

THE VALIDITY OF THE LAND SELLING AGREEMENT WHICH CONTAINS LEGAL DEFECTS

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Keywords

Agreement
Legal Disability

A valid agreement must be made based on the provisions of Article 1320 of the Civil Code, these conditions include subjective and objective conditions as contained in Article 1320 of the Civil Code. An agreement made that does not fulfill one of the requirements of Article 1320 of the Law has different legal consequences. An agreement that does not meet the subjective requirements of Article 1320 of the Civil Code has legal consequences, a cancellation of the agreement may be requested by one of the parties, while an agreement that does not meet the objective requirements of Article 1320 has legal consequences for the agreement made by these parties, null and void and deemed to have never occurred. The land sale and purchase agreement made by the late Ibrahim and Djaidin to Nur Saidah is an agreement made using false information by the late Ibrahim and Djaidin as contained in Decision Number: 178/PDT.G/2012/PN.Sda. The late Ibrahim and Djaidin in the case of the decision acted as heirs of Anuwar P. Sidik to sell the inheritance land that had not been divided by inheritance, as the legal facts found that the late Ibrahim and Djaidin were not heirs of Anuwar P. Sidik. Based on the case, there are interesting things that want to be studied in writing this thesis, namely, the sale and purchase agreement must include the identity of the seller and buyer.

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1. INTRODUCTION

An agreement is an act by which one or more people bind themselves to one or more other people, an agreement can only be made if it fulfills the elements and conditions of a valid agreement where in Article 1320 of the Civil Code it is stated "For a valid agreement four conditions are required. , Agree on those who bind themselves, The ability to make an engagement, A certain thing, A lawful cause[1], [2].

In the legal terms of the agreement above, there are Subjective conditions and Objective conditions, what is meant by Subjective conditions are "Agreed by those who bind themselves" and "The ability to make an engagement", while what is meant by Objective conditions are "A certain thing" and "A lawful cause. "[3]. The subjective requirement of the agreement is "The ability to make an engagement", the skill is that they have reached the age of twenty one while based on Article 330 of the Civil Code that minors are those who have not reached twenty-one years of age and not older previously married. In the event that what is meant is incompetence, that is, it is based on Article 1330 of the Civil Code[4], [5].

It is the same with a sale and purchase agreement, which must also fulfill the elements of Article 1320 and Article 330 of the Civil Code. The sale-purchase agreement is an agreement made by the seller and the buyer, in which the seller is bound by submitting an object and the buyer pays the agreed price. The sale and purchase is deemed to have occurred when the parties have reached an agreement on the object and the price, even though the object has not been delivered. Buying and selling land is a process of transferring rights using the basic principle of light and cash[6], [7].

Bright means that the sale and purchase must be carried out in the presence of an authorized public official, authorized public officials such as the Customary Head, Camat, and PPAT[8]. Cash means that the sale price must be paid in cash. Based on the description above, that with the sale and purchase agreement, there is a process of transferring a material right in the form of land from the seller to the buyer[9]. All agreements made legally apply as law for those who make them in accordance with Article 1338 of the Civil Code which states: All agreements made in accordance with the law apply as law for those who make them. The agreement cannot be withdrawn other than by agreement of both

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parties, or for reasons determined by law[10], [11].

The agreement must be executed in good faith. As is the case with the land sale and purchase agreement in the Decision of the Sidoarjo District Court Number: 178/PDT.G/2012/PN.Sda. The Plaintiff with his lawsuit dated October 25, 2012 which was accepted and registered at the Registrar's Office of the Sidoarjo District Court on October 25, 2012, that in Medaeng Kulon Hamlet, Kedungturi Village, Taman District, Sidoarjo Regency once lived a husband and wife named Anuwar P. Sidik and Hindun who in the His household is blessed with 4 (four) children each named: Mochammad Sidik (Plaintiff 1), Abdul Koder, Hadi, Aroeman Soebono (Plaintiff 2). Related to that, after giving birth to their fourth child, Anuwar P. Sidik divorced Hindun and remarried a woman named Wakinah whose household was blessed with a son named Abdul Karim (Plaintiff 3). Furthermore, Hindun remarried to a man named Karto who in his household was blessed with a daughter named Tutik Hidayah (Plaintiff 4). Anuwar P. Sidik died in 1987 and Hindun died on July 19, 2007, thus the Plaintiffs are the heirs of the late Anuwar P. Sidik and the late Hindun.

