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Review of Sale and Purchase Agreement According to Indonesian Legal System

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Abstract

Agreement of the parties. Agreement means there is a free will agreement between the parties regarding the main things that are desired in the agreement. In this case, the parties must have a free will (voluntary) to bind themselves, where the agreement can be stated explicitly or secretly. Free here means free from errors (dwaling, mistake), coercion (dwang, dures), and fraud (bedrog, fraud). In a contrario, based on article 1321 of the Indonesian Criminal Code, the agreement becomes invalid, if the agreement occurs because of the elements of an error, coercion, or fraud. Whereas in land buying and selling parties who have made land purchases to the seller can be sued by those who feel entitled to the land rights, therefore it is necessary to require a legal protection for buyers, usually this land ownership dispute is submitted by the plaintiff in the District Court for selling buy the land there is a certificate that has been carried out based on the process that has been passed starting from the making of the sale and purchase certificate to the issuance of the certificate. But all of that is not likely to be sued by a third party.

Keywords: *Review; Sale and Purchase Agreement; Indonesian Legal System*

Introduction

At this time the expansion of community activities in various fields and the increasing population and human needs for land, the land becomes very important for its control, use and ownership. Humans always try to own and control and use land, because it is very important for life. Efforts to get the land can be done in various ways, one of which is buying and selling land. With buying and selling, land ownership is transferred from one party to another. Buying and selling can result in the transfer of land rights from the seller to the buyer, so it is included in the agrarian law. [1]Land is one of the resources for human life and is one of Indonesia's wealth which has a very important social function for the people of Indonesia in order to increase the prosperity and welfare of the people. Land for the community has grown as a very important economic item and can also be used as commercial material. In Article 33 Paragraph.[2] of the 1945 Constitution it has been stated that the earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. The

[1] Asser – L.E.H. Rutten, (2001), *Handleiding tot de broefening van het Nederlands Burgelijk Recht,Verbintenissenrecht,,* (pp. 255). Netherland : Algemene Leer der Overeenkomsten
[2] J. Satrio, (1998), Agreement Law, (pp.85), Jakarta, JKT: Sinar Grafika, Jakarta.

importance of the role of land for human life makes the need for land increases along with development and economic development that requires land in the form of land.

Since the enactment of Law Number 5 of 1960 concerning Basic Rules for the Abbreviated Agrarian Principles (UUPA), the notion of buying and selling land is no longer an agreement as in Article 1457 of the Civil Code, but rather a legal act against the transfer of land rights. Land can be transferred from the owner to another party who wants the land, the transfer of land ownership is closely related to legal provisions to provide certainty of rights for someone who acquires the land. According to Article 1457 the Civil Code reads:

"*Buying and selling is an agreement with which one party binds itself to surrender a material, and the other party to pay the price agreed upon."*

Sale and purchase of land is a sale and purchase with specific objects, Salim HS said that the agreement certainly has its limits, namely specifically in the field of land law, as long as the agreement entered into does not violate the Law or contravene the provisions of the Basic Agrarian Law. The term sale and purchase is only mentioned in article 26 of the Basic Agrarian Law, which is related to the sale and purchase of land rights. In other articles there is no word that says buying and selling, but it is said to be transferred. The definition of buying and selling is not explained clearly in the LoGA, but with regard to Article 5 LoGA which states that the National Land Law is Customary Law.

In essence, human life can not be separated from relationships with other humans because they want to always live in unity with each other. Togetherness will take place well if there is agreement between the parties when conducting interactions, so that from this interaction arises a relationship between the parties that can produce an event where someone promises to other people to do something. This can be in the form of freedom to do something, to give something, not to do something. Wirjono Projodikoro stated the meaning of the agreement as a legal relationship regarding property between two parties.[3] Where a party promises or is deemed promised to do something, while the other party has the right to demand the implementation of the promise. An agreement must be implemented in good faith, in the Civil Code, provisions regarding good faith, especially those relating to the implementation of the agreement contained in Article 1338 Paragraph 3 which stipulates that all agreements must be carried out in good faith. This means that each party that made the agreement, in this case including the sale and purchase agreement. Problems in buying and selling are inseparable from people's daily lives and good faith in buying and selling is an important factor so that buyers in good faith will receive legal protection according to the applicable laws and regulations.

