

Juridical Review: Basis for Making a Land Sale Deed by a Notary in the Correlation of Land Administration Issues

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Abstract

This research aims to describe the Juridical Review: Basics for Making Land Sale Deeds by Notaries in the Correlation of Land Administration Issues. In this research, the normative legal research method is one where the study is based on legal materials from literature. The research specifications used are analytical descriptive. The legal material collection technique used in this research is a documentation technique which is carried out by inventorying and categorizing legal materials such as statutory regulations, literature, and other legal materials. The data analysis method used is qualitative analysis, namely data obtained directly according to facts in the field. The results of PPJB's research are the initial agreement made by the seller and buyer as an initial binding before the AJB is made before the PPAT. The basis for making the PPJB by the parties is that the new APPJB is an agreement because not all payments have been made, APPJB where the payment has been made in full, but the AJB cannot be made before the PPAT, because the sale and purchase process has not been completed, for example: The certificate is still in the process of certificate splitting, and in the process of merging as well as various other reasons why AJB cannot be created.

Keywords | *juridical review, basis for making land sale deeds, land administration.*

INTRODUCTION

The most common way to obtain land rights is by buying and selling between parties who want to buy the land and those who want to sell the land. This sale and purchase of land is a legal act which results in the right to the land being transferred to the person receiving the transfer as regulated in Article 1457 of the Civil Code which states, Sale and purchase is an agreement by which one party binds himself to hand over something. goods, and the other party to pay the promised price. Thus, the agreement creates rights and obligations for the parties who make it, in this case the seller and the buyer. In buying and selling land, it is usually carried out with an agreement commonly known as a sale and purchase agreement (R. Subekti and R. Tjitrosudibio, 2013).

An agreement creates rights and obligations between the parties. Rights give individuals enjoyment and freedom in carrying them out, while obligations are restrictions and burdens, so what stands out is the active aspect of the legal relationship, namely rights (Sudikno Mertokusumo, 2017). In an agreement, justice is also required between the parties, where justice is a constant and continuous will to give each person what is due to him. According to Article 1338 of the Civil Code, it is stated that all agreements are made by fulfilling the conditions determined by law for those who make them, meaning that all agreements bind those who make them to have the rights given to them by the agreement and are obliged to do the same. -things specified in the agreement. (R. Abdoel Djamali, 2013). A Notary according to Article 1 paragraph (1) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary is a Public



Official who has the authority to make authentic deeds and has other authorities as intended in this Law or based on other laws. This authentic deed as a Notary's authority is made by a Notary to be used by the public. The resulting deed produced by a Notary has perfect evidentiary power before the court.

A deed of sale and purchase agreement made before a Notary is a sale and purchase agreement for a land object made between the prospective seller and the prospective buyer before the Sale and Purchase Deed (AJB) is signed. A binding sale and purchase agreement for land with title certificate can be executed before a Notary, while the making of a sale and purchase deed must be carried out before a Land Deed Drafting Officer (PPAT). After the seller and buyer submit the land certificate, proof of tax payment and identity documents of the parties as well as paying the transaction fee components, the seller and buyer appear before the PPAT to sign the Deed of Sale and Purchase (AJB). The Sale and Purchase Agreement (PPJB) is made to provide a temporary binding agreement before the official Sale and Purchase Deed (AJB) is made before the PPAT. The meaning and function of a sales and purchase binding agreement (PPJB) made before a Notary is actually no different from agreements in general. The binding of the Sale and Purchase Agreement is made privately for certain reasons such as payment of the price has not been paid in full. It's just that a binding sale and purchase agreement is an agreement that was born as a result of the open nature of Book III of the Civil Code (KUHPdata), which gives the widest possible freedom to legal subjects to enter into agreements containing anything in any form, as long as does not violate statutory regulations.

