



## Status of Sale and Purchase Agreement for Transfer of Land Right According to Indonesian Legal System

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### **Abstract**

The transfer of rights in order to obtain the legality and authenticity of the transfer of rights, so that the Sale And Purchase Agreement is made in the form of a Deed. In the present practice, the agreement was born due to legal discovery for the parties, due to the requirements that have not been met or the existence of matters agreed upon by the parties must be fulfilled. The discovery of the law itself is the process of establishing law by law officers, due to the existence of unclear or incomplete legal regulations. Therefore, with that the binding sale and purchase agreement was born. Where is land agreement due to the existence when someone will buy land, in the sense of purchasing property rights on the land.

**Keywords:** *Status; Sale and Purchase Agreement; Land Rights*

### **Introduction**

Based on Law No. 2 of 2014 concerning Position of Notary, the development of the world of notaries in Indonesia has experienced a very big change in terms of its duties as a public official authorized to make deeds in civil law traffic. Notary as an officium nobile or an honorable profession in the field of law certainly requires mastery of material in the field of qualified civil law in order to meet the needs of the community for legal services in the field of manufacturing evidence.

The very rapid development of the law certainly affects the work carried out by the notary to make the deeds in order to keep abreast of developments or human actions that are so fast. The basis for notary deeds or duties is very clearly regulated in Law Number 2 of 2014 concerning Notary Position, but not all of these acts or duties of the notary have fulfilled the community's demands for the fulfillment of legal services in the framework of making deeds because of the rapid legal development in society. With the rapid development of law in the community, the notary is required to find a way or a breakthrough to meet the needs of the community such as what is in the Act, the activity is called Legal Discovery which is usually interpreted as establishing the law by a judge or other legal officers who are given the task of carrying out the law against concrete legal events.

Just like judges, notaries as other legal officers must be able to find a way or make a deed for legal settlement in the field of civil law as long as the act is not prohibited by law and the need for services in that field is really needed by the community in terms of efficiency. Departing from reality Above mentioned the author wants to examine the role of the notary in making the deed-Problem is the gap between what should exist with the actual reality on the ground, between what is done with what is available, between expectations with the achievement of results or what is called *des sollen* with *das sein* .

What is meant by legal discovery or that in a foreign language is known as *rechvinding* and law making is finding a law because the law is incomplete or unclear. It is not only judges who make a legal discovery, because the purpose of finding a law is to solve a concrete legal problem. Every legal scholar who works in the field of law (his profession) always faces concrete legal problems to solve and find the law.

The notary is not a judge who has to examine and hear a case, serving in litigation. The notary has the authority to make an authentic deed concerning all deeds of agreement and stipulation which is ordered by general rules or requested by the person concerned. Notary every day making a legal discovery means helping law enforcement, finding legal means not to find the law, there are rules and requirements. The act of a legal expert in a particular situation to accommodate certain needs is what is meant by understanding legal discovery or *rechtsvinding*. In the legal decision making process, a legal expert is basically required to carry out two main tasks or functions, namely: 1 He must always be able to adjust the concrete legal rules (legislation) to the real demands that exist in society, by always paying attention to habits, prevailing views, ideals that live in society, and his own sense of justice. Need to be done by a legal expert because legislation is basically not always able to be set to regulate all events that exist in society.

In practice, notaries make more deeds in the form of standard deeds whose forms have been determined by the government in the Act, namely authentic deed deeds in general, such as the Grant Deed, Inbreng Deed. Deed of Limited Liability Company, and other deeds made by Notary Public, but at certain times. Notaries are also required to be able to make legal discoveries, in certain agreements or contracts because of legal imperfections available<sup>1</sup>

Where on the basis of the notary's duty is to make all forms of agreements that are presented to him by the parties, where as we know the agreement is arranged in the third book on the engagement, which has a broader meaning than the word agreement, where the word *gambnanan* can be interpreted as a legal relationship between two or more people, based on which one party has the right to sue the other party, and the other party is obliged to fulfill that demand. According to Article 1313 of the Civil Code is an act with the *amana* of one person or more *mengijatkan* himself to others or more. The notary in carrying out his duties as a state official is also given another authority, namely as stipulated in article 15 paragraph 2 namely the authority to give legal counseling in connection with the making of the deed.

