



## Legal Implications of Default on Bad Faith on the Fulfillment of the Parties' Promises in the Building Sale and Purchase Deed and Assignment of Land Rights (Study of Decision Number: 177/Pdt.G/2022/Pn Mdn)

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### ABSTRACT

This study aims to find out and analyze the validity of building sale and purchase deeds made in bad faith according to the laws in Indonesia, legal protection for parties aggrieved by bad faith in fulfilling promises and handing over the object of sale and purchase based on decision number 177/Pdt.g/2022/PN Mdn, as well as analysis of judges' considerations in adjudicating cases of bad faith in fulfilling promises and handing over the object of sale and purchase in the decision number 177/Pdt.g/2022/PN Mdn. This study uses normative juridical research that is descriptive in nature. The results of the study show that the validity of the deed of sale and purchase of buildings made in bad faith through the act of default of one party according to the laws in Indonesia is listed in Article 1320 of the Civil Code and Government Regulation Number 24 of 1997 concerning Land Registration.

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## **INTRODUCTION**

Indonesia's written law is codified, ensuring legal clarity. In everyday life, there are two sorts of laws: criminal law and civil law. Civil law contains several challenges, which are explained in practice. One of the issues in civil law is buying and selling, which is classed as commercial law, however commercial law is also part of civil law. Commercial law governs the formation of agreements and commitments outlined in Book III of the *Burgerlijk Wetboek* (BW).

The sale and purchase agreement document must be founded on the parties' goodwill and have legal protection. The existence of legal protection is carried out to obtain justice for the parties in order to achieve their respective goals. Basically, the agreement itself is an event that occurs between a person who promises to another person in carrying out something. A sale and buy agreement is a consensual agreement, which means that the agreement and agreement are created when an agreement is achieved on the key points of the agreement, and no formality is necessary.

The agreement must have legal terminology and ideas. According to Article 1338 Paragraph 3 of the Civil Code, the agreement must be followed in good faith. Good faith is the notion of creating an agreement, which indicates that a person with good faith is honest and trusts the other party without hiding anything unpleasant. This demonstrates that the parties must carry out the agreement in an honest and clean manner, so that its execution reflects legal clarity and a sense of fairness for the parties bound by it.

Agreements that are implemented without rules that are the basis for the parties in their implementation certainly have the potential to cause disputes between these parties. To provide legal clarity, the agreement's substance must include sections that control the parties' rights and responsibilities in accordance with fairness and balance. This legal certainty is required for giving legal protection to the parties to an agreement.

The Civil Code defines good faith in a variety of ways, including Article 1338 paragraph (3), which requires an agreement to be implemented in good faith. According to Wery, both parties should conduct towards each other as courteous persons without deception, trickery, or guile, without upsetting the other party, not looking at their own interests but looking at the interests of the other party. The same thing was also stated by Aser Rutten in executing an agreement based on good faith means that the creditor in the exercise of his rights and the debtor in the fulfillment of his obligations must have good faith in accordance with the requirements of "*Redelijkheid en billijkheid*", implying that the parties must implement the agreement like respectable persons would do.

An agreement, according to Article 1313 of the Civil Code, is an act between one or more people that binds them to one or more other people. To be able to determine whether or not an agreement is valid or not, there must still be legal protection in protecting weak parties in accordance with laws and regulations and court intervention through judges in their decisions. A contract or agreement must fulfill the requirements for its legality outlined in Article 1320 of the Civil Code. When the four elements for the legality of an agreement are

met, the agreement becomes valid and legally binding for the parties involved. The agreement in question has the following legal conditions:

1. There is an agreement for those who bind themselves;
2. The ability of the parties to make an alliance;
3. A certain thing; and
4. A cause (causa) that is halal.

The legal act of buying and selling land is carried out through a deed filed with PPAT. Meanwhile, the Notary conducts a transfer of rights from the seller to the buyer. In terms of the legislation governing the transfer of land rights, the sale and purchase of land rights from the seller to the buyer must comply with all applicable laws and regulations. The land sale and sale binding agreement, in the form of a genuine deed signed before a notary in accordance with the legal actions of the interested parties, is then established as a regulation.

The legal act of buying and selling land is carried out through a deed filed with PPAT. Meanwhile, the Notary conducts a transfer of rights from the seller to the buyer. In terms of the legislation governing the transfer of land rights, the sale and purchase of land rights from the seller to the buyer must comply with all applicable laws and regulations.

## **THEORETICAL REVIEW**

### *Theoretical Framework*

Theory is an arrangement of definitions, concepts, and systematic explanations of the view of the situation and leads to the relationship between one variable and another to clarify and predict the situation that occurs. A theoretical research will be indispensable in order to explain or explain a specific phenomenon or a process that occurs.

### *Legal Certainty Theory*

The theory of legal certainty is one of the goals of law and it can be said that legal certainty is part of the effort to be able to realize justice.

### *Legal Proof Theory*

Etymologically the proof in Arabic is called Al-Bayyinah, which means one that explains. Terminologically, proof means providing information with convincing evidence.

