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ANALYSIS OF JUDGES' CONSIDERATIONS IN RELIGIOUS COURT DECISION NUMBER 1332/PDT.G/2020/PA.BTL CONCERNING DEFAULT IN BUSINESS CONTRACTS

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Abstract

This research aims to analyze and find out the legal considerations of the panel of judges in the decision of case Number 1332/Pdt.G/2020/PA.Btl) for the parties of the istishna' sale and purchase agreement which does not stipulate a delivery time limit. This research is normative legal research, which emphasizes the study of statutory norms, principles and principles of positive law, positive legal theory and basically legislative, conceptual and case approaches. In case decision Number 1332/Pdt.G/2020/PA.Btl., the panel of judges considered that the preliminary sale and purchase agreement was declared valid and binding on both parties because it had fulfilled the legal requirements of the agreement. As a legal consequence, the agreement remains valid and binding on both parties. Both parties still have the obligation to complete their achievements in good faith.

KEYWORDS: *Contracts; Defaults; Judge's Considerations; Court Decisions.*

Introduction

As people's need for housing increases and is balanced with increasing economic growth, people's interest in owning land or houses also increases. The limited availability of land for residential purposes is not commensurate with the need for land and houses. This makes land prices high and land owned for a long period will have benefits as a long-term investment. [1]

The increasing public need for land and houses is driving the rapid growth of the property business. Developers as property business actors take advantage of the opportunity for high public demand for property. Developers compete with each other in marketing their business by providing attractive offers to consumers. In marketing their properties, developers provide attractive offers to potential buyers, for example offering strategic locations, cheaper prices, promotions, discounts, more complete facilities, ease of payment, and affordability with a long-term easy installment system from the developer or home ownership credit (KPR) from banking with low interest[2]. These offers can certainly be an attraction for consumers.

Apart from that, there are developers who offer pre-project sales to the public. Sales using this form of order will make it easier for people financially to own land and property, considering that land prices are increasingly high. This offer in the form of orders (pre-project selling) is used by developers to obtain capital.

This form of offering really helps developers get additional capital because the need for funds in development projects is very large, and it is difficult to get large loans from banks because they must be accompanied by

[1] Wachda Mihmii, "Keuntungan Investasi Properti, Kekurangan, Serta Modal," *Global Investasi Indonesia*, 2022.
[2] Yanita Petriella, "Ini Yang Dilakukan Pengembang Untuk Meraih Penjualan Strategi Pendekatan Pasar Dapat Juga Mengundang Berkunjung Ke Galeri Pemasaran Dengan Tetap Mengikuti Protokol Kesehatan.," *Bisnis.Com 31 Desember 2020* |, 2020.

collateral. Therefore, the concept of marketing by order will be very profitable for developers because it helps with capital and money circulation.[3]

This pre-project selling concept is usually offered by residential project developers (developers) by carrying out sales or marketing before the property product in question is realized. There are even project developers who carry out order marketing concepts before completing the requirements, including building construction permits (IMB), construction permits, and other permits.[4]

Buying and selling in the form of an order is the act of ordering/purchasing goods at a proposed price agreed to by the seller. This legal act creates a consensual binding agreement between buyers and sellers, where between the two parties there is an agreement on goods and prices.[5]

In this form of order offer, if an agreement has been reached, both parties will make a binding sale and purchase agreement containing the rights and obligations of both. In buying and selling in the form of an order, the parties can make a preliminary sale and purchase agreement. According to the provisions of Article 42 paragraph (1) of Law Number 1 of 2011 concerning Housing and Settlement Areas. Preliminary sale and purchase agreement after fulfilling the requirements for certainty regarding the status of land ownership, the matter being agreed, ownership of permits to construct the main building, availability of infrastructure, facilities, and public utilities; and housing development of at least 20% (twenty percent).

In Indonesia, making a sales agreement can refer to civil law provisions or sharia principles. Since the introduction of the concept of Sharia

[3] Purbandari, "Kepastian Dan Perlindungan Hukum Pada Pemasaran Properti Dengan Sistem," *Widya*, 2012, 14.
[4] Purbandari.
[5] Fredrik J Pinakunary, "Pemesanan Pembelian (Purchase Order) Dalam Perspektif Hukum Perjanjian Indonesia," Fredrik J Pinakunary Law Office (Jakarta, 2020).

economics and the enactment of the Compilation of Sharia Economic Laws, buying and selling property using sharia principles has begun to be widely used. The concept of buying and selling land and houses using sharia principles in transactions involves banks, there are transactions carried out directly between the developer and the consumer without any intervention from the bank, and there are also developers without involving the bank, but the bank is involved only as an intermediary in payments. installments directed directly to the developer's account, especially for consumers who choose to pay for home purchases on credit.[6]

