

IMPLEMENTATION OF LAND BUYING TRANSACTIONS BASED ON THE AUTHORITY TO SELL WHICH ARE NOT ELIGIBLE WITH THE SALE AND PURCHASE BINDING AGREEMENTS (PPJB)

¹Deden Indra Wijaya, ²Dr. Hj. Yulfasni, ³Dr. Yussy Adelina Mannas
¹Master Of Notary Student, ²Master Of Law Lecture, ³Master Of Law Lecture
Faculty Of Law, Andalas University, Padang, West Sumatera, Indonesia
Email – dedenindrawijaya6@gmail.com

Abstract: Land is one of the current investments that is chosen by the community because of the increasing need for housing for the community so that the price of land increases every year. Therefore, land buyers usually expect a guarantee of legal certainty for registration of the transfer of land rights due to sale and purchase, one of which is by using a power of attorney to sell made by a notary without being followed by a binding sale and purchase agreement (PPJB). Meanwhile, in Government Regulation Number 24 of 1997 concerning Land Registration Article 38 paragraph 1 and Article 39 paragraph 1 letter d states that: Article 38 paragraph 1: The deed as referred to in Article 37 paragraph (1) is attended by parties who carry out legal actions concerned and witnessed by at least 2 (two) witnesses who meet the requirements to act as witnesses in the legal act. Article 39 paragraph 1 letter d: PPAT refuses to make a deed, if one of the parties or the parties acts on the basis of an absolute power of attorney which essentially contains the legal act of transferring rights.

Key Words: Power to Sell, Sale and Purchase Binding Agreement (PPJB).

1. INTRODUCTION:

In practice, it is often found that the registration of the transfer of rights is based on a deed of power of attorney to sell without being followed by a deed of binding sale and purchase agreement (PPJB). Meanwhile, the power to sell is without a certificate from a notary who makes the power to sell which explains that the land as an object in the deed of power to sell has been paid in full. As was the case in Pekanbaru City, where the Notary made a PPJB accompanied by a Selling Authorization in which the PPJB contained the procedure for payment for the sale of the plot of land and the Notary did not add a clause that the power to sell was an integral part of the PPJB and was valid if the agreement If the said land has been completed or has been paid in full, on the basis that there is no such clause in the power of attorney to sell, the buyer uses it to sell the land without the knowledge of the seller, so that the land is sold to a third party without paying off its obligations to the seller.

2. THEORITICAL FRAMEWORK:

- a. Legal Certainty Theory
According to Sudikno Mertokusumo, legal certainty is a guarantee that the law is enforced, that those entitled by law can obtain their rights and that decisions can be enforced.[1]
- b. Legal Protection Theory
According to Satjipto Rahardjo, legal protection is to provide protection for human rights that are harmed by others and that protection is given to the community so that they can enjoy all the rights granted by law.[2]

3. LITERATURE REVIEW:

In the practice of making a deed of sale and purchase, it is often the case that the seller is represented by another party by using the power of attorney to sell.

An agreement issues an engagement, therefore the agreement is the most important source that gives birth to an engagement.

4. METHOD:

The method used in this study is an empirical juridical approach, namely an approach based on field research methods, namely examining applicable legal provisions and what is happening in people's lives.[3]

5. DISCUSSION:

If it is related to the power to sell, the buyer here receives power from the seller, which then the buyer can act and have the same authority as the power of attorney (seller) so that in the exercise of this power the buyer can act in 2 (two) authorities at the same time which acts as the seller. and act as a buyer as stated in the Sale and Purchase Deed (AJB) by and before the Land Deed Making Officer (PPAT). In granting the power of attorney to sell, other conditions are often added, among others, the power to sell can be valid if there has been a default, the power to sell can be effective from the date specified and/or expire with the period specified in the power of attorney.

The granting of such power of attorney is considered detrimental to the giver of the power of attorney because not a few recipients of the power of attorney abuse the power for their personal interests. The purpose of making this power of attorney for the power of attorney is to make it easier to sell the land to a third party without requiring further approval from the attorney whose name is listed in the certificate, and to reduce the tax burden that must be paid if he follows the procedure for buying and selling land in accordance with the laws and regulations.