What we often encounter in society is that the process of buying and selling land is now done by paying in stages or installments over a certain period of time. In this case, the parties, namely the seller and the buyer, carry out a legal act by making a land sale and purchase agreement before a notary. The deed of land sale and purchase agreement contains things that have been promised between the seller and the buyer which must be obeyed and implemented together in order to achieve the agreed goals. Apart from that, this land sale and purchase agreement appears to provide legal protection and certainty for the parties who will enter into a land sale and purchase agreement. This land sale and purchase agreement occurs because of the lack of requirements if an AJB (Deed of Sale and Purchase) is made directly, because the buyers' abilities and conditions in purchasing this land are different. From those who are able to buy with a DP (Down Payment) or a receipt or down payment that has been agreed upon then the remaining payment is paid in installments or pays half the price first then it is paid off after the title certificate is issued or the payment is made directly in full with a guarantee if the certificate is within the time period If what has been promised has not been issued, the money paid for the land will be returned in full to the buyer because it does not comply with the time specified in the sale and purchase agreement.

The Sale and Purchase Agreement (PPJB) was made due to the lack of requirements if AJB had made it directly. In these two cases it is related to one of the principles of the agreement, namely the principle of freedom of contract. Where sellers and buyers can still carry out land sale and purchase transactions even though the AJB requirements are still lacking, by making a sale and purchase agreement whose content and form are made freely

according to the wishes of the seller and buyer and does not violate applicable laws. The principle of freedom of contract is one of the important principles in contract law. Freedom of contract is based on Article 338 paragraph (1) of the Civil Code which states that all agreements made legally are valid as law for those who make them. Freedom of contract guarantees freedom to a person in several matters relating to agreements, including freedom to determine whether he will enter into an agreement or not, freedom to determine with whom he will enter into an agreement, freedom to determine the content or clauses of the agreement, freedom to determine the form of the agreement, freedom to determine the law used, other freedoms. This freedom of contract still has limits, namely that it does not conflict with the law, public order or morality (Ahmadi Miru, 2012).

In land law, a very important issue to prove the existence of a land right is registering the land right. Related to this, the explanation of article 19 paragraph (1) of the UUPA states that: "To ensure legal certainty, the government will carry out land registration throughout the territory of the Republic of Indonesia." However, the process of registering land until the issuance of a land certificate requires very large costs, so that people from weak to middle economic groups experience difficulties in processing land documents. For this reason, the government created several national projects, such as PRONA which was born with the Decree of the Minister of Home Affairs Number 189 of 1981 dated 13 August 1981; with the Ministry of Home Affairs, the "National Agrarian Operational Project Program" was established which was appointed under the name PRONA, then finally the Land Certification Program for Poor Communities was born. In the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 4 of 2015 concerning the National Agrarian Program (PRONA), it is explained that in article 12 PRONA funding comes from the State Revenue and Expenditure Budget (APBN). PRONA activities as intended in paragraph (1) are funded by the respective Regency/City Office Budget Implementation Form (DIPA). Apart from funding sourced from the State Revenue and Expenditure Budget (APBN), PRONA can also be financed by the Provincial Government or Regency/City Government with funding from the Regional Revenue and Expenditure Budget (APBD).

LITERATURE REVIEW

Notary Public

Notaries are public officials who carry out certain professions to serve the public in the field of civil law. According to (Wahid, Mariyadi, Sunardi, 2017) Public officials are people who carry out some of the state's public functions, especially in the field of civil law. The Notary profession itself is obtained after attending education and various trainings to develop special skills in the field of Notary. After holding the profession of Notary, you only have the authority to serve the community specifically in the field of civil law, such as making authentic deeds.



Land Administration

Land Administration according to Murad (2017) is: "A business and activity of an organization and management related to the implementation of Government policies in the Land sector by mobilizing resources to achieve objectives in accordance with applicable laws and regulations. In addition, land administration is a business and activity of an organization and management related to implementing government policies in the land sector by mobilizing resources to achieve goals in accordance with applicable statutory provisions.

Making a Land Sale Deed

A sale and purchase deed is a document that cannot be made yourself because it requires the services of a notary or PPAT (Deed Maker Official). Land. The purpose of making a sale and purchase deed is to prove the existence of a sale and purchase transaction and transfer of rights and buildings. When buying land or buildings, this document is a legal requirement to protect you if the seller commits a violation and can cause loss to you, and the buyer must have evidence that can be submitted to court. The sale and purchase deed has considerable legal force and has a legal basis which includes the form of a purchase agreement and building.

