

The Existence Of The Parties' Signatures In The Land Sale And Purchase Binding Agreement With Notary Deed Numbering

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Abstract : A notary is a public official who is authorized by the state to make authentic deeds whose actions must comply with statutory regulations and Article 1868 of the Civil Code. In making the deed, it must be guided by article 38 UUJN and article 1868 of the Civil Code. The aim of this research is firstly, to analyze the existence of the signatures of the parties in the land sale and purchase binding agreement by notarial deed numbering, and secondly, to analyze the legal protection of the notary and the parties after signing the land sale and purchase binding agreement deed but the certificate has not been checked for the deed numbering.

The research method used is normative juridical approach with concepts and laws and regulations. The results of the research and discussion show that: First, the existence of the signatures of the parties in the land sale and purchase binding agreement and the numbering of the notarial deed cannot be separated because after the deed of the sale and purchase binding agreement is made and the BPHTB is paid, it must be read by the notary to the applicant and immediately signed by the parties and the notary are simultaneously numbering the deed because it affects the authenticity of a deed, and if this is not done simultaneously then the authentic power of a deed will be degraded. Second, legal protection for the notary and the parties after signing the deed of the agreement binding the sale and purchase of land but the numbering of the certificate has not been checked, for the seller the form of protection is to ask for a down payment associated with the cancellation of the deed if the buyer defaults, while the form of protection for the buyer is the implementation of the achievement and leveraging if it has been paid off and has absolute power of attorney, this is feared by the seller for breaking his promise, while the form of notary protection is guided by article 66 UUJN.

Keywords: Existence, Signature, Deed Numbering

1. Introduction

There is a lot of community land, apart from those that have been certified, there are also those that have not been certified, proof of ownership is usually only in the form of a letter c, inherited land whose inheritance rights have not been registered, and so on. So it takes quite a long time to change the status and history of land, but because of the different needs of human life, especially due to economic pressures, the process of transferring rights or buying and selling is still carried out. The process of transferring rights is usually carried out before a notary who is bound by a binding sale and purchase agreement. The validity of the deed of sale and purchase agreement is still doubted by some people. To explore this problem the author uses a theoretical framework.

A notary is a public official who has the right to make authentic deeds and other authorities as stated in the Law on the Position of Notaries. The notary has the right to certify the signature and determine the exact date of the underwritten letter by registering it in a special book. Basically¹, if there are two or more parties who want to carry out an agreement in the form of buying and selling, renting, and as appropriate, the parties who want to carry out something that has a legal connection will initially look for a notary, where in this case the notary has the function and role of mediator in making agreements.

Notary as a Public Official is a necessity in connection with the definition of an authentic deed given in Article 1868 of the Civil Code, namely a deed made in a form determined by law by or in the presence of public officials who have the authority to do so, at the place where the deed is made. It is made. The notary is appointed to serve the interests of people who carry out legal actions, to be present as a witness to the legal actions they carry out and to write down what is witnessed. Notaries as public officials who are appointed and dismissed by the government are given the authority and obligation to be able to provide services to the public in helping to make agreements, making deeds and ratifying them, which is also the authority of the notary.

The general authority of a notary is regulated in Article 15 UUJN, namely that a notary has the authority to make authentic deeds regarding all deeds, agreements and provisions that are required by statutory regulations and/or desired by interested parties to be stated in an authentic deed, guarantee the certainty of the date of making the deed, store the deed, provide grosses, copies and quotations of deeds, all as long as the preparation of the deeds is not assigned or excluded to other officials or other people as determined by law.

Based on the explanation of Article 15 UUJN above, a Notary has the authority to make authentic deeds relating to all acts, agreements and provisions required by law. The authority to make an authentic deed means that the notary's duty is to formulate the wishes of the parties as stated in the authentic deed, taking into account the applicable legal regulations. The special authority of a notary is regulated in Article 15 paragraph 2, namely validating signatures and determining the date of private letters by registering them in a special book, recording private letters by registering them in a special book, making copies of original private letters in the form of copies. which contains the description as written and depicted in the letter concerned, validates the suitability of the photocopy with the original letter, provides legal counseling in relation to making deeds, makes deeds relating to land, and makes auction minutes. Notaries also have special authority as regulated in Article 51 UUJN, namely to correct writing errors or typographical errors contained in the Minutes of a signed deed, by making a Correction Minutes and a copy of the Correction Minutes and are obliged to deliver them to the parties.

A Notarial Deed must meet the formal requirements in its formation, the legal consequence if the formal requirements are not fulfilled, either in part or in

¹ Whenahyu Teguh Puspa, Tanggung jawab notaris terhadap kebenaran akta dibawah tangan yang dilegalisasinotaris oleh, jurnal repertorium vol.III no.2 Juli-Desember 2016, hal, 157

whole as required by Article 38 UUJN-P, is that the Notarial Deed only has the power of proof as a private writing, if signed by the parties as well. confirmed in Article 1869 of the Civil Code. By referring to the term Sjaifurrachman in one of his writings, a Notary's deed which only has the power of proof as written privately is called a deed degradation.

