

Legal Validity of Transfer of Land Rights Based on a Deed of Sale and Purchase Agreement That Has Been Canceled According to Indonesian Positive Law

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Abstract

According to the provisions of Article 37, paragraph 1 of Government Regulation Number 24 of 1997 concerning Land Registration, the transfer of land rights and ownership rights to apartment units can only be registered if it is made with a deed by a Land Deed Making Officer. Every transfer of land rights must be registered at the local land office. Then, the registration process at the land office must meet all provisions in the Regulation of the Minister of State for Agrarian Affairs / Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration. However, in practice, the transfer of land rights is often preceded by a deed of Sale and Purchase Agreement and a Deed of Power of Attorney to Sell. This study will examine the legal validity of authentic deeds regarding the transfer of land rights that have been cancelled according to Indonesian positive law and the legal consequences of the transfer of land rights based on authentic deeds that have been cancelled according to Indonesian positive law. The type of research used in this study is the normative legal research method, namely research conducted on applicable laws and regulations or library legal research methods. The nature of the research used in writing this thesis is descriptive and analytical. In the Making of a PPJB Deed for land and buildings, it should no longer be followed by a Deed of Power of Attorney for Sale, just a PPJB, because the Deed of Power of Attorney for Sale creates new legal problems, besides being able to deceive who the real owner of the Object is because of the Deed of Power of Attorney for Sale. In the cancellation of PPJB and Power of Attorney for Sale, the deed that was cancelled must be withdrawn and attached to the minutes of the Deed of Cancellation so that the deed that was cancelled can no longer be used to carry out legal acts and submit the original Certificate that was cancelled to the real owner.

Keywords: *Sale and Purchase Agreement, Land Rights, Cancellation of Notarial Deed.*

Introduction

The transfer of rights through sale and purchase according to the provisions of Article 1458 of the Civil Code (hereinafter referred to as the Civil Code) is deemed to have occurred because of an agreement between the parties involved, namely that the agreement that was agreed upon has been fulfilled. A sale and purchase is an agreement by which one party binds himself to deliver goods, and the other party to pay the promised price. To carry out legal acts in the form of transferring land rights through a sale and purchase agreement and good faith is very important so that the parties who have good faith in carrying out legal acts in the form of a sale and purchase agreement will receive reasonable legal protection. Good faith can be seen at the time the legal act comes into effect or at the time of implementation of the rights and obligations contained in the legal relationship.

The term cancellation is active, even though the terms of the agreement have been fulfilled, but the parties involved in the agreement wish that the agreement made is no longer binding on them for certain reasons, either based on an agreement or by filing a cancellation lawsuit in court, for example the parties have agreed to cancel the deed that they have made, or it is known that there are formal aspects of the deed that have not been fulfilled that were not previously known, and the parties want to cancel it. Authentic deeds made by the parties can be canceled by the parties who made the agreement in the deed. When an authentic deed has been cancelled, the canceled deed no longer has legal force. And in general, the deed that has been canceled (a copy of which must be withdrawn by the notary who made the deed) so that the deed that has

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been canceled is no longer misused by irresponsible parties. A copy of the deed that has been canceled must be placed on the note of the deed of cancellation. Cancellations made unilaterally can only be done by filing a lawsuit with the local court.

Unilateral cancellation of an agreement can be interpreted as the unwillingness of one party to fulfill the performance that has been agreed upon by both parties in the agreement. At which time the other party still intends to fulfill the performance that has been promised and wants to continue to obtain counter performance from the other party. As we know that a valid agreement, in the sense of fulfilling the requirements of validity according to law, applies as a law for the parties who make it. Based on the explanation above, it is the same as in the Civil Code, namely what is called freedom of contract, namely All agreements made in accordance with the law apply as laws for those who make them. However, these agreements are not withdrawn except by agreement of both parties, or for reasons that are stated by law to be sufficient for that.

However, in reality, in the case that is the object of this research, namely a deed that has been cancelled but the deed is used to carry out legal acts, namely it is used to transfer land rights to another person. This case began with the cancellation of the Deed of Sale and Purchase Agreement and the Deed of Power of Attorney to Sell which were carried out by I Putu Sunartawan (defendant) and I Nyoman Widajaya. That on April 23, 2008 I Putu Sunartawan (defendant) and I Nyoman Widajaya came to Notary I Gusti Made Max Odantara, agreed to cancel the Deed of Sale and Purchase Agreement Number 06 and the Deed of Power of Attorney to Sell Number 07, both dated 07-04-2005 namely with the Deed of Cancellation Number 02 dated 23-04-2008 against the disputed land.

