

RESOLUTION OF ANTAM GOLD SELLING AND BUYING DISPUTES REVIEWED FROM ECONOMIC ANALYSIS OF LAW THEORY

Sri Wahyuni


*Universitas Bhayangkara Jakarta Raya
sri.wahyuni@dsn.ubharajaya.ac.id*

ABSTRACT

There was an agreement to buy and sell Antam gold between the seller, namely PT Aneka Tambang Tbk, which is a State-Owned Enterprise, and the buyer, namely someone from Surabaya. This agreement has legal consequences for the parties who make it and must be implemented in good faith. As agreed, the buyer has the right to receive Antam gold and is obliged to pay a certain amount of money according to the agreement between the parties. On the other hand, the seller has the right to receive a certain amount of money and is obliged to provide Antam gold by the sale and purchase agreement agreed upon by the parties. In this case, the buyer has paid the amount of money according to the agreed nominal value, but not all of the Antam gold received has been received. The buyer has tried to ask the seller for their rights but they have not been given them. On the other hand, the seller is a State-Owned Enterprise which in essence must not cause state losses. Regarding the resolution of the case, it was carried out through the courts. The question arises of how to resolve the Antam gold buying and selling dispute in terms of economic analysis of law theory. The research method in this research uses a normative legal research method with a case approach. This research uses the theory of Economic Analysis of Law. The results of this research are to find out the resolution of Antam's gold buying and selling dispute through the court, considering the theory of economic analysis of law.

Keywords: *dispute resolution, buying and selling Antam gold, economic analysis of law*

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INTRODUCTION

The agreement between the seller and the buyer has legal consequences for the parties. According to Article 1338 of the Civil Code, all agreements that have been legally made will apply according to the law for the parties who make them. This means that it is made legally referring to Article 1320 of the Civil Code regarding the conditions for the validity of an agreement, which means that when an agreement has been reached between the consumer and the business actor, it will give rise to rights and obligations for the parties who made it (Anggriawan & Brahmayanti, 2016).

One example of the case of buying and selling gold in Surabaya, started with information that there was a discount on Antam gold bullion if you bought large quantities, to get certainty regarding this information, the buyer, namely Budi Said, who is a businessman from Surabaya, on March 19 2018 came to Antam's official gold sales office is on Jalan Pemuda Number 27-31 Surabaya. At the office, he met with one of the employees and explained that the information about there being a discount when buying Antam gold in large quantities was true. In essence, there has been an agreement to buy and sell gold bullion for Rp. 3.9 Trillion rupiah totaling 7.1 Tons of gold (Rahayu, 2020). The buyer has paid a sum of money equal to the agreed price, namely Rp. 3.9 trillion rupiah in stages via transfer and has only received 5.9 tonnes of gold which has not been given by the seller, namely PT. Aneka Tambang, Tbk. to the buyer as much as 1,136 Kg. The buyer tried to ask for the remainder to be given by the sale and purchase agreement but the seller, namely PT. Aneka Tambang Surabaya Branch did not give the remaining 1,136 Kg to the buyer so the buyer sent a letter to PT. Aneka Tambang Pusat in

Jakarta, but it has not been given yet. PT's reasons. Antam stated that it never sells Antam gold at a discount. Because they feel that their rights have not been fulfilled, the buyer feels disadvantaged and then take the route of litigation or court (Kusumawati & Sumiyati, 2021).

Regarding the agreement that has been made together, it creates rights and obligations for each party and must be implemented in good faith. According to Article 1338 paragraph (1) of the Civil Code, it is stated that agreements must be implemented in good faith. If we look at the case being researched, the buyer, in this case Mr Budi Said, has requested his rights several times but has not been able to fulfill them due to various reasons stated by the seller, namely PT Aneka Tambang. Next, such as the settlement of the sale and purchase of Antam gold and whether the buyer received compensation by what was agreed at the beginning (Asia et al., 2022).

There are several examples of compensation in several cases that have been studied, including research conducted by Kadek Tia Yulastari et al, in Buleleng Regency, laundry service business actors provide compensation that is not by the losses experienced by laundry service consumers. Responsibility for losses to consumers of business actors only provides compensation for half the price of the goods, while the efforts taken by consumers are through peaceful means through negotiations between business actors and consumers (Yulastari et al., 2018). In another research conducted by Andi Ahmad et al, in the city of Balikpapan, business actors returned change with candy. The validity of candy in payment transactions is based on the provisions of Article 2 paragraph (2) of Law Number 7 of 2011 concerning Currency and Bank Indonesia Regulation Number 6/14 /PBI/2004 concerning Issuance, Circulation, Revocation and Withdrawal, and Destruction of Rupiah Currency which states that paper money and metal are legal means of payment in the territory of the Republic of Indonesia, then candy is not a legal means of payment because based on this article legal currency are banknotes and coins (Ahmad et al., 2022).