Article 38 (1) letter a UUJN-P states that the beginning of each Deed or head of the Deed contains a. title of Deed, b. Deed number, c. hour, day, date, month, and year; and D. full name and position of the Notary. One important aspect of the beginning of a Notarial deed is that it must include the deed number which is made in Arabic numerals, written after writing the title of the deed followed by numbering and dating the deed. Numbering and dating of deeds is said to be important because on the one hand it is related to the authenticity of the Notary's deed, and on the other hand it is administrative because it is related to the Notary's obligation to daily record all deeds made by or in his presence.

The form and nature of the deed as described in Article 38 UUJN-P must receive serious attention from the Notary when making the deed so that the deed can be said to be an authentic deed. Therefore, when a deed is made, it must be able to guarantee certainty of time as one of the conditions. The certainty of the time when a deed is made is fundamental for the parties to determine or determine when an agreement or legal act was made and agreed upon between the parties making it. The certainty of time will be clearer, if at that time the Notarial deed is also accompanied by numbering or in other words a delay in numbering the deed will have implications for delaying the time or date the deed was made.

The construction of the sentence which mentions the day and date as mentioned at the beginning of this deed, refers to the initial part/head of the Deed of Sale and Purchase Agreement which has been previously signed but has not been given a deed number and date by a Notary. The sentence formulation at the beginning/head of the deed can be made as follows Sale and purchase binding agreement Number : On this day -----date-----month-----year----At time -----Western Indonesian Time (WIB) .

The number and date given at the beginning/head of the Sale and Purchase Agreement deed are made the same as the date it is read because the words immediately in the dictum are interpreted at the time the number and date are also given.

The question is what is the legality of the sale and purchase agreement signed by the parties even though they are still taking care of the tax on the acquisition of land rights in accordance with the down payment given, with the phrase - "Immediately after this deed I, the Notary, read it to the presenters and witnesses, then "This deed is signed by the presenter, witnesses and me, the Notary,"

Based on the background description stated above, the problems that will be raised in writing this thesis are as follows:

- A. What is the existence of the signatures of the parties in the land sale and purchase agreement with the notarial deed numbering?

- B. What is the legal protection for the notary and the parties after signing the deed of land sale and purchase agreement but the deed numbering has not been checked?

2. Method

Based on the problems researched by the author, the author uses normative legal research methods. by using a statutory regulatory approach and a conceptual approach. departs from concepts and doctrines that develop in legal science.

The sources of legal materials used in this research consist of primary legal materials, secondary legal materials and tertiary legal materials², which are described as follows:

A. Primary legal materials

Primary legal materials are legal materials that have binding legal force³. In this case, the primary legal materials will be:

- 1) Law Number 5 of 1960 concerning Basic Agrarian provisions;
- 2) Civil Code;
- 3) Republic of Indonesia Government Regulation Number 24 of 1997 concerning Land Registration
- 4) Law Number 30 of 2004 concerning Notary Positions
- 5) Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions.

B. Secondary legal materials

Secondary legal materials are materials that are closely related to primary legal materials, and can help analyze and understand primary ⁴legal materials. Secondary legal materials in this research are books, literature, papers, research results, articles and other scientific works related to this research, such as:

- 1) Research results;
- 2) Scientific work of legal experts.
- 3) Law reading books or textbooks; including books by Mr. Suratman, Mr. Sunardi. Nafisah's mother.
- 4) Journals;

C. Tertiary legal materials

Tertiary legal materials are materials that provide information about primary legal materials and secondary legal materials. Tertiary legal materials in this research consist of:

- 1) Indonesia Dictionary.
- 2) English-Indonesian dictionary.

3. Discussion

A. Existence of Signatures of the Parties in the Land Sale and Purchase Agreement with Notarial Deed Numbering.

The position of a notary as a public official who makes authentic deeds is confirmed in Article 1 Paragraph (1) UUJN which states that: "A notary is a

² Bambang Waluyo, *ibid*, hal. 18.

³ Suratman dan Philips Dillah, *Metode Penelitian Hukum*, Bandung: Alfabeta, 2014, hal. 67

⁴ Suratman dan Philips Dillah, *Metode Penelitian Hukum*, Bandung: Alfabeta, 2014, hal. 67

public official who has the authority to make authentic deeds and other authorities as intended in this law." From the sound of the article, it can be seen that the public official referred to in this case is a notary. The authenticity of a notarial deed comes from Article 1 Paragraph 1 UUJN, where the notary is made a "Public Official" so that the deed made by the notary in that position acquires the character of an authentic deed. In other words, a deed made by a notary has authentic characteristics, not because of the stipulation of law, but because the deed was made "by" or "in the presence of" a public official, as required in Article 1868 of the Civil Code.

Here, a notary is not only required to be able and able to adjust known conditions or the wishes of interested parties to be expressed in a deed made "by" or "before", but must also know and understand matters relating to the substance stated and regulated therein. by law and what things must be fulfilled in accordance with the provisions of statutory regulations.

Meanwhile, the explanation of the authority of a notary as a public official is confirmed in Article 15 Paragraph (1) UUJN which states that a notary has the authority to make authentic deeds regarding all acts, agreements and provisions required by statutory regulations and/or desired by interested parties. to be stated in an authentic deed, guarantee the certainty of the date the deed was made, store the deed, provide grosses, copies and quotations of the deed, all of this as long as the making of the deed is not also assigned or excluded to another official or other person as determined by law.

The authoritative terminology in UUJN and UUNJP is necessary because it relates to the provisions of Article 1868 of the Civil Code which states that an authentic deed is one that is made in the form determined by law "by" or "in the presence of" a public official authorized to do so, at the place where the deed is. made.