Then on 28-04-2008 I Putu Sunartawan (defendant) and I Nyoman Widajaya returned to Notary I Gusti Made Max Odantara, SH to cancel the deed of PPJB No. 44 and the deed of power of attorney to sell No. 45 both dated 20-06-2005, namely with the deed of cancellation dated 28-04-2008, No. 3 regarding the disputed land II. That after the issuance of the Deed of Cancellation, I Nyoman Widajaya promised that within no later than 1 (one) month he would hand over the certificates for disputed land I and disputed land II to I Putu Sunartawan (defendant) to be processed to change the name from the name of I Nyoman Widajaya to the name of I Putu Sunartawan (defendant), however, up to the time limit of 1 month promised by I Nyoman Widajaya, the certificates for disputed land I and disputed land II were not handed over by I Nyoman Widajaya to I Putu Sunartawan (defendant).

That apparently without the knowledge of I Putu Sunartawan (defendant), it turns out that I Nyoman Widajaya has sold the disputed land I and disputed land II to the Plaintiff as stated in the Deed of Sale and Purchase Agreement Number 21 and the Deed of Power of Attorney to Sell Number 22 both dated 07-05-2008 made before Notary/PPAT I Made Dwita, SH, Notary in Gianyar for the disputed land I, where I Nyoman Widajaya as the Seller and Raden Roro Endah Suparsetyaningsih (Plaintiff) as the buyer. Then for the disputed land II, a Deed of Sale and Purchase Agreement Number 18 and a Deed of Power of Attorney to Sell Number 19 were made both dated 07-05-2008 made by Notary/PPAT I Made Dwita, SH, Notary in Gianyar, where I Nyoman Widajaya as the seller and the Defendant as the buyer.

In this case, the ownership of the land rights obtained by the Plaintiff Raden Roro Endah Suparsetyaningsih is based on the Deed of Sale and Purchase originating from the PPJB and the Deed of Power of Attorney which has been cancelled by the Defendant (as the seller) and I Nyoman Widajaya (as the buyer), thus causing the Deed of Sale and Purchase to be legally flawed and null and void. Based on the background above, it is necessary to conduct this research with the research title "Legal Analysis of Ownership of Land Rights Obtained Based on the Deed of Sale and Purchase Agreement and the Deed of Power of Attorney to Sell that has been Canceled (Study of Supreme Court Decision Number 1681k/pdt/2015).

Method

The first step taken in data analysis is to inventory all legal norms contained in special regulations on perfect evidence viewed from the perspective of positive law in Indonesia. The next process is to draw out the legal principles that are "hidden" behind or behind the legal norms. The process starts from the premises of

positive legal norms contained in the law, using the inductive interpretive analysis technique. Interpretative is done by removing things that are specific in nature to obtain things that are abstract in general. This technique is also known as the abstraction technique with the inductive analysis method. The inductive reasoning method will always be placed in a prior position through observation of propositional statements contained in the norms of laws and regulations that are arranged as premises and then conclusions are drawn through inductive procedures. By utilizing propositions from observations, new propositions will be obtained as inductive conclusions that are generally applicable in the form of legal principles.

In the world of scientific reasoning (law), the legal principles obtained inductively in the next round will be used as the main proposition (major premise) to develop deductive, speculative thinking, in order to prove the assumptions that have been put forward in this study, which in turn will be used as capital to start the next induction process as something news (a legal figure of an agreement that creates a sense of justice, provides benefits and creates legal certainty as stated in the National Contract Law in the form of a named agreement). This technique is commonly known as "content analysis". This research method moves from the intended qualitative analysis. The results of the analysis do not depend on the amount of data based on numbers but rather the data that is analyzed is carried out in depth and holistically.

Result

The legal position of PPJB and the power of sale regarding the transfer of land rights according to applicable provisions is valid and binding on the parties, as long as it meets the provisions of Article 1320 of the Civil Code, and other regulations related to this matter, including being carried out in good faith, and payment for the object has been paid in full. Furthermore, the process of changing the name of the object in the PPJB must be carried out with a PPAT deed, in accordance with Article 37 of PP 24 of 1997, however, for PPJB that has not been paid in full, it cannot be followed by a Deed of Power of Attorney to Sell.

Discussion

The legal validity of an authentic deed regarding the transfer of land rights that have been cancelled according to Indonesian positive law?

The transfer of land rights based on the PPJB deed, namely the PPJB is paid in full and followed by a deed of power of attorney to sell, has legal force and legal certainty. The PPJB deed is a deed made by a notary in the form of an authentic deed. Based on the Circular of the Supreme Court No. 4 of 2016 concerning the Enforcement of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2016 as a Guideline for the Implementation of Duties for the Court (hereinafter referred to as SEMA 4/2016), Part B of the Formulation of the Civil Chamber Law, General Civil Law number 7, explains that the transfer of land rights based on the Sale and Purchase Agreement (PPJB) legally occurs if the buyer has paid the land price in full and has taken control of the object of the sale and purchase and is carried out in good faith.

