
NOTARY RESPONSIBILITY FOR UNLAWFULLY MADE DEEDS IN LEGAL DEEDS OF BUYING AND SELLING LAND

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Abstract

This research discusses legal protection for buyers who have good intentions in land buying and selling transactions based on Supreme Court Decision Number 20 PK/Pid/2020. The research method used is normative juridical research with a case approach. The data used is secondary data originating from primary, secondary and tertiary legal materials. In discussions regarding sale and purchase deeds, sale and purchase agreement deeds, or power of attorney deeds to sell, it is important to apply the principle of good faith to create a sense of mutual trust between the seller and the buyer. Good faith in an objective sense means that the agreement must be implemented by complying with the norms of propriety and decency so as not to harm either party.

Keywords: Buying and Selling, Legal Protection, Good Faith.

INTRODUCTION

Natural resources in Indonesia are very much besides water and air, land is one of the most important natural resources in our lives. Therefore, we as humans have an obligation to always maintain the health and fertility of the soil. Land is one of the objects that besides being needed as a place to live or where the community carries out its activities, it is also an object that can be bought and sold and its property rights are transferred (Karuni et al., 2022).

One of the basic human needs is the need for boards or houses that need land, because land has a dual function, namely as a social asset and as a capital asset. As a social asset, land is a means of binding social unity among Indonesian people. As a capital asset, land has grown as a very important economic object, not only as a commercial material but also as an object of speculation. On the one hand the land must be used and utilized as much as possible for the welfare and prosperity of the people and on the other hand it must be preserved.

So valuable is land that many people carry out land buying and selling activities, while the understanding of buying and selling is contained in Article 1457 of the Civil Code. "Sale and purchase is an agreement by which one party binds himself to deliver an item, and the other party to pay the promised price" The definition obtained from article 1457 of the Civil Code is that the sale and purchase of land is an agreement in which the party who owns the land called "Seller", promises and binds himself to surrender his rights to the land concerned to the other party, the so-called "Buyer". While the buyer promises and binds to pay the agreed price.

The implementation of land sale and purchase agreements carried out by the community today generally does not escape from the sale and purchase agreements that have been regulated in the Civil Code (KUHPercivil), especially in the provisions in article 1320 of the Civil Code, namely the regulation of a legal condition of the agreement and the provisions of Article 1338 of the Civil Code which regulates an agreement to apply as a law for those who make it, as well as the provisions in article 1457 of the Civil Code (Damayanti, 2020).

In its implementation, land sale and purchase activities are usually the interested parties ask for assistance from the Land Deed Making Officer or commonly abbreviated as PPAT, but if the purchase of land has not been repaid or there is something that results in the inability to make a sale and purchase deed, in this case the parties can ask for notary assistance to make a deed of sale and purchase binding agreement before the implementation of the sale and purchase deed.

Notary is a profession that has the authority to make authentic deeds, while the definition of notary according to article 1 paragraph 1 of Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions hereinafter referred to as UUJN is, Notary is a general official who is authorized to make authentic deeds and has other authorities as referred to in this Law or based on other laws.

The government wants notaries as general officials who are appointed and dismissed by the government and given the authority and obligation to be able to provide services to the public in helping to make agreements, make deeds and ratification which is also the authority of the notary. Although referred to as a general official, notaries are not civil servants as referred to in the laws and regulations governing employment. Notaries are bound by government office regulations, notaries do not receive salaries and pensions from the government, but receive salaries from honorariums or *fees* from their clients (Damayanti, 2020).

Notaries can be said to be government employees who do not receive salaries from the government, notaries are also retired by the government, but do not receive pensions from the government. Therefore, both notaries and consumers, namely people who use notary services, should be protected (Jurdi, 2022). Notaries as public officials, in the sense of having authority with exceptions, by categorizing notaries as public officials, in this case public which means law. Notary as a public official does not mean the same as a public official in the field of government which is categorized as a state administrative agency or official, this can be distinguished from the products of each public official. Notary as a public official the final product is an authentic deed, which is bound by civil law provisions, especially in the law of evidence (Adjie & Gunarsa, 2013).

Notary is a position of trust, this means that Notaries who carry out the duties of office can be trusted and in carrying out the duties of their office, notaries have the obligation to keep confidential everything about the deed made and all information obtained for making the deed in accordance with the oath or promise of office, unless the Law specifies otherwise, as mentioned in Article 16 paragraph (1) letter e concerning the Notary Office Law. It is also affirmed that to keep confidential everything related to the deed and other papers is to protect the interests of all parties related to the deed (Adjie, 2011). The significance of the notary profession is that notaries by law are authorized to create an absolute means of proof in the sense that what is said in the authentic deed is true (Notodisoerjo, 1982).

