

## JURIDICAL STUDY OF BREACH OF LAND SALE (CASE STUDY OF DECISION NUMBER 44/PDT.G/2019/PN KDL)

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**Abstract:** The juridical study of default on land sale and purchase Case Study of Decision Number 44/PDT.G/2019/PN KDL and the default dispute in the decision on case Number 44/Pdt.G/2019/PN Kdl between PT Kawasan Industri Kendal and PT. Prospera Jaya. This study uses a qualitative approach which is descriptive analysis with normative juridical methods, namely by using research materials from secondary data collected through library research. The conclusions of this study are (1) Settlement of default disputes in sale and purchase agreements in the decision of Case NUMBER 44/ PDT.G/2019/PN KDL went through a mediation process. By mediating the dispute that occurred between PT Kawasan Industri Kendal as the Plaintiff and PT Prospera Jaya Group as the defendant ended amicably by carrying out several agreements in accordance with applicable law. (2) It is hoped that all companies in Indonesia experiencing civil disputes will first take part in the mediation process. So that in resolving disputes it is not just carrying out the mediation process as a formality to avoid the threat of being null and void, but should resolve disputes in accordance with the objective mediation so that a sense of justice is fulfilled and beneficial to the parties. (3) The researcher advises the general public or companies experiencing default disputes as in Case NUMBER 44/PDT.G/2019/PN KDL to carry out the same process as in the decision of the case. (4) So as to minimize losses between the two parties.

**Keywords:** Juridical Study, Breach, Land Sale

## **I. INTRODUCTION**

Land is part of the resources to meet basic human needs, namely shelter and other basic needs, especially human nutritional needs, so that natural resources are needed, which is likely to be disputed by several parties. who need each other. Conflicts that start with underlying land disputes involve community interests, values, data, etc. Economic growth and the increase in the economic value of land has led to greater social disparities between those with access to traditional building land and those who most need space, but are under pressure. It is impossible for this situation not to continue causing conflicts/disputes in the field.

Business ethics in the daily life of Indonesian people cannot be separated from contracts, especially when it comes to state buying and selling contracts. According to the legal interpretation of the Civil Code, an agreement is an act of one or more persons who bind themselves to another person or persons. Every contract entered into by related parties is legally binding and must comply with the legal requirements of the contract to be concluded. Article 1320 of the Civil Code states that the conditions for a valid agreement must be the agreement of the parties, the ability of the parties, the existence of a certain object and the force of law.

Failure to perform a contract or failure to perform a performance results in negligence. Default is the failure or non-performance of an obligation imposed on certain parties, whether it is an obligation arising from a contract or agreement or agreement according to law. The Civil Code, which regulates buying and selling contracts, follows a mandatory system. So that the new sale and purchase agreement contains the relationship between the rights and obligations of both parties, if the seller and buyer are formalized at the time of the sale and purchase agreement. Based on this contract, the seller is obliged to relinquish his rights to the goods he sells, and at the same time has the right to demand payment of the agreed price and otherwise force the buyer to pay the price of the goods against his rights and requires the transfer of rights to the goods.

Due to the difficulty of fulfilling the sale and purchase requirements before the PPAT, the legal rules that are still used in state buying and selling practices, namely the obligatory sale (PJB) were made. Even though the contents already regulate the sale and purchase of land, the form is limited to mandatory sale and purchase. The relevant form is the form of the contract which is or is an introduction. The land sale and purchase agreement is a kind of formality. The formality mentioned here is that all land sale and purchase agreements must be drawn up in the presence of an authorized official. The authorized official in this case is the Land Deed Making Officer or abbreviated as PPAT. Government Regulation no. 2 of 1997 concerning Registration of Immovable Property. This article does not clearly state the formalities of land registration or there is no rule in the article that requires buying and selling to be carried out before the PPAT. According to Article 37 of Government Regulation no. 2 of 1997 concerning the preparation of land records, what must be done by the PPAT.

## **II. METHODS**

In accordance with the title and the problem under study used by the author in the research entitled Juridical Study of the Case of Default in Land Sale and Purchase (Decision Case Number 44/Pdt.G/2019/PN Kdl), namely normative juridical writing. The author uses this normative juridical writing because it will put more emphasis on the implementation of legal norms, statutory regulations, international agreements in the form of conventions, legal theories and opinions of legal scholars so that this writing will appear to prioritize study materials bibliography and also the materials available at the relevant agencies where the author does the writing.

