Siber International Journal of Advanced Law (SIJAL)
E-ISSN : 2987-5595
P-ISSN : 2987-5609
https://review.e-siber.org/SIJAL siberpublisher.info@gmail.com +62 812-1046-7572
DOI: https://doi.org/10.38035/sijal.v3i1
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Legal Position of Making a Deed of Sale and Purchase Binding Agreement (PPJB) That Does Not Comply with the Material Requirements

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Abstract: This study aims to determine how a deed is said to be in accordance with formal and material requirements and what are the legal consequences and legal status of a deed that does not comply with formal and material requirements. This study is a Normative Research with a Conceptual Approach. The legal materials used are primary legal materials in the form of the Civil Code, Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, secondary legal materials in the form of books, articles and related journals. While the data analysis method used is qualitative. The results of this study are that a Notarial deed including a Deed of Sale and Purchase Agreement must meet the requirements in Article 1320 of the Criminal Code and Article 38, Article 39, and Article 40 UUJN. The results of the second discussion are that a deed that does not meet the requirements of Article 1320 of the Criminal Code, Articles 38,39 and 40 UUJN has the same evidentiary force as a private deed.

Keywords: Notary, UUJN, Legal Material.

INTRODUCTION

Transfer of land rights is a legal act of transferring land rights that is carried out intentionally so that the rights can be separated from the original owner and transferred to another party. The enactment of the Basic Agrarian Law makes transfers possible through sale and purchase, exchange, grant, gift with a will, gift according to custom and other acts intended to transfer ownership rights. Article 1457 of the Civil Code states that a sale and purchase is a party where one binds himself to hand over the object/ownership and the other party pays for the object/ownership according to the price that has been mutually agreed upon. A sale and purchase reaches an agreement if the goods to be purchased have not been delivered. The word agreement means that both parties have agreed to each other to agree to the sale and purchase. According to Article 19 of Law Number 5 of 1960 concerning Basic Agrarian Principles (hereinafter referred to as UUPA), the transfer of land rights can be carried out through a sale and purchase. The legal transfer of land rights must be carried out by land registration or land sale and purchase in accordance with the principles of customary law, namely cash, clear and real. (Amalia,2021). These three things must be met so that the

transfer of land rights can be carried out. However, if all three have not been met, the parties can make a Sale and Purchase Agreement (hereinafter referred to as PPJB) first. PPJB is a preliminary agreement between the parties consisting of the buyer and the seller in the sale and purchase of land. Of course, every agreement must be based on the good faith of the parties. Good faith is not only at the beginning of the agreement but also until the end of the agreement. This agreement can be made in writing to avoid default. In general, PPJB is made because of current developments in the era where buying and selling are rarely done in cash and directly. So that the buyer pays off the land price first to avoid the land price which always increases every time. In addition, the seller has not been able to complete the land administration when the object is paid for (Dian Apriandini & Amad Sudiro, 2023).

PPJB is a binding sign of a sale and purchase transaction while waiting for payment in full. The Deed of Sale and Purchase Binding is made in 2 (two) ways, namely: "1. The new PPJB Deed is a promise because the price has not been paid in full (PPJB Not Paid In Full); 2. PPJB Deed whose payment has been made in Full, but the sale and purchase deed cannot be made before the PPAT because there are still some that have not been completed. (PPJB Paid In Full). Not finished here means, because of something the AJB process cannot be made, for example one of the parties cannot be present at a certain time, or the status of the object of the sale and purchase is still guaranteed or collateralized at the bank, or the object of the sale and purchase is still in the process of being divided, so it is bound first using PPJB Paid In Full. " In practice, the making of PPJB as a preliminary agreement often causes problems in the future, due to the rights and obligations of one of the parties not being implemented as agreed. Therefore, in this article, the author will explain the legal force of the PPJB deed.

