**SELLING AND PURCHASING BOOTHS AT MALLS WITH THE RIGHTS FOR LIFETIME USAGE**

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**Abstract**

In the life of the community, the legal relationship that is often carried out involves bonding which is a day-to-day activity carried out by every society, where the understanding is a bond in the field of property law (vermogens recht) between two or more people, where one party has the right to something and the others parties are obliged to implement it. Engagement can be sourced from laws and agreements, legal relationships that often occur in community activities, one of which is buying and selling where buying and selling is a form of engagement originating from an agreement. There is a sale and purchase where buying and selling both written and oral, buying and selling is a daily activity carried out by the Indonesia people, one of which is buying and selling land and buildings that are immovable objects, buying and selling is an agreement made between one party and another. However, the legal purchase of land and buildings that occur in the community often occurs, so that clarification on legal issues that occur in Indonesia is needed, one of which is the sale and purchase of land and building stands and ownership rights so that buyers and sellers get certainty. and legal protection so that no community is harmed. The purpose of this journal research is to find out and analyze the legal consequences caused by the sale and purchase of booths and rights for booth buyers who are only given proof of rights in the form of certificates for the right to use the room for a life time period. While the method used in writing this journal includes the type of normative juridical research that is a study using literature materials which include legislation and literature relating to contract law, buying and selling laws and material law and approach to the problem used is the first statue approach, by reviewing all laws and regulations that relate to legal issues that are being addressed, the second is the conceptual approach is an approach by means of a conceptual approach, the opinions of scholars in literature books.

Keyword : Contract, Sell and Purchase, Right to Use the Room.

**Introduction**

In this globalization era, there is a large number of legal issues happened in the society because of legal relation in between the community. One of the legal relation that often be performed is an engagement which are daily activities done by everyone in the community. The meaning of engagement is an engagement in the context of property law (vermogensrecht) between two or more people, where one side is entitled to something and the other side has the obligation to execute it. Legal engagement could be derived from the laws and agreements. For example, the legal relation that often happened in the society, sale and purchase activity. sale and purchase is a form of engagement that is derived from a contract.

Sale and purchase contract occurred because there is a relation between the buyer and seller where they engaged themselves with one another. Seller engaged himself to handover an item and buyer is bounded to pay it with the amount accepted by both parties. Sale and purchase is a contract or an agreement or a where one party (seller) is bounded to submit his right of ownership of items/articles to the other party (buyer) that is bounded to pay the amount of money to the seller.[[1]](#footnote-2)

 Based on that understanding, sale and purchase contract is a form of reciprocal contract that involved two parties, buyer and seller. Each party who formed the buy and sell contract has the rights and obligations to execute their contract accordingly. In general, contract is a legal institution based on the principle of freedom of contract where the parties are free to determine the form and content of the type of contract they made.

 Based on the provisions of the Indonesian Civil Code (hereinafter abbreviated as “**BW”**) Article 1457 BW states that "Buying and selling is an contract, with which one party binds itself to submit a material, and the other party to pay the price promised". In that Article only contains the word "submit" without additional word "property rights", but according to the purpose of the sale and purchase contract both parties intend that the ownership rights of the goods sold turn from the seller to the buyer, meaning the seller releases the ownership sold to the buyer. In buying and selling there are legitimate terms of buy and sell contract where the legal terms of the agreement listed in Article 1320 of the BW automatically apply to the validity of buy and sell contract, namely:

1. Agreements between seller and buyer
2. Ability/ competence of both sellers and buyers to bind themselves
3. Specific / can be determined object
4. Legal Account / Authority[[2]](#footnote-3)

 According to Purwahid Patrik, agreement is the will of the parties that must be in accordance with each other and proved from a statement of his will. The agreement occurs by the existence of interconnected offer and acceptance. Offer and acceptance can be done sternly or secretively.[[3]](#footnote-4)

**Definition**

The agreement definition has been regulated in Article 1313 BW, determine that:

"A contract or agreement is an action by which one person or more ties himself to one or more other people".

