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The Role of the Notary in the Unilateral Cancellation of the Deed of Land Sale and Purchase Agreement Due to Default and the Legal Consequences

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Abstract
Notary as a public official with the authority to make or cancel an agreement, in this case a land sale and purchase agreement. The cancellation of an agreement unilaterally can be caused by a breach of contract or default by the parties. This certainly causes losses for interested parties. It is known that this study uses a normative yiridis method with a statutory approach, namely provisions related to the position of a notary who are associated with the concept of a land sale and purchase binding agreement and its legal consequences. In the discussion, it is known that the unilateral cancellation of the binding agreement for the sale and purchase of land on the basis of breach of contract or default is an act that is not against the law. The Notary based on his authority is obliged to ask for an explanation from the canceling party and the party deemed to have committed a breach of contract or default to discuss the legal consequences of the cancellation. Next is the process of canceling the binding agreement on the sale and purchase of land which is marked by the deletion from the list of deeds belonging to the Notary.

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1. INTRODUCTION

Recording or creating legal documents is a legal instrument that can provide legal protection for humans in carrying out their lives, because one of its main functions is as a means of written evidence so that it can create legal certainty and order. In the field of civil law, Notaries are here to provide answers to the needs for recording or creating legal documents.

Notary comes from ancient Roman*reporter*", which is the name given to people who work to write or take notes (Notodisoerjo, 1993). Article 1 number 1 of Law Number 2 of 2014 concerning Amendments to Law Number 20 of 2004 concerning the Position of Notaries explains that a Notary is a public official who has authority between general authority, special authority and authority determined later by law (Notodisorjo, 2013). That based on the sound of this article, notaries play the role of carrying out some of the State's duties in the field of civil law and notaries are qualified as public officials who have the authority to make agreements in authentic deeds which are formulations of wishes or wills (*will forming*) from the parties listed in the notarial deed and made in front of the notary based on the Law of the Notary Department.

According to Black's Law Dictionary, an agreement is an agreement between two or more people. This agreement creates an obligation to do or not do something in part. This obligation is called an achievement that must be fulfilled by both parties. Problems regarding agreements that often arise are related to the fulfillment of achievements, where

one party breaks a promise so that the achievements agreed upon between the parties are not fulfilled. In this way, legal problems will arise, even the resolution will not be so easy and fast and will take a long time, ultimately leading to the Court Registrar and Notary/PPAT. (Yahman, 2016). Furthermore, there are conditions for the validity of the agreement in accordance with Article 1320 Civil Code, namely the agreement of those who bind themselves, the ability to make an agreement, a certain subject matter, and a cause that is not prohibited (halal).

If the terms of the agreement are not fulfilled, legal consequences will arise, namely that it can be canceled and null and void by law. An agreement that does not meet subjective requirements, such as being made by a party who is not yet legally competent and made under pressure or coercion so that there is no agreement between the two parties, the agreement can be cancelled. Meanwhile, an agreement that can be said to be null and void is an agreement that does not meet objective requirements, such as the goods being promised are goods that are prohibited by law.

There are things that need to be taken into account apart from the legal conditions of the agreement mentioned above, this is the existence of the Principles of Contract Law where, in implementing the agreement, you must also pay attention to and apply the principles of contract law, namely: (Kamilah, 2013) the Principle of Consensualism, the Principle of the Binding Strength of Agreements (pacta sunt servanda), the Principle of Good Faith (*good faith*), Basis of Trust, Basis of Personality, Basis of Legal Equality, Basis of Balance, Basis of Legal Certainty, Basis of Morality, Basis of Propriety, Basis of Custom and Basis of Protection, and Basis of Freedom of Contract.

The principle of good faith is one *instrument* law to limit the freedom of contract and the binding force of the agreement. The principle of good faith contained in Article 1338 paragraph (3) Civil Code should be enforced not only when the contract is signed and implemented, but also before the contract is signed. In general, good faith can be interpreted as meaning that each party in an agreement to be agreed, according to the law, has an obligation to provide information or information as complete as possible, which can influence the other party's decision to enter into the agreement or not, whether such information is requested or not. (Khairandy, 2003).

An agreement is binding on the parties who make it and applies as law for the parties (Civil Code Article 1338). However, there are restrictions regarding this matter, especially in land law, namely that as long as the agreement or agreement made must be in accordance with the rules in the Basic Agrarian Law. Agreement in an agreement is deemed to have occurred when one of the parties has accepted or agreed to the offer (*offers*) provided by the other party. An agreement that has been made cannot be canceled by one party without the consent of the other party. In an agreement, it is very important to know, this is in connection with changes to the relevant laws and regulations which could have an impact on the agreement itself. An example is the transfer of risk in a sale and purchase agreement. (Santosa).

Sales and Purchase Binding Agreement is an advance agreement that is independent in form, function and purpose from Sales and Purchase Binding Agreement This is to prepare, confirm, strengthen, regulate, change, or resolve a legal relationship that occurs in the main agreement, the main agreement in Sales and Purchase Binding Agreement is a sale and purchase agreement. (Budiono, 2010). According to the author, land sale and purchase agreements can be classified as conditional agreements. This can be seen based on the provisions of Article 1253 Civil Code which states that an engagement is conditional if it is dependent on an event that is yet to come and is not certain to occur, either by

postponing the engagement until such an event occurs according to the occurrence or non-occurrence of the event.

The entry into force of a binding land sale and purchase agreement may result in cancellation either unilaterally or by agreement of the parties. This can cause losses for the entitled parties. For this reason, the author will discuss how **"The role of the Notary "Regarding the Unilateral Cancellation of the Deed of Land Sale and Purchase Agreement Due to Default and the Legal Consequences"** so that the parties in particular and the community in general can guarantee their legal interests in carrying out land sales and purchases.

Problem Formulation

Based on the background described above, in this research the problem formulation can be obtained as follows:

1. What is the role of a notary in a Sale and Purchase Agreement which contains a clause for unilateral termination of the agreement due to default?
2. What are the legal consequences of a Sales and Purchase Agreement that contains a clause on unilateral termination of the agreement due to default?

2. RESEARCH METHOD

The research method used in this research is normative juridical. The specifications of this research are analytical descriptive, namely describing facts in the form of data using primary legal materials, namely statutory regulations, secondary legal materials, namely doctrine (opinions of legal experts), and tertiary legal materials, namely legal dictionaries or encyclopedias, to obtain a comprehensive and systematic picture. Data analysis in this research was carried out using qualitative normative methods. Normative because this research starts from existing laws and regulations as positive law. Qualitative because it is an in-depth analysis and study, which does not only rely on statistics, but focuses more on behavior and the interaction of values in a process of social reality.

3. DISCUSSION

1. The role of the notary in the Sale and Purchase Agreement which contains a termination clause regularly unilaterally due to default

Agreements or in everyday language we know them as contracts are an important aspect of law, especially Civil Law. Various types of agreements that grow in society give birth to an agreement between the parties which makes it a legal relationship between the parties who make it (Raharjo, 2009). In general, an agreement can be made freely, namely in terms of being free to enter into an agreement with anyone, being free to determine the form of the agreement or terms, and being free to determine the form of the agreement itself. With the freedom to enter into agreements (*party otonomy, freedom of contract*), then the subjects of the alliance are not only bound to enter into alliances whose names are determined by law (*appointed agreement*). (Subekti, 1996).

Further found in Article 1338 paragraphs (2) and (3) Civil Code which states that the agreement cannot be withdrawn other than by agreement of both parties, or for reasons determined by law. Agreements must be carried out in good faith (Soebekti, 2009). The Sale and Purchase Agreement is different from the sale and purchase as referred to in Civil Code which is regulated in Book III Chapter 5 (Articles 1457-1540) Civil Code. Buying and selling which in Dutch is called "*buying and selling*" is an agreement/agreement (*agreement*) by which the seller binds himself to deliver an object

(*zak*), while the other party is the buyer to pay the promised price (Article 1457 Civil Code). General provisions and the rights and obligations of the seller and the buyer, as soon as they agree on the object and price in question even though neither the object nor the price have been delivered and paid for.