Based on this provision, the notary in carrying out his services must be guided by the applicable laws and regulations and must refuse to make the deed or provide other services that are not in accordance with the provisions of the applicable laws and regulations. Besides that, the notary is also given a new authority or legal authority stated in Article 15 paragraph 2 letter f, namely: making a deed relating to land. The notary has the authority to make and ratify an authentic deed of the transfer of rights to obtain legality and authentication of the transfer of rights, so that the Sale and Purchase Binding Agreement is made in the form of a Deed. In practice today the agreement that was born was because there was a legal discovery by a notary for the parties, due to the requirement that the conditions had not been fulfilled or the things agreed upon by the parties must be fulfilled. The discovery of the law itself is the process of

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<sup>1</sup> <http://hermannotary.blogspot.com/2010/03/penemuan-hukum-rechtsvinding.html>

legal formation by law officers, due to unclear or incomplete laws. So with that was born the binding agreement of buying and selling. Where the binding purchase agreement is born because when someone will buy land, in the sense of purchasing property rights to the land.

However, the land has not been certified, and the payment has not been paid, the binding of the sale and purchase of the land was made prior to the sale deed of land because the conditions determined by the law have not been fulfilled, to keep the agreement carried out properly while the requirements requested can still be taken care of, then usually the parties who will conduct the sale and purchase of the initial agreement in the form of an agreement which is then known as the binding agreement of sale and purchase.

The notary has the authority to make and ratify an authentic deed of the transfer of rights to obtain legality and authenticity of the transfer of rights, so that the Sale and Purchase Binding Agreement is made in the form of a Deed. In practice today the agreement that was born was because there was a legal discovery by a notary for the parties, due to the requirement that the conditions had not been fulfilled or the things agreed upon by the parties must be fulfilled. The discovery of the law itself is the process of legal formation by law officers, due to unclear or incomplete laws. So with that was born the binding agreement of buying and selling. Where the binding purchase agreement is born because when someone will buy land, in the sense of purchasing property rights to the land.<sup>2</sup> According to the description above, there are some discussions this research as follows : How The Status of Sale And Purchase Agreement As The Previous Land Agreement For The Parties. How does the legal consequences of Sale and Purchase Agreement in Transfer Land of Right.

### **Research Method**

The research used in this research is normative legal research or normative juridical research, that is research carried out approaches that are used in research on secondary data by focusing on research activities. Legal research is a statute approach, a case approach, a historical approach, a comparative approach, and a conceptual approach.<sup>3</sup>

### **Discussion**

#### *1. The Status of Sale and Purchase Agreement For Transfer of Land Rights In Indonesian Legal System*

##### *a. Sale and Purchase Agreement as the Previous Land Agreement for the Parties*

There are two terms in treaty law derived from Dutch, namely *verbintenissen* and *overeenkomst*. *Verbintenissen* is derived from the word *verbinden* which means binding, therefore the term *verbintenissen* is translated as an agreement, whereas *overeenkomst* is translated as agreement or agreement According to Pitlo, an agreement is a legal relationship in the field of assets between two or more people where one party has the right (creditor) for an achievement and other parties are obliged (debtor) for an achievement. An engagement that occurs because of an agreement or because the law is a legal fact or legal event.

According to Article 1313 of the Civil Code, an agreement is an act by which one or more persons commit themselves to one or more other people, that the definition given by Article 1313 of the Civil

<sup>2</sup> Notaris” <http://id.wikipedia.org/wiki/notaris>

<sup>3</sup> Soerjono Sokeanto and Sri Amudji, 2000, Normative Legal Research, Raja Grafindo Persada, Jakarta, p. 22.

