

The Notary's Answer to the Making of the Sale and Purchase Agreement Deed (PPJB) When a Dispute Occurs for the Parties

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Abstract. *The binding sale and purchase agreement which is often called PPJB is made before a notary with the aim of expressing the agreement of the parties in the form of a deed to bind each other. This writing aims to find out and analyze the responsibility of a notary for making a sale and purchase agreement deed when a dispute occurs for the parties in Rembang district and to find out and analyze the juridical implications for making a binding sale and purchase agreement deed when a dispute occurs in Rembang district. The approach method used in this study is a sociological juridical approach, which means a study conducted on the real condition of society or the community environment with the intent and purpose of finding facts which then leads to identification and ultimately leads to problem solving. The analytical knife in this paper uses the theory of legal certainty and the theory of responsibility. The results of this study indicate that the notary's responsibility for the deed he made is limited to the initial part of the deed / head of the deed and the final / closing part of the deed, in this section the notary has full responsibility for its contents both formally and materially. The role of the Notary is only as a Media for the birth of an Authentic Deed and Juridical Implications for Making a Sale and Purchase Binding Agreement Deed in the event of a Dispute in Rembang Regency made before a Notary in which a dispute occurs because one party's obligations are not fulfilled (default) can cause the cancellation of the deed drawn up before a Notary namely the deed of the Sale and Purchase Agreement (PPJB) can be canceled if it does not fulfill the subjective element or is null and void if it does not fulfill the objective element as it turns out in Article 1320 of the Civil Code.*

Keywords: Agreement; Buy; Sell.

1. Introduction

Indonesia is a state of law. The term state is contained in the 1945 Constitution article 1 paragraph (3). Even though there were differences in the 1945 Constitution before and after the amendment, in essence, both of them had the same goal, namely to make the State of Indonesia a legal state. What is meant by

a rule of law is a country in which there are various aspects of regulations that are coercive and have strict sanctions if violated. A strong country is a country that has rules in all aspects of life, including how its citizens carry out the legal process of buying and selling which is preceded by a binding sale and purchase agreement.

Guaranteeing certainty, order and legal protection, which has the core of truth and justice in legal traffic, generally requires evidence that clearly determines the rights and obligations of a person as a legal subject in society.¹

According to Sudikno Mertokusumo, an agreement is a legal relationship between 2 (two) or more parties based on an agreement to cause legal consequences. That is, the two parties agree to determine regulations or rules or rights and obligations that bind them to obey and implement them. The agreement is to create legal consequences, namely to generate rights and obligations, so that if the agreement is violated, there will be legal consequences or sanctions for the violator.² Meanwhile, according to Prof. R. Subekti, SH said that: "An engagement is a legal relationship between two people or two parties, based on which one party has the right to demand a right from the other party, and the other party is obliged to fulfill that claim". The definition above contains two aspects, namely the active aspect (rights) and the passive aspect (obligations).³

The philosophical basis for the formation of the UJUN is the Realization of Legal Certainty, Order and Legal Protection with the core of truth and justice through the Deed he made, Notaries must be able to provide Legal Certainty to Notary Service User Communities.⁴

Legal Products issued by Notaries are in the form of Deeds that have Authentic characteristics and have Perfect Proof Strength. As the definition of an Authentic Deed mentioned in Article 1868 of the Civil Code "An Authentic Deed is a Deed which in its form is determined by law, made by or before the competent Public Employees for that at the place where the deed was made."⁵

¹Aulia Gumilang Rosadi, 2020, Responsibilities of a Notary in a Dispute of Parties Related to the Deed of Sale and Purchase Agreement (Ppjb) Made, (JCH) Journal of Scholars of Law, Vol 5, p. 11, https://e-jurnal.stih-pm.ac.id/index.php/cendekeka_Hukum/article/view/228,

²Sudikno Mertokusumo, 1986, Knowing the Law (An Introduction), Liberty, Yogyakarta, p. 97-98

³Sibuea Mia Augina Romauli, 2022, Notary Civil Responsibility for Deed of Deed of Binding Sale and Purchase Agreement with Defects in Comparison, Journal of Suara Hukum, Vol. 4 No. 1, page 37, (<https://journal.unesa.ac.id>)

⁴Bureau of Public Relations and HLN. Hasbullah, Notary and Guarantee of Legal Certainty, (www.wawasanHukum.blogspot.com, 14 November 2022)

⁵Ninda Afifah Permatasari, 2021, The Role of Notaries and Analysis of the Cancellation of Land Sale and Purchase Binding Agreements Due to Default, Kertha Semaya Journal, Vol. 10 No. 1, p. 39, (<http://ojs.unud.ac.id>).