In article 15 UUJN, the authority of a notary is to make authentic deeds regarding deeds, agreements and provisions required by statutory regulations and/or which are desired by those interested to be stated in authentic deeds, guarantee the certainty of the date of making the deed, store the deed, provide grosse , copies, and during the making of the deeds are not also assigned or excluded to other officials or other people as determined by law.

Apart from that, UUJN Article 15 paragraph 2 regulates the special authority of notaries to carry out certain legal actions, such as:

- 1) Validate the signature and determine the exact date of the letter under hand by registering it in a special book;
- 2) Book documents privately by registering them in a special book;
- 3) Make copies of original letters under hand in the form of copies containing descriptions as written and depicted in the letter concerned;
- 4) Validate the suitability of the photocopy with the original letter;
- 5) Providing legal counseling regarding the preparation of deeds;
- 6) Make deeds related to land;
- 7) Make a deed of auction minutes

In point 6 above it is clear that a Notary has the authority to make deeds related to land, for example making a PPJB deed (land sale and purchase agreement). However, it must be made in accordance with applicable regulations.

When making a deed, a notary must make it in the form determined by law in order to obtain authenticity in the deed made by the notary. In the UUJN, the regulation of the form and nature of a notarial deed is regulated in Article 38 to Article 65, but specifically regarding the form of the deed it is regulated in Article 38 Paragraph 1 to Paragraph 5. Article 38 entitled "Form and Nature of the Deed" regulates the framework of a notarial deed which requires that a notarial deed must have 1) head of the deed, 2) body of the deed 3) end of the deed

In Article 38 UUJN it reads:

- 1) Each Deed consists of:
 - a. Beginning of the Deed or head of the Deed;
 - b. Deed Body; And
 - c. End or closing of the Deed.
- 2) The beginning of the Deed or head of the Deed contains:
 - a. Deed Title;
 - b. Deed number;
 - c. Hour, day, date, month and year; And
 - d. Full name and position of Notary.
- 3) The Deed Body contains:
 - a. Full name, place and date of birth, nationality, occupation, title, position, place of residence of the presenters and/or the person they represent;
 - b. Information regarding the acting position of the facing person;
 - c. The contents of the deed constitute the wishes and desires of the interested parties; And
 - d. Full name, place and date of birth, as well as occupation, title, position and residence of each identifying witness.
- 4) The end or closing of the Deed contains:
 - a. Description of the reading of the Deed as intended in Article 16 paragraph (1) letter m or Article 16 paragraph (7);
 - b. Description of the signing and place of signing or translation of the Deed, if any;
 - c. Full name, place and date of birth, occupation, title, position and residence of each witness to the Deed; And
 - d. A description of the absence of changes that occurred in the making of the Deed or a description of any changes which may be in the form of additions, deletions or replacements and the number of changes.

If interpreted literally, a deed is a specially made writing which is made in such a way as to become a valid and accurate piece of evidence, called a deed. A deed is a special piece of writing that is made to become written evidence⁵

⁵ Komar Andasasmita, *Notaris I*, Sumur Bandung, Bandung, 1981, hal. 47.

A. Pitlo defines a deed as a signed document, made to be used as evidence, and to be used by the person, for whose benefit the letter was made.⁶

Article 1868 of the Civil Code regulates the definition of an authentic deed, namely: "An authentic deed is a deed which, in a form determined by law, is made by or in the presence of public officials who have authority for that purpose in the place where the deed is made." that's what he did." If a deed is to obtain authentic status, which is contained in a notarial deed, then according to Article 1868 of the Civil Code, the deed in question must fulfill the following requirements.⁷

- 1) The deed must be made by or in the presence of a public official and therefore in connection with notarial deeds regarding agreements and decrees.
- 2) The deed must be in the form determined by law, so if it does not comply with what is determined by law, it can be threatened with losing its authenticity.

A Notarial Deed as an authentic deed has 3 (three) evidentiary powers, namely as follows⁸

- 1) The Power of Outward Proof

The external ability of a Notarial deed is the ability of the deed itself to prove its validity as an authentic deed. If seen from the outside (its birth) as an authentic deed and in accordance with the legal rules that have been determined regarding the requirements for an authentic deed, then the deed is valid as an authentic deed, until proven otherwise, meaning until someone proves that the deed is not an authentic deed in appearance. In this case, the burden of proof is on the party who denies the authenticity of the Notary's deed. The parameters for determining a Notarial deed as an authentic deed are the signature of the Notary concerned, both on the minutes and the copy as well as the beginning of the deed (starting from the title) to the end of the deed.

- 2) Formal Probative Power

The Notarial Deed must provide assurance that the events and facts mentioned in the deed were actually carried out by the Notary or explained by the parties present at the time stated in the deed in accordance with the procedures determined in making the deed. Formally, to prove the truth and certainty regarding the day, date, month, year, time of appearance, and the parties appearing, the initials and signatures of the parties/appearances, witnesses and Notaries, as well as proving what was seen, witnessed, heard by a Notary (in the official's deed/minute), and record the statements or statements of the parties/appearers (in the party's deed).

⁶ A. Pitlo, *Pembuktian dan Daluarsa*, Intermasa, Jakarta, 1986, hal. 52

⁷ Missariyani, *Akta Notaris Sebagai Alat Bukti Dalam Penyelesaian Perkara Perdata*, Legal Opinion, Vol. 4 No. 4, 2016, hal. 8.

