

**Juridical consequences of lending and borrowing agreements
that are covered with the substance of buying and selling paid
off ownership rights to land**

Charles Lungkang¹
lungkang2003@hotmail.com
Dwijendra University

Putu Dyatmikawati²
puhmika.dwijendrabali@gmail.com
Dwijendra University

Made Gde Subha Karma Resen³
Karma_resen@unud.ac.id
Udayana University

Abstract

The position of the lending and borrowing agreement which is covered by the substance of the sale and purchase of paid off land ownership rights, in this case the position is based on an agreement or loan agreement between the parties which requires the borrowing party to pay off the debt after a certain period of time accompanied by payment of a number of rewards. Lending within a certain period of time set by the lender. The loan recipient pays off the loan, by returning the loan money. The position of the lending and borrowing agreement relates to freedom of contract, the parties can regulate the contents of the agreement as long as it is not prohibited by law and propriety and in the contract must fulfill the terms of the agreement. This position is born from the existence of an agreement between the two parties, namely the borrower and the lender, so with this agreement the loan agreement is binding on both parties, that is, the parties cannot cancel the loan agreement without the approval of the other party. If the loan agreement is canceled or terminated unilaterally, the other party can sue. After the money that is the object of the agreement has actually been handed over by the lender to the borrower, the borrower must or has the obligation to return the loan on time to the lender in accordance with the agreement in the agreement.

Keywords : Juridical consequences, lending and borrowing agreements, covered substance, buying and selling.

¹ Master of Law, Dwijendra University, Indonesia

² Lecturer, Dwijendra University, Indonesia

³ Lecturer, Udayana University, Indonesia

1. Introduction.

The agreement is the most important source that gave birth to the agreement. Indeed, most of these agreements are issued by an agreement, but as has been described, there are also other sources that give birth to agreements, these other sources include laws. So from an agreement that was born from an "agreement" and there is an agreement that was born from a law (Subekti, 2005:1).

Legal relations contained in engagements and in agreements have legal consequences so that they can be used as a tool that can force the parties to mutually fulfill their achievements, because in social life in society there are still many agreements or agreements that exist outside the law, and many agreements arise from politeness. courtesy or promises that do not need to be considered by law.

A person or group of people in interacting with other people or legal entities must have a common goal of mutual benefit which is known as symbiosis mutualism. In the case of borrowing and borrowing, for example, it has become a form of legal relationship that has existed since human civilization. Rules or norms in society are not enough to guarantee the continuity of human life because the sanctions are not strict for those who violate them so that the mistake can be repeated again, so a law is drawn up that has strict sanctions against the violators, that the goal in the theory of jurisprudence confirms (Ali, 2012 :48).

Legal theory cannot be separated from the environment of its era, we often see it as an answer given to legal problems or challenging a dominant legal thought at a time. Therefore, even though he wishes to express a thought universally, it would be good for us to always be aware that the theory has such a background of thought. In connection with such a situation, we should not be able to separate these theories from

the context in which they appeared, it is better to understand such a background (Ali, 2012: 48).

According to Article 1338 paragraph (3) of the Civil Code (KUHPerdata) a contract must be executed in good faith. The element of good faith in Article 1338 of the Civil Code is not a condition for the validity of a contract but is required in the implementation of a contract, with the element of good faith in a contract it can be said that the elements in Article 1320 of the Civil Code regarding legal clauses have been fulfilled. It can be said that a contract has been made legally, that is, it fulfills the legal requirements of the contract in accordance with Article 1320 of the Civil Code. If the contract in its making has been made in good faith by the parties but in carrying out the contents of the contract it actually harms interested parties, it can be said that the contract has been carried out contrary to good faith.

As with a loan agreement that is born from the existence of an agreement between the two parties, namely the borrower and the lender, then with this agreement the loan agreement is binding on both parties, that is, the parties cannot cancel the loan agreement without the approval of the other party.

If the loan agreement is canceled or terminated unilaterally, the other party can sue. After the money that is the object of the agreement has actually been handed over by the lender to the borrower, the borrower must or has the obligation to return the loan on time to the lender in accordance with the agreement in the agreement. The lending and borrowing agreement in this case is actually surrendered or in other words the agreement is only said to be binding if an agreement has been made and a handover has been made simultaneously between the two parties who made the agreement.