### III. RESULTS AND DISCUSSION

#### **Juridical Study of Default in Land Sale and Purchase (Case Study of Decision Number 44/Pdt.G/2019/PN Kdl)**

The decision determines Case No. 44/PDT.G/2019/PN KDL as plaintiff, followed by PT Kawasan Industri Kendal (KIK). Meanwhile, PT. Prospera Jaya was named a suspect. This dispute was resolved at the Kendal District Court. According to Article 2(1) of Law no. 14 of 1970 (as amended by Law No. 35 of 1999) and the last provision of Article 1(1) of Law no. 16 (4) of 2004 with Law Number 14 of 1970 states that the Kendal District Court is a civil body in charge of receiving, investigating, adjudicating and resolving disputes between the parties involved. The lawsuit filed by PT Kawasan Industri Kendal (KIK) is often referred to as a controversial jurisdiction, ie. H. Partisan disputes.

Determining whether the debtor is guilty of negligence when the debtor intentionally or negligently does not perform the agreed performance or contract. In the Decision of Case 44/PDT.G/2019/PN KDL, investigators must pay special attention and consider the circumstances of negligence in decision four. First, the debtor defaults which results in the debtor being negligent in the agreed contract without any effort. Second, the debtor fulfills the obligation, but is neither right nor wrong. This means that the service has been provided, but the service provided or provided is not in accordance with the agreement that has been agreed upon. Third, the debtor does but not on time or late. Fourth, the debtor does something that is prohibited by the contract or violates the contract and its conditions.

In connection with the termination of the contract, if the debtor is guilty, a court order is made. State law that can be applied when the creditor intends to default on the debt. In principle, the debtor's mistake must first be determined as negligence. In this case, the creditor has the right to warn the debtor or debtor through legal channels that the creditor wants immediate or short-term payments ordered by a court or a joint arrangement. In short, the lawsuit must be billed and the violator be reprimanded with a warning or warning in accordance with applicable law.

Article 1238 BGB regulates notification of default or unpaid debtors. According to Article 1238 BGB, the warning must be accompanied by a permit or similar document. According to Article 1238 BGB, the order is an official reprimand from the bailiff or a party to the trial. The action in question is an ordinary (unofficial) letter, letter or telegram, the purpose of which is to warn the debtor, so that he is immediately aware of his actions or within a certain time. However, according to Ramela Subekt, similar actions are generally interpreted as verbal and written warnings or notifications from creditors, the purpose of which is to encourage debtors to immediately or within a specified period of time. The law for creditors who default on an agreement is something that becomes the outcome or result of a legal event that enters into a cooperation agreement in accordance with a court decision. However, if one of the parties commits a default, sanctions will be imposed in accordance with the losses suffered by the creditor.

First, compensation for losses suffered by creditors, both real and material losses. Second, cancel or carry out the agreement through a judge. Third, the risk of switching since a default occurs. Fourth, pay court fees if you are sued in court. Fifth, Fulfill promises if they can still be implemented or cancel the agreement accompanied by compensation. if one of the parties commits a default, sanctions will be imposed in accordance with the losses suffered by the creditor. First, compensation for losses suffered by creditors, both real and material losses. Second, cancel or carry out the agreement through a judge. Third, the risk of switching since a default occurs. Fourth, pay court fees if you are sued in court. Fifth, Fulfill promises if they can still be implemented or cancel the agreement accompanied by compensation. if one of the parties commits a default, sanctions will be imposed in accordance with the losses suffered by the creditor. First, compensation for losses suffered by creditors, both real and material losses.

Second, cancel or carry out the agreement through a judge. Third, the risk of switching since a default occurs. Fourth, pay court fees if you are sued in court. Fifth, Fulfill promises if they can still be implemented or cancel the agreement accompanied by compensation.<sup>1</sup>

With respect to a contract to perform an act, if the contract is not on time, the person is in default by the stipulated time. Because of this, he was accused of negligence. Before pursuing a case of negligence, you must charge or warn in advance. According to Article 1238 StGB, according to him, a warning can be given orally or in writing. At the same time, compensation for negligence is regulated in Article 1239 StGB, according to which "any agreement to do or not do something must be compensated by compensation for costs, losses and interest if the debtor does not fulfill his obligations". At the same time, according to Section 1250 of the Criminal Code, according to which compensation for costs and interest on damages caused by non-compliance with the contract is mandatory.