Juridical Review

Juridical is a rule that is considered legal or in the eyes of the law its validity is justified, whether in the form of regulations, customs, ethics and even morals that form the basis of its assessment. In this research, what is meant by the author as a juridical review is an activity to search for and break down the components of a problem to be studied more deeply and then relate them to the law, legal rules and legal norms that apply as a solution to the problem (Bahder Johan Nasution, 2018).

METHOD

In this research, the normative legal research method is one where the study is based on legal materials from the literature (Soekanto & Mamudji, 2015). In this research the author uses a problem approach, namely a statutory approach and a conceptual approach. The statutory approach is an approach where a statutory regulation is carefully reviewed and the statutory regulation is also related to existing problems.

The research specifications used are analytical descriptive. This research specification describes the situation based on facts and in accordance with statutory regulations—invitation which aims to provide a detailed, systematic and comprehensive description of everything related to the land sale and purchase agreement carried out before a notary which is then analyzed. Through descriptive research, researchers describe events and happenings that are the center of attention without giving special treatment to these events.

The legal material collection technique used in this research is a documentation technique which is carried out by inventorying and categorizing legal materials such as statutory regulations, literature and other legal materials related to binding agreements for

the sale and purchase of land rights as a basis for making deeds. buying and selling before PPAT. Next, this is done using the recording method, namely by quoting, summarizing, and providing reviews on the topic discussed. After the primary legal materials and secondary legal materials are obtained, the legal materials are sorted, immediately analyzed systematically, namely, by using legal arguments based on deductive and inductive legal logic and the presentation uses descriptive analysis, namely a method of analyzing legal materials which is carried out by compiling systematically.

The data analysis method used is qualitative analysis, namely data obtained directly according to facts in the field. In qualitative research, researchers start from data, utilize existing theories as explanatory material and end up with a theory. Qualitative analysis is analysis that is non-statistical in nature. Qualitative analysis techniques are processing and analyzing collected data into systematic, orderly and structured data.

RESULTS AND DISCUSSION

Basis for Making a Binding Agreement for Sale and Purchase of Land Rights by a Notary

Before entering into the meaning of PPJB, we must know the meaning of Agreement. An agreement is a legal event where a person promises another person to carry out a certain thing (Subekti, 2019). Meanwhile, PPJB is a basic agreement made by the seller and buyer before the AJB is created (Salim HS, 2017). Article 1313 of the Civil Code regulates the meaning of agreement. Generally, PPJB is divided into two, namely made authentically or made in the presence of a notary as a public official, and PPJB which is made privately without the presence of a notary or between the parties. And the agreement has elements, namely: The Essentialia Element is an agreement that is made absolutely, The Naturalia Element is that the agreement is regulated in the governing Law, and no one can replace or change it, The Accidental Element is that the Agreement is regulated in the governing Law and no one can change it. or change it and there are additions from parties.

Agreements have principles, namely: the principle of freedom of contract means that everyone is free to bind themselves in making a contract, the principle of consensualism is an agreement between two parties regarding the object of the agreement which will be the object of the agreement, the principle of personality is this principle that applies to whoever makes or makes the agreement. , the principle of balance is to satisfy both parties to carry out the agreement so that it is balanced, the principle of legal certainty is a form of legal manifestation that is certain, the moral principle is a principle that exists within a person, the principle of propriety is a principle that must be maintained because parties are determined by the sense of justice in society (Hadikusuma, 2003). Before the Parties enter into the Basis for Making PPJB Land Rights, the transition can be transferred and transferred. Transfer is the transfer of ownership rights to land from the owner to another party due to a legal event, while Transfer is the transfer of ownership rights to land from the owner to another party due to a legal act.

The Sale and Purchase Agreement (PPJB) can be made before an authorized official, namely a notary as an authentic deed and the Sale and Purchase Agreement (PPJB) can also



