

Sale and Purchase Deed as Evidence in Resolving Land Sale and Purchase Default Disputes

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ABSTRACT

Indonesia as a country of law adheres to the Civil Law system where the source of Law and all rules applied in Indonesia must be based on what has been codified or written in the form of a law. The type of research used is qualitative research derived from legal materials. The research approach method used is laws and regulations and a case approach, with the method of collecting data from literature studies and data analysis using normative juridical analysis. It is divided into several legal orders, one of which we know, namely Civil Law. The problems handled in the Civil Law are individual persons, for example, the sale and purchase of land where two parties are involved in a civil bond. In buying and selling, there is a need for an agreement, then generally there is a Deed of Sale and Purchase (AJB) which is an authentic deed and plays an important role in the process of buying and selling land as a sign that there has been a legal act between the parties. However, in reality, there is still a default in the sale and purchase of land after the issuance of the AJB where the seller cannot fulfill the rights of the buyer as stated in the AJB. If a civil dispute cannot be resolved using mediation, it can be resolved by submitting it to the court. In the settlement of civil disputes in court, there is evidence where evidence must be submitted to strengthen the argument. In this case, the Deed of Sale and Purchase can be used as evidence that is classified as an authentic deed of evidence.

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1. Introduction

Indonesia is a country based on law where everything related to general welfare has been regulated in the law in the form of written regulations. The written law used by Indonesia is a codified law which can have legal certainty (Ariyanti, 2019). In the aspect of life, we know 2 laws, namely criminal law and civil law. According to Prof. Soebekti in his book Principles of Civil Law, civil law in a broad sense, includes all the basic laws that govern the interests of individuals (Sari, 2020). The term civil was first officially accepted and included in Indonesian legislation, namely:

1. The RIS Constitution is contained in Article 15, paragraph 2, Article 144, paragraph (1), Article 156, paragraph (1), and Article 158, paragraph (1).
2. The Constitution is included in Article 15 paragraph (2), Article 101 paragraph (1), and Article 106 paragraph (3) (Bagenda et al., 2023).

Civil law, in a broader context, includes the Civil Code (BW), the Commercial Law Code (WvK), and various other additional laws. Civil law summarizes all material private law, which is a fundamental legal framework that regulates the interests of individuals (Soebekti, 1996). In a narrow sense, civil law includes the Civil Code (BW) and sometimes conflicts with commercial law. According to Soedawi Masjchoen Sofwan, civil law in a broad sense includes commercial law (Sofwan, 1980) in (Hadrian & Hakim Lukman, 2020).

In civil law, there are many problems that are explained in practice. One of the problems of civil law is regarding buying and selling; buying and selling is included in commercial law, where commercial law is also part of civil law. Commercial law regulates the issue of treaties and engagements regulated in Book III of *Burgerlijk Wetboek* (BW) (Annisa, 2023). The act of buying and selling is the most common civil event carried out by individuals to obtain property rights or an object. Most of the items belonging to a person are obtained through handover by the seller (Choliardika, 2018). Buying and selling can occur due to an agreement made between the seller and the buyer, and a valid agreement must meet the conditions of the validity of the agreement.

The conditions for the validity of an agreement are listed in the Civil Code in Article 1320, which are as follows:

- 1) Agree with those who bind themselves.

This is so that the parties who want to enter into an agreement must first agree or agree on the main conditions of the agreement to be made. The word "agree" is invalid if it is given due to error, coercion, or fraud.

- 2) The ability to make an alliance.

Basically, everyone is capable of making a treaty unless otherwise specified by law. According to Article 1330 of the Civil Code, those who are incapable of making agreements are minors and are placed under custody. In addition, women are prohibited by law from making certain agreements. The legal consequence of this inability is that the agreement that has been made can be requested to be cancelled by the judge.

- 3) Something specific.

The object of the agreement must be clear and determinable.

- 4) A cause that is halal.

Regarding the content of the agreement, it should not conflict with public order, decency, and the law (Choliardika, 2018).

After the parties meet the conditions for the validity of the agreement, then the sale and purchase will occur. In buying and selling, after the parties agree on what they agreed on in the sale and purchase event, the parties sign on the Sale and Purchase Deed (AJB). The Deed of Sale and Purchase is a letter officially issued by PPAT and contains information on the new owner and an agreement related to the transfer of property ownership between the parties concerned. The Deed of Sale and Purchase is evidence of a sale and purchase transaction on the ownership of land, houses, or buildings (Hadijah, 2022). With this statement, the Deed of Sale and Purchase can be evidence in Court in the event of a default.

