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Validity of Land Rights Transfer Based on Debt with Collateral of Land Certificate under Indonesian Law

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Abstract
Debt agreement with land certificate guarantee, the accesoir agreement is a guarantee agreement by way of installation of Mortgage which then for repayment if there is negligence / default, an auction is carried out as regulated in Law Number 4 of 1996 concerning Mortgage but in this case it is actually used as a sale and purchase between debtors and creditors. This may cancel the registration of the transfer of land rights that has been carried out by the Purchaser who was previously the Creditor Party. This study uses a normative juridical research method and uses a statutory approach, a conceptual approach, and a case approach. The data sources used are secondary data sources with primary legal sources, secondary legal sources, and tertiary legal sources. Data analysis in this study is a qualitative analysis method with deductive reasoning logic.The results obtained are that the Deed of Sale and Purchase of land rights based on debts and receivables is considered invalid because it is a form of simulation agreement, which is a continuation of accounts payable which if the collateral is a plot of land then it should be the installation of Mortgage Rights. This is based on Article 1131 of the Indonesian Civil Code and the rules contained in Law Number 4 of 1996 concerning Mortgage Rights. Another thing that happened was that the making of the Sale and Purchase Deed was based on the Sale and Purchase Agreement Deed and the Power of Attorney to Sell which contained legal defects so that it affected its validity. The cancellation of land rights can be carried out by means of an application through the Head of the Regency/City Land Office which is then forwarded to the Head of the Provincial Regional Office as described in Article 125-130 of the Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 9 of 1999 concerning Procedures for Granting and Cancellation of State Land Rights and Management Rights which are the Implementing Regulations of Government Regulations Number 24 of 1997 concerning Land Registration.

Keywords: transition of land rights; debts; guarantee.

Дійсність передачі прав на землю на основі боргу із заставою земельного сертифікату за законодавством Індонезії

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Анотація
Договір позики під заставу земельних сертифікатів є гарантійною угодою шляхом встановлення іпотечного права, яке для погашення вимог кредитора у разі неналежного виконання або невиконання зобов'язань боржника реалізується через проведення аукціону, як це передбачено Законом № 4 від 1996 р. щодо іпотечних прав. Але в цьому випадку договір позики фактично використовується як договір купівлі-продажу між боржниками та кредиторами. Це дозволяє уникнути реєстрації переходу прав на землю, здійсненої покупцем, який раніше був кредитором. У цій роботі застосовуються нормативні юридичні методи дослідження та законодавчі, теоретичні й практичні підходи. При цьому використовуються різні джерела – вторинні джерела даних поряд із первинними юридичними та матеріальними джерелами, а також вторинні юридичні матеріальні джерела та третинні юридичні матеріальні джерела. Аналіз даних у цьому дослідженні здійснено з використанням дедуктивного методу. Отримані результати свідчать про те, що договір купівлі-продажу прав на землю на основі кредиторської заборгованості вважається недійсним, оскільки він є видом удаваного правочину, який є продовженням дебіторської заборгованості. Якщо предметом застави є земельна ділянка, то це призводить до виникнення у заставодержателя іпотечних прав. Це ґрунтується на статті 1131 Цивільного кодексу Індонезії та нормах, що містяться в Законі № 4 від 1996 р. про іпотечні права. Ще одна проблема, яку досліджено, стосується оформлення договору купівлі-продажу на підставі договору купівлі-продажу та довіреності на продаж, юридичні недоліки яких вплинули на їх дійсність. Анулювання прав на землю може бути здійснено шляхом подання заяви через керівника земельного управління регентства/міського управління, яке потім надсилається керівнику регіонального управління провінції, як це визначено у статтях 125–130 Регламенту Міністра аграрних справ/Керівника Національного земельного агентства № 9 від 1999 р. щодо процедур надання й анулювання прав на державні землі

та прав управління, які є імплементаційними постановами урядової постанови № 24 від 1997 р. щодо реєстрації землі.

Ключові слова: перехід прав на землю; борги; гарантія.

Introduction

Acquisition of land rights is more often done by transferring rights (transfer of rights). The transfer of land rights can occur due to 2 (two) things, namely legal actions and legal events. Transfer of land rights due to legal actions is a transfer of land rights that occurs due to legal actions carried out by the parties intentionally and consciously to make the transition. Legal actions that cause the transfer of land rights include buying and selling, exchanges, grants, income within the company, and distribution of joint rights. The transfer of land rights due to a legal event, namely the transfer of rights that occurs due to the death of a person, this results in a transfer of rights automatically due to a legal event of death which underlies the occurrence of land rights to the heir [1].