According to Subekti, a contract is also called agreement because both parties agree to do something, it can be said that the two words (contract and agreement) are the same. Subekti further stated that "A contract is an event where a person promises to another person or where two people promise each other to do something. With the existence of an contract, there arises a relationship between the two people called the engagement".[[4]](#footnote-5)

According to Purwahid Patrik that:

Contract is legal action that occurs in accordance with the formalities of existing legal regulations, depending on the conformity of the will of two or more people intended for the emergence of legal consequences for the benefit of one party at the expense of another party or for the sake of each party reciprocally.[[5]](#footnote-6)

Therefore, a contract is a legal action, legal action is an act in which for the occurrence or disappearance of the law or legal relationship as a result desired by the actions of the person.[[6]](#footnote-7)

 Sri Soedewi Masjchoen Sofwan, argues that "Contract is a legal act whereby someone or more ties himself to another person"[[7]](#footnote-8). In addition, Tan Kamello also provides a definition of contract stating that the contract is "A legal relationship between two or more people based on words agreed to bind each other about something with a specific purpose and result in legal consequences."[[8]](#footnote-9)

The difference in views from the scholars mentioned above arises because of a different perspective, that is, the one who sees the object from the actions taken by the legal subject, while the other party reviews the legal relationship.

 Contract is a source of engagement, therefore all provisions regarding the contract are subject to book III B.W. who adhere to the principle of freedom in terms of making contracts. Prof. Subekti stated that in the provisions of Article 1338 BW states that: "All contract made legally, apply as laws for those who make them", what is meant by the article is that each contract binding on both parties so that everyone can conclude free to make any contract, as long as it does not violate public order or morality.[[9]](#footnote-10)

 In a sale and purchase contract, there are several parties that are interconnected, one by one binding each other into a contract. There are conditions in social and commercial interactions, involving immovable objects, such as land and buildings and their derivatives. Based on Law Number 28 of 2002 concerning Buildings, the definition of a building is a physical form of the results of a construction work that is united with its place of domicile, partly or wholly above and / or in land and / or water, which functions as a place for humans to do activities, both for shelter or residence, religious activities, business activities, social activities, culture, or special activities. A building is an immovable object which in its transfer must be carried out with an authentic deed made by a notary or an authorized official. However, in practice that occurs in the community, many sale and purchase agreements that are carried out experience some irregularities.

 Based on Article 1457 BW stipulates that " sale and purchase is a contract, with one party binding itself to submit a material, and the other party to pay the promised price." Furthermore, in Article 1458 BW is regulated regarding the time of sale and purchase which determines "Buying and selling is deemed to have occurred between the two parties, immediately afterwards these people agreed on the material and the price, even though the material has not been delivered, nor has the price have been paid. "

 R.M. Suryodiningrat stated that :

Article 1458 of the BW reads the same as article 1583 of the French BW with such differences, that according to article 1583 BW at the time of agreement the ownership rights of the goods sold have also been switched from the seller to the buyer, whereas according to the Civil Rights the ownership rights are transferred from the seller to the buyer after the delivery of goods is made and is real and legal.[[10]](#footnote-11)

In sale and purchase, the seller's obligations under Article 1474 BW are:

a. Submit the selling object to the buyer.

b. Ensure pleasure and peace along with the absence of hidden defects.[[11]](#footnote-12)

Besides that in the case of submission of objects sold to buyers in property rights, the BW recognizes three types of objects, and therefore there are 3 (three) ways of submission, including:

1. Submission of moving objects

According to article 612 BW, the submission of movable objects is carried out by real surrender, or by surrendering the keys to the building where the object is located. Furthermore, Article 612 paragraph 2 BW stipulates that surrender does not need to be done if the object to be handed over has been controlled by the person who will accept the surrender.

2. Submission of immovable objects

Submission of immovable objects is carried out with a notary deed, except for land and buildings since the Basic Agrarian Law applied, the submission of immovable objects carried out with the PPAT deed (Land Deed Making Officer) and must be registered at the Land Registration Office based on Government Regulation No. 10 of 1961.

