

Notary's Obligations for The Drafting of a Sale-Purchase Agreement Deed in Connection with Regional Retribution

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Abstract. *This study analyzes the obligations and responsibilities of notaries in making a Deed of Sale and Purchase Agreement (PPJB) based on Regional Regulation Number 8 of 2023 and the Notary Law (UUJN). In addition, this study identifies the forms of sanctions that can be imposed on notaries if violations occur and evaluates the effectiveness of supervision and law enforcement in the notary profession. By understanding the regulations and their implementation, this study is expected to provide recommendations to improve the professionalism of notaries and legal protection for parties conducting land sale and purchase transactions through PPJB. The approach used is normative juridical with qualitative analysis methods. Data were obtained through literature studies, including laws and regulations, court decisions, and related legal literature. The analysis was carried out by examining the obligations of notaries based on regulations and comparing their implementation in practice. In addition, the study examines the form of sanctions against notaries in violation of the making of PPJB and the role of the Notary Supervisory Board in ensuring compliance with regulations. The results of the study show that notaries have an important role in ensuring the validity and legal certainty of PPJB. Compliance with the law protects the rights of the parties and prevents disputes, but obstacles such as lack of documents from related parties and potential abuse of authority still occur. Administrative, civil, and criminal sanctions regulated in the UUJN and Regional Regulation Number 8 of 2023 need to be implemented more effectively in order to provide a deterrent effect and increase the accountability of the notary profession.*

Keywords: *Deed of Agreement; Notary Obligations; Retribution.*

1. Introduction

Notary is a public official who has the authority to make deeds related to actions, agreements and decisions that are required by general legislation or the parties concerned to be stated in an authentic letter, determine the date, store the deed and provide a "grosse" (legal copy), a copy and an excerpt, and all of that as long as the making of the deeds is not also required of the official or specifically becomes his obligation. Notarial deeds play an important role in creating legal certainty because of their authentic nature and can be used as a strong and full means of proof if a problem occurs related to the deed.¹

The emergence of notary institutions is based on the need for binding evidence other than witness evidence. Given that witness evidence is no longer sufficient, because in accordance with the development of society in terms of making agreements carried out by society, it has become increasingly complicated and complex.²

The profession of a notary is a legal profession which is a noble profession (Nobile Officium) but a Notary is not a civil servant as regulated in the regulations related to personnel, a notary is a job in the private sector that is bound by job regulations and notaries are free to carry out their profession because notaries are appointed and also dismissed by the Government, but Notaries are not given honorariums in the form of salaries or pensions by the government, their income comes from honorariums obtained from their clients.³

Soegondo Notodisoejo, provides a definition related to public officials, namely someone who is appointed and dismissed by the government and is given authority and obligations to serve the public, especially in certain matters because of his participation in exercising a power that comes from the authority of the Government. Notaries as public officials must act professionally in carrying out their duties and positions, namely making deeds which are written evidence with perfect evidentiary power. Because a notary is a position of trust given by the government based on statutory regulations, notaries must maintain their dignity and honor in carrying out their duties and functions to serve the community, especially in the civil field.⁴

The process of buying and selling a house certainly has various stages and also some administration that must be completed by both the seller, buyer or notary himself in Regional Regulation Number 8 of 2023 Article 18 regulates the

¹Supriyadi, 2016, Kedudukan Perjanjian Pengikatan Jual Beli Hak Atas Tanah Dalam Perspektif Hukum Pertanahan, Jurnal Arena Hukum, vol.9, no.2. Hal. 210

² Habib Adjie (II), 2008, Sanksi Perdata dan administratif Terhadap Notaris Sebagai Pejabat Publik, Refika Aditama, Bandung, hal. 83.