⁸ Felix Christian Adriano, *Analisis Yuridis atas Turunnya Kekuatan Pembuktian Akta Notaris menurut UUJN No. 2 Tahun 2014 tentang Jabatan Notaris*, *Premise Law Journal*, Vol. 9 Tahun 2015, hal. 7 – 8.

3) Strength of Material Proof

Certainty regarding the material of a deed is very important, that what is stated in the deed is valid evidence for the parties who made the deed or those who received rights and is valid for the public, unless there is proof to the contrary (*tegenbewijs*). Information or statements outlined/contained in official deeds (or minutes), or statements of the parties given/delivered before the Notary and the parties must be assessed as correct. The words which are then stated/contained in the deed are valid as true or every person who comes to the Notary and whose statement is then stated/contained in the deed must be judged to have said those things correctly. If it turns out that the statements/statements of those present are not true, then this is the responsibility of the parties themselves. Notaries are apart of that kind of thing. In this way, the contents of the Notarial deed have the certainty of being true, becoming valid evidence for/between the parties and their heirs and recipients of their rights.

The third strength of an authentic deed made before or by a notary is the perfection of the position of a notarial deed as evidence in evidentiary law, especially in civil procedural law and has binding force for the parties involved in the deed.

However, several articles, namely article 16 paragraph (9), article 41, article 44, article 48, article 49, article 50, article 51, article 52 in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2014 2004 concerning the Position of a Notary regulates the degradation of the evidentiary power of an authentic deed to a private deed in the event of a violation of the obligations and procedures in terms of making a deed which have been determined in the statutory regulations relating to the obligation to read the deed to the audience, provisions on the anatomy of the deed, conditions presenters and witnesses, signing the deed, *renvoi* procedures.

Based on the descriptions of the evidentiary strength of a notarial deed, it can be said that the position of a notarial deed as perfect evidence, unless it can be proven that the deed is fake or violates the provisions referred to above. Thus, the judge must accept the notarial deed as perfect evidence in civil procedural law.

The form and nature of the deed as described in Article 38 UUJN-P must receive serious attention from the Notary when making the deed so that the deed can be said to be an authentic deed. Therefore, when a deed is made, it must be able to guarantee certainty of time as one of the conditions. The certainty of the time when a deed is made is fundamental for the parties to determine or determine when an agreement or legal act was made and agreed upon between the parties making it. The certainty of time will be clearer, if at that time the Notarial deed is also accompanied by numbering or in other words a delay in numbering the deed will have implications for delaying the time or date the deed was made.

The numbering and dating in the PPJB Deed are included in the framework of providing certainty on the date of making the deed as intended

in the provisions of article 15 paragraph (1) UUJN-P. This means an emphasis on the principle of legal certainty, more likely to maintain the written legal norms of existing positive law to provide legal protection for every citizen and for Notaries as Public Officials who carry out their positions in providing legal services to the community.

The authenticity of the PPJB Deed as part of the notarial deed is related to the procedure for making it, fulfilling the procedures and requirements in accordance with UUJN provisions. And before signing, the BPHTB tax is paid first according to the down payment given. In this way, to fulfill authenticity, especially the numbering and dating aspects of the PPJB Deed, the Notary can issue a copy of the Deed of Sale and Purchase Agreement (PPJB).

If the author examines it from the theoretical aspect of authority, in carrying out his office, the Notary receives authority that comes from the law, so the Notary's authority is attributive, meaning that the authority given by the law maker to the Notary as one of the implementers of government affairs in the field of civil law. The use of a Notary's authority in making an authentic deed must comply with the provisions stipulated in article 38 UUJN-P, which consist of (a) the beginning of the Deed or head of the Deed, (b) the body of the Deed and (c) the end or closing of the Deed.

Notaries as public officials are required to state at the beginning of the deed or head of the deed the correctness of the notarial deed which is chronologically logical and a legal fact and described as required in Article 38 paragraph (2) UUJN-P. Inclusion of a description of the facts in the head of the deed, by consolidating the facts and writing them at the beginning of the deed to fulfill the provisions of Article 38 UUJN-P. If this is not the case then the legal consequence is that the Notary's deed will lose its authenticity and only have the power of proof as a private deed if it is signed by the parties.

Article 38 paragraph (2) letters a and b UUJN-P requires that every Notarial deed be given a number for its issue or issuance by the Notary who made it. In this article and in other articles there are no provisions regarding the numbering of Notarial deeds, there are only a few Notarial habits that can be used as guidelines, namely (1) Notarial deeds must be numbered sequentially starting from number one and so on for each month, then every month. next repeated Back from number one. Deed numbers are written in Latin numbers starting from one digit, but some also use two digits.

The inclusion of the time/time on the deed is the time or momentum of the parties to appear before the Notary, and must be adjusted to the division of time zones in Indonesia and the location of the Notary. Furthermore, the Notary must guarantee the date of the deed, meaning that the date mentioned in the deed is the date the deed was formalized, that is, the deed was made, read by the Notary and signed by the witnesses present and the Notary. Therefore, this date cannot be different from the date the deed was inaugurated, so what is called *anti-dateren*", that is, giving a date other than the date of the inauguration (*verlijden*) of the deed, cannot be held. Certainty regarding this date sometimes means a lot, for example for an agreement

where a certain period of time is tied, especially if that period is calculated starting from the date of the deed in question.