Buying and selling is a form of transfer of land rights, according to Article 1457 of the Indonesia Civil Code, it is an agreement, by which one party binds himself to surrender an object, and the other party to pay the price that has been promised. Buying and selling, which was formerly known as the real principle, occurs when there is levering or delivery of goods. Then in the provisions of Article 1458 of the Indonesian Civil Code it is explained that "buying and selling is considered to have taken place between the two parties when they have reached an agreement regarding the goods and price, even though the goods have not been delivered or the price has not been paid".

The provisions above explain that buying and selling has occurred since there was an agreement. If this understanding is associated with a transfer of land rights, then there is one party who surrenders his land to another party by paying the agreed price. The transfer of rights through buying and selling is carried out before the Land Deed Making Official, where the Land Deed Making Official makes an authentic deed and registers it with the National Land Agency to change the ownership of the land in the land certificate.

The granting or determination of land rights included in any resolution of land disputes is intended as an effort to guarantee legal certainty for the holders of their rights. In order to guarantee legal certainty which is one of the main objectives of the Basic Agrarian Law, the Law instructs the government to carry out land registration in all Indonesian territories that is Rechskadaster in nature, meaning that the aim is to guarantee legal certainty and certainty of their rights as stipulated in Article 19 of the Law Basic Agrarian Law [2].

The problem that usually occurs in the community is that there is a practice of buying and selling land that originates from debts and receivables both verbally and in writing. The party giving the loan (creditor) usually asks for a guarantee to guarantee the debt of the borrowing party (debtor), but there are also creditors who do not have good faith come directly to the Notary to make a deed of the Sale and Purchase Agreement which is then made by the notary a Power of Attorney. Selling in order to continue the buying and selling process. Making a sale and purchase agreement deed aims to temporarily protect the parties from default, while the selling power of attorney is intended for the benefit of the creditor to continue the buying and selling process. The creditor, on the basis of the Sale and Purchase Agreement and the Power of Attorney to sell, then comes to another Notary as the Official for Making the Land Deed to make a Sale and Purchase Deed as well as the process of transferring the name from the previous right holder, namely the seller/debtor to being on behalf of the buyer/creditor.

Based on the description of the background above, the authors formulate several problems, as follows:
1. What is the validity of the transfer of land rights based on debts guaranteed by land certificates?
2. How is mechanism of return the land rights towards transfer of land rights that canceled by the court?

Materials and Methods

The method used in this study is the normative juridical method, a process for finding legal rules, legal principles and legal doctrines to answer the legal issues faced. The approach method that the author uses in this study is the Legislative Approach, Conceptual Approach, and Case Approach. The data sources used are secondary data sources with primary legal sources including the Indonesian Civil Code, Law Number 5 of 1960 concerning Basic Agrarian Regulations, Government Regulation Number 24 of 1997 concerning Land Registration; secondary sources of legal materials include literature in the field of law, research results in the field of law, scientific articles, journals and the internet; Tertiary legal material sources include legal dictionaries, encyclopedias, magazines, newspapers, and other sources that support this research and have correlations to support this research. The data analysis that the writer uses in this study is a qualitative analysis method with logical deductive thinking.

Results and Discussion

The Validity of The Transfer of Land Rights based on Debts Guaranteed by Land Certificates

An agreement according to Article 1313 of the Indonesian Civil Code is an act by which one or more people bind themselves to one or more people. The word "agreement" in general can have a broad and narrow sense. In a broad sense, an agreement means any agreement that gives rise to legal consequences as desired (or deemed desired) by the parties, including marriages, marriage agreements and others. Meanwhile, agreements in the narrow sense are only aimed at legal relations in the field of property law, as referred to in Book III BW (*Burgerlijk Wetboek*).

The agreement or agreement (*overeenkomst*) referred to in Article 1313 of the Indonesian Civil Code only occurs with the permission or will (*toestemming*) of all those related to the agreement, namely those who entered into the agreement or agreement concerned. From the above statement it can be concluded that the agreement gives rise to achievements of the parties to the agreement. Performance is an obligation that must be fulfilled and carried out by one party (debtor) to another party (creditor) in the agreement.