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⁴ Gomies, F. R. 2020. Notaris Dalam Status Terpidana Yang Masih Menjalankan Jabatannya. Jurnal Magister Hukum ARGUMENTUM, 7(1), 16-26. <https://doi.org/10.24123/argu.v7i1.3009> hal. 16

imposition of BPHTB payments which regulate taxes and levies. Of course, in this case a notary also plays an important role in carrying out the position of a notary in accordance with the Notary Law Article 16 which requires acting in a trustworthy, honest, independent, and impartial manner. So that in the process of Binding the Sale and Purchase Agreement notarized in accordance with the Law both from the seller, buyer and notary himself.⁵

The author compiled this journal entitled "Notary's Obligations for Making a Deed of Sale and Purchase Agreement Linked to Regional Retribution"

2. Research Methods

The approach method used in this research is the normative legal approach. The normative legal approach method or doctrinal legal research, namely legal research that uses secondary data sources. with the type of data collection, namely primary data and secondary data.⁶

3. Results and Discussion

3.1. Notary's Obligations in Making Deeds of Sale and Purchase Agreements in Bekasi Regency Linked to Regional Retributions.

The sale and purchase agreement that regulates the rights and obligations of the seller and buyer automatically determines the responsibility of the seller and buyer for what has been regulated in the sale and purchase agreement. The conditions that must be fulfilled by the seller as the rights holder and the seller is responsible for fulfilling them, include:⁷

- 1) The certificate period is still for building use rights and the buyer wants to buy with freehold status.
- 2) The certificate has not been split yet.
- 3) The rights holder has died.
- 4) Certificate is still in the bank
- 5) Certificate with the status of land owned by the clan (must be attached with the clan's Ranji and clan agreement known to the Mamak Kepala Waris). If the seller does not fulfill the requirements according to the agreed or given time period, then the buyer will not pay the remaining balance because the buyer will pay if all the requirements have been fulfilled.

⁵Dewi Kurnia Putri. 2017. Perbedaan Perjanjian Pengikatan Jual Beli Lunas dengan Perjanjian Pengikatan Jual Beli Tidak Lunas, Jurnal Akta, Vol.4, No.4, hal. 624

⁶Soerjono Soekantodan Sri Mamudji, 2004, Penelitian Hukum Normatif Suatu Tinjauan Singkat, cetakan kedelapan, Sinar Grafika, Jakarta, Hal 24.

⁷ Selamat Lumban Gaol. 2020. Keabsahan Akta Perjanjian Pengikatan Jual Beli Tanah Sebagai Dasar Pembuatan Akta Jual Beli Tanah Dalam Rangka Peralihan Hak Atas Tanah dan Penyalahgunaan Keadaan (Misbruik Van Omstandigheden), Jurnal Ilmu Hukum Dirgantara, Vol. 11 No. 1, hal. 81.

An authentic deed can be qualified as violating administrative requirements if the process of making the deed does not comply with the provisions that have been regulated, namely the provisions in Articles 38, 39, 40 of the UUJN. Notaries can be held administratively responsible if they are proven to have violated the elements that are expressly regulated in Law Number 30 of 2004 concerning the Position of Notary as amended by Law Number 2 of 2014.

In the process of notary accountability if there is negligence that causes the deed to not meet the legal requirements of the agreement and causes losses to the parties in the agreement seen from the quantity and quality of the negligence committed by the notary. Procedural/administrative errors in making authentic deeds will be held accountable administratively.

Administrative accountability can take the form of administrative accountability (verbal warning, written warning, temporary dismissal, honorable dismissal, or dishonorable dismissal) as well as being asked for civil accountability (compensation, interest and other costs).

UUJN strictly regulates the civil responsibilities of notaries as regulated in Article 84 of UUJN which reads:

"acts of violation committed by a notary against the provisions as intended in Article 16 paragraph (1) letter i, Article 16 paragraph (1) letter k, Article 41, Article 44, Article 48, Article 49, Article 50, Article 51, or Article 52 which result in a deed only having evidentiary power as a private deed or a deed becoming null and void by law can be a reason for the party who suffers losses to demand reimbursement of costs, compensation and interest from the notary."

