



LEGAL PROTECTION FOR DEBTORS OVERTRANSFER OF LAND RIGHTS BASED ON A DEED OF SALE WITH A DEFECTIVE WILL

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Abstract

The research method used is normative legal research with a descriptive analytical nature. The approaches used include a statute approach and a case approach, with the primary data sources being secondary legal materials, including official documents, legal literature, and court decisions. The results of the study indicate that the transfer of land rights through AJB containing a defective will can be canceled because it violates the subjective requirements for the validity of the agreement in Article 1320 of the Civil Code. The widespread use of sale and purchase instruments as debt collateral (property ownership), where financially distressed debtors sign AJB not of their own free will, but as a loan requirement, which fundamentally contradicts the legal principles of collateral in Indonesia. This study aims to analyze the legal regulations regarding the validity of the transfer of land rights through AJB containing defects in will, the form of legal protection for debtors, and the legal considerations of the Supreme Court in Decision Number 2458 K/Pdt/2025.

Keywords: Legal Protection, Debtors, Sale and Purchase Deeds, Defects in Will.

INTRODUCTION

Land is a resource that has strategic value, both economically, socially and legally, for the lives of Indonesian people.¹ Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that the earth, water and natural resources contained therein are controlled by the state and used as much as possible for the prosperity of the people.² This constitutional mandate was then concretely explained through Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA), which became the cornerstone of the national land law system as well as the basis for all regulations regarding land rights in Indonesia.³ In the Indonesian land law system, the transfer of land rights can only be carried out through mechanisms that have been strictly stipulated by statutory regulations.⁴ Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration stipulates that every transfer of land rights through sale and purchase must be proven by a deed made by an authorized Land Deed Making Officer (PPAT).⁵ This provision aims to provide legal certainty to the parties involved and prevent land ownership disputes in the future.⁶ However, in reality, such strong procedural formalities are often misused by parties who do not have good intentions to legitimize the transfer of land rights which in fact do not have a valid legal basis for a sale or purchase.⁷

¹Sigit Sapto Nugroho, Muhammad Tohari and Mudji Rahardjo, Indonesian Agrarian Law, (Solo: Pustaka Iltizam, 2017), pp. 14-15.

²Rahmat Ramadhani, Basics of Agrarian Law, (Medan: Pustaka Prima, 2019), p. 30.

³Muhammad Arba, Indonesian Agrarian Law, (Jakarta: Sinar Grafika, 2015), p. 7

⁴Adrian Sutedi, Transfer of Land Rights and Their Registration, 1st Edition, Fourth Printing (Jakarta: Sinar Grafika, 2010), p. 149.

⁵Hizma Meidi Anugrawati, Areta Edgina Apta Maharani and Nabila Pangesti Yudhiasti, "Transfer of Land Rights Based on the Power of Attorney to Sell Clause in Debt Agreements", Wacana Paramarta, Vol 20, No 5, (2021), p. 40.

⁶Meyske Tanamal, Teng Berlianty and Theresia Louize Pesulima, "Selling and Purchasing Land and Buildings as Debt Collateral", TATOHI: Journal of Legal Studies, Vol 2, No 4, (2022), p. 362.

⁷Patrisia Ludovika Manse, I Made Sudirga and Made Emy Andayani Citra, "Legal Status of Sale and Purchase Agreement and Power of Attorney to Sell as Collateral for Debt (Case Study of Decision Number 1183/Pdt.G/2020/PN Dps)", Jumaha, Vol. 05, No. 01, (April 2025), p. 97.

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¹International Labor Organization, World Employment and Social Outlook 2021: The Role of Digital Labor Platforms in Transforming the World of Work, Geneva, 2021.

²Central Statistics Agency, E-Commerce and Digital Economy Statistics in Indonesia, Jakarta, 2022.

³Diane Mulcahy, The Gig Economy: The Complete Guide to Getting Better Work, Taking More Time Off, and Financing the Life You Want, AMACOM, 2016.

⁴Valerio De Stefano, "The Rise of the 'Just-in-Time Workforce': On-Demand Work, Crowdsourcing and Labor Protection," Comparative Labor Law & Policy Journal, 2016.

The issues presented by this case are very real and at the same time constitute urgent legal issues that require scientific study. On the one hand, there is strong material evidence showing that the transfer of land rights was carried out through a deed that contained a flawed will and did not reflect the true legal relationship. The Cibinong District Court itself has correctly concluded that material truth must trump the formal truth written in the deed. On the other hand, the legal interests of the Plaintiff, as the injured debtor, were not provided with the legal protection they deserve due to procedural flaws in the drafting of the lawsuit. This phenomenon illustrates the vulnerability of debtors in facing the practice of misusing sale and purchase instruments as debt collateral, as well as the importance of careful procedural law so that material legal protection can be truly realized.

