

The Legal Position of the Sale & Purchase Agreement between the Developer & the Purchaser for Land Objects That are Still in the Process of Splitting

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Abstract. *The purpose of this research is to find out and analyze the legal position of the binding sale and purchase agreement between the developer and the buyer for land objects that are still in the process of splitting and analyze the role of a notary in making a binding sale and purchase deed where the land object is still in the process of splitting. This type of research is sociological juridical. The research approach used is descriptive research. Source of data used primary data and secondary data. Collection data used literature study and field study. The data analysis technique uses an interactive analysis model. The results of the study show that the legal position of the binding agreement on the sale and purchase of land rights made by a notary is recognized as a valid agreement, the binding agreement on sale and purchase aims to bind the seller and the buyer as a preliminary agreement in order to prepare the main agreement/subject agreement which will be carried out later, in the case of this is the Deed of Sale and Purchase. The role of the Notary in making PPJB is as an official authorized to make authentic deeds, intermediary and recorder of the will of the parties in the buying and selling process and as a witness that a deed has been carried out.*

Keywords: Agreement; Contract; Sale and Purchase.

1. Introduction

The object of buying and selling is very diverse, one of which is land or buildings. Land or building buying and selling transactions are inseparable from the existence of an agreement or engagement, namely an agreement between parties who are mutually binding, where one party transfers an object, and the

other party makes payments according to what was agreed¹, this is in accordance with the provisions of Article 1457 of the Civil Code that The agreement creates rights and obligations for the parties who make it, in this case, namely the seller and the buyer.

Consumers who buy land or buildings through the credit system should not have a Sale and Purchase Deed (AJB) made between the developer and the consumer, so to get around this problem, the developer makes an agreement with the consumer to make an agreement on land and buildings called the Sale and Purchase Agreement. PPJB)². PPJB can be made underhand or with an authentic deed before a Notary. PPJB is a form of initial agreement between the prospective seller and the prospective buyer who promises to carry out a sale and purchase transaction for an object, generally immovable objects including land and houses.

Sale and Purchase Binding Agreements (PPJB) are usually used by buyers and sellers of property as collateral for initial binding where the transaction has not been completed or has not been paid in cash. PPJB is an obligatoir agreement, namely an agreement that arises only with an agreement but has not resulted in a transfer of rights. This sale and purchase agreement contains the promises of the parties to carry out the sale and purchase if the conditions made and agreed upon have been fulfilled. The transfer of new rights will occur when a sale and purchase agreement has been made which is a material agreement³.

PPJB is an authentic deed made before a Notary, so it has perfect evidentiary power⁴. The deed is made by a notary public official who has the authority to make various kinds of agreements. The making of an authentic deed is required by laws and regulations in creating legal certainty, order and legal protection, so that the meaning of legal certainty can be properly actualized if the parties can understand the purpose of making the deed properly⁵.

¹Fadhila Restyana Larasati dan Mochammad Bakri, 2018, Implementasi Surat Edaran Mahkamah Agung Nomor 4 Tahun 2016 Pada Putusan Hakim Dalam Pemberian Perlindungan Hukum Bagi Pembeli Beritikad Baik, Program Studi Magister Kenotariatan Pasca Sarjana Fakultas Hukum Universitas Brawijaya, *Jurnal Konstitusi*, Vol 15 No 4, p.2-3

²Sendy Anantyo, Siti Malikhatun Badriyah, Adya Paramita Prabandari. 2021. Kekuatan Hukum Pada Perjanjian Pengikatan Jual Beli Baik Rumah dan Ruko (Kios) di Perumnas. *Notarius*. Vol 14 No 2. p. 821.

³Rona Swastika. 2021. *Analisis Yuridis Perjanjian Pengikatan Jual Beli (Ppjb) Tanah Ditinjau Dari Perspektif Kitab Undang-Undang Hukum Perdata*. Program Studi Ilmu Hukum Fakultas Hukum Universitas Muhammadiyah Surakarta, p. 2.

⁴Agustiro Nugroho Aribowo. 2020. Kepastian Hukum Pengikatan Akta Perjanjian Jual Beli di Hadapan Notaris Tanpa Dihadiri Para Saksi. *Jurnal Surya Kencana Satu : Dinamika Masalah Hukum dan Keadilan*. Vol 11 No 1, p. 89.

⁵Felix The. 2017. Perlindungan Hukum Atas Kriminalisasi Terhadap Notaris. *Jurnal Masalah-Masalah Hukum*, Vol 46 No 3.p. 219.

PPJB is an authentic deed made before a Notary, so it has perfect evidentiary power. The deed is made by a notary public official who has the authority to make various kinds of agreements. The making of an authentic deed is required by laws and regulations in creating legal certainty, order and legal protection, so that the meaning of legal certainty can be properly actualized if the parties can understand the purpose of making the deed properly.

The role of a notary in making a deed is to objectively safeguard the interests of the parties. The notary in making the PPJB plays a role in assisting the parties in formulating matters agreed to be agreed upon which are then poured into the form of a deed of agreement. The binding agreement on the sale and purchase of land creates an agreement which contains the rights and obligations of the parties who agree to it, so that if in the future a violation of the agreed terms is found, it can be said that there has been a breach of contract which results in the cancellation of the agreement. Cancellation of an agreement can be due to certain conditions, either canceled by one of the parties or an agreement between the parties and can also be canceled due to a court order.

The main principle in buying and selling land is the existence of inherent rights for the owner, meaning that someone will have legal force as the owner of the land rights. The ownership rights contain legal consequences, so there is legality of selling if the legal subject is valid as the owner of the rights and buying and selling through a mechanism agreed upon and stipulated by legal provisions which proves that the seller has the right to sell with a certificate issued on behalf of the seller as the legal owner⁶.

2. Research Methods

The type of research in this study is sociological juridical with the approach method using descriptive research. The data source to be used is primary data and secondary data. Data collection techniques using field studies and literature studies. The data analysis used is qualitative data analysis with an interactive analysis model.

3. Result and Discussion

3.1. Legal Standing of the Sale and Purchase Binding Agreement between the Developer and the Buyer of Land Objects that are still in the Process of Splitting in Boyolali

Obtaining land rights requires a certain process or mechanism, for example due to inheritance, grants, buying and selling, and so on. Regarding the acquisition of land and/or buildings through a sale and purchase transaction, in concept it must be done clearly and in cash. Explanation means that it is done openly, clearly the object and subject of the owner, complete with documents and proof of

⁶M. Adib Lutfi and Akhmad Khisni. 2018. Akibat Hukum Terhadap Peralihan Hak Milik Atas Tanah Yang Belum Lunas Pembayarananya. *Jurnal Akta*. Vol 5 No 1.p. 67.

ownership. Cash means paid immediately and at once. The taxes are paid, the sale and purchase deed signed and then the name of the certificate is reversed at the land office in order to obtain legal certainty as contained in Article 19 paragraph (1) of Act No. 5 of 1960 concerning Basic Regulations "Basic Agrarian Principles (hereinafter referred to as BAL), that "To ensure legal certainty by the Government,

Transactions of buying and selling land and/or buildings in practice are inseparable from the existence of an agreement, where there is an agreement between the parties who are mutually binding, with one party handing over an object and the other party making payments according to what has been agreed, this is in accordance with the provisions of Article 1457 of the Civil Code. The agreement creates rights and obligations for the parties who make it, in this case, namely the seller and the buyer. In the legal act of buying and selling land, there are two parties who have an interest, namely Prospective Buyers and Prospective Sellers.