In this case, one of the products of a Notary is a Sale and Purchase Agreement made by him, in addition, a Sale and Purchase Agreement can be made underhand. A Sale and Purchase Agreement made before a notary has different legal force from a Sale and Purchase Agreement made underhand. A Sale and Purchase Agreement made before a notary has strong legal evidentiary force as an authentic deed, and a Sale and Purchase Agreement made underhand does not have perfect evidentiary force. A Sale and Purchase Agreement that is not paid off is made because the price of the land rights promised to be the object of the sale and purchase has not been paid in full. "This is done to bind the seller not to sell his land to someone else, until the agreed repayment period between the seller and the buyer. The buyer is also bound to pay off the agreement within the agreed period."⁸

"A sale and purchase agreement that has been paid in full is made because it is not yet possible to carry out the sale and purchase before an authorized PPAT, for example because the land title certificate that is promised to be the object of the sale and purchase is in the process of being issued at the land office. Or it can

⁸I Made Hendra Kusuma, *Problematik Notaris Dalam Praktik (Kumpulan Makalah)*, Bandung: P.T. Alumni, 2019, hal. 15.

be caused by other reasons, for example the land title certificate is in the process of being roya (deletion from the recording of the burden of mortgage rights on something (credit/debt) at the land office, and other reasons.”⁹

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In addition, the notary has an obligation to explain in detail the contents and legal consequences of the PPJB to the parties. This is in accordance with the principle of caution that must be upheld by a notary. This explanation includes the rights and obligations of each party, the risks that may arise, and the legal steps that can be taken if there is a violation of the agreement. Thus, the parties can fully understand the contents of the agreement before signing the deed.

The obligation of neutrality is also an important aspect that must be considered by notaries. In carrying out their duties, notaries must not side with one party. This neutrality is demonstrated by providing equal treatment to all parties involved in the PPJB, including in the process of preparing and ratifying the deed. If an indication of a conflict of interest is found, the notary must refuse to make the deed in order to maintain the integrity of his profession.

In practice, the implementation of notary obligations in Bekasi Regency often faces challenges. One of them is the completeness of documents submitted by the parties. Many parties do not understand the importance of documents such as land certificates or proof of tax payments in the PPJB creation process. To overcome this, notaries are expected to provide education to the public

⁹Subekti, *Aneka Perjanjian*, Bandung: PT Citra Aditya Bakti, 2014, hlm. 10.

¹⁰Selamat Lumban Gaol. 2020. Keabsahan Akta Perjanjian Pengikatan Jual Beli Tanah Sebagai Dasar Pembuatan Akta Jual Beli Tanah Dalam Rangka Peralihan Hak Atas Tanah dan Penyalahgunaan Keadaan (Misbruik Van Omstandigheden), *Jurnal Ilmu Hukum Dirgantara*, Vol. 11 No. 1, Hal. 81.

regarding the required documents and the legal impact if the documents are incomplete or fake.

Regional Regulation Number 8 of 2023 also regulates sanctions for notaries who do not carry out their duties according to the provisions. These sanctions include administrative sanctions in the form of warnings, fines, and even revocation of practice permits if serious violations are found. These sanctions aim to increase the accountability of notaries and maintain public trust in the notary profession. In addition, professional organizations such as the Indonesian Notary Association (INI) have a role in supervising and providing guidance to their members.

In certain cases, legal disputes may arise even though the notary has carried out his duties properly. For example, there are differences in perception between the parties regarding the contents of the PPJB or objections to the legal status of the object of the agreement. In this situation, the notary can be an expert witness in court to explain the process of making the deed. This shows that the deed made by the notary has high evidentiary power in the eyes of the law. So that the Notary has carried out his responsibilities in accordance with the theory of Legal Certainty.

