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Transfer of Ownership Rights on House Sale With Installment Method (Case Study of Bekasi District Court Decision Number 124/Pdt.G/2020/PN Bks)

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Abstract: Land is a vital natural resource for human life, necessitating adequate legal protection regarding land rights. One mechanism for transferring land rights is through the Sale and Purchase Binding Agreement (PPJB), often used in property transactions such as houses or other real estate. However, in practice, legal issues frequently arise regarding buyer protection, particularly in cases of default. This study aims to analyse the acquisition of ownership rights in house sale and purchase transactions, as exemplified by the Bekasi District Court Decision Number 124/Pdt.G/2020/Pn Bks. Using a normative juridical method with statute approach and case approach, this research examines relevant regulations and their application to the transfer of rights in property transactions. The findings reveal that the court's considerations in this case were inconsistent with Article 22L Paragraph (4) of Government Regulation No. 12 of 2021. Therefore, more equitable legal protection is necessary, referring to the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), to ensure optimal protection for all parties involved in property sale and purchase transactions.

Keyword: Transfer of Rights, PPJB, Property Sale, Installment Method, Default.

INTRODUCTION

One of the natural resources that is very important for human life to meet the needs and food is land (Liani, 2021). Therefore, there needs to be rules governing it, to provide legal protection for the ruler or owner. The 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) stipulates that the land, water and natural resources contained therein shall be controlled by the state and utilised for the greatest prosperity of the people (Republik Indonesia, 1945, Article 33 Paragraph 3). Law No. 5 of 1960 on the Basic Regulation of Agrarian Principles (UUPA) stipulates land rights (Supriadi, 2006). Land rights are intended to authorise the use of the land concerned, as well as the body of the earth and water and the space above it, just as necessary for the interests directly related to the use of the land within the limits set by this Law and other higher legal regulations (Republik Indonesia, 1960, Art. 4).

Land rights are regulated in the UUPA, namely property rights, business use rights, building use rights, use rights, rental rights, land clearing rights, rights to collect forest products, other rights, rights to water and space (Republik Indonesia, 1960, Art. 16). Land rights can be utilised to build a variety of buildings, one of which is housing and residential areas, which are regulated in Law Number 1 of 2011 concerning Housing and Residential Areas (Housing and Residential Areas Law). Every holder of land rights can utilise and transfer their rights according to their needs (Silitonga, Veronika Lasma, 2024). In the transfer process, two things generally occur, namely switching and being transferred. Switching is the transfer of a land right ownership from the previous right holder to another party through a legal event, such as inheritance. Meanwhile, transfer is the transfer of land rights from the right holder to another party through legal actions, such as sale and purchase, exchange, waqf, grants, auctions, and so on (Santoso & Urip, 2006, p. 399).

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 (Republik Indonesia, 1847, Art. 1457). R. Subekti argues, buying and selling is not something that is newly known, but has existed since ancient times (Sumarna, 2022). The Civil Code (KUHP) further regulates that a sale and purchase is deemed to have taken place between the two parties when they have reached an agreement on the goods and price, even though the goods have not been delivered nor the price paid (Republik Indonesia, 1847, Art. 1458). The occurrence of a sale and purchase binding because of an agreement between two parties (Shafira, Rani, 2019). Preliminary Agreement of Sale and Purchase or Agreement of Sale and Purchase Binding, hereinafter referred to as PPJB, is an agreement between the development actor and any person to sell and purchase a house or unit of flats that can be carried out by the development actor before construction for flats or in the process of construction for single houses and row houses made before a notary (Republik Indonesia, 2021, Art. 1(11)).

