



## Legal Consequences of Cancellation of Land Purchase with Down Payment (A Study in North Lombok Regency)

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### **Abstract**

This study discussed the legal consequences of canceling land purchases with down payments in the district of North Lombok. The research problem was how the legal protection to the seller for the cancellation of the land purchase with down payment and the status of its Conveyance Deed. This study aimed at determining and analyzing the legal protection of the seller for the cancellation of the land purchase and to analyze the status of the Conveyance Deed due to the cancellation. It utilized an empirical legal method with a conceptual approach, a legislative approach, and a sociology of law approach. This study found that: 1) the regulations governing the sale and purchase with down payment protection law included the Civil Code Article 1464, the consumer protection law article 4 letter (h) regarding the claim for compensation, the jurisprudence of the Supreme Court Decree No. 2661K/Perdata/2004 dated 28 February 2006, the decision of the Tanjungkarang District Court No. 5/pdt.g/2015/pn.tjk dated 31 August 2015 and article 1339 of the Civil Code in conjunction with article 1347 of the Civil Code; 2) in terms of the status of Conveyance Deed due to cancellation, the Conveyancer could not cancel the Sale and Purchase Deed that had been made in the event of a dispute. The parties had to settle it to the judiciary where one party was the plaintiff and the other party was the defendant.

**Keywords:** *Land Purchase; Notary; Down Payment*

### **Introduction**

An agreement is a concurrence of two or more parties based on an awareness as a human being who has promised (Hernoko, 2019). It needs to be obeyed and respected and will be accounted for both in the world and before God (Anshori, 2018). The agreement is an event where one party promises to another party or two parties promise each other to carry out something agreed upon (Jayanti et al., 2016).

Sale and Purchase Deed (Indonesian: *Akta Jual Beli/AJB*) is used to guarantee the rights and obligations of the parties and to avoid problems regarding land rights in the future. It is also used as proof by the parties in the agreement on the occurrence of an agreement in the form of sale and purchase.

Article 1321 of the Civil Code confirms that there is no valid agreement if the agreement is given because of error or obtained by force or fraud. Furthermore, based on Article 1320 of the Civil Code, this is a violation of the subjective conditions of the agreement that have consequences for the agreement by requesting the cancellation by one of the parties to the judge. Failure to fulfill one of the four elements causes the flawed agreement, so that it is threatened with cancellation in the form of subjective or objective cancellations.

If the agreement is declared null and void, one party cannot sue the other party based on the agreement. The judge, *ex officio*, must declare that there has never been an agreement (Santoso & Ali, 1989). Article 1339 of the Civil Code explains that an agreement is not only binding that is explicitly stated by the parties, but also includes everything according to the agreement, required by propriety, customs and laws. The intended custom is a habit in general (*gewoonte*), which is a local custom or habit that is commonly developed in certain societies.

The process that frequently occurs in the sale and purchase of land before the handover of the object is to provide down payment (*persekot/voorschot*) as a proof of the process of sale and purchase. The customary law in down payment is the provision of a sum of money received by the seller and buyer. The sale and purchase transactions are also contained in Article 1464 of the Civil Code stating 'if the purchase was made by giving something or some money or down payment, none of the parties can cancel the purchase, either by allowing to keep the thing, or having returned the the money'. It is very urgent to know the habits carried out in society in terms of the understanding on the implementation and consequences of giving down payments from sellers and buyers. There is a risk of a party being disadvantaged from a sale and purchase agreement using the down payment system, which is preceded by a written or unwritten agreement. In accordance with the development of the form of sale and purchase transactions due to technological advances and the free market era, the transactions with the down payment system can occur directly or indirectly.

Lack of knowledge and understanding of buyers about habits related to sale and purchase transactions with a down payment system allows them to feel treated unfairly. This is because they usually feel disadvantaged by the loss of down payment that has been given to the seller. In article 1234 of Civil Code, it is stated that: "Every contract or agreement aims to provide something, to do something, or not to do something." Moreover, article 1243 of Civil Code also stated that: "Compensation for costs, damages and interests for the breach of an obligation only becomes obligatory, if the debtor, has been declared negligent to fulfill its agreement, and neglects "*das solen*". One of the examples is the practice of giving down payments that occur in Teloq Boroq, Malaka Village, Pemenang Subdistrict, North Lombok Regency when the seller conducts the sale and purchase of private property. The buyer has paid the down payment and promised to pay the rest a month later. However, he did not pay off the rest of the payment as promised, even unilaterally saying that he had paid off the purchased land. In fact, he only gave the down payments and had already made the Sale and Purchase Deed in front of Conveyancer; and a "*das sein*" certificate was issued.