Legal certainty arising from the transfer of land rights based on PPJB and the power of sale, which is based on the good faith of the parties, namely the seller and the buyer and on the basis of an agreement that has been agreed upon by the parties. This gives rise to a right for the buyer because after the agreement is reached and the payment has been made in full, the notary makes a deed, namely the PPJB deed in authentic form and followed by the power of attorney to sell.

The legal position of the transfer of land rights in the PPJB, namely the PPJB in full and the power to sell to the buyer is a guarantee from the seller, which if the seller dies and for one reason or another, then it is very strong and perfect because the evidentiary nature of the PPJB and the power to sell are made in the form of an authentic deed, namely made before a public official or notary. This is a legal certainty and legal protection for buyers who have paid the full price they have paid but have not been able to make the AJB and register the name change because one thing or another there are conditions that have not been met.

PPJB is a Pre-agreement agreed by the parties with partial purchases so that it must be divided, and the payment is made in installments and not in full, but in this case the seller's rights have not been transferred, because in the transfer of rights must be done with a PPAT deed, because in the sale and purchase agreement there are words - will sell, will buy. In PPJB must meet the principles of civil law, namely the principle of Consensualism (conformity of will), the principle of Freedom of Contract, the principle of Binding Power, the principle of Good Faith, as long as these principles are met then the Sale and Purchase Agreement is valid, because it is a Pre-Agreement

PPJB Paid Off in Practice followed by a Power of Attorney to Sell, this is a different and wrong legal act. The PPJB is a Pre-Agreement, namely an agreement occurs if the conditions are met. In the PPJB Paid Off, the authority is given to make a PPAT deed, different from the Power of Attorney to Sell Deed because it is a different legal act. PPJB cannot be followed by a Power of Attorney to Sell Deed, but the power in the PPJB is valid but the power in the PPJB Paid Off is not a power of sale but to carry out the sale and purchase. PPJB Paid Off followed by a power of attorney to sell can cause legal problems, namely null and void because every PPJB followed by a power of attorney to sell in one object there are two legal acts, this cannot be done. PPJB followed by a Power of Attorney to Sell raises a problem, namely every time in the sale and purchase of land rights with the making of a PPJB Paid Off deed followed by a power of attorney to sell, the Power of Attorney to Sell Deed can be used to transfer to another person without the consent of the husband or wife in this case it causes legal problems.

In the Deed of Power of Attorney will be used to sell and change the name to another person, so that the Sale and Purchase Agreement is not used, and the basis for making the AJB deed is the power of sale, in this case it is a problem, because the sale and purchase can be done secretly because there is already a power of sale. PPJB Paid Off followed by Power of Sale is called a hanging sale and purchase because the Deed of Power of Attorney is often used to change the name to another person's name, what should be followed is PPJB Paid Off not Deed of Power of Sale, because if the power of sale is the spouse or husband or wife does not participate in the land sale and purchase process, even though this is wrong, because in fact if the deed of PPJB Paid Off should be the spouse must also participate in signing the sale and purchase process but in reality in practice this is not created.

legal consequences for the Transfer of Land Rights based on an authentic deed that has been canceled according to Indonesia's positive law.

Absolute nullity is usually related to the problem of "form" determined by law. Some legal experts distinguish between a null and void agreement and a non-existent agreement. Void means that the essential elements of a legal action have indeed been fulfilled, but the legal action for certain reasons becomes invalid. By law, these legal actions have not had legal consequences since they were originally sanctioned. Failure to take legal action in the form required by law will result in the cancellation of the legal action. On the other hand, non-existent means that a legal action in the eyes of the law "does not exist", that is, because one of the elements required in the agreement intended by the parties is not fulfilled.

Absolute nullity is that the null and void legal action has no legal consequences for anyone; The legal action is void for anyone. So no one is bound by such a legal action, which means that from the beginning the legal action has no legal consequences. What is meant by legal actions are actions that cause legal consequences and those legal consequences are desired or considered desirable. This action is manifested in a statement, either explicitly or tacitly.

The cancellation of the Notary/PPAT deed through a court decision, is not only due to the result of the mistake or negligence of the Notary/PPAT in making the deed. However, the cancellation of the Notary/PPAT deed can also be caused by the mistakes or negligence of the parties who bind themselves to each other in the deed, so that the existence of errors or negligence causes a lawsuit from one of the parties. In civil proceedings, it is not uncommon for a Notary/PPAT to be in a position as a co-defendant which is given as a forced effort, because in a notary deed, especially the Partij Acte which then becomes evidence for civil cases, the Notary/PPAT is not involved or even prohibited by law from being involved in a legal act as described in the notary deed that he inaugurated.

