



## Legal Consequences of Cancellation of the Land Sale and Purchase Agreement by the Seller Consequences of Buyer Defaulting

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**Abstract.** This research aims to determine the process of canceling a land sale and purchase by the seller because the buyer defaulted, the legal consequences of canceling the land sale and purchase agreement by the seller because the buyer defaulted. The research method used in this research is descriptive analytical. The research results of the sale and purchase agreement process are valid and have binding force since an agreement is reached between the seller and the buyer. The sale and purchase agreement is based on the validity of the contract and other agreement principles. An agreement can be null and void (van rechtswege neting) or can be canceled (vernietigbaar), if an agreement does not meet the requirements specified in accordance with Article 1320 of the Civil Code, namely if it does not fulfill subjective requirements (they agree to bind themselves, are competent to make an agreement) and objective conditions (a certain thing, a lawful cause). The legal consequences that arise for the buyer if they default, the buyer is required to pay compensation for losses suffered by the seller, pay court costs if sued in court, and fulfill the agreement if it continues.

**Keywords:** Buying, Selling, Agreement, Default.

### 1. INTRODUCTION

An agreement is an instrument for interested parties to bind themselves to one another in order to fulfill their respective rights and obligations. According to the applicable contract law, we recognize the principle of freedom of contract which determines that parties entering into an agreement are allowed to make their own provisions that deviate from the articles of contract law and they are allowed to regulate their own interests in the agreement they enter into. A sale and purchase agreement is an agreement where the agreement is valid and has binding force since an agreement is reached between the seller and the buyer. An agreement is an event where someone makes a promise to another person or where two people promise each other to carry out something. Indonesian law adheres to Dutch provisions as seen in Book III of the Civil Code. Based on the legal principles, agreements are divided into 3 (three), namely: (1) Principle of Obligations of the Parties, (2) Principle of Freedom of Contract, (3) Principle of Consensualism. Article 1458 of the Civil Code of the sale and purchase agreement states: "where the sale and purchase is deemed to have occurred between the two parties when they have reached an agreement on the goods and price, even though the goods have not been delivered or the price has not been paid." In a sale and purchase agreement, the seller promises

to transfer and hand over his ownership rights to the goods, then the second party as the buyer will pay the price according to the agreement.

Buying and selling is an agreement, where one party binds himself to hand over an object and the other party to pay himself the price of the object that has been agreed upon (Article 1457 of the Civil Code). Before an agreement is reached, it is preceded by an act of bargaining, which functions as a determinant of when a permanent agreement will occur. Since the permanent agreement occurs, the sale and purchase agreement is declared valid and binding so that it must be implemented by the seller and buyer. Buying and selling is the most frequently held agreement in people's lives. 5 The definition of land sale and purchase according to customary law is a legal act in which the seller hands over ownership rights to the land he is selling to the buyer in perpetuity and at the time the transaction takes place the new buyer pays for the land part of the price of the agreement that has been made to the seller. Since the land transaction took place, there has also been a transfer of land rights from the seller to the buyer. This research aims to examine the implementation process of land sale and purchase cancellation by the seller because the buyer is in default, the legal consequences of canceling the land sale and purchase agreement by the seller because the buyer is in default.

## **2. RESEARCH METHOD**

The approach method used in this research is analytical descriptive. Descriptive analytical research is research that describes, examines, explains and analyzes a legal regulation. Regarding the descriptive matter, this legal research aims to provide an overview of the characteristics of problems that occur based on the applicable laws and regulations of the phenomenon regarding the implementation of land buying and selling.