## **Research Methods**

This research is an empirical legal research, that is a research that studies and analyzes the implementation of a statutory regulation in the field or in the community. The legal materials used were primary legal materials including: a. The 1945 Constitution of the Republic of Indonesia; b. Law Number 5 of 1960 concerning Agrarian Principles, State Gazette of the Republic of Indonesia of 1960 Number 104, Supplementary State Gazette of the Republic of Indonesia Number 2043; c. Government Regulation Number 24 of 1997 concerning Land Registration, State Gazette of the Republic of Indonesia 1997 Number 59. Supplementary State Gazette of the Republic of Indonesia Number 3696;

Furthermore, this study also utilized secondary legal materials, that was legal materials that provided an explanation of primary legal materials such as jurisprudence, views/opinions (doctrines), books, scientific journals and legal journals. In addition, tertiary legal materials were also used; legal materials that provided instructions and explanations for primary legal materials and secondary legal materials such as dictionaries (law), and Indonesian encyclopedias. Additionally, the approaches used in this research were conceptual approach, legislative approach and sociology of law approach.

The technique used in gathering the aforementioned legal materials was interview. Data collection was carried out from a sample of individuals and/or communities directly related to the problems of legal consequences of sale and purchase of land with down payment. They were interviewed regarding the factors underlying the cancellation of the Sale and Purchase Deed of land and the status of the Conveyance Deed due to the cancellation of the sale and purchase of land with down payment in North Lombok Regency. Last but not least, the observation technique in this research was a reviewing activity carried out to find out and determine samples in the community. The research instrument consisted of a series of written questions to obtain information.

## ***Results and Discussion***

### *Legal Protection of Sellers for Cancellation of Land Purchase with Down Payment*

Legal protection covers all aspects including civil aspects such as sale and purchase transactions and so on. One of the examples of sale and purchase transactions that is often conducted by the community is the sale and purchase of land. In this case, the law needs to be present to accommodate the rights and obligations of sellers and buyers to make sure that the transactions are convenient and beneficial to both parties.

One of the practices that frequently occurs in land sale and purchase transactions is the practice of giving the down payment as a 'booking fee' and the settlement is done later based on the agreement. However, in practice, this kind of transaction often creates problems between sellers and buyers as happened in Malaka Village, Pemenang Subdistrict, North Lombok Regency. The land buyer has given a down payment and promised to pay it off some time later, but the buyer did not pay it up to the given deadline. There were also often the cancellations of Sale and Purchase Deed and the down payments were requested to be returned.

The above example is very detrimental to the community as the sellers because they felt cheated by the buyer who provided the down payment that should be paid in accordance with the agreement. On the other hand, the down payment received was already used for their daily needs. The community was very disadvantaged because they believed that the buyer was the guilty party. The buyer suddenly disappeared and did not pay off the down payment in accordance with the specified deadline.

Therefore, referring to the above problems, the law must be present to solve the existing problems. Article 1464 of the Civil Code states that: 'If the purchase was made by giving something or some money or down payment, none of the parties can cancel the purchase, either by allowing to keep the thing, or having returned the money'. Therefore, the down payment acts as the 'booking fee', by which the down payment that has been given by the buyer to the seller cannot be taken or returned to the buyer if the sale and purchase is canceled.

In the land sale and purchase transactions, down payments can act as booking fees and as advance. Down payment as a booking fee usually occurs before the contract, while the down payment as an advance occurs after the handover of the object of sale and purchase or when the purchase agreement is

complete. Both of them still position the parties have the right to demand compensation when there is a cancellation.

The Consumer Protection Act has guaranteed legal certainty for buyers to claim compensation. It is the right to get compensation and / or replacement if the goods and or services received do not comply with the agreement or are not as intended. This is explained in Article 4 letter (h) regarding the claim for compensation for the Consumer Protection Act. The seller or buyer has the right to claim compensation if he/she feels disadvantaged as long as there is evidence of loss. For this reason, there must be good faith and honesty for those who submit claims for compensation.

