

Juridical Analysis of the Refusal of Home Emptying Post-Sale by Seller (Study of Decision Number 626/PDT.G/2019/PN.MDN)

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ABSTRACT

The purpose of this study is to find out the applicable legal mechanism related to the emptying of houses after sale by sellers; to analyze and find out the process of resolving legal disputes that can be applied in cases of refusal to vacate the house after sale by the seller; and to analyze and find out the analysis in the judge's consideration of the court decision number 626/Pdt.G/2019/PN.Mdn. The results of the study show that the existence of an agreement to vacate the house in the sale and purchase deed reduces the risk of refusal to vacate the house by the seller; The results of this study show that out-of-court settlement or non-litigation is an important way to resolve this house vacancy case, because it is faster, more efficient and effective, for example, the parties can choose what kind of non-litigation dispute resolution must be carried out in order to obtain justice and legal certainty. Juridical leveraging guarantees that the legal ownership rights are transferred from the seller to the buyer in accordance with the applicable legal provisions, as mentioned in article 1457 of the Civil Code and 1458 of the Civil Code and there is a discrepancy in the rules of civil procedure law where in the decision the defendant I and defendant II are not present in the trial where in article 125 Paragraph (1) which is often called the verstek decision, namely all lawsuits from the plaintiff must be granted, However, in the judge's decision above, the lawsuit from the plaintiff was only partially accepted, in the judge's consideration it was also not mentioned that the object of the case was not confiscated through the court and there was no coercive effort by the court against the emptying of the object of the case, which resulted in losses by the plaintiff.

Keywords: *House Emptying, Sales, Dispute*

INTRODUCTION

Land is one of the important components in community life in Indonesia. Land can be utilized through the rights given to its legal subjects. In Law Number 5 of 1960 concerning the Basic Regulations on Agrarian Principles (hereinafter referred to as the UUPA), land rights have been regulated. Land rights are rights that can be given and owned by people, either individually or jointly and can be owned by legal entities. The rights to the land are intended to give the authority to use the land in question. Furthermore, Article 16 paragraph 1 of the UUPA states that land rights include property rights, building use rights, use rights, business use rights, lease rights, land opening rights and other rights that have not been mentioned that will be determined by the Law. Land rights can be transferred to other parties, the transfer of land rights can be carried out by buying and selling, exchange, grants, land parcel divisions, grants according to customs, income in the company or (inbreng), and hiataasiat or (legaat). In the event of buying and selling land objects, an agreement is needed to be the basis for the rights and obligations of the parties in the land purchase and sale transaction.

The agreement has also been regulated in article 1313 of the Civil Code which contains the meaning, namely: "An agreement is an act by which one or more other persons bind themselves to one or more other persons", from this event a legal relationship arises between the parties who enter into an agreement or ordinarily referred to as an agreement where there are rights and obligations of each party. Regarding the sale and purchase

agreement, the provisions of the law give the parties the freedom to determine the conditions that they must meet. This is in accordance with the principle of freedom of contract contained in article 1338 paragraph (1) of the Civil Code.

An agreement is an event where one person promises to another person or where 2 (two) people promise each other to carry out something. An agreement must also meet the subjective and objective elements in article 1320 of the Civil Code concerning the Valid Conditions of Agreement, namely the existence of an agreement, skill, certain things, and halal causes. With the fulfillment of the conditions for the validity of the agreement, an agreement becomes valid and legally binding for the parties who make it. Because of the existence of an agreement, it will give rise to an agreement for the parties who have agreed to make an agreement so that the realization of achievements that must be carried out by each party who binds themselves to each other in an agreement will be realized.

With the occurrence of such a legal event, Mr. ED and Mrs. AAH have violated the provisions contained in the Civil Code, namely Articles 1313, 1320, and 1338, so it is clear that Mr. ED and Mrs. AAH have defaulted on the sale and purchase agreement that has been made jointly and before the Notary. In the event that the achievement is not fulfilled so that it has become an act of default, the subject of the default must reimburse costs and losses as stated in article 1243 of the Civil Code. "Reimbursement of costs, losses and interest due to the non-fulfillment of an obligation begins to be obligatory, if the debtor, even though it has been declared lalai, is still obliged to fulfill the obligation, or if something that must be given or done can only be given or done within a period beyond the predetermined time" which is often referred to in legal terms as a default. If one of the parties violates the agreement, then the party has committed an unlawful act based on Article 1365 of the Civil Code "The unlawful act in question is an unlawful act committed by a person who, due to his fault, has caused harm to another person".

