



Forgery Of Sale and Purchase Deeds on The Basis Of Debt Receivables (Decision Study No. 10/Pid.B/2019/Pn.Lbj)

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Abstract

In the Indonesian legal system, debt agreements that transform into ownership transfers can create serious legal problems, particularly regarding potential document forgery crimes. Generally, this issue arises when creditors unilaterally create transfer deed documents for debt collateral objects without valid consent from debtors, especially when done through public officials such as (Land Deed Making Officer) in the form of Sale and Purchase Deeds. Based on this normative legal research which analyzes various aspects ranging from the formulation of document forgery crimes in the Criminal Code, the relationship between creating land sale and purchase deeds with forgery crimes, to judicial considerations in concrete cases, it was found that perpetrators of sale and purchase deed forgery can be sentenced to a maximum of 8 years imprisonment, and to prove the existence of forgery in deed creation requires strong evidence in court proceedings, as seen in Decision No. 10/Pid.B/2019/PN.Lbj which was ultimately declared time-barred due to exceeding the prosecution time limit.

Keywords

Forgery, sale and purchase deed, debt agreement.

Introduction

Land is a human need that cannot be avoided and denied and one of the natural resources that has many benefits for human life. Human needs for land are increasing day by day along with the development of the world, humans need land for a place to live and a source of life.¹ That is why, everyone really needs land, both on a small scale for housing needs and on a large scale for social and business needs. In accordance with laws and regulations, land must be utilized and used massively for the welfare of the community while paying attention to its sustainability.²

One way to acquire land is through buying and selling. Buying and selling is regulated in Article 1457 of the Civil Code (hereinafter referred to as the Civil Code), namely "Buying and selling is an agreement by which one party binds himself to hand over an object and the other party to pay the promised price".³ The one promised by one party (the seller) surrenders or transfers his ownership rights over the goods offered, while the one promised by the other party pays the agreed price. Although it has been mentioned in one of the articles of the Law, it is only right that this price must be in the form of a sum of money, because if not, it is no longer called a sale and purchase, but rather an exchange. Furthermore, what must be handed over by the seller to the buyer is the ownership rights over the goods, so it is not just power over the goods, what must be done is a legal handover or levering. According to civil law there are three types of legal handover, namely:⁴

1. Delivery of movable goods
2. Delivery of immovable goods
3. Submission of receivables in the name of each of which has its own methods.

So it can be concluded that the definition of a land sale and purchase agreement is an agreement where the seller promises and binds himself to sell the land and hand over the land rights (land certificate) in question to the buyer, while the buyer also promises and binds himself to be willing to pay the land price according to what has been mutually agreed upon.

Sale and purchase is a legal event in the form of the transfer of land rights to another party, this is stated in Article 20 paragraph (2) and Article 35 paragraph (3) of Law No. 5 of 1960 concerning Basic Agrarian Principles (hereinafter referred to as UUPA) which states that ownership rights and building use rights can be transferred and assigned. The transfer of rights as a result of an agreement where one party binds himself to hand over an object

¹ Benhard Limbong, *Konflik Pertanahan*, Jakarta: Margaretha Pustaka, 2012, hal. 2.

² Achmad Rubaie, *Hukum Pengadaan Tanah Untuk Kepentingan Umum*, Malang, Bayumedia, 2017, hal.1.

³ Subekti (I), *Hukum Perjanjian*, Jakarta: Intermasa, 2014, hal. 79

⁴ *Ibid.*

(land) and the other party to pay the agreed price, the sale and purchase here is an agreement to transfer land rights, which gives a new right to the land.

UUPA has ordered the government to carry out land registration. The implementation of land registration in Article 1 number 24 of Government Regulation Number 24 of 1997 concerning Land Registration has determined the Position of Land Deed Making Officer who is given the authority to make certain land deeds, as evidence of certain legal acts regarding land rights that will be used as the basis for registration. Systematic recording of land and the rights attached to it is very important, both for state administration and for the planning and development of the land itself, as well as for legal certainty in the transfer, assignment or encumbrance of rights.⁵ With the provisions of the UUPA, land sales and purchases are no longer made before the Customary Head or Village Head underhand, but before a Land Deed Making Officer (PPAT) or Temporary Land Deed Making Officer (Temporary PPAT) if a Sub-district has not yet been appointed a PPAT. They are appointed by the Head of the National Land Agency of the Republic of Indonesia, based on certain conditions. With the requirement for land sales and purchases before a PPAT or Temporary PPAT, Government Regulation Number 37 of 1998 has been issued which has been amended by Government Regulation Number 24 of 2016 concerning the Regulation of the Position of Land Deed Making Officers.

