party does not act in good faith in carrying out its obligations. This is in accordance with what was done by the Defendant/Appellant, namely not carrying out what should have been agreed to do.

Based on the analysis, the author is of the opinion that the Defendant/Appellant's actions fulfill the elements of breach of contract even though the Defendant/Appellant argued that the payment was not made because the Plaintiff/Appellant had not submitted part of the object of the agreement. However, in reality the Plaintiff/Appellant had submitted part of the object of the agreement as agreed by both parties as stated in the Deed of Sale and Purchase Agreement. So it is appropriate if the deed of sale and purchase agreement is canceled by a court decision.

The default committed by the Defendant/Appellant was proven by the decision of the District Court Judge which in its decision stated that the Defendant/Appellant had committed a default, namely not carrying out its obligations as stipulated in the Sale and Purchase Agreement (PPJB) for the Land and Building of the SGU-Edutown BSD City Campus in BSD City No: 017/PPJB/Kavling-CBD/I/10 and the Cancellation of the Sale and Purchase Agreement (PPJB) for the Land and Building of the SGU-Edutown BSD City Campus in BSD City No: 017/PPJB/Kavling-CBD/I/10 based on the Plaintiff's Letter No: 001/DIR/IX/2014 dated September 9, 2014 is legally valid. Which was then strengthened by the High Court Judge by adding the verdict, namely Sentencing the Defendant to vacate and hand over the land and buildings owned by the Plaintiff, namely: (1). Land and Building of SGU-Edutown BSD City Campus in BSD City No: 017/PPJB/ Kavling-CBD/I/10 and (2). Land and Building of Edutown BSD City in BSD City, based on the Minutes of Fitting Out and Borrowing No.: 001/BASTK/CRC-CCM/BSD/I/2010 dated 11 January 2010, to the Plaintiff.

According to the theory of legal protection, it is important to provide protection for the rights of individuals or weaker parties in a legal relationship, so that there is no abuse of power or injustice. This theory aims to create a sense of justice, legal certainty, and protection for individuals or groups who are vulnerable to potential losses in various legal relationships, both in contracts, business transactions, and in social life. The theory of legal protection plays an important

[6]A Qirom Syamsuddin M., (1985), Principles of Contract Law and its Development, Yogyakarta: Liberty, page 13.

role in resolving cases of default by ensuring that the injured party receives protection, and to ensure that the injured party obtains their violated rights. The Court's decision in the case above shows that there has been legal protection for the injured party, namely the Plaintiff/Appellee with the existence of default. This is in accordance with the role of the court, where the court has a very large role in enforcing legal protection, namely by providing fair decisions, either through fulfilling the contract, canceling the contract, or providing compensation. And in every case of default, the main goal is to restore the fairest possible conditions for the injured party and provide legal certainty for all parties involved.

3.2 Settlement of Default Against Sale and Purchase Agreement

The Sale and Purchase Agreement has not actually been regulated in the legislation and in practice the Sale and Purchase Agreement can be made by notarial deed or under hand. In making the Sale and Purchase Agreement deed, the notary relies on the provisions of Article 15 paragraph (2) letter f of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (UUJN) which gives the notary the authority to make deeds related to land. The most important principle in the Sale and Purchase Agreement is that the agreement contains clauses that are in accordance with the interests and agreements of the parties, as well as the rights and obligations (performance) that must be fulfilled and implemented by the seller and buyer. With the signing of the Sale and Purchase Agreement by all parties before a public official, the Sale and Purchase Agreement is included in the authentic deed, so that the position of the authentic deed is perfect, unless proven otherwise.

An agreement cannot always run according to the agreement desired by the parties. Sometimes in practice one of the parties in a sale and purchase agreement does not fulfill the promised performance so that according to the law it is considered to have deviated from the agreement which results in a loss for the other party called a breach of contract. A breach of contract or failure to fulfill a promise can occur either intentionally or unintentionally. A party who does not intentionally commit a breach of contract can occur because they are indeed unable to fulfill the performance or because they are forced not to do the performance.[7]

If in an agreement there is one party who breaks a promise or does not carry out its obligations, then there is a party whose interests are violated. This makes the law provide protection for the interests of the parties who are harmed in their interests. This responsibility arises from the existence of an act of violation by one party to an agreement.