Accordingly, the claim for compensation must be fair, legal according to the law, impartial, have equal rights, morally reasonable and appropriate (Nasution, 2008). The claim can be done with the limitation that as long as consumers can prove that the losses suffered are a result of the business actor, which can be (Holijah, 2017):

1. Products traded are legally flawed. It means that the product is the property of someone else, or the result of a crime that the buyer does not know;
2. Hidden defective products that the buyer does not know;
3. There is a unilateral cancellation from the seller or buyer.

Besides the provisions in the Civil Code above, legal protection granted to the land sellers with down payment can be found in the jurisprudence of the Supreme Court Decree No. 2661K/Perdata/2004 dated 28 February 2006 with legal considerations: 'Since it turned out that the plaintiff/appellee default did not pay the remaining shortfall of payment of IDR 375,000,000 until the agreed date which was March 22, 2003, then according to the custom in the business or trade world, the defendant/appellant has no obligation to return the down payment to the plaintiff/appellee.'

Moreover, there is also the decision of the District Court of Tanjungkarang No. 5/PDT.G/2015/PN.Tjk (has permanent legal force) dated August 31, 2015 which states that: since the agreement cannot be canceled unilaterally, then if the cancellation occurs because the seller defaults, he must return the down payment along with the costs that have been incurred to the buyer. On the other hand, if the cancellation occurs because the buyer defaults, then the seller is not required to return the down payment.

The provision of down payment in land purchase transactions can function as a booking fee or as an advance. Both can be included or not in the price of payment whose practice may vary. This is also supported by the complex life patterns of the current development of civilization. In meeting the needs and ways of distributing needs, humans base on different philosophies, including religious beliefs, ideology, legal culture, and political interests of a particular community of people (Ali, 2008).

Land purchase transactions with down payments are actually very vulnerable to losses. Honesty and good intentions of both parties are indeed worthy of attention in its practices. This is because of the possibility of the concept and practice that a buyer pays the seller an amount of money that is less than the value of the land price after the transaction is completed.

The custom of giving down payments in sale and purchase transactions in the community is actually a form of agreement. Giving down payment is legally justified. It can be seen in Article 1339 of the Civil Code in conjunction with Article 1347 of the Civil Code that agreements are not only binding on what is explicitly regulated, but also things that are in the habit and commonly followed. It includes habits that develop in people's lives based on the habits of each applicable customary law (von Benda-

Beckmann & von Benda-Beckmann, 2011). Article 1339 of the Civil Code states that an agreement is not only binding on matters expressly stated in it, but also everything which according to the nature of the agreement is required by propriety, customs and law.

Moreover, Article 1347 of the Civil Code states that matters that are customarily agreed upon are considered to be secretly included in the agreement even though it is not explicitly stated. The customary principle as one of the principles in an agreement is the result of a workshop of the National Legal Development Agency in 1985. There are eight (8) principles, namely:

1. The principle of trust;
2. The principle of equality before the law;
3. The principle of balance,
4. The principle of legal certainty;
5. Moral principle;
6. The principle of propriety;
7. Customary principle;
8. The principle of protection.

The customary principle is used in a sale and purchase transaction including a sale and purchase transaction with down payment, so the meaning of the customary principle of giving down payment in the sale and purchase of a product is that down payment in the community has been considered as a form of approval or agreement.

Although it is not explicitly stated, giving down payment as a form of approval that is secretly stated is a legal event of approval because of a custom or habit, both as a general custom and as a local custom. It means that if the granting of down payment as a form of approval originating from customs arising from a sale and purchase transaction is expressly stated, then it is subject to a written agreement. The risk of giving down payments as a general custom is in line with the habits of general sale and purchase transactions. It depends on the custom of the event of giving down payment of the same object or according to the practice of the local community.

