

CHARACTERISTICS AND LEGAL PROTECTION OF LAND BUYERS IN GOOD FAITH IN THE SALE AND PURCHASE BINDING AGREEMENT (PPJB) IN FULL AND POWER OF ATTORNEY

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ABSTRACT

Sale and Purchase Binding Agreement (PPJB) is an obligatoir agreement that usually includes a power to sell clause. The principle of good faith is the basis for a sale and purchase agreement, because the agreement will work well if the parties have good faith to fulfill their rights and obligations. Under certain conditions, PPJB and the power of attorney made, illegal acts may arise, causing one party to be hindered from subjective rights and legal interests. The problem is how the characteristics and legal protection of land buyers in good faith in PPJB paid off and brusha. This research method is juridical normative with the aim of knowing the characteristics and legal protection of land buyers in good faith in PPJB paid off and power of attorney as well as input material for parties who will make PPJB and power of attorney. The conclusion in this study is that aperson's characteristics can be called having good faith, can be seen when taking legal action at the pre-contract stage and contract execution. Honestyneeds to be put forward so that its implementation will always be guided by the norms of decency and decency so as not to harm either party. Legal protection of land buyers in good faith in PPJB in full and power of attorney that contains elements of unlawful acts, namely that the deed made by the parties before a Notary Public is an authentic deed so as to provide legal certainty and a strong basis for the implementation of the sale and purchase agreement, the buyer who is violated his rights is entitled to legal protection in the form of compensation due to the unlawful act. In addition, land buyers who have good intentions in the PPJB in full and the power of attorney, have the right to process the name back of the land at the National Land Agency (BPN) as the agency that carries out the registration process for the transfer of land rights whose process has fulfilled the provisions of article 5 of the Basic Law Agraria (UUPA) in cash, real, and light.

Keywords: Land Buyer-Good Faith-Sale and Purchase Binding Agreement (PPJB) Paid Off- Power of Attorney.

INTRODUCTION

The development of diverse legal traffic, especially in public life, increasingly demands legal certainty for individual legal relationships and between legal subjects, including those concerning engagements or agreements. Article 1338 paragraph (1) of the Civil Code expressly states that all agreements made validly apply as law to those who make them. In making an agreement to bind both parties, the provisions of Article 1320 of the Civil Code regarding the conditions for the validity of the agreement must be fulfilled, namely: a. Agree those who bind themselves b. Able to make a covenant c. A certain thing d. A lawful cause.

A Binding Sale and Purchase Agreement is an obligatoir agreement without prejudice, either to the elements of the agreement, the terms of validity of the agreement or the legal principles of the agreement. In general, a sale and purchase binding agreement contain promises that must be fulfilled first by one of the parties or parties before the main agreement can be carried out which is the ultimate goal of the parties. (Gaol, S.L., 2021) There are conditions in social and commercial interactions, which concern immovable objects, such as land and buildings and their derivatives. (Putri, D.K., 2017) Sale and Purchase Binding Agreement (PPJB) of land rights that have been certified is an implementation of the principle of freedom to make agreements, where the parties can freely determine their willingness to make agreements under any name as long as the agreement does not conflict with the provisions of the applicable laws and regulations as well as the generally recognized principles of decency and justice. (Herlina Hasibuan, 2021)

The Sale and Purchase Binding Agreement (PPJB) for immovable objects is usually made by including a clause granting power to sell to a second party as a buyer. The inclusion of the power to sell clause is given with consideration that if the main things in the Sale and Purchase Binding Agreement (PPJB) have been fulfilled, the second party as the buyer, can sell the object in the PPJB to himself directly. The power of attorney to sell must be given in the form of a special power of attorney, not in the form of a general power of attorney and use express words. (Gita Rianty Hapsari, 2016)

In its implementation, the Sale and Purchase Binding Agreement (PPJB) sometimes does not run in accordance with the agreement desired by the parties, for example, land objects in PPJB are guaranteed to third parties for debt agreements, receivables or the objects are not immediately handed over when the PPJB has been paid in full, resulting in problems that result in illegal acts that cause one party to be hindered from its subjective rights and result in His legal interests are harmed. Based on the Supreme Court Circular Number 4 of 2016 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2016 as a Guideline for the Implementation of Duties for the Court, the general civil section in number 7, states that the transfer of land rights based on PPJB legally occurs if the buyer has paid in full the price of the land and has mastered the object of sale and purchase and is carried out in good faith. The existence of the SEMA basis only explains that basically the transfer of land rights has occurred with the existence of PPJB if the buyer has paid in full the price and has mastered the object of sale and purchase in good faith. The principle of good faith is a fundamental principle in buying and selling, because a contract or agreement will work properly if both parties have good faith to fulfill rights and obligations.

