

The Validity of The Sale And Purchase Deed Was Not Signed in The Presence of Land Deed Officer

Titis Giriarti¹, Tri Lisiani Prihatinah², Sri Wahyu Handayani³

¹ Faculty of Law, Universitas Jenderal Soedirman, Indonesia.

E-mail: titisgiriatri@gmail.com

² Faculty of Law, Universitas Jenderal Soedirman, Indonesia.

E-mail: tlisiani@yahoo.com

³ Faculty of Law, Universitas Jenderal Soedirman, Indonesia.

E-mail: sriwahyuhandayani89@gmail.com

Abstract: The sale and purchase deed is proof that the sale and purchase process has been carried out regarding land rights or ownership rights to apartment units made by land deed officer. In making sale and purchase deed is must be attended by the parties carrying out the legal action concerned or their authorized person and land deed officer. The problem raised in this research is the validity of the sale and purchase deed whose signing was not in the presence the land deed officer. The research aims to analyze the validity of deeds of sale not executed in the presence of a land deed officer and the responsibility of the land deed officer towards the aggrieved party in making such deeds. Deeds of sale that are not executed in the presence of a land deed officer are considered illegitimate because they fail to satisfy both the formal criteria. The responsibility of the land deed officer towards the aggrieved party regarding the making of deeds of sale takes the form of civil liability, responsible to compensate for the damages caused by their fault and materially compensate for the losses suffered.

Keywords: Notary Law; Sale And Purchase Deed; Land Deed Officer

1. Introduction

The Law number 4 of 1996 on mortgage rights for land and related property, following article 29 of the said law, rendered the mortgage guarantee and creditverband institutions no longer effective. as a result, it concluded that mortgage rights serve as a robust security institution encumbering property rights on land. the definition of mortgage rights refers to a proprietary security interest imposed on property rights over land as defined by the mortgage rights law, either with or without other property that constitutes an integral part of the land itself, to settle specific debts, thus affording priority status to particular creditors over.¹

A proprietary security interest is the creditor's entitlement to prioritize settling their debt over other creditors. On the other hand, personal security interest is a personal guarantee given by a debtor for specific debts. Mortgage Rights, as defined in Law No. 5 of 1960 on Basic Agrarian Principles, are security rights encumbered on land rights, with

¹ Tampil Anshari Siregar, *Advanced Deepening of the Basic of Agrarian*, (Medan: Bangsa Press,2005), 256.

or without other property elements inherently linked to the land itself, to settle specific debts, providing a preferential position to specific creditors over others.²

The birth of Mortgage Rights heralds the dawn of a new era in Indonesia's banking security system.³ According to Law No. 5 of 1960 on Basic Agrarian Principles, mortgage rights are security rights encumbered on land rights. In this context, security institutions (Mortgage Rights) substantially support the economic development era, particularly for entrepreneurs seeking credit to expand their businesses. Moreover, economic and trade growth, backed by increased demand for credit and credit facility provisions, necessitates security for the safety of credit disbursement.⁴

Commercial banks must base their confidence on in-depth analysis or good faith regarding the debtor's ability and intention to repay their debt or meet the agreed-upon financing terms. When extending credit facilities, one crucial aspect that the Bank carefully examines is the collateral provided by the debtor. This protection renders the Bank the holder of a mortgage right. However, a problem arises when someone acquires ownership through unlawful means.⁵

It is mandatory to transfer rights and other derivative agreements, such as credit agreements and mortgage agreements, through a Notary or Land Deed Official (PPAT). Additionally, according to Government Regulation 24 of 1997, every agreement involving the transfer of land rights, granting new rights to land, using land as collateral, or borrowing money with land rights as collateral must be documented in a deed prepared by a designated official. Furthermore, legal provisions govern agreements between individuals or between individuals and legal entities to assure legal compliance and prevent infractions. However, it is essential to note that even though notarial deeds are considered strong evidence, they can still be invalidated.

The land sale and purchase deed, as stated in Articles 1457 and 1458 of the Indonesian Civil Code, has evolved since the enactment of the Agrarian Law. It is, instead, a legal act of transferring ownership rights in a concrete and tangible manner, as further regulated in the Implementing Regulation of the Agrarian Law, namely Government Regulation No. 10 of 1961, which was updated by Government Regulation No. 24 of 1997. This regulation requires that a qualified Land Deed Official prepares a deed to document the transfer of land rights following the prevailing laws and regulations.