METHOD

This research is a Normative Research, namely research based on laws and regulations, doctrines and jurisprudence. The approach in this research is a Conceptual Approach. The legal materials used are primary legal materials in the form of the Civil Code, Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, secondary legal materials in the form of books, articles and related journals. While the data analysis method used is qualitative and the results of the analysis are presented descriptively, which will then obtain answers to the problems and draw conclusions on the answers to the problems

RESULTS AND DISCUSSION

Sale Purchase Binding Agreement (PPJB) in Accordance with Formal and Material Requirements

The definition of an agreement in the Civil Code as regulated in Article 1313, states "An agreement is an act by which one or more people bind themselves to one or more other people". This is in line with Subekti's opinion which defines an agreement as an event where one person promises to another person or where two people promise each other to do something (Subekti, 1990). "Contract law in Indonesia adheres to an open system, meaning that contract law gives the widest possible freedom to the public to enter into agreements containing anything, as long as it does not violate public order and morality, this contains the principle of freedom of contract."(Subekti, 1990). Article 1338 paragraph (1) of the Civil Code states "All agreements made legally apply as laws for those who make them." An "agreement is said to be valid if it meets the requirements for a valid agreement as stipulated in the provisions of Article 1320 of the Civil Code, namely agreement, legal capacity, certain things, and a lawful cause (causa). The subjective and objective requirements must be met, namely consensualism, capacity, certain objects, and lawful cause/causa, where if the subjective requirements are not met, the agreement can be canceled, while if the objective requirements are not met, the agreement is null and void. As for the PPJB, several requirements must be met which are basically regulated in the relevant PPJB." One of the agreements that is often carried out in society is the PPJB for land rights, this agreement is an anonymous agreement, because it is not found in the forms of agreements regulated in the

Civil Code. The land rights sale and purchase agreement is an implementation of the principle of freedom of contract, where the parties can freely determine their will." PPJB is a preliminary agreement, so usually the agreement contains promises from the parties that contain provisions where the conditions for the actual sale and purchase have been met. This is in line with the opinion of Herlin Budiono, who explained that PPJB is an assistance agreement that functions as a preliminary agreement in free form, so that this PPJB can be categorized into a preliminary agreement made before the implementation of the main/principal agreement (Putri dan Purnawan, 2017).

The function of a notary in his/her field of work is to be obliged and responsible, especially for making authentic deeds that have been entrusted to him/her, especially in the field of civil law. The provisions for making authentic deeds for notaries are regulated in Article 38, Article 39, and Article 40 of the UUJN, which include the physical form of the deed and the parties involved in the process of making the deed itself. Article 38 explains that:

1. Every notarial deed consists of: a) The beginning of the deed or the head of the deed; b) The body of the deed; c) The end or closing of the deed.
2. The beginning of the deed or the head of the deed contains: a) Title of the deed; b) Number; c) Time, day, date, month, and year; d) Full name and domicile of the Notary.
3. The body of the deed contains: a) Full name, place and date of birth, citizenship, occupation, position, position, place of residence of the parties and/or the person they represent; b) Information regarding the acting position of the parties; c) The contents of the deed which are the will and desire of the interested parties; full name, place and date of birth, as well as the occupation, position, position, and place of residence of each identifying witness.
4. The end or closing of the deed contains: a) A description of the reading of the deed as referred to in Article 16 paragraph (1) letter m or Article 16 paragraph (7); b) A description of the signing and place of signing or the translator of the deed if any; c) Full name, place and date of birth, occupation, position, position, and place of residence of each witness to the deed; d) A description of the absence of changes that occurred in the making of the deed or a description of the existence of changes that may be in the form of additions, deletions, or replacements.
5. The Deed of Substitute Notary, Special Substitute Notary, and Temporary Notary Official, in addition to containing the provisions as referred to in paragraph (2), paragraph (3), and paragraph (4), also contains the number and date of the appointment, as well as the official who appointed him.