In this regard, the problem that the author will study and discuss is how the characteristics of the buyer in good faith in a land sale and purchase agreement and legal protection for land buyers in good faith in processing the name of the land rights based on the paid off PPJB and the power he has made.

RESEARCH OF METODE

The research method of this article is juridical normative. Normative research is often referred to as doctrinal research, which is research whose object of study is statutory documents and library materials (Peter Marzuki, 2011). Normative legal research is also often called research to analyze rules or norms in positive law. Based on this description, normative legal research or research is carried out by reviewing existing legal materials, both those derived from laws and regulations and those from various legal literature to examine the characteristics and legal protection of land buyers in good faith preceded by a binding agreement for sale and purchase in full and power in the transfer of rights. Research data sources include primary legal materials and secondary legal materials. Secondary legal material is legal material that provides an explanation of primary legal material. Secondary legal materials can be in the form of legal expert opinions, legal research results, and scientific work results from legal circles. The analysis method used in this article is by qualitative descriptive method.

FINDINGS AND DISCUSSION

In essence, the sale and purchase agreement aim to transfer a property right to an item being traded because in buying and selling the seller is obliged to hand over the goods sold to the buyer, while the buyer has the obligation to pay the price of the goods to the seller. In buying and selling transactions, it is necessary to pay attention to the principles in the law of agreements. There are five important principles in the law of treaties, namely; 1. Principles of Freedom of Contract 2. Principles of Consensualism 3. Basic Pacta Sunt Servanda 4. Principles of Good Faith 5. Personality Principle. (Niru, Anita Sinaga, 2018) Legal principles are the broadest basis for the birth of a legal regulation, which means that legal regulations can be returned to these principles. Legal principles have a function as guidelines and directions for orientation on how laws can be implemented and become a source of life law through ethics, and social values of society.

In its development, the principle of good faith cannot be separated from the evolution of contract law derived from Roman Law which only recognizes *iudicia stricti iuris*, which is a contract born because of legal acts (*negotium*) which strictly and formally refers to *ius civile*. Next developed *iudicia bonae fidei* called *negotia bonae fidei* which is derived from *ius gentium* which requires that contracts must be made in good faith. (Priyono, Ery Agus, 2017)

The principle of good faith is a fundamental principle in buying and selling. A contract or agreement will work properly if both parties have good faith to fulfill rights and obligations and prioritize honesty to achieve common goals. According to M.L Wry good faith is: "Actions without deceit, without deceit, without trickery, without hinting, reasoning, without disturbing others, not by looking at one's own interests, but also by looking at the interests of others". (Khoirul, 2023) . B related to the characteristics of a person can be called having good faith, it can be seen that the ethics of the parties to enforce the law or agreement, namely at the pre-contract stage and contract execution. (Sjahdeni Sutan Remy, 1993) In line with that, R. Subekti divided the principle of good faith into 2 (two), namely: (R. Subekti, 1983)

1. Good faith in the subjective sense (pre-contract) i.e. good faith that lies in one's inner attitude. In law, this goodwill is usually defined by honesty.
2. Good faith in an objective sense (performance of a contract) that an agreement made must be executed with due regard to the norms of decency and decency which means that the agreement must be executed in such a way that it does not harm either party.

The Sale and Purchase Binding Agreement is *obligatoir*, which only gives rise to rights and obligations reciprocally but has not transferred title to an object from the seller to the buyer. Meanwhile, in this case, the power of sale as an assistance agreement is *accessoir* because it follows the main agreement, namely the binding agreement for sale and purchase in full and cannot stand alone. PPJB and Power of Attorney to sell in this case are inseparable and complement each other. (Dwisaptono, D., Koeswarni, E., Sujadi, S, 2020)

Sale and purchase agreements, especially regarding fixed objects, apart from the agreement must also be formulated in a deed made before a certain official and followed by registration (reverse name) of legal acts based on deeds in the general register. (Herlien Budiono, 2019) In order for the sale and purchase of land to be legal, it must meet material requirements and formal requirements in buying and selling. Material conditions include the buyer has the right to acquire the land concerned, the seller has the right to sell the land concerned and is not in dispute. (Adrian Sutedi, 2017) While the formal requirements are carried out by deed of PPAT and registered (reverse name) to the land office as specified in Government Regulation No.24 of 1997 concerning Land Registration.

