



The Validity of the Binding Sale and Purchase Agreement (PPJB) in the presence of a Notary related to the incomplete basis of land rights

Febrihadi Suparidho^{1*}, Yuni Ristanti²

^{1,2}Fakultas Hukum Ilmu Sosial dan Ilmu Politik Universitas Mataram

*Email: febrihadi.s27@staff.unram.ac.id

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ABSTRACT

The Sale and Purchase Binding Agreement (PPJB) is one of the legal instruments commonly used in the practice of land purchase and sale transactions in Indonesia. PPJB is generally made when the parties have reached an agreement on the object and price, but have not been able to pour it into the Deed of Sale and Purchase (AJB) due to various administrative constraints, including incomplete land rights base. On the other hand, Article 1320 of the Civil Code requires the existence of a certain thing and halal cause as an objective condition for the validity of the agreement. This condition raises juridical problems: whether the PPJB made before a notary can still be declared valid and binding if the basis of land rights is not perfect, and how the notary is accountable in making the deed. This research is a normative legal research with a legislative approach, a conceptual approach, and a limited case approach. The results of the study show that PPJB with incomplete rights can basically still be declared valid as long as it meets the legal requirements of the agreement, especially regarding the agreement of the parties and the clarity of the agreed object, but the agreement only gives birth to the rights and obligations of the obligate and does not necessarily transfer the rights to the land. Notaries are obliged to conduct a reasonableness examination on the grounds of rights submitted by the parties, provide adequate explanations of legal risks, and refuse to make deeds if they are clearly contrary to laws and regulations. However, notaries are not burdened with the obligation to ensure the material correctness of land ownership, so that the notary's civil liability can only be requested if it is proven to be negligent or acts beyond the limits of his authority.

INTRODUCTION

Land has a very important position in the social and economic life of the Indonesian people. Land is not only seen as a place to live, but also as a factor of production and an object of high value. Along with the increasing need for housing and business activities, land and building buying and selling transactions are increasingly rampant. In practice, the land sale and purchase process should ideally be outlined in the Deed of Sale and Purchase (AJB) made by the Land Deed Making Officer (PPAT) after all administrative and juridical requirements have been met. However, often the parties cannot immediately make an AJB due to various obstacles, such as land rights certificates that are still in process, land status that is still in the form of girik or old rights bases, or other administrative obligations that have not been resolved.

Nowadays, in the uncertain state of social life, there is a great need for certainty, especially legal certainty. The community is increasingly tying itself with other communities, so that agreements arise. The legal relationship that occurs between one legal subject and another occurs with the existence of an agreement and an engagement. In such cases, the law is present to provide legal protection and certainty. One of the properties and objectives of the law is to provide protection to the community which must be realized in the form of legal certainty.

To accommodate the needs of the parties in order to obtain certainty about the legal relationship between them before the AJB was made, the practice of making a Binding Sale and Purchase Agreement was born, which later in this paper is often referred to as PPJB. Basically, PPJB is a preliminary agreement that

contains an agreement between the seller and the buyer to sell and purchase land at a later date with certain conditions, including conditions for repayment of the price and the completion of the completeness of the basis of rights. In practice, PPJB is often made in front of a notary so that it is stated in the form of an authentic deed, in the hope of providing a higher level of certainty and evidentiary strength for the parties.

In general, an agreement can be made freely, that is, in terms of being free to enter into an agreement with anyone, free to determine the form of agreement or conditions, and free to determine the form of the agreement itself. With the freedom to enter into agreements (partij otonomie, contractvrijheid), the subjects of the alliance are not only bound to enter into alliances whose names are determined by law (benoemde overeenkomsten).

On the other hand, PPJB made when the basis of land rights is not complete raises juridical questions about the validity of the agreement. Article 1320 of the Civil Code stipulates that an agreement must meet subjective conditions in the form of agreement of the parties and the ability to make an agreement, as well as objective conditions in the form of the existence of a certain thing and a halal cause. When the basis of rights is incomplete, doubts arise as to whether the object in the PPJB can be considered as 'a certain thing' and whether the reason for the agreement can be considered as a halal cause if in the future it turns out that the seller is not the rightful owner or the land is in dispute.

In addition to the aspect of the validity of the agreement, another issue that is no less important is the responsibility of the notary in making the PPJB deed. Notaries are public officials who are authorized to make authentic deeds as stipulated in Article 1868 of the Civil Code and Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Office of Notaries. Notaries are obliged to act honestly, independently, impartially, and ensure that the deed he makes reflects the will of the parties. However, the limits of the notary's obligation to check the material truth of the basis of land rights are often debated, especially when in the course of time disputes or claims from third parties arise.

