

ANALYSIS OF LAND SALE AND PURCHASE DISPUTE RESOLUTION IN ALTERNATIVE DISPUTE RESOLUTION PERSPECTIVE (A CASE STUDY BETWEEN THE HEIRS OF MULREJO OR SIMPAR WITH PT. AMANAH AGUNG SELARAS)

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ABSTRACT

This research intends to know and explain the legal study related to the sale and purchase of land between the heirs of Mulrejo or Simpar with Pawira. The benefits of this research are to find out related to making agreements in accordance with applicable regulations. This needs to be studied because the parties feel they claim to be the owners of land to be purchased by PT. Amanah Agung Selaras is aligned. The result of this legal writing research is that to solve the problem does not have take the path of court or litigation. But it can be resolved by a path outside the chosen court by means of negotiations that are not enforced by any party. The heirs of Mulrejo or Simpar give power to Bayan who has successfully negotiated negotiations so as not to take the court route. The result of these negotiations is the division of land purchases is partly based on percentage of 60 % for the heirs of Mulrejo or Simpar and 40 % for Pawira. The division is not equal because based on the applicable regulations. The agreement made under the hands of Mulrejo or Simpar with Pawira is null and void.

Keywords: Agreements, Negotiations, Null and Void.

INTRODUCTION

Sale and purchase practice is a usual activity in social life, because it has been done since years. It is accordance with article 26 paragraphs (1) and (2) of law No. 5 of 1960 about basic agrarian rules (UUPA). The transfer of land rights from civil law action is caused of the occurrence of a legal event from someone, as example such marry or death. Other matters of legal action is based on the mutual will of parties to take over the land ownership rights from of selling and purchasing, bequest, or interchange. The stages of selling and purchasing usually occur according to an agreement of the parties who have the same purpose. It is appropriate with article of law 1313 *Of the Civil Code*.

The problem raises from the developer; PT. Amanah Agung Selaras, which wants to purchase the land that located in Boyolali regency to build houses. However, there is obstacle related to the purchased land where the ownership is not clear, regarding there are other parties claim owing the purchased land by PT. Amanah Agung Selaras. That claiming makes the relevant parties resolve it by using effective and efficient. The relevant parties should be careful and observant to solve it immediately, because the developer in this case is PT. Amanah Agung Selaras wants to build houses which already has its work plan. If it is not resolved soon, so the developer; PT. Amanah Agung Selaras; feels hamed and also the other parties; the heirs of Mulrejo or Simpar, do not get their money from the sale of inherited land from Mulrejo or Simpar soon. It is caused of the land still has problems, while other lands have been bought by the developer that is PT. Amanah Agung Selaras.

From the explanation on the background of study above, so the problems of the study which will be answered: How are the efficient and effective resolutions related to land sale and purchase between the heirs of Mulrejo or Simpar with PT. Amanah Agung Selaras regarding the presence of the third parties (Pawira)? The methodology used is empirical law writing based on facts and the primary data is from the research field. While, if it is seen from its trait, this law writing is descriptive. It means that this writing especially could emphasize the hypotheses, in order able to support old theories, or within the framework of formulating new theory (Soerjono Soekanto, 2010: 51). This research is descriptive design which provides an explanation of the efficient and effective resolutions related to land sale and purchase between the heirs of Mulrejo or Simpar with PT. Amanah Agung Selaras. The research approach chosen is qualitative approach based on data found in the field by using interactive analysis technique consists of: data reduction, data display, conclusion and verification.

RESEARCH RESULT

The problem occurs when PT. Amanah Agung Selaras will make subsidized houses project in the regency of Boyolali. Then, PT. Amanah Agung Selaras; in this case is as the developer wants to make a land purchasing in the village of Kragilan, Boyolali, Central Java province. Some of the land owners will sale their land, but there is a problem from the land owner which is caused of the sale of the land to the third party namely Pawira is without the heirs knowledge. This resulted in the agreement that has been made by PT. Amanah Agung Selaras with representatives of the heirs of Mulrejo alias Simpar can be canceled.