The national land law regulation adopts customary law provisions considering Article 5 of the UUPA, in buying and selling requires the fulfillment of cash, real, and clear principles. (Adrian Sutedi, 2017) Based on the Supreme Court Circular (SEMA) Number 4 of 2016 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2016 as a Guideline for the Implementation of Duties for the Court, the general civil section in number 7, states that the transfer of land rights based on PPJB legally occurs if the buyer has paid in full the price of the land and has mastered the object of sale and purchase and is carried out in good faith. The existence of the SEMA basis only explains that basically the transfer of land

rights has occurred with the existence of PPJB if the buyer has paid in full the price and has mastered the object of sale and purchase in good faith.

Whether an agreement is executed in good faith or not can be seen from the actual actions of the person who carries out the agreement. (H. Riduan Syahrani, 2006) The implementation of the agreement is the act of carrying out or fulfilling obligations and obtaining rights that have been agreed upon by the parties so as to achieve their goals. (Abdulkadir Muhammad, 2019) Payment is one way to terminate the engagement according to the provisions of Article 1381 of the Civil Code. Payment means any fulfillment of the agreement that is carried out voluntarily. That in this very broad sense, not only the buyer pays the purchase price but also the seller is said to pay if he has delivered or delivered the goods he sells. (Subekti, 2002)

In the implementation of land sale and purchase, disputes can occur between the parties because one party violates the rights of the other party. According to the law, responsibility is a consequence of the consequences of a person's freedom about his actions related to ethics or morals in doing an action. (Soekidjo Notoatmojo, 2010) In general, the principle of responsibility in law can be distinguished as follows: (Celina Tri Siwi Kristiyanti, 2008)

1. The principle of liability based on fault This principle is a fairly general principle applicable in civil law, especially Articles 1365, 1366, and 1367 of the Civil Code.

2. The matter that needs to be explained in this principle is the definition of the subject of wrongdoers which in legal doctrine is known as the principle of vicarious liability and corporate liability. Vicarious liability means that the company is responsible for the losses of other parties incurred by people or employees under its supervision. Corporate liability has the same meaning as vicarious liability.

While based on the law of engagement, responsibilities are divided into 2 (two), namely:

1. Legal responsibility due to contractual agreements/relationships as stated in Article 1338 of the Civil Code and Article 1317 of the Civil Code.

2. Statutory liability. Responsibility based on contractual relationships, arises if there is a default or violation of the agreement, while responsibility due to law is responsibility based on unlawful acts.

In judicial practice, the definition of unlawful acts no longer adheres to a narrow stance/formulation, but has adopted a formula in a broad sense, namely unlawful acts have fulfilled alternative requirements including: 1. acts that are contrary to the legal obligations of the perpetrator; 2. violate the subjective rights of others; 3. violate the rules of decency; 4. contrary to the principles of propriety.

According to Wirjono Prodjodikoro, legal protection is an effort to protect legal subjects, about what they can do to defend or protect the interests and rights of legal subjects. (Wirjono Prodjodikoro, 1992) The buyer in good faith has the right to be protected by his circumstances to ask the seller for fulfillment of achievements because his achievements have been fulfilled. The achievement that must be done by the seller is to carry out the transfer of property rights by making a sale and purchase deed that will be made before the PPAT because PPJB has been paid in full. In PPJB, it is usually agreed that when the buyer has paid off the payment for the land, the buyer and the seller will continue the transfer of rights by making a sale and purchase deed made before the PPAT. Here the buyer has in good faith carried out its obligations in the agreement, so the buyer is entitled to receive his rights. While the seller has fulfilled its rights, the selling party must fulfill its obligations for the transfer of rights.

Legal protection for the parties to the agreement if the agreement is made in the form of a notarial deed or a deed of the land deed making official, then the deed of agreement automatically becomes a notarial deed so that the power of protection is in accordance with the protection of the authentic deed and returns to the provisions contained in Article 1338 of the Civil Code which applies as law for the parties. (Sarjipto Rahardjo, 2000) In article 1868 KUHPercivil, what is meant by authentic deed is a deed made in the form prescribed by law by / or before a public official authorized for that purpose, at the place where the deed was made.

