

Analysis of Legal Protection of Buyers Against Breach of Performance in The Deed of Sale of Land Pledge at The People's Credit Bank

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Abstract. *A deed of sale and purchase can be considered the initial step towards the execution of a land rights sale and purchase agreement. Based on Article 1457 of the Civil Code, the creation of a deed of land sale and purchase does not require full payment as long as both parties agree. However, this often leads to legal issues later, including in cases where the seller is in default. The problem that will be discussed in this thesis is how the legal protection for buyers in the event of default in the sale and purchase agreement of land pledged at PT. Bank Perkreditan Rakyat Arthanugraha Makmursejahtera. What are the legal consequences of default in the sale and purchase agreement of land pledged at PT. Bank Perkreditan Rakyat Arthanugraha Makmursejahtera. What is the basis of the legal considerations of the Panel of Judges in the case of default on the Sale and Purchase Agreement made by the Notary for the land pledged at PT. Bank Perkreditan Rakyat Arthanugraha Makmursejahtera. This research is descriptive analysis and the research material is obtained using a normative juridical approach. The data collection technique used is a literature study. The collected data is then analyzed using a qualitative method supported by deductive logical thinking. Based on the research that has been conducted, it can be concluded that, the choice of resolution in the problems and solutions to joint property disputes This sale and purchase agreement carried out by Mr. Abdul Khoir as the Buyer/Plaintiff against Mr. Masno bin Pardi as the Seller/Defendant is valid according to the applicable laws and regulations, because it fulfills the requirements for a valid agreement according to Article 1320 of the Civil Code.. The existence of the Deed of Sale and Purchase Agreement Number: 20 dated April 28, 2023 made before a Notary is legally valid. If any party has committed a breach of contract against the authentic deed, it must first be declared void by the Court, thus causing an error and leading to the cancellation of the deed. The Panel of Judges in providing legal considerations on case Number: 49/Pdt.G/2023/PN.Pwd was not careful and wrong and did not reflect a*

sense of justice for the community in seeking justice, especially for the Buyer/Plaintiff who clearly the Seller/Defendant had committed a breach of contract against Deed of Sale and Purchase Agreement Number 20 dated April 28, 2023 made before a Notary.

Keywords: *Default; Land Sale and Purchase Deed; Legal Protection for Buyers.*

1. Introduction

Land ownership is a fundamental necessity in human life because it serves crucial social, economic, and cultural functions. Land sales and purchases in Indonesia are generally conducted through a Deed of Sale and Purchase (AJB) drawn up before a Land Deed Official (PPAT). However, in practice, it is not uncommon for both sellers and buyers to choose to first draw up a Sale and Purchase Agreement (PJB), particularly when the formal requirements for an AJB have not yet been met, for example, when the land certificate is still held as collateral at a bank.¹

The use of a PJB as a preliminary agreement often raises legal issues. This is because, legally, the collateral held by the bank should not be transferable to another party until the loan is fully repaid. However, many transactions are still carried out due to practicality or the urgent needs of both the seller and the buyer. This situation then opens the door to default, a situation where one party fails to fulfill its obligations as stipulated in the agreement. Several previous studies have shown that default issues in sales contracts often result in losses for buyers. For example, research by Purnawan & Adillah (2014) emphasized that unclear regulations and weak notary oversight can lead to legal uncertainty in contract enforcement. Meanwhile, Kastury & Munsharif (2020) also emphasized the importance of notarial prudence in drafting deeds, particularly when the object of the agreement is still under collateral.²

The main problem that arises is the buyer's position, which is often at a disadvantage. The buyer has paid the agreed price for the land, but because the certificate is still held as collateral with the bank and the seller is in default, the buyer's right to acquire the land cannot be exercised. This creates legal uncertainty and violates the principle of fairness in civil transactions. In this context, legal protection for buyers in good faith becomes crucial. On the other hand, the judge's

¹ Made Ara Denara & I Made Dedy Priyanto, (2019), "Perjanjian Pengikatan Jual Beli (PPJB) Dalam Transaksi Peralihan Hak Atas Tanah dan/atau Bangunan", *Jurnal Kertha Semaya*, Vol. 8 No. 1, Jakarta.

