

Legal Issues in Sales and Purchase Agreements Involving Land Rights Entered into Before a Notary

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ABSTRACT

The Sale and Purchase Binding Agreement (*Perjanjian Pengikatan Jual Beli* or *PPJB*) as a preliminary agreement (*obligatoir*) plays an important role in property transactions in Indonesia. This study examines various legal issues that arise in the making of PPJB for land rights before the notary, especially related to deviations from its original purpose as a preliminary agreement to a sale and purchase deed. Through the doctrinal law research method with a qualitative approach, this study analyzes positive provisions and notary practices in the making of PPJB. The results of the study show that there are various forms of PPJB irregularities, such as its use as a debt recognition, loan and borrowing agreement, or the execution of guarantees, which are contrary to Article 1335 jo. Article 1337 of the Civil Code regarding the conditions for the validity of the agreement. This research also reveals the responsibility of notaries in ensuring the validity of PPJB and the legal consequences of these irregularities. The findings of the research are expected to provide input for improving regulations and notary practices in making PPJB to create legal certainty in property transactions.

Keywords: Legal Issues, PPJB, Land Rights

INTRODUCTION

A Sales and Purchase Agreement with land rights as its object (hereinafter referred to as PPJB) is an agreement that serves as a preliminary agreement. In this agreement, the parties commit themselves to enter into a new main agreement, namely a real agreement or Deed of Sale and Purchase before an authorized Land Deed Official, which results in the transfer of real rights. PPJB with land rights as its subject matter falls under the category of *obligatory* agreements that create individual rights and cannot be used as the basis for registering changes to land registration data at the local Land Office (Alfiansyah, 2015). The purpose of creating a PPJB with land rights as its object is due to the unfulfilled requirements for the creation of a Deed of Sale and Purchase before an authorized Land Deed Officer, such as the price not yet being fully paid, The Notice of Outstanding Property Tax for the year the PPJB was made has not been issued by the authorized official, the land subject to the PPJB is still undergoing an extension of its rights at the Land Office, and other reasons (Widiyono & Khan, 2023).

Previous studies have examined various aspects of PPJB and land rights. For instance, Budiono (2012) analyzed the legal defects in PPJB agreements, highlighting the inconsistencies between the stated cause and the actual intent of the parties. Similarly, Harsono (2008) explored

the foundational principles of land rights under the UUPA, emphasizing the clear and immediate nature of land transfers in customary law. Adjie (2014) discussed the role of notaries in ensuring the validity of PPJB deeds, noting the challenges posed by deviations in practice. Despite these contributions, gaps remain in understanding the legal implications of PPJB deviations and the responsibilities of notaries in addressing these issues (Bedner & Arizona, 2019).

Since the enactment of the National Land Law, which is based on customary law, there have been two fundamental functions of customary law in the context of national land law: namely, as the primary source for the formulation of national land law and as a supplement to national land law. According to customary law norms, the sale and purchase of land is a legal act of transferring land rights that is clear and immediate (Wahyuni, 2021). Clear means that the transfer of rights is carried out in the presence of the customary head, now carried out in the presence of the Land Deed Official or an authorized public official. Cash means that the transfer of rights and payment of the price are carried out simultaneously (Sulaiman & Purwaningsih, 2024). The sale and purchase of land under customary law is not a contract or does not create rights and obligations, but is a legal act of transferring rights over land (Christiana, 2021). The sale and purchase of land rights, subject to the provisions on land registration, must be proven by a deed executed before a Land Deed Officer, and the sale and purchase is understood as a legal act of transferring land rights with payment of the price in cash, and its nature and characteristics as a *real* and clear act (Mulyani, 2020). Legal acts involving land rights that can serve as the basis for the registration of the transfer of land rights at the Land Office are deeds of sale, deeds of gift, deeds of exchange, deeds of incorporation into a company, and other deeds of transfer of rights proven by a deed drawn up before an authorized Land Deed Officer.

In relation to land registration, deeds executed before a Land Deed Officer have two functions, namely:

- a. As evidence that a specific legal act regarding land rights or ownership rights over a unit of a residential building has been carried out (*probationis causa*);
- b. As the basis for registering changes to land registration data resulting from such legal acts.