Regarding the lending and borrowing, polemics and conflicts may occur in the future if the loan agreement violates applicable legal norms and regulations. The

polemic about the law that develops in society with the relationship in terms of lending and borrowing with collateral for land as the object of collateral for loans is camouflaged in disguise, in this case the loan agreement which is veiled by the substance of buying and selling paid off land ownership rights. That these loans will lead to legal problems because they ignore existing legal principles.

In writing this research, the author raises the title of the research entitled "Position of Lending and Borrowing Agreements Enveloped by the Substance of Sale and Purchase of Paid Property Rights to Land" in terms of aspects of existing norms, both emptiness of norms and/or ambiguity of norms, and/or norm conflict. Polemics about the law that developed in the community / legal cases related to public relations in terms of borrowing and borrowing with land guarantees are common knowledge, that these loans will lead to legal problems because they ignore legal principles.

2. Analysis and Discussion.

2.1. The position of the loan agreement.

The loan-borrowing agreement according to the Civil Code article 1754 which reads: Borrowing is an agreement in which one party gives the other party a certain amount of goods that are used up due to use, with the condition that the latter party will return the same amount of same type and condition.

Loans are the provision of money or bills that can be equated with that, based on a loan agreement or agreement between the parties that requires the borrower to pay off the debt after a certain period of time accompanied by payment of a fee. Lending within a certain period of time set by the lender. The loan recipient pays off the loan, by returning the loan money.

The position of the lending and borrowing agreement relates to freedom of contract, the parties can regulate the contents of the agreement as long as it is not

prohibited by law, decency and jurisprudence, in the contract must fulfill the following conditions:

1. Qualify as a contract
2. A contract to bind both parties, the conditions that must be met include (Fuady, 2007:33-34): a. General legal requirements consist of first, Article 1320 of the Civil Code regarding general legal requirements, second, general legal requirements outside Articles 1338 and 1339 of the Civil Code. b. The specific legal requirements consist of First, for certain contracts the terms of the deed of certain officials (who are not notaries) are required. Second, written requirements for certain contracts. Third, the conditions for permission from the authorities. Fourth, the notarial deed requirements for certain contracts;
3. Not prohibited by law, namely not contrary to the provisions of the applicable laws and regulations.
4. In accordance with prevailing customs. The provisions of Article 1339 of the Civil Code also stipulate that a contract is not only binding on the contents of the contract, but also on things that are customary.
5. As long as the contract is executed in good faith. (Fuady, 2007:33-34).

According to Article 1338 paragraph (3) of the Civil Code, a contract must be executed in good faith. The element of good faith in Article 1338 of the Civil Code is not a condition for the validity of a contract but is required in the implementation of a contract, with the element of good faith in a contract it can be said that the elements in Article 1320 of the Civil Code regarding legal clauses have been fulfilled. It can be said that a contract has been made legally, that is, it fulfills

the legal requirements of the contract in accordance with Article 1320 of the Civil Code. If the contract in its making has been made in good faith by the parties but in carrying out the contents of the contract it actually harms interested parties, it can be said that the contract has been carried out contrary to good faith.

As with a loan agreement that is born from the existence of an agreement between the two parties, namely the borrower and the lender, then with this agreement the loan agreement is binding on both parties, that is, the parties cannot cancel the loan agreement without the approval of the other party.

If the loan agreement is canceled or terminated unilaterally, the other party can sue. After the money that is the object of the agreement has actually been handed over by the lender to the borrower, the borrower must or has the obligation to return the loan on time to the lender in accordance with the agreement in the agreement. The lending and borrowing agreement in this case is actually surrendered or in other words the agreement is only said to be binding if an agreement has been made and a handover has been made simultaneously between the two parties who made the agreement.

Regarding the lending and borrowing, polemics and conflicts may occur in the future if the loan agreement violates applicable legal norms and regulations. The polemic about the law that develops in society with the relationship in terms of lending and borrowing with collateral for land as the object of collateral for loans is camouflaged in disguise, in this case the loan agreement which is veiled by the substance of buying and selling paid off land ownership rights. That these loans will lead to legal problems because they ignore existing legal principles.

Many agreements are made with the public, both written and unwritten regarding buying and selling, goods payable or cooperation agreements and so on

which in essence refer to the basis of freedom of contract as implied in Article 1338 of the Civil Code which gives freedom to people to make any type of agreement and whatever contents, as long as they do not conflict with the Law, Decency and Public Order.

In everyday life, it can be found that many community interests can be fulfilled through agreements. Thus, in fact the term agreement is not a foreign term to be heard in daily life, at any time consciously or unconsciously, most people always make agreements in their lives (Abdulkadir Muhamad, 2011: 93).

The agreement is the most important source that gave birth to the agreement. Indeed, most of these agreements are issued by an agreement, but as has been described, there are also other sources that give birth to agreements, these other sources include laws. So from an agreement that was born from an "agreement" and there is an agreement that was born from a law (Subekti, 2005: 1-2).

Legal relations contained in engagements and in agreements have legal consequences so that they can be used as a tool that can force the parties to mutually fulfill their achievements, because in social life in society there are still many agreements or agreements that exist outside the law, and many agreements arise from politeness, courtesy or promises that do not need to be considered by law.

Agreement as a relationship that has a legal context regarding materially valuable property or objects between two parties in which one party promises to do something while the other party has the right to demand the implementation of the promise. A legal action carried out by two or several parties with the aim of establishing an agreement between them.

As a form of law that stands alone, of course the agreement has principles that form its basis. What is meant by principles are principal matters for the creation

of an agreement as it should be. These matters include those relating to the binding force of an agreement, the scope of its application, as well as the will of the parties entering into the agreement. While the elements in question are the parts of an agreement, which can determine whether there is an agreement or not.

Regarding the lending and borrowing, polemics and conflicts may occur in the future if the loan agreement violates applicable legal norms and regulations. The polemic about the law that develops in society with the relationship in terms of lending and borrowing with collateral for land as the object of collateral for loans is camouflaged in disguise, in this case the loan agreement which is veiled by the substance of buying and selling paid off land ownership rights. That these loans will lead to legal problems because they ignore existing legal principles.

3.2. Lending and borrowing agreements that are covered with the substance of buying and selling paid off ownership rights to land.

The binding sale and purchase is a form of agreement prior to the sale and purchase of land rights. Lending and borrowing agreements that are covered with the substance of buying and selling paid off land ownership rights, in this case whether the agreement is acceptable in land law. Article 37 paragraph (1) of Government Regulation Number 24 of 1997 states that: "Transfer of land rights and ownership rights to apartment units through buying and selling, exchange, grants, income within the company and other legal actions of transferring rights, except for transferring through an auction can only be registered if it is proven by a deed drawn up by an authorized Land Deed Official (PPAT) according to the provisions of the applicable laws and regulations".

The provisions of Article 37 paragraph (1) of Government Regulation Number 24 of 1997 actually do not determine whether or not a transfer of land rights

is valid or not, for example through buying and selling, but regulates the registration of the transfer of rights. This means that regarding the validity or not and the occurrence of a legal act of transferring land rights does not depend on the presence or absence of the PPAT deed, as well as being carried out and/or not being carried out before the PPAT.

This can be seen in the provisions of Article 37 paragraph (2) which states that: "Under certain circumstances as determined by the Minister, the Head of the Land Office can register the transfer of rights over parcels of land with ownership rights, carried out between individual Indonesian citizens as evidenced by a deed which was not made by the PPAT, but according to the Head of the Land Office the level of truth is deemed sufficient to register the transfer of the title in question.

Until now, there are no laws and regulations governing the legal terms of sale and purchase agreements on land rights in Indonesia. This is different from the Civil Code (KUH Perdata) which regulates the legal terms of an agreement. The next issue that arises is whether in this way the terms of the validity of the agreement as stated in Article 1320 of the Civil Code can be applied for the validity of a sale and purchase agreement on land rights.

The lending and borrowing agreement which is covered with the substance of the sale and purchase of land ownership rights if it refers to the binding carried out by the PPAT can be considered valid, but if the loan agreement which is covered with the substance of the sale and purchase of paid ownership rights to the land violates the terms and conditions the terms of the validity of the agreement as stated in Article 1320 of the Civil Code, the agreement is null and void.

A new agreement is said to be valid if certain conditions are met. These conditions in article 1320 K.U.H. Civil Code stipulates that: For an agreement to be valid, 4 (four) conditions are required, namely:

1. Agree those who bind themselves

This condition implies that the parties making the agreement have agreed or there is a mutual agreement of will or mutually agreed to the will of each that was born by the parties. This will or desire that is born must be carried out freely, without any coercion, negligence or fraud. If the agreement is made on the basis of these three things, then such agreement is considered imperfect. So that the agreement made, by itself is also considered invalid, and can be requested for annulment to the Judge by one of the parties who feel aggrieved from the agreement.

According to Subekti, the teaching that is commonly adhered to is that "The agreement must be considered born when the party making the offer accepts the answer referred to in the letter, because that moment can be considered as the moment the agreement is born (Subekti, 2005:28).

2. Capable To Make An Agreement

Proficiency is a general requirement to be able to carry out legal actions legally, that is, must be an adult, healthy mind and not prohibited by a law or regulation from carrying out a certain legal action. Regarding this matter, you can find the arrangement in book 1 K.U.H. Civil law on people.

Likewise, by making an agreement, a person is said to be competent if based on the provisions of the law, he is considered capable of making an agreement himself with perfect legal consequences. People who are categorized as competent in this case are those who are 21 years old or not

yet 21 years old but have been married (article 330 K.U.H. Civil Law yo article 47 Law No. 1 of 1974). Does not include people who have been decided by the Court to be under amnesty article 1330 yo article 433 K.U.H. Civil.

3. A Certain Thing

What is meant by a certain thing in an agreement is the goods that are the object of the agreement (achievement) in other words, what rights and obligations are agreed upon by both parties if a dispute arises in the future (Subekti, 2005: 19).

In article 1333 K.U.H. Civil Code states that: "An agreement must have as the subject of an item of at least a specified type. It is not an obstacle that the amount of goods is not certain as long as the amount can later be determined or calculated (Subekti, 2005:1-2).

Besides that, it is also determined that the goods that can be used as the object of the agreement are only goods that can be traded (article 1332 of the Civil Code). So that the goods cannot be used as the object of the agreement. The goods in question are listed in article 521, article 522 and article 523 K.U.H. Civil (Riduan Syahrani, 2005:212).

4. A Halal Cause

In article 1335 K.U.H. The Civil Code stipulates that, "An agreement without cause or which has been made for a reason that is fake or prohibited, does not have force. This condition (a lawful cause) in an agreement, as stated by Abdulkadir Muhamad, stated that a cause is "something that causes people to make agreements (Abdulkadir Muhamad, 2011:94).

So that a cause that is not lawful, such as a cause that is contrary to law, decency and public order, cannot be made into the contents of an agreement. This is stated in article 1337 K.U.H. Civil. Thus an agreement containing lawful causes or *causas* applies and is binding for each party making the agreement. This understanding shows that all: the agreement has a cause, there is no agreement without a cause. Thus a cause that is lawful as a condition for the validity of an agreement is a cause that is not contrary to law, decency and public order which is the content and purpose to be made by the parties.

Basically, the lending and borrowing agreement which is covered with the substance of the sale and purchase of land ownership rights if it refers to the binding carried out by the PPAT can be considered valid, but if the loan agreement which is covered with the substance of buying and selling in full of ownership rights to the land violates the terms of the validity of the agreement as stated in Article 1320 of the Civil Code, the agreement is null and void.

3. Conclusion.

The position of the lending and borrowing agreement which is covered by the substance of the sale and purchase of paid off land ownership rights, in this case the position is based on an agreement or loan agreement between the parties which requires the borrowing party to pay off the debt after a certain period of time accompanied by payment of a number of rewards. Lending within a certain period of time set by the lender. The loan recipient pays off the loan, by returning the loan money. The position of the lending and borrowing agreement relates to freedom of contract, the parties

can regulate the contents of the agreement as long as it is not prohibited by law and propriety and in the contract must fulfill the terms of the agreement. This position is born from the existence of an agreement between the two parties, namely the borrower and the lender, so with this agreement the loan agreement is binding on both parties, that is, the parties cannot cancel the loan agreement without the approval of the other party. If the loan agreement is canceled or terminated unilaterally, the other party can sue. After the money that is the object of the agreement has actually been handed over by the lender to the borrower, the borrower must or has the obligation to return the loan on time to the lender in accordance with the agreement in the agreement. The lending and borrowing agreement in this case is actually surrendered or in other words the agreement is only said to be binding if an agreement has been made and a handover has been made simultaneously between the two parties who made the agreement. Regarding lending and borrowing, polemics and conflicts may occur in the future if the loan agreement violates applicable legal norms and regulations. It is suggested to people who are going to make a material loan agreement that is legally obligatory based on the form of the agreement which has four conditions for the validity of the agreement based on Article 1320 of the Civil Code. Communities who make agreements are advised to understand that the four conditions are further divided into subjective and objective conditions that must be understood.

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