Current economic growth has an impact on all aspects of human life, this causes the goods and services produced by the community to increase, especially at this time where human activity is increasingly seen from the relationship between the two legal parties by making an agreement, which in the agreement is often include the power clause in accordance with what is desired. The granting of power of attorney is a legal act that is often found in society, the granting of power is a basic and important act in the process of legal relations or non-legal relations, where a person wants himself to be represented by others to be his power of attorney in doing everything that is in the interests of the authority.

According to Article 37 Paragraph (1) the Government Regulation states that for the transfer of land rights a deed required by a public official called the Land Deed Making Officer (PPAT) is abbreviated by the government. Even so, the provisions of the article do not exclude the provisions in force in traditional law. The existence of the deed of transfer of land rights made by the PPAT by the legislation is referred to as an authentic deed. The procedure and formality of making an authentic deed is

[3] B. Ter Haar Bzn, (2003), *Beginselen en stelsel* (pp. 88). Netherland: Van Het Adatrecht.

a compelling legal provision, meaning that the procedure and procedure must be followed as precisely as possible without being allowed to cross at all. Deviations from the procedures and procedures for making authentic deeds will bring legal consequences to the proof of the deed. As state officials, the Notary and PPAT are given the authority to issue a deed that has perfect proofing power. Notaries and PPAT are vulnerable to temptation and fraud for personal gain. So that in the notary position law and notary code of ethics and government regulation Number 37 of 1998 concerning Land Deed Making Officials and their implementation are expected to be able to supervise and anticipate issues issued by irresponsible Notary / PPAT. Whereas in the sale and purchase of land a party who has purchased land from a seller may be sued by a party who feels entitled to the land rights, therefore it is necessary to require legal protection to the buyer. buying the land there are certificates that have been carried out based on the process that has been passed from the making of the sale and purchase deed to the issuance of the certificate. But all that is not closed, the possibility of a third party being sued. Whereas the buyer / second party has made buying and selling based on the procedure and they have had good intentions in the buying and selling. The author formulates several problems for discussion as follows: How the Review Of Sale and Purchase Agreement According To Indonesian Legal System. How The Terms of Making Sale and Purchase Agreement According To Indonesian Legal System.

Research Method

This research uses normative legal research, namely by conducting a review of the laws and regulations and books that can be used as legal research, especially relating to the review of sale and purchase agreement according to the Indonesian legal system.

Discussion

1. Review of Sale and Purchase Agreement According To Indonesian Legal System

a. The Existence Of Sale And Purchase Agreement

The existence of sale and purchase agreement in the community is a means to create peace and order in the community, so that the relationship between members of the community with one another can be safeguarded. The law serves to provide protection for human interests. For human interests to be protected, laws must be implemented. Implementation of the law can take place normally, peacefully but there can also be violations of the law, in this case the law violated must be upheld. Legal protection contains two meanings, namely.

1) There are general rules that make individuals know what actions are allowed and what cannot be done;
2) Legal certainty for individuals from governmental authority because with the existence of general legal rules, individuals can find out what may be charged or done by the State to individuals. Legal certainty is not only in the form of Articles, Laws but also the consistency in the decisions of judges between the decisions of one judge and the decisions of other judges, for similar cases that have been decided.