This description means the numbering and dating of the Notarial deed according to the provisions of the UUJNP which is carried out by the Notary with the aim of ensuring the certainty of the day, date, month, year and facing time listed or mentioned at the beginning of the Notarial deed, as proof that the parties appeared and signed the deed on the day, date, month, year and time mentioned in the deed and all preparation procedures have been carried out in accordance with applicable legal regulations. Furthermore, the issue of numbering and dating of deeds is part of the anatomy of the deed as a whole so that this must be interpreted as a whole with other parts or the anatomy of the deed is a system that is integrated into one whole.

Thus, the existence of the signatures of the parties in the land sale and purchase agreement with notarial deed numbering. If the author analyzes it from the theory of authority and legal certainty, then a notary has the authority to make an authentic deed made in the presence or presence of a notary, in making it based on statutory regulations. invitation. After the deed is made in front of the parties on the day, date and year after that the notarial deed is read after they understand what the contents of the deed are, which are the wishes of the parties which have been converted by the notary into a deed, in the final sentence of the deed, article 38 paragraph 4 which states contains the signature statement with the phrase "Immediately after this deed I, the Notary, read it to the presenters and witnesses, then this deed is signed by the presenters, witnesses and I, the Notary," thus the meaning after it is signed is in The deed must immediately be numbered to show that the number, date and signature have been carried out in accordance with applicable legislation, this is in accordance with the certainty element of the deed. If this is done then the deed contains perfect evidence, both formal and material evidence.

- B. Legal protection for the notary and the parties after signing the deed of land sale and purchase agreement but the deed numbering has not been checked.

The PPJB Deed is a type of "partij deed", the deed contains the wishes of the parties, the promises of the parties as well as the rights and obligations of the parties, the deed contains various contents desired by the parties before a notary. A clause regarding the time period for fulfilling rights and obligations must be included in the PPJB deed, because uncertainty will arise for the parties in obtaining their rights and obligations. A deed will become a problem if one party does not fulfill its achievements or one party feels disadvantaged. This causes losses for the parties who have made and agreed to the deed that has been made, but in the course of the deed the agreement does not proceed according to the agreement of the parties who made it, there are conditions which result in an agreement having to end not in accordance with the initial agreement. There are several factors that result in the cancellation of the sale and purchase deed, namely the sale and purchase price agreed upon in the sale and purchase agreement is not paid by the buyer within the agreed time period;

the parties do not fulfill their obligations in paying taxes; and the land documents required for the process of transferring land rights (land sale and purchase before PPAT) have not been completed until the agreed time period. Therefore, there is legal protection for the parties to protect their interests and provide legal certainty in the PPJB deed.

PPJB can be classified as an obligatory agreement. An obligatory agreement is an agreement where the parties agree to bind themselves to hand over an object to another party⁹ Therefore, simply making a PPJB does not result in the transfer of ownership rights to an object from the seller to the buyer. This stage is only a consensual agreement and must be followed by a surrender agreement (levering).¹⁰

that is, the sale and purchase deed is signed in front of the Land Deed Official.

The buyer also has the main obligation to pay the price of what he has purchased, at the time and place as determined according to the relevant agreement/agreement with additional rules that if the parties do not specify this, payment must be made at the place at the time the object is delivered. The legal protection in the PPJB deed can be formulated by the prospective seller himself, usually in the form of requirements which are usually requested by the prospective seller himself.

Protection for buyers, apart from being carried out with conditions, must be followed by a request to grant an irrevocable power of attorney. What this means is that if the seller does not comply, the buyer can sue and ask for compensation in accordance with the agreement stipulated in the sale and purchase agreement.

PPJB is carried out before AJB if there are certain conditions that require carrying out this process. This PPJB practice is often used by developers who can function as a down payment from buyers. Therefore, attention must be paid to this PPJB, namely the object of the PPJB, the guarantee from the seller, the seller's obligations, the buyer's obligations, and the contents of the PPJB.

If the PPJB has been signed by all parties in the presence of a public official, the PPJB is included in the authentic deed, so that the position of the authentic deed is perfect, unless proven otherwise. Legal protection for the parties is seen from 2 (two) perspectives or points of view, namely legal protection by¹¹

a. Seller

In PPJB there are rights and obligations of sellers and buyers. As for examples that are practiced, for example, the PPJB requires the buyer to make payment of a certain amount of money within an agreed time period,

⁹ Arie S. Hutagalung, *Condominium dan Permasalahannya*, Depok: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2002, hal. 62. Dikutip melalui Arkie V.Y Tumbelaka, *Kajian Kontrak Baku dalam Perjanjian Pengikatan Jual Beli Satuan Rumah Susun dalam Perspektif Itikad Baik*, Jakarta: Penerbit Fakultas Hukum Magister Hukum Ekonomi Salemba, 2012, hal. 92

¹⁰ Ibid, hal. 95

¹¹ Ketut Ayu Lestari, I Nyoman Darmadha, *Wanprestasi Dalam Perjanjian Jual Beli Rumah Susun Melalui Pemesanan (Pre-Project Selling)** 2018-05-21, hal. 1-13

and is also associated with a cancellation requirement if this is not carried out in accordance with the provisions of the PPJB. The seller also has the obligation to hand over the object if the requirements in the PPJB have been implemented, so that later the buyer will sign the BAST (Minute of Handover) of the object.

