



DUE TO LEGAL CANCELLATION OF LAND PURCHASE DEED

By
Indrati Rini
Professor of Law at Narotama, University of Surabaya
Email: indratorini1956@gmail.com

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ABSTRACT

Deed of sale and purchase of land as evidence of the transfer of ownership rights to land, including the buildings/houses on it. The transfer of ownership rights to land can be done through a sale and purchase agreement. The land sale and purchase agreement, including the building/house on it, must be carried out by the parties before an authorized official, namely a Notary/Land Deed Making Officer. To ensure legal certainty of the transfer of ownership rights to land, it is stated in the form of an authentic deed. The validity of the land sale and purchase deed is determined by the legal terms of the agreement which must be fulfilled by the seller and the buyer. The deed of sale and purchase of land can be canceled by a judge, which in practice, cases often occur which give rise to legal consequences for the cancellation of the deed of sale and purchase of land.

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Corresponding Author:

Indrati Rini
Professor of Law at Narotama, University of Surabaya
Email: indratorini1956@gmail.com

1. INTRODUCTION

Various types of agreements are made by community members with one another in an effort to sustain their lives and livelihoods, both at the national, regional and global levels. One of the most common types of agreements is a sale and purchase agreement (*sales contract, sales agreement*), specifically land sale and purchase agreements including buildings/houses that are on the land. The land sale and purchase agreement can be made based on an authentic deed (*authenticate documents*) or deed under hand (*negotiation deed*).

Acquisition or transfer of land rights, especially property rights (*heel property*) certainly aims to provide legal protection and legal certainty over the rights attached to the land. Based on property law (*of business law*) that takes place in Indonesia, land is classified as fixed or immovable property. Legal protection and legal certainty for property owned by a person as a member of society is guaranteed by the country's basic law which determines that "everyone has the right to the protection of property that is under his authority and entitled to have private property rights that cannot be arbitrarily taken over by anyone".¹ Thus the state, in this case implemented by the government, is obliged to protect its citizens over land ownership.

In practice or facts in society, land sale and purchase agreements, especially those made by a Notary/Deed Making Officer as an authentic deed, can be requested for cancellation, either by the seller or the buyer, if one of the parties breaks the promise. It is not uncommon for court decisions to state that the deed of sale and purchase of land is the basis for deciding the occurrence of default or the existence of an unlawful act.

Based on these facts, the problem that arises is how far is the legal consequence of canceling the deed of sale and purchase of land ownership?

¹ The 1945 Constitution of the Republic of Indonesia, Amendment IV, Articles 28G and H, as the embodiment of human rights guaranteed by the state.

2. RESEARCH METHODS

This research is a normative legal research (*normative legal research, doctrinal research*), which is based on

legal norms, or positive law as secondary data. As it is understood that "legal research conducted by examining literature or secondary data is called normative legal research".² The sources of data used are in the form of laws and regulations, legal documents, decisions of judicial bodies, 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.

3. PRELIMINARY

Sale and purchase agreement as one of the most frequent types of agreements made by community members. Based on the positive law stipulates, "that buying and selling is an agreement, by which one party binds himself to surrender an object, and the other party to pay the price that has been promised".³ In this case, the main obligation of the seller, namely to deliver the goods, and bear it. On the other hand, the main obligation of the buyer is to pay the purchase price at the time and place according to the agreement.

Buying and selling involves sellers and buyers, in which the seller is obliged to surrender ownership of an object(*case, goods*), and the buyer is obliged to pay the agreed price. Obligations for the seller are the rights of the buyer, otherwise the obligations of the buyer are the rights of the seller. Agreements that give rise to rights and obligations for the parties that are mutually exclusive are referred to as *reciprocal agreement*.