### **Settlement of Default Dispute in the Dispute of the Sale and Purchase Agreement in Case Decision Number 44/PDT.G/2019/PN KDL**

In decision number 44/PDT.G/2019/PN, KDL was involved in a civil lawsuit. In case number 44/Pdt.G/2019/PN Kdl, PT Kawasan Industri Kendal (KIK) is named as the plaintiff. Meanwhile, PT. Prospera Jaya was identified as a defendant in case number 44/Pdt.G/2019/PN Kdl. On Wednesday, January 8 2020, Case No. 44/PDT.G/2019/PN KDL was tried openly at the Kendal District Court. In the case of Decision No. 44/PDT.G/2019/PN KDL, the plaintiff and the defendant reached an agreement. This led to the decision that both sides decided to settle the matter amicably. The mediation process between the plaintiff and the defendant was carried out by Robby Alamsyah, SH, MH as a judge at the Kendal District Court. Based on the written peace agreement dated January 2, 2020,

Mediation is a form and alternative dispute resolution. Mediation has long been growing and developing as an alternative in dispute resolution. This is because the process moves quickly. The factors that influence this are inseparable from the desire of the community or society to resolve disputes quickly. Thus, both parties to the dispute will be satisfied. According to PERMA No. 1 of 2016, "Arbitration Proceedings in the District Court". Recognizing that mediation is a peaceful, fast, appropriate and efficient way of resolving disputes can provide greater opportunities for disputing parties to find solutions and obtain a sense of justice.

In a dispute or case between two or more parties, peace can be sought, dispute resolution through peace is much more effective, mediation can be carried out outside the court or even in the court session itself, if outside the court it is known that the ADR (Alternative Dispute Resolution) procedure in various forms, such as mediation with the help of a facilitator or mediation by intermediaries etc.

As in procedural law, which requires calm in disputes. This can be seen in Article 130 HIR and Article 154 RBG, where the two articles demand calm in this matter. So here it can be seen that the judge played a role in the implementation of this peace, while the power of the peace decision is the same as an ordinary decision and as other decisions can be implemented, this peace effort is open so far because the examination is carried out in court. In Case No. 44/PDT.G/2019/PN KDL, PT Kawasan Industri Kendal is the seller of the property. In this case, PT Kawasan Industri Kendal owns the property. PT Prospera Jaya Group is now the buyer of the disputed property. The disputed property is located at Jl. Wanamarta Raya No. 22 by area 11. 272 M2 (eleven thousand two hundred and seventy two square meters) in the Kendal Industrial Estate (KIK). File number 44/PDT.G/2019/PN KDL, start buying and selling land on Jl. Wanamarta Raya No. 22 with an area of 11,272 M2 (eleven thousand two hundred and seventy two square meters) in the Kendal Industrial Area (KIK). The nominal price is IDR

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<sup>1</sup>Abdulkadir Muhammad, Indonesian Civil Law, Third Edition, PT. Citra Aditya Bakti, Bandung, 2010, h. 29

15,499,000,000 (fifteen billion four hundred ninety nine million rupiah). Procedure no. 44/PDT.G/2019/PN KDL starts when the parties viz. H. the defendant and the plaintiff differed on the agreement and mediation of the sale and purchase object. On February 22 2019, the defendant, in this case PT Prospera Jaya Group, complained to the plaintiff at the Central Java Regional Police. On August 23, 2019,

PT Kawasan Industri Kendal's cassation request to the Kendal District Court as the plaintiff is in accordance with the applicable litigation principles. Filed a lawsuit at the Kendal District Court in accordance with Article 142 RBg (Rechtsreglemnt Buitengewesten). If the object of the lawsuit is real estate, according to Article 142 RBg, action can always be submitted to the district court where the real estate is located. The property which is the subject of this legal dispute is subject to Article 1332 BGB. Article 1332 BGB states that only goods that can be traded can become the subject of a contract. Transactions of buying and selling land and buildings are goods and prices. According to Article 1457 of the Indonesian Civil Code ("KUHP"), buying and selling is an agreement where one party agrees to deliver goods and the other party agrees to pay the promised price. Price can be interpreted as legal tender, namely in the form of a sum of money. Goods that form the basis of buying and selling land and buildings are land and/or building rights.

Dispute number: 44 Pdt.G/2019/PN.Kdl stipulated in Article 2 for problem solving Article 2 paragraph 1 file number: 44 Pdt.G/2019/PN.Kdl regarding dispute resolution. The plaintiff and the defendant agreed to terminate the sale and purchase agreement. Cancellation refers to the sales contract number: 021/KAV/PPJB-KIK/2017 dated 11-28-2019. Article 2(2) also provides that the parties agreed between the plaintiffs to repay the land purchase price to the defendant. Given the costs incurred by the plaintiff from the previous sale and purchase process.

