

Cancellation of Sale-Purchase Agreement and Absolute Power of Attorney Clause Made Based on Debts and Receivables

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Abstrak

The Sale and Purchase Agreement (hereinafter abbreviated to PPJB) is a preliminary agreement as an effort to overcome the obstacles of the parties who have not been able to make a Deed of Sale and Purchase (hereinafter abbreviated to AJB). However, in several cases abuse of the use of PPJB and Power of Sale has been found. PPJB and Power of Sale become a security agreement for debts. The PPJB contains a power of sale clause and a Power of Sale Deed which grants power from the owner of the land object (as the seller/party who has the debt/debtor) to the debtor (as the buyer/party who gives the receivable/creditor) to transfer land rights. Debtors who suffer losses because they do not intend to sell the land can file an effort to cancel the agreement. Based on the problem approach (statute approach), conceptual approach (conceptual approach), and case approach (case approach), namely various decisions that have legal force, it can still be concluded that the Supreme Court and lower courts have maintained the unity of law application and consistency of decisions, especially regarding legal smuggling. Sale-Purchase Agreements and Absolute Power of Attorney Clauses Made Based on Debts and Receivables, by declaring such agreements null and void by law even if the agreement is made based on a Notarial Deed or Authentic Deed. Application for cancellation of agreement due to fraud, coercion or abuse of circumstances (misbruik van omstandigheden).

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1. INTRODUCTION

Initially, the stages of the buying and selling process are carried out in front of you Land Deed Making Official (PPAT) such as paying seller's tax and buyer's tax, checking the original physical land certificate, signing the Sale and Purchase Deed, validation, and so on. This means that buying and selling carried out by the community with the object of buying and selling land rights is carried out with an agreement. This provides more legal certainty because land rights are regulated in applicable laws and regulations and land also has a special agreement object. Several conditions for the sale and purchase of land rights that have not been fulfilled mean that the signing of the Deed of Sale and Purchase of land rights cannot be carried out before the Land Deed Official.

The Sale and Purchase Agreement (hereinafter abbreviated to PPJB) is a preliminary agreement as an effort to overcome the obstacles of the parties who have not been able to make a Deed of Sale and Purchase (hereinafter abbreviated to AJB). Subekti, stated that the sale and purchase agreement is an agreement between the seller and the buyer before the sale and purchase is carried out because there are elements that must be fulfilled for the sale and purchase, including the fact that the land title certificate does not yet exist because it is still in process, or the price has not yet been paid off or The taxes imposed on the sale and purchase of land rights cannot yet be paid by either the seller or the buyer [1], the land object is still under debt collateral, in the process of increasing rights or the splitting process so AJB cannot be carried out in PPAT [2]. This practice is often found in home sales by developers. The sale of a developer's house is often hampered by lengthy legal/obligation arrangements such as: the status of the sale and purchase object is still guaranteed in the bank, or the sale and purchase object is still a certificate splitting process, and so on. Therefore, the Notary provides a solution, namely making an agreement

which is binding between the buyer and the seller, in this case known as PPJB [3]. The buying and selling system with PPJB is regulated in the Regulation of the Minister of Public Works and Public Housing Number 11/PRT/M/2019 concerning the Preliminary Agreement System for Buying and Selling Houses. The definition of PPJB according to these regulations is an agreement between the construction actor and any person to carry out the sale and purchase of a house or apartment unit which can be carried out by the construction actor before the construction of an apartment or in the construction process for single houses and row houses as stated in a notarial deed.

PPJB also follows the principle of clear and cash buying and selling, namely buying and selling which involves a permanent transfer of rights and payment by the buyer which is made at that time and received by the seller [6] so that PPJB actually provides legal protection for the buyer because the seller is not the party who must be protected because the seller has obtained/received his rights in full, namely by having received the payment price for his land [4]. However, in several cases abuse of the use of PPJB and Power of Sale has been found. PPJB and Power of Sale become a security agreement for debts. The PPJB contains a power of sale clause and a Power of Sale Deed which grants power from the owner of the land object (as the seller/party who has the debt/debtor) to the debtor (as the buyer/party who gives the receivable/creditor) to transfer land rights. This means that if the debtor is unable to pay the debt or is in default, the creditor can transfer ownership of the debtor's land to the creditor so that it is as if the object of the debtor's land ownership is collateral for the debts. The practice of using PPJB causes confusion between the PPJB and the Power of Sale which is properly used by the parties for the process of buying and selling land objects with the PPJB and the Power of Sale which is used as collateral for debts.

Debtors who suffer losses because they do not intend to sell the land can file an effort to cancel the agreement. Cancellation of an agreement for an authentic Notarial Deed (PPJB and Absolute Power of Attorney) will create obstacles and evidentiary challenges because basically, authentic deeds clearly stipulate rights and obligations, provide legal certainty, and are expected to prevent disputes from arising. In resolving disputes, authentic deeds function as the strongest written evidence as regulated in Article 1870 of the Civil Code [5]. This writing discusses the considerations and views regarding the application for cancellation of the Sale-Purchase Agreement and the Absolute Power of Attorney Clause made based on the Debts and Receivables.

2. RESEARCH METHOD

The method used in this form of research is a normative juridical research method, which is based on the legal background and interests mentioned above. A normative legal approach is a study based on relevant regulations, such as the Civil Code (KUHPerdata) as well as research or writings related to the problem. This writing approach is based on the approach to laws and regulations that are relevant to the problem (*statute approach*), conceptual approach (*conceptual approach*), and case approach (*case approach*), namely various decisions that have permanent legal force.

3. RESEARCH RESULTS AND DISCUSSION

3.1. Cancellation of Agreement

Article 1266 of the Civil Code states that there are three things that can result in the cancellation of an agreement, namely as follows [7, 25]:

- a. The parties mutually agree on a reciprocal basis, namely providing achievements related to each other, if one party does not fulfill the achievements then it will be connected directly to the other party who has fulfilled the achievements. Thus, if one of the parties has defaulted by not fulfilling the contents of the agreement that has

been made, the opposing party has the right to apply for the agreement to be canceled. However, if the opposing party also defaults then he does not have the right to request cancellation of the agreement.

- b. The terms of cancellation are stated when the opposing party has defaulted and are included in the reciprocal agreement if the performance or obligations are not fulfilled by one of the parties. (Article 1266 of the Civil Code).
- c. Cancellation of the agreement must be made through a District Court Decision.

Subekti explained that cancellation of an agreement can be done in two ways, namely first, the interested party actively asks the judge to cancel the agreement. Second, wait until he is sued in front of a judge to fulfill the agreement. In front of the court, he as the defendant stated that he had agreed to the agreement when he was still incompetent, or he agreed because he was threatened, or because he was mistaken about the object of the agreement or because he was deceived [9]. Subekti's explanation is in line with Article 1325 which states, "Force makes an agreement void, not only if it is done to one of the parties making the agreement, but also if it is done to the husband or wife or their family in the upward or downward line." And Article 1328 of the Civil Code states, "Fraud is a reason to cancel an agreement, if the fraud used by one of the parties is such that it is clear that the other party would not have entered into the agreement without deception. Fraud cannot only be assumed, but must be proven." Apart from error, coercion, fraud, there are other forms of defects of will which are not regulated in the Civil Code, namely Abuse of Circumstances (*Abuse of circumstances*).

The invalidation of an agreement due to abuse of circumstances is by no means absolute that there is a certain level or a certain form of harm, the loss of one of the parties is only one of the factors, in addition to all other information such as the nature of the circumstances. the circumstances under which the use takes place and the relationship between the parties determine whether the agreement originates from a cause that is contrary to good morality. Nieuwenhuis explains 4 (four) conditions for abuse of circumstances, namely [9]:

- Special circumstances (*special circumstances*), is a state of emergency, dependency, carelessness, mental insanity, and inexperience;
- A real thing (*knowability*), it is required that one party knows or should know that the other party due to special circumstances is moved (his heart) to conclude an agreement
- Misuse (*abuse*), one of the parties has executed the agreement even though he knew or should have understood that he should not have done so
- The Causal Relationship is important that without abusing the circumstances the agreement will not be closed

Abuse of this situation must have two elements that must be fulfilled, namely a loss suffered by one party, and an abuse of opportunity by the other party.

Reasons for canceling the agreement can be submitted to court. Concerning evidence in court will be discussed further in the next sub-chapter regarding Cancellation **Sale-Purchase Binding Agreement and Absolute Power of Attorney Clause Made Based on Debts and Receivables**. This sub-chapter explains several decisions and considerations of the panel of judges in granting the annulment lawsuit based on the arguments that the Plaintiff has successfully proven.

3.2. Cancellation of Sale-Purchase Agreement and Absolute Power of Attorney Clause Made Based on Debts and Receivables

PPJB was initially used as a solution to the parties' obstacles to the AJB process becoming a guarantee agreement for debts. Several practices of using PPJB are misused

in the realm of debt and receivables agreements by utilizing the power of sale clause and the Power of Sale Deed which grants power of attorney from owner land object (as the seller/party who has the debt/debtor) to the debtor (as the buyer/party giving the receivable/creditor) to transfer land rights. This means that if the debtor is unable to pay the debt or is in default, the creditor can transfer ownership of the debtor's land to the creditor so that it is as if the object of the debtor's land ownership is collateral for the debts.

