

***ERROR IN SUBTANTIA* DALAM PEMBATALAN AKTA PERJANJIAN
PENGIKATAN JUAL BELI SECARA SEPIHAK OLEH DEVELOPER**

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ERROR SUBTANTIA; CANCELLATION AGREEMENT

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RINGKASAN

Tesis ini akan membahas tentang *error in substantia* dalam pembatalan Perjanjian Pengikatan Jual Beli hak atas tanah oleh developer. Tesis ini akan memberikan penjelasan mengenai Perjanjian Pengikatan Jual Beli, pembatalan Perjanjian Pengikatan Jual Beli secara sepihak dan akibat hukumnya. Tesis ini juga akan menerangkan konsepsi penyelesaian sengketa apabila ada pembatalan Perjanjian Pengikatan Jual Beli secara sepihak dan menganalisis tentang *error in substantia* dalam pembatalan Perjanjian Pengikatan Jual Beli oleh developer berdasarkan putusan Pengadilan Negeri Surabaya Nomor: 191/Pdt.G/2008/PN. SBY.

Perjanjian Pengikatan Jual Beli lahir karena sifat terbukanya buku III B.W. dan daya berlakunya sebagai Undang-undang bagi para pihak yang membuatnya. Perjanjian Pengikatan Jual Beli seringkali dibatalkan secara sepihak oleh satu pihak. Pembatalan Perjanjian Pengikatan Jual Beli secara sepihak merupakan perbuatan melanggar hukum karena bertentangan dengan Pasal 1338 ayat (2) B.W, Pasal 1266 B.W. dan Pasal 1267 B.W. Ketentuan Pasal 1338 ayat (2) B.W. menerangkan bahwa perjanjian tidak boleh dibatalkan oleh salah satu pihak, sedangkan Pasal 1266 B.W. menerangkan bahwa pembatalan perjanjian harus dimintakan kepada hakim pengadilan. Akibat hukum pembatalan Perjanjian Pengikatan Jual Beli secara sepihak adalah pembatalan tersebut tidak sah dan dibebankan kewajiban untuk membayar ganti kerugian bagi yang membatalkan sebagaimana ketentuan Pasal 1267 B.W. Konsep Penyelesaian sengketa atas pembatalan Perjanjian Pengikatan Jual Beli secara sepihak dapat dilakukan dengan dua cara yaitu penyelesaian sengketa melalui jalur litigasi (*in court settlement*) dan penyelesaian sengketa melalui jalur nonlitigasi (*out of court settlement*). Pada perkara Nomor: 191/Pdt.G/2008/PN.SBY majelis hakim yang memeriksa, mengadili dan memutus perkara ini telah melakukan *error in substantia* dalam pertimbangan hukumnya. *Error in substantia* tersebut adalah kekhilafan dalam hal menyamakan sifat Perjanjian Pengikatan Jual Beli dengan Perjanjian Jual Beli. Padahal dua perjanjian tersebut berbeda secara fungsional. Implikasi dari *error in substantia* tersebut adalah hakim membenarkan pembatalan Perjanjian Pengikatan Jual Beli secara sepihak oleh developer.

ABSTRACT

This thesis will discuss the error in substantia the Binding Sale and Purchase Agreement cancellation rights to the land by the developer. This thesis will provide an explanation regarding the Binding Sale and Purchase Agreement, cancellation of Binding Sale and Purchase Agreement unilaterally and its legal effect. This thesis would also explain the concept of dispute resolution if there is cancellation of Binding Sale and Purchase Agreement unilaterally and analyzed the error in substantia in the cancellation of Binding Sale and Purchase Agreement by the developer based on the decision of District Court Surabaya Number: 191/Pdt.G/2008/PN. SBY.

Binding Sale and Purchase Agreement was born because of the nature of the opening of book III BW and the enactment of the Act for the parties who made it. Binding Sale and Purchase Agreements are often canceled unilaterally by one party. Cancellation of Binding Sale and Purchase Agreement unilaterally is against the law because it violated Article 1338 paragraph (2) BW, Article 1266 BW and Article 1267 B.W. The provisions of Article 1338 paragraph (2) B.W. explained that the agreement should not be canceled by either party, while Article 1266 BW explained that the cancellation of the agreement must be requested to the court judge. Due to the cancellation laws Binding Sale and Purchase Agreement unilaterally is the cancellation of the illegitimate and imposed the obligation to pay compensation for the void as the provisions of Article 1267 BW.

Settlement of a dispute over the concept of a unilateral Binding Sale and Purchase Agreement cancellation can be done in two ways: completion of disputes through litigation (*in court settlement*) and the settlement of disputes through litigation (*out of court settlement*). In the case Number: 191/Pdt.G/2008/PN.SBY panel of judges who examine, hear and decide this case has made an error in substantia in its legal considerations. Error in substantia is a mistake in terms of equating the properties view Binding Sale and Purchase Agreement with Sale and Purchase Agreement. Though these two functionally different agreements. The implications of the error in substantia are judges justify the cancellation of Binding Sale and Purchase Agreement unilaterally by

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