A deed executed before a Land Deed Officer (hereinafter referred to as "PPAT Deed") is not a requirement for the validity or a formal cause for a legal act of transfer of land rights, and without a PPAT Deed, the sale and purchase of land rights, provided that it is clear and paid in full, is deemed to have resulted in the transfer of land rights by operation of law. The Supreme Court, through its Circular Letter, acknowledges that a PPJB made before a Notary with land rights as its object, provided that the price has been paid in full and the land has been physically possessed by the buyer in good faith, then the transfer of land rights has materially occurred by law.

Historically, the PPJB began to be used since the implementation of land registration regulations requiring that the transfer of land rights could only be registered through a sales deed executed before an authorized Land Deed Officer. Therefore, before the requirements for a sale before a Land Deed Officer were fulfilled, the parties would execute a PPJB, which functioned as a preliminary agreement. As an *obligatory* agreement, the PPJB is a consensual agreement and is subject to and governed by the validity requirements of an agreement and the fundamental

principles of contract law, including the principles of consensualism, freedom of contract, and the binding force of an agreement. In its legal development, the PPJB is no longer made in accordance with its original purpose and intent, but has deviated from its purpose, giving rise to a legal problem, namely the PPJB followed by an agreement with a right of repurchase. PPJBs made with a cause (purpose) as a form of loan agreement or acknowledgment of debt, PPJBs made with the purpose or cause as the execution of collateral still subject to a lien, PPJBs applying the principle of publicity to avoid layered PPJBs, and various other deviations. This article is written to address the legal developments in the creation of PPJB as a deviation and its legal implications.

This research has two main objectives. First, to analyze the role and responsibilities of notaries in making PPJB in the midst of the latest legal developments. Second, to identify various forms of irregularities in PPJB practices and their legal implications. The novelty aspect of this research lies in its comprehensive approach in linking PPJB irregularities with the protection of land rights, as well as an in-depth analysis of the strategic position of notaries as gatekeepers in land transactions. Viewed in terms of benefits, this research contributes three layers. At the theoretical level, the research findings will enrich the treasures of legal science, especially in the fields of land law and treaty law. From a practical aspect, the results of the research can be a guideline for notaries and legal practitioners in compiling PPJB that meets legal standards. Meanwhile, from a policy perspective, this research can be considered for regulators in drafting clearer and stricter regulations regarding PPJB, so as to reduce the potential for irregularities and protect the interests of all parties involved in land transactions.

METHOD

The research method used was doctrinal legal research, conducted by examining literature or secondary data. This research involved inventorying positive law or legal concepts as legislation to identify legal principles, foundations, and doctrines related to or contained in positive law, which were used to address the research problems. The legal framework studied included the Notary Public Act, provisions on obligatory contracts, property contracts, and land registration related to PPJB concerning land rights. Data was collected through literature studies of primary legal materials such as the Civil Code, the Basic Agrarian Law, the Law on the Notary Position, and regulations related to land registration, as well as secondary materials including academic literature, journal articles, court decisions, and scientific works by legal experts. Data analysis employed legal interpretation to understand the normative meaning of legal provisions, legal construction to build a comprehensive understanding, critical evaluation of notary practices, and legal synthesis to formulate findings. The research was guided by fundamental legal principles such as consensualism, good faith, legal certainty, and legal protection. The research stages included identification of legal problems, data collection and classification, in-depth analysis, and concluding results designed to uncover the legal complexities of PPJB and identify legal loopholes requiring correction in the regulatory system.

RESULTS AND DISCUSSION

The Role and Responsibilities of Notaries in the Preparation of PPJB

The Notary Public Act (hereinafter referred to as the "UUJN") has designated Notaries as public officials with the authority to draw up authentic deeds, both deeds drawn up by Notaries (*akta relaas*) and deeds drawn up before Notaries (*akta partij*), as stipulated in several articles of the UUJN, namely:

a. Article 1(1) of the UUJN:

“A Notary is a public official authorized to draw up authentic deeds and possesses other powers as provided for in this Law or under other laws.”

b. Article 1(7) of the Notary Public Law:

“A Notary Public Deed is an authentic deed drawn up by or before a Notary Public in accordance with the form and procedures prescribed in this Law.”

c. Article 15(1) of the UUJN:

“A notary is authorized to draw up authentic deeds concerning all acts, agreements, and decisions required by law and/or desired by the parties concerned to be stated in an authentic deed...”