In the context of Gustav Radbruch's theory of legal certainty, a sales and purchase agreement (PPJB) made before a notary is a manifestation of positive law that provides legal certainty for the parties. Positive law in this case is the Notary Law (UUJN) and Regional Regulation Number 8 of 2023 which applies in Bekasi Regency. With the existence of regulations governing the duties and responsibilities of a notary, the parties involved in the PPJB receive clear legal protection, including in terms of the obligations of the seller and buyer to fulfill the specified administrative requirements. The legal certainty provided by a notary reflects the importance of law based on established facts, such as the validity of the documents that are the object of the agreement and the verification process that must be carried out by the notary before ratifying an authentic deed. Therefore, the role of a notary is not only as a transaction recorder but also as a guardian of legal certainty in the property sale and purchase process.

In addition to positive law, legal certainty also depends on how the facts are formulated clearly so as not to cause misunderstandings in its application. In PPJB, facts relating to the object of sale and purchase, the status of the land certificate, and the rights and obligations of the parties must be stated explicitly in the deed made. The notary's role is to ensure that the parties understand the legal implications of the contents of the agreement they sign, so that there are no multiple interpretations that can cause disputes in the future. This principle is in line with Gustav Radbruch's theory that applicable laws must have a clear formulation so that they can be easily implemented by the community. However, in practice, challenges often arise, such as the lack of public understanding of the importance of legal documents or the potential for misuse of documents that

can harm one of the parties. Therefore, notaries have an obligation to provide legal education to the relevant parties so that they understand the legal consequences of every decision they make in property sale and purchase transactions.

Gustav Radbruch's Legal Certainty Theory emphasizes that positive law should not change easily in order to create legal stability for society. In the context of PPJB, legal stability is very important because it concerns property transactions that are of great value and have long-term impacts on the parties. Changes in regulations that are too frequent can create legal uncertainty that has the potential to harm the community and business actors in the property sector. Therefore, UUJN and Regional Regulation Number 8 of 2023 in Bekasi Regency aim to provide legal certainty by setting clear standards in making PPJB. In addition, administrative sanctions for notaries who violate the rules also aim to maintain legal stability by ensuring that every deed made is in accordance with established procedures. Thus, the implementation of Gustav Radbruch's legal certainty theory in making PPJB by notaries not only reflects the existence of legal protection for the parties, but also maintains the credibility of the notary profession in the legal system in Indonesia.

3.2. Forms of Sanctions Given to Notaries Who Do Not Carry Out Their Obligations According to Regional Regulation Number 8 of 2023 Concerning Reporting of Deeds of Sale and Purchase Agreements

A notary is a public official who is solely authorized to make authentic deeds regarding all acts, agreements and determinations required by a general regulation or by an interested party desired to be stated in an authentic deed, guarantee the certainty of the date, keep the deed and provide grosse, copies and extracts, all as long as the making of the deed by general regulation is not also assigned or excluded to other officials or people. In carrying out his/her position, a notary must carry out the obligations and prohibitions that have been regulated in the UUJN. If a notary does not carry out the obligations and prohibitions as stipulated in the notary's code of ethics, then the notary can also be classified as an untrustworthy notary.¹¹

Notaries who are proven to have violated the obligations and prohibitions of Notaries as stipulated in Articles 16 and 17 of the UUJN, may be subject to sanctions in the form of civil sanctions, administrative sanctions, code of ethics sanctions and even criminal sanctions. Civil sanctions are generally sanctions imposed for violations of private law, namely laws that regulate interpersonal relationships in fulfilling their interests. The implementation of administrative sanctions against notaries who violate the provisions of Articles 16 and 17 of UUJN No. 2 of 2014 concerning amendments to UUJN No. 30 of 2004, is regulated in the Regulation of the Minister of Law and Human Rights of the

¹¹Soerjono Soekanto dan Purnadi Purbacaraka, *Sendi-Sendi Ilmu Hukum dan Tata Hukum*, (Bandung: Citra Aditya Bakti, 1993), Hal.63.

