

LEGAL REVIEW OF UNLAWFUL ACTS IN ORAL SALE AND PURCHASE AGREEMENT

(Study of Medan District Court Decision
Number: 113/Pdt.G/2024/PN.Mdn)

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ABSTRACT

Unlawful acts in an oral sale and purchase agreement occur when one of the parties breaks a promise, which can be prosecuted under Article 1365 of the Civil Code (if there is an element of error and loss) or Article 1338 of the Civil Code (the principle of freedom of contract), especially if it violates the legal terms of the agreement (Article 1320 of the Civil Code) or general law, although an oral agreement is valid if it meets the requirements, but the proof is difficult and is stronger if it is written, especially objects such as land/houses that require a Deed of Sale and Purchase. (AJB) so that it is valid and strongly binding. The elements of unlawful acts (PMH) in buying and selling, based on Article 1365 of the Civil Code and jurisprudence, include the existence of unlawful acts (violating the law or the principles of propriety), the presence of errors (intentional/negligent), the occurrence of losses (material/immaterial), and the causal relationship (causality) between the act and the loss, where a breach of contract (default) can be PMH if accompanied by bad faith or violating the principles of good faith and propriety. Liability for unlawful acts (PMH) is the legal obligation of the perpetrator to bear the consequences of the losses he caused, mainly in the form of compensation (material and immaterial) to the victim, based on Article 1365 of the Civil Code which emphasizes the existence of unlawful acts, losses and mistakes (intentional or negligent) of the perpetrator.

1. Introduction

The legal basis relating to the sale and purchase agreement is Article 1457 of the Civil Code (hereinafter referred to as the Civil Code) which states that "sale and purchase is an agreement by which one party binds himself to hand over an object and the other party to pay the agreed price."

A sale and purchase is a consensual agreement, meaning that it is born as a valid, binding agreement or has legal force at the moment an agreement is reached between the seller and the buyer regarding the main elements (essentialia), namely regarding the goods and price, even if the sale and purchase concerns immovable goods. The consensual nature of this sale and purchase is emphasized in Article 1458 of the Civil Code which states: "A sale

and purchase is deemed to have occurred between both parties when they have reached an agreement on the goods and price even though the goods have not been delivered nor the price paid."

The sale and purchase agreement adopted by the Civil Code is also said to be obligatory, because the agreement does not yet transfer ownership rights. Ownership rights are only transferred by levering or delivery. Thus, in the Civil Code system, levering is a legal act to transfer ownership rights (transfer of ownership). Levering or transfer of ownership is the handover of an item by the owner or on behalf of another person, so that the other person obtains ownership rights over the item, in this case, an apartment unit. Levering or transfer of ownership follows an obligatory agreement, because according to the Civil Code system, an obligatory agreement only creates rights and obligations and does not transfer ownership rights. In order for ownership rights to transfer, it must be followed by the delivery of the item.

The transfer referred to includes the transfer of control and ownership of goods based on a basic obligation, namely an agreement. Every agreement that aims to transfer control and ownership rights must be executed through the transfer of said goods. This transfer can be carried out either physically or legally. Legal transfer can be clearly seen in the case of immovable property, as the procedures are regulated by law.

A sales and purchase agreement between a seller and a buyer inevitably creates obligations for each party to fulfill these obligations. The seller's primary obligation is to hand over the shophouse as the object of the sales and purchase agreement, essentially the buyer's primary right. Conversely, the buyer's primary obligation is to pay the price of the shophouse in accordance with the sales and purchase agreement, which is the seller's primary right. This means there is a reciprocal relationship between the seller's and the buyer's obligations, with the rights of each party.

Every legal relationship in society is inevitably subject to disputes, whether they are small or large-scale. This also occurs in shophouse sales agreements between sellers and buyers. If a sales agreement is not properly implemented, it can be caused by one party being proven to have broken a promise or breached a contract and failing to act in good faith to resolve the matter. If such a breach occurs, the injured party can file a lawsuit demanding compensation or redress from the party causing the loss.

Default in the sale and purchase agreement as in the Medan District Court decision Number: 113/Pdt.G/2024/PN.Mdn with the plaintiff Hendri Ongso suing with a lawsuit letter dated February 5, 2024 which was received and registered at the Medan District Court Clerk's Office on February 5, 2024 in

Register Number 113/Pdt.G/2024/PN-Mdn has filed a lawsuit that the Plaintiff, the owner of the name Sentosa Jaya Wholesale Sandal and Shoe Shop since 2019, where the business is located at Jl. Sutomo, No. 306. Defendant I (Guardian) as the owner of the Usaha Jaya Shop, is located at Jl. Sutomo, Defendant II (Paiman) as the owner of Toko Buana located at Jl. Sutomo and Defendant III (Ricky Pratama Wibowo) as the Owner of Toko Berkas Abadi, where Defendant I and Defendant II are siblings, and Defendant III is the nephew of Defendants I and II. The Plaintiff and Defendants I and II have been in the business of buying and selling shoes and sandals since September 1, 2019, while the Plaintiff and Defendant III have been in the business of buying and selling shoes and sandals since April 18, 2022, where the Defendants are sellers/suppliers of goods and the Plaintiff is the buyer.