2. METHOD

Research methods are indispensable in a scientific paper. The research method in a scientific work is an important factor to find the truth on the subject matter specified and becomes a guide in writing research results. By using the right research methods will get the results of the analysis that contains the truth and can be justified scientifically. The use of a method in a study is a way of working in the form of procedures or steps to find, develop and test the truth because the value of a research cannot be separated from the method used. Legal research is conducted to solve the proposed legal issues. The research method used includes several aspects, namely as follows:

2.1 Research Type

The type of research used by the author in writing scientific papers in the form of this thesis is normative juridical research, which is carried out by reviewing various formal regulations such as laws and literature that are theoretical concepts which are then linked to the problems that are the subject of discussion.

2.2 Problem Approach

In legal research, in order to get the truth about the legal issues being handled, a problem approach is needed in order to find correct and concrete answers. In writing this thesis, the author uses one kind of problem approach, namely the statutory approach. The statute approach is to examine all laws and regulations related to the legal issues being handled. Used to find legal rules in knowing about the validity of an agreement made using false information.

2.3 Legal Material

In a research on law, it is very necessary to source legal materials, because to solve legal issues and at the same time provide prescriptions on what research sources should be needed. The sources of legal research in the form of legal materials consist of primary legal materials, secondary legal materials and legal materials. non-legal. Writing in this thesis, the author uses primary legal materials and secondary legal materials.

3. Results and Discussion

3.1 Sale and Purchase Agreements whose Subjects Use False Information

Making agreements with other people or more is not a new thing in this day and age, because along with the times, agreements will continue to grow and will always be made by everyone for their own interests. The agreement made by the interested parties aims to bind each party involved in the agreement to comply with and fulfill the obligations of the agreement they made. As the understanding of the agreement is an agreement is an act by which one or more people bind themselves to one or more people, the definition of this agreement can be seen in Article 1313 of the Civil Code. Article 1313 of the Civil Code intends to show that an agreement is a

An act; Between at least two people (so it can be more than two people). This act gave birth to an agreement between the promised parties. The agreement is a legal act which gives rise to the rights and obligations of each party who makes it, the making of the agreement must fulfill every element

described in Article 1320 of the Civil Code. Each element contained in Article 1320 of the Civil Code can cause different legal consequences, for example in numbers 1 (one) and 2 (two), namely regarding the subject, while in numbers 3 (three) and 4 (four) it is the object. . The legal requirements of an agreement that must be fulfilled are stated in Article 1320 of the Civil Code which applies to all agreements that will be made by each party,

The sale and purchase agreement as defined can be seen in Article 1457 of the Civil Code, namely a reciprocal agreement in which one party (the seller) promises to hand over ownership rights to an item, while the other party (the buyer) promises to pay a price consisting of a sum of money in return for the acquisition of the property rights. The sale and purchase agreement itself is considered to have occurred between the two parties, as soon as the people reach an agreement on the goods and their prices even though the goods have not been delivered and the price has not been paid, this is based on Article 1458 of the Civil Code. Reciprocity here can be interpreted that each party who enters into a sale and purchase agreement has a relationship with one another, The relationship in question is the rights and obligations that must be borne by each party. The obligation to deliver the goods by the seller according to the provisions of Article 1459 of the Civil Code is obligatory or mandatory, because it is one of the conditions for the transfer of ownership of the object being traded. submission must be made based on Articles 612, 613, and 616 of the Civil Code

- a. According to Article 612 of the Civil Code, for movable goods, it is sufficient that the transfer of power over the goods manifestly means hand-to-hand delivery.
- b. According to Article 616, for immovable goods in the form of land, delivery can be carried out by an act called "transfer of name" which is carried out in the presence of the Land Deed Making Official.
- c. For intangible goods with an act called "cessie" as regulated in Article 613 of the Civil Code which states:

The submission of receivables in the name and other intangible objects is carried out by making a private deed, whereby the rights to the object are delegated to another person. Such a delivery for the debtor has no effect unless the surrender is notified to him in writing and he acknowledges it. The delivery of each receivable due to a carry-over is carried out with the submission of the letter; the submission of each receivable due to a letter of appointment is carried out by submitting a letter accompanied by an endorsement

The making of a sale and purchase agreement must be in accordance with applicable legal procedures and be based on an agreement from the parties who are purely of their own will, not because of an unfree will. A valid sale and purchase agreement is an agreement made with applicable legal procedures, if the agreement is made without following an applicable legal procedure, the agreement can be said to be legally flawed. Legal defects can be divided into three groups, namely Coercion, Misguidance, and Fraud. In its further development, we recognize another form of legal defect, namely the will that arises because of the Misuse of Circumstances.

3.2 Legal Consequences of a Sale and Purchase Agreement Using False Information

The principle of freedom of contract provides an opportunity for everyone to make an agreement or not to make an agreement. The principle of freedom of contract is a principle that occupies a central position in contract law, although this principle is not set forth as a rule of law but has a very strong influence on the contractual relationship of the parties. Apart from the principle of freedom of contract, every agreement made must fulfill the validity of the agreement itself as it can be seen that the legal requirements or validity of every agreement made by each person is based on Article 1320 of the Civil Code which states that the agreement of those who bind themselves; 2. The ability to make an engagement; 3. A certain thing; 4. A lawful cause.

An agreement is a legal act that can have legal consequences, as the agreement is legally made by fulfilling every element of Article 1320 of the Civil Code, then the agreement applies as law for those who make it based on Article 1338 of the Civil Code. Civil law. The making of an agreement made by each party has elements contained in the agreement itself

- a. The essentialia element, this element in the agreement represents provisions in the form of achievements that must be carried out by one or more parties, which reflects the nature of the

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agreement that distinguishes in principle from other types of agreements. This element is generally used in providing the formulation, definition or understanding of an agreement.

- b. Naturalia element, this element is an element that must exist in a certain agreement, after the essential element is known with certainty.
- c. Accidental elements are complementary elements in an agreement which are provisions that can be deviated by the parties according to the wishes of the parties.

Article 1320 of the Civil Code as a guide in the validity of the agreement has subjective and objective conditions. Subjective requirements can be met in Article 1320 in the first and second points, while objective conditions can be met in the third and fourth points, subjective requirements from Article 1320 can be described as follows

- a. Agreeing those who bind themselves, agree is a reflection of the principle of consensualism that animates every agreement because with an agreement there has been an agreement. The agreement made by each party must be in free will based on their own wishes, not because of coercion from a third party. Legal defects in the agreement occur if there are abnormal conditions, in the sense that there are elements of misguidance, coercion, fraud and abuse of circumstances.
- b. The ability to make an engagement, competent in terms of making an agreement must be at the age of 21 and twenty-one years as based on Article 330 of the Civil Code which states that minors are those who have not reached the age of twenty-one years and are not previously married. Incompetence to make agreements is also regulated in the Civil Code in Article 1330 which explains that, incompetence to make agreements are: 1) Minors; 2) Those who are put under custody; 3) Women, in matters stipulated by law, and in general everyone to whom the law has prohibited making such agreements. Those who are put under guardianship are those who have matured because their personal nature is considered unable to take care of their own personal interests, they are stupid, memory-lost and blind people. The third point in Article 1330 of the Civil Code is no longer valid after the issuance of SEMA (Supreme Court Circular) No. 3 of 1963, from the birth of the SEMA, the principles of *lex specialist derogat lex generalis* (specific regulations override general regulations) and *lex posteriori derogat leg priori* (new regulations take precedence over the old regulations). The third point in Article 1330 of the Civil Code is no longer valid after the issuance of SEMA (Supreme Court Circular) No. 3 of 1963, from the birth of the SEMA, the principles of *lex specialist derogat lex generalis* (specific regulations override general regulations) and *lex posteriori derogat leg priori* (new regulations take precedence over the old regulations). The third point in Article 1330 of the Civil Code is no longer valid after the issuance of SEMA (Supreme Court Circular) No. 3 of 1963, from the birth of the SEMA, the principles of *lex specialist derogat lex generalis* (specific regulations override general regulations) and *lex posteriori derogat leg priori* (new regulations take precedence over the old regulations).

