

Legal Analysis of Notary Deals Buy & Sale Binding Agreement (PPJB)

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Abstract. *The purpose of this study is to analyze and explain the legal analysis of the notarial deed of sale and purchase agreement (PPJB). To analyze and explain legal protection for the fulfillment of the rights of the parties if one of the parties defaults in the sale and purchase binding agreement (PPJB). The method used by the researcher is Empirical Jurisdiction and The specifications in this study are descriptive. Based on the results of the study that Legal analysis of the notarial deed of sale and purchase binding agreement (PPJB), namely this sale and purchase binding agreement deed does not provide legal certainty and protection to the parties regarding the agreement they made. The position of the Deed of Sale and Purchase Agreement is null and void due to the non-fulfillment of the legal requirements of an agreement. This sale and purchase agreement is carried out on the basis of an agreement even though the buyer knows that the object of the sale is a guarantee for the seller's debt to the bank.*

Keywords: Analysis; Deed; Notary; Sale; Purchase; Agreement.

1. Introduction

Notary is a public official as referred to in Article 1 point 1 of Act No. 30 of 2004 which was amended by Act No. 2 of 2014 concerning Notary Positions (abbreviated UUJN) that "Notaries are General Officials of Deed Makers. Notaries are authorized to make authentic deeds and other authorities as referred to in the laws and regulations". GHS Lumban Tobing is of the view that Article 1 of this Notary Position Regulation does not provide a complete description of the duties of a notary. In addition to making authentic deeds, the Notary is also to ratify (*waarmerken and legaliseren*) letters/deeds made under the hand, as well as provide legal advice and explanations regarding the law to the parties concerned.¹

The deed made before a notary is perfect authentic evidence with all the consequences.² Notary, appointed by the Government represented by the Minister of Law and Human Rights of the Republic of Indonesia and works for the State to serve the needs of the community in making authentic Deeds.

The basis of the notary's authority as a public official is based on the law, the state gives the authority to carry out state administration functions. On this basis, a notary becomes a position of trust because it is believed to have a neutral attitude in making an authentic deed. Everything written and determined (*constatir*) by a notary as an official is correct, he is a strong document maker in a legal process.³The formal requirement for an authentic deed is in the form determined by law, including the deed made by or before a public official authorized for it, and the place where the deed was made. Deed is a writing that is deliberately made and signed to be used as evidence if an event occurs.⁴

In addition, the Notary is also the only public official who is appointed for the manufacture of such evidence, so that the Notary does not carry out the acts committed by the parties but only makes evidence for both parties. The legal product issued by a Notary is in the form of deeds that have an authentic nature and have perfect evidentiary power. The duties and authorities of a notary are closely related to agreements, actions and also provisions that give rise to rights and obligations between the parties, namely providing guarantees or evidence

¹Lumban Tobing, G.H.S. 1999, *Peraturan Jabatan Notaris*, Erlangga, Jakarta, p. 37.

²Kohar, A. 1983, *Notaris dalam Praktek Hukum*, Alumni, Bandung, p. 64

³Tan Thong Kie, 2000, *Buku I Studi Notaris; Serba Serbi Praktek Hukum*, Ichtiar Baru Van Hoeve, Jakarta, p. 157.

⁴Subekti, R. 2001, *Hukum Pembuktian*, Pradnya Paramita, Jakarta, p. 48.

against the actions, agreements, and also the provisions so that the parties involved in it have legal certainty.⁵

Banking activities have a role in increasing equitable development. The preamble to letter b of Act No. 7 of 1992 concerning Banking as amended by Act No. 10 of 1998 (hereinafter referred to as "Banking Law") states that banking based on economic democracy with its main function as collectors and distributors of public funds, has a strategic role to support the implementation of national development, in the context of increasing equitable distribution of development and its results, economic growth and national stability, in the direction of increasing the standard of living of the people at large.

The objectives to be achieved in this study are: To analyze and explain the legal analysis of the notarial deed of sale and purchase binding agreement (PPJB). To analyze and explain legal protection for the fulfillment of the rights of the parties if one of the parties defaults in the sale and purchase binding agreement (PPJB).

2. Research Methods

The research method used is by using an empirical juridical approach "empirical juridical approach method is used to study legislation"⁶ This type of research is descriptive. The sources and types of data in this study are primary data. And secondary data obtained from literature studies related to the theory of legal certainty and legal protection.