Agreements in sharia principles are called contracts. In a sale and purchase contract using sharia principles, there are three types of contracts, namely the murabahah contract, the salam contract and the istishna' contract.[7] First, the murabahah contract is the sale and purchase of goods at the original price plus the agreed profit (margin). Second, the salam contract is a sale and purchase contract for ordered goods between the buyer and seller where the price is paid in advance and the goods are delivered later according to the agreement. Third, the istishna' contract is a contract in the buying and selling process between the orderer and the recipient of the order with certain specifications. In general, the difference between a salam contract and an istishna' contract lies in the payment. In a salam contract, payment must be cash up front, whereas in an istishna' contract, payment can be paid in installments or paid at the end according to the agreement. In the process of buying and selling land and houses using an istishna' contract or a salam contract, the consumer carries out a sale and purchase transaction by ordering the land and house first, then the sharia housing developer will take care of the land acquisition and/or carrying out

[6] M. Aziz, Rosyid, Hanjaeli, Iwan Januar, *Berkah Berlimpah Dengan Bisnis Properti Syariah* (Bogor: Al-Azhar Fresh zone Publising, 2015).
[7] Imron Rosyadi, *Jaminan Kebendaan Berdasarkan Akad Syari'ah (Aspek Perikatan, Prosedur Pembebanan, Dan Eksekusi) Hak Tanggungan, Jaminan Fidusia*, Cetakan ke (Jakarta: Jakarta : Kencana, 2017 PT Balebat Dedikasi Prima, 2017).

the construction of the house according to the agreement between the buyer and developers.

In its development, developers who use sharia principles in their contracts have begun to imitate the Home Ownership Credit (KPR) system but without going through banking institutions or non-bank financial institutions. This credit financing system with a sharia contract without banks or non-bank financial institutions applies a credit system where buyers do not use banks to pay their installments so that home buyers pay directly to the developer. The sharia home ownership credit system without banks is believed to make it easier for buyers because buyers are not burdened with bank administrative requirements. In its implementation, the sharia home ownership credit system has no confiscations, no fines, and no usury.[8]

In practice, violations committed by developers in the sale and purchase of land and housing ownership often occur. From consumer complaint data to the National Consumer Protection Agency (BPKN) in the housing sector, it was recorded that in 2021 there were 254 complaints. Consumer complaints in the housing sector are related to social and public facilities, building physics, legality, stalled housing development processes, fraud, etc.[9] And the housing sector complaint data for 2022 is 150 complaints.[10]

This violation can be caused by various reasons, one of which is a lack of good faith. A valid agreement or contract will bind the parties, and give rise to rights and obligations for the parties. Because an agreement is binding and creates rights and obligations for the parties, good faith is required. In the negotiation stage, pre-agreement up to the implementation of the

[8] Egi Arvian Firmansyah and Deru R Indika, "Kredit Pemilikan Rumah Syariah Tanpa Bank: Studi Di Jawa Barat," *Jurnal Manajemen Teori Dan Terapan | Journal of Theory and Applied Management* 10, no. 3 (2017): 223, https://doi.org/10.20473/jmtt.v10i3.6541.
[9] Silvia Monty, "BPKN: Hingga Juli 2022 Terdapat 2.967 Pengaduan Konsumen Terkait Perumahan," Prorperti Indonesia, 2022.
[10] Dimas Bayu, "Aduan Konsumen Di Indonesia Menurun Pada Tahun 2022", DataIndonesia.Id," dataindonseia.id, 2022.

agreement, good faith is required from the parties. In a sale and purchase agreement, the seller from the beginning of the offer should be honest, in explaining the facts of the transaction without hiding elements that contain legal defects to the buyer, and in the agreement or contract, it is written in detail and clearly so that the buyer can read and examine the agreement before signing an agreement or contract. Likewise, the buyer must also have good faith, where the buyer must examine the contents of the agreement or contract and ask for an explanation in as much detail as possible.[11] This is to avoid problems of breach of contract (default) which will harm one of the parties.

Default is a condition where the debtor does not carry out the obligations specified in the agreement, especially the agreement.[12] In the provisions of Article 1243 of the Civil Code, it is regulated that "compensation for costs, losses, and interest due to failure to fulfill an obligation begins to be mandatory, if the debtor, even though he has been declared negligent, still fails to fulfill the obligation, or if something that must be given or done can only be given or done within a time beyond the specified time". In Article 36 of the Compilation of Sharia Economic Law, parties can be considered to have broken their promises due to their mistakes: firstly they do not do what they promised to do, secondly, they carry out what they promised, but not as promised, thirdly they do what they promised but are late, and fourthly do something that according to the agreement is not permitted.

Settlement of disputes regarding breach of contract (default) of contracts made based on sharia principles can be filed in litigation to the Religious Court. In accordance with the provisions of Law no. 3 of 2006 concerning Amendments to Law no. 7 of 1989 concerning Religious Courts.

[11] Ridwan Khairandy, *Hukum Kontrak Indonesia Dalam Perspektif Perbandingan* (Yogyakarta: FH UII Pres, 2014).
[12] Khairandy.