### *Legal Protection Theory*

Legal protection refers to all intentional efforts undertaken by individuals, governments, and private entities to safeguard, control, and fulfill the welfare of life in conformity with existing human rights, as outlined in Law Number 39 of 1999 respecting Human Rights.

### *Conception*

Conceptual is the arrangement of various concepts that are the focus of observation in carrying out research. A conceptual framework is a framework that explains the existence of a relationship of specific concepts, with which the researcher will be researched, but this is an abstraction by the phenomenon. The

phenomenon itself will be called a fact or relation, the concept itself is an explanation that will be associated with the relationship in it with the fact or reality

#### *Legal Protection*

Law is a set of written and unwritten regulations that are usually coercive in nature for human behavior in state society and between states that are oriented to two principles, namely justice and utility, for order and peace in society.

#### *Sale and Purchase Deed*

A sale and purchase deed is a document that proves the transfer of land rights from the owner as the seller to the buyer as the new owner. In principle, the sale and purchase of land is light and cash, which is carried out in front of the Land Deed Making Officer and the price has been paid in full.

#### *Notary*

A notary is a State official/public official who can be appointed by the State to perform State obligations in legal services to the public in order to obtain legal certainty as an official who signs authentic deeds in civil cases. A notary is someone who is authorized by the government to ratify and witness certain agreements, wills, deeds, and other documents but does not receive government wages or pensions.

#### *Bad Faith*

The involvement of other parties in requesting the cancellation of the transfer of land rights stems from one of the parties in the land sale and purchase transaction acting in bad faith, whereas good faith in the law of agreement is a doctrine or principle derived from the bona fide teachings of Roman Law.

#### *Promise*

Promises made in writing are commonly known as agreements. A contract or agreement is an occurrence in which one person or two persons pledge to do or not do something.

#### *Default*

Default is an act in which an achievement or obligation arising from a legal agreement between the parties is not fulfilled. Default can only occur when the parties are negligent in the agreement that is binding on the parties because the position of the agreement is the same as the law, which means that when the agreement is violated, it can be sued.

## **METHODOLOGY**

Research methods are procedures or steps used by researchers to collect, analyze, and interpret data to answer research questions or achieve research objectives. This method includes the techniques used to obtain information, as well as the approach taken to analyze the data. The methods in this study are as follows:

1. Nature and Types of Research

This research is a descriptive examination that shows the laws and regulations pertaining to the author's legal ideas, as well as their application in society.

2. Data Source

This study implements the research using secondary data sources. Secondary data is a source that does not directly supply data for gathering. Information was gathered indirectly from a variety of sources that supported this investigation, including paperwork and literary records. The secondary data comprises of many legal documents.

3. Data Collection Techniques and Tools

According to Sugiyono, if researchers do not know the techniques of data collection, then researchers will not get data that can meet the data standards that have been determined. With the techniques that have been regulated, researchers can easily conduct research. In this study, data collection was carried out by literature study.

4. Data Analysis

The data analysis of this study uses a normative juridical approach method in accordance with the field of legal studies, namely law is conceptualized as norms/rules, principles, legal systematics or dogmas. Rules/norms are the meaning of a rule of law.

## RESEARCH RESULTS

### *Analysis of the Validity of the Sale and Purchase of Buildings Act Made in Good Faith through the Default of One Party According to the Law in Indonesia*

#### *Overview of the Sale and Purchase Deed*

A covenant is an event in which one person makes a promise to another, or two individuals pledge each other to someone else. In the Indonesian legal system, the regulations relating agreements are controlled in the Civil Code in article 1313, which defines an agreement as an act of one or more individuals reminding themselves of one or more others. An agreement is born because of an act done by a legal subject who has mutually agreed to remind himself and produce a legal relationship between the legal subjects and cause legal consequences. An agreement is said to be valid if it meets the elements of the legal conditions of the agreement stipulated in Article 1320 of the Civil Code, including:

1. Agree with those who bind him;
2. Ability to make an alliance;
3. A certain thing;
4. A halal cause.

While the definition of buying and selling itself means the act of transferring cash, real, and clear rights so that when the sale and purchase deed is signed, the transaction on the land is considered final, namely the payment of the price is considered to have been paid off and the land that is the object of the sale and purchase is considered to have been handed over by the seller and accepted by the buyer.

### ***Overview On Bad Faith Through Default In Making Sale And Purchase Deed***

The sale and purchase agreement is simply binding, which means that the act of purchasing and selling does not transfer ownership rights. The new sale and purchase agreement confers rights and imposes responsibilities on both parties, namely granting the buyer the power to demand the surrender of ownership of the items sold. A transfer of ownership takes place only when a formal act of handover / levering is carried out judicially. The transfer of immovable commodities, such as land, takes place when the sale and purchase deed is executed.

A Sale and Purchase Deed is a document that certifies the transfer of rights, such as land rights, from the seller to the buyer as new owners. In principle, land sales and purchases are conducted in front of the Land Deed Making Office in cash, with the whole sum paid. If the full purchase price of the land has not been paid, the AJB cannot be issued. According to Article 37 of Government Regulation Number 24 of 1997 on Land Registration, a sale and purchase document provides legal proof that the rights to land and structures have been transferred to third parties. The Sale and Purchase Deed is executed in front of the Land Deed Making Office or sub-district in districts where Land Deed Making Offices are still scarce. Legally, land and construction rights cannot be transferred by hand.

