

Kedudukan hukum perjanjian pengikatan jual beli tanah ditinjau dari aspek hukum perjanjian dan kepemilikan tanah (studi kasus terhadap putusan no.2338/K/PDT/2003; putusan No.229/PDT/G/2010/JKT.UT; dan putusan No.89/PK/TUN/2008) = The land sale and purchase binding agreement based on contract law and land ownership (Case study on decree number 2338/K/PDT/2003; decree number 229/PDT/G/2010/JKT.UT; and decree number 89/PK/TUN/2008).

Yustisia Aviyanti, author

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## Abstrak

Penelitian ini bertujuan untuk melihat pelaksanaan Perjanjian Pengikatan Jual Beli di dalam teori dan praktek terkait dengan kepemilikan tanah, khususnya untuk melihat kedudukan hukum Perjanjian Pengikatan Jual Beli tanah dalam hal terjadi sengketa atau perkara dan hal-hal yang memicu terjadinya sengketa tersebut. Di dalam skripsi ini, dianalisis tiga putusan pengadilan yang telah berkekuatan hukum tetap.

Dari analisis tersebut, dapat diketahui bahwa Perjanjian Pengikatan Jual Beli terkait transaksi tanah telah berkembang di dalam masyarakat untuk mengatasi kebuntuan dalam hal syarat-syarat dilakukannya jual beli belum terpenuhi. Di dalam prakteknya terdapat penyalahgunaan terhadap penggunaan Perjanjian Pengikatan Jual Beli, contohnya dengan dibuat sebagai jaminan hutang atas tanah yang belum bersertipikat.

Berdasarkan analisis ketiga putusan pengadilan, Hakim melihat Perjanjian Pengikatan Jual Beli memiliki kekuatan sebagai dasar untuk melakukan peralihan hak sepanjang terpenuhi syarat sahnya perjanjian Pasal 1320 KUHPdata dan harganya telah dibayar lunas dengan disertai pemberian Kuasa untuk melakukan peralihan hak.

Di dalam skripsi ini, disarankan bahwa perlu diatur secara khusus pengaturan mengenai Perjanjian Pengikatan Jual Beli, serta pembuatan undang-undang mengenai kepemilikan tanah (Undang-Undang Hak Milik), dan pemberian jaminan perlindungan hukum yang lebih tegas terhadap pemilik tanah pemegang sertipikat yang di atur dalam undang-undang.

.....This study aims at looking into The Sale and Purchase Binding Agreement execution, in theory and practice related to the land ownership, particularly in order to perceive the standing of the land Sale and Purchase Binding Agreement in the event of dispute and the matters that triggered the dispute. In this thesis, three legal and binding court decisions are analyzed.

From this analysis, it is discovered that the Sale and Purchase Agreement on land transactions has been developing in the society to overcome the clogged in terms of the condition that the requirements of the sale transaction have not been fulfilled thus the Sale and Purchase Deed can not be established. In practice, the Sale and Purchase Agreement is often misused as a loan agreement of a land that has not been registered. Based on the court decisions analysis, the Judge considers that the Sale and Purchase Binding Agreement has its legality as long as the valid legal requirement for agreement in Article 1320 of the Civil Code is done authentically and its price has been fully paid by the buyer, followed by the grant of power.

Suggested by this mini thesis, there has to be a regulation that specifically oversee the Sale and Purchase Binding Agreement, as well as the establishment of a regulation on the land ownership (regulation on

ownership right), and a strictly legal protection assurance for a certified land owner in the regulation.