The law is essentially something abstract, although in its concrete manifestation, people's perceptions about the law vary, depending on which angle they look. Judges will see the law from their

perspective as judges, legal scientists will view the law from the standpoint of their scientific profession, the ordinary people will view the law from their perspective and so on.

b. The Meaning Of Sale And Purchase Agremeent As The Legal Protection

The main purpose of law as a protection of human interests is to create an orderly society, sale and purchase agreement is also included. so that the realization of a balanced life. The law maintains the integrity of life in order to create a psychological and physical balance in life, especially the life of social groups. It means that the law also maintains justice in social and community life. According to Subekti in the book Sudikno Mertokusumo argues that, the purpose of the law is to serve the purpose of the state, which is to bring prosperity and happiness to its people. In essence there is a relationship between legal subjects with legal objects that are protected by law and give rise to obligations. Rights and obligations arising from the legal relationship must be protected by law, so members of the community feel safe in carrying out their interests.

As the law regulates the rights and obligations of community members in general, so also the agreement establishes the rights and obligations between the parties to the agreement. The words "that made it" addressed to the parties in the agreement. If it is called binding "as a law", the intention is: just as the law binds the members of the community, so is the binding agreement, the only difference is that the law regulates community members in general, while the agreement only regulates the rights and obligations between the parties in the agreement

c. Basis Principle

On the basis of that said, that according to B.W. agreements are consensual and obligatory. The characteristic "consensual" would say, that for the birth of the agreement - according to B.W. - in principle there is no need for certain formalities, agreeing is enough. "Obligatory nature" would like to say, that with the closing of the agreement, new rights and obligations (commitments) are born between the parties; the object of the new agreement is transferred later through the act of submission.

The principle above, that is the agreement according to B.W. in principle "consensual", has enormous influence in the practice of treaties, which are often forgotten. For example, the question has been asked, in the case of an agreement set forth in a notarial deed, when was the agreement born? The agreement should have been born before being taken to the notary. The agreement was born at the time the agreement was reached, but people need strong evidence of the agreement that was reached. They come to the notary asking to agree that they will be put in the notarial deed.[4]

d. Consequences According To Private Law (BW)

The consequences of the provisions of Article 1338 paragraph (1) B.W. is, that: an illegal agreement, has no binding power."Legitimate" here means fulfilling all the conditions for the validity of an agreement. This is in line with the provisions of Article 1335 jo. Article 1337 B.W. Likewise, the agreement that was canceled; Such an agreement - from the beginning, from the next - is not binding or no longer binding. So the validity of an agreement is related to its binding power.Article 1338 paragraph (2) B.W. said: "An agreement cannot be withdrawn other than by agreement of both parties, or for reasons which by law are declared sufficient for that".In other words, the article above wants to say, that: a valid agreement can be withdrawn upon the agreement of both parties. Is not by agreeing on both parties, the parties can also make a new agreement whose contents cancel the agreement that was made before? The parties to the agreement may also expressly agree, that the agreement they closed may be

[4] Peter Mahmud Marzuki, (2011), Legal Research in Indonesia, (pp. 53). Sinar Grafika.

canceled unilaterally.Note. Henceforth in this paper, if you say "agreement", then what is meant is a valid agreement.With that being said, that: the agreement in principle cannot be withdrawn unilaterally (4).

Court Desicion Number 306/K/TUN/2015 explains that :

That the buyer in good faith must be protected legally in Sale And Purchase Agreement, both in civil protection, as well as criminal and state administration, the buyer in good faith is, the buyer who has followed all the procedures performed before the PPAT (Land Deed Making Official), so that if a case occurs if sued by a third party, then buyers in good faith may not be prosecuted, and compensation if they feel aggrieved must be sought from the seller in Advance

Sale And Purchase Agreement is also must be based from Provisions of Article 1338 paragraph (1) B.W. is, that: an illegal agreement, has no binding power."Legitimate" here means fulfilling all the conditions for the validity of an agreement. This is in line with the provisions of Article 1335 jo. Article 1337 B.W. Likewise, the agreement that was canceled; Such an agreement - from the beginning, from the next - is not binding or no longer binding. So the validity of an agreement is related to its binding power.Article 1338 paragraph (2) B.W. said: "An agreement cannot be withdrawn other than by agreement of both parties, or for reasons which by law are declared sufficient for that".In other words, the article above wants to say, that: a valid agreement can be withdrawn upon the agreement of both parties

