

Legal Consequences of the Discrepancy on Construction of Land Sale and Purchase Deed towards the Procedure for Dedication (Analysis of the Jurisdiction of the Supreme Court Number-967k/Pdt/2010)



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ABSTRACT: The purpose of this study was to determine the legal consequences and causative factors which lead the construction of land sale and purchase deed was not in accordance with procedures based on analysis of the Supreme Court's decision number-967K/Pdt/2010. In this case it is known that the factor that cause the land dispute is due to PPAT did not pre-check at the Land Office regarding the suitability of land rights certificate, the construction of PPAT deed was not attended by the parties who carried out the concerned legal act and was not witnessed by at least two witnesses who, according to the provisions of prevailing regulations, and did not read the deed to the concerned parties. With regards to the case that the construction of land sale and purchase deed was not in accordance with related procedure, it is necessary to receive legal consequences in the form of: PPAT can be dishonorably dismissed from his position and subject to administrative sanctions without reducing the possibility of being sued for compensation by parties who suffer losses and resulted in the degradation of the power of proof becomes a private deed because it does not meet the requirements determined by law and or other regulations.

KEYWORDS: Judicial Review, Supreme Court, PPAT

INTRODUCTION

In order to guarantee legal certainty by government, therefore land registration is held throughout the territory of the Republic of Indonesia. ¹ In this case, systematic registration does not only generate certificates, but the most important role is to register every plot of land in Indonesia while at the same time fixing existing certificates, and suppressing land disputes that arise due to unclear land ownership status, illegal land tenure and so on. ² Next, to execute the mandate of Article 19 of the LoGA (Basic Agrarian Law) concerning Land Registration, the government issued Government Regulation Number 10 of 1961 concerning Land Registration. In this regard, there are cases about the construction of land sale and purchase deed that is not in accordance with procedures.

This case is contained in the Supreme Court Decision Number 967K/Pdt/2010. In this case, Ima Rengganis Sudiono, SH, as a Notary and PPAT who has collaborated with Yohanes Jakob Prasetya, manipulate as if Suhartono Yos Alirama (Plaintiff) has sold the house with Certificate of Ownership number: 02040/Rengas to Yohanes Jakob Prasetya. Then, Yohanes Jakob Prasetya has guaranteed the land certificate to PT. Bank Internasional Indonesia, Tbk., as collateral for the loan perpetrated by Yohanes Jakob Prasetya and the certificate has been charged with Mortgage, in which stated in the Granting Mortgage Deed Number: 572/2004, dated July 29, 2004. This is categorized as is an unlawful act because the execution was conducted without the knowledge and consent of Suhartono Yos Alirama as the land owner. ³

Based on the issue of land registration as described above, the researcher interested to discuss it and formulated with the title: Legal Consequences of the discrepancy on construction of land sale and purchase deed towards the Procedure for dedication (Analysis of the Decision of the Supreme Court of the Republic of Indonesia Number 967k/Pdt/2010).

Research methods

¹ Mira Novana Ardani, "The Challenges of Implementing Complete Systematic Land Registration Activities in Order to Realize the Provision of Legal Certainty", Echo Justice Journal, Volume 6, Edition III, 2019, p. 270

² Zainuddin, Zaki Ulya Zainuddin, "Domein Verklaring in Land Utilization in Aceh", Journal of Samudra Justice Law, Vol. 13, No. 1, 2018, p. 140

³ Decision of the Supreme Court of the Republic of Indonesia Number 967k/Pdt/2010

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This study used normative legal research methods, which means that research is carried out by analyzing library materials or secondary data related with legal, with statutory approach and the case approach. All data obtained through library materials were processed deductively, which is drawing conclusions from a general problem to the concrete problems encountered. After the data had been purchased, an analysis of the data was performed to obtain the answers to the problems discussed.