3.3 Basis for Judge's Consideration in Deciding Case Number: 178/PDT.G/2012/PN.Sda

A court decision is a court decision that has permanent legal consequences for the disputing parties in court after it has been pledged by the panel of judges. Court decisions are the final goal of the process of examining cases in the District Court, a decision is taken by a judge containing the settlement of a disputed case.⁶⁴ Decisions made by the panel of judges should have legal considerations which are the soul and essence of the decision. These considerations contain analysis, arguments, opinions or legal conclusions from the judge who examines the case.

Based on legal considerations from the panel of judges against the lawsuit filed by the legal heirs of Anuwar P. Sidik, namely Muchammad Sidik (Plaintiff I), Aroeman Soebono (Plaintiff II), Tutik Hidayah (Plaintiff III), and Abdul Karim (Plaintiff IV) in Decision Number: 178/PDT.G/2012/PN.Sda there is a dissenting opinion. The opinions of the presiding judge and second member judge are as follows:

1. Considering, that the panel of judges will first consider whether the plaintiff's claim is lacking parties (Plurium Litis Consortium) because in the Deed of Sale and Purchase Agreement No. 239 dated July 10, 1990 and Deed of Authorization to Sell No. 240 dated July 10, 1990 made by Co-Defendant I is invalid and null and void because in the deeds it is explained that the first party (the seller) is Mr. Ibrahim and Djaidin and as the second party is Mrs. Nur Saidah (Defendant I) who in the deed it states that the first party (the seller) is willing and obliged to resolve all problems in the future that may arise regarding the ownership of what he sells with this deed, with all his own risk, expense and expense.
2. Considering, that from the examination process before the trial the panel of judges obtained the fact that although the principle of freedom applies where the plaintiff is authorized to determine who he will sue, but to settle the aquo case that the lawsuit must be directed against parties who have legal relations (Supreme Court Decision RI dated July 7, 1971 No. 294 K/SIP/1971);
3. Considering, that the existence of this case is based on the Deed of Sale and Purchase Association No. 239 dated July 10, 1990, in which Article 8 and Article 5 bind the heirs of the late Ibrahim and the late Djaidin who must also be held responsible in accordance with the agreement of the Sale and Purchase Association Deed No. 239 dated July 10, 1990 must be withdrawn as a party in this case, therefore according to the Panel of Judges the claim of the Plaintiffs is considered incomplete, then the Defendants' Exception can be granted
4. Considering, whereas because one of the exceptions is declared accepted and granted, the exceptions other than and the rest are no longer considered;
5. Considering, whereas based on the considerations mentioned above, the Plaintiff's Claim for Less Convention is granted, according to the Panel of Judges the Plaintiff's Claim for Convention cannot be accepted;
6. Considering, whereas in the Convention and the Convention, because the Defendants' exceptions are granted, the main claim in the Convention is declared ineligible and the claim in the Convention is also declared unacceptable, the Plaintiffs in the Convention must be punished to pay court fees which are currently estimated at the amount as stated in the Convention. order this decision.

Member Judges I have different legal considerations from the Chief Judge and Member Judges II as follows:

1. Considering, that from the legal facts at trial obtained from answers and answers, documentary evidence and witnesses can be stated as follows:
2. Whereas it is a fact that the Plaintiffs are the true heirs of ANOEWAR or also called Anuwar P. Sedek or Anuwar P. Sidik;
3. That it is a fact that the heirs have an inheritance of ex Gogol rice fields which has been upgraded to Governor's Decree No.I/AGR/74/XI/HM/01.G/1971 On behalf of Anuwar P. Sidik with an area of 0.735 Ha (Evidence P- 10);
4. That it is a fact that Defendant II (PT. Ispat Wire Products) already has a Certificate of Building Use Rights on the object of the dispute, which was obtained from Defendant I (Nur Saidah), and Defendant I obtained it from the late. Abraham and Alm. Djaidin (Evidence T1 & T2 – 1s/d3);
5. Considering, that the question is in terms of the conditions under which the Building Use Rights of Defendant II was issued in 1994, while the Governor's Decree from the Plaintiffs in 1971, it is agreed that both parties are actually the legal owners;
6. Considering that it is a legal fact that Defendant I and Defendant II cannot prove that Defendant I and Defendant II obtained from the Plaintiff, but Defendant I obtained the object of dispute instead from Ibrahim and Djaidin. Where Defendant I and Defendant II cannot prove where Ibrahim and Djaidin obtained or the basis of their rights;

