



The Role of Notary in Sale and Purchase Binding Agreement (PPJB) System in Law Number 11 Year 2020 Regarding Job Creation

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Abstract. The purpose of this research is to describe and analyze the role of Notary in Sale and Purchase Binding Agreement System in Law Number 11 Year 2020 regarding Job Creation. The method used in this legal research normative method, where most of the literature mentions normative research in principle as doctrinal legal research or theoretical legal research. The notary in this case has a role to make PPJB in the PPJB system as referred to in Government Regulation Number 12 of 2021, besides the role of the Notary is to ensure that the PPJB as intended can be made after fulfilling the requirements for certainty over the status of land ownership, the agreed terms, PBG, Availability of infrastructure, facilities, and public utilities and construction of at least 20% (twenty percent). The legal consequence of making PPJB in the PPJB System Government Regulation Number 12 of 2021 is not made before a Notary is that the PPJB will only be categorized as an underhand deed, when a deed is only made under the hand then the deed does not provide perfect evidence.

Keywords: Sale and Purchase Binding Agreement · Notary · Job Creation

1 Introduction

In the lux edition of the Big Indonesian Dictionary, the word agrarian is given the meaning of agricultural affairs or agricultural land, land ownership affairs [2]. Ager is the Latin form of agrarian which can be interpreted as a plot of land or land, where in this case agrarian has the meaning of cultivation, rice fields, agriculture [3]. Land itself is a necessity and a vital need for mankind [4].

Although in this case the notion of agrarian is not explicitly written or included in Law Number 5 of 1960 concerning Basic Regulations on Agraria (UUPA) but a Boedi Harsono explained that from what was stated in the preamble, the articles and explanations could be it can be concluded that the agrarian definition used in the agrarian law in the UUPA uses a broad agrarian definition, which includes earth, water and the natural resources contained therein [5]. Where related to this Article 1 (2) explains that “The entire earth, water and space, including the natural resources contained therein within the territory of the Republic of Indonesia as a gift from God Almighty, are the earth, water and space of the Indonesian people and constitute national wealth.”

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A. Endah Kusumaningrum et al. (Eds.): ICLEH 2022, ASSEHR 723, pp. 42–51, 2023.

https://doi.org/10.2991/978-2-38476-024-4_6

Indonesia as a sovereign State is indeed the highest authority over the control of the earth, water, and natural resources contained therein with the mandate that such control is used for the greatest prosperity of the people, where this is regulated in the provisions of Article 33 paragraph (3) of the State Constitution. Republic of Indonesia Year 1945. The provisions referred to are the basis or basis of the right to control the State in the Law of the Republic of Indonesia Number 5 of 1960 concerning the Basic Regulation of Agrarian Principles (UUPA). Where as described in Article 2 of the UUPA, the authority in question includes:

1. Regulate and administer the allocation, use, inventory and maintenance of the earth, water and space;
2. Define and regulate legal relations between people with earth, water, and space;
3. Define and regulate legal relationships between people and legal actions concerning the earth, water, and space.

Where legal certainty and legal protection of ownership of land rights are mandated in Article 19 (1) of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles which was followed up by implementing regulations namely Government Regulation Number 10 of 1961 which was later revoked and replaced with Government Regulation Number 24 of 1997 concerning Land Registration.

Land rights are derived from the state's right to control over land as described in Article 4 (1) of the UUPA where the land rights can be given to and owned by people, either alone or together with other people and legal entities. Article 4 (2) of the BAL, the rights to land as referred to above give the authority to use the land in question as well as the body of the earth and water and the space above it, only needed for interests directly related to the use of the land within the limits according to the law. this law and other higher laws. In Article 16 of the UUPA, there are several types of land rights, and one of them is property rights. Property rights are hereditary, strongest and fullest rights that people can have on land [6]. Property rights are also the right to enjoy the use of an object freely and to intend to be free of that object, with full sovereignty as long as it does not conflict with laws or general regulations stipulated by a power that has the right to determine it, and does not interfere with the rights of others [7]. As written in Article 21 of the UUPA, only Indonesian citizens can have property rights, but the government has determined legal entities that can have ownership rights, namely banks established by the state, agricultural cooperative associations established under the Act.

