

## Legal Consequences of Binding the Sale and Purchase of Land Rights Under Hands That Have Been Warned by a Notary

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**Abstract.** *The researcher conducted this research with the intention of knowing and analyzing the legal status of PPJB for private land rights that have been Waarmerking and also to find out and analyze whether a PPJB for private land rights that has been Waarmerking must make a Deed of Sale and Purchase. In this study, a sociological legal approach will be used and primary data will be used as the main data, namely the results of interviews conducted with Mrs. Arini Sutanti, SH, M.Kn. She is one of the Notaries in Temanggung Regency and is also supported by secondary data from a number of sources which are then analyzed and processed using qualitative methods in order to obtain a conclusion. The results of the study show that the sale and purchase agreement for land rights carried out privately which was then carried out by Waarmerking efforts by the Notary does not affect the authenticity of the contents or signatures contained in the deed, the role of Waarmerking is only limited to entering it in the Notary's book as an archive if at some point the agreement is lost or damaged, so that all parties who bind themselves do not have to re-make the agreement. This means that the evidentiary power and status of the Waarmerking itself can be interpreted as if the Notary has no responsibility for the contents and signatures contained therein, so the related parties will only have responsibility for the contents and signatures contained in the letter.*

**Keywords:** *Consequences; Legal; Notary; Waarmeking.*

### 1. Introduction

Since ancient times, our society has known buying and selling, so buying and selling is nothing new. Generally, buying and selling is carried out with an agreement or also called a Sales and Purchase Agreement (PPJB). In customary law, it has been explained that what is meant by a sales and purchase agreement is a real agreement, meaning that the requirements that must be met from an agreement are the delivery of goods that have been promised. If something has been promised but in reality what was promised has not been given, then the

agreement is the same as not existing or has not occurred, then also based on the principle of clear and cash, namely buying and selling with the granting of full rights and immediately the buyer pays directly to the seller.<sup>1</sup>

This condition is not in line with the explanation regarding the sale and purchase agreement contained in the Civil Code, considering the wording of Article 1458 of the Civil Code, namely "a sale and purchase is deemed to have occurred between the two parties when they have reached an agreement on the goods and price, even though the goods have not been delivered or the price has not been paid". Referring to the wording of the article above, it can be understood that the agreement is considered to have occurred since the two parties mutually agreed, even though the seller has not delivered the goods that have been agreed upon.<sup>2</sup>

In relation to the authority held by a Notary who is a Public Official, a private letter can be strengthened with legality and *waarmerking*. What distinguishes *Waarmerking* and Legalization is: *Waarmerking* only has a certainty of the date and there is no certainty of the signature, then in legalizing the signature it is carried out in front of the person who provides the legality, then in *waarmerking*, when *waarmerking*, the letter already has the signature of the related party. So that the person who gives the *waarmerking* does not know about it so that it does not legalize the signature in it.<sup>3</sup>

The registration of this *waarmerking* has not been firmly and wordingly stipulated, however, regarding Legalization, it is explained in Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notary, in Article 15 paragraph (2) letter a which explains that "Notaries in their positions are authorized to validate signatures and determine the certainty of the date of private letters by registering them in a special book". However, there are many problems in implementing private letters registered by the Notary, there are many misinterpretations, private letters registered by notaries do not have a clear legal basis, only explained in the Notary Position Law. Reflecting on the wording of the article above, Notaries have the authority, however, the legal force of the *Waamerking* is not explained.

The Private Land Rights Sale and Purchase Agreement that has been *Waarmerking* is one of the products that occurs as a result of an agreement that has a universal nature and is not limited by space and time, as long as what is agreed upon is in accordance with the regulations in the legislation. However, many people assume that the Private Land Rights Sale and Purchase Agreement is a sale and purchase of land rights that is in accordance with the provisions that have been set. Then the PPJB itself cannot be used as a basis for making land certificates or transferring land rights. For a number of people who have little understanding of the concept of an agreement, some of them who have

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<sup>1</sup>Fransiska Mayasari, "Legal Review of the Implementation of the Sale and Purchase Agreement of Land Rights Based on Notarial Deeds in Tegal", *Jurnal Akta*, Vol 4 No. 4, December 2017, p. 516,

<sup>2</sup>*Ibid*, p. 516

<sup>3</sup>A. Pitlo, "Evidence and Expiration According to the Civil Code, (linguistic expert by M. Isa Arief)", *Intermasa*, Jakarta, 1986, p. 34

previously made a private sale and purchase agreement or at the Village Office, namely by trying to Waarmerking the agreement letter while waiting for enough money to make a Sale and Purchase Deed and pay the tax. However, there are still many people who misunderstand the concept of Waarmerking itself.