The public's weak understanding of the differences between collateral law and sale and purchase law, coupled with the imbalance in bargaining power between creditors and debtors, creates a highly vulnerable space for the misuse of legal instruments that result in the unlawful loss of debtors' land ownership rights. The role of Notaries and Land Deed Officials (PPAT), which should be the last line of defense against irregularities, is often neglected when these officials draw up deeds without further examining whether the parties' wishes are truly free and in accordance with the actual legal cause. This condition emphasizes the need for research that systematically examines the validity of the transfer of land rights through AJB based on the debt-receivable relationship, the form of legal protection that should be provided to debtors, and the consistency of judges' legal considerations in upholding material justice and formal legal order.

Based on the description above, this study raises the title "LEGAL PROTECTION FOR DEBTORS OVER TRANSFER OF LAND RIGHTS BASED ON A DEED OF SALE WITH A DEFECTIVE WILL (Study of Supreme Court Decision Number 2458 K/Pdt/2025)", with the hope of providing a meaningful scientific contribution to the development of civil law, agrarian law, and notarial law in Indonesia, as well as being a practical guide for the community, notaries, PPAT, and law enforcers in dealing with similar problems.

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METHOD

The legal research method is "a system and a process that must absolutely be carried out in research activities and the development of scientific knowledge".⁸ Legal research is basically:

A scientific activity based on certain methods, systematics and thinking which aims to study something or several legal phenomena by analyzing them, except that an in-depth examination of the legal facts is also carried out in order to then attempt to find a solution to the problems that arise in the phenomena concerned.⁹

The legal research approach used in writing this law is the statutory regulatory approach, which means: To comprehensively understand and analyze the hierarchy of laws and regulations and the principles within them, a statutory approach is used to examine all laws and regulations related to the legal issue at hand.¹⁰

This research approach also uses a case approach, which is "one type of approach in normative legal research in which researchers try to build legal arguments from the perspective of concrete cases that occur in the field, of course these cases are closely related to legal cases or events that occur in the field."¹¹ The case approach can be carried out by conducting a study of cases related to the issue at hand which have become court decisions which have permanent legal force.¹²

RESULTS AND DISCUSSION

A. The Facts and Legal Position of the Parties in Supreme Court Decision Number 2458 K/Pdt/2025

The change in the parties' legal standing occurred as the case progressed from the first instance at the Cibinong District Court, to the appeal at the Bandung High Court, and finally to the cassation level at the Supreme Court. The plaintiffs believe their subjective rights were violated through a series of actions by the defendants, who unlawfully transferred their property rights. The circumstances of this dispute illustrate the complexity of informal lending transactions, which often lead to forced asset takeovers through legal smuggling mechanisms. The term legal smuggling may be unfamiliar to some, but it is a common practice in Indonesia and even the world, whether consciously or not. Legal smuggling is a method that individuals, or many individuals, can devise to circumvent a legal problem involving them and alter the legal consequences of such actions from detrimental to beneficial, motivated by various reasons and objectives.¹³ Narratively, the chronology of the case can be divided into several crucial phases. In the period before December 2017, Edward Jimmy Demostein Rahail as the Plaintiff was in a state of acute financial difficulty. He had an obligation to pay debts, interest and fines that had accumulated at PT Indosurya Inti Finance with a Building Use Rights Certificate (SHGB) Number 5850/Ciangsana guarantee covering an area of 264 m² located in Ciangsana Village, Gunung Putri, Bogor. The total remaining obligations of the Plaintiff at that time reached Rp824,000,000, and PT Indosurya had issued warnings or summonses three times and was preparing to conduct an execution auction for the guarantee.

B. Supreme Court Considerations in Assessing Defects of Will in a Deed of Sale and Purchase

Contract law in Indonesia, rooted in the Civil Code (Burglaj Wetboek), places agreement as the primary subjective requirement for the validity of a contract. According to Article 1320 of the Civil Code, the agreement of the binding parties is the first step in assessing the validity of a contract. This agreement requires not only an offer and acceptance, but also the validity of the internal process of forming that will.¹⁴

The Indonesian civil law system identifies three main categories of defects of will that can result in an agreement being voidable (vernietigbaar). Article 1321 of the Civil Code states that "No agreement is valid if it is given through mistake or obtained through coercion or fraud."¹⁵

The following is related to Supreme Court Decision Number 2458 K/Pdt/2025:

⁸ I Made Pasek Diantha, Normative Legal Research Methodology in Legal Justification, (Jakarta: Prenada Media Group, 2020), p. 12.