A land ownership sale and purchase agreement can be interpreted as an agreement in which the parties agree to transfer ownership rights through the sale and purchase of an object, namely land, but if during the sale and purchase process itself there are still several incomplete and unfulfilled requirements, then this is often circumvented by making a Sale and Purchase Agreement (PPJB) which can be made privately or in the presence of a notary. PPJB is a preliminary agreement in free form, the function and objectives of this PPJB is to prepare, confirm, strengthen, regulate, change or resolve a legal relationship that occurs in the main agreement, the main agreement in the PPJB is a sale and purchase agreement. (Herlien, 2010). According to the author, land sale and purchase agreements can be classified as conditional agreements. This can be seen based on the provisions of Article 1253 of the Civil Code which states:

"An engagement is conditional if it is dependent on an event that is yet to come and is not certain to occur, either by postponing the engagement until such an event occurs according to the occurrence or non-occurrence of the event."

In fact, the Sale and Purchase Agreement deed is an authentic deed which will not be disputed if one of the parties does not feel objections or has been disadvantaged, but with the contents of the Sale and Purchase Agreement deed above, disputes may arise which are disputed by one of the parties. So according to the author the formulation of the time period for fulfilling rights and obligations inside The deed is very important and must be detailed precisely. The formulation of the time period in the Sale and Purchase Agreement deed is also related to sanctions if the binding agreement is violated by the parties. These two clauses can provide legal certainty for the parties after appearing before a Notary. The formulation of the time period in the deed states when the buyer will pay within the written time period inside the deed, and also regarding the time for completing the requirements that must be completed before the Sale and Purchase Agreement deed is made. (Amin, 2018).

The clauses relating to the time period and sanctions are contained in the Sale and Purchase Agreement deed, the parties receive legal certainty and the interests of the parties can also be protected by the conditions in the Sale and Purchase Agreement deed. And the aim of the parties is to make an authentic deed before a Notary that works with certainty and predictability guaranteed, another aim is that the parties get protection and the parties no longer worry about their situation in entering into an agreement even though the format is only limited to binding. If the parties still have doubts about the Sale and Purchase Agreement deed, they have made, the prospective buyer can ask to store the files with a third party, namely a notary. Document storage can be carried out by a notary until the parties have signed the Deed of Sale and Purchase. (Amin, 2018).

To find out whether an agreement made legally can be canceled during the period the agreement is in force and what the consequences are of canceling the agreement, you must first see whether the agreement contains a clause that regulates the possibility of cancellation of the agreement along with the causes and consequences for the parties. In general, agreement cancellations can be grouped based on the following criteria.

1) There are various possible arrangements regarding contract cancellation regulated in the agreement, as follows:

a) Mention of reasons for terminating the agreement. Often in the agreement the reasons are detailed so that one party or both parties can terminate the agreement. So in this case, not all defaults can cause one of the parties to terminate the agreement, but only defaults as stated in the agreement.
b) The agreement can be terminated by agreement between both parties. Sometimes it is stated in the agreement that an agreement can only be terminated if agreed by both parties. In fact, in this case it is only an affirmation, because without mention of this, by law, the agreement can be terminated if agreed by both parties.
c) Setting aside Article 1266 Civil Code Very often in agreements it is stated that if they want to terminate the agreement, the parties do not need to go through court procedures, but can decide directly by the parties. With this, Article 1266 Civil Code must be firmly ruled out. Because, according to Article 1266 Civil Code Accordingly, any termination of the agreement must be carried out through the courts.
d) Procedure for terminating the agreement

In addition to determining whether to terminate the agreement without going through court, procedures for terminating the agreement are usually also determined by the parties. It is often stipulated in agreements that before terminating an agreement, the party must first be warned who has not fulfilled his or her performance in carrying out his or her obligations. This warning can be done two or three times. If the warning is still not heeded, then one of the parties can immediately terminate the agreement. Writing obligations give warnings like this are in line with the principles espoused by Civil Code, namely by ingebrekestelling, namely by the issuance of a "deed of negligence" by the creditor (Article 1238 Civil Code), where a subpoena (with various exceptions) is in principle necessary to terminate a contract.

2) Cancellation of an agreement due to default. If there is a default on an agreement, the other party is given various rights as follows:
   a) *An exception to the contract was not fulfilled* where the party who is disadvantaged due to a default can reject the performance or refuse to carry out further performance.
   b) Rejection of further achievements by the opposing party.
   c) Demanding restitution in this case, the party who has made the achievement has the right to demand restitution from the opposing party, namely demanding that he be given back or paid for every achievement that has been made.
3) Restrictions on termination of the agreement

   As has been explained, if one party has defaulted, then the other party in the agreement has the right to terminate the agreement in question. However, the right to terminate the agreement by the party who has been harmed by default applies several things retribution juridical in the form of:
   a) Intentional Default
      Not for all defaults, the aggrieved party can terminate the agreement. However, the injured party must also be able to show that the default was an intentional default.
   b) The right to terminate the agreement has not been waived
      Generally accepted in the theory of contract law that the right to terminate the agreement because the other party has defaulted no longer applies when the aggrieved party has put aside the right to terminate the agreement.

c) Termination of the agreement is not too late
Termination of the agreement by the aggrieved party because the other party has defaulted must be carried out within a reasonable time (*reasonable time*). This is to provide certainty for parties who have defaulted to continue or not a default that has not yet been implemented. If a reasonable period of time for terminating the agreement is not used to terminate the agreement in question, then he is too late in terminating the agreement on the basis that he has accepted or tolerated actions containing elements of default, so that he can no longer terminate the agreement in question.

d) Default is accompanied by an element of error
In principle Civil Code does not require the existence of the element of "fault" in order for an agreement to be terminated by the aggrieved party or for a compensation payment to be claimed. But based on Article 1266 Civil Code which involves the court to terminate a reciprocal agreement, then the use of the court's discretion to terminate the agreement also includes, among other things, using the fault factor of the party committing the default to determine whether the agreement can be terminated or not. (Amin, 2018).

Based on the explanation above, it is known that the land sale and purchase agreement is part of the agreement, so that in its implementation it requires the role of a notary as an official who has the authority to carry out legal actions related to making, recording and storing the deed of agreement as well as an official who has the authority to represent the legal interests of the parties in implementing the agreement. the.

Article 1 number 1 of Law Number 2 of 2014 concerning Amendments to Law Number 20 of 2004 concerning the Position of Notary explains that a Notary is a public official who has authority between general authority, special authority and special authority. set then by law (Notodisorjo, 2013). Based on the sound of this article, notaries have the role of carrying out some of the State's duties in the field of civil law and notaries are qualified as public officials who have the authority to make agreements in deeds. authentic which is a formulation of the wishes or wishes (wilsvorming) of the parties which are set out in the notarial deed and made in front of the notary based on the Law of the Notary Department.

The authority of a notary is classified in Article 15 of the Law on Notary Positions, namely the Authority of a Notary in this Law and the Authority of a Notary in other laws. Notary powers include:

"Making an authentic Deed regarding all acts, agreements, and determinations required by legislation and/or which are required by those interested to be stated in an authentic Deed, guaranteeing the certainty of the date of making the Deed, keeping the Deed, providing grosses, copies and extracts of the Deed, all of that as long as the making of the Deed is not assigned or excluded to other offices or other people prescribed by law".

In carrying out their position, notaries are encouraged to provide legal counseling regarding the preparation of deeds, as stated in Article 15 paragraph (2) letter e of the Law on the Position of Notaries. Apart from that, notaries also have obligations as stipulated in Article 16 letter e of the Law on Notary Positions, namely to provide services to clients, unless there is a reason to refuse it. Legal counseling is part of national legal development, while national legal development is part of national development (Sholiha, 2019).

