



EFFECTS OF THE LAW OF UNDER-HAND SALE AND PURCHASE AGREEMENTS ON THE SALE AND PURCHASE OF LAND AND BUILDINGS FROM DEVELOPER COMPANIES

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Abstract

This research aims to analyze land sale and purchase transactions with private PPJB, where the application of the principle of clear and cash sale and purchase transactions cannot be carried out. In practice in the field, not all transactions can be carried out using the clear and cash principle due to several factors, for example because the payment has not been paid in full/installments, the certificate is still in the process of being split or other processes, not being able to pay taxes, or other factors. The focus of the researchers is to find out what factors cause PPJB to occur under the hands of buying and selling land and buildings from developer companies and the legal consequences. The legal research method is descriptive (normative law). Factors that cause the implementation of PPJB under the hands include, among others, because payments are made in stages, either in cash or with bank facilities, certificates are still in the process of splitting, merging and reducing rights, PBG is still in process at the relevant agencies and the last reason is because it is practical and cost-effective. PPJB which is made under the hand results in being null and void because it violates the objective conditions in an

agreement, so that the PPJB under the hand is deemed to have never existed in the first place, so the legal consequence is that the party who has received the performance is obliged to return it to the party who has fulfilled the performance, this aims to return the situation to its original state.

Keywords: Legal Consequences, Binding Sale and Purchase Agreement, Under Hand.

INTRODUCTION

Humans have needs for their lives, one of the human needs is a house to live in. Nowadays, social relations can be seen from the fulfillment of the need for a house to be built by the Developer or Developer. A Sale and Purchase Binding Agreement (PPJB) is an agreement practice that is commonly carried out in society before a sale and purchase is carried out. This practice is carried out with the aim of binding an agreement between the seller and the buyer because there are elements that have not been fulfilled for the sale and purchase, including the fact that the land title certificate does not yet exist because it is still in the process of splitting or merging, or the price or taxes imposed on the sale and purchase of land rights by the seller or buyer have not yet occurred (R. Subekti, 1987: 75).

This Sale and Purchase Binding Agreement (PPJB) was made because of the principle of freedom of contract. According to the principle of freedom of contract or the principle of freedom in making agreements, basically everyone can make an agreement with the content they wish, but it must not conflict with the law, moral norms and public order. The law here is a law that is coercive in nature (J. Satrio, 1994: 37). The meaning of agreement is regulated in Article 1313 of the Civil Code (KUHPerdata), namely that an agreement or agreement is an act by which one or more people bind themselves to one or more other people. An agreement in Dutch is called *overeenkomst*, which is the source of an agreement. What is meant by agreement in the provisions above is a legal act. Legal experts have



criticized the word act on the grounds that it is inaccurate, incomplete, and still has a very broad meaning (J.Satrio, 1994: 10-11).

According to Harlien Budiono, a binding sale and purchase agreement is an agreement that is in the form of assistance as a means to carry out a sale and purchase transaction if the conditions have not been met and the form is free (Dr. Harlien Budiono, S.H, 2004: 57). Based on the description of the agreement as mentioned above, it can be concluded that the elements in an agreement are:

- a. The presence of parties, at least two people;
- b. There is an agreement between the parties;
- c. There is a goal to be achieved;
- d. There are achievements that will be carried out by the parties;
- e. The existence of terms and conditions as part of the contents of the agreement;
- f. There is a certain form, it can be oral or written.

R. Subekti stated that the sale and purchase binding agreement is an agreement made between the seller and the buyer before the sale and purchase deed is signed because the conditions for the sale and purchase have not yet been met, including that the certificate of title to land ownership has not yet completed the process of splitting, merging, decreasing rights, or payments are made in stages or the taxes for signing the sale and purchase deed are not yet available (R. Subekti, 1998: 29).

The validity of a PPJB can be seen from the content and process as regulated in the provisions of Government Regulation of the Republic of Indonesia Number 12 of 2021 concerning Amendments to Government Regulation Number 14 of 2016 concerning the Implementation of Housing and Settlement Areas. This regulation is issued with the aim of creating legal certainty and protecting all the interests of the parties in a binding sale and purchase agreement. By issuing this Regulation, it is possible to market or sell land and buildings in the form of houses

before the construction of the house is completed (Arie S. Hutagalung, 2002:62).