Based on the previously outlined details, this study examines a real-life case, Supreme Court Decision Number 305K/Pdt/2017, which holds legal validity (Eintracht). Initially, Plaintiff (NS) rightfully owned the land and building in the North Birobuli village, per Certificate HM No. 02570 issued on May 15, 2012. Plaintiff (NS) assigned Defendant II (MZ) the task of obtaining the certificate. However, before Defendant II (MZ) could deliver the certificate to Plaintiff (NS), Defendants I (IKG) and II (MZ) devised a scheme to

² Purwahid Patrik dan Kashadi, *Law of Guarantee*, (Semarang: Diponegoro University, 2008), 51.

³ Hendri Budiyo, "Burdening of Rights of Building Use with a Change in Status of Ownership", *Repertorium Journal*, no. 3 (2015): 33-26

⁴ St. Nurjannah, "The Existence of Mortgage Rights as a Land of Ownership Security Institution (Philosophical Review)", *Jurisprudential Journal*, vol 2 no.1 (2018): 195-2012

⁵ Dian Pertiwi, "Legal Protection for Mortgage Rights Holder Whose Objects are Controlled by Third Parties Based on Lease Agreements", *Scientific Journal of Surabaya University Student*, vol.2 no.2 (2013): 3-21

use the certificate in Plaintiff (NS)'s name to secure financing for their business venture. They accomplished this by offering the certificate as collateral to a bank, specifically Plaintiff IV (Bank), which took place without Plaintiff (NS)'s knowledge.

The Plaintiff (NS) has filed a lawsuit to reclaim certificate HM No. 02570, initially issued in their name on May 15, 2012. Defendants include Defendant I (IKG), Defendant II (MZ), Defendant III (F), Defendant IV (Bank), and Defendant V (BPN P). The basis for this action is that they engaged in unlawful conduct by changing the registered owner's name on the certificate and using it as collateral in a bank under Credit Agreement No. RO.PLU/2012/184/BNI GRIYA, entered on July 25, 2012, between Defendant I (IKG) and Defendant IV (Bank). As a result, the Plaintiff (NS) has suffered material and immaterial losses. Therefore, it is imperative to nullify other legal events, given that the sale and purchase agreement was not executed in the presence of a Land Deed Official or did not comply with the applicable legal provisions.

In the judgment of the District Court Number 68/Pdt.G/2015/PN, the panel of judges ruled that the deed of sale and mortgage were invalid. This was due to the deed of sale, executed by the land deed official, failing to adequately reflect the actual circumstances and the absence of authorization from the Plaintiff. Consequently, the District Court declared the deed of sale and mortgage invalid. The Defendant felt aggrieved with the verdict and filed an appeal.

Following that, the High Court in Palu considered the case and held the view that District Court Decision Number 68/Pdt.G/2015/PN Palu was correct and accurate. The Palu Court had thoroughly evaluated all the arguments presented by the Appellant in their appeal memorandum, resulting in the deed of sale and mortgage being deemed invalid. Nonetheless, the Defendant remained dissatisfied and opted to file a Cassation with the Supreme Court.

In the Supreme Court Decision Number 305 K/Pdt/2017 case, the Supreme Court ruled that the deed of sale and mortgage were lawful. This ruling was based on the Plaintiff's acknowledgment of their signature on the deed of sale without coercion from any party. The Supreme Court upheld the deed of sale and mortgage in this judgment. Nevertheless, the Plaintiff felt aggrieved and submitted a request for reconsideration to the Supreme Court. In the review, the court concluded that the deed of sale and mortgage was lawful, mainly since the Bank, as the holder of the mortgage right, had acted in good faith and deserved protection.

In the verdict of the district court number 68/pdt.g/2015/pn. pal, upheld by the high court decision number 15/pdt/2016/pt. pal, it was declared that plaintiff's lawsuit regarding the deed of sale and the encumbrance certificate conducted in the presence of defendant iii is invalid. the ownership certificate was returned to the plaintiff, rendering the legal actions taken by defendants I, II, and III contrary to the law. however, in contrast, the cassation decision supreme court number 303/k/pdt/2017 and the review decision number 627/pk/pdt/2018 declared that all of the plaintiff's claims were dismissed, making all the aforementioned legal actions valid and in accordance with the law.

From the above discussion, the Supreme Court's ruling (Cassation), reinforced by the Judicial Review, ruled that the act of signing the deed of sale between Plaintiff and

Defendant I, without the presence of a Land Deed Official, is legally lawful. This goes against the formal requirement for the legal validity of a deed of sale. Therefore, in the first problem statement, the author will examine the validity of a deed of sale not executed in the presence of a Land Deed Official. Furthermore, the existence of a deed of sale not executed in the presence of a Land Deed Official has resulted in both material and immaterial losses for the Plaintiff. Plaintiff feels deceived because the creation of the deed of sale did not involve the presence of a Land Deed Official and did not include the reading or explanation of its contents. In the second problem statement, so the authors formulate the problem regarding case above, how is validity sale and purchase deed was not signed in the presence of land deed officer and what is the responsibility of land deed official toward the affected party in the creation of a deed of sale?