3. Submission of receivables in the name and other rights

According to article 613 BW, submission of receivables in the name and other rights is carried out with a notary deed or underhanded deed that must be notified to the debitor, or in writing approved and recognized.[[12]](#footnote-13)

In guaranteeing enjoyment as is the seller's obligation according to R.M. Suryodiningrat "guarantee of enjoyment and peace comes from the guarantee that the object being sold is truly owned by the seller himself, and there is no possibility of interference from a third party claiming that the object being sold is his property, and because of that the thirf party filing a claim before the court. [[13]](#footnote-14)

 The obligation of the buyer is based on Article 1513 BW which stipulates that "The main obligation of the buyer is to pay the purchase price, at the time and at the place as stipulated according to the contract." In the practice of sale and purchase it was found that, there were Buy and Sell Stands found in the Mall where the booth was obtained based on the Sale and Purchase Deed and the Right of Operations. Based on the ownership of the Stand, the Right to Use Room was issued by the mall manager. In the Certificate of Right to Use the Stand regulates the Right to use the the booth which is given to the holders of the Certificate of Right to Stand for the Stand as follows :

1. The seller / manager of the mall is the owner of the land along with all the building rooms and other buildings that stand on it.

2. Based on the Deed of Agreement concerning the granting of the right to use the room (Wholesale) provide the right to use the booth (wholesaler) with a life time period for the holder of the Right to Use the Room (Wholesale) to use it.

3. The Right to Use Room Holder is given the freedom of authority if he wants to move / pass the right to use the room to a third party, if there is a transfer of rights then it must be recorded in the administration of the seller / manager of the mall

Then due to the sale and purchase stand and transfer rights in front of the Notary, the ownership of the booth/room has been transferred to the buyer but in the Certificate of Use of the Stand it regulates that the seller / manager of the mall is the owner of the land and all the buildings that stand above it.

**The Right to Use the Room As Bezit**

Transfer of the rights contained in the Sale and Purchase Deed and the Transfer of Rights, the mall manager / seller gives the Right to Use for the building of the stand to the stand buyer where the usage rights are unlimited or for a life time period.

Based on 1548 BW, stated that :

Rent is an agreement, with which one party binds itself to give to the other party the enjoyment of an item, for a certain period of time and with a payment of a price, which is later agreed upon by that party.

The lease agreement is legal and binding upon reaching the agreed time regarding the main elements, which is goods and prices, so that the goods are delivered not to be owned, but only to be used, their usefulness means that the surrender is mere power over the goods rented. But there are several elements of the lease, which is :

1. Object

2. Price

3. Time Period

The acquisition of a stand (Grossir) by a stand buyer cannot be categorized as a lease, because the leases have a deadline in the sense that the lease has a time limit and a price is paid every time specified based on the agreement of the parties.

 Generally a mall consists of several floors, some of them are rented and some of them are sold to the community as experienced by the stand buyers at Mall X so that the rights to the land and the buildings above are owned by the Mall Management / Sellers where the Management Mall / Seller builds a building consisting of rooms such as flats. Based on Article 1 number 1 and Article 44 paragraph (2) Law Number 20 Year 2011 concerning Flats determine that:

Flats are multi-storey buildings that are built in a divided environment in functionally structured parts, both in horizontal and vertical directions and the units can be owned and used separately, especially for dwellings equipped with shared parts, shared objects, and shared land.

 In the aforementioned provisions that part of the apartment can be owned and used separately. Mall Managers / Sellers sell booths (stand) to stand buyers based on Stand Sale and Rights Sale Deed, in which the stand buyer is given the right in the form of the right to use the stand room (Grossir). The right to use the booth is not an understanding of the right to use the land and is not included in the ownership of the apartment unit, because the ownership certificate issued is in the form of a certificate of ownership over the apartment unit or building ownership certificate for the apartment project. This is because Mall Managers / Sellers do not make Atum Market as a Flats as stipulated in the Flats Law.

