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Default in Payment in Land Sales That Have Been Registered at the Land Office (A Study of Court Decision Number 15/Pdt/2022/PT.Bdg.)

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Abstract
This research discusses default in the payment of land purchase using a home ownership credit as a basis for canceling a sale that has been registered at the land office, based on the Court Decision Number 15/Pdt/2020/PT.Bdg. In this case, the bank disbursed the credit according to the credit agreement between the buyer and the bank, which should have been paid to the seller by the buyer. However, since the money was not paid despite the transfer of rights being registered at the Land Office, the seller suffered a loss due to the buyer's default. This default can create new legal problems if not promptly resolved through the court. The research method used is doctrinal legal research, based on legal doctrines and applicable laws and regulations. The research typology used is descriptive-analytical. This method describes the applicable laws and regulations and relates them to legal theories and the practice of positive law relevant to the issue. This research focuses on whether a default can annul a land sale that has been registered with the land office and the differences between default and unlawful acts in canceling an engagement based on applicable regulations. The result of this research is that the transfer of land can be annulled by proving that a default has indeed occurred through a judge's decision in accordance with Article 1266 of the Civil Code.

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1. INTRODUCTION

Background

Buying and selling land according to customary law is a process of transferring land rights which must be carried out "clearly" and "in cash". In customary law, the word bright means that the transition process must be carried out in the presence of the traditional head who is responsible for ensuring the smoothness and validity of the transaction. The transfer of rights must be carried out openly so that it is known to the general public. Meanwhile, "cash" in this context means that the transfer of rights and payment must be made simultaneously.

Payment can be in full or partial cash, which is considered a cash payment.

Meanwhile, in the realm of national land law, the clear principle means that the transfer of land rights is carried out before an authorized official, namely the PPAT, and a deed is drawn up as proof that payment has been made and registered with the land office to provide legal certainty. If the buyer does not fulfill his obligations by not paying off the payment, the seller has legal grounds to sue. The requirements in the act of transferring land rights determine the validity of the sale and purchase of land, especially regarding payment obligations.

PPAT is responsible for drawing up the Sale and Purchase Deed and registering it at the local land office according to the location of the land in question. Land sale and purchase is a form of bilateral agreement between two parties, where each party has rights and obligations. In general, a sale and purchase agreement is an agreement between a seller and a buyer to exchange goods for a certain value. Some key points to note include:

1. Agreement of the Parties: The seller and buyer must reach an agreement regarding the goods to be sold, the selling price, and other terms.

2. Object of Sale and Purchase: The goods being sold can be objects, rights or services. It is important that the item is clear and identifiable.
3. Price: The sale and purchase price must be agreed upon by both parties and can be in the form of money or other exchange rates.
4. Payment and Delivery of Goods: The buyer pays the price according to the agreement, and the seller must deliver the goods according to the agreement.
5. Seller and Buyer Obligations: The seller must deliver the goods in good condition, while the buyer must pay the price according to the agreement.

If one party does not fulfill its obligations completely, this can give rise to a conflict of interest called default or broken promise. Default is defined by Article 1243 of the Civil Code as an act of a debtor who is negligent in fulfilling his achievements for which compensation for costs, losses and interest can be requested. Therefore, the term "default" can be interpreted as "broken promise," "broken promise," or "broken performance," because they all relate to non-compliance with promises or implementation of achievements in an agreement.

From the contents of this article, at least three elements of default can be identified, namely:

1. There is an agreement.
2. There are parties who violate or do not fulfill promises.
3. The debtor has been declared negligent, but still does not carry out the contents of the agreement.

Thus, the party who violates the promise is responsible for compensating for the losses experienced by the injured party as a result of the breach of the promise in accordance with Article 1243 of the Civil Code. However, if a default occurs in a reciprocal agreement, especially the sale and purchase of land rights, where there is a transfer of rights by changing the name of the land title certificate. The party who feels aggrieved can sue for the cancellation of the sale and purchase on the basis of breach of contract under Article 1266 of the Civil Code.

The sale and purchase can also be invalidated if the transfer is carried out in an unlawful manner (an unlawful act occurs). An unlawful act according to Article 1365 of the Civil Code refers to any action that violates the law and results in loss to another party. The party who caused the loss is responsible for compensating for the loss. Unlawful acts can also be defined as actions or omissions that conflict with the rights of other people, the legal obligations of the perpetrator, norms of decency, or moral principles that apply in social interactions with other people or with property.

The initial step in a land sale and purchase transaction is to ensure that the prospective seller has the legal right to sell the land in accordance with Article 9 paragraph (1) letter (a) of Republic of Indonesia Government Regulation Number 24 of 1997 concerning Land Registration that the object of land registration includes property rights, business use rights, building use rights and use rights. This means that the seller is the legal right holder of an object based on the classification of Article 9 paragraph (1) letter (a). If there is only one owner, he has the authority to sell the land independently. However, if there are two or more right holders, all right holders have the authority to sell the land together.

The second step is to determine whether the seller has the authority to sell the land. There are situations where a person has ownership of land but does not have the authority to sell it if it does not meet certain requirements. For example, if the land is owned by a minor or an individual under a guardianship, then the seller does not have the authority to sell the land.