In practice, it is not uncommon for civil disputes to arise that originate from PPJB which is made when the basis of land rights is incomplete. For example, the buyer feels aggrieved because the land that is the object of PPJB turns out to be irtransferable to him, either because the certificate was never issued, the land is claimed by another heir, or there is a court decision stating that the land belongs to a third party. In such a situation, the buyer tends to sue not only the seller, but also the notary who made the PPJB, on the pretext that the notary has neglected to conduct an examination or has not provided an adequate explanation regarding the legal status of the land that is the object of the agreement.

On the doctrinal side, there are different views on the legal construction of PPJB and its implications for the validity of the agreement. Some people view that PPJB is a preliminary agreement that is obligatory and basically valid as long as the parties agree and the object can be identified, even though the basis of rights is not completely complete, with the note that the transfer of land rights only occurred at the time of the signing of the AJB. On the other hand, there is a stricter view that the creation of PPJB on land with unclear rights has the potential to violate the principle of legal certainty and put buyers in a vulnerable position, so it needs to be limited or even prohibited under certain conditions.

These problems show the need for a more in-depth juridical study on the validity of PPJB made before a notary when the ground of land rights is incomplete, as well as the extent of the notary's responsibility for the legal risks that may arise. This study is important not only from a theoretical point of view, but also from a practical point of view, considering that the existence of PPJB is very closely related to the importance of legal protection for the parties in land purchase and sale transactions.

Based on this background, this study is focused on analyzing the validity of the binding sale and purchase agreement before a notary regarding the incomplete basis of land rights. This study will examine the legal arrangements regarding PPJB and the basis of land rights, the validity of PPJB before a notary when the basis of rights is incomplete, the responsibility of Notaries in making PPJB deeds with incomplete rights grounds, and the implications for the legal protection of the parties and including third parties.

RESEARCH METHODS

Ahmad Mukti Fajar ND and Yulianto explained that the definition of normative legal research is "legal research that lays down law as a system of norms. The norm system in question is about the basic principles, norms, rules, of laws and regulations, court decisions, agreements and doctrines (teachings).

This research is a normative or doctrinal legal research, which is research that relies on written legal materials as the main source. Normative legal research is carried out by examining the legal principles, norms, and rules that govern agreements in general, PPJB, the basis of land rights, and the position and responsibilities of notaries. The focus of the research is directed at the study of the provisions in the Civil Code, the Law on the Notary Position, laws and regulations in the field of land, and other relevant implementing regulations.

The approaches used in this study include: statutory approach, conceptual approach, and limited case approach. The statutory approach is used to examine the normative provisions that govern agreements, authentic deeds, and notary positions, including the authority and obligations of notaries in making PPJB deeds. A conceptual approach is used to examine key concepts related to PPJB, the basis of rights, and

responsibilities of the notary profession. Meanwhile, the case approach is used to explore the judges' legal considerations in court decisions related to PPJB disputes and notary liability, although in this article case analysis is carried out in general and does not focus on one specific decision.

DISCUSSION

Legal Arrangements on PPJB and Land Rights

In the Indonesian civil law system, the legal relationship between the parties is basically based on an agreement. A covenant is defined as an act by which one or more persons bind themselves to one or more other persons. A new agreement is considered valid and binding if it has met the conditions specified in Article 1320 of the Civil Code, namely the agreement of the parties, the ability to make an agreement, a certain thing, and a halal cause. Of the four conditions, the first two conditions are subjective conditions, while the last two conditions are objective conditions. If the objective conditions are not met, then the agreement is null and void. The third condition in the legal terms of the agreement requires that there be a clear and determinable object of the agreement. In the land PPJB, the object of the agreement is the land and the buildings on it (if any) that must be specifically mentioned. Object clarity includes complete identification such as land location, area, boundaries, certificate number, and other land data.

PPJB is essentially a preliminary agreement (voor overeenkomst) that contains a promise between the parties to enter into a sale and purchase agreement at a later date. In the context of land buying and selling, PPJB is usually made when the parties have reached an agreement on the object and price, but have not been able to transfer rights directly through the AJB. PPJB regulates the rights and obligations of the parties, including the seller's obligation to complete the basis of rights and hand over the land to the buyer, as well as the buyer's obligation to pay the purchase price according to the agreed stages. Thus, PPJB gives birth to an obligatory relationship, which is the obligation to do something (in casu, make an AJB in the future), not directly transfer land rights.