2. Research Method

This research is descriptive, because it only describes the object that is the main problem. Descriptive research leads to normative juridical research, namely research that starts from problems by looking at the reality that occurs in the field, then connecting it with applicable laws and regulations. The approach method in this research uses a normative juridical approach. The normative juridical approach is used to analyze the laws and regulations related to the return of shophouses as objects of a sale and purchase agreement due to default based on the Decision of the Supreme Court of the Republic of Indonesia Number 329 K/Pdt/2019

3. Results And Discussion

An unlawful act is an act by a person who intentionally violates a provision, so that this violation also causes harm to other people.

The definition of unlawful is stated in Article 1365 of the Civil Code (hereinafter referred to as the Civil Code), which clearly states that the consequences of a person's actions or mistakes cause harm to another person and requires the person whose actions are caused to compensate for the loss.

An unlawful act in the narrow sense is defined as "a person who commits a violation against another person or has acted contrary to his own legal obligations." The courts previously interpreted unlawful as only a violation of written legal articles (violation of applicable legislation), but since 1919 there has been a development in the Netherlands, by interpreting the word unlawful not only for violations of written legislation alone, but also encompassing any violation of morality or propriety in social interaction.

After the Arrest of the Hoge Raad 1919 Number 110 dated January 31, 1919, the definition of an unlawful act was further expanded, namely that the act or omission

violates the rights of others, or is contrary to the legal obligations of the person who acts (up to this point this is a formulation of a narrow opinion), or is contrary to morality or against the propriety that should exist in the traffic of society towards the person or property of others).

The definition of an unlawful act in the broad sense based on the statement above, is that the act not only violates the rights of others and is contrary to the legal obligations of the perpetrator or the person who does it, but the act is also contrary to morality and propriety towards the person or property of others, which should exist in society, in the sense that it is contrary to unwritten provisions, such as customs and so on.

Since 1919, in the Netherlands and also in Indonesia, unlawful acts have been interpreted broadly, namely to include one of the following acts:

- a. Actions that conflict with one's own legal obligations.
- b. Actions that are contrary to morality.
- c. Actions that are contrary to caution or the requirements of good social interaction.

Actions that conflict with other people's rights (*inbreuk op eens anders recht*) are among the actions prohibited by Article 1365 of the Civil Code. The rights that are violated are a person's rights that are recognized by law, including but not limited to the following rights:

- 1) Personal rights (*persoonlijkheidsrechten*).
- 2) Property rights (*vermogensrecht*).
- 3) Rights of freedom.
- 4) The right to honor and good name.

An act that violates one's own legal obligations is also considered an unlawful act if it violates the legal obligations (*rechtsplicht*) of the perpetrator. The term "legal obligation" refers to an obligation imposed by law on a person, whether written or unwritten. Therefore, it not only violates the written law (*wettelijk plicht*), but also violates the rights of others under the law (*wettelijk recht*). Therefore, the term used for an unlawful act is *onrechtmatige daad*, not *onwetmatige daad*.

Actions that violate morality, which society has recognized as unwritten law, are also considered unlawful. Therefore, if an act that violates morality causes harm to another party, the party suffering the loss may sue for damages based on the unlawful act as stipulated in Article 1365 of the Civil Code.

Actions that violate the principles of prudence or the requirements of good social interaction are called *zorgvuldigheid*, which is also considered an unlawful act. Therefore, if someone commits an act that harms another person, without violating any written law, they may still be charged with an unlawful act because their actions violate the principles of prudence or the requirements of social interaction.

These societal requirements are, of course, unwritten, but recognized by the community in question.

Abdulkadir Muhammad is of the opinion that unlawful acts in the narrow sense only cover Article 1365 of the Civil Code, in the sense that the definition is carried out separately between the two articles. While the definition of unlawful acts in the broad sense is a combination of the two articles. Acts in the sense of unlawful acts include positive acts, which in the original Dutch language are daad (Article 1365) and negative acts, which in the original Dutch language are nataligheid (negligence) or onvoorzigtigheid (lack of care) as determined in Article 1365 of the Civil Code.

Article 1365 of the Civil Code applies to those who actually committed an act, while Article 1366 of the Civil Code applies to those who did not. Violations of both articles have the same legal consequences, namely compensation. The formulation of positive acts in Article 1365 of the Civil Code and negative acts in Article 1366 of the Civil Code only had meaning before the Dutch Supreme Court's decision of January 31, 1919, because at that time the definition of unlawful (onrechtmatigedaad) was still narrow. After the Dutch Supreme Court's decision, the definition of unlawful became broader. The provisions of Article 1366 of the Civil Code were also included in the formulation of Article 1365 of the Civil Code.