The practice of debts and receivables usually uses collateral institutions, in this case land objects use Mortgage Rights. The process of executing Mortgage Rights must be auctioned to a third party and prohibits Mortgage Rights holders from owning collateral objects as regulated in Article 12 of Law Number: 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land ("UUHT"), which states: "The promise that gives authority to the Mortgage Rights holder to own the Mortgage Rights object if the debtor breaks his promise, is void." With the PPJB and the Power of Sale, the collateral which has not been charged with Mortgage Rights can be owned by the Creditor as a legal smuggling effort to disobey Article 12 UUHT.

This practice can be found in the Larantuka District Court Decision Number 16/Pdt.G/2018/PN Lrt and the Surabaya District Court Decision Number 281/Pdt.G/2020/PN Sby with the following position cases:

a. Larantuka District Court Decision Number 16/Pdt.G/2018/PN Lrt [10]

The plaintiff initially lent 1,000 kg (one thousand kilograms) to the late Yosef Raja Nuhan who was the husband of Defendant I and the father of Defendant II and Defendant III as well as the father-in-law of Defendant IV who was the wife of the late ILE NUHAN who was also the son of the late Yosef Raja. Noah. The loan occurred on March 31, 1999.

That in order to guarantee the certainty of the Plaintiff's loan of 1,000 kg of rice, the late Yosef Raja Nuhan as the FIRST PARTY and the PLAINTIFF as the SECOND PARTY made a Statement which was jointly signed on February 22 1999, witnessed by the Witnesses who also signed the Statement. . The Statement Letter made on February 22 1999, basically explained:

- The late Yosef Raja Nuhan admitted that it was true that he had borrowed 1,000 kg of Plaintiff's rice, with an agreement to return the rice along with interest of 400 kg of rice on March 31, 1999;
- If on March 31 1999 the late Yosef Raja Nuhan has not returned the rice he borrowed, then instead the late Yosef Raja Nuhan will hand over a piece of land he owns (hereinafter referred to as the Dispute Object)

Furthermore, the late Yosef Raja Nuhan was unable to return the rice so in the end the late Yosef Raja Nuhan issued a statement of release of rights to the object of the dispute.

The Statement Letter contains statements, among others

- The parcel of land was released along with everything on the land with the intention that the land be given to become the complete property of the Plaintiff;
- The rights to the land were released in exchange for payment/repayment of debt in the form of 1,000 kg of rice, plus 400 kg of interest for a total of 1,400 kg;

The plaintiff then sold the land to Defendant V, but another party emerged, namely Defendant VI, who stated that the object of the dispute belonged to him. Based on these conditions, the Plaintiff asked the Panel of Judges to ratify the Statement of

Relinquishment of Land Rights made by the late Yosef Raja Nuhan and Paulus Udja Hurint (Plaintiff) on April 1 1999 as valid and legally binding.

Regarding this petition, the Panel of Judges was of the opinion that the debt and receivable agreement between the Plaintiff and the late Yosef Raja Nuhan was a form of debt and receivable agreement using absolute power as prohibited in Law Number: 4 of 1996 concerning Mortgage Rights for Land and Objects That In relation to land and Instruction Number 14 of 1982 concerning the Prohibition of the Use of Absolute Power of Attorney to Transfer Land Rights; Considering, that again it is linked to the conditions for the validity of the agreement, which is point 4 in 1320 BW (Burgelijk WetBoek/ Civil Code) namely regarding the purpose/reason for making an agreement must be in accordance with applicable law or a contract may not be made to do things that are contrary to law.

Therefore, the Panel of Judges concluded that this agreement used absolute power and was contrary to Instruction Number 14 of 1982 concerning the Prohibition of the Use of Absolute Power of Attorney as a Transfer of Land Rights and Article 12 of Law Number: 4 of 1996 concerning Mortgage Rights for Land and Objects. -Objects related to land ("UUHT"), then the rice debt and receivable agreement should have been made by the Convention Plaintiff/Reconvention Defendant with the latter. Yosef Raja Nuhan on March 23 1998 was declared null and void.

b. Surabaya District Court Decision Number 281/Pdt.G/2020/PN Sby [11]

The Plaintiff is a Tour & Travel entrepreneur and to expand his business the Plaintiff borrowed funds from the JMP Branch of BRI bank with the guarantee of a house with an SHM certificate located on Jalan Mulyosari No. 27 Surabaya. In the course of the installments, the plaintiff's Tour & Travel business suffered losses, so that the Supreme Court of the Republic of Indonesia, the plaintiff was continuously charged by BRI bank to pay the arrears in installments. The Plaintiff asked for an increase in his loan but BRI Bank did not comply and the Plaintiff tried to seek a loan from another bank but was rejected.