b. Buyer

One form of legal protection for buyers in the PPJB is a request for an irrevocable power of attorney, that is, if the agreement in the PPJB is not fulfilled and/or not fulfilled by the seller, then because this results in losses for the buyer, he can submit a claim or request. compensation for this. The requirement that buyers usually request for protection is to request that the certificate or sign of ownership of the land be held by a third party who is usually a Notary or other party appointed and mutually agreed upon by the seller and buyer. Apart from that, another protection is an agreement granting power of attorney by the seller to the buyer which cannot be withdrawn if all the requirements have been fulfilled to carry out the sale and purchase, then the buyer can transfer rights even if the seller is not present at the signing of the sale and purchase deed.

Notary Legal Protection in Land Sale and Purchase Agreements

Buying and selling land rights is a legal act in the form of handing over ownership rights (forever) by the seller to the buyer, who at that time also hands over the price to the seller which results in the transfer of land ownership rights from the seller to the buyer within the scope of land law. national. Buying and selling land according to customary law is a legal act intended to transfer land rights from the seller (right holder) to the buyer by payment of a sum of money in cash and done clearly¹².

To ensure legal certainty and order in the sale and purchase of land rights, it is necessary to have formal requirements for sellers or owners of land rights. The formal requirements for the object of sale and purchase of land rights are proof of land ownership related to the land rights, and also related to the procedure for transferring land rights. The procedures for buying and selling land rights have been determined according to applicable provisions, namely Law no. 5 of 1960 concerning Basic Regulations on Agrarian Principles (State Gazette of 1960 No. 104, Supplement to State Gazette Number 2043) and Government Regulation no. 10 of 1961 which was amended by Government Regulation no. 24 of 1997 concerning Land Registration (State Gazette of 1997 Number 59, Supplement to State Gazette Number 3696).

The land sale and purchase agreement must be proven by a deed made by and before a public official, namely a notary. This is done to ensure legal certainty and order in the sale and purchase of land, the process of binding land sale and purchase agreements can only be carried out on land owned based on land rights, meaning land objects that are legalized with proof of ownership of

¹² Boedi Harsono, Menuju Penyempurnaan Hukum Tanah Nasional, Universitas Tri Sakti, Jakarta, 2002, hal. 134.

land rights. In this way, it can be seen that the seller is a person or party who has the right and legal right to sell.

The process of binding a land sale and purchase agreement (PPJB) that has been registered or has been certified has a low legal risk, because the ownership rights and legal subject matter of the seller are clear, however for land whose ownership rights have not been registered or have not been certified, there is a significant legal risk and vulnerability. higher. Therefore, regarding objects of sale and purchase of land rights that have not been registered or have not been certified, greater emphasis is placed on carefulness and prudence, so that it is clear and clear that the seller is the legal party and has the right to sell. This can be seen from the formal requirements attached to the basis of rights. On the other hand, the mechanisms and procedures for buying and selling land are also different from land rights that have been registered or have a certificate¹³

Notaries are the only public officials appointed by the state who do not receive salaries and pensions like other state servants. Therefore, it is appropriate for the state to respect and uphold the natural rights of individual notaries by paying attention to the position they have held and its risks in order to maintain the continuity of the implementation of the position¹⁴.

Legal protection comes from two syllables, namely protection and law. Protection is the thing or act of protecting. Meanwhile, law is a rule to safeguard the interests of all parties.¹⁵ According to Wirjono Prodjodikoro in his book Legal protection is a protection effort given to legal subjects, regarding what they can do to defend or protect the interests and rights of the legal subject.¹⁶

Legal protection for notaries is a progressive effort from the state through the government to provide recognition and protection, both preventive and repressive, to the honor and dignity of notaries in a fair manner, both as office holders and as individual citizens by safeguarding, preserving and saving the honor of the notary's office and notary's individual rights.¹⁷

The legal protection provided to Notary (Position) is regulated in Article 66 UUJNP. Article 66 of the UUJNP regulates the establishment of a Notary Honorary Council (MKN) consisting of representatives of Notaries, the government and academics, which functions as a legal protection institution for Notary Positions related to deeds made by or before them. The existence of MKN is expected to provide optimal legal contributions for Notary institutions in carrying out their duties as legal protection institutions. Regarding the regulation of the position and form of legal protection of the MKN, this has not actually been regulated explicitly in the UUJN or in other forms of statutory regulations.

¹³ Giovanni Rondonuwu, *Kepastian Hukum Peralihan Hak Atas Tanah Melalui Jual Beli Berdasarkan Pp Nomor 24 Tahun 1997 Tentang Pendaftaran Tanah*, *Lex Privatum Journal*, Vol. V, No. 4, 2017, hal. 119.

¹⁴ Bachrudin, *Hukum Kenotariatan, Perlindungan Hukum dan Jaminan Bgi Notaris Sebagai Pejabat Umum Dan Warga Negara*, Yogyakarta: Thema Publishing, hal.33

¹⁵ DepDikBud-Balai Pustaka, *Kamus Besar Bahasa Indonesia*, Edisi Ketiga, Jakarta: Balai Pustaka, 2001, hal. 674

¹⁶ Wirjono Prodjodikoro, *Asas-Asas*, Op.Cit, hal. 20

¹⁷ *Ibid*, hal. 145.

