

Legal Protection for Buyers in Binding Agreements Land Sale and Purchase Agreement (PPJB)

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Abstract. *This study aims to analyze: 1) Legal protection for buyers in Land Sale and Purchase Agreements (PPJB). 2) Notary's responsibility in making the deed of Land Sale and Purchase Agreement (PPJB). This type of research is normative legal research. The approach method in this study is the Statute approach. The type of data in this study is secondary data sourced from primary, secondary and tertiary legal materials. The data collection method uses library techniques (document study). The analysis in this study is prescriptive. The results of the study concluded: 1) Legal protection for buyers in Land Sale and Purchase Agreements (PPJB) depends on the legality and procedures regulated in the legislation. PPJB is only an initial commitment and does not immediately guarantee land ownership, which is only valid after the Deed of Sale and Purchase (AJB) is made and registered at the Land Office. Preventively, buyers must ensure that the PPJB meets legal requirements and is followed up with an AJB to avoid disputes. Meanwhile, repressive protection allows aggrieved buyers to file a lawsuit. Denpasar District Court Decision No.1107/Pdt.G/2022/PN Dps indicates that buyers who rely solely on the PPJB without completing the AJB process risk losing their rights. Therefore, following complete land sale and purchase procedures is crucial to ensure maximum legal protection. 2) The notary's liability in drafting the deed of sale and purchase agreement (PPJB) can be categorized as individual liability and liability based on fault if there is an element of negligence in ensuring the validity of the object of the agreement. However, if the notary has carried out his duties according to procedure but the deed remains problematic due to external factors, then his liability can be absolute. In the case of Denpasar District Court Decision No. 1107/Pdt.G/2022/PN Dps, if the notary is proven negligent in verifying the object of the agreement, he can be held legally accountable. Therefore, notaries must carry out their duties professionally and carefully*

to ensure legal certainty, and obtain legal protection if they have acted in accordance with applicable procedures.

Keywords: Buyer; Legal Protection; PPJB.

1. Introduction

Land plays a vital role in human life. This importance stems from its role as a supporting medium for human life, both economically and socially, and culturally. In other words, human life is inseparable from land. This is because land has been a vital source of life in the social order of society, from traditional to modern times.¹ This is reflected in the shift in land use. From the era of kingdoms and colonialism to the present day, land and its resources have played a crucial role in ensuring sufficient food and energy resources. This role has evolved further in the modern era, where land is no longer solely used for agriculture but also for non-agricultural industrial development and mining, for example, the development of commercial areas and manufacturing areas.² Land ownership can be legally recognized if it is first registered at the land office, as stipulated in Government Regulation Number 24 of 1997 concerning Land Registration. Providing legal certainty for the community in a way General rights over land ownership must be accommodated. This also relates to Article 33 of the 1945 Constitution of the Republic of Indonesia and should be realized without compromising macro-level development interests. Government agrarian policy in Indonesia seems to consistently face complex issues, often resulting in conflicts between public stakeholders and the common people, which never achieve synergy between the two interests.³

Transfer of land rights can be done through, among other things, a sale and purchase process, inheritance and also through gifts.⁴ Land rights are transferred when ownership is transferred to another person through a legal act. This legal act is outlined in a deed of agreement. The parties enter into an agreement to obtain legal protection. According to Satjipto Raharjo, legal protection is the protection of human rights that have been harmed by others, and this protection is extended to

¹Muslim Andi Yusuf, Kepastian Hukum Hak Masyarakat Hukum Adat Atas Tanah Dan Sumberdaya Alam, *Prosiding Seminar Nasional*, Volume 02, No. 1, p. 675.

²Djoko Prakosa dan Budiman Adi Purwanto, (1985), *Eksistensi Prona Sebagai Pelaksanaan Mekanisme Fungsi Agraria*, Jakarta : Ghalia Indonesia, p. 19.

³Ryan Alfi Syahri, Perlindungan Hukum Kepemilikan Hak Atas Tanah, *Jurnal Ilmu Hukum Legal Opinion*, Edisi 5, Volume 2 Tahun 2014, p.2.