Meanwhile, Law No. 5 of 1960 on Agrarian Principles (UUPA) must be enforced explicitly and in cash. The nature of the light must be determined in front of a PPAT, a government-appointed official whose work area corresponds to the location of the land for sale. It is named cash because the process of giving over land and paying the price of land is deemed to occur concurrently (simultaneously), with the sale and purchase completed as soon as the land is turned over. As a result, the process of handing over land and building rights must take place in front of an authorized official, in this case PPAT, and be paid in cash, as evidenced by the Deed of Sale and Purchase (AJB), which serves as a document proving the transfer of land rights from the owner's control as the seller to the buyer as the new owner.

### ***The Validity of the Sale and Purchase of Buildings Act Made in Good Faith through the Default of One Party According to the Law in Indonesia***

Notaries are permitted to make deeds as long as they are desired by the parties or are required by law to be in the form of an authentic deed. The deed must be executed in accordance with the legal requirements governing the Notary deed procedure. Thus, a public official is a position held or conferred upon individuals who are permitted by the rule of law to produce an authentic deed, and the Notary, as a public official, is granted the ability to do so. Notaries must be guided by the principles that have been determined as a reference in backing something, returning something and/or placing something on the thing to be explained in the form of:

#### ***The Basics of Equations***

Notaries should not discriminate between providing their services to one client and another based on socioeconomic circumstances or other reasons. Only

legal reasons can be used as a basis that the Notary cannot provide services to the attending party and the status of the attending is the same in the eyes of the law (equaility before the law).

#### *Principle of Trust*

The notary is obligated to keep private everything concerning the deed he prepares and any information gained while making the deed in line with the oath/promise of office, unless the law states otherwise.

#### *The Principle of Legal Certainty*

Notaries are obliged to be guided by the legal rules related to all actions that will be taken and then stated in the deed. The deed made by the Notary must be in accordance with the applicable legal rules in the event of a problem, the Notary deed is a guideline for taking legal action for the parties.

#### *The Principle of Prudence*

The notary is obliged to examine all the evidence presented by the parties and listen to the information and ask for statements from the parties as a basis for pouring the wishes and wishes of the parties in a deed.

#### *The Basics of Reasoning*

Every outpouring of wishes and wishes in a deed must have appropriate legal reasons and be supported by sufficient evidence and provide legal considerations to the parties for the legal acts they make.

#### *Principle of Prohibition of Abuse of Authority*

If the Notary steps beyond his authority and results in harm to the parties, the parties can demand a refund of fees, damages and interest to the Notary.

#### *The Basis of the Prohibition of Action*

The notary must see, consider and ask for all documents to be shown and shown to him. The role of the Notary as a determinant of whether a legal act can be stated in the form of a deed or not and the result of the decision must have an appropriate legal reason and must be explained to the witnesses.

#### *Principles of Proportionality*

The exercise of authority must consider the balance of rights and obligations in the interests of the parties.

#### *Principles of Professionalism*

Notaries are obliged to prioritize science in exercising their authority which is based on the Law on the Notary Position and the Notary Code of Ethics. Analysis of Legal Protection for Parties Harmed by Default with Bad Faith in Fulfilling Promises and Submission of Objects of Sale and Purchase Based on Decision Number 177/Pdt.G/2022/Pn Mdn

### ***Sale and Purchase Deed as Evidence of Dispute Settlement in the Agreement***

A sale and purchase agreement may be managed and carried out correctly if the parties have fulfilled the contents of the sale and purchase agreement in terms of the parties' promises and duties as mentioned in the agreement without causing any harm to either party. Buyers and sellers have rights and duties that must be recognized and followed, as outlined in Law No. 8 of 1999 concerning Consumer Protection (UUPK), which governs consumer protection rights if they are dissatisfied with a purchasing or selling transaction.

The binding of the sale and purchase must be carried out by two (or more) persons who pledge themselves to each other, known as the seller and buyer. Binding between the seller and the buyer will result in legal repercussions, namely a responsibility in the form of an agreement to complete the seller's achievement of handing over the object of sale and purchase to the buyer. The buyer is also required to pay for the item acquired in accordance with the agreement with the vendor.

### ***There is an act of default with bad faith on the part of the parties in the sale and purchase deed agreement***

A notary deed is a perfect, strongest, and most comprehensive method of proof. In addition to ensuring legal certainty, a notary deed helps prevent disagreements. Pouring deeds, agreements, stipulations in the form of a notary deed is considered better than pouring them in a letter under hand. Although it is signed on a stamp, it is also strengthened by the signatures of the witnesses.

### ***Legal protection for parties aggrieved by defaults in bad faith in fulfilling promises and handing over the object of sale based on Decision Number 177/Pdt.G/2022/PN Mdn***

An agreement is one of the legal events that might result from the source of the agreement; nevertheless, there are legal conditions that can also result in an agreement. When an agreement is formed, there is an alliance between one party and another, such as the seller and the buyer or a third party, referred to as business actors and consumers in some jurisdictions.