7. Considering that the Defendant I and Defendant II were unable to prove the basis of the rights of Ibrahim and Djaidin, this implies that the object of the dispute is not a letter that can be inherited, so that the Plaintiff does not need to mention the heirs of Ibrahim and Djaidin;
8. Considering whereas similarly Defendant I and Defendant II could not prove who the heirs of Ibrahim and Djaidin were, so that the exceptions of Defendant I and Defendant II did not need to be considered;
9. Considering, that from various disputed cases, it is often found that a person claiming to be the owner (even though he is not), conducts buying and selling with other parties in cooperation with the village head;
10. Considering, that this indication should have been realized by Defendant I and Defendant II, by showing at trial what be the basis of the rights of Ibrahim and Djaidin. So that Defendant I and Defendant II obtained Building Use Rights from him, but this was not done by Defendant I and Defendant II.
11. Considering, whereas taking into account the matters mentioned above, it is appropriate to grant the Plaintiff's claim and reject all exceptions from the Defendants.

Based on legal considerations from the Chief Judge and Member II Judge, the two Judges rejected the Plaintiff's claim because the Plaintiff's lawsuit lacked parties. The exception of the Defendant giving a statement regarding the Deed of Sale and Purchase Agreement made by Notary Tantien Bintarti in which there is a clause in Article 5 stating that the First Party fully guarantees to the Second Party, that the First Party is the only party entitled to sell the land, therefore Therefore, the First Party remains willing and obliged to resolve all problems that may arise in the future regarding the ownership of what it sells under this deed, at its own risk, burden and expense. Article 8 in the Deed of Sale and Purchase Agreement also states that this Agreement is binding on the Heirs of both parties, therefore the terms and conditions contained in this deed shall remain valid and binding on the heirs of both parties. Even if one party dies. The explanation of the exception was granted by the Chief Justice and Member Judge II, both judges based their legal considerations on the Decision of the Supreme Court of the Republic of Indonesia dated July 7, 1971 No. 294 K/SIP/1971 which states that although the principle of freedom applies in which the Plaintiff has the authority to determine who he will sue, in order to settle the aquo case, the claim letter must the two judges based their legal considerations on the Decision of the Supreme Court of the Republic of Indonesia dated July 7, 1971 No. 294 K/SIP/1971 which states that although the principle of freedom applies where the Plaintiff has the authority to determine who he will sue, in order to settle the aquo case, the lawsuit must be the two judges based their legal considerations on the Decision of the Supreme Court of the Republic of Indonesia dated July 7, 1971 No. 294 K/SIP/1971 which states that although the principle of freedom applies in which the Plaintiff has the authority to determine who he will sue, in order to settle the aquo case, the claim letter must directed against parties who have legal relations.

4. CONCLUSION

Based on the description of this Sale and Purchase Agreement, it has been legally flawed since its inception, the author is guided by the Jurisprudence of the Supreme Court no. 2510 K/Pdt/1991 dated April 8, 1993 which was published in Varia Judiciary Year IX No. 104, May 199472, stated "A Notary who makes an authentic deed pretending (proforma) and the material is not in accordance with reality (facts). the truth, even contrary to the material truth, then the notarial deed made that way is invalid and has no legal force as of the date the deed is issued". Sale and Purchase Association Number 239 made by Notary Tantien Bintarti SH, based on Supreme Court Decision No. 2510 K/Pdt/1991 dated April 8, 1993 is invalid and has no legal force since the sale and purchase agreement deed was issued. With the invalidity and legal force of the Sale and Purchase Deed, the Exception from the Defendant, namely "the Plaintiffs' claim is incomplete, cannot be accepted and all exceptions from the Defendant do not need to be considered again, but should grant the claim from the plaintiff. .

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