

Cancellation Of The Deed Of Land Sale And Purchase Agreement Due To One Of The Parties Defaulting, Viewed From The Aspects Of Legal Certainty And The Value Of Justice

H. Suratman¹, Sunardi², Charis Imraatus Sholichah³

¹Master of Notarial Universitas Islam Malang,

Email : sunardi_mkn@unisma.ac.id

²Master of Notarial Universitas Islam Malang,

Email: Senja_85@yahoo.com

³Malang Islamic University Students :

Abstract: The Land Sale and Purchase Agreement (PPJB) contains the rights and obligations of the parties who made it, so that if the matters agreed upon in the Sale and Purchase Agreement (PPJB) deed are violated or not fulfilled by the parties who made it, then this can be said to have been default occurs. It is possible to cancel the Sales and Purchase Agreement (PPJB) unilaterally by one of the parties or with the agreement of both parties. The land sale and purchase agreement (PPJB) can also be canceled by a court decision. The method used in this research is normative juridical research, as for the formulation of the problem, what are the consequences of canceling the deed of land sale and purchase agreement due to one of the parties defaulting in terms of legal certainty and the value of justice. What are the procedures for canceling the deed of land sale and purchase agreement if one of the parties defaults? The results of this research analysis are that if viewed from the perspective of legal certainty, the binding sale and purchase agreement aims to obtain legal certainty regarding the land to be purchased which binds both parties to carry out the performance, because the buyer is in default, the seller can request the cancellation of the PPJB to the court. . The conditions for cancellation are deemed to be contained in agreements that have reciprocity, when one party defaults, so that the agreement will return to the way it was before the agreement was entered into, the seller must return what has been deposited by the buyer. Apart from that, as a result of the court's decision to annul the deed, the deed will be relegated to a private deed if the drafting does not comply with statutory regulations. The procedure for canceling the Deed of Land Sale and Purchase Agreement if one of the parties is in default is to submit a request to the court by means of a notary who makes a deed of the land sale and purchase agreement which is forwarded to the court regarding the cancellation of the agreement so that with a final court decision there is certainty. and justice for the parties.

Keywords: Cancellation of Deed of Agreement, Sale and Purchase Agreement, Default

1. Introduction

Based on article 1457 of the Civil Code which states that buying and selling is an agreement, in which one party binds himself to hand over an object and the other party pays the agreed price. We can see the conditions for the validity of an agreement in Article 1320 of the Civil Code ("Civil Code"), namely:

1. The agreement of those who bind themselves;
2. Ability to create an agreement;
3. A particular subject matter;
4. A cause that is not prohibited.

The type of agreement that will be discussed in this research is a binding sale and purchase agreement regulated in the Civil Code, where a sale and purchase agreement can be interpreted as a reciprocal agreement in which one party (the seller) promises to hand over ownership rights to an item. while the other party (the buyer) promises to pay a price consisting of a certain amount of money as compensation for acquiring the property rights¹

The Sale and Purchase Agreement gives rise to legal consequences for the parties who are involved in this agreement, where according to the Civil Code the main obligation of the parties is to hand over the agreed goods as sellers and hand over their obligations as buyers. This Sale and Purchase Agreement can be used for the sale and purchase of movable and immovable goods such as land.

The Sale and Purchase Agreement, which is a preliminary agreement for the Sale and Purchase, is vulnerable to problems such as negligence by the buyer or seller. According to the Civil Code, this negligence is referred to as an act of breach of contract (Article 1238 and Article 1243 of the Civil Code). According to M. Yahya Harahap, in general, default is the implementation of obligations that are not done on time or are carried out inappropriately.²

Meanwhile, according to Article 1243 of the Civil Code, compensation for costs, losses and interest due to failure to fulfill an obligation will only begin to be required if the debtor, after being declared negligent in fulfilling his obligation, continues to neglect it, or if something must be given or made, can only be given or made in the deadline has been exceeded. The form of default can be:

1. Not carrying out what has been agreed to be carried out.
2. Carrying out what has been agreed but not the same as the contents of the agreement.
3. Delay in carrying out contractual obligations.
4. Doing something you promised not to do.³

Based on the explanation above, by looking at the reality of what happened, the author will write a thesis with the title: "CANCELLATION OF THE DEED OF THE LAND SALE AND PURCHASE AGREEMENT DUE TO ONE OF THE PARTIES' DEFAULT IS REVIEWED FROM THE ASPECT OF LEGAL CERTAINTY AND THE VALUE OF JUSTICE".

The problem formulation from the background description above is as follows:

1. What are the consequences of canceling the deed of land sale and purchase agreement due to one of the parties defaulting in terms of legal certainty and the value of justice?
2. What are the procedures for canceling the deed of land sale and purchase agreement if one of the parties defaults?

¹ Subekti, *Hukum Perjanjian*, Jakarta: Intermasa, 2002, hal. 79.

² Yahman, , *Karakteristik Wanprestasi dan Tindak Pidana Penipuan*, Kencana, Jakarta, Cetakan ke-3, 2016, hal, 81-83.

³ Djoko Trianto, *Hubungan Kerja di Perusahaan Jasa Konstruksi*, Bandung, Mandar Maju, 2004, hal.61

2. Metode

The type of research taken by the author is normative legal research. Normative legal research, also called doctrinal legal research, is a process of finding legal rules, legal principles and legal doctrines to answer the legal issues faced. The approaches used are a statutory approach, a conceptual approach and a case approach.

The types and sources of legal materials needed and used in this research are as follows:

A. Primary Legal Materials

Primary legal materials are binding legal materials. In this research the author used 3 (three) primary legal materials consisting of:

- 1) Law no. 5 of 1960 concerning: Provisions for the Basic Agrarian Principles Regulations (UUPA).
- 2) Civil Code (Staatsblad 1847 Number 23);
- 3) Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (State Gazette of the Republic of Indonesia of 2014 Number 3, Supplement to the State Gazette of the Republic of Indonesia Number 5491);
- 4) Decree of the Head of the Land Agency of the Republic of Indonesia Number 34 of 2007 concerning technical instructions for handling and resolving land problems.