One of the sale and purchase disputes based on sharia principles that was submitted through litigation to the Bantul Religious Court was the case of a lawsuit for breach of contract in the sale and purchase of reservations for plots of land filed by the Buyer against the Developer with the Istishna' sale and purchase agreement registered with Case Number 1332/Pdt.G/2020/ PA. Btl. In Case Number 1332/Pdt.G/2020/PA.Btl, Benny Nurrohman as the buyer sued Syaiful Azmi Aziz as Director of PT Salam Teguh Perkasa, developer of Taman Darussalam Jogja 2. The case in this case was seated on February 23 2018 Between the seller and the buyer there has been a sale and purchase agreement with an Istishna' contract with the object being the reservation of a plot of land in Taman Darussalam Jogja 2 which is located in Kaliberot, Argomulyo Village, Sedayu District, Bantul Regency, in unit B62 with a land area of 90 m² (ninety meters). square) with an agreed price of Rp. 131,000,000.00 (one hundred thirty-one million rupiah). Both parties have signed a Preliminary Sale and Purchase Agreement with the Istishna' Agreement legalized by a notary. The buyer gets a platinum voucher of IDR 5,000,000.00 (five million rupiah) and a hard cash voucher of IDR 5,000,000.00 (five million rupiah), so the price the buyer must pay IDR 121,000,000.00 (one hundred twenty-one million rupiah). On February 17 2018 the buyer paid a booking fee of Rp. 3,000,000.00 (three million rupiah) and on February 19 2018 the buyer paid the remainder in full amounting to Rp. 118,000,000.00 (one hundred and eighteen million rupiah). Thus, the total amount paid by the buyer in the sale and purchase of the land reservation is IDR 121,000,000.00 (one hundred twenty-one million rupiah). The buyer has paid in cash to PT Salam Teguh Perkasa, as the developer of Taman Darussalam Jogja 2. After the payment was made by the buyer, PT Salam Teguh Perkasa did not carry out its obligation to hand over a plot of land and a land ownership certificate in Taman Darussalam Jogja 2 to the buyer.

Because until 2020 PT Salam Teguh Perkasa did not hand over the ownership certificate and plot of land for unit B62 in Taman Darussalam

Jogja 2, the buyer filed a lawsuit against the Director of PT Salam Teguh Perkasa to the Bantul Religious Court with case number 1332/Pdt.G/2020/ PA.Btl with the demands that the essence is that the Preliminary Sale and Purchase Agreement (Akad Istishna') Taman Darussalam Jogja 2 regarding the sale and purchase of one unit of plot No. Unit B62 with an area of 90 m2 (ninety square meters) at a price of IDR 121,000,000,- (one hundred twenty-one million rupiah), which uses SHM No.08718/ Argomulyo, SHM No.08717/ Argomulyo and SHM No.04863/ Argomulyo located in Argomulyo Village, Sedayu District, Bantul Regency, D.I. Yogyakarta belonging to the Defendant. Valid and binding on both parties (Vide: Article 1338 of the Civil Code) along with its legal consequences. and the Defendant has broken his promise/default.

The Panel of Judges has examined and handed down a decision in this case which basically states legally that the Preliminary Sale and Purchase Agreement (Akad Istishna') for one unit of plot No. Unit B62 in Taman Darussalam Jogja 2, Kaliberot, Argomulyo Village, Sedayu District, Bantul Regency, with an area of 90 m2 (ninety square meters) with a price of IDR 121,000,000.00 (One hundred and twenty-one million rupiah) is legal and binding on both and the legal consequences and reject the Plaintiff's claim for anything other than that, including the claim for breach of contract.

A contract that does not specify a delivery time limit, whether done intentionally or not, will be detrimental to the buyer. Buyers who have paid in full but have not received their rights according to the agreement or contract will have difficulty determining whether the seller's actions fall into the category of broken promise or default and will have difficulty in demanding their rights. With this case, a problem arises regarding the legal considerations of the panel of judges in the decision of case Number 1332/Pdt.G/2020/PA.Btl, therefore it is necessary to carry out research with the aim of reviewing and analyzing the Judges' Considerations in Religious Court Decision Number 1332/ Pdt.G/2020/Pa.Btl Concerning Default in Business Contracts.

Method

This research is normative legal research, by examining and analyzing norms, rules, principles, theories, foundations, and objectives of law, which are conceptualized in positive law with primary legal materials in the form of legal regulations, secondary legal materials in the form of various references, journals and miscellaneous and tertiary legal materials various legal dictionaries, encyclopedias, etc. In analyzing the problem, a statutory and conceptual approach is used, as well as a comparative approach.

Result and Discussions

The Court's Decision is The Law (Judge Made Law)

Laws can be formed through law makers (law making) either from legislative bodies in the form of legislation (positivism) or through court decisions (Judge made law). Laws formed through courts are based on logical, systematic, juridical legal considerations, and avoid non-juridical aspects.