Discussion Subjects in Supreme Court Decision Number-967K/Pdt/2010

The Supreme Court had read the concerned letters that the Plaintiff is Suhartono Yos Alirama against the Defendant Yohanes Jakob Prasetya (Defendant I), Ima Rengganis Sudiono, SH. (Defendant II), who is a Notary and PPAT, PT. Bank Internasional Indonesia (Defendant III), and the National Land Agency (BPN) of Tangerang Regency (Defendant 4). In this case, Ima Rengganis Sudiono, SH. (Defendant II) as a Notary and PPAT who had collaborated with Yohanes Jakob Prasetya (Defendant I) who manipulate as if Suhartono Yos Alirama (Plaintiff) had sold the house with Certificate of Ownership number: 02040/Rengas to Yohanes Jakob Prasetya. Then, Yohanes Jakob Prasetya has guaranteed the land certificate to PT. Bank Internasional Indonesia, Tbk., as collateral for the loan perpetrated by Yohanes Jakob Prasetya and the certificate has been charged with Mortgage. , in which stated in the Granting Mortgage Deed Number: 572/2004, dated July 29, 2004. This is categorized as is an unlawful act because the execution was conducted without the knowledge and consent of Suhartono Yos Alirama as the land owner. Whereas Defendant IV as the competent authority must re-register in the land book or the book intended for that purpose that the certificate of ownership rights number: 02040/Rengas is returned to the name of the Plaintiff/Suhartono Yos Alirama, and the Certificate of Mortgage of First Rank Number: 4784 /2004, dated August 11, 2004, must be null and void.

Based on the the above issue, the Plaintiff requested to the Tangerang District Court to formerly set down confiscate guarantee of the Defendant's property and then demanded the District Court to take a decision that can be executed formerly, as follows: ⁴

1. Granted the Plaintiff's claim entirety;
2. To declare that the confiscation is valid and valuable which had been placed on: A plot of land and a house building as stated in the Certificate of Ownership No. 02040/Rengas, Was 1.185 m², Letter of Measurement dated April 29, 2000, No. 72/Rengas/2000, which is located at Jalan Cempaka 2, No. 19A, RT/RW: 03/03, Rengas, Ciputat District, Tangerang, Banten, along with all the sequences above it;
3. To declare that Defendant I, Defendant II, Defendant III and Defendant IV, had committed unlawful acts that harm the Plaintiff;
4. To declare that Defendant III is not a creditor with good intentions;
5. To declare that the deed of sale and purchase has been created as if the Plaintiff has sold the land and residential buildings as stated in the Certificate of Ownership No. 02040 made by Defendant II, with all the legal consequences;
6. To declare the cancellation of the Deed of Granting Mortgage Number: 572/2004 dated July 29, 2004 made by Defendant II, with all the legal consequences;
7. Declaring the Deed of Credit Agreement No. 10, dated July 29, 2004, made before Defendant II, with all the legal consequences;
8. To declare the Certificate of Mortgage Rank I (First) null and void Number: 4784, dated August 2004, with all the legal consequences;
9. To order and punish Defendant I to return the Certificate of Ownership No. 02040/Rengas to the Plaintiff, immediately after this case was decided;
10. To Order and punish Defendant II to cancel the Sale and Purchase Deed that had been made, cancel the Deed of Granting Mortgage Number: 572/2004 dated July 29, 2004 and cancel the Deed of Credit Agreement No. 10, dated July 29, 2004, immediately after this case was decided;
11. To order and punish Defendant III to stop the execution process and submit Certificate of Ownership No. 02040 to the Plaintiff, immediately after this case was decided;
12. To order and punish Defendant IV to re-register Certificate of Ownership No. 02040/Rengas on behalf of the Plaintiff/Suhartono Yos Alirama and canceling the First Rank Mortgage Certificate Number: 4784, dated 11 August 2004, immediately after this case was decided;
13. To Sentence Defendant I, Defendant II, Defendant III and Defendant IV to pay the Plaintiff forced money (dwangsom) of Rp. 10,000,000,- (ten million rupiah)/day for the delay in carrying out the petitum points 9, 10, 11 and 12 above;
14. To Sentence Defendant I, Defendant II, Defendant III jointly and severally to pay the material and immaterial losses suffered by the Plaintiff with a total amount of Rp. 11.500,000,000, - (eleven billion five hundred million rupiah), which must be paid immediately, in cash and complete, after the case is decided;

⁴ Decision of the Supreme Court of the Republic of Indonesia Number 967k/Pdt/2010

