

BONDING DEED OF SALE AND BUYING AN IMPORTANT DEED DEVELOPED BY A NOTARY

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ABSTRACT

Notary practice can be seen as several things that cause the parties who have agreed to bind themselves to the price and object of sale and purchase of certain land parcels, first make PPJB. The Sale and Purchase Binding Agreement which is often referred to as PPJB reaffirms the parties as a result of the notary's proposal, what the notary proposes is the form of a temporary deed, namely in the form of a binding agreement, the notary as a public official who pours the agreement in the form of the deed. Actually, without any binding words. In this study, the approach used is a normative approach using a statute approach and a conceptual approach. The type of research in this research is descriptive-analytical. Sources of legal materials in this study are sourced from secondary data based on library materials. The results of this research PJB is an agreement between the seller to sell his property to the buyer made with a notarial deed. PJB can be made for certain reasons, such as the payment of the sale and purchase price not being paid and the taxes arising from the sale and purchase not being paid. There are two kinds of PJB: PJB paid off and PJB is not paid off. A paid PJB is made if the sale and purchase price has been paid in full by the buyer to the seller but the AJB has not been able to implement it, because, among other things, sales and purchase taxes have not been paid, the certificate is still being processed and so on.

Keywords: Authentic Deed, Sale, and Purchase Binding Deed, Notary

INTRODUCTION

Along with the development of the dynamics of social life, interactions between individuals are expanding, especially regarding economic and commercial values, including relationships related to obligations or contracts. There are several parties bound by a contract. In social and business communication some expressions include real estate's such as land and buildings and their derivatives. A sale and purchase agreement (PPJB), usually begins with a preliminary agreement. Before a transaction or engagement is carried out, an agreement is made that contains conditions that must be agreed upon, usually in the form of a sale and purchase transaction.

From and in notarial practice, several things can be seen that cause the parties who have agreed to bind themselves to the price and object of sale and purchase of certain land parcels, first to make PPJB, among others in essence. (Dewi Kurnia Putri dan Amin Purnawan:2017) The sale and purchase or sale and purchase agreement as mentioned above is usually called a Binding Agreement, the meaning, and purpose of a binding agreement is a legal action carried out by two or more in which each party in it is required to perform one or more achievements. In general, PPJB is made authentically or made before a notary as a public official, on the other hand, there are PPJB made under the hands. Good PPJB is made authentically in the form of a deed or made under the hand, usually, both include witnesses who also signed the PPJB. Why PPJB can happen and why don't the parties directly carry out a sale and purchase, which can be followed up for further administrative arrangements, such as changing names for certificates of land rights? This is because the parties made PPJB, do the following things: (Dewi Kurnia Putri dan Amin Purnawan:2017)

1. Payment as a consequence of the sale and purchase cannot be carried out in full or in full.
2. Land documents or documents are incomplete.
3. The object or parcel of land cannot be controlled by the parties, the seller or the buyer, in this case, the original owner or the new owner.
4. The amount of the object of sale and purchase is still under consideration by the parties.

Based on the things mentioned above, which is the reason why PPJB occurs. However, there may be other things that cause PPJB to be agreed upon or chosen by the parties. A statement of agreement or agreement by the parties entering into a sale and purchase agreement can be authentic or private. An authentic deed is a deed made before a notary. (Hikmahanto Juwana: 2012) deed made before a notary (*deed partij*), namely a deed made before a notary containing a description of what was explained or told by the parties who appeared before a notary, for example, credit agreements, buying and selling, and so on (Benny Herman:2010).

The Sale and Purchase Binding Agreement which is often referred to as PPJB reaffirms the parties as a result of the notary's proposal, what the notary proposes is the form of a temporary deed, namely in the form of a binding agreement, the notary as a public official who pours the agreement in the form of the deed. Actually, without any binding words, the parties are already bound by a sale and purchase agreement. The effect of the word binding is only to convince the parties to the agreement because now almost all deed of sale and purchase agreements are entitled PPJB. Because PPJB contains certain conditions in the binding (Hendra Tanu Atmaja: 2012).

