

Legal Implications of the Deed of Land Sale and Purchase Agreement that is Still in the Process of Being Finalized for Legal Certainty for the Parties

Julianty¹⁾ & Taufan Fajar Riyanto²⁾

¹⁾ Master of Notary Law, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: julianty@gmail.com

²⁾ Master of Notary Law, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: taufanfajarriyanto@unissula.ac.id

Abstract. *This study aims to analyze: 1) Legal implications of the use of a Deed of Sale and Purchase in land sale and purchase transactions that are still in the process of being divided. 2). Legal certainty for buyers in land sale and purchase transactions with a Deed of Sale and Purchase when the land certificate is still in the process of being divided. This type of research is normative legal research. The approach method in this research is a case study approach and a statute approach. The type of data in this research is secondary data. The data collection method uses library techniques (study documents). The analysis in this research is prescriptive. The results of the study concluded: 1) The legal implications of the use of a Deed of Sale and Purchase in land sale and purchase transactions that are still in the process of being divided are that the use of PPJB has significant legal consequences because it is only obligatory and has not transferred ownership rights as regulated in Article 37 of PP Number 24 of 1997. This condition causes buyers to not obtain legal protection for property, cannot change the name, and is at high risk if the seller abuses land rights. Based on Soeroso's Theory of Legal Consequences, a PPJB for undivided land has three legal consequences: the emergence of a new legal situation in the form of a conditional sale and purchase agreement, the formation of a reciprocal legal relationship between the seller and the buyer, and the emergence of legal sanctions in the event of default. 2) Legal certainty for buyers in land sale and purchase transactions with a Deed of Sale and Purchase Agreement when the land certificate is still in the process of being divided is not fully guaranteed. Although the UUPA, PP Number 24 of 1997, and Permen ATR/BPN Number 16 of 2021 have provided the legal basis for land registration, the PPJB only creates an obligatory relationship without transferring ownership rights. As a result, buyers do not have legal certainty regarding the property and only have the right to demand the implementation of the sale and purchase after the division is complete. Registration of the PPJB at the Land Office only provides administrative certainty, not legal ownership. Differences in judges' interpretations of*

the legal force of the PPJB, as seen in the Decisions of the Yogyakarta District Court No. 63/Pdt.G/2020/PN.Yyk and the Yogyakarta High Court No. 13/PDT/2021/PT.Yyk demonstrates a lack of substantive legal certainty. Therefore, regulatory updates are needed to clarify the legal standing of PPJBs to strengthen protection for buyers in good faith and ensure the process of deed separation and AJB is carried out with certainty and uniformity.

Keywords: Certificate; Purchase; Sale; Splitting.

1. Introduction

The philosophy of land law in Indonesia is rooted in Article 33 paragraph (3) of the 1945 Constitution, which states that the land, water, and natural resources contained therein are controlled by the state and used to the greatest extent possible for the prosperity of the people. This principle implies that land rights have a social dimension, not merely individual interests, so that the state is obliged to guarantee legal certainty and protect the rights of the community to land.¹ Land plays a vital role in the lives of the Indonesian people. This is because Indonesia is an agricultural nation, so every activity undertaken by the majority of Indonesians constantly requires and involves land. In fact, for most Indonesians, land is considered sacred, as it symbolizes their social status.²

Land conception according to law Number 5 of 1960 concerning Basic Agrarian Regulations refers to the surface of the earth, including the body of the earth beneath it and that which is underwater. The land referred to here does not refer to land in all aspects but only regulates one aspect, namely land in the legal sense which is called land rights and its management. Article 2 paragraph (1) of Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA) states that the earth, water and space, including the natural resources contained therein, are controlled at the highest level by the state. The meaning of the state controlling the land does not mean that the land is owned by the state, but rather the state has the power to regulate the distribution of land rights that can be granted and the legal relationships that arise over land.³

Land rights are the right to control land by the state which is given to a person, a group of people, or a legal entity, whether an Indonesian citizen or a foreign

¹Jimly Asshiddiqie, 2011, *The Indonesian Constitution and Constitutionalism*, Sinar Grafika, Jakarta, p. 112.