The form of the agreement is divided into 2 (two) types, namely (1) a written agreement is an agreement made by the parties in written form, and (2) an oral agreement is an agreement made by the parties in oral form (enough agreement of the parties) [3]. The agreement has the following elements:
a. There are parties that are the subject, at least two parties and each of them can consist of people with people or people with legal entities or legal entities with legal entities. Thus it is impossible to say that there is an agreement if there is only one subject.
b. There is an agreement between the parties. The agreement is described as a statement of the will of the parties that complement each other. The agreement is formed through offers submitted by the parties which then meet at one point.
c. There are objects that are a things. The object of the agreement is property that can be traded.
d. There is a purpose that is material (regarding wealth). In other words, the agreement intends to transfer rights to property which is the object of the agreement.
e. There is a particular form, spoken or written. Based on the principle of freedom of contract or partij autonomy, actually agreements can be made verbally so that they are known as oral contracts, they can also be in written form unless the law stipulates otherwise, which in theory are known as formal contracts such

as peace contracts, land guarantee contracts, company establishment contracts, limited grant agreement [4].

According to Article 1320 of the Indonesian Civil Code, an agreement requires four conditions:
a. Those who bind themselves should agree.
b. It should be proficient in making an agreement.
c. It should regard a certain thing.
d. It should have a lawful cause [5].

The first and second conditions are called subjective conditions because they involve the parties entering into an agreement. The third and fourth conditions are called objective conditions, because they involve the object of the agreement. If the first and second conditions are not met, then the agreement can be cancelled. If the third and fourth conditions are not met, then the agreement is null and void, meaning that from the beginning the agreement was deemed to have never happened.

An agreement can cause a transfer of land rights. One way of transferring land rights is by buying and selling. But the problems related to buying and selling land that often occurs in Indonesian society originate from debt agreements, such as the case that occurred in Dompu Regency, West Nusa Tenggara, in the Supreme Court Decision Number 1615K/Pdt/2020. The essence of the problem, in this case, is that the Plaintiff, in this case the debtor/seller, stated that he felt disadvantaged because the Defendant, in this case the creditor/buyer, committed an unlawful act against the verbal debt agreement that had been mutually agreed upon. The verbal credit agreement states that the Plaintiff received a loan from the Defendant to pay off the remaining credit at PT. Bank Rakyat Indonesia (BRI) as evidenced by a credit repayment slip. That after guaranteeing the debt at PT. BRI in the form of a certificate of land owned by the Plaintiff was issued, the Defendant requested it as collateral for the payment of the Plaintiff's debt to the Defendant.

That a few days after the oral debt agreement, the Defendant unilaterally went to the Notary's office which in this case was Co-Defendant III to draw up a Power of Attorney to Sell and a Deed of Agreement on Sale and Purchase. Whereas after the issuance of the Power of Attorney to Sell and the Deed of Agreement on Sale and Purchase by Co-Defendant III, Defendant visited the Plaintiff to sign the letters. Due to the Plaintiff's ignorance of these letters, the Plaintiff continued to sign the letters submitted by the Defendant. Whereas on the basis of the Power of Attorney to Sell and the Deed of Binding Sale and Purchase, the Defendant came to another Notary/ Land Titles Registrar (PPAT) office where

in this case Co-Defendant IV made a Sale and Purchase Deed which was then issued by Co-Defendant IV a Sale and Purchase Deed along with the process of transferring the name of the Land Certificate originally on behalf of the Plaintiff became on behalf of the Defendant. Whereas accordingly, there is an indication of an unlawful act by the Defendant over the verbal debt and credit agreement previously agreed with the Plaintiff.

Whereas in the principal case described above, the debtor/seller sued the creditor/buyer by co-defendant Notary who in this case issued the Power of Attorney to Sell and Deed of Sale and Purchase Agreement, PPAT which in this case issued the Deed of Sale and Purchase, and the Land Agency Dompu District National Office, which in this case crossed out the name of the right holder in the land certificate.

The agreement recognizes 5 (five) important principles, namely:
a. Principle of Freedom of Contract

This freedom of contract is stated in Article 1338 paragraph (1) of the Indonesian Civil Code which reads: "All agreements made legally apply as laws for those who make them". The scope of the principle of freedom of contract, according to Indonesian contract law, is:
1) Freedom to make or not to make agreements;
2) The freedom to choose the party with whom he wants to agree;
3) The freedom to determine or choose the cause of the agreement to be made;
4) Freedom to determine the object of the agreement;
5) Freedom to determine the form of an agreement;
6) The freedom to accept or deviate from the provisions of the law is optional (aanvullend optional).

b. Principles of Consensualism

An agreement generally occurs when a conformity of will that satisfies certain conditions constitutes a legally valid contract. The principle of consensual can be concluded in Article 1320 paragraph (1) of the Indonesian Civil Code. The article stipulates that one of the conditions for a valid agreement is the existence of a word of agreement between the two parties.