A decision is a judge's statement stated in written form and pronounced by the judge in a trial open to the public, as a result of the examination of a lawsuit. When examining and trying a case, the most important thing for a judge is the facts or events and not the law. Because in the event itself, the law is concluded. [13]

Judges in deciding cases must be based on comprehensive, logical, juridical legal reasons. In accordance with Article 50 of Law Number 48 of 2009 concerning Judicial Power which states that court decisions must

[13] HA.Mukti Arto, *Praktek Perkara Perdata Pada Pengadilan Agama* (Yogyakarta: Pustaka Pelajar, 2017).

contain the reasons and basis for the decision, and also contain certain articles from the relevant statutory regulations or sources of unwritten law that are used as the basis for adjudicating.

The panel of judges in panel deliberations should explore legal reasons even if the parties do not reveal them at trial. This is as regulated in Article 178 paragraph (1) HIR/189 paragraph (1) R.Bg. states that the Judge, because of his position, during deliberations, is obliged to provide all legal reasons that are not put forward by both parties.[14] This is so that the court judge's decision has in-depth and comprehensive reasons based on legal reasons and facts at trial so that the court decision can reflect legal certainty, justice, and expediency.

Analysis of the Legal Considerations of the Panel of Judges

Basically, judges are prohibited from making decisions that are not requested, unless the law stipulates otherwise.[15]

a. Analysis of legal considerations regarding the validity of the agreement

In the main decision of case Number 1332/Pdt.G/2020/PA.Btl. The panel of judges has granted part of the main petitum of the Plaintiff's lawsuit, namely to legally declare that the Preliminary Sale and Purchase Agreement (Akad Istishna') for one unit of plot No. B62 in Taman Darussalam Jogja 2, Kaliberot, Argomulyo Village, Sedayu District, Bantul Regency, with an area of 90 m2 (Ninety square meters) with a price of Rp. 121,000,000,- (One hundred and twenty-one million Rupiah), is valid and binding on both parties along with the legal consequences.

The panel of judges found legal facts in the trial that Plaintiff had entered into a Sale and Purchase agreement with an Istishna' Agreement with the Defendant as Director of PT. Salam Teguh Perkasa on February 23, 2018, which in essence stated that the Plaintiff had purchased (ordered) one

[14] Natsir Asnawi, *Hukum Acara Perdata* (Yogyakarta: UII Press, 2016).
[15] HA.Mukti Arto, *Tatacara Pemeriksaan Ekonomi Syariah* (Jakarta: Kencana, 2021).

unit of plot No. Unit B62 with an area of 90 m2 (ninety square meters) at a price of Rp. million rupiah) located at Taman Darussalam Jogja 2, Kaliberot, Argomulyo Village, Sedayu District, Bantul Regency, to the Defendant. This consideration is based on the evidence submitted by Plaintiff and Defendant being the same, namely in the form of a Preliminary Sale and Purchase Agreement (Akad Istishna') between Plaintiff and Defendant dated 23 February 2018 and which was registered with a notary in Bantul. This evidence has been admitted by the Plaintiff and the Defendant.

The Panel of Judges also found the fact that there was a legal relationship between the Plaintiff and the Defendant. Therefore, the Panel of Judges is of the opinion that the Plaintiff and Defendant are seen as people with an interest (persona standi in judicio) and should be parties (legal standing) in this case.

Based on these legal considerations, the Panel of Judges was of the opinion that the evidence had been acknowledged by both parties so based on Article 1338 of the Civil Code, the agreement letter was binding law for both parties.

The agreement made between the Plaintiff and the Defendant is a preliminary sale and purchase agreement. In the sale and purchase of land and housing, this Preliminary Agreement is often called the Sale and Purchase Binding Agreement (PPJB). The Sale and Purchase Agreement (PPJB) is regulated in Article 42 of Government Regulation Number 1 of 2011 concerning Housing and Settlement Areas. In this Preliminary Agreement, the Plaintiff agreed to buy and sell land for one unit of plot No. B62 in Taman Darussalam Jogja 2, Kaliberot, Argomulyo Village, Sedayu District, Bantul Regency, with an area of 90 m2 (ninety square meters) to the Defendant. This preliminary sale and purchase agreement uses the basis of an Istishna' or reservation contract because the land being traded is still in raw (manufactured) condition where there has been no transfer of ownership rights in the form of a Certificate of Ownership (SHM) from the

old owner to the buyer, so the seller needs time to process the issuance of the transfer of the Certificate. Ownership Rights (SHM) are in the name of the buyer.

Judging from the conditions for the validity of the agreement as regulated in Article 1320 of the Civil Code and the terms of agreement Article 22 of the Compilation of Sharia Economic Law, this agreement has fulfilled the terms of validity and terms of the agreement. The first condition in this agreement is that both parties have clearly stated in the agreement that there is an agreement between both parties. The seller (Defendant) agreed to sell one unit of plot of land and the buyer (Plaintiff) agreed to pay the agreed price.