In cases like this, specific requirements must be met before a land transaction can take place. If a land transaction is carried out but it turns out that the seller does not have the authority to sell or the buyer does not have the right to buy, even though the seller has the right to the land or the buyer should have the right to buy, then the consequence is that the transaction can be declared void by the interested party. Apart from that, the Land Registration Office has the authority to refuse registration in accordance with Article 45 PP 24 of 1997 because this action has the potential to give rise to land disputes as previously explained.

The third step is to ensure that the seller has permission to sell the land. Although the seller has the right and authority to sell the land, he may not have met certain requirements to make the sale. For example, a person may own land that was previously recognized as a Western title or land that has been registered as an Indonesian title in accordance with the UUPA. However, if the land is not registered at the land office or the certificate is lost, the seller cannot transfer ownership of the land because the requirement to make a sale and purchase deed is with an original certificate and PPAT can refuse it in accordance with Article 39 Paragraph (1) letter (a) PP 24 of the Year 1997. The steps that need to be taken are to process and obtain the certificate first before you can sell it.

The fourth consideration is ensuring that both the seller and the buyer act personally or as representatives. Both sellers and buyers can act directly or through representatives. In both cases, identity must be clearly defined. If the seller or buyer is an individual, his or her identity includes name, date of birth, nationality, occupation, and address, which are usually listed on a Resident's Identity Card (KTP) or Passport.

If the seller or buyer is a legal entity, the identity includes the name, legal entity form, legal entity status, and information about the management. If the seller or buyer acts through a representative, it is important to ensure that there is a power of attorney that specifically states the authority to carry out land sales. General powers of attorney which are usually used for other matters do not apply in the context of land sales. The power of attorney used for land sale and purchase transactions must clearly and unequivocally state the authority to carry out the sale.

In buying and selling land, there are also credit facilities provided by banks to assist prospective buyers in the purchase and sale payment process. This facility is called Home Ownership Credit (KPR), KPR is a form of credit given to help ease the burden of payments when purchasing a house. In the KPR scheme, the bank will make an initial payment for the house purchased by the prospective buyer to the home owner. Next, the buyer will pay the amount to the bank within a certain period of time in accordance with the agreement stipulated in the mortgage agreement between the customer and the bank. Home Ownership Credit (KPR) involves several legal relationships, namely:

1. The legal relationship between buyers (consumers) and sellers, who can be individuals, companies, or developers. This relationship is regulated through a written agreement such as a Sale and Purchase Agreement or a Sale and Purchase Deed.
2. The legal relationship between the seller and the bank, which is expressed in the form of a Cooperation Agreement or Memorandum of Understanding (MoU).
3. The legal relationship between the buyer (consumer) and the bank, which is established through a Credit Agreement or Debt Acknowledgment.

However, even though land buying and selling has been regulated in such a way, there are still violations of land buying and selling procedures as in High Court case Number 15/Pdt/2022/PT. Cf. Violations of the sale and purchase of land can affect the validity of the sale and purchase. Moreover, if the violation concerns the procedure for making a PPAT deed, whether related to material or formal requirements, it can cause legal defects in the

deed. Errors in material terms are primarily related to the legitimacy of the subject of the transaction, and the object being traded must be free from conflict. The buyer, as the recipient of the rights, is required to meet the criteria as the legal owner. The person who has the right to transfer land is the holder of legal rights to the land. In addition, it is important to check whether the land to be sold is eligible for trading and is not under dispute.

In Decision Number 15/PDT/2022/PT BDG, the plaintiff plans to sell his certificate of ownership number 4485/Sukamiskin with an area of 176 m2 for Rp. 550,000,000 to the defendant via KPR. The plaintiff was asked to submit a certificate to defendant II (YB bank) for the credit agreement process, and the defendant stated that "the parties have agreed on the sale and purchase at a price of Rp. 550,000,000, and if it is less than that, it will be canceled automatically". However, when the sale and purchase agreement process was attended by the Plaintiff, Defendant I, Defendant II, and Defendant III (PPAT), it was recorded in the sale and purchase deed that the sale was carried out at a price of Rp. 300,000,000. The mortgage provider explains that the remainder will be paid separately after signing the sale and purchase deed. However, after 7 months since signing the sale and purchase deed, the plaintiff still had not received payment for the sale.

Formulation of the problem

Based on the description of the background above, the author concludes that the legal problem is, whether a default can cancel the sale and purchase of land that has been registered with the land office.

2. RESEARCH METHOD

This form of legal research is doctrinal, which is based on legal doctrines and applicable laws and regulations to analyze concrete legal problems. This research refers to legal norms contained in laws and regulations as well as norms that apply in society to find solutions to specific legal problems. Through this approach, an insight into the legal norms and cases studied can be obtained, providing an in-depth analysis of the topics discussed.

The research typology used is analytical descriptive. This method describes the applicable laws and regulations and links them to legal theories and the practice of implementing positive law that are relevant to the problem. In this case, the research focuses on finding out whether a default can cancel the sale and purchase of land that has been registered with the land office and the difference between a default and an unlawful act to cancel an agreement based on applicable regulations.

3. DISCUSSION

The transfer of land rights can occur due to two main things, namely legal actions and legal events. Legal actions that cause the transfer of land rights include sale, exchange, gift, handover to a company, and division of joint rights. Meanwhile, a legal event occurs when someone dies, which results in land rights being automatically transferred to the heir based on the death event.

With the enactment of Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA), buying and selling land is seen as a legal act that results in the transfer of land rights. Every Indonesian citizen, regardless of gender, has the same rights to obtain land ownership and obtain the benefits and privileges of land ownership, both for themselves and their families. Where this property right can be transferred or transferred.

The word "transferable" means that the transition occurs not because of an intentional legal action, but because of an unintentional legal event, such as inheritance. Meanwhile, "transferred" indicates that there was an intentional act where a legal action occurred that

transferred the property rights, such as the transfer of land rights by buying and selling. The transfer of land rights must be registered to ensure legal certainty of the transfer itself.

Where the final result of this land registration is the issuance of a proof of title in the form of a land title certificate which has strong evidentiary power. This transfer of land rights can be registered if proven by a deed made by PPAT. In this article it says "deed made by PPAT" refers to the Sale and Purchase Deed (AJB). This deed is an official document prepared by the Land Deed Official and is the main requirement in the land sale and purchase transaction process.

Through the creation of an AJB made by PPAT, land rights can be transferred from the seller to the buyer, and can be immediately re-registered at the land office whose area is under the jurisdiction of the PPAT. According to Boedi Harsono, there are two land registration systems in Indonesia, namely the deed registration system (Registration of Deeds) and the rights registration system (Registration of Titles, title in the sense of right). In both systems, the deed functions as a source of juridical data which will be registered by the Land Registration Officer (land office).

In the deed registration system, every time a change occurs, a new deed must be created as evidence, and the necessary juridical data must be obtained from these deeds. Meanwhile, in the registration of titles system, the deed functions as a source of juridical data to register the rights recorded in the land book. If a change occurs, a new right is not created, but the change is recorded in the mutation space available in the relevant land book.

Then Boedi Harsono also explained the meaning of registration, land registration is a series of activities carried out by the state or government continuously and regularly, including collecting, processing, storing and presenting certain information or data in certain areas. All of this is done for the benefit of the community, with the aim of providing legal certainty in the land sector, including the issuance of evidence and its maintenance.

Agreements are an important element that forms the basis of various transactions, such as buying and selling land and buildings, leasing, granting credit, insurance, transporting goods, and so on. Buying and selling in civil law is categorized as a reciprocal agreement. In civil law, if an agreement meets all legal requirements, both subjective and objective requirements according to Article 1320 of the Civil Code, then the agreement is binding and must be fulfilled and applies as law to the parties who make it. In other words, the agreement gives rise to legal consequences that must be fulfilled by the parties concerned.

An agreement according to the Civil Code is an action in which one or more people bind themselves to one or more other people. Then, according to Abdulkadir Muhammad, an agreement is an agreement in which two or more people promise each other to do something in terms of wealth. In an agreement, there is a possibility that one of the parties will not carry out the performance as agreed.

If one party does not carry out what was agreed upon, then that party can be said to be in default, which means not fulfilling the achievements agreed upon in the agreement. Default is the failure to fulfill the obligations stipulated in an agreement. This lack of fulfillment can be caused by two reasons. This could be due to the debtor's fault, either intentionally or through negligence, or due to compelling circumstances, such as force majeure, which means it is beyond the debtor's control.

Default according to the Civil Code, is when one party does not fulfill the obligations in an agreement, then that party must compensate for costs, losses and interest that arise as a result of the violation. Based on the provisions of this article, it is clearly written that a debtor can only be considered to be in default if there is a statement that the debtor has been negligent. So, the author concludes that a statement of negligence not only determines whether the debtor has defaulted or not, but also protects the rights of creditors.

The debtor may be deemed to be in default through a warrant, similar official document, or based on the terms of an agreement that has been entered into. Written warnings can be given either officially or informally. Official warnings are usually carried out through the District Court which has jurisdiction. The District Court will deliver the warning letter to the debtor via the bailiff, and an official report will be made regarding its delivery. Meanwhile, informal written warnings can be made via registered letter, telegram, or delivered directly by the creditor to the debtor with a receipt. This type of warning is called "ingebreke stelling".

Based on this explanation, J. Satrio explained that a debtor can only be declared in default if he does two things. First, the debtor is declared negligent by the creditor, where the creditor gives a letter (summon) to the debtor. The letter contains a warning for the debtor to carry out its obligations contained in the agreement. If the debtor ignores or does not respond to the warning, the creditor can state that the debtor has defaulted through a letter to the debtor. Second, if the debtor carries out his obligations but exceeds the agreed time, then the debtor is declared to have defaulted.

It can be concluded that if there is a breach of contract in the agreement, the legal consequence is that the debtor must compensate the losses suffered by the creditor in accordance with Article 1243 of the Civil Code. However, if the agreement is reciprocal, the creditor has the right to request cancellation of the agreement for default. However, in this case the agreement is suddenly canceled by law, rather the cancellation is requested through the court.

However, if a breach of contract occurs, the aggrieved party can choose to force the other party to fulfill the agreement if it is still possible, or if not, can demand cancellation of the agreement with compensation. Then, in an agreement to give something, if the debtor fails to deliver the goods, then the goods become the responsibility of the debtor.

To determine whether a debtor is guilty of default requires an assessment of whether he intentionally or negligently failed to fulfill the stipulated obligations. There are three situations to consider in this regard. First, when the debtor does not fulfill his obligations at all. Second, when the debtor fulfills these obligations, but does not do it well or makes mistakes. Third, when the debtor fulfills his obligations, but does not comply with the specified time or is late.

In contract law, when someone does not fulfill his performance perfectly, it is known as the Substantial Performance Fulfillment Doctrine. This means that if one party has fulfilled most or substantially all of its obligations, even though not perfectly, then the other party is still expected to fulfill its obligations in full. If one party does not fulfill its performance substantially, this is called a material breach of contract. Therefore, when substantial performance has been made on the contract in question, the exception non adimpleti contract doctrine no longer applies.

Although the doctrine of contract enforcement can be applied to substantially all types of contracts, for sales and purchase contracts or those related to land, this doctrine usually does not apply. Instead, the doctrine of full contract performance is applied, which is known by a number of terms such as Strict performance rule, Full performance rule, or Perfect tender rule. According to the doctrine of full performance of a contract, if a seller delivers goods that do not conform to the contract in all aspects, then the buyer has the right to reject the goods.

So, based on the discussion above, a conclusion can be drawn, if the debtor defaults, the debtor can be subject to legal sanctions as follows:

1. The debtor must compensate the losses suffered by the creditor (Article 1243 of the Civil Code).

2. If the agreement is reciprocal, the creditor can apply for termination or cancellation of the agreement through the court (Article 1266 of the Civil Code).
3. If the agreement involves giving something, the risk will be transferred to the debtor upon default (Article 1237 paragraph (2) of the Civil Code).
4. The debtor must fulfill the agreement if it is still possible, or the agreement can be canceled but the debtor still pays compensation (Article 1267 of the Civil Code).

Debtors must compensate for losses suffered by creditors, including losses arising from default. According to Kristiane Pandoeng, in Article 1246 of the Civil Code, the loss component consists of three main elements. First, the costs that have been incurred, such as printing costs, stamp costs and advertising costs. Second, losses due to damage or loss of the creditor's property due to the debtor's negligence, for example damage to fruit due to late delivery or damage to a house due to faulty construction. Third, the interest or profit expected by the creditor that is lost due to the debtor's default.

In paying compensation, these three elements do not always have to be present. At a minimum, the compensation must reflect the actual losses suffered by the creditor. Even though the debtor has defaulted and is required to pay compensation, the law still provides limitations on the amount of compensation that the debtor should pay in accordance with the creditor's demands. These restrictions are imposed by law as an effort to protect debtors from arbitrary actions carried out by creditors.

The debtor can only be asked for compensation if the default is not caused by reasons that fall under force majeure. Force majeure refers to certain circumstances, such as unforeseen events that cause failure in the performance of a contract. In this case, if the debtor can prove that the failure was caused by an unforeseen event, which is not a breach of contract, then it is considered force majeure, and the applicable legal regulations will be different. However, if the debtor acts in bad faith, then he or she will still be held liable.

Apart from that, there are other reasons that can classify the debtor as being in a force majeure situation so that he is not responsible for non-fulfillment of the contract. This is if the debtor is prevented from fulfilling his obligations or carrying out an action that is ordered or prohibited for him due to compelling circumstances. There is no obligation for the debtor to pay compensation for costs, losses or interest. According to Kristiane Pandoeng, there are two methods for determining the starting point for calculating compensation based on Article 1243.

First, if the agreement does not specify a time period, compensation payments begin when the party is declared negligent, but is still in default. Second, if a certain period of time has been stipulated in the agreement, compensation payments begin at the end of the stipulated period. Furthermore, to be able to request compensation based on breach of contract, the creditor must be able to prove that the loss incurred could have been expected or suspected since the act that caused the loss was carried out.

However, this rule does not apply if the default occurs due to deception committed by the debtor. The compensation requested from debtors who default is only limited to losses and lost profits which are a direct result of the default, even though the default is caused by the debtor's fraudulent actions. If the contract stipulates the amount of compensation that must be paid by the debtor in case of default, the payment of compensation must be in accordance with the amount stipulated in the contract and must not exceed or be less than that.

Then regarding the payment of compensation arising from delays in fulfilling achievements in paying the amount of money in an agreement. Compensation consists only of interest as determined by law, unless there are special regulations that provide otherwise.

The debtor must pay this compensation without the creditor needing to prove there is a loss. Then the payment of compensation begins from the moment the creditor files a request in court, unless there are special regulations that stipulate that compensation occurs by law.

Apart from default, the sale and purchase of land rights can also be canceled if it is proven that an unlawful act has occurred during its implementation. An unlawful act is considered an act of violation of norms rather than a violation of an agreement, because the lawsuit is not based on the existence of an agreement. Acts against the law are regulated in Article 1365 of the Civil Code. To be considered an unlawful act, an action must fulfill several elements.

First, there are actions that appear actively, or in some cases, actions that do not appear actively but are based on the individual's awareness to act but are not carried out. It can be an action that is carried out or not carried out. The importance of this action includes both intentional and negligent actions that cause harm.