Authentic deed as the strongest and most fulfilled evidence, its role is very important in every legal relationship in people's lives. In various business relationships, activities in the fields of banking, land, social activities, and others, which require written evidence in the form of authentic deeds, the development of demands for legal certainty in various economic and social relations, both at the regional, national and global levels. Through an Authentic Deed which clearly defines the Rights and Obligations of the Parties and guarantees Legal Certainty and at the same time it is hoped that Disputes can be avoided. Although the Dispute is unavoidable, in the Dispute Resolution Process,

In essence, the Authentic Deed contains Formal Truth, according to what the parties have notified the Notary. However, the notary has the obligation to include provisions, that what is contained in the notarial deed is truly understood and in accordance with the wishes of the parties, namely by reading it, so that the contents of the notarial deed become clear, as well as providing access to information, including access to regulations. Relevant legislation for the Parties. In addition, they can freely determine whether to approve or disagree with the contents of the Notary Deed to be signed.⁶

2. Research Methods

This study uses a sociological juridical approach, the research specifications used are analytical descriptive, the data used in this study includes primary data and secondary data, data collection in this research uses interview methods and literature study, data analysis methods use qualitative analysis methods.

3. Results and Discussion

3.1. Notary Responsibilities for Making Deeds of Sale and Purchase Agreements When Disputes Occur for Parties in Rembang Regency

The meaning of responsibility linguistically is the condition of being obliged to bear everything (if something happens, you can be sued, blamed, sued, and so on).⁷

⁶Hari Agus Santoso, 2021, Legal Justice Perspective of Gustav Radbruch's Theory in the Pkpu "PTB" Decision, Jatiswara Journal, Vol. 36 No. 3 p.15, <https://jatiswara.unram.ac.id/index.php/js/article/view/341>

⁷Devi Eriyanti, 2022, The Role of a Notary in Legal Certainty for the Power of Attorney to Sell Against Bankrupt Sale and Purchase Objects, Journal of USM Law Review Vol 5 No 1, (<https://journals.usm.sc.id>)

According to Hans Kelsen, who outlines the theory of accountability in law, namely a concept related to the concept of legal responsibility (responsibility) is the concept of legal responsibility (liability).

Regarding this responsibility, Hans Kelsen divides it into several parts, namely:

1. Individual responsibility, that is, an individual is responsible for his own violations;
2. Collective accountability means that an individual is responsible for an offense committed by another person;
3. Liability by fault means that an individual is liable for a breach committed intentionally and presumably with the aim of causing harm; And
4. Absolute liability means that an individual is responsible for an unintentional and unforeseen violation.

Someone who is legally responsible for certain actions that he can be subject to a sanction in cases where his actions are contrary to law because of his own actions that make that person responsible. Normally, in a case, the sanction imposed on the perpetrator (delinquent) is due to his own actions which make that person responsible.⁸

In carrying out his position, a notary has a moral responsibility towards his profession. According to Paul F. Camanisch as quoted by K. Bertens stated that Profession is a Moral Community (Moral Community) that has shared Aspirations and Values. Professional groups have their own powers and special responsibilities. As a profession, this group has a reference called the Professional Code of Ethics.⁹

As for the source of responsibility itself, according to Roscoe Pound defines the existence of several sources, namely:¹⁰

⁸Jimly Asshiddiqie and M. Ali Safa'at, 2012, Translation of Hans Kelsen's Theory of Law, Cet. 2nd, Constitution Press, Jakarta, p. 56

⁹Dewi Kurnia Putri, Amin Purnawan, Differences between the binding sale and purchase agreement in full and the binding sale and purchase agreement not paid off, Journal of Deed, Vol.4 Number 4 December 2017. (<http://jurnal.unissula.ac.id>)

¹⁰Roscoe Pound, 1996, An Introduction to the Philosophy of law translated by Mohammad Radjab, Bharatara Niaga Media, Jakarta, p. 92

a. Agreement, in which the Parties entered into the Agreement Each of them is required to be responsible for fulfilling the contents of the Agreement they made;
And

b. Acts against the law include:

- 1) Self-deeds, whether intentional "dolus" or unintentional "culpa";
- 2) The actions of other people (people who are still under the responsibility of the person in charge); And
- 3) Other incidents that are not acts, but cause consequences that must still be accounted for by the person who is considered by law to be responsible.