There are two types of authentic deeds within the authority of a Notary as a public official: deeds drawn up by a Notary, known as *official deeds* or deeds of a public official, and deeds drawn up in the presence of a Notary, known as *private deeds*. A PPJB, as a *binding* agreement, falls under consensual agreements, meaning agreements that can be freely made, either in writing or orally, as written evidence. A PPJB made before a Notary as an authentic deed is a *party* deed, where the Notary, in performing their duties, must comply with and be bound by the provisions of the UUJN, and must guarantee the authenticity and validity of the PPJB they make.

The Notary is obligated to ensure that the PPJB made before them does not contain any unlawful elements, and this is explicitly stated and regulated in the UUJN, namely:

a. A Notary Public must refuse to draw up a deed if it conflicts with the law, the Notary Public is not neutral/impartial, or one of the parties lacks the capacity to act.

1) Article 16(1)(e) of the Notary Public Law states:

“In performing their duties, Notaries must provide services in accordance with the provisions of this law, unless there is a valid reason to refuse.”

2) Explanation of Article 16(1)(e) of the UUJN states:

“The reasons for refusal refer to circumstances that render the notary impartial, such as a blood relationship or affinity with the notary themselves or their spouse, or if one of the parties lacks the legal capacity to act or perform an act prohibited by law.”

Based on this provision, the PPJB deed as a product of the Notary must be assessed under the principle of presumption of validity (*Presumption Iustae Causa*), meaning it must be

deemed valid until proven otherwise by a party. If the content of the PPJB contains unlawful elements, the Notary may be held legally liable.

- b. The PPJB contains the intentions of the parties, and the Notary is obligated to read the deed to the parties in the presence of two witnesses and have it signed simultaneously, as emphasized and regulated in the UUJN, namely:
 - 1) Article 16(1)(m) of the Notary Public Law:

“In performing their duties, a Notary must read the deed in the presence of the parties, with at least two witnesses present, and have it signed at that time by the parties, the witnesses, and the Notary.”
 - 2) Article 38(3)(c) of the Notary Public Law:

“The contents of the deed reflect the will and intentions of the parties concerned.”

Based on these provisions, the position of the Notary in the PPJB deed is not as a party, but merely as a medium for the creation of an authentic deed, or the Notary has no legal interest in the PPJB deed. Although the Notary is not a party to the deed, the Notary cannot be relieved of their liability if the PPJB conflicts with public law norms that have a binding nature. In such cases, legal liability may still be sought from the Notary who drafted the PPJB deed.

A PPJB made before a Notary is an authentic deed that has full (perfect) evidentiary force and is binding on the parties, their heirs, or their successors in title, as provided for in Article 1870 of the Civil Code (hereinafter referred to as the Civil Code), which reads:

“An authentic instrument provides, between the parties, their heirs, or those who derive rights from them, perfect evidence of what is contained therein.”

Article 1870 of the Civil Code emphasizes that an authentic deed has full probative value for the parties, their heirs, or their successors in title, provided that the deed is signed by all parties or their authorized representatives. In accordance with the fundamental principle of contract law, namely the principle of the binding force of a contract, all contracts made in a valid manner are binding on the parties who made them, their heirs, and their successors in title. The probative force of authentic instruments can be examined from two aspects, namely:

- a. The probative value of authentic deeds is perfect and binding on the parties regarding what is stated in the deed and also perfect and binding on the judge, who must consider it as a perfect and sufficient basis of fact for deciding the resolution of the disputed matter;
- b. The minimum standard of proof for authentic documents is that they stand alone without requiring assistance or support from other evidence or have reached the minimum standard of proof under the law, unless contrary evidence (*tegen bewijs*) is presented against them.

PPJB Followed by an Agreement with a Right of Repurchase

The Basic Agrarian Law (hereinafter referred to as the UUPA) came into effect on September 24, 1960. In its repealing provision, the UUPA states that Book II of the Civil Code no longer applies to land, water, and natural resources contained therein. The UUPA does not repeal Book III on Special Contracts of Sale, Exchange, and Gift involving Land Rights, and this raises

legal issues regarding the applicability of Book III, given that the UUPA is the National Land Law whose formation is based on customary law.

