

THE VALIDITY OF THE DEED OF SALE AND PURCHASE AND THE DEED OF GRANTING RIGHTS AND LEGAL CONSEQUENCES FOR THE WINNER OF THE AUCTION BASED ON A MOCK AGREEMENT

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ABSTRACT

The validity of a covenant must meet 4 conditions, namely an agreement that binds him, the ability to make an agreement, about a certain matter, and a lawful cause. One example is in the Supreme Court Decision Number 655 K / Pdt / 2014 and Review Decision Number 636 PK / Pdt / 2016, there are differences in decisions regarding the Deed of Sale and Purchase and the Deed of Granting Rights of Dependents on the basis of a mock agreement. This study aims to analyze the validity of the sale and purchase deed and the deed of granting dependent rights as well as the legal consequences for the auction winner based on a mock agreement. The research method used is normative juridical, with a statutory approach, a conceptual approach, and a case approach. The data used in this study are secondary data obtained from literature studies. The results of the research obtained are the Validity of the Deed of Sale and Purchase of land rights based on receivables in the Supreme Court Decision Case Number 655 K / Pdt / 2014 states that the Sale and Purchase Deed made by PPAT is invalid and null and void. This is because in making the Deed of Sale and Purchase by PPAT based on the temple agreement made by a Notary, it does not meet the material requirements of an authentic deed, namely the non-fulfillment of the elements of a halal cause as stipulated in Articles 1335 and 1337 of the Civil Code, thus it also cancels the crossing out of the name in the land certificate from the Plaintiff to the Defendant carried out by BPN. In the decision of Review Decision Number 636 PK / PDT / 2016 stated that the Deed of Sale and Purchase and Deed of Granting Rights of Dependents were valid and there was no pretend agreement. The winner of the auction based on the Minister of Finance Regulation No. 93/2010 on auction implementation guidelines is the buyer who submits the highest bid and is certified as the winner of the auction by the Auction Officer. Article 41 paragraph (1) of Government Regulation No. 24/1997 on land registration explains that the transfer of land rights through transfer of rights by auction can only be registered if proven by quotation of auction minutes made by auction officials.

Keywords: *Deed of Sale and Purchase, Deed of Granting Rights, Auction Winner.*

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INTRODUCTION

Auctions in Indonesia are based on Minister of Finance Regulation Number 213/PMK.06/2020 concerning Instructions for Implementing Auctions (hereinafter referred to as PMK Implementing Auctions). Based on Article 1 paragraph 1 PMK Implementation of Auctions, an Auction is the sale of goods that is open to the public with written and/or verbal price offers that increase or decrease to reach the highest price, which is preceded by an Auction Announcement. There are various types of auctions, namely, execution auctions, mandatory non-execution auctions, and voluntary execution. Auctions relating to mortgage rights objects are execution auctions based on Article 6 UUHT. An execution auction is an auction to carry out a court decision or decision, other equivalent documents, and/or implement provisions in statutory regulations (Supriadi et al., 2020).

A problem that usually occurs in society is that there is the practice of buying and selling land which begins with debts and receivables either verbally or in writing. The party who provides the loan (loan/creditor) usually asks for a guarantee to guarantee the debt of the party who borrows (debtor/debtor), but there are also creditors who do not have good intentions who

immediately come to the Notary/PPAT to make a Deed of Sale and Purchase as well as the name change process. from the previous right holder, namely the seller/debtor, to the name of the buyer/creditor. Then the buyer/creditor uses it as credit collateral to the bank.

Based on what has been described above, the problem that will be studied in this research is the Court Decision which has permanent legal force (*inkracht*) in the case of Sriwati and Dedi Supriadi (as Plaintiffs I and II) and Adif Alfian and Asna Dewi (as Defendant I and II), Notary/PPAT Latifa Katiri, S.H. (as Defendant III), PT Bank BRI (as Defendant IV), KPKNL Semarang Office (as Defendant V), Dr. Suhono (as Defendant VI), BPN Kudus Regency (Co-Defendant), that initially Plaintiffs I and II were the legal owners of Certificate of Ownership Number 1086 covering an area of 4,140 m² in the name of Plaintiff I. Plaintiffs I and II borrowed money from Defendants I and II in the amount IDR 50,000,000.00 to cover debts to Bank Danamon. That after the debt guarantee at PT Bank Danamon in the form of a land certificate belonging to the Plaintiff was issued on 15 October 2008 and Plaintiffs I and II had not been able to return the money from Defendants I and II, on 20 October 2008 Plaintiffs I and II were invited by Defendants I and II to Defendant III's office with unclear aims and objectives. When he arrived at Defendant III's office, Defendant III had prepared a Deed of Sale and Purchase of land belonging to Plaintiffs I and II SHM Number 1086 with Deed Number 659/Bae/2008 dated 20 October 2008 and the plaintiff just had to sign it. Then Defendant III registered it with the Co-Defendant, so that the Co-Defendant changed the ownership of land SHM Number 1086 which was originally in the names of Plaintiffs I and II to be in the names of Defendants I and II on December 16 2008.