One of the agreements made in the community is the PPJB of land rights. The agreement is an anonymous agreement, because it is not found in the forms of agreements regulated in the Civil Code. The agreement to buy and sell land rights is an implementation of the principle of freedom of contract, where the parties can freely determine their wishes. PPJB is a preliminary agreement, so usually the agreement contains promises from the parties which contain provisions in which the actual conditions for buying and selling have been fulfilled, this is in accordance with the interview with PPAT which stated that PPJB is basically an agreement whose assistance function is for a preliminary agreement but in a free form, so that this PPJB is included in the category of a preliminary agreement made before the implementation of the main/principal agreement

The position of the binding sale and purchase agreement on land rights which is a form of legal action of the agreement is the first step for the parties to bind themselves to each other in order to carry out further legal actions based on the BAL and Government Regulations concerning Land Registration, one of which is to carry out a sale and purchase in front of the PPAT (signing AJB). The purpose of the PPJB is to bind the prospective seller so that at the time agreed he will sell his property/rights to the prospective buyer, and at the same time the agreement also binds the prospective buyer to purchase the object/rights belonging to the prospective seller, in accordance with the terms agreed upon by the parties. There are two types of PPJB, namely unpaid PPJB and paid PPJB.

The PPJB is carried out by the developer, generally carried out by means of the buyer making payments in stages according to a predetermined schedule, otherwise the developer binds himself to the buyer to complete the construction according to a mutually agreed upon schedule so that it is an obligation for the

buyer to pay on the agreed schedule, a reciprocal condition can also be determined.

The Sale and Purchase Contract Agreement (PPJB) generally stipulates that the seller will sell his land to the buyer, but this cannot be done for certain reasons, for example the land is still under a bank guarantee, or other conditions are still required for the handover or during the land splitting process. . Prospective sellers and buyers are not required to make a Sale and Purchase Agreement (PPJB) in a land sale and purchase transaction, the Sale and Purchase Agreement (PPJB) usually regulates certain conditions that must be met by the parties in order to carry out a Sale and Purchase Deed (AJB).

Act No. 5 of 1960 concerning the Basic Agrarian Regulations (UUPA), it is stated that in order to transfer land rights, a process called buying and selling is required. The sale and purchase process was carried out before the Land Deed Making Officer (PPAT), an authentic deed known as the Sale and Purchase Deed (AJB) was obtained. AJB has a higher legal status compared to PPJB, because AJB causes the transfer of ownership of a building or land from the seller to the buyer, while PPJB only has the status of a letter of agreement between the seller and the buyer. Its nature does not change the status of land ownership from the seller to the buyer.

One of them is the use of PPJB for land certificates which are still in the process of solving certificates. The parties want to buy and sell a piece of land where the certificate is still in the process of being resolved, so the parties use the PPJB as a preliminary agreement between the two to bind each other to their desire to carry out legal actions of buying and selling land rights. The results of the interviews with the authors show that the Sale and Purchase Contract Agreement (PPJB) must be carried out or made in the presence of an authorized public official, namely a Notary, so it becomes a notarial deed that is an authentic deed.

The existence of PPJB plays an important role as a starting point before the sale and purchase die is drawn up. The existence of the PPJB will not prevent the parties from transacting but on the contrary can provide certainty regarding the parties' intention to agree, although in practice sometimes at the time of signing the PPJB there has not been a transfer of land rights due to several considerations. This PPJB is intended to bind sellers and buyers, which is generally done by developers to make it easier to buy and sell property. PPJB which is a preliminary agreement, functions to prepare the main agreement/main agreement that will be carried out later, in this case is the sale and purchase contract.

The implementation of the agreement sometimes does not always go according to the agreement desired by the parties, where under certain conditions problems can arise which result in broken promises/defaults. Some of the forms of broken promises that occur in the implementation of the binding sale and purchase agreement regarding late payments from the buyer, the seller who sells the object of sale and purchase to another party, the seller who does not carry out his obligations such as not submitting proof of ownership of the land as well as a certificate to the buyer, not handing over the object of sale and purchase to the buyer and making the object of sale and purchase as collateral at the bank, selling or renting it out to other people.

One example of a case that occurred in Boyolali Regency was a sale and purchase binding agreement made by a notary in Boyolali Regency, namely between Mr. AA as the owner of the land with a certificate of ownership no. 3959 located in Jeron Village, Nogosari District, Boyolali Regency with an area of 2,720 m², and Mr. SM as the buyer (developer), where in the agreement Mr. AA has sold part of the land area of 1,100 m² to Mr. SM in stages over six months, and while waiting for payment from Mr. SM the certificate is being processed for splits.