c. Principle of Legal Certainty (*Pacta Sunt Servanda*)

Article 1338 paragraph (1) of the Indonesian Civil Code states that "All agreements made legally apply as laws for those who make them", which means that agreements made by the parties have binding legal force. The principle of pacta sunt servanda requires that judges must respect and must not intervene in the substance of the contract made by the parties like a law. If there is a

dispute in the implementation of the agreement, the judge with his decision can force the violating party to carry out his rights and obligations according to the agreement.

d. Principles of Good Faith

The principle of good faith is contained in the provisions of Article 1338 paragraph (3) of the Indonesian Civil Code which reads: "Agreements must be implemented in good faith." Good faith which is called te goeder trouw in Dutch, which is often also translated as honesty, can be divided into 2 (two) types, namely: (1) Good faith when entering into an agreement; and (2) Good faith when carrying out the rights and obligations arising from the agreement. An agreement carried out in good faith or not will be reflected in the actual actions of the parties in implementing the agreement, so that even though good faith lies in the human heart which is subjective in nature, good faith can also be measured objectively.

e. Principles of Personality.

The principle of personality is contained in Article 1315 of the Indonesian Civil Code which reads: «In general a person cannot enter into an agreement or agreement other than for himself», and Article 1340 of the Indonesian Civil Code which reads: "An agreement only applies between parties – the party that made it". However, this provision has exceptions as introduced in Article 1317 of the Indonesian Civil Code which states: "An agreement can also be entered into for the benefit of a third party if an agreement is made for oneself, or a gift to another person, contains such a condition." Meanwhile, in Article 1318 of the Indonesian Civil Code, it does not only stipulate agreements for oneself, but also for the interests of the heirs and for those who obtain rights from them.

There are 5 (five) ways for conformity of statements of intent to occur, namely:
a. Perfect and written language.
b. Perfect language orally.
c. Imperfect language as long as it is accepted by the opposing party.
d. Causal sign language can be accepted by the other party.
e. Silence or silence, but as long as it is understood or accepted by the other party [6].

Agreements made in written form will be contained in a deed. A deed is a signed letter containing events which form the basis of a right or engagement, which was made from the outset on purpose for proof. The deed has 2 (two) important functions, namely (1) the deed is a formal function which means that a legal act will be more complete if a deed is made; (2) the function of evidence, namely

the deed as a means of proof where the deed made by the parties bound in an agreement is intended for proof at a later date. According to Article 1868 of the Civil Code, it is explained that "an authentic deed is a deed made in the form determined by law by or before a public official who is authorized to do so at the place where the deed was made". An authentic deed is a binding evidence, the truth of the things written in the deed must be recognized by the Judge, that is, it must be considered true as long as the truth is there is no other party who can prove otherwise [7].

According to Article 1867 of the Indonesian Civil Code, deeds can be classified into 2 (two) types, namely:
a. Underhand deed

An underhand deed is a deed made not in the presence of an authorized official but made and signed by the parties themselves who entered into an agreement. If a private deed is not denied by the parties, then the underhanded deed has the same evidentiary power as an authentic deed as long as the parties acknowledge and do not deny the truth of what is written on the underhanded deed as stated in Article 1857 of the Indonesian Civil Code.

b. Authentic deed

An authentic deed according to Article 1868 of the Indonesian Civil Code, namely "an authentic deed is a deed made in a form determined by law by or before a public official who is authorized to do so at the place where the deed was made". An authentic deed is a binding evidence, the truth of the things written in the deed must be recognized by the Judge, that is, it must be considered true as long as the truth is there is no other party who can prove otherwise.

Article 1 paragraph (1) Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Office of a Notary and Article 1 paragraph (1) Government Regulation Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning Regulations The position of Official for Making Land Deeds states that Notary and PPAT are general officials who are authorized to make authentic deeds.

There are 2 (two) requirements regarding the validity of an authentic deed made by a Notary/PPAT, including:
a. Material Requirements

Concerning material requirements, a deed must meet the legal requirements of an agreement as stipulated in the provisions of Article 1320 of the Civil Code described above.

b. Formal Requirements

The formal requirements for an authentic deed state that the form of an authentic deed based on the provisions of the Head of Agency Regulations National Land Affairs Number 8 of 2012 if the PPAT deed and Article 38 of Law Number 2 of 2014 concerning Amendments On Law Number 30 of 2004 if the Notary deed.

An authentic deed can be considered "legally disabled" if it does not fulfill the material and/or formal requirements as described above, and as a consequence, the deed can be canceled or null and void by law.

