



TORT AS A BASIS FOR CANCELLATION OF A LAND SALE AND PURCHASE AGREEMENT

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Abstract: This study aims to investigate the legal provisions regarding the cancellation of land purchase agreements and the legal implications of unilateral cancellation. The research method used is normative legal research with a literature approach, using 3 types of legal materials: primary, secondary, and tertiary. This study focuses on literature review to analyze the applicable legal rules. The results show that the cancellation of land purchase agreements can be a solution to resolve disputes related to transactions with legal defects. This can be due to either not meeting the legal requirements for the agreement or due to unlawful acts. Based on Article 1338 paragraph (1) of the Indonesian Civil Code, society can make binding agreements, including land purchase agreements. The consequences of unilateral cancellation of land purchase agreements are: 1. Termination of the agreement and refund of the money paid by the buyer to the seller after deducting a percentage from the selling price and imposing a fine. 2. The parties may be subject to fines according to the mutual agreement, which must be paid for each day of delay. The responsibility for the actions of each party is an obligation that must be fulfilled.

Keywords: Cancellation of Land Purchase Agreement, One-sided, Law.

INTRODUCTION

Indonesia is a country that places law in a high place and highly respects the law, this can be seen from the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia) in Article 1 Paragraph (3) which states that the State of Indonesia is a rule of law. With the declaration of Indonesia as a legal state, all community activities in

Indonesia, both from an economic, social and cultural perspective, are regulated through legal norms. Humans themselves as social creatures need legal rules that regulate human behavior in order to create social harmony. This causes the birth of legal actions or legal relationships between humans and other humans (Fartini, 2018).

In the context of canceling a land sale and purchase agreement, the

principle of the rule of law becomes very important. Indonesia, as a country of law, sets high standards in the application of law in various aspects of life. This is reflected in the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia) Article 1 Paragraph (3) which states that the State of Indonesia is a legal state. As a legal state, all community activities are regulated by legal norms to create order and justice. This is where the role of law in regulating land sale and purchase transactions becomes crucial, because the cancellation of agreements based on unlawful acts aims to maintain legal integrity and justice for all parties involved. Thus, the implementation of law in land buying and selling transactions is not only a means of protection, but also an instrument to ensure justice and mutual prosperity.

The application of law in land buying and selling transactions is crucial because the cancellation of agreements based on unlawful acts aims to maintain legal integrity and justice for all parties involved. For example, when one party does not fulfill its obligations in a buying and selling transaction, the law provides a basis for canceling the agreement and returning the parties involved to the position before the transaction was carried out. This is important to ensure that no one is unfairly disadvantaged and that justice can be served.

In addition, the implementation of law in land buying and selling transactions is not only a means of protection, but also an instrument to ensure justice and mutual prosperity.

With strong laws in place and consistently applied, people can have confidence that their transactions are protected by law and they will be treated fairly. This creates a stable business environment and can increase investor confidence in investing in the property sector. So, overall, the application of law in land buying and selling transactions is an integral part of building a just and sustainable legal state.

Tort are actions that are contrary to the laws in force in Indonesia, whether regulated in statutory regulations or recognized legal principles. In the context of a land sale and purchase agreement, unlawful acts can include various actions, such as falsifying documents, fraud, or embezzlement. Cancellation of a land sale and purchase agreement becomes relevant when there is an unlawful act committed by one of the parties involved in the agreement (Prawira et al., 2023).

In Indonesia, there are several laws that regulate unlawful acts and can be the basis for canceling a land sale and purchase agreement. One of them is Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land (UU Mortgage Rights). This law regulates mortgage rights over land and objects related to land. This mortgage right provides guarantees for the implementation of debt obligations by giving creditors the right to collect their debts from the proceeds from the sale of the collateralized land, if the debtor is unable to fulfill his debt obligations. Cancellation of a land sale and purchase agreement can be carried out if there is a violation of the

provisions of the Mortgage Rights Law, for example falsification of documents used in the transaction. For example, if the seller falsifies the land certificate that is the basis of the transaction, this can be a valid reason to cancel the sale and purchase agreement.

Apart from that, Law Number 5 of 1960 concerning Basic Agrarian Principles (UU PPA) is also a reference in canceling land sale and purchase agreements. The PPA Law regulates agrarian principles in Indonesia, including land ownership, use and exploitation. Cancellation of the land sale and purchase agreement can also be carried out if there is a violation of the provisions regulated in the PPA Law. For example, if the land being sold is actually state land which cannot be sold individually according to the PPA Law, then the sale and purchase agreement can be canceled by the party who feels aggrieved. Thus, these two laws provide a strong basis for protecting the interests of the parties in land buying and selling transactions in Indonesia, and need to be protected so that they are not misused.