2. Method

In this study using empirical juridical research that uses considerations from the starting point of analysis with facts that occur in the field in the form of an act in carrying out a judge's decision that does not refer to the suitability of applicable laws and regulations. The approach used in this research is the case approach and the statute approach. The case approach is employed to understand the application of legal norms/principles in legal practice. It involves examining specific cases to analyze how legal rules are applied and interpreted in real-life situations. On the other hand, the statute approach focuses on studying and analyzing legal statutes and regulations themselves to gain insights into their content, intent, and implications. Both approaches contribute to a comprehensive understanding of the research subject from different angles.

3. Validity sale and purchase deed was not signed in the presence of land deed officer

An agreement is an act that occurs between one or two or more individuals binding themselves to another person, in which both parties mutually bind themselves. The term "Agreement" is used as a translation of "overeenkomst" since a valid "overeenkomst" requires "toestemming," which can be translated as consent. Meanwhile, the term "Agreement" itself, a legal relationship between two or more parties based on their mutual agreement to establish legal consequences, which result in obligations among the parties involved.⁶

According R. Setiawan definition of an agreement is as follows: "An act of law, in which one or more individuals bind themselves or mutually bind themselves to one or more individuals." Defines an agreement as a legal relationship of wealth or property between two or more individuals, granting one party the right to obtain a performance while obligating the other party to execute the performance.⁷

A valid agreement must meet the conditions specified in Article 1320 of the Indonesian Civil Code. Based on Article 1320 of the Indonesian Civil Code, the legislators provide a

⁶ Soedikno Mertokusumo, *Understanding Law*, (Yogyakarta: Liberty, 1999). 110.

⁷ Yahya Harahap, M, *Aspects of Contract Law*, (Bandung: Alumnus, 1982). 6

general guideline for how a legitimate agreement is formed. These conditions can include both the parties (subjects) and the object of the agreement. All of this is regulated in Article 1320 of the Indonesian Civil Code and beyond, in Part Two of Book III. The conditions for the formation of a valid agreement include the following, as stated in Article 1320 of the Indonesian Civil Code:

- 1) Agreement of the parties
- 2) Capacity to enter into an agreement
- 3) A specific subject matter
- 4) A lawful cause

Based on the data in the Supreme Court's Cassation Decision, namely Decision Number 305 K/Pdt/2017 upheld by the Supreme Court's Cassation Decision in Decision Number 627 PK/Pdt/2018, the author analyzes that the considerations of the Supreme Court's Cassation Decision are not accurate. This is because the Plaintiff acknowledged the validity of the signature. However, the Plaintiff thought the signature was to register the certificate, not for a sales agreement. Therefore, the Plaintiff agreed to sign the document based on misleading information.

Based on Article 1320 of the Indonesian Civil Code, there is an element of an agreement that needs to be fulfilled, namely the parties' agreement. The agreement in an agreement is regulated in Article 1321 of the Indonesian Civil Code, which states that an agreement is not valid if it is made due to error, coercion, or fraud. In this case, the Plaintiff (NS) was provided with false information that the document to be signed was for land registration, not a sales agreement. The author categorizes this action as fraud. Fraud is a deceitful act, as stipulated in Article 1328 of the Indonesian Civil Code, which explicitly states that fraud is a reason for the annulment of an agreement.

This is also expressed in the Palu District Court's Panel of Judges' considerations. It states that in the case proceedings, Defendant I and Defendant II requested Defendant III to create a Deed of Sale (AJB) based on the agreement between Defendant I and Plaintiff. Plaintiff signed the agreement letter based on trust in Defendant I and Defendant II, and as a result, Plaintiff did not thoroughly read the contents of the document. However, this does not fulfill the elements of an agreement, both in objective and subjective terms.

The lack of consensus among the parties led to the agreement between Plaintiff and Defendant I, contradicting the objective and subjective elements of an agreement. Defendant II and Defendant III engaged in deception by presenting an agreement letter to Plaintiff that lacked essential information, which Plaintiff, a party involved in the agreement, was unaware of. Furthermore, one party's malicious intent influenced the existence of the agreement, and, as a result, all parties consider the agreement null and void. This, in turn, results in the annulment of the certificate and the authentic deed arising from this agreement.

As per Article 1457 of the Indonesian Civil Code, an agreement for the sale and purchase is an agreement in which one party commits to delivering a specific item while the other party promises to pay the agreed-upon price. Meanwhile, as per Abdulkadir Muhammad, A sale and purchase agreement is a contractual arrangement in which the seller either

conveys or commits to convey ownership rights to the buyer in return for a specified amount of money, known as the price.