Second, actions that are against the law. Unlawful actions do not only refer to violations of the law. But it also includes actions that violate the rights guaranteed by law to other people, conflict with the perpetrator's legal obligations, violate moral norms, or conflict with good behavior in social life that takes into account the interests of other people.

Third, there is a mistake on the part of the perpetrator. Article 1365 of the Civil Code requires an element of fault (schuld) in an unlawful act. To assess the scope of the elements of error so that the perpetrator can be held legally responsible, several criteria need to be met. The criteria are the presence of an element of intent, an element of negligence (negligence or culpa), and the absence of a justifying or forgiving reason (rechtvaardigingsgrond), such as a state of overmacht, self-defense, or insanity. An action can be said to contain an element of error which results in legal responsibility if it meets these three criteria.

Fourth, there are losses for the victim. Article 1365 of the Civil Code states that every unlawful act that causes loss must be compensated. Losses (Schade) resulting from unlawful acts include material and immaterial losses.

Fifth, there is a causal relationship between actions and losses. A causal relationship is a cause-and-effect relationship that is used to determine whether there is a connection between an unlawful act and the losses that arise. So that the perpetrators of these unlawful acts can be held accountable. This causal relationship can be seen from the statement that an action carried out through a mistake causes harm. It is important to know whether the loss was caused by the act or if the loss was a result of the act. The emphasis here is whether the loss was truly caused by an action and how the truth can be proven.

Then the consequences of unlawful acts are losses for the victim. These losses must be compensated by the person or actor who is legally responsible for doing so. The law recognizes several forms of compensation for unlawful acts. First, nominal compensation, this compensation is applied when there is a serious unlawful act, such as one that contains an element of intent, but does not cause real harm to the victim. In this case, the victim can be given a certain amount of money according to a sense of justice without calculating the actual loss.

Second, compensation compensation (Compensatory Damages), namely payments to victims in the number of losses actually experienced as a result of unlawful acts. This compensation is also called actual compensation. Third, punitive damages, namely compensation in large amounts that exceed the actual loss, are intended as punishment for the perpetrator. This punitive compensation is applied in cases of serious or sadistic intent, such as serious abuse without any sense of humanity.

Meanwhile, according to Moegni Djojodirdjo, compensation for unlawful acts includes, among other things, compensation in the form of money, compensation in the

form of returning the situation to its original state, a statement that the act committed is unlawful, a prohibition on carrying out a certain act or the cancellation of something that was held legally. against the law. Then according to Wirjono Prodjodikoro, the Civil Code divides the issue of responsibility for unlawful acts into two categories.

First, direct responsibility is regulated in Article 1365 of the Civil Code, where a person is directly responsible for his own actions. Second, indirect responsibility in accordance with Article 1367 of the Civil Code, where a person is not only responsible for unlawful acts committed by himself, but also for acts committed by other people who are under his control and for goods under his supervision. .

If we look at the actions against the law and breach of contract, at first glance they are similar. However, according to M. Yahya Harahap, in essence, default and unlawful acts have fundamental differences in terms of their source, form and form. Because of this difference, it is not permissible to confuse a breach of contract with an unlawful act, formulating an argument for an unlawful act in a lawsuit is considered wrong if what happened concretely was a breach of contract and it is incorrect if the lawsuit refers to a breach of contract but the event that occurred objectively was an unlawful act.

In High Court Decision Number 15/Pdt/2022/PT. Bdg., HMD felt aggrieved by ADG's actions in not paying the sale and purchase money. So, HMD sued ADG and the other defendants for committing acts against the law under Article 1365 of the Civil Code. Then the High Court judge decided to uphold the Bandung District Court Decision Number 92/Pdt.G/2021/PN Bdg, dated 18 November 2021. In the Bandung District Court Decision, the judge decided to "reject the plaintiff's lawsuit in its entirety".

The Bandung District Court judge handed down the decision based on legal considerations which are summarized as follows. The Tribunal has considered the existing legal facts, concluding that there has been a breach of promise by ADG as the buyer and Bank YB as the credit provider to pay the sales price to HMD after the Deed of Sale and Purchase and the process of changing the name of the certificate and KPR were carried out. The non-fulfillment of the payment was caused by a dispute regarding the value of the sale and purchase price between ADG and HMD.

Then the panel considered that the execution of the Deed of Sale and Purchase in the land sale and purchase process which was a dispute between HMD and ADG by and before PPAT defendant III was valid according to law. The non-payment of the purchase price by ADG and/or Bank YB to HMD, if it can be proven, is an act of breach of promise (default) and not an unlawful act.

It can be concluded that based on the judge's considerations, in this case the actual incident was a breach of contract. However, because the plaintiff's lawsuit was not a breach of contract but rather an unlawful act, the judge was of the opinion that the lawsuit was inappropriate and therefore rejected the plaintiff's lawsuit in its entirety. In the case of Bandung High Court Decision Number 15/Pdt/2022/PT. Bdg., HMD as the plaintiff is an individual seller and ADG as the defendant is an individual buyer who wants to buy an HMD house through the Home Ownership Credit Facility (KPR) provided by Bank YB.

To get a mortgage facility from the bank, ADG has fulfilled the mortgage requirements. After completing the administrative requirements, the bank will issue a SP3K as written proof that the KPR has been approved. SP3K KPR contains important information related to KPR. SP3K is an official document provided by the bank after evaluating a Home Ownership Credit (KPR) application. This document shows that the bank has approved the mortgage application submitted by the home buyer.