The substance of the agreement is the will and desire of the parties concerned, thus the substance of the agreement can include objects, rights and obligations of the parties and others. After that, Article 1315 of the Civil Code gives us a guideline regarding who, an agreement has the direct effect that the agreement binds the parties themselves in the sense that the rights and obligations arising in the agreement are only for the parties concerned (J. Satrio, 1994: 63). As regulated in Article 1320 of the Civil Code, for a valid agreement, four conditions are required, namely: agreement, legal competence, regarding a certain matter and a lawful cause.

Republic of Indonesia Government Regulation Number 12 of 2021 concerning Amendments to Government Regulation Number 14 of 2016 concerning the Implementation of Housing and Settlement Areas regulates in detail what the developer must do before signing the PPJB. In Article 22 paragraph (5), it is stated that the PPJB is carried out after the development actor has fulfilled the certainty requirements regarding:

- a. Land ownership status;
- b. What was agreed upon;
- c. PBG, namely building approval, which is a permit given to building owners to build new, modify, expand, reduce and/or maintain buildings in accordance with building technical standards;
- d. Public infrastructure, facilities and utilities are available; And
- e. Awakened at least 20% (twenty percent)

In terms of sales through PPJB, it must consist of Marketing and PPJB itself as regulated in Article 22A of Government Regulation of the Republic of Indonesia Number 12 of 2021 concerning Amendments to Government Regulation Number 14 of 2016 concerning the Implementation of Housing and Residential Areas. Furthermore, Article 22B paragraph (2) regulates the consumer's right to receive



correct, clear marketing and guarantee the certainty of information regarding existing planning and physical conditions.

The rights of buyers regulated in Government Regulation of the Republic of Indonesia Number 12 of 2021 concerning Amendments to Government Regulation Number 14 of 2016 concerning the Implementation of Housing and Residential Areas are:

1. Certainty of space allocation
2. Certainty of land rights
3. Certainty of house ownership status
4. Permitting the construction of housing or flats and
5. Guarantee for the construction of housing or flats from a guarantee institution

The rights of prospective buyers are clearly regulated in Article 22C paragraph (1) which is then explained in paragraph (2), paragraph (3), paragraph (5), paragraph (6) and paragraph (7) of Government Regulation of the Republic of Indonesia Number 12 of 2021 concerning Amendments to Government Regulation Number 14 of 2016 concerning the Implementation of Housing and Residential Areas. The conditions that must be implemented by the developer and the buyer's rights that must be fulfilled before implementing the PPJB as stipulated above cannot be fulfilled completely by the developer, namely:

1. Cannot provide certainty of land ownership rights as regulated in Article 22C paragraph (1) letter b which is then explained in Article 22C paragraph (3). The status of land ownership as intended in Article 22C paragraph (1) letter b, is proven by a certificate of land rights in the name of the development actor or a certificate of land rights in the name of the owner of the land being collaborated with or a document of land rights in accordance with the provisions of laws and regulations in the land sector which must be shown to the buyer at the time of signing the PPJB to fulfill the requirements. certainty of rights to land ownership. This issue of land ownership does not only arise in the present but has become a classic problem, namely

since the time of the Holy Roman Empire, which was an autocratic power that was strongly influenced by barons, most of whom were landowners, (Efridani Lubis and Mulyono, 2020: 19). This concept of land ownership was then adopted by the Dutch and brought to application in Indonesia through the principle of concordance. But at the same time, in Indonesia there have long been indigenous communities who regulate various things in their traditional life, one of which is land ownership. So this has resulted in the land problem in Indonesia being split into 2 (two) systems. Then it was harmonized through Law Number 5 of 1960 concerning Agrarian Principles which is often abbreviated as UUPA. With this, it is hoped that there will be no more problems with land ownership rights.