Seeing the huge role of land, the state is obliged to regulate the use and designation of land. In addition to being transferable, land can also be used as collateral for debts. Unlike buying and selling where there is a transfer of the object of the agreement, debts are usually based on borrowing which is an agreement between one person and another, the object in this agreement is generally money. The position of one party as the party providing the loan and the other party receiving the loan with the provision that the money borrowed will be returned within a certain period of time based on mutual agreement without including collateral or including collateral for land rights which are often known as mortgage rights.⁶

Debt is an agreement between one party and another party and the object agreed upon is generally money. The position of one party as the party providing the loan, while the other party receives the loan. The money borrowed will be returned within a certain period of time according to what was agreed upon..⁷

⁵ Irawan Soerodjo, *Kepastian Hukum Pengalihan Hak Atas Tanah di Indonesia*, Surabaya: Arkola, 2003, hal. 27.

⁶ Gatot Supramono, *Perjanjian Hutang Piutang*, Jakarta : Kencana, 2013, hal. 9.

⁷ Meyske Tanamal, dkk, "Jual Beli Tanah dan Bangunan Atas Objek Jaminan Utang," *TATOHI: Jurnal Ilmu Hukum* Vol 2, No 4 2022: 361-373, hal. 364.

Debt agreements, usually followed by the submission of collateral as a condition for the return or settlement of debt, this is done to anticipate if the debtor defaults by not paying/settling the debt. That creditors in providing loans to debtors, of course, are not immediately willing to fulfill the debtor's request, before giving the creditor must first consider several things about whether or not the request can be granted.⁸ The collateral most often used in debt guarantees is land because it has high economic value and will not experience a decrease in value.⁹ The existence of collateral in the credit agreement process is an effort to provide certainty regarding debt repayment by the debtor as a means of security and protection for the creditor.

When a debt agreement changes into a transfer of rights, it can cause problems. In a debt agreement, the party providing the loan may not immediately make a deed of transfer of rights to the object of the debt collateral provided by the borrower. Moreover, the transfer of rights is carried out in the presence of a public official, such as a PPAT who issues a Deed of Sale and Purchase in the transfer of rights. PPAT is a public official who plays a very important role in ensuring certainty, order, and legal protection through deeds made by and before them. An authentic deed is strong evidence, and if a dispute arises in court, the PPAT deed provides perfect evidence as referred to in Article 1870 of the Civil Code to the parties who made it, unless there are elements of forgery in the making of the deed.

Decision No. 10/Pid.B/2019/PN.Lbj presents a concrete case where Frans Oan Semewa unilaterally made a Deed of Sale and Purchase No. 53/JB/KK/IV/1998 on land owned by Cristian Nathanael which was used as collateral for debt without the owner's consent, then changed the name on the certificate in 1998. The District Court granted the decision of the expiration because the case was reported by Cristian Nathanael in 2015 or 17 years after the deed was made, thus exceeding the 12-year prosecution time limit based on Articles 78 and 79 of the Criminal Code. However, the Kupang High Court reversed the decision by considering the jurisprudence that the calculation of the expiration period starts from when the victim became aware of the forgery, not from when the deed was made, and sentenced the defendant to 2 years and 6 months because he was proven to have used fake authentic documents that harmed the rights of the original land owner.

⁸ *Ibid*, hal. 365.

⁹ Indah Lestari, "Kepastian Hukum Atas Keabsahan Akta Jual Beli Sebagai Dasar Hutang Piutang Berdasarkan Surat Pernyataan (Studi Putusan Nomor 859 PK/PDT/2019)", *Imanot: Jurnal Kemahasiswaan Hukum & Kenotariatan* Vol. 2 No. 2 2023, hal. 594.

Methods

This study uses a normative legal research method with a descriptive analytical nature and a qualitative approach to examine legal problems through an in-depth analysis of positive law and applicable legal norms. The data used are secondary data as the main data in the form of laws and regulations, books, journals, and related research results, which are supported by primary data through interviews with Notaries as supporting data. Data collection techniques are focused on literature studies through analysis of relevant legal documents, with data analysis using a descriptive qualitative approach and deductive drawing of conclusions to obtain a comprehensive understanding of the issues being studied.

Result, Discussion and Analysis

Formulation of the Criminal Act of Forgery of Documents Based on the Criminal Code in Relation to Debts and Receivables

One of the elements of the crime of forgery of letters referred to in the criminal provisions of Article 263 paragraph (1) of the Criminal Code, the contents of which are as follows:

"Whoever makes a fake letter or falsifies a letter, which can issue a right, an agreement (obligation) or a debt relief, or which can be used as information for an act, with the intention of using or ordering another person to use the letters as if the letter were genuine and not forged, then if using it can cause a loss, he is punished for forgery of letters, with a maximum imprisonment of six years."