Based on the case data "The plaintiff is paying off the remaining credit deposits at the Woja Unit Office of PT. Bank Rakyat Indonesia (PERSERO) Tbk. Dompu Branch Rp. 40.000.000 (forty million rupiah), get a temporary money loan from Defendant I with an oral agreement will be returned in the amount of Rp. 50,000,000 (fifty million rupiah) with the condition that the Certificate of Ownership Number 569 in the name of MARIAM (Plaintiff) is held by Defendant I as the Collateral".

According to the author, if this is related to the description regarding the legal principle of the agreement, based on the provisions of Article 1338 paragraph (1) of the Indonesian Civil Code which states that "all agreements made legally apply as laws for those who make them". The word "all" in the article indicates that everyone is free to make agreements. Freedom in making an agreement is not absolute, but there are certain limitations that have been determined by laws and regulations. The parties still have limitations as stipulated in Article 1337 of the Indonesian Civil Code, namely to pay attention to law, decency and public order. This makes the parties in this case freely make and determine the contents of the agreement as long as it does not conflict with the law, decency and public order.

Based on data on the legal considerations of the Dompu District Court judge who stated that "in line with the Jurisprudence of the Supreme Court of the Republic of Indonesia Number 3309 K/Pdt/1985 dated 29 July 1987 explained that "The Authorized Recipient who becomes the Buyer in underhand sales on the threat of cancellation, whether the purchase is made by themselves as well as by intermediary persons, the authorities regarding the goods they are authorized to sell. The purpose of the ban is actually so that the recipient of the power of attorney does not abuse the power of attorney for his benefit. This kind of legal action (authorization) is contrary to the principle of "contrary to the public interest (*Van Openbare Orde*)" because if the sale of collateral is not carried out voluntarily it must be carried out in public by way of auction according to local customs so that the authorization of sale like this is null and void by law".

According to the author, the data on the legal considerations of the judges at the Dompu District Court above are related to the provisions of Article 1338 paragraph (1) of the Indonesian Civil Code concerning the principle of freedom of contract and the principle of pacta sunt servanda juncto Article 1320 of the Indonesian Civil Code concerning the terms of the validity of an agreement in which the parties freely make the agreement must pay attention to the limitations related to the freedom to determine the contents of the agreement compatible with Article 1337 of the Indonesian Civil Code so that the agreement contained in the deed can be said to be valid and legally enforceable. The provisions of Article 1337 of the Civil Code which state that "a cause is prohibited, if the cause is prohibited by law or if the cause is contrary to decency or public order" is an explanation regarding one of the conditions for the validity of an agreement, namely a cause (causa) which is lawful as stated in Article 1320 of the Indonesian Civil Code [8].

According to the author, this is compatible with the description of the terms of the validity of the agreement in which the conditions for a lawful cause (causa) are an objective condition of the agreement so that if these conditions are not fulfilled it can result in the agreement being null and void, meaning that from the start the agreement was deemed to have never happened. The cancellation of the deed of Power of Attorney to Sell according to the judge's considerations at the Dompu District Court based on the Jurisprudence of the Supreme Court of the Republic of Indonesia Number 3309 K/Pdt/1985 has actually been regulated in the provisions of Article 1470 of the Indonesian Civil Code which states that "Likewise, with the threat of cancellation, it is not may become buyers in private sales, whether the purchase is made by themselves or through intermediaries: attorneys, insofar as the goods are authorized to them to be sold", because of that reason, the cause of making the agreement contained in the deed of Power of Attorney has been contrary to law and public interest.

According to the author, the deed of Power of Attorney to sell which was declared null and void inflict in the cancellation of the sale and purchase preliminary agreement deed and the sale and purchase deed as well as the registration of the transfer of land rights at the Dompu Regency Land Office. The deed of Sale and Purchase Preliminary Agreement in this case becomes null and void because that deed is used as the basis for making the deed of the Selling Power of Attorney which is proven with the order number of establishment the deed of the Selling Power of Attorney after the number of the deed of the Sale and Purchase Agreement deed, and made at the same Notary and on the same date. Then the Deed of Sale and Purchase made by another PPAT was declared null and void because it was made based on the

deed of the Sale and Purchase Preliminary Agreement and the Deed of Power of Attorney.

