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CANCELLATION OF THE AUTHORITY OF THE LAND BUYING AGREEMENT AGREEMENT

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ABSTRAK

This study aims to analyze the cancellation of the binding agreement on the sale and purchase of land rights unilaterally. Especially those related to the validity of the sale and purchase agreement of land rights using the binding deed of sale and purchase and its cancellation. Based on the results of the study showed: (1). The sale and purchase binding agreement is an agreement born from the open nature of Book III of the Civil Code (KUHPer). This sale and purchase binding agreement arises because there are things (requirements) that have not been fulfilled or there are things (conditions) agreed by the parties to be fulfilled, for example related to payment of prices that have not been paid off. (2). changes to the price that have been agreed upon by the parties previously can only be made if there is an agreement from both parties in this case the Seller Party and the Buyer Party. This means that the adjustment to the price in the sale and purchase of land rights cannot be used as an excuse by the seller to cancel the agreement unilaterally.

1. INTRODUCTION

Soil is very closely related to human life. Every people need land even not only in his life, for Even if humans die, they still need a piece of land. In our society, gain land rights are practiced more often with the transfer of rights, namely by through buying and selling. Words of buying and selling in everyday meaning can be interpreted, in where someone releases money for get the desired item voluntarily. Since the promulgation of the UUPA, then the meaning of buying and selling land is no longer an agreement as in Article 1457 jo 1458 of the Indonesian Civil Code, but a legal act of transferring right forever in cash and then further set in Implementing Regulations of the LoGA, namely PP No. 10 of 1961 which has been updated with Government Regulation Number 24 1997, concerning Land Registration, which determines that the sale and purchase of land must be proven by a deed which made by and in the presence of Officials Land Deed Maker (PPAT).

Based on the provisions in the UUPA Jo. PP 24 of 1997 concerning Registration Land that any transfer of rights to land (sales and purchases, grants, exchange, lease) must be done up front PPAT (Official Land Deed Maker).

One of the conditions that must be met in buying and selling transactions is a problem price. That means before the price is paid paid off, it does not meet the requirements for

carry out the name transfer process via PPAT. Therefore in the case of certain to bind the parties a Deed of Sale Binding Agreement is made purchases made in front of a Notary. In in the deed of binding sale and purchase has determined the end of the stage payment to be made by buyer.

This is reinforced by the Regulations Government Number 37 of 1998, concerning Land Deed Officials Regulation (PPAT) in Article 2 paragraph (1) which reads as follows: "PPAT on duty" principal carry out some activities land registration by makin a deed as evidence that an act has been committed certain laws regarding land rights or Ownership of the Flat Unit which will be used as the basis for registration changes to land registration data as a result of that legal action."

However, in practice, because various reasons, bright and cash concept it is often not fulfilled. Not yet fulfilled, does not mean the transaction is not can be done, there are other instruments, namely with the Sale and Purchase Agreement ("PJB") as a binder, as a sign that the sale and purchase transaction is complete, requirements document for manufacture Sale and Purchase Deed (AJB). Not fulfilled requirements for the Sale and Purchase Deed, it could be because the payment has not been paid in installments, certificate is still in the process of solving or other processes, has not been able to pay taxes, or other conditions that legal. But in life buy land between sellers

and the buyer without the intervention of the Land Deed Making Official. To ensure legal certainty in transactions buying and selling rights to the land, the parties make the Sale and Purchase Binding Deed before a notary. Special for selling buy land rights in installments in practice it often ends up on the table green (Court) especially if the payment of a price that is not in accordance with the time agreed in the agreement.

B. DISCUSSION

1. Conditions for the validity of the deed Law of Sale and Purchase of Land Rights Deed

a. Subjective conditions and objective conditions in legal action (agreement) buy and sell Article 1313 of the Civil Code formulating a contract or agreement is a the act by which one person or more attached to one another person or more.

Against the definition formulated by Article 1313 of the Civil Code, para scholars such as Setiawan and Purwahid Patrik thinks it still needs to be completed. Setiawan said that the actions of in Article 1313 of the Civil Code must interpreted as a legal act, namely:

actions that aim to cause legal consequences; then add the word "or bind themselves together" According to Van Dunne, the agreement is a legal relationship because two respective legal actions one-sided (twee eenzijdige recht-handeling), namely the offer and acceptance of which is based on agreement

between two or more people who are mutually related to effect law (rechtsgevolg).

The definition does not only examine the contract at the contractual stage only but also pay attention actions before and after. Previous actions (pre-contractual) include the stages of offer and acceptance, while the after-action (post-contractual) is the implementation of the agreement.⁵ The contract arrangement system is open system in the sense that every people are free to enter into agreements both those that have been set and those that not regulated in law.

This can be concluded from the provisions as stated in Article 1338 paragraph (1) The Civil Code which is formulated "All" an agreement made legally valid as law for those who make it.

According to Nindyo Pramono dalam that in contract law known 4 (four) important principles, namely the principle of freedom contract, the principle of consensualism, the principle of pacta sunt servanda, the principle of good faith.

1. The principle of freedom of contract.
2. The principle of freedom of contract is principle that gives freedom to the parties to:
 - (i) To make or not to make agreement
 - ii) Choose the party with whom it is want to make a pact.
 - (iii) Determining or selecting a cause

of the agreement to be made,
(iv) Determining the object
of the agreement

(v) Determine the form of an
agreement

(vi) Accept or deviate from
the provisions of the law which
is optional (aanvullend,
optional).

from Article 1338 paragraph (1) of
the Civil Code whose implementation needs
to be linked with other contract law
principles such as the principles contained
in Articles 1320, 1335, 1337, 1338
paragraph (3), and 1339 of the Civil Code.
This means the freedom of the parties in
making a contract need to pay attention to
the following points:

- a. Meet the legal requirements contract;
- b. In order to achieve the objectives of the
parties, the contract must have a cause;
- c. Does not contain fake causa or prohibited
by law;
- d. Not against the law, decency, order
general, custom, propriety.
- e. Must be carried out in good faith good.

2. The principle of consensualism

Article 1320 of the Civil Code states
that there are 4 (four) conditions:

for the validity of the agreement,
namely the existence of agreement of the
parties, the skills of the parties the party
making the agreement, there is certain
object or thing, and there is a lawful cause.
The principle of consensualism is the
principle which states that the agreement
occurs with the agreement of both parties
party. This principle can be deduced from
Article 1320 number 1 of the Civil Code
which determine that one of the conditions
The validity of the agreement is the
agreement of both parties.

The principle of consensualism
determines the "existence" of the
agreement. That the agreement was born
with an agreement which is conformity of
will.

The principle of consensualism
means the "will" of the parties to mutual
achievement, there is a will to bind each
other. This will awaken the belief that the
agreement was fulfilled. Principle this trust
is an ethical value which is rooted in the
moral that honorable human will take care
of promise. As for certain situations there
are contracts that do not reflect agreement
or conformity will due to a defect the will to
enter into a contract.

The defects of will include:

- a. Misguidance (dwaling); and the principle
of binding power (pacta sunt servanda)
contained in Article 1338 paragraph (1) of
the Civil Code. Violation of this provision
will result in an invalid agreement and not
binding as law.

Subekti further stated that the first
two conditions are called conditions
"Subjective", because it concerns the people
or "subject" who entered into the
agreement, while the two The last condition
is called the condition "Objective", because
it concerns the agreement itself or the object
of the legal act that was carried out. If the
subjective conditions are not met, then the
agreement cancellation may be requested.
Meanwhile, if the objective conditions are
not met, then to the agreement is null and
void. That is, the agreement is considered
not ever happened

3. The Principle of Binding Power (Pacta Sunt servanda)

The principle of
binding strength (pacta sunt servanda) is the
principle that judges or third parties must
respect the substance of the contract made
by the parties as appropriate

Constitution. This principle can be concluded in Article 1338 paragraph (1) The Civil Code whose formulation is: "Agreements made legally valid" as law". Agreement legally made is an agreement that meet the requirements of Article 1320 the Civil Code, and agreements that made in accordance with Article 1320 of the KUH Civil law has binding power. According to Niewenhuis in Agus Yudha Hernoko, binding power the agreement that comes with the principle of freedom of contract that provides freedom and independence to the parties, in certain situations validity is limited. First, power binding the agreement is limited by good faith as stipulated in

Article 1338 paragraph (3) of the Civil Code that

the agreement must be executed in good faith; second, there is overmacht or force majeure (daya force) limits its binding power agreement to the parties who make the agreement. According to M.Isnaeni, the power of binding a limited agreement to the parties who make agreement due to rights born of both the agreement and the engagement to generally are individual rights and is relative, meaning that the right can be enforced on certain parties especially to his co-workers.

This is a consequence of a personal agreement as reflected in Article 1315 jo Article 1340 of the Civil Code, while contained in article 1317 and 1318 of the Civil Code is a exception.

4. The principle of good faith The principle of good faith is the principle that the parties are creditors and the debtor must carry out substance of the contract based on the trust or goodwill of the parties. This principle is deduced from Article

b. Fraud (bedrog);

c. coercion (dwang) So if the agreement is given by the parties because of defective will then this will result in the contract being canceled.