Over time, holding on to the Sale and Purchase Contract Agreement made before a Notary, Mr. SM as the buyer (developer) sold the land by plotting to new buyers, and to convince the prospective buyer, Mr. SM (developer) made the sale and purchase binding agreement to a notary only based on the master number of the certificate before it was broken up and the site plan was made. The binding sale and purchase agreement made with the new buyer Mr. SM (developer) here acts as the seller, whereas in fact the object in the agreement made is still in the process of being broken and has not been renamed to Mr. BC (developers).

The existence of this case shows that PPJB can be used as an alternative in the pre-project selling sales system as an efficient and fast way to sell property. Marketing through this system is used by developers by selling projects with building objects that will be built in the future so that PPJB is used as a way for developers to get new funds or business capital then after sufficient funds then construction is carried out.

PPJB between the developer and the buyer can be made with an authentic deed or a private deed. Making with an authentic deed means that the PPJB is made by a notary in the form of a notary deed. Underhand PPJB is referred to as an ordinary agreement made by the seller and buyer without going through a notary, but what is good is that the PPJB is made by a notary in the form of an authentic deed because legally the PPJB that is made authentically made by a notary will have perfect evidentiary power while the PPJB is underhand made by the parties, without going through a notary the power of proof is not as perfect

as an authentic deed, in practice to make private agreements, the conditions must comply with Article 1320 .

The results of the interview with the notary in Boyolali Regency stated that the position and validity of a deed, especially in this case, the Sale and Purchase Agreement, departs from Article 1320 of the Civil Code. The binding sale and purchase agreement is an obligatoir agreement, which is an agreement that gives birth to rights and obligations between the parties, where after the deed of the binding sale and purchase agreement is made and one of the buying and selling principles (especially the cash principle) can be fulfilled, the seller is obliged to transfer rights of land through the Deed of Sale and Purchase made by the PPAT

PPJB is temporary, in this case it is a temporary bond between the seller and the buyer while the parties are waiting for the AJB process which will be made before the PPAT. The purpose of this temporary binding is that the seller is willing to bind the buyer to sell the agreed object, and the buyer is also willing to bind himself to the seller to buy the object contained in the contents of the PPJB. The object of sale and purchase to reach AJB must go through several stages, for example inspection or physical checks, splitting certificates, removing mortgage rights or royalties, and so on, which are submitted to the local Land Office as requested by the PPAT. This process requires a lot of time, so if it is related to time constraints on the part of the buyer, the PPJB is a solution to be able to immediately carry out the process of transferring these rights. PPJB from the seller and/or developer can be used as a basis sale and purchase, either in the form of land or in the form of land and buildings, to achieve AJB, which is used as the basis for transferring rights from the seller to the buyer in order to fulfill legal protection and law certainty.

Based on all the information that has been put forward, it shows that the legal position of the binding sale and purchase agreement on land rights made by a Notary when the land is in the process of splitting is very strong, because the Sale and Purchase Agreement (PJB) was made before a notary, the deed has become a deed. a real memorandum so that it is an authentic deed, while for one made not in the presence of a notary it becomes a private deed whose proof is under an authentic deed, even though Article 1875 of the Civil Code states that underhanded deed can have perfect proof as an authentic deed if the signature in the deed is recognized by the party who signed it. The PPJB made by the parties before a Notary serves as a binding rule for the parties entering into a sale and purchase agreement which has legal force for both the seller and the buyer and can be equaled as a law for the parties in it. The PPJB that has been made can be used as a guide and evidence for the parties that an agreement has

been reached in the sale and purchase before proceeding to the Sale and Purchase Deed (AJB) stage before the PPAT

3.2. The Role of a Notary in Making a Sale and Purchase Binding Deed in which the Land object is still in the Splitting Process in Boyolali Regency

Notaries are authorized by the state to make authentic deeds regarding all actions, agreements and stipulations that are required by laws and regulations and/or that are desired by interested parties to be stated in authentic deeds guaranteeing the certainty of the date of making the deed, keeping the deed, providing grosee, other than and excerpts of the Deed, all of that as long as the making of the Deed is not also assigned or excluded to other officials. The deeds made by a Notary are authentic deeds which bind the parties listed therein to protect each party from events that can harm one of the parties.