From the explanation presented above, the author is interested in researching how to resolve disputes over the sale and purchase of Antam gold in terms of economic analysis of law theory.

METHOD

This research uses normative legal research. According to Soejono Soekanto and Sri Madmuji, the normative legal research method with the object of research study on legal principles is research on legal rules, which are standards for behavior (Saifullah, 2018). This research is normative legal research with a case approach carried out by examining cases related to the legal issues being faced. The case in this research focuses on what it would be like to settle the sale and purchase of Antam gold through court. This case uses data from first-instance court decisions, namely the Surabaya District Court, Decision Number 158/Pdt.G.2020/PN. Sby, January 13, 2021, High Court Decision Number 371/Pdt/2021/PT Sby, August 19, 2021, a Cassation Decision Number 1666K/Pdt/2022, dated 29 June 2022. This case is a case that has become a court decision that has permanent force or interaction. The main study in this case approach is the judge's ratio decidendi or reasoning to arrive at a decision. Ratio decidendi or reasoning is needed both for practice and academic studies. The case approach emphasizes that several cases studied will become references for legal issues.

Sources of legal materials used include primary and secondary sources of legal materials. As a normative legal research, the focus of this research is based on the study of primary legal

materials and secondary legal materials. Legal Materials are the most important part of legal research. To solve the legal issues faced, legal materials are used as a research source (Susanti & Efendi, 2014). The primary legal material referred to here is statutory regulations, in this research, the Civil Law Book and Civil Procedure Law are used. This case uses first-instance court decision data, namely the Surabaya District Court, Decision Number 158/Pdt.G.2020/PN. Sby, January 13, 2021, High Court Decision Number 371/Pdt/2021/PT Sby, August 19, 2021, and Cassation Decision Number 1666K/Pdt/2022, June 29 2022 are important materials (Muhjad & Nuswardani, 2012).

RESULTS AND DISCUSSION

Before discussing how to resolve Antam gold buying and selling disputes in terms of economic analysis of law theory, the author needs to explain what buying and selling is according to the Civil Code. According to Article 1457 of the Civil Code, a sale and purchase agreement is an agreement between a seller and a buyer in which the seller binds himself to hand over his ownership rights to an item to the buyer, and the buyer binds himself to pay the price of the item. Buying and selling is a form of buying and selling transaction that is defined as exchanging goods for money between the seller and the buyer (Shoviy & Indrayani, 2021).

Furthermore, what is the term "Disputes", often referred to as the same as "Conflict"? Henry Campbell Black explains the meaning of "Dispute", "A conflict of controversy; a conflict of claims or rights; an assertion of a right, claim, or demand on one side, met by contrary claims or allegations on the other. The subject of litigation; the matter for which a suit is brought and upon which issue is joined, and about which jurors are called and witnesses examined" (Talib, 2013) Dispute resolution can be done outside of court or through court. Regarding agreeing in a sale and purchase agreement, it refers to Article 1320 of the Civil Code, namely the conditions for a valid agreement, first, the parties agree, are competent, certain things, and have a lawful cause. In this case, it is necessary to investigate further regarding these elements when related to the case above: Firstly, we agree that the seller, in this case, PT Aneka Tambang, Tbk, Surabaya branch, and the buyer, Mr. Budi said, a businessman from Surabaya, have agreed to carry out buying and selling 7.1 tons of gold for Rp. 3.9 trillion rupiah in 2018. Second, the parties are individuals or legal entities who can carry out legal actions because they are not under guardianship, crazy, or mentally disturbed. Third, a certain thing has been explained the object of the sale and purchase agreement in this case is 7.1 tons of Antam gold. Fourth, a certain thing means that the object being bought and sold is legal in the eyes of the law because it does not conflict with the law, public order, and morality. So that the sale and purchase agreement that has been made meets the requirements for the validity of the agreement. Agreements can be made verbally or in writing, but in principle, they must meet the requirements for the validity of the agreement.

