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TRANSFER OF LAND RIGHTS (SALE AND PURCHASE ACT WITH SALE AND PURCHASE BINDING AGREEMENT) STUDY AT THE NOTARY & PPAT OFFICE BUDI ARIPIN S.SOS, S.H, M.KN.

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Abstract:

Background. The Sale and Purchase Binding Agreement (PPJB) serves as a binding preliminary agreement between the seller and the buyer before the Sale and Purchase Act (AJB) is drafted by the Land Deed Making Office (PPAT).

Aims. Transferring land rights requires registration at the National Land Agency (BPN) to ensure legal certainty. Problems can arise if the fulfillment of rights and obligations does not accompany fulfilling the rights contained in the PPJB. This can result in the inability to make an AJB by PPAT to change the certificate's name to the land office where the object is located.

Methods. The juridical normative method used requires both primary and secondary data. Primary data is obtained from the study location, the Notary Office & PPAT Budi Aripin, S.Sos, S.H, M.Kn. In contrast, secondary data is obtained from literature.

Result. The results of his research show that the function of the deed made by the Notary is to provide legal certainty and guarantee the right to land ownership, as well as evidence that legal acts have been carried out, and the factors that hinder the transfer of land rights through sale and purchase.

Conclusion. A binding sale and purchase agreement is a form of preliminary agreement. Therefore, it can be used as a basis for making an AJB and serves as a document or evidence to complete the registration requirements for the transfer of land rights due to the sale and purchase transaction.

Implementation. However, implementing all the conditions agreed to in this agreement can take quite a long time. This can prevent potential sellers from signing the AJB.

Keywords: PPJB, PPAT, AJB, BPN, transfer

INTRODUCTION

Soil is a fundamental resource that is indispensable for the life of all humans, because soil is one of the essential elements for human survival from time to time. The purpose of its use is to achieve welfare for the entire community, whose distribution is carried out fairly, materially and spiritually. The demand for land increases along with the growing population, so it is natural for humans to try to acquire land, one of which is through land buying and selling transactions. However, sometimes land ownership and acquisition can lead to legal issues or disputes between family members, other individuals, or even government agencies regarding land ownership. To prevent disputes or conflicts regarding the possession and ownership of land, the government needs to formulate regulations that regulate land issues related to the possession and ownership of land that are not under the applicable legal regulations.

The government's form of attention in anticipating problems in the land sector in Indonesia is the promulgation of the Basic Agrarian Law No. 5 of 1960 concerning the Basic

Regulation of Agrarian Principles (Statute Book of 1960 No. 104), which is more commonly called the Basic Agrarian Law (UUPA).

This is despite the existence of the 1945 Constitution as its organic regulation, especially in article 33, paragraph (3), which contains "The Earth, Water, and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people." The formulation of Article 33, paragraph (3) of the 1945 Constitution, contains the meaning that the ownership of land rights is intended for persons, individuals, or legal entities. So that the state as an organization is authorized to do something on the land, namely:

1. To regulate and organize its designation, use, inventory, and maintenance.
2. Determine and regulate the rights that can be had over (part of) the earth, water, and space.
3. Determine and regulate the legal relations between the people of the laws concerning the earth, water, and space. ¹

New policies and laws approved by the government and applied to residents aim to prevent conflicts or disputes in the community, especially related to land issues such as land boundary issues, land status, and rights and obligations related to the land. To prevent or deal with problems that arise in the land sector, the government has issued various laws that regulate these matters.

Regarding the sale and purchase of land whose object is on land, it can be seen in article 26 paragraph (1) of the Basic Agrarian Law No. 5 of 1960 which states: "Buying and selling, exchanging, granting, giving by will, giving with customary law and other acts intended to transfer property rights and their control are regulated by government regulations." Furthermore, in article 23 paragraph (1) of the Basic Agrarian Law, it is stipulated that: "Property rights as well as any transfer, deletion and encumbrance with other rights must be registered following the provisions referred to in article 19 of the Basic Agrarian Law." As a follow-up to the provisions of the article mentioned above, a PP was issued. No. 10 of 1961 is now a Government Regulation because it is considered inappropriate.