²Bagas Imam Arianto & Gunarto, 2019, *Legal Review of the Implementation of Complete Systematic Land Registration (PTSL) at the BPN Office of Grobogan Regency*, Proceedings: Unissula Student Scientific Conference (KIMU) 2, Unissula Semarang, p. 353

³Hardianto Djanggih, 2017, *Legal Aspects of Land Acquisition for Development Implementation in the Public Interest*, Pandecta: Journal of Legal Research, Volume 12 Number 2, p. 165

citizen.⁴ Land rights are rights give authority to the rights holder (either an individual individually, a group of people together or a legal entity) to use in the sense of controlling, using and/or taking advantage of a particular plot of land.⁵

All land rights can essentially be transferred or assigned. Transfer is the transfer of land rights by law, without any deliberate legal action to transfer those rights to another party.⁶ Transfer of land rights can be done through, among other things, a sale and purchase process, inheritance and also through gifts.⁷ 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 the community so that they can enjoy all the rights granted by law.⁸

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/PPAT suggests making a Sale and Purchase Agreement (PPJB) first to bind both parties.⁹ A Sales and Purchase Agreement (hereinafter referred to as PPJB) is used to establish a binding agreement before the official Deed of Sale and Purchase (hereinafter referred to as AJB) is drawn up before a notary/PPAT. When drafting a sales and purchase agreement, the Notary/PPAT must provide tax calculations. The Notary is responsible for deducting income tax and land and building acquisition tax (BPHTB), and making payments through the Directorate General of Taxes.

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 agreement and sale 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 takes place because there are elements that must be fulfilled first for the sale and purchase to take place.¹⁰ If the land being traded is still in the process of being separated from the master certificate or in the certification stage, the Deed of Sale and Purchase (AJB) cannot be executed until the new certificate is issued. In this situation, the PPJB serves to seal the agreement before the individual

⁴Urip Santoso, 2010, *Agrarian Law and Land Rights*, Kencana, Jakarta, p. 87

⁵*Ibid.*, p. 82

⁶Erna Sri Wibawanti, R. Murjiyanto, 2013, *Land Rights and Their Transfer*, Liberty Yogyakarta, p.119.

⁷Andi Hartanto, 2015, *Complete Guide to Practical Land Ownership Law*, Laksbang Justitia, Surabaya, p. 175

⁸Rengganis, 2023, *Legal Protection for Buyers in PPJB (Sales and Purchase Agreements) Where the Object is Guaranteed by the Seller*, *Journal of Notarial Deeds*, Vol. 2 No. 1, p. 115

⁹*Ibid.* p. 118

¹⁰Subekti, 1998, *Contract Law*, Intermasa, Jakarta, p. 75

certificates are ready to be issued in the buyer's name. The PPJB serves as proof of an agreement between the seller and buyer before the transaction is officially validated by the Land Deed Official (PPAT). However, in practice, the land being traded is often still in the process of being divided from the master certificate, which has the potential to create legal uncertainty for the parties. The process of dividing a land certificate requires time and requires extensive administrative procedures. This can pose legal risks for the buyer, especially if there is a default or other issues that hinder the completion of the division process. In such circumstances, legal certainty for the buyer is uncertain, because even though the PPJB is in place, ownership rights cannot officially be transferred until the new land certificate is issued.

2. Research Methods

This research is normative legal research. The approaches used are case study and statute approach. The data used is secondary data. The data collection method uses literature review (document study). The analysis is prescriptive.