⁴Andi Hartanto, (2015), *Panduan Lengkap Hukum Praktis kepemilikan Tanah*, Surabaya : Laksbang Justitia, p. 175

the community so that they can enjoy all the rights granted by law.⁵ Every agreement entered into by the public will inevitably lead to a notary as a means of civil validity in the agreement. This means that the notary's position is crucial in helping to create legal certainty for the public. Notaries are in the realm of preventing legal problems through the authentic deeds they create, which serve as the strongest evidence in court. The most important position of the notary profession lies in their primary duty as the creator of authentic deeds. Article 1870 of the Civil Code states that an authentic deed is absolute and strong evidence for the parties who make it. Notaries are authorized by law to create this absolute evidence. This implies that the contents stipulated in the authentic deed are essentially considered true.⁶

A sale and purchase agreement is the most common agreement entered into between members of society. The essence of a sale and purchase agreement is a series of rights and obligations between the two parties, namely the seller and the buyer. According to Article 1457 of the Civil Code, a sale and purchase agreement is an agreement in which the party who owns the land, known as the seller, promises and binds himself to transfer his rights to the land in question to another party, known as the buyer. The requirements for a valid sale and purchase agreement are explained in Article 1320 of the Civil Code. Sometimes the signing of the Sale and Purchase Deed cannot be done because there are several conditions that have not been met, including the land certificate being in the process of being split, so the Notary suggests making a Land Sale and Purchase Agreement (PPJB) first to bind both parties.⁷

A sales and purchase agreement contains promises that must be fulfilled first by one or both parties before the main agreement is carried out which is the final goal of the parties. The definition of a sales and purchase agreement can be seen by separating the words of a sales and purchase agreement into an agreement and a sales and purchase agreement. A sales and purchase agreement according to R. Subekti is an agreement between the seller and the buyer before the sale and purchase is carried out because there are elements that must be fulfilled first to be able to carry out the sale and purchase, including the certificate not yet being available because it is still in the process of not having paid the price.⁸ In practice, a Land Purchase Agreement (PPJB) is drawn up before a Notary to further strengthen the legal standing of the agreement. A Land Purchase Agreement is drawn up because the certificate is in the process of being processed. The initial

⁵Rengganis, (2023), *Perlindungan Hukum Terhadap Pembeli Dalam Ppjb (Perjanjian Pengikatan Jual Beli) Yang Obyeknya Dijaminkan Oleh Penjual*, *Jurnal Akta Notaris*, Vol. 2 No. 1, p. 115

⁶Rizki Nurmayanti dan Akhmad Khisni, (2017), *Peran Dan Tanggung Jawab Notaris Dalam Pelaksanaan Pembuatan Akta*, *Jurnal Akta*, Vol. 4 No. 4, p. 611

⁷Rengganis, *Op.cit.*, p.118

⁸Subekti, (1998), *Hukum Perjanjian*, Jakarta : Intermedia, p. 75

agreement between the parties promises that the Land Purchase Agreement will be followed up with a Deed of Sale and Purchase at a later date (if the payment is in full) and if the agreed-upon terms have been fulfilled. The problem that arises is that although Land Purchase Agreements are frequently used, they are never regulated in legislation relating to land rights. Therefore, the legal standing of Land Purchase Agreements is sometimes questioned.

2. Research Methods

This research is normative legal research. The approach used is a statute approach. The data used is secondary data sourced from primary, secondary, and tertiary legal materials. The data collection method uses library research (document study). The analysis used is prescriptive.

3. Results and Discussion

3.1. Legal Protection for Buyers in Land Purchase Agreements (PPJB)

The main objective of the UUPA is not only to provide legal certainty and legal protection regarding land ownership rights for the people, but UUPA also regulates the various types of land rights that can be granted and owned by individuals, either alone or together with other people or legal entities.⁹ Land title transfers carried out at the Land Office are a form of land registration data maintenance and occur due to legal events that cause changes in data, both legal and physical. Transfers that occur due to legal data changes include sales, exchanges, gifts, contributions, inheritances, auctions, and so on.¹⁰

Buying and selling is a process of transferring rights that has existed since ancient times and is usually regulated by customary law, based on the principles of "clear and cash." "Clear" means it takes place before an authorized public official, and "cash" means it is paid in cash. Therefore, if the price has not been paid in full, the intended sale and purchase cannot take place.¹¹ The aspect of legal certainty in land ownership is also closely related to the buying and selling mechanism regulated in laws and regulations. According to the Civil Code, buying and selling is an agreement in which one party (the seller) binds himself to hand over (ownership rights to) an object and the other party (the buyer) to pay the price promised in accordance with Article 1457. According to Article 1458, buying and selling is deemed to have occurred between the two parties when an agreement

⁹Syarifah Liadan Lathifah Hanim, (2017), Kepastian Hukum Dalam Penyelesaian Sengketa Timbulnya Tumpang Tindih Sertifikat Hak Milik (Shm) Atas Tanah (Studi Kasus di Kantor Pertanahan/Agraria Dan Tata Ruang Kota Pontianak), *Jurnal Akta*, Volume 4 No. 1, p.33

