

Legal Protection for Landowner Due To Phased Payment System in Land Transaction



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ABSTRACT: The practice of phased payment system in land transaction creates uncertainty for landowner because the land has been controlled by the buyer but the landowner has not yet received the full payment of the land. This research analyzes the legal protection for landowner due to this practice through the legal protection theory by Moch. Isnaeni. This legal research uses empirical research with a qualitative approach. The types and sources of data used are primary and secondary data. Data collection techniques used are field studies and literature studies. Data analysis techniques used is interactive analysis. The data validity technique used is the source triangulation method. The results of this research indicate that internal legal protection that can be done by landowner and buyer is by involving the role of notary in making the agreements and the inclusion of proportional clauses for both parties. While the external legal protection provided by the law is legal protection against default and legal protection against dispute resolution through litigation and non-litigation method.

KEYWORDS: Authentic Deed, Land, Landowners, Legal Protection, Phased Payment.

I. INTRODUCTION

Article 37 paragraph (1) of Government Regulation No. 24/1997 on Land Registration states that to transfer land rights at the Land Registry Office, an authentic deed made by Land Deed Official (PPAT) is required. The process of land transaction is generally carried out by making a Sale and Purchase Agreement (PPJB) then after the buyer give the full payment, the signing of the Sale and Purchase Deed (AJB) is carried out by both parties in front of Land Deed Official. The Sale and Purchase Deed (AJB) is signed by the parties when the payment for the land has been fully paid. In addition to the payment of the land price, prior to the signing of the Sale and Purchase Deed, the parties must also pay the taxes, there are Income Tax for the seller and Duty on the Acquisition of Land and Building Rights (BPHTB) for the buyer. The Sale and Purchase Deed is used as a condition for transferring land rights at the Land Registry Office, so without a Sale and Purchase Deed, the transfer of land rights from the landowner as the seller to the buyer cannot be carried out and the land rights still belong to the landowner.

In practice, there are buyers who do not pay for the land in full payment, but in phase payments. Usually this is done by housing developers in the property business. Developer is an individual or company that works to develop a residential area into housing area that is livable and has economic value so that it can be sold to the public. (Yetti & Yalid, 2022) Some of the payment systems carried out by housing developers are, payment by bank credit, phased payment for each of lot sold, payment made when the housing project is completed, and phased payment accompanied by a Power of Attorney. There are several reasons why developers used phased payments system to landowner. First, the price, the land that is targeted by developer for housing construction is a extensive land and has a strategic location as a place to live. The more extensive and strategic a land causes its selling price to be higher so that the landowner offers a high price as well. A very large nominal causes the developer to not be able to make a lump sum payment, so the price is paid several times according to the agreement between the two parties. Second, the economic condition of the developer, phased payment is the right way for developer who have little capital or do not want to spend a lot of capital. This is because developer only needs to spend capital to provide a down payment to the landowner and the next payment is paid when he gets income from their consumers. The developer does not need to pay the entire land price at the beginning of the purchase, so the company funds can used for other purposes, such as project development or material purchases. Third, family or close friends, developers who buy land from family or close friends are usually more flexible in making agreements because of mutual trust. Fourth, the time, phased payments that used by developer will save more time for developer. This is because in the transaction process with the landowner, the developer does not have to do a land tittle transfer first. Developer can immediately take care of housing development licensing, split the certificates, and can immediately sell to their customers. Meanwhile, the reason that causes

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landowner to accept phased payments is that is the economic situation of landowners who are financially lacking causes them to sell their land quickly.

With the practice of land transaction that has not been fully paid, it can cause problems in the future if the buyer cannot pay the land price or is late in making payments. In the property business, the developer has not paid off the payment to the landowner but the land has been platted or the building has been built on it and has been resold to its consumers. The payment of land that is not made in full certainly does not provide certainty for the landowner because the land is already under the control of the buyer but the landowner has not received the full payment. Based on the description above, the author is interested in writing a research with the title “**Legal Protection For Landowner Due To Phased Payment System In Land Transaction**”.