In order for an agreement to be valid, four conditions need to be fulfilled, namely: agreement of those who bind themselves, capacity to make an agreement, a certain subject matter and a cause that is not prohibited (Republik Indonesia, 1847, Art. 1320). Government Regulation Number 24 of 1997 on Land Registration jo (Government Regulation Number 24 of 1997, 1997). Law No. 2 of 2014 on the Amendment to Law No. 30 of 2004 on the Office of Notary (Law No. 2 of 2014), land-related deeds will be made and signed in the presence of a Notary or Land Deed Official (PPAT). The issuance of Government Regulation of the Republic of Indonesia Number 12 of 2021 which amends Government Regulation No. 14 of 2016 concerning the Implementation of Housing and Settlement Areas (PP Number 12 of 2021). Article 22A to Article 22O emphasises the importance of the PPJB system being regulated by the government to protect the interests of all parties, especially consumers who have a weak bargaining position.

At this stage, the parties involved are bound and have the rights and obligations to fulfil the achievements and contraprestations as agreed in the PPJB (Oroh, 2018). The implementation of this agreement is the first step before the transfer of land rights. This agreement includes the rights and obligations of the parties, and if there is a violation of the agreed rights, it is considered a default (Setiono, 2004). In practice, this agreement can be cancelled unilaterally, based on mutual agreement and/or due to a court decision which of course carries legal consequences. In Supreme Court Decision Number 124/Pdt.G/2020/PN Bks, the Plaintiff is a legal entity engaged in developers and real estate. Meanwhile, the Defendant is an individual who is interested in buying a housing unit with a gradual or instalment payment method. Based on this decision, there was an agreement which was then outlined in the Sale and Purchase Bond Deed (PPJB). After the signing of the agreement, the Defendant has factually occupied and fully enjoyed the object in dispute. However, during the process, the Defendant was proven to have defaulted on 55 (fifty-five) instalment payments.

One of the arguments in the Judge's Decision states that all instalment money that has gone to the Plaintiff belongs entirely to the Plaintiff. On the other hand, Government Regulation No. 12 of 2021 regulates that if the payment has been made by the buyer more than 10% (ten percent) of the transaction price, there is a cancellation of the purchase of the House after the signing of the PPJB due to the negligence of the buyer, the development actor has the right to deduct 10% (ten percent) of the transaction price (Government Regulation No. 12 of 2021, Article 22L Paragraph (4)) (Arsawan, I. Gede Yudi, 2024). Thus, there is legal uncertainty related to the legal protection of debtor rights. The purpose of making this research is to avoid duplication of previous research, the following are previous studies, namely as follows :

a. Legal Consequences of Cancellation of Deed of Sale and Purchase Agreement (PPJB) of Land in Makassar City (Case Study of Makassar City Notary Office) by M. Ibnu Sumarna, Syahrudin Nawi, and Andi Risma, Maleo Law Journal, Year 2022 This research discusses the cancellation of PPJB of land can result in the parties being subject to fines in the form of refunds that have been agreed upon. In addition, the agreed PPJB can be cancelled through a notarial deed if there are parties who fail to meet their obligations in accordance with the predetermined time limit. This research uses empirical legal methods, where the data used is direct research, interviews and questionnaires. While in the research the author uses the normative juridical method, namely by examining library materials or secondary materials only. As well as using a statutory approach as well as a case approach that examines the Bekasi District Court Decision Case Number 124/Pdt.G/2020/Pn Bks.

b. Responsibility of Business Actors for Consumer Losses in Standard Agreements by Berly Praditama Setiana and Dwi Aryanti Ramadhani, UPNVJ Repository, 2022. This research discusses the liability of sellers to consumers related to losses in standard agreements. Consumers who feel harmed can file a complaint to request compensation, and vice versa. One example of compensation can be in the form of compensation with the aim of providing a balance of goods or services that do not meet demand expectations. This research uses normative juridical methods. The difference with the author's research is that the author's focus is related to the transfer of rights to sale and purchase using the instalment method with a case study of the Bekasi District Court Decision Number 124/Pdt.G/2020/Pn Bks.

c. Default in Land and Building Sale and Purchase Agreement (Research Study on Semarang City Development) by Arina Ratna Paramita, Yunanto, and Dewi Hendrawati, Diponegoro Law Journal, 2016. In this research, the focus is on default in PPJB and its settlement. Defaults often occur between developers and consumers, this research takes a sample of defaults by developers. Settlement of the developer's responsibility, sanctions can be agreed upon through deliberation if there is a delay in the delivery of the house. The difference with the author's research is that the case that the author raises is a default committed by a buyer who fails to make installment payments as agreed, not a business actor. However, on the other hand, in the case studied by the author, there was no legal protection related to the buyer's rights.

