

Legal Analysis Of The Authority Of A Notary Related To Making A Binding Deed Of Sale And Purchase (Case Study: Supreme Court Decision Number 685/Pdt.G/2020/PN Mdn)

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Abstract

This study raised the issue of the deed of binding sale and purchase of land handed down to the heirs of the buyer but the certificate and deed that has been approved by the notary was lost and a few years later there are parties who recognize that the object of land owned by the buyer has changed hands without the knowledge of the first buyer. The case is contained in the Supreme Court Decision No. 685/Pdt.G / 2020 / PN Mdn. The problem arises starting from Jan Willem Roeloffs as Plaintiff I and Pieter Roeloffs as plaintiff II intends to take care of the deeds he has related to the purchase of agricultural land covering an area of 2891 m2 located in Jaranguda Village, Simpang Empat District, Karo Regency, which his late parents did by borrowing the name of an Indonesian citizen, namely on behalf of Betty Boru Saragih as described in title certificate No. 88 dated November 7, 1995 and in the binding sale and purchase by the second party who has completed the payment of the purchase price to the First party of Rp. 10.000.000, - (ten million rupiah) by using deed of sale and purchase No. 6 dated January 12, 2001 as proof of receipt of payment by the First party. However, on September 16, 2006, the plaintiffs ' father died so that the obligation to take care of the Certificate of property rights number 88 dated November 7, 1995 an Betty Boru Saragih fell on the plaintiffs. On February 3, 2007. the plaintiffs asked the notary on behalf of Haji Marwansyah Nasution to take care of and reverse the name of property rights Certificate Number 88 dated November 7, 1995 on behalf of Betty to be on behalf of the plaintiffs by submitting the original document in 2012, there is someone who claims to be the owner of property rights Certificate Number 88 dated November 7, 1995 an Betty Boru Saragih based on The Binding Of Sale and Purchase With Tigor Manurung described in The Binding Of Sale and purchase with the right to repurchase number 228 dated September 23, 2011 made before notary Martua Simanjuntak SH. With these events, The plaintiffs objected and were aggrieved because according to the plaintiffs the original documents submitted to notary Haji Marwansyah Nasution had been abused by the Haji Marwansyah Nasution and Notary Martua Simanjuntak SH by issuing power of Attorney No. 68 dated November 30, 2010 from Betty Boru Saragih to Tigor Manurung made before Notairs Haji Marwansyah Nasution which was used as the basis for the sale and purchase of Tigor belongs to no. 88 dated November 7, 1995 as a result of the actions of Notary Haji Marwansyah Nasution and his team along with Notary Martua Simanjuntak who reversed the name of the Certificate of property rights No. 88 dated November 7, 1995 an Betty Boru Saragih became an Hotman Simanjuntak without the consent and without the knowledge of the plaintiffs who had the original land certificate, the plaintiffs filed a lawsuit against the defendants as stated in Supreme Court decision number 685/Pdt.G / 2020 / PN Mdn. In the decision, the panel of judges granted the plaintiff's claim I and II in part and sentenced the defendant to pay forced money (dwangsom) after this decision has permanent legal force

Keywords : *Binding deed of sale and purchase, notary Authority*

INTRODUCTION

For human life, land has a very important meaning because it has a dual function, namely as a *social asset* and as a *capital asset* . Land as a *social asset* is a means of binding social unity among Indonesian people. Meanwhile, as a *capital asset* , land grows as a very important economic object, not only as a trading material but also as an object of speculation. In addition, land is used and utilized as optimally as possible for the welfare and prosperity of the people and on the other hand its sustainability must be maintained. In land ownership and

management, the law has mandated the Government to carry out Land Registration as regulated in Law Number 5 of 1960 concerning Basic Agrarian Regulations, known as the Basic Agrarian Law or abbreviated as UUPA. On the basis of this law, Government Regulation Number 10 of 1961 concerning Land Registration was issued and later this regulation was replaced by Government Regulation Number 24 of 1997 concerning Land Registration.

To own and manage the land, there is a practice of buying and selling with the object of land rights preceded by an agreement called the Binding Sale and Purchase Agreement or called the PPJB. For the people of Indonesia, the matter of buying and selling is not new, because buying and selling land has been done since ancient times. This sale and purchase is usually done with a sale and purchase agreement. Based on customary law, the sale and purchase agreement is an agreement in nature real, meaning that the delivery of the promised goods is a condition that is absolutely fulfilled for an agreement. This can be interpreted if something has been agreed upon, but in practice the object of the agreement has not been submitted, then the agreement is deemed not to exist or there has been no agreement.