In this case, the element contained in Article 263 paragraph (1) of the Criminal Code, forgery of debt made for debt relief. The crime of forgery of letters referred to in the criminal provisions of Article 263 paragraph (1) of the Criminal Code is the creation of a fake letter that can give rise to a right, an obligation or a debt relief. If the forgery of the letter causes a loss, the perpetrator can be punished with a maximum imprisonment of 6 years.

In addition, Article 264 of the Criminal Code stipulates that falsification of official documents, especially official letters, is a more serious offense. Article 264 of the Criminal Code states that:

(1) Forgery of letters is punishable by a maximum of eight years' imprisonment, if committed against:

- a. authentic deeds
- b. debt letters or debt certificates from a country or part thereof or from a public institution

- c. holdings or debt letters or holdings or debt certificates from an association, foundation, corporation or airline
- d. talon, proof of dividends or interest from one of the letters described in 2 and 3, or proof issued as a substitute for those letters
- e. letters of credit or trade letters intended for circulation.

(2) Anyone who intentionally uses the letter referred to in the first paragraph, the contents of which are not true or which are falsified as if they were true and not falsified, is threatened with the same punishment if the falsification of the letter can cause loss.

This provision confirms that the act of falsifying official documents, such as authentic deeds, debt letters, or bank credit letters, is a serious violation of the law. An authentic deed is an official document made in accordance with the provisions of the law, either by or before an official who has the authority to do so, usually at the place where the agreement or transaction takes place. This type of document is generally in the form of an agreement and is related to an agreement made by an individual or group in society. Perpetrators involved in falsifying these official documents can be subject to criminal sanctions in the form of imprisonment with a maximum sentence of up to 8 (eight) years..

The act of forging authentic deeds in relation to debts, including the category of criminal acts as referred to in Article 264 of the Criminal Code, where in the Decision of the Kupang High Court Number 68/Pid/2019/PT KPG, the panel of judges has stated that the Defendant Frans Oan Semewa was found guilty of committing a crime using a fake authentic letter and sentenced the Defendant to imprisonment for 2 (two) years and 6 (six) months.

The authentic deed forged by the Defendant Frans Oan Semewa in the case was the Deed of Sale and Purchase No. 53/JB/KK/IV/1998 made by Drs. Yos Vind Ndahur, Head of Komodo District who acted as the Land Deed Making Officer (PPAT) for the Komodo District area, the contents of which were not true or were forged as if they were true and not forged, where the object of the sale and purchase was land owned by Cristian Nathanael. In the Deed of Sale and Purchase, Cristian Nathanael is recorded as the Seller and Frans Oan Semewa as the Buyer..¹⁰

In the Deed of Sale and Purchase based on the Minutes of the Criminalistic Laboratory Examination of Document Evidence Number LAB: 92 / DTF / 2018 made by the Forensic Laboratory Center of the National Police Criminal Investigation Unit, Denpasar Branch dated July 9, 2018, which concluded in essence that the signature of Christian Nathanael as the seller in the Deed of Sale and Purchase Number 53 / JB / KK / IV / 1998 is Non-Identical. This means that there was a forgery of the signature carried out by the Defendant

¹⁰ Putusan Pengadilan Negeri Labuan Bajo Nomor 10/Pid.B/2019/PN Lbj, hal. 4.

Frans Oan Semewa in order to be able to issue a Deed of Sale and Purchase between the Defendant Frans Oan Semewa and Christian Nathanael (the victim). As a result of the making of the Deed of Sale and Purchase, it means that the rights to the land referred to in the Deed of Sale and Purchase have been transferred from the ownership of Christian Nathanael to the Defendant Frans Oan Semewa as a sale and purchase transaction, even though the actual fact is that the legal relationship between Christian Nathanael and the Defendant Frans Oan Semewa is a debt or borrowing. Based on the provisions of Article 1754 of the Civil Code which states: "borrowing and lending is an agreement by which one party gives another party a certain amount of goods which are used up, on the condition that the latter will return the same amount in the same condition."¹¹

So debt or loan is a transaction between two parties where one voluntarily gives his money to another to be returned to him by the second party with something similar. Or someone gives money to another party to be used and then returned the amount that was owed. Or giving money or goods to someone with an agreement that he will pay the same amount..¹² So, in a debt agreement, it cannot be changed or made into a sale and purchase, even though the party borrowing the money provides a certificate of ownership as collateral to the party providing the loan as security. However, this does not mean that the collateral can immediately be used as an object of sale and purchase..

If in a debt receivable there is a default committed by the debtor, then there will be legal consequences/legal responsibilities/legal sanctions that must be accepted by the debtor, namely:

- a. the debtor is required to pay the losses suffered by the creditor or what is called paying compensation;
- b. cancellation of the agreement or also called the termination of the agreement;
- c. transfer of risk;
- d. the debtor is required to pay court costs if it is brought to court, and the debtor is proven to have committed a default.¹³

So, if the debtor defaults, there are sanctions or responsibilities that must be fulfilled by the debtor to the creditor, where the creditor cannot arbitrarily make a Deed of Sale and Purchase unilaterally when a default occurs.

¹¹ R.Subekti Dan R. Tjitrosudibyo, *Kitab Undang-Undang Hukum Perdata*, Jakarta:Pradnya Paramita, 1992, hal.451.

¹² Dede Rudin, *Tafsir Ayat Ekonomi*, Semarang: Karya Abadi Jaya, 2012, hal. 86.

¹³ H. R. Daeng Naja, *Hukum Kredit Dan Bank Garansi*, Bandung: Citra Aditya Bakti, 2011, hal 124.

Based on the making of Deed of Sale and Purchase Number 53 / JB / KK / IV / 1998 in case No. 10 / Pid.B / 2019 / PN.Lbj, the Certificate of Ownership which was originally used as collateral for debt by Christian Nathanael to the Defendant Frans Oan Semewa, when the Certificate of Ownership was made a Deed of Sale and Purchase by the Defendant Frans Oan Semewa, then the Certificate of Ownership will become the right and property of the Defendant Frans Oan Semewa and will cause losses for Christian Nathanael because he lost his rights, moreover the making of Deed of Sale and Purchase Number 53 / JB / KK / IV / 1998 was made with elements of forgery carried out by the Defendant Frans Oan Semewa.

The Relationship Between the Making of a Deed of Sale and Purchase of Land and the Occurrence of the Criminal Act of Forgery

In a Deed of Sale and Purchase, there are parties involved, namely the seller and the buyer and the PPAT who issued the Deed of Sale and Purchase. The PPAT is not included as a party subject to the sale and purchase, but is the party who issued the Deed of Sale and Purchase. In the case of the making of the Deed of Sale and Purchase being carried out on the basis of a debt that occurs between the two parties, it will cause problems. Based on the results of an interview with Rosma, as a Notary/PPAT in Deli Serdang Regency, he explained that: "I have never made a Deed of Sale and Purchase based on a debt agreement in it, because debts are still debts, which if there is a debt, a debt agreement must be made, not a Deed of Sale and Purchase. The Deed of Sale and Purchase made as a form of debt settlement has violated the rules of law and is a form of legal smuggling."¹⁴

Debt is an agreement between one party and another party and the object agreed upon is generally money. The position of one party as the party providing the loan, while the other party receives the loan. The money borrowed will be returned within a certain period of time according to what was agreed upon.¹⁵ In the debt agreement, it is usually followed by the submission of collateral in the form of a land certificate as a condition for the return or settlement of the debt, which is usually submitted by the party who is in debt to the party who provides the debt..¹⁶

A debt agreement that is converted into a transfer of rights to the object of the debt collateral provided by the borrower in the form of a Deed of Sale and Purchase carried out before a PPAT due to the borrower's inability to pay his debt to the lender, resulting in a

¹⁴ Hasil wawancara dengan Rosma, selaku Notaris/PPAT di Kabupaten Deli Serdang, tanggal 12 Desember 2024.

¹⁵ Meyske Tanamal, dkk, *Op.Cit*, hal. 364.

¹⁶ *Ibid*, hal. 365.

Deed of Sale and Purchase being made by the lender. This will of course cause problems, especially if the making of the Deed of Sale and Purchase contains elements of forgery or falsification in it. Such a Deed of Sale and Purchase will cause losses for the borrower, because it is possible that the amount of debt between the borrower and the lender does not match the collateral submitted to the party lending the debt. The form of forgery of a deed of sale and purchase is a criminal act in accordance with Article 264 Paragraph (2) of the Criminal Code, the provisions of which state that "Whoever intentionally uses the letter in the first paragraph, the contents of which are not true or which are falsified as if they were true and not forged, shall be subject to the same penalty, if the forgery of the letter can cause losses." Intentionally using a letter as stipulated in paragraph (1) means intentionally falsifying an authentic deed, so that the maximum criminal penalty is 8 (eight) years. Thus, the relationship between the making of the land sale and purchase deed and the occurrence of the crime of forgery can be seen through the evidence presented at the trial by the parties. To find the truth in a case, evidence is the main way used by judges to determine whether or not the defendant committed the alleged act or to obtain the basis for making a decision in resolving a case. Therefore, judges must be careful, precise, and mature in assessing and considering the issue of evidence.¹⁷