An authentic deed has the power of proof in such a way that it is considered attached to the deed itself, meaning that the authentic deed is binding evidence because what is written in the deed must be considered true and believed by the judge. The inherent power of an authentic deed is; Perfect and binding to the judge so that the judge must make it a basis of perfect facts and sufficient to make a decision on the settlement of the disputed case. (M.Yahya Harahap, 2008) Article 1870 of the Civil Code states that an authentic deed gives between the parties and their heirs or persons entitled to them, a perfect proof of what is contained therein. The value of the evidentiary power attached to the authentic deed, if the formal and material requirements are met, the deed immediately meets the minimum limit of proof without the help of other evidence. Directly valid as evidence of an authentic deed, the deed is immediately attached to the value of the evidentiary power, namely perfect (volledig) and binding (bindende). (M.Yahya Harahap, 2008)

In this regard, legal protection for land buyers in good faith which is preceded by the making of the PPJB Deed in full and power, namely:

1. With the Deed of Sale and Purchase Binding Agreement in full and Power of Attorney made before a Notary, it is authentic evidence and becomes a strong basis for the implementation of the sale and purchase agreement as a temporary binding before the implementation of the main agreement, namely the sale and purchase agreement before the PPAT. As a party who violated his

rights and suffered losses due to these unlawful acts, then as a buyer in good faith entitled to compensation from the seller. Article 1365 of the Civil Code states that every act that violates the law and brings harm to another person must be the person who caused the loss because of his fault to compensate for the loss. Based on the provisions of the article, unlawful acts must meet the elements including the existence of the act, the act is against the law, there is guilt on the part of the perpetrator, there is a loss to the victim, there is a causal relationship between the act and the loss. (Munir Fuady, 2017)

The Civil Code regulates losses and compensation in relation to unlawful acts, there are 2 (two) approaches, namely general compensation, and special compensation. In general indemnity is an indemnity that applies to all cases both in cases of default of agreements and cases related to other engagements including unlawful acts. This general compensation provision is divided into 3 (three), namely the terms cost, loss, and interest are used. Furthermore, special compensation is compensation for losses arising from certain engagements. (Munir Fuady, 2017)

2. In addition, BPN as the agency that carries out the registration process for the transfer of land rights carries out the process of changing the name to the name of the buyer in good faith on the basis of paid PPJB and power of attorney as an authentic Deed that has been made in accordance with the provisions of article 5 of the Basic Agrarian Law (UUPA) in cash, real, and light.

CONCLUSION

Based on the description that the author has described in the subject above, it can be concluded as follows:

1. The characteristics of a person can be said to have good faith when the parties have fulfilled their rights and obligations and these characteristics can be seen when the parties carry out legal actions or agreements, namely at the pre-contract stage and contract execution. The inner attitude in this case the honesty of the parties in making the agreement needs to be put forward so that its implementation will always be guided by the norms of decency and decency so that the agreement is implemented in such a way that it does not harm either party.
2. Legal protection for land buyers in good faith in the binding agreement for sale and purchase in full and power of attorney that contains elements of unlawful acts, namely that the deed that has been made by the parties before a Notary Public is an authentic deed and returns to the provisions contained in Article 1338 of the Civil Code, which applies as law to the parties who make it, So as to provide legal certainty and a strong basis for the implementation of the sale and purchase agreement, prospective buyers who are violated their rights are entitled to legal protection in the form of compensation due to these unlawful acts. In addition, the buyer of land in good faith on the basis of PPJB in full and power of attorney as an authentic Deed has the right to process the name of the land back at the National Land Agency (BPN) as the agency that carries out the registration process of transferring land rights whose process has fulfilled the provisions of article 5 of the Basic Agrarian Law (UUPA) in cash, real, and clearly.