¹⁰Kurnia Martini, (2016), Status Hukum Peralihan Hak Atas Tanah Yang Diperoleh Dari Lelang Berdasarkan Hak Mendahulu Negara, *Fiat Justisia Journal of Law*, Volume 10 Issue 3, p.509

¹¹Soedharyo Soimin, (2008), *Status Hak dan Pembebasan Tanah*, Jakarta : Sinar Grafika, p.86

is reached regarding the object being traded and its price even though the object has not been handed over and the price has not been paid.¹²

In practice, the land sale and purchase process is often not directly realized in a Deed of Sale and Purchase (AJB), but rather begins with a Land Sale and Purchase Agreement (PPJB). A Land Sale and Purchase Agreement (PPJB) is a preliminary agreement between a seller and a buyer that binds both parties before the Deed of Sale and Purchase (AJB) is executed before a Land Deed Official (PPAT). A PPJB is generally made when certain conditions have not been met, such as payment in installments or a land certificate that is still in process.¹³

The PPJB serves as an initial commitment between the seller and buyer to conduct a future sale and purchase transaction. However, the PPJB does not automatically transfer land rights, as legal ownership is only established after the sale. After AJB is made and registered at the Land Office.¹⁴ The PPJB contains certain conditions in the binding, namely a prior agreement to be mutually agreed upon between the parties in the legal event.¹⁵

The PPJB plays a crucial role in providing legal certainty for the parties before the land sale and purchase transaction is legally finalized through a Deed of Sale and Purchase (AJB). However, in practice, various factors can lead to the cancellation of a PPJB, including legal flaws, breaches of the agreement, and court decisions. One example of a PPJB cancellation case can be found in the Denpasar District Court decision No. 1107/Pdt.G/2022/PN Dps, which demonstrates how the legal aspects of a PPJB can be tested in court in the event of a dispute between the parties.

The judge considered the cancellation of the Land Sale and Purchase Agreement (PPJB) by referring to the contents of PPJB Deed No. 1A dated May 15, 2004, drawn up before Notary Daniel Ganda Wijaya, SH, in Surabaya. The essence of the agreement is the legal obligation to deliver the goods after payment is made, as a concrete form of the sale and purchase transaction. In a sale and purchase agreement, there are essential elements that must be fulfilled, one of which is "a certain thing" which refers to the object being traded. However, in this case, the land object that is the basis of the agreement in PPJB Deed No. 1A has been annulled based on the legal considerations explained previously. Because the object of the agreement never existed, one of the objective requirements for the

¹²Maria SW Sumardjono, (1982), *Aneka Masalah Hukum Agraria*, Yogyakarta : Andi Offset, p. 53

¹³Yahya Harahap, (1986), *Segi-Segi Hukum Perjanjian*, Jakarta : Alumni, p. 121.

¹⁴Boedi Harsono, (2008), *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*, Jakarta : Djambatan, p. 27

¹⁵ Dewi Kurnia Putri & Amin Purnawan, (2017), Perbedaan Perjanjian Pengikatan Jual Beli Lunas dengan Perjanjian Pengikatan Jual Beli Tidak Lunas, *Jurnal Akta*, Vol.4 No. 4, p. 626

validity of the agreement was not met. Consequently, PPJB Deed No. 1A was declared null and void and no longer binding on the parties involved in the agreement. Based on these considerations, the Panel of Judges decided to reject the petitum submitted by the Plaintiff.

Based on the case above, Hadi Setiawan (Buyer) actually did not get adequate legal protection despite having a Sales and Purchase Agreement (PPJB). This is due to several factors that weaken their legal position. Here's an analysis of why buyers don't receive adequate legal protection:

1. PPJB is not accompanied by a Deed of Sale and Purchase (AJB)

A PPJB is merely a preliminary agreement binding both parties to carry out a future sale and purchase transaction. However, a PPJB is not proof of legal ownership of the land. To transfer land ownership, a Deed of Sale and Purchase (AJB) is required, drawn up before a Land Deed Official (PPAT) and registered at the Land Office. Hadi Setiawan never completed the sale and purchase process by drawing up an AJB and registering it with the Land Office. As a result, his ownership of the land is not legally recognized.

2. Land Certificate Has Been Made in Another Person's Name

After the PPJB was made in 2004, Agung Gede Tjandra (deceased) submitted an application for replacement of the lost land certificate in 2015. Based on the decision of the Denpasar State Administrative Court (PTUN) in 2017, the Denpasar City Land Office issued a new Certificate of Ownership (SHM) in the name of Agung Gede Tjandra in 2019. Agung Gede Tjandra then sold the land to Leonard Hartono (Defendant IV) and PT. Indoberka Investama (Defendant V) through Deeds of Sale and Purchase No. 81/2019 and No. 86/2019, made before Notary Nurhayati, SH, M.Kn. With this AJB, legal ownership of the land was transferred to Defendants IV and V, not Hadi Setiawan.