In addition, Notaries are the only public officials who have the right to make authentic deeds as a perfect means of proof. Notary is an extension of the state where it fulfills some of the state's duties in the field of civil law (Notaris, 2013). The state in order to provide legal protection in the field of private law to citizens has delegated part of its authority to notaries to

make authentic deeds. Therefore, when carrying out their duties, Notaries must be positioned as general officials who carry out their duties (Notaris, 2013).

Authentic deeds have a very important role in every legal relationship in life in society. As well as business interactions, banking, land, social activities, and so on. The birth of the need for a written proof which in this case is an Authentic deed is getting higher along with the development of the demand for legal certainty in economic and social relations at various levels (Yudanti & Zulfa, 2022).

In general, Notaries are required to keep confidential the contents of the deed and information obtained in making the Notary Deed, unless instructed by law that the Notary Public is not obliged to keep confidential and provide the necessary information related to the deed, thus the limitation is only the law that can order the Notary to disclose the secret contents of the deed and the information / statement known to the Notary relating to the making of the deed in question (Abdullah, 2017).

When we know the importance of honesty for notaries in carrying out their duties, notaries in carrying out their duties should always prioritize the interests of both parties, and must always be transparent in doing any action, in order to create justice for both parties in making deeds.

However, there are still several cases involving notaries in carrying out their duties not applying honesty resulting in CG losses to one party, of course, this is very contrary to the principles of notary work and very contrary to the oath or promise in office.

The problem in this decision is about the issue of buying and selling land whose payment is made by writing off debts between the two interested parties, but in its implementation the buyer who already has good faith or the party who will buy land by way of payment writes off the seller's debt gets an act that should not be done by the seller

The seller deliberately conducts deception with the aim of benefiting themselves, but unfortunately in this case the notary is also involved in the act, this results in a decrease in public trust in the notary profession.

From the description above, problems can be found in this study, which will discuss legal protection for aggrieved parties in the process of buying and selling land which will then be poured into the following problem formulation: How is legal protection for parties in good faith in the process of buying and selling land based on Decision Number: 20 PK / PID / 2020?

METHOD RESEARCH

Method is the main way that the author uses to achieve, test, a series of hypotheses with certain tools. In order to facilitate the preparation of this research, the type of research used in this study is normative juridical research, research that refers to legal norms contained in laws and regulations, and court decisions and norms that live in society. This research is descriptive analytical, which reveals laws and regulations related to legal theories that are the object of research.

In this study will use the type of data sourced from secondary data, Secondary Data Is data obtained from: primary, secondary, tertiary legal materials. This research uses a case approach or case approach carried out by reviewing cases related to the issues faced that have become court decisions that have permanent legal force, the case can be in the form of cases

that occur in Indonesia or in other countries. Then from the secondary data that has been collected, then analyzed in a qualitative juridical manner, in order to obtain scientifically justifiable conclusions.

RESULT AND DISCUSSION

The deed of sale and purchase, deed of sale and purchase binding agreement or deed of power to sell is one of the authentic deeds made by a Notary / PPAT as valid evidence that a legal act has occurred from the sale and purchase, so it is appropriate between the seller and buyer to apply the principle of good faith in carrying out the legal act, so that mutual trust arises so that it makes it easier for the Notary / PPAT to make the deed and avoid legal problems such as the occurrence of Land disputes are later on, this is also regulated in article 1338 paragraph 3 of the Civil Code which states "that an agreement must be executed in good faith" However, the article does not explicitly mention what is meant by "good faith". As a result, people will find it difficult to interpret from good faith itself. Because good faith is an abstract understanding related to what is in the human mind (Hadi et al., 2017).

Good faith in the pre-contract phase is also referred to as subjective good faith. Then good faith in the contract execution phase is called objective good faith (Innaka & Sularto, 2012).

1. Good faith in an objective sense, that an agreement made must be executed with due regard to the norms of decency and decency which means that the agreement must be executed in such a way that it does not harm either party.
2. Good faith in the subjective sense, that is, the notion of good faith that lies in one's inner attitude. In law, this goodwill is usually defined by honesty.

Then according to Munir Fuady, the formulation of Article 1338 paragraph (3) of the Civil Code identifies that in fact good faith is not a condition for the validity of an agreement as the conditions contained in Article 1320 of the Civil Code. The element of good faith is only hinted at in terms of the "execution" of an agreement, not in the "making" of an agreement. Because the element of "good faith" in the matter of making an agreement can already be covered by the element of "legal causation" of Article 1320 (Fuady, 2016).