Code is incomplete, narrow, and too broad. After the formulation of Article 1313 of the Civil Code is perfected, then the definition of agreement is obtained as a legal act by which one or more persons are bound themselves or bind themselves to one or more persons. The agreement can also be defined as a legal act that raises, modifies, abolishes rights, or give rise to a legal relationship and in this way the agreement results in legal consequences which are the goals or wishes of the parties. A multiple legal act is an agreement If the multiple legal actions fulfill the elements of the agreement, including:

- Agreement from two or more parties  
An agreement can only arise if there is an agreement or statement of will from two or more parties (the parties). The will must be stated.
- The agreement reached must depend on the parties
- Agreement is reached if one party agrees on what is offered by the other party, so the parties agree with each other. If an agreement is reached that does not depend on the parties, then the legal action is not an agreement.
- The desire or purpose of the parties for their legal consequences  
Not all statements of will are promises that bring about legal consequences, some are just social obligations. This can be seen from the intent or purpose of the parties and the local circumstances or habits. In practice it is known that gentlemen's agreement gives rise to moral obligations and gentlemen's agreement which gives rise to legal obligations whose distinction depends on the intentions of the parties.

Sale and purchase agreement is a legal relationship between the buyer and the seller whose contents are rights and obligations with absolute conditions, if both of them have been fulfilled, the agreement to terminate the purchase agreement. If the rights and obligations as well as the terms agreed upon are not carried out by the parties, the purchase and purchase agreement can be used as the basis for the fulfillment of defaults for the parties, to be filed for a civil case either through court or through the court. Or by way of arbitration, mediation, peace.

#### b. Sale and Purchase Agreement for Completion Legal Vacuum

In the agreement to buy and sell legal actions and legal relations, the deed of sale and purchase agreement is an authentic proof as the basis for transfer of land rights if the specified conditions have not been fulfilled, the purchase agreement is a product of legal discovery, because it is not directly regulated in the law, the binding purchase agreement deals with the legal vacuum.<sup>4</sup> According to the contractual *sudikno*, it is possible to make any agreement, but it is still based on the applicable law, and the PPJB is issued as a legal finding product for legal service solutions to the public, with conditions that must be paid in full, and does not harm the parties. The clause of the binding purchase agreement that must exist is that there is a clear period of time, if the sale and purchase has been paid off, switch certificates to on behalf of the owner. to ensure certainty to the seller and switch it.

There are two forms of that are not regulated in a notarial deed, namely the binding agreement of sale and purchase and inheritance certificate, because PPJB is a fill in the legal vacuum (contractual legal discovery), PPJB is one of the legal service solutions to the community with PPJB provisions. made must be paid in full and / or not to prejudice the parties to the agreement. In buying and selling, especially in buying and selling land, a Binding Sale and Purchase Agreement (PPJB) occurs if there has not been a transfer of rights to the land caused by things such as land, which has only been paid or the Certificate is still in the process of the Land Agency Office (BPN), repayment, because the Purchase Binding Agreement (PPJB) is a preliminary agreement. in general, a binding purchase agreement consists of

<sup>4</sup> Rusdianto Dony Hadi, (2009), Some Important Notes About the Binding of Buying and Selling Land, (pp.51). Jakarta, JKT: Rineka Cipta Science Partner.

promises that must be fulfilled in advance by one of the parties or the parties before the principal agreement. therefore a binding sale and purchase agreement is a preliminary agreement, called a preliminary agreement because the agreement contains promises from the parties that contain provisions if the conditions of sale and purchase have been fulfilled.

## 2. *Legal Consequence of Sale And Purchase Agreement in Transfer Land Right*

### a. Consequence for the Parties

1. The agreement is valid as a law for the parties (Article 1338 paragraph (1) of the Civil Code).
2. The parties cannot unilaterally withdraw from the agreement made (Article 1338 paragraph (2) of the Civil Code), but can be terminated unilaterally if there are reasons which by law are declared sufficient for that as the reasons contained in Article 1571- 1572, Article 1649, and Article 1813 of the Civil Code.
3. Implementation of an agreement must be carried out in good faith (Article 1338 paragraph (3) of the Civil Code).
4. Agreement other than binding for matters promised, also binding on everything according to the nature of the agreement required by propriety, customs, or law (Article 1339 of the Civil Code) as well as things that are customary to be promised in the agreement although not explicitly stated in the agreement or what is also called a promise which according to custom is always promised (Article 1347 of the Civil Code).
5. The agreement only applies between the parties who made it and may not incur losses to third parties (Article 1340 of the Civil Code), but third parties can benefit from an agreement if it has been previously agreed (Article 1317 of the Civil Code).