Regarding the responsibilities of a Notary as a Public Official relating to material truth, it is divided into 4 (four), namely:

1. Civil Notary Responsibilities for the Material Truth of the Deed he made.

Civil liability for the material truth of the deed drawn up by a notary is seen from unlawful acts, which can be distinguished based on their active or passive nature. Active unlawful acts are committing acts that cause harm to other parties. Unlawful acts that are passive in the sense of not committing acts that are mandatory, so that the other party suffers losses;

2. The notary's criminal responsibility for the material truth in the deed he made.

Regarding Criminal Provisions it is not regulated in the UUJN but Criminal Notary Responsibility is imposed if the Notary commits a Criminal Act. UUJN only regulates Sanctions for Violations committed by a Notary against UUJN. The sanction can be in the form of a Deed made by a Notary who does not have Authentic Power or only has the power as an Underhand Deed. The Notary himself may be given a Sanction in the form of a Reprimand to a Disrespectful Dismissal;

3. The responsibility of a Notary in carrying out his/her Duties is based on the Notary's Code of Ethics.

The duties of a Notary must adhere to the Code of Ethics for the Position of Notary, because without it, the dignity and dignity of professionalism will be lost and will no longer gain the trust of the public. The existence of a relationship between the Notary's Code of Ethics and the Notary's Position Law gives meaning to the Essence of the Notary's Profession itself. The Notary's Code of Ethics and the Notary's Code of Ethics require that a Notary get a reference in carrying out his/her duties as a Public Official, in addition to having to comply with UUJN, they must

also obey to the Professional Code of Ethics and must be responsible for the community it serves;

4. Notary Responsibilities based on Notary Position Regulations (UUJN).

Notary Position Regulations are regulations that exist in relation to the Notary Profession in Indonesia, Notaries as Public Officials are appointed by the Government not only for the benefit of the Notary himself, but also for the Public Interest. The services provided by a notary are related to matters of trust, meaning that the state gives great trust, where the responsibility can be both legal and moral.

From this description, the notary is required to be responsible for the deed he has made. The responsibility of a notary when viewed from UUJN is very closely related to the duties and work of a notary. It is said so because in addition to making Authentic Deeds, the Notary is also assigned and responsible for carrying out the Registration and Legalization (Waarmerken and Legalization) of Letters/Deeds made under the Hand

Regarding the Notary's Responsibility for the Deed he made, a Notary is Responsible for the Stakeholders in the Deed he made. The deed made by a Notary is related to Civil Issues, namely regarding an Agreement made by 2 (two) parties or more, although it is possible to make it unilaterally (its nature only strengthens). The nature and principle adhered to by the law of engagement, especially engagements born out of agreements, is that the law is only possible and may be changed or replaced or declared invalid, only by those who make it.

Thus, from the description stated in the UUJN regarding Notary Liability in the Deed of Sale and Purchase Binding Agreement for Deeds made in accordance with the Authority of the Position, it can be stated that the Notary's responsibility for the Deed he made is limited to the Initial Part of the Deed/Head of Deed and the End/Closing Deed, in this section the Notary has full responsibility for the contents both formally and materially, Regarding the identity facing the Responsible Notary as long as it is supported by an identity issued by another authorized Official, and whether or not the Appearing Party is correct or not coming to make an Agreement, regarding whether there are Witnesses, regarding the day, date and so on, as mentioned above.

The notary is not a party to the deed he made. Article 38 paragraph 2 d of the UUJN states that: "At the beginning or head of the deed contains the full name and domicile of the notary, at the end of the deed the signature of the notary must be stated." Inclusion of the Notary's name and signature is often interpreted that the Notary is a party to the Deed, so that if the Deed is problematic, the Notary is often placed as the Defendant or Co-Defendant, witness, Suspect, Defendant.

Interpreting the position of a notary as such is misguided because this view does not understand the position of a notary in the national legal system.

The notary cannot be held liable for losses arising as a result of the making of the deed or its preparation and implementation as long as the assistance provided by the notary has been carried out in accordance with the provisions of UUJN, other laws and regulations within reasonable limits of accuracy.

