



Judicial responsiveness in the search for material truth regarding the proof of sale and purchase deed

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Abstract

This study discusses judicial responsiveness in the search for material truth regarding the proof of sale and purchase deeds. Judicial responsiveness is an attitude that prioritizes the sensitivity and response of judges to various evidence presented in court. The aim of this research is to analyze the extent to which judges adopt a responsive attitude in evaluating the proof of sale and purchase deeds to achieve material truth. The research method used is normative legal research with a legislative and theoretical concept approach. Data were obtained through literature study by collecting information from various relevant primary and secondary sources. The results show that judicial responsiveness plays an important role in efforts to achieve material truth in the proof of sale and purchase deeds. Judges need to be able to critically and objectively respond to the evidence presented and use relevant legal principles to make fair and just decisions. The conclusion of this study is that the tendency of judges in resolving civil disputes tends to use legal positivism rather than responsive law because fundamentally judges prioritize the principle of legal certainty over the principles of justice and utility. This is evident from the legal considerations in decisions on land sale and purchase disputes, where judges apply Article 165 of the HIR/285 RBg as it is, without critically considering the documentary evidence presented in court, using the paradigm of seeking formal truth and disregarding the paradigm of seeking material truth.

Keywords: Judge, proof, sale and purchase deed

Introduction

One way to obtain or own land is through the sale and purchase of land, meaning that the party desiring to possess the land must purchase it from the seller. The practice of buying and selling land facilitates individuals in acquiring and controlling land, subsequently evidenced by a deed of ownership rights to the land. In the practice of land sale and purchase, a contract or deed of sale is usually made before a PPAT (Land Deed Official) who is authorized (Budiono, 2013) ^[2]

In the implementation of land sale and purchase, before the Sale and Purchase Deed is made, typically both parties have agreed upon the price and the payment method. Both the Seller and the Buyer have made an agreement either verbally or through a private deed, or even created an authentic deed to bind the sale and purchase agreement, often referred to as a Deed of Sale and Purchase Agreement (PPJB). Thus, with the creation of the Sale and Purchase Deed, the sale and purchase transaction is considered valid, and the Seller has received the agreed-upon payment.

However, in practice, it is often found that the Sale and Purchase Deed is made even though the full price has not been paid, as only a partial payment has been made. Nevertheless, the land object has already been registered with the local Land Office for the transfer of ownership from the seller's name to the buyer's name. If the Land Deed Official (PPAT) creates the Sale and Purchase Deed before the full payment of the sale price, it may lead to disputes if the Buyer fails to pay the entire purchase price within the specified period. In this case, the Seller can sue the Land Deed Official (PPAT) and the Buyer for Breach of Contract. However, in some cases of resolving such land sale and purchase disputes through the court, the plaintiff, as the seller, must be careful in presenting the reasons for the

lawsuit, as a mistake in determining the reasons may result in the rejection of the lawsuit.

In cases of sale and purchase disputes like this, the role of the judge in proving the material truth of the sale and purchase deed is a crucial procedure. Proof becomes central because the arguments of the parties are examined through the evidentiary stage to find the law that will be applied or found in a particular case (Ali, 2015) ^[1]. In judicial proof, the search for truth in an event is not the same. The truth that the judge seeks in resolving a case can be formal truth or material in civil litigation, what the judge seeks is formal truth, which means the judge is bound by the evidence or proof presented by the parties (Heryani, 2015) ^[4].

Finding formal truth in civil cases, especially in land sale and purchase disputes, is reflected when the judge evaluates evidence in the form of an authentic deed. If a defendant in a court hearing presents an authentic deed, such as a Deed of Sale and Purchase, stating that on a certain day the plaintiff appeared before the Land Deed Official (PPAT) and at that time explained that they sold their land to the defendant, then the civil judge must consider that the land has indeed been sold to the defendant. This can happen because according to Article 165 of the HIR/Article 285 of the Rbg, an authentic deed is a binding and perfect evidence (Sutini, 2015) ^[9].

Based on the brief description of the above cases regarding disputes over land sale and purchase where the land price has not been fully paid but the object of the sale has transferred to the buyer, there is a similarity where the judges in both cases emphasize the aspect of formal truth. Therefore, in the considerations of the three aforementioned verdicts, the judges rejected the lawsuit for the annulment of the Sale and Purchase Deed filed by the plaintiff as the seller.

The resolution of civil cases that heavily emphasizes the search for formal truth sometimes becomes a reason for dissatisfaction among the litigants with the judge's decision. If judges solely seek formal truth, it's highly possible that the party who is actually correct may lose their case because they cannot provide the requested evidence in court, resulting in judicial decisions that do not always reflect the actual situation. As a consequence, seekers of justice feel injustice and deprived of their rights and interests. Through this study, it is hoped to provide evaluation and input for judges in adjudicating land sale and purchase disputes, as in the research on this issue, so that future decisions can provide justice for the disputing parties.

Research Method

The type of research to be used by the author is normative. The approach employed in this study is the legislative approach and the case approach, conducted by examining several cases, namely Decision Number 40 Pdt.G/2023/PN Byl, Decision Number 151/Pdt.G/2020/PN PDG, and Decision of the Supreme Court Number 888/K/PDT/2017. The ratio decidendi or reasoning becomes the main focus in the case approach, which is the court's considerations to arrive at a decision. The legal materials used are primary legal materials, namely HIR (Herziene Indonesische Reglement) and BW (Burgerlijk Wetboek) or KUHPerdata Book IV Articles 1865 to 1945, as well as secondary legal materials. The analysis of legal materials is conducted through deductive methods, which are then linked to the theory of legal responsiveness in the research problem, namely the tendency of judges to use legal positivism rather than responsive law in proving disputes of land sale and purchase where the land price has not been fully paid by the buyer.

Discussion

Evidence in civil proceedings occupies a very important place. Procedural law, or formal law, aims to preserve and uphold substantive law. Formally, the law of evidence regulates how evidence is presented according to applicable law. Meanwhile, substantively, the law of evidence determines whether a particular piece of evidence can be admitted and its probative value in court. Evidence is the presentation of legally valid evidence to the judge who examines a case to provide certainty about the truth of the events presented (Syahrani, 2016)^[10].

The majority of decisions in land sale and purchase disputes in Civil Courts apply the principle of proving formal truth, as regulated in Article 165 of the HIR/285 R.Bg., which is the general principle in civil cases. Article 165 of the HIR (285 R.Bg.) states that "an authentic deed made by/or in the presence of an authorized public official has probative force that binds all parties (including judges)." Therefore, the Panel of Judges examining disputes over the proof of land sale and purchase, as evidenced by the decisions I found, consider that the Sale and Purchase Deed has probative force that binds the judge.

The analysis in this study focuses more on the tendency of judges to use legal positivism by seeking formal truth rather than using responsive law, which emphasizes substantive justice by seeking material truth in the process of civil evidence regarding the creation of Sale and Purchase Deeds that have not been fully paid, as seen in several decisions such as Decision Number 40/Pdt.G/2023/PN Byl, Decision

Number 151/Pdt.G/2020/PN PDG, and Decision Number 888/K/PDT/2017.

From one of the three aforementioned verdicts, wherein the principal decision of the case, the Panel of Judges rejected the plaintiff's lawsuit for the annulment of the Sale and Purchase Deed. This demonstrates that the panel of judges adjudicating land sale and purchase disputes tends to prioritize the principle of discovering formal truth over seeking material truth. The tendency of judges to only seek formal truth in civil cases is inseparable from the system of evidence adopted by the Indonesian Civil Code, which employs a positive system of evidence. Therefore, an authentic deed has perfect and binding evidentiary force. Perfect, in the sense that judges do not need any other evidence to decide a case based on an authentic deed, and binding, in the sense that judges are bound by the evidence of an authentic deed unless proven otherwise.

The burden of proof is bound by specific provisions as regulated in Article 138 of the HIR, Article 164 of the RBg, and Article 148 of the Rv. Judges and the parties involved in the case are obligated to consider the authentic deed as authentic until the opposing party can prove that the deed presented is not authentic. The opposing party can prove the existence of a legal defect because the official who made it was not careful or did not follow the prescribed procedure. The evidentiary force of an authentic deed is

1. The formal evidentiary force: Article 1871 of the Civil Code explains that all statements contained therein are considered to be true and are conveyed by the signatory to the official who created it. Therefore, all statements given by the signatory in the authentic deed are considered true as intended and desired by the signatory. The presumption of the truth contained therein is not only limited to the statements or declarations contained therein being true from the person who signed them but also includes the formal truth stated by the official who created the deed.
2. The material evidentiary force: Regarding the material evidentiary force of an authentic deed, it concerns whether the statements contained therein are true or not. In other words, it proves between the parties whether the event stated in the deed did indeed occur.

