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ANALYSIS OF THE DISPUTE OF UNLAWFUL ACTS IN THE LAND SALE AND PURCHASE AGREEMENT

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ABSTRACT

Background: The sale and purchase of land in this study leads to the rights of a land. From a legal point of view, buying and selling land is not about the land being traded, but the right to use the land. Regulations regarding the transfer of land rights are regulated in PP No. 34 of 1997 Article 32 paragraph (2) which reads: "Under certain conditions as determined by the Minister, the Head of the Defense Agency can register the transfer of ownership rights to a parcel of land, which is carried out between Indonesian citizens individually with evidence of a deed not made.

Aim: This study aims to analyze the dispute of unlawful acts in the land sale and purchase agreement

Method: This type of research is normative legal research that focuses on applicable legal norms and the study of legal norms is carried out by examining secondary data as the main data, while primary data as supporting data. This normative legal research is viewed from several aspects, such as aspects of theory, philosophy, comparison, general explanation, composition, and so on.

Findings: The UUPA does not clearly explain what is meant by buying and selling land, but agrarian law uses a system and legal principles. The customary law used is the customary law that applies 138ndi s adapted nationally and follows modern developments. In essence, buying and selling land is the transfer of land rights from the seller to the buyer, so that the buyer can use the land according to its function. According to the UUPA, there are various types of land rights that can be transferred, namely property rights, use rights and building rights.

KEYWORDS *Agreement, Sale and Purchase, Unlawful Acts*

INTRODUCTION

Judging from the development of cooperation in the world from all aspects, one of them in the field of cooperation is growing so rapidly. In the development of cooperation, contract law also develops rapidly. People are also increasingly binding themselves in an agreement that results in the emergence of various kinds of agreements, including one of which is a sale and purchase agreement between the seller and the buyer.

The agreement of sale and purchase is called a legal act. The definition of a legal act is an act that causes legal consequences. Agreement is one product of civil law. The term "Civil Law" (*Privat recht*) is used as opposed to the term "Public Law" (*Publikrecth*). Explanation of Civil Law is a legal rule that regulates relations or actions between civil law subjects for the benefit of one legal subject with other relevant legal subjects, without involving the public interest or other broader interests (Fuady, 2015).

All the rules in Civil Law are contained in the Civil Code (*Burgerlijk WetBoek*). The Indonesian Civil Code is a translation of the Dutch Civil Code applicable in the Netherlands, while the Dutch Civil Code is derived from the French Civil Code which was made during the

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reign of Napoleon Bonaparte, so it is also called the Napoleonic Code. Napoleon Bonaparte made the law based on its source, the Roman Code of Law, commonly known as the *Corpus Juris Civilis*. Fuady (2015) states that the book of laws made by Napoleon consists of three main pillars, namely:

1) The concept of individual property rights;
2) The concept of freedom of contract;
3) The concept of a patrilineal family.

The agreement applies the concept of freedom of contract. The principle of freedom of contract can be analyzed from the provisions of article 1338 BW paragraph (1) which reads "All agreements made legally apply as law for those who make them." The principle of freedom of contract gives freedom to the parties written in Salim's book (2013) to make:

1) Make or not make an agreement;
2) Entering into an agreement with anyone;
3) Determine the contents of the agreement, its implementation, and its requirements;
4) Determine the form of the agreement, namely in writing or verbally

The law of the agreement has an open nature, which in its content means that it can be determined by the parties with several provisions, namely not contradicting public order, morality and the law in the sale and purchase agreement made by the seller and the buyer.

In Dutch, the term against the law is called *onrechmatige daad*. Acts against the law are actions that violate subjective rights that have been regulated by law and are contrary to the legal obligations of the perpetrators that have been determined by law (Subekti, 1979).

In Book III of the Civil Code, especially Articles 1365-1380, it has been regulated about acts against the law, acts against the law can be used as the basis for a claim for compensation. Article 1365 of the Civil Code states that "Every unlawful act that causes harm to another person, obliges the person who because of his fault causes harm to another person, obliges the person who because of his fault caused the loss, to compensate for the loss" (Syahrani, 2013).