Based on the sale and purchase agreement, a sale and purchase agreement was born, which is a form of agreement prior to the implementation of the sale and purchase of land rights. Article 1458 of the Civil Code states that buying and selling is considered to have taken place between the two parties when they have reached an agreement on the goods and price, even though the goods have not been delivered or the price has not been paid. The requirements regarding the object of sale and purchase in the form of land to be traded are land rights that are legally owned by the seller as evidenced by the existence of a land certificate or other legal evidence regarding the land rights, and the land being traded is not in dispute with other parties. If these conditions have been met, the signing of the sale and purchase deed can be done before the Land Deed Making Officer.

With the deed of sale and purchase agreed upon by both parties, a transfer of land rights arises from the seller to the land buyer as stipulated in Article 37 paragraph (1) PP No. 24 of 1997 which states that "Transfers of land rights and ownership rights to apartment units through buying and selling, swaps, grants, income within the company and other legal actions for transferring rights, except for transferring rights through auctions, can only be registered if proven by a deed. made by the authorized PPAT according to the provisions of the applicable laws and regulations". These provisions indicate that one of the legal actions that causes the transfer of land rights and must be re-registered is the legal action of buying and selling made in the form of a Sale and Purchase Deed (AJB) drawn up by and/or before the Land Deed Making Officer which is commonly referred to as AJB transfers the name and can be used as a means of registering the transfer of land rights. The tool for registering the transfer of land rights is an authentic deed as stipulated in Article 1 PP No. 24 of 1997 and Regulation of the Head of the National Land Agency/Minister of Agrarian Affairs Number 8 of 2013 concerning the form of a PPAT Deed is a deed drawn up by the party carrying out the legal action concerned or his attorney (in the case of buying and selling legal actions attended by his attorney) before the PPAT witnessed by at least 2 (two) witnesses who can testify about the presence of the parties.

The deed of sale and purchase can also be carried out based on the deed of binding sale and purchase agreement in the form of an authentic deed drawn up by a notary. These deeds were made between the parties, namely the land owner as the seller and another party as the buyer before a Notary, so that it is commonly referred to as a real memorandum deed. A Deed of Binding of a Sale and Purchase Agreement is basically evidence indicating the binding of the parties to an agreement regarding prices and goods/objects (land and/or buildings) as the object of the sale and purchase agreement. There is an agreement between the parties regarding the object of the agreement and the land and/or building price has been paid in full by the buyer

and received by the seller, otherwise the seller surrenders the land and/or building to and has been received by the buyer, then the elements of sale and purchase have been fulfilled by and/or before a Notary who fulfills the reasons for making the Deed of Binding Sale and Purchase Agreement after other conditions have been fulfilled as a real deed.

The deed of binding sale and purchase agreement can also be inherited to the heirs of the purchaser of the land rights as stated in Article 7 of the deed of binding sale and purchase which states that "This agreement does not end because one of the parties dies but is hereditary and must be fulfilled by (the) experts heirs of the deceased". This means that if the land buyer dies, then the obligation to pay off and manage the land is delegated to his heirs until the land purchase is declared paid off. The deed of binding sale and purchase which was handed down to the heirs of the purchasers of land rights who had died also occurred in civil cases contained in the Supreme Court Decision Number 685/Pdt.G/2020/PN Mdn which was used as the theme for writing the thesis by the author.

The problem arose from Jan Willem Roeloffs as Plaintiff I and Pieter Roeloffs as Plaintiff II intending to take care of the deeds they owned related to the purchase of agricultural land covering an area of 2891 m² located in Raranguda Village, Simpang Empat District, Karo Regency which was carried out by both of his late parents^{by} borrowing the name of an Indonesian citizen, namely on behalf of Betty Boru Saragih as described in the Property Rights Certificate No. 88 dated November 7, 1995 and in a sale and purchase agreement by a second party who has completed payment with a purchase price to the first party of Rp. 10,000,000.- (ten million rupiah) using the Deed of Sale and Purchase Agreement Number 6 dated 12 January 2001 as proof of receipt of payment by the first party. However, on September 16, 2006, the father of the Plaintiffs passed away, so the obligation to administer the Property Rights Certificate Number 88 dated November 7, 1995 an Betty Boru Saragih fell on the Plaintiffs. As a result of the actions of Notary Haji Marwansyah Nasution and his team along with Notary Martua Simanjuntak who reversed the name of the Certificate of Ownership No. 88 dated November 7, 1995 Betty Boru Saragih became Hotman Simanjuntak without the consent and without the knowledge of the Plaintiffs who have the original land certificates, the Plaintiffs filed a lawsuit against the Defendants as stated in the Supreme Court Decision Number 685/Pdt.G/2020 /PN Mdn. In this decision the Panel of Judges sentenced the Defendants to pay dwangsom in the amount of Rp. 50,000/day if the Defendants are declared negligent in carrying out decisions that have legal force. The formulation of this study is that in the Supreme Court Decision Number 685/Pdt.G/2020/PN Mdn , why did the Panel of Judges reject all of the arguments (exceptions) of Defendants I and II which stated that the Defendants already owned the land object of the dispute so that the Defendants were sentenced to dwangsom . The purpose of this study was to find out the legal basis used by the Panel of Judges who rejected all the arguments (exceptions) of Defendants I and II in the Supreme Court Decision Number 685/Pdt.G/2020/PN Mdn.

RESEARCH METHODS

The type of legal research carried out by the author is a type of normative research, namely legal research carried out by examining library materials which are secondary data and also known as library research, document study because this research is carried out or indicated only on regulations, written or other legal materials. The research approach undertaken by the author is a case approach by examining all laws and regulations as well as a case approach by examining cases related to the legal issues at hand. The technique for collecting legal material that supports and is related to the presentation

of this research is document study (library study), which is a tool for collecting legal material through written legal material using content analysis. This study uses data analysis techniques with deductive logic or processing of legal material in a deductive way, namely research that explains something that is general in nature and then draws it into more specific conclusions.

RESULTS AND DISCUSSION

Legal Considerations of Judges Medan District Court Decision Number 685/Pdt.G/2020/PN.Tpg . In the Exception of Defendant I

The plaintiff's lawsuit must be declared *Niet Ontvankelijke Verklaard*, based on *Obscuur Libel* reasons, with the description as written on the Exception 1 point A to D. After the Panel of Judges studied the Exception and Answers, studied the Replik and Duplik, then according to the law the Plaintiff's lawsuit was clear and clear, the position was has been able to support its Petikum, in which the Plaintiffs filed a lawsuit against Defendants I and Defendants II as well as Co-Defendants I and II, to confirm their rights in connection with the inheritance of the late father and late mother which he had purchased by borrowing the name Betty Boru Saragih and between Betty Boru Saragih and the late Mr Plaintiffs as well as for the interests of the Plaintiffs have entered into a sale and purchase agreement, and Betty Boru Saragih has authorized Mr and Mrs and the Plaintiffs to do everything for land and building objects on the object of the case in accordance with SHM No : 88/Jaranguda an. Betty Boru Saragih, and by Notary Mirwansyah Nasution as Notary The Plaintiff's Family and their parents had been entrusted with keeping these documents for the purpose of the transfer of names, but later it turned out that Betty Boru Saragih and Notary Mirwansyah Nasution had died while the process of transferring names had not been completed. and it was not clear to the Plaintiffs, it turned out that Defendant I and Defendant II as well as Co-Defendant had committed an Unlawful Act in which Defendant I claimed to be the owner of the land object and the building of the bamboo inn according to SHM No: 88/jaranguda an. Betty Boru Saragih, and subsequently the Plaintiffs are trying to fight for their rights to their parents' inheritance by filing a Lawsuit in this case in which the Plaintiffs request that the Medan District Court give a Decision as in the Petikum of their Lawsuit, and if the Panel of Judges is of another opinion, the Plaintiffs ask for a Fair Decision fairly, therefore Defendant's Exception I point 1 A. to D. is not sufficiently grounded in law and must be rejected .

The plaintiff's lawsuit is baseless because Defendant I has no legal relationship with the plaintiffs, with the reasons in point 2 A, B, C. However, according to the assessment of the Panel of Judges, the Plaintiffs can directly be seen by Defendant I as having no legal relationship, but in fact have a relationship of interest, in connection with the recognition of Defendant I to the witnesses of the Plaintiffs, in which Defendant I claims to be the owner of agricultural land and the bamboo inn buildings above it are in accordance with SHM No. 88/Jaranguda an. Betty Boru Saragih, according to the Plaintiffs' version, belongs to the Plaintiffs which are the inheritance of their parents, therefore the Plaintiff's lawsuit is based on law, then Defendant's Exception I point 2 A, B, C has entered into the substantiation of this case, then Exception point 2 must be rejected.

The Plaintiff's lawsuit must be stated as *Niet Ontvankelijke Verklaard*, based on the reason for the Unlawful Act, which provides unclear or vague information as a description of the Exception in point 3 A, B, C, D, E, F. Based on this exception, the Panel of Judges gave consideration that the two parties are at the heart of the lawsuit, whether Defendant I purchased the object of the case from Defendant II, because it was done in good faith, or vice versa, whether Defendant I entered into a legal sale and purchase relationship with Defendant II not perfect, or contains defects, and also from where Defendant II has obtained the rights to the object of the case before selling it to Defendant I, then this Exception has entered into proof of the main case, and must also be proven by Defendant I according to what has been described in his answer, then thus the Defendant's Exception point 3 must be rejected.

The Plaintiff's lawsuit must be declared rejected or at least declared unacceptable, on the grounds that the Plaintiff's Lawsuit is lacking in parties (*Plurium Litis Consortium*). This can be explained that in this case it has been explained that those dealing directly for the interests of the Plaintiffs are other people who are considered to have made a mistake to harm the Plaintiffs, namely Defendants I and

Defendants II, while Betty Boru Saragih is seen as having made no mistakes, however Betty's heirs Boru Saragih namely Harianto has been made a Co-Defendant IV, while Mirwansyah Nasution's mistakes were not prosecuted because Mirwansyah had also died, and there was no indication of his guilt in connection with Defendant I's recognition of ownership of the object of the case according to SHM No 88/Jaranguda An. Betty Boru Saragih said, If there was an error by Mirwansyah Nasution in the conduct of his position as a Notary, he could not be sued against his heirs, therefore the Defendant's Exception I Point 4 must be rejected.

In the Matter

Whereas the Plaintiffs argue that they are children/heirs of: the late: Alm. Pieter Roeloffs who died on September 16 2006 and his wife Almh Adriana Johana Smol who died on November 1 2015 who during his lifetime lived at the Taman Setia Budi Complex Block YY No. 17, Medan, North Sumatra, and the late parents of the Plaintiffs during their lifetime made the Deed of Sale and Purchase Agreement No: 06, date: January 12, 2021, made before a Notary: Mutiara Sahat Purnama Magelina Marpaung SH, in the Deed the first party was Betty Boru Saragih, second party Dr Pieter Roeloffs, Adriana Johana Roeloffs, Drs Jan William Roeloffs, Dr. Pieter Roeloffs, with an agricultural land object of ± 2891. M² which is located in Jaranguda Village, Simpang Empat District, Karo Regency, according to SHM No: 88 dated 7 November 1995, An. Betty Boru Saragih, and the second party paid Rp. 10,000,000, - This PPJB Deed is a receipt and in accordance with Articles 5, 6,7, PPJB No: 6, Plaintiff I and Plaintiff II have full rights to the land and everything on it, and according to the agreement in Article 7 of the PPJB Deed it is written that this agreement does not end because one of the parties dies, but is hereditary and must be fulfilled by the Heirs of the deceased party, therefore the Plaintiffs describe their arguments in full and are ready to prove, and the Plaintiffs request to the Chairperson of the Medan District Court through the Panel of Judges to give a legal verdict as fully stated in the Petitum Primair of their Lawsuit Points 1 to 10 on pages 9 and 10 of their Lawsuit, and in their Subsidiary Petitum the Plaintiffs stated if the Panel of Judges who examined and tried this case held a different opinion The Plaintiffs requested the fairest possible decision (*Ex Aequo Et Bono*).

Whereas for the lawsuit of the Plaintiffs, Defendant II, Co-Defendant I, Co-Defendant II, have been legally and properly summoned, as has been described in the section on the case and the dossiers in the trial in accordance with the relas contained in this case file, according to the law Defendant II, Co-Defendant I and Co-Defendant II, did not use their rights to submit their answers or objections to the Plaintiffs' lawsuit, therefore Defendant II, Co-Defendant I and Co-Defendant II must submit and comply with all the contents of the Medan District Court Decision in this matter.