REFERENCES

- Adrian Sutedi,(2017), *Peralihan Hak Atas Tanah Dan Pendaftarannya* , Jakarta: Sinar Grafika, hlm 78.
- Abdulkadir Muhammad, (2019), *Hukum Perdata Indonesia* , Bandung: PT Citra Aditya Bakti, hlm 307.
- Celina Tri Siwi Kristiyanti, (2008). "Hukum Perlindungan Konsumen", Jakarta: PT. Sinar Grafika, hlm. 92.
- Dwisaptono, D., Koeswarni, E., & Sujadi, S. (2020). Keabsahan Perjanjian Pengikatan Jual Beli dan Kuasa Menjual yang dibuat Secara Melawan Hukum dalam Putusan Nomor 1460/Pid. b/2019/PN. Dps. *Jurnal Notary Universitas Indonesia*, 16.
- Gaol, S.L., (2021), Keabsahan Akta Perjanjian Pengikatan Jual Beli Tanah Sebagai Dasar Pembuatan Akta Jual Beli Tanah Dalam Rangka Peralihan Hak Atas Tanah Dan Penyalahgunaan Keadaan (Misbruik Van Omstandigheden). *Jurnal Ilmiah Hukum Dirgantara*,11(1)
- Gita Rianty Hapsari,(2016), "Jual Beli Tanah Berdasarkan Akta Pengakuan Utang dan Akta Kuasa Jual sebagai Jaminan Pelunasan Utang yang Timbul Berdasarkan Tindak Pidana Pengelapan (Analisis Putusan Nomor 298/PDT/2013/PT.MKS)," (Tesis Magister Universitas Indonesia, Depok), hlm. 61
- Herlina Hasibuan,(2021)"Analisis Yuridis Penolakan Pembatalan Akta Perjanjian Pengikatan Jual Beli (PPJB) Hak Atas Tanah Melalui Prosedur Gugatan Ke Pengadilan (Studi Putusan MA No. 3703.K/PDT/2016)", *Jurnal Perspektif Hukum* Vol 2 No.1.
- Herlien Budiono, (2019), *Ajaran Hukum Perjanjian dan Penerapannya di Bidang Kenotariatan* ,Bandung: PT Citra Aditya Bakti hlm 18.
- H. Riduan Syahrani,(2006), *Seluk Beluk dan Asas-Asas Hukum Perdata*, Bandung: PT Alumni hlm 249.
- Khoiril, Hukum Kontrak, Slide 1.Ppt. [Http://:Sunan-ampel.ac.id](http://Sunan-ampel.ac.id), diunduh tanggal 20 maret 2023)
- Munir Fuady, (2017), *Perbuatan Melawan Hukum Pendekatan Kontemporer*,Bandung: PT Citra Aditya Bakti, hlm 10.
- M.Yahya Harahap.(2008) Hukum Acara Perdata, tentang Gugatan, Persidangan, Penyitaan, Pembuktian dan Putusan Pengadilan, Jakarta: Sinar Grafika. Cetakan kedelapan, Hlm,583
- Niru, Anita Sinaga, (2018), "Peranan Asas-Asa Hukum Perjanjian Dalam Mewujudkan Tujuan Perjanjian", *Binamulia Hukum* vol 7, No.2 :117
- Putri, D.K., (2017), Perbedaan Perjanjian Pengikatan Jual Beli Lunas Dengan Perjanjian Pengikatan Jual Beli Tidak Lunas. *Jurnal Akta*, 4(4), pp.623-634.
- Priyono, Ery Agus,(2017), "Peranan Asas Itikad Baik Dalam Kontrak Baku (Upaya Menjaga Keseimbangan bagi Para Pihak)" *Jurnal Diponegoro Law Review* vol 1, No.1:13.
- Peter Mahmud Marzuki, (2011), *Penelitian Hukum*, Jakarta: Kencana Prenada Media Group, hlm. 34

- R. Subekti,(1983), *Hukum Perjanjian*. Jakarta : Citra Aditya Bakti, hlm.25
Subekti, *Hukum Perjanjian* (PT Intermasa, 2002) hlm 64.
Sarjipto Rahardjo,(2000), *Ilmu Hukum*, Bandung: PT. Citra Aditya Bakti. hlm.54
Salim,(2007), *Perancangan Kontrak & Memorandum of Understanding (MoU)*, Jakarta: Sinar Grafika. hlm.85.
Sjahdeni Sutan Remy,(1993) *Kebebasan Berkontrak dan Perlindungan Seimbang bagi Para Pihak dalam Perjanjian Kredit di Indonesia*. Jakarta, Institut Bankir Indonesia, hlm.94
Soekidjo Notoatmojo, (2010). “Etika dan Hukum Kesehatan”, Jakarta: Rineka Cipta, hlm. 136.
Urip Santoso, (2011), *Pendaftaran Dan Peralihan Hak Atas Tanah*, Kencana, ,hlm 364.
Wirjono Prodjodikoro, (1992). *Perbuatan Melanggar Hukum*, Bandung: sumur, hlm. 20.

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