## **3. RESULTS AND DISCUSSION**

### **Implementation of the Cancellation of the Land Sale and Purchase Agreement carried out by the Seller due to the Buyer defaulting**

Land buying and selling transactions are legal acts that are commonplace and often carried out by the community. A land owner has the right and authority to use and exploit the land according to his needs. To meet their economic needs, land owners can transfer their land rights to other parties through land buying and selling, grants, or land exchange. Based on Article 5 of Law Number 5 of 1960 concerning Basic Agrarian Principles Regulations, it essentially states that national land law is customary law, therefore the implementation of national land buying and selling also adheres to a land buying and selling system in accordance

with customary law. The definition of land sale and purchase according to customary law is a transfer of rights that fulfills: (a) The cash principle is that the transfer of rights and payment of the land price are made at the same time. Apart from that, this principle means that payment is made until it is paid in full according to the agreed price as stated in the sale and purchase deed. Cash does not mean that payment and repayment of the land price must be made immediately, but it means making payment according to the agreed price. So the cash principle is still fulfilled even if a payment is made using the installment method. (b) The Clear Principle means that the sale and purchase of land is carried out openly and is not hidden. This clear principle is fulfilled when the sale and purchase of land is carried out in front of the PPAT because since the enactment of Government Regulation Number 24 of 1997 concerning Land Registration jo. Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats and Land Registration (hereinafter referred to as PP concerning Land Registration), land sales and purchases must be carried out before the PPAT.

This has the function of: (1) Guarantee of the truth regarding the status of the land, the rights holder and the validity that the implementation of the land sale and purchase is carried out in accordance with applicable law and has fulfilled the principle of clarity. (2) Representatives from village residents as a form of the principle of publicity, for land sales and purchases carried out before the PPAT there must be a minimum of 2 (two) witnesses, consisting of the village head/district head and someone from the village area where the land that is the object of the sale and purchase is located. The cash and clear principle as explained above is realized in a land sale and purchase deed signed by the parties and executed before the PPAT, as well as being proof that there has been a process of transferring land rights from the seller to the buyer accompanied by payment according to the agreed land price. Article 1338 of the Civil Code, an agreement or agreement not only concerns all matters that have been clearly agreed upon, but also concerns matters that based on the nature of the agreement itself can be sued on the basis of custom, justice, and also on the basis of law.

The transition process is based on the sale and purchase of land rights, namely that the seller, as the land owner, hands over his land to the buyer at an agreed price, then from that moment on the ownership has been transferred. The two main conditions for buying and selling land, namely: (1) Material requirements are the person who has the right to the land he wants to sell. This means that the person who has the right to sell the land is the legal owner. If he is married, then the husband and wife must be present to sign the agreement and act as sellers. Then the buyer is the person who has the rights to the land he bought. This means that buyers are people who have been legally permitted to own land in Indonesia. Based on the Basic

Agrarian Law, only Indonesian citizens and legal entities that have been determined by law may own land in the territory of the Republic of Indonesia. The land being traded is not in dispute. According to the UUPA, land that can be used as an object of transfer of rights is land with ownership rights, business use rights, building use rights and use rights. (2) Formal requirements in the form of buying and selling are carried out before the PPAT and are fulfilled after the material requirements are met.

Regarding the conditions contained in an agreement, even if they are not stated clearly and unequivocally in the agreement, if it has become a custom, then these conditions must be considered to be included in the agreement. The agreement is binding on the parties who make it and applies as law to the parties. The contents of a binding sale and purchase agreement can be described as follows: (1) The seller promises and binds himself to sell to the buyer who promises and binds himself to buy from the seller a plot of land. (2) The seller acknowledges that the sale price of the land and building to be sold by the seller to the buyer is the amount agreed upon and paid by the buyer to the seller at the time of signing the deed and the deed of sale and purchase agreement is also valid as a sign of acceptance or the receipt is valid, without prejudice to the issuance of a separate/special receipt. (3) If the buyer cancels the sale and purchase agreement, the down payment (DP) that has been paid will become the property of the seller and if the seller cancels the sale and purchase agreement, then the seller provides compensation to the buyer of 10% (percent) of the price transaction. (4) The seller guarantees fully and to the fullest extent that he is the only party who has the right to carry out this agreement and then sell the land to the buyer. (5) That each party promises and is able to do so and is obliged and bound to provide mutual assistance to the other party in carrying out this agreement voluntarily, free of charge and in good faith. (6) That all and all costs and expenses as a result of this sale and purchase agreement are fully borne by both parties. (7) That the seller's tax will be paid by the seller, while the buyer's tax, sale and purchase deed and transfer of name will be paid by the buyer. (8) All and everything regarding this binding and all its consequences, the parties shall choose a general and permanent legal residence at the local clerk's office.