Judge's Consideration in Proving the Criminal Act of Forgery of Sale and Purchase Deed in Decision No. 10/Pid.B/2019/PN.Lbj

In case No. 10/Pid.B/2019/PN.Lbj, in its verdict, the panel of judges has issued a verdict stating that:

1. Declaring the prosecution of the Public Prosecutor is unacceptable;
2. Declaring the authority of the Public Prosecutor to prosecute the Defendant Frans Oan Semewa is revoked because it has expired;
3. Ordering the Defendant to be released from detention immediately after this verdict is pronounced;

However, the public prosecutor then continued the case to the appeal level, namely as per Decision Number 68/Pid/2019/PT.KPG, namely with the same charges as in the first instance court, the Public Prosecutor has charged the Defendant with Alternative charges, namely First violating Article 264 paragraph (2) of the Criminal Code and Second violating Article 263 paragraph (2) of the Criminal Code. The appeal request was submitted by the Public Prosecutor on the grounds of objection that the Labuan Bajo District Court decision contained negligence in the application of procedural law or errors or was incomplete..

¹⁷ *Ibid.*

In Decision Number 68/Pid/2019/PT.KPG, the panel of judges at the appellate level has issued the following decisions:

1. Canceling the Decision of the Labuan Bajo District Court Number 10/Pid.B/2019/PN Lbj, dated May 13, 2019, which was appealed; and
2. Declaring that the Defendant Frans Oan Semewa mentioned above has been legally and convincingly proven guilty of committing the crime of 'using a fake authentic letter;
3. Sentencing the Defendant therefore to imprisonment for 2 (two) years and 6 (six) months;
4. Determining that the detention period that the Defendant has served is deducted entirely from the sentence imposed;

The decision was made by the panel of judges at the appellate level, based on the following legal considerations:

To see whether the Labuan Bajo District Court Decision Number 10/Pid.B/2019/PN Lbj dated May 13, 2019 was correct, the panel of judges at the appellate level considered that:

- a. Article 78 paragraph (1) 3 of the Criminal Code in full reads as follows: "The authority to demand criminal penalties is abolished due to the statute of limitations, for crimes punishable by imprisonment of more than three years, after twelve years";
- b. Article 79 paragraph (1) of the Criminal Code in full reads as follows: "The statute of limitations shall apply on the day after the act is committed except in the following cases: for counterfeiting or damage to currency, the statute of limitations shall apply on the day after the counterfeit goods or damaged currency are used";

Of the two articles, what must be explained and understood is the meaning of the word "used" which is found at the end of Article 79 paragraph (1) of the Criminal Code, because the explanation and understanding of the word "used" will greatly influence the calculation of the statute of limitations. The verdict of the Labuan Bajo District Court Number 10/Pid.B/2019/PN Lbj dated May 13, 2019, which stated that "The authority of the Public Prosecutor to prosecute the Defendant Frans Oan Semewa has been revoked because the time limit (expiration) has passed", was handed down by the Panel of Judges of the First Instance based on the calculation of the use of the allegedly fake deed, in this case the Deed of Sale and Purchase Number 53/JB/KK/IV/1998, namely one day after it was used to carry out the name change process for SHM Number 875, namely one day after June 9, 1998,

meaning June 10, 1998, until the case files were submitted to the Labuan Bajo District Court on February 20, 2019, so that it has passed 12 (twelve) years as the expiration period. Based on the facts of the trial at the first instance court, witness Christian Nathanael only found out that SHM Number 875 in his name had been changed to the name of the Defendant based on Deed of Sale and Purchase Number 53/JB/KK/IV/1998 in 2015, even though witness Christian Nathanael felt that he had never sold his land with a certificate of ownership Number 875 and felt that he had never signed Deed of Sale and Purchase Number 53/JB/KK/IV/1998, so witness Christian Nathanael suspected that his signature in the deed of sale and purchase was forged and then followed up by making a report to be processed by investigators and submitted to the Labuan Bajo District Court in 2019. The alleged forgery of the signature of the seller Christian Nathanael in Deed of Sale and Purchase Number 53/JB/KK/IV/1998 was clarified and emphasized by the issuance of the Minutes of the Criminalistic Laboratory Examination of Document Evidence Number LAB:92/DTF/2018 made by the Central Laboratory The Forensic Investigation Unit of the National Police, Denpasar Branch, dated July 9, 2018, concluded that the signature of Christian Nathanael as the seller in the Deed of Sale and Purchase Number 53/JB/KK/IV/1998 was not identical. For that reason, the consideration/assessment of the Panel of Appeal Judges as mentioned above is in line and in tune with the Decision of the Bandung High Court Number 261/Pid/2014/PT Bdg which annulled the Decision of the Bekasi District Court Number 94/Pid.B/2014/PN Bks dated June 12, 2014 which stated that the 1st, 2nd, or 3rd indictment could not be accepted or was dropped due to the statute of limitations, in which the Panel of Appeal Judges of the Bandung High Court stated the reasons for annulling the decision of the First Instance Court, among others, that to determine the calculation of when to start and calculate the statute of limitations for the crime of 'forgery of documents', it is not on the day after the forgery of the document was made, but on the following day the allegedly forged document was used and the existence of the forgery was discovered by the victim or other person who was harmed due to the use of the allegedly forged document. The considerations/assessment of the Panel of Appeal Judges at the Bandung High Court are also in line with the opinion of legal expert Muhammad Fauzi who discussed it by linking it to Article 79 paragraph (1) of the Criminal Code, which in essence states: "That if what is falsified is a letter or deed which gives rise to rights (benefits for the perpetrator and losses for the victim), the statute of limitations is calculated from the date of the falsification."