According to Article 823 BW determines that "Users are not permitted to surrender or lease their rights to others". Usufructuary rights and rights are limited property rights, this is due to BW provisions which require that users should not surrender or lease their rights to others, while booth buyers are permitted to surrender or transfer the building of the stand to other parties with the condition that report to Mall Management / Seller.

 Since the enactment of the provisions of the Agrarian Basic Law which regulates land, the provisions on usufructuary rights regulated in BW have not been used anymore. Based on the consideration of the Agrarian Basic Law No. 5 of 1960 number 4 has stated that it revokes the second book of BW as long as it relates to Earth, Water and natural resources contained in it except the provisions concerning hypotheek.

 Right to Use Stand room (Grossir) owned by stand buyers is not subject to the provisions of the Right of Use regulated in BW, because the right to use the stand room (Grossir) of stand buyers is on land and buildings so that the provisions contained in BW concerning immovable objects, especially land are not applies again with the existence of the Agrarian Basic Law. The right to use the stand room besides being unable to comply with the provisions on usage rights in BW also cannot be categorized as land rights according to the Agrarian Basic Law, because the right to use stand space owned by the stand buyer is given for an unspecified period of time. The definition of land use rights is regulated in Article 41 paragraph (1) of Law Number 5 Year 1960 concerning Basic Agrarian Principles determine that:

Right to use is the right to use and / or collect results from land that is controlled directly by the State or land owned by another person, which authorizes and obligations determined in the decision of giving by an official authorized to give it or in an agreement with the land owner, which is not a lease leasing or land processing agreements, everything as long as it does not conflict with the soul and the provisions of this Law.

Furthermore, Article 49 paragraph (1) of Government Regulation Number 40 Year 1996 concerning Right to Cultivate, Right to Build and Use Rights to Land determines that "Use rights to land of ownership are granted for a maximum period of twenty-five years and cannot be extended". Based on the above provisions, the right to use stand space owned by stand buyers cannot be subject to the right to use rights contained in the Agrarian Basic Law and Government Regulation No.40 of 1996 because the right to use the stand is not included in the elements of usufructuary rights in Law Agrarian Principles.

 The right to use the stand that is given by the Mall Management / Seller is the usufructuary rights, there is no time period, but the right to use the stand is not the property of the stand even though there is no time limit limiting the right to use the stand. The right to use the stand room owned by the buyer is a material right in the form of bezit (position in power) which is regulated in the BW in Article 529- Article 569.

 Based on Article 529 BW, it stipulates that "The position of power is, the position of someone who controls a material, by itself or with the intermediary of another person, and who retains or enjoys it as the person who possesses the material". enjoyed by someone is not necessarily his own but only as if his own. People who control objects that are controlled and not his own are called bezziter.

 Bezit can occur in tangible objects and intangible objects such as bezit objects and bezit rights. According to Sri Soedewi Masjchoen Sofwan bezit is divided into 2 (two) types, namely:

1. Burgerlijk bezit / bezit is bezit where bezitter really wants to have the item for himself. Burgerlijk bezit usually belongs to the owner.

2. Detentie is bezit wherein the bezziter in this case does not have the intention to own the item for himself. Someone controls the object based on certain legal relationships with other people, for example because of leasing, borrowing, mortgaging, etc.[[14]](#footnote-15)

Furthermore, Rachmadi Usman said that in burgerlijk bezit, a person controls an object in a real way and behaves like an owner and wants to become an owner, but in fact he is not the real owner. While in detentie someone is purely hold an object without a desire to possess it.[[15]](#footnote-16)

**Conclusion**

 Based on the discussion as in the previous chapters, regarding the sale and purchase of booths and the transfer of rights, it can be concluded that the sale and purchase of stands between the Seller and the Buyer can be justified, valid, and has legal protection for the buyer because:

a. The sale and purchase of a stand between the Seller and the Buyer is the sale and purchase of intangible objects in the form of rights granted in the form of the right to use the room for a life time.

b. Buying and selling made between sellers is a sale and purchase of rights because the object of sale and purchase is an intangible object.

c. The seller only gives us the right to use the booth and the usufructuary rights granted are the right to use for immovable objects where the rights are the material rights that give pleasure to the holder in the form of bezit.

d. Buyers of stand buildings only get bezit, so that the seller and the buyer only have rights to buy and sell where the buyer has the right to control the stand for a period of time but not a right to have the stand so that there can be legal protection for the buyer, even though the certificate issued by seller determines that the seller is the owner of the land and all building space and other buildings that stand above, the seller can not take back the stand because based on the sell and purchased contract the buyer has get a right to use a stand for a life time.