A covenant is an occurrence in which one person pledges another to execute an action. The agreement establishes a duty on the part of both parties to carry out its terms. When creating an agreement in the form of an agreement, the parties must adhere to the principles and components outlined in the agreement's legal framework. The Civil Code contains many broad principles that serve as guidance, as well as limitations in regulating and making agreements until the parties reach an agreement that pertains to them.

Analysis of Judges' Considerations in Adjudicating the Case of Default with Bad Faith in Fulfilling Promises and Delivering Objects of Sale and Purchase in Decision Number 177/Pdt.G/2022/Pn Mdn.

#### ***Case Disposition***

##### **1. The Parties**

*A.M. Ilham Pulungan (Plaintiff)*

The plaintiff is a man born in Medan, June 16, 1983 as a self-employed worker with an address at Jalan Letda Sujono GG. Abadi No.03, Kel. Bandar Selamat, Medan Tembung District, Medan City, North Sumatra Province. In this case, it gives power of attorney to Muhammad Zenurdy Sirait, S.H., Dodi Candra, S.H., M.H., Ramlan Damanik, S.H.

*Sudarwan (Defendant I)*

Defendant I is a man born in Medan, October 12, 1957 whose address is Jl. Alumunium Raya No. 11 LK. XXII, Tanjung Mulia District, Medan Deli District, Medan City.

*Nurmiyati (Defendant II)*

Defendant II is a woman and wife of Defendant I born in Medan on December 31, 1958 whose address is Jl. Alumunium Raya No.11 LK. XXII, Tanjung Mulia District, Medan Deli District, Medan City, North Sumatra Province

Defendant I and Defendant II in this case gave power of attorney to Ahmad Fadhly Roza, S.H., M.H., Komalasari, S.H., M.H. Agung Harja, S.H., Juanda, S.H., Advocate and Legal Consultant at the Law Office Ahmad Fadhly Roza, S.H., M.H., as well as Associates-Advocates And Legal Consulting with offices at Jalan Bilal No. 77, Pulo Brayon Darat I Village, East Medan District, Medan City-North Sumatra.

*Notary Octavia Melda Munthe, S.H., SpN (Co-Defendant)*

The Defendant is also a woman as a Notary whose address is Jl. Besar Tembung No.42, Tembung Village, Percut Sei Tuan District, Deli Serdang Regency, North Sumatra Province.

## 2. Chronology of Cases

The Plaintiff and Defendant I after obtaining approval from Defendant II as the Wife dated September 3, 2020 have bought and sold a plot of land and a house covering an area of 306 M<sup>2</sup> (three hundred and six square meters) located on Jl. Alumunium Raya No.11 LK. XXII, Tanjung Mulia District, Medan Deli District, Medan City, North Sumatra Province. with the following limits:

- a. The North is bordered by Jl. Alumunium Raya with a size of  $\pm 10$  meters.
- b. The East is bordered by Tanah Nasrun with a size of  $\pm 30.60$  meters.
- c. The south is bordered by Sofyan with a size of  $\pm 10$  meters.
- d. The West is bordered by Alm. Ahmadi with a size of  $\pm 30.60$  meters.

Based on the deed of sale and purchase of building and handover of land rights number 01 dated September 3, 2020 made by the Co-Defendant. Simultaneously with the signing of the Building Sale and Sale and Assignment of Land Rights, Defendant I and Defendant II handed over to the Plaintiff the basis of the Land rights of the object of sale and purchase, namely:

- a. Statement of Relinquishment of Land Rights, made under hand with a sufficient stamp dated February 28, 2008 Legalization Number: 593/203/II/MD/2008 which is known by the Sub-district Head of Medan Deli District, Medan City registered in the name of SUDARWAN;

- b. Statement of Handover/Compensation of a Plot of Land, made under hand with a sufficient stamp dated August 20, 1996 Number: 11/TM/VIII/96 known by the Village Head of Tanjung Mulia Village, Medan Deli District, Medan City;
- c. Statement of Handover of Plot of Land, made under hand with a sufficient stamp dated July 15, 1985 Number: 30/Lg-7/TM/85 which is known by the Village Head of Tanjung Mulia Village, Medan Deli District, Medan City;
- d. Grant Sulthan, Number 45 B, dated April 14, 1930;

Article 2 of the Deed of Sale and Purchase of Land Rights No. 01 Dated September 3, 2020, Defendant I and Defendant II must and are obligated to transfer over the land and structures in a vacant condition, not occupied or farmed by anybody, on the day and day this Deed is executed. However, Defendant I and Defendant II begged with the Plaintiff for a three-month grace period to vacate the property that was the subject of the sale and purchase while they waited for Defendant I and Defendant II's new residence to be completed. Because the grace time requested by Defendant I and Defendant II is still reasonable, and for the sake of humanity, the Plaintiff permits Defendant I and Defendant II to dwell or occupy the house for three (3) months.