3. Results and Discussion

3.1. Legal Implications of Using a Deed of Sale and Purchase in Land Sale and Purchase Transactions That Are Still in the Process of Being Divided

As population growth increases, demand for land also increases, while land availability in some areas is increasingly limited. This situation is fueling competition and opening up promising business opportunities in the land sector. For some areas that have a high population growth rate, the need for land to be used for building residences is increasing, especially since land values always grow every year.¹¹

The existence of land has a dual meaning for human survival: social assets and capital assets. Capital assets mean that land can grow as an economic object, whose development can become capital that is considered crucial and can become an object of commerce. Meanwhile, social assets mean a means of binding together social unity in society in living and living.¹²

The regulation governing land is Law Number 5 of 1960 concerning Basic Agrarian Regulations (hereinafter referred to as UUPA), letter "a" which essentially determines that the earth, water, and airspace are gifts from God, with the main objective of creating a just and prosperous community life. The consideration of letter "a" shows the philosophical basis for why UUPA was enacted. 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

¹¹Putri Lilasari, 2022, Legal Responsibility for Losses Due to Default in Land Sale and Purchase Agreements, Indonesia Journal of Law and Social-Political Governance, Volume 2, Number 2, p. 566

¹²Achmad Rubaie, 2007, Law on Land Acquisition for Public Interest, Bayumedia, Malang, p.1

various types of land rights that can be granted and owned by individuals, either alone or together with other people or legal entities.¹³ 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.¹⁴

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.¹⁵ 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 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.¹⁶

In practice, the land buying and selling process is often not directly realized in a Sale and Purchase Deed (AJB), but rather begins with a Sale and Purchase Binding Agreement (PPJB). A Sales 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.¹⁷

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.¹⁸ The PPJB contains certain conditions

¹³Syarifah Liadan Lathifah Hanim, 2017, Legal Certainty in Resolving Disputes Arising from Overlapping Certificates of Ownership Rights (SHM) on Land (Case Study at the Land/Agrarian Affairs and Spatial Planning Office of Pontianak City), Jurnal Akta, Volume 4 Number 1, p. 33

¹⁴Kurnia Martini, 2016, Legal Status of Transfer of Land Rights Obtained from Auction Based on State Priority Rights, Fiat Justisia Journal of Law, Volume 10 Issue 3, p. 509

¹⁵Soedharyo Soimin, 2008, Status of Land Rights and Acquisition, Sinar Grafika, Jakarta, p. 86

¹⁶Maria Sumardjono, Loc.cit., 1982, p. 53

¹⁷Yahya Harahap, 1986, Legal Aspects of Contracts, Alumni, Jakarta, p. 121.

¹⁸Boedi Harsono, 2008, Indonesian Agrarian Law: History of the Formation of the Basic Agrarian Law, Its Contents and Implementation, Djambatan, Jakarta, p. 27

in the binding, namely a prior agreement to be mutually agreed upon between the parties in the legal event.¹⁹

The PPJB plays a crucial role in providing legal certainty for the parties before the land sale and purchase transaction is legally completed through a Deed of Sale and Purchase (AJB). In practice, The use of Deeds of Sale and Purchase (PPJB) has become increasingly prominent, particularly in land sales transactions where the certificate status is still in the process of being divided. PPJBs cannot be used as a basis for changing the name and cannot be used as proof of land ownership, so the buyer's position remains at the "right to claim" (*rechte vordering*) stage, not the "right of ownership" stage. This situation can give rise to risks, such as the seller transferring the land to another party, changes to the division plan, boundary disputes, or delays in processing at the land office.

The case example between IRYS (seller) and LM (buyer) in Yogyakarta District Court Decision Number 63/Pdt.G/2020/PN Yyk and Yogyakarta High Court Decision Number 13/PDT/2021/PT YYK illustrates the legal issues in the use of a Sales Purchase Agreement (PPJB) for land that is still in the process of being split. In this case, IRYS sold part of the land from two certificates (SHM No. 2430 and SHM No. 1768) which were agreed to be split first before being transferred to LM. The parties then made a PPJB before a Notary/PPAT for a total price of IDR 1.3 billion, to be paid in installments. After LM paid IDR 200 million and began construction on the land with written permission from IRYS, the seller sued on the grounds that the buyer had not yet made full payment and the name change process could not be carried out.