In the Civil Code there is an openness system that frees everyone to make or enter into agreements with any parties, in making an agreement it is necessary to pay attention to the legal terms of an agreement. The terms of the agreement are contained in Article 1320 of the Civil Code, which states: 1) Agreement; 2) Skills; 3) Specific objects; and; 4) *Halal* power.

Agreements are divided into 2 (two) types, namely named agreements (*Nominaat*) and unnamed agreements (*Innominat*), named agreements are regulated in the Civil Code such as rental agreements, safekeeping of goods, borrowing and buying agreements, while unnamed agreements are agreements that have not been regulated in the Civil Code.

From an unnamed agreement (*Innominat*) was born a binding sale and purchase agreement (Called PPJB), the term PPJB is not listed in the Act but we find many in everyday life. PPJB is an assistance agreement that has a function as a preliminary agreement that is free, in making PPJB must pay attention to the legal terms of the agreement mentioned above.

The sale and purchase of land in this study leads to the rights of a land. From a legal point of view, buying and selling land is not about the land being traded, but the right to use the land. Regulations regarding the transfer of land rights are regulated in PP no. 34 of 1997 Article 32 paragraph (2) which reads: "Under certain conditions as determined by the Minister, the Head of the Defense Agency can register the transfer of ownership rights to a parcel of land, which

is carried out between Indonesian citizens individually with evidence of a deed not made. by the PPAT, however, according to the Head of the Land Agency, the size of the truth has been deemed sufficient in order to register the transfer of rights to the land in question". After the issuance of the land certificate, the power of ownership over the land will be transferred to the new owner. And the transfer of ownership rights and objects in the form of land to the buyer.

In the process of buying and selling land, not everything went well. There are various problems regarding the sale and purchase of land, one of which is in the scope of unlawful acts. The explanation of unlawful acts is regulated in Article 1365 of the Civil Code, which explains that: "every act that violates the law, which causes harm to another party, then the person is obliged to compensate for the loss because of his mistake".

An object may contain elements of an unlawful act if: 1) Actions that are made contrary to the rights of others; 2) Actions that are made contrary to his own obligations; 3) Actions that are made against the norms of decency; and 4) Actions that are made are contrary to good social order (Fuady, 2013). Many parties initially doubted the unlawful act, whether it was a separate field or just a collection of legal meanings that were not included in one of the existing legal fields and constituted an error in the field of civil law (Fuady, 2003). Therefore, the research aims to analyze the dispute of unlawful acts in the land sale and purchase agreement in Indonesia.

METHOD

This type of research is normative legal research that focuses on applicable legal norms and the study of legal norms is carried out by examining secondary data as the main data, while primary data as supporting data. This normative legal research is viewed from several aspects, such as aspects of theory, philosophy, comparison, general explanation, composition, and so on.

RESULTS AND DISCUSSION

Agreement in Sale and Purchase

In contract law, an agreement has the term in Dutch "*overeenkmst*". The agreement made by the parties must be based on the principles of the agreement. In this case it is necessary to pay attention, because the principles of the agreement are used as guidelines in carrying out the agreement. The principles that must be considered by the parties in making an agreement are as follows.

Good Faith Principle

The agreement also adheres to the principle of good faith, which is regulated in Article 1338 paragraph (3) of the Civil Code which states "Agreement must be carried out in good faith". The principle of good faith is very important so that the agreement made does not cause harm to one of the parties.

Personality Principle

Article 1315 of the Civil Code formulates the principle of personality which states, "In general, a person cannot enter into a binding or agreement other than for himself".

Principles of Consensualism

Consensualism means a binding agreement for the parties who made the agreement since the agreement was reached, so that the agreement does not require certain actions (Budi & Ahlan, 2008).

Article 1317 of the Civil Code explains about third parties, in an agreement a third party can enter into an agreement that has been made by the parties if the rights of the third party are contained in the agreement. Every agreement must pay attention to the legal conditions in making an agreement, Article 1320 of the Civil Code regulates the legal requirements for making an agreement, namely agreement (Between the parties), skills, certain matters, and *Halal* reasons (Muljadi & Widjaja, 2010).