2. Cannot prove the building construction permit, whether it is broken or the main part, which is then changed to a building permit (PBG) as regulated in Article 22C paragraph (1) letter d which is then explained in Article 22C paragraph (6) must be proven by a PBG letter submitted by the buyer at the time of signing the PPJB.
3. In the developer's practice of making PPJB unilaterally without involving buyers to ask for information on what points they want to include in the PPJB, this is suspected to be a legal product. The PPJB was made privately so that full power in the process of preparing the PPJB is in the hands of the developer, even though in Article 1 number 11 of the Government Regulation of the Republic of Indonesia Number 12 of 2021 concerning Amendments to Government Regulation Number 14 of 2016 concerning the Implementation of Housing and Settlement Areas, it is stated that PPJB is made before a Notary as an official who has the authority to make various types of agreements. The authority of the notary is limited to that granted by the Law on the Position of Notaries. Article 15 paragraph (1) Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (Habib Adjie, 2008: 7778).



Losses for consumers due to the failure to fulfill the three points above, namely, firstly, the process of signing the Deed of Sale and Purchase (AJB) is hampered because in practice the completion of the Certificate and PBG process takes quite a long time and exceeds the time limit promised by the developer, secondly, consumers do not have space to provide input on the points regulated in the PPJB because they are made privately and unilaterally by the Developer, where consumers are only presented with the PPJB and just have to sign it like a standard agreement.

In Article 4 paragraph (3) of Law Number 8 of 1999 concerning Consumer Protection, consumer rights are clearly written, namely the right to correct, clear and honest information regarding the condition and guarantee of goods and/or services. In the PPJB there has been a relationship the law between the seller (developer) and the buyer where with the PPJB there has been a linkage and entanglement of the rights and obligations of each party which must be obeyed and fulfilled, here are some principles that depart from doctrine and theory in the long history of consumer protection, namely (Janus Sidabalok, 2014: 83):

1. Principle of Let The Buyer Beware (Caveat Emptor)
This means that consumers have an equal position with developers.
2. Principles of The Due Care Theory
This means that the developer must be careful when marketing their product.
3. The principle of the privacy of contract
In this principle, consumers have the right to receive protection from the developer, but with the condition that there must be a binding agreement between the developer and the buyer.
4. Contract principles are not conditions
In this principle, it is known that contractual agreements are no longer part of the conditions for protecting consumer rights.

The vulnerability of problems faced by buyers regarding ownership of immovable assets from developers obtained through a Sales and Purchase

Agreement (PPJB) which then has implications for the legal relationship between buying and selling often becomes disharmonious, and often even gives rise to legal disputes between the buyer and the developer, even though in the end the buyer is on the weak side in the legal efforts taken so that they cannot provide protection for their rights, considering the developer's very strong position before the law. Based on the problems described above, the author is interested in conducting more in-depth research with the title "**The Legal Effects of Underhand Sale and Purchase Agreements on the Sale and Purchase of Land and Buildings from Developer Companies**".

DISCUSSION

Factors causing the occurrence of underhand sales and purchase agreements in the sale and purchase of land and buildings from developer companies

In practice, PPJB is made privately for practical and cost-saving reasons, but the basic thing is that the developer cannot fulfill the requirements for implementing PPJB in the form of an authentic deed, namely that it must include proof of ownership of land rights (building use rights, property rights, use rights and so on) in this case in the form of a certificate for the unit being bought and sold. So the underhand PPJB does not comply with the provisions in Article 1 number 11 of the Government Regulation of the Republic of Indonesia Number 12 of 2021 concerning Amendments to Government Regulation Number 14 of 2016 concerning the Implementation of Housing and Residential Areas, namely the Preliminary Sale and Purchase Agreement or Sale and Purchase Agreement, hereinafter referred to as PPJB, is an agreement between the construction actor and each person to carry out the sale and purchase of a house or unit of flats which can be carried out by the construction actor before the construction of an apartment or in the construction process for a single house and a house. series made before a notary.

The practice of hand-held PPJB does not comply with the provisions of Article 22 K of the Republic of Indonesia Government Regulation Number 12 of 2021 concerning Amendments to



Government Regulation Number 14 of 2016 concerning the Implementation of Housing and Areas

The settlement which states that the buyer has the rights before signing the PPJB is:

- 1) Prospective buyers have the right to study the PPJB before signing the PPJB
- 2) Prospective buyers study the PPJB as intended in paragraph (1) within a minimum period of 7 (seven) working days.
- 3) The PPJB is signed by the prospective buyer and the development actor in the presence of a notary.