Book III on Contracts in the Civil Code, specifically concerning contracts as a source of obligations, contains its legal principles and principles, namely:

- a. Contracts in Book III of the Civil Code are classified as *obligatory* contracts that give rise to rights and obligations;

Obligatory contracts are contracts that arise from an agreement between two or more parties with the aim of creating an obligation. PPJB as an *obligatory* contract is subject to the requirements for the validity of a contract and the principles of contract law, namely the principle of consensualism, the principle of freedom of contract, and the principle of the binding force of contracts.

- b. Book III of the Civil Code recognizes the causal system, which is a system where the acquisition of ownership of an object must be carried out through two stages, namely an *obligatory* agreement (valid title) and *delivery* in accordance with the type of object. In the transfer or *delivery* as one of the methods to acquire ownership of a thing, the causal system establishes two conditions that must be met for the validity of a transfer. First, there must be a "valid legal basis," which is *the obligatory* agreement. Second, the transfer (*levering*) must be carried out in accordance with the type of property, where movable tangible property is regulated under Article 612 of the Civil Code, movable intangible property is regulated under Article 613 of the Civil Code, and immovable property, particularly rights over land, is governed by the Land Law (UUPA) and its implementing regulations.

- c. A contract creates personal rights, not property rights.

Sale with the Right to Repurchase is regulated in Articles 1519 to 1532 of the Civil Code, where this institution was created to allow a person in a desperate need for money to sell their property and, if their economic circumstances permit, to repurchase it. Since the implementation of the National Land Law, which is based on customary land law, the transfer of land rights (sale and purchase with land rights) is clear and immediate. This means that the legal act is performed before the customary head or now the Land Title Officer, followed by the payment of the price and the simultaneous physical and legal transfer of the land.

A PPJB involving land rights is a preliminary agreement where the parties commit to entering into a main agreement, namely a sale and purchase deed before the Land Title Officer. The legal purpose of a PPJB is to facilitate a sale and purchase transaction. The Supreme Court has ruled that a sale and purchase with a right to repurchase is null and void, based on the following legal considerations:

- a. Sale and purchase with the right of repurchase is a debt agreement disguised as collateral;
- b. Sale and purchase with a right of repurchase is contrary to customary law as the source of the formation of the Land Law (UUPA), which states that the sale of land under customary law is clear and cash (sale and release) and does not recognize sale and purchase with a right of repurchase.

A PPJB serves as a preliminary agreement, where the parties aim to execute a sale and purchase deed before an authorized Land Deed Officer as a property agreement. A PPJB with the object of land rights and the cause of transfer of land rights has a clear and cash nature, so a PPJB followed by an agreement with a right of repurchase is null and void because it contains a false cause. All payments received by the buyer must be returned to the seller.

The Land Law (UUPA) or National Land Law, in its provisions, has repealed Book II of the Civil Code, but has not repealed Book III of the Civil Code, particularly regarding sale and purchase, gift, and exchange as named contracts with the subject matter being land rights. Agreements with a right of repurchase are regulated in Articles 1519 to 1532 of the Civil Code, which fall under the Subheading of Sale and Purchase as named contracts and constitute obligatory contracts with a causal system, which are inconsistent with the National Land Law derived from Customary Law, which is clear and immediate. Based on the above, the sale and purchase of land rights with a Right of Repurchase is no longer valid with the implementation of the National Land Law.

PPJB with a Loan-Borrowing Cause

PPJB as an *obligatory* agreement must meet the requirements for a valid agreement and the fundamental principles of contract law, namely the principle of consensus, the principle of binding force, and the principle of freedom of contract. The validity requirements of a contract are regulated in Article 1320 of the Civil Code, namely: (a) mutual agreement between the parties; (b) capacity to enter into a contract; (c) a specific subject matter; and (d) a lawful cause.