The Yogyakarta District Court deemed LM to have acted in good faith and rejected IRYS's lawsuit, stating that the seller was still obliged to process the transfer of title. However, the Yogyakarta High Court held the opposite opinion, stating that LM was in default because it had not fulfilled its obligations under the PPJB, so the agreement was declared null and void. This case demonstrates that even though the PPJB was legally drawn up before a Notary/PPAT and is civilly binding, the agreement does not provide full legal protection if the land object is still in the process of being divided and cannot be transferred through a Deed of Sale and Purchase (AJB) or registered at the Land Office.

Based on the case of LM vs. IRYS, the legal implications of using a Deed of Sale and Purchase (PPJB) in a land sale and purchase transaction that is still in the process of splitting the certificate show many weaknesses in terms of legal certainty and protection for buyers. First, the PPJB does not transfer ownership rights, because it is only an obligation and not evidence of transfer of rights as regulated in Article 37 of Government Regulation No. 24 of 1997, so that buyers do not obtain legal

¹⁹ Dewi Kurnia Putrid and Amin Purnawan, 2017, Differences between a Paid Sale and Purchase Agreement and an Unpaid Sale and Purchase Agreement, *Jurnal Akta*, Vol. 4 Number 4, p. 626

protection for property and remain dependent on the seller. Second, the administrative uncertainty in the certificate splitting process often gives rise to disputes, especially regarding the time of repayment, responsibility for splitting, and the boundaries of the sale and purchase object. Third, the PPJB has the potential to be misused by sellers who still hold the certificate for administrative reasons or late payments, as occurred in the IRYS–LM case. Fourth, buyers are at high risk if they carry out construction on the land before the AJB is made, because legally the land still belongs to the seller and the building can be considered to belong to the original rights holder.

Furthermore, the PPJB often leads to differing interpretations by judges, as seen in the different decisions of the Yogyakarta District Court and the Yogyakarta High Court in assessing the buyer's default, demonstrating the weak legal construction of the PPJB. Notaries/PPATs can also be held legally responsible if the deed does not specify the obligations, time limits, or dispute resolution mechanisms. Externally, the PPJB poses risks to third parties because the land is still in the seller's name, making it susceptible to collateral, seizure, or bankruptcy. The PPJB cannot also be used as a basis for a change of name, because the Land Office only recognizes the AJB as evidence of the transfer of rights. In principle, the use of the PPJB for land that has not been divided is contrary to the principles of legal certainty, clarity, and cash in national land law, because the object of the sale and purchase is uncertain, the boundaries of the land are unclear, and rights cannot be legally transferred. Thus, the PPJB for land that is still in the process of being divided is only temporary and carries a high risk of causing disputes and legal uncertainty for buyers.²⁰

The use of a Sales and Purchase Agreement (PPJB) for land still in the process of being divided creates a series of legal consequences for the parties involved. The concept of legal consequences, as proposed by Soeroso, positions every legal action as a source of structured legal consequences. Soeroso defines legal consequences as the consequences arising from legal actions or deeds undertaken to achieve a specific goal, the validity of which is guaranteed by legal norms.²¹Based on Soeroso's theoretical framework, the signing of a Sales and Purchase Agreement (PPJB) for undivided land gives rise to three types of legal consequences. First, the birth or change of the legal situation, namely the creation of a new legal relationship in the form of a preliminary agreement between the seller and the obligatory buyer. Even though the land has not been divided, the PPJB remains valid as long as the object can be clearly identified or can be determined later. In the IRYS-LM case, the PPJB gave rise to a conditional sale and purchase legal relationship in which IRYS is obliged to divide the certificate and transfer rights to LM, while LM is obliged to pay according to the agreement. Second, the birth of a legal relationship between the parties, in which the PPJB creates reciprocal rights and obligations that are binding. The seller is obliged to

²⁰Boedi Harsono, Indonesian Agrarian Law, Op.cit., p. 283.