² Tan Thong Kie, (2000), *Studi Notariat – Serba Serbi Praktek Notaris*, Jakarta : Ichtar Baru Van Hoeve

considerations in resolving PJB default disputes are also an important issue. Judges are obliged to explore the values of justice and legal certainty as stipulated in Article 5 paragraph (1) of the Judicial Powers Law. However, in reality, court decisions sometimes emphasize the formal aspects of the agreement without considering the buyer's position as the party who has fulfilled its obligations.

Thus, there is a gap between legal practice in practice and the law's stated objectives. When a PJB is created with land still pledged as collateral and a default occurs, questions arise about the legal protection provided to the buyer, the legal consequences of such a default, and how the judge considers the decision. This study aims to analyze the legal protection of buyers against default in the Sale and Purchase Agreement of land that is still pledged at the People's Credit Bank, analyze the legal consequences arising from the default, and examine the basis for the judge's considerations in the Purwodadi District Court Decision Number 49/Pdt.G/2023/PN.Pwd.

2. Research Methods

This research uses a normative juridical approach, namely legal research that focuses on the study of laws and regulations, doctrines, and court decisions that are relevant to the problem.

The research specifications are descriptive-analytical, with the aim of systematically describing the legal problems that occur, then analyzing them using applicable legal theories and norms.³

The types and sources of data used include:

- a. Primary legal materials: statutory regulations, the 1945 Constitution, the Civil Code, the Notary Law, and the Purwodadi District Court Decision Number 49/Pdt.G/2023/PN.Pwd.
- b. Secondary legal materials: doctrine, literature, legal journals, scientific articles, and previous research results.
- c. Tertiary legal materials: legal dictionaries and legal encyclopedias.

Data collection techniques were carried out through literature studies, by reviewing literature, laws and regulations, and related court decisions.

Data analysis was carried out qualitatively using a deductive method, namely outlining the applicable general legal rules, then drawing specific conclusions that

³ Koentjaraningrat, (1980), *Metode-Metode Penelitian Masyarakat*, Jakarta : Gramedia

are in accordance with the legal facts in the case of PJB land that is still being pledged.⁴

3. Results and Discussion

3.1. Legal Protection for Buyers

The concept of legal protection in civil transactions plays a crucial role in guaranteeing the rights of the parties, particularly those harmed by default. According to Philipus M. Hadjon (1987), legal protection itself is divided into two forms: preventive legal protection and repressive legal protection. In the context of a Land Purchase Agreement (PJB) that is still being pledged, legal protection becomes relevant when the buyer has fulfilled their obligations, but the promised rights cannot be realized due to the problematic legal status of the land.⁵

Basically, a Sale and Purchase Agreement is an agreement where someone promises to sell and another person promises to buy. In the event that the Sale and Purchase Agreement is not fulfilled by one of the parties, then legally one of the other parties can file a claim on the basis of default, but the sale and purchase agreement is also an assistance agreement that functions as a preliminary agreement in free form that functions to prepare or even strengthen the main/main agreement that will be carried out, because the sale and purchase agreement is the beginning for the birth of the main agreement. Thus it is clear that the sale and purchase agreement functions as an initial agreement or preliminary agreement that provides confirmation to carry out the main agreement, as well as completing a legal relationship if the things that have been agreed upon in the sale and purchase agreement have been fully implemented.

That in this research, a real case occurred in a land sale and purchase transaction whose object is still under debt guarantee at the Bank, namely, the buyer named Mr. Abdul Khoir has purchased part of Mr. Masno's yard, by first making and signing a sale and purchase agreement made before Notary Enggar Dian Alamtyas, SH, M.Kn. Because the purchase of the land was carried out in stages and the original certificate is still guaranteed at PT. Bank Perkreditan Rakyat Arthanugraha Makmursejahtera. The existence of the sale and purchase transaction first begins with an agreement, then based on the provisions of Article 1320 of the Civil Code, it must fulfill the valid requirements of the agreement, namely the existence of an agreement, capacity, a certain thing, and a lawful cause.⁶

⁴ Peter Mahmud Marzuki, (2008), *Penelitian Hukum*, Cet. 2, Jakarta : Kencana

⁵ Muh Taufiq Amin, (2018), "Konsekuensi Hukum Pembatalan Akta Perjanjian Pengikatan Jual Beli (PPJB) dalam Praktek Jual Beli Properti di Makassar", *Jurisprudentie*, Volume 5, Nomor 1, Jakarta.

