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Deviations from Buying and Selling Principles indeed Binding Agreement - Land Buy and Sell Law No. 5 Year 1960 Concerning Basic Regulations of Agrarian Fundamentals

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The types of agreements named in the book III Civil Code are open principles, meaning that can be done mixed agreement, for example buy and sell agreement mixed with lease agreement then become a purchase agreement, provided that one does not violate the principle of compliance (Article 1339 Civil Code) but if perverts, then this agreement should not be implemented, for example in the agreement borrowed loan is converted into a purchase agreement through the binding deed of temporary sale and purchase.

Key words: *Borrowing agreements, propriety theory*

Introduction

Book III Civil Code is titled about the Alliance, in which this alliance essentially contains various provisions of the named agreement or Biomed Overeenkomst, also often referred to as contract Nominate contracts, namely the name is in book III Civil Code, ranging from the agreement or sale of purchase agreement to peace approval (Act Van Adding), which is fully regulated as follows:

1. Buy and sell, starting from article 1457 Civil Code;
2. Swap, starting from article 1541 Civil Code;
3. Rental lease, starting from article 1548 Civil Code;
4. The agreement does the work (Labor), starting from article 1601 Civil Code;
5. Civil Federation, starting from article 1618 Civil Code;
6. Assembly, starting from article 1653 Civil Code;
7. Grants, starting from article 1666 Civil Code;

8. Luggage storage, starting from article 1694 Civil Code;
9. Loan use, starting from article 1740 Civil Code;
10. Borrow borrowing, starting from article 1754 Civil Code;
11. Fixed interest or lasting interest, starting from article 1770 Civil Code;
12. The profit agreement, starting from article 1774 Civil Code;
13. Granting of power, starting from article 1820 Civil Code;
14. Dating, starting from article 1820 Civil Code; Dan
15. Peace, starting from article 1851 Civil Code.

Other agreements present and outstanding as of now but not in book III Civil Code, referred to as unnamed agreements, i.e. agreements that have not been set up in limitations in law, because it is not stipulated in Civil and KUHD or in other legislation. This agreement in practice is based on the principle of freedom of contract, having a treaty or participatory autonomy. It is governed by article 1319 of the Civil Code that:

All agreements, whether with a specific name or an unknown name, are subject to the general rules contained in this chapter and other chapters.

This unnamed agreement includes joint venture contracts, production sharing contracts, leasing (now in the fiduciary LAW), franchises, contract works, buy leases, contracts of the uterus and other agreements in circulation and executed in Indonesia.

Book III of this Civil Code is open, meaning of all kinds of agreements as many as 15 of the above can be married or combined or can be mixed between each rule of agreement, for example provisions on buy and sell agreements can be mixed with lease agreement, so that the name of the new agreement or the mixed agreement is a rental agreement that blends or mixes between provisions stipulated in the sale and purchase agreement (Article 1457 to section 1540) with lease agreement (article 1548 to article 1600) in book III Civil Code.

The open nature of book III Civil Code aims to change the results by mixing different provisions and emerging new agreements that can reach to various needs of the development of the era, because it is legal always left by the development of society, and this is proven to be able to help the community in interacting and fulfilling the needs of its life, such as a factory worker or low-labor that the majority of , then the economic value is calculated that from the to pay the transaction costs by paying to the public transportation continuously, then it is better to buy a vehicle by renting a monthly, and after the price comes to the prices of the vehicle following the interest of the loan, then the beneficiary of this vehicle becomes the first buyer, so that after the paid rent, the tenant turned into a buyer.

Mixing the agreement in book III this Civil Code is not only bring good things as in the purchase of lease, also sometimes negative impact, for example in a personal or business relationship, there is a loan agreement to borrow money (debt-money) then a traffic jam, should be the next step is to make an agreement deed of debt recognition or the right of liability (deed of burden of rights) if the collateral is land and building. However, in practice PPJB made and in front of notary, where in the order to say that buying and selling will be implemented a few months later. This means that this is a legal smuggling because the contents of the PPJB deed is a debt treaty that, if not paid later, then the collateral belongs to the recipient of the PPJB.

Mixing of the above agreements is legitimate, even if the rules in book III of the Civil Code are open (other regulated), but the law should not be abused or interlinked, although only by means of being smuggled for various reasons or interests, the law must be clear, both from the beginning to the end, meaning that if the initial agreement is a debt-receivable agreement, it must end with payment or repayment and not to lose land and building.