A notary in carrying out his position must be able to be professional and honest by the professional code of ethics of a notary so that the notary gains the trust of the public. Notaries must have good ethics in carrying out their duties because if a notary does not have good ethics, then in carrying out his duties the notary may violate the rules so that he can be subject to administrative, civil, and criminal sanctions. So that before a notary is appointed as a public official, he must take an oath first, and therefore in carrying out his authority the notary must always remember his oath and submit to the applicable law. The position of a notary/PPAT is noble because a notary/PPAT is an extension of the government, a notary/PPAT is called a public official who provides free legal or educational services to the public, that's why here the role of a notary should not be underestimated or underestimated. People who come before a notary / PPAT certainly have certain goals which are different, but the problem that will be raised in the discussion of this thesis is related to the Deed of Sale and Purchase / AJB made before a notary / PPAT.

By Article 6 paragraph (2) PP No. 24 of 1997 as the executor of land registration in Indonesia is carried out by the Head of the Land Office who is assisted by the Land Deed Official (hereinafter referred to as PPAT) and other officials assigned to carry out certain activities according to this government regulation or the relevant legislation. The other official referred to is the Temporary Land Deed Making Officer (hereinafter referred to as PPATS). Meanwhile, for the making of the waqf pledge deed by the Waqf Pledge Deed Making Officer, the notary made a Power of Attorney to Imburse Mortgage Rights (SKMHT), the auction official made minutes of auction and adjudication in systematic land registration by the Adjudication Committee.

But before the AJB is made, the parties who are notary/PPAT must first be raised with the Sale and Purchase Binding Agreement/PPJB. There are 2 types of PPJB, namely PPJB that has been paid off and PPJB that has not been paid off according to the title that will be discussed here PPJB that has not been paid off. The purpose of making PPJB is as a form of binding both parties, meaning that to avoid unwanted things, there must be a clear binding because one party may break a promise so that the other party is harmed so to avoid this PPJB must be made first, that's why the role of a notary/PPAT here is very much needed to provide education to the parties related to the PPJB that will be made even though the contents of the PPJB are the wishes of both parties, but the notary/PPAT will monitor whether the contents of the PPJB are by the rules of the law (Ni Kadek Septiarianti, et.all:2020).

Notaries are authorized to make authentic deeds as regulated in Article 15 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions (UUJN). The notary in making the deed must pay attention to Article 16 paragraph (1) letter a jo. Article 39 paragraph (2) UUJN, if it is related to the obligations of a notary, a notary is obliged to check to protect the interests of the parties in carrying out legal actions and to check all parts of the deed starting from the beginning of the deed, comparison, contents of the deed to the end of the deed. The notary in making the deed must prioritize the principles regulated in Article 16 paragraph (1) letter of the UUJN. In this study, the Notary did not pay attention to and apply Article 16 paragraph (1) letter a jo. Article 39 paragraph (2) of the UUJN, so that the deed made causes losses to the parties, especially the buyer who has paid off the house payment in full. If the deed made by the notary causes losses to the parties, the notary can be held accountable for the deed he has made. The liability is in the form of a claim for compensation in the form of reimbursement of costs and compensation, as a result of the deed of the Sale and Purchase Binding Agreement made by the Notary is null and void due to the inaccuracy and inaccuracy of the Notary in making the deed (Sibuea Mia Augina Romaul, et.all:2022).

The binding sale and purchase agreement, hereinafter referred to as PPJB, can occur and the parties do not directly hold a sale and purchase because several things cannot be followed up to carry out further administrative arrangements such as changing names for certificates of land rights. After all, the payment as a consequence of the sale and purchase cannot be carried out with full or paid payment, incomplete land documents or documents, the amount of the object of sale and purchase is still under consideration by the parties, the object or parcel of land cannot be controlled by the parties, namely the seller or the buyer, in this case, the original owner or the new owner. . However, there may be other things that cause PPJB to be agreed or chosen by the parties.

The binding for immovable objects, in this case, land, is usually made by including a clause granting power to sell to a second party as a buyer. The inclusion of a power of attorney clause to sell is given with consideration that if the main things in the PPJB have been fulfilled, the second party in this case as the buyer, can sell the object in the PPJB to himself directly. If the buyer can sell to himself, the meaning is that because he has obtained the power to sell from the seller or owner, the buyer has been able to sell the object in the previous sale and purchase to any party, including himself, with the following action taken as follows: buying and selling (Dewi Kurnia Putri & Amin Purnawan, 2017).