The law governing the agreement is civil law(*private law, private law*), namely the rules governing the relationship between people and people, people and objects, and people and their families. The relationship between community members regulated by civil law is equal or equivalent, between one party and another, including the relationship between the seller and the buyer. Precisely what is the main basis is the law of engagement or law of agreement / 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

respectively. In reality, the emergence of disputes or lawsuits in the future, usually stems from the non-fulfillment of the obligations of each party. In this case the buyer does not pay the land price or the seller does not hand over land ownership, according to the agreement. As Raymond stated

Wacks that "*can the law of contract be properly understood, without an appropriation of the concepts of rights and duties*".⁴

² Soerjono Soekanto, and Sri Mamudji, *Normative Legal Research*, Rajawali, Jakarta, 1986, p. 15.

³ The Civil Code, Article 1457, indicates the main elements of a sale and purchase agreement in the form of delivery of goods/goods, and payment of the price of goods/goods.

⁴ Raymond Wacks, *Understanding Jurisprudence, An Introduction To Legal Theory*, Oxford University Press, New York, 2021, h.1.

In fact, the parties in entering into a land sale and purchase agreement, including houses and things on it, are often not based on an authentic deed, which is made in front of a Notary/Land Deed Maker's Office, but only based on a deed under the hand(*negotiation act*). Various factors cause the sale and purchase of land to be carried out based on private deeds, including ignorance of the law, mutual trust, abuse of selling power by other parties, low cost, local customs, practicality of manufacture, and various other factors. Difficulties can arise if the buyer carries out the land registration process to obtain a certificate of ownership at the National Land Agency.

Community members who need legality or legitimacy of the land sale and purchase agreement made, must go to the Notary/Land Deed Making Officer to have the sale and purchase deed made. The deed made by the seller and the buyer before a Notary/Deed Making Official is referred to as an authentic deed, which functions as a means of proving land ownership. Basically, an authentic deed is a deed made in a form determined by law, made by or before an official who is authorized to do so, and made at the place where the deed was made.⁵ The office authorized to make a land sale and purchase deed that is valid as an authentic deed is the Notary/Land Deed Maker's Office.

Related to officials who have the authority to make land sale and purchase deeds as authentic deeds are notaries, as stated by Habib Adjie, "that a notary is a public official who is the only one authorized to make authentic deeds regarding all actions, agreements, and stipulations required by public regulations, or by interested parties, it is desired to be stated in an authentic deed".⁶ Thus the existence of the deed of sale and purchase of land in an authentic form is very influential as written evidence, if one day there are other parties who do not recognize the validity of the sale and purchase agreement that has been made, or who claim to have rights to the land and the objects on it.

The main purpose of a sale and purchase agreement is delivery(*delivery*) property rights of the seller to the buyer. Property rights are the strongest and fullest rights to objects(*business, goods*). As determined, "that ownership is the right to enjoy the use of a thing freely, and to act freely on that thing with complete sovereignty, as long as it does not violate the law or general rules set by a power that has the right to set it, and does not interfere the rights of others ...".⁷ Thus basically, only the owner of an object, in this case the owner of the land, including the building/house on it, can sell it to the buyer. In other words, the main basis for the seller's authority to transfer the object under his



control is proof of ownership.

⁵ The Civil Code, Article 1868 requires three things to be fulfilled as an authentic deed.

⁶ Habib Adjie, *Indonesian Notary Law, Thematic Interpretation of Law No. 30 of 2004 concerning the Position of Notary*, Refika, Bandung, 2008, h. 13.

⁷ The Civil Code, Article 570 indicates that the owner of the object has sovereignty, namely the full power to use or transfer the object he owns.

In Indonesia, both juridically and factually, the legal system is more inclined to adhere to the *sect legal positivism*, as a hallmark of the Continental European legal system, known as *civil law system*. This national legal system prioritizes written law in the form of statutory regulations. This condition is in accordance with the Stufenbau Theory from Hans Kelsen, that law is arranged in stages from the highest to the lowest, which leads to

base norm (*basic standard*), higher law as the basis for lower law. This legal fact that applies nationally, is proven in the provisions regarding the formation of statutory regulations, that the level or levels that must be obeyed are what apply as positive law.⁸

In the order of sequence, laws take the form of a Constitution, Decree of the People's Consultative Assembly, Government Act/Regulation in Lieu of Law, Government Regulation, Presidential Regulation, Provincial Regulation, and Regency/City Regional Regulation. The point is that lower legal regulations must originate from higher level regulations, with the threat of being annulled, if they conflict. The basic norm that applies nationally, namely Pancasila as the source of all sources of law and order (*right order*), as it is written in the Preamble to the 1945 Constitution, which also applies as a legal ideal (*legal idea*) in the life of the nation and state. The written law in the form of statutory regulations must be applied in authentic deeds and certificates of ownership of land.