6. ANALYSIS:

A. Position of the Deed of Power to Sell in the Transfer of Land Rights.

The position of the power of attorney to sell in the transfer of land rights functions and has the aim of guaranteeing legal certainty for the buyer . This is because legal certainty can regulate clearly and logically so that it will not cause doubt if there are multiple interpretations. So that it will not clash and will not cause conflict in the norms that exist in society. Legal certainty is also needed to realize the principles of equality before the law without discrimination. From the word certainty, it has a close meaning with the principle of truth. That is, the word certainty in legal certainty is something that can be strictly syllogized in a formal legal way. With legal certainty, it will guarantee a person can perform a behavior in accordance with the provisions of the applicable law and vice versa. Without legal certainty, an individual cannot have a standard provision for carrying out a behavior. In line with that goal.

B. Position of the Sale and Purchase Binding Agreement (PPJB) in the Land Sale and Purchase Process

PPJB sale and purchase of land made by a notary can not be used as the basis for the transfer of land rights, because the basis for the transfer of land rights received by the National Land Agency, hereinafter referred to as (BPN) is a deed of sale and purchase of ownership rights to land made by PPAT, so PPJB only as a preliminary agreement because the conditions for carrying out AJB cannot be implemented, so PPJB is only a preliminary agreement as an agreement of the parties to continue to carry out the agreement even though the specified conditions are not ready with the provisions of the clauses that must be implemented. So PPJB only results in the right to control the land for the buyer, but the ownership rights to the land cannot be given to the buyer until the agreements specified in the clause can be implemented properly. there has been no transfer of land rights from the seller to the buyer and the sale and purchase binding agreement cannot be equated with AJB.

C. Legal Protection for the Parties If One of the Parties Defaults in the Sale and Purchase Binding Agreement.

The certainty of legal protection for the parties if one of the parties defaults in the PPJB is very dependent on the content and strength of the PPJB made, namely if it is made with an underhand deed, then the protection is in accordance with the protection of the private deed, even though in Article 1875 of the Law The Civil Law Law does state that an underhand deed can have perfect evidence such as an authentic deed if the signature on the deed is recognized by the parties who signed it, but it is not made before an authorized official in accordance with Article 1868 of the Civil Code. which states "an authentic deed is a deed in the form specified

in the law, made by or before public officials in power for that at the place where the deed was made", whereas if it is made by or before a notary then the deed automatically becomes a deed. notarial sehin The power of protection is not in accordance with the protection of authentic deeds.

7. CONCLUSION :

From the discussion as explained earlier, several conclusions can be drawn, including:

- 1) The position of the power of attorney to sell in the transfer of land rights is used for the buyer to appear and sign the Sale and Purchase Deed (AJB) independently before the PPAT, both as a seller and as a buyer.
- 2) The position of the binding sale and purchase agreement (PPJB) in the process of buying and selling land is an assistance agreement that functions as a preliminary agreement before the main agreement, namely AJB is signed, whose purpose is carried out by a Notary to ensure legal certainty for the seller and buyer in the implementation of the sale and purchase of land, so that PPJB is legal to apply and use and can be used as evidence if problems occur in the future.
- 3) Legal protection for the fulfillment of the rights of the parties if one of the parties defaults in the sale and purchase binding agreement is very dependent on the strength of the PPJB made, the legal protection provided in the sale and purchase binding agreement is very strong because of the evidentiary nature of the sale binding agreement purchases made before a public official, in this case a Notary, who has very strong evidence in accordance with the evidence from an authentic deed.

REFERENCES:

1. Sudikno Mertokusumo, 2007, *Mengenal Hukum Suatu Pengantar*, Liberty, Yogyakarta, page 160.
2. Satjipto Raharjo, 2000, *Ilmu Hukum*, PT.CitraAditya Bakti,Bandung, page 53.
3. Bambang Waluyo, 2002, *Penelitian Hukum Dalam Praktek*, Sinar Grafika, Jakarta, page 15.