Before providing services to clients regarding requests regarding the status of land rights, to visitors who come to express their intention to carry out a sale and purchase, the Notary must provide an explanation of the actual legal situation in accordance with the provisions of the law, explain the rights and obligations of each party, in order to achieve a high and correct legal awareness in society, honestly, impartially, and with a full sense of responsibility. The notary can also provide advice (legal advice) to the parties regarding the legal actions to be carried out as well as providing advice that the Sale and Purchase Agreement be executed with a Notarial Deed so that the Agreement has perfect evidentiary power if needed as documentary evidence. (Permatasari, 2021).

A sale and purchase agreement allows for cancellation either by mutual decision or unilaterally. In practice, it is often found in the Sale and Purchase Agreement include clause in the agreement that both parties agree to waive Article 1266 paragraph (2) of the Civil Code. Where the accompanying article is based on principles of *Agreements are to be kept, which* is an implementation of Article 1338 paragraph (1) of the Civil Code, namely "All agreements made legally apply as law for those who make them". Apart from that, cancellation of the sale and purchase agreement can also be carried out based on a decision from the local District Court on the basis of a request by filing a civil lawsuit. However, with the cancellation of an agreement that has been deeded before a notary, there will definitely be legal issues that must be accepted. A notary is obliged to explain to anyone who appears before him that the notary's deeds and actions are in accordance with existing regulations.

If the parties consider that the notarial deed is not as expected, then the related parties can come together before the notary concerned so that the deed can then be cancelled. In the notarial legal order, it is related to deeds, if a deed is at a later date questioned by the parties, the related parties can approach the relevant notary to cancel the deed they have made, so that the related parties are no longer bound by the contents of the canceled deed, however the parties concerned must be willing to be responsible for the consequences that will occur if the deed is cancelled. (Prakoso, 2015). In certain circumstances, if certain defects occur in an agreement, the agreement will be deemed null and void by law.

2. **Legal consequences of the Sale and Purchase Agreement which contains a termination clause regularly unilaterally due to default.**

According to Indonesian law, cancellation of an agreement is a consequence if one of the parties breaks their promise (default). Regulations regarding cancellation of agreements are regulated in Articles 1266 and 1267 Civil Code which essentially stipulates that cancellation of the agreement must be requested from a judge, whether or not the conditions for cancellation are stated in the agreement, and the party who feels aggrieved can demand cancellation of the agreement with compensation for costs, losses and interest. The implementation of the agreement in reality is more likely to not be in accordance with what is written in the regulations in the two articles mentioned above. (Pahlefi, 2019).

There is also the view that when the parties agree to the exclusion of Articles 1266 and 1267 Civil Code then the cancellation does not require an intermediary decision by a judge because the cancellation will be void without the mediation of a judge in the event of a default. Because this will create an opportunity for the parties to override

Article 1266 Civil Code, then the parties must expressly state that the rights the parties have based on the provisions of this article have been waived.

Due to a breach of contract debtors or parties who have an obligation to carry out performance on the contract resulting in the following things: (Permatasari, 2021).

1) Must compensate for losses suffered by creditors or other parties who have the right to receive the achievement (Article 1243 Civil Code);
2) Termination of the contract must be accompanied by payment of compensation (Article 1267 Civil Code);
3) Must accept the transfer of risk from the moment the default occurs (Article 1237 paragraph (2) Civil Code);
4) Must bear the costs of the case if the case is brought to court (Article 181 paragraph (2) HIR) The legal consequences of a decision being handed down by the court, in this connection the notary has no responsibility for losses suffered by the losing party, and the notary cannot be sued for losses regarding the costs of making the deed in question. The Court's decision stating that the unilateral termination of the sale and purchase agreement carried out by a seller who does not have good intentions is invalid is invalid. law unilateral termination of the agreement and the seller must carry out the content's decision established by the court.

4. CONCLUSION

Unilateral cancellation of a land sale and purchase agreement can occur for several reasons, one of which is due to a breach of contract or default by the prospective buyer. A form of breach of contract that often occurs is disorder and even the inability of prospective buyers to pay installments according to the specified time. This will certainly cause losses for the seller.