Number 79 of 1958 (State Gazette of 1958 No. 139), religious bodies appointed by the Minister of Agriculture/Agrarian, after hearing the Minister of Religion, Social agencies appointed by the Minister of Agriculture/Agrarian, after hearing the Minister of Social Welfare [8].

Land registration is known in Government Regulation Number 24 of 1997 article 1 paragraph 1 as a series of activities carried out by the Government continuously, continuously and regularly, including collection, processing, bookkeeping, and presentation and maintenance of physical data and juridical data, in the form of maps and a list of land parcels and apartment units, including the issuance of a certificate of title for land parcels for which one land has rights and ownership rights over the apartment units as well as certain rights that encumber them.

The transfer of land rights can occur due to inheritance without a will and legal actions, namely the transfer of rights [9]. Before discussing further about the transfer of rights, it is necessary to first know about land registration, as written in Article 1 (1) Government Regulation Number 24 of 1997 concerning Land Registration, namely:

“A series of activities carried out by the Government continuously, continuously and regularly, including the collection, processing, bookkeeping, and presentation and maintenance of physical data and juridical data, in the form of maps and lists, regarding land parcels and apartment units, including granting of certificates of proof of rights for parcels of land that already have rights and ownership rights to flats as well as certain rights that are burdensome to them.”

As explained in Article 37 of PP 24 of 1997 concerning land registration, except for the transfer of rights through auction, it can only be registered if it is proven by a deed made by PPAT. In Article 1 (1) Government Regulation no. 37 of 1998 concerning Position Regulations for Land Deed Making Officials, it is stated that Land Deed Making Officials, hereinafter referred to as PPAT are public officials who are authorized to make authentic deeds regarding certain legal actions regarding land rights or Ownership Rights to Flat Units. PPAT has the main task of carrying out some land registration activities by making a deed as evidence that certain legal actions have been carried out regarding land rights or Property Rights to Flat Units, which will be used as the basis for registering changes in land registration data caused by the legal act [10]. Where the legal actions in question are as follows [11]:

1. Buy and sell;
2. Swap;
3. Grant;
4. Entry into the company (inbreng);
5. Shared rights;
6. Granting of Building Use Rights/Use Rights on Owned Land;
7. Granting Mortgage;
8. Granting power of attorney to impose mortgage rights.

In article 1457 of the Civil Code it is explained that buying and selling is an agreement in which one party binds himself to deliver an item, and the other party pays the promised price. Furthermore, the sale and purchase is considered to have taken place between the two parties after the parties have reached an agreement on the goods and their prices, even though the goods have not been delivered and the price has not been paid [12].

Efforts to increase investor interest in investing in Law Number 11 of 2020 concerning Job Creation in this Government Regulation are also seen from changes in strategic policies in regulations related to the imposition of sanctions. The government takes a policy to prioritize the imposition of administrative sanctions on every sectoral legislation with the exception of activities that have an impact on Health, Safety and Environment (K3L). The application of criminal sanctions is *ultimum remedium* which means that criminal sanctions are the last sanctions used in law enforcement [13].

As regulations related to ppjb are regulated in Article 50 of Law Number 11 of 2020 concerning Job Creation which states that several provisions in Law Number 1 of 2020

concerning Housing and Settlement Areas are amended and further regulated in Government Regulation Government Regulation Number 12 of 2021 concerning Amendment to Government Regulation Number 14 of 2016 concerning the Implementation of Housing and Settlement Areas.

In the general explanation of Government Regulation Number 12 of 2021 concerning Amendments to Government Regulation Number 14 of 2016 concerning Implementation of Housing and Settlement Areas which states that Law Number 11 of 2020 concerning Job Creation also provides protection to consumers through strengthening PPJB arrangements previously regulated in Ministerial Regulations are mandated to be regulated in this Government Regulation. There are 2 (two) main substances, namely Marketing and PPJB, each of which has requirements. The existence of these conditions aims to protect consumers and put a balance between development actors and prospective buyers which is further regulated in this regard in Article 1 (10) of Government Regulation Number 12 of 2021 concerning Amendments to Government Regulation Number 14 of 2016 concerning Implementation of Housing and Settlement Areas.