Mixing the provisions of the agreement to borrow money to buy and sell agreements is not prohibited by law, it should not violate the rules of compliance as stipulated in article 1339 Civil Code, namely:

A covenant is not only binding to things expressly stated in it, but also to everything that is by the nature of the Covenant, required by the dissolution, habit, or statute.

The size of the resistance is difficult to prove, even in the past arrest-arrest (especially the arrest of Nona from the city of Stephen)[1] in proving the act against the law almost fails to prove that improper deeds are done is an act against the law because of difficulties in proving the relationship between improper deeds and losses.
Many people are not satisfied with this arrest, then there is a doctrine conveyed by Molengraaff (1887) that:)[2]

Acts against the law as inappropriate deeds are those who do inappropriate against others who are not as supposed to be in the Association of society.

The case of Lindenbaum and Cohen in Arrest 13 January 1919 it was decided that the deed against the law in the broad sense of the essence must be evidenced the losses suffered.

Related to this research, the problem that is researched by the author is the debt of payment from a home procurement contractor to the sub contractor. In respect of the debt not yet paid, the contractor invites the sub-contractor to attend and facing the notary to make PPJB, which

[1] R. Setiawan, *the legal points of the Alliance, the son of Abardin*, Bandung, 1999, p. 77.
[2] Purwahid Patrik, *the legal bases of the Alliance*, CV. Mandar Maju, Bandung, 1994, p. 79.

means if the debt is not paid also in the next few months, then the land and building owned by the contractor belongs to the sub-contractor that is considered as payment.

The uniqueness of this scrupulous author is that, in general debt (Cyber Receivables /creditors) will act on its own and weaken the recipient of the debt (CYBERDEBT/debtor), that is by inviting debtors to create the PPJB deed, where Cyber debt was given several months to prepare to pay its debts, and if it failed in payment, then based on the Clausal in the PPJB deed, Cyber receivables can directly sell collateral goods belonging to CYBERDEBT. In this case the CYBERDEBT/debtor invites to make PPJB on its unpaid debts. This is a new symptom or phenomenon in the development of law smuggling laws in the field of civil law.
The results of surveys and searches that have been done by the authors, it turns out that the CYBERDEBT/debtor doing misdeeds or fraudulent deeds turns out the land that was used as a binding object to buy and sell this is the land belonging to others, that happened because of the involvement of the notary who made it, stating that as if the land is certainly going to belong to CYBERDEBT/debtor, while the fact that the certificate belongs to others, the right base used as the basis of the PPJB use notary Cover note stating that the certificate of land that became the object of PPJB is in the process behind the name to Cyber debt

Comparative material and tracing of similar research is contained in the research in the form of a thesis titled "PPJB Rights on land related to borrowing borrowed conducted before the notary (case study decision No. 26/PDT/2016/PT-MDN)," written by R. Ready in 2019, the study Program of North Sumatera University (USU) Medan. This research focuses on the duties and authorities of the notary who should keep the law from irregularities or smuggling laws in serving the parties who need the legality of the agreements he made to be legitimate before the law.

Discussion

Factors Causing the Creation of PPJB Deed Derived from the Issue of Debt-Receivables

The cause of the creation of PPJB deed derived from debt-receivable issues occurs because the debts are not paid, either because of the default as well as the PMH by either party or among the parties themselves.

The existence of a notary who is not a party but as a general officer considered to know the law, even as the executor of the legislation that is poured in all the deeds he made, should know and understand the right between the agreement to borrow borrowing is not appropriate to do because it will bring losses to one party.

The element of loss suffered by one of these parties, especially the weak, is the primary evidence by a judge in court in the event of improper action. Thus if there is no loss then a

lawsuit against the law or tort cannot be submitted to the complainant. Likewise, if it is to be submitted to the investigation process, the loss element occupies the main position of the requirement, and this is also required in criminal acts of unpleasant action which has been supplemented by the decision of the Constitutional Court against the articles of unpleasant action.

The legal person including the notary is actually very aware and understand about the position between the lending agreement or the debt-receivable agreement with the buy and sell agreements is the equivalent and level of the same as the Nominate agreement or the agreement named in Book III Civil Code, meaning both of which are the principal agreements different from the Accesoir agreement. These nominate agreements may also give birth to or create agreements that follow or are known as an Accesoir or treaty agreement or an additional agreement in which it is called a guarantee agreement, where it follows the main agreement or the matter.

The Accesoir agreement in the lending agreement is embodied in the letter of and so that the letter of this debt recognition agreement can be effective to be installed the Irah or Grosse deed in the deed made by the notary (not by PPAT), thus, as long as the collateral is not an object of immovable or permanent object, especially for land and/or building, and this agreement remains attached to the debt agreement of the contract of debt recognition , the agreement of the debts has not been settled or settled, the Treaty of confession will not be clear or remain attached.

This Accesoir agreement or additional agreement can be made at the same time at the beginning of the agreement, can also be made later after the term of the agreement, there is usually a new one when the indebtedness is unable to pay his debts or start the occurrence of tort.

The use of Grosse deed on the letter of the Treaty of debt recognition in the authentic deed provides a level guarantee with the judgment of judges, and if in the time that the agreement has not been fulfilled by the debt, then the collateral can be done directly executed (Pirate Execute) by the receivable, but if not use the Grosse deed, although made authentically, then the direct execution cannot be done if the person who owed the debt will not give the collateral , the steps that can be taken must go through the litigation nevertheless it is assumed the use of Grosse deed, if the party of the debt is not willing and will not give up the collateral, then the right of pirate executing in reality cannot be done, because in the agreement, its nature must be started with the word agree and end with the said also, therefore if not reached the word agreed at the end of the agreement including due , then the step to be traveled by the receivables is to submit a lawsuit to the court.

If the collateral is a permanent object or a stationary object, then the ledge to be made is to create a mortgage deed, whereas since 1996, for collateral objects in the form of land and or buildings, must exercise the right of liability. Thus it certainly is not appropriate and smuggling the law if it occurs from the debt-receivables agreement then occurs congestion in payment, then made a guarantee agreement in the form of PPJB, because the letter of the debt recognition agreement is an accesoir agreement of the debt-receivable agreement.

The use of PPJB which is used as an Accesoir agreement to the agreement is not a single prohibition because the nature of the agreements is open and is allowed to be regulated, but the act is to violate the property pursuant to article 1339 Civil Code, because of the debt-receivables agreement is made an agreement of debt recognition as a accesoir agreement of the debt-receivable agreement.

Legal acts such as the above, i.e. a debt treaty is later due to the indebtedness of the debt, then the debt is invited to make PPJB over the land and building of the indebted the debt is a step wrong and violate the principle of contravility, because between the debt agreements and the PPJB is something different, and each stand alone as a named agreement or a treaty of nominate according
PPJB is intended for preliminary agreements against buying and selling agreements (AJB) of land and buildings, this is related to the usual sale and purchase agreements between prospective landowners and buildings provided and constructed by the developer, where the new developer provides the land alone, while for its development expects funds from the bank's loan disbursement proceeds to prospective homeowners and loans received by the developer. Based on this, PPJB's usage of the indebtedness of the debt to the receivables is then made by PPJB, so there has been a law smuggling.

The practice of completion such as the above by distorted many laws happened as examples of the attached matter, then civil-emerging naming term PPJB to exist 2 (two), namely PPJB pure and not pure PPJB.

PPJB is a pure PPJB which is implemented in accordance with the prevailing provisions, which is made based on the sale and purchase agreement between the seller of the land and or buildings with the buyer, so both the price and the goods have been agreed since from PPJB to do sale. While the term PPJB is not pure is the PPJB which was made in the beginning of the matter of debt-receivables as in the case of the authors of this.

As a result of violating this principle of contravenes results in a few months due to PPJB, if the debt is not yet paid, then the collateral is based on the clausal contained in PPJB that the buyer in this case the receivables, for the power of the seller in this case the debt, in the sale without

requesting any further approval from the seller (the debt), including selling on itself (cyber receivables).

Such a step above is certainly very detrimental to cyber debt, because from the beginning of the agreement, the intention is to borrow money and not to sell the land and its buildings. This is where its location violates the appropriateness of the principle.

There is a lot of practice among notary/PPAT who become naughty, which is to make the container for the practice of unhealthy profession such as buying and selling rights that are illegal buy back. The land case has its own complexity so that the judges or law enforcement officers need to collaborate the evidence in the form of a shortage of different legal facts and situations surrounding it.