From the description above, in this case the researcher is interested in conducting a study entitled "Legal Consequences of Binding the Sale and Purchase of Land Rights Under Hand Which Have Been Notarized by a Notary".

## **2. Research Methods**

The research to be conducted will use a sociological legal approach. Sociological legal research focuses on research that is intended to obtain empirical legal knowledge by going directly to the field. The specifications of this research use descriptive analysis, namely in addition to describing, writing and reporting a phenomenon, it will also provide general conclusions from the problems being studied. Data sources are obtained from primary and secondary data. The data needed is taken through interview methods and literature studies. The data that has been successfully collected is then analyzed qualitatively using an interactive model referring to that developed by Miles and Huberman.<sup>4</sup>

## **3. Results And Discussion**

### **3.1 Legal consequences of PPJB for Land Rights Under Hand that have been Waarmerked**

#### **a. Legal Position of PPJB Land Rights Under Hand**

Legal standing is a status in which a subject or object of law is positioned to have a function and purpose. Then the legal standing is also a factor that determines how the subject or object of law can carry out activities that are allowed or not allowed. Starting from this explanation, PPJB is one of the products of legal standing, where the subject or object of law can carry out an action that is allowed and not allowed based on the provisions of the applicable Law.<sup>5</sup>

The Law directly explains the requirements that must be fulfilled so that an agreement can be considered perfect and have legal force, namely those explained in Article 1320 of the Civil Code below;

1. Both parties have agreed
2. Ability to act
3. There is a thing or there is an object of agreement.
4. There is a halal clause (Geoorloofde oorzaak).<sup>6</sup>

In its application, there are still many people who do not understand how the practice of buying and selling land rights that have been explained in the Law,

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<sup>4</sup>Irwansyah, 2021, "Legal Research; Choice of Methods and Writing of Articles", Mirra Buana Medika, Yogyakarta, p. 176

<sup>5</sup>Civil Code and Civil Code, TK: Pustaka Buana, 2015, p. 295.

<sup>6</sup> Ghita Aprillia Tulenan, "Position and Function of Private Deeds Legalized by Notary, Lex Administratum", Vol. II – No. 2, April – June 2014, p. 122.

where many people carry out buying and selling of land rights in a secret manner. Then based on PP No. 24 Article 37 paragraph (1) of 1997, land registration can be carried out which is accompanied by evidence of a deed made before a Notary which is then called a Deed of Sale and Purchase.<sup>7</sup>

Thus, the process of buying and selling land rights carried out does not refer to the Deed of Sale and Purchase made by a Notary, it can also be called a Sale and Purchase Agreement, considering that its position does not change or affect the transfer and income of land rights. Its scope is only to bind the sale and purchase agreement, not the transfer process. The fact that the author has successfully found is that the community, especially those who live in the research area, do not yet understand the concept of a legitimate sale and purchase and the amount of tax that must be paid by the seller or buyer, thus giving rise to practical thinking in the field related to the sale and purchase of land rights.<sup>8</sup>

The basic concept of a sale and purchase transaction is clear and cash. Clear means it is carried out transparently, the object and subject are clear, and the proof of ownership is complete. Then Cash means it is paid immediately. Pay the tax burden, sign the Deed of Sale and Purchase, after that the change of name on the certificate will be processed.<sup>9</sup>

However, in reality, the concept of Bright and Cash sometimes cannot be fulfilled. Not fulfilled, does not mean that the transaction cannot be carried out, there are other instruments, namely the binding using the PPJB Deed as a sign of the transaction, while waiting for anything that has not been completed. The requirements for the Sale and Purchase Deed cannot be fulfilled, this can occur because the payment has not been paid in full or is still being paid in installments, the certificate is still in the process of being divided or other processes, the tax has not been paid or other legal conditions.