The fundamental legal principles recognized in contract law, which include the principle of consensualism, the principle of binding force, and the principle of contractual freedom, play a crucial role in interpreting rules within contract law, namely:

a. The Principle of Consensualism

This principle relates to the formation of a contract based on mutual agreement, for contracts that can be made freely in the sense of without a deed, with a private deed, or with an authentic deed as written evidence. Consensualism comes from the word *consensus* (Latin) which means agreement. In essence, a contract comes into existence at the moment mutual agreement or meeting of minds is reached. This principle applies only to contracts that can be freely formed and does not apply to formal contracts. This principle is derived from Article 1320(1) of the Civil Code.

b. The Principle of Binding Force

This principle refers to the consequences of a contract that apply to the parties, their heirs, and their successors in interest. According to this principle, all contracts made validly are binding on the parties who made them. This principle is derived from Article 1338(1) and Article 1340 of the Civil Code, which state:

1) Article 1338(1) of the Civil Code:

“All agreements made in accordance with the law are binding as law upon those who make them.”

2) Article 1340 of the Civil Code:

“A contract is only binding between the parties who enter into it.”

c. Principle of Contractual Freedom

This principle concerns the content or scope of a contract, which reflects the will or intention of the parties. Freedom of contract means that every person is free to enter into a contract containing any terms, which are binding on the parties who enter into it. This principle is derived from Article 1338(1) in conjunction with Article 1320 and Article 1329 of the Civil Code. The principle of freedom of contract is limited by Articles 1335 and 1337 of the Civil Code, the principle of good faith, and the formal requirements of a contract.

A PPJB, as an *obligatory* agreement, is a consensual agreement that can be freely made in the sense that it can be made without a written document (orally) or with a written document, whether a private document or an authentic document. A PPJB as an authentic instrument has full probative force and is binding. Its contents must not conflict with the law, public morality, and public order. A lawful cause as a requirement for the validity of a contract is used as a parameter to assess a PPJB with the object of land rights made with a debt cause.

The fourth requirement for the validity of a contract is a lawful cause, regulated in Articles 1335, 1336, and 1337 of the Civil Code, namely:

a. Article 1335 of the Civil Code states:

“A contract without cause or made for a false or prohibited cause has no legal effect.”

b. Article 1336 of the Civil Code states:

“If no cause is stated but there is a lawful cause or if there is another cause than that stated, the agreement is nevertheless valid.”

c. Article 1337 of the Civil Code:

"A cause is prohibited if it is prohibited by law or if it is contrary to good morals or public morals."

The Civil Code or law recognizes the existence of contracts with a "false cause," contracts "without cause," and contracts with a "prohibited cause." A lawful cause is one of the requirements for the validity of a contract and is an objective requirement. If this requirement is not met, the contract (legal act) becomes void ab initio. Regarding this cause, the law does not provide an explanation of a lawful cause. Doctrine (the opinions of legal experts) is used in assessing PPJBs made as debt collateral based on the cause regulated in Article 1335 in conjunction with Article 1337 of the Civil Code.

Herlien Budiono states that cause originates from Latin and has various meanings. A lawful cause is interpreted in relation to the intent and purpose of the parties. A false cause may occur if a cause does not correspond to the actual circumstances or if the cause is simulated, while a prohibited cause is one that conflicts with the norms of written or unwritten law.

Legal doctrine (the opinions of legal experts) has provided explanations regarding contracts without cause, contracts with a false cause, and contracts with a prohibited cause, as formulated in the Civil Code, namely:

a. Contracts Without Cause

A contract without cause is a contract without a purpose or reason. A contract without cause is not considered a prohibited cause or a false cause. A contract without cause is a contract intended by the parties but impossible to perform. An example of a contract without cause is a novation agreement aimed at replacing an old obligation with a new one. If the old obligation to be replaced does not exist, the novation agreement is void.

b. Contract with a False Cause

This refers to a contract that contains a cause but not the actual *cause*. A false cause, which is not the actual cause, may be a prohibited cause or one that conflicts with the law, public order, and/or morality, or it may be a false cause that is not a prohibited cause.

c. Agreement with a Prohibited Cause

A contract with a prohibited cause refers to a contract that is contrary to the law, morality, and public order. A contract prohibited by law can be reviewed from three aspects, namely the substance of the contract prohibited by law, the implementation of the contract prohibited by law, and/or the intent and purpose of making the contract prohibited by law.