In practice, it was found that the notarial deed was legally flawed. This matter begins with the existence of a Deed of Sale and Purchase Agreement in advance before making a sale and purchase deed. Then one Notary draws up a deed in the form of a Sale and Purchase Binding Agreement Deed, however already paid off. The Notary should have made a Sale Deed Buy, but because there is a conspiracy with the Seller, the Notary makes the Deed of Sale and Purchase Binding Agreement and there is the provisions of the article in the deed are empty. The buyer does not aware of fraud for up to 5 years about provisions the article in the deed is blank. The deed also stated that there is a transfer of rights from the Seller to the Buyer, namely 1 month after the deed is signed (making a sale and purchase deed), but up to 5 years after the deed is drawn up and signed there is no transfer of rights or even making a Sale and Purchase Deed.

RESEARCH METHOD

The approach method used in this research is to use a normative approach using a statute approach and a conceptual approach. The type of research in this research is descriptive-analytical, an analysis that only reaches the level of description, namely analyzing and presenting facts systematically so that they are easier to understand and conclude. The conclusions given are always clear on a factual basis so that everything can always be returned directly to the data obtained. Sources of legal materials in this study are

sourced from secondary data based on library materials. In this study, the authors use library materials that provide instructions and explanations of the subject matter in this study, such as the Civil Code, Laws related to the subject matter, agreement law books, research results, work of scientific scholars, and the opinions of legal experts.

RESULT AND DISCUSSION

The law of engagement is regulated in Book III of the Civil Code which is broadly divided into two parts, namely first, engagements in general, both those born of agreements and those born of law and second, engagements born of certain agreements. (Ahmadi Miru and Sakka Pati: 2012) Covenant Law adheres to an open system, meaning that contract law provides the widest possible freedom to the public to enter into agreements containing anything, as long as it does not violate public order and decency. (Subekti: 1990) An agreement is an event where one person promises to another person or where two people promise each other to carry out something (Ahmadi Miru and Sakka Pati: 2012).

The meaning of the sale and purchase binding agreement can be seen by separating the words from the sale and purchase binding agreement into a sale and purchase agreement and binding. The understanding agreement can be seen in the previous sub-chapter, while the definition of a Sale and Purchase Binding according to R. Subekti in his book is an agreement between the seller and the buyer before the sale and purchase is carried out because there are elements that must be met for the sale and purchase, among others, the certificate is not yet available. because it is still in the process, and the price has not yet been paid. (R. Subekti: 1998) Meanwhile, according to Herlien Budiono, a binding sale and purchase agreement is an assistance agreement that functions as a free preliminary agreement. (Herlien Budiono: 2004) From the understanding described above, it can be concluded that the meaning of a binding sale and purchase agreement is a preliminary agreement made before the implementation of the main agreement or the main agreement.

As an agreement born out of necessity and not explicitly regulated in the form of legislation, the sale and purchase binding agreement does not have a specific form. This is also the opinion of Herlien Budiono, the sale and purchase binding agreement is an assistance agreement that functions as a free preliminary agreement. (Herlien Budiono: 2004) PPJB is a form of agreement that is subject to the provisions of Law No. 1 of 2011 concerning Housing and Settlements and the Decree of the Minister of Public Housing No. 9 of 1995 concerning Guidelines for Binding Sales and Purchases as *lex specialis*, and if associated with the provisions Article 1320 paragraph (1) of the Civil Code (*lex generalis*) then PPJB fulfills the elements as an agreement, which can lead to an engagement originating from an agreement. Although PPJB is not regulated by the Law.

The contents of the binding sale and purchase agreement which is a preliminary agreement for the birth of the main/main agreement are usually in the form of promises from the parties containing provisions regarding the agreed terms for the validity of the main agreement. For example, in the binding agreement for the sale and purchase of land rights, the binding sale and purchase agreement usually contains promises from both the seller of the land rights and the buyer regarding the fulfillment of the conditions in the sale and purchase agreement so that the main agreement is the sale and purchase agreement and the deed of sale. The purchase agreement can be signed before the official making the land deed (PPAT) such as a promise to process land certificates before the sale and purchase are carried out as requested by the buyer, or a promise to immediately make payments by the buyer as a condition from the seller so that the sale and purchase deed can be signed in front of the buyer. land certificate maker (PPAT). In addition to the usual promises in the sale and purchase binding agreement, the right to give power of attorney to the buyer is also stated. This happens when the seller is unable to attend the signing of the deed of sale and purchase in front of the official making the land deed (PPAT), either because the location is far away, or because there are obstacles and so on. And the granting of power of attorney usually only takes effect after all the conditions for buying and selling land rights at the land deed maker official (PPAT) have been fulfilled.