In the application of the enactment of laws related to authentic deeds and certificates of ownership of land, including buildings on it, is the authority of the state. Land is the surface layer of the earth which is in the territory of the Unitary State of the Republic of Indonesia, which acts as the object of a sale and purchase agreement in social life. The formal basis of the statutory order, including property law, contract law, and land law, must be considered in addition to individual interests as well as public interests. The publication element is important for the issuance of property rights certificates, which are based on the deed of sale and purchase of land. This condition is in accordance with the statement, "that publication is absolute in confirming the existence of legal actions or legal relations".⁹

The legal regulations related to land, in particular, are regulations on basic agrarian principles and provisions, which mandate, "that the entire territory of Indonesia is the united homeland of all Indonesian people, who are united as the Indonesian nation".¹⁰ Based on this provision, it implies that state power, which in its application is operationalized by the government, namely the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency. Thus, the government has the authority to regulate and administer legal relations, namely between people and legal actions regarding land and buildings on it.

⁸ Law No. 12 of 2011, as revised by Law No. 15 of 2019 concerning the Establishment of Legislation.

⁹ swamp, *Civil law*, Intermasa, Jakarta, 1977, p. 129.

¹⁰ Law No. 5 of 1960 concerning the Fundamentals and Provisions of the Principal Provisions of Agraria, Article 1.

The implementation of the land sale and purchase agreement must be in accordance with customary law. "For this reason, the land sale and purchase agreement as outlined in the form of an authentic deed must be based on the principles or principles of customary law, namely the principle of cash and the principle of light".¹¹ Based on the cash principle, it mandates that the transfer of rights by the seller and the payment of the land price by the buyer be carried out simultaneously. In this case, cash or cash does not mean that payments and payments are made instantly. That is, the buyer makes payments according to what is 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 principle of cash is still fulfilled even though the method or method of payment is in installments.

In addition to the cash principle in buying and selling land, the principle of light also applies, that the land sale and purchase agreement is carried out openly or without concealing it, if it is done before a Notary/Land Deed Making Officer. The function of buying and selling land is carried out before a Notary/Officer for Making Land Deeds, namely the guarantee of the truth of the status of the land, the right holder, and the validity that the implementation of the sale and purchase agreement is carried out in accordance with applicable law.

The Notary/Land Deed Making Official issues the Land Sale and Purchase Deed, which is an authentic deed. As an authentic deed, of course it is guaranteed by law the validity and truth of its contents. In addition, the existence of a sale and purchase agreement that applies as an authentic deed also provides legal certainty for the parties. This condition is in line with Lon Fuller's Theory of Legal Certainty, that there must be certainty between legal regulations,

and the implementation of the law, so that positive law can be carried out, if it has entered into the realm of behavior, action, and factors that can influence how the law works.

The proving strength of an authentic deed is perfect, "that is, providing between the parties and their heirs, or people who get rights from them, a perfect proof of what is contained in it".¹² Authentic deed can be used as evidence, in the form of writing, in addition to other evidence, as determined that evidence consists of written evidence, evidence of witnesses, allegations, confessions and oaths. An authentic deed applies as the main means of proof, if there are other parties who argue that they have a right, confirm their rights, or deny the rights of others, and point to an event, then they are required to prove the existence of that right or event.

The sale and purchase of land deed despite having the power of proof is perfect, it turns out that it can be canceled, "that the condition of cancellation is always considered to be included in a reciprocal agreement, while one of the parties does not fulfill its obligations".¹³ In this case the sale and purchase agreement is not null and void, but the cancellation must be asked to the judge (*destructible*).