If there is a violation of the provisions of the PPA Law, such as an unauthorized sale of land or carried out in a way that violates agrarian law, the land sale and purchase agreement can be cancelled. However, there is another point of view that needs to be considered regarding Law Number 5 of 1960 concerning Basic Agrarian Principles (UU PPA) in the context of canceling land sale and purchase agreements.

Although the PPA Law provides a strong legal basis for regulating agrarian matters in Indonesia, the process of canceling land sale and purchase agreements based on violations of the PPA Law can be complicated and time consuming. Sometimes, violations of the PPA Law are difficult to prove concretely in court, especially if the violation relates to subjective aspects of land ownership, use or exploitation. For example, in determining whether a land sale was carried out legally or in violation of agrarian law, careful analysis of the often complex evidence of land ownership and use is required.

In addition, varying interpretations of the provisions of the PPA Law can cause differences of opinion between the parties involved in the agreement. For example, a land sale and purchase agreement may be considered valid by one party but considered to violate the PPA Law by another party due to different interpretations of the terms of the legality of a land transaction. This can prolong the legal process and create uncertainty for the parties involved.

Therefore, while the PPA Law provides an important legal basis for canceling land sale and purchase agreements, it is also necessary to consider a more efficient and clear mechanism for dealing with violations of the PPA Law so that the legal process becomes smoother and fairer for all parties involved. For example, providing more detailed guidance or interpretive guidance on the provisions of the PPA Law could help reduce legal uncertainty and increase the clarity of agreement cancellation procedures.

Furthermore, Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering (UU PPTP) also has a role in canceling land sale and purchase agreements. This law regulates the prevention and eradication of money laundering crimes, which are often related to illegal land transactions or carried out to hide the proceeds of crime. Thus, the use of the PPTP Law as a tool to cancel land sale and purchase agreements that violate agrarian law can provide a clearer and more effective legal basis, reducing the possibility of differences in interpretation, as well as speeding up the overall legal process. (Walujo & Soekorini, 2023).

In the context of land sale and purchase transactions, cancellation of the agreement can be carried out if there are indications that the transaction is involved in a money laundering crime (Nugroho, Pranoto, 2016). By implementing laws that regulate unlawful acts, it is hoped that a healthy and fair legal environment will be created in land buying and selling transactions in Indonesia. The existence of strong legal protection will provide certainty for the parties involved in the transaction, as well as encourage business practices with integrity and in accordance with applicable regulations.

There are several gaps that need to be considered in this research. First, the complexity of the legal process in canceling a land sale and purchase agreement is often time-consuming and complicated, but is still poorly understood in detail. Second, legal uncertainty often influences the decisions of land business actors, but

its impact has not been fully documented. Third, the PPA Law provides an important legal basis but it is not clear how effective it is in preventing violations in land buying and selling transactions. And fourth, legal protection for land business actors still needs to be further evaluated to ensure justice and legal certainty for all parties involved.

This research aims to analyze the complexity of the legal process in canceling land sale and purchase agreements in Indonesia and assess the impact of legal uncertainty on the decisions and actions of land business actors. Apart from that, this research will also evaluate the effectiveness of Law Number 5 of 1960 concerning Basic Agrarian Principles Regulations (UU PPA) in preventing violations in land buying and selling transactions, as well as analyzing the legal protection provided to land business actors in these transactions.

MAIN PROBLEM

Based on the problem mentioned above, the author then formulates main problem discussed in this research, that is :

1. The aim of this research will focus on regulations related to buying and selling land and what things must be considered when buying and selling land in accordance with the regulations set both in terms of laws and government regulations, so that harmony will emerge between *das sein* and *das Sollen*.
2. This research we will discuss what impacts there are if a

violation occurs which causes the land sale and purchase agreement to be invalidated, and how it should be done

METHOD OF RESEARCH

The type of research used is normative legal research, namely research that focuses on norms and this research requires legal material as the main data. Meanwhile, the nature of the research that the author uses is analytical descriptive research in the sense that all legal material that the author obtains will be described and described and then analyzed. The data collection technique uses library document study by carrying out an inventory and identification of a number of statutory regulations, legal documents, legal records, results of scientific work and materials. reading/literature originating from legal science in the form of books, articles, journals and research results that are related to the research raised.

RESEARCH RESULT AND DISCUSSION

1. Legal Regulations Regarding Cancellation of Land Sale and Purchase Contract

People in their social life will always interact with each other in various forms. Relationships between individuals who are legal subjects and between legal entities often constitute a legal relationship which can certainly be categorized as a legal act. An agreement is a legal act that appears to accommodate certain interests of community members (Erlina, 2019).

A relationship between a person and another person gives rise to a legal relationship, which legal relationship has its own criteria and that will give rise to agreements and agreements between them. Which agreement is an oral agreement, private agreement or notarial deed/PPAT so that it is authentic and can be used as evidence if a problem occurs. Even though there is a known principle of freedom of contract, every agreement or engagement must always refer to the regulations that have been determined for that purpose. If the legal relationship occurs because of an agreement between a person and another person regarding land or a house or something else, apart from being related to the regulations of the office of a notary/PPAT if the land or house which is the object of the agreement has a clear and definite status, such as a certificate of ownership, building use rights and so on, then the agreement must be made before the appointed official, namely the Land Deed Drafting Officer (PPAT)(Wahid & Kusuma Dewi, 2019).

Rules like this have been regulated in the Basic Agrarian Law, government regulation Number 10 of 1961 and have been revoked and further refined in Government Regulation Number 24 of 1997 concerning Land Registration and linked to Government Regulation Number 37 of 1998 concerning Regulations on the Position of Officials Making Land Deeds (PPAT). So for every agreement between one person and another or between a person and a legal entity or vice versa, there are legal instruments that regulate it so

that there is no deviation from what has been determined by law (Saraswati, 2021).

Another perspective on land sale and purchase agreements in community legal relations opens up a broad discussion regarding the complexity and need for clear and consistently applied regulations. When viewed from a social contract perspective, agreements are an important mechanism in facilitating harmonious social interactions. In this context, agreements become a means of accommodating the interests of individuals and legal entities, as well as maintaining a balance between rights and obligations. The agreement can be in the form of an oral agreement, private agreement, or notarial deed agreement/PPAT, all of which have different legal force depending on the situation and existing requirements.

However, behind freedom of contract, there is an obligation to comply with applicable legal regulations. This means that every agreement must meet the standards set by law in order to be valid and can be used as a strong legal basis. For example, in the context of a land sale and purchase agreement, the regulations governing the making of the agreement must refer to existing regulations, such as those regulated in the Basic Agrarian Law and relevant government regulations (Mahesa et al., 2023).

The role of the Land Deed Drafting Officer (PPAT) is crucial in maintaining the validity of the land sale and purchase agreement. PPAT acts

as an official appointed to supervise the preparation of land sale and purchase agreements so that they comply with applicable legal provisions (Hartono, F., & Lukman, 2022). First of all, PPAT carries out in-depth verification of the status of the land or house that is the object of the agreement. This includes checking documents such as land certificates, original letters, and land ownership history. This verification is important to ensure that the object being agreed upon is legal land or house and is free from legal problems such as ownership or mortgage disputes. Apart from that, PPAT is also responsible for ensuring that the sale and purchase agreement is drawn up correctly in accordance with applicable legal provisions. This includes ensuring that the agreement contains all the necessary information completely and accurately, such as the identity of the seller and buyer, a description of the land or house object being sold, the selling price, and other agreed terms. By carrying out this process carefully, PPAT can minimize the risk of errors or legal violations in the land sale and purchase agreement. Therefore, PPAT plays a very important role in preventing deviations from the rules established by law, thereby maintaining the validity and security of land buying and selling transactions for all parties involved.

The laws and regulations governing land sale and purchase agreements provide a clear and definite framework for the community in carrying out these transactions. With this framework, it is hoped that a healthy and secure legal environment can be created for all parties involved

in land sale and purchase agreements. Furthermore, these legal rules not only ensure legal certainty, but also protect the interests of the parties, both individuals and legal entities, in land buying and selling transactions. This means that every step of the transaction process, including document requirements, payment, fulfillment of obligations, to dispute resolution, is regulated in detail to ensure a fair and transparent agreement. For example, provisions regarding ownership rights, tax payments, rights and obligations of sellers and buyers, as well as procedures for transferring land ownership rights are regulated in detail. Thus, communities can rely on this legal framework to extend their land transactions without legal confusion or uncertainty, while their rights and obligations are effectively protected.

2. Legal Consequences of Cancellation of a Land Sale and Purchase Agreement Without Mutual Consent

The issue of land in human life has a very important meaning because a large part of human life is very dependent on land. For this reason, the State is obliged to regulate its existence. Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (hereinafter referred to as UUPA), as a derivative of Article 33 paragraph 3 of the 1945 Constitution contains the principle that all rights to land are controlled by the State and the principle that land ownership rights can be revoked for the public interest. Based on Article 2 of the UUPA, the State is the substitute

for all parties who recognize it as the legal authority of the land, in this case the government acts as the party that implements and applies the provisions contained in Article 2 of the UUPA (Ramadhani & Ida Safitri, 2019). The government is the party that is obliged to resolve land tenure rights disputes that arise.

State control over land is divided into two types of control, namely direct control and indirect control. According to Sunarjati Hartono, land is controlled directly by the State and is then referred to briefly as State land (Arnowo, 2021). The indirect State control right is the State's right to control land that has been owned by an individual or is called non-free State land.