²¹R. Soeroso, 2011, Introduction to Legal Science. Sinar Grafika, Jakarta, p. 271

process the division of the certificate and guarantee the object is free from disputes, while the buyer is obliged to make payments. In this case, IRYS's written permission to LM to build creates an additional legal relationship based on the principle of trust (*vertrouwensbeginfel*), which legally cannot be unilaterally revoked without valid reasons.

Third, legal sanctions arise if violations occur, either in the form of default or cancellation of the agreement. In the context of a PPJB for undivided land, violations can arise due to delays in certificate division, area discrepancies, or negligence in payment. In the IRYS-LM case, the Yogyakarta District Court deemed LM to have acted in good faith, thus maintaining a legal relationship, while the Yogyakarta High Court deemed LM to have defaulted and declared the PPJB null and void. This difference in judgment demonstrates that the legal consequences of a PPJB depend heavily on the judge's interpretation of the parties' actions. Thus, a PPJB for undivided land has complex legal consequences—starting from the emergence of an obligatory relationship, the formation of reciprocal rights and obligations, and the possibility of legal sanctions if one party is deemed to have breached its obligations, thus requiring caution in its preparation and implementation.

Based on Soeroso's theory of legal consequences, the series of legal consequences of an undivided land sale and purchase agreement (PPJB) can be understood as a system of norms that operate simultaneously. The act of signing a PPJB simultaneously creates a legal state, legal relationship, and potential sanctions. Furthermore, the legal consequences do not stop at these three categories, but produce further consequences, such as the transfer of risk over the object of the agreement, the shifting of responsibility for safeguarding the object, and changes in the parties' positions in terms of evidence in the event of a dispute. Several legal studies have shown that an undivided land sale and purchase agreement (PPJB) often functions as a protection instrument for buyers, as buyers obtain certainty that their rights will arise after the certificate is issued. However, at the same time, a PPJB can also create a burden of risk for buyers if the seller does not fulfill its obligations properly.²²

Based on the description above, the legal implications of using a deed of sale and purchase agreement in a land sale and purchase transaction that is still in the process of being divided are that the use of PPJB has significant legal consequences for the parties because this agreement is only obligatory and has not transferred ownership rights to the land as regulated in Article 37 of PP No. 24 of 1997. The legal implications include the buyer not being able to change the name or build before the Deed of Sale and Purchase (AJB) is made, legal uncertainty occurs due to the lengthy certificate division process, the seller still has full power over the land and has the potential to abuse it, PPJB cannot be used as a basis for

²²Bachtiar Effendi, 2016, The Binding Power of Preliminary Agreements in Civil Relations, *Jurnal Arena Hukum*, Vol. 9 No. 2, pp. 233–250.

registering rights, and notaries/PPAT can be held responsible if the deed does not contain important clauses. Based on Soeroso's theory of legal consequences, PPJB on land that has not been divided gives rise to three legal consequences, namely the birth of a new legal situation in the form of a conditional sale and purchase agreement, the formation of a reciprocal legal relationship between the seller and the buyer, and the emergence of legal sanctions if one of the parties defaults. Thus, the PPJB on land that is still in the process of being divided creates a legal relationship that is valid but not yet perfect, carries a high risk for the buyer, and needs to be carefully drafted to ensure the principles of legal certainty, transparency, and cash as regulated in the UUPA and land regulations in Indonesia.