The position of the MKN in providing legal protection for Notaries is that of an independent institution, because in this case the existence of the MKN is not part of the government that appointed it. MKN, in exercising its authority to issue a decision, is not influenced by other parties or institutions, so that in this case the decision made by MKN cannot be contested.

If there is an error in the notarial deed of the parties, they are obliged to prove it. UUJNP states that if a Notary is suspected of being involved in a legal problem related to a deed made by or before him, then the investigator, public prosecutor or judge, when summoning the Notary, must first obtain approval from the MKN. As stated in Article 66 paragraph (1) UUJNP, namely: For the purposes of the judicial process, investigators, public prosecutors, or judges with the approval of the Notary Honorary Council have the authority to: a) take photocopies of the Minutes of the Deed and/or letters attached to the Minutes of the Deed or Protocol Notary in the Notary's custody; and b) summon the Notary to attend an examination relating to the Notarial Deed or Protocol which is in the Notary's custody.¹⁸

The MKN's position in providing legal protection for Notaries for the deeds they make regarding the civil liability of Notaries is an independent institution, because in this case the existence of the MKN is not a sub-part of the government that appointed it. MKN, in exercising its authority to issue a decision, is not influenced by other parties or institutions, so that in this case the decision made by MKN cannot be contested.¹⁹

In contrast to protection for prospective sellers, protection for buyers is usually carried out with conditions and is also followed by a request to grant an irrevocable power of attorney. The aim is that if the seller does not comply, the buyer can sue and ask for compensation in accordance with the agreement stipulated in the sales and purchase agreement. Thus, legal protection can be provided to all parties in the PPJB. Apart from legal protection, the PPJB deed is also based on Article 1338 of the Civil Code which is based on freedom of contract, as well as the good intentions of the parties to fulfill the agreement that has been made.

The legal steps that can be taken by one of the parties if the other party is in default of the PPJB have been regulated according to the provisions on compensation in the Civil Code. Basically, they are not much different between compensation caused by a default or because of an act that violates the law, only in the case of a violation. The law recognizes the existence of immaterial lawsuits. This immaterial compensation cannot be assessed and the Civil Code also does not determine the amount of compensation that must be given for losses arising from unlawful acts.

¹⁸ Irene Dwi Enggarwati, *Pertanggungjawaban Pidana Dan Perlindungan Hukum Bagi Notaris Yang Diperiksa Oleh Penyidik Dalam Tindak Pidana Keterangan Palsu Pada Akta Otentik*, Tesis, Magister Kenotariatan Fakultas Hukum Universitas Brawijaya, Malang, 2015, hal. 17.

¹⁹ Irene Dwi Enggarwati, *Pertanggungjawaban Pidana Dan Perlindungan Hukum Bagi Notaris Yang Diperiksa Oleh Penyidik Dalam Tindak Pidana Keterangan Palsu Pada Akta Otentik*, Tesis, Magister Kenotariatan Fakultas Hukum Universitas Brawijaya, Malang, 2015, hal. 18.

So, according to the author, legal protection is all activities or actions that can provide protection for the fulfillment of rights and provide legal certainty for all legal subjects in accordance with applicable legal provisions and statutory regulations.

Checks are carried out with the aim of providing guarantees and legal protection for the rights of citizens to obtain, own and enjoy property rights to land. Every transfer of land rights through sale and purchase needs to be proven by a deed made by a Land Deed Official and a notary or also abbreviated as PPAT/notary. The PPAT/notary is obliged to check the certificate first to avoid land disputes that will occur in the future.

The process of making a land sale and purchase agreement deed through a notary is in accordance with legal provisions, according to article 1 of Government Regulation number 37 of 1998, who is authorized to make land sale and purchase agreement deeds. Before making a deed of agreement for the sale and purchase of the land, the notary must first submit a request for checking the certificate to the land office.

If the certificate has been declared clean in accordance with the land book registers, the notary will draw up a deed of land sale and purchase agreement. Based on the theory of legal protection, the importance of making a sale and purchase binding deed is a form of legal protection for land buyers. Apart from that, based on the theory of legal certainty, by making a sale and purchase agreement deed by a notary, it will guarantee legal certainty for both parties so that the land sale and purchase agreement agreement can be implemented. According to the theory of authority, a notary is an extension of the land office in making deeds of land sale and purchase agreements. Based on the theory of justice, notaries carry out their duties according to their position and are impartial and help the public at affordable costs.

In practice, notaries are often asked to make a deed of agreement for the sale and purchase of land with the object of a plot of land that has been certified and for certain reasons only a sale and purchase agreement or other legal action is made with a notarial deed whose object is land that has been certified, in this case is it necessary to check? on the certificate.