⁶ Raymond Aristyo & Akhmad Budi Cahyono, (2021), "Tanggungjawab Notaris terhadap Akta PPJB dan Akta Kuasa untuk Menjual sebagai Jaminan Terjadinya Utang Piutang," *Jurnal Kertha Semaya*, Vol 9., No.11.

Preventive legal protection is provided before a dispute arises with the aim of preventing losses. In PJB practice, this form of preventive protection can take the form of a notary's obligation to explain the status of the land object in detail to the parties before the agreement is signed. As a public official, a notary is obliged to uphold the principle of prudence, as stipulated in Law Number 2 of 2014 concerning the Position of Notary. Therefore, when land to be used as the object of PJB is still being pledged to a bank, the notary should refuse or at least warn the buyer of the legal risks that may arise.

However, practice shows that this preventive obligation is often neglected. Notaries tend to simply document the parties' agreements in the deed, ignoring the legal protections for buyers. This leaves buyers in a vulnerable position in the event of a seller's default. Previous research by Kastury & Munsharif (2020) found that many problematic PJB cases arise from the weak role of notaries in providing adequate legal information to buyers.

Repressive legal protection is provided when a dispute has already occurred, with the aim of restoring the rights of the aggrieved party. In the event of a PJB default, the form of repressive protection that the buyer can pursue is filing a lawsuit. Through this mechanism, the buyer can demand specific performance, cancellation of the agreement, or compensation in accordance with Article 1267 of the Civil Code.⁷

The case under study, Purwodadi District Court Decision No. 49/Pdt.G/2023/PN.Pwd, demonstrates how a well-intentioned buyer found himself disadvantaged. The buyer had made payment but did not obtain land rights because the object of the agreement was still pledged as collateral at the bank. The buyer filed a lawsuit as a repressive legal remedy to obtain protection. However, the judge in his ruling emphasized the formal aspects of the agreement rather than the protection of the party who had fulfilled its obligations.⁸

Legal protection in such cases is also related to general principles of contract law. The principle of freedom of contract, as stipulated in Article 1338 of the Civil Code, provides the parties with the freedom to enter into agreements. However, this principle is limited by the valid conditions of an agreement, as stipulated in Article 1320 of the Civil Code. If the objective conditions are not met, for example, if the object of the agreement cannot be sold because it is still pledged as collateral, then the agreement is void by law.⁹

⁷ Nasrudin, (2013), *Perbandingan Peran dan Wewenang Dewan Kehormatan Daerah Notaris Dan Majelis Pengurus Daerah Notaris Dalam Penegakan Kode etik*, Semarang : Tesis MKn Undip

⁸ Salim HS & Ellis Septiana Nurbaini, (2014), *Penerapan Teori Hukum pada Penelitian Tesis dan Disertasi*, cetakan ketiga, Jakarta : Raja Grafindo Indonesia.

⁹ Purnadi Purbacaraka, (2010), *Perihal Kaidah Hukum*, Bandung : Citra Aditya

In such circumstances, the buyer's position is further weakened because, even if they have acted in good faith and fulfilled their payment obligations, the agreement they made is legally invalid. Therefore, legal protection should not only focus on formal legal certainty, but also on protecting parties acting in good faith. This aligns with Gustav Radbruch's doctrine of justice, which states that the law must reflect three fundamental values: justice, certainty, and utility.

Thus, it can be concluded that legal protection for buyers in PJB land that is still being used as collateral should include:

- a. Preventive, through the obligation of notaries to provide complete and transparent explanations regarding the legal status of land.
- b. Repressive, through the mechanism of a lawsuit for breach of contract, cancellation of the agreement, or demands for compensation in court.

However, in practice, this legal protection is not yet fully effective, because it still depends on the judge's interpretation and weak regulations regarding PJB with land objects that are still being used as collateral.¹⁰

Legal protection is a fundamental aspect of every agreement, including a PJB. In the context of land sales and purchases, buyers have the right to obtain legal certainty regarding the transaction. However, practice shows that when the PJB object is still collateralized by the bank, the buyer's position is significantly weakened. This is because the buyer cannot obtain land rights until the mortgage is released. As a public official, a notary public is obligated to provide legal certainty and protection for the parties. However, in practice, notaries often continue to issue PJBs even though the object is not yet free of the encumbrance. This situation poses risks for buyers.

According to the theory of legal protection, law enforcement officers and public officials, including notaries, must ensure that the rights of the less fortunate are not violated. In this case, notaries should not issue deeds while the property is still being pledged, or at least provide a complete explanation of the legal risks to the buyer. Preventive and repressive legal protection must be provided, both through stricter legal regulations and through fair court decisions.

3.2. Legal Consequences of Default in PJB

A land sale and purchase agreement is a form of obligation that has broad legal implications not only for the parties directly involved in the contract, but also for third parties who are factually or legally affected by the implementation or cancellation of the contract. In the Indonesian civil law system, the principle of freedom of contract, as stipulated in Article 1 of the Civil Code, provides the parties

¹⁰ Suteki, (2000), *Publik Hukum Kode Etik Notaris di indonesia*, Bandung : Grafika Media

with the freedom to determine the terms and conditions of the agreement. However, this freedom remains limited by the obligation to implement the agreement in good faith and the legal consequences in the event of default.

Default is a situation where one party to an agreement fails to fulfill its obligations as agreed. In the context of a Sales and Purchase Agreement (PJB), default generally occurs when the seller is unable to transfer land rights to the buyer because the land certificate is still held as collateral at a banking institution. This has significant legal consequences for both the validity of the agreement and the protection of the buyer's rights.¹¹

This problem is clearly reflected in the case that is the focus of this study regarding the Legal Consequences of Default in the Land Purchase Agreement Guaranteed at PT. Bank Perkreditan Rakyat Arthanugraha Makmursejahtera. In this study the author will describe the legal problems that occurred between Mr. Abdul Khoir as the buyer and Mr. Masno bin Pardi as the land seller, where both have mutually agreed and bound themselves by signing the land purchase agreement made before a Notary.

The term "legal consequences" refers to any action taken to address a legally sanctioned consequence and agreed upon by the parties and the legal regulator. If a debtor has made a firm promise but still falls short of the required performance, the debtor can be considered to be in default. The sanctions for such defaults are as described in Article 1243 of the Civil Code.

According to Article 1243 of the Civil Code, breach of contract can result in an obligation to pay compensation consisting of costs, losses, and interest. Furthermore, Article 1267 of the Civil Code gives the injured party the right to choose one of the following legal remedies:

- a. Forcing the implementation of the agreement;
- b. Demand cancellation of the agreement;
- c. Claiming compensation; or
- d. Combining demands for performance of the agreement with compensation.¹²

In the case of a PJB for land that is still pledged as collateral, the legal consequences of default are very complex because they involve the interests of a third party, namely the bank as the creditor holding the mortgage. The existence of this mortgage makes the land unable to be transferred to the buyer without the

¹¹ M. Luthfan Hadi Darus, (2017), *Hukum Notariat Dan Tanggung jawab Jabatan Notaris*, Yogyakarta : UII Press

¹² Liliana Tedjosaputro, (1995), *Etika Profesi Notaris Dalam Penegakan Hukum Pidana*, Yogyakarta : Bayu Grafika

bank's consent. Therefore, if the seller still makes a PJB, the agreement is legally flawed and potentially void because it does not meet the objective requirements in Article 1320 of the Civil Code, namely that the object of the agreement must be determinable and saleable.

The next legal consequence is the cancellation of the agreement through a lawsuit in court. A buyer who feels aggrieved can file a breach of contract lawsuit with a petition to cancel the agreement. If the court grants the order, the parties are restored to their original state (*restitutio in integrum*). Thus, the buyer is entitled to a refund of the money paid and compensation commensurate with the actual losses suffered.

In practice, it's not uncommon for courts to simply declare agreements invalid without providing adequate compensation to buyers. This is evident in Purwodadi District Court Decision No. 49/Pdt.G/2023/PN.Pwd, where the panel of judges emphasized the status of the land certificate, which was still pledged as collateral, thus deeming the PJB invalid. However, protection for buyers who have already made payments has not been fully addressed. This situation creates legal uncertainty and undermines the principle of protecting parties acting in good faith.¹³

In this research, it was discovered that the cause was the Notarial Deed made by Notary Enggar Dian Alamtyas, SH, M.Kn., where the land sale and purchase agreement was made by Mr. Abdul Khoir with Mr. Masno bin Pardi regarding the Deed of Sale and Purchase Agreement Number: 20 dated April 28, 2023. The agreement was carried out and carried out using an authentic deed made before a Notary.