The second condition in this agreement is that the seller and buyer are parties capable of entering into an agreement, and the buyer is a person capable of entering into an agreement. According to the provisions of Article 1329 of the Civil Code, every person is competent to make agreements unless according to law he is not declared competent. Meanwhile, the seller is a party who, because of his/her position, acts on behalf of a legal entity, namely PT. Greetings Teguh Perkasa. Thus, both parties should be parties to this agreement.

The third condition, an agreement must fulfill the conditions of a certain thing, a certain object. Sometimes the object of the agreement can be interpreted as the subject of the agreement, sometimes as the subject of performance. What is meant by a particular thing is the debtor's obligations and the creditor's rights. This means that what is agreed is the rights and obligations of the parties.[16] In accordance with the provisions of Article 1333 paragraph (1) of the Civil Code, it is stipulated that an agreement must have as its subject an object whose type can at least be determined. The object agreed upon must be clear and detailed in terms of type, quantity, and price or description of the object, and the rights and obligations of each party must be known. The object of this agreement is one unit of plot of land No.

[16] Khairandy, *Hukum Kontrak Indonesia Dalam Perspektif Perbandingan*.

Unit B62 in Taman Darussalam Jogja 2, Kaliberot, Argomulyo Village, Sedayu District, Bantul Regency, with an area of 90 m2 (ninety square meters).

The fourth requirement is a halal legal cause or the main purpose of the contract in accordance with Article 22 of the Compilation of Sharia Economic Law. The cause in this agreement refers to the content and purpose of the agreement itself. According to Domat and Pothier, the cause or cause in the agreement is the driving force for the debtor to accept the agreement to fulfill the content or performance of the agreement. Accepting an engagement means accepting the obligations arising from the engagement to fulfill performance.[17] The rights and obligations in a sale and purchase agreement are reciprocal, namely, the seller's obligation to hand over the object to the buyer and the buyer's obligation to pay the seller an amount of money according to the agreed price. Meanwhile, the right of the seller is to receive an amount of money according to the price of the object, and the right for the buyer to receive the object of sale and purchase. In this agreement, the purpose of the sale and purchase is the transfer of land ownership rights in the form of a Certificate of Ownership (SHM) for the agreed plot of land from the seller to the buyer and the delivery of a sum of money for the price of the land.

In this case, the Preliminary Sale and Purchase Agreement (Akad Istishna') between Plaintiff and Defendant, made on February 23, 2018, was signed by Plaintiff as the buyer and Defendant acting in his position as the seller, namely PT. Greetings Teguh Perkasa. The agreement is still in the form of a preliminary agreement and has been registered (watermarking) by a Notary in Bantul on February 28, 2023. The results of the author's interview with the resource person, Dr. Abdul Mujib, S.Ag., M.Ag., lecturer in Sharia Economic Law, Faculty of Sharia, UIN Sunan Kalijaga, that in this case, the preliminary agreement with the Istishna' agreement between the seller and the buyer is a Sale and Purchase Agreement (PPJB) for land and

[17] Khairandy.

houses such as with conventional land and house sale and purchase agreements. This preliminary land sale and purchase agreement is made by the seller and buyer before the process of transferring ownership rights to the land is carried out and after the transfer of Ownership Rights Certificate (SHM) is issued, a Sale and Purchase Deed is then made. A preliminary agreement made before a notary has binding force for the parties and is an authentic deed as regulated in Article 1868 of the Civil Code. Article 1870 of the Civil Code stipulates that preliminary agreements made before a notary have perfect evidentiary power.

Apart from having to meet the legal requirements of the agreement in accordance with the provisions of Article 1320 of the Civil Code, the sale and purchase agreement must also reflect the principles of benefit, justice, balance, consumer security, and safety, as well as legal certainty as regulated in Article 2 of Law Number 8 of 1999 concerning Consumer Protection. In this preliminary sale and purchase agreement, it is viewed as the fulfillment of the legal conditions of the agreement as stipulated in Article 1320 of the Civil Code above, which fulfills the conditions for the validity of the agreement, however, the absence of provisions on the time period for handing over the object in the agreement creates the potential for problems to arise in the future. If the seller does not carry out his obligations, then in an agreement that does not provide a time period for delivery of this object, this will result in no legal protection for consumers. Consumers do not have legal certainty about how long the property rights to the object of sale and purchase will be received by the seller. This property sale and purchase agreement uses a standard or standard contract. According to Mariam Darus Badrulzaman, a standard contract is an agreement whose contents are standardized and stated in the form. A general standard agreement is an agreement whose form and contents have been prepared in advance by the creditor and then presented to the debtor. In the provisions of article 1 point 10 of Law Number 8 of 1999 concerning Consumer Protection, it is stated that standard clauses are interpreted as every rule or provision and