After signing the SP3K, this means that the credit has been approved by the bank and only then will a Deed of Sale and Purchase (AJB) be drawn up by PPAT. The sale and purchase deed, as in the previous discussion, is a requirement for the transfer to be

registered at the land office. This deed was made on the basis of a request from the seller and buyer to PPAT as the person authorized in his position to make the AJB. Where in this case the parties have fulfilled the requirements for an AJB to be made.

After fulfilling the requirements for making the AJB, PPAT and the parties including the bank as potential creditors of the buyer will enter into a sale and purchase agreement. After the PPAT sale and purchase agreement is executed, the parties still have the obligation to prepare transfer of name documents for transfer purposes at the land office. These documents must be completed when transferring names at the land office, because these documents are mandatory requirements that cannot be separated from land registration.

The next step is to impose mortgage rights on the land ownership certificate in accordance with the provisions stipulated in Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land. The assignment of mortgage rights must be carried out using a deed of assignment of mortgage rights (APHT) made by PPAT. This mortgage right is imposed by ADG as the owner of the disputed object whose previous name has been changed, which will be charged to the bank that provides the mortgage facility.

Then the National Land Agency will issue a certificate of mortgage right which is official proof of the existence of the mortgage right. This certificate has executorial power equivalent to a court decision which has permanent legal force. Apart from that, this certificate is also valid as a substitute for grosse acte hypotheek in matters related to land rights.

The APHT must include the names and identities of the parties, the domicile of the parties, the guaranteed debts, the value of the collateral and a clear description of the object of the mortgage rights. If a party is domiciled outside Indonesia, a preferred domicile must be determined in Indonesia or the PPAT office where the deed is made is considered the preferred domicile. Then, various promises can also be included in the APHT, such as limiting the authority of the mortgage rights provider to rent out the mortgage rights object without the written consent of the mortgage rights holder, or to change the shape or arrangement of the mortgage rights object without the written consent of the mortgage rights holder.

Then other promises include the authority of the mortgage right holder to manage the object of the mortgage right based on the determination of the head of the district court. As well as promises related to repayment of receivables and sale of objects of mortgage rights. All these promises must be clearly stated in the deed if they have been agreed upon.

That having been analyzed from the decision and linked to the discussion described above, there are the following facts. Where HMD and ADG have agreed to buy and sell using KPR facilities from Bank YB. ADG's credit application was approved by Bank YB via letter number 320/BYB-0BDG/X/2011 dated 14 October 2011 to provide credit facilities in the form of an Installment Loan in the form of a maximum amount of Rp. 300,000,000,- (three hundred million rupiah). Finally, ADG and Bank YB made a credit agreement deed with deed number 11 dated January 18 2012 which was made in the presence of defendant III in his position as Notary/PPAT in Bandung.

Then HMD, ADG, Bank YB and PPAT entered into a sale and purchase agreement on January 18 2012. The sale and purchase deed number 6 were drawn up and signed. Then the sale and purchase deed number 6 along with the requirements for other name changes were registered for transition purposes and were completed. transferred ownership to ADG on April 16 2012.

That based on Bank YB's statement, the sale and purchase money amounted to Rp. 300,000,000 (three hundred million rupiah) in accordance with the credit agreement, has

been handed over from Bank YB to ADG. However, based on ADG's statement, he has not given the money for the sale and purchase to HMD. Then a Deed of Granting Mortgage Rights was also drawn up between ADG and Bank YB with Mortgage Rights No. 4419/2012 jo. APHT No. 50/2012 dated 17 March 2012, in PPAT defendant III.

That from the facts that have been explained, the KPR carried out by ADG and Bank YB is a valid credit agreement and has been approved with the issuance of letter number 320/BYB-0BDG/X/2011. Then the sale and purchase are also legal because it meets the land sale and purchase requirements based on national land law and has been registered with the land office. The problem arose because after ADG received the credit disbursement, ADG had not paid the sale and purchase money to HMD.

Where IDR was received. 300,000,000. (three hundred million rupiah) on January 18 2012, precisely on the day the sale and purchase deed were drawn up. However, ADG has not paid the sale and purchase money. So, it can be concluded that the problem that arose was that there was no payment from the defendant to the plaintiff, which means this problem occurred after the buying and selling process at PPAT. So, the Sale and Purchase Deed Number: 6 dated January 18 2012, is a valid deed because it was made in the PPAT work area and was read out in the sale and purchase agreement as well.

Apart from the facts above, before HMD brought this case to court. HMD has attempted to settle out of court. In case number 16, after carrying out the sale and purchase agreement, he had not yet received payment. HMD has visited ADG and Bank YB several times to ask about payments. However, ADG and Bank YB only shifted responsibility to each other and did not respond to HMD's words.

Then HMD made a police report to the West Java Regional Police regarding alleged criminal acts regarding embezzlement, as intended in Article 372 of the Criminal Code which was allegedly committed by ADG, on July 11 2013 with Police Report No. Pol: LPB/633/VII/2013/Jabar. However, the investigation was stopped by Decree Number: S.Tap/284.b/XII/2014/ Reskrim dated 12 December 2014. On the grounds that the incident turned out not to be a criminal act. In fact, HMD had taken steps before bringing this case to court, but to no avail.