B. Secondary Legal Materials

Secondary legal materials are materials that are closely related to primary legal materials, and can help analyze and understand primary legal materials. Secondary legal materials in this research are books, literature, papers, research results, articles and other scientific works related to this research, such as: research results, scientific works of legal experts, legal reading books or textbooks, Journals, including books by Mr Suratman, Mrs Nafisa and Mr Sunardi.

C. Tertiary Legal Materials

Tertiary legal materials are materials that provide information about primary legal materials and secondary legal materials. Tertiary legal materials in this research consist of: ⁵Big Indonesian Dictionary, English-Indonesian Dictionary.

Analysis of legal materials is carried out descriptively which is used to study normative or juridical aspects through analytical descriptive methods

3. Discussion

A. What are the consequences of canceling the deed of land sale and purchase agreement due to one of the parties defaulting in terms of legal certainty and the value of justice

Land sale and purchase transactions are carried out with an agreement to provide more legal certainty because land rights are included in the object of an agreement which is specifically regulated in the applicable laws and regulations,

⁴ Suratman dan Philips Dillah, *Metode Penelitian Hukum*, Bandung, Alfabeta, 2014, hlm. . 67

⁵ Suratman dan Philips Dillah, *Metode Penelitian Hukum*, Bandung, Alfabeta, 2014, hlm. . 67

where every legal act involving land rights is bound or must follow the provisions stipulated in the regulations. this legislation, meaning that the party who will carry out legal actions relating to land rights must comply with the legal rules that regulate or relate to the regulation of land rights or in other words the party who carries out certain legal actions regarding land rights, then he He is not free to do so, but he is bound by the legal provisions governing land rights.

The Sale and Purchase Agreement (PPJB) is free in nature and contains promises from the parties. Transferring rights to another party so that the transfer of rights obtains certainty, order and legal protection requires authentic written evidence regarding circumstances, events or legal actions carried out through certain positions, so that in this case an authorized official is needed to exercise that right.⁶

The official in question is a Notary who has the authority to make and ratify an authentic deed of the transfer of rights in order to obtain the legality and authenticity of the transfer of rights, so that the Sale and Purchase Agreement (PPJB) is made in the form of a Deed. However, it is still possible that the deed can be canceled or void by law, if the deed contains legal or material defects.

This shows that the deed is perfect evidence, but its truth can still be disputed as long as it can be proven otherwise. In practice, it is possible to cancel the Sales and Purchase Agreement (PPJB) unilaterally by one of the parties or by agreement of both parties. The Sales and Purchase Agreement (PPJB) can also be canceled by a court decision. The cancellation of a deed of agreement that was made authentically will certainly have legal consequences.

The reasons for the parties entering into this binding sale and purchase agreement are, among others:

- 1) If the land certificate is still in the process of being registered at the National Land Agency office
- 2) If the sale and purchase transaction is paid in stages or in installments.
- 3) If the object is being occupied or is being rented by another party while the buyer wants the object he purchased to be empty.
- 4) If the object is under mortgage and the roya process must first be carried out.⁷

The conditions for the validity of a sale and purchase agreement in accordance with Article 1320 of the Civil Code are:

- 1) There is an agreement between both parties, namely that both parties who make the agreement agree regarding the main matters in the contract.
- 2) Every person who is mature and of sound mind has the ability to carry out legal actions. The provisions are mature, there are several opinions.

⁶ Habib Adije, *Hukum Notaris Indonesia Tafsir Tematik Terhadap Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris*, Refika Aditama, Bandung, 2008, hal, 14

⁷ Wirjono Projodikoro, *Hukum Perdata Tentang Persetujuan – persetujuan Tertentu*, Bandung, Sumur, 1991, hal, 17.

According to the civil code article 330, adulthood is 21 years for men, and 19 years for women.

- 3) The existence of an object, something that is promised in an agreement must be a thing or thing that is quite clear.
- 4) The existence of a lawful cause, namely article 1335 of the Civil Code, an agreement that does not use a lawful cause or is made for a false or prohibited cause, has no legal force.

The terms of the land sale and purchase agreement in legal actions regarding the transfer of land rights are divided into 2 (two), namely as follows:

- 1) Material requirements, material requirements really determine the validity of the sale and purchase of the land, including:
 - a) The seller is the person who has the rights to the land he is going to sell.
 - b) The buyer is the person who has the right to own the land he has purchased.
 - c) The land in question may be bought and sold or not in dispute. According to the UUPA, land that is used as a transition object is: ownership rights, business use rights, building use rights and use rights
- 2) Formal requirements, after all material requirements are met, the sale and purchase is carried out before the PPAT.⁸ Sale and Purchase Agreement Agreement Procedure

The Sale and Purchase Agreement (PPJB) is a support agreement that functions as a preliminary agreement and is free in form. In general,⁹ a binding sale and purchase agreement contains promises that must be fulfilled first by one of the parties before the main agreement is carried out, which is the ultimate goal of the parties.

We can see the meaning of a binding sale and purchase agreement by separating the words from a binding sale and purchase agreement into agreement and binding sale and purchase. According to R. Subekti,¹⁰ a binding 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 first in order for the sale and purchase to be carried out, including the fact that the certificate does not yet exist because it is still in the process and payment has not yet occurred. price".

Because this binding sale and purchase agreement is a preliminary agreement, the agreement usually contains promises containing provisions that the conditions for sale and purchase before the Land Deed Official (PPAT) have been fulfilled. Of course, after the conditions for the sale and purchase have been fulfilled, the parties can come again

⁸ Erza Putri. *Peran PPAT Dalam Peralihan Hak Atas Tanah*. <http://erzaputri.blogspot.com>.