Returning to the definition of Article 1868 of the Civil Code, an authentic deed is a deed drawn up in a form regulated by statutory regulations and by an authorized official at the location where the deed is drawn up. Essentially, a sale and purchase agreement is not specifically regulated by law. However, a sale and purchase agreement arises from the principle of freedom of contract as stipulated in Article 1338 of the Civil Code. A sale and purchase agreement arises from the public's need for land sales and purchases.

Article 1338 of the Civil Code provides the freedom to enter into contracts. However, this freedom does not mean absolute freedom. Rather, as stipulated in Article 1338 of the Civil Code, the freedom to enter into an agreement depends on whether or not to enter into an agreement, with whom to enter into the agreement, and on the terms of the agreement. This freedom to enter into an

¹³ Kementerian Agama Republik Indonesia, (2022), *Al – Qur'an dan terjemahannya*, Jakarta

agreement is exercised while still fulfilling the valid requirements for an agreement as stipulated in Article 1320 of the Civil Code.

In the Deed of Sale and Purchase Agreement Number: 20 dated April 28, 2023, which was made before a Notary, it was made with the aim of serving as an initial agreement between the prospective seller and prospective buyer before the land sale and purchase transaction was officially carried out through a Deed of Sale and Purchase. However, for the Deed of Sale and Purchase Agreement in the Decision of this case, the Panel of Judges actually considered if the provisions contained in the sale and purchase agreement were known to be contradictory to one another so that they did not meet the requirements for a valid agreement.¹⁴

The existence of the Deed of Sale and Purchase Agreement Number 20 dated April 28, 2023, drawn up before a Notary cannot be considered an agreement containing a permissible cause. As stipulated in Article 1337 of the Civil Code, a prohibited cause is something prohibited by law and/or contrary to morality and public order.

In addition, the legal consequences of default also impact the position of a notary as a public official. A notary can be held accountable if proven negligent in carrying out his/her obligation to provide information regarding the status of land that is still being pledged. The notary's obligations as regulated in Article 16 paragraph (1) letter a of the Notary Law emphasize the importance of being careful in making deeds. If this obligation is ignored, the notary can be subject to administrative, civil, and even criminal sanctions.

From a civil law perspective, default in a PJB for land that is still being pledged gives rise to three main legal consequences:

1. Regarding the agreement, PJB has the potential to be null and void by law or can be cancelled because it does not meet the objective requirements.
2. Regarding the parties, the seller is obliged to return the buyer's money along with compensation, while the buyer has the right to seek justice through the courts.
3. Against third parties (banks), the mortgage rights remain attached so that the bank as creditor still has a preferred position (*droit de preference*), while the buyer only has civil rights to demand compensation.¹⁵

Thus, the legal consequences of default in a PJB on land still under collateral status are not limited to the cancellation of the agreement, but also have broad implications, including consumer protection, notary liability, and legal certainty in land sales practices. Therefore, stricter regulations are needed to define the

¹⁴ I Ketut Oka Setiawan, (2021), *Hukum Perikatan*, Jakarta : Sinar Grafika

¹⁵ Ikatan Notaris Indonesia, (2005), *Kode etik Notaris*, Bandung : Konggres Luar Biasa

validity of a PJB on land still under collateral status, to optimize legal protection for buyers.

If the seller defaults on the Sales and Purchase Agreement (PJB), the agreement cannot be upgraded to a Deed of Sale and Purchase (AJB). This implies that the buyer who has made the payment does not obtain the land rights, resulting in a loss. According to Article 1243 of the Civil Code, the injured party has the right to claim compensation for the default. In the context of a PJB, a default lawsuit can be filed by the buyer to cancel the agreement and demand a refund. However, the problem is that buyers often do not receive optimal protection because the judge deems the agreement invalid from the start.