In another part, Muhammad Fauzi stated that the principle of the statute of limitations was originally because the perpetrator of the crime during the statute of limitations felt

suffering (misery) because he was hiding from law enforcement and in hiding the perpetrator of the crime felt restless and suffered during the statute of limitations period so that the statute of limitations was considered as another form of misery as a criminal penalty if imposed when processed legally, however in the case of forgery of documents this is not the case, in fact the victim is the one who is harmed and suffers regarding the criminal act of forgery of the document, so to interpret the validity of the statute of limitations in the criminal act of forgery of documents such as the case above in order to achieve justice, the statute of limitations for 'forgery of documents' is calculated from the time the victim or the party who is harmed knows about the use of the forged or forged document. The decision of the Bandung High Court Number 261/Pid/2014/PT Bdg and the opinion of legal expert Muhammad Fauzi are also in line with the statements of experts whose opinions were heard under oath in this trial, namely Dr. Pius Bere, S.H., M.Hum. and the expert statement of Prof. Dr. Nur Basuki Minarno, S.H., M.Hum. which was read in court, the gist of which was that the statute of limitations in the crime of forgery of documents was calculated from the next day after the alleged forged deed was used by the accused as evidence to defend himself, namely when the Defendant showed the Deed of Sale and Purchase Number 53/JB/KK/IV/1998 to the investigator as the basis for changing the name of SHM Number 875 to his name, and at that time it was also known by the reporter/Christian Nathanael, as the party who felt aggrieved, namely around May 2015. Based on the legal facts above, associated with the expert testimony and opinion of Muhammad Fauzi and the decision of the Bandung High Court, in which the forgery of the document was only discovered in 2015, so that in that year it was also reported by the victim, the Panel of Appeal Judges of the Kupang High Court considered that the calculation of the statute of limitations in this case began in 2015, not 1998 as considered by the Labuan Bajo District Court, therefore the police action which began the investigation and inquiry in 2015 can be justified and cannot be subject to the "principle of statute of limitations", therefore the prosecution process carried out by the Public Prosecutor against the Defendant is not valid and is not subject to the statute of limitations. Based on the description above, it can be concluded that the opinion of the panel of judges at the first instance court stating that the demands of the public prosecutor have expired, based on the provisions of Article 79 of the Criminal Code which states that: "the expiration period begins to be calculated from the next day after the act was committed, while based on the facts of the trial, it is known that witness Christian Nathanael only found out about the Deed of Sale and Purchase No. 53 / JB / KK / IV / 1998 dated April 22, 1998 on May 5, 2015. In this case, it was also revealed that there were results of a criminalistic laboratory examination by the Denpasar Police Criminal Investigation Unit as

stated in the Minutes of the Criminalistic Laboratory Examination of Documentary Evidence No. LAB: 92 / DTF / 2018 dated July 9, 2018, which stated that the signature of witness Christian Nathanael on the Deed of Sale and Purchase No. 53 / JB / KK / IV / 1998 dated April 22, 1998 was different or not identical. This means that in the making of the Deed of Sale and Purchase No. 53/JB/KK/IV/1998 dated 22 April 1998, there are indications of forgery of signatures by the Defendant or another party.