After 3 (three) months, the Plaintiff requested that Defendant I and Defendant II vacate the house immediately; however, Defendant I and Defendant II refused to vacate or leave the house that was the subject of the Sale and Purchase on the grounds that Defendant I and Defendant II's new house was not yet completed. If Defendant I's Sale and Purchase of Buildings and Assignment of Land Rights with the Plaintiff meets the legal requirements of an Agreement as outlined in Article 1320 of the Civil Code, then the Co-Defendant's Deed of Sale and Purchase of Land Rights Number: 01 dated September 3, 2020 is valid and has binding legal force.

Defendant I and Defendant II have not acted in good faith and have failed to fulfill their obligation to hand over the land and house of the object of sale to the Plaintiff in a vacant state, uninhabited or cultivated by anyone, in accordance with the provisions of the Co-Defendant's Deed of Sale and Purchase of Land Rights Number: 01 dated September 3, 2020. As a result, the Defendants have breached their guarantee (default) to the Plaintiffs, as stated in Article 1243 of the Civil Code.

The Plaintiff has suffered a loss as a result of Defendant I and Defendant II's failure to fulfill their obligation to hand over the land and house of the object of sale and purchase to the Plaintiff in a vacant state, not inhabited or operated by anyone, in accordance with the provisions contained in the Co-Defendant's Deed of Sale and Purchase of Land Rights Number: 01 dated September 3, 2020.

3. Plaintiff's Petition in Decision Number 177/Pdt.g/2022/PN Mdn
  - a. Accept and grant the Plaintiff's claim in its entirety;
  - b. Declaring that it is valid and has the legal force of binding the agreement between the Plaintiff and Defendant I upon the approval of Defendant II regarding the Sale and Purchase of a plot of land and a house covering an area of 306 M2 located on Jl. Alumunium Raya No.11 LK. XXII, Tanjung

Mulia District, Medan Deli District, Medan City, North Sumatra Province with the following boundaries:

- 1) The North is bordered by Jl. Alumunium Raya with a size of  $\pm 10$  meters.
- 2) The east is bordered by Tanah Nasrun with a size of  $\pm 30.60$  meters.
- 3) The south is bordered by Sofyan with a size of  $\pm 10$  meters.
- 4) The west is bordered by Alm. Ahmadi with a size of  $\pm 30.60$  meters.
  - a. Declare the validity and value of all the evidence submitted by the Plaintiff in this matter;
  - b. Declare that Defendant I and Defendant II have committed an injury to a promise/default;
  - c. To punish the Defendant-I and the Defendant-II to hand over properly and correctly and in a vacant state and not inhabited or cultivated by any person to the Plaintiff a plot of land and house covering an area of 306 M<sup>2</sup>;
  - d. Declare valid and valuable Confiscation of Guarantee (Conservatoir Beslag) for a plot of land and house covering an area of 306 M<sup>2</sup>;
  - e. To punish Defendant-I and Defendant-II to pay forced money (dwangsom) in the amount of Rp.1,000,000.00 (one million rupiah) every day, if Defendant I and Defendant II neglect to implement the contents of the decision of this case as of the decision having permanent legal force;
  - f. Punishing Defendant I and Defendant II to obey and submit to this decision;
  - g. Declaring that the decision in a quo case can be carried out first (uitvoerbaar bij voorraad) even if there is an appeal, cassation, or verzet;
  - h. Charge Defendant I and Defendant II to pay costs in this case.
4. Defendants' Answers I and II in the Exception and Subject Matter of Decision Number 177/Pdt.g/2022/PN Mdn
  - a. In Exception:
    - 1) The dispute sued by the Plaintiff is being examined and processed at the North Sumatra Police;
    - 2) In the mediation event that has been agreed, the principal plaintiff is not present;
    - 3) The plaintiff's lawsuit is vague (obscur libel);
    - 4) The plaintiff's lawsuit lacks a party.
  - b. In the Subject Matter:

In Convention and Recognition:

    - 1) Defendant I and Defendant II reject and firmly deny the Plaintiff's postulations;
    - 2) The Plaintiff's postulates are far-fetched and false, in fact the Defendants intend to sell the house located on Jalan Alumunium Raya No. 11 Lk. XXII, Tanjung Mulia District, Medan Deli District, Medan City for Rp 1.5 billion by installing a sign with the words "this house will be sold";
    - 3) Around September 2020, the Defendant received a call from Susiyanti (Brother-in-law) that someone wanted to buy the Defendants' house with an offer price of IDR 1.4 billion, finally they agreed and a few days later