II. RESEARCH METHOD

This legal research uses empirical research with a qualitative approach. Empirical legal research is research using data obtained directly from community behavior. This research is also called non-doctrinal legal research. (Soekanto, 2010) The types and sources of data used are primary and secondary data. Primary data is data obtained directly from community behavior, while secondary data is obtained from law regulations, books, theses, journals, and the internet. Data collection techniques were carried out by means of field studies through structured interviews and literature studies. Data analysis techniques are carried out by means of interactive analysis. The data validity technique used is the source triangulation method.

III. RESEARCH RESULT

Legal protection is protection given to legal subjects. Legal protection is a description of the function of the law, that the law can provide justice, order, certainty, benefit, peace, and a sense of security, both in mind and physically from disturbances and various threats from any party. (Saputri, 2018) Landowner need legal protection due to the implementation of a phased payment system in the land transaction. This is to create legal certainty for landowner as holders of the land rights that have been controlled by buyers. According to the Moch. Isnaeni's theory, legal protection is carried out in 2 (two) ways, there are internal legal protection and external legal protection.

Internal legal protection, namely in forming an agreement, the parties can create their own desired legal protection according to the agreement. The legal protection is packaged by the parties themselves, at the time of making the agreement clause, both parties want their interests to be accommodated on the basis of the agreement. Likewise with all types of risks that are attempted to be prevented through the clauses of the agreement. Internal legal protection can be realized by the parties legal standing if both are relatively equal or the parties have equal bargaining power. (Syajratuddar, 2023) Internal legal protection refers to the agreement made by the landowner and the buyer. Some things that can be done as legal protection efforts are as follows:

1. Involve the role of a notary in making the agreement

Agreement are made written so it can be used as evidence in the event of a dispute between the parties. Landowner and buyer can make agreement in the notary by making a party deed, or legalizing and waarmeking an underhand deed that has been made by the parties at the notary. Party deed is a deed made in front of notary by the request of the parties. Legalization deed is an underhand deed that has been made by the parties which must be signed and legalized in front of notary. Meanwhile, waarmeking is an underhand deed that has been signed by the parties on the day and date mentioned in the agreement, which is not done in front of notary, and the notary is tasked to booked the underhand deed. Authentic deeds have perfect evidentiary power in court. The evidentiary power possessed by the authentic deed includes 3 (three) things, the first is the power of birth proof, namely the deed itself has the ability to prove itself as an authentic deed. Second, formal evidentiary power, namely that the authentic deed proves the truth of what was seen, heard, and done by the notary. Third, the strength of material evidence, namely the contents of the deed are considered true for all people. If the deed is used in court, it is considered sufficient by the judge without having to ask for other evidence, because the deed was made in written, completely and clearly states the parties, the object, and the date the deed was made. (Salim, 2015) An agreement made by notary will provide stronger legal certainty for the landowner, because the notary acts as a public official who has the authority to ensure that the agreement is in accordance with applicable legal provisions.

2. Inclusion of important clauses in the agreement

- a. Form of legal relationship. This clause explains the essence of the form of legal relationship between the parties whether it is a sale-purchase relationship, lease, cooperation, borrowing, or other forms of legal relationship. The form of the legal relationship can also include the object of the agreement, namely the land belonging to the landowner. This clause must be able to accommodate the following articles so that they are in harmony with the concept of the rights and obligations of the parties in the legal relationship. (Sukandar, 2011)
- b. Price and payment system. This clause lists the amount of price agreed between the landowner and the buyer. Article 1465 paragraph (1) of the Civil Code determines that the price in a transaction must be determined by both parties. This means that it is not allowed if only one party determines the price so that there must be an agreement between the parties. Inclusion of the payment system must be detailed in the agreement. The payment system can be in the form of several mechanisms, namely payment in full in advance, the advantages for landowner if they used a full payment system are that landowner receive direct

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payment without the need to wait or arrange installments, there is no risk of late payments from buyer, and the transaction can be completed quickly, phased payments, payment by exchange of goods, and payment by credit bank, where the buyer obtains a loan from the bank to pay for the land purchased from the landowner. If the payment system is made in stages, it is important to include arrangements regarding the date and amount of installments to be paid. It is also necessary to include the name and account number of the bank receiving the installment payments.