The implementation of the judge's decision can be carried out in two ways, namely voluntarily and by way of execution, the first means that after the judge makes a decision and has permanent legal force, the defeated party with his own will voluntarily carries out the implementation of the judge's decision can be carried out in two ways, namely by voluntary means and by way of execution, the first means that after the judge makes a decision and has permanent legal force, the party who defeated by his own will to voluntarily carry out. Examined from the perspective of the provisions of the Het Herziene Inlandsch Reglement Article 178 (HIR, Stb. 1941-44), Rechtsreglement voor de Buitengewesten Article 189 (RBg, Stb. 1927-227) the end of the process of examining civil cases in court is the issuance of a judge's decision. The logical consequence is that if it has been decided by the court, the winning party of course hopes that the decision can be implemented or commonly known as execution. If it is not implemented, the court decision becomes meaningless. In the event that the court decision has permanent legal force (inkracht van gewijs de zaak) is not carried out voluntarily by the defeated party, of course this raises a problem.

From the description in the background above, the researcher is interested in conducting research on the case so that it can identify several problems by discussing it further regarding the act of default committed by the research subject. So the title of the thesis in this study is "Juridical Analysis of the Refusal to Vacate a House After Sale by the Seller (Study of Decision Number: 626/PDT. G/2019/PN. MDN).

LITERATURE REVIEW

Basic Definition and Concept of Legal Protection

The Civil Procedure Law regulates how to file a claim for rights, examine and decide them and the enforcement rather than the decision. The Civil Procedure Law is regulated in various ways to defend the rights of citizens through the mediation of the court or in front of a judge. In the Civil Procedure Law, the term legal remedy is known, which is an effort given by law to a person or legal entity to in certain cases against the judge's decision. A judge's decision is not closed to the possibility of causing problems in its implementation in the future.

Therefore, a distinction must be made between carrying out the verdict voluntarily and executing the verdict. Carrying out the verdict voluntarily means that the losing parties actually accept and fulfill the content of the verdict without having to be forced by the court. Executing a decision means that the losing party is forced by the court to carry out the court decision because he does not want to carry out the decision voluntarily. If the amar (content) of the judgment is accepted and implemented by the defeated party voluntarily, by vacating and handing over the disputed land to the plaintiff (the winning party), then it is not a problem. It means that the loser of the Real Execution in Civil Cases Regarding Land and House Building Vacating 3 has carried out the verdict and fulfilled the interests of the winning party so that the dispute between the parties has been resolved.

Legal Provisions for Vacating Houses in Accordance with Applicable Laws

The holder of the Guarantee Right, due to the nature of the owner of a preferencely protected right, can execute as if there is no bankruptcy, because it is considered separatist (independent) according to Article 55 paragraph 1 of Law Number 37 of 2004, even though Article 56 paragraph (1) stipulates that the execution is suspended for a maximum of 90 days from the date the bankruptcy judgment is pronounced (Sumarmi, 2010: 193). If the Execution Auction on the collateral runs smoothly and the auction results are submitted by KPKNL to the Creditor to pay off the debtor's obligations, and the Auction Winner can enjoy the collateral that has been purchased based on the execution auction, then what is described in the explanation of Article 20 paragraph (1) is very efficient and effective and the legal certainty for the implementation of the auction for the execution of the right of dependency is proven to be effective.

However, this is not always the case. The auction of the execution of collateral is a very frightening "scourge" as an effort to force the settlement of debtors' obligations to creditors. The debtor in some problems, does not voluntarily accept the execution auction of the collateral granted to the creditor and if the auction has been carried out is not willing to vacate the object of the Dependent Rights, either at the time when the object of the Dependent Rights will be executed, before the auction or after the auction is held, by the way the debtor files a lawsuit for unlawful acts against the auction of the execution of the collateral or makes resistance (verzet) to the Chairman of the local District Court with the intention of postponing or canceling the auction of the execution of the collateral.

Juridical Review of Legal Protection in the Case of Refusal to Vacate the House

Obstacles in the implementation of a notarial house vacancy agreement, if the seller or other people who are still occupying the house do not immediately leave or vacate the house

in accordance with what has been agreed. Another obstacle is that the buyer or homeowner cannot pay or give severance pay to the seller, even though the seller or other people occupying the house are ready to leave or vacate the house according to the agreed time.

The inclusion of sanctions in these various legal rules is like an obligation that must be included in each legal rule. Therefore, it can be concluded that the enforcement of a legal rule can be imposed if there are accompanying sanctions, and the enforcement of the legal rules in question is carried out procedurally (procedural law). Sanctions are usually placed at the end of each regulation which in Latin can be called in *cauda venenum*, meaning that at the end of a legal rule there is a sanction.

METHODS

The type of research used in this study is a type of descriptive research with a qualitative approach. According to Sugiyono (2006) qualitative research is interpreted as a research method used to examine the natural condition of objects, while qualitative descriptive research is described according to the opinion of respondents, as it is in accordance with the research question, then analyzed according to respondent behavior, reduced, triangulated, concluded and verified. Primary data is obtained directly through interviews and field observation. Secondary data refers to information gathered from official documents, books related to the research object, and research findings in reports, theses, dissertations, journals, and legal regulations. Tertiary legal materials provide guidance and explanations for primary and secondary legal materials, such as dictionaries, magazines, newspapers, internet sources, scientific journals, and encyclopedias. Data collection methods include documentation and interviews. Data analysis is conducted through data examination and arrangement.