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2. The Terms of Making Sale and Purchase Agreement According To Indonesian Legal System

1. Contain of Sale And Purchase Agreement

Themselves to another person so that an agreement arises from the engagement. In making this agreement applies the principle of freedom of contract as regulated in Article 1338 of the Civil Code or also referred to as Burgerlijk Wetboek ("BW").So, basically an agreement is made freely between the parties that bind themselves. But it still must be in accordance with applicable norms and laws. According to advocate Brigitta Imam Rahayoe, points which are generally contained in an agreement include (but are not limited to):[5]

· The parties;
· Preliminary;
· Definition;
· Representations and Warranties;
· Contract contents;
· Price;

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· Payment Terms;
· Payment method;
· Payment obligations;
· Litigation / Arbitration / Alternative Dispute Resolution;
· Applicable law;
· Jurisdiction;
· Waiver;
· Attachments;
· Closing.

Thus as we quote from Brigitta Imam Rahayoe's material presented at the Peradi-Hukumonline Legal Roadshow with the theme "Technique of Making Contracts without Gap and Hold a Lawsuit" on Thursday, February 10 in Surabaya. In reviewing an agreement, what must be considered are the points that can cause harm to the parties in the process of completing the agreement. This is often the subject of debate between parties who make agreements (in this case the company). Each party does not want any interests to be harmed. So in making an agreement (especially a commercial agreement) there is often a conflict of interest in the process of drafting the agreement. A person can be bound by an agreement that he does not want, if he - after he is aware of an error or fraud or after the coercion has ceased - within the time determined by law does not require cancellation (see Article 1454 B.W.).Try reading Article 1454 B.W., then you will be able to read, that:In all cases, where a claim for statement of annulment of an engagement is not limited to a specific statutory provision for a shorter period of time, that time is five years. When it comes into force :

- In the case of coercion, since the day of coercion has ceased,
- In the case of oversight or fraud, since it was discovered that the error or fraud was.

So, even if the agreement, which at the time of its closure contained a defect in the will, was still born, but within five years of coercion no longer exists, or since it was realized that he was lost or deceived, the person concerned must submit a claim to cancel the agreement, otherwise then the agreement is binding on the parties as the legal agreement.If so, wouldn't the person who closed the agreement on the basis of a flaw in the will actually not want the agreement? He has agreed because he was lost, forced or deceived. However, from the possibility of canceling claims for agreements containing defects in the will, we can say, agreements that contain elements of defect in the will at the time of closing - even before being demanded to cancel are binding on the parties however - are invalid agreements.

2. Agreement As The Rule For The Parties

The agreement was born, but is invalid, in the sense that it can be demanded for cancellation by a party whose will is flawed. Isn't a legal agreement binding on the parties as a law (Article 1338 paragraph 1 B.W.) and can only be canceled or amended by agreement of the parties or in terms of the law allowing it (read Article 1338 paragraph 2 B.W.)? It is invalid here in the sense that upon the claim of the party whose wish is flawed, the agreement can be canceled. Then how do people justify the consequences mentioned above? In such an event, the party whose agreement contains defects, by not utilizing Article 1454 B.W. for his benefit, he - who was lost, forced and deceived - was seen as agreeing to the agreement.