Furthermore, default in a land sale and purchase agreement (PJB) where the object is still pledged as collateral creates legal uncertainty. This uncertainty not only harms the buyer but can also harm the bank that has an interest in the collateral. Therefore, clearer regulations are needed regarding the legal status of PJBs for objects still pledged as collateral to avoid future disputes.¹⁶

3.3. Legal Considerations of the Panel of Judges in the Decision

The judge's considerations in deciding a case are an important aspect because they show how the law is applied in practice. Judges are not merely the mouthpiece of the law (*la bouche de la loi*), but also have an obligation to explore the values of justice, legal certainty, and benefit as mandated in Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power. Therefore, an analysis of the judge's considerations in the Purwodadi District Court Decision Number 49/Pdt.G/2023/PN.Pwd is important to assess the extent to which the judge provides legal protection to buyers in good faith.

A decision is considered fair if the panel of judges, in deciding a case under trial, is based solely on the law without discriminating between the parties. A decision is said to have legal certainty, meaning that the decision must be clear, firm, and certain so that the decision can be implemented properly. Meanwhile, a decision is said to be beneficial if the decision can be implemented so that the decision is beneficial to the parties, especially the party whose rights have been violated.

In the implementation of civil material law, it is possible that an injury or violation may occur, so it is necessary to maintain the continuity of the civil material law with a series of other legal regulations that regulate it. This is what is called civil procedural law. According to Prof. Sudikno Mertokusumo in his book, Civil procedural law is a legal regulation that regulates how to guarantee compliance

¹⁶ Ishaq, (2009), *Dasar-dasar Ilmu Hukum*, Jakarta : Sinar Grafika

with material civil law through the intermediary of a judge or legal regulations that determine how to guarantee the implementation of material civil law.¹⁷

It is understood that the Panel of Judges' legal considerations in deciding Civil Case Number 49/Pdt.G/2023/PN.Pwd have gone through a series of evidentiary processes and opinions in accordance with applicable regulations. In this case, the role of the judge's decision in resolving a dispute is recognized, as ultimately, a judicial process will end with a judge's decision.

Based on the Decision of the Panel of Judges above, the author concludes that in fact the Defendant has clearly breached the promise/breach of contract in the deed of sale and purchase agreement made by the Notary. Apart from the legal considerations of the Panel of Judges which stated that the notarial deed should not have been made, it was an inaccurate consideration, wrong and mistaken in applying the law of evidence. The description of the contents of the Deed of Sale and Purchase Agreement Number 20 dated April 28, 2023 made before Enggar Dian Alamtyas, SH, M.Kn., Notary in Grobogan is not contradictory, because in the description of Article 1 it states that "all of it is in a blank state and free from all burdens, disputes and encumbrances, thus with a price of Rp. 80,000,000,- (eighty million rupiah) paid in installments...".

In this consideration, the Panel of Judges was wrong in examining the contents of the notarial deed because they only understood it in fragments without understanding the entire meaning of the Notarial Deed. This means that the contents of the Deed of Sale and Purchase Agreement No. 20 are correct because the entire contents of the Documentary Evidence are Notarial Deeds made before an authorized public official at the place where the deed was made and the form has been determined by law and authentic deeds already have their own pattern form. Therefore, someone who wants to make an authentic deed before a Notary cannot make it in any format. In addition, the documentary evidence in the form of Deed of Sale and Purchase Agreement No. 20 dated April 28, 2023 is a term commonly known in the process of buying and selling land or houses. However, it should be noted that the Sale and Purchase Agreement is not specifically regulated in legislation. However, there are a number of regulations that use the term Sale and Purchase Agreement. One of them is contained in the Government Regulation of the Republic of Indonesia Number 12 of 2021 concerning Amendments to Government Regulation Number 14 of 2016 concerning the Implementation of Housing and Residential Areas. As stated in the provisions of Article 1 Paragraph (1) it explains: "The system is a series of agreement processes between each person and the development actor in marketing activities which are stated in a preliminary sale and purchase agreement or a Sale and Purchase Binding Agreement before the sale and purchase deed is signed." This means that the

¹⁷ H. Salim H.S., (2004), *Perkembangan Hukum Jaminan di Indonesia*, Ctk. Pertama, Edisi 1, Jakarta : Rajawali Pers

written evidence in the form of a notarial deed when the payment has been paid in full will be upgraded to a Sale and Purchase Deed as the basis for the transfer of the disputed object in the a-quo case.¹⁸