Plaintiffs I and II objected and were disadvantaged by the Deed of Sale and Purchase Number 659/Bae/2008 because Plaintiffs I and II never sold to Defendants I and II, so Defendant III directed and provided a solution to Plaintiffs I and II that another Deed would be drawn up, namely the Deed Notarial Deed Number 65 entitled "DEED OF LAND BINDING AGREEMENT" which was made on the same day, namely October 20 2008. Whereas the Notarial Deed Number 65 states "that the First Party (Defendant I) is the holder of the right to a plot of land based on a certificate of Ownership Rights Number 1086 is located in Bacin Village, Bae District, Kudus Regency, then also includes the clause "declaring and acknowledging that the land with the Ownership Certificate No. 1086 as the actual owner is the second party (Plaintiff). The legal relationship that occurred between Plaintiffs I and II and Defendants I and II, which was correct, was only borrowing and borrowing money, not buying and selling, but in reality it was in accordance with APHT Number 25/Bae/2009 dated 15 January 2009 which was made by Defendant III which guaranteed the rights on land with SHM Number 1086/Bae to Defendant IV, namely Defendants I and II, not the land owner SHM Number 1086/Bae/2009. As time went by, Defendants I and II as debtors had defaulted, namely by not making installment payments to Defendant IV, so that Defendant IV submitted an auction request to Defendant V, so that Defendant V would carry out an execution auction for the collateral object. Because Plaintiffs I and II felt aggrieved by the Object of Mortgage Rights that were executed, Plaintiffs I and II filed a lawsuit against the Unlawful Act (PMH) carried out by the Defendants on the grounds that the actual legal relationship was borrowing and borrowing money, not buying and selling because the plaintiff did not sell to Defendants I and II, so the Deed of Sale and Purchase Number 659/Bae/2008 was made detrimental to Plaintiffs I and II and the process of transferring rights to the Certificate of Ownership Number 1086/Bae

from the names of Plaintiffs I and II to the name of Defendant I and II following the imposition of mortgage rights. This is an engineered process and is not in accordance with the actual legal facts and material truth, so it is very detrimental to Plaintiffs I and II and states that the deeds. Sale and Purchase Deed Number 659/Bae/2008 dated 20 October 2008, APHT Number 25/Bae/2009 dated 15 January 2009 are null and void.

In the First Level Decision, namely Decision Number 47/Pdt.G/2012/PN.Kds. and in the Judicial Review Decision Number 636/PK/Pdt/2016 there is the same decision stating that all the claims of Plaintiffs I and II are rejected, so that all legal events are the Deed of Sale and Purchase Number 659/Bae/2008 dated 20 October 2008, APHT Number 25/Bae /2009 dated 15 January 2009 is valid and does not conflict with the law.

In the Appeal Level Decision, namely Decision Number 285/Pdt/2013/PT.Smg and Supreme Court Decision Number 655 K/Pdt/2014 granted the lawsuit of plaintiffs I and II in part and stated the law that the plaintiff is the legal owner of a plot of land with a Certificate Ownership Rights Number 1086, states that the sale and purchase deed number 659/bae/2008 dated 20 October 2008 and the deed of granting mortgage rights (APHT) Number 25/Bae/2009 dated 15 January 2009 are null and void, stating the law that the act or action taken carried out by defendants I, II, III, on land SHM Number 1086 is an unlawful act and is detrimental to the plaintiff, punishing defendants I and II to return the certificate of ownership number 1086 to the plaintiff.