Republic of Indonesia Number 61 of 2016 concerning Procedures for Imposing Administrative Sanctions on Notaries. The legal consideration for the issuance of Permenkumham Number 61 of 2016 is to implement the provisions of Article 91A of the UUJN, so that it can create legal certainty regarding the Procedures for Imposing Administrative Sanctions on Notaries.¹²

Notaries as public officials in carrying out their positions are supervised by the Minister and a special institution, namely the Notary Supervisory Board. The Notary Supervisory Board is authorized by the Minister to impose sanctions on Notaries who violate the Notary Position Regulations in the form of administrative sanctions carried out in stages starting from the lightest to the most severe sanctions in accordance with the order of precedence. Sanctions can be imposed on notaries if proven to have committed violations, including written warning letters, temporary dismissal, honorable dismissal, and dishonorable dismissal.¹³

The application of administrative sanctions, the enforcement instruments in the Notary Law, include preventive measures (supervision) and repressive measures (application of sanctions).¹⁴

- 1) The Regional Supervisory Council (MPD), in the form of verbal and written warnings, and has the right to propose to the Regional Supervisory Council in the form of temporary dismissal.
- 2) The Regional Supervisory Board (MPW), in the form of verbal and written warnings, and has the right to propose to the Central Supervisory Board in the form of temporary suspension
- 3) (three) months to 6 (six) months and dishonorable discharge.
- 4) The Central Supervisory Board (MPP), in the form of temporary dismissal, and has the right to propose to the Minister of Law and Human Rights in the form of dishonorable dismissal.
- 5) Minister, in the form of honorable dismissal and dishonorable dismissal.

Regional Regulation Number 8 of 2023 also regulates civil sanctions that can be filed by injured parties. In this case, parties who feel aggrieved by the actions or negligence of a notary can file a civil lawsuit in court. The lawsuit can be in the

¹²Donny Hasbullah, *Kewajiban dan Wewenang Jabatan Serta Pertanggung jawaban hukumnya*, (Jakarta: Ghalia, 2006), Hal. 77.

¹³ JDIH Kabupaten Gresik Jaringan Dokumentasi dan Informasi Hukum Kabupaten Gresik, <https://jdih.gresikkab.go.id/pencarian?subjek=PAJAK> , Di akses pada tanggal 01 November 2024, pukul 14.00 WIB

¹⁴Donny Hasbullah, *Kewajiban dan Wewenang Jabatan Serta Pertanggung jawaban hukumnya*, (Jakarta: Ghalia, 2006), Hal. 77.

form of a claim for material or immaterial compensation arising from violations committed by the notary.¹⁵

In addition, professional organizations such as the Indonesian Notary Association (INI) also have internal mechanisms to impose sanctions on their members. These mechanisms include examination by the Notary Honorary Council, the imposition of ethical sanctions, and recommendations for revocation of membership. This process aims to maintain ethical standards and professionalism in the notary profession.

Another sanction is special training. In some cases, notaries who commit minor violations can be directed to take additional training or coaching. This program aims to improve notaries' understanding of applicable regulations and prevent future violations.

In addition to the forms of sanctions above, local governments can also impose sanctions in the form of publication of violations. The names of notaries who violate the provisions can be announced to the public as a form of transparency and accountability. This publication aims to provide a warning to other notaries to be more careful in carrying out their duties.

In some situations, notaries who violate can also be subject to sanctions in the form of an obligation to pay compensation costs due to losses incurred. These costs include legal costs, compensation to injured parties, and other costs relevant to the violation case that occurred.

Violation of Regional Regulation Number 8 of 2023 can also have an impact on the reputation of a notary. This reputation sanction may not be formal, but it can affect public trust in the notary concerned. Loss of reputation can result in a reduction in the number of clients and, in the long term, reduce the notary's income.