Normatively, the authority to carry out inspections or check certificates rests with the PPAT, not the Notary, this is in accordance with the regulations as stated in:

1. Regulation of the head of the national land agency number 1 of 2006 concerning provisions for implementing government regulation number 37 of 1998 concerning regulations on the position of land deed officials - article 54 paragraph (1):
"Before making a deed regarding a legal act as intended in article 2 letters a to g, the ppap is obliged to check the suitability/validity of the certificate and other records at the local land office by explaining its aims and objectives."
2. Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency number 3 of 1997 concerning provisions for implementing

government regulation number 24 of 1997 concerning land registration - article 97:

- a. Before carrying out a deed regarding the transfer or encumbrance of land rights or ownership rights over apartment units, the PPAT must first carry out an inspection at the land office regarding the suitability of the certificate of land rights or ownership rights over the apartment unit in question with the lists available at the office. local land certificate by showing the original certificate.
- b. Examination of the certificate as intended in paragraph (1) is carried out for every deed made by the Ppat, provided that for the making of deeds of transfer or encumbrance of rights to parts of master rights land in the context of marketing development results by real estate companies, industrial areas and similar developments it is sufficient The master land certificate is examined once, unless the relevant ppat deems it necessary to re-examine the certificate.

Thus, legal protection for the notary and the parties after signing the deed of land sale and purchase agreement but the deed numbering has not been checked. Legal protection for sellers requires buyers to pay a certain amount of money within an agreed time period, and is also linked to the requirement of cancellation if this is not carried out in accordance with PPJB provisions. The seller also has the obligation to hand over the object if the requirements in the PPJB have been implemented, so that later the buyer will sign the BAST (Minute of Handover) of the object. And protection for buyers. One form of legal protection for buyers in the PPJB is a request for the granting of an irrevocable power of attorney, namely if the agreement in the PPJB is not fulfilled and/or is not fulfilled by the seller, then because this results in losses for the buyer, he can submit a claim or request compensation for this matter. Meanwhile, the form of protection for notaries is based on article 66 of the UUJN, namely if someone thinks the deed is wrong then the form of protection is that those who say it is wrong must prove where the error lies or reverse proof. Apart from that, every request for a photocopy, summoning a notary, as a form of protection must be approved. MKN is in accordance with article 66 UUJN. The correlation between checking certificates and numbering is not within the authority of the notary, in other words, it is permissible to provide numbering in the PPJB before checking. Apart from that, checking certificates is the authority of the PPAT and apart from that PPJB is not a transfer of land rights, only a preliminary agreement, this is in accordance with the Regulation of the head of the National Land Agency number 1 of 2006 concerning provisions for the implementation of government regulation number 37 of 1998 concerning regulations on the position of officials who make land deeds. – article 54 paragraph (1) and Regulation of the state minister of agrarian affairs/head of the national land agency number 3 of 1997 concerning provisions for implementing government regulation number 24 of 1997 concerning land registration – article 97. However, as a matter of caution, a notary must carry out checks, it is not an obligation Do a check for fear that there will be problems in the future.

4. Conclusion

- A. Existence of signatures of the parties in the land sale and purchase agreement with notarial deed numbering.

Thus, the existence of the signatures of the parties in the land sale and purchase agreement with notarial deed numbering. If the author analyzes it from the theory of authority and legal certainty, then a notary has the authority to make an authentic deed made in the presence or presence of a notary, in making it based on statutory regulations. invitation, and BPHTB has been paid. Then, after the deed has been made in front of the parties on the day, date and year after that, the notarial deed is read after they understand what the contents of the deed are, which are the wishes of the parties which have been converted by the notary into a deed, then in the final sentence of the deed, article 38 paragraph 4 which contains about signing with the phrase "Immediately after this deed I, the Notary, read it to the presenters and witnesses, then this deed is signed by the presenters, witnesses and me, the Notary," thus the meaning after it is signed signed, then the deed must immediately be numbered to show that the number, date and signing have been carried out in accordance with applicable legislation, this is in accordance with the certainty element of the deed. If this is done then the deed contains perfect evidence, both formal and material evidence. If it is not like that then the deed falls into a private deed.

- B. Legal protection for the notary and the parties after signing the deed of land sale and purchase agreement but the deed numbering has not been checked. Legal protection for sellers requires buyers to pay a certain amount of money within an agreed time period, and is also linked to the requirement of cancellation if this is not carried out in accordance with PPJB provisions. The seller also has the obligation to hand over the object if the requirements in the PPJB have been implemented, so that later the buyer will sign the BAST (Minute of Handover) of the object. And protection for buyers. One form of legal protection for buyers in the PPJB is a request for the granting of an irrevocable power of attorney, namely if the agreement in the PPJB is not fulfilled and/or is not fulfilled by the seller, then because this results in losses for the buyer, he can submit a claim or request compensation for this matter. Meanwhile, the form of protection for notaries is based on article 66 UUJN, namely if someone thinks the deed is wrong, then the form of protection is that those who say it is wrong must prove where the error is or reverse proof. Apart from that, every request for a photocopy, summoning a notary, as a form of protection must be provided. MKN approval in accordance with article 66 UUJN. The correlation between checking certificates and numbering is not within the authority of the notary, in other words, it is permissible to provide numbering in the PPJB before checking. Apart from that, checking certificates is the authority of the PPAT and apart from that PPJB is not a transfer of land rights, only a preliminary agreement, this is in accordance with the Regulation of the head of the National Land Agency number 1 of 2006 concerning provisions for the implementation of government regulation number 37 of 1998 concerning regulations on the position of officials who make land deeds. – article 54 paragraph (1) and Regulation of the state

minister of agrarian affairs/head of the national land agency number 3 of 1997 concerning provisions for implementing government regulation number 24 of 1997 concerning land registration – article 97. However, as a matter of caution, a notary must carry out checks, it is not an obligation Do a check for fear that there will be problems in the future..

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