Pre-sale agreement system, hereinafter referred to as PPJB system, is a series of agreement processes between everyone and development actors in marketing activities as outlined in the preliminary sale and purchase agreement or sale and purchase binding agreement before signing the sale and purchase deed, which is further explained in Article 1 (11) Government Regulation Number 12 of 2021 concerning Amendments to Government Regulation Number 14 of 2016 concerning Implementation of Housing and Settlement Areas that the preliminary sale and purchase agreement or sale and purchase binding agreement, hereinafter referred to as PPJB, is an agreement between the development actors and each person to carry out the sale and purchase of houses or flats which can be carried out by the development actors prior to the construction of flats or in the process of construction for single houses and row houses made before a notary, so that due to the above background, The author conducted a study entitled "*The Role of Notary in Sale and Purchase Binding Agreement System In Law Number 11 Year 2020 regarding Job Creation.*"

2 Research Method

In legal research on "The Role of Notaries in the PPJB System in Law Number 11 of 2020 concerning Job Creation" the author uses legal research with a normative method, where most of the literature mentions normative research in principle as doctrinal legal research or theoretical legal research due to research normative focus on written studies, namely using secondary data such as using laws and regulations, court decisions, legal theories, legal principles, legal principles and can be in the form of scholarly works [14].

This approach used is a normative approach or a juridical approach, namely an approach that has prescriptive characteristics where it provides an assessment of something that is right or wrong, appropriate or inappropriate, thereby describing the law in abstracto or das sollen [15].

3 Findings and Discussion

1. The role of the Notary in the Sale and Purchase Binding Agreement (PPJB) System in Law Number 11 of 2020 concerning Job Creation.

As explained above that regulations related to PPJB are further regulated in Government Regulation Number 12 of 2021 concerning Amendments to Government Regulation Number 14 of 2016 concerning the Implementation of Housing and Settlement Areas that PPJB is made before a notary, where the notion of a Notary can be found in Law No. 2 of 2014 concerning Amendments to Law no. 30 of 2004 (UUJNP) concerning the position of a Notary Article 1 (1), namely “a public official who is authorized to make authentic deeds and has other authorities as referred to in this Law or based on other laws.” In his duties, a Notary must have a Notary protocol where according to UUJNP Article 1 (13) the Notary protocol is a collection of documents which are state archives that must be stored and maintained by a Notary in accordance with the provisions of the legislation. Where the Notary protocol consists of [16]:

- a. Minutes of the Deed;
- b. A register of deeds;
- c. A register of private deeds whose signing is done before a Notary or registered private deeds;
- d. The list of names of the appearers or klapper;
- e. Protest register book;
- f. A will register; and
- g. other register books that must be kept by a Notary based on the provisions of laws and regulations

Where the authority of a Notary can be found in Article 15 of the Notary Position Act, namely:

- a. Notaries are authorized to make authentic Deeds regarding all actions, agreements, and stipulations required by laws and regulations and/or desired by interested parties to be stated in authentic Deeds, guarantee the certainty of the date of making the Deed, keep the Deed, provide grosse, copies and a quote from the Deed, all of which are as long as the making of the Deed is not assigned or excluded to other officials or other people stipulated by law.
- b. In addition to the authority as referred to above, a Notary is also authorized to:
 - 1) Ratify the signature and determine the certainty of the date of the letter under the hand by registering it in a special book;
 - 2) Record the letter under the hand by registering in a special book;
 - 3) Make a copy of the original underhand letter in the form of a copy containing the description as written and described in the letter concerned;
 - 4) Validate the compatibility of the photocopy with the original letter;
 - 5) Provide legal counseling in connection with the making of the Deed;

- 6) Make a deed related to land; or
- 7) Make a Minutes of Auction Deed.

So from the explanation of the notary's understanding and authority as written above, it can be understood that PPJB is one of the elements in the PPJB System other than marketing as referred to in Article 22 A of Government Regulation Number 12 of 2021 concerning Amendments to Government Regulation Number 14 of 2016 concerning the Implementation of Housing and Settlement Areas are a deed that needs to be made with the intervention of a Notary, because Article 1 (11) of Government Regulation Number 12 of 2021 explicitly concerning Amendments to Government Regulation Number 14 of 2016 concerning Implementation of Housing and Settlement Areas explains that PPJB is made before a Notary.