METHOD

The research method used is the Yuridis Normatif research method. This research is a legal research method conducted by examining secondary materials (Muchtari, 2015). In addition, normative juridical legal research is carried out by examining library materials that are used as references in research (Soekanto, 2001). This research approach is a statutory approach (statute approach) carried out by examining all laws and regulations relating to the legal issues being addressed (Marzuki, 2010). In addition, a case approach (case approach) is also used in this research. To discuss and solve the problems in the research, the author applies the case approach method with the type of normative legal study (Ibrahim, 2011).

The data sources or research materials that the author uses in this research include primary and secondary legal sources (Wardani, 2016). In this study the authors used several laws, Law Number 5 Year 1960 on the Basic Regulation of Agrarian Principles, Law Number 1 Year 2011 on Housing and Settlement Areas, Law Number 2 Year 2014 on the Amendment to Law Number 30 Year 2004 on the Position of Notary, Government Regulation No. 24 of 1997 on Land Registration, Government Regulation of the Republic of Indonesia No. 12 of 2021 amending Government Regulation No. 14 of 2016 on the Implementation of Housing and Settlement Areas. Secondary legal sources are legal materials that provide explanations of primary legal materials, such as draft laws, research results, works from legal circles, textbooks, and scientific journals (Rasyid, M. R., & Winanti, 2023). In this research, the author uses the library research method to collect data.

RESULTS AND DISCUSSION

Acquisition of Property Rights for the Sale and Purchase of Houses in the Case of Bekasi District Court Decision Number 124/Pdt.G/2020/Pn Bks

House has an important role in human life, apart from being a place to live, it is also a means of family development and a valuable asset that has economic value. As the definition of a house is a building that functions as a habitable residence, a means of family development, a reflection of the dignity of its occupants, and an asset for its owner (Article 1 Paragraph 7 PP 12/2021). As a form of asset, homeowners must have legal status of land rights as a form of strong and legal validity. The process of buying and selling houses generally involves the transfer of rights to land and buildings from the seller to the buyer. In language, buying and selling is transferring property rights to objects with a mutual replacement contract (Mardani., 2021). Based on Article 37 of Government Regulation No. 24 of 1997 concerning Land Registration, every sale and purchase transaction of land rights must be proven by a deed prepared and signed before a Notary or Land Deed Official (PPAT) (Government Regulation No. 24 of 1997, 1997). The making of this deed aims to ensure legal protection for both parties, both related to land or house ownership rights as well as other rights of the seller and buyer. As an official document, this deed serves as authentic evidence that strengthens the legal position of each party in the sale and purchase transaction. There are two deeds that are included in the process of buying and selling a house, namely Akta Jual Beli (AJB) and Perjanjian Pengikatan Jual Beli (PPJB). While both serve as evidence of the transaction, AJB holds a higher legal status. AJB is an authentic deed created by PPAT after the sale is fully completed, transferring ownership from the seller to the buyer. In contrast, PPJB is a preliminary agreement between the buyer and seller, outlining terms before the final sale deed is signed (Article 1 Paragraph 10 PP 12/2021).