As a basis for a lawsuit for breach of contract, to request legal responsibility as a result of one of the parties not carrying out the obligations stated in the Sales

[7]Ahmadi Miru, (2014), Contract Law and Contract Drafting, Jakarta: Raja Grafindo, p. 74

and Purchase Agreement (PPJB), this can be done through non-litigation or out-of-court dispute resolution and litigation resolution or through the general court process.

a. Non-Litigation or Dispute Resolution Outside the Court (ADR)

Dispute resolution outside the court Alternative Dispute Resolution (ADR) is a civil dispute resolution that sets aside litigation dispute resolution based on the good faith of the parties. According to Suyud Margono, settlement through ADR is carried out through consultation, negotiation, mediation, conciliation, arbitration, good offices, mini trial, summary jury trial, rent a judge and med arb.[8]

Dispute resolution through ADR is regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (ADR). Dispute resolution through ADR is in line with PUPR Ministerial Regulation No. 11/2019 concerning the Sale and Purchase Binding System which regulates the resolution of PPJB disputes through an arbitration mechanism.[9]

Based on Article 1 paragraph (10) of Law Number 30 of 1999 concerning Arbitration and Alternative Resolution, it is stated that alternative dispute resolution is an institution for resolving disputes or differences of opinion beyond the stages agreed to by the parties concerned, namely handling outside the courts by means of consultation, negotiation, mediation, conciliation or various expert opinions.

b. Litigation Settlement

In addition to seeking non-litigation processes, the injured party in the dispute can also take legal action through litigation to obtain their rights as stated in the Sales and Purchase Agreement (PPJB). According to the book "Dispute Resolution Law" by Dr. Frans Hendra Winarta, SH, MH, litigation is a conventional method in the business world to resolve disputes, such as in trade, banking, mining projects, oil and gas, energy, infrastructure, and so on. The litigation process involves parties that are in conflict with each other. Litigation is also considered a last resort (ultimum remedium) after alternative dispute resolution efforts have failed.[10]

Dispute resolution through litigation has advantages and disadvantages because the dispute resolution process in court produces decisions that are adversarial in nature and cannot cover common interests, because it produces a win-lose solution. As a result, there are parties who feel satisfied and other parties who feel defeated, which can cause new problems between the disputing parties. In

[8]Ros Angesti Anas Kapindha, et al., (2014), Effectiveness and Efficiency of Alternative Dispute Resolution (ADR) as a Way to Resolve Business Disputes in Indonesia, Private Law, Volume 12 Number 4 of 2014.

[9]Anda Setiawati, (2019), Legal Efforts Related to the Problem of Sale of Flats Bound by PPJB, Criminal Law and Legal Development, Volume 01 Number 02 of 2019, pp. 5-6.

[10]Frans Hendra Winarta, (2012), Indonesian National and International Arbitration Dispute Settlement Law, Jakarta: Sinar Grafika, pp. 1-2.

addition, dispute resolution through litigation is often slow because it takes a long time and the costs are uncertain.

Regarding litigation, there is no specific definition given in the legislation. However, in Law Number 30 of 1999 Article 6 paragraph 1 concerning Arbitration, there is an explanation that disputes in a civil context can be resolved by the parties involved through alternative dispute resolution in good faith, by avoiding the litigation process in Court. Therefore, it can be concluded that litigation is a process of resolving legal disputes in court where each party to the dispute has the same rights and obligations, both in filing a lawsuit and providing an answer to refute the lawsuit.

Protected from the enactment of the provisions of Article 1338 paragraph (1) of the Civil Code regarding the principle of freedom of contract and binding of agreements, the aggrieved party in an effort to obtain their rights from an agreement can choose to force the other party to fulfill the agreement, if this can still be done, or demand cancellation of the agreement, with compensation for costs, losses and interest. Based on the provisions of Article 1267 of the Civil Code, the developer can sue the developer in the form of fulfilling the developer's achievements, compensation, cancellation of the agreement, fulfillment of achievements accompanied by compensation or cancellation of the agreement accompanied by compensation. Thus, the aggrieved party has the right to demand a combination of fulfillment (nakoming), compensation (vervangede vergoeding), dissolution, termination, or cancellation (ontbinding), fulfillment plus complementary compensation (nakoming en anvullend vergoeding), or dissolution plus complementary compensation.[11]

From the existing legal efforts, the parties chose a settlement through litigation. Initially, the Plaintiff/Appellee had attempted a non-litigation settlement by sending a notification letter so that the Defendant/Appellant would carry out their obligations, but the letter did not receive a reply from the Defendant/Appellant, so the Plaintiff/Appellant chose the litigation route by filing a lawsuit against the Defendant/Appellant to the Court.

Dispute resolution through litigation is chosen because in litigation, the final decision is taken by the judge based on the law and evidence presented in court. The judge's decision is final and binding on all parties to the dispute. In addition, litigation resolution is a process of resolving legal disputes in court that can create legal certainty.