- c. Payment deadline. Payments are made by the buyer to the landowner in stages over a certain period. The inclusion of a payment deadline or payment date is very important. If the payment date is not included in the agreement, then this agreement can cause uncertainty and there will be differences opinion about when the payment must be paid.
- d. Rights and obligations of the parties. In the agreement, the landowner and the buyer have the freedom to specify their rights and obligations in detail. The principle of freedom of contract provides flexibility in negotiating, so that the agreement can be adjusted to the needs and conditions faced by the parties.
- e. Arrangements regarding land tenure rights during the payment process. The landowner has the right to control the land and ensure that the land is not transferred while the payment is outstanding. Until the land price is fully paid, the ownership rights to the land have not been transferred to the buyer. Therefore, with this clause, the landowner can retain ownership rights until such time as the transfer of rights or leveraging to the buyer.
- f. Penalties or compensation in case of late payment. Fines are imposed in case of violation of rights and obligations. Apart from being a punishment for violations, fines are also an element of encouragement so that buyers carry out their obligations consistently. (Sukandar, 2011)
- g. Default. Default occurs when the rights and obligations of one of the parties are not fulfilled. The forms of default committed by one of the parties are: (1) Not fulfilling the performance at all. (2) The performance performed is not appropriate. (3) Late in fulfilling the performance. (4) Doing what the agreement forbids to do. The party who feels aggrieved can demand compensation in the form of costs, losses, and interest (Article 1246 of the Civil Code). According to Article 1267 of the Civil Code, the injured party can choose between 2 (two) things, namely asking for the implementation of the agreement, if that is still possible, or the second is asking for the cancellation of the agreement, with a claim for compensation. (Nadhifah, 2023) Based on Article 1243 of the Civil Code, there are 2 (two) ways of determining the calculation of compensation in the agreement, namely first, if the agreement does not specify a period of time, the payment of compensation begins to be calculated since the defaulting party has been declared negligent, but continues to neglect it. In this case, the injured party can give advance notice to the defaulting party for the fulfillment of obligations. Second, if the agreement has specified a certain period of time, the payment of compensation begins to be calculated from the expiration of the specified period. The injured party can wait until the time period expires after which if the other party does not fulfill its obligations, then the injured party can claim compensation.
- h. Dispute resolution. The dispute resolution clause should contain a phased dispute resolution, starting from kinship to final and binding. Dispute settlement can be done through non-litigation and litigation. Non-litigation dispute resolution is an out-of-court settlement by referring to Law No. 30/1999 on Arbitration and Alternative Dispute Resolution. There are five types of out-of-court dispute resolution, namely consultation, negotiation, mediation, conciliation, legal opinion, arbitration. Meanwhile, dispute resolution through litigation is a dispute resolution process that occurs between the parties whose mechanism is carried out by the court. (Windari, 2014)
- i. Cancellation or termination of the agreement. Cancellation of an agreement is a situation that results in an agreement relationship being considered never to have existed. The legal consequences of cancellation is considered retroactive since the making of the agreement. The cancellation of the agreement has the intention of returning to its original position, as it was before the making of the agreement. (Hernoko, 2008) Termination of the agreement is associated with a violation of obligations by one of the parties resulting in default. Termination of the agreement must be based on a violation that fundamentally affects the whole or part of the agreement. Based on Article 1266 of the Civil Code, parties who are harmed by default can demand termination or cancellation of the agreement through the court. The void condition can be included in the agreement itself, or regulated by law and regulations. If the void condition is not included in the agreement, the aggrieved party can demand the cancellation of the agreement through the court. (Nadhifah, 2023)