Sale and purchase of land with the proprietary Certificate of Ownership Number: 1289 with the area of 7.726 m² which is located in Kragilan village, Boyolali regency, Central Java, as far as Pawira understanding had been sold by Mulrejo or Simpar which was registered on the certificate. The sale and purchase of the land can be proven by Pawira with the evidence of an underhand sale and purchase agreement. Mulrejo or Simpar had passed away on July 3rd, 2011 with the evidence of the death certificate Number: 470/24/VII/2011 published by the official of Kragilan village on July 5th, 2011. So, if anyone wants to make a purchase of the land, automatically should do the land purchase with the heirs of Mulrejo or Simpar. In other opinion, the heirs of Mulrejo or Simpar feel that their father (Mulrejo or Simpar) had sale the land to Pawira, on the other side, the developer had their own agenda in finishing the houses.

From the problems explained above, the writer wants to analyze the effective resolutions by not taking to the court. Theoretically, there are two forum can be chosen by the parties in resolving the dispute, namely through court (litigation) or out of court (non-litigation) (Rahmadi Indra Tektona, 2011: 87). The dispute resolution through court must follow certain law procedural which surely taking alot of time (Indah Sari, 2019: 48). The resolution out of the court can also be refered as Alternative Dispute Resolution (ADR). In Chapter I of the General Provisions of Law Number 30 of 1999, Article 1 point 10, it is stated that ADR is institution for resolving disputes or differences of opinion through procedure agreed upon by the parties, namely resolution out of court through consultation, negotiation, mediation, consolidation, and expert judgment (Bambang Sutiyoso, 2008: 21). Meanwhile, the notion of ADR as an alternative to adjudication, means a consensus or cooperative dispute resolution mechanism, such as negotiation, mediation, and conciliation (Suyud Margono, 2000: 36). Several forms of ADR will be described clearly and briefly. Some of ADR forms are (Suyud Margono, 2000: 36):

- a. Consultation;
- b. Negotiation;
- c. Mediation;
- d. Conciliation;
- e. Legal opinion;
- f. Arbitration;
- g. Good Offices;
- h. Mini Trial;
- i. Summary Jury Trial;
- j. Rent a Judge; and
- k. Med-Arb.

Alternative Dispute Resolution (ADR) is an alternative deserves consideration, especially by the business community because it is in accordance with the "character/nature" of business, which is characterized by complete, simple, fast, non-bureaucratic, practical and inexpensive conflict resolution (Marwah M. Diah, 2008: 122). By those advantages, the parties who have an interest in solving existing problems will use ADR.

By some out of court settlement options have been described above, so the effective and efficient option to settle a land sale and purchase dispute between the heirs of Mulrejo or Simpar and Pawira and PT. Amanah Agung Selaras is Negotiation which it is included in one of ADR by means of two-way communication which intends to obtain an agreement from the same or different communications, without involving the third party as the intermediary. The reason of choosing negotiation is because the parties who have interest directly negotiated without the presence of the third party as intermediary (although the interested parties give authority to other people who are capable in that issue). The absence of a third party as an intermediary because usually the third party provides advice, but in this case the third party is not used because the interested parties already have sufficient knowledge to solve the problem. The kind of ADR used is negotiation which similar to the peace stated in Articles 1851 to 1864 of the Civil Code. The settlement here must obtain the approval of the interested parties by surrendering, promising or withholding an item, ending a case. This option was chosen because based on the Positivism Theory which is based on applicable regulations, there are regulations that allow settlement by negotiation.

In addition, it should also be noted that negotiation is one of the alternative dispute resolution institution which is done out of the court, while reconciliation can be carried out either before the court process, or after the judicial trial is carried outs, both inside and outside the court session (Article 130 HIR) (Nevey Varida Ariani, 2012: 282). Negotiations can be called as kind of ADR chosen by the parties who have an interest or dispute who gives authority to other people by deliberation or negotiation to be able to resolve the case fairly.

In the dispute resolution, the heirs of Mulrejo or Simpar gave authority to the legal advisor to resolve it, because he was more capable in land sale and purchase. Meanwhile, Pawira also gave authority to village official who understood the legal o f theland sale and purchase, namely Bayan. Even though the disputing parties gave the authority to their respective confidants, but no one used the third party who acted as an intermediary. Therefore, the solution was by negotiating options by way of negotiations.

The resolution of a land sale and purchase dispute between the heirs of Mulrejo or Simpar and Pawira can be categorized into Interest Based Negotiation Technique. This technique was chosen to resolve the case between the heirs of Mulrejo or Simpar and Pawira because it has appropriate stages in the resolution process, such as:

- a. There was almost a deadlock during the negotiations with Bayan because the opposing party still argued that the Underhand Agreement of sale and purchase of the land with Mulrejo or Simpar was valid, so that he got his rights according to the contents of the agreement. But, on the other hand, the heirs of Mulrejo or Simpar argued that Mulrejo or Simpar had never sold part of the land and stated that the contents of the agreement were only a fabrication.
- b. Has four basic components, they are:
 - 1) The people component is people able to separate between people and problems which is proved by in the negotiations process he focuses on the problem and puts the Legal advisor and Bayan as a working partner so the problem is going to be resolved immediately. It is because there is another party, namely the developer (PT. Amanah Agung Selaras) who will buy the land, which can give benefits to the heirs of Mulrejo or Simpar and Pawira;
 - 2) The interest component is Legal advisor and Bayan focus on the contents of the underhand agreement regarding the rights of the heirs of Mulrejo or Simpar with Pawira based on applicable regulations;
 - 3) The option component is a Legal advisor and Bayan provide a choice regarding the shares between the heirs of Mulrejo or Simpar and Pawira, by the shares of percentage 60% is for the heirs of Mulrejo or Simpar and 40% is for Pawira. Mulrejo or Simpar's heirs gave 40% to Pawira because they still respect him as their parents' neighbor and also because of the exiting of witness evidence from Bayan who stated that Pawira had given some money to Mulrejo or Simpar for renting the land instead of buying it.;
 - 4) The criterion component is an agreement has done regarding the option given in which it has a market value and in this case is the price of the land purchased by PT. Amanah Agung Selaras based on the local community customs.

Then, the negotiation procedures are devided into three phases, they are (Nevey Varida Ariani, 2012 : 52-54) :

1. Preparation Phase

Before doing negotiation, the negotiator prepares some steps such:

- a. Consolidation with the team/ kolega;
- b. Preparing the agenda/material or issued needs to be negotiated;
- c. Setting the goal and target to be achieved;
- d. Making and fulfill the promise;
- e. Finding out the opponent (identity, personality, character, reputation, etc.);
- f. Checking all preparation;
- g. Is negotiation needed?
- h. How is the relationship quality among the heirs?

2. Ongoing Negotiation Phase

The ongoing negotiation phase, there are several things to note, they are:

- a. Opening statement from the negotiator;
- b. Sets the problem;
- c. Sets a starting position (opening gambits);
- d. Giving argumentation;
- e. Investigating the opponent's possible response;
- f. Giving concession;
- g. Making a proposal;
- h. Sets and sign the agreement.

Here, the negotiator needs to deliver the opening statement by giving a welcoming sentence or a short monolog which is stated by the dispute parties as the basic of the negotiation.

3. The Last Phase

Final phase is a step after negotiation has been done. Several things should be done are:

- a. Draw a conclusion have been agreed;
- b. The conclusion should be made in the written contract;
- c. Follow up the agreement;
- d. Forming a monitoring / implementation evaluating team.

At this preparation phase, the Legal Advisors and Bayan consolidated each other and had prepared the negotiation materials related to the sale and purchase agreement made under the hands of Mulrejo or Simpar and Pawira in the form of written evidence owned by each party. The goal and the target was a settlement or resolution related to the land's sale and purchase due to applicable regulations. In the next day, both parties will make an agreement which has to be adhered and implemented. However, before making an agreement, we needed to know the personality and character of the parties who became negotiators and prepared the necessary documents during negotiations.