Generally, PPJB is made at an early stage after an agreement between the buyer and the seller, even though the settlement process and fulfilment of administrative requirements have not been fully completed. However, unlike AJB, at the PPJB stage the ownership status of the land or house has not yet been transferred because basically the PPJB is used as a "binding" between the seller and the buyer. PPJB is made before a notary and witnesses, so it has the status of an authentic deed. As Article 1868 of KUHP states that authentic deeds are made by authorised public officials. Although there is no transfer of rights, PPJB still provides legal certainty in house or land sale and purchase transactions. PPJB consists of 2 (two) types, namely (Zula, 2024):

a. PPJB lunas. This PPJB generally contains a "Power of Sale" clause, which means that for PPJB lunas deeds, the power of sale in the deed is absolute, that is, it cannot be revoked and will not expire due to the causes regulated in Article 1813 of the KUHP. The purpose of the power of sale is to provide legal certainty to the buyer because the buyer has made a full payment. However, the buyer cannot yet take possession of the land/building. In PPJB with

Power of Attorney, there are 2 (two) types of power of attorney, namely *Volmacht* Is an absolute power that is not derived from an agreement, *Lastgeving* is a power of attorney granted under an agreement. In this case, the PPJB with power of attorney is included in the power of *lastgeving* because the cause of the power of attorney is due to an agreement. On the other hand, PPJB *lunas* with power of sale is contrary to Article 39 Paragraph 1(d) of Government Regulation Number 24 of 1997 concerning Land Registration, which reads "PPAT refuses to make a deed, if: one of the parties or the parties act on the basis of an absolute power of attorney which essentially contains a legal act of transfer of rights" (Government Regulation No. 24 of 1997, 1997). As well as contrary to the principle of *Nemo plus Iuris ad alium transferre potest quam ipse habet*, which means that a person does not give rights to others beyond the rights he has (Saputro & Huda, 2024).

b. PPJB has not been paid in full. In this agreement there are opportunities that result in the agreement ending not in accordance with what was agreed upon at the beginning. Generally, it occurs due to non-fulfilment of the rights and obligations of one of the parties. This PPJB is usually made by developers, where buyers make gradual payments according to an agreed schedule (Amasangsa, M. A. D. A., & Priyanto, 2019). The PPJB must contain information on the method and deadline for payment (Justika, 2024). In addition, the PPJB must also regulate if the sale and purchase process is cancelled in the middle of the road due to certain conditions. Furthermore, the cancellation of the PPJB has not been paid off due to the developer or buyer is regulated in Article 22L of Government Regulation Number 12 of 2021. As an authentic deed, PPJB has the power as valid evidence in the event of a dispute. This PPJB is a form of legal protection for the parties. For the seller, the PPJB can protect the seller's rights and obligations. For example, it protects the seller's rights against late instalment payments. For the buyer, PPJB can protect the object from being resold by the seller to anyone (Alfirridho, M., & Warka, 2024). In the case of Bekasi District Court Decision Number 124/Pdt.G/2020/Pn Bks. PT Hasana Damai Putra, a developer, a legal entity domiciled at Sentra Niaga Bulevar Hijau Complex Kav. 33-35, Medan Satria, Bekasi, West Java through a Special Power of Attorney, hereinafter referred to as the "Plaintiff" filed a lawsuit with the Registrar of the Bekasi District Court on 13 March 2020. Mr Sutikno, an individual, residing at Perumahan Efodia Harapan Mulya Blok 32HM, Bekasi, West Java intended to purchase 1 (one) unit of house to the Plaintiff in 2012, hereinafter referred to as the "Defendant". After negotiations between the Plaintiff and the Defendant, an agreement was reached on the sale and purchase price of the house in the amount of Rp 275,000,000 (two hundred seventy five million rupiah) to be paid by the Defendant to the Plaintiff in instalments. The agreement between the Plaintiff and the Defendant was set out in the Deed of Sale and Purchase Agreement No. 07 dated 01 March 2012 made before Hj. Tuti Alawiyah S.H., Notary in Bekasi, hereinafter referred to as the "Agreement"