- Setiawan and the man the Defendants did not know and Setiawan confirmed that he was going to buy the house;
- 4) The Defendants were called by Susiyanti to meet at Notary Octavia Imelda Munthe and bring their original letters. The Defendants went to the Notary's office which is located at Jalan Besar Tembung No. 42, Percut Seituan District, Deli Serdang Regency;
  - 5) The Defendants saw the existence of Notary employees named Nona, Susiyanti, Setiawan and the Plaintiff. The Defendants were surprised to find out that the Plaintiff was the one who bought the land;
  - 6) The Defendants sold a unit of house located on Jalan Alumunium Raya No. 11, Link. 22, Kel. Tanjung Mulya, Kec. Medan Deli, Medan City, to the Plaintiff for 1.4 billion rupiah. The Plaintiff only paid Rp 300,000,000 (three hundred million rupiah) through transfer from the Account to the account in the name of the Defendants' children. Thus, the money paid by the Plaintiff amounted to Rp 600,000,000 (six hundred million rupiah), while the remaining unpaid amount amounted to Rp 800,000,000 (eight hundred million rupiah);
  - 7) The plaintiff no longer has money, so the rest will be paid with 3 permanent houses that are ready to live located on Jalan Terusan, Gg. Bengkel, Tembung Village, Deli Serdang Regency worth Rp 800,000,000,- (eight hundred million rupiah);
  - 8) The Defendants agreed to what was offered by the Plaintiff asking Setiawan to transfer his land to the Defendants;
  - 9) The promised permanent houses have not yet been completed into 3 permanent houses that are ready to be inhabited, but they are not ready to be inhabited because they are mangkrak and abandoned;
  - 10) Every time Defendant I asked the Plaintiff about the house, the Plaintiff always evaded and said "it's Setiawan's business", but if Defendant I asked Setiawan then the answer was the Plaintiff's business". After Defendant I made a report at the North Sumatra Police, Defendant I received information that the Plaintiff and Setiawan were allegedly land mafia plotters;
  - 11) As for the Receipt dated September 14, 2020, the payment of 1.4 billion as if the Plaintiff had paid in full to Defendant I;
  - 12) The information received by Defendant I and Defendant II on the Complaint Report at the North Sumatra Regional Police, the land deed on the land of the Object of Case has been collateralized to the Bank;
  - 13) The Plaintiff's argument regarding the Plaintiff having paid off and paid Rp. 1.4 billion is a lie and far-fetched.
5. Decision of the Panel of Judges in Case Number 177/Pdt.g/2022/PN Mdn In exceptions:
- a. Granting or accepting the exclusion of Defendant I and Defendant II in their entirety;
  - b. Declare the Plaintiff's lawsuit unacceptable;  
In the Convention.

Dismiss the Plaintiff's lawsuit in its entirety; In the Reconvension.

- a. Granting the reconvention lawsuit of the Convention Defendants/Reconvension Plaintiffs in its entirety;
- b. Declare the validity and value of the security seized that has been placed in this matter;
- c. Declare valid and valuable all evidence submitted by the Convention Defendants/Reconvension Plaintiffs in this case;
- d. Declaring invalid or void the receipt made by the Convention Plaintiff/Reconvension Defendant dated September 14, 2020 which explains as if the object of the case has been paid in full in the amount of Rp 1.4 billion with all its legal remedies;
- e. Punishing the Convention Plaintiffs/Reconvension Defendants to pay the remaining purchase of the object of the case to the Reconvension Plaintiffs/Convention Defendants in the amount of Rp. 800,000,000,- (eight hundred million rupiah) in cash and immediately without any conditions;
- f. To punish the Convention Plaintiffs/Reconvension Defendants to pay intangible/moral losses suffered by the Convention Defendants/Reconvension Plaintiffs in the amount of Rp. 10,000,000,000,- (ten billion rupiah) to the Reconvension Plaintiffs/Convention Defendants as of the date of this judgment;
- g. To punish the Convention Plaintiffs/Reconvension Plaintiffs to pay material losses incurred by the Intervention Plaintiffs in the amount of Rp. 500,000,000,- (five hundred million rupiah) to the Convention Defendants/Reconvension Plaintiffs from the date of this judgment being pronounced;
- h. Punish the Convention Plaintiffs/Reconvension Defendants to pay a forced sum of Rp 5,000,000 (five million rupiah) every day to the Reconvension Plaintiffs/Convention Defendants since the judgment is pronounced whenever the Convention Plaintiffs/Reconvension Defendants are negligent in carrying out this judgment;
- i. Punish the Convention Plaintiffs/Reconvension Defendants to submit and comply with this judgment.

***Judge's consideration in adjudicating the case of an act of default with bad faith in the fulfillment of promises and the delivery of the object of sale and purchase in Decision Number 177/Pdt.G/2022/PN Mdn***

The judiciary is a free and independent power, regardless of all influences. The judge in deciding the case adheres to the provisions of the applicable law to fulfill the sense of justice. One of the forms of free and independent judicial power is the freedom of the Judge to give an opinion on legal considerations on a case without being influenced by other Judges who handle the same case, although in the end it is the deliberation and consensus that becomes the decision of the Judges.

Proof is very important, meaning in civil cases because the granting or rejection of a lawsuit depends on whether or not the lawsuit is proven in court. The things that must be proven are only the things that are the subject of the dispute (event), namely everything that is proposed by one party but denied by

the other. Meanwhile, the legal problem does not need to be proven by the parties, but *ex officio* is considered to be known and applied by the judge. In civil proceedings in Indonesia, the judge is bound in the proceedings to reach his verdict. Only based on valid evidence, judges are allowed to make decisions.