The sale and purchase of land, as per Article 26 of the Agrarian Law, involves the transfer of ownership rights to land. While the term "transferred" is used in other articles, it signifies a deliberate act to transfer land rights to another party through various means such as sale and purchase, gift, exchange, and bequest. Hence, even though the term "transferred" is used, one of the intended actions is the transfer of land rights through sale and purchase

Sale and purchase is a mutual agreement between the seller and the buyer. The seller commits to convey ownership rights to a specific item, while the buyer commits to pay an agreed-upon price. The object of the agreement must be identifiable in terms of form and quantity when delivered to the buyer.⁸

Based on Article 37 of Government Regulation No. 24 of 1997 on Land Registration, the registration of land rights transfer through sale and purchase must necessitate valid proof in the form of a deed executed by an authorized Land Deed Official, following the existing legal framework. In creating a deed for the sale and purchase of land, the seller and the buyer must be present before the Land Deed Official, or they may be represented by a valid power of attorney to perform this legal act.⁹

Land registration, as outlined in Government Regulation No. 24 of 1997 on Land Registration, involves a consistent and organized sequence of governmental procedures. These activities encompass collecting, processing, documenting, and upkeeping both the physical and legal data, including maps and records associated with land parcels and housing units.

A Sale and Purchase Deed is an official record that provides proof of the conveyance of land ownership from the seller to the buyer. In principle, land sale and purchase are clear and immediate, necessitating the presence of a Land Deed Official and the payment of the total price. If the price of the land sale and purchase has not been fully paid, the Deed of Sale and Purchase cannot be created. According to Article 37 of Government Regulation No. 24 of 1997 on Land Registration, the Deed of Sale and Purchase establishes the legal transfer of land and building ownership to another party. According to the law, one must conduct the transfer of land rights through a Land Deed Official and cannot do so informally. Before a land sale and purchase transaction takes place, the Land Deed Official will explain the procedures and requirements to be fulfilled by both the seller and the buyer.

To ensure the validity of the Deed of Sale and Purchase of land, certain requirements must be fulfilled in the transfer of land rights through sale and purchase.

1) Material Condition

The buyer must meet the requirements for the relevant land. This means that the buyer, as the beneficiary of the rights, must meet the criteria for the land they intend to purchase. Determine whether the buyer is eligible to obtain rights to the land in question;

⁸ R. Subekti, Various Agreements, (Bandung: Citra Aditya Bakti, 2014), 4.

⁹ A.P. Parlindungan, Land Registration in Indonesia, (Based on Government Regulation No. 24 Tahun 1997), (Bandung: Mandar Maju, 1999), 2.

it depends on the type of rights associated with the land, whether it is ownership rights, building rights, or usage rights. According to Article 21 of the Basic Agrarian Law, only single Indonesian people and legal entities constituted by the government are eligible for land ownership rights.

The seller is entitled to sell the respective land. The entitlement to sell a block of property resides with the legitimate land rights holder, commonly referred to as the owner. In the case where a piece of land has a single legal owner, that owner possesses the exclusive right to execute the sale of the land independently. Conversely, if the land has multiple co-owners, all of them collectively share the right to sell the land, with no individual permitted to act as the seller unilaterally.

The land rights in question are for sale and are not currently under dispute. In the context of Article 1320 of the Indonesian Civil Code in relation to Article 39 paragraph (1) of Government Regulation No. 24 of 1997 on Land Registration, the procedure for creating deeds by Land Deed Officials must comply with subjective requirements (related to the parties involved) and objective requirements (the substance of the rights being transferred) in the Land Deed Official creation process. If the subjective and objective requirements are violated, the validity of the Land Deed Official may be questioned and could be declared null and void under the law.

2) Formal Requirements

Article 1868 of the Indonesian Civil Code states that the elements for creating an authentic deed must meet the following criteria:

- a. The deed must be made in the form prescribed by the law.
- b. The deed must be prepared by a notary or in the presence of a public official.

Based on the requirements for the fulfillment of an authentic deed as regulated in Article 1868 of the Indonesian Civil Code, when associated with the provisions in Articles 95-102 of the Minister of State for Agrarian Affairs/Head of the National Land Agency Regulation No. 3 of 1997 Regarding the Implementation of Government Regulation No. 24 of 1997 on Land Registration; if a Land Deed Official violates the formal requirements or conditions, it will result in the downgrading of the full probative force of the authentic deed to the probative force of a deed under private signature when a court decision declares one or more violations have occurred.