3. Hadi Setiawan Does Not Complete the Legal Process

Although Hadi Setiawan had a PPJB (Deed of Sale and Purchase), he did not take legal steps to complete the sale and purchase process by creating a Deed of Sale and Purchase (AJB) and registering it with the Land Office. He also did not file an objection when Agung Gede Tjandra applied for a replacement for the lost land certificate in 2015. As a result, legal ownership of the land was legally recognized as belonging to Defendants IV and V, not Hadi Setiawan.

4. Illegal Physical Control of Land

Hadi Setiawan claimed that he had physically controlled the land since 2004. However, after the land certificate was issued in the name of Agung Gede Tjandra and then sold to Defendants IV and V, Hadi Setiawan's physical control was deemed invalid. Defendants IV and V claimed that Hadi Setiawan damaged the fence and boundary markers of the land they had purchased, which was considered an unlawful act.

5. Decision of the State Administrative Court (PTUN)

A 2017 Denpasar Administrative Court ruling ordered the Land Office to issue a new certificate in the name of the late Agung Gede Tjandra. This ruling has permanent legal force and cannot be challenged. Hadi Setiawan did not file a lawsuit to overturn the PTUN ruling, so that ownership of the land was legally recognized as belonging to Agung Gede Tjandra and then to Defendants IV and V.

6. Inadequate Legal Protection

Even though Hadi Setiawan has a PPJB, he does not receive adequate legal protection because:

- a. PPJB is not followed by the creation of AJB.
- b. The land certificate has been issued in the name of Agung Gede Tjandra (deceased) based on the PTUN decision.
- c. The land was sold to Defendants IV and V through the authorized AJB.

Based on the above case, Hadi Setiawan did not receive adequate legal protection because he did not complete the legal process by making a Deed of Sale and Purchase (AJB) and registering it with the Land Office. In addition, the land certificate had been issued in the name of Agung Gede Tjandra based on a PTUN decision, and the land was then sold to Defendants IV and V through a valid AJB. Therefore, Hadi Setiawan's control of the land is considered invalid and unlawful. This raises questions about how the state provides legal protection for its citizens in land ownership disputes, especially in cases involving a Sales and Purchase Agreement (PPJB).

According to Philipus M. Hadjon's theoretical analysis, Hadi Setiawan did not receive adequate legal protection because preventive and repressive protection were not effective. From the analysis above, it can be concluded that legal protection for buyers in PPJB should prioritize preventive aspects so that buyers do not lose their rights. PPJB is not legal proof of ownership, so buyers must immediately follow up with AJB and register rights to the Land Office. In this case, the weakness of preventive legal protection causes repressive legal protection to be ineffective in defending their rights. Therefore, land buyers must understand the importance of legal steps from the start to avoid losses in the future.

3.2. Notary's Responsibility in Making the Deed of Land Sale and Purchase Agreement (PPJB) that He Makes

The land sale and purchase agreement (PPJB) made before a notary does not result in the rights being transferred immediately from the seller to the prospective buyer. This is because the sale and purchase agreement is a conditional agreement or preliminary agreement before...implementationsale and purchase agreement through a deed from a Land Deed Maker (PPAT) official.

Land sale and purchase agreement (PPJB) was born as a result of the obstruction or the existence of several requirements related to the sale and purchase of land rights that have not been fulfilled, so that it is not possible to authenticate the sale and purchase deed before the land deed making official. The requirements that have not been fulfilled, such as sales taxes that have not been paid by each seller and buyer or the certificate that is the basis for land rights still has a note of the burden of mortgage rights that still have to be paid, before the sale and purchase deed can be signed before the land deed making official. The sale and purchase agreement is actually no different from the agreement in general. It's just that the land sale and purchase agreement (PPJB) provides the broadest possible freedom to legal subjects to enter into agreements that contain anything and in any form, as long as it does not violate laws and regulations, public order and morality.¹⁶

Based on Chapter 1 number 1 of Law Number 30 of 2004 concerning the Position of Notary as amended by Law Number 2 of 2004/2014, states that a Notary is a public official authorized to make authentic deeds and has other powers as referred to in this law or other laws. This definition of a Notary shows that a Notary's duties are those of a public official, while his or her authority is primarily to make authentic deeds.¹⁷ The position of a Notary as a public official means that the authority given by the state to a Notary is never given to other officials, as long as this authority does not become the authority of other officials in making authentic deeds, then this authority becomes the authority of the Notary.¹⁸