If an authentic deed is challenged by the opposing evidence, its evidentiary force is reduced to preliminary evidence. To meet the minimum proof requirement, it must be supplemented with at least one other piece of evidence. As one type of civil case, land sale and purchase disputes submitted to the Court must, in principle, be adjudicated within the framework of civil procedural law, which entails the search for formal truth. The principles of evidence law provide the foundation for the application of evidence.

Judges in resolving disputes over land sale and purchase should not only seek formal truth regarding the proof of the sale and purchase deed but also strive to find material truth. Prioritizing formal truth does not mean that judges should disregard material truth. According to legal experts and Supreme Court jurisprudence in case number 3136 K/Pdt/1983 dated March 6, 1985, it is no longer appropriate to hold such an opinion. Civil procedural law must now seek material truth, akin to the principles of criminal procedural law.

The resolution of civil cases that heavily emphasizes the search for formal truth sometimes becomes a reason for

dissatisfaction among the litigants with the judge's decision. If judges solely seek formal truth, it's highly possible that the party who is actually correct may lose their case because they cannot provide the requested evidence in court, resulting in judicial decisions that do not always reflect the actual situation.

In situations like this, when connected with the theory of responsive law by Nonet & Szelnick, where the aim of the law is to achieve fair substantive justice for the parties involved, judicial responsiveness becomes crucial. This involves an active role of judges in seeking truth, not merely filtering the evidence presented by the parties without any initiative. This aligns with the duties of judges as stated in Law Number 48 of 2009 concerning Judicial Power, which mandates judges to explore, follow, and understand legal values and the sense of justice in society, as well as to possess integrity and an unblemished character, honesty, fairness, professionalism, and experience. Furthermore, the active role of judges in seeking material truth in civil litigation is also in line with the cassation decision of the Supreme Court of the Republic of Indonesia Number 3136 K/Pdt/1983, which asserts that courts are not prohibited from seeking and discovering material truth in adjudicating civil cases.

The position and strength of evidence will influence the judge to reach their conviction in deciding the case because evidence functions to persuade the judge. The judge's conviction is crucial in adjudicating civil cases, even if all evidence has been fully presented by the litigants, and even though the truth sought is formal truth, but formal truth is interpreted as the truest or ultimate truth. As observed in the decisions in this study, there is a tendency to prioritize the principle of legal certainty by using the principle of seeking formal truth in legal considerations, especially when faced with the provisions of Article 165 of the HIR/285 RBg.

The legal positivism ideology strongly influences the tendency of judges in resolving land sale and purchase disputes to prioritize the principle of legal certainty over the principles of justice and utility. This is evident in the legal considerations of the decisions in land sale and purchase dispute cases, where Article 165 of the HIR/285 RBg is applied as it is, without critically considering documentary evidence in court proceedings. This reflects a paradigm of seeking formal truth and disregarding the paradigm of seeking material truth.

The process of evidence that solely seeks formal truth is perceived as unjust in civil disputes, particularly in proving land sale and purchase disputes, as it essentially leads to arbitrary seizure of private property rights by the court, which is guaranteed by the constitution. Theoretically, the purpose of an authentic deed is to serve as a document intentionally and formally created for the purpose of future proof in case of disputes. Ideally, a judge who receives an official (authentic) document issued based on legal provisions that are valid and perfect should not immediately apply formal truth rigidly because the perfection value of the document does not stand alone; rather, it still requires support from other pieces of evidence.

Conclusion

The tendency of judges in resolving civil disputes leans more towards legal positivism rather than responsive law, as judges inherently prioritize the principle of legal certainty over the principles of justice and utility. This is evident in

the legal considerations of decisions in land sale and purchase dispute cases, where judges apply Article 165 of the HIR/285 RBg as it is, without critically considering documentary evidence in court proceedings, using the paradigm of seeking formal truth while disregarding the paradigm of seeking material truth.

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