Before conducting a sale and purchase transaction, a Land Deed Official will explain the steps and requirements necessary for the transaction to take place. One of the crucial steps involves presenting the original land certificate for an initial verification process, ensuring the technical and legal data on the certificate align with the land register maintained at the land office. Engaging in a sale and purchase transaction under the guidance of a Land Deed Official ensures transparency and adherence to legal requirements. In the context of transferring property rights, the commonly employed legal documents include deeds such as sale and purchase agreements, grants, and exchanges.

For example, a sale and purchase deed, signed by the involved parties, serves as concrete evidence of a legitimate transfer of property rights from the seller to the buyer,

conducted in accordance with the law. This process also involves the payment of the agreed-upon price, satisfying the financial aspects of the transaction. Furthermore, the deed demonstrates that the legal act of transferring ownership has been executed in practice. By virtue of this deed, it can be ascertained that the recipient of the rights (the buyer) has officially assumed their new property rights in compliance with prevailing regulations.

In the Supreme Court Cassation Decision Number 305 K/Pdt/2017 subsequently affirmed by the Supreme Court Cassation Decision Number 627 PK/Pdt/2018 it is stated that the sale and purchase deed between the Defendant I (Participating Appellee in Cassation) and the Plaintiff (Appellee in Cassation) is considered valid. This validity is based on the presence of the signatures signifying an agreement between the Appellee in Cassation and Participating Appellee in Cassation, who were previously the Plaintiff and Defendant I. The Cassation Court panel acknowledged that the academic degree held by the Plaintiff carries specific legal implications in the context of this case, as elaborated in section However, as previously explained, Plaintiff's trust in the document provided by Defendant II failed to establish mutual consent among the parties, ultimately causing harm to Plaintiff.

In civil procedural law, the search for formal truth is the primary focus for the panel of judges in assessing the evidence presented by the parties. This formal truth is established through the existence of a sale and purchase deed signed by Plaintiff and Defendant I. I, as the author, argue that the process of creating the sale and purchase deed contradicts the provisions set out in Article 1320, particularly concerning the principle of agreement or consensualism between the two parties. This is due to the foundation of trust held by the Plaintiff in the agreement that was created and signed, which, in reality, was not based on the Plaintiff's true understanding. Therefore, with the non-execution of this agreement, both documents and deeds, whether authentic or under private signature, resulting from this agreement, lose their legal force and are deemed never to have existed.

Based on its form, a Notary deed is divided into two types: authentic deeds and private deeds, which are explained as follows:

1. Authentic Deed

The Authentic Deed referred to as an "authentic deed" in English and "authentieke akte van" in Dutch, is governed by Article 1868 of the Indonesian Civil Code. This article explains that an authentic deed refers to "a deed made in a form prescribed by law, by or in the presence of a public official authorized to create the deed at the location where the deed is made." Additionally, Article 1, point 7 of the UUJN-P also defines an authentic deed, which is an "act by a notary," or "deed," created by a notary in accordance with the prescribed form and procedures defined in this law.

2. Private Deed

Based on Article 1874 of the Indonesian Civil Code, "tulisan di bawah tangan" (written underhand) refers to documents that are directly signed by the concerned party, including letters, lists, household-related correspondence, and other written materials

made without the involvement of a public official. When considering the Notary Position Law, handwritten documents can be classified into two types: legalized handwritten documents and authenticated handwritten documents, as stipulated in Article 15, paragraph 2, clauses a and b of the Notary Position Law.

- a. Certifying signatures and establishing the exact date of the handwritten documents by recording them in a special register;
- b. Certifying signatures and establishing the exact date of the handwritten documents by recording them in a special register;

In an authentic deed, all the rights and obligations of the parties involved in an agreement have been recorded. An authentic deed, as defined in the Indonesian Civil Code, is a deed prepared in a format prescribed by the law and executed before public officials authorized for this purpose. In the context of this case, the designated public official is a notary.

As per Article 1868 of the Civil Code, an authentic deed is a document made in a specific format prescribed by law by or in the presence of a public official authorized for such purposes at the location where the deed is created. An authentic deed comprises three essential elements:¹⁰

- 1) Created in a specific format.
- 2) Executed in the presence of an authorized official.
- 3) Executed at a specific location.