Based on Government Regulation of the Republic of Indonesia Number 12 of 2021 concerning Amendments to Government Regulation Number 14 of 2016 concerning the Implementation of Housing and Settlement Areas, it regulates in detail what the developer must do before signing the PPJB in Article 22 I paragraph (1), it is stated that the PPJB is carried out after the development actor has fulfilled the certainty requirements regarding:

- a. Land ownership status;
- b. What was agreed upon;
- c. PBG;
- d. Availability of public infrastructure, facilities and utilities; And
- e. Development of at least 20% (twenty percent).

Most of points a, b and c have not been able to be fulfilled by the developer but the PPJB is still being implemented even though it is expressly regulated in Article 22 I paragraph (2), paragraph (3) and paragraph (4), namely:

- a. Land ownership status as regulated in paragraph (1) letter a is proven by a certificate of land rights shown to prospective buyers at the time of signing the PPJB.
- b. The things agreed upon, as intended in paragraph (1) letter b, consist of at least:
 - House Condition.

- Public infrastructure, facilities and utilities which become Marketing information as intended in Article 22D paragraph (1) letter I
- Explanation to prospective buyers regarding PPJB content material.
- Status of land and/or buildings in terms of being collateral as intended in Article 22E paragraph (2).
- c. The PBG as referred to in paragraph (1) letter c is delivered as an original copy to the prospective buyer at the time of signing the PPJB.

In practice, as per the PPJB regarding objects being bought and sold as written in the PPJB, it only includes the address of the object being bought and sold without writing proof of ownership of land rights and proof of building ownership or PBG, therefore it can be seen that when signing the PPJB the developer does not show proof of ownership of land rights and also does not provide a copy of the PBG to the buyer as regulated in Government Regulation of the Republic of Indonesia Number 12 2021 concerning Amendments to Government Regulation Number 14 of 2016 concerning the Implementation of Housing and Settlement Areas regulates in detail what the developer must do before signing the PPJB in Article 22 I paragraph (1) which is then explained in Article 22 I paragraph (2), paragraph (3) and paragraph (4), namely that the developer is obliged to implement these provisions by showing the land title certificate to the buyer at the time of signing the PPJB and providing a copy of the PBG to the buyer at the time of signing the PPJB. signing of PPJB.

Based on this analysis, the author was able to find factors that led to the signing of a binding sale and purchase agreement under the hands of the developer and buyer, including:

- 1) Payment is made in stages, either in cash or with bank facilities
- 2) The certificate is still in the process of splitting, merging and reducing rights
- 3) PBG is still in process at the relevant agencies
- 4) Practical and cost effective



Because factors 2 and 3 are required to exist before signing the PPJB and the developer's inability to fulfill the above provisions, the developer unilaterally makes the PPJB under his own hands without involving the buyer.

Legal Consequences of Underhand Sale and Purchase Agreements in the Sale and Purchase of Land and Buildings from Developer Companies

The consequences of the agreement are regulated in Article 1338 of the Civil Code which states that all agreements made in accordance with the law are valid as law for those who make them. The agreement or agreement cannot be withdrawn other than by agreement of both parties, or for reasons determined by law. Agreement must be made in good faith on the part of the parties.

From the above definition, the PPJB is an agreement between the seller and the buyer who have agreed to carry out a transfer of rights or a sale and purchase transaction, provided that the PPJB has fulfilled the elements and legal requirements of an agreement as regulated in Article 1320 of the Civil Code, so the PPJB has become law for the parties and binds both of them to perform and receive sanctions in the event of default as regulated in the PPJB.

Article 1340 of the Civil Code also states that the agreement made only applies to the parties who made it. This means that the agreement cannot harm third parties and also cannot provide benefits to third parties. If the form of the PPJB is not in accordance with Article 1 number 11 of the Government Regulation of the Republic of Indonesia Number 12 of 2021 concerning Amendments to Government Regulation Number 14 of 2016 concerning the Implementation of Housing and Residential Areas, namely the Preliminary Sale and Purchase Agreement or Sale and Purchase Agreement, hereinafter referred to as PPJB, is an agreement between the construction actor and each person to carry out the sale and purchase of a house or unit of apartments which can be carried out by the construction actor before the construction of an apartment or in the construction

process for a single house or house. series made before a notary.