A PPJB with land rights as collateral for a debt or credit agreement constitutes an error or mistake in the application of the law, where the difference between a PPJB and a debt agreement lies in the following:

- a. A PPJB is an *obligatory* agreement that serves as a preliminary agreement with the purpose of binding the parties to enter into a main agreement, namely a property agreement or Deed of Sale and Purchase that results in the transfer of property rights. The cause for entering into a PPJB is the transfer of rights over land as the subject matter of the legal act, not as collateral for a debt.
- b. A debt agreement is based on a loan agreement, where the lender provides a certain amount of money to the borrower, who is obligated to repay it within a specified period with interest. The purpose of a debt agreement is for the creditor to receive interest (profit) from the loan provided. A debt agreement is a principal agreement followed by *accessory* agreements in the form of personal guarantees and/or collateral in the form of mortgages, liens, pledges, and/or fiduciary agreements.

A PPJB with land rights as its object is an *obligatory* agreement that gives rise to personal rights, not property rights, and cannot be used as collateral. Land rights fall under property rights. The PPJB cannot be used as collateral, as emphasized by Herlien Budiono, who states that personal rights are relative in nature and arise from agreements regulated in Book III of the Civil Code, which can only be claimed or enforced against the specific parties who entered into the agreement. Property rights are rights that are enforceable, have property consequences, i.e., they are attached to the property wherever it may be (*droit de suite*), and can be enforced against anyone. A PPJB cannot be used as collateral on the grounds that collateral is an *accessory* agreement to strengthen

the main agreement (debt agreement), whereas a PPJB is a preliminary agreement in which the parties commit themselves to enter into a new main agreement, namely a deed of sale as a property agreement. This is further clarified by Frieda Husni Hasbullah, who states that a security agreement is an additional agreement dependent on the main agreement. The main agreement is a loan agreement or debt agreement followed by an additional agreement as collateral. A PPJB is not a main agreement but a preliminary agreement for the creation of a main agreement in the form of a sales deed as a property agreement.

From the perspective of the objective validity of an agreement or the cause of the agreement, the cause of the PPJB is the transfer of land rights, while the cause of the loan agreement is the provision of a loan with interest that must be repaid within an agreed period. Therefore, the PPJB contains a false cause, while the actual cause is the loan agreement that applies to the parties, and the legal status is concealed from third parties.

From the perspective of the subjective validity requirements of a contract, mutual consent is *an essential* element or a mandatory component in the formation of a contract as referred to in Article 1320 of the Civil Code. Mutual consent occurs when there is agreement between the intention and the statement. Herlien Budiono states that intent is understood as the will that is expressed and directed toward the creation of legal consequences. Generally, the statement made by a person is consistent with their intent. However, there is also the possibility of a discrepancy between intent and statement. This occurs when the statement made is consistent with what the other party intended, but the legal consequences are not desired. The Sales and Purchase Agreement as an auxiliary agreement aims to prepare the parties to enter into a main agreement, namely the sale and purchase of a piece of land. The parties sign the Sales and Purchase Agreement (Statement), but their intention is to acknowledge a debt, resulting in a conflict between intention and statement. The PPJB created by the parties, from the perspective of subjective requirements, contains a defect of intention and gives rise to the right to demand cancellation.

A PPJB with the object of land rights aims to transfer land rights. Therefore, a PPJB related to a loan with the same object of land rights as a PPJB secured by a mortgage can be categorized as a form of execution of the collateral outside of auction, which is contrary to the Mortgage Law. The sale of collateral outside of an auction may be conducted through a PPJB provided that it meets the requirement of being notified in writing by the grantor and grantee of the Mortgage Right to the parties concerned and has been announced in at least two newspapers circulating in the relevant area or local media, and no party objects during the announcement period. The sale of collateral outside of an auction that does not meet the requirements specified in the Mortgage Law renders the PPJB null and void.

The nullity of a deed is caused by the legal defect of the deed (i.e., the legal act itself), which, when examined from the perspective of its legal consequences or sanctions, can be distinguished into:

- a. Void *Ab Inemittis* is a civil sanction against a legal act that contains a legal defect (cause of invalidity). The legal act performed has no legal effect from the time the legal act was performed or has retroactive effect (*ex tunc*). In other words, the legal act becomes invalid

from the time the deed was signed, and the legal actions mentioned in the deed are deemed to have never occurred.

- b. Voidable is a civil sanction against a legal act that contains a legal defect (cause of invalidity) in the form of the cancellation of the legal act at the request of a certain party. The legal consequence of this cancellation is that the legal act has no legal effect from the moment of cancellation. The annulment or validation of the legal act depends on a specific party, which causes the legal act to be annulled or validated. An act whose sanction is subject to annulment remains valid and binding until there is a final and binding court decision annulling it.