The sale and purchase carried out by the community with the object of buying and selling land rights are carried out by an agreement. This provides more legal certainty because the land rights are regulated in the applicable laws and regulations and land also has a special object of the agreement. If the requirements for the sale and purchase of land rights have not been fulfilled, the signing of the parties to the Sale and Purchase Deed of land rights cannot be carried out in the presence of the Land Deed Maker Official. This situation is certainly not profitable or even detrimental to the parties who buy and sell land rights. This situation makes the seller have to postpone the sale of the land so that these requirements can be met.

The same thing applies to the buyer, with this condition the buyer is also delayed in his desire to get the rights to the land to be purchased. To overcome this, and for the smooth and orderly administration of land, a legal innovation was found, namely by making a Deed of Sale and Purchase Binding Agreement, although the contents were about buying and selling, the format was only limited to a binding agreement for the sale and purchase of land rights which was carried out before a notary. The deed is made by a notary public official who has the authority to make various kinds of agreements. The authority of the notary is limited to that given by UUJN (Habib Adjie:2008).

The Sale and Purchase Binding Deed is an authentic deed that has perfect proving power. This is intended by the parties to provide more protection and legal certainty for the parties who make it. Because the Notary in making a deed is impartial and maintains the interests of the parties in an objective and independent manner. With the help of a notary, the parties who make the sale and purchase binding agreement will get assistance in formulating the things that will be agreed upon. Although there is the principle of freedom of contract, every agreement or engagement must always refer to the regulations that have been determined, as stated in Article 1337 of the Civil Code. The second is the Sale and Purchase Deed, this deed is made after everything regarding Land Rights has been fulfilled, if the land or house that is the object of the agreement has a clear and definite status, such as certificates

of property rights, building rights and so on, seller's tax and the buyer has been paid and the price has been paid in full, the agreement must be made before the appointed official, namely the PPAT.

Before the parties carry out a sale and purchase transaction of land rights before PPAT, in practice the parties first carry out a legal action by making a binding deed of sale and purchase of land before a Notary. The binding is intended as a preliminary agreement from the main intention of the parties to transfer land rights. The parties request a notary to make a binding sale and purchase agreement because the parties cannot fulfill the requirements determined by law at one time. PPJB made by a notary contains the promises of the parties, even though it contains the sale and purchase of land rights, but the format is only limited to a binding agreement for the sale and purchase of land rights carried out before a notary.

So every agreement between a prospective seller and a prospective buyer or between a person and a legal entity or vice versa, there are legal instruments that regulate it so that there is no deviation from what has been stipulated by law. As explained in the background and the previous chapter, PPJB is a legal breakthrough used by the parties to sell and purchase land rights. The binding sale and purchase agreement is an assistance agreement that functions as a preliminary agreement and is free in form. The binding sale and purchase agreement of land is an agreement in which both parties bind themselves to make a sale and purchase, if things that cannot be fulfilled at the time the sale and purchase agreement is carried out, usually involve incomplete requirements regarding land certificates as legal evidence regarding the right, payment of the agreed price, settlement of Land and Building Tax in the event of delay in payment by the seller, and payment of tax duty for the seller and the buyer.

CONCLUSION

PJB is an agreement between the seller to sell his property to the buyer made by a notarial deed. PJB can be made for certain reasons, such as the payment of the sale and purchase price not being paid and the taxes arising from the sale and purchase not being paid. There are two kinds of PJB: PJB paid off and PJB is not paid off. A paid PJB is made if the sale and purchase price has been paid in full by the buyer to the seller but the AJB has not been able to implement it, because, among other things, sales and purchase taxes have not been paid, the certificate is still being processed and so on. In the articles of the PJB, it is stated when the AJB will be implemented and the requirements. The PJB in full also includes the power of attorney from the seller to the buyer to sign the AJB, so that the signing of the AJB does not require the presence of the seller. PJB paid-off is generally carried out for transactions on buying and selling objects that are outside the working area of the notary or PPAT concerned. Based on the PJB in full, an AJB can be made in front of the PPAT at the location where the object is located. PJB is not paid off, it is made if the sale and purchase price payment has not been paid off by the seller. In the articles of non-payment of PJB, at least the amount of down payment paid at the time of signing the PJB deed, the method or terms of payment, when the payment is due and the agreed sanctions if one of the parties defaults. PJB not paid off must also be followed up with AJB at the time of settlement.

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