### **3.2 Contract for Sale and Purchase of Rights Under Hand that has been Waarmerked**

Warning is an action taken by a Notary to record a deed under hand made by the related parties. Waarmerking itself is carried out by a Notary by writing it in a special book.

Article 15 paragraph (2) Letter b of the Notary Law explains the authority of a notary over a waarmerking. Regarding the authority held by a Notary who is a Public Official, a private letter can be strengthened with legality and waarmerking. What distinguishes Waarmerking and Legalization is: Waarmerking only has a certainty of date and there is no certainty of signature, then in legalizing the signature it is carried out in front of the person who provides the legality, then in waarmerking, when waarmerking, the letter already has the signature of the related party. So that the person who provides

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<sup>7</sup> Soedharyo Soimin, "Land Rights Status and Acquisition", Jakarta: Sinar Grafika, 2001, p. 87

<sup>8</sup> *Ibid.*

<sup>9</sup> R. Subekti, "Contract Law," (Jakarta: Intermasa, 2004), p. 75.

the waarmeding does not know about it so it does not legalize the signature in it.<sup>10</sup>

However, there are many problems in applying the letter, many errors in interpretation, the letter under hand registered by the Notary does not have a clear legal basis, only explained in the Notary Law. Reflecting on the sound of the article above, the Notary has the authority, but it does not explain the legal force of the Waarmeding.<sup>11</sup>

In fact, the legal force of proof of the Waarmeding does not affect the Waarmeding, meaning that the legal force in proving it will be more perfect if all parties acknowledge the validity of the signature, then the Notary is not fully responsible for the legality of the Waarmeding, so the purpose of registering the letter is solely so that the state acknowledges the letter.

Thus, a purchase agreement that is not made in front of a Notary can also be called a PPJB for land rights under hand, considering that it does not affect the transfer of rights. Then in the PPJB letter for land rights that have been Waarmeding, it is only limited to the recognition of the position of the letter which is strengthened by a Notary, but its legal status will be more perfect if all parties acknowledge the contents of the letter and the signatures of the various related parties.<sup>12</sup>

The evidentiary power of a private letter is highly dependent on the truth of the confession or denial of all parties regarding the contents and signatures contained therein. This private deed, for example, which has been explained in Article 1880 of the Civil Code, will not have the power of proof against a third party except since a Notary or other employee determined by Law affixes a statement and is recorded based on statutory provisions.

When correlated with the theory of legal certainty, it can be concluded that, "the principle of legal certainty is a guarantee of legal protection for all parties, so that Notaries also have the authority to regulate, protect, and provide guarantees of legal certainty, in terms of storing minutes of deeds that Notaries do and must have legal certainty, and must provide guarantees of order, especially related to Notary products, namely the making of authentic deeds where a deed is a document that can provide certainty for the entire community."<sup>13</sup>

### **3.3 A PPJB for Land Rights under Hand that has been Waarmeding becomes the basis for making a Deed of Sale and Purchase.**

PPJB itself can be implemented with a private deed or can also be implemented

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<sup>10</sup> <https://blog.justika.com/document-bisnis/example-legalization-notaris/> accessed on June 20, 2024 at 19.00

<sup>11</sup>A. Pitlo, "Evidence and Expiration According to the Civil Code, (linguistic expert by M. Isa Arief)", Intermasa, Jakarta, 2016, p. 34

<sup>12</sup>Jazim Hamidi, "Indonesian Legal Revolution: Meaning, Position, and Legal Implications of the Proclamation Manuscript of August 17, 1945 in the Constitutional System of the Republic of Indonesia, Konstitusi Press & Citra Media", Yogyakarta, 2006, p. 200.