In buying and selling, it is very possible to have a default dispute. A default dispute is a situation where a debtor (the debtor) does not fulfill or perform the achievement as stipulated in an agreement. The elements of default are the existence of a valid agreement, the existence of errors (due to

negligence or intentionality), the existence of losses, and the existence of sanctions, which can be in the form of compensation, resulting in the cancellation of the agreement, the transfer of risks, and the payment of case costs (if the problem reaches the court). As a result of losses incurred by other parties, the party who commits the default must bear the consequences of the other party's demands, which are in the form of: cancellation of the agreement, cancellation of the agreement accompanied by a claim for compensation, and fulfillment of the agreement accompanied by a claim for compensation (Ridwan & Permana, 2022).

The parties to the dispute in the sale and purchase of land in Decision Number 127/Pdt.G/2018/PN.Tjk, namely :

1. The plaintiff, with the initials WH, is the only heir of the late F (with the initials TSN) based on the Deed of Inheritance Rights Number 02/KHW/12/2010. The plaintiff owns a plot of land covering an area of 225 square meters, which is located on Jalan Yos Sudarso, Sukaraja Village, South Telukbetung District, Bandar Lampung City.
2. The Defendants with the initials HW (Defendant I) and PN als Apon (Defendant 2) are husband and wife who want to buy land owned by Plaintiff.
3. The sale and purchase agreement between Plaintiff and the Defendants on the land owned by Plaintiff is Rp 150,000,000 with payment using Bilyet Giro Bank BRI owned by Defendant II, which is one sheet worth Rp 100,000,000 and the rest will be paid by the Defendants if measurements have been made by BPN Lampung.
4. After that, the Parties made a Deed of Sale and Purchase of PPAT of South Teluk Betung District, which was then issued a Deed of Sale and Purchase Number 13/PPAT/TBS/2015 dated August 15, 2015.
5. After the AJB was made, it turned out that Defendant II's business went bankrupt, which as a result, had an impact on its payment to Plaintiff. Because the Defendants are unable to make payments to the Plaintiff on time, the Defendant's actions can be declared in default.

The purpose of this study is to analyze the role of AJB in resolving land purchase and sale default disputes through a normative juridical approach, as well as to identify factors that affect its effectiveness as evidence in the judicial process.

In the lawsuit above, the Plaintiff submitted 5 photocopies of the letter, one of which is *a copy of the Deed of Sale and Purchase*, the evidence *of the copy of the AJB* has been matched and in accordance with the original. Based on the case that has been described as an example that shows that the Deed of Sale and Purchase can be evidence in the Court in a civil dispute over land sale and mortem, therefore the author is interested in making the title "Sale and Purchase Deed (AJB) as Evidence in the Settlement of Land Sale and Mortem Dispute Dispute" in this study.

2. Materials and Method

Data and Information Collection Techniques

- a. Type of Research. The type of research used is qualitative research derived from legal materials. This qualitative research will be described descriptively through explanations arranged in sentences and grammar related to legal research.
- b. Research Approach. The research approach method used in this study is laws and regulations and a case approach.
- c. Source of Legal Materials

- 1) Primary Legal Materials,
 - Civil Code,
 - HIR
- 2) Secondary Legal Materials,
 - Reading books related to the title.
 - Papers related to the title.
 - Scientific writings related to research materials.

Data and Information Processing Engineering

- a. Data Collection Techniques,

In this study, the data collection technique used by the researcher is a literature study. This involves gathering relevant reading materials, books, and documents related to the research object. The literature study aims to comprehensively review existing information and theoretical frameworks pertinent to the research topic. Sources include legal texts, academic journals, official publications, and other credible documents that provide insights and data necessary for the analysis..
- b. Data Analysis Techniques,

The data obtained from the literature study will be analyzed using normative juridical analysis. This method involves a detailed examination of legal norms and principles contained in the collected literature. The analysis will follow these steps: Identification and Collection: Identify and gather all relevant legal documents and literature; Classification, Classify the collected data based on specific legal issues related to the research; Interpretation, Interpret the legal texts to understand the underlying legal norms and principles; Comparative Analysis' Compare the identified legal norms with the practical issues being analyzed to highlight similarities, differences, and implications; Synthesis and Conclusion, Synthesize the findings to draw conclusions that address the research questions, supported by the interpreted legal norms..