3. Results and Discussion

3.1. Legal analysis of the notarial deed of sale and purchase binding agreement (PPJB)

The position of the binding sale and purchase (PJB) depends on how the binding sale and purchase agreement (PJB) is made, so if the binding sale and purchase (PJB) is made before or by a notary, the deed of binding sale and purchase agreement (PJB) made will become a deed that notarial and can be authentic. So, even though the binding agreement for the sale and purchase of land rights that occurred in Tegal was made under the hands, especially those made by the seller and buyer, it is the same as the legal force possessed by the deed of binding sale

⁵ Habib Adjie, 2008, *Sanksi Perdata & Administratif Terhadap Notaris Sebagai Pejabat Publik*, Refika Aditama, Bandung, p. 32.

⁶ Ulber Silalahi, 2009, *Metode Penelitian Sosial*, Refika Aditanam, Bandung, p.29

and purchase agreement (PJB) which was made under the hand, where the power is only based on Article 1338 of the Civil Code.⁷

The basis that the agreement only binds the parties who make the agreement is strengthened by the existence of Article 1340 of the Civil Code which states that the agreement only applies to the parties who make it. This means that the transfer of credit (credit transfer) that has been carried out and is binding with the achievement of an agreement regarding the objects to be sold and the purchase price between the seller and the buyer, cannot be canceled unilaterally by the buyer (the debtor who receives the transfer) and the seller (the debtor who accepts the transfer).⁸ The parties must respect and carry out the sale and purchase in good faith. This is because buying and selling is basically an agreement and the parties must be able to implement the principle of balance.

The notary has the authority to make a binding deed of sale and purchase of land with the status of a Certificate of Ownership (SHM) but is not authorized to make an authentic deed of sale and purchase of land with a certificate of ownership rights (AJB), because the authority to make a deed of sale and purchase of land (AJB) with a certificate of Ownership belongs to the Maker Official. Land Deed (PPAT).⁹ The development of human demands for housing which is a basic need in addition to clothing and food causes new problems to always arise in the procurement of housing, especially in large cities which are rapidly developing, have a high rate of population growth and are very heterogeneous in their inhabitants.¹⁰

The process of buying and selling in Article 1458 of the Civil Code, among others:

- a. If both parties have agreed on the price and the goods, even though the goods have not been delivered and the price has not been paid, this sale and purchase agreement is considered to have been completed.
- b. Buying and selling using a trial period is considered temporary. Since the approval of the sale and purchase agreement in this way, the seller continues to be bound, while the new buyer is bound if the trial period has passed and has been declared agreed.
- c. Since received an advance in the purchase with an advance payment. Both parties

⁷Fransiska Mayasar, Munsyarif Abdul Chalim, *Tinjauan Yuridis Pelaksanaan Perjanjian Pengikatan Jual Beli Hak Atas Tanah Berdasarkan Akta Notaris Di Tegal*, Vol. 4 No. 4 December 2017, Jurnal Akta Unissula

⁸Kartini Muljadi & Gunawan Widjaja, 2003, *Jual Beli*, RajaGrafindo Persada, Jakarta, p. 125

⁹ Ramdan, Harijanto, 2010, *Kewajiban-Kewajiban Dalam Pelaksanaan Jual Beli Tanah Bersertifikat*, Pustaka Ilmu, p. 36.

¹⁰Eko Budihardjo, 1998, *Sejumlah Masalah Pemukiman Kota*, Alumni. Bandung, p. 2.

cannot cancel the sale and purchase agreement, even if the buyer leaves the advance with the seller, or the seller pays the advance back to the buyer.¹¹

Legal analysis of the notarial deed of sale and purchase binding agreement (PPJB), namely this sale and purchase binding agreement deed does not provide legal certainty and protection to the parties regarding the agreement they made. The position of the Deed of Sale and Purchase Agreement is null and void due to the non-fulfillment of the legal requirements of an agreement. This sale and purchase agreement is carried out on the basis of an agreement even though the buyer knows that the object of the sale is a guarantee for the seller's debt to the bank. On the basis of the agreement, the notary makes the deed of the sale and purchase agreement. However, the sale and purchase agreement made has a legal defect due to the non-fulfillment of one of the terms of the agreement in Article 1320 of the Civil Code, in which case the agreement does not meet the objective requirements.