And if the terms of the agreement have been fulfilled, according to Article 1338 paragraph 1 of the Civil Code, the agreement made by the parties will become law for the parties who made it, according to the principle of *pasta sunt serua*, and the sale and purchase agreement has created rights and obligations for the parties. In Article 1338 paragraph 3 of the Civil Code it is said that agreements must be executed in good faith, the question is what is good faith? According to Sutan Remy, good faith is the intention of one party not to harm another party. In this case, the lawsuit was filed in court using PMH (Unlawful Action). Unlawful acts can be

interpreted as a collection of legal principles that aim to control or regulate dangerous behavior, provide responsibility for losses that arise, and provide compensation with an appropriate claim (Dameria et al., 2017). PMH according to Article 1365 of the Civil Code states that for every action that causes harm to another person, it is mandatory for the person who caused the loss to compensate for the loss. Regarding the elements of unlawful acts contained in the provisions of Article 1365 of the Civil Code, first, there is the act. Second, there is a loss caused, meaning that there is an element of unlawfulness in the unlawful act which is a sign that someone who suffers a loss due to the consequences of an unlawful act committed by someone against another person can ask for compensation for the loss suffered in court (Niasari et al., 2021).

PMH can claim two types of losses, namely material and immaterial, but the compensation claim must be proven and measurable. In this case material compensation worth Rp. 817,465,600,000,- (eight hundred forty-five million six hundred thousand rupiah) as a loss value equivalent to 1,136 Kg of Antam gold bullion, Punish the seller Rp. 92,092,000,000,- (ninety-two billion ninety-two million rupiah). Immaterial compensation worth Rp. 500,000,000,000 (five hundred billion rupiah) and pay dwangsom amounting to Rp. 100,000,000,- (one hundred million rupiah). So the compensation proposed by the buyer is too much, so there needs to be a measure of the amount of compensation that is by the fairness of the parties so that it does not burden the seller, in this case, the BUMN, namely PT. Aneka Tambang Tbk.

In this case, the good faith of all parties is needed to carry out what has been mutually agreed upon. Good faith is the intention of one party not to harm the other party. This is by Article 1338 paragraph 3 of the Civil Code that agreements must be implemented in good faith. We all know that good faith is one of the principles. The position of legal principles is the foundation of legal norms, basically providing direction, objectives, and basic assessments for the existence of a legal norm.

Some experts even stated that the meaning of legal principles is the heart or heart of legal norms (legal regulations). According to GW Paton³³, this is based on 2 reasons, namely: (Suprapti & Tarigan, 2021)

1. Legal principles are the broadest "foundation" for the formation of legal norms. So that each legal norm can in turn be returned to these legal principles.
2. Legal principles are the "reason" for the emergence of a legal norm or the "ratio legis" of a legal norm. We want to continue to create legal norms. Legal principles will not exhaust their power by creating legal norms but will continue to exist and will continue to create new legal norms.

¹ The principle of good faith has two meanings, namely: (Arifin, 2020)

1. Good faith in the objective sense, that an agreement made must be implemented with due regard for the norms of propriety and decency, which means that the agreement must be implemented in such a way that it does not harm either party.
2. Good faith in the subjective sense, namely the meaning of good faith which lies in a person's inner attitude. In property law, good faith can be interpreted as honesty. Good faith in the subjective sense can be interpreted as a person's honesty in carrying out a legal act, namely what lies in a person's inner attitude at the time a legal act is carried out. Good faith in this subjective sense is regulated in Article 531 Book II of the Civil Code.

¹¹ Based on the civil procedural law in force in Indonesia, there are 5 (five) pieces of evidence regulated in Article 1866 of the Civil Code and Article 164 H.I.R., namely written evidence, evidence with witnesses, allegations, confessions, and oaths. So that if there is a dispute in an agreement, you can use the agreement as valid evidence in court.

Regarding compensation as a form of responsibility for losses, it is regulated in Article 1366 of the Civil Code. Losses suffered by consumers themselves are regulated by Article 1367 of the Civil Code. These two articles stipulate that compensation must be given for actions and negligence in matters under their supervision. These two articles are the basis for efforts to realize protection for buyers with good intentions. Government efforts to protect the rights of buyers and sellers. So the compensation proposed by the buyer is too much, so there needs to be a measure of the amount of compensation that is by the fairness of the parties so that it does not burden the business actor.