⁹ Herlien Budiono, "Pengikat Jual Beli Dan Kuasa Mutlak" *Majalah Renvoi*, Maret 2004, hal, 75.

¹⁰ Subekti, *Hukum Perjanjian*, Jakarta : Intermasa, 1998, hal, 75.

to carry out the sale and purchase before the Land Deed Making Officer (PPAT).

The Sale and Purchase Agreement (PPJB) is made to provide a temporary binding agreement before the official Sale and Purchase Deed (AJB) is made before the PPAT.

The meaning and function of a sales and purchase binding agreement (PPJB) made before a notary is actually no different from agreements in general. The binding of the Sale and Purchase Agreement is made privately for certain reasons such as payment of the price has not been paid in full. It's just that a binding sale and purchase agreement is an agreement that was born as a result of the open nature of Book III of the Civil Code (KUHPerdota) which gives the widest possible freedom to legal subjects to enter into agreements containing anything in any form, as long as they do not violate statutory regulations.

The binding sale and purchase agreement was born as a result of the obstruction or existence of several requirements determined by the Law relating to the sale and purchase of land rights which ultimately hampered the completion of transactions in the sale and purchase of land rights. above ground. These requirements include an agreement between the parties who will carry out the sale and purchase of land rights, requirements arising from the law, for example the sale and purchase must have been paid off before the sale and purchase deed (AJB) can be signed. In general, the requirements that often arise are requirements that arise from an agreement between the parties who will carry out the sale and purchase. The buyer wants a certificate of land rights to be purchased, whereas the land rights to be sold do not yet have a certificate (still Letter C), and on the other hand, for example, the buyer is not yet able to pay the entire price of the land rights in full, so he only pays half. from the agreed price. With this situation, of course it will hinder the preparation of the sale and purchase deed, because the official who makes the land deed will refuse to draw up the sale and purchase deed because all these requirements have not been completed. Thus, it is clear that the sale and purchase binding agreement functions as an initial agreement or preliminary agreement which provides confirmation for carrying out the main agreement, as well as completing a legal relationship if it has been agreed in the sale and purchase binding agreement and is implemented in full. However, there are times when the prospective seller is unable to come back, and the buyer, in signing the sale and purchase deed, acts alone, either representing the seller or himself as the buyer.

So in this case a power of attorney is needed, apart from this power the seller usually gives general management rights (Daden Van Beheer) over the land rights as long as the sale and purchase has not been carried out before the official in question. This is necessary considering that there is a possibility that the seller is not in place to

carry out legal action which is still an obligation. To anticipate this situation, the notary in the deed of sale and purchase agreement always includes powers of attorney (Blanco Volmacht) in the deed with the intention that the buyer's rights are not harmed considering that all the requirements for the sale and purchase have been fulfilled before an authorized official. Land Deed Making Official. (PPAT).

From the explanation above, the author concludes that several factors in the occurrence or emergence of binding sales and purchase agreements include:

1. The sale and purchase has not been paid off

In the event that someone wants to sell a piece of land and the other party wants to buy it, they will come before the Land Deed Making Officer to be asked to make a sale and purchase deed for the land. However, for some reason the sale and purchase cannot be carried out, for example because the sale and purchase has not been paid off in full. However, if the parties still wish to be asked to make a sale and purchase deed, to anticipate this, PPAT, who also works as a notary, will advise the parties to make a sale and purchase agreement deed. One of the purposes of making a sale and purchase agreement deed is so that the seller can obtain part or all of the sale and purchase price and the buyer can obtain rights to the land even though it has not actually happened yet.

2. BPHTB and PPH factors

He added that something that is no less important and often happens is the payment of taxes. If the parties wish to postpone the payment of tax on a sale and purchase transaction, whether income tax (PPH) or Land and Building Rights Acquisition Fee (BPHTB), then they usually carry out the transaction using a deed of engagement/sale and purchase agreement. Another possibility that causes a deed of sale and purchase agreement to be executed or carried out is if the certificate for the land is still in the name of the heir or initial owner, while the heirs will quickly sell the land because they need money. For this reason, so that they can get money quickly, they carry out transactions by making a deed of engagement/sale and purchase agreement before a notary.

The main factor that causes people to enter into a sale and purchase agreement is because the sale and purchase has not been paid off (in installments) and to postpone the obligation to pay taxes, because by carrying out a sale and purchase agreement transaction, taxes will not arise because there is no registration of the transfer of rights as required in regulations regarding Officials Making Land Deeds. In other words, it can be said to temporarily postpone the implementation of tax payments.

It can also be added that apart from the factors mentioned above, what causes people to enter into sales and purchase agreements is because in order to carry out the sale and purchase directly before the Land Deed Official, the obligation to pay taxes, both PPH and BPHTB, must have been fulfilled, whereas for tax payments These taxes, especially BPHTB, must first be verified at the Regional Revenue Service office whether or not there are

arrears in PBB (Building Land Tax) payments on the object to be bought and sold.

3. PBB Factor If there is, then all PBB arrears must be paid off first, then the sales and purchase taxes, namely PPh and PPHTB, are paid.

In making a sale and purchase deed, documents include, among other things

1. Identity of the parties (seller and buyer)
2. Identity of the approver (wife)
3. UN
4. Certificate / letter C
5. If Letter C is accompanied by a field map issued by BPN

In making the deed of sale and purchase agreement, it must be clearly agreed that it will be at whose expense the tax owed on the land will be paid and to find out the results of the verification from the Regional Revenue Service Office it will take several days. Meanwhile, both sellers and buyers want their buying and selling transactions to be completed quickly for various reasons. In terms of the action that must be taken by a notary in the form of drawing up a deed of sale and purchase agreement, it must pay attention to the rights and obligations between both parties (prospective buyer and prospective seller), applicable laws and regulations, as well as fulfilling other requirements and considerations. Once the parties have completed the deed of engagement/sale and purchase agreement before a notary, a notary, apart from being a public official, also functions as a legal advisor for the parties who come to him, as long as it is related to the deed he has made. Only then will the deed of sale and purchase agreement be signed by the parties.