The object of the Agreement is a piece of land as shown in Building Rights Title Certificate 496/Setia Mulya covering an area of 112 m², Situation Drawing 281/Setia Mulya/2010, Dated 04 October 2010, located in Setia Mulya Village, Tarumajaya Sub-district, Bekasi, West Java, under the name of PT Hasana Damai Putra, together with everything standing and remaining on that part of the land, also known as Harapan Mulya Housing Block 32HM, Lot Number 19 Type/Building Area 45, hereinafter referred to as the "Dispute Object". The Agreement agreed on the payment schedule, namely Rp 55,000,000 (fifty five million rupiah) which was paid by the Defendant to the Plaintiff as a down payment prior to the signing of the Agreement. Furthermore, Rp 250,000,000 (two hundred and fifty million rupiah) plus an administration fee of 14% per annum will be paid in 84 (eighty four) instalments starting in February 2012 until paid off, payable no later than the 10th of each month with a nominal value of Rp. 5,186,000.00 (five million one hundred and eighty six thousand rupiah).

Since the signing of the Agreement, the Defendant has occupied the Disputed Object in full. However, during the instalment payment process the Defendant failed to make payments 55 (fifty five) times. In the Agreement, if the Defendant fails to carry out its obligations 3 (three) times either consecutively or not, it will receive a warning letter (summons) from the Plaintiff. The Plaintiff has given the Defendant a summons. However, the Defendant still did not perform its obligations. That based on his consideration the judge stated:

- a. Accept and grant the Plaintiff's claim in part; State that the Plaintiff is the legal owner of the Disputed Object.
- b. Declare that the Defendant has committed default.
- c. Stating that the Agreement between the Plaintiff and the Defendant is cancelled and does not bind both of them since the verdict of the case was handed down.
- d. Declare that the instalment money paid by the Defendant to the Plaintiff in the amount of Rp. 150,394,000.00 (one hundred fifty million three hundred ninety four thousand rupiah) belongs to the Plaintiff.
- e. Punish the Defendant to return the Disputed Object to the Plaintiff in an empty and unobstructed state in the form of a plot of land.
- f. Punish the Defendant to pay court costs in the amount of Rp 406,100.00 (four hundred six thousand one hundred rupiah).
- g. Reject the Plaintiff's claim other than and for the rest.

In Book III of the KUHPer, agreements are made based on legal principles, including (Larasati, 2022):

- a. The principle of Freedom of Contract is that everyone has the freedom to make agreements with anyone, whatever the content and form, as long as it does not violate the law, as in Articles 1337 to 1338 of the Civil Code.
- b. The principle of Pacta Sunt Servanda, that an agreement made legally is fully binding on the parties to it, as in Article 1338 of the Civil Code.
- c. The principle of consensualism, that an agreement is born due to the agreement of the parties who make it, as in Article 1320 of the Civil Code.
- d. The Principle of Good Faith, that the agreement must be implemented based on good faith, as in Article 1338 of the Civil Code.
- e. Personality principle, that a person makes an agreement for himself, except as in Article 1317 of the Civil Code.

The agreement results in a relationship between the parties who are obliged to fulfil the performance or counterparty of the agreement. If there are parties who cannot carry out their obligations as they should, they are said to be in default. R. Subekti argues that default has 4 (four) forms, including (Sitanggang, 2017). Based on his consideration, the judge decided that the Defendant had been declared negligent (Default), where the Defendant had fulfilled the elements of Default. Default gives legal consequences to the perpetrator as well as legal protection for the injured party. Article 1267 KUHPer, parties who have been harmed due to default, can demand several things, including fulfilment of the agreement, fulfilment of the agreement accompanied by compensation, demanding compensation, cancellation of the reciprocal agreement, and cancellation of the agreement accompanied by compensation. The party who commits default has the obligation to pay compensation. Reimbursement of costs, losses and interest due to non-fulfilment of an obligation begins to be required, if the debtor, although it has been declared negligent, still fails to fulfil the obligation, or if something that must be given or done can only be given or done in a time that exceeds the time specified (Article 1243 KUHPer).