⁹ Ediwarman, Legal Research Methodology Monograph: Guide to Writing Theses, Dissertations and Dissertations, (Medan: Softmedia, 2015), p. 17.

¹⁰ Peter Mahmud Marzuki, Legal Research, (Jakarta: Kencana, 2014), p. 133.

¹¹ Soerjono Soekanto, Introduction to Legal Research, (Jakarta: University of Indonesia, 2015), p. 136.

¹² Ishaq, Legal Research Methods and Writing of Theses, Dissertations, and Dissertations, (Bandung: CV. Alfabeta, 2017), p. 98.

¹³ Bayu Seto, Basics of International Civil Law, (Bandung: Citra Aditya Bakti, 2006), p. 89.

¹⁴ Sudikno Mertokusumo, Op. Cit., p. 110.

¹⁵ Ridwan Khairandy, Good Faith in Freedom of Contract, (Jakarta: Postgraduate Program of Law, Islamic University of Indonesia, 2004), p. 227.

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1. Mistake (Dwaling): Occurs when one party has a misconception about the essence of the object of the agreement or the identity of the counterparty. In the context of land sales and purchases, mistakes often arise regarding the legal status of the land or physical boundaries that do not correspond to the statements in the deed.
2. Coercion (Dwang): Refers to physical or psychological pressure that creates fear in a person so that he is willing to close the agreement. The Supreme Court considers coercion not only in the form of threats of violence, but also pressure that interferes with the autonomy of an individual's will to act freely.
3. Deception (Bedrog): Involves the use of deception, a series of lies, or deliberate manipulation of information by one party to induce another party to consent. Fraud in AJB is often associated with falsifying identities or concealing material facts regarding land objects.

These three defects of will constitute violations of the subjective terms of the agreement. Consequently, the agreement is not automatically void by law, but remains binding on the parties until a request for cancellation is granted by a judge. Although the Civil Code does not explicitly regulate abuse of circumstances, the Supreme Court has adopted this doctrine through legal discovery (*rechtsvinding*) as a fourth type of defect of will. This doctrine emerged to fill the legal vacuum (*rechtvacuum*) in situations where an agreement appears to exist formally, but materially, there is an extraordinary imbalance of position.¹⁶ Abuse of circumstances occurs when someone with a particular advantage (either financial or psychological) exploits another party's difficult situation or dependency to gain an unfair advantage. The Supreme Court used criteria established by experts such as Nieuwenhuis.

⁵Law Number 13 of 2003 concerning Manpower.

⁶Lalu Husni, *Introduction to Indonesian Employment Law*, Jakarta: RajaGrafindo Persada, 2014.

⁷BPJS Employment, *BPJS Employment Annual Report*, 2022.

⁸International Labor Organization, *Digital Labor Platforms and the Future of Work*, Geneva, 2021.

⁹Satjipto Rahardjo, *Legal Studies*, Bandung: Citra Aditya Bakti, 2000.

¹⁰The 1945 Constitution of the Republic of Indonesia.

¹¹Aloisi, Antonio, "Commoditized Workers: Case Study Research on Labor Law Issues Arising from a Set of 'On-Demand/Gig Economy' Platforms," *Comparative Labor Law & Policy Journal*, 2016, p. 3.

¹²Law Number 13 of 2003 concerning Manpower, Article 1 number 15.

¹³Prassl, Jeremias, *Humans as a Service: The Promise and Perils of Work in the Gig Economy*, Oxford University Press, 2018, p. 45.

¹⁶Sudikno Mertokusumo, *Op.Cit.*, p. 49.

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C. Analysis of Supreme Court Decision Number 2458 K/Pdt/2025 and its Comparison with the Appellant's Decision

Land disputes in Indonesia often present a sharp contradiction between substantive justice favoring debtor protection and procedural legal certainty that is the foundation of the civil justice system. Supreme Court Decision Number 2458 K/Pdt/2025 is a crucial case study that illustrates how a dispute that materially indicates the practice of legal smuggling in the form of debt collateral wrapped in a sale and purchase agreement ultimately had to run aground in court due to negligence in fulfilling the formal requirements of the legal subject. This case involved Edward Jimmy Demostein Rahail as the cassation applicant who sought to restore his rights to land that was unilaterally transferred through the Deed of Sale and Purchase (AJB) mechanism that arose from a debt relationship. The background of this dispute is rooted in the economic condition of Edward Jimmy Demostein Rahail (Plaintiff) who has a principal debt obligation along with interest and fines at PT Indosurya Inti Finance amounting to Rp824,000,000.00. The land object that is used as collateral is a plot of land measuring 264 square meters with a Building Use Rights Certificate (SHGB) Number 5850/Ciangsana located in Bogor Regency. In a pressing condition to make repayment in order to avoid the auction of mortgage execution, the Plaintiff was introduced by H. Abdullah Agus BS (Defendant III) to the late Andy Lomona Siregar, who was willing to provide a loan of Rp1,100,000,000.00.