The completeness of the land rights base is very closely related to the land registration system in Indonesia. In principle, the UUPA and its implementing regulations emphasize the importance of land registration to ensure legal certainty and legal protection for rights holders. However, in reality, there are still many lands that have not been registered or have just been supported by evidence of old ownership such as girik, petok, or other certificates that have not been converted into land rights certificates. This condition creates space for buying and selling transactions that are preceded by PPJB, especially when the seller is in the process of taking care of certificates or completing other land administrations.

In the practice of notarity, PPJB is often made in the form of an authentic deed in front of a notary. An authentic deed according to the provisions of civil law is a deed made in the form prescribed by law by or in the presence of a public official authorized for it at the place where the deed is made. Thus, the PPJB deed made before a notary has full evidentiary power regarding what is stated by the parties therein, as long as the deed is made in accordance with the provisions of laws and regulations and the authority of the notary. This provides a greater sense of security and legal certainty for the parties, even though the substance of the legal relationship that is born is still obligatory.

Validity of PPJB before a Notary when the Basis of Rights is Incomplete

There are several fundamental things in treaty law that need to be considered in analyzing the validity of PPJB before a notary when the basis of rights is incomplete. First, the principle of freedom of contract that allows everyone to make a deal with whomever they want about anything, and in any form. Second, looking at the legal conditions of the agreement that have been fulfilled or not, it can be seen from the clause of the agreement.

Whether the agreement is valid or not can be seen from article 1320 of the Civil Code which reads, In order for a valid agreement to occur, four conditions need to be met;

- the agreement of those who bind him;
- the ability to make an alliance;
- a certain subject matter;
- a cause that is not forbidden.

The validity of PPJB made when the basis of land rights is not complete needs to be analysed by focusing on the conditions of the validity of the agreement and the basis of freedom of contract. From the point of view of subjective conditions, no problems are found as long as the parties are legally competent and have given consent freely without coercion, error, or fraud. More problems arise in the fulfillment of objective requirements, especially regarding 'a certain thing'. The object of the agreement in PPJB is land with a certain identity, for example, it is stated in area, boundaries, and location, but the basis of the rights is not completely complete or is still in the process of issuing a certificate.

If the land object can be clearly identified, even if the basis of the right is not yet in the form of a certificate, in principle the condition regarding 'a certain thing' can still be considered fulfilled. This is because what is required by civil law is that there is certainty about the agreed object, not a formal form of proof of

ownership. However, the incompleteness of the basis of rights can affect another aspect, namely the certainty that the seller is really the owner or the authorized party to transfer the rights to the land. If it is later proven that the seller is not the rightful owner, the agreement can be sued and declared null and void for reasons that are not lawful or because there is a defect in the will or object of the agreement.

Thus, PPJB made before a notary with an incomplete basis of rights can basically still be considered valid and binding as long as the seller has an initial basis of control that can be accounted for and the parties consciously accept the risk that the transfer of new rights can be realized after the basis of rights is perfect. PPJB in this case is commonly constructed as a conditional agreement, where the fulfillment of certain obligations, such as the issuance of certificates or the completion of administrative processes, is a condition for the implementation of AJB. In such a construction, the rights and obligations of the parties have been born since the signing of the PPJB, but the concrete implementation in the form of the transfer of land rights only occurs after the fulfillment of these conditions.

Problems arise when the promised basis of rights can never be completed, for example because the land is disputed land, state land, or land owned by another party. In this situation, the buyer has the potential to suffer losses because he has issued a certain amount of payments without obtaining the promised land rights. Juridically, the buyer can demand the cancellation of the agreement and seek compensation from the seller based on default or unlawful acts. However, this condition also often drags the notary into disputes, especially if the buyer thinks that the notary does not carry out his duty of care.

Notaries as general officials who make authentic deeds have a responsibility that is not light in every deed he makes. The Notary Position Law stipulates that notaries are obliged to act honestly, thoroughly, independently, impartially, and safeguard the interests of the parties interested in the deed. The notary is also obliged to clearly list the information provided by the parties and read and explain the contents of the deed to the parties before signing. However, the notary obligation is basically related to the formal truth, namely the conformity between the information of the parties and what is stated in the deed, not the material truth regarding the legal status of the agreed object.

In the context of PPJB with incomplete rights grounds, notaries are still obliged to conduct a reasonableness check on documents submitted by the seller, such as proof of land tenure, land history certificates, or other documents that show that the seller has a basis to claim ownership. The notary must also provide an open explanation to the parties about the legal risks that may arise if the legal basis is not perfect, including the possibility of disputes with third parties or failure to issue certificates. The failure of the notary to provide an adequate explanation can be considered as negligence in carrying out the duties of his position.