According to the theory of legal certainty, the legal system must create clarity, transparency, and consistency in the application of the law to provide protection of rights and justice for every individual. In the context of litigation, legal certainty provides assurance that the legal process will run according to clear procedures, and the decisions taken will be fair, binding, and predictable. Legal certainty, in turn, also supports an effective dispute resolution process. This is

[11]Anda Setiawati, Op.Cit., pp.6-7.

important to ensure that the rights of each party are respected, and justice can be achieved in the legal system.

The theory of legal certainty also provides a very important basis for litigation because without clear legal certainty, the litigation process can be ineffective and create uncertainty. On the contrary, the litigation process itself can strengthen legal certainty by issuing valid and binding decisions. In this context, legal certainty and litigation work together to realize justice, social stability, and protection of the rights of every individual involved in a legal dispute.

Based on the theory of legal certainty, the parties, especially the Plaintiff/Appellee, choose the path of resolving default through litigation. Because litigation provides a guarantee of a final and binding decision. Court decisions provide clear legal certainty regarding the rights and obligations of each party. Once a decision is made, the losing party is obliged to comply with it, and there is little chance of changing the decision, except through legitimate legal remedies such as appeal or cassation.

4. Conclusion

Based on the theory of good faith, what was done by the Defendant/Appellant shows no good faith because the Defendant/Appellant did not provide any performance in accordance with what was agreed, namely to make payments for the object of the agreement periodically, even though the Plaintiff/Appellant had submitted the object of the agreement in accordance with the agreement. So it is clear that the actions of the Defendant/Appellant fulfill the elements of breach of contract. And the court decision shows that the theory of legal protection has been applied, namely with the existence of legal protection for the injured party in this case the Plaintiff/Appellant with the existence of a breach of contract, namely in the form of cancellation of the deed of sale and purchase agreement and punishing the Defendant/Appellant to vacate and hand over the land and buildings belonging to the Plaintiff/Appellant. From the existing legal efforts, the settlement of this case was carried out through litigation. The parties, especially the Plaintiff/Appellant, chose the litigation settlement path. Because litigation provides a guarantee of a final and binding decision. The court decision provides clear legal certainty regarding the rights and obligations of each party. Once a decision has been made, the losing party is obliged to comply with it, and there is little opportunity to change the decision, except through legitimate legal remedies such as appeal or cassation. The parties who enter into an agreement, especially in this case the Sale and Purchase Agreement must have good faith, in addition, the parties who will make the Sale and Purchase Agreement before a Notary must also truly understand the clauses that will be agreed upon, so that all contents in the Sale and Purchase Agreement deed can truly be known and understood by both parties, this is done to prevent default by the parties in an agreement. And the Government should regulate the Sale and Purchase Agreement further in specific laws and regulations, especially related to land

issues, so that the parties who use the Sale and Purchase Agreement as a preliminary agreement before the Sale and Purchase Deed are better protected. And it is also regulated regarding the settlement if there is a default on the sale and purchase agreement.

5. References

Journals:

Harahap, M. Yahya, (1968), Segi-Segi Hukum Perjanjian, Bandung: Alumni.

Kapindha, Ros Angesti, Anas Salvatia Dwi M., dan Winda Rizky Febrina, (2014), Efektivitas dan Efisiensi Alternative Dispute Resolution (ADR) Sebagai Salah Satu Penyelesaian Sengketa Bisnis di Indonesia. Private Law. Fakultas Hukum Universitas Sebelas Maret. Vol. 2, No. 2.

Miru, Ahmadi dan Sakka Pati, (2008), Hukum Perikatan, Jakarta: Rajawali Pers.

Pamungkasih, Rini, (2009), 101 Draft Surat Perjanjian Kontrak, Jakarta Selatan: Gradien Mediatama.

Patahna, M., (2009), Problematika Notaris, Jakarta: Rajawali

Rudianto, Muchtar, (2010), Perjanjian Pengikatan Jual Beli Sebagai Perjanjian Pendahuluan, Jakarta: Rajawali Press.

Setiawati, Anda, (2019), Upaya Hukum Terkait Masalah Penjualan Rumah Susun Yang Diikat Dengan PPJB, Hukum Pidana dan Pembangunan Hukum, Volume 01 Nomor 02 Tahun 2019.

Waluyo, Dody Radjasa, (2001), Kewenangan Notaris Selaku Pejabat Umum, Jurnal, Media Notariat (Menor), Edisi Oktober-Desember 2001.

Winarta, Frans Hendra, (2012), Hukum Penyelesaian Sengketa Arbitrase Nasional Indonesia dan Internasional, Jakarta: Sinar Grafika.