With the development of people's lives so that it is perfected by a new regulation, namely government regulation No. 24 of 1997 concerning land registration because in

¹ Effendi Perangin, *Agrarian Law in Indonesia: A Study from the Perspective of Legal Practitioners*, First Edition of Rajawali, Jakarta, 1986, p. 12

government regulation no. 24 of 1997 article 37 Paragraph (1) states that: "Transfer of land rights and property rights to flats through buying and selling, exchange, grants, income in the company and other legal acts of transfer of rights, except that the transfer of rights through auction can only be registered if it is proven by a deed made by the authorized PPAT following the provisions of the applicable laws and regulations."

From the definition of buying and selling contained in the Civil Code, it can be concluded that several elements in a land sale and purchase agreement can be concluded, namely:

1. There are at least two parties.
2. There is an agreement between the parties.
3. Assignment of rights to an item;
4. Payment of an agreed amount of money.²

A legal rule that is approved and announced is expected to run effectively in society. Thus, communities involved in the sale and purchase of land are expected to comply with and follow Law No. 5 of 1960 and related regulations. They must carry out land purchase and sale transactions through deeds prepared by PPAT. PPAT simplifies the process of registering land rights obtained through buying and selling transactions so that the land rights can be guaranteed a certain legal status.

However, in practice, many individuals still commit legal acts that violate the applicable legal provisions, such as land purchase and sale transactions that are not carried out in front of PPAT. This phenomenon often occurs in certain locations, such as Cirebon City, where residents are still unaware of the significance of PPAT deeds and the process of buying and selling land.

Based on the description in the background that we discussed above, the formulation of the problem that will be addressed is: What is the role and responsibility of Notaries and PPAT in making AJB, and what are the stages in creating a deed of transfer of land rights based on PPJB?

² Muhammad Kevin Zulidan, Implementation of Binding Sale and Purchase Agreement (PPJB) in Land and Building Rights Transfer Transactions in Pekalongan Regency (Case Study at the Notary Office/ PPAT Sugiyanto S.H, M.Kn), Thesis, Sultan Agung Islamic University Semarang, 2022, p.5

METHODS

This study uses a normative juridical method to analyze the transfer of land rights through the sale and purchase deed at the Notary & PPAT office of Budi Aripin, S.H., M.Kn. in the city of Cirebon. The approach used is a legislative, conceptual approach that includes a study of relevant regulations and doctrines, including Law No. 5 of 1960 concerning Basic Regulations on Agrarian Principles and other rules regulating land rights transfer. The data includes primary legal materials such as laws and secondary materials in legal literature, books, articles, and legal journals.

The analysis examines the applicable legal norms and their application in practice in the field and identifies potential legal problems that may arise in transferring land rights. Through this research, it is hoped that a deeper understanding of legal certainty in the transfer of land rights and how the sale and purchase deed functions as valid evidence in the transaction.

DISCUSSION

The Role and Responsibility of Notaries & PPAT in the Deed of Sale and Purchase

In Indonesia, the role and responsibility of notaries and PPAT in making AJB are the main components of maintaining legal certainty and regulating land transactions. In controlling their practice, these two public officials are responsible for ensuring that every legal act related to the sale and purchase of land is carried out with a careful procedure, based on complete document verification and under the provisions of the law, so as not to cause disputes in the future.

Article 1, 1 of Law No. 2/2014 concerning Amendments to Law No. 30/2004 concerning the Notary Position states, "Notary is a public official who is authorized to make authentic deeds and has other authorities as referred to in other laws". The authority of the Notary, as in Article 15, paragraph (1) and paragraph (2) of Law No.2/2014, is:

1. The notary is authorized to make an authentic deed regarding all deeds, agreements, and determinations required by laws and regulations and/or that are needed by the interested party to be stated in the authentic deed, guarantee the certainty of the date of making the deed, keep the deed, provide grosse, copy and quotation of the deed, all of which as long

as the making of the deed is not assigned or excluded to other officials or other persons determined by law.

2. In addition to the authority as intended in paragraph (1), the Notary is also authorized:
 - a. Certify the signature and determine the certainty of the date of the letter by hand by registering it in a special book;
 - b. Book a letter by hand by registering in a special book;
 - c. Make a copy of the original letter by hand in the form of a copy containing the description as written and described in the letter concerned;
 - d. Certify the compatibility of the photocopy with the original letter;
 - e. Provide legal counseling in connection with the making of deeds;
 - f. Making deeds relating to land; or
 - g. Make an auction minutes deed.³

The article not only regulates the authority of notaries, but also indirectly describes the fundamental role of Notaries in the legal system. This article emphasizes that Notaries are officials who act as guarantors of legal certainty by giving the authority to make authentic deeds, set the date of creation, keep documents, and provide copies or citations of deeds. This means that in every legal act that is stated in the form of an authentic deed, the Notary is responsible for ensuring that the entire process of making and documenting is carried out by applicable legal standards and requirements, so that each document has high evidentiary power in the future.