The notary helps the parties who make the binding sale and purchase agreement to get assistance in formulating the things to be agreed upon. The Preliminary Sale and Purchase Agreement System or the PPJB System is a series of agreement processes between each person and development actors in marketing activities as outlined in the preliminary sale and purchase agreement or binding sale and purchase agreement before the sale and purchase deed is signed. The results of the interview with the Notary in Boyolali Regency showed that there were several things that became the basis for the PPJB for the sale and purchase of land, namely that because the certificate for the land was still in the process of splitting, or when buying housing,

Related to the process of transferring land rights, a deed is needed in the process of transferring land rights, namely deeds related to land. Article 15 paragraph (2) letter f UUJN, states that a Notary has the right to make deeds related to land rights on land such as buying and selling, exchange, grants, distribution of joint rights, and so on related to land. The parties who will enter into a Sale and Purchase Agreement (PPJB) are required to come directly to the Notary that has been agreed upon, if the parties are individuals, then the party is required to come to make the Sale and Purchase Agreement or can be authorized based on a power of attorney but if one or both parties is a Legal Entity in the form of a Limited Liability Company (PT),

a PPJB was made which functions to provide legal protection and safeguard the interests of the parties who will carry out land sales and purchase transactions or also land and buildings that do not meet the requirements for making a Sale Purchase Deed, so that beforehand it is necessary to make a Sale and Purchase binding agreement in accordance with the agreement contained in the agreement between the parties. the party, then after all the formal and material requirements are met, then it becomes the duty of the PPAT to make the

transfer of land ownership rights by making a Sale and Purchase Deed which forms the basis for applying for the transfer of land ownership to the competent authority, namely the National Land Agency/Ministry of ATR BPN

The binding agreement for sale and purchase made before a notary is an additional deed made in the event that there are special events that result in the sale and purchase transaction being made by making a sale and purchase deed, but with the reason that the agreement was made legally by the parties, the agreement is will apply as a law for those who make it and legally made based on Article 1338 paragraph (1) of the Civil Code and will bind the parties until the accomplishments that are the rights and obligations of each party are fulfilled. The binding agreement for sale and purchase made by a notary has not transferred rights but only constitutes a reciprocal relationship that gives rights and obligations to each party in fulfilling an achievement.

Notaries in the implementation of PPJB making need to be careful because they are prone to problems in making the value of the Sale and Purchase Agreement (PPJB). The notary does his best by taking preventive actions such as writing in detail, in detail and as completely as possible based on the information from the parties in the list of the Sale and Purchase Agreement (PJB), if the notary makes the deed carefully, carefully and thoroughly then the function of making the Sale and Purchase Agreement (PPJB) will be realized, that is, what is written in the agreement should show the actual wishes of the parties, therefore when the agreement is made, the actual wishes must be fully disclosed. The function of this agreement is called the function of the agreement to maintain the honesty of the hearts and minds of the parties.

Notaries who will make PPJB tend to consider the deed made valid if the parties have agreed, and each party is capable of carrying out legal actions. The responsibility of a notary as a public official for the PPJB he made is that a notary must be morally responsible for the deed he made because he is trusted to compile and formulate the wishes of the parties in the PPJB. The form of the deed can be legally justified and does not conflict with law, decency and public order or the notarial deed can be called fake and null and void, as a notary has the obligation to produce an authentic deed which acts as perfect evidence.

The notary sticks to the agreement that has been agreed upon by both parties. The results of interviews with Notary SM in Boyolali Regency show that the parties should understand in detail what was agreed because everything outside of the PPJB is not the Notary's fault. The agreement made does not deviate and is in accordance with applicable law where the parties may not enter the value of the Sale and Purchase Agreement (PPJB) which is not in accordance with the agreement, both the time period and the price of the land. The notary only makes the contents of the agreement based on the agreement of the parties.