3.2. Legal Certainty for Buyers in Land Sale and Purchase Transactions with a Sale and Purchase Deed When the Land Certificate is Still in the Process of Being Divided

From the buyer's perspective, this situation raises serious legal certainty issues with the PPJB. While the land certificate is still being processed, the buyer has no legal basis to register the transfer of ownership, change the name, pledge the land, or even build on it.²³The buyer's legal certainty is limited because the PPJB lacks the force of proof of land ownership. The buyer's legal position is limited to holding the right to sue (*rechte vordering*) for future sale and purchase transactions. Under these circumstances, the buyer's legal risk is high, as the land is still registered in the seller's name and can be transferred to another party, pledged as collateral to a financial institution, or even seized if the seller encounters legal issues.²⁴However, in the development of modern land practices, the government, through the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN), has attempted to provide administrative space for the registration of PPJB at the Land Office to strengthen the legal position of buyers. Based on Ministerial Regulation of ATR/BPN Number 16 of 2021 concerning Amendments to Ministerial Regulation of ATR/BPN Number 3 of 1997 concerning Implementing Provisions for Government Regulation Number 24 of 1997, PPJB can be registered as long as the agreement is notarized and meets certain requirements, such as full payment or an agreement containing a clause on the transfer of rights after the certificate is split. This registration does not change the legal status of ownership, but provides administrative certainty that the transaction has been carried out legally and is acknowledged by the Land Office. This is a form of preventative legal protection for buyers to prevent their rights being ignored or violated by the seller.

Legal certainty for buyers in a Sales and Purchase Agreement (PPJB) for undivided land is a central issue in land law practice in Indonesia. This certainty essentially depends on two main aspects, namely the role of the notary/PPAT and the effectiveness of the applicable positive legal system. Notaries have a legal

²³Effendi Perangin, 2019, *Agrarian Law in Indonesia*, RajaGrafindo Persada, Jakarta, p. 226.

²⁴Mulyadi, 2021, *Contract Law in Notarial Practice*, Prenadamedia Group, Jakarta, p. 254.

obligation to ensure that the object of the sale and purchase is free from disputes and encumbrances and include a clause governing the seller's obligations in dividing the certificate. Based on Article 16 paragraph (1) letter a of the Notary Law, notaries are required to act carefully and explain the legal risks to the parties. If negligent, notaries can be held civilly liable for failing to carry out their prudential duty. In addition, legal protection for buyers can also be enforced through the courts if the seller does not fulfill their obligations, as stipulated in Article 1338 of the Civil Code, which emphasizes that a legally made agreement applies as law for the parties. However, the case of LM against IRYS shows that legal certainty for buyers is still relatively weak due to differences in judges' interpretation of the implementation of PPJB, so that legal protection through the courts is often inconsistent.

From the perspective of Gustav Radbruch's theory of legal certainty (*rechtssicherheit*), legal certainty is only realized if the law is positive, based on social facts, clearly formulated, and not easily changed. In the context of PPJB, these four dimensions have not been fully met. First, although positive laws such as Government Regulation No. 24 of 1997 and Ministerial Regulation of ATR/BPN No. 16 of 2021 have provided a framework for land registration, PPJB cannot be used as a basis for transfer of rights, so buyers only have binding rights, not property rights. Second, socially, PPJB emerged as a practical solution to transaction needs when the certificate has not been divided, but its regulations are still partial. Third, the absence of clear and consistent norms regarding the status of PPJB has given rise to differing interpretations among judges, as in the conflicting decisions of the Yogyakarta District Court and High Court. Fourth, frequent changes in land regulations without harmonization have undermined legal stability and public trust. Thus, legal certainty for buyers through PPJB on undivided land has not been met, either formally or substantively. Therefore, land law reform is needed that affirms the position of PPJB, provides protection for buyers in good faith, and ensures clarity and consistency in the application of the law so that legal certainty is not only procedural, but also substantive and just. With such regulations, Indonesian land law will be more in line with Gustav Radbruch's idea that places law not only as an instrument of formal certainty, but also as a means to realize justice and social benefits. This reformulation also embodies progressive law as proposed by Hardianto Djanggih, namely law that moves according to the needs of society and does not stop at the text of the regulations alone.²⁵

Based on the above description, legal certainty for buyers in land sale and purchase transactions using a Deed of Sale and Purchase (PPJB) when the land certificate is still in the process of being divided is essentially not fully guaranteed. Normatively, Indonesian positive law through the UUPA, Government Regulation Number 24 of 1997 concerning Land Registration, and Regulation of the Minister

