

Keabsahan pengikatan jual beli atas tanah yang dibuat dalam bentuk nota kesepakatan : tinjauan yuridis Putusan Kasasi Mahkamah Agung nomor 1681K/Pdt/2011 = The validity of sale and purchase agreement which made in the form of memorandum of understanding : judicial review of the Supreme Court Decision number 1681K/Pdt/2011

Ibrahim Budhiman, author

Deskripsi Lengkap: <https://lib.ui.ac.id/detail?id=20364980&lokasi=lokal>

Abstrak

ABSTRAK

Pengaturan dalam Undang-Undang Pokok Agraria mengharuskan jual beli hak atas tanah agar dilangsungkan secara terang dan tunai. Hal tersebut menyulitkan proses negosiasi awal di mana akta jual beli belum dapat dibuat namun kepastian hukum bagi para pihak sudah dibutuhkan guna menjamin terlaksananya perbuatan hukum yang mereka lakukan secara baik. Meskipun demikian, tidaklah berarti kepastian hukum dalam jual beli hak atas tanah tidak dapat diciptakan sejak awal proses. “Asas Kebebasan Berkontrak” yang dianut oleh hukum perjanjian dalam Kitab Undang-Undang Hukum Perdata memberikan kebebasan kepada masyarakat untuk membuat berbagai macam perjanjian dengan batasan-batasan tertentu yang ditentukan oleh undang-undang. Karenanya lahirlah perjanjian pengikatan jual beli di dalam masyarakat. Perjanjian pengikatan jual beli hak atas tanah pun menjadi hal yang lazim diadakan dalam tiap proses awal jual beli hak atas tanah. Lazimnya perjanjian pengikatan jual beli dilakukan di hadapan notaris dengan dituangkan ke dalam suatu akta otentik. Namun adakalanya perjanjian pengikatan jual beli tersebut hanya dibuat di bawah tangan dengan berbagai macam bentuk yang ditentukan sendiri oleh para pihak. Dengan tidak dibuatnya secara otentik perjanjian pengikatan jual beli tersebut menimbulkan persoalan terkait keabsahan maupun pembuktian dalam implementasinya. Dalam penulisan ini dibahas mengenai keabsahan perjanjian pengikatan jual beli hak atas tanah yang dibuat dalam bentuk nota kesepakatan, yaitu dalam perkara sengketa perjanjian pengikatan jual beli antara H. Maming Daeng Tata selaku Pembeli dengan Darma Setiawan selaku Penjual dengan obyek tanah warisan di wilayah Jakarta Selatan. Nota kesepakatan yang dibuat para pihak tidak mengatur secara lengkap mengenai bagaimana jual beli akan dilaksanakan, sehingga di luar nota kesepakatan tersebut terdapat pula kesepakatan-kesepakatan tidak tertulis antara para pihak. Hal tersebut menimbulkan perselisihan antara para pihak hingga pada akhirnya berakibat dinyatakan tidak sahnya perjanjian pengikatan jual beli tersebut oleh pengadilan. Penelitian ini menggunakan metode pendekatan yuridis normatif dengan cara mengkaji suatu kasus dalam suatu putusan, kemudian diterapkan dengan peraturan perundang-undangan yang berlaku serta dituangkan dalam bentuk tulisan deskriptif analitis mengenai pembahasan dari suatu permasalahan yang terjadi.

<hr>

ABSTRACT

The regulation of the Principal Agrarian Laws requires that the purchase of land rights should be done in bright and cash. That requirements has brought difficulties for the beginning of the negotiation process in which the deed of sale yet has not been able to be made, meanwhile in the other side, legal certainty for the parties has been required in order to guarantee the implementation of legal acts which they do. Nevertheless, this does not mean a legal certainty in the beginning of the process on a sale and purchase of land rights

cannot be created. The principle of "Freedom of Contract" in the contract law adopted by the Civil Law has granted freedom to the people to create a wide variety of agreements with certain limitations. Those has made the sale and purchase binding agreements born in the society. Sale and purchase binding agreement of land rights has become a common thing that held in many of the initial process of buying and selling land rights. Sale and purchase binding agreement usually conducted in the presence of a public notary to be made into an authentic deed. But sometimes a sale and purchase binding agreement could be made with an underhand deed by the parties. A non authentic deed of sale and purchase binding agreement might raises legal problems regarding the validity of the agreement in its implementation. This study discusses the validity of the sale and purchase binding agreement of land right which is made in the form of a memorandum of understanding which held in the dispute of sale and purchase binding agreement between H. Maming Daeng Tata as a buyer and Darma Setiawan as a seller with an inherited land in South Jakarta as the object. Memorandum of understanding made by the parties in this case were not regulate comprehensively on how the purchase process will be conducted, so that beside the memorandum of understanding, there were also unwritten agreements made between the parties. This has raise dispute between the parties and finally brought the sale and purchase binding agreement declared as an invalid agreement by the court. This research was using normative juridical approach method, which examine a case on one decision, then implemented it with the regulation applied, then laid out in the form of a descriptive analytical writing, of a discussion on which the problems happen.