Based on the previous description that a deed that has been canceled is either null and void or can be canceled or canceled by the parties by agreement, since the cancellation is carried out as a result of the rights and obligations of the parties that have been determined in the deed that has been canceled no longer has legal force. Why can the deeds that have been canceled, namely the PPJB deed and the power of sale deed as mentioned above, be used to carry out legal acts.

Based on the description above, the canceled deed can no longer be used as a basis for carrying out legal acts, but for deeds that have been canceled, in fact they can be used to carry out legal acts as in the case of DECISION Number 1681K/Pdt/2015 of the Supreme Court, in this case due to the bad faith on the part of the Cassation Petitioner/Plaintiff/Appellant.

The deeds that have been canceled are Deed No. 06 of the Sale and Purchase Agreement and Deed No. 07 Power of Attorney to sell dated May 7, 2005 to disputed land II with the making of Deed of Cancellation No. 02 dated April 23, 2008, and Deed of Cancellation No. 03 dated April 28, 2008 to Deed No. 44 of the Sale and Purchase Agreement and Deed No. 45 Power of Attorney to sell dated June 20, 2005 to Disputed Land I, which was made by Notary I Gusti Made Max Odantara, SH, Notary in Denpasar, after the deed was canceled that without the knowledge of Defendant I Nyoman secretly sold the disputed land I and II to the Plaintiff, namely by making the Deed of Sale and Purchase Agreement Number 18 dated 07-05-2008 and the Power of Attorney Selling Number 19 dated 07-05-2008 the Plaintiff as the Buyer and I Nyoman Widajaya as the seller of the disputed land I and against the disputed land II the Deed of Agreement was made Sale and Purchase Number 21 dated 07-05-2008 and Power of Attorney to Sell Number 22 dated 07-05-2008 made before Notary I Made Dwita, SH, Notary in Gianyar.

That the Defendant has never sold the disputed land I and the disputed land II either to I Nyoman Widajaya or to the Plaintiff. That on the disputed land II, the Defendant has established shophouses, residential houses, boarding houses that the Defendant manages and enjoys the results and occupies and controls them until now. The plaintiff said that he had purchased the disputed land I and the disputed land II on May 7, 2008 and I Nyoman Widajaya. Why the disputed land I and disputed land II that the Plaintiff bought was never controlled by the Plaintiff and why after 6 (six) new years the Plaintiff sued the Defendant who controlled and occupied the disputed land I and disputed land II, because it is impossible that the existence of the Defendant in the disputed land I and disputed land II is not known to the Plaintiff if it is true that the Plaintiff has checked the land object that he will buy. Thus, it has become clear that the Defendant is a buyer in bad faith and does not deserve legal protection

In this case, there is a mistake from the notary who makes the cancellation deed where according to the norm in the notary world for the deed that has been canceled, the official copy of the deed that has been canceled must be withdrawn by the notary who makes the deed of cancellation and must be attached to the minut of the deed of cancellation, so that the deed that is canceled in this case, PPJB deeds and deeds of power of attorney to sell, namely Cancellation of Deed No. 06 of the Sale and Purchase Binding Agreement and Deed No. 07 of the Power of Sale issued dated 07 – 04 – 2005 against disputed land II and the Cancellation of Deed No. 44 of the Sale and Purchase Binding Agreement and Deed No. 45 of the Power of Sale issued on 20 – 06 – 2005. Both of these can no longer be used to commit legal acts.

The legal consequences of the transfer of land rights based on the PPJB deed and the power of sale that has been canceled cause the cancellation deed to be used to transfer land rights to another person or used as a basis for selling which results in the transfer of land rights. So, the aggrieved party can sue for the cancellation of the certificate by filing a lawsuit in the local district court. Carry out the cancellation of the certificate of ownership of the land and is based on the request of the interested parties, namely the Plaintiffs who have submitted an application to the Court as stipulated in Article 50 paragraph (1) of the Regulation of the Minister of Agrarian Affairs Number 11 of 2016 concerning the Settlement of Land Cases, (hereinafter referred to as Ministerial Regulation No. 11 of 2016).

Conclusion

Based on the description above, it can be concluded as follows: first, the legal position of PPJB and the power to sell against the transfer of land rights according to the applicable provisions are valid and binding on the parties as long as they comply with the provisions of article 1320 of the Civil Code, and other regulations related to this matter, among others, are carried out, in good faith, and the payment of the Object has been paid in full. Furthermore, changing the Object's name in the PPJB must be carried out with a PPAT deed, per article 37 of PP 24 of 1997. Second, the legal consequences of transferring land rights that have been transferred by the PPJB deed and the power of sale that has been cancelled are legal defects. The acts of the transfer are null and void because the deed that has been cancelled no longer has legal force. The Object that has been cancelled is in a free state in the sense that it returns to the original party (the original owner) so that the Object's buyer no longer has legal standing to perform Legal Acts.

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