Based on the analysis of the judge's considerations that have been carried out in decision number 177/Pdt.g/2022/PN Mdn, several things can be understood, namely the following:

*Exception Accepted and Lawsuit Rejected*

The judge granted the exception filed by Defendant I and Defendant II indicating a formal or substantial defect in the lawsuit filed by the Convention Plaintiff. This decision shows that the lawsuit filed does not meet the applicable legal requirements or there is an error in the basis of the claim. By declaring the lawsuit inadmissible, the judge considered that the plaintiff did not have a strong enough legal basis or sufficient evidence to support his claim regarding the fulfillment of promises and the delivery of the object of sale and purchase.

*Convention Lawsuit Rejected and Reconvention Lawsuit Granted*

The judge not only rejected the lawsuit filed by the Convention Plaintiffs, but also granted the counterclaim (reconvention) filed by the opposing party. The Convention Defendant succeeded in proving that the plaintiff who originally filed the claim had acted in bad faith in the sale and purchase transaction. With this ruling, it can be concluded that the plaintiff not only failed to fulfill his obligations, but tried to justify his position through legal channels without a solid basis.

*Confiscation of Bails and Evidence*

The judge said that the confiscation of the collateral that had been carried out in this case was valid and valuable. This decision shows that there are strong indications of disputes related to the fulfillment of payment obligations, as well as the handover of the object of sale and purchase that is the subject of the case. The judge also stated that all the evidence submitted by the Convention Defendant/Reconvention Plaintiff had legal validity. This further strengthens the position of the defendants in this case because the evidence they submitted is considered to have a strong legal basis in supporting their claims.

*Payment Receipt Declared Invalid*

One of the important points in this decision is the judge's statement stating that the payment receipt made by the Convention Plaintiff/Reconvention Defendant dated September 14, 2020 is invalid and has no legal force. In the receipt, it was stated that the object of sale and purchase had been paid in full of Rp 1.4 billion. However, after going through the trial process, the judge considered that this receipt contained elements of forgery or manipulation of documents. This decision proves that the plaintiff has acted dishonestly in the sale and purchase transaction in question.

### *Punishment for Paying Residual Purchases*

The judge ordered the Convention Plaintiff to immediately pay the remaining purchase of the object of the case amounting to Rp 800 million in cash and without conditions. This decision shows that there is a shortfall in payment that has not yet been resolved by the plaintiff to the defendant. This payment order confirms that the plaintiff did not fulfill its obligations as agreed in the sale and purchase agreement, so that it became one of the basis for the judge's consideration in granting the reconvention lawsuit.

### *Material and Immaterial Losses*

In addition to punishing the plaintiff to pay the remaining payment, the judge also determined that the plaintiff must pay compensation for material and immaterial losses suffered by the defendant. In this ruling, the plaintiff is required to pay immaterial losses of IDR 10 billion and material losses of IDR 500 million. The amount of compensation imposed by the judge shows that the plaintiff's actions are considered to have caused a serious impact on the defendant. This decision is also a form of consequence for the acts of default and dishonesty committed by the plaintiff in this transaction.

### *Imposition of Forced Money (Dwangsom)*

To ensure the implementation of the judgment, the judge also included the imposition of forced money or dwangsom on the Convention Plaintiff of Rp 5 million per day if they were negligent in implementing this decision. The imposition of this forced money aims to put pressure on the plaintiff to immediately fulfill his obligations as in the court decision. This policy also serves to prevent plaintiffs from avoiding their responsibilities by delaying the implementation of decisions that already have permanent legal force.

### ***Legal Implications for Acts of Default with Bad Faith in Fulfilling Promises and Surrendering Objects of Sale and Purchase Based on Decision Number 177/Pdt.G/2022/PN Mdn***

The consequences of the cancellation of the agreement are regulated in Articles 1451 and 1452 of the Civil Code. The cancellation has consequences based on Article 1452 which is "A null statement based on coercion, misrepresentation or fraud also results in the goods and persons concerned being recovered in the same state as before the engagement was made." Based on these provisions, the other party in the agreement who has already received achievements from the other party is obliged to return it. An agreement that does not meet the legal requirements of an agreement as stipulated in Article 1320 of the Civil Code will have the following legal consequences:

1. Non-existence if there is no agreement, there will be no agreement.
2. Vernietigbaar or can be cancelled, if the agreement is born due to a defect of will or incompetence.
3. Null or void when there is an agreement that does not meet the requirements of a certain object or does not have a cause or cause is prohibited.

According to Article 1338 of the Civil Code, every agreement is binding on both parties, therefore persons are free to enter into any arrangement as long

as it does not infringe public order or morals. In other words, both parties must enter into an agreement in good faith so that they do not injure each other, and the agreement must be carried out in good faith by paying attention to and adhering to the principles of appropriateness and decency.

## **DISCUSSION**

When the buyer defaults, the seller usually sends a warrant or warning called a summons letter as stipulated in Article 1238 of the Civil Code and Article 1243 of the Civil Code. A debtor can only be declared in default after he or she is given a summons letter by the creditor or bailiff which is made at least three times by the creditor or bailiff. If the summons is not heeded by the debtor, then the creditor has the right to take the case to court. The court is the one who has the authority to decide the case of actions taken by the debtor, including acts of default or not.