From this case, there are differences between the District Court, High Court, Supreme Court and Judicial Review, namely in the District Court and Judicial Review which stated that the Plaintiff was the legal owner of a plot of land with Certificate of Ownership Number 1086 covering an area of 4,140 m², stating that the Deed of Sale and Purchase number 659/Bae/2008 dated 20 October 2008 and Deed of Granting Mortgage Rights (APHT) number 25/Bae/2009 dated 15 January 2009 are null and void by law. Declare that the actions or actions carried out by defendants I, II, III regarding the Certificate of Ownership Number 1086 are unlawful acts and are detrimental to the plaintiff. The decision of the High Court and Supreme Court states that the Deed of Sale and Purchase and Deed of Granting Mortgage Rights (APHT) are valid according to law and the auction remains valid and binding.

These differences give rise to different understandings regarding the sale and purchase of Property Rights Certificate Number 1086 on the basis of a sham agreement which started from Debts and Receivables which had no collateral but was made as if it were a sale and purchase and a deed of sale and purchase was made before the PPAT, then there was a transfer of rights from plaintiffs I and II to defendant I and defendant II. The certificate was guaranteed to defendant IV, over time there was a bad credit which resulted in default, so that defendant IV submitted an auction to Defendant V, so the question arose about the validity of the Deed of Sale and Purchase and the Deed of Granting Mortgage Rights (APHT) based on a pretend agreement which was originally a debt and receivable without guarantee.

Based on the differences in the decisions of the District Court, Judicial Review and High Court, the Supreme Court regarding the sale and purchase of land rights on the basis of a pretend agreement which was initially an unsecured debt, gave rise to different legal consequences for the auction winner. If the Deed of Sale and Purchase and Deed of Granting Mortgage Rights (APHT) are declared valid, then the auction winner has the right to ownership of the land resulting from the execution auction. However, if the Deed of Sale and Purchase

and the Deed of Granting Mortgage Rights (APHT) are declared invalid, it will cause losses to the auction winner, so the question arises as to what the legal consequences will be for the auction winner which originates from the Deed of Sale and Purchase and Deed of Granting Mortgage Rights (APHT) based on on a pretend agreement (debts and receivables). The formulation of the problem in this research is the validity of the Deed of Sale and Purchase and the Deed of Granting Mortgage Rights which is based on a mock agreement in the Supreme Court Decision Number 655 K/Pdt/2014 and Judicial Review Decision Number 636 PK/Pdt/2016.

METHOD

This research uses the Normative Juridical research type, which means a method based on reference to normative rules that will examine in more depth the principles, theories, rules in law through a literature study that is still closely related to the problems that arise. (Moeleong Lexy, 2018). In the normative juridical aspect, the researcher will carry out research by conducting a study based on legal regulations on the literature study, then as a reinforcement the study will also be linked to several legal theories regarding juridical analysis of the validity of sale and purchase deeds and deeds of granting mortgage rights (apht) as well as the legal consequences on auction winner. In general, the data collection technique used by the researcher is a literature study, then after obtaining the materials, a description will be carried out to answer any problems that arise in this research.

RESULTS AND DISCUSSION

Validity is a translation of the Dutch legal term "rechtmatig" which can literally be interpreted as "based on law". In English, the term validity is called "legality" which means "lawfulness" or in accordance with the law. (Hadi & Michael, 2017) Legitimacy according to the Big Indonesian Dictionary comes from the word "valid" which means the quality of being valid or valid. So validity means that everything is legal if it is based on law or in accordance with the law.

Kudus District Court Decision Number 47/PDT.G/2012/PN Kds That the authentic deeds which were used as the basis for the transfer of land rights were declared valid by law by the panel of judges at Kudus District Court. That the main case in the decision is that the Plaintiff borrowed money from Defendant I to pay off a loan at Bank Danamon amounting to Rp. 50,000,00.00. Then, with an oral agreement between the plaintiff and defendant I, the plaintiff received a loan of money and will return it in the amount of IDR 50,000,000.00 without any sale and purchase agreement, only a verbal agreement on debts and receivables.

That by being lent money by Defendant I as in the case above, the matter between the plaintiff and Danamon Bank was completely resolved, namely on October 15 2008, so that SHM guarantee number 1086 could be taken. After that, because the Plaintiff had not been able to settle/return Defendant I's money as stated in the case, on 20 October 2008 the Plaintiff was invited by Defendant I to Notary / PPAT Kudus, namely Lafita Katiri, SH (Defendant III) with unclear aims and objectives.