That the legal considerations of the Panel of Judges are not careful, have been wrong and mistaken in applying the law of evidence to reject the Buyer/Plaintiff's lawsuit. In fact, the Panel of Judges only prioritizes and/or emphasizes whether the existence of the original certificate of the object of the dispute exists or not?. Such considerations are insufficient considerations because they do not even consider the entire description of the contents of the written evidence in the form of the Deed of Sale and Purchase Agreement Number 20 dated April 28, 2023 made before Enggar Dian Alamtyas, SH, M.Kn., Notary in Grobogan as well as the Buyer/Plaintiff's Evidence in the Form of Statement Letter No. 290.01/BPR.AMAS/XI/2023 related to explaining that on November 27, 2023, Co-Defendant I (BPR AMAS) had made a letter which essentially explained that Defendant I (Masno) through his child Defendant II (Novia Setiyaingsih) on July 13, 2023 had taken a guarantee of Freehold Certificate Number: 291 covering an area of 3,500 m2 registered in the name of Pardi Bin Sodjojo, which is located in Kedungrejo Village, Purwodadi District, Grobogan Regency, Central Java Province.

That regarding the provisions of clause Article 2 of the Deed of Sale and Purchase Agreement Number 20 dated April 28, 2023, in addition to explaining "That until now the original certificate is still in collateral/security at BPR AMAS, which is domiciled at Jalan Raya Bandungrejo, Jagalan, Mranggen, Mranggen District, Demak Regency". There is also a clause that explains "That at the time of payment the certificate must have been taken from BPR AMAS and submitted to the office of Notary ENGGAR DIAN ALAMTYAS, Bachelor of Law, Master of Registrar, for further processing".

That if we examine the contents of the provisions of the Deed of Sale and Purchase Agreement Number 20 dated April 28, 2023, it is correct and clear and is not prohibited by law or is in accordance with other written evidence, which in essence shows that the Original Certificate of the disputed object has been taken by Defendant I at the Office belonging to Co-Defendant I. However, the existence of this written evidence was not considered at all in the decision of the case.¹⁹

In the a quo case, the judge ruled that the Sale and Purchase Agreement (PJB) between the seller and buyer was legally invalid because the object of the agreement was still pledged as collateral at the bank. This consideration was based on Article 1320 of the Civil Code, which requires the object of the agreement to be identifiable and marketable. Because the land was still used as collateral for the

¹⁸ Frans Hendra Winata, (2003), *Persepsi Masyarakat Terhadap Profesi Hukum di Indonesia*, Jakarta : PT Gramedia

¹⁹ Bambang Waluyo, (1991), *Penelitian Hukum Dalam Praktek*, Jakarta : Sinar Grafika

loan, the object of the agreement was deemed not to meet the objective requirements, thus rendering the agreement null and void.

Formally, the judge's reasoning aligns with contract law doctrine, which emphasizes the fulfillment of valid contractual requirements. However, this decision has drawn criticism for neglecting to protect buyers who have fulfilled their obligations, namely making payment. By emphasizing only formal validity, the judge was deemed to have neglected the principle of justice, which should protect parties acting in good faith in a transaction.²⁰

The judge's reasoning in this case also demonstrates the gap between legal certainty and justice. Legal certainty is reflected in the application of the normative rule that a PJB is invalid because the object is still pledged. However, substantive justice is not achieved because the buyer still bears the loss despite acting in good faith. This contradicts Gustav Radbruch's legal theory, which asserts that the law must balance the values of justice, certainty, and utility.

Furthermore, the judge failed to adequately consider the notary's role in this case. The notary who drafted the PJB should have transparently explained the legal status of the land to the parties. If the notary had carried out their duties professionally, the dispute could likely have been avoided. Therefore, the notary's responsibilities should have been part of the judge's considerations, not simply the validity of the object of the agreement.

From a consumer protection perspective, the judge's considerations should favor the purchaser as a vulnerable consumer of legal services. This aligns with the principle of protecting parties in good faith in civil law. This principle is widely recognized in international judicial doctrine and practice, emphasizing that parties who have fulfilled their obligations in good faith should be protected by the law.