The issue of land in human life plays a very important role, because most of human life is very dependent on land. In response to this dependency, the state has an obligation to regulate land management. Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA), which is a derivative of Article 33 paragraph 3 of the 1945 Constitution, contains the principle that all rights to land are owned by the State and that ownership rights to land can be revoked for the public interest. (Mandey, 2022). Article 2 of the UUPA stipulates that the State is the substitute for all parties who claim to be the legal owners of land, and the government acts as the implementer and enforcer of the provisions of Article 2 of the UUPA. The government has the responsibility to resolve disputes over land ownership that may arise.

Land control by the State can be divided into two forms, namely direct and indirect control. Direct control by the State refers to land that is directly owned and controlled by the State. This means that the land is a State-owned asset that is regulated, managed and utilized directly by government institutions. Examples are land for public purposes such as roads, city parks, or government buildings. On the other hand, indirect control by the State, which is often referred to as non-free State land, refers to land owned by individuals or legal entities, but which remains under the supervision and control of the State. These lands are controlled through certain rights granted by the State, such as lease rights or cultivation rights. In this case, the land owner still holds ownership rights, but its use is limited by regulations set by the government. This often happens in the case of land that is used for economic activities or property development. So, land control by the State does not only include direct ownership, but also regulates land owned indirectly by individuals or legal entities (Supriyo, 2024).

This issue has broad and often complex implications in practice. Another point of view that needs to be considered is the socio-economic impact of land management by the State. Although the principle of land control by the State is aimed at the public interest, its implementation often has complex impacts, especially on the people who depend on the land for their livelihoods.

In addition, it is also necessary to consider how these regulations affect

individual rights to land and how they contribute to economic and social development. The presence of the principle that land is the right of the State, in the context of individual rights, presents various challenges. For example, how to balance individual rights to land with the public interest, as well as how to manage the transition from individual ownership to State ownership without sacrificing individual rights.

In an economic context, the impact of land management by the State is also worth considering. This includes how land management policies affect investment, economic growth, and the distribution of wealth. Meanwhile, in a social context, it is necessary to consider how these policies affect social structure and equality in society.

Not only that, the government is also faced with the complex task of enforcing laws related to land ownership and management. This involves law enforcement against violations of UUPA principles, including cancellation of land rights and resolving land disputes (Faradhiba & Subekti, 2023).

Apart from that, there are also technical aspects that need to be considered, such as how the government manages and supervises land use, as well as how land management impacts the environment and ecological sustainability. It also covers how the government implements land redistribution to ensure fair and sustainable land use.

Conclusion about it, land issues in the legal context have many complex and

varied points of view. From a social, economic and legal perspective, the implementation of UUPA principles and land control by the State has a significant impact on society and the economy. Therefore, a deep understanding and careful approach is needed in regulating and implementing laws related to land ownership and management.

CONCLUSION

The conclusion of an unlawful act as a basis for canceling a land sale and purchase agreement, there are several important implications to consider. Law enforcement against unlawful acts has a very vital role in maintaining legal integrity and justice in land buying and selling transactions.

First, the importance of law in protecting the interests of the parties involved in a land sale and purchase agreement. Unlawful acts, such as falsifying documents, fraud or embezzlement, can harm one of the parties to the transaction. By referring to Law Number 4 of 1996 concerning Mortgage Rights on Land and Law Number 5 of 1960 concerning Basic Agrarian Principles Regulations, the party who is the victim of an unlawful act has a legal basis for canceling the land sale and purchase agreement.

Second, the cancellation of land sale and purchase agreements based on unlawful acts also emphasizes the importance of legal certainty in property transactions. The existence of clear and effective laws in dealing with violations in land transactions ensures that land business actors can operate in an orderly and fair environment.

Third, from a social and economic perspective, canceling land sale and

purchase agreements based on unlawful acts contributes to consumer protection and economic stability. By punishing perpetrators who commit acts against the law, people can have more confidence and feel safe when carrying out land buying and selling transactions. Apart from that, implementing this law can also prevent economic instability caused by fraudulent practices in the property market.

Fourth, unlawful acts as a basis for canceling a land sale and purchase agreement also emphasize the importance of justice in law. Punishment of perpetrators who commit unlawful acts ensures that every individual or entity in society is subject to the same rules. This creates a fair environment for all parties involved in land buying and selling transactions.

In conclusion, unlawful acts have a significant impact in canceling land sale and purchase agreements. Effective law enforcement against unlawful acts ensures legal protection for land business actors, economic stability, legal certainty and justice in society. Thus, the role of law in dealing with unlawful acts is very important to maintain the integrity of the legal system and support sustainable growth in the property industry.

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