If the buyer's compensation settlement is linked to the Economic Analysis of Law theory, then there is the application of economic principles as an alternative rational choice used to analyze legal issues.¹ This theory comes from the flow of utilitarianism which prioritizes the principle of benefit, which was developed by the philosopher Jeremy Bentham (1748-1832) and the philosopher John Stuart Mill⁸ (1806-1873). The simple EAL approach is also based on economic considerations which are based on three basic values, namely: utility, value, and efficiency. In Richard Posner's view, EAL is constructed as an economic conception of justice, which in principle aims to ensure that economic analysis of law can realize the maximum public interest (maximizing overall social utility). Based on the description of EAL, according to this research, EAL has three characteristics, namely: first, EAL tries to synergize law and economics, where law has the character of legal certainty while economics has an orientation towards benefit. Therefore, EAL emphasizes that law and economics can create useful legal certainty and guarantee benefits with legal certainty.

Second, EAL tries to see the law in broad dimensions with an interdisciplinary character. This means that a legal product not only has an internal dimension to a legal system but also embodies other aspects that form the substance of legal regulations. If it is related to the relationship between law and economics, EAL tries to integrate the values of effectiveness and efficiency in the substance of legal policy. Good legal rules from an EAL perspective must also pay attention to the values of effectiveness and efficiency.

Third, EAL simply views law and economics as three interrelated aspects such as utility, value, and efficiency. This confirms that if one of the aspects above is not fulfilled then the law is not optimal and maximal because it negates one of the existing aspects. If we refer to the provisions on administrative sanctions related to digital business, then referring to the idea of EAL, administrative sanctions in digital business should also refer to the values in the EAL idea which include utility, value, and efficiency which are aim to realize as many public interests as possible.

Sudikno Mertokusumo is of the view that if you are looking for the law, first look for the meaning of a word in the law because the law is authentic, in written form, and guarantees legal certainty. (Asikin, 2020) So when resolving a gold buying and selling dispute in litigation or court, based on Perma Number 1 of 2016 the judge is obliged to reconcile the parties, meaning that the parties can carry out a mediation process to reach a settlement point, but if this is not successful then the trial will continue to the next stage until the court decision. A judge is

required to actively and continuously follow and explore the law, legal principles, legal theories, legal sources, doctrine, jurisprudence, and applicable legal values, especially when giving legal considerations (ratio decidendi) to judges. must be able to interpret, reason, and make legal arguments so that decisions are based on the value of justice, the value of benefits, and the value of legal certainty so that the authority of the law will be reflected in the decision. What the judge does at the trial is constitute concrete events, qualify concrete events, which means determining the legal events and concrete events, and constitute or give the law or punishment, which is the same as the activities of a legal graduate who works in the field of law. In particular, judges are always faced with concrete events, a case or conflict that must be resolved and resolved (Mertokusumo, 2014) Legal discovery is the process of forming laws by judges or other legal officers who are given the task of implementing the law on concrete events. Legal discovery is a complex process or series of activities that starts from the legal response until the decision is made. So the momentum for the discovery of law begins after concrete events are proven and then the law must be searched for or discovered.

CONCLUSION

PMH can be sued for two types of losses, namely material and immaterial, but the compensation claim must be provable, measurable, proportional, and not detrimental to either party, meaning that the principle of justice applies to the parties. In this case material compensation worth Rp. 817,465,600,000,- (eight hundred seven billion four hundred sixty-five million six hundred thousand rupiah) as a loss value equivalent to 1,136 Kg of Antam gold bullion, Punish the seller Rp. 92,092,000,000,- (ninety-two billion ninety-two million rupiah). Immaterial compensation worth Rp. 500,000,000,000 (five hundred billion rupiah) and pay dwangsom amounting to Rp. 100,000,000,- (one hundred million rupiah). So the compensation proposed by the buyer is too much, so there needs to be a measure of the amount of compensation that is by the fairness of the parties so that it does not burden the seller, in this case, the BUMN, namely PT. Aneka Tambang Tbk.

In the resolution of Antam's gold sale and purchase dispute, the demand for compensation rights from the buyer is linked to the theory of Economic Analysis of Law, so there is the application of economic principles as an alternative to rational choices used to analyze legal issues.' The simple EAL approach is also based on economic considerations which are based on three basic values, namely: utility, value, and efficiency. In Richard Posner's view, EAL is constructed as an economic conception of justice, which in principle aims to ensure that economic analysis of law can realize the maximum public interest (maximizing overall social utility). With the hope of being able to provide consumers with a win-win solution. A judge is required to actively and continuously follow and explore the law, legal principles, legal theories, legal sources, doctrine, jurisprudence, and applicable legal values, especially when giving legal considerations (ratio decidendi) to judges. must be able to interpret, reason, and make legal arguments so that decisions are based on the value of justice, the value of benefits, and the value of legal certainty so that the authority of the law will be reflected in the decision.

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