

Akibat Hukum Akta Perjanjian Pengikatan Jual Beli Yang Dinyatakan Prematur Berdasarkan Putusan Mahkamah Agung Nomor 680 K/PDT/2017 = Legal Consequences Of Sale And Purchase Agreement Which Was Declared Premature Based On Supreme Court Decision Number 680 K/PDT/2017

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Abstrak

Penelitian tesis membahas mengenai aspek yang harus diperhatikan dalam pembuatan perjanjian pengikatan jual beli sehingga perjanjian tersebut menjadi perjanjian yang sah menurut hukum perjanjian. Perjanjian pengikatan jual beli lahir karena adanya asas kebebasan berkontrak sebagaimana diatur dalam Pasal 1338 KUH Perdata. Walaupun didasari dengan kebebasan berkontrak perjanjian tersebut tetap mempunyai batasan yaitu tidak bertentangan dengan peraturan perundang-undangan, kesusilaan, dan ketertiban umum. Kaitannya dalam perjanjian pengikatan jual beli tanah maka harus diperhatikan ketentuan yang berkaitan terhadap objek perjanjian tersebut. Dalam putusan Mahkamah Agung Nomor 680 K/PDT/2017 perjanjian pengikatan jual beli dinyatakan batal demi hukum dikarenakan perjanjian bersifat prematur. Sehingga permasalahan yang diangkat dalam penelitian ini adalah perjanjian pengikatan jual beli yang dinyatakan prematur menurut pertimbangan hakim dalam putusan Mahkamah Agung Nomor 680 K/PDT/2017; tanggungjawab Notaris atas kerugian yang timbul akibat perjanjian pengikatan jual beli yang dinyatakan prematur; dan perlindungan hukum terhadap pembeli yang beritikad baik. Untuk menjawab penelitian tersebut digunakan metode penelitian dengan bentuk yuridis normatif dengan pendekatan secara deskriptif yang menggambarkan peristiwa hukum yang terjadi dengan apa adanya dan menyampaikan kondisi tersebut menurut teori dan peraturan perundang-undangan. Hasil analisa penelitian ini adalah perjanjian pengikatan jual beli tanah bersifat prematur karena tidak dipenuhinya syarat sah perjanjian mengenai objek yang belum jelas kepemilikannya. Namun putusan hakim ini bersifat ultra vires dikarenakan menjatuhkan putusan melebihi yang dimintakan dalam gugatan yaitu wanprestasi. Akibat dibatalkannya perjanjian maka pembeli dapat meminta biaya kerugian dan dalam hal ini Notaris tidak dapat dimintakan pertanggungjawaban dalam perkara wanprestasi karena Notaris bukanlah pihak dalam perjanjian.

.....This thesis research discusses aspects that must be considered in making a sale and purchase agreement so that the agreement becomes a legal agreement according to the regulations. Sale and purchase agreement was born because of the principle of freedom of contract that regulated in article 1338 civil code. Although based on freedom of contract the agreement still has the limitation such as not contradicting laws and regulation, decency, and public order. According to the relation of sale and purchase agreement of land the agreement must be notice a regulation that related to the object. Based on Supreme Court Decision number 680 K/PDT/2017 the agreement was declared null and void due to the agreement was premature. Hereby the issues that will be discuss in this research is sale and purchase agreement which was declared premature based on Supreme Court Decision number 680 K/PDT/2017, Notary's responsibility for losses arising from the sale and purchase agreement which is declared premature, and legal protection for good faith buyers. This research uses normative-juridical with a descriptive approach that describes legal events that occur as they are and conveys these conditions according to the theory and legislation. Based on the results of the

research sale and purchase agreement of land is premature because the conditions of the agreement are not fulfilled especially regarding of object whose ownership is not clear. However the judge's decision was ultra vires because pass a verdict that exceeds what is requested in the lawsuit namely default. As a result of the cancellation of the agreement, the buyer can ask for loss costs and in this case the Notary cannot be held accountable in a case of default because the Notary is not a party to the agreement.