1. Form of Notary/PPAT Responsibility for Product Deeds That Are Canceled by the Court

There is no definite application of the terms nullity and annulment as explained by Herlien Budiono, namely that when a law wishes to state that there are no legal consequences, it is declared "null and void", but sometimes the term "null and worthless" is used (Article 879 of the Civil Code) or "does not have power" (Article 1335 of the Civil Code)¹¹. If the agreement no longer meets the objective requirements, it turns out that someone is still filing a lawsuit or claim regarding this matter, then the judge is obliged because of his position to state that there was never an agreement or engagement.¹²

The consequences of an annulment are in principle the same as being null and void, can be canceled or non-existent, namely that all three result in the legal act becoming invalid or the legal act having no legal consequences. or the absence of something essential/main in the agreement. So, judging from the cause, it is null and void because it is not.

¹¹ Herlien Budiono, *Kumpulan Tulisan Hukum Perdata di Bidang Kenotariatan*, PT. CitraAditya Bakti, Bandung, hal, 364

¹² R Subekti, *Hukum Perjanjian*, Intermasa, Jakarta, 2005, hal.22

the fulfillment of objective conditions, as well as non-fulfillment of conditions which are the essence of the agreement and because the formal form as required by the applicable law/provisions is not fulfilled is called non-existent void. The differences are:¹³

- a. Null and void, as a result the legal action taken has no legal consequences since the legal action occurred. In practice, null and void is based on a court decision which has permanent legal force;
- b. Can be cancelled, as a result the legal action taken has no legal consequences since the cancellation occurs and where the cancellation or ratification of the legal action depends on a certain party, which causes the legal action to be cancelled. Deeds whose sanctions can be canceled remain valid and binding as long as there is no court decision that has permanent legal force canceling the deed;
- c. Non-existent, as a result the legal action that is carried out does not exist, which is caused by the essentials of an agreement not being fulfilled or not fulfilling one or all of the elements in a particular legal action. Dogmatically non-existent sanctions do not require a court decision, but in practice a court decision is still required which has permanent legal force and its implications are the same as being null and void.

In contract law there are certain legal consequences if subjective and objective conditions are not met. If the subjective conditions are not met, then the agreement can be canceled as long as there is a request by certain or interested people. These subjective requirements are always shadowed by the threat of cancellation by interested parties, namely parents, guardians or guardians. So that such threats do not occur, confirmation can be requested from those concerned that the agreement will remain valid and binding on the parties. If the objective conditions are not met, then the agreement is null and void, without the need for a request from the parties, thus the agreement is deemed to have never existed and is not binding on anyone.

Absolutely void agreements can also occur, if an agreement made is not fulfilled, even though legal regulations have determined that the legal action must be made in a predetermined manner or is contrary to morality or public order, because the agreement is deemed to not exist, then it is no longer valid. there is another basis for the parties to sue or sue each other in any way and form.

Subjective conditions are stated at the beginning of the deed. The first subjective requirement element is an agreement, free from the promising parties or without pressure and intervention from any party but solely the wishes of the promising parties. The second element of subjective requirements is the ability to take action on the part of the promising party. The ability to carry out legal action by the parties to the deed which will give rise to certain legal consequences if they do not fulfill the specified conditions. This relates to the legal subject that will act in the deed.

¹³ Mulyoto, *Perjanjian Teknik, cara membuat, dan hukum perjanjian yang harus dikuasai*, Cakrawala Media, Yogyakarta, 2012, hal. 45

Thus, if at the beginning of the deed, especially the requirements for the parties appearing before the Notary, do not meet the subjective requirements, then at the request of a certain person the deed can be cancelled. A Notarial Deed is a means of evidence so that it has perfect evidentiary power, if all procedural provisions or procedures for making a deed are fulfilled. If there are procedures that are not fulfilled, and the procedures that are not fulfilled can be proven, then the deed through court proceedings can be declared as a deed that has the power of proof as a private deed. If it is in such a position, then the value of the evidence is handed over to the judge.

At the correct level of notarial law regarding Notarial deeds and Notaries, if a Notarial deed is disputed by the parties, then:

- 1) The parties come back to the Notary to make a deed of cancellation of the deed, and thus the canceled deed is no longer binding on the parties, and the parties bear all the consequences of the cancellation.
- 2) If the parties do not agree that the deed in question will be annulled, one party can sue the other party, with a lawsuit to degrade the notarial deed into a private deed. After being degraded, the judge examining the lawsuit can give his own interpretation of the notarial deed that has been degraded, whether it remains binding on the parties or is cancelled. This depends on the evidence and the judge's assessment.

If in another position, namely one of the parties feels disadvantaged by the deed made by the Notary, then the party who feels disadvantaged can file a lawsuit in the form of a claim for compensation to the Notary concerned, with the obligation of the plaintiff, namely in the lawsuit it must be proven that the loss is a result of directly from the Notarial deed. In both positions, the plaintiff must be able to prove what was violated by the Notary, from the external aspect, formal aspect and material aspect of the Notary's deed.¹⁴

Notaries/PPATs in carrying out their duties and positions as public officials who have the authority to make authentic deeds are burdened with responsibility for their actions. This responsibility is a willingness to carry out his obligations which include the material truth of the deed he makes. The Notary/PPAT is responsible for negligence and errors in the content of the deed made before him, but the Notary/PPAT is only responsible for the formal form of the authentic deed as regulated by law. Responsibilities related to material truth include, among others:¹⁵

- 1) Notary/PPAT's civil responsibility regarding the material truth of the deed they make. The juridical construction used in civil responsibility regarding the material truth of the deed made is the construction of an unlawful act.
- 2) Notary/PPAT's criminal responsibility for the material truth in the deed they make. Regarding criminal provisions, it is not regulated in the Law on the Position of Notaries or in the Regulations on the Position of Officials Making Land Deeds, but the responsibility of a Notary/PPAT is criminally imposed if the Notary/PPAT commits a criminal act that violates the law.