The notarial deed of sale and purchase agreement (PPJB) for the purchase of a house that is still under bank collateral is analyzed using the theory of legal certainty that with the existence of legal certainty, the purpose of the law, namely justice, will be achieved. The main thing about the value of legal certainty is the existence of the regulation itself. "About whether the regulation must be fair and have benefits for the community, is beyond prioritizing the value of legal certainty", the choice of this legal certainty theory looks at whether the deed of sale and purchase agreement whose object is collateralized by the bank, which is an authentic deed made before an authorized official is as evidence that has perfect evidentiary power can also be degraded the strength of its proof to be like an underhand deed, or even declared null and void by law. The degradation of the power of proof of an authentic deed becomes the power of proof under the hands, and a juridical defect of an authentic deed which results in an authentic deed can be canceled or null and void, occurs if there is a violation or deviation from the formal requirements and material requirements as regulated in the relevant statutory provisions. Thus, it can be reviewed whether the deed of sale and purchase agreement whose object is pledged at the bank has legal force and legal certainty.

¹¹ C.S.T. Kansil, 1991, *Hukum Perdata I (Termasuk Asas-Asas Hukum Perdata)*.. Pradnya Paramita, Jakarta, p. 236.

3.2. Legal protection for the fulfillment of the rights of the parties if one of the parties defaults in the sale and purchase binding agreement (PPJB)

Legal protection for prospective buyers in Indonesia is stated in Act No. 8 of 1998 concerning Consumer Protection. The provisions of Article 5 of the Consumer Protection Act (UUPK) explain that consumers have the following rights:¹² a. The right to comfort, security and safety in consuming goods and or services. b. The right to choose goods and or services, and to obtain such goods or services in accordance with the exchange rate, conditions and guarantees for the goods and or services. c. The right to correct, clear and honest information regarding the conditions and guarantees of goods and or services. d. The right to have their opinions and complaints heard on the goods and or services used. e. The right to get advocacy, protection and efforts to resolve consumer protection disputes properly. f. The right to obtain consumer guidance and education. g. The right to obtain compensation, compensation and or replacement, if the goods and or services received are not in accordance with the agreement.

Life in a dynamic society, we often find various forms of legal action, which sometimes the legal subject cannot do it directly.¹³The power of attorney for sale consists of the giver of the power of attorney and the recipient of the power of attorney. Legal protection for the power of attorney is very important considering that the power of attorney performs a legal action for the benefit of the power of attorney. Based on the results of the study, it can be concluded that the making of a selling power of attorney in an authentic deed can provide legal protection for the parties, considering that in this case the Notary as a public official authorized to make an authentic deed can provide legal advice so that the selling power made can provide protection impartial law for the parties.

A land sale and purchase agreement made by an authorized official usually applies the principle of freedom of contract in which the parties to the agreement freely state what the intent and purpose of the agreement is.¹⁴ As for the objects that are traded, they must only be tangible objects.¹⁵ In other words, everything that can be used as an object of buying and selling is property or assets, or everything that has value, including for example trading companies,

¹²Gunawan Widjaya & Ahmad Yani, 2003, *Hukum Tentang Perlindungan Konsumen*, Gramedia Pustaka Utama, Jakarta, p. 29.

¹³Paulus Meldif Dika Pratama, *Akibat Hukum Akta Kuasa Menjual Lepas Yang Dibuat Dalam Pembuatan Akta Jual Beli Tanah & Bangunan Oleh Notaris*, Vol. 4 No. 4 December 2017, Jurnal Akta Unissula

¹⁴ M. Adib Luthfi, Akhmad Khisni, *Akibat Hukum Terhadap Peralihan Hak Milik Atas Tanah Yang Belum Lunas Pembayaranannya*, Vol 5 No 1 March 2018, Jurnal Akta Unissula

¹⁵Adrian Sutedi, 2010, *Peralihan Hak Atas Tanah & Pendaftarannya*, Sinar Grafika, Jakarta, p. 72.

inheritance, or all objects that can be worth assets. The provisions of Article 1332 of the Civil Code states that only goods that can be traded can be the subject of agreement. Thus the object of an agreement can be used as an object of buying and selling, buying and selling occurs after the ownership rights are transferred after the goods purchased are delivered. Before the transfer of the name of the land rights has not been transferred to the buyer, this means that the transfer of land rights still requires another legal action in the form of leasing, which must be made a deed by the authorized official.¹⁶