In the same context, PPAT has an equally important role, especially in transactions related to land rights, According to Government Regulation Number 37 of 1998 Land Deed Making Officials, hereinafter referred to as PPAT is a public official who is given the authority to make authentic deeds regarding certain legal acts regarding land rights or Property Rights over Flats Units. The duties of PPAT are also regulated in Article 2 and paragraph 2, namely:

1. PPAT has the main task of carrying out a number of land registration activities by making a deed as evidence that certain legal acts have been carried out regarding land rights or Property Rights over Flats Units, which will be used as the basis for the registration of changes in land registration data resulting from the legal act.

³ Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary
Zelfi Ghaffar Aufiya | 25
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2. The legal acts as referred to in paragraph (1) are as follows:

- a. Selling
- b. Convert
- c. Grant
- d. Entry into the company (*inberg*);
- e. Distribution of common rights;
- f. Granting of Building Use Rights/Right of Use on Land Title
- g. Granting of Dependent Rights;
- h. The granting of power of attorney imposes the Deferral Right.⁴

In each process, PPAT must cross-check all documents, such as land certificates, IMB, and proof of tax payment, to confirm that all relevant information has been updated and is valid. The deed that is prepared must be not only a formal document but also a legal tool that functions as a basis for registering changes in land rights at BPN so as to provide maximum legal protection for sellers and buyers of land.

The role of PPAT, which combines administrative functions and legal certainty guarantees, ensures that buying and selling transactions are not only formal but also legally protected. This protects both parties (seller and buyer) because the deed has gone through a strict inspection process, so the potential for errors or fraud can be minimized.

Thus, the synergy between Notaries and PPAT is the main key to ensuring the validity and accuracy of every land purchase and sale transaction, preventing land buying and selling, and preventing the occurrence of prolonged disputes if there are errors or irregularities in the verification process and preparation of deeds.

Notaries/PPAT are primarily responsible for drafting the sale and purchase deed, which focuses on the beginning (head of deed) and the final part (closing of the deed). In these parts, the Notary/PPAT is comprehensively responsible in terms of materially representing the legal content and substance of the deed and in terms of formality, including the procedure for drafting and signing documents. The head of the deed generally contains the basic information of the

⁴ Government Regulation No. 37 of 1998 concerning Regulations on the Position of Land Deed Making Officials
Zelfi Ghaffar Afiya
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identity of the parties and the basis for making the deed. At the same time, the concluding part includes the final statement and signature that certifies the document as legal evidence.

The form of responsibility that the Notary/PPAT must bear depends on the type of mistake or violation that occurred. Suppose a violation touches the criminal realm, such as a case of forgery of Notary/PPAT documents, sanctions in the form of imprisonment and/or fines, by applicable laws and regulations. Meanwhile, if the error is civil, the Notary/PPAT must compensate the aggrieved party. In this context, the deed's validity as an authentic document will be torn, so the deed is only considered as a deed under hand and loses its proper legal force. As for administrative violations, the sanctions imposed can be in the form of verbal and written reprimands, and in more severe cases, can even lead to dismissal from the position as a Notary.⁵

Stages in Making a Deed of Transfer of Land Rights Based on PPJB

The term right is always inseparable from the term law. As it is known, the right is an interest recognized and protected by law. Lili Rasjidi states, "That a right requires the person affected by the right to do an act or not to do something."⁶ It can be interpreted as a legal act that aims to move rights or movable or immovable goods or objects. Acts that result in the transfer of rights or goods or objects can be in the form of buying and selling, exchanging, and grants, regulated by laws and regulations, and meet the specified conditions. In this case, "The transfer of land rights does not only include buying and selling, but can also occur due to grants, exchanges, gifts by will, and other acts that intend to transfer ownership rights."⁷

In general, the most common transfer of land rights in the community is buying and selling. Land rights transfer is a legal act that deliberately separates land rights from the original holder and transfers them to other parties.⁸

Buying and selling land based on the provisions of Article 37, Paragraph (1) of Government Regulation Number 24 of 1997 must be done before the Land Deed Making

⁵ Andi Ismayana Wahid and Firman Tongke, "The Role and Responsibility of Notaries/PPAT on the Making of Sale and Purchase Deeds", Proceedings of the 7th National Seminar on Information and Technology Systems (SISFOTEK) (2023)