The word "before" a notary can be interpreted as *partij* deed, namely a deed made before a notary or made before an official who is authorized to do so and the deed is made at the request of the interested parties, in the form of this deed the characteristic that can be found is the presence a comparison that explains the authority of the parties appearing to make the deed. Where in the Civil Code Article 1868 states that an authentic deed is a deed made in the form determined by law by or before a public official authorized for that at the place where the deed was made. Furthermore, the meaning of an authentic deed is also regulated in Article 285 of the *Reglement Tot Regeling Van Het Rechtswezen In De Gewesten Buiten Java En Madura (RBg.)* authorized at the place where the deed was made, is complete evidence between the parties and their descendants and those who have rights regarding what is contained therein and even about a mere statement; this last thing as long as the statement is directly related to what is the subject of the deed."

Deed is a letter that is signed and made with the main purpose as evidence, which is then used by the person for whom the letter was made [17]. In Article 1866 of the Civil Code it is explained that the means of proof include:

- a. Written evidence;
- b. Witness
- c. Conjecture
- d. Confession
- e. Swear

Where it is further explained in Article 1867 of the Civil Code that written evidence is carried out in authentic writing or in writing under the hand. In Article 1874 of the Civil Code it is explained that "What is considered to be written under the hand is a deed signed under the hand, letters, lists, household affairs and other writings made without the intercession of a public official." Furthermore, it is also explained in Law Number 5 of 1996 concerning the State Business Court Article 101 b, namely "Underhand deed, namely a letter made and signed by the parties concerned with the intention of being used as evidence regarding legal events or events that have occurred. listed in it."

In the general explanation of Law Number 30 of 2004 concerning the Position of Notary, it is explained that the authentic deed as the strongest and most complete evidence

has an important role in every legal relationship in people's lives. In various business relationships, activities in the fields of banking, land, social activities, and others, the need for written evidence in the form of authentic deeds is increasing in line with the growing demands for legal certainty in various economic and social relations, both at the national, regional, and international levels, as well as globally. Through an authentic deed that clearly defines rights and obligations, guarantees legal certainty, and at the same time it is hoped that disputes can be avoided. Although the dispute cannot be avoided, in the process of resolving the dispute, the authentic deed which is the strongest and most complete written evidence makes a real contribution to the settlement of cases cheaply and quickly.

Where the PPJB in the PPJB system in addition to needing to be made before a Notary also requires several other things, in Article 22 (3) Government Regulation Number 12 of 2021 concerning Amendments to Government Regulation Number 14 of 2016 concerning the Implementation of Housing and Settlement Areas explains that the PPJB system applies to single houses, row houses, and/or flats that are still under construction, marketing can be done.

The PPJB as intended can be made after fulfilling the certainty requirements for [18].

The PPJB as intended can be made after fulfilling the certainty requirements for:

- a. Land ownership status;
- b. The agreed terms;
- c. PBG; [19]
- d. Availability of Publik Infrastructure, Facilities and Utilities; and
- e. Revival of at least 20% (twenty percent)

The things that are agreed upon in this case at least consist of [20]:

- a. The condiciton of the House;
- b. Infrastructure, Facilities, and Public Utilities that become Marketing information;
- c. explanation to prospective buyers regarding PPJB cargo materials;
- d. status of land and/or buildings in terms of being collateral.

Meanwhile, the availability of infrastructure, facilities and public utilities as referred to in the above requirements is evidenced by [21]:

- a. construction of infrastructure, at least roads and rainwater/drainage channels;
- b. the location of the construction of the Facilities according to the designation; and
- c. statement letter from development actors regarding the availability of public utilities in the form of electricity and water sources.

The construction of housing at least 20% as referred to above is proven by:

- a. for single house or building series house at least 20% (twenty percent) of the total number of housing units and the availability of infrastructure, facilities and public utilities in a planned housing; or

- b. for Constructed Flats at least 20% (twenty percent) of the volume of construction of Flats that are being marketed.

PPJB made before the notary at least contains [22]:

- a. Identity of the parties;
- b. Description of PPJB object;
- c. House prices and payment procedures;
- d. Guarantee for development actors;
- e. Rights and obligations of the parties;
- f. Building handover time;
- g. Building maintenance;
- h. Building use;
- i. Transfer of rights;
- j. Cancellation and expiration of PPJB; and
- k. Dispute resolution.