Based on data from the legal considerations of the Mataram High Court judge Number 130/PDT/2019/PT. MTR which stated that "Considering, that initially between the Appellant, originally Defendant I, and the defendant appeal, there was a debt-receivable legal relationship, the Appellant originally stated that the defendant appeal had debt with the Appellant, originally Defendant I, but did not explain in detail when the debt occurred, when the defendant appeal returned/paid his debt to the Appellant, originally Defendant I, it was also unclear whether the amount owed was Rp. 40.000.000 (forty million rupiah) or Rp. 50.000.000 (fifty million rupiah)", so the Mataram High Court judge decided to cancel the decision of the Dompu District Court dated 29 May 2019 Number 23/Pdt.G/2018/PN.Dpu which the appeal was filed for and stated that the plaintiff's original appeal was unacceptable (*Niet Ontvankelijke verklaard*).

According to the author of the legal considerations of the Mataram High Court judge above, consider what actually happened between the parties was a sale and purchase agreement because the Plaintiff in his lawsuit did not explain in detail when the debt agreement occurred, when the Plaintiff returned/paid his debt to the Appellant, originally Defendant I, and the amount owed. These legal considerations, if related to the description of the Sale and Purchase Agreement, are based on the provisions of Article 1458 of the Indonesian Civil Code which reads "Buying and selling is considered to have taken place between the two parties, as soon as the people reach an agreement regarding the goods and the price, even though the goods it has not been submitted and the price has not been paid" [9], in this case, what was agreed upon by the Plaintiff was not a sale and purchase agreement but a debt and credit agreement so that the sale and purchase was deemed not to have occurred because an agreement was not reached.

The legal considerations of the judge of the High Court which are then related to the description of the Sale and Purchase Preliminary Agreement, which is a preliminary agreement before the sale and purchase deed is made as a condition for the transfer can be made for several reasons, namely (1) payment cannot be made to the object in full or paid off; (2) administrative files in the form of letters/object documents cannot be completed; (3) the parties, sellers or buyers, cannot control the object; and (4) considerations regarding the value of the object being traded for which there is still no agreement between the parties [10]. In this case, Defendant I as the Buyer has submitted full payment to Plaintiff as the Seller and the Seller has submitted documents of ownership of the object to the Buyer, then in terms

of documents, the ownership of the object has been registered in the name of the Seller. In such a situation, a sale and purchase deed should be made immediately without making a sale and purchase agreement deed in advance for the purposes of transitional registration at the local Regency/City Land Office. Taking into account this description, according to the author, the legal considerations of the Mataram High Court judges were inappropriate and not based on law.

Based on data from the legal considerations of Supreme Court judges Number 1615K/Pdt/2020 "Considering, after carefully examining the cassation memorandum on October 21 2019 it was linked to judex factie considerations, in this case, the Mataram High Court which annulled the decision of the Dompu District Court there was an error in applying the law, with the consideration that the a quo case between the Plaintiff (Mariam) and Defendant I (Eni Riani) was regarding the Plaintiff's loan of Rp. 40.000.000.00 (forty million rupiah) to the Defendant with a guaranteed title certificate in the name of the Plaintiff (Mariam), by because what happened was debts agreement with a guarantee, then the sale and purchase carried out by Defendant I and Co-Defendant IV on behalf of the power of attorney to sell the disputed object belonging to the Plaintiff which was used as collateral for the loan was invalid".

According to the author, the legal considerations of the Supreme Court judges are compatible with the provisions of Article 1335 of the Indonesian Civil Code which explains that "an agreement without cause, or made based on a false or prohibited cause, has no force" so the judge decides on the PPJB Deed, The deed of power of attorney to sell and the deed of sale and purchase and the write-off of the right holder in the certificate are declared null and void because a cause in the sale and purchase agreement drawn up and stated in the deed is not a real cause (simulated cause).

The land sale and purchase agreement and debt agreement with land collateral are agreements that have different constructions and are mutually independent because the two agreements are the main agreements. The debt agreement according to the provisions of Article 1754 of the Indonesian Civil Code is an agreement whereby one party gives the other party a certain amount of goods that have been used up due to usage, with the condition that the latter party will return the same amount of the type and the situation is the same. Meanwhile, the sale and purchase agreement according to the provisions of Article 1457 of the Indonesian Civil Code is an agreement by which one party binds himself to deliver an item, and the other party to pay the promised price [11].

Taking into account the explanation of the sale and purchase agreement and debt agreement above, there are very clear differences regarding the rights and

obligations of the parties. In the sale and purchase agreement there is a seller who has the obligation to deliver an item and the buyer who has the obligation to pay the price of the item in money, while the rights of the parties are contrary to their obligations where the seller's right is to receive payment from the buyer and the buyer's right i.e. receiving goods that have been paid for.