Based on the above analysis, it can be concluded that the judge's considerations in the Purwodadi District Court's decision emphasized formal legal certainty over substantive justice. Consequently, buyers in good faith do not receive adequate protection. This situation demonstrates the need for clearer regulatory reforms regarding the validity of PJBs with land still pledged as collateral, so that judges have a stronger legal basis to protect buyers' interests.²¹

Thus, even though the judge's considerations are normatively in accordance with the provisions of the Civil Code, substantively the decision has not fully fulfilled the legal objective of providing justice, certainty and benefits in a balanced manner.

²⁰ Bambang Sugugono, (1985), *Metode Penelitian hukum*, Jakarta : PT Raja Grafindo Persada

²¹ Abdul Ghofur Anshori, (2009), *Lembaga Kenotariatan Indonesia*, Yogyakarta : UII Pres

In Purwodadi District Court Decision Number 49/Pdt.G/2023/PN.Pwd., the panel of judges deemed the PJB made on land still being pledged invalid because it did not meet the objective requirements in Article 1320 of the Civil Code. The judges argued that pledged land cannot be the object of the agreement, therefore the PJB was deemed null and void. This consideration was based on the principle of legal certainty but ignored the aspect of protection for buyers who had fulfilled their obligations.²²

An analysis of this decision shows that the judge failed to consider the principles of justice and expediency. In legal theory, justice, certainty, and expediency must be balanced. A decision that emphasizes only legal certainty without considering the buyer's interests has the potential to create injustice. The judge should have provided protection to the buyer by declaring the seller in breach of contract and obligated to return the payment, thereby protecting the buyer's rights.

4. Conclusion

Conclusion Based on the results of the research and discussion, several conclusions can be drawn as follows: Legal protection for buyers in a Sales and Purchase Agreement (PJB) for land still pledged as collateral at a bank can be implemented preventively or repressively. Preventive action is realized through the notary's obligation to transparently explain the legal status of the land before the agreement is signed. Repressive action is realized through legal remedies in court, such as lawsuits for default, cancellation of the agreement, or demands for compensation. However, in practice, this protection is not fully effective because it depends on the notary's attitude and the judge's decision. The legal consequence of default in a PJB for land still pledged as collateral is null and void or can be canceled by the court because it does not meet the objective requirements in Article 1320 of the Civil Code. The subsequent consequence is the obligation to return the buyer's money and provide compensation. However, the bank's position as the holder of the mortgage right remains prioritized, so the buyer's position is weakened even though they act in good faith. The judge's considerations in Purwodadi District Court Decision Number 49/Pdt.G/2023/PN.Pwd emphasized the aspect of formal legal certainty by declaring the PJB invalid. However, the judge failed to consider substantive justice for buyers who had fulfilled their obligations. This created legal uncertainty and demonstrated the need for strengthened regulations regarding PJBs involving land still encumbered by collateral. For notaries, be more careful in making PJB deeds for land that is still collateralized in the bank, and carry out the obligation to explain the legal status of the land object to the parties to prevent disputes. For buyers, it is recommended to check the legal status of the land before making a transaction, including ensuring whether the certificate is being collateralized or

²² A. Qirom Syamsudin Meliala, (2010), *Pokok-pokok Hukum Perjanjian Beserta Perkembangannya*, Yogyakarta : Liberty

not, so as not to suffer losses in the future. For lawmakers, there is a need for stricter regulations regarding PJB with land objects that are still collateralized, in order to create legal certainty and stronger protection for parties in good faith. For judges, in making decisions, it is best to consider the principle of substantive justice by providing more protection to buyers who have carried out their obligations in good faith. Notaries have an obligation to check the validity of documents and ensure that the PJB object is free from disputes or burdens. However, in practice, there are still notaries who make PJB even though the object is collateralized. This raises questions regarding the responsibility of notaries. Based on the Notary Law, notaries can be held responsible if the deed they make causes losses due to negligence. Therefore, it is necessary to reaffirm the limits of a notary's authority and responsibility in drafting a PJB. Furthermore, banks also have a responsibility. Banks must ensure that the collateral is not used in agreements that could give rise to legal disputes. In this case, banks should provide clear information regarding the status of the collateralized land to prevent buyers from being disadvantaged. Therefore, legal protection for buyers can only be achieved through synergy between notaries, banks, and the government as regulator.

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