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15. To declare that this decision can be implemented beforehand even though there is a verset, rebuttal, appeal or cassation (uitvoerbaar bij voerraad);

16. To Sentence Defendant I, Defendant II, Defendant III and Defendant IV, to pay the costs of this case according to law;

Considering, based on the above mentioned lawsuit, Defendants II, III, and IV filed the following exceptions:

Defendant II Exception

1. The Tangerang District Court was not authorized to examine, judge and decide on this case (absolute competence);

Whereas in the lawsuit filed by the Plaintiff, regarding: A lawsuit regarding an unlawful act, but in the description in the lawsuit, the Plaintiff is concerned about the land that had been certified. Thus, it is clear that the essence of the Plaintiff's lawsuit concerns the disputed State Administrative Decisions and not acts against the law. The Plaintiff's lawsuit should have been filed under the authority of the State Administrative Court (PTUN). Accordingly, the Tangerang District Court should have declared unauthorized to examine and judge this case.

2. Plaintiff's claim was vague and unclear (exceptio Obscurum lebellum);

From the lawsuit, it appears that Plaintiff and Defendant I had problems and this concerns the criminal element, which is the problem of fraud. Thus, the lawsuit should not involve Defendant II, as a result the Plaintiff's claim is unclear and vague, the Plaintiff's lawsuit (exception obscurum lebellum) and it is appropriate for the Court to declare a lawsuit plaintiff is unacceptable.

Defendant III Exception:

1. Plaintiff's claim is vague and unclear (Obscuur Libel);

a. Whereas based on the arguments presented by the Plaintiff in his lawsuit dated January 23, 2007 regarding the lawsuit against the law, it can be concluded that a quo dispute is essentially a dispute between the Plaintiff and Defendant I, the material is within the scope of criminal law, because the legal event that is used as a the basis of the lawsuit by the Plaintiff is the alleged embezzlement and/or fraud (bedrog) by Defendant I;

b. Meanwhile, both in the posita and the petitum part of the lawsuit, the Plaintiff argues that Defendant III together with the other Defendants have committed an unlawful act because they have conspired or collaborated to transfer the Certificate of Ownership Title Number: 02040/Rengas belonging to the Plaintiff to be in the name of Defendant I and then guarantee it to the Plaintiff. Defendant III and has been burdened with mortgage rights. Thus, it is clear that the lawsuit filed by the Plaintiff contains formal defects, namely vague and unclear, therefore the Plaintiff's claim should be rejected or at least declared unacceptable;

c. The Plaintiff's argument in its letter of lawsuit number 10 (ten) expressly requests that Defendant III stop the execution process of land and building certificate No. 02040/Rengas and at the same time asks that the Credit Agreement No. 10 dated July 29, 2004 made before Defendant II must be canceled ;

d. Whereas the execution process carried out by Defendant III was based on the Mortgage Certificate No, 4784/2004 dated August 11, 2004 which was carried out for the sake of Justice Based on the One Godhead, which means it has legal force as befits a court decision that has permanent legal force, which the process is carried out by the Tangerang District Court and is currently at the stage of confiscation of execution;

e. Whereas if the Plaintiff does not like or object to the confiscation of execution that has been carried out by the Tangerang District Court, legal remedies for the execution should be in the form of third party resistance (derden verzet) or rebuttal remedies;

f. Whereas in addition the Plaintiff also requested that the Credit Agreement between Defendant III and Defendant I which was made and signed before Defendant II to be canceled, even though it is clear in the Credit Agreement that the defendant was not involved at all, and once again we emphasize that Defendant III is formally the same as does not have any legal relationship with the Plaintiff, thus there is no interest in the Plaintiff in the Credit Agreement and the Plaintiff should not request the cancellation of the Credit Agreement, unless the Plaintiff does have an agenda aimed at harming Defendant III, namely obscuring the obligation of Defendant I to pay the debt. to Defendant III based on the Credit Agreement;

g. Whereas based on the foregoing matters, it is increasingly clear that the Plaintiff's claim contains formal defects because it is vague and unclear, so that it should be declared rejected or at least declared unacceptable;

Defendant IV Exception:

1. Plaintiff's lawsuit is vague (Obscuur Libel);

Whereas the Plaintiff's claim on posita 3 and 4, the Plaintiff argues that the Plaintiff has submitted the Certificate of Ownership 02040/Rengas Letter of Measurement dated April 29, 2000 No. 72/ Rengas/2000 to Defendant I, because the plaintiff has full trust in Defendant I and based on the Sale and Purchase Deed No. 571/2004 dated July 29, 2004, drawn up before Notary/PPAT Ima

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Rangganis Sudiana, SH (as Defendant II), the certificate has been transferred to Defendant I and the Plaintiff has also officially reported the actions of Defendant I to Polda Metrojaya, Directorate of General Crime Investigation. on January 11, 2007 No. Pol.: 122/K/1/2007/SPK Unit "1" to investigate and process the actions of Defendant II according to the applicable criminal law, due to alleged criminal acts of fraud and or forgery as referred to in Article 378 of the Criminal Code and or Article 263 (paragraph 1 and 2) the Criminal Code. So based on the Plaintiff's arguments, it can be concluded that in the sale and purchase of certificates between the Plaintiff and Defendant I, there are indications that a criminal act has occurred which of course must take precedence over the legal process. So that criminal acts are the competence of the Criminal Court, not the Civil Court.

2. That the Plaintiff erroneously withdraws Defendant IV as a Party in the a quo case, because Defendant IV has no legal relationship with the Plaintiff in accordance with legal facts, there is no explanation that Defendant IV has committed an unlawful act (in Petition No. 12), and it is because of this that the Head of the Land Office has carried out his duties according to the rules based on Government Regulation No. 24 of 1997 concerning Land Registration jo. Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number: 3 of 1997 concerning Provisions for the Implementation of Land Registration

3. Whereas Defendant IV is not a material official who checks the material truth of the data or deeds attached by Defendant I (as the applicant for the transfer of mortgage rights), but is an administrative registrar who carries out his duties as a State Administrative Officer, so that the authority to cancel the certificate of mortgage no. 4784/2004 is the authority of the State Administrative Court, not the competence of the District Court.

That, therefore, there is sufficient reason according to the law that the plaintiff's claim, especially with regard to Defendant IV, must be rejected or at least declared inadmissible.

Tangerang District Court has handed down a decision against the lawsuit, namely Decision No. 23/Pdt.G/2007/PN.TNG. dated October 1, 2007, the statement of which is as follows: IN EXCEPTION:

- Rejecting the Exceptions of Defendants II, III and IV; IN THE MATTER
- Rejecting the Plaintiff's claim entirety;
- Impose the Plaintiff to pay the cost of this case which so far has been calculated at Rp. 1,534,000, - (one million five hundred thirty four thousand rupiah).

Analysis of Supreme Court Decision Number-967K/Pdt/2010

Considering that a quo petition for cassation and its reasons have been carefully informed to the opposing party. That these reasons cannot be justified, because the judex facti/High Court decision that upheld the District Court's decision was correct and did not misapply or violate the applicable law, because it had properly considered matters that were juridically relevant, namely that the Plaintiff had received money from Defendant I in amount of Rp. 70,000,000.00 which indicates a legal relationship. And according to the deed of Sale and Purchase No. 571/2004 dated July 29, 2004 between the Plaintiff as the Seller and Defendant I as the Buyer proved the existence of a buying and selling process as outlined in the deed.

Whereas Defendant IV carried out the process of transferring rights to SHM No. 02040/Rengas location in accordance with Article 103 paragraph (1) (2) PP No. 24 of 1997, in addition, the reason regarding the assessment of the results of evidence that is appreciative of a fact which cannot be considered in the examination at the cassation level, because the examination at the cassation level only deals with not being carried out or there is an error in the application of the law, there is a violation of the applicable law. , there is negligence in fulfilling the conditions required by laws and regulations, which threatens the negligence with the cancellation of the decision in question or if the Court is not authorized or exceeds the limits of its authority, as referred to in Article 30 of the Law on the Supreme Court (Law No. No. 14 of 1985 in conjunction with Law No. 5 of 2004 in conjunction with Law No. 3 of 2009).

Considering, whereas based on the above considerations, it proved that the judex facti/High Court decision in this case did not contradict the law and/or regulation, the Cassation Petitioner: SUHARTONO YOS ALIRAMA should be rejected and penalized the Cassation Petitioner / The Plaintiff to pay the court fees at this level of cassation which was determined at Rp 500.000,00 (five hundred thousand Rupiah).

Oleh karenanya aturan tentang pelaksanaan tugas dan tanggung jawab PPAT perlu diawasi dengan baik dan menimbulkan akibat hukum. Dalam hal pembuatan akta oleh PPAT agar tidak menimbulkan sengketa pertanahan di kemudian hari maka :

Based on the results of the author's analysis of the Supreme Court's decision Number-967K/Pdt/2010, that the existence of a land dispute that occurred was actually caused by the the construction of land sale and purchase deed that was not in accordance with the procedures of land deed construction which was carried out by PPAT. Therefore, many of the defendants aggrieved by the plaintiff's report that many parties cooperated for unlawful acts that harmed the plaintiff. Thus, the rules of the implementation of PPAT's duties and responsibilities need to be properly monitored and have legal consequences. It is expected that there will not generate land disputes in the future in terms of constructing land deed by PPAT, then:

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1. PPAT must prior checking at the Land Office regarding the suitability of the certificate of land rights at the local Land Office by showing the original certificate (Article 97 paragraph (1) Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Provisions for Implementation Government Regulation Number 24 of 1997 concerning Land Registration).
2. The construction of the PPAT deed must be attended by the parties who carried out the legal action concerned or the person authorized by them with a written power of attorney in accordance with the applicable laws and regulations (Article 101 paragraph (1) Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration).
3. The construction of the PPAT deed must be witnessed by at least two witnesses who according to the provisions of the applicable laws and regulations meet the requirements to act as witnesses in a legal act, who testify, among others, regarding the presence of the parties or their proxies, the existence of documents shown in the making of the deed, and the legal action has been carried out by the parties concerned (Article 101 paragraph (2) Regulation of the State Minister of Agrarian Affairs/Head of National Land Agency Number 3 of 1997 concerning Provisions for Implementation of Government Regulation Number 24 of 1997 concerning Land Registration) .
4. PPAT is obligated to read the deed to the parties concerned and provide an explanation of the content and purpose of making the deed, and the registration procedure that must be carried out subsequently in accordance with applicable provisions (Article 101 paragraph (3) Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 3 1997 concerning Provisions for Implementation of Government Regulation Number 24 Year 1997 concerning Land Registration).
5. The PPAT Deed must be read/explained its contents to the parties in the presence of at least 2 (two) witnesses before being signed immediately by the parties, the witnesses and the PPAT (Article 22 of Government Regulation Number 37 of 1998 concerning Position Regulations). Land Titles Registrar).

The legal consequences that may apply are:

1. PPAT can be dishonorably dismissed from his position (Article 28 paragraph (2) of the Regulation of the Head of the National Land Agency Number 1 of 2006 concerning Provisions for the Implementation of Government Regulation Number 37 of 1998 concerning the Regulation of the Position of the Official of the Land Deed Maker for committing a serious violation of obligations as PPAT namely not reading the deed before the parties concerned.
2. The PPAT who makes the deed is subject to administrative sanctions and fines (Article 62 of Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land Registration PPATs who in carrying out their duties ignore the provisions as referred to in Article 38, Article 39 and Article 40 as well as the provisions and instructions that given by the Minister or Official without reducing the possibility of being sued for compensation by parties who suffer losses resulting from the neglect of these provisions.
3. The degradation of the power of proof becomes a private deed because it does not meet the requirements determined by law and or other regulations Conclusion

Analysis of the Supreme Court decision number-967K/Pdt/2010 with a case regarding the the construction of land sale and purchase deed which was not in accordance with procedure, it is necessary to receive legal consequences in the form of : PPAT was dishonorably dismissed from his position for committing violations including PPAT did not read the deed deed to the concerned parties or parties who have not or are not authorized to act in accordance with the deed, PPAT who made the deed may be subject to administrative sanctions and fines without reducing the possibility of being sued for compensation by parties who suffer losses caused by the neglect of these provisions, and the degradation of the power of proof becomes a private deed because it does not meet the requirements determined by law and or other regulations.

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