The definition of a good faith buyer can be said to be as follows

1. A buyer in good faith is an honest buyer, not knowing the defects of the goods he buys.
2. A buyer in good faith is a buyer who has absolutely no idea that he or she is dealing with a person who is not the owner.
3. A buyer in good faith is a buyer who actively examines material facts and juridical facts regarding the goods purchased.
4. A buyer in good faith is someone who buys goods with full confidence that the seller really owns the goods he sells (Santosa & Hanim, 2017).
5. A buyer in good faith is a criterion for a buyer who receives legal protection

Good faith is closely related to the order of community life because it will involve the legal awareness of the community that requires guidance and regulation (Meliala, 1987). However, in its implementation, it often does not go well and even causes conflicts. This kind of thing requires legal means to solve it. The existence of law is very necessary to be respected and legal principles must also be upheld the principles or principles in law serve as the

protection of the interests of society. The hope of obeying the law in practice should go well (Sinaga, 2021).

But in fact in its implementation there are many processes of buying and selling land that harm one party, because many of the humans in pursuing their life interests are based on good faith and some are based on bad faith, one and another interact in society about their interests in the land, not infrequently humans actually have rights, castrated or deprived of rights by those who are not entitled. Because lust or bad faith arises over the human person to the detriment of other human beings (Sinilele, 2020).

Therefore, legal protection for buyers in good faith from sellers who have bad faith must always be applied in overcoming these problems as contained in Article 1365 of the Civil Code which states "Every act that violates the law and brings harm to others, requires the person who caused the loss because of his fault, to compensate for the loss", this is done considering the high legal act of buying and selling then Legal protection should be provided for the aggrieved party.

This is also related to the theory of responsibility which states the law In general, legal responsibility can be interpreted as a state of obligation to bear, bear responsibility, bear everything, (if there is something, it can be sued, blamed, prosecuted and so on) in accordance with applicable legal regulations. Legal responsibility is human awareness of intentional or unintentional behavior or deeds (Manullang, 2017).

Such as the problem that occurred in the Supreme Court decision Number: 20 PK / Pid / 2020 where this time discusses legal protection for parties in good faith in buying and selling land to one of the aggrieved parties, then what protection must be given to parties in good faith when viewed from the case of the Supreme Court decision Number: 20 PK / Pid / 2020

And of course, to provide legal protection to the party in good faith in this case, you must also see, based on the judge's consideration, what losses have been obtained from the party in good faith, so that the rights of the party in good faith must be restored immediately

The judge's consideration based on the decision is based on the explanation of witnesses who confirm that the party in good faith has really been deprived of his rights by the seller, even though it is clear that the party in good faith will write off the seller's receivables with the agreement that the seller will hand over the promised land as debt repayment

That in this case the seller is indeed proven to have committed fraud, but in doing so a notary who is considered to have a position of trust and also as a State official is involved in the matter, the notary is considered to fulfill the element of Moving others to hand over things to him, or to give debts or write off receivables, resulting in losses to parties in good faith in the sale and purchase of this land

The next consideration is, that during the trial there is no excuse or justification that can remove the unlawful nature of the defendant's actions, and the defendant can account for his actions, then the defendant must be found guilty and sentenced to a crime commensurate with his actions;

In addition, if an agreement has fulfilled the provisions of Article 1320 of the Civil Code, then the agreement is juridically valid and has legal force. If the agreement does not meet the conditions of agreement and competence which is a subjective condition, then the agreement can be canceled by the interested party. Then if the agreement is not a certain thing and a lawful

cause, which is an objective condition, then the agreement is null and void (Khalid, 2023). So if viewed from the above problems, the land sale and purchase agreement can be canceled because it violates the provisions of article 1320 of the Civil Code.

CONCLUSION

Based on Supreme Court Decision Number 20 PK/Pid/2020, it can be concluded that legal protection for buyers in good faith in land sale and purchase transactions is very important. The principle of good faith must be applied to create mutual trust between sellers and buyers. The deed of sale and purchase, deed of binding sale and purchase agreement, or deed of power of sale must be done in good faith, in accordance with the norms of decency and decency. A buyer in good faith must be protected from a bad faith seller, as provided for in Article 1365 of the Civil Code. The rights of a good-faith buyer who suffered a loss must be restored. Notary / PPAT also has an important role in ensuring the authenticity and legality of land transactions. However, the concept of good faith needs to be clearly interpreted and defined to avoid confusion. Legal protection must be provided to parties who have good faith and suffered losses. This Supreme Court ruling is a guideline in restoring the rights of buyers in good faith.

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