¹¹ Government Regulation No. 24 of 1997 juncto Government Regulation No. 18 of 2021 concerning Management Rights, Land Rights for Flats Units, and Land Registration.

¹² The Civil Code, Article 1870 states that by law, everyone must believe, if the contents of an authentic deed are true until proven otherwise.

¹³ The Civil Code, Article 1266 indicates that the judge has the authority to cancel the sale and purchase agreement deed.

The decisions of the judiciary dealing with interesting cases are in Nganjuk, where there are mutual claims between the seller and the buyer of the land where the house stands on it. Land sellers and buyers carry out sale and purchase transactions before a notary. The agreed price of the land has been partially paid by the buyer, and the certificate of ownership in the name of the seller turns out to be in the possession of the buyer, even though the price has not been paid in full. The seller died a short time later, and the only heir was her husband, as sole heir. The seller's certificate of ownership by her husband was registered with the Land Agency to be replaced in her name. Both the heirs of the seller and the buyer both claim that the object of land in dispute belongs to her. "The District Court canceled the land sale and purchase, while the State Administrative Court canceled it

certificate of ownership in the name of the seller's husband.¹⁴ Thus the sale and purchase deed is the main proof of ownership of land rights, namely whether there is a transfer of ownership rights to land. A default on the buyer's side results in the cancellation of the land sale and purchase deed, so that the ownership of land rights remains with the seller or his heirs.

Based on the decisions of the judiciary, it appears that the existence of the deed of sale and purchase agreement made before a Notary as an authentic deed, has an effect on the issuance or cancellation of land ownership certificates. The deed of sale and purchase is valid as perfect and primary evidence, which affects the validity of the certificate of ownership as legal proof of land ownership. The cancellation of the land sale and purchase agreement results in the cancellation of the land title certificate. In essence, the existence of both the deed of sale and purchase as well as certificates of ownership as a form of legal protection for the subject of rights and objects of rights. In this case, it is in accordance with the Theory of Legal Protection from Satjipto Rahardjo which teaches that the purpose of law is to integrate and coordinate various interests in society, in ways that regulate protection and restrictions, and protect one's interests by allocating their human rights based on power to act in the context of that interest. In line with the teachings Sonya Meier, "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".¹⁵

Thus the deed of sale and purchase of land and the house on it, which is authentic, functions as the main basis for the validity of the transfer of ownership rights. The property right to the land remains with the seller, if the deed of sale and purchase is cancelled, it means that the ownership returns to its original state, that the buyer does not have the legality of ownership of the land, so that the certificate of ownership of the land cannot be issued by the National Land Agency.

¹⁴ Decision No: 9/PDT.G/2017/PN.NJK Regarding Default and Decision No: 64/G/2011/PTUN SBY Regarding Cancellation of Property Rights Certificates.

¹⁵ Sonya Meier, *Legal Theory and Interpretation in Dynamic Society*, Nomos, Germany, 2021, h.378.

4. CLOSING

The land sale and purchase agreement made before a Notary/Land Deed Making Officer is called an authentic deed, as a means of proving the transfer of land ownership rights, in a form determined by law, drawn up by or before an official authorized to do so, and carried out at the place of the deed it's made.



Land sale and purchase deed made before a Notary/Land Deed Making Officer, i.e. there is a guarantee of the correctness of the status of the land, the right 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 a process of transferring rights has taken place land from the seller to the buyer, based on legal regulations regarding the sale and purchase of land, both regarding the transaction process and the validity of the certificate documents.

Cancellation of the deed of sale and purchase of land, including the buildings/houses on it, can be requested for cancellation, if one of the parties commits a default, namely not fulfilling the obligations in accordance with what was agreed upon together.

The legal consequence of the cancellation of the deed of sale and purchase of land by the judge is that there is no transfer of property rights from the seller to the buyer, so that the ownership of the land rights remains in the hands of the seller, as well as the certificate of ownership rights to the land including the building/house on it, remains with the the seller as the original owner.

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