Then, during the negotiation phase, the Legal advisor and Bayan giving a statement based on their points of view regarding the sale and purchase of the land, so we were able to find out the root of the problem. Next, it was explained that the beginning of the agreement happen which was made between Mulrejo or Simpar and Pawira was invalid. It was because there was an unfulfill requirement, namely a certain matter regarding the clarity of the part of the land purchased by Pawira. So, Pawira did not have full rights to the part of the purchased land which was stated in the agreement. The Legal advisor suggested that the agreement was not valid, and made the Bayan surprised and still believed on his opinion that the agreement was valid. After that, holding a negotiation is a way to divide the share obtained by the heirs of Mulrejo or Simpar with Pawira related to applicable regulations. Then the Legal advisor gave a concession in the form of a share based on a percentage of 60% for the heirs of Mulrejo or Simpar and 40% for Pawira. The Bayan also accepted the share distribution because the Legal advisor had explained there were flaws in the agreement. And if he still persists on his opinion, even though taking to the court, the result have been predicted by the Legal advisor and the relationship with the heirs of Mulrejo alias Simpar is also not good because if you take the court route there are parties who feel aggrieved. Another thing is if he takes to the court, Pawira will not get the right of the land at all. Next, it is a meeting agenda to approve the agreements that has been agreed. The agreement should be adhered to by the parties who in this case are the heirs of Mulrejo alias Simpar, Pawira, and PT. Amanah Agung Selaras because there has been an agreement and based on article 1338 Of the Civil Code which explains that the agreement is considered a law for the parties who have agreed.

At this final phase, the Legal Advisors and Bayan concluded that the share of the disputed land was 60% for the heirs of Mulrejo or Simpar, then 40% for Pawira and also the payment mechanism was gradually in accordance with payments from the developer (PT. Amanah Agung Selaras). Then, it was listed in the written agreement without a coercion from both parties or even from the witnesses from the Legal advisor, Bayan, and the Director of PT. Amanah Agung Selaras. The implementation of the agreement is monitored by Legal Advisors and Bayan regarding the payments from PT. Amanah Agung Selaras to the heirs of Mulrejo or Simpar and Pawira.

CONCLUSION

Dispute resolution outside the court is very effective and efficient. This is because the sale and purchase of land based on the agreement does not meet the legal requirements of the agreement and there are other objectives in the form of profits from the land purchased by the developer (PT. Amanah Agung Selaras). The result for the parties are getting profit, so the purpose of a win-win solution out of court is the right solution for this case. The agreement made under the hand between Mulrejo or Simpar and Pawira based on applicable regulations is null and void, so, the offer given to the land issued is divided by a percentage of 60% for Mulrejo or Simpar's heirs and 40% for Pawira. The 40% share for Pawira is because according to the witness, in this case is the Bayan, he saw the payment to Mulrejo or Simpar. However, according to the heirs of Mulrejo or Simpar, the payment is only for land rent, not for seling the land.

When buying a land, we should know the history of the land which is able to explain whether it has problem or not. If it has no problems, the sale and purchase can be done. While, if the land's problems have not over yet, it should be resolved first, which can be assisted by a competent party. The underhand agreement is to obtain the legal certainty, it is advisable to legalize it to a Public Official, in this case is to a Notary. The role of Notary is needed because when carrying out legalization, the Notary will match the existing data. However, there is another way which is more protect for the buyer and seller, namely an agreement made by a notary in the form of an authentic deed. It is caused if there is any a dispute in the future, so the agreement made in form of authentic deed becomes a perfect evidence. While, the agreement made under the hand is still able to be denied. So, to protect the parties, they should make the agreement in the form of autentic deed. If the signature has been approved, accordingly the underhand agreement can be used as a perfect evidence such as an authentic deed for the parties who made it (Muhammad Syaifuddin, 2012: 138). In the underhand agreement, the parties suspected of having signed, and do not admitted it, they must be able to find other complementary evidence that can support the unrecognize signature.

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