That between the Plaintiffs and Defendant I, Co-Defendant II and Co-Defendant IV, efforts have been made to settle this case amicably through mediation procedures but were unsuccessful, therefore this case is continued and will be decided in accordance with applicable legal provisions. That even though the object in the form of agricultural land in this case along with the bamboo inn building on it is located in Raranguda Village, formerly Simpang Empat District, Karo Regency, but in relation to the domicile of some of the Defendants or Co-Defendant in Medan City, the Plaintiffs according to law can file their lawsuit in court The Medan District Court and the Medan District Court have the authority to receive, examine, try and decide this case.

Whereas on the Plaintiff's Lawsuit, Defendant I and Co-Defendant filed a rebuttal to part of the Plaintiff's Lawsuit, but Co-Defendant IV submitted an answer that actually supports the Plaintiffs' arguments, but because Defendant I disputes the Plaintiff's arguments, according to the law the Plaintiffs are required first to prove the arguments of the lawsuit.

Legal Basis and Conformity Used by the Panel of Judges in the Decision Supreme Court Number 685/Pdt.G/2020/PN Mdn

In the results of the Panel of Judges' decision as stated in the Supreme Court Decision Number 685/Pdt.G/2020/PN Mdn, the Panel of Judges granted part of the demands of Plaintiff I and II including:

- a. Declare that the Deed of Sale and Purchase Agreement is valid and enforceable Number: 6 dated 12 January 2001 made before Notary Mutiara Sahat Purnama Magelia Marpaung, SH, Notary in Medan.
- b. Declare disabled, invalid and unenforceable Power of Attorney Number: 68 dated 30 November 2010 made before Notary Haji Marwansyah Nasution, SH.
- c. Declared defective, invalid and has no legal force Deed of Sale and Purchase Agreement with Repurchase Rights Number: 28 dated 23 September 2011 made before Notary/PPAT Martua Simanjuntak, SH;
- d. Declare that all letters/agreement/transfer of rights issued by Defendant-I, Defendant-II and Co-Defendant-I and II or issued by other people who obtain rights from Defendant-I, Defendant-II are defective, invalid and have no legal force. and Co-Defendant-I and II related to Certificate of Ownership Number 88 dated 7 November 1995's. Betty Boru Saragih without the knowledge and consent of Plaintiffs-I and II;
- e. Punish Defendant-I and Defendant-II jointly and severally to pay forced money (dwangsom) of Rp. 50,000.- (fifty thousand rupiah) per day if Defendant-I and Defendant-II fail to implement this Decision after having permanent legal force (inkracht van gewijsde);
- f. Declare the legal and valuable confiscation of collateral (conservatoir beslag) carried out by the Medan District Court against the assets belonging to Defendant-I and Defendant-II in the amount of the losses of Plaintiffs-I and II;
Punish Defendants-I, II and Co-Defendant-I to IV to pay the costs incurred in this case.

CONCLUSION

Based on the results of the analysis and discussion, the conclusion of this research is to grant the plaintiffs I and II's lawsuit in part, declaring valid and legally enforceable. . Declare disabled, invalid and unenforceable Power of Attorney Number: 68 dated 30 November 2010 made before Notary Haji Marwansyah Nasution, SH Declared disabled, invalid and unenforceable Deed of Sale and Purchase Agreement with Repurchase Rights Number: 28 dated 23 September 2011 made before Notary/PPAT Martua Simanjuntak, SH Declared defective, invalid and unenforceable for all letters/agreement/transfer of rights issued by Defendant I, Defendant II and Co-Defendant I and Co-Defendant II or issued by other persons others who obtained rights from Defendant I, Defendant II and Co-Defendant I and II in relation to the Certificate of Property Rights Number 88 dated 7 November 1995 An. Betty Boru Saragih without the knowledge and consent of Plaintiffs I and II. Punish the Defendants jointly and severally to pay forced money (dwangsom) in the amount of Rp. 50,000 per day if Defendants I and II fail to implement this Decision after having permanent legal force. Punish the Defendants to pay the costs incurred in this case in the amount of Rp. 6,734,000. Rejected the lawsuits of Plaintiffs I and II for part and the rest.

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