External legal protection explains the legal protection that comes from the laws and regulations made by the authorities through regulations for the interests of the weak party, in accordance with the nature of the regulations which must not be biased and partial, it is also mandatory to provide balanced legal protection to the other party because it is possible that in making an agreement, one party has a stronger position than its partner. (Syajratuddar, 2023) Some things that can be done as legal protection efforts are as follows:

1. Legal protection against default

The provisions regarding default are regulated in several articles in the Civil Code. Article 1239 of the Civil Code stipulates that if a party does not fulfill its obligations in the agreement, then the party must compensate for the costs, losses, and interest arising from its negligence. The legal consequences for the party who has committed default are the following legal penalties or sanctions:

- a. The debtor is obliged to pay compensation for the losses suffered by the creditor (Article 1243 of the Civil Code).

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- b. If the agreement is reciprocal, the creditor can demand termination or cancellation of the agreement through a judge (Article 1266 of the Civil Code).
- c. If the agreement is an agreement to provide something, the risk shifts to the debtor since the default occurred (Article 1237 paragraph (2) of the Civil Code).
- d. The debtor is obliged to fulfill the agreement if it can still be done, or the cancellation of the agreement is accompanied by payment of compensation (Article 1267 of the Civil Code).
- e. The debtor is obliged to pay the court costs in the District Court.
- f. The debtor is found guilty. (Paendong, 2022)

The party who feels aggrieved can only request compensation from the party who committed the default not due to reasons that are included in force majeure or due to unforeseen causes. If unexpected things happen (which must be proven by the debtor) that cause failure to implement the agreement, this is not included in the category of default. This is regulated in Articles 1244-1245 of the Civil Code. For compensation payments arising from an agreement on the payment of a sum of money caused by the delay in fulfilling the performance by the debtor based on Article 1250 of the Civil Code, the compensation only consists of interest stipulated by law, unless there is a special law that stipulates otherwise. The interest stipulated by law is 6% (six percent) per year. Payment of compensation is made without the need to prove that there has been a loss to the creditor. Payment of compensation is calculated from the time it is requested in court by the creditor.

2. Dispute resolution through litigation and non-litigation

Dispute resolution through non-litigation is regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. According to Article 6 paragraph (1) of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, it states that civil disputes or differences of opinion can be resolved by the parties through alternative dispute resolution based on good faith by setting aside litigation resolution in the District Court.

Alternative Dispute Resolution is the resolution of disputes by the parties carried out outside the court either without or with the assistance of a neutral third party cooperatively to achieve peace or agreement. No party is harmed and it is mutually beneficial to the disputing parties, because the result of alternative dispute resolution is a win-win solution. In Article 1 number 10, alternative dispute resolution can be carried out through consultation, negotiation, mediation, conciliation, or expert assessment.

Dispute resolution efforts through litigation are final legal efforts if after going through non-litigation efforts the parties have not reached an agreement. The litigation dispute resolution process is a dispute resolution carried out through a court proceeding where the authority to regulate and decide it is carried out by the judge. The litigation dispute resolution process results in all disputing parties facing each other to defend their rights in court. The final result of a dispute resolution through litigation is a decision stating a win-lose solution and the implementation of the decision can be enforced if the losing party does not want to implement the contents of the court decision. (Rianti, 2024)

CONCLUSIONS

The form of legal protection for landowner due to the phased payment system in land transaction can be in the form of internal and external legal protection. Internal legal protection refers to the agreement made by the two parties. Some things that can be done as legal protection efforts are first, involving the role of notary in making agreements so as to provide legal certainty and have perfect evidentiary power in court. Second, include the following clauses in the agreement: form of legal relationship, price and payment system, payment deadline, rights and obligations of the parties, arrangements regarding land tenure rights during the payment process, sanctions or compensation in the event of late payment, default, dispute settlement, and cancellation or termination of the agreement. Meanwhile, external legal protection provided by the law and regulations are legal protection against default which is regulated in Article 1239 of the Civil Code, and legal protection against dispute resolution through litigation and non-litigation which is regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.

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