There may be a default in payment for the sale and purchase of land that has been registered with the land office. This is because when the name is transferred to the land office, the payment is considered complete, even though it has not been paid in full. Because this is stated in the AJB made by PPAT which states: "The First Party acknowledges that it has received the above money in full from the Second Party and for the receipt of this money this deed is also valid as a valid receipt (receipt)." Payment is considered to have been paid in full by the land office when the AJB is registered. Apart from this clause, this is because the AJB made by PPAT is not an obligator agreement, but is a legal act as a condition for handing over the land, which must then be registered to transfer ownership of the land. Even though the payment is "considered paid off," the buyer is still obliged to pay the sale and purchase money, because the payment is the right of the seller.

So, it can be summarized from the discussion of position and default cases above. That it is true that there was a breach of contract in the form of non-payment of the sale and purchase money. This payment was not carried out due to a dispute over the nominal sale and purchase price. Then, before filing a lawsuit in court, the seller tried to settle outside of court by asking the buyer to pay the sale and purchase money. However, until this case was brought to court there had been no payment from the buyer.

The author believes that the judge's actions in the High Court Decision Number 15/Pdt/2022/PT. Cf. strengthens District Court Decision Number 92/Pdt.G/2021/PN. Cf. to reject the plaintiff's claim is appropriate. The point that must be highlighted is that the

plaintiff's claim is inappropriate. Where the plaintiff, suing for an unlawful act is not a breach of contract. So, the consequences of no payment from ADG are based on the theory of default which was discussed previously.

HMD as the seller has the right to submit a request for termination or cancellation of the agreement through the court by proving a breach of contract in accordance with Article 1266. Or HMD can sue ADG to fulfill the agreement if it is still possible, or the agreement is canceled but ADG still pays compensation in accordance with Article 1267 of the Civil Code. If HMD submits a request for termination or cancellation of the agreement in accordance with Article 1266 and it is declared by the judge that it is proven that there has been a breach of contract in this case.

This means that the certificate has no legal force, because the judge's decision in Article 1266 does not make the agreement null and void. Only after that, through the state administrative court, the land ownership certificate was canceled. Based on SEMA No. 10 of 2020, "Civil judges do not have the authority to cancel certificates, but only have the authority to declare certificates as having no legal force. Cancellation of a certificate is an administrative action which is the authority of the state administrative court."

4. CONCLUSION

In the case of Bandung High Court Decision Number 15/Pdt/2022/PT. Bdg., regarding the sale and purchase of land and KPR facilities, there has been a dispute between the HMD seller and the ADG buyer regarding payment for the sale and purchase of the house via the KPR facility from Bank YB. Based on Article 37 paragraph (1) of Government Regulation Number 24 of 1997, the transfer of land rights must be proven by a deed made by PPAT, in this case in the form of a Sale and Purchase Deed (AJB). The transaction process has met the requirements for legal land buying and selling according to national land law, including making an AJB and registering at the land office.

However, problems arose when ADG did not pay the sale and purchase price to HMD even though it had obtained credit disbursement. The Bandung District Court and High Court rejected HMD's lawsuit claiming an unlawful act based on Article 1365 of the Civil Code, because the problem that occurred was a breach of contract, not an unlawful act. According to Article 1243 of the Civil Code, default occurs when a party to an agreement does not fulfill its promised obligations. The judge stated that PPAT's actions in making AJB were legal and that Defendant I's payment obligations to the plaintiff had not been fulfilled, but this did not mean the act was against the law.

So from this discussion t. Therefore, the conclusion that can be drawn is that HMD has the right to submit a request for termination or cancellation of the agreement through the court by proving a breach of contract in accordance with Article 1266. Or HMD can sue ADG to fulfill the agreement if it is still possible, or the agreement is canceled but ADG still pays compensation in accordance with Article 1267 of the Civil Code.

5. BIBLIOGRAPHY

Legislation

Code of Civil law.

Law of the Republic of Indonesia concerning Basic Regulations on Agrarian Principles, Law Number 5 of 1960. LN of 1960 No. 104.

Law of the Republic of Indonesia concerning Mortgage Rights on Land and Objects Related to Land, Law Number 4 of 1996. LN of 1996.

Government Regulations on Land Registration. PP Number 24 of 1997, LN of 1997 No. 59.

Government Regulations concerning Position Regulations for Land Deed Officials. PP Number 37 of 1998, LN of 1998 No. 52, TLN No. 3746.

Government Regulation concerning Amendments to Government Regulation Number 37 of 1998 concerning Position Regulations for Land Deed Officials. PP Number 24 of 2016, LN of 2016 No. 120, TLN No. 5893.

Court ruling

Bandung District Court. Decision No. 92/Pdt.G/2021/PN. Cf. HMD versus ADG et al (2021).

Bandung High Court. Decision No. 15/Pdt/2022/PT Bdg. HMD versus ADG et al (2022).

Books

Harahap, M. Yahya. *Ruang lingkup Permasalahan Eksekusi Bidang Perdata*. Ed. ke 2. Cet. ke 9. Jakarta : Sinar Grafika, 2019.

Harsono, Boedi. *Hukum Agraria Indonesia Sejarah Pembentuk Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*. Jakarta : Universitas Trisakti, 2016.