According to Subekti, the principle of consensualism has a strong relationship closely with the principle of freedom of contract 1338 paragraph (3) of the Civil Code which formulated "Agreements must be implemented in good faith". According to Subekti, this provision implies that: judges are empowered to supervise the implementation of an agreement lest the implementation violates propriety or justice. This means, the judge has the power to deviate from the contents of the agreement according to the letter, if the implementation is according to that letter would contradict good intention.

Subekti further stated that if paragraph (1) of Article 1338 The Civil Code can be viewed as a condition or demand for certainty law (the promise is binding) then the verse (3) Article 1338 of the Civil Code must seen as a demand for justice. Indeed, the law always pursues two The goal is to ensure certainty (order) and meet the demands of justice. Legal certainty requires that what is promised must be fulfilled (to be kept), but in demanding the fulfillment of that promise, let no one abandon the norms of justice or propriety According to Van Dunne, the power of good faith covers the whole process contract. Thus, good faith includes three stages of the contract, namely: pre-contract; contract stage, and stage post-contract.¹⁴ Article 1338 paragraph (3) The Civil Code in general always linked to Article 1339 the Civil Code which states that "Agreement does not only bind what which is expressly defined in therein, but also everything that by its

nature consent is required on the basis of propriety, custom, or law." Thus for the validity legal action in the sale transaction buy land rights in addition to having to submit on the validity of the agreement based on Article 1320 of the Civil Code, must also comply with UUPA and regulations Government Number 24 of 1997 regarding Land Registration.

b. Land Titles Registrar (PPAT) As a Public Official Authorized In Making Deed of sale & purchase According to the provisions of Article 1 number 24, Government Regulation No. 24 year 1997, mentioned the Land Deed Making Officer (PPAT), is as a public official authorized to make certain land deeds as regulated in the laws and regulations that concerned, namely the deed of transfer and imposition of land rights and property rights On the Flat Unit, and the deed granting power to impose rights dependents.

A public official, is a person who appointed by the authorized agency with the task of serving the general public in a particular field or activity. General Officer in Netherlands, is "Openbaar Ambtenaar" Openbaar means relating to government, affairs that are open to public, public interest, Openbaar Ambtenaar means official on duty make a general deed (openbare akten), such as notaries and bailiffs. In his position, it was concluded that a characteristic or characteristic, which distinguishes it from other positions in society, Even though to carry out other positions, it is sometimes necessary to appoint or get permission from government, for example the appointment of advocates, doctors, accountants and others, then the nature and the rapture actually granting permission, grantin that authority is a

license to run a position. To make it easier for people in remote areas where there is no PPAT in carrying out legal actions regarding land, PPAT can be appointed temporary. Designated as PPAT meanwhile, is a government official who controls the state of the area concerned: namely the Village Head.

According to the general explanation, it was stated that the PPAT deed was wrong one of the main sources in order to maintenance of land registration data, then the main tasks of PPAT and how to implementing it is regulated in the Regulations Government No. 24 of 1997. As for general provisions regarding PPAT positions regulated in PP No. 37 of 1998 concerning Regulation of the Position of the Deed Making Officer Land (PPAT) (LNRI 1998-52; TLN 3746). PPAT activities help the Head Office of Defense in implementing tasks in the field of land registration, especially in data maintenance activities registration, regulated in Article 3740 Code of Civil law regarding, transfer of rights, Article 44 of the Book Civil Law Law concerning encumbrance of rights, Article 51 of the Civil Code concerning the distribution of joint rights, Article 62 of the Book of Civil Law Law concerning (administrative sanctions if in carrying out their duties they ignore the applicable provisions). As a Deed Making Officer Land (PPAT), who is also a Notary or sub-district head as PPAT and PPAT Official others, even if they are public officials to serve the making of the deed of sale and purchase property rights (for example), they are not allowed to make a deed in other forms, other than those specified in the laws and regulations. PPAT Notaries and PPAT Sub-District Heads are limited authority and or function to are within the limits according to the UUPA and PP No. 24

of 1997. Meanwhile, PPAT Notaries and the PPAT sub-district head is prohibited from serving the existence of absolute powers is essentially a transfer of rights over the ground. Actually MDN Instructions No. 14 of 1982 which contains a prohibition on it was addressed to the Camat and Village head or equivalent with it (Lurah) not to make/strengthen the power of attorney Absolute which is essentially transfer of land rights disguised, but in the end certain parties appear or come PPAT Notaries/Sub-District Heads. Public Officials (Camat/Notary/ other officials as PPAT) should only serve the manufacture according to the form, terms and methods specified in the place his position where he is authorized make that authentic deed. Therefore it was also determined that in front of the office the place where he carried out the task, placed/installed "Identifier Board" PPAT", so that the public knows and that's where he does his job officially and legally. Here it means also that PPAT is not authorized make a PPAT deed for land transactions outside the jurisdiction/ work in which it is set as PPAT.