The importance of notaries in the process of making agreements, especially land sale and purchase agreements, is recognized. Notaries have a crucial role in preparing authentic deeds that provide legal certainty and protection for the parties. Notarial deeds are also closely related to clauses regarding time periods, sanctions and consequences for violating agreements. The notary, based on his/her authority, is obliged to ask for an explanation from the party canceling and the party deemed to have breached the contract or default to discuss the legal consequences of the cancellation. In practice, cancellation of an agreement still requires the approval of a judge because court decisions play an important role in determining whether or not unilateral termination of an agreement is valid. Buyers who are the injured party can sue and demand compliance with the contents of the court decision.

5. SUGGESTION

For parties who want to make a deed of sale and purchase agreement for land or other things, you need to know that it is important to introduce and check the prospective buyer or seller before a notary as a preliminary agreement. Next, it is necessary to make clauses or provisions regarding breach of contract or default that may be committed by the parties along with the legal consequences. This is because buying and selling land is a special legal act that requires the role of a Notary in its implementation.

6. BIBLIOGRAPHY

[1] M. T. Amin, "Konsekuensi Hukum Pembatalan Akta Perjanjian Pengikatan Jual Beli (PPJB) Dalam praktek Jual Beli Properti dI Makassar.," *Jurisprud. Vol. 5 Nomor 1 Juni.*, 2018.

[2] H. Budiono, "Kumpulan Tulisan Hukum Perdata di Bidang Kenotariatan Buku Kedua.," *Bandung: Citra Aditya Bakti.*, 2010.
[3] A. Kamilah, "Bangun Guna Serah (Build Operate and Transfer/BOT) Membangun Tanpa Harus Memiliki Tanah: Perspektif Hukum Agraria, Hukum Perjanjian, dan Hukum Publik.," *Bandung Keni Media.*, 2013.
[4] R. Khairandy, "Itikad Baik Dalam Kebebasan Berkontrak.," *Jakarta Univ. Indones. Fak. Huk. Pascasarjana.*, 2003.
[5] R. S. Notodisoerjo, "Hukum Notariat di Indonesia Suatu Penjelasaan.," *Jakarta.*, 1993.
[6] S. R. Notodisorjo, "Hukum Notariat di Indonesia (Suatu Penjelasan).," *Jakarta Raja Graf.*, 2013.
[7] Pahlefi., "'Klausula Pembatalan Sepihak dalam Perjanjian menurut Peraturan Perundang-undangan Indonesia'.," *J. Hukum,Vol. 2 No 2 Okt.*, 2019.
[8] N. A. Permatasari, "Peran Notaris Dan Analisis Pembatalan Perjanjian Pengikatan Jual Beli Tanah Akibat Wanprestasi.," *J. Kertha Semaya, Vol. 10 No. 1.*, 2021.
[9] A. Prakoso, "Etika Profesi Hukum Telaah Historis, Filosofi dan TeoritisKode Etik Notaris, Advokat, Polisi, Jaksa dan Hakim.," *Surabaya Laks Bang Justitia.*, 2015.
[10] H. Raharjo, "Hukum Perjanjian di Indonesia.," *Yogyakarta: Pustaka Yustisia.*, 2009.
[11] K. &. (n. d.). Santosa, "'Perlindungan Hukum Bagi Pihak yang Beritikad Baik dalam Perjanjian Jual Beli Tanah dan Bangunan, (Studi Kasus Nomor 29/Pdt. G/2014/PN. Wsb)'. .," *J. Akta, 4(2), 167-173.*.
[12] M. A. Sholiha, "'Notaris Tidak Memberikan Penyuluhan Hukum Sehubungan Dengan Akta Perjanjian Pengikatan Jual Beli (Ppjb) Status Objek Tanah Negara Dan Mengakibatkan Kerugian Materiil Bagi Pembeli'.," *J. Media Huk. dan Perad.*, 2019.
[13] R. Soebekti, "Kitab Undang-Undang Hukum Perdata.," *Jakarta: Pradnya Paramita.*, 2019.
[14] "Subekti. (1996). Hukum Perjanjian. Jakarta: Intermasa.".
[15] Yahman., "Karakteristik Wanprestasi dan Tindak Pidana Penipuan.," *Jakarta: Kencana, Cetakan ke-3.*, 2016.