In principle, the sale and purchase agreement can be canceled considering that this is related to the principle of freedom of contract or under certain conditions where the sale and purchase agreement can be canceled by the parties or by order of the court. Based on the sale and purchase agreement that has been made by the parties, the buyer does not carry out the seller's obligation to make the second stage of payment. The buyer has defaulted or broken a promise as stated in Article 1243 (Civil Code) compensation for costs, damages and interest

due to non-fulfillment of an agreement begins to be mandatory, if the debtor, even though he has been declared negligent, still fails to fulfill the agreement, or if something must be given or can only be given or carried out within a time that exceeds the specified time." The cases described are cases of default or broken promises that have been agreed upon in the sale and purchase agreement, including: (a) The buyer has not paid the shortfall in accordance with the agreement and is due. (b) The buyer ignores the seller from making payment immediately.

Reasons that can be said to be the form and conditions for fulfilling a default or broken promise are as follows: (a) Not doing what he promised to do; (b) Carry out what was promised, but not as promised; (c) Doing what was promised but being late; (d) Doing something that according to the agreement he is not allowed to do. Furthermore, Article 1266 of the Civil Code states that conditions for cancellation are always included in reciprocal agreements when one of the parties does not fulfill its obligations. In this case, the agreement is not null and void, but the annulment must be requested from the judge. This request must also be made, even though the conditions for non-fulfillment of obligations stated in the agreement are void. The provisions of Article 1267 of the Civil Code, if the party whose agreement is not fulfilled, can choose to force the other party to fulfill the agreement, if this is still possible, or to cancel the agreement, with compensation, costs, losses and interest.

### **Legal Consequences of Cancellation of the Land Sale and Purchase Agreement by the Seller Due to the Buyer Defaulting**

The sale and purchase agreement that takes place between the seller and the buyer is not always a simple sale and purchase agreement, in fact it often causes problems, so legal regulations are needed that regulate the various possibilities that can arise in the sale and purchase agreement. Careful regulation of buying and selling with legal regulations is a basic need, both in terms of the type of goods traded and the method of payment. 18 Various contract laws, if the agreement has fulfilled all the conditions and according to the law the agreement is binding and must be fulfilled and applies as law. The agreement gives rise to legal consequences that must be fulfilled by the parties concerned. 19 The legal consequence of a land sale and purchase deed made by PPAT containing a legal defect is that the land sale and purchase deed can be cancelled. This means that a statement of cancellation of a legal action is based on the demands of parties who are justified by statutory regulations in demanding cancellation.

According to statutory regulations and literature, the factors behind the cancellation of a land sale and purchase agreement bound by a sale and purchase deed issued by PPAT are: (a)

Failure to fulfill the requirements set by law for this type of formal agreement, which results in the agreement is null and void; (b) Failure to fulfill the legal conditions of the agreement; (c) Fulfillment of the conditions for cancellation of a conditional type of agreement; (d) Cancellation by a third party based on Paulina's action. 20 Under certain conditions, an agreement can result in cancellation, either by the parties or by court order. As a form of agreement, a land sale and purchase agreement contains the rights and obligations of the parties who make it, so that if the matters agreed upon in the sale and purchase agreement are violated or not fulfilled by the parties who make it, then this can be said to have occurred. Before you can carry out a sale and purchase before an authorized official, regarding land, the Land Deed Making Officer (PPAT), the parties who will carry out the sale and purchase of land rights must fulfill all the requirements regulated by the land sale and purchase.