The legal construction offered by the creditor does not use the customary mortgage instrument under Law Number 4 of 1996 (UUHT), but instead uses a series of deeds under the legal umbrella of a sale and purchase agreement. The plaintiff was forced to sign the Deed of Sale and Purchase Agreement (PPJB) Number 5, the Deed of Power of Attorney to Sell Number 6 and the Deed of Vacancies Agreement Number 7 on December 13, 2017. Additional conditions imposed include payment of a fee of Rp141,500,000.00 and the obligation to repay the entire loan within three months, precisely no later than March 23, 2018. De facto, the funds received by the Plaintiff were directly used to pay off the debt at PT Indosurya Finance, however the SHGB that had been paid off was not returned to the debtor, but was instead controlled by the creditor as part of the loan security. The main problem arose when the creditor, through an absolute Power of Attorney to Sell Deed, signed the Deed of Sale and Purchase (AJB) Number 48/2019 before PPAT Nurul Afiah on May 23, 2019. In the AJB, Andy Lomona Siregar acted as the power of attorney of the seller as well as the buyer for himself, a practice that is often considered a deviation from the principle of transparency in the transfer of land rights.

CONCLUSION

1. The legal regulation regarding the validity of the transfer of land rights through AJB in Indonesian civil law is based on the fulfillment of the requirements for a valid agreement in Article 1320 of the Civil Code, where defects in will including error, coercion, fraud, or abuse of circumstances result in the agreement being voidable. However, if the AJB is a form of legal smuggling to disguise the debt-receivable relationship with collateral ownership, then the deed contains a false or impermissible cause, so that it is legally void by law because it violates the objective conditions of the agreement and the prohibition of *lex commissoria* in Article 12 of the Mortgage Law.
2. Legal protection for debtors is divided into two channels: preventive protection through supervision by Notaries and Land Deed Officials (PPAT), who are required to apply the principle of prudence, the principle of balance, and conduct material verification to ensure that the agreement is free from economic pressure from creditors. Repressively, debtors can file a lawsuit for cancellation of the agreement or a lawsuit for unlawful acts (Article 1365 of the Civil Code) to the court to restore the situation to its original position, and take administrative measures in the form of blocking the certificate at the Land Office to prevent further transfer of rights to third parties.
3. The Supreme Court's legal considerations in Decision Number 2458 K/Pdt/2025 demonstrate a procedural tragedy in which material legal protection for the debtor cannot be realized due to being hampered by formal defects in the lawsuit. Although the District Court initially ruled in favor of the debtor by declaring the Deed of Sale and Purchase (AJB) void due to the practice of collateral ownership, the Supreme Court upheld the appellate decision, which declared the lawsuit inadmissible due to an error in persona, namely the plaintiff's inclusion of a deceased party as a defendant. This confirms that in the Indonesian judicial system, orderly procedural law and formal truth are absolute requirements before a judge can examine the substantive justice of a land transfer dispute.

SUGGESTIONS

1. The government and lawmakers are advised to immediately codify the doctrine of abuse of circumstances more firmly in the revised Civil Code or agrarian legislation to provide definitive criteria for judges in assessing defects in will in land transactions motivated by debt. This is crucial so that the practice of legal smuggling

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through collateralized AJBs can be uniformly identified and does not rely solely on legal findings by judges in court.

2. Public officials, particularly notaries and land and building officials (PPAT), are expected to increase their active role as a bulwark against legal smuggling by conducting not only formal verification but also in-depth material interviews with the parties to detect any economic pressure or imbalance in bargaining power. Public officials must have the courage to refuse to draw up a deed if they find indications that the Deed of Sale and Purchase (AJB) is being used solely as collateral for a debt, to avoid the risk of future unlawful claims.
3. For the public, especially debtors and legal practitioners, it is recommended to be more careful in understanding the legal consequences of signing collateral documents packaged in the form of a sale and purchase, and must thoroughly validate the status of the opposing legal subject before filing a lawsuit. Procedural failures such as error in persona in this case should be a lesson for plaintiffs to accurately confirm the residence status and the existence of heirs of the opposing party to avoid legal deadlocks that lead to permanent loss of property rights due to a lawsuit that is declared inadmissible.

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