conditions that have been prepared and determined in advance unilaterally by the business actor as stated in a document and/or agreement. which is binding and must be complied with by consumers. Business actors or sellers as drafters of standard contracts should be more careful and formulate clauses that provide legal protection for both parties, one of which is to explicitly state the time limit for delivery of goods and payment. Good faith in making a standard contract is very necessary before presenting it to the buyer for approval and signing the contract. In the case of a contract that does not contain a time limit provision but has been signed by both parties, the seller in good faith should make an addendum to the contract for matters that have not been expressly regulated in the initial agreement. However, every legal action has risks that must be faced by each party. This sale and purchase agreement is made based on an agreement between both parties, where both parties have made an agreement on the contents of the agreement, in accordance with the principle of consensualism which is the first legal requirement of an agreement. Buyers should also read the contents of the agreement carefully before agreeing and signing the contents of the contract. The buyer has the right to ask the seller about unclear provisions in the contract.

The contract that has been agreed upon and signed by both parties applies the principle of Pacta Sunt Servanda, where the contract is binding on both parties, based on Article 1338 of the Civil Code, the agreement is legally valid and binding on both parties along with its legal consequences. With a contractual agreement, both parties know what risks they will face. To overcome the risk due to the lack of certainty regarding the time limit for delivery of objects, the buyer has the right to submit an addendum to the contract to the seller regarding provisions regarding the time limit for delivery of goods and other matters that have not been expressly regulated in the contract. Likewise, the seller should have good faith to make a recovery with an addendum to the contract, either at the request of the buyer or on his own initiative to provide legal protection for the parties

because in implementing a contract the principle of good faith from both parties applies as regulated in Article 1338 paragraph (3) Civil Code.

The legal consequences of this agreement are that both parties are bound to carry out their rights and obligations. Buyers who have carried out their obligations have the right to receive ownership rights to the object of sale and purchase. The seller has the right to receive money according to the agreed price and is obliged to deliver the goods. a buyer who has not carried out his obligation to immediately hand over the ownership of the object to the buyer. In implementing the contract, the parties must implement the principle of good faith. The objective standard of good faith in contract implementation refers to an objective norm. The provisions of good faith refer to norms that apply in society, even though they are not written down, that apply in society. In an agreement that does not stipulate a time period for delivery of goods and an addendum to the contract is not made, in accordance with the principle of good faith, the time limit for delivery of objects is in accordance with propriety that applies in society. The seller must be honest with the buyer and provide information on where the delivery process of the goods is and what the obstacles are. Regarding the processing stages of providing objects, the time required is based on the time limits that apply in the community/institution related to each stage. For example, in this case, the object is a plot of land, then based on feasibility and propriety in society the time required from the licensing process, drying, splitting, and other stages until it becomes a certificate of ownership is in accordance with the applicable time limits at the Ministry of Agrarian Affairs/National Land Agency, Regional Spatial Planning Service and related agencies.

b. Analysis of the Judge's Considerations regarding Default

Meanwhile, the petitum in the case lawsuit letter Number 1332/Pdt.G/2020/PA.Btl which was rejected in the decision was regarding the claim for breach of contract.

The Panel of Judges considered that even though it was proven that Defendant had not delivered the goods agreed upon, because the agreement did not specify a time limit for delivery of the ordered goods, no time limit had been violated by Defendant. The Plaintiff was also not proven to have served a subpoena, so the Defendant in this case cannot yet be categorized as the party in default.

In the sale and purchase, the Defendant's actions did not carry out his obligations or performance in accordance with the provisions of Article 1234 of the Civil Code and Article 36 of the Compilation of Sharia Economic Law to be declared a default. However, the Panel of Judges emphasized as a reason for its consideration that the agreement between Plaintiff and Defendant did not stipulate a definite and firm delivery date for the goods ordered for sale and purchase. This makes it difficult to determine when the Defendant can be declared to have broken his promise or defaulted because there is no stipulated time limit for delivery of the goods. The panel of judges used the basis of Fatwa of the National Sharia Council (DSN) No: 06/DSN-MUI/IV/2000 concerning Istishna' Sale and Purchase, which stipulates that in buying and selling with an ishtisna' contract the provisions regarding the time and place of delivery of goods must be stipulated in the contract based on agreement of the parties.

In the consideration of the Panel of Judges, it was not proven that there was a subpoena issued by the Plaintiff to the Defendant. In accordance with the provisions of Article 1238 of the Civil Code and 1243 of the Civil Code, a subpoena is a stage that must be passed to declare the debtor in default. However, the Plaintiff could not prove that he had warned the Defendant. Based on the considerations mentioned above, the Panel of Judges rejected the request for the Defendant to be declared in default.