Based on this description, it can be understood that the act of default with bad faith in case number 177/Pdt.G/2022/PN Mdn shows a violation of the principle of good faith as stipulated in Article 1338 of the Civil Code. This principle requires each party to the agreement to adhere to trust, fairness and responsibility in the execution of the agreement. However, the party acting in bad faith is proven to have failed to fulfil its obligations in the sale and purchase agreement, resulting in losses for the other party. As a consequence of the default, the Panel of Judges issued a verdict that included compensation for material and immaterial losses, cancellation of the agreement, and the threat of forced money to ensure compliance with the judgment. This decision confirms that defaults committed in bad faith not only harm other parties but also have serious legal implications, including risk transfer and the obligation to pay case fees in accordance with the provisions of the Civil Code.

## **CONCLUSIONS AND RECOMMENDATIONS**

### ***Conclusion***

Based on the results of the research that has been discussed earlier, the conclusions in this study are as follows:

1. In Indonesia, a building sale and purchase deed executed in poor faith due to one party's default is considered lawful under Article 1320 of the Civil Code and Government Regulation Number 24 of 1997 on Land Registration. According to Article 1320 of the Civil Code, a valid agreement must fulfill subjective prerequisites such as the parties' agreement and legal capacity, as well as objective requirements such as clear goals and halal reasons. If the AJB is created in violation of the law or the principles of honesty and propriety, it might be canceled by filing a case in court. Furthermore, under Government Regulation Number 24 of 1997 concerning property Registration, an AJB that does not fulfill formal and material standards is considered legally faulty and cannot be utilized to register property rights.
2. Legal protection for parties aggrieved by default with bad faith in fulfilling promises and handing over the object of sale and purchase based on decision number 177/Pdt.g/2022/PN Mdn, namely: a). Granting the reconvention lawsuit in its entirety, b). Determination of valid and valuable security

confiscation, c). Recognition of valid and valuable evidence, d). Cancellation of payment receipts, e). Payment award for the remaining purchase, f). Immaterial/moral compensation, g). Material damages, h). Forced money (dwangsom), and i). Obligation to submit and obey the judgment. This demonstrates that there is a form of legal protection available to parties aggrieved by bad faith in fulfilling promises and handing over the object of sale and purchase, which is based on Article 1338 paragraph (3) of the Civil Code, which states that every agreement must be implemented in good faith, which means that both parties must strive to fulfill the agreement honestly and in accordance with the agreement.

3. Analysis of the judge's considerations in adjudicating the case of an act of default with bad faith in fulfilling promises and handing over the object of sale and purchase in decision number 177/Pdt.g/2022/PN Mdn, including: a). Exception Accepted and Lawsuit Rejected, b). Convention Lawsuit Rejected and Reconvention Lawsuit Granted, c). Confiscation of Guarantees and Evidence, d). Payment Receipts Declared Invalid, e). Punishment for Paying the Remaining Purchase, f). Material and Immaterial Losses, and g). Imposition of Forced Money (Dwangsom). In the case of lawsuit number 177/Pdt.g/2022/PN Mdn, the party acting in bad faith is proven to have violated the sale and purchase agreement that leads to compensation for material and immaterial losses, as well as the threat of forced money to ensure the fulfillment of obligations.

#### *Recommendation*

Based on the conclusions described above, there are suggestions in this study as follows:

1. To prevent abuse or bad faith in the making of AJB, stricter supervision of the agreement process is required, including verification of documents and conformity with the principles of honesty and propriety. In addition, the authorities must increase socialization and law enforcement against deeds that do not meet formal or material requirements. The public also needs to be given further understanding of the legal risks of legally flawed AJB in order to avoid disputes in the future.
2. The researcher suggested that legal protection for the aggrieved party in fulfilling promises and handing over the object of sale and purchase was strengthened by the application of good faith as stipulated in Article 1338 paragraph (3) of the Civil Code. As a preventive measure, the researcher recommends that each sale and purchase agreement be clearly documented and meet legal standards so that it can minimize potential losses in the event of a violation. In addition, it is important for the parties to pay attention to every detail in the agreement and commit to the principle of good faith, so that legal protection can be effectively applied and the rights of the parties are protected to the maximum.
3. The parties involved in the sale and purchase transaction must ensure that each deal is legally and transparently documented to avoid potential lawsuits in the future. In addition, judges in deciding similar cases are expected to continue to

consider the principles of justice, legal certainty and protection of the aggrieved party in order to create better legal certainty in the practice of sale and purchase agreements. Socialization about the legal consequences of treaty violations also needs to be increased so that the public better understands the importance of complying with legal provisions in every transaction.

## ADVANCED RESEARCH

This study shows that sale-purchase deeds made in bad faith can be annulled, as seen in Decision No. 177/Pdt.G/2022/PN Mdn. The ruling affirms that good faith is essential in contract enforcement, with courts granting compensation and forced compliance.

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