⁶ Lili Rasjidi, Legal Philosophy What Law Is, Bandung. Adolescent Works, p. 73

⁷ Ali Ahmad Chomzah, Land Law on the Granting of State Land Rights, Jakarta, Prestasi Pustaka, 2002, p.15

⁸ K. Wantjik Saleh, Your Rights to Land, Jakarta, Ghalia Indonesia, 1977, p.15 - 18

Officer (PPAT). This is intended so that later, the sale and purchase deed can be used as a basis for registration of changes of rights.⁹

According to the Basic Agrarian Law (UUPA), registration is strong proof of the legality of buying and selling carried out, especially concerning a third party in good faith.¹⁰

In a stage of the buying and selling process in front of a Notary / PPAT, there is payment of seller and buyer's tax, checking land certificates, signing of AJB, validation, and so on. However, due to one thing or another, the process from which AJB can be uncontrollable, for example, because the object of sale and purchase has not been paid off according to the price agreed by both parties, or the status of the object of sale and purchase is still guaranteed or collateralized at the bank, or also the object of sale and purchase is still in the process of breaking the certificate, and so on. Therefore, PPAT provides a solution by first making a binding agreement between the buyer and the seller, in this case known as PPJB.

Before entering the understanding of PPJB, we must know the meaning of the agreement. A contract is a legal event where a person promises to another person to perform a particular action. Meanwhile, PPJB is a principal agreement between sellers and buyers before AJB is made. Article 1313 of the Civil Code regulates the meaning of agreements. Generally, PPJB is divided into two, namely made authentically or made in front of a Notary as a public official, and PPJB is made under hand without being in front of a Notary or between parties. Before entering the basis of the PPJB, the parties can make land rights, and the transition can be switched and transferred. The transfer of rights can be due to legal events or legal acts. For example, legal events are inheritance and death; examples of legal acts are buying and selling, grants, and APHB.

The parties in the process of buying and selling land and buildings carry out PPJB for several reasons, including the following: the object cannot be controlled by the parties, both the seller and the buyer; the administrative file similar to the letter or object document cannot be completed; the payment for the object has not been made in full, and there is still no agreement between the parties.

⁹ Dyara Radhite Oryza Fea, Smart Book of Land Certificates and Their Permits, Yogyakarta, Smart Books, 2016, p.203

¹⁰ A.P. , Protection of Land Registration in Indonesia, Print II, Mandar Maju, Bandung, 1990, p. 14

Zelfi Ghaffar Aufiya

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The existence of PPJB has a very important role before the existence of AJB, but the existence of PPJB does not prevent the parties from transacting, even though in practice, at the signing of PPJB, there was no transfer of land rights due to several considerations of the transfer that require the existence of AJB.

While the PPJB in question binds sellers and buyers, which is generally done by developers to facilitate property buying and selling transactions, and PPJB is a preliminary agreement, the function of this PPJB is basically to prepare the main agreement / principal agreement, which will later be carried out by AJB.

PPJB is often considered an alternative option for a land transaction. However, a number of challenges may arise on the ground. One of them is in the event of a default from one of the parties, both from the seller who does not fulfill the promise to hand over the land after payment is made and the buyer who does not fulfill their obligations in accordance with the agreement.

In practice, there are 2 (two) types of PPJB agreements, namely:

1. Sale and Purchase Binding Agreement (PPJB) paid off
2. Sale and Purchase Binding Agreement (PPJB) not paid off

CONCLUSION

Notaries and PPAT are responsible for preparing the AJB, which is the basis for legal certainty in land purchase and sale transactions. Notaries are responsible for drafting official deeds by checking documents ranging from land certificates, identities, and other supporting documents to ensure that the deed is valid and has valid evidentiary force. On the other hand, PPAT should check land administration documents (e.g., certificates, IMB, and proof of tax payment) to ensure that the deed can be used as a basis for registration with BPN. These two officials not only play a role in the creation and verification process but also have significant responsibility for any errors or violations, which can lead to criminal, civil, or administrative sanctions.

A binding sale and purchase agreement is a form of preliminary agreement. However, implementing all the conditions agreed to in this agreement can take quite a long time. This can prevent potential sellers from signing the AJB. Therefore, the binding agreement can be

used as a basis for making an AJB and serves as a document or evidence to complete the registration requirements for the transfer of land rights due to the sale and purchase transaction.

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