3. Results and Discussions

What is the role of the Sale and Purchase Deed (AJB) as evidence in resolving land sale and mortar disputes?

Law in Indonesia is divided into several legal orders: customary law, criminal law, and civil law (Oktavira, 2023). Criminal law is commonly known as public law, and there are civil laws, commonly called private law and customary law, where the rules have been embraced by the local community since ancient times. Each legal order that is embraced and applied has its own procedures and rules in solving a problem. In the criminal law order, the term *ultimum remedium* is known as the last effort in resolving a problem, while in the civil law order, it is stated that when mediation does not reach a consensus, then in order to resolve a case, it should be resolved through litigation through the local district court. In the process of resolving cases through litigation, there are many stages that will be undertaken, starting from the reading of the lawsuit, the defendant's answer, the interlocutory decision, proof, and conclusion to the reading of the final verdict by the panel of judges, all of which are done for the realization of the purpose of the judiciary, namely upholding law and justice (Patawari, 2017, p. 3). As the author has previously described, there are several stages in a civil court hearing, where there is one stage that is very important and plays a very crucial role in every dispute or case held in court, namely, the evidentiary stage. In the stage of proving the settlement of civil

disputes is a stage that must be passed in the trial process, the party who submits a civil lawsuit to the district court at this stage must provide evidence to corroborate the civil lawsuit filed.

To corroborate a civil lawsuit filed by the party filing the lawsuit, it must provide evidence in the evidentiary process in the district court. Evidence is anything that can prove that something really happened. The Civil Law itself regulates evidence and evidence based on the Civil Code Article 1866, namely, written evidence, evidence with witnesses, evidence of suspicion, evidence of confession and evidence of oath. More specifically, what is meant in the provisions of Article 1866 regarding written evidence is a letter/deed, which is further divided into two types, namely, in the form of authentic deeds and deeds underhand. In accordance with the provisions of Article 1868 of the Civil Code, an authentic deed is a deed that is in the form prescribed by the Law and made in the presence of employees in the place where the deed is done later, Article 1874 of the Civil Code explains that a deed under the hand is a deed made by handwriting accompanied by a thumbprint such as registration letters and household papers, the strength of the deed under the hand is further regulated in article 1875 of the Civil Code where the deed under the hand can become an authentic deed if it is recognized based on the law. Evidence with witnesses is regulated in Article 1909 and Article 1912 of the Civil Code; evidence of prejudice is regulated in Articles 1915 and 1916 of the Civil Code; further provisions regarding evidence of confession are regulated in Article 1929 of the Civil Code, and Evidence of oath is regulated in Article 1929 of the Civil Code (Basri & Suryanti, 2023). In the civil legal order, written evidence in the form of a letter under hand or an authentic deed, the type that is included in the authentic deed is a notary deed, a deed made in front of a notary and witnessed in the presence of witnesses.

The Deed of Sale and Purchase, which is often referred to as AJB, is a letter that is proof of a transfer of ownership from the seller to the buyer (BFI, 2023), the making of the Deed of Sale and Purchase (AJB) must be carried out and made by a notary in front of a notary based on the Law that regulates the process of making a notary deed. In Indonesia, the settlement of civil disputes is divided into several stages, starting with the settlement of disputes by family or negotiation, then if it has been carried out but is unsuccessful or does not reach an agreement, the lawsuit can be submitted to the district court, and a trial process is carried out as previously described. The implementation of civil dispute resolution through the judiciary is also regulated in Article 118 Paragraph (1) of the HIR regarding relative competence (Wahyuni, 2023). The stages of civil litigation in resolving civil disputes begin with the submission of a civil lawsuit to the district court by the plaintiff, then the reading of the lawsuit, answers from the defendant, replicas, duplicates and finally the proof stage (Ms Tapaktuan, 2020).