Based on the above, a PPJB made with a loan cause is a contract containing a defect in the agreement and contrary to the cause of a contract, which may result in the invalidity of the PPJB legal act.

PPJB and the Principle of Publicity

A PPJB, as an *obligatory* agreement, gives rise to personal rights and not property rights, and therefore a PPJB is not a legal document that can be used as the basis for registering changes to land registration data or the transfer of rights at the local land office. Legal documents that can be used as the basis for registering changes to land registration data are deeds made before an authorized Land Deed Officer, including deeds of sale, deeds of gift, deeds of exchange, deeds of division of joint rights, deeds of contribution to a company (*inbreng*), deeds granting HGB or HP rights on land owned by Hak Milik, deeds granting mortgage rights, and power of attorney to encumber mortgage rights, which serve as the basis for the attorney-in-fact to execute the deed granting mortgage rights. The Ministry of Agrarian Affairs and Spatial Planning/National Land Agency has formulated a new legal principle that a PPJB with land rights as its object may be submitted to the local city or regency land office for registration in the general register and land rights certificate. The procedures and requirements for registering a PPJB over land rights by the city or regency land office are as follows:

- a. The applicant submits an application to the local City or District Land Office for the registration of the PPJB in the general register and the land rights certificate, attaching the land rights certificate and a copy of the PPJB deed executed before a Notary:
- b. Since the date of recording of the PPJB in the land title certificate and the general register, the transfer of land rights can only be made to the prospective buyer listed in the PPJB:
- c. The removal of the PPJB registration from the General Register and the Land Title Certificate may be done by the applicant.

This provision does not apply to PPJBs involving land rights that have been fully paid or partially paid. To provide legal protection and certainty for the prospective seller, prospective buyer, and interested third parties, only PPJBs for which the price has been fully paid should be submitted for registration. The PPJB deed shall include a clause stating that the prospective buyer is granted the right or authority to submit an application for the registration of the PPJB for the land in question to the local City or Regency Land Office, provided that the price has been paid in full in accordance with the manner and time specified in the PPJB. The Deed of Sale and Purchase Agreement (PPAT) made based on the PPJB with the land rights as the subject matter should be

executed after the PPJB has been registered at the local City or District Land Office as a preventive measure to avoid land disputes. This is because the Land Office can verify the identity of the seller in the PPJB with their previous identity as the buyer, which is recorded at the local City or District Land Office. The registration of the PPJB with the subject matter of land rights in the land title certificate and the general register aims to prevent the sale or transfer of land rights to any other party and ensure that such rights are only transferred to the prospective buyer named in the PPJB. Ministerial Regulation ATR/KBPN No. 16 of 2021 is a preventive measure to prevent layered PPJBs and also prevent deviations from the PPJB, as one of the elements to protect buyers in the PPJB who act in good faith through the publicity of the PPJB in the land title certificate and the general register at the local Land Office.

CONCLUSION

This study concludes that the Binding Sale and Purchase Agreement (PPJB) on land, although it functions as a valid preliminary agreement, in practice often experiences deviations that are contrary to the legal principles of the agreement and agrarian law. These irregularities include the use of PPJB as a means of borrowing, debt recognition, or collateral execution, which has the potential to legally cancel the agreement and create uncertainty for the parties. Notaries as general officials play a crucial role in ensuring the validity of PPJB, including verifying the conformity between the *causa* listed and the true intentions of the parties, as well as refusal to make deeds that are suspected of containing irregularities. To address this issue, some suggestions can be considered. First, notaries need to increase prudence in verifying the intentions of the parties and provide a comprehensive explanation of the legal consequences of PPJB. Second, policymakers must tighten regulations related to the limits on the use of PPJB, increase supervision of notary practices, and consider an integrated PPJB registration system. Third, the public needs to increase legal understanding of rights and obligations in PPJB transactions and avoid irregular practices. Finally, further research can focus on notary supervision mechanisms, the effectiveness of legal sanctions, or the development of electronic PPJB models to minimize irregularities. With these steps, it is hoped that better legal certainty will be created in PPJB transactions on land as well as the protection of the rights of all parties involved.

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