Thus the Notary's responsibility for the Deed of Sale and Purchase Agreement he made is limited to the initial part of the deed/head of the deed and the final part/closing of the deed, and is fully responsible for its contents.

The Notary in carrying out his duties in making an Authentic Deed has complied with something which is the Procedure for the Process of Making an Authentic Deed, this is because the Notary before carrying out the Making of the Deed has first examined the files in accordance with the documents shown to him. Whereas in the Elements of Legal Disputes, as if a Notary commits an Act of Abusing Authority, considering that the Authority in his possession has been abused, so that the Use of Authority is ultimately not in accordance with the Purpose of Granting Authority itself, the Notary will be subject to Administrative, Civil and Criminal Sanctions.

The parties concerned who carry out the binding sale and purchase agreement if there are parties who commit a default in the agreement are very dependent on the contents of the strength of the agreement. Regarding the Disputes that occurred between the Parties outside the authority of the Notary because in this case the error of the Appealing Party, there was dishonesty on the part of 1 (one) Party, namely the power of attorney/intermediary by not giving all payments to the seller.

3.2. Legal Consequences and Solutions for Loan Guarantees Pawned to Third Parties at Bank Lampung, West Lampung branch

The binding sale and purchase agreement (PPJB) made before a Notary does not result in the right being transferred at that time from the hands of the seller to the prospective buyer. This is because the sale and purchase agreement is a conditional agreement or preliminary agreement prior to the implementation of the sale and purchase agreement through the official deed. Land Deed (PPAT).¹¹

¹¹Interview Results with Notary and PPAT Holifia Sajadah., SH., M.Kn on January 17, 2023

The PPJB deed made by a notary is basically an authentic deed which will not be disputed if one party does not feel disadvantaged, but with the contents of the agreement in the PPJB which contains the things mentioned above, a problem can arise because one party feels harmed by other parties. The contents of the agreement that are important to discuss in detail are regarding the rights and obligations between the seller and the buyer, the price of the object of sale and purchase and the procedure for payment. This clause can provide legal certainty for the parties after going to a notary. The formulation of the time period in the deed states when the buyer will pay off with the time period written in the deed,

The PPJB deed made before a Notary and fulfilling the formal and material requirements is an authentic deed. The benefits of an authentic deed, which in English is called the *benefits of dead authentic*, whereas in Dutch it is called *wet uitkeringen authentiek* relating to the use or advantages of an authentic deed. Those benefits include:

1. Clearly define rights and obligations.
2. Guarantee legal certainty.
3. Avoiding disputes.
4. The strongest and most complete written evidence.
5. In essence, it contains formal truths in accordance with what the parties notify the Notary.

The deed of binding sale and purchase is useful for the parties in providing legal certainty for the sale and purchase process to be carried out, this is in line with the theory of legal certainty according to Gustav Radbruch in his view, that legal certainty is certainty about the law itself. Legal certainty is a product of law or more specifically of legislation. Based on this opinion, according to Gustav Radbruch, positive law that regulates human interests in society must always be obeyed even though positive law is unfair.

Legal certainty as one of the goals of law can be said as part of efforts to achieve justice. The real form of legal certainty is the implementation or law enforcement of an action regardless of who does it. With legal certainty, everyone can predict what will happen if they take certain legal actions. Certainty is needed to realize the principle of equality before the law without discrimination.

Legal certainty will guarantee a person to carry out behavior in accordance with applicable legal provisions, otherwise without legal certainty, a person does not have standard provisions in carrying out behavior. Thus, it is not wrong if Gustav

Radbruch argues for certainty as one of the goals of law. In the order of community life, it is closely related to legal certainty. Legal certainty is in accordance with the normative nature of both the provisions and the judge's decision. Legal certainty refers to the implementation of the order of life which in practice is clear, orderly, consistent and consistent and cannot be influenced by subjective circumstances in people's lives.

The Deed of Sale and Purchase Agreement (PPJB) can be formulated by the Parties themselves, usually in the form of requirements that are usually requested by the parties themselves. For example, there are prospective sellers who in the Sales and Purchase Agreement (PPJB) they make ask the buyer to make payment of the buyer's money for a certain period of time accompanied by cancellation conditions and sanctions for late payment, there are also those who do not fulfill the payment as requested and agreed, the Sale and Purchase Agreement (PPJB) for land rights that has been made and agreed to is void and usually the seller will not take the money that has been paid unless the buyer asks for an exception.