The cancellation of an agreement aims to return the parties to the original situation before the agreement. In Article 1266 of the Civil Code, an agreement can be cancelled if it meets three conditions, namely that the agreement must be reciprocal, there are parties who make defaults,

and based on a judge's decision. Based on his consideration, the judge decided that the agreement between the Plaintiff and the Defendant was cancelled and no longer bound both parties. The cancellation of the agreement automatically means that there is no transfer of land rights. The plaintiff still has legal power over the ownership status of the disputed object. In line with the principle of consensualism, a sale and purchase agreement can give rise to a transfer if the legal conditions of the agreement have been fulfilled, further regulated in Article 1320 of the Civil Code. However, in this case, the Defendant failed to fulfil its obligations, so the Plaintiff has full power and authority over the disputed object. Therefore, there is no transfer of land rights and the legal ownership status of the land remains with the Plaintiff. In the case of a House Sale and Purchase Agreement, in the event that payment has been made by the buyer of more than 10% (ten percent) of the transaction price, there is a cancellation of the purchase of the House after the signing of the PPJB due to the negligence of the buyer, the development actor is entitled to deduct 10% (ten percent) of the transaction price (Article 22L paragraph (4) of Government Regulation Number 12 of 2021). This means that the Defendant has the responsibility to compensate for the losses suffered by the Plaintiff. However, it still has its rights in terms of the instalment money that has been paid to the Plaintiff.

Based on his consideration, the judge decided IDR 150,394,000.00 (one hundred and fifty million three hundred and ninety-four thousand rupiah), namely that all instalment payments paid by the Defendant belonged to the Plaintiff. Where this is not in line with Article 22L Paragraph (4) of Government Regulation Number 12 of 2021, which states that the Plaintiff is entitled to deduct 10% of the instalment money and the rest remains the right of the Defendant itself. The purpose of Article 22L Paragraph (4) of Government Regulation Number 12 of 2021 is specifically to provide legal protection to the weaker party, namely the Defendant for their rights, especially in relation to the instalment money that has been paid. However, in contrast to the Regulation, in the above decision the Defendant did not get his rights at all, both in relation to the status of ownership of the house which was canceled and the instalment money which entirely belonged to the Plaintiff. The government through this regulation makes efforts to protect the law which serves to balance the interests of the parties so that arbitrariness and injustice do not occur.

According to Satjipto, the law functions to provide protection and restrictions on these interests in order to create justice and peace (Azmi, Muhammad Yuris, Hernawan Hadi, 2016). This legal protection also plays a role in preventing arbitrary actions, both from the authorities and other individuals, so that everyone can feel safe in exercising their rights. It can also be said that legal protection is a form of certainty that provides a sense of security for those who perform a legal act (Risanto, 2022). In this case, legal protection provides a sense of security for everyone involved in a legal action, so that they are not only legally protected, but also get recognition and certainty of their rights. As in Article 28D Paragraph (1) of the 1945 Constitution of the Republic of Indonesia, everyone is entitled to recognition, guarantees, protection, and certainty of a just law and fair treatment and equal treatment before the law.

CONCLUSION

In the case of Bekasi District Court Decision Number 124/Pdt.G/2020/Pn Bks, despite the existence of a PPJB, the Defendant's negligence in paying instalments caused default and cancellation of the agreement. So that there is no transfer of rights and the Plaintiff is still entitled to the object in dispute. However, the judge's consideration in the decision is not in line with regulations that protect the rights of buyers, as stipulated in Article 22L Paragraph (4) of Government Regulation Number 12 of 2021, which states that in the event of cancellation of the PPJB due to the buyer's negligence, in the event that payment has been made more than 10% (ten percent), the developer has the right to deduct 10% (ten percent) of the money paid. This creates injustice for the Defendant, who should receive legal protection in accordance with

the principles of justice and legal certainty, as stipulated in Article 28 D Paragraph (1) of the 1945 Constitution.

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