**Bibliography**

**Books**

Kamello, Tan, Hukum Jaminan Fidusia Suatu Kebutuhan Yang Didambakan, Alumni, Bandung, 2006

Patrik, Purwahid , Dasar-Dasar Hukum Perikatan (Perikatan Yang Lahir Dari Perjanjian dan Dari Undang-Undang) , Mandar Maju, Semarang , 1994

Masjchoen, Sri Soedewi, Hukum Jaminan di Indonesia, Pokok-Pokok Hukum Jaminan dan Jaminan Perorangan, Liberty, Yogyakarta, 1980, hlm. 1

Subekti, Hukum Perjanjian Cet.21, Intermasa, Jakarta, 2005

Subekti, Pokok-Pokok Hukum Perdata, PT Intermasa, Jakarta, 2011

Suryodiningrat, RM, Perikatan-Perikatan Bersumber Perjanjian, Tarsito, Bandung, 1991

**Regulations**

Code of Civil law (*Burgerlijk Wetboek)* (*Staatsblad* Year 1847 Number 23)

Law Number 28 Year 2002 concerning Buildings (Indonesian State Gazette Year 2002 Number 134 Additional of Indonesian State Gazette Number 4247)

Law Number 20 Year 2011 concerning Flats (Indonesian State Gazette Year 2011

Number 108 Additional of Indonesian State Gazette Number 5252)

Law Number 5 Year 1960 concerning Agrarian Principles (Indonesian State Gazette Year 1960 Number 104 Additional of Indonesian State Gazette Number 2043

1. R.M.Suryodiningrat, *Perikatan-Perikatan Bersumber Perjanjian* **,** Tarsito , Bandung , 1991, page 6 [↑](#footnote-ref-2)
2. *Ibid*,page 7 [↑](#footnote-ref-3)
3. PurwahidPatrik ,*Dasar-Dasar HukumPerikatan (Perikatan Yang Lahir Dari Perjanjian dan Dari Undang-Undang) ,* Mandar Maju, Semarang , 1994, page 55 [↑](#footnote-ref-4)
4. Subekti, *Hukum Perjanjian* Cet.21, Intermasa, Jakarta, 2005, Page 1. [↑](#footnote-ref-5)
5. Purwahid Patrik, *Op.Cit.,* Page 46-47. [↑](#footnote-ref-6)
6. *Ibid*, Page 47 [↑](#footnote-ref-7)
7. Sri Soedewi Masjchoen, *Hukum Jaminan di Indonesia, Pokok-Pokok Hukum Jaminan dan Jaminan Perorangan*, Liberty, Yogyakarta, 1980, page 1 [↑](#footnote-ref-8)
8. Tan Kamello, *Hukum Jaminan Fidusia Suatu Kebutuhan Yang Didambakan*, Alumni, Bandung, 2006, Page 4 [↑](#footnote-ref-9)
9. Prof. Subekti, *Pokok-Pokok Hukum Perdata*, PT Intermasa, Jakarta, 2011, page 127. [↑](#footnote-ref-10)
10. R.M. Suryodiningrat, *Op.Cit.,* page 8 [↑](#footnote-ref-11)
11. *Ibid*, page 9 [↑](#footnote-ref-12)
12. *Ibid,*page 9 [↑](#footnote-ref-13)
13. *Ibid***,** page 11 [↑](#footnote-ref-14)
14. Sri Soedewi Masjchoen Sofwan, *Op.Cit***.**, page 85 [↑](#footnote-ref-15)
15. Rachmadi Usman, *Op.Cit.,* page 149 [↑](#footnote-ref-16)