Every agreement is required to pay attention to the things described above. The stages in making the agreement include 3 stages as follows:

1) Before Making an Agreement (Pre-contract)

   The pre-contract stage is the stage before the agreement is made or drafted. At this stage the parties who will make the agreement must pay attention to the following things (Budiono, 2014):

   a) Identification of parties: At this stage the parties who will make the agreement determine the identity, the parties must have a clear identity and are legally capable and authorized in making an agreement.
   b) Determination of rights and obligations: Determine the rights and obligations of the parties who make the agreement, and determine the contents of the agreement such as compensation and so on.
   c) Negotiation: Bargaining process between the parties and aims to reach an agreement on the object and substance of the agreement to be made

2) Agreement Making

   At this stage there is a statement of will or agreement between the parties making the agreement. The steps that must be carried out in this stage are as follows (Salim, 2003):

   a) Agreement Draft: The agreement draft is made by one party or both parties to design the text or concept of the agreement.
   b) Exchanging the contents of the draft agreement: The parties to the agreement exchange the draft agreement they have made, aiming to provide the parties with an opportunity to study, and investigate the contents of the draft agreement.
   c) Revision of draft agreement: Revision is an attempt to make changes to the contents of the draft agreement before it is approved and signed by the parties making the agreement.
   d) Cover: The closing part is a manifestation of the agreement by the parties making the agreement and the signing of the agreement on all the rights and obligations that have been agreed upon.

3) After the Drafting of the Agreement

   It is the implementation stage in the contents of the agreement made and agreed upon by the parties making the agreement. The following are things that must be considered after the agreement is agreed and signed (Salim, 2003).

a) Execution of the Agreement: The parties must carry out their respective rights and obligations as stated in the agreement, the parties must understand the contents of the agreement that has been made.
b) Alternative Settlement If There is a Dispute in the Agreement: In an agreement, disputes can arise from the consequences of not implementing the agreement in good faith, in the agreement the parties can choose the dispute resolution method to be taken.

Binding Agreement in the Sale and Purchase of Land

The definition of a binding sale and purchase agreement is, according to R. Subekti, explaining that the agreement between the seller and the buyer before the sale and purchase process is held, there are elements that must be fulfilled, namely the certificate does not exist because it is still in process, and the price has not been paid off. In addition, according to Herlien Budiono, the binding sale and purchase agreement is free and serves as a preliminary agreement (Budiono, 2004). While the function of the sale and purchase binding agreement can strengthen the main agreement to be carried out, so that the sale and purchase binding agreement is the beginning of the birth of the main agreement. A relief agreement has the purpose of preparing, strengthening, changing or finalizing a legal relationship. So that the binding sale and purchase agreement has a function as an initial or preliminary agreement that can provide confirmation to carry out the main agreement or main agreement (Budiono, 2004).

The binding sale and purchase agreement contains the introduction of the main agreement in the form of the rights and obligations of the parties in which there are conditions agreed upon by the parties so that an agreement becomes valid. For example, the binding agreement for the sale and purchase of land rights, the binding agreement for the sale and purchase of land rights usually contains promises from both the seller of land rights and the buyer regarding the fulfillment of rights and obligations so that the main agreement concerning the sale and purchase and the deed of sale can be signed at before the PPAT official. Such as the land certificate management agreement which will be taken care of before the sale and purchase is carried out by the seller, and the promise to immediately pay off the payment by the buyer so that the sale and purchase deed can be signed in front of the PPAT official.

The form of binding sale and purchase agreement was born because of the need and there are no rules regarding a certain form of binding sale and purchase agreement. This is also in accordance with Herlien Budiono's opinion, that the aid agreement has a function as an introduction and is free in form (Budiono, 2004).

Definition of Unlawful Acts

In 1919 in Indonesia, unlawful acts were interpreted broadly, which included several acts, namely:

Actions that are contrary to the rights of others

Article 1365 of the Civil Code regulates actions that violate or conflict with the rights of others (*Inbreuk opeens anders recht*). A person's rights that are violated must be recognized by law (Fuady, 2005).

Acts contrary to their own legal obligations

Can be included in the category of unlawful acts if the obligations of the perpetrator conflict with their own legal obligations, the legal obligations given to a person can be in the form of written or unwritten legal obligations. So, it is not only against the written law, it is also against the rights of a person according to the law.

Acts against decency

The act of violating decency in society has been recognized as an unwritten law and is also considered an act against the law. Actions that violate decency cause harm to other parties, can claim compensation based on Article 1365 of the Civil Code based on unlawful acts.

Actions that are contrary to necessity in good social relations

If a person commits an action that harms another person and violates written articles, he or she can be charged with an unlawful act, because the action is contrary to the principles of obligation in social interaction. This obligation in the community is not written, but is recognized by the community concerned (Fuady, 2005).

In Article 1365 of the Civil Code explaining acts against the law, Article 1365 of the Criminal Code only stipulates that if a person suffers a loss due to an unlawful act committed by another person against him, then that person can file a claim for compensation to the State Court.

An unlawful act is an act that is born from the law as a result of someone who violates the law and is regulated in the Civil Code. In a narrow sense, an act against the law can be interpreted as "a person who violates the rights of others or is contrary to his own legal obligations". The rights that are violated are the rights recognized by law (Widjaja & Muljadi, 2017).

Acts against the law in Indonesia normatively refer to the provisions of Article 1365 of the Civil Code, the elements of the article are: 1) There is a case; 2) Against the law; 3) There is an error; 4) There is a loss; and 5) There is a causal relationship between the actions that cause losses.

Acts against the law in Indonesia originate from Continental Europe which are regulated in Article 1365 of the Civil Code to Article 1380 of the Civil Code, in these articles regulating responsibility for unlawful acts. Article 1367 paragraph 1 of the Civil Code explains: "a person is not only responsible for losses caused by his own actions but also due to the actions of people who are his dependents or caused by goods under his control" (Book of the Civil Code (Burgerlijk Wetboek, Article 1367, nd). Article 1367 paragraph (1) of the Civil Code divides responsibilities into several categories:

1) Responsibility for the actions of others
    a) Acts committed by a person become his general responsibility;
    b) Responsibilities of parents and guardians to minors (article 1367 paragraph 3 of the Civil Code);
    c) The employer's responsibilities towards the employed person (article 1367 paragraph 3 of the Civil Code);
    d) The teacher's responsibility towards students and craftsmen (Article 1367 paragraph 4 of the Civil Code).

2) Responsibility for the goods under his control.
   a) Responsibility for goods in general (Article 1367 paragraph 1 of the Civil Code)
   b) Responsibility for animals (article 1368 of the Civil Code);
   c) Owner's responsibility for the building (Article 1369 of the Civil Code).

Buy and Sell Land

The UUPA does not clearly explain what is meant by buying and selling land, but agrarian law uses a system and legal principles. The customary law used is customary law that applies and is adapted nationally and follows modern developments (Harsono, 1997). The enactment of the LoGA on September 24, 1960 resulted in a cash transfer of land, therefore, after the enactment of the LoGA, any transfer of land rights must be carried out in front of an official appointed by the Minister of Agrarian Affairs. Article 26 paragraph (1) of the LoGA, explains:

"Sales and purchases, exchanges, grants, gifts by will, gifts according to customary law and other acts intended to transfer property rights and their supervision is regulated by a Government Regulation"

To implement the article, the government issued PP No. 10 of 1961 which has been updated with PP No. 24 of 1997, Article 37 paragraph (1) reads:

"The transfer of land rights and ownership of the apartment unit through buying and selling, exchanging, grants, income in the company and other legal acts of transferring rights, except the transfer of rights through auction can only be registered if it is proven by a deed made by the Land Deed Making Officer (PPAT) which is authorized according to the provisions of the legislation"

The subject of buying and selling land seen from the UUPA

The subject of buying and selling there are two, namely the seller and the buyer.

a. Seller

   According to the Basic Agrarian Law No. 5 of 1960 article 21 which can be subject to sale are people who have land rights and have the status of Indonesian citizens.

b. Buyer

   Buyer subjects in buying and selling are subjects who have land rights stipulated by law, subjects who can have land rights according to law, namely: 1) Single Indonesian citizen; 2) Legal entities that have been regulated by PP No. 38 of 1963 which is involved in the religious and social fields (Banks established by the government (Bank Negara), cooperative associations established under Law no. 79 year 1958, religious body appointed by the State Minister of Home Affairs by listening to the opinion of the minister of religion, and social agency appointed by the Minister of Home Affairs after hearing the opinion of the Minister of Social Affairs).