¹⁴ Habib Adjie, *Karakter Yuridis Akta Notaris, Indonesia Notary Community.htm*

¹⁵ Abdul Ghofur Anshori, *Lembaga Kenotariatan Indonesia*, UII Press, Yogyakarta, 2009, hal.16

The Law on the Position of Notaries and the Regulations on the Position of Officials who make Land Deeds only regulate sanctions for violations committed and these sanctions can be in the form of a deed made by a Notary/PPAT that does not have authentic power or only has the power of a private deed or even the deed is canceled automatically. law by the Court.

2. Notary/PPAT Civil Responsibilities

The juridical construction used in civil responsibility regarding the material truth of a deed made by a Notary is the construction of an unlawful act (Article 1365 of the Civil Code). What is called an unlawful act has an active or passive nature. Active means carrying out an act that causes harm to another party, so an unlawful act is an active act. Passive means not carrying out a certain action or a necessity, then the other party can suffer a loss. The elements of an unlawful act include the existence of an unlawful act, the existence of a mistake and the loss caused.

As with the development of contemporary tort law institutions, what is meant by tort law is an act against the law in the broadest sense. In more detail, an unlawful act is if:

- a. Violates other people's rights;
- b. Contrary to the perpetrator's legal obligations;
- c. Contrary to decency;
- d. Contrary to propriety in paying attention to one's own interests and the property of others in daily life.

The Explanation of the Law on Notary Positions shows that the Notary is only responsible for the formality of an authentic deed and not for the material of the authentic deed. This requires the Notary to be neutral and impartial and to provide some kind of legal advice to clients who ask the Notary concerned for legal guidance. In line with this, the Notary can be held responsible for the material truth of a deed if the legal advice he gives turns out to be wrong at a later date. Through the construction of the explanation of the Notary Position Law, it can be concluded that a Notary can be held responsible for the material truth of a deed he or she has made if it turns out that the Notary has not provided access to certain laws relating to the deed he or she has made so that one of the parties feels cheated due to their ignorance. .¹⁶

3. Notary/PPAT Criminal Responsibility

Criminal acts are actions that are prohibited in a legal regulation, where the prohibition is also accompanied by sanctions or threats in the form of certain criminal sanctions for those who violate them. Criminal provisions are not regulated in the Law on the Position of Notaries, but in terms of criminal responsibility, a Notary/PPAT who commits a criminal act can be subject to the Notary/PPAT. In the Law on the Position of Notaries, it only regulates sanctions for violations committed by Notaries/PPATs in the form of deeds that do not

¹⁶ Ima Erлие Yuana, *Tanggung Jawab Notaris Setelah Berakhir Masa Jabatannya Terhadap Akta Yang Dibuatnya Ditinjau Dari Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris*, Magister Kenotariatan Universitas Diponegoro Semarang, 2010, Thesis

have authentic power or only have evidentiary power as private deeds. Meanwhile, sanctions against the Notary/PPAT can be given in the form of a warning or even dishonorable dismissal.

4. Administrative responsibilities of the Notary/PPAT

There is a very strong correlation between the Law on the Position of Notaries, the Regulations on the Position of Land Deed Officials and the professional code of ethics. The professional code of ethics regulates Notaries/PPATs internally and the Notary Position Law and Position Regulations for Land Deed Officials regulate it externally. In carrying out their duties, a Notary/PPAT must do the following things:¹⁷

- a) Notaries/PPATs are required to make deeds properly and correctly. This means that the deed made fulfills the general will and requests of the interested parties because of their position;
- b) Notaries/PPATs are required to produce quality deeds. This means that the deed made is in accordance with legal regulations and the wishes of the interested parties in the true sense, not made up. The Notary/PPAT must explain to interested parties the correctness of the contents and procedures of the deed he or she is making. And this deed has a positive impact, so that anyone will admit that the deed has perfect evidentiary power.

Thus, the author concludes that the consequences of the cancellation of the deed of land sale and purchase agreement due to one of the parties defaulting, viewed from the aspect of legal certainty and the value of justice, are that if viewed from the perspective of legal certainty, the sale and purchase agreement aims to obtain legal certainty. regarding the land to be purchased which binds both parties to carry out performance, as a form of legal protection from the seller is to obtain certainty of payment and the buyer is to carry out payments in accordance with what is specified in the agreement and ask for a power of attorney as a form of protection for the buyer, in the agreement The clause must be clear so that if one of the parties defaults, they can apply for cancellation of the land sale and purchase binding agreement, so that as a result of the sale and purchase binding agreement is an agreement that is canceled by the court due to default and has permanent legal force, the agreement is considered This has never happened to the parties, so the seller must return what has been deposited by the buyer. Apart from that, the third party (Notary) must take a neutral, impartial position. If the making of the sale and purchase agreement does not comply with the conditions stipulated by law, the notary will be responsible. answer in accordance with applicable regulations.