The deed of the binding sale and purchase agreement will require a person to behave in accordance with the legal provisions contained in the deed, otherwise without any legal certainty contained in the parties in the deed of binding sale and purchase agreement, the parties do not have standard provisions in carrying out the binding sale and purchase process. Thus, it is not wrong if Gustav Radbruch argues for certainty as one of the goals of law. In the governance of community life, it is closely related to certainty in law, community certainty in carrying out all legal actions will certainly raise juridical implications that can be used as a reference for parties in legal traffic.

Based on the applicable legal provisions as stated in Article 1320 of the Civil Code, an agreement is declared valid if it fulfills four conditions, namely:

- a. Agree those who bind themselves;
- b. Ability to act to make an agreement;
- c. The existence of a certain object or thing; And
- d. A lawful reason

The first two conditions are called subjective conditions, because they concern the people or subjects who enter into an agreement, while the last two conditions are called objective conditions because they concern the agreement itself or the object of the legal action being carried out.

There are juridical implications if one of these conditions is not met. In this case if the objective conditions are not met, the agreement is null and void. This means that originally there was never an agreement and there was never an agreement. Thus, there is no basis for the parties to sue each other before the judge (*null and void*). With regard to subjective conditions, if the conditions are not met then the agreement is not null and void, but one of the parties has the right to request that the agreement be canceled. Then the party requesting cancellation is an incompetent party. Such an agreement is called *voidable/vernietigbaar*.

The binding sale and purchase agreement (PPJB) on land made by the parties before a notary can be requested for cancellation if one party feels aggrieved.

One of the disputes regarding binding sale and purchase agreements in Rembang Regency is the case regarding the binding of sale and purchase agreements that are detrimental to the buyer, person A bought a plot of land in Leteh village, Rembang district, Rembang district with an area of 17,000 M2 on behalf of person B through intermediary person C. In the future Si A wants to sell the land to another person but the certificate is flawed because Si C does not pay in full to the land owner even though Si A has paid in full. Because it contains a Legal Action in 1 (one) Deed of a Land Sale and Purchase Binding Agreement, this is detrimental to the Buyer because the Notary Deed is expected to provide Legal Certainty so that the Buyer is formally protected from not being able to change his name due to disputes in the future.

Juridical Implications for Making a Sale and Purchase Binding Agreement Deed if a Dispute occurs in Rembang Regency made before a Notary in a dispute because the obligations of one of the parties are not fulfilled (default) can cause the cancellation of the deed made before a Notary, namely the deed of the Sale and Purchase Binding Agreement (PPJB) can canceled if it does not meet the subjective element or null and void if it does not meet the objective element as it turns out in Article 1320 of the Civil Code which states the terms of the validity of the agreement. In addition to the cancellation of the deed made before a Notary.¹²

4. Conclusion

Whereas based on the results of the research described by the author above, the writer can draw the following conclusions: The responsibility of a Notary in the Deed of the Sale and Purchase Agreement Binding of the Deed he made is in accordance with the Authority of his Office which is based on UUJN, it can be argued that the Notary's responsibility for the Deed he made is limited to at the beginning of the deed/head of the deed and the final/closing part of the deed, in

¹²Interview Results with Notary and PPAT Holifia Sajadah., SH., M.Kn on January 17, 2023

this section the notary has full responsibility for its contents, both formally and materially. The role of the Notary is only as a Media for the birth of an Authentic Deed. Notaries are not required to carry out their duties if in the future there is a dispute between the parties that occurs as a result of default, and the Authentic Deed will be proof that an Event or Relationship has occurred between the Parties. And the Juridical Implications for Making the Deed of Binding Sale and Purchase Agreement if a Dispute occurs in Rembang Regency is made before a Notary who has a dispute because the obligations of one of the parties are not fulfilled (default) can cause the cancellation of the deed made before a Notary, namely the deed of the Binding Sale and Purchase Agreement (PPJB) can canceled if it does not meet the subjective element or null and void if it does not meet the objective element as it turns out in Article 1320 of the Civil Code which states the terms of the validity of the agreement. In addition to the cancellation of the deed made before a Notary.

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