The theory of legal liability has been developed by Hans Kelsen. Hans Kelsen divides the principles of responsibility into 4 (four), namely:

1. Individual accountability is the accountability that must be carried out for violations that one has committed himself.
2. Collective liability means that an individual is responsible for an offense committed by another person.
3. Liability based on fault means that an individual is responsible for violations that he/she commits intentionally and is expected to cause harm.
4. Absolute liability means that an individual is responsible for violations he commits unintentionally or unpredictably.¹⁹

¹⁶Herlina Hasibuan, (2020), Analisis Yuridis Penolakan Pembatalan Akta Perjanjian Pengikatan Jual Beli (Ppjb) Hak Atas Tanah Melalui Prosedur Gugatan Ke Pengadilan (Studi Putusan MA No. 3703.K/Pdt/2016), *Tesis Fakultas Hukum Universitas Sumatera Utara Medan*, p.36

¹⁷Wiriya Adhy Utama & Ghansham Anand, (2018), Perlindungan Hukum Terhadap Notaris Pengganti Dalam Pemanggilan Berkaitan dengan Kepentingan Peradilan, *Jurnal Panorama Hukum*, Volume 3 No.1, p. 106

¹⁸Deviana Yuanitasari, (2017), The Role of Public Notary in Providing Legal Protection on Standard Contracts for Indonesian Consumers, *Sriwijaya Law Review Journal*, Volume 1 No. 2, p.179.

¹⁹Shidarta, (2006), *Hukum Perlindungan Konsumen Edisi Revisi*, Jakarta : Gramedia Widiasarana Indonesia, p. 73.

In relation to Denpasar District Court Decision No. 1107/Pdt.G/2022/PN Dps, in this decision, the PPJB was declared null and void because the object of the agreement was found to be non-existent or its existence was annulled. If it is proven that the Notary did not conduct a thorough inspection of the land status before making the deed, the Notary can be considered negligent and is liable based on individual liability and liability based on fault. However, if the Notary has carried out his duties according to applicable procedures but then the object of the agreement is canceled by another party outside his authority, then the Notary's liability can be categorized as absolute liability.

Based on the above description, in the case of Denpasar District Court Decision No. 1107/Pdt.G/2022/PN Dps, the cancellation of the PPJB occurred because the object of the agreement did not meet the specified legal requirements. If a Notary is proven not to have thoroughly verified the legal status of the object of the agreement, then he can be held legally responsible for the deed he made. Conversely, if the Notary has acted according to procedure, but the object of the agreement is canceled due to factors beyond his control, then he cannot be held responsible for the cancellation of the agreement. Thus, in making a PPJB, a Notary must carry out his duties professionally, carefully, and in accordance with the principle of prudence to avoid potential legal disputes in the future. In addition, legal protection for Notaries also needs to be considered, especially in situations where he has carried out his duties properly, but problems arise due to external factors beyond his control.

4. Conclusion

Legal protection for buyers under a Land Sale and Purchase Agreement (PPJB) depends heavily on compliance with legal requirements and sales procedures stipulated in laws and regulations. Although the PPJB serves as an initial commitment between the seller and buyer, this agreement does not automatically provide certainty of land ownership, as legal ownership is transferred only after the Deed of Sale and Purchase (AJB) is drawn up and registered at the Land Office. From a preventive legal protection perspective, buyers should ensure that the PPJB is prepared in accordance with applicable legal requirements and is followed up with an AJB to avoid potential future disputes. Meanwhile, under repressive legal protection, buyers who feel disadvantaged due to the cancellation of the PPJB or land ownership disputes can file a lawsuit to obtain legal justice. However, Denpasar District Court Decision No. 1107/Pdt.G/2022/PN Dps indicates that buyers who rely solely on the PPJB without completing the AJB preparation and land registration process risk losing their rights. Therefore, in order for buyers to obtain maximum legal protection, it is important to follow the land sale and purchase procedures completely and take appropriate legal steps if problems arise. A notary's liability in drafting a deed of sale and purchase agreement (PPJB) can be

categorized as individual liability and liability based on fault if there is an element of negligence in ensuring the validity of the object of the agreement. However, if the notary has carried out his duties according to procedure but the deed remains problematic due to external factors, then his liability can be absolute. In the case of Denpasar District Court Decision No.1107/Pdt.G/2022/PN Dps, if the notary is proven negligent in verifying the object of the agreement, he can be held legally accountable. Therefore, notaries must carry out their duties professionally and carefully to ensure legal certainty, and obtain legal protection if they have acted in accordance with applicable procedures.

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