B. Procedures for Cancellation of the Deed of Land Sale and Purchase Agreement if One of the Parties Defaults.

Cancellation is a statement of the cancellation of a legal action based on the demands of a party who, according to the law, is justified in demanding such

¹⁷ Abdul Ghofur Anshori, *Lembaga Kenotariatan Indonesia, Perspektif Hukum dan Etika*, UII Press, Yogyakarta, 2009, hal, 49

cancellation. Cancellation is carried out by a judge based on the demands of parties who are given the right by law to make such demands, as a result of the cancellation, the cancellation applies retroactively after the judge declares it null and void. If it is related to Article 1266 of the Civil Code, then in a reciprocal agreement there are rights and obligations of the parties dealing with each other. The rights and obligations of one party conflict with the rights and obligations of the other party.¹⁸

Article 1266 of the Civil Code states that void terms are deemed to be forever included in a reciprocal agreement when one party does not fulfill its obligations or is in default. This means that one of the parties is allowed to demand annulment, if the opponent of the promise defaults. There are three conditions so that cancellation can be carried out, namely:¹⁹

1. The agreement must be reciprocal;
2. There must be a default; And
3. Must be a judge's decision.

So in this case there are two parties who have an obligation to fulfill each other's achievements. If one party defaults, the other party can request cancellation in court by filing a lawsuit for cancellation, so that the judge's decision will cancel the agreement. Default is only a reason for the judge to hand down his decision, in other words, default is only a condition for the judge's decision to be issued.

This shows that the intention of the makers of the law, in this case, is to equate default with the condition of cancellation. However, in reality, the terms of cancellation and default have differences determined by the law itself, such as the need for a judge's decision.²⁰

According to the author, there are several things that need to be considered in terms of cancellation, namely:

- 1) The condition that it is deemed to be void means that if you look at the agreement, it actually does not exist, but even if the parties do not agree to it, it is always considered as if it had been agreed.
- 2) "Considered to be forever included", meaning that the parties do not need to agree expressly, because the meaning of the clause is forever, which means that all reciprocal agreements are automatically deemed to be included, or in other words agreed to tacitly.
- 3) This clause only applies to perfect reciprocal agreements, and therefore does not apply to imperfect reciprocal agreements.
- 4) The void clause applies on the condition that the opposing party commits a default. Regarding overmacht to debtors, this provision does not apply.

In the formulation of Article 1266 of the Civil Code, which reads:²¹

"The condition of cancellation is considered to always be included in a reciprocal agreement, if one of the parties does not fulfill its obligations. In

¹⁸ J. Satrio, *Hukum Perikatan Tentang Hapusnya Perikatan*. Bagian 2. Bandung: Citra Aditya Bakti. 1996, hal,

¹⁹ Syahrani, H. R. *Seluk-Beluk dan Asas-Asas Hukum Perdata*. Bandung: Alumni, 2004, hal, 229

²⁰ Muhammad, A. *Hukum Perikatan*. Bandung: Alumni, 1982 hal, 130

²¹ J. Satrio, *Hukum Perikatan Perikatan Pada Umumnya*. Bandung: Alumni, 1999, hal, 301-302

such cases the agreement is not null and void, but the annulment must be requested from the Court."

This request must also be made, even though the void conditions regarding non-fulfillment of obligations are stated in the agreement. "If the conditions for cancellation are not stated in the agreement, then the Judge, considering the circumstances, at the request of the defendant, is free to give a period of time to fulfill the obligation, but this period cannot be more than one month."

From the provisions of the article above, it cannot be denied because it contains contradictions and gives the impression that because the debtor is in default, it can be divided into 4, including:²²

- 1) The agreement is automatically void due to law
- 2) Cancellation of the agreement must be requested from the judge
- 3) According to the author of the review, this article is actually intended to provide protection to creditors against losses as a result of debtors who are in default, which means:
- 4) If the terms of cancellation are expressly stated in the agreement, the request for cancellation must still be made or the cancellation must be demanded.
- 5) It is determined that at the request of the defendant, the judge, considering the circumstances, is free to determine the time period as long as it does not exceed 1 month.

Based on the description above, according to the author, if we examine it using contract theory and justice theory, if the debtor is in default, then the reciprocal cancellation of the agreement cannot be canceled automatically even though the terms of cancellation are not actually stated in the agreement. Article 1266 of the Civil Code Paragraph (1) clearly states that, the condition of cancellation is deemed to always be included, thus even though it is not actually stated, this condition does exist, so that if in the future the debtor defaults, then based on Paragraph (2) the cancellation must be requested from the judge and Paragraph (3) even though this cancellation condition is not clearly stated in the agreement. This shows that this article contains an obligation and must not be set aside or even ignored, because if it is set aside or even ignored, it will actually lead the parties to an unclear and uncertain situation.

Cancellation of the sale and purchase agreement

The various types of cancellation of sales and purchase agreements include:

1. Cancelled due to failure to fulfill one of the legal conditions of the agreement

As has been explained, the validity of an agreement must meet the requirements stated in the law. These conditions consist of subjective requirements and objective requirements. Failure to fulfill subjective requirements, namely the agreement and skills of the parties making it, means that the agreement can be requested to be canceled by one of the parties. Meanwhile, failure to fulfill objective conditions, namely certain things and lawful causes, causes the agreement to be null and void. In such

²² H. R. Syahrani, *Seluk-Beluk dan Asas-Asas Hukum Perdata*. Bandung, Alumni, 2004, hal, 229-230

cases, from the beginning it is considered that there is no agreement and the agreement that arose, the intention of the parties to put an agreement that binds them to each other has failed, one party cannot sue the other party in front of a judge, because the legal basis does not exist. This judge is obliged because of his position to state that there has never been an agreement or engagement.²³

2. Cancelled because the conditions for canceling the conditional agreement are fulfilled

Conditional engagement is a form of engagement known in society. In the Civil Code itself, a conditional obligation is defined as an obligation that is dependent on conditions. These conditions are events that are still to come and are not certain to happen.

Engagements with conditions are divided into two, namely agreements with tough conditions and agreements with void conditions.

- a) An agreement with tough conditions, namely postponing the birth of the agreement until the conditions in question occur. Whereas
- b) an agreement with the condition of being void, an agreement that has already been created ends or is canceled if the event in question occurs.

In practice, this cancellation condition is often included in a clause that regulates the possibility of cancellation of the agreement along with the causes and consequences for the parties.