The duty and authority of a Land Deed Official are to create authentic deeds. As a Land Deed Official, they are authorized to provide legal guidance regarding the deed to be executed, explaining what actions are permissible or not according to prevailing laws to the involved parties. Based on the applicable legal provisions, various forms and types of deeds can be created by a Land Deed Official, including:

- 1) Deed of sale and purchase;
- 2) Exchange deed;
- 3) Deed of gift;
- 4) Deed of incorporation into a company;
- 5) Deed of shared property division;
- 6) Deed granting rights to buildings or land use on ownership rights;
- 7) Deed of mortgage granting; and
- 8) Deed of power of attorney for encumbering mortgage rights

As a public official, a Land Deed Official is empowered to create an authentic deed, which functions as a legally recognized instrument of proof to establish that a legal act has taken place. Land Deed official typically handles deeds related to the transfer of land rights, and, in many cases, a legal act requires the creation of a deed to be considered complete

¹⁰ Salim H.S, *The technique of Making a Deed*, (Jakarta: Raja Grafindo Persada 2016), 17.

or legally valid.¹¹ The validity of an authentic deed is based on two main elements: the content, as prescribed by the law, and the execution by a competent public official. An authentic deed is deemed invalid if either or both of these elements are not satisfied.

However, the invalidity of an authentic deed due to the failure to meet one or both of the elements mentioned above only renders the deed partially void. Instead, it can be classified as a deed executed by private individuals (*onderhandsche acte*). The existence of an authentic deed that provides clear information regarding the rights and obligations of the parties is expected to prevent disputes and conflicts between different parties. Furthermore, an authentic deed serves as a written instrument of evidence with perfect probative force, often requiring no additional evidence. In legal proceedings, the burden of proof lies with the party making a claim, following the principle known by the Latin adage "actori incumbit probatio."

In summary, an authentic deed is a legal instrument with compelling probative force. An authentic deed must meet two main criteria: it should be executed in the presence of a competent authority and adhere to the legal provisions. Failure to meet these criteria classifies the document as a private deed rather than rendering it entirely null and void, as explained by an Expert Witness presented by the Third Defendant, who stated that the absence of prerequisites for creating an authentic deed could result in the document being categorized as a private deed, without necessarily nullifying it.

In the legal analysis conducted by the author, it is noteworthy that while a defect, either in form or substance, can render an authentic deed non-authentic and transform it into a private deed, this transformation is inherently case-specific and not universally applicable across all cases. For instance, in the current case, the deed was created without the presence of the involved parties, and the contents of the authentic deed were only read aloud after signatures were affixed. Moreover, Plaintiff was unaware of fraudulent activities conducted by the First Defendant and the Second Defendant, which consequently invalidated the agreement and annulled the previous authentic deed, including the Deed of Sale and Purchase executed by the Notary/Public Deed Official. It is important to note that if one of the parties was genuinely unable to be physically present and was effectively represented by a legally authorized proxy, and if all parties possessed a complete understanding of and willingly agreed to the entire substance of the agreement, the authentic deed could then be deemed valid.

4. Responsibilities of land deed official towards injured parties in the creation of sale and purchase deeds.

The term "responsibility," according to the Great Dictionary of the Indonesian Language, refers to the condition in which an individual is obligated to face the consequences of their actions, which may include demands, criticism, and legal accountability. In a legal context, responsibility pertains to an individual's duty to fulfill what has been mandated of them. This responsibility arises as a result of an individual's obligations in their behavior, whether the law or moral norms establish those obligations. The law regulates

¹¹ Sudikno Mertokusumo, Indonesian Civil Procedure Law, (Liberty: Yogyakarta, 1998),126.

legal relationships among individuals, providing commands, prohibitions, and sanctions to society. In contrast, moral norms regulate an individual's behavior in their interactions with others, determining what is considered appropriate or inappropriate, right or wrong, according to human conscience.

According to the Civil Code, the issue of liability for wrongful acts is divided into two categories:

1) Direct Liability

This is regulated by Article 1365 of the Civil Code. With a broad interpretation of Article 1365, which has been in place since 1919 (*Arest Lindenbaun vs. Cohen*), many things that were previously not subject to claims, sanctions, or penalties can now be pursued against the wrongdoer for compensation.

2) Indirect Liability

As per Article 1367 of the Civil Code, a legal entity is not only liable for its wrongful acts but also for the acts of others for whom it is responsible, as well as for items under its supervision. Liability for the consequences of wrongful acts, in civil law, falls on the wrongdoer as well as may be transferred to another party or the State, depending on the party responsible for the act.

The essence of legal accountability can be understood as responsibility for legal actions that give rise to a legal event, where the consequences of such actions result in being held legally accountable for the acts committed. An example of legal accountability in the present case is the issuance of a decision up to the stage of cassation review, which the Cassation Petitioner won. In this context, the legal ramifications are experienced by the Cassation Respondent, leading to legal accountability that the Cassation Respondent must bear. This may include case deposit fees, land occupancy status, and other related matters.