The debt agreement is different from the sale and purchase agreement, in that in the debt agreement there is a party receiving the loan (debtor) and a party providing the loan (creditor). According to J. Satrio, explained that the engagement as a legal relationship has 2 (two) aspects, namely the aspect of assets (in terms of rights), which is in the form of claims owned by the creditor, and the aspect of liabilities (in terms of liabilities), which is in the form of debts that must be paid by the debtor. In terms of passivity, people distinguish between schuld and haftung. Schuld is the performance obligation (debt), while haftung is the juridical responsibility [12].

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

According to the author, taking into account the description above, where there is a false reason in making a sale and purchase agreement, this affects the validity of the Sale and Purchase Deed which is an authentic deed, resulting in the Sale and Purchase Deed originating from a debt agreement with collateral in the case of a Supreme Court Decision Number 1615K/Pdt/2020 becomes null and void and has no legal force. The cancellation of the sale and purchase deed is due to one of the legal requirements for an authentic deed, namely the material requirements are not met. The validity of an authentic deed is largely determined by the truth regarding the events written in the deed because a deed is a writing that contains a legal event that is then signed by the parties and used as evidence in the event of a dispute.

Mechanism of Return the Land Rights towards Transfer of Land Rights that Canceled by the Court

The Indonesian National Land Agency, Badan Pertanahan Nasional (BPN) is mandated to administer the entire land base of Indonesia according to Agrarian

Law no. 5/1960. This law serves as the basis for defining and classifying land as public (state) land or private land, and for allocating land for large-scale plantations such as rubber, coffee, and tobacco, with a more recent emphasis on converting forest areas into oil palm plantations [13]. During the Dutch colonial rule and the early independence era, land governance in Indonesia was based on indigenous customary tenure (adat), which varied between different regions of the country. One of the most important land governance legislations during the postindependence era was the Basic Agrarian Law (UUPA), which was enacted in 1960 and later complemented by a number of other laws, regulations, and decrees [14].

The National Land Agency (BPN) is a government agency that is given the authority, duties, functions, and responsibilities to organize governance in the agrarian and spatial planning sector as formulated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which is based on the conception that all land is the land of the Indonesian nation as a gift from God Almighty. The stage after the sale and purchase deed for the transfer of land rights is that the Land Deed Making Officer (PPAT) is tasked with registering the transfer of rights to the National Land Agency no later than 7 (seven) working days. From the registration of the transfer of land as a result of the sale and purchase, the resulting output is a land certificate that has been renamed with the name of the new right holder, so that the legal action applies in strong evidence as stated in Article 32 Paragraph (1) of Government Regulation Number 24 of the Year 1997 that:

"A certificate is a letter of proof of rights which is valid as a strong means of proof regarding the physical data and juridical data contained therein, as long as the physical data and juridical data are due to the data contained in the measurement letter and land title book in questio".

Gustav Radbruch put forward 4 (four) fundamental things related to the meaning of legal certainty, namely:
a. That the law is positive, means that the positive law is legislation.
b. That the law is based on facts means that it is based on reality.
c. That facts must be formulated in a clear way so as to avoid mistakes in meaning, besides being easy to implement.
d. Positive law should not be easily changed [15].

The next provision in Article 32 paragraph (2) of Government Regulation Number 24 of 1997 states that "In the event that a certificate has been legally issued on a parcel of land in the name of a person or legal entity who has acquired the land in good faith and actually controls it, then the Others who feel

they have rights over said land can no longer demand the exercise of said rights if within 5 (five) years from the issuance of the certificate they do not submit a written objection to the certificate holder and the Head of the Land Office concerned or do not file a lawsuit against the Court regarding land tenure. or the issuance of the certificate", meaning that the certificate of land rights can still be challenged by other interested parties who feel they have been harmed.

The transfer of land rights is the transfer or transfer of land ownership that originally belonged to a person or group of people to another community. The transfer of land rights regulated in the provisions of Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration states as follows:

"Transfers of land rights and ownership rights to apartment units through buying and selling, exchange, grants, entry into the company and other legal acts of transferring rights, except for the transfer of rights through auctions, can only be registered if proven by a deed drawn up by the PPAT who is authorized according to the provisions of the applicable laws and regulations".

Based on these provisions, the types of transfer of rights can occur due to buying and selling, exchange, grants, income within the company, transfer of rights through auctions, and other transfers of rights. Transfer of other rights can be in the form of distribution of joint rights, granting of building use rights, usufructuary rights, auctions, granting of mortgage rights and inheritance.