In accordance with the provisions of the sale and purchase agreement as regulated in Article 1457 of the Civil Code, it is stated that "sale and purchase is an agreement in which one party binds himself to deliver an item, and the other party to pay the promised price." In Article 1458 of the

Civil Code, "A sale and purchase is deemed to have occurred between the two parties, as soon as the parties reach an agreement regarding the goods and their price, even though the goods have not been delivered and the price has not been paid." In the provisions of article 1459 of the Civil Code, it is stated that "The ownership rights to goods sold do not transfer to the buyer as long as the delivery has not been made (according to the relevant provisions).

The sale and purchase agreement is obligatory, meaning that the new sale and purchase agreement places reciprocal rights and obligations between both parties, the seller and the buyer, namely placing an obligation on the seller to hand over the ownership rights to the goods he sells and at the same time giving him the right to receive payment for the price that has been paid. agreed, and on the other hand places an obligation on the buyer to pay the price of the goods according to the agreement and obtain the right to demand the transfer of ownership of the goods purchased.[18] Buying and selling does not transfer ownership rights to the goods being traded, but instead lays down the rights and obligations of both parties.

In this case, the sale and purchase agreement does not regulate the date of handover of the goods by the seller. And the ultimate goal of buying and selling is to hand over the goods and pay the price. The buyer has paid the agreed price, while the seller has not delivered the goods. The seller should examine the contents of the contract that will be signed by both parties regarding the provisions on the time limit for delivery of goods. However, after signing the contract, the seller did not take the initiative to make an addendum to the contract which stipulated the delivery time limit. In the event that the seller does not have the good faith to carry out an addendum to the contract or immediately deliver the goods according to the time limit in accordance with the appropriateness and propriety that applies in society, then the buyer can choose to force the seller to fulfill the

[18] A.A. Ngurah Wirasila Ni Nyoman Putri Satrianingsih, "Peralihan Hak Milik Atas Tanah Melalui Perjanjian Jual Beli Dibawah Tangan"," *Jurnal Kertha Semaya* Vol 7 no 6 (n.d.).

agreement if this can still be done, or sue cancellation of agreement with compensation for costs, losses and interest if the seller still does not immediately deliver the goods, as regulated in Article 1267 of the Civil Code. Applications for cancellation of the agreement, compensation for costs, losses, and interest due to negligence by the seller must be submitted to court, in accordance with the provisions of Article 1266 and Article 1480 of the Civil Code.

The condition of non-fulfillment of obligations is caused by the seller's mistakes, either intentionally or through negligence, and all of this can be blamed on him, so it is said that the seller has committed a default. Default as regulated in Article 1238 of the Civil Code is "a condition where the debtor is declared negligent by means of a warrant, or by a similar deed, or based on the strength of the agreement itself, namely if this agreement results in the debtor being deemed to be in default after the specified time has passed." Forms of default are: a. Not doing what is promised to be done, b. carry out what was promised but not as promised, c. did what he promised but was late, d. do something that according to the agreement is not allowed to be done. To file a claim that a debtor has committed a breach of contract to court, in accordance with the provisions of Article 1238 of the Civil Code, the first step that must be passed is a summons. A summons is a written order or warning which aims to warn the debtor to carry out the performance. This written subpoena must not be abandoned by the buyer to file a breach of contract lawsuit against the seller.

The task of the Panel of Judges examining cases is to re-establish justice in order to achieve justice for the parties. If in the agreement there are things that deviate from Sharia principles and principles and there are deficiencies in the agreement that have the potential to harm one of the parties, then the Panel of Judges examining the case has the duty to correct the agreement again through its decision, so that it can be carried out properly and does not cause harm to any of the parties. one party.[19] In this

[19] HA.Mukti Arto, *Tatacara Pemeriksaan Ekonomi Syariah*.

case, the agreement made by the parties has fulfilled the legal and harmonious requirements as stipulated in Article 1320 of the Civil Code, Article 22, and Article 56 of the Compilation of Sharia Economic Law. However, in its decision, the Panel of Judges in this case did not consider and decide to correct the agreement or contract. The absence of a time limit for delivery of goods in the sale and purchase agreement causes the buyer to suffer a loss because the seller does not immediately fulfill his obligation to hand over the object of sale as regulated in Article 63 paragraph (1) of the Compilation of Islamic Law.

In its considerations, the panel of judges emphasized the absence of a time limit for delivery of goods in the agreement with the Istishna' contract. The Panel of Judges did not consider whether the Defendant had good faith in implementing the agreement. Based on the provisions of Article 1339 of the Civil Code, it is stated that the substance of good faith in implementing an agreement can be linked to a sense of justice and propriety in society. In the provisions of Article 81 paragraph (3) of the Compilation of Sharia Economic Law, it is stated that the procedures for handing over goods must pay attention to customs and propriety in society. Good faith is not only assessed according to the opinions of the parties but also the propriety that exists in society.[20] An agreement is not only binding on what is expressly stated or written in it but is also binding on everything that is required by propriety, custom, and law.