Nevertheless, the notary cannot be burdened with the obligation to guarantee that the basis of the right to the land can definitely be perfected or that in the future there will be no disputes. The obligation to ensure the correctness of the material ownership basically lies with the landowner and the authorized land agency. As long as the notary has conducted a reasonable examination of documents, explained the conditions and risks to the parties, and honestly poured the information of the parties into the deed, the notary's civil liability in principle cannot be charged just because in the future there is a dispute regarding the object of PPJB. The notary's civil liability can only be requested if it is proven that the notary acted beyond his authority, assisted in committing unlawful acts, or was seriously negligent in carrying out his duties.

In some practices, notaries apply additional precautionary measures, for example by including a clause that affirms that the basis of land rights is still in the process of being refined and that the parties agree to bear the risk according to the agreed portion. The notary may also suggest that the payment of the price be made in stages and deposited through a joint account (escrow) until certain conditions are met. These steps show that notaries not only play the role of recorder of the will of the parties, but also as guardians of contractual justice and legal protection for the parties.

The existence of PPJB made before a notary with an incomplete basis of rights has important implications for legal protection, both for the parties bound by the agreement and for third parties. For the parties, the PPJB deed provides strong written evidence of the existence of legal relationships, rights, and obligations of each other. This makes it easier for the buyer to demand the fulfillment of achievements or compensation if the seller does not carry out his obligations, for example not completing the basis of rights or refusing to sign the AJB after the conditions are met.

For third parties, the existence of a PPJB deed can be a tool to assess the good faith of the parties, especially when there is a land ownership dispute. Buyers who have bound themselves through PPJB, paid the price, and controlled the land objects are generally considered as parties in good faith. However, this does not necessarily negate the rights of third parties who can prove stronger ownership. In such a situation, the judge will balance the protection of the legal certainty of the certificate, the good faith of the buyer, and the protection of the civil rights of the other party. The notary who makes the PPJB deed will be assessed from the extent to which he has carried out his professional obligations correctly and carefully.

From a legal policy perspective, the phenomenon of PPJB with incomplete rights also shows that there is a gap between the need for practice and normative regulation. On the one hand, society needs flexible legal instruments to guarantee an agreement before all administrative requirements are met. On the other hand,

the law needs to ensure that the instrument is not misused by irresponsible parties to speculate or plunge the other party into unsecured transactions. In this context, the role of the notary becomes very strategic as a keeper of the balance between the interests of the parties and the protection of the public interest through the application of the principles of prudence and compliance with laws and regulations.

CONCLUSION

Based on the results of the analysis that has been described, it can be concluded that first, PPJB made before a notary on land with an incomplete basis of rights can basically still be declared valid and binding on the parties as long as it meets the requirements for the validity of the agreement, especially the agreement of the parties, competence, clarity of object, and halal cause. The incompleteness of the basis of rights affects the certainty of the implementation of the agreement and the risk of disputes, not necessarily aborting the validity of the PPJB, as long as the seller has an initial basis of control that can be accounted for and the parties are aware of the condition. PPJB in this case is positioned as a preliminary agreement that gives birth to the rights and obligations of the obligate and does not directly transfer the rights to the land.

Second, the notary as the general official of the maker of the authentic deed has the responsibility to act honestly, thoroughly, and impartially in the preparation of the PPJB deed, including conducting a reasonableness check on the basis of rights submitted by the seller and providing adequate explanations of legal conditions and risks to the parties. Notaries are not burdened with the obligation to ensure the veracity of land ownership, but can be held to civil liability if proven to be seriously negligent, act beyond their authority, or actively assist in the occurrence of unlawful acts. The role of a notary who is carried out professionally and with integrity will contribute significantly in providing legal protection and preventing PPJB disputes in the future.

SUGGESTIONS

Based on this conclusion, the author suggests: first, that the parties who will carry out land purchase and sale transactions through PPJB be more careful in checking the status of the basis of rights and do not necessarily rely on the existence of the deed as an absolute guarantee. Second, for notaries to improve the application of the principle of prudence by tightening document checks, including clear clauses regarding the conditions of the basis of rights and risk sharing, and suggesting a safer payment mechanism for buyers. Third, for lawmakers to consider the preparation of more explicit regulations regarding PPJB in laws and regulations in the field of land and consumer protection, so that the legal position of PPJB and protection for the parties becomes clearer and uniform in practice.

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