be made through a private deed. An authentic deed is a perfect means of proof for both parties and their heirs as well as all people who receive rights from them regarding what is contained in the deed (Muljono, 2013). Apart from that, a private deed is a Sales and Purchase Agreement (PPJB) which is only made by the buyer and seller privately, without involving a notary or other authorized official, and must involve two adult witnesses. The aim of this witness is to provide further information if a dispute arises (Ambarwati, 2019). Types of Sales and Purchase Agreement Deeds (APJB), namely an outstanding Sales Purchase Agreement (APJB), is the payment of the predetermined price. And the Deed of Sale and Purchase Agreement (APJB) which has been paid in full means that the payment has been paid in full but the Deed of Sale and Purchase cannot be made yet because there are several processes that have not been completed, such as the certificate splitting process not yet being completed, in the process of merging and various other reasons that cause APJB cannot be created yet. In full, the Sales and Purchase Agreement (PPJB) usually has the power to sell. The purpose of this Power of Attorney is for the buyer to provide a guarantee to consumers who pay the price but cannot yet return the name of the certificate because there are conditions that have not been fulfilled. APJB has six elements, namely: having proof of proof, having an authorized official, having a legal subject, having a legal object, having rights and obligations and conditions that must be fulfilled.

Deed of Sale and Purchase of Land Rights Based on Juridical Review

In its daily activities, PPAT's task is to make APJB. Before moving on to the topic of discussion, the meaning of PPAT is the authority of public officials to make authentic deeds regarding legal acts (Santoso, 2016). PPAT has the authority to make APJB land rights based on the binding sale and purchase agreement made by the parties as stated in article 4 (1) of Government Regulation Number 37 of 1998 concerning Position Regulations for Officials Making Land Deeds (Chomzah, 2004). This authority is not all deeds that can be made by PPAT, including deeds of exchange, deeds of grant, deeds of entry into the company, deeds of sharing of joint rights, deeds of building use rights, use rights, mortgage rights. The function of the deed made by the Land Deed Making Official (PPAT), namely the Land Deed Making Official's Deed (PPAT) as proof of legal actions regarding land rights and the Land Deed Making Official's Deed (PPAT) being the basis for registering changes to land data at the BPN Office. Regency/City according to its working area includes the location of the land concerned.

In carrying out their duties, the Land Deed Making Officer is prohibited from carrying out sale and purchase deeds of land rights based on the sale and purchase agreement between the parties, namely having only one office, using the media to carry out promotions, installing signboards outside the predetermined limits, creating competition for fellow Land Deed Official. The function of the PPAT deed states that the deed made by the PPAT is as proof of legal actions regarding land rights and ownership rights to apartment units, the deed of the Land Deed Official is the basis for registering it with the Land Office in the Regency or City depending on the area where the land is located. . PPAT refuses to make the deed if the plot of land that has been registered does not have an original certificate or the certificate

does not match the existing register. If the land plot has not been registered, it must have a letter of proof of title, a statement from the village or sub-district head, have a certificate stating that the land plot does not have a certificate, one or the parties have committed a legal act or one of the witnesses, the parties act on the letter absolute power, has permission from the agency that has rights to the land plot in question.

Deed of Land Sale by Notary in Correlation of Land Administration Issues

In efforts to regulate and control land use for various purposes, such as resolving land issues, land registration is a necessary prerequisite. Land registration is referred to as an instrument for structuring control and ownership of land as well as a controlling instrument for the use and utilization of land as well as an instrument for structuring land control and ownership as well as an instrument for structuring control and ownership, (Reda Manthovani, Istiqomah, 2017). The number of PPATs who submitted deeds to the land office took more than 7 days. This certainly violates the provisions of Article 40 of Government Regulation Number 24 of 1997 concerning Land Registration, (Mega Mentari, Ana Silviana, Mira Novana Ardani, 2020). Consequences of the existence of a legal relationship. A legal relationship is an act that gives rise to legal rules giving rights and responsibilities to individuals. Therefore, if a violation occurs, the violator can be sued in court or subject to administrative sanctions under state administrative law. If there are legal consequences for the PPAT ignoring the written notification of submitting documents to the Land Office, then Article 62 of Government Regulation Number 24 of 1997 concerning Land Registration regulates administrative sanctions in the form of written documents relating to the PPAT's dismissal from office.