Actually, this is just a confirmation, because without mention of this, by law, the agreement can be terminated if agreed by both parties. Waivers to Article 1266 of the Civil Code are also very often included in agreements to regulate the termination of the agreement. The waiver of this article means that if the parties want to terminate their agreement, the parties do not need to take court procedures, but can decide directly by the parties.

Several practitioners and other legal experts stated that a breach of contract does not automatically result in the agreement being canceled but must be submitted to a judge. This is supported by the reason that if the debtor defaults, the creditor still has the right to file a lawsuit so that the debtor fulfills the agreement. In addition, based on article 1266 paragraph 4 of the Civil Code, the judge has the authority to give the debtor an opportunity, within a maximum period of one month, to fulfill the agreement even though in fact the debtor has defaulted or broken his promise. In this case, the judge has the discretion to weigh the severity of the debtor's negligence compared to the losses suffered if the agreement is cancelled.²⁴

To decide whether a default is a condition for cancellation or whether an annulment must be requested from a judge, Suharnoko is of the opinion that it must be considered case by case and the parties making the agreement. The author himself agrees with Suharnoko's opinion, the overriding of article 1266 of the Civil Code which makes default as a condition for cancellation is not a problem if both parties agree and accept that there has indeed been a

²³ Abdulkadir Muhammad, *Hukum Perjanjian*, Alumni, Bandung, 1986, hal. 22

²⁴ Suharnoko, *Hukum Perjanjian Teori dan Analisa Kasus*, Jakarta, Kecana, 2009, hal. 64.

default by one of the parties, and both parties agree to cancel the agreement, but it is a problem if The party accused of committing a breach of contract denies that he has committed a breach of contract, so cancellation through the court is necessary not only first to determine whether there really is a breach of contract or not, but also to avoid the arbitrariness of one of the parties who terminates the agreement unilaterally without reasons justified by law so that harm other parties.

Meanwhile, the opinion that states that cancellation must be requested from the court will be a problem if the debtor uses this to delay credit payments or carry out their obligations, because the process through the court is expensive and takes a long time. Because of the things above, it is necessary to consider the case and the parties making the agreement in deciding whether a default is a condition for cancellation or whether an annulment must be requested from a judge.

3. Cancellation Due to Default

Default comes from Dutch which means bad performance. A person who makes a promise, but does not do what he promised, is negligent, negligent or breaks his promise or also violates the agreement. If he does or does something that he is not allowed to do, then he is said to be in default.

Default (negligence or negligence) can be of four types:

- Not doing what he said he would do;
- Carries out what it promises, but not as promised;
- Did what was promised but was late;
- Doing something that according to the agreement he is not allowed to do.²⁵

For someone's negligence or negligence, several sanctions or punishments are threatened, namely:²⁶

- Paying losses suffered by other parties who experience losses, or in short called compensation (article 1243 of the Civil Code)
- Cancellation of the agreement or also called breaking the agreement through the courts (article 1266 of the Civil Code)
- Request fulfillment of the agreement, or fulfillment of the agreement accompanied by compensation and cancellation of the agreement accompanied by compensation (article 1267 of the Civil Code)

From the description above, if the parties to the agreement break their promise or default, the aggrieved party can request cancellation of the agreement. Cancellation of agreements due to breach of contract often occurs and is considered normal. Especially if the reason is justified in the termination clause that has been agreed upon by both parties. The issue of canceling an agreement due to negligence or default by one of the parties, in the Civil Code, is regulated in article 1266, namely an article contained in the

²⁵ Subekti, *Aneka perjanjian*, Cet. 9, Bandung : Citra Aditya Bakti, 1992, hal 45.

²⁶ Djaja S. Meiliana, *Perkembangan Hukum Perdata Tentang Benda dan Hukum Perikatan*, Cet. 1 Bandung: Nuansa Aulia, 2007, hal. 100

fifth part of Chapter I, Book III, which regulates conditional agreements. The law views the debtor's negligence as a void condition which is deemed to be included in every agreement. In other words, in every agreement it is assumed that there is a promise (clause) which says "if you, the debtor, are negligent, then this agreement will be void. ". However, the agreement is not automatically null and void, but cancellation must be requested from a judge. This must also be done even though the clause or condition for cancellation is included in the agreement.²⁷

Article 1266 of the Civil Code is the basis that the judge is the one who determines whether there has been a breach of contract or not in a contract. In fact, unilateral termination of the contract due to default without a judge's decision is not a problem if the other party also accepts the decision.

However, if one party refuses to be accused of breach of contract, then the parties should submit the decision to the judge to assess whether there is a breach of contract. If the judge declares that the act of breach of contract is proven and valid, then the broken promise is counted from the time one of the parties terminates the agreement.

Cancellation of an agreement aims to bring both parties back to the situation before the agreement was entered into. If a party has received something from another party, whether money or goods, then the money or goods must be returned.

4. Unilateral cancellation of the agreement

Unilateral cancellation of an agreement can be interpreted as the unwillingness of one party to fulfill the achievements agreed upon by both parties in the agreement. At that time, the other party still intends to fulfill the performance he has promised and wants to continue to obtain counter-performance from the other party.

As we know, a valid agreement, in the sense that it fulfills the legal requirements according to law, is valid as law for the parties who make it. As stated in article 1338 (1) of the Civil Code. Meanwhile, paragraph (2) states that: "these agreements cannot be withdrawn other than with the agreement of both parties, or for reasons which the law states are sufficient for that."

From article 1338 paragraph (2) of the Civil Code, it is clear that the agreement cannot be canceled unilaterally, because if the agreement is canceled unilaterally, it means that the agreement is not binding between the people who made it. If you look at articles 1266 and 1267 of the Civil Code, it clearly regulates the conditions for cancellation if one of the parties does not fulfill its obligations.