What can be Done by Sub-Contractor as PPJB for Unpaid Debt

The legal measures that are supposed to be done by the sub-contractor or in this case are called cyber receivables due to the occurrence of tort or deed against the law by CYBERDEBT is not a change in the debt-to-trade agreement (PPJB), but continuing the process of legal efforts resulting from the achievement of cyber debt, which is through 3 ways, namely:

1. Continue or proceed with the debt-receivable agreement by making a contract of recognition with the use of collateral, and if the collateral is not land and building, or put a liability if the collateral is land and building. This is so that this assurance agreement becomes valuable and can be executed
2. If the acknowledgement of debt or right of dependents has occurred with the debt payable, then based on Grosse Clausal, the collateral can be made in public sales that result to pay off the debt, but if there is a problem, the non-litigation law is done, which is the provision of somasi.
3. If non-litigation efforts are unsuccessful, then the final step is by litigation in the form of a lawsuit submission to the court.

Step of oral legal notice should be done, then notices written. If this move is also not ignored by the debt, then the next step is to file a court lawsuit.

The proceedings in this court in the present time cannot directly process the lawsuit, but must take the mediation process in the court with the time provided for 30 days and may be 10 days in practice (although in practice only 7 days or for 1 week).

The mediation process in this court was led by a judge, and this judge would not be a judge in the ensued lawsuit process. Then, if the mediation process is not obtained by the word agreed

between the parties, then it is scheduled for the proceedings that begin from the lawsuit, the lawsuit answers, proof and verdict.

This journey of civil proceedings is deemed inefficient, for a long time, even the end of the ruling decision can be made by the law, both ordinary and extraordinary remedies. This can all be time-consuming, and there are even things that have come to the verdict of reconsideration, if eligible can be done by PK-2.

The impact or consequences of the old and related proceedings of the law in the form of civil law, one of which resulted in measures of legal smuggling such as the above, including attracting narrative civil issues to the criminal realm, while in the criminal law itself, that the criminal step is the last attempt in law enforcement, known as the principle of optimum remedies.

Conclusion

1. A formal juridical notary is responsible for what has been legally involved, making the PPJB deed the fact that the matter is debt-receivable is then changed to PPJB. The lending or borrowing agreement is not to be changed to PPJB (buying and selling), as neither the loan agreement is borrowed with the same purchase agreement as a stand-alone agreement, which is equally as a named or nominate agreement. Although there is no prohibition because of this civil realm and it can be done under article 1320 and 1338 Civil Code, but the provisions of article 1339 Civil law is also a whole unity that cannot be intersected or smuggled, that improper deeds do not be done. Settlement of debt receivables disputes by means of creating and signing of PPJB has brought a loss for the party owed, because if it does not pay its debts , then the goods can be done AJB and behind the name (change the rights of ownership immediately), while the intent of the indebtedness is willing to provide a guarantee of land rights to cyber receivables is to provide assurance that the debt will be paid off and not to sell such collateral. The location of the place has been inappropriate or violating the sedition.
2. The settlement by Siberiputang (sub-contractor) in collecting debt to CYBERDEBT has been regulated in the Civil Code and is not converted into PPJB, because PPJB is actually a stand-alone agreement and has been selling its purchase, only its implementation in a few months later. Cyber receivables in addressing the CYBERDEBT is supposed to be through an inbrekesteling institution or through a neglected establishment, i.e. an institution or place provided by the Law (Civil Code) to declare that the indebtedness and still neglect its obligations is through notification or notices, and after through notices still also unpaid, the cyber debt cannot do the pirate Executive during the cyber debt is not willing and willing to grant the material rights.

Suggestion

1. There needs to be a legal awareness of the parties to return to the actual rules, i.e. if there is borrowed borrowing made by Notarial deed with the use of Grosse deed, this is based on article 1131 Civil Code, the object of guarantee is not limited to all goods, then for the deed done by the notary, the injured party can make a complaint to the association notary, in this case the Indonesian notary Bond (THIS) and the civil lawsuit to the Bale , because it has caused losses to sub-contractors.
2. The settlement of the law must be in accordance with the correct rules or rules, rather than to find a path by irregularities or smuggling the law, search by means of taking other rules that ultimately harm the other party. But the legal presence itself is to ensure the absence of losses.

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