<sup>13</sup>Marwan Mas, "Introduction to Legal Science", Ghalia Indonesia, Bogor, 2003, p.39

with a deed made in front of a Notary. In relation to this, the author focuses on PPJB under hand which is then Waarmerking by a Notary, where the Seller and Buyer bind themselves to a letter and then register or Waarmerking by a Notary. Based on this statement, it is quite clear that the Notary has no responsibility for the contents and signatures in his deed, but is only limited to recording it in the book belonging to the appointed Notary.

Together we can understand that related to the PPJB of Land Rights Under Hand that has been Waarmerking has a universal concept and is not limited to the purpose of buying and selling alone, but occurs due to a number of factors and circumstances of the seller or buyer. Thus the Notary has no responsibility for the contents and signatures contained in the deed, but is only limited to recording it in the Notary's register book.<sup>14</sup>

Thus, the status of the PPJB for Land Rights Under Hand that has been Waarmerking can only be used as evidence to strengthen when a Deed of Sale and Purchase will be made by a Notary, so this can be seen as perfect proof if all parties who are bound by an agreement, the contents and signatures contained in the agreement are true and their authenticity is guaranteed.

PPJB under hand or made by a Notary cannot be the basis for making a Deed of Sale and Purchase if all parties bound by the previous deed do not come before the Notary who is appointed together. So all parties, both sellers and buyers, must be present in person before the Notary after which the Notary will make a Deed of Sale and Purchase based on the applicable laws and regulations.

Thus, in making a Deed of Sale and Purchase if there is no power of sale or other power of attorney in the previous PPJB, both parties are required to come directly in front of a Notary as a reference for the transfer of rights from the seller to the buyer with all parties being able to fulfill the rights and obligations of the buyer and seller and proof of the creation or transfer of rights to the land in the Certificate of Ownership.<sup>15</sup>

When associated with the theory of legal responsibility from Hans Kelsen, then legal obligation is a concept of legal responsibility. In the legal perspective, a person is declared responsible for a certain action that he can get a sanction in a conflicting action. Ideally, in the case of sanctions given to the delinquent, it is because of his own actions that make a person responsible. A Notary is given the authority to store documents included in the state archives as a protocol in the form of minutes of the deed, which is recognized by the state as having perfect evidentiary power so that legal certainty can be achieved.<sup>16</sup>

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<sup>14</sup>Satjipto Rahardjo, *Legal Science*, PT. Citra Aditya Bakti, Bandung, 2006, p.40

<sup>15</sup>Dewi Kurnia Putri, Amin Purnawan, "The Difference Between a Settled Sale and Purchase Agreement and an Unsettled Sale and Purchase Agreement", *Jurnal Akta* Vol. 4 No. 4, 2017, p. 632

<sup>16</sup>Hartono Supratikno, 1982, "Various Sale and Purchase Agreements", Yogyakarta, Notary Section, Faculty of Law, UGM, p. 1.

#### 4 Conclusion

In this case, we can understand together that the land rights sale and purchase agreement carried out in a private manner which is then called *Waarmerking* by the Notary does not affect the authenticity of the contents or signatures contained in the deed, the role of *Waarmerking* is only written in the Notary's book as an archive if at some point the agreement letter is lost or damaged, thus all parties who are bound do not have to re-make the agreement letter. This means that the evidentiary power and status of *Waarmerking* itself can be interpreted if the Notary has no responsibility regarding the contents and signatures in his deed, thus only the related parties are responsible for the contents and signatures on the letter. The sale and purchase of land rights which are widely carried out by the community, especially in a number of areas that still have limited understanding regarding the effective and efficient Land Rights Sale and Purchase process still uses many practical mechanisms, where the sale and purchase are not carried out in front of a Notary but only in front of the Village Head or Traditional Head or in the sense that if the sale and purchase is private, it does not provide anything regarding the transfer and income of land rights. So that the sale and purchase can also be said to be a PPJB for Land Rights. Basically related to the PPJB for Land Rights that has been *Waarmerking* itself is still the same as the PPJB in general, where the main concept is a binding agreement made by all parties who bind themselves, where as an agreement made before the final agreement is made. This happens due to a number of factors from the seller or the buyer. Thus, in making a Deed of Sale and Purchase, it must be relevant to the mechanism that has been determined, namely both parties' data in front of a Notary and the sale and purchase process is Clear and Cash.

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