Requirements regarding the object of sale and purchase, for example the right to the land to be traded is a land right legally owned by the seller as proven by the existence of a land certificate or other valid proof of that right, and the land being traded is not in dispute with another party, and so on. A sale and purchase agreement between parties has been agreed that the seller has an obligation to provide information to the buyer. General provisions regarding an agreement to hand over something are regulated in Article 1235 of the Civil Code and provisions specifically regulated for buying and selling are in Article 1474 of the Civil Code. After an agreement is entered into, the seller has three obligations, including: (1) Maintaining and caring for the property to be handed over to the buyer until delivery; (2) Hand over the goods being sold at the specified time, or if no time has been determined, at the buyer's request; (3) Cover the goods sold. The legal consequences that will arise are the cancellation of the sale and purchase agreement for the seller if there is no good faith from the buyer, then if an agreement is canceled they can make an agreement for the certificate that has been entrusted to the notary to be returned or an agreement between the parties that the payment will be returned at half the price. which has been paid by the buyer.

The issue of the transaction price for land which in fact has not actually been paid off, but the sale and purchase deed states that it has been "paid off", is apparently not a new problem, because many problems arise in transactions over land as a result of the character of such sale and purchase provisions, so as to resolve This issue is resolved by filing a lawsuit in court. That resolving civil cases through court is the final solution, after amicable settlement between the two is unsuccessful. When filing this lawsuit, the plaintiff is the seller who must be careful in filing his lawsuit, because wrongly determining the lawsuit will result in the lawsuit being rejected. There are only two known reasons for civil lawsuits, namely unlawful

acts (PMH) and breach of contract. Regarding considerations of civil procedural law in Indonesia, if the payment has not been paid in full and there is an agreement then the lawsuit states a breach of contract.

The legal consequences for buyers who have defaulted are the following penalties or sanctions: (a) The buyer is required to pay compensation for losses suffered by the seller (Article 1243 of the Civil Code). These provisions apply to all engagements; (b) Reciprocal (bilateral) agreement, a default by one party gives the other party the right to cancel or terminate the agreement through a judge (Article 1266 of the Civil Code). (c) The risk shifts to the buyer from the moment the default occurs (Article 1237 of the Civil Code). This provision only applies to agreements to provide something; (d) Paying court costs if the case is brought before a judge under Article 181 paragraph 1 HIR (Herziene Inland Reglement). Buyers who are proven to have defaulted will certainly be defeated by the case. These provisions apply to all engagements; (e) Fulfill the agreement if it can still be done, or cancel the agreement accompanied by payment of compensation (Article 1267 of the Civil Code). This applies to all engagements. Regarding the cancellation of the agreement or also called breaking the agreement, as a second sanction for negligence, or perhaps people who cannot see the nature of the cancellation or breaking the agreement as a punishment.

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#### **4. CONCLUSION**

The process of implementing a land sale and purchase agreement through a private deed or with validation before a notary is necessary if a dispute arises in the future. The sale and purchase agreement must fulfill the legal requirements for an agreement contained in Article 1320 of the Civil Code. The agreement is binding between both parties, the contents of the

agreement contain the identities of the parties, the price and size agreement which has been measured at the National Land Agency, the payment system such as stages or payment in full, as well as the contents of the agreement which includes if something undesirable happens between the two parties. , so that there are sanctions for payment of fines or interest and return of the certificate. It is called a breach of contract if one does not do what one agrees to do, carries out what was promised, but not as promised, does what was promised but is late and does something that according to the agreement one is not allowed to do. The legal consequences of canceling a sale and purchase agreement also bind both parties who have the rights and obligations to obtain legal protection. The right for the seller to get the proceeds from the sale of the object that has been sold, the right of the buyer to get the object from the seller as agreed. Cancellation does not apply if it is canceled unilaterally, so cancellation is carried out on the basis of an agreement. However, if there is no good faith on the part of one of the parties, it can also be brought to court or canceled automatically.

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