In the proof, as previously explained, in the Civil Law, the provisions regarding evidence are regulated in the Civil Code Article 1866, one of which can be evidence, namely written evidence, more detailed, namely deeds as Articles 1866 and 1874 explain that they are divided into two types, namely authentic deeds and deeds underhand. Which is then included in the authentic deed, which is a deed made by a notary in front of a notary. The Deed of Sale and Purchase or (AJB) is classified as an authentic deed because it contains an event of transfer of property rights through a legal event in the form of a sale and purchase (Marbun, 2022) and made by a notary in the presence of a notary.

The Sale and Purchase Deed (AJB) can be used as evidence that is classified as an authentic deed in the settlement of civil disputes over land sale and purchase defaults, as stated in Decision

127/Pdt.G/2018/PN. TJK The Judge tried and decided the case by considering the evidence provided by the plaintiff in the form of a photocopy of the Sale and Purchase Deed Number 13/PPAT/TBS/2015 dated August 15, 2015, and evidence. Thus, it can be explained that the Deed of Sale and Purchase (AJB) has an important role as evidence in the settlement of civil disputes over the sale and purchase of land in court.

What is the position of the seller's default against the buyer in the Sale and Purchase Act (AJB)?

In the case of land purchase and sale transactions between sellers and buyers, a mutual agreement written in the sale and purchase agreement is required (Fuzain, 2023). The sale and purchase agreement is defined in Article 1457 of the Civil Code, which states that in the event of a sale, the seller and the buyer agree to transfer the right to the goods to the buyer, and the buyer agrees to pay a certain amount of the price of the relevant goods (Langi, 2016). Land sellers and buyers must be involved in the sale of land, as well as notaries or land deed-making officials (PPAT). PPAT is an official who is authorized to make an authentic deed of land rights.

Land purchase and sale transactions must be in accordance with the principle of transparency and cash, which means that it must be clear and transparent about land ownership and the completeness of documents showing ownership. The cash in question is the transfer of land rights in conjunction with all land payments (Fuzain, 2023). According to Article 1458 of the Civil Code, a sale and purchase agreement is still considered to have occurred between two parties after they agree on the goods and the price. This applies even if the goods or price have not been delivered or paid. The sale and purchase agreement provides legal certainty for the right to land which is the object of the agreement, which is specially regulated and made in front of a Notary or PPAT. Thus, the parties are subject to and bind what is agreed in the AJB (Legawantara et al., 2020).

A land sale and purchase agreement can be carried out properly if the parties carry out the sale and purchase agreement without harming one of the parties and carry out their obligations based on the land sale and purchase agreement. However, default or breach of contract occurs if one of the parties fails to comply with the agreement and obligations of the mutually agreed sale and purchase agreement (Fuzain, 2023).

With the signing of the sale and purchase deed between the seller and the buyer, the land use rights are transferred from the seller to the buyer. Land use rights are the subject of the agreement contained in the clause of the sale and purchase deed. In general, the subject matter of the land sale and purchase agreement includes land, buildings, and all equipment, such as electricity and water. After the signing of the AJB. At the time of delivery of the object of the agreement, the seller commits a default by cutting off the electricity and water flow without notifying the buyer, in this case, the seller has caused losses to the buyer.

A thing that is said to be a default is if the obligations that should be carried out are not carried out, an act that violates what has been agreed upon, or something that, according to the agreement, should not be done. In the book *Law of Agreements*, according to Subekti, there are four factors that form default (negligence/forgetfulness) (Subekti, 1987), that is: Not doing what it is capable of doing; Carrying out what is promised but not as promised; Doing what is promised but too late; Doing something that is contrary to the terms of the agreement.

According to Subekti, default has four legal consequences for the party who doing so and causing consequences for the rights of the aggrieved party, as follows:

1. By paying compensation according to the provisions of Article 1423 of the Civil Code.
2. The agreement is null and void, meaning it never existed and can be subject to the law of default. Money and goods must be returned if one party receives something from the other party.

3. Risk transfer: in article 1237 paragraph (2) of the Civil Code, the term risk is the obligation to bear losses in the event of an event beyond the control of one of the parties in the subject matter of the agreement. Furthermore, article 1460 of the Civil Code explains in detail the transfer of risks.
4. Pay the cost of the case, if the case reaches the court, the consequences must be paid. This provision is regulated in Article 181, paragraph (2) of the HIR.