Land as an object of sale

In essence, buying and selling land is the transfer of land rights from the seller to the buyer, so that the buyer can use the land according to its function. According to the UUPA, there are various types of land rights that can be transferred, namely property rights, cultivation rights and building rights (Perangin, 1991).

In essence, buying and selling land is the transfer of land rights from the seller to the buyer, so that the buyer can use the land according to its function. According to the UUPA, there are various types of land rights that can be transferred, namely property rights, cultivation rights and building rights.

Legal Efforts in the event of an unlawful act in the sale and purchase of land lawsuit

In a broad sense, the lawsuit aims to provide guarantees for the implementation of legal order in civil cases, in the narrow sense that the lawsuit aims to obtain legal protection with state assistance. A thing that is demanded by someone in order to get a legal path and ends with a judge's decision, is expected to get what is his right back.

Lawsuit (Contentius)

Contentious lawsuits are explained in Article 2 paragraph (1) of Law No. 14 of 1970 (amended by Law No. 35 of 1999), the authority and duty of the judiciary is to settle contentious lawsuits. Contentious lawsuits have the following characteristics: 1) The parties are called the plaintiff and the defendant; 2) There is a case or dispute in the lawsuit; 3) There are opponents or other parties who are dragged in this lawsuit, and 4) The problem raised is the prosecution of rights to what is being disputed between a person or legal entity and another person or legal entity.

Application Lawsuit

A lawsuit can be filed in the form of an application. The term *Voluntair* can be seen from the explanation of Article 2 paragraph (1) of Law No. 14 of 1970 (amended by Law No. 35 of 1999), explaining that the settlement of any dispute that is submitted to the judiciary has an understanding in which it is a settlement of the problem concerned with *Voluntair* jurisdiction (Rambe, 2004).

The characteristics of the voluntary suit are: 1) The parties concerned are called the applicant and the respondent; 2) This lawsuit and application is without dispute; 3) The problem posed is of one-sided interest only; 4) No third party is drawn as an opponent.

A person who goes through a civil process, starting with the filing of a written suit, can also be submitted orally and then rewritten on the basis of the request of the Chairman of the Court to the Registrar. To further explain the form of a civil lawsuit, then in the Act and the practice that occurs in the scope of the Court can be explained as follows:

a) Written Lawsuit: The preferred lawsuit is a written lawsuit, the provisions of a written lawsuit are regulated in Article 118 paragraph 1 of the HIR which states that a civil lawsuit at the first level is within the power of the state court, it is obligatory to include a request letter signed by the plaintiff or his attorney. Regarding civil claims in the first instance, it is the authority of the state court appointed according to the applicable provisions in article 147, with a letter of application signed by the plaintiff submitted to the head of the district court authorized in the jurisdiction where the plaintiff lives (Rambe, 2004).
b) Verbal Lawsuit: Article 120 HIR/144 R.Bg explains that for the plaintiff who does not have the ability or expertise in writing, the lawsuit filed can be made orally to the Chief Justice, then the Chairperson of the Court summarizes it and records the

contents of the lawsuit. However, in the R.Bg it states that the lawsuit is verbal, it is not allowed to be represented or the person authorized by the plaintiff (Fauzan, 2005).

The purpose of being relaxed in filing a lawsuit orally, is expected to provide justice to people who cannot write, when providing assistance to people who cannot write, the chairman of the court is prohibited from deviating from the purpose of what is desired by the plaintiff (Harahap, 2001).

To avoid things that are not desirable, the Judge or Court Officer who has been determined by the Chairman of the Court to formulate a lawsuit that is submitted orally in the form of a lawsuit, the formulation of a lawsuit can be by recording events and events in the area around the claim requested by the plaintiff. After being formulated, the court employee reads out to the plaintiff, if it is in accordance with the plaintiff's demands, the lawsuit is signed by the judge or court employee who formulates the lawsuit.

CONCLUSION

The UUPA does not clearly explain what is meant by buying and selling land, but agrarian law uses a system and legal principles. The customary law used is the customary law that applies and is adapted nationally and follows modern developments. In essence, buying and selling land is the transfer of land rights from the seller to the buyer, so that the buyer can use the land according to its function. According to the UUPA, there are various types of land rights that can be transferred, namely property rights, use rights and building rights.

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