



Legal Consequences of Cancellation of the Land Sale and Purchase Agreement by the Seller Consequences of Buyer Defaulting

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Abstract: *This research aims to determine the process of canceling a land sale and purchase by the seller because the buyer defaulted, the legal consequences of canceling the land sale and purchase agreement by the seller because the buyer defaulted. The research method used in this research is descriptive analytical. The research results of the sale and purchase agreement process are valid and have binding force since an agreement is reached between the seller and the buyer. The sale and purchase agreement is based on the validity of the contract and other agreement principles. An agreement can be null and void (van rechtswege neiting) or can be canceled (vernietigbaar), if an agreement does not meet the requirements specified in accordance with Article 1320 of the Civil Code, namely if it does not fulfill subjective requirements (they agree to bind themselves, are competent to make an agreement) and objective conditions (a certain thing, a lawful cause). The legal consequences that arise for the buyer if they default, the buyer is required to pay compensation for losses suffered by the seller, pay court costs if sued in court, and fulfill the agreement if it continues.*

Keywords: *Buying and Selling; Agreement; Default service.*

Introduction

An agreement is a legal document that creates a binding relationship between parties, outlining their rights and responsibilities. Under contract law, parties have the freedom to negotiate and agree on terms that differ from standard legal provisions.

A sale and purchase agreement is a specific type of contract that becomes legally binding once the seller and buyer reach a mutual agreement. This agreement signifies a promise to exchange goods for a price. Indonesian law, influenced by Dutch civil law, recognizes three key principles in contract law:

1. **Obligation of Parties:** Both parties are legally obligated to fulfill their agreed-upon duties.
2. **Freedom of Contract:** Parties have the autonomy to negotiate and customize the terms of their agreement.

3. Consensualism: A contract is formed by mutual consent, regardless of whether goods have been delivered or payment has been made.

Article 1458 of the Civil Code stipulates that a sale and purchase agreement is valid when both parties agree on the goods and the price. The seller commits to transferring ownership of the goods, while the buyer agrees to pay the agreed-upon price.

A buying and selling agreement is a contract where one party (the seller) agrees to transfer ownership of an item to another party (the buyer) in exchange for a specific price. Before a final agreement is reached, negotiations often take place to determine the terms of the deal. Once a mutual agreement is made, the sale and purchase agreement becomes legally binding, and both parties are obligated to fulfill their respective obligations. In customary law, a land sale and purchase agreement is a legal act where the seller transfers ownership rights to the land to the buyer in perpetuity. At the time of the transaction, the buyer pays a portion of the agreed-upon price to the seller. This transfer of ownership rights is a significant aspect of land transactions.

Research Method

This research employs an analytical descriptive approach. This method involves describing, examining, and analyzing a legal regulation. The descriptive aspect aims to provide an overview of the characteristics of problems related to land buying and selling, based on applicable laws and regulations.

Result and Discussion

Implementation of the Cancellation of the Land Sale and Purchase Agreement carried out by the Seller due to the Buyer defaulting

Land transactions, such as buying and selling, are common practices in communities. Landowners have the right to use and develop their land as they see fit. To meet their financial needs, they may choose to transfer land ownership through various means, including sale, gift, or exchange. According to Article 5 of Law Number 5 of 1960, national land law is rooted in customary law. Consequently, land buying and selling transactions in Indonesia often follow customary practices. Customary land sale and purchase is characterized by two key principles: 1) Cash Principle The transfer of ownership and payment of the land price occur simultaneously. This doesn't necessarily mean immediate payment, but rather payment in full according to the agreed-upon terms, even if it's through installments. 2) Clear Principle: Land transactions must be conducted openly and transparently. Since the implementation of Government Regulation Number 24 of 1997 and

Government Regulation Number 18 of 2021, land sales and purchases must be carried out before a Notary Public (PPAT) to ensure transparency and legal validity.

This serves two primary functions: 1) **Guaranteeing Legal Validity:** Ensures the accuracy of land ownership and rights, as well as the legality of the land sale and purchase process, adhering to legal principles and transparency. 2) **Publicity and Transparency:** Involves local community representatives, like the village head or district head, as witnesses to the transaction. This ensures public awareness and adherence to the principle of transparency. The cash and clear principles are implemented through a legally binding land sale and purchase deed, signed by both parties and executed before a Notary Public. This document serves as proof of the transfer of ownership and payment of the agreed-upon price. Article 1338 of the Civil Code emphasizes that agreements not only cover explicitly stated terms but also implied obligations based on custom, justice, and law.

The transfer of land ownership occurs through a sale and purchase agreement, where the landowner (seller) hands over the land to the buyer for an agreed-upon price. This transfer signifies a change in ownership. Two key conditions must be met for a valid land sale and purchase: 1) **Material Requirements:** The seller must be the legal owner of the land; If married, both spouses must consent to the sale; The buyer must be legally permitted to own land in Indonesia, typically Indonesian citizens or legally recognized entities; The land being sold must not be subject to any legal disputes; The land must be eligible for ownership transfer, such as land with ownership rights, business use rights, building use rights, or use rights. 2) **Formal Requirements:** The sale and purchase transaction must be conducted before a Notary Public (PPAT) after fulfilling the material requirements.

The agreement, even if not explicitly stated, includes conditions that are customary practices. This agreement is legally binding on both parties. Key points of the sale and purchase agreement: 1) **Sale and Purchase Commitment,** both parties commit to the sale and purchase of the land. 2) **Price and Payment,** the agreed-upon price is paid upon signing the agreement. 3) **Cancellation Terms,** if either party cancels, specific penalties apply (e.g., forfeiture of the down payment or compensation) **Seller's Ownership:** The seller guarantees sole ownership rights. 4) **Mutual Cooperation,** both parties agree to cooperate fully and in good faith. 5) **Cost Allocation,** both parties bear their respective costs. 6) **Tax Responsibility,** the seller pays their taxes, while the buyer pays for their taxes, the sale and purchase deed, and name transfer. 7) **Dispute Resolution,** any disputes will be resolved through the local court.

A sale and purchase agreement can be canceled under certain conditions, either by mutual agreement or by court order. In this case, the buyer's failure to make the second stage of payment constitutes a breach of contract. According to Article 1243 of the Civil Code, the buyer's default entitles the seller to compensation for costs, damages, and interest.

This applies if the buyer continues to default, even after being notified. Specific instances of breach in this context include: Failure to Pay, the buyer doesn't pay the remaining amount as agreed upon. Ignoring Payment Requests, the buyer disregards the seller's requests for immediate payment.

The following actions constitute a breach of contract are : not fulfilling the promised action, performing the action but not as agreed upon, delayed Performance: Performing the action but doing so late, performing an action that is prohibited by the agreement. Article 1266 of the Civil Code states that reciprocal agreements may include conditions for cancellation if one party fails to fulfill their obligations. In such cases, the agreement is not automatically void but requires a court order for annulment. This applies even if the non-fulfillment conditions in the agreement are invalid. Article 1267 of the Civil Code provides the non-breaching party with two options: force the breaching party to fulfill the agreement if still possible and cancel the agreement with seek compensation for damages, costs, losses, and interest.

Legal Consequences of Cancellation of the Land Sale and Purchase Agreement by the Seller Due to the Buyer Defaulting

A land sale and purchase agreement can be complex and often leads to disputes. Therefore, legal regulations are crucial to address potential issues and ensure a smooth transaction. Various contract laws govern these agreements. If an agreement meets all legal requirements, it becomes binding and must be fulfilled. This agreement creates legal obligations for both parties. A land sale and purchase deed notarized by a PPAT can be canceled if it contains legal defects. This cancellation can be initiated by a party with legal grounds to demand such action.

According to statutory regulations and literature, the factors behind the cancellation of a land sale and purchase agreement bound by a sale and purchase deed issued by PPAT are: (a) Failure to fulfill the requirements set by law for this type of formal agreement, which results in the agreement is null and void; (b) Failure to fulfill the legal conditions of the agreement; (c) Fulfillment of the conditions for cancellation of a conditional type of agreement; (d) Cancellation by a third party based on Paulina's action. Under certain conditions, an agreement can result in cancellation, either by the parties or by court order. As a form of agreement, a land sale and purchase agreement contains the rights and obligations of the parties who make it, so that if the matters agreed upon in the sale and purchase agreement are violated or not fulfilled by the parties who make it, then this can be said to have occurred. Before you can carry out a sale and purchase before an authorized official, regarding land, the Land Deed Making Officer (PPAT), the parties who will carry

out the sale and purchase of land rights must fulfill all the requirements regulated by the land sale and purchase.