The process of land registration related to the transfer of land rights that has been completed and the land certificate issued, if there is falsification in the authentic deed, it can cause material or immaterial losses, if the certificate has changed its name, it must be canceled to provide legal certainty to the holder of the certificate of land rights [16]. This is similar to the Supreme Court decision case number 1615K/Pdt/2020 where the authentic deed which forms the basis of a transfer of land rights is canceled by a court decision that results in the cancellation of the transfer.

Regarding the return of land rights to the transfer of land rights that were canceled by the court, the provisions of Article 55 paragraphs (1) and (2) of Government Regulation Number 24 of 1997 state that:

"(1) The Court Registrar is obligated to notify the Head of the Land Office regarding the contents of all Court decisions which have obtained permanent legal force and decisions of the Head of Court which result in changes to the data concerning land parcels that have been registered or apartment units to be recorded in the relevant land book and as far as possible on certificates and other lists.

(2) The recording as referred to in paragraph (1) can also be carried out at the request of an interested party, based on an official copy of the Court's decision that has permanent legal force or a copy of the decision of the Head of the Court concerned submitted by him to the Head of the Land Office".

Based on the provisions above, when associated with the Supreme Court decision number 1615K/Pdt/2020 which states that the deletion of the Name of the Rightholder in the Certificate of Property Rights (SHM) Number 569 of 2006 from Mariam/Plaintiff to Eni Riyani/Defendant is invalid and has no legal force because the Sale and Purchase Deed which became the basis for the transfer of land rights was declared invalid and null and void, the Court Registrar is obliged to notify the Head of the Dompu District Land Office the contents of all decisions to be recorded in the land book. The registration of the cancellation of the transfer of land rights on the certificate of land rights can also be carried out by interested parties in this case, namely the Plaintiff by submitting an application to the Dompu District Land Office and attaching an official copy of the Court Decision.

Conclusions

1. The validity of the Deed of Sale and Purchase of land rights based on debts according to Article 1868 of the Indonesian Civil Code, a deed in order to be said to be an authentic deed must meet several requirements, namely, First, the deed is drawn up by or before a public official; secondly, the deed must be drawn up in the form determined by law; Third, the public official must have the authority to make deeds. Authentic deed regulated in the Article must meet the formal requirements and material requirements for making an authentic deed so that it can be declared valid and has legal force.

The formal requirements for an authentic deed state that the form of an authentic deed is based on the provisions of the Regulation of the Head of the National Land Agency Number 8 of 2012 if it is a PPAT deed and Article 38 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 if it is a Notary deed. Then the material requirements for an authentic deed state that in making an authentic deed one must fulfill the legal requirements of an agreement as stipulated in Article 1320 of the Indonesian Civil Code.

The case in the Supreme Court Decision Number 1615K/Pdt/2020 states that the Sale and Purchase Deed made by the PPAT which is an authentic deed is declared invalid and null and void. This is because the PPAT made the sale and purchase deed based on the PPJB deed (the deed of the Sale and Purchase Preliminary Agreement) and deed of power of attorney to sell made by a notary. The making of the PPJB deed and the Power of Attorney to Sell by a Notary

do not fulfill the material requirements of an authentic deed, namely the non-fulfillment of elements of a lawful cause as stipulated in Articles 1335 – 1337 of the Indonesian Civil Code, resulting in a Sale and Purchase Deed which is the next stage of the PPJB deed becomes invalid and cancels the transfer of land rights that have been registered with BPN.

2. The mechanism for returning land rights to the transfer of land rights canceled by a court decision in the Supreme Court Decision Case Number 1615K/Pdt/2020 can be carried out by submitting an application to the Land Office and attaching an official copy of the Court Decision which has permanent legal force to delete and return of rights on the land certificate to the previous Name of the Right Holder. This is in accordance with the provisions of Article 55 paragraph (1) and (2) Government Regulation Number 24 of 1997 concerning Land Registration.

Recommendations

Judges in giving legal considerations should explain in more detail the legal aspects that are the source of deciding a case so that there is clarity on the rules for a problem. Then for Notaries and PPATs as public officials who are authorized to make authentic deeds, in carrying out their positions, it is hoped that they will be more careful when there are parties who face having to make a deed.

BPN is expected to be responsive to a problem of transferring land rights so that parties who have been declared legally owning the land that is the object of the dispute do not have to make an application because there is already a court decision that has permanent legal force, moreover, the BPN is also a defendant in the trial and knows the process in the trial. This is an effort to achieve legal certainty related to the land demanded by the rights holders.

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