The District Court Judge's Legal Considerations and Reconsideration are in accordance with the provisions of Article 1320 of the Civil Code regarding the conditions for the validity of an agreement, namely that both parties have agreed to enter into an agreement and the object

of the agreement is clear, but there is an unlawful cause by one of the parties which is contrary to the law. The cause of the illegality lies in the Deed of Sale and Purchase, AJB, according to the Judge, is invalid because the sale and purchase or the imposition of Mortgage Rights (APHT) were not carried out by the entitled person, so both the sale and purchase deed and the deed of granting mortgage rights (APHT) on the land in question are invalid. by law.

The actions of the Defendant and the Notary/PPAT in making a deed of sale and purchase with a pretend agreement violated Article 1320 of the Civil Code, so this action was an unlawful act. Furthermore, the losses were a direct result of the actions of the Defendant and the Notary/PPAT who made the sale and purchase deed of the temple. That it is true that the plaintiff's loss was a direct result of the actions of the defendant and the notary/PPAT who made the pura pura sale and purchase deed and because of the existence of this deed it caused losses to the plaintiff.

The legal considerations of the High Court and Supreme Court judges mentioned above said that the initial agreement agreed upon by both parties was a debt and receivables agreement with collateral but then the follow-up agreement made was a sale and purchase agreement, so this could be categorized as a simulation agreement. In a simulated agreement, there are two agreements, where the further agreement (continuation deed) is made differently from the original agreement (original deed), and the juridical conditions of the legal acts contained in the continuation deed are hidden from third parties.

In accordance with the description above, the Legal Considerations of Supreme Court Judges are included in the Absolute Simulation Agreement because the follow-up agreement made is different from the intent or purpose of the initial agreement, which is contrary to the law, resulting in it being null and void. Whereas the initial agreement between the Plaintiff and Defendant I was a debt and receivables agreement with collateral where the function of the guarantee was that if the debtor defaulted then the guarantee could be used as repayment of the debt by selling it in public (auction), this had the intention of obtaining the highest price for the sale of the collateral object so that If there is a remainder from paying off the debt then the remainder becomes the right of the debtor.

A debt and receivable agreement is different from a sales and purchase agreement, in that in a debt and receivable agreement there is a party who receives the loan (debtor) and a party who provides the loan (creditor). According to J. Satrio, explains that an agreement as a legal relationship has 2 (two) aspects, namely the asset aspect (rights aspect), which is in the form of claims owned by the creditor and the liability aspect (liabilities aspect), which is in the form of a debt that must be paid by the debtor. . In terms of liabilities, people differentiate between schuld and haftung. Schuld is his performance obligation (his debt), while hafting is his juridical responsibility (Satrio, 1998).

Based on this description, the debtor in a debt and receivables agreement is not only obliged to fulfill performance (schuld) but must also have collateral (haftung) to guarantee the implementation of his obligations as explained in Article 1131 of the Civil Code which states that "all movable and immovable goods belong to the debtor, both existing and future, become collateral for the debtor's individual obligations." This confirms that the rights and obligations arising from the debt and receivables agreement are not owned by each party, the debtor only has the obligation to pay the debt, while the creditor only has the right to collect the receivables.

Based on the description above, the Juridical Facts in the case of Supreme Court Decision Number 655K/Pdt/2014 are that leveraging in the form of transferring the name of the land certificate from the Plaintiff to the Defendant on the basis of the Deed of Sale and Purchase made by the PPAT became invalid because the obligatory agreement in the form of a PPJB deed with a Letter The Power of Sale made by a Notary is declared null and void by the Judge. That this is viewed from the Juridical Norms, namely the provisions of Article 1320 of the Civil Code regarding the conditions for the validity of an agreement, where the conditions for a lawful cause (*causa*) in making the PPJB deed and Power of Attorney to Sell are not fulfilled so that the agreement is declared null and void because this condition is an objective condition for the validity of the agreement. Then in Article 1335 of the Civil Code which is an elaboration of the requirements for a *halal* cause (*causa*) that an agreement made without cause or made with a false cause has no legal force. Thus, the Sale and Purchase Agreement contained in the PPJB deed with the Power of Attorney to Sell in this case was made with a false cause where the real cause was the Debts and Receivables Agreement with a land certificate as collateral.