As per the provisions above, the PPJB must be made before a notary whose PPJB product is an authentic deed. This is intended so that the interests of the parties in the PPJB can be protected because authentic deeds made before a notary have perfect evidentiary power. As well as providing legal protection and certainty for the parties who create it. Because the notary in making the deed is impartial and safeguards the interests of the parties objectively. However, in practice there are still many PPJBs made privately, in general those who do this are the developers for reasons of practicality and cost savings, so that the strength of the PPJB between the developer and the buyer in terms of proof does not have perfect strength like an authentic deed so the strength of the proof is only limited to private letters.

However, the developer is of the view that the PPJB that has been signed is not null and void, but the PPJB is binding on both parties, especially since the achievements in the PPJB have already been implemented and give rise to rights and obligations for both parties. This is the developer's opinion that the private PPJB they made is based on the principle of freedom of contract, namely Article 1313 of the Civil Code, only in terms of being used as evidence, the level is only a private letter.

Based on the researcher's analysis, as a result of signing the PPJB under the hands of the developer and the buyer, the agreement made by the parties can be said to not meet the objective requirements, namely violating the provisions regulated in Article 1320 paragraphs (3) and (4) of the Civil Code. Violating Article 1320 paragraph (3) of the Civil Code, namely "A Certain Matter" in the Agreement, it must be stated clearly what will be the subject of the agreement or the thing being agreed upon. As regulated in Article 1332 of the Civil Code and Article 1333 of the Civil Code, this is done to fulfill the principle of certainty in making agreements.



Violating Article 1320 paragraph (4) of the Civil Code, namely "Halal Causa" or a halal cause, meaning that an agreement cannot include a reason that is prohibited or contrary to law, public order and morality as regulated in Article 1337 of the Civil Code. Therefore, PPJB which is made privately does not comply with the provisions of Article 42 paragraph (3) of Law of the Republic of Indonesia Number 1 of 2011 concerning Housing and Settlement Areas which was later amended by Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation in conjunction with Article 1 number 11 of Government Regulation of the Republic of Indonesia Number 12 of 2021 concerning Amendments to Government Regulation Number 14 of 2016 concerning the Implementation of Housing and Settlement Areas, which is The PPJB must be made before a Notary in the form of an authentic deed, which is an objective requirement so that an agreement can be declared valid, namely fulfilling the provisions of halal causes, one of which must not be in conflict with the law.

Therefore, the PPJB which is made privately is null and void because it violates the objective conditions in an agreement, so that the PPJB under the hand is considered to have never existed in the first place, so the legal consequence is that the party who has received the achievement is obliged to return it to the party who has fulfilled the achievement, this aims to return the situation to its original state.

CONCLUSION

Factors that cause the implementation of a private sale and purchase agreement for the purchase of land and buildings from developers are, among others, because payments are made in stages, either in cash or with bank facilities, certificates are still in the process of splitting, merging and reducing rights, PBG is still in process at the relevant agencies and the last reason is because it is practical and cost-effective. Due to the fact that the certificate is still in the process of splitting, merging and decreasing rights, the PBG is still in the process at the relevant agency, it is required

to be there before signing the PPJB and the developer's inability to fulfill the provisions that the certificate must be shown when signing the PPJB and the PBG must be delivered to the consumer in the form of a copy first, so that the PPJB cannot be implemented before a notary because the requirements for proof of land ownership rights are not met, so the developer unilaterally makes the PPJB under his hand without involving the buyer.

The legal consequences of implementing a private sale and purchase agreement for the purchase of land and buildings from a developer company, PPJB which is made privately does not comply with the provisions of Article 42 paragraph (3) of the Law of the Republic of Indonesia Number 1 of 2011 concerning Housing and Settlement Areas which was later amended by Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation in conjunction with Article 1 Number 11 Government Regulation of the Republic of Indonesia Number 12 of 2021 concerning Amendments to Government Regulation Number 14 of 2016 concerning the Implementation of Housing and Settlement Areas, where the PPJB must be made before a Notary in the form of an authentic deed, which is an objective requirement so that an agreement can be declared valid, namely fulfilling the provisions of halal causes, one of which must not conflict with the law. Therefore, PPJB which is made privately is null and void because it violates the objective conditions in an agreement, so that the PPJB under the hand is deemed to have never existed in the first place, so the legal consequence is that the party who has received the performance is obliged to return it to the party who has fulfilled the performance, this aims to return the situation to its original state.

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