The binding sale and purchase agreement is actually no different from the agreement in general. It's just that the sale and purchase binding agreement is an agreement that was born as a result of the open nature of Book III of the Civil Code, which provides the widest freedom for legal subjects to enter into agreements containing anything and in any form, provided that does not violate laws and regulations, public order and decency. The sale and purchase binding agreement was born as a result of obstruction or the presence of several requirements determined by the law relating to the sale and purchase of land rights which ultimately hampered the settlement of transactions in the sale and purchase of land rights. Some of these requirements are born from existing statutory regulations and some arise as an agreement between the parties who will buy and sell land rights. Requirements arising from the law, such as buying and selling, must be paid off before the Sale and Purchase Deed can be signed.¹⁷

The deed of power of sale made by a notary is prohibited from violating the principle of *nemo plus iuris ad alium transferre potest quam ipse habet*, which means that a person cannot transfer rights to another person more than the rights he has, so the power of attorney cannot give power of attorney more than the right or authority which he owns.¹⁸ ¹⁹A power is not a transfer of rights. Granting power or lastgeving is an agreement, by which one person gives power to another person, who accepts it to carry out an affair on his behalf. In general, a power of attorney is a one-sided agreement in the sense that the obligation to carry out an achievement lies only with one party, namely the recipient of the power of attorney.

¹⁶Wantijk Saleh, 1979, *Hak Anda atas Tanah*, Ghalia Indonesia, Jakarta, p. 31.

¹⁷Dewi Kurnia Putri, Amin Purnawan, *Perbedaan Perjanjian Pengikatan Jual Beli Lunas Dengan Perjanjian Pengikatan Jual Beli Tidak Lunas*, Vol. 4 No. 4 December 2017, Jurnal Akta Unissula

¹⁸ Indradi Prajanto dalam tesisnya, 2016, *Formulasi Bentuk Komparasi Akta Peralihan Hak Atas Tanah dalam Harta Bersama untuk Menjaga & Memenuhi Ketentuan Asas Nemo Plus Juris Transfere Potest Quam Ipse Habet*, Program Pascasarjana Universitas Atma Jaya, Yogyakarta, p. 17

¹⁹ Deen, Thaufiq., Ong Argo Victoria & Sumain. (2018). *Public Notary Services In Malaysia*. *JURNAL AKTA*: Vol. 5, No. 4, 1017-1026. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/4135>

The existence of an authentic deed as written evidence has an important role in every legal relationship in people's lives, in various economic activities, activities in banking, land, social activities, and others. The need for written evidence in the form of authentic deeds is increasing in line with the growing demands for legal certainty in various economic and social relations, both at the national, regional, and global levels. With an authentic deed, rights and obligations can be clearly determined, guaranteeing legal certainty and at the same time it is also expected to avoid disputes.²⁰

Legal protection against the fulfillment of the rights of the parties if one of the parties defaults in the sale and purchase binding agreement (PPJB) for the purchase of a house that is still collateralized by bank BTN in Bangkalan that the legal protection that can be given to the fulfillment of the rights of all parties in the sale and purchase agreement is other than in accordance with The legal protection provided by the authentic deed can also be based on Article 1338 BW, as well as the good intentions of the parties to fulfill the agreement that has been made. In this case, because the debtor's position is weaker, before taking legal action, be more careful.

According to the author, legal protection against the fulfillment of the rights of the parties if one of the parties defaults in the sale and purchase binding agreement (PPJB) for the purchase of a house that is still under bank collateral is analyzed using the theory of legal protection that protects a person or group from harm and actions that can harm his life from other people, society and the authorities. In addition, it also functions to provide justice and is a means to realize prosperity for all people. Legal protection when explained literally can lead to many perceptions.

4. Closing

Legal analysis of the notarial deed of sale and purchase binding agreement (PPJB), namely this sale and purchase binding agreement deed does not provide legal certainty and protection to the parties regarding the agreement they made. The position of this Sale and Purchase Agreement Deed is null and void due to the non-fulfillment of the legal requirements of an agreement. Legal protection for the fulfillment of the rights of the parties if one of the parties defaults in the sale and purchase binding agreement (PPJB) that the legal protection that can be given to the fulfillment of the rights of all parties in the sale and purchase

²⁰Rahmat Solehan, Gunarto, Peran Notaris Dalam Memberikan Pemahaman Hukum Kepada Masyarakat Yang Kurang Mampu Dalam Memahami Hukum Kaitannya Dalam Pembuatan Akta-Akta Notariil Di Wilayah Kedu Selatan, Jurnal Akta Vol. 4. No. 1, March 2017: 13 – 16, Unissula March 2017: 13 – 16, Unissula

agreement in addition to the legal protection provided by the authentic deed can also be based on Article 1338 BW, as well as the good intentions of the parties to fulfill the agreement that has been made.

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