In addition to placing legal accountability on the Cassation Respondent as the aggrieved party, the Cassation Co-Respondent also receives the judgment's mandate to comply with its contents. Consequently, they are responsible for either carrying out or refraining from actions that contradict the judgment. Nevertheless, through case analysis, the author remains convinced that the parties who should be held accountable are the notary and the Bank. As explained in the lawsuit contained in the cassation judgment, the First Instance Defendants requested the Bank to conduct a survey when the parents of the First Instance Defendants were not at home, and they were asked not to heed anything communicated by the Plaintiff or his wife. This serves as an indicator that there was irregularity in the practice of guaranteeing mortgage rights to the land occupied by the Plaintiff. The reason the land could be used as the subject of mortgage rights is due to the deed of sale carried out under the name of the land by the Land Deed Official at the National Land Office where the land is located. According to the author, this is a matter that should be of concern to the cassation court.

Unlawful actions are regulated in Book III of the Civil Code, Articles 1365-1380, and are considered as obligations arising from the law. Article 1365 of the Civil Code mandates that "Every unlawful act causing harm to another obliges the person whose fault caused

the harm to compensate for the damage." However, Article 1365 of the Civil Code does not explicitly define what constitutes an unlawful act. Instead, it primarily addresses the conditions for seeking compensation for damages resulting from unlawful actions.

In Dutch, unlawful acts are referred to as "onrechtmatige daad," while in English, they are known as "torts." The term "tort" is originally from the Latin word "torquere" or "tortus" in French, similar to the term "wrong," which derives from the French word "wrung," signifying a legal wrong or injury. The term "tort" has evolved to encompass civil wrongs that do not arise from breaches of contractual agreements, aligning with the concept of unlawful acts or onrechtmatige daad in the legal systems of the Netherlands and other Continental European countries.

In line with the provisions of Article 1365 of the Civil Code, an unlawful act must encompass the following elements:

- 1) The existence of an act;
- 2) The act contravenes the law;
- 3) The presence of fault on the part of the wrongdoer;
- 4) The occurrence of damage to the victim;
- 5) The presence of a causal relationship between the act and the damage;
- 6) The act is inconsistent with the standard of care or duty in a well-ordered society.

Article 1365 of the Civil Code states, "Every act that violates the law and causes harm to another obliges the responsible party to compensate for the resulting damage." Besides, Article 1366 of the Civil Code also specifies that an individual is not only liable for harm caused by their actions but also for harm resulting from their negligence or lack of due care. Moreover, Article 1365 regulates the accountability arising from unlawful acts, whether they result from an action or an omission. Furthermore, Article 1366 places more emphasis on the liability stemming from errors due to negligence. In essence, individuals who commit unlawful acts are obligated to take responsibility for their actions, as a person who is unaware of what they are doing is not obligated to pay compensation for damages.

Multiple wrongdoers cause damage. If the damage results from the actions of several individuals, then each person responsible for those actions can be held accountable for the entirety of the damage. The Civil Code divides the issue of liability for unlawful acts into two categories, as follows:

Direct liability: This is governed by Article 1365 of the Civil Code. With a broad interpretation established since 1919 (*Arest Lindenbaun vs. Cohen*) regarding Article 1365 of the Civil Code, many actions that were previously not subject to claims, sanctions, or penalties can now be the basis for demanding compensation from the wrongdoer.

Indirect liability: According to Article 1367 of the Civil Code, a legal entity is not only responsible for its unlawful actions but also for actions carried out by others under its responsibility and for items under its supervision. The responsibility for the consequences resulting from unlawful acts in civil law can be attributed not only to the wrongdoer but also to another party or even the State, depending on the perpetrator.

Referring to the analysis in the present case, the author contends that the core issue at hand revolves around an unlawful act (*onrechtmatige daad*) between the Plaintiff and the Defendants. While the existence of a written agreement executed and agreed upon by Plaintiff and Defendant I does not categorize this case as a breach of contract but rather as an Unlawful Act due to the lack of consensus and the deceptive means employed by Defendant I and Defendant II in obtaining signatures as symbols of validation for the said agreement. Consequently, the absence of an agreement and the absence of clauses or provisions within the breached agreement make it evident that the present case constitutes an Unlawful Act.

As for the subject matter of the case, as previously explained by the author, the deceitful actions taken by the Defendants against Plaintiff in the creation of the agreement render the agreement legally ineffectual and considered null and void. This aligns with the judgments rendered by the Palu District Court and the Palu High Court as the first and appellate instances that examined and adjudicated the case in question. The author asserts that the unlawful act committed by the Defendants, resulting in both material and immaterial losses to the Plaintiff due to their actions, warrants a claim for accountability and the restoration of the original State (*restitution in integrum*).

Legal provisions use various terms to refer to individuals holding specific positions within government and state institutions. These terms include state officials, public officials, state officers, government officials, and local government officials. A "position" is a permanent work environment within an organization. In the context of the State, government as a work environment comprises various offices, including executive, legislative, judicial, and other superstructure positions. These positions come with specific authority. The collection of authorities empowers individuals to perform or abstain from certain actions.