The results of the criminalistic laboratory examination of the Denpasar Police Criminal Investigation Unit as stated in the Minutes of the Criminalistic Laboratory Examination of Document Evidence No. LAB: 92 / DTF / 2018 dated July 9, 2018, are evidence stating that there was an act of forgery of signatures on the Deed of Sale and Purchase No. 53 / JB / KK / IV / 1998 dated April 22, 1998. Proof in criminal procedure law is very important in the process of examining criminal cases in court. Proof is considered very important in criminal procedure law because what is sought in the examination of criminal cases is material truth, which is the goal of criminal procedure law itself. To find the truth in a case, proof is the main way used by judges to determine whether or not the defendant committed the alleged act or to obtain the basis for making a decision in resolving a case. Therefore, judges must be careful, precise, and mature in assessing and considering the issue of proof. However, the proof process in this case experienced difficulties because Drs. Yos Vins Ndahur, the Komodo Sub-district Head who acted as the Land Deed Making Officer (PPAT) for the Komodo Sub-district at the time the Sale and Purchase Deed No. 53/JB/KK/IV/1998 dated April 22, 1998 was made, had died in 2003 and could not be asked for information for that, so it could not be proven who forged Christian Nathanael's signature, because based on witness statements no one knew who forged the signature.

Proof in criminal procedural law is very important in the process of examining criminal cases in court. Proof is considered very important in criminal procedural law because what is sought in examining criminal cases is material truth, which is the goal of criminal procedural law itself. To find the truth in a case, proof is the main way used by judges to determine whether or not the defendant committed the alleged act or to obtain the basis for making a decision in resolving a case. Therefore, judges must be careful, precise, and mature in assessing and considering the issue of proof.

So, the witness statement from Drs. Yos Vins Ndahur, the Komodo Sub-district Head who acted as the Land Deed Making Officer (PPAT) for the Komodo Sub-district at the time the Sale and Purchase Deed No. 53/JB/KK/IV/1998 dated April 22, 1998 was made can be used as a strong witness because Drs. Yos Vins Ndahur, the Komodo Sub-district

Head who at that time made the Sale and Purchase Deed No. 53/JB/KK/IV/1998, certainly knows who forged Christian Nathanael's signature. The evidence can strengthen the Public Prosecutor's charges against the Defendant and can prove the criminal act of forging a signature from Christian Nathanael as an effort to provide legal protection for Christian Nathanael as the victim, even though in reality based on the Decision of the Kupang High Court Number 68/Pid/2019/PT.KPG which has stated that the Defendant Frans Oan Semewa above has been legally and convincingly proven guilty of committing a crime using a fake authentic letter and has sentenced the Defendant to imprisonment for 2 (two) years and 6 (six) months..

Based on the formulation of Article 264 paragraph (1) of the Criminal Code, "Forgery of a letter is subject to a maximum imprisonment of eight years, if committed against authentic deeds, namely the Deed of Sale and Purchase No. 53/JB/KK/IV/1998 dated 22 April 1998, can be subject to the same penalty for anyone who intentionally uses the letter in the first paragraph, the contents of which are not true or which are forged as if they were true and not forged, if the use of the letter can cause losses. Thus, based on the legal considerations of the panel of judges at the appellate level, which stated that the elements in Article 264 paragraph (2) of the Criminal Code have been fulfilled by the Defendant. If a deed of sale and purchase that is suspected of being forged is used for the process of changing the name on the certificate in 1998, then the prosecution for forgery of the deed has expired. The purpose of the formulation of the norms of Articles 78 and 79 of the Criminal Code is to protect the interests of the party who is the victim of a crime. Therefore, Article 79 paragraph (1) The Criminal Code, the statute of limitations must be interpreted since the victim knows that there is a criminal act of forgery of documents, this is because the State has an interest in guaranteeing the rights of citizens. Article 264 paragraph (2) of the Criminal Code includes material crimes, so if the person who makes a forged document has not been held criminally responsible, then the person who uses the forged document can be held criminally responsible, but the construction must be seen whether there is a conspiracy between the person who makes and the person who uses the forged document. For this reason, the researcher does not agree with the decision of the panel of judges in the Labuhan Bajo District Court decision Number 10/Pid.B/2019/PN Lbj, which in its legal considerations states that the statute of limitations is calculated from the time the Deed of Sale and Purchase No. 53/JB/KK/IV/1998 dated April 22, 1998 was made, while Christian Nathanael has suffered losses due to the Defendant's actions and has only just learned about the Deed of Sale and Purchase No. 53/JB/KK/IV/1998 dated April 22, 1998. 1998 on May 5, 2015. Regarding the debts associated with the making of the Deed of Sale and Purchase

No. 53/JB/KK/IV/1998 dated April 22, 1998, the panel of judges in both decisions did not consider the legal considerations. The panel of judges in both cases only made legal considerations related to the act of forgery charged to the Defendant based on the provisions of Article 264 paragraph (2) of the Criminal Code. In this case, the researcher agrees with the decision made by the panel of judges in the Kupang High Court Decision Number 68/Pid/2019/PT.KPG which has stated that the Defendant Frans Oan Semewa above has been proven legally and convincingly guilty of committing the crime of 'using fake authentic letters and has sentenced the Defendant to imprisonment for 2 (two) years 6 (six) months.

The imposition of criminal sanctions contained in a verdict against the Defendant is a form of legal protection for the injured party. This kind of protection is called repressive legal protection. Legal protection is a universal concept of a state of law. Legal protection is an action to protect or provide assistance to legal subjects, by using legal instruments.¹⁸ This protection has been stated in the provisions of Article 28 D paragraph (1) of the 1945 Constitution, which contains the rule that "everyone has the right to recognition, guarantees, protection and certainty of fair law and equal treatment before the law"¹⁹ As a citizen guaranteed by the Constitution, Christian Nathanael has the right to receive legal protection for the transfer of his land to another person based on elements of forgery..

Conclusion

The formulation of the crime of forgery of documents based on the Criminal Code in relation to debts is regulated in Article 263 paragraph (1) of the Criminal Code for forgery of general documents with a maximum penalty of 6 years in prison, and Article 264 of the Criminal Code for forgery of official documents such as authentic deeds which are subject to a maximum penalty of 8 years in prison. The connection between the making of a deed of sale and purchase and the crime of forgery can be proven through evidence presented at trial, where forgery can be in the form of the entire contents of the letter or only the signatures of the parties, on the condition that the act must cause harm and be carried out as if the letter were genuine. In the case of Decision No. 10/Pid.B/2019/PN.Lbj, the judge decided that the case had expired based on Articles 78 and 79 of the Criminal Code because it had passed the 12-year time limit from the use of the forged deed to the transfer of the files to the court, although the Kupang High Court later found the defendant guilty and

¹⁸ Philipus M. Hadjon, *Pengantar Hukum Administrasi Indonesia*, Yogyakarta: Gajah Mada University Press, 2011, hal.10.

¹⁹ Annisa, "Pembatalan Akta Jual Beli Yang Dibuat Oleh Camat Selaku Pejabat Pembuat Akta Tanah Sementara," Sriyaman & Marwah, *Indonesian Journal of Criminal Law*, Vol. 3, No. 2, Desember 2021, hal. 256.

sentenced him to 2 years and 6 months. This study recommends that all parties comply with existing criminal provisions, judges be more careful in assessing evidence of forgery of sales and purchase deeds, and punishment must be based on mature considerations in order to provide a deterrent effect and education to the community.

References

- Benhard Limbong, *Konflik Pertanahan*, Jakarta: Margaretha Pustaka, 2012, hal. 2.
- Achmad Rubaie, *Hukum Pengadaan Tanah Untuk Kepentingan Umum*, Malang: Bayumedia, 2017, hal.1.
- Subekti (I), *Hukum Perjanjian*, Jakarta: Intermasa, 2014, hal. 79
- Irawan Soerodjo, *Kepastian Hukum Pengalihan Hak Atas Tanah di Indonesia*, Surabaya: Arkola, 2003, hal. 27.
- Gatot Supramono, *Perjanjian Hutang Piutang*, Jakarta : Kencana, 2013, hal. 9.
- Meyske Tanamal, dkk, “Jual Beli Tanah dan Bangunan Atas Objek Jaminan Utang,” *TATOHI: Jurnal Ilmu Hukum* Vol 2, No 4 2022: 361-373, hal. 364.
- Indah Lestari, “Kepastian Hukum Atas Keabsahan Akta Jual Beli Sebagai Dasar Hutang Piutang Berdasarkan Surat Pernyataan (Studi Putusan Nomor 859 PK/PDT/2019)”, *Imanot: Jurnal Kemahasiswaan Hukum & Kenotariatan* Vol. 2 No. 2 2023, hal. 594.
- R.Subekti Dan R. Tjitrosudibyo, *Kitab Undang-Undang Hukum Perdata*, Jakarta:Pradnya Paramita, 1992, hal.451.
- Dede Rudin, *Tafsir Ayat Ekonomi*, Semarang: Karya Abadi Jaya, 2012, hal. 86.
- H. R. Daeng Naja, *Hukum Kredit Dan Bank Garansi*, Bandung: Citra Aditya Bakti, 2011, hal 124.
- Philipus M. Hadjon, *Pengantar Hukum Administrasi Indonesia*, Yogyakarta: Gajah Mada University Press, 2011, hal.10.
- Annisa, “Pembatalan Akta Jual Beli Yang Dibuat Oleh Camat Selaku Pejabat Pembuat Akta Tanah Sementara,” Sriyaman & Marwah, *Indonesian Journal of Criminal Law*, Vol. 3, No. 2, Desember 2021, hal. 256.