c. Function of the Deed of Sale and Purchase of Land Before elaborating further regarding the function of the deed of sale and purchase of land, then please know about understanding / understanding the deed first, making it easier to understand the function of the deed of sale and purchase of land. According to Article 1874 of the Book Civil Law Act, Deed, is a copy that is indeed with deliberately made to serve as evidence about an event and signed. Thus, the essential elements for a deed, it is intentional to create a written evidence and written signature. Deed in a broad sense, is legal action (*rechtshandeling*). Deed can be distinguished between authentic deed and deed under hand. The authentic deed is deed

made by and before authorized public official. Whereas an underhand deed is a deed that made between one party and another other legalized by officials who authorized for it, or the deed below hand is legal according to the provisions of Article 1338 Code of Laws Civil Code, which explains, that an agreement made in private, valid, and valid as law for those who make it, as long as it fulfills the provisions Article 1320 of the Code of Law Civil. Meanwhile, according to the provisions of Article 1870 Civil Code, which is about power and authentic deed as a means of proof is an authentic deed giving di between the parties and their heirs or people who have the right and to them, a perfect proof about what is contained in it. Authentic deeds have absolute evidentiary power. When a dispute arises between parties, then what is contained in the deed authentic is perfect proof so there is no need to prove with other evidence. In which in legal practice makes it easier? proof and provide certainty stronger law. Different from a deed under the hand that can still be denied and has new power perfect proof when admitted by both parties, or strengthened again with other evidence. By hence, it is said that the deed under hand, is the beginning of written evidence.

The function of the PPAT Deed made is as evidence; that it has been the relevant legal act was carried out and because of that act cash in nature as well as proving the transfer of land rights in question to the recipient of the right. The transfer of rights can only be registered if evidenced by the PPAT Deed. Thereby specified in Article 37 paragraph (1) PP 24 of 1997, it is clear that the existence of the PPAT Deed is a Requirements for transfer registration his rights. In the sense that in the absence of a

deed PPAT Head of Land Office is prohibited to register it. The article is not determines that a legal act of transferring rights is carried out before

PPAT, which makes the deed of transfer their rights as evidence, are conditions for the occurrence and validity legal act of transfer of rights conducted.

The validity of the legal action taken is determined by the fulfillment of the material requirements concerned, namely Article 1320 of the Civil Code. Authentic deed of sale and purchase of land made by the Deed Making Officer Soil (PPAT), where has the function among others:

1. The PPAT deed proves authentically, there has been a sale and purchase of a certain plot of land, on the day of certain, by certain parties who called in it.

2. There is evidence in the form of a deed PPAT is a requirement for registration of the sale and purchase by the head Land Office.

3. Conducting buying and selling in front of PPAT, with PPAT deed as the proof is not a valid sale buy done.

4. The validity of the sale an purchase is determined by the fulfillment of material conditions for buy and sell:

- a) General conditions for validity a legal act (Article 1320 Civil Code);
- b) The buyer is eligible for holders of land rights;

- c) Landreform provisions are not violated.

- d) Done in cash, clear, and real. (Kpts MA 123/K/1970)

5. The sale and purchase is carried out before the Village Head is legal according to law, if the material conditions mentioned above are fulfilled. Buy and sell that was done in front of the Chief The village meets the requirements of light, meaning not done

in secret. But the Head of the Defense Office will refuse to register it

C. CONCLUSION

The validity of the binding agreement buying and selling is determined based on the provisions Article 1338 jo. Article 1320 of the Civil Code. The birth of a binding sale and purchase agreement land rights are a consequence parties, the content and form of the agreement, but may not violate laws and regulations, order common sense and morality. The sale and purchase binding agreement arises due to delays I or there are some requirements determined by law relating to the sale and purchase of land rights which ultimately hinders completion in the sale and purchase of land rights. Agreement This sale and purchase binding arises because there are things (requirements) that have not been fulfilled or the existence of things (requirements) agreed by the parties must be fulfilled. These things (requirements) can be obstacle to the completion of the agreement buying and selling, which can be divided into 2 that is because the factor has not been fulfilled the requirements required in the legislation as well as the specified in Article 39 of PP Number 24 1997 concerning Land Registration or from the seller's agreement factor/ the buyer himself, for example about payment mechanism.

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