Dispute resolution due to default in the sale and purchase agreement is as follows:

Legally, an agreement according to the Civil Code can arise from the agreement itself, or an agreement can arise because of the law. If it turns out that the legal consequences of the agreement made by both parties are violated, then a lawsuit for default can be filed. Therefore, the compensation is a loss of expected profit. In this case, the disadvantage is that the electrical and water equipment is revoked by the seller after the sale and purchase deed are signed. After signing the sale and purchase deed, the seller does not notify the buyer about the disconnection of electricity and water sources from the house that is the object of the sale. In this case, the seller does not meet all the requirements of the object of the sale and purchase agreement, in the sale and purchase deed, it is explained that the object of sale and purchase is land and houses in all their sequences. The sequence in question is the source of electricity and the source of water. The seller has committed an act that is detrimental to the buyer, and for this act, the seller is obliged to compensate for the loss because he has removed water and electrical equipment without the buyer's knowledge. The seller's actions are an element of default, namely, doing what is promised but not in accordance with expectations.

Based on Article 1267 of the Civil Code, the buyer can sue the seller for default by demanding the fulfillment of the agreement or cancellation accompanied by costs, losses and interest (Subekti, 1987). It can be concluded that the buyer can choose; Demand for fulfillment of agreements; Fulfillment of the agreement accompanied by compensation; Compensation only; Cancellation of agreements; Cancellation is accompanied by compensation.

The buyer can make peace with the seller. Whatever the reason the seller takes this action, it can be considered by the buyer. The seller is dishonest and does not have good faith in the buyer because after paying in full and signing the sale and purchase deed, the seller commits the act without the knowledge of the buyer and the notary. Article 1473 stipulates that the agreement made in the sale and purchase deed imposes an obligation on the seller to provide correct information about the goods purchased. The seller must clearly state what his commitment is. It strictly stipulates that the seller must provide correct information to the buyer without anything being covered up. But in reality, the seller committed a default.

In this case, the buyer gets legal protection against dishonest sellers. The seller has clearly violated the principle of good faith. The principle of good faith is a foundation factor that must be carried out in an agreement, including in the sale and purchase deed. Land in all its sequences is the standard object of land buying and selling.

Settlement of default disputes between the parties can be done by deliberation, by litigation before a judge, or it can also be done by non-litigation (Langi, 2016), as follows:

1. Consultation: in this effort, the parties consult with consultants to get input on the problems of the parties.
2. Negotiation, an attempt to resolve a dispute, involves the parties discussing the issues at hand in a cooperative and open manner.
3. Mediation: This effort is carried out by negotiating with the help of a third party to find a mutually agreed solution.
4. Conciliation: This effort is to negotiate to help the parties to the dispute.
5. Expert Assessment: This effort comes to experts to convey their opinions and considerations in order to resolve disputes that occur.

6. Arbitration is an alternative to resolving civil disputes outside the court based on the agreement of the parties to the dispute.

4. Conclusion

Each legal order in Indonesia has its own rules and procedures in terms of how to handle an action that is considered to violate the rules that have been set. In civil law, what is done to resolve a civil dispute is negotiation or settlement by deliberation, if a consensus is not reached, a lawsuit can be filed with the court. There are stages to settle a civil case. One of the stages is the proof stage, the process by which the party filing the lawsuit must prove its lawsuit by presenting a contract of evidence. In civil law, there are types of evidence in accordance with 1866 of the Civil Code, one of which is written evidence or authentic deeds. AJB can be classified as an authentic deed because it is made in front of a notary, the sale and purchase deed can be evidence in the process of proving land sale and purchase disputes as evidence that there is a transfer of rights from the seller to the buyer.

Buying and selling is an agreement between the seller and the buyer in an agreement, where the validity of the agreement is the fulfillment of subjective conditions and the fulfillment of objective conditions. The sale and purchase deed must be made before an authorized notary, must contain an honest statement from the seller, the seller must provide clear information, and must be signed by both parties. The sale and purchase deed must pay attention to the elements of freedom of contract and the conditions contained in Article 1320 of the Civil Code.

When the parties enter into a sale and purchase agreement, they must bind the sale and purchase. The seller and the buyer must have good faith, which is the main element in the sale and purchase agreement, including the sale and purchase deed. If one party violates the good faith, it will cause losses for the other party. In this dispute-resolution effort, the aggrieved party can negotiate through peaceful or familial channels. If alternative efforts cannot be carried out, legal efforts can be taken.

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