Based on the explanation we already know that the position of the Sale And Purchase Agreement is the previous agreement of the sale and purchase agreement, it is termed to guarantee legal certainty for the parties as well as notaries and ppast who will make the agreement to buy and sell, as said in the legal certainty theory. The law is also called the principle of legal security and rechtszekerheid. Legal certainty is a legal instrument of a country that is able to guarantee the rights and obligations of every citizen. Legal certainty is also interpreted as a guarantee for members of the community, that everything will be treated by the state / authorities based on legal arrangements, which are not arbitrary.

The existence of public law does not even know the clarity of rights and obligations according to law. Without legal certainty, people will not know what to do, do not know what is right or wrong, are prohibited or not prohibited by law. Legal certainty is a hope for justice seekers against the arbitrary actions of law enforcement officers who sometimes always arrogance in carrying out their duties as law enforcers. In this penelia legal certainty can be seen by making PPJB between the seller and the buyer, where the price has not been paid off. This PPJB is the initial agreement before AJB to transfer the name with ownership status to the buyer, because AJB cannot yet be made as the basis for the BPN to process the transfer of name.

## 2. The Purchaser Can Control the Land

The position of the sale and purchase agreement is the previous agreement of the sale and purchase agreement, it is termed to guarantee legal certainty for the parties as well as notaries and ppast who will make the agreement to buy and sell, as said in the legal certainty theory. The law is also called the principle of legal security and rechtszekerheid. Legal certainty is a legal instrument of a country that is

able to guarantee the rights and obligations of every citizen. Legal certainty is also interpreted as a guarantee for members of the community, that everything will be treated by the state / authorities based on legal arrangements, which are not arbitrary. The current trend is because many things have not yet been met in taxation, fermentation, and so on, the agreement to bind the sale and purchase agreement, the PPJB in full can be registered with the transfer of rights under 1997, with the issuance of PP No. 24 of 1997, the PPJB was settled. Under 1997, it was recognized as a registration of land rights, after which it was no longer valid.

Sale and purchase is authentic evidence which states that a legal act has taken place. , the position of the deed remains as an authentic akita if it is made before a notary and if it is made under the hand, it is a deed under the hand. So even though the sale and purchase agreement has not yet occurred because the conditions have not yet been fulfilled, such as tax validation, the payment has not been settled, fermented, with a binding purchase agreement there is a legal relationship between the buyer and seller who must fulfill their respective rights and obligations, in other words due the law of making a binding sale and purchase agreement by a notary, the purchaser can control the land right even though it has not been paid off, the ownership rights have not yet occurred, and there is no sale and purchase agreement yet.

### ***Conclusion***

1. The Sale And Purchase Agreement is an authentic deed, because the terms and regulations for making the sale and purchase agreement cannot yet be made. implemented, as the basis for the right to enter into a sale and purchase agreement for the transfer of name to the BPN, and the PPJB is a legal invention because it is not regulated by law.
2. Legal consequences of the land agreement is an authentic. The parties are obliged to fulfill their respective rights and obligations until the terms of the agreement are fulfilled and the agreement is completed, so that the bias can be carried out with the BPN, and the legal consequence is that the purchaser can control the land, even though the agreed terms of the PPJB have not been fulfilled, such as payment has not been settled, but ownership rights have not yet occurred if there is no deed of the binding contract of sale and purchase, so this PPJB is also made to refer to the legal certainty theory, so that legal certainty exists for the claimant and the buyer to have a legal relationship and legal actions that must be complied with. implement it in other words to ensure certainty for both parties.

### ***Suggestion***

1. In entering into a binding purchase agreement, he must pay attention to the terms and conditions set forth in the agreement, so that disputes do not occur in the future. The making of a binding sale and purchase agreement for land should be made before a Notary Public as an authentic deed. So that it can guarantee legal certainty for the parties, and the clauses in the binding agreement of sale and purchase can be expressly implemented to avoid the occurrence of defaults in the future.
2. The notary in making a binding sale and purchase agreement for land rights must see whether the certificate which is used as the object of the binding purchase agreement is a guarantee at the bank or in the hands of the owner, to guarantