

Legal protection in the sale and purchase of land based on the element of undue influence

Auva Moeda Pratama¹, Yusri², Siti Rahmah²

¹ Faculty of Law, University Syiah Kuala, Banda Aceh, Indonesia

² Lecturers, Faculty of Law, University Syiah Kuala, Banda Aceh, Indonesia

Abstract

PPAT is authorized to transfer land rights by making a Sale and Purchase Deed, as regulated in Article 2 of Government Regulation of the Republic of Indonesia Number 37 of 1998 concerning Land Deed Making Officials and Article 37, paragraph (1) of Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land Registration. the PPAT's conduct in creating the Deed of Sale and Purchase must be consistent with the subjective conditions of the agreement and must not contain a defect of will. This is to ensure that no purchases or sales of land are conducted with undue influence, as experienced by the plaintiff in the Supreme Court Decision of the Republic of Indonesia Number 106 PK/Pdt/2020.

The purpose of this research is to determine the legal protection of the parties in the sale and purchase of land before PPAT based on the element of undue influence. This study uses normative legal research with research methods that are the statute approach, the case approach, and the comparative approach. Data were collected by reviewing library resources or secondary data.

The results of the research show that the parties don't receive preventive legal protection and only receive repressive protection. This is due to the lack of legislation in Indonesia that significantly regulates undue influence. The parties only receive repressive legal protection by filing a lawsuit with the court.

Keywords: Legal protection, undue influence, sale and purchase of land

Introduction

A sale and purchase is an agreement by which one party binds itself to hand over an object and the other party pays the agreed price as specified in Article 1457 of the Indonesian Civil Code. Thus, in a sale and purchase, there are two parties, namely the seller and the buyer. In this case, the seller promises and binds himself to hand over his rights to the land in question to the buyer, while the buyer promises and binds himself to pay the agreed price. ^[1]

A sale and buy agreement might be verbal or written. A land sale and purchase agreement is usually in writing, in the form of an authentic deed signed before a land deed official (PPAT). Land sale and purchase is defined as a legal act in which the seller transfers ownership rights to the buyer, who then submits the price to the seller. ^[2]

PPAT is authorized to transfer land rights by making a Sale and Purchase Deed, as regulated in Article 2 of Government Regulation of the Republic of Indonesia Number 37 of 1998 concerning Land Deed Making Officials and Article 37, paragraph (1) of Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land Registration. ^[3] The making of the Deed of Sale and Purchase must be attended by the parties carrying out the relevant legal act (seller and buyer) or a person authorized by them with a written power of attorney in accordance with applicable laws and regulations. ^[4] The sale and purchase deed must be based on the provisions regulated in Book III of the Indonesian Civil Code concerning the law of contract. An agreement can be said to be valid and legally binding if it meets certain requirements. The requirements for a valid agreement are regulated in Article 1320 of the Indonesian Civil Code, namely the agreement of the parties who bind themselves; legal capacity to make an obligation; a specific

subject matter; and a permitted cause/consideration. The most basic condition for an agreement is its existence. ^[5]

The parties struck an agreement on the basis of being equally powerful and having the same bargaining position. However, the parties are occasionally in an unequal condition, allowing the stronger party to enforce its will for personal gain, resulting in one-sided or unjust agreement content and terms. The imbalance in the parties' position in an agreement that is not based on free will or defect of will. ^[5]

According to Article 1321 of the Indonesian Civil Code, a justification for canceling an agreement is given due to a mistake (*dwaling*) or obtained by force (*dwang*) or fraud (*bedrog*). However, as Dutch contract law has evolved, one sort of defect of will has emerged: undue influence (*misbruik van omstandigheden*), as regulated in Book 3, Article 44, paragraph (1), and Book 6, Article 228, paragraph (1), of the new Dutch Civil Code, or *Nieuw Burgerlijk Wetboek*. Undue influence is categorized as a defect of will because it is more in accordance with the content and nature by itself. It has no bearing on the agreement's objective criteria but does have an impact on its subjective conditions. ^[6]

The occurrence of undue influence involves the following elements ^[7]

1. The strong party can force his will on the weak party so that the weak party simply follows the terms of the agreement submitted to him; and
2. This power is employed to compel the will to achieve his benefit.

As a result, the PPAT's conduct in creating the Deed of Sale and Purchase must be consistent with the subjective

conditions of the agreement and must not contain a defect of will. This is to ensure that no purchases or sales of land are conducted with undue influence, as experienced by the plaintiff in the Supreme Court Decision of the Republic of Indonesia Number 106 PK/Pdt/2020.

Plaintiff borrowed Rp. 2,000,000,000 (two billion rupiah) from Defendant. However, the Plaintiff was unable to repay his debt, so the Defendant took advantage of the Plaintiff's condition and difficult economic situation. The Defendant persuaded the Plaintiff to sign the Binding Sale and Purchase Deed for a parcel of land and a building, which is identified by Building Rights Title Certificate Number 621/Petukangan Utara Sub-district, Pesanggrahan District, South Jakarta Administrative City, Special Capital Region of Jakarta Province, and was registered in the plaintiff's name. The Defendant promised the Plaintiff that the signature of the Binding Sale and Purchase Deed (PPJB) was only to strengthen the debt position and that ownership would not be transferred.

On July 11, 2008, the Plaintiff signed the Binding Sale and Purchase Deed under pressure in front of the Notary. After signing the Binding Sale and Purchase Deed, it was revealed that it contained irrevocable power of attorney, as outlined in Article 3 of the Binding Sale and Purchase Deed. As a result, on August 20, 2008, Defendant entered into a Deed of Sale and Purchase in front of PPAT, standing as both the seller and buyer. The Defendant transferred the rights related to the Building Use Rights Certificate and upgraded its status to a Freehold Certificate.

According to the description above, there is a Deed of Sale and Purchase that contains elements of undue influence resulting in the transfer of land rights. PPAT, in carrying out his position, must work with complete responsibility, independence, honesty, and impartiality. This is regulated in Article 3, letter f of the Code of Ethics of the Indonesian Association of Land Deed Officials Number 112/KEP-4.1/IV/2017 (IPPAT Code of Ethics).

Materials and Methods

This study uses normative legal research conducted by reviewing library resources or secondary data.^[8] The research methods used are the statute approach, the case approach, and the comparative approach. This study employs a qualitative legal analysis method, specifically an in-depth evaluation of legal sources, as is customary in normative legal research. This study used qualitative data analysis. Qualitative data analysis is data analysis that follows norms and regulations to solve research issues. After the analysis is completed, the facts will be described or explained deductively, with an emphasis on reasoning that begins with broad concepts and narrows down to specific ones.^[9]

Results and Discussion

Legal protection is a guarantee that a person will get what is right and do what is required.^[10] Legal protection refers to the government's efforts to ensure legal certainty, which aims to protect citizens' rights and to impose sanctions on those who do violate them in accordance with current legislation.^[11] According to Sudikno Mertokusumo, the application of legal protection must balance 3 (three)

elements: certainty (*rechtssicherheit*), utility (*zweckmassigkeit*), and justice (*gerechtigkeits*).^[12] Legal protection for parties involved in a land sale and purchase might take the following forms

a. Preventive Legal Protection

Preventive legal protection is a type of legal safeguard that aims to avoid legal issues from emerging. This provision allows citizens to express their objections to government decisions before they become final. Thus, this legal safeguard aims to prevent disputes and is essential for government action based on freedom of action.^[10]

Preventive legal protection for the parties in a land sale and purchase is regulated in Article 1338 of the Civil Code, which states that all agreements validly made shall be the law of those who made them. An agreement, including an AJB, must be valid in line with Article 1320 of the Indonesian Civil Code. AJB, as an authentic deed, has perfect evidential authority under Article 1870 of the Indonesian Civil Code. According to the article, an authentic deed shall provide conclusive evidence of the contents provided for the parties, their successors, or parties with rights therein.

Based on Article 19, paragraph (1), of the Indonesian Basic Agrarian Law, it states that the government carries out land registration throughout the territory of the Republic of Indonesia to ensure legal certainty. This also complies with Article 3 of Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land Registration, which states land registration is carried out to provide legal certainty and protection to the holders of land rights, units of apartment buildings, and other registered rights, so that they can easily prove themselves. A person's ownership of land rights, including their criteria, as well as any transfer, deletion, or burden with other rights, must be recorded so that it can serve as a powerful means of proof, as regulated in Articles 23, 32, and 38 of the Indonesian Basic Agrarian Law.

A person who has registered his land will receive a certificate from the Land Office. According to Article 32, paragraph (1) of Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land Registration, a certificate is a legal document that acts as solid evidence of the physical and juridical data mentioned in it, as long as the data match what is represented in the relevant survey record and land book. Land registrations submitted by the rights holder must be publicly displayed for thirty days for systematic land registration and for sixty days for sporadic land registration.^[13] This period allows interested parties to file any objections.

The sale and purchase of land can only be registered if proven by a deed executed before the PPAT.^[14] The deed must be signed by all parties involved in the sale and purchase, as well as 2 (two) witnesses.^[15] The PPAT must refuse to make a deed if one or more of the parties acts under an absolute power of attorney.^[16]

Preventive legal protection in the case of undue influence in land sale and purchase is not regulated significantly. As a result, the Plaintiff encountered the transfer of land rights with elements of undue influence. The land with the Building Use Rights Certificate belonging to the Plaintiff

was transferred to the Defendant due to the AJB being made based on absolute power of attorney.

b. Repressive Legal Protection

Repressive legal protection is intended to settle issues by returning to the situation that existed prior to the violation of legal norms. Repressive legal protection takes the form of a claim for rights by a party perceived to be disadvantaged. This may happen if one side believes their interests are being harmed.^[10]

Article 1321 of the Indonesian Civil Code provides limited repressive legal protection concerning a defect of will. Undue influence as a defect of will is also regulated in the Jurisprudence of the Supreme Court of the Republic of Indonesia Number 3666 K/Pdt/1992, dated October 26, 1994, and the Jurisprudence of the Supreme Court of the Republic of Indonesia Number 275 K/Pdt/2004, dated August 29, 2005. The Jurisprudence of the Supreme Court of the Republic of Indonesia states as follows

1. The Jurisprudence of the Supreme Court of the Republic of Indonesia Number 3666 K/Pdt/1992, dated October 26, 1994, states that if one party is in financial difficulty and is used to carry out legal acts that are detrimental to him or benefit another party, the other party has committed an act of undue influence, and the legal act is declared void. In relation to the case in the Supreme Court Decision of the Republic of Indonesia Number 106 PK/Pdt/2020, the Plaintiff signed the Binding Sale and Purchase Deed under economic duress, as they were burdened with debt. This act caused harm to the Plaintiff and benefited the Defendant.
2. The Jurisprudence of the Supreme Court of the Republic of Indonesia Number 275 K/PDT/2004, dated August 29, 2005, states that a debt-based sale and purchase agreement is considered a fictitious agreement in which the indebted party or seller is in a weak and pressured position, constituting economic duress. When related to the present case, the legal act of sale and purchase was based on a debt relationship between the Plaintiff and Defendant. The Plaintiff's weak condition was exploited by the Defendant, who used the situation to persuade the Plaintiff to sign a Binding Sale and Purchase Deed containing a clause of irrevocable power of attorney. The Defendant then used the Binding Sale and Purchase Deed to sign the Deed of Sale and Purchase before the PPAT and transferred the rights to the land to himself.

Repressive legal protection is also regulated by Article 27 and Article 32, paragraph (2), of Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land Registration. A party who suffers losses as a result of a land transfer with an AJB made before the PPAT may register an objection to be resolved by deliberation and consensus.^[17] If deliberation fails to address the issue, a lawsuit may be launched in court.^[18] Objections or lawsuits to the court can be filed within a period of 5 (five) years from the issuance of the certificate. If the period has expired, then the harmed party cannot claim their rights back.^[19]

Conclusion

The parties don't receive preventive legal protection and only receive repressive protection. This is due to the lack of legislation in Indonesia that significantly regulates undue influence. The parties only receive repressive legal protection by filing a lawsuit with the court. In the case of Supreme Court Decision of the Republic of Indonesia Number 106 PK/Pdt/2020, the plaintiff received repressive legal protection because the defendant was proven to have carried out a land sale and purchase with elements of undue influence by taking advantage of the plaintiff's economic situation, and the AJB was declared void. It is recommended that the Indonesian government or related agencies enact laws prohibiting undue influence as a basis for canceling an agreement so that judges can refer to statutory regulations when making decisions in order to protect the parties and achieve the legal objective of legal certainty.

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