Officials exercise the authority or power inherent to their position. An official possesses legal authority. This legal authority grants an official the right to perform certain actions, accompanied by the fulfillment of obligations within the field of public law. For example, a police officer has the right to apprehend someone who disrupts public order. This right arises from their position as a member of the police tasked with maintaining security as part of the police force. It is not due to the individual making the arrest but rather because of their position.

The official responsible for creating land deeds, hereafter referred to as Land Deed Official, has been in existence since the implementation of Government Regulation No. 10/1961. This regulation is an enforcement mechanism derived from the Basic Agrarian Law. In accordance with Article 19 of PP No. 10/1961, it is stipulated that:

“Any agreement intending to transfer land rights, grant new rights over land, mortgage land, or use land as collateral for borrowing must be substantiated by an official deed prepared by a government-appointed official, as designated by the Minister of Agrarian Affairs.”.

The Land Deed Official has a crucial role in the life of the nation, as the State authorizes them to create land transfer deeds and other deeds within the Republic of Indonesia and abroad. The Land Deed Official is a public official empowered to create deeds for land

rights transfers and encumbrances, with the form of the deed defined as evidence of the execution of specific legal actions related to land situated within their jurisdiction. Deeds prepared by Land Deed Official constitute authentic instruments.

The Land Deed Official, as a public official, is required to perform their duties diligently, and, as such, The Land Deed Official should carefully examine the formal accuracy of the documents submitted to them. The Land Deed Official is also expected to act with integrity, including being honest with oneself, society, and the Divine in carrying out their duties. Furthermore, The Land Deed Official must fulfill their obligations in good faith and accordance with the applicable code of ethics, as stipulated in Article 3 Letter f of the Land Deed Official Code of Ethics, which requires The Land Deed Official to be responsible, honest, impartial, and Article 4 letter r, which prohibits The Land Deed Official from engaging in actions that violate provisions in the Land Deed Official Job Regulations and other relevant legal regulations pertaining to the core duties of The Land Deed Official.

The Land Deed Official has the authority to create authentic deeds for all legal acts concerning land rights and Condominium Unit Ownership Rights located within their jurisdiction in accordance with the prevailing regulations. In the context of a real estate transaction, the Land Deed Official's main responsibility is to create authentic deeds related to all legal acts concerning land rights and Condominium Unit Ownership Rights located within their jurisdiction.

In the case of 305 K/Pdt/2017, Defendant III, acting as a Land Deed Official, does not face issues regarding their position. They have their office in Central Sulawesi, specifically in Palu City, in accordance with the jurisdiction of the Palu District Court and the Palu High Court. Regarding their educational background, they are a notary and possess the qualifications required for notarial duties, as mentioned earlier. In this context, the legal position and legal standing of Defendant III as a notary do not present any incapacity, as they are capable of utilizing their position and status to engage in legal proceedings with the assistance of legal counsel through a power of attorney.

5. Conclusion

A deed of sale that is not executed in the presence of a Land Deed Official is considered invalid. This is because the deed needs to meet the formal and substantive requirements. The formal requirements are stipulated in Article 1868 of the Civil Code, which determines that the creation of an authentic deed must adhere to the form prescribed by law and must be executed in the presence of an official. Substantive requirements are governed by Article 1320 of the Civil Code, which involves the agreement of the parties involved, the capacity to agree, a clear object, and a lawful purpose. Therefore, the decision of the Supreme Court at the cassation level in case No. 305 K/Pdt/2017, affirmed by the Supreme Court at the review level in case No. 627 PK/Pdt/2018, is deemed inappropriate because the deed of sale was not executed in the presence of a Land Deed Official. As a result, there is a defect in the creation of this authentic deed, and the deed can only be considered a private deed. Furthermore, according to Article 1320 of the Civil Code, there is a missing element of an agreement among the involved parties, which is

mutual consent. In this case, the Plaintiff was provided with false information that the deed was only for land registration purposes, not for a sale and purchase transaction. Therefore, this action can be categorized as fraud. PPAT has a private law responsibility towards the party suffering losses due to the creation of an invalid deed of sale. This is in line with the considerations of the judges of the District Court in case No. 68/Pdt.G/2015/PN.PAL, affirmed by the considerations of the judges of the High Court in case No. 15/PDT/2016/PT.PAL. Bas Article 1365 of the Civil Code, every action that violates the law and causes losses to another party obliges the person responsible for the action to compensate for the resulting losses. The Land Deed Official should compensate the material losses incurred by the Plaintiff and return the land title certificate to the Plaintiff, who is the rightful owner of the land.

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