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Buy and sale bonding agreements as a mean of fraud legal relation debt receivables

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Abstract. This research is a normative legal research. *Perjanjian Pengikatan Jual Beli* (PPJB) it can be said to be an agreement that arises or is born to due open nature Book III BW so that the implementation of previously unknown agreements such as PJBB is possible based on the principle of contact freedom. Accounts payable begins with an agreement called a debt agreement, but in practice the general public turns out to make a lot of quasi or fake agreements by making a deed of money debt agreement with land certificates or house certificates as collateral then packaged as PPJB. PPJB which is used to disguise debt is actually an agreement that is legally deviant. Legally deviant contracts are made by parties who are in a depressed position and there is no element of agreement of the will and it is an abuse of circumstances.

Keywords. binding sale and purchase agreement, phishing, debt

Introduction

Humans are social creatures which means that humans will live together in society to carry out their lives. Humans are zoon politicon, which means humans are creatures who like to socialize with people. Because of their nature to want to get along with each other, humans are called social creatures. Humans are social beings who need each other in the face of needs, so humans, both individuals or business entities such as companies, always want to fulfil all human needs because humans basically want to live decently and always have enough. [1]. The fulfilment of material needs, such as clothing, food, shelter and other wealth is called prosperous. However, in an effort to realize prosperity, humans often encounter the main obstacle, namely the lack of resources, material (money) to meet these needs. When people want to fulfil their needs or desires while they do not have money, they often fulfil their needs or desires by way of debt. In fulfilling the necessities of life, it leads to aspects of agreements that lead to acts of debt and receivables in people lives. [2].

Debt can provide many benefits to both parties. Debt is an act of mutual help between human beings which is highly recommended in religion. Debt can reduce the difficulties of other people who are in trouble and can strengthen the brotherhood of both parties. Debts and receivables begin with a debt agreement with two legal subjects, namely debtors and creditors, then usually followed by the delivery of collateral, but in practice the general public turns out to be many who make quasi or sham agreements by making a deed of agreement on debts and

credits with land certificates or land certificates as collateral. home certificates are then packaged as *Perjanjian Pengikatan Jual Beli* (hereinafter referred to as PPJB) land or house accompanied by a power of attorney to sell with the aim of being used to transfer collateral from the debtor to the creditor if the debtor defaults, then such a thing is a quasi or sham agreement and must be assessed as a Debt and Receivable Agreement with collateral. [3].

The relationship of debts and receivables with collateral for land or house certificates and then packaged as *Perjanjian Pengikatan Jual Beli* (PPJB) land or houses should not be allowed to happen at this time, because as already mentioned in the rules of Indonesian national land law, the sale and purchase is based on customary law, namely free sale and purchase without any collateral and the incident was not actually a mortgage of land, but debts.

If studied more deeply, then the granting of the power of attorney to sell by making a deed of power of sale with a view to guaranteeing the repayment of the debtor of the creditor if the debtor defaults should not be carried out considering that it contains legal risks for the parties, because there is no legal certainty and legal protection, especially for debtors because with the power to sell the creditor at any time can sell the object of power regardless of whether there will be a default or not [4]. In the rules of Indonesian national land law based on the customary law system, in the customary law system, buying and selling land is a free sale, which means that the sale of land is a permanent transfer of land with the seller receiving a certain amount of money paid openly, bright and cash.

It should be in the construction of a debt and credit legal relationship, if land and house buildings are to be used as collateral for debts, then what should be made is not a binding sale and purchase agreement, but a debt agreement by using *Hak Tanggungan* according to the provisions in *Undang-Undang Republik Indonesia* Number 4, 1996 about Mortgage on Land and Objects Related to Land (hereinafter referred to as UU RI No. 4/1996) which is accompanied by making *Akta Pemberian Hak Tanggungan* (APHT) by *Pejabat Pembuat Akta Tanah* (PPAT), so that if the debtor defaults directly, the guarantee can be executed and the position of the Mortgage is actually an additional agreement (accessoir) from the main agreement, namely the debt agreement. [5].

The sale and purchase program of land and houses obtained from the existence of a debt agreement is an acquisition of rights that are legally flawed, because the collateral used as a guide to creditors according to laws and regulations is not allowed to be owned, because based on UU RI No.4/1996 must be sold by public auction by the creditor as a form of execution and as a form of settlement of the debtor's debt to the creditor.

Accounts payable agreements using PPJB with land and house certificates guarantee a lot of things that happen and are carried out because of the pressure factor of economic needs with the consideration that PPJB does not require a difficult procedure, so it is an alternative that is widely chosen and carried out by the general public so that quick disbursement of funds can be realized. [6]. Legal problems arise after some time later, when at the time of maturity of debt repayment it turns out that the debtor cannot fulfill its obligations so that the creditor then gives a summons to the debtor to voluntarily submit the object of the agreement, but the debtor refuses on the grounds that there is still a desire and hope to be able to settle the entire agreement. obligations and still considers as the legal owner of the object of the agreement.[7]

The debtor just realized that what actually happened between the debtor and creditor was the legal relationship between debt and credit, not buying and selling land or houses, but what the PPJB deed and selling power had already signed by the debtor so that the object of the agreement could be sold by the creditor even though the agreement was not actually required in this form. By looking at the above, the researcher can identify the formulation of the problem

in the study, namely what is the essence of a sale and purchase binding agreement in the perspective of the principle of freedom of contract. What is the form of abuse of the sale and purchase binding agreement as a means of defrauding the legal relationship of debt and receivables.

