

Analisa hukum cacat yuridis akta pengikatan jual beli dan kuasa dan implikasi hukum atas gugatan para ahli waris (Studi kasus putusan mahkamah agung Nomor 131K/PDT/2010) = Juridical analysis on the defect of sale and purchase binding agreement and power of attorney and the legal implications on accusation of the heirs (Case study of the supreme court decision No 131K/PDT/2010)

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Abstrak

Pengikatan jual beli sebagai perjanjian obligator dijelaskan sebagai perjanjian yang baru meletakkan hak dan kewajiban untuk menentukan kedudukan masing-masing pihak yaitu penjual dan pembeli. Menurut ketentuan Peraturan Pemerintah Nomor 24 tahun 1997, peralihan hak hanya dapat terjadi apabila ada Akta Jual Beli yang dibuat di hadapan PPAT (Pejabat Pembuat Akta Tanah) sekalipun dalam hukum adat yang berlaku di Negara Indonesia menyatakan bahwa jual beli telah sah meskipun dilakukan secara bawah tangan. Akan tetapi, Akta Jual Beli adalah perjanjian pokok dan Pengikatan Jual Beli adalah merupakan perjanjian bantuan, sehingga hanya dengan adanya Pengikatan Jual Beli belum menjadi bukti sebagai peralihan hak dari penjual kepada pembeli. Begitu pula dengan yang terjadi antara tergugat dengan pewaris yang melakukan pengikatan jual beli atas harta milik pewaris semasa hidupnya. Akibat yang demikian menyebabkan munculnya gugatan para ahli waris yang dimenangkan pada tingkat kasasi melalui putusan Mahkamah Agung Republik Indonesia. Di dalam gugatan tersebut disampaikan fakta-fakta bahwa pengikatan jual beli itu selain melanggar syarat sah perjanjian juga melanggar asas kebebasan berkontrak sehingga menurut hukum, harta bersama yaitu berupa tanah dan bangunan tersebut tidak sepenuhnya diduduki oleh tergugat. Metode yang digunakan dalam penulisan tesis ini adalah yuridis normatif, dengan sifat penelitian deskriptif analitis, bentuk penelitiannya adalah evaluatif dan preskriptif, sumber data nya adalah data sekunder dan alat pengumpul datanya adalah bahan hukum primer, sekunder dan tersier.

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A binding sale and purchase agreement is described as an obligator agreement which putting the rights and duties to determine the position of each of the parties who are the seller and buyer. According to the Government Regulation No. 24 of 1997, the transition of rights can only occur if there is a Deed of Sale and Purchase made in front of PPAT (Land Deed Officer) even under customary law which still applicable in the State of Indonesia stating that the purchase is legal even though it is conducted under the hand. Although an agreement of sale and purchase is a primary agreement and the Sale and Purchase Agreement is an assistance agreement, but the presence of the binding Sale and Purchase has not yet becoming an evident of the transfer of rights from the seller to the buyer. Similar to the case in this thesis, which happened between one of the heirs and the testator who did a binding of sale and purchase agreement when the testators was still alive. The consequence of this case came out as a result is a lawsuit led to the emergence of the heirs who won on appeal by the decision of the Supreme Court of the Republic of Indonesia. The lawsuit from the plaintiffs was submitted severe of facts that a binding sale and purchase agreement not only violated the agreement but also violated the fundamental of freedom of contract. According to the law, it is true and valid that the property from the testators is still a common asset from the plaintiffs together with the

defendant as the heirs. Therefore, the act of defendant, which is still occupying the land as a common asset is illegal. The methods used in this thesis is juridical normative, character of study is analytical descriptive, form research is evaluative and prescriptive, the source of its data is secondary data and the data collection tool is the primary legal materials, secondary and tertiary.