HS, Salim. *Pengantar Hukum Perdata Tertulis (BW)*. Cet. 12. Jakarta: Sinar Grafika, 2008.

HS, Salim. *Teknik Pembuatan Akta Pejabat Pembuat Akta Tanah (PPAT).* Cet. ke 2. Jakarta: Rajawali Press, 2016.

Ichsan, Achmad. *Hukum Perdata*. Jakarta: PT. Pembimbing Masa, 1969.

Marilang, *Hukum Perikatan: Perikatan yang Lahir dari Perjanjian*. Makassar: Indonesia Prime, 2017.

Muhammad, Abdulkadir. *Hukum Perjanjian.* Jakarta : Citra Aditya Bakti, 1986.

Nazir, Moh. dan Risman Sikumbang. *Metode penelitian / Moh. Nazir ; editor: Risman Sikumbang.* Cet. Ke 8. Bogor : Ghalia Indonesia, 2013.

Perangin, Effendi. *Praktek Jual Beli Tanah*. Jakarta: Raja Grafindo Persada,1994.

Prodjodikoro,Wirjono. *Perbuatan Melawan Hukum*. Bandung: Mandar Maju, 2000.

Rahmat, Setiawan. *Pokok-Pokok Hukum Perikatan*. Bandung: Putra Abardin, 1999.

Satrio, J. *Wanprestasi Menurut Hukum Perdata, Doktrin dan Yurisprudensi*. Bandung: Citra Aditya Bakti, 2012.

Subekti, R. *Hukum Perjanjian*. Jakarta: Intermasa, 2005.

Sutedi, Adrian. *Peralihan Hak Atas Tanah Dan Pendaftarannya.* Cet. ke 9. Jakarta: Sinar Grafika, 2018.

Tanuwidjaja, Henny. *Pranata Hukum Jaminan Utang dan Sejarah Lembaga Hukum Notariat*. Bandung: Reflika Aditama, 2012.

Journals

Baharudin. "*Kewenangan Pejabat Pembuat Akta Tanah (PPAT dalam Proses Jual Beli Tanah)." Jurnal Keadilan Progresif.* Vol. 5. No. 1 (2014). hlm. 89.

Hibatullah Fauzan, David Saerang, Meily Yalalo, *"Analisis Penerapan Sistem dan Prosedur Pemberian Kredit Pemilikan Rumah (KPR) Suubsidi Pada Bank Tabungan Negara Cabbang Manado", Jurnal Riset Akutansi Going Concernt,* Vol. 4 (2018), hlm. 833.

Johan F. Mondoringin, *"Tinjauan Hukum Tentang Hak dan Kewajiban Penjual dan Pembeli Dalam Perjanjian Jual Beli Menurut KUH-Perdata", Le Privatum,* Vol. 12. No. 3 (2023), hlm. 3.

Kristiane Pandoeng, *"Kajian Yuridis Wanprestasi Dalam Perikatan dan Perjanjian Ditinjau Dalam Hukum Perdata", E-Jurnal Unsrat Lex Privatum*, hlm. 5.

Ni Putu Dian Putri Pertiwi Darmayanti, *"Akibat Hukum Jual Beli Hak Milik Atas Tanah Kepada Orang Asing Berdasarkan Undang-Undang Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria"*, Jurnal Fakultas Hukum Udayana, Vol. 2, No. 1, (2020), hlm. 3.

Nusa, Tresna I.W. *"Tinjauan Yuridis Terhadap Pembatalan Jual Beli Tanah Akibat Wanprestasi." Lex Privatum.* Vol. 11. No. 4 (2023). hlm. 6.

Silalahi, Rumelda. *"Kekuatan Hukum Jual Beli Tanah Melalui Kuasa." Jurnal Rectum*, Vol. 1. No. 2. (2019). hlm. 198.

Soetandyo Wignjosoebroto, *"Hukum : Paradigma Metode dan Dinamika Masalahnya / Soetandyo Wignjosoebroto"*, (Jakarta: Elsam Lembaga Studi Dan Advokasi Masyarakat, 2002), hlm. 121.

Varah Aisyah Octariani, *"Pembatalan Perjanjian Pengikatan Jual Beli Ruko Akibat Wanprestasi*", *Repertorium*, Vol.10, No. 1 (2021), hlm. 554.

Yeni Puspita Dewi, Tina Marlina, Irma Maulida, *"Kekuatan Akta Jual Beli (AJB) Atas Tanah Dalam Proses Menjadi Sertipikat Hak Milik", Jurnal Hukum Responsif,* Vol. 11, No. 2 (2020), hlm. 90.

Internet

Novriyadi, "Apa itu SP3K? Manfaat dan Masa Berlakunya" , *https://www.lamudi.co.id/journal/apa-itu-sp3k*, diakses pada 30 Mei 2024.

Rizky Nurwansyah, Muhammad dan Mahendra Rendi, "Apa Itu KPR? Ini Syarat, Biaya, Keuntungan, dan Contoh Simulasinya", *https://ekonomi.bisnis.com/read/20231204/47/1719128/apa-itu-kpr-ini-syarat-biaya-keuntungan-dan-contoh-simulasinya*, diakses pada 30 Mei 2024.