Whose name is not necessarily in accordance with the actual circumstances.Generally - not always, but mostly - an agreement is the result of negotiations, bargaining about the price, terms or promises - until an agreement is reached, so an agreement is born. But do not think, that the new agreement was born if all aspects of the agreement have been agreed upon. It turns out, if the main aspects - the main, essential

for the existence of the agreement - have been agreed upon, then the agreement has been born, even though there are certain aspects of detail that have not been agreed upon. This is evident from Article 1333 B.W., which says that"An agreement must have as the principal the kind of goods which has at least a specified type.There is no obstacle that the quantity of goods is uncertain, as long as the amount can later be determined or calculated ".So when the agreement is closed maybe you do not know how much or how many objects of the agreement agreed. That according to the above provisions is not a problem, even though Article 1320 sub 3 B.W. requires: the existence of certain things, the purpose of which is the existence of an object (zaak) or a certain object.[6]

Pay attention to the word "certain". It turns out that the word "certain" does not have to be certain in all aspects. This is evident in Article 1333 above. These deficiencies can later be filled by statutory provisions which are additive, habitual or proprietary (read Article 1339 B.W.). Then one can be bound to the contents of a certain agreement, which he has never explicitly agreed upon.Pay attention to the word "specific content" of an agreement, because the essential elements - the essential elements - must be agreed upon in order for the agreement to be born.B.W. departing from the principle, on the terms of the agreement - which is not the essence of the agreement concerned - which is left unregulated (agreed) by the parties, will by law be filled with legal provisions that are additive (aanvullendrecht), and if the law is there is no supplementary nature, filled by applicable customs or by propriety (read Article 1339 BW). Basically, the legislator departs from the mind, if the provisions of laws that are additive (which are aanvullend) may be distorted by the parties - by making agreements that deviate from the provisions of it - or may be agreed by the parties to get rid of habits that are applies in the place where the agreement is carried out or prominently

It is important to realize that despite the principle of freedom of contract, one of the conditions for the validity of the agreement as stipulated in Article 1320 of the Civil Code ("Civil Code") is a lawful cause. Furthermore Article 1337 of the Civil Code states that a cause (an agreement) is prohibited, if prohibited by law, or if it is contrary to good morality or public order. Based on the principle of freedom of contract in article 1338 of the Indonesian Criminal Code, the parties to the contract are free to make an agreement, whatever its content and whatever its form:"All treaties made legally apply to the law of those who make them."However, what we need to remember is that the principle of freedom of contract still cannot violate the legal conditions of the agreement in the Criminal Code. The legal conditions for the agreement are regulated in article 1320 - article 1337 of the Indonesian Criminal Code. According to the description above, the author draw some conclusions as follows:

1. Agreement of the parties. Agreement means there is a free will agreement between the parties regarding the main things that are desired in the agreement. In this case, the parties must have a free will (voluntary) to bind themselves, where the agreement can be stated explicitly or secretly. Free here means free from errors (dwaling, mistake), coercion (dwang, dures), and fraud (bedrog, fraud). In a contrario, based on article 1321 of the Indonesian Criminal Code, the agreement becomes invalid, if the agreement occurs because of the elements of an error, coercion, or fraud.

2. The ability of the parties. According to article 1329 of the Indonesian Criminal Code, basically all people are competent in making agreements, unless determined not competent according to the law.

3. Regarding a certain thing. The specific thing means what rights and obligations of both parties have been agreed upon, at least the type of goods intended in the agreement is determined by

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type. According to Article 1333 of the Indonesian Criminal Code, the object of the agreement must include certain types of goods with at least a specified type. Article 1332 of the Indonesian Criminal Code determines that the object of the agreement is tradable goods.

4. Halal. The halal cause is the contents of the agreement itself, which describes the objectives to be achieved by the parties. The contents of the agreement do not conflict with the law, decency, or with public order. This is regulated in article 1337 of the Indonesian Criminal Code.

Conclusion

There are some conclusion in this is research as follows :

1. The the Sale and purchase agreement must be increased and the protection for the buyers is arrannged in Court so that the implementation of the agreement for the parties can run well.

2. Sale and purchase agreements must be contained in full on what points must be included in the agreement, so that the interests of the parties can be protected.

Suggestion

In making a sale and purchase agreement, it must pay attention to applicable legal provisions, so that the parties can obtain legal certainty to carry out the agreement.

Reference

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