

Perbuatan Melawan Hukum Setelah Penandatanganan Perjanjian Pengikatan Jual Beli (Studi Putusan Mahkamah Agung Republik Indonesia Nomor 1837 K/Pdt/2020) = Unlawful Acts After Signing of the Sale and Purchase Binding Agreements (Study of the Decision of the Supreme Court of the Republic of Indonesia Number 1837 K/Pdt/2020)

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Abstrak

Proses jual beli seringkali didasari dengan pembuatan Perjanjian Pengikatan Jual Beli sebelum dilanjutkan dengan Akta Jual Beli. Para pihak tidak menyadari adanya ketentuan yang juga mengikat akibat pembuatan Perjanjian Pengikatan Jual Beli walaupun belum terjadinya peralihan hak. Penulisan ini terdiri dari dua rumusan masalah, yaitu mengenai akibat hukum terhadap perbuatan melawan hukum setelah penandatanganan Perjanjian Pengikatan Jual Beli dan mengenai pertimbangan hakim dalam memutus perkara perbuatan melawan hukum setelah penandatanganan Perjanjian Pengikatan Jual Beli. Penulisan ini menggunakan metode yuridis normatif dan tipologi penelitian eksplanatoris. Bahan hukum yang digunakan adalah bahan hukum primer berupa peraturan perundang-undangan yang mengatur terkait Perjanjian Pengikatan Jual Beli, Akta Pemberian Hak Tanggungan, perbuatan melawan hukum, dan juga kredit, sedangkan bahan hukum sekunder yang terdiri dari buku, jurnal, dan internet. Penulisan ini juga melakukan wawancara baik terhadap Notaris dan PPAT serta juga kepada Bank. Penulis menyimpulkan bahwa akibat adanya perbuatan melawan hukum setelah dilakukan penandatanganan Perjanjian Pengikatan Jual Beli, maka Akta Pemberian Hak Tanggungan dapat batal demi hukum karena tidak dibuat atas dasar sebab yang halal. Selain itu, pertimbangan majelis hakim dalam memutuskan perkara perbuatan melawan hukum setelah penandatanganan Perjanjian Pengikatan Jual Beli kurang tepat karena tidak mempertimbangkan mengenai hak dan kewajiban yang timbul akibat Perjanjian Pengikatan Jual Beli. Majelis hakim juga seharusnya mempertimbangkan tentang perbuatan Bank. Hal ini karena Bank tidak menerapkan prinsip kehati-hatian Bank dalam pemeriksaan sebelum pemberian kredit.

.....The buying and selling process is often based on the making of a Sale and Purchase Binding Agreement before proceeding with the Sale and Purchase Deed. The parties are not aware of the existence of provisions that are also binding due to the making of the Sale and Purchase Binding Agreement even though there has not been a transfer of rights. This writing consists of two problem formulations, namely regarding the legal consequences of unlawful acts after the signing of the Sale and Purchase Binding Agreement and regarding the judge's considerations in deciding cases of unlawful acts after the signing of the Sale and Purchase Binding Agreement. This writing uses a normative juridical method and an explanatory research typology. The legal materials used are primary legal materials in the form of laws and regulations relating to the Sale and Purchase Binding Agreement, Deed of Granting Mortgage Rights, unlawful acts, and also credit, while secondary legal materials consist of books, journals, and the internet. This writing also conducts interviews with both Notaries and PPAT as well as to Banks. The author concludes that as a result of an unlawful act after the signing of the Sale and Purchase Binding Agreement, the Deed of Granting Mortgage may be null and void because it was not made on the basis of a lawful cause. In addition, the consideration of the panel

of judges in deciding cases of unlawful acts after the signing of the Sale and Purchase Binding Agreement is not appropriate because it does not consider the rights and obligations arising from the Sale and Purchase Binding Agreement. The panel of judges should also consider the actions of the Bank. This is because the Bank does not apply the prudential principle of the Bank in the examination before granting credit.