The notary is only a witness in the agreement. The witness is the signatory in front of a notary and of course the contents are known to all parties.

4. Conclusion

The legal position of the Sale and Purchase Contract Agreement (PPJB) of land rights made by a Notary is recognized as a valid agreement, because this authority is normatively regulated in positive law. The binding sale and purchase agreement aims to bind the seller and the buyer, which is generally done by the developer to make it easier to buy and sell property. The binding sale and purchase agreement is a preliminary agreement, so the function of the binding sale agreement is basically to prepare the main agreement/main agreement that will be carried out later, in this case the deed of sale and purchase.

5. References

Journals:

- Agustiro Nugroho Aribowo. 2020. Kepastian Hukum Pengikatan Akta Perjanjian Jual Beli di Hadapan Notaris Tanpa Dihadiri Para Saksi. *Jurnal Surya Kencana Satu : Dinamika Masalah Hukum dan Keadilan*. Vol 11 No 1
- Fadhila Restyana Larasati dan Mochammad Bakri, 2018, Implementasi Surat Edaran Mahkamah Agung Nomor 4 Tahun 2016 Pada Putusan Hakim Dalam Pemberian Perlindungan Hukum Bagi Pembeli Beritikad Baik, Program Studi Magister Kenotariatan Pasca Sarjana Fakultas Hukum Universitas Brawijaya, *Jurnal Konstitusi*, Vol 15 No 4.
- Felix The. 2017. Perlindungan Hukum Atas Kriminalisasi Terhadap Notaris. *Jurnal Masalah-Masalah Hukum*, Vol 46 No 3.
- M. Adib Luthfi dan Akhmad Khisni. 2018. Akibat Hukum Terhadap Peralihan Hak Milik Atas Tanah Yang Belum Lunas Pembayaranannya. *Jurnal Akta*. Vol 5 No 1.
- Rona Swastika. 2021. *Analisis Yuridis Perjanjian Pengikatan Jual Beli (Ppjb) Tanah Ditinjau Dari Perspektif Kitab Undang-Undang Hukum Perdata*. Program Studi Ilmu Hukum Fakultas Hukum Universitas Muhammadiyah Surakarta.
- Sendy Anantyo, Siti Malikhatun Badriyah, Adya Paramita Prabandari. 2021. Kekuatan Hukum Pada Perjanjian Pengikatan Jual Beli Baik Rumah dan Ruko (Kios) di Perumnas. *Notarius*. Vol 14 No 2.

Supriyadi. 2016. Kedudukan Perjanjian Pengikatan Jual Beli Hak Atas Tanah Dalam Perspektif Hukum Pertanahan. *Jurnal Arena Hukum*. Vol 9, No 2.

Books:

Ali Achmad Chomzah, (2002), *Hukum Pertanahan*, Jakarta : Prestasi Pustaka.

Ali Hasan. (2013). *Berbagai Macam Transaksi dalam Islam (Fiqh Muamalat)*, Jakarta : PT. Grafindo Persada,

Dony Hardirusdianto. (2009). *Beberapa Catatan Penting Tentang Pengikatan Jual Beli Hak Atas Tanah*. Jakarta : Mitra Ilmu.

Habib Adjie. (2007). *Hukum Notaris Indonesia (Tafsir Tematik Terhadap UU No.30 Tahun 2004 tentang Jabatan Notaris.*,

Herlien Budiono, (2014), *Ajaran Umum Hukum Perjanjian dan Penerapannya di Bidang Kenotariatan*, Bandung : Citra Aditya Bakti.

Rusdianto. (2010). *Teori Kewenangan (Theorie van Bevoegdheid)*, Surabaya : Diktat Mata Kuliah Magister Kenotariatan Fakultas Hukum Universitas Narotam.

Internet:

<https://bovolalikab.bps.go.id/subject/153/geography.html>