Based on the analysis of the case of Supreme Court Decision Number 655K/Pdt/2014, it is concluded that the validity of the Deed of Sale and Purchase of land based on debts and receivables was declared null and void by law by the Judge because of the material requirements for the validity of the authentic deed in the PPJB deed and the Power of Attorney to Sell which was the basis for making The Sale and Purchase Deed is not fulfilled. This is related to the provisions of Article 1320 of the Civil Code regarding the conditions for the validity of an agreement, namely the requirements for *halal* causes, which are further explained in the provisions of Articles 1335 and 1337 of the Civil Code. The validity of an authentic deed is determined by the truth regarding the events written in the deed, because a deed is a writing containing a legal event which is then signed by the parties and used as evidence if a dispute occurs. So, in this case, judges at courts of first instance and cassation are expected to be more specific in stating the legal basis for deciding a case.

In banking law it has been determined that in providing credit, apart from paying attention to the economic and business aspects of banking, banks must also pay attention to legal security aspects. (Khoidin, 2012) The credit guarantee that is approved and accepted by the bank will then have several functions, one of which is to secure credit repayment if the debtor breaks his promise or defaults. Every debtor who guarantees his land and/or building to a creditor (both bank and non-bank) in a debt and receivables agreement is required to sign a Power of Attorney to Encumber Mortgage (SKMHT) or Deed of Granting Mortgage Rights (APHT) which will then be registered with the land office where the land used as the object of the Mortgage is located (Ilham, 2012).

The granting of Mortgage Rights is preceded by a promise to grant Mortgage Rights as collateral for the repayment of certain debts as stated in and is an inseparable part of the relevant debt and receivable agreement or other agreement which gives rise to the debt. Thus, it can be said that the Mortgage Rights guarantee agreement is an accessory agreement or a subsidiary agreement to the main agreement, namely the debt and receivables agreement which results in the Mortgage Rights guarantee agreement being created. Thus, it can be said that the mortgage agreement cannot stand alone and depends on the main agreement. Granting of Mortgage Rights is carried out by making a Deed of Granting of Mortgage Rights by PPAT in accordance with applicable laws and regulations. Thus, it can be said that APHT must be made in an

authentic deed made by PPAT. This is different from the SKMHT deed which is also made in an authentic deed but can be made through a notarial deed and also a PPAT deed. Meanwhile, APHT must be made only by PPAT (Nainggolan, 2016).

In the decision of the Kudus District Court and Judicial Review, the validity of the deed of sale and purchase and the deed of granting mortgage rights (APHT) based on a pura pura agreement, it can be concluded that the deed of sale and purchase made before a Notary/PPAT does not meet the requirements for making a deed of sale and purchase, namely relating to the conditions material where the person who has the right to sell the land in question is the plaintiff, and in fact, even though the plaintiff's name is listed in the deed, the deed can be canceled or declared null and void by law. Apart from that, the sale and purchase deed that was made was contrary to Article 1320 of the Civil Code, namely that materially the sale and purchase never took place and contained a false cause.

CONCLUSION

The Validity of the Deed of Sale and Purchase and the Deed of Granting Mortgage Rights in the Supreme Court Decision Number 655 K/Pdt/2014 states that the validity of the deed of sale and purchase deed and the deed of granting mortgage rights (APHT) is based on a pura-pura agreement, it can be concluded that the deed of sale and purchase was made before a Notary/ PPAT does not meet the requirements for making a sale and purchase deed, namely relating to material conditions where the person who has the right to sell the land in question is the plaintiff, and in fact, even though the plaintiff's name is listed in the deed, it can be canceled or declared null and void by law. Apart from that, the sale and purchase deed that was made was contrary to Article 1320 of the Civil Code, namely that materially the sale and purchase never took place and contained a false cause.

Judges in Supreme Court Decision Case Number 655 K/Pdt/2014 should give legal considerations by stating the legal basis used to decide a case so that there is clarity in the rules regarding a problem, for example as stated in the provisions of Article 1335 of the Civil Code which states that an agreement is made without cause or made with a false cause does not have any force, that in the case of the cause for making the sale and purchase agreement is not in accordance with the real cause, namely the agreement to borrow money with collateral.

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