Sanctions imposed on notaries must be in accordance with the principle of proportionality. This means that the sanctions imposed must be proportional to the level of violation committed. This principle aims to ensure that every law enforcement action is carried out fairly and not excessively.

In addition to enforcing sanctions, it is important for notaries to have access to the appeal process. If a notary feels that the sanctions imposed are inappropriate or unfair, they have the right to file an objection or appeal through the available legal mechanisms. This process aims to protect the rights of notaries while ensuring that law enforcement is carried out transparently.

Supervision of the implementation of Regional Regulation Number 8 of 2023 also involves the role of the community. The community is expected to report if they

¹⁵Government Regulation of the Republic of Indonesia Number 35 of 2023, <https://perpajakan.ddtc.co.id/sumber-hukum/peraturan-pusat/peraturan-pemerintah-35-tahun-2023> Accessed on November 01, 2024, at 14.00 WIB

find alleged violations committed by notaries. This report can be the basis for the authorities to conduct further investigations.

Violation prevention efforts should also be a major focus. Local governments, together with professional organizations, can organize regular socialization and training for notaries regarding applicable regulations. This step aims to improve notaries' understanding of their obligations and minimize the risk of violations.

Legal responsibility for the notary profession shows that violations of obligations stipulated by law will result in legal consequences in the form of sanctions. In this case, the Supervisory Board of the Region, Area, and Notary Center as a supervisory institution has an important role in ensuring that the sanctions imposed on notaries are in accordance with applicable provisions. According to Kelsen's pure legal theory, sanctions are a form of coercive action from legal rules that aim to ensure that the obligations stipulated are truly complied with by legal subjects. For example, in the Decision of the State Administrative Court No. 235/G/2019/PTUN.KT, it is explained that the dishonorable dismissal of a notary by the MPN must be in accordance with applicable regulations, in this case Permenkumham Number 61 of 2016. If the dismissal is not in accordance with the rules, then the action can be considered a form of arbitrariness that is contrary to the principle of legal certainty. Therefore, the application of sanctions against notaries must be based on applicable legal norms, not merely subjective considerations from the authorities. This shows that in Kelsen's theory, the law must be enforced through hierarchical norms and must not conflict with the rules above it.

The concept of legal responsibility in Kelsen's theory is also related to the need for a fair and transparent legal mechanism in imposing sanctions on notaries. According to Kelsen, legal rules must be objective and must not be based on certain interests that can harm legal subjects. Therefore, in enforcing legal responsibility for notaries, the principles of proportionality and legal certainty must be applied. As public officials, notaries must have clear legal protection so that arbitrary actions do not occur in imposing sanctions. In this context, notaries who are subject to sanctions have the right to take legal action, such as filing objections or appeals to the court, to ensure that legal procedures have been applied fairly. Thus, Kelsen's theory of legal responsibility teaches that every legal subject, including notaries, must be accountable for their actions in accordance with applicable legal provisions. However, at the same time, the law must also provide protection against the possibility of abuse of authority in the application of sanctions. Therefore, the legal system must operate with the principles of justice, legal certainty, and proportionality in enforcing legal responsibility for notaries.

4. Conclusion

Notaries are required to ensure that the PPJB deed is in accordance with Regional Regulation Number 8 of 2023 and UUJN, including the identity of the parties, the validity of the documents, and the legal status of the object of the agreement. Notaries are responsible for negligence that can lead to administrative, civil, or criminal sanctions. The Regional Regulation requires cooperation with the BPN to ensure that the land is free from disputes, and to uphold neutrality in making deeds. The main challenge is the lack of documents from the parties, so public education is needed. Violations of UUJN and Perda Number 8 of 2023 can be subject to administrative sanctions (reprimands, fines, freezing, or revocation of permits) by the MPN. Civil and ethical sanctions also apply if there is a violation of the code of ethics. The public can report suspected violations, while prevention is carried out through socialization and training. An appeal mechanism is provided for notaries who feel aggrieved.

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