Based on the definition of unlawful acts above, both etymologically, the Civil Code, the decision of the Dutch Supreme Court with its Arrest dated January 31, 1919 and the opinions of legal scholars, although they differ from each other, they have the same intent and purpose, namely to provide confirmation of a person's actions that have violated the rights of others or that are contrary to their own legal obligations, while regarding this matter there are already rules or provisions that regulate it, both written and unwritten, such as customs and so on.

The elements that must be met in order for someone to be said to have committed an unlawful act are:

a. The act must be against the law (onrechtmatig).

This first element actually has two meanings: act and unlawful. The two are interrelated. This relationship can be demonstrated in two ways: through linguistic interpretation. Unlawful describes the nature of the act; in other words, unlawful is an adjective, while act is a verb. Therefore, the existence of an unlawful act creates a sentence that states an unlawful act.

The definition of an unlawful act in the narrow sense only covers the rights of others and the obligations of the perpetrator that are contrary to or only violate the law/statute. This opinion was expressed before the arrest of the Hoge Raad in 1919. While in the broad sense, it has included morality and propriety that apply in public traffic towards the person and property of others. This opinion was expressed after the arrest of the Hoge Raad in 1919 was used.

b. The act must cause harm.



The law does not merely explain the extent and scope of the losses referred to in this second element. It only specifies the nature of the losses, namely material and immaterial. "These losses can be material or immaterial. The extent and scope of these losses are not further specified in the law in relation to unlawful acts."

Based on the statement above, do these examples meet the criteria for losses caused by unlawful acts? This is possible, as the law itself does not regulate it. However, this does not mean that the injured party can sue others for their losses at will. There is an opinion that the High Court has repeatedly ruled that the provisions for losses arising from unlawful acts are the same as those arising from breach of contract (Articles 1246-1248), although these provisions cannot be directly applied. However, if the application is carried out analogously, it is still permissible.

In legal practice, the above statement can be proven true, that in general the injured party always receives compensation from the perpetrator of the unlawful act, not only for the actual loss, but also for the profit that should have been obtained. Thus, the loss referred to in this second element, in practice, can be applied to the provisions of losses arising from breach of contract. Although this application is only analogous, it does not rule out the possibility of applying these provisions to unlawful acts. The reason is because there are no further regulations in the Law on this matter.

c. The act was only done by mistake

Error in this description, is an intentional or negligent act of committing an act or an act that is against the law (onrechtmatigedaad). According to civil law, a person is said to be guilty if it is regrettable that he has done/not done an act that should have been avoided. The act that should have been done/not done is inseparable from whether or not those things can be estimated. The estimated must be measured objectively, meaning that a normal person can estimate in certain circumstances the act should have been done/not done.

An unlawful act is an act that intentionally or negligently commits an act. An error in this element is an action that can be estimated or calculated by the normal human mind as an action that is carried out or not carried out. Thus, doing or not doing can be categorized into a form of error.

Another opinion states that "mistakes can occur, because: intentional and unintentional". Of course, what is meant by intentional and unintentional in the statement above is in terms of actions. Intentional and unintentional means that mistakes can occur and be made as a result of negligence. If negligence can be considered an element of error, then according to the legal perspective, human nature as a creature that is never free from mistakes and errors, is a basic guideline in determining that the act is included in an unlawful act and cannot be denied. But in reality, why are there still many people who have committed unlawful acts, able

to avoid themselves from accusations and lawsuits by denying the unlawful acts that are shown to them.

d. There is a causal relationship between the act and the loss.

Article 1365 of the Civil Code, this causal relationship can be seen from the sentence "an act that, due to its fault, causes a loss." The loss arises because of the act, or the loss is the result of the act. The problem here is whether the loss is the result of the act, and to what extent can this be proven true. If there is a causal relationship between the loss and the act, then it can certainly be said that every loss is the result of an act. Does this opinion not contradict the law of nature, which states that the occurrence of nature, undergoes several processes that

This causal relationship consists of several causes that constitute events, so that the loss is not only caused by the act, but consists of several conditions of the act. The causal relationship between the act committed and the resulting loss is a condition of an unlawful act.

The causal relationship is not included in the elements of an unlawful act because it does not exist within the meaning of Article 1365 of the Civil Code, so the scholar only sees the clear and obvious things from the wording of the article, meaning he only sees things that are expressly stated. Meanwhile, the causal relationship, according to the opinion of other scholars, is something implied. Therefore, it does not need to be mentioned as one of the elements.

The elements of unlawful acts put forward by the scholars above have the same intent and purpose, namely to provide an explanation and confirmation of the criteria of an unlawful act, the purpose of which is to explain that the act is an unlawful act

4. Conclusion

The success of a business, which is the ultimate goal of all parties, should always consider the contractual aspects that frame those business activities. Therefore, how the business operates in accordance with its objectives will correlate with the structure of the contract developed together. "A contract will protect the parties' business processes if it is first and foremost legally executed, as this determines the subsequent legal relationship." Article 1320 of the Civil Code states that there are four conditions that must be met for an agreement to be valid, namely: the agreement of those who bind themselves, the ability to make an agreement, a certain thing, a lawful cause.

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