Where related to fees and cancellations are explained in Article 22 L of Government Regulation Number 12 of 2021 concerning Amendments to Government Regulation Number 14 of 2016 concerning the Implementation of Housing and Settlement Areas, it mentions several things, namely:

- a. Development actors should not withdraw funds of more than 80% (eighty percent) to buyers before fulfilling PPJB requirements.
- b. In the event of cancellation of the purchase of the house after signing the PPJB due to the negligence of the developer, the payment that has been received must be returned to the buyer.
- c. In the event that the buyer has made a payment of a maximum of 10% (ten percent) of the transaction price, there is a cancellation of the purchase of the house after the signing of the PPJB due to the buyer's negligence, the entire payment becomes the rights of the developer.
- d. In the event that the payment has been made by the buyer for more than 10% (ten percent) of the transaction price, there is a cancellation of the purchase of the house after the signing of the PPJB due to the buyer's negligence, the developer has the right to deduct 10% (ten percent) of the transaction price.

So in this case, the Notary has a role to ensure that the requirements as written above can be met first at the time of signing or making PPJB.

Where in this case, if the purpose of making Government Regulation Number 12 of 2021 is to protect consumers and put a balance between development actors and prospective buyers as described in the general explanation of the government regulation, it would be better if the PPJB to be made is in the form of an authentic deed not a deed. under hand.

2. The legal consequences of making PPJB in the PPJB System Law Number 11 of 2020 concerning Job Creation is not made before a Notary

As explained above in Article 1874 of the Civil Code concerning the meaning of underhanded letters are deed signed underhand, letters, lists, household affairs letters and other writings made without the intercession of a public official. From this explanation, it can be understood that when it is not made before a notary, the PPJB will only be categorized as a private deed. In this case, when a deed is only made under the hand, the deed does not provide perfect evidence, because in Article 1870 of the Civil Code an authentic deed provides perfect evidence of what is contained in it.

However, an authentic deed does not provide perfect evidence of what is contained in it as mere narrative, unless what is said has a direct relationship with the main content of the deed. with the main content of the deed, then it can only be used as the beginning of proof in writing [23]. In this case, Habib Adji explained that the perfect proof in authentic can also be determined that anyone is bound by the related deed so long as it cannot be proven otherwise based on a court decision that has permanent legal force [24]. Judges no longer need to test the truth or in other words, an authentic deed has perfect proving power outwardly, both formally and materially [25].

Article 1875 of the Civil Code explains that when a written handwritten note that is acknowledged to be true by a person is brought before him or legally deemed to have been justified by him, it creates complete evidence such as an authentic deed for the people who signed it, the heirs and the other person. -people who get rights from them. Where when a person is faced with an underhand writing by the person who makes a claim against him, that person is obliged to admit or deny his signature expressly, where for his heirs or people who have rights from him, it is enough for them to explain that they do not acknowledge the writing or sign. the hand as the writing or signature of the person they represent [26]. The private deed only provides sufficient material evidence against the person for whom the statement was given, whereas against the other party the strength of the proof is dependent on the judge's judgment [27].

4 Conclusion

The notary in this case has a role to make PPJB in the PPJB system as referred to in Government Regulation Number 12 of 2021, besides the role of the Notary is to ensure that the PPJB as intended can be made after fulfilling the requirements for certainty over the status of land ownership, the agreed terms, PBG, Availability of infrastructure, facilities, and public utilities and construction of at least 20% (twenty percent), where the PPJB also at least contains the identity of the parties, description of the object of PPJB, house prices and payment procedures, guarantees for development actors, rights and obligations the parties, the time of the handover of the building, the maintenance of the building, the use of the building, the transfer of rights, the cancellation and expiration of the PPJB; and dispute resolution. The PPJB made before a Notary can be issued as an authentic Deed where the authentic Deed as the strongest and most complete evidence has an important role in every legal relationship in people's lives.

The legal consequence of making PPJB in the PPJB System Government Regulation Number 12 of 2021 is not made before a Notary is that the PPJB will only be categorized as an underhand deed, when a deed is only made under the hand then the deed does not provide perfect evidence.

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