The plaintiff then sought bailout funds to pay off the debt at BRI Bank. Next, the Plaintiff met with Defendant I and Defendant II. On Tuesday 21 -11-2017 at 15.45 WIB the Plaintiff and Defendant I, Defendant III appeared before a Notary (According to the Supreme Court of the Republic of Indonesia, Defendant I) to make a Sale and Purchase Agreement with No. 38 as an absolute condition for obtaining a bridging loan.

Whereas regarding the PPJB, the Panel of Judges agreed with the Expert's opinion that the bailout funds are a debt and receivable agreement, and a debt and receivable agreement for a sum of money may not be made in the form of a PPJB on the grounds that it is used as collateral. PPJB is a form of transfer of ownership rights, while debts and receivables are a loan and borrowing agreement. PPJB accompanied by the power to sell which is born on the basis of a loan agreement is an agreement that does not originate from the borrower's free will because in this position the borrower has no other choice but to accept the existing conditions. Thus, the PPJB accompanied by the power to sell can be canceled because the legal action constitutes an abuse of circumstances (*abuse of circumstances*) because the borrower is in a weak position - he has no other choice but to agree to this, even though the Supreme Court of the Republic of Indonesia in question has absolutely no intention of transferring his assets. If the debtor feels that this right causes losses (due to a defect in the will), then the PPJB can be canceled.

Supposedly, if it is for collateral reasons, the right to the land should not be made into a PPJB but a material guarantee agreement, in this case a Mortgage Guarantee. In this case the PPJB can be qualified as a pseudo or pretend agreement.

Therefore, the Panel of Judges is of the opinion that the basis of the Sale and Purchase Agreement No. Supreme Court of the Republic of Indonesia 38 dated 21 November 2017 made before Notary ALEXANDRA PUDENTIANA WIGNJODIGDO, S.H is a bailout debt between the Plaintiff to Defendant I and Defendant II, so that the absolute power stated in Article 5 of the Sale and Purchase Agreement No. 38 dated 21 November 2017 constitutes legal smuggling, so that the actions of the Defendants who have tied up the bailout debt with a Sale and Purchase Agreement accompanied by an Absolute Power of Attorney over the object of the dispute are qualified as an unlawful act, whereupon the Panel of Judges states that the Sale and Purchase Agreement based on Absolute Power of Attorney is Legal Smuggling and Null by Law and declaring by law the actions of Defendant I, Defendant II in tying up the bailout debt with a Sale and Purchase agreement accompanied by Absolute Power of Attorney is an Unlawful Act

The author thinks **Larantuka District Court Decision Number 16/Pdt.G/2018/PN Lrt** and **Surabaya District Court Decision Number 281/Pdt.G/2020/PN Sby** is in line with the Republic of Indonesia Supreme Court Decision No. 1904 K/Sip 1982, dated 28 January 1984 which contains the following rules:

In an agreement, a notarial deed, where a person authorizes another person to sell the disputed house to a third party or to himself, is considered valid, however, considering the history of the power of attorney. Starting from a power of attorney from a letter of acknowledgment of debt by pledging the disputed house which, because it could not be repaid on time, was changed to a power of attorney to sell the house, then the agreement was actually a pseudo-agreement to replace the original agreement which was a debt and receivable. Because the debtor is also bound by other debts and receivables which have already received a decision from the court, he is in a weak and urgent position, so he is forced to sign agreements in a notarial deed which are burdensome, then the next agreement can be classified as the will of one party [12].

Based on the explanation above, the author is of the opinion that the Supreme Court and the courts below have maintained the unity of legal application and consistency of decisions, especially regarding legal smuggling of Sale and Purchase Agreements and Absolute Power Clauses Made Based on Debts and Receivables, by declaring such agreements null and void even though the agreement was made. based on a Notarial Deed or Authentic Deed.

4. CONCLUSION

Based on the results and discussion, it can be concluded that Application for cancellation of the Sale-Purchase Agreement and Absolute Power of Attorney Clause can be granted as long as the agreement is based on or preceded by a Debt-Receivables agreement. Debt and receivable agreements and debt and receivable agreements for amounts of money may not be made in the form of PPJB on the grounds that they serve as collateral. PPJB is a form of transfer of ownership rights, while debts and receivables are a loan and borrowing agreement. PPJB accompanied by the power to sell which is born on the basis of a loan agreement is an agreement that does not originate from the free will of the borrower because in this position the borrower has no other choice or it can be said that

the application for cancellation of the agreement is due to fraud, coercion or abuse of circumstances (*abuse of circumstances*).

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Decision

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