The guiding principle of Article 40 paragraph (2) of Government Regulation Number 24 of 1997 concerning Land Registration explains the obligation of a PPAT to provide written notification regarding the delivery of a deed to the parties concerned. Article 24 Government Regulation Number 24 of 1997 concerning Land Registration. Registration of land rights resulting from conversion of rights must be proven by written evidence. Article 40 paragraph (2) Government Regulation Number 40 paragraph (2) concerning Provisions for Land Registration, PPAT is required to guarantee the convenience of clients in submitting documents to the Land Registration Office, behind that is a performance guarantee. In accordance with PP 24 of 1997 concerning the List of Assets, if there is a possibility that PPAT uses this power to abuse Article 40 paragraph 2 of the PPAT Government Law, as a result, administrative treatment such as written warnings up to dismissal from his position as PPAT will be applied. Although the accommodation for handing over authentic land deeds to the Land Agency Office by PPAT was late and not in accordance with statutory regulations. This does not result in denial of authentic deeds and certainty of land ownership. Regarding the explanation which states that delay in presenting an authentic deed makes the deed invalid and null and void. Even though the submission is late, the Head of the Land Office is still obliged to handle it. However, the PPAT concerned is responsible for all consequences resulting from delays in sending archives.



The legal consequences of the expiration of the registration period for the sale of rights do not reduce or damage the validity of the PPAT document. Unregistered PPAT documents are only used for non-defense purposes, so they are not limited to external assurance meetings. In addition, if PPAT delays the registration of a contract that has been made, PPAT can request documents with a suspension letter and will not shorten the contract period for the transfer of rights. Apart from that, PPAT not registering directly will cause problems. As the owner loses the status of the goods, the transfer of rights cannot be registered, and the ownership of the goods becomes unclear. Guidelines for legal certainty that guarantees in the land sector require the disclosure of legal instruments that are organized, complete and clear which are completed reliably in accordance with the spirit and substance of the game plan so that people in carrying out legal actions that are identical to the land become and guarantee the certificate of land rights, (Santoso , Urip, 2015).

Responding to the performance of the PPAT, the authors analyzed it using the theory of authority which cannot be separated from the boundaries of the Head of the Land Office Agency for the current situation of the Head of the Land Office Agency. The Land Office is the authorized agency appointed to manage the implementation of PPAT performance and must provide directions and warnings, both verbally and in written warnings to PPATs who do not carry out their commitments appropriately with the aim of making district PPATs more active in completing their work as PPATs. Because of the importance of evidence, in this case administrative land ownership rights, as a way of confirmation that can provide legal certainty and guarantee to the right holder. Therefore, making a deed containing the transfer of land rights is the basis for land registration requirements. By not making a deed of transfer of land rights in accordance with the predetermined time period, the change in rights obligations will not be completed, with the aim that the game plan or recording contained in the land book is deemed to have never been changed and there have been no meetings between the parties, so that it cannot provide certification and legal guarantees that should have been completed by PPAT.

CONCLUSION

Based on the results of the research and discussion in the previous chapter, it can be concluded as follows:

- a) PPJB is an initial agreement made by the seller and buyer as an initial binding before the AJB is made before the PPAT. The basis for making the PPJB by the parties is that the new APPJB is an agreement because not all payments have been made, APPJB where the payment has been made in full, but the AJB cannot be made before the PPAT, because the sale and purchase process has not been completed, for example: The certificate is still in the process of certificate splitting, and in the process of merging as well as various other reasons why AJB cannot be created. PPAT has the authority to make a deed of sale and purchase of land rights based on a binding sale and purchase agreement between the parties if the Binding Sale and Purchase Agreement (PPJB) is followed by a deed of power of attorney/authorization to sell, with the deed of power of attorney/power of

attorney to sell the party receiving the power of attorney being in two quality at the same time, namely as the seller and as the buyer.

- b) The guidelines for Article 40 paragraph (2) of Government Regulation Number 24 of 1997 concerning Goods Registration are: "PPAT needs to issue a written notification to clarify changes to the documents mentioned in Article (1) previously to clarify Article 40 paragraph (2), namely, the responsibilities of PPAT limited to submitting the deed that has been made together with important documents to the National Land Agency Office. For quick access to matters relating to PPAT, the national office must issue a receipt for submitting a registration application, for example, a deed from the PPAT and enter the file into the appropriate PPAT. According to Government Regulation no. 24 of 1997 concerning Land Registration, this is a legal regulation regulated by land law enforcement officials when carrying out various land registration activities in Indonesia. This responsibility not only influences progress in understanding or compliance with the law, but also considers the larger impact of the law on PPAT thinking or behavior, both positive and negative.

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