RESULTS AND DISCUSSION

Author's Analysis of the Court Decision at the Medan District Court with Case Number 626/PDT. G/2019/PN. MDN

According to the provisions of Article 1365 of the Civil Code, it is explained that, "Every unlawful act, which brings harm to another person, obliges the person who because of his fault to issue the loss, to compensate for the loss". In the Civil Code Article 574 it is further explained that, "Every owner of a material thing, has the right to demand from whoever is in control of it the return of the material in its condition". The seller who is still occupying the house that has been sold to the buyer at the time of signing the House Vacancy Agreement Deed before the Notary, promises to leave or vacate the occupied house on the date that has been agreed upon and stated in the house vacancy agreement.

If on the date specified in the agreement the seller does not leave or vacate the house so that it cannot be used / inhabited by the buyer, then the solution to realize a sense of justice that can be implemented is that the passage of time alone is enough to be real evidence of the negligence of the seller, so that any reprimand in the form of any kind is no longer needed, and the seller is subject to a fine by the buyer as much as has been agreed for each day The delay must be paid immediately and at once, and the fine is paid for a previously agreed time.

Another solution that can be taken if on the agreed date the seller is still unable to hand over the house in an empty state to the buyer, then the buyer has the right and in this case is authorized by the seller to enter and vacate the building (house), as well as move all

the seller's belongings in the house to another place according to the buyer's will on the seller's burden and expenses without being obliged providing shelter accommodation in any form for the residents of the house, or paying a compensation in any form and any amount to the residents of the house.

In property buying and selling transactions, one of the important elements is juridical transfer of property rights or juridical leveraging. Juridical leveraging guarantees that the legal ownership rights pass from the seller to the buyer in accordance with the applicable legal provisions. However, in some cases, problems can arise when the seller refuses to vacate the property that has already been sold. Article 1457 of the Civil Code regulates the definition of buying and selling as an agreement in which the seller binds himself to hand over an item and the buyer to pay the agreed price and in article 1458 of the Civil Code it is stated that the sale and purchase is considered to have occurred between the two parties as soon as they reach an agreement on the goods and price, Even though the goods have not been handed over. In the judge's consideration, it was stated that there had not been a juridical transfer of rights, but there was an AJB that had been declared valid and had permanent legal force, which the sellers of the house should immediately vacate.

According to the court decision No. 626/PDT.G/2019/PN.MDN, there are several things that are not in accordance with the rule of law where in the decision the defendant I and defendant II were not present in the trial where in article 125 Paragraph (1) which is often called the *verstek* decision, namely all lawsuits from the plaintiff must be granted, but in the judge's decision above, the lawsuit from the plaintiff is only partially accepted, In the judge's consideration, it was also not mentioned that the object of the case was not confiscated through the court and there was no coercive effort by the court against the emptying of the object of the case, which resulted in losses by the plaintiff.

Article 5 paragraph (1) of Law No. 48 of 2009 concerning Judicial Power states: "Judges and constitutional judges are obliged to explore, follow, and understand the values of law and the sense of justice that live in society". The word digging assumes that the punishment is there but hidden, so that it reaches the surface still needs to be excavated. So the law exists, but it still has to be excavated, searched and discovered, not nothing, then created. Scholten said that in human behavior itself there is a law. Meanwhile, whenever humans in society behave, do or work, therefore the law already exists, it is only a matter of digging, searching or finding it.

CONCLUSION

Based on the results of the research that has been carried out, the author draws the conclusion that:

1. The legal mechanism applicable regarding the seller's post-sale vacating of the house may depend on the property and contractual laws in force in the particular country or jurisdiction. A home sale contract typically includes a clause that requires the seller to vacate the house within a certain period of time after the sale is completed. This clause provides a legal basis for buyers to demand the fulfillment of obligations from the seller, so that the process of handing over the house can take place as agreed. If the seller refuses to vacate the house, the buyer has the right to sue the seller in accordance with the provisions of the applicable law, such as through the courts.
2. Legal dispute resolution in the case of refusal to vacate a post-sale house by the seller

can go through several steps, including negotiation between the buyer and seller, mediation, arbitration, or through court proceedings. The first step in dispute resolution usually involves mediation and negotiation between the seller and the buyer. This effort aims to reach a peace agreement without having to involve a third party or the courts. Mediation can be facilitated by a neutral third party to help both parties reach a fair and satisfactory solution. These measures aim to achieve a fair settlement and comply with the terms of the contract and applicable law.

3. Basically, in the analysis of decision No. 626/PDT.G/2019/PN.MDN, there is no evidence that in the verdict defendant I and defendant II were not present at the trial where in article 125 Paragraph (1) which is often called the *verstek* decision, namely all lawsuits from the plaintiff must be granted, but in the judge's decision above the lawsuit from the plaintiff is only partially accepted, In the judge's consideration, it was also not mentioned that the object of the case was not confiscated through the court and there was no coercive effort by the court against the emptying of the object of the case, which resulted in losses by the plaintiff.

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