Research Method

The type of research used in this research is normative legal research.[8]

Discussion

The ontological view of the binding sale and purchase agreement in the perspective of the principle of freedom of contract

The Sale and Purchase Binding Agreement was originally an agreement that was used in the marketing of properties that were still under construction, so they were still marketed in the form of images known as the system *Pre Project Selling*. Thus the object being offered does not yet exist, this means that the object will still exist, so that the requirements for the process of transferring rights to land and buildings by the parties cannot be fulfilled because the provisions in the UUPA cannot facilitate, but otherwise based on the provisions *Kitab Undang-Undang Hukum Perdata* or formerly known as *Burgelijk Wetboek* (hereinafter referred to as BW), this can be facilitated. BW chapter 1334 state that : “*kebendaan yang baru akan ada di kemudian hari dapat menjadi pokok suatu perjanjian*”.

BW chapter 1319 states that the agreement is divided into two namely, the agreement named (*nominaat*) which has a certain name and has been determined in the BW, for example buying and selling and unnamed agreements (*innominaat*) which is a rule regarding various agreements that arise as a result of the development of community needs which were not known at the time the BW was formed. With the principle of freedom of contract, it is very possible for the parties to make agreements that are not yet in the law or better known as anonymous agreements, namely agreements whose types and arrangements do not exist in the BW. Thus, it can be seen that in fact the legislators do recognize the possibility of other agreements than those listed in the BW and this proves the application of the principle of freedom of contract. [9].

By applying BW chapter 1319, Then PPJB was born as an unnamed agreement (*innominaat*) and Validity PPJB based on the principle of freedom of contract as contained in BW chapter 1338 paragraph (1), so that this PPJB can be said to be an agreement that arises or is born due to the open nature of Book III BW, the implementation of an agreement that was previously unknown such as PPJB is possible based on the principle of freedom of contract.

The principle of freedom of contract is the principle of free will for all individuals to be free to make agreements with anyone and the parties can freely choose the content and terms of an agreement on the condition that the agreement will not conflict with laws and regulations that have a coercive nature, both public order and decency [10]. The principle of freedom of contract begins to operate so that PPJB which is not yet known and has not been specifically regulated in the legal system in Indonesia can be made by all parties themselves, but in fact the principle of freedom of contract cannot operate alone and freely. because if the principle of freedom of contract is allowed to operate on its own freely and wildly, it can get out of control and exceed the limits which will result in the emergence of PPJB which is no longer purely aimed [11].

Referring to the formula BW chapter 1338 (1) “*semua perjanjian yang dibuat secara sah berlaku sebagai undang-undang bagi yang membuatnya*”, then PPJB in the perspective of

the principle of freedom of contract, still needs to be accompanied by other legal signs. All parties in making PPJB can rely on the principle of freedom of contract but still have limitations and must comply with the provisions of the law, especially regarding the legal requirements of an agreement based on BW chapter 1320 namely the terms of agreement, requirements for skills, conditions for the existence of certain objects and conditions for permissible causes. In addition to having to fulfill the legal requirements of an agreement, the making of PPJB should also be in tandem with the principle of good faith and also based on the principle of proportionality in order to achieve a sense of justice by all parties.

The Form of Misuse of the Sale and Purchase Binding Agreement as a Means of Deceit of Debt and Receivable Legal Relations

The debtor who has already signed the PPJB and then realizes that what actually happened is a debt and not a sale and purchase, can be in a wrong position because if the debtor refuses to voluntarily submit the object of the agreement, then what happens is as if the debtor is considered to have violated the terms of sale. bought and has defaulted when in fact what happened.

The existence of a loss for the debtor due to a defect in the will or a defect in the agreement, namely the imperfection of the agreement because it was formed not based on free will, such as the debtor who from the beginning did not intend to sell his land or house. This defect of will usually occurs in the pre-contract period or phase. [12].

Debtors who are harmed and feel that they have been treated unfairly can only hope for a cancellation PPJB [13], because it is considered to have caused a loss to the debtor and this can happen because perhaps from the beginning the creditor had bad intentions by hoping that if the debt from the debtor is not paid off, the selling power will be used so that the object that is used as an object in the selling power will be taken over and controlled by the creditor. This clearly has deviated from the pure purpose in making PPJB.

Provision BW chapter 1321 and chapter 1449 emphasized that there are 3 defects of agreement or defects of will that can be used as reasons for canceling the agreement, namely, oversight, error, coercion and fraud. The current development of will defects can also occur due to reasons of abuse of circumstances (*Misbruik Van Omstandigheden*), therefore the reason for the abuse of the situation can be used as the 4th (fourth) reason for the cancellation of the agreement. BW indeed has not regulated the abuse of circumstances, although in Indonesia it has been applied to the judicial level and has been accepted in jurisprudence, in contrast to the Dutch BW which is new in law enforcement. *Nieuw Burgelijk Wetboek* (NBW) has determined abuse of circumstances to be one of the reasons for canceling the agreement [14].

PPJB which is used to disguise the legal relationship of debt and receivables is actually a contract that looks legally obscure. Legally disguised contract (*implied-in-law contract*) This is the only type of contract in which there is absolutely no element of agreement of will between the parties, but by law it is considered that there is an element of agreement. [15].

Conclusion

Perjanjian Pengikatan Jual Beli (PPJB) can be said to be a legal breakthrough to fill the legal vacuum in making an agreement that arises from the open nature of Book III BW where the principle of freedom of contract can provide the widest freedom to the parties to make and hold contracts. an agreement that contains anything and in any form. Sale and Purchase with accounts payable are two different legal events because they have different legal constructions and legal consequences and cannot be combined.

The making of PPJB with a selling power as a means of defrauding the legal relationship of debts and receivables has experienced a defect of will because the debtor did not have the will from the start to sell the land or building that was used as collateral through PPJB. The misuse of PPJB as a means of defrauding debt-receivable relationships occurs because of the misuse of circumstances where one party is depressed and economically down so that they have no other choice but to take legal action to make PPJB and selling power.

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