This sale and purchase agreement is based on the Istishna' agreement, in the form of a sale and purchase agreement for ordering this plot of land because the land is still in raw condition, where the certificate has not been broken down, has not received a drying permit and has not yet changed the name of the certificate and this requires time for the licensing process. and transfer of ownership rights at the Land Office and Investment Office.

In accordance with the principle of good faith, Defendant still has the obligation to carry out the agreement by handing over the land certificate

[20] Khairandy, *Hukum Kontrak Indonesia Dalam Perspektif Perbandingan*.

for the plot to Plaintiff within a time period that is appropriate for society. Based on the results of interviews from the information section of the Bantul Regency Land Office, in the process of splitting land certificates and changing names, the administrative requirements must be completed. The process for each stage takes approximately 4 to 5 (four to five) months on average. Land that is still in the form of rice fields must first go through the drying permit stage at the Capital Investment Service. This is because it is related to the spatial layout of the land being included in the yellow zone or green zone. The yellow zone is land where buildings are allowed to be built and the green zone is land where buildings are not allowed to be built. The length of time required for a drying permit cannot be guaranteed because it is related to the policies of several related agencies.

Faced with the long time required and the complexity of the administration of processing property rights certificates in the sale and purchase of land, good faith is needed from the seller to seriously carry out the processing of the transfer of ownership rights so that the seller can immediately hand over the object of sale and purchase to the buyer.

c. Analysis of Judges' Considerations Regarding Compensation

Another decision was to reject the petitum so that Defendant would be sentenced to pay material losses to Plaintiff amounting to IDR 121,000,000 (One hundred and twenty-one million rupiah). The panel of judges' considerations rejected the above petitum. Considering that the Defendant cannot yet be categorized as being in default. The application for compensation is made because of losses suffered by the creditor due to the debtor's negligence in not keeping his promise. Compensation can be submitted after a warning is given to the debtor to carry out his promise.[21]

In this case, because the court decision rejected the Plaintiff's petitum that the Defendant was declared in default, where the Defendant could not yet be categorized as in default, a claim for compensation could not yet be filed. Thus, the judge's consideration was correct.

[21] Khairandy.

d. Analysis of the judge's considerations regarding Uitvoerbaar bij voorraad

The Panel of Judges has rejected the Plaintiff's lawsuit, hence the petitum Uitvoerbaar bij voorraad. There are exceptions to the implementation of the decision, one of which is the immediate execution of the decision. As regulated in Article 180 paragraph (1) HIR, the execution of the decision can be carried out first even though it does not yet have permanent legal force or there are legal remedies for Verzet, Appeal, or Cassation. There are conditions for the decision to be granted immediately, namely first, there is an authentic or handwritten deed which according to the law has the force of evidence, second there is another decision that already exists and has permanent legal force and third, there is a provisional lawsuit that is granted. A provisional lawsuit is a preliminary claim that is temporary before the main decision of the case. Based on the provisions of the Supreme Court Circular Letter (SEMA) Number 3 of 2000 in conjunction with Number 4 of 2001 concerning Immediate Verdicts, the requirement to grant an instantaneous decree, especially those relating to executions, must be accompanied by the provision of collateral whose value is equal to the value of the goods/object of execution.

In his decision the judge rejected the provisional demand before the main case demand, considering that the object proposed in the provisional demand was not relevant to the main case. Because the previous petitum was rejected by the judge, there was no immediate decision that could be implemented. Thus, the judge's consideration in rejecting the claim was appropriate.

e. Analysis of the judge's considerations regarding the costs of this case

The Panel of Judges is of the opinion that because the Plaintiff is the defeated party, in accordance with Article 181 HIR, case costs are borne by the Plaintiff, the amount of which will be included in the decision, thus this petitum is also declared rejected. The panel of judges' considerations were correct in rejecting the Plaintiff's claim. In accordance with Article 181 HIR,

the burden of case costs is borne by the losing party. In this case, the Plaintiff was the losing party, because of all his demands, only 1 (one) claim was granted, and the rest were rejected.

Conclusion

In case decision Number 1332/Pdt.G/2020/PA.Btl., the panel of judges considered that the preliminary sale and purchase agreement was declared valid and binding on both parties because it had fulfilled the legal requirements of the agreement. Regarding the claim for breach of contract, the panel of judges rejected that the Defendant had committed a breach of contract because in the preliminary sale and purchase agreement there was no clause on the agreement on the date of delivery of the goods. Based on these considerations, it was stated that the Defendant was not considered to have committed a breach of contract because none of the provisions on the delivery date had been violated.

When making a contract, it is necessary to pay attention to the provisions of the legal terms of the agreement and write clearly and firmly the agreement relating to rights and obligations (achievements) fairly and not burdening either party. Agreement regarding details of the object, period and place of payment and delivery of goods, other rights and obligations choice of legal forum for dispute resolution, and other provisions should be written clearly in the agreement..

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DECLARATION OF CONFLICTING INTERESTS

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