Requirements regarding the object of sale and purchase, for example the right to the land to be traded is a land right legally owned by the seller as proven by the existence of a land certificate or other valid proof of that right, and the land being traded is not in dispute with another party, and so on. A sale and purchase agreement between parties has been agreed that the seller has an obligation to provide information to the buyer. General provisions regarding an agreement to hand over something are regulated in Article 1235 of the Civil Code and provisions specifically regulated for buying and selling are in Article 1474 of the Civil Code. After an agreement is entered into, the seller has three obligations, including: (1) Maintaining and caring for the property to be handed over to the buyer until delivery; (2) Hand over the goods being sold at the specified time, or if no time has been determined, at the buyer's request; (3) Cover the goods sold. The legal consequences that will arise are the cancellation of the sale and purchase agreement for the seller if there is no good faith from the buyer, then if an agreement is canceled they can make an agreement for the certificate that has been entrusted to the notary to be returned or an agreement between the parties that the payment will be returned at half the price. which has been paid by the buyer.

The issue of unpaid land transactions, where the sale and purchase deed falsely indicates full payment, is a common problem. Such issues often lead to legal disputes. Resolving these disputes often involves legal action, specifically civil lawsuits. This is a last resort after failed attempts at amicable settlement. When filing a lawsuit, the plaintiff (the seller) must carefully consider the legal grounds. The two primary grounds for civil lawsuits are unlawful acts and breach of contract. In cases of unpaid installments or breaches of payment agreements, a breach of contract lawsuit is the appropriate course of action. This is based on Indonesian civil procedural law.

The legal consequences for buyers who have defaulted are the following penalties or sanctions: (a) The buyer is required to pay compensation for losses suffered by the seller (Article 1243 of the Civil Code). These provisions apply to all engagements; (b) Reciprocal (bilateral) agreement, a default by one party gives the other party the right to cancel or terminate the agreement through a judge (Article 1266 of the Civil Code). (c) The risk shifts to the buyer from the moment the default occurs (Article 1237 of the Civil Code). This provision only applies to agreements to provide something; (d) Paying court costs if the case is brought before a judge under Article 181 paragraph 1 HIR (Herziene Inland Reglement). Buyers who are proven to have defaulted will certainly be defeated by the case. These provisions apply to all engagements; (e) Fulfill the agreement if it can still be done, or cancel the agreement accompanied by payment of compensation (Article 1267 of the Civil Code).

This applies to all engagements. Regarding the cancellation of the agreement or also called breaking the agreement, as a second sanction for negligence, or perhaps people who cannot see the nature of the cancellation or breaking the agreement as a punishment.

A land sale and purchase agreement can be canceled under certain conditions, either by mutual agreement or by court order. This agreement outlines the rights and obligations of both parties. If either party breaches the terms of the agreement, it may lead to cancellation. Before proceeding with a land sale and purchase transaction, the parties must fulfill the necessary requirements, including: The seller must have legal ownership of the land, as evidenced by a land certificate or other valid proof. The land must not be involved in any legal disputes. Other specific legal requirements may apply depending on the jurisdiction and the nature of the land.

Conclusion

A legally sound land sale and purchase agreement, whether through a private deed or notarized, is essential to protect against future disputes. This agreement must adhere to the legal requirements outlined in Article 1320 of the Civil Code. The agreement should include: Identities of the parties involved, agreed-upon price and land measurement details, payment terms (e.g., installments or full payment), conditions and consequences for breach of contract, such as penalties or certificate return.

A breach of contract occurs when one party fails to fulfill their obligations, either by not performing, performing incorrectly, performing late, or performing unauthorized actions. The cancellation of a sale and purchase agreement has legal consequences for both parties, including: the seller's right to receive the agreed-upon payment, the buyer's right to receive the purchased land. Cancellation cannot be unilateral and requires mutual agreement or a court order. Bad faith actions by one party may lead to automatic cancellation or legal action.

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