²⁵Hardianto Djanggih, 2019, "Responsive Law and Legal Certainty in a Progressive Law Perspective", *Jurnal RechtsVinding*, Vol. 8 No. 2, BPHN, p. 205.

of Agrarian Affairs and Spatial Planning/National Land Agency Number 16 of 2021 has provided a legal framework aimed at providing legal certainty and protection to land rights holders. However, in practice, the PPJB only creates an obligatory legal relationship and does not transfer ownership rights. Therefore, buyers do not have legal protection for the property and only act as holders of the right to claim (*rechte vordering*). Consequently, while the land certificate is still in the process of being divided, buyers cannot change the name, pledge, or build on the land. Applicable legal provisions also do not provide guarantees against risks if the seller defaults, transfers, or encumbers the land to another party. Legal certainty for buyers is further weakened by the absence of regulations that specifically and comprehensively regulate the status and legal consequences of PPJB. Although the government has provided administrative space through the registration of PPJB at the Land Office as stipulated in Ministerial Regulation of ATR/BPN Number 16 of 2021, this step only provides administrative recognition and does not guarantee legal certainty of ownership. Differences in judges' interpretations of the legal force of PPJB, as seen in the Yogyakarta District Court Decision Number 63/Pdt.G/2020/PN.Yyk and the Yogyakarta High Court Decision Number 13/PDT/2021/PT.Yyk, indicate that legal certainty still depends on the interpretation of individual law enforcers, rather than on definite and uniform norms. Therefore, to achieve substantive legal certainty for buyers, land law reform is needed that explicitly regulates the legal position of PPJB, clarifies protection mechanisms for buyers in good faith, and ensures that the process of certificate splitting and the creation of the Deed of Sale and Purchase (AJB) can be carried out within a certain timeframe and with clear procedures in accordance with the principle of legal certainty as referred to in Article 19 of the UUPA.

4. Conclusion

The legal implication of using a PPJB for land still in the process of being divided is that the PPJB only creates an obligatory legal relationship without transferring ownership rights as stipulated in Article 37 of Government Regulation No. 24 of 1997. As a result, buyers cannot transfer ownership or build before the AJB is drawn up, and remain in a weak legal position. Based on Soeroso's theory of legal consequences, the PPJB creates a conditional sale and purchase agreement, a reciprocal relationship, and sanctions in the event of default. Thus, the PPJB is valid but imperfect and carries high risks for buyers, so it must be carefully drafted to ensure the principles of legal certainty, clarity, and cash as stipulated in the UUPA. Legal certainty for buyers in a PPJB for land that has not been divided is not fully guaranteed because the PPJB only grants obligatory rights, not ownership rights. Although there is a legal basis in the UUPA, PP 24/1997, and Permen ATR/BPN 16/2021, buyer protection remains weak and depends on the judge's judgment, as seen in the differences in the Decisions of the Yogyakarta District Court and High Court. Therefore, regulatory updates are needed that explicitly regulate the legal status and power of PPJB to provide real legal protection and certainty for buyers in good faith.

5. References

Journals:

- Bachtiar Effendi. 2016. "Kekuatan Mengikat Perjanjian Pendahuluan dalam Hubungan Keperdataan." *Jurnal Arena Hukum*, Vol. 9 No. 2.
- Bagas Imam Arianto & Gunarto. 2019. "Tinjauan Yuridis Pelaksanaan Pendaftaran Tanah Sistematis Lengkap (PTSL) di Kantor BPN Kabupaten Grobogan." *Prosiding Konferensi Ilmiah Mahasiswa Unissula (KIMU) 2*, Unissula Semarang.
- 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.
- Hardianto Djanggih. 2017. "Aspek Hukum Pengadaan Tanah Bagi Pelaksanaan Pembangunan Untuk Kepentingan Umum." *Pandecta: Jurnal Penelitian Ilmu Hukum*, Vol. 12 No. 2.
- Hardianto Djanggih. 2019. "Hukum Responsif dan Kepastian Hukum dalam Perspektif Hukum Progresif." *Jurnal RechtsVinding*, Vol. 8 No. 2, BPHN.
- Kurnia Martini. 2016. "Status Hukum Peralihan Hak Atas Tanah yang Diperoleh dari Lelang Berdasarkan Hak Mendahului Negara." *Fiat Justisia Journal of Law*, Vol. 10 Issue 3.
- Putri Lilasari. 2022. "Tanggung Jawab Hukum Atas Kerugian Akibat Wanprestasi Dalam Perjanjian Jual Beli Tanah." *Indonesia Journal of Law and Social-Political Governance*, Vol. 2 No. 2.
- Rengganis. 2023. "Perlindungan Hukum Terhadap Pembeli Dalam PPJB (Perjanjian Pengikatan Jual Beli) yang Obyeknya Dijaminkan oleh Penjual." *Jurnal Akta Notaris*, Vol. 2 No. 1.
- Syarifah Liadan Lathifah Hanim. 2017. "Kepastian Hukum Dalam Penyelesaian Sengketa Timbulnya Tumpang Tindih Sertifikat Hak Milik (SHM) Atas Tanah." *Jurnal Akta*, Vol. 4 No. 1.

Books

- Achmad Rubaie. 2007. *Hukum Pengadaan Tanah Untuk Kepentingan Umum*. Bayumedia, Malang.
- Andi Hartanto. 2015. *Panduan Lengkap Hukum Praktis Kepemilikan Tanah*. Laksbang Justitia, Surabaya.
- Boedi Harsono. 2008. *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*. Djambatan, Jakarta.

- Effendi Perangin. 2019. *Hukum Agraria di Indonesia*. RajaGrafindo Persada, Jakarta.
- Erna Sri Wibawanti & R. Murjiyanto. 2013. *Hak-Hak Atas Tanah dan Peralihannya*. Liberty, Yogyakarta.
- Jimly Asshiddiqie. 2011. *Konstitusi dan Konstitusionalisme Indonesia*. Sinar Grafika, Jakarta.
- Maria S.W. Sumardjono. 1982. *Hukum Agraria Indonesia*. Djambatan, Jakarta.
- Mulyadi. 2021. *Hukum Perikatan dalam Praktik Notaris*. Prenadamedia Group, Jakarta.
- R. Soeroso. 2011. *Pengantar Ilmu Hukum*. Sinar Grafika, Jakarta.
- Soedharyo Soimin. 2008. *Status Hak dan Pembebasan Tanah*. Sinar Grafika, Jakarta.
- Subekti. 1998. *Hukum Perjanjian*. Intermasa, Jakarta.
- Urip Santoso. 2010. *Hukum Agraria dan Hak-Hak Atas Tanah*. Kencana, Jakarta.
- Yahya Harahap. 1986. *Segi-Segi Hukum Perjanjian*. Alumni, Jakarta

Regulation:

The 1945 Constitution of the Republic of Indonesia.

Civil Code

Law Number 5 of 1960 concerning Basic Agrarian Regulations.

Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary.

Government Regulation Number 24 of 1997 concerning Land Registration.

Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 3 of 2011 concerning Management of Land Case Studies and Handling.

Presidential Regulation of the Republic of Indonesia Number 20 of 2015 concerning the National Land Agency

Government Regulation Number 24 of 2016. Amendment to Government Regulation Number 37 of 1998 concerning the Regulations on the Position of Land Deed Making Officials.

Supreme Court Regulation Number 6 of 2018 concerning Guidelines for Settlement of Governmental Administrative Disputes.

Government Regulation of the Republic of Indonesia Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration.

Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency (Permen ATR/Ka BPN) Number 3 of 2023 concerning the Issuance of Electronic Documents in Land Registration Activities.