The cancellation must be requested in court, this is intended so that later no party can cancel the agreement unilaterally on the grounds that one of the other parties has not carried out its obligations (default).

According to article 1266 of the Civil Code, there are three things that must be considered as conditions for cancellation to be carried out.

The three conditions are:

²⁷ Subekti, *Ibid.*, hal. 50.

- a) The agreement is reciprocal
- b) There must be a default
- c) Must be a judge's decision

Reciprocal agreement, as explained above, where both parties fulfill their respective obligations, namely performance. If one of the parties breaks their promise or defaults regarding the basic terms of the agreement, a lawsuit can be filed requesting cancellation of the agreement to the judge.

There are several legal theories related to unilateral cancellation of an agreement, namely repudiation of the agreement.

Repudiation (repudiation, anti-fastness) is a statement regarding the unwillingness or inability to carry out a previously agreed agreement, which statement is made before the time comes to implement the agreement. Repudiation in that sense is called anticipatory repudiation, which is different from ordinary repudiation, namely cancellation which is declared when the implementation period of the agreement has entered.²⁸

The juridical consequence of repudiation of a contract is that it can delay or even free the other party from the obligation to carry out the performance of the agreement; and on the other hand, it gives the injured party the right to immediately claim compensation, even though the party carrying out repudiation is not yet due to carry out its obligations under the agreement.

An act of repudiation of an agreement can be realized in the following ways:²⁹

- a) Strict repudiation
- b) This means that the party declaring repudiation expresses his will firmly that he does not want to carry out his obligations as stipulated in the agreement.
- c) Inclusive repudiation

Apart from being explicit, repudiation actions can also be carried out not strictly, but inclusively. This means that from the existing facts it can be concluded that one of the parties will not carry out its obligations based on the agreement.

The main criterion for inclusive repudiation is that the party carrying out repudiation shows his actions or intentions logically and clearly (reasonably clear) that he will not carry out his obligations as stipulated in the agreement.

5. Procedure for Cancellation of Deed of Sale and Purchase Agreement

Notary/PPAT as one of the public officials who has an important role in ensuring legal certainty, order and legal protection through authentic deeds made by and before him, the authentic deed is a strong piece of evidence and if a dispute occurs in court unless it can be proven to be untrue, so that the Notarial/PPAT deed provides perfect proof as stated in Article 1870 of the

²⁸ Munir Fuady, *Hukum Kontrak: Dari Sudut Pandang Hukum Bisnis*, Bandung: PT.Citra Aditya Bakti, 2001, hal. 105.

²⁹ Munir Fuady, *Ibid*, hal, 107-109.

Civil Code to the parties who make it. If there is a dispute regarding the deed, the deed can be canceled or null and void by law.

Cancellation of a Notary/PPAT deed through a court decision is not only due to errors or negligence of the Notary/PPAT in making the deed. However, the cancellation of a Notarial/PPAT deed can also be caused by errors or negligence of the parties who bound themselves to each other in the deed, so that an error or negligence results in a lawsuit from one of the parties. In civil proceedings, it is not uncommon for a Notary/PPAT to be in the position of co-defendant which is given as a forced measure, because in notarial deeds, especially the Partij Acte which then becomes evidence for civil cases, the Notary/PPAT is not involved and is even prohibited by law. -The law is involved in a legal act as explained in the notarial deed which he formalizes.

In a lawsuit stating that the Notarial/PPAT deed is invalid, the invalidity must be proven from both external, formal and material aspects. If you cannot prove it, then the deed in question is still legally binding on the parties interested in the deed. If the deed can be proven in court, then there is one aspect that causes the deed to be defective, so that the deed can become a degraded deed or a fraudulent deed, or even become null and void. Based on Article 1870 of the Civil Code regarding the power of binding and perfect evidence, an authentic, binding deed means that the judge is bound to believe the deed as long as the untruth cannot be proven, while the meaning of perfect means that it is considered sufficient as evidence without any other evidence. .

Apart from that, ex officio judges basically cannot cancel a Notarial/PPAT deed if an annulment is not requested, because the judge cannot make decisions that are not requested. If an annulment is requested by the party concerned, basically the authentic deed can be annulled by a judge as long as there is opposing evidence. Regarding cancellation of the contents of a deed, a Notary/PPAT only acts to record what is stated by the parties and is not obliged to investigate the material truth of the contents of the deed.³⁰

Thus, the author can conclude that the procedure for canceling the Deed of Land Sale and Purchase Agreement if one of the parties is in default is to apply to the court by means of a notary who makes a deed of the land sale and purchase agreement which is forwarded to the court regarding the cancellation of the agreement so that the decision is made. the court has stepped forward to obtain certainty and justice for the parties.

4. Conclusion

- A. The consequences arising from the cancellation of the deed of land sale and purchase agreement because one of the parties defaults, viewed from the aspect of legal certainty and the value of justice, is that if viewed from the perspective of legal certainty, the sale and purchase agreement aims to obtain

³⁰ Djoko Sukisno, *Pengambilan Fotocopy Minuta Akta dan Pemanggilan Notaris (Mimbar Hukum vol.20 nomor 1)*, 2008, hal, 52

legal certainty regarding the land in question will be purchased which binds both parties to carry out the performance, because the buyer is in default, the seller can request cancellation of the PPJB to the court. Conditions for cancellation are deemed to be contained in reciprocal agreements, when one party is in default. So that the agreement will return to the way it was before there was an agreement, the seller must return what has been deposited by the buyer. Apart from that, as a result of the court's decision to annul the deed, the deed will be relegated to a private deed if the drafting does not comply with statutory regulations.

- B. The procedure for canceling the deed of land sale and purchase agreement if one of the parties is in default is to apply to the court by means of a notary who makes a deed of land sale and purchase agreement which is forwarded to the court regarding the cancellation of the agreement so that the court decision has been confirmed. obtain certainty and justice for the parties.

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