The main points of the dispute regarding the allowing sale and purchase of land in Case no. 44 Pdt.G/2019/PN.Kdl. Due to disagreements over the agreement between the parties and the return of goods. According to Abdulkadir Muhammad, as a result of non-contractual negligence, something becomes negligent which is the result of a legal event that ends in a cooperation agreement and when one party is negligent. penalty

First, to compensate for losses suffered by creditors. File number: 44 Pdt.G/2019/PN.Kdl. The indemnification procedure is contained in Section 2(2), which provides that the plaintiff returns the purchase price of the property to the defendant. This means that PT Kawasan Industri Kendal will return the land purchase money paid by PT Prospera Jaya Group in accordance with applicable regulations. In reviewing the law Article 1243 of the German Civil Code (KUHPer), contains:

"Reimbursement of costs, losses and interest caused by non-compliance with the agreement is required, if the debtor, even though he is declared bankrupt, does not fulfill the agreement, or if something must be given or can only be given or within a period that exceeds the time agreed, but in this case the emergence of a dispute is part of the agreement, the purpose of the terms of the agreement is set forth in writing on January 2, 2020 in article 5 of the contract, article 5 explains that this is due to differences of opinion about the agreement and the actual arrangement.

Let's compare it with Article 1239 StGB, according to which every agreement to do or not do something must be accompanied by compensation for costs, losses and interest, if the debtor does not fulfill his obligations. According to the author's opinion, it is less important if the subject matter is equated with Article 1239 of the Criminal Code. Because the debtor fulfills his obligations as the owner and property of Jl. Wanamarta Raya No. 22 with an area of 11,272 M2 (eleven thousand two hundred and seventy two square meters) in the disputed Kendal Industrial Area (KIK).

Second, canceling or enforcing the contract through a judge. The two disputing parties in case number: 44 Pdt.G/2019/PN.Kdl agreed to settle the contract through mediation. Through the mediation process previously described, both parties agreed to cancel the sale and purchase agreement number: 021/KAV/PPJB-KIK/2017, 28.11.2019.

Third, if you are sued, you will pay a lawyer. As stated in the case number: 44 Pdt.G/2019/PN.Kdl in the provisions reviewed by both parties. In the case before this court, the plaintiff was ordered to pay a fee of Rp. 666,000.00 (six hundred sixty six thousand rupiah). The grant of power of attorney to the plaintiff was carried out in accordance with Article 9 (1) of Supreme Court Regulation (PERMA) No. 1 of 2016. In that article it is stated that a fee is charged for inviting the parties to mediation. in advance to the plaintiff by court deposit.

Fourth, fulfill the promise, if it is still possible, or terminate the contract with compensation. Contract termination and compensation are decisions made by both parties to the dispute during mediation. As explained in the previous paragraph. However, as a result of this Peace Agreement, both parties must fulfill the compensation provided for in Article 3 if number: 44 Pdt.G/2019/PN.Kdl. The parties to the dispute also agreed not to sue each other in the form of criminal complaints to the police and lawsuits related to the purchase of land on Jl. Wanamarta Raya No. 22 with an area of 11,272 M2 (eleven thousand two hundred and seventy two square meters) in the Kendal Industrial Area (KIK).

From the description above, case number: 44 Pdt.G/2019/PN.Kdl with PT Kawasan Industri Kendal and PT Prospera Jaya Group can be resolved through mediation. According to the author, the mediation conducted by PT Kawasan Industri Kendal and PT Prospera Jaya Group is very appropriate. With the hope that those involved can get a sense of justice. A sense of justice can be achieved not only in disputes, but also by considering the mutual understanding of the parties. The results of the arbitration process agreed upon by both parties become law. Because the principle of binding is based on the provisions of Article 1374 Paragraph 1 BW (old) and Article 1338 Paragraph 1 BGB. Article 1338 paragraph 1 BGB confirms: "All legally concluded contracts are governed by the laws of those who enter into them."

#### **IV. CONCLUSION**

The conclusions obtained from the results of the Juridical Study of Default on Land Sale and Purchase (Case Study of Decision Number 44/Pdt.G/2019/PN Kdl) gave rise to a civil dispute. This civil dispute will make both parties concerned submit this dispute to the district court. So that both parties have considered the legal consequences or legal consequences in the dispute process that they submitted to the district court. The legal consequences include. First, compensate for losses suffered by creditors. Second, cancel or carry out the agreement through a judge. Third, the risk of switching since a default occurs. Fourth, pay court fees if you are sued in court. Fifth, Fulfill promises if they can still be implemented or cancel the agreement accompanied by compensation

Settlement of default disputes in the sale and purchase agreement in the decision of Case NUMBER 44/PDT.G/2019/PN KDL through a mediation process. This dispute involves PT Kawasan Industri Kendal as the plaintiff and PT Prospera Jaya Group as the defendant. The mediation process resulted in several agreements contained in case NUMBER 44/PDT.G/2019/PN KDL.

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