Meanwhile, Article 39 explains that the person appearing must meet the following requirements:

1. At least 18 (eighteen) years old or married; and
2. Capable of performing legal acts.
3. The person appearing must be known to the notary or introduced to him by 2 (two) identifying witnesses who are at least 18 (eighteen) years old or married and capable of performing legal acts or introduced by 2 (two) other persons appearing;
4. The introduction as referred to in paragraph (2) is expressly stated in the deed.

Article 40 explains:

a. Every deed read by a notary must be attended by at least 2 (two) witnesses, unless statutory regulations specify otherwise;
b. Witnesses as referred to in paragraph (1) must meet the following requirements:
   a) At least 18 (eighteen) years old or previously married;
   b) Capable of performing legal acts;

c) Understand the language used in the deed;
d) Not having a marital relationship or blood relationship in a straight line up or down without limitation of degree and sideways line up to the third degree with the Notary or the parties.
e) Witnesses as referred to in paragraph (1) must be introduced to the Notary or have their identity and authority explained to the Notary by the person appearing; f) The introduction or statement regarding the identity and authority of the witness is stated expressly in the Deed.

Position and Legal Consequences Of Sale Purchase Binding Agreements (PPJB) That Do Not Meet Formal And Material Requirements

In practice, there are 2 (two) stages that are passed by the parties, namely the PPJB Land Rights made before a Notary and the Sale and Purchase Agreement or better known as AJB made before a PPAT. There is a fundamental difference between PPJB and AJB, namely regarding the transfer of goods or objects, where in PPJB the transfer of goods or objects only occurs in the future, while in the transfer of goods or objects in a sale and purchase agreement it occurs at that time (moving immediately from the seller to the buyer). In the context of the sale and purchase of land and/or buildings, the transfer of land rights only occurs after the AJB is signed before an authorized official, namely the PPAT." (Gusti Bagus Gilang Prawira,2023). In addition to having strong and perfect evidentiary properties, by making a PPJB and power of sale, it can also provide legal protection for buyers as follows: "1) Regarding "tax, the buyer does not bear sales tax, if the seller has died because when the PPJB was signed, the PPh had been paid in full before the PPJB was signed. This is based on Article 1 paragraph (3) letter a of Government Regulation No. 34 of 2016 concerning Income Tax on Income from the Transfer of Rights to Land and/or Buildings, and the Sale and Purchase Agreement for Land and/or Buildings and its Amendments. Because before the enactment of this PP in practice, when making a PPJB and power of sale, no PPh was paid first so that if the seller has died, the party who bears the PPh is the buyer, and usually PPh is only paid when making the AJB." 2) Ownership "can be legally proven by the PPJB and the power of attorney to sell made before a notary is very strong, if the seller dies, the heirs cannot interfere with the lawsuit regarding the ownership of the land even though the AJB has not been made for the land, because the heirs must comply with the provisions contained in the PPJB clause and the power of attorney to sell."

The provisions stipulated in Article 41, explain that violations of the provisions as referred to in Article 38, Article 39, and Article 40 result in the deed only having evidentiary force as a private deed. In line with Article 41, Moechthar said that if this provision is violated, it will result in a deed only having evidentiary force as a private deed or a deed being null and void by law. After all the requirements stipulated in the laws and regulations are met, the deed can be said to be an authentic deed that has perfect evidentiary force. A notarial deed that is made does not meet the existing provisions, can result in unclear legal certainty which then triggers a dispute between parties who feel disadvantaged by the existence of the deed.

CONCLUSION

PPJB is a preliminary agreement, so usually the agreement contains promises from the parties that contain provisions where the actual conditions for the sale and purchase have been met. Which in writing the PPJB deed must be based on Article 1320 of the Criminal Code as a formal and material requirement and fulfill the Elements in Articles 38, 39, and 40 UUJN. The provisions regulated in Article 41, explain that violations of the provisions as referred to in Article 38, Article 39, and Article 40 result in the deed only having evidentiary force as a private deed. In line with Article 41, Moechthar said that if this provision is violated, it will

result in a deed only having evidentiary force as a private deed or a deed being null and void by law.

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