### *Conveyance Deed Status Due to Cancellation of Land Purchase with Down Payment in North Lombok Regency*

Sale and Purchase Deed is the act of the parties because it is made based on the agreement of the seller and the buyer which contains the rights and obligations of the parties. The Conveyancer here is only as a medium to make the Sale and Purchase Deed. The Conveyancer as a general official who is given the authority of the state in the matter of making a deed related to land must follow the applicable laws and regulations and may not deviate from the applicable provisions. The provisions regarding the cancellation of the Conveyance Deed are contained in Article 45 paragraph (1) letter g of Government Regulation No. 24 of 1997 which confirms that the Head of the Land Office refuses to register the transfer of rights or the imposition of rights if the legal act referred to in Article 37 paragraph 1 of Government Regulation No. 24 of 1997 is canceled by the parties before being registered by the land office. The legal acts referred to in the Article 37 paragraph (1) are the transfer of land rights and ownership rights to a unit of flats through the sale and purchase, exchange, grants, income in companies, and other legal acts of transfer of rights, except the transfer of rights through auctions that can only be registered if they are proven by a deed made by an authorized Conveyancer based on the applicable laws and regulations. In addition, Article 45 of the Government Regulation No. 24 of 1997 also confirms that the Conveyance Deed is a tool to prove that a legal act has been committed. Therefore, if the legal action is canceled, the relevant Conveyance Deed no longer functions as the evidence of the legal action. Thus, if a legal action is canceled by the parties concerned but it has been already registered at the land office, it then cannot be canceled. Changes

to the land registration data according to the cancellation of the legal act must be based on other evidence, for example, a court decision or Conveyance Deed concerning on a new legal action. Under these provisions, there are two cancellations of the Conveyance Deed:

1. Cancellations are made before registration to the Land Office
2. Cancellation after registration or in the process of registration at the Land Office. The cancellations made before registration to the land office can be done with a notarial deed because the deed mentioned in the Conveyance Deed is a civil deed of the parties.

According to the Article 45 of Government Regulation No. 24 of 1997, cancellations made during the registration process at the land office must be with a court decision. In accordance with the principles in civil law, when the cancellation is carried out, all such conditions must be returned to their original state when the aforementioned legal act has not yet occurred (Adjie, 2014). The cancellation of the Conveyance Deed during the registration process at the Land Office requires a careful review. The deed of legal action in the Conveyance Deed is the act of the parties. If both parties agree or there is no objection, they can come to the notary to make the cancellation deed. However, if the parties are in dispute, one of the parties can submit a cancellation to the general court or district court. This method can actually be done to cancel the Conveyance Deed which is in the registration process at the land office. Therefore, the cancellation can be made with a notarial deed and then submit the cancellation request by attaching the deed of cancellation. When a cancellation is submitted, the land office has the authority to issue a decision on the cancellation of the registration (Adjie, 2014).

The Binding Agreement of the rule of law guarantees certainty, order and protection of the law with core truth and justice. Certainty, order and legal protection demand that legal traffic in people's lives requires evidence that clearly defines the rights and obligations of a person as a legal subject in society. The procedure and formality of making an authentic deed are a compelling legal provision, meaning that the procedures and methods for making it must be followed as precisely as possible without being violated at all. Deviations from the procedures and methods for making authentic deeds will bring legal consequences to the strength of the proof of the deed. The existence of an authentic deed and general official in Indonesia is regulated in Article 1868 of the Civil Code which states that an authentic deed is a deed determined by the Act, made by or in the presence of an authorized public official.

The article above requires a law governing the form of authentic deeds and general officials. The Conveyancer's liability in terms of intentional, negligence and/or oversight in the making of Sale and Purchase Deed that deviates from the formal and material requirements for the procedures for making the Conveyance Deed may be subject to administrative sanctions. Based on the regulation of the head of the National Land Agency 1/2006, deviations from the formal and material conditions include grave violations by the Conveyancer that can be subject to sanctions with the dishonorable discharge from his position by the Head of the Indonesian National Land Agency. The Conveyancer that commits deviation by not meeting the material or formal requirements can cause the Conveyance Deed to be legally flawed. It can lead to legal consequences in the form of a cancellation before the court or the deed becomes a deed under the hand. In this case, the making of the deed is not based on the requirements of the applicable laws and regulations, so that it does not meet the subjective requirements.

If the Conveyance Deed is issued legally flawed because of the Conveyancer's mistake, negligence, or intentionality, then he must give accountability both morally and legally. Errors and negligence by the Conveyancer can be minimized by the existence of very strict supervision by a Minister. It is in line with the Minister Regulation No. 2 of 2018 which states that the regulated supervision includes the

enforcement of legal rules in accordance with the provisions of the legislation. The law enforcement is carried out on the findings of the Ministry against violations in the performance of office or there are complaints from individuals or legal entities. The law enforcement for violations committed by the Conveyancer can be in the form of a written report, a temporary dismissal, a respectful dismissal, or a dishonorable discharge. Problems arise because of negligence committed intentionally or unintentionally by the Conveyancer. It results in the cancellation of the deed (*vernietigbaar*) because it does not meet the subjective conditions that can be possibly used as an excuse for the injured party to claim compensation to the Conveyancer.

Besides the Conveyancer's negligence, problems can arise from client dishonesty regarding the accuracy of administrative requirements as a basis for making a deed which could result in the deed being null and void by law (*nietigheid van rechtswege*), because the objective conditions are not met. Thus, in this case, the Conveyancer can be held accountable for the Sale and Purchase Deed that he makes. It can be canceled or declared null and void by the Court's Decision because the process of making it legally, administratively, or criminally flawed if the Conveyancer concerned is proven guilty.

The Conveyance Deed is an authentic deed as affirmed in Article 1 paragraph (1) and Article 3 paragraph (1) of Government Regulation No. 37 of 1998. As an authentic deed, the Conveyance deed is enacted with provisions concerning the terms and procedures for making an authentic deed. The form of the Conveyance deed has been determined by law, while the official who made it, in order to have the same weight, must also be determined by law or statutory regulation at the level of the law (Budiono, 2007). As an authentic deed, the Conveyance deed as an evidence which has perfect power of proof can be degraded into a deed under the hand.

The degradation of the strength of authentic evidence becomes the strength of evidence under the hand if any material or formal conditions are not fulfilled. In addition, the existence of legal or juridical defects in the authentic deed results in its cancellation or annulment. It can happen if there is a violation of statutory provisions, including:<sup>1</sup>

1. Article 1869 of the Civil Code, which states that a deed, which due to the incompetence or incapability of the official or due to the absence of format, cannot be regarded as authentic, may be enforced as a private document, if this document has been executed by the parties. This article contains the provisions that a deed does not have authentic evidence strength and only has evidence strength under the hand in the case of:
  - a. The public official is not authorized to make the deed;
  - b. General officials are not able (incompetent) to make the deed;
  - c. Defect in its form
2. Article 1320 of the Civil Code, which states that an agreement is considered valid if it meets the following conditions:
  - a. There must be a consent of the individuals who are bound thereby;
  - b. There must be capacity to enter into an obligation;
  - c. There must be a specific subject matter; and
  - d. There must be permitted cause.

Terms a and b are subjective conditions because both of them discuss the people or subjects who entered into the agreement. If subjective conditions are violated, the deed may be subject to cancellation.

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<sup>1</sup> Pieter Latumenten, Congress XX Indonesian Notary Association, The Cancellation and Degradation of Strength of Notarial Deed Evidence and Actual Model, (Surabaya, 28 January 2009), page 2.

Meanwhile, terms c and d are objective conditions because they contain the contents of the agreement. If the objective conditions are violated, the deed is null and void.

### **Conclusion**

The legal protection to the seller for the cancellation of the land purchase with down payment is contained in Article 1464 of the Civil Code. It is also regulated in Article 4 letter (h) of Law No. 9 of 1999 concerning Consumer Protection concerning claims for compensation for the Consumer Protection Act, legal protection for sellers, and in the jurisprudence of the Supreme Court No.2661K/Perdata/2004 dated 28 February 2006 with legal consideration: 'Since it turned out that the plaintiff/appellee default did not pay the remaining shortfall of payment of IDR 375,000,000 until the agreed date which was March 22, 2003, then according to the custom in the business or trade world, the defendant/appellant has no obligation to return the down payment to the plaintiff/appellee.'

If the Conveyance Deed is issued legally flawed because of the Conveyancer's mistake, negligence, or intentionality, then he must give accountability both morally and legally. Problems arise because of negligence committed intentionally or unintentionally by the Conveyancer. It results in the cancellation of the deed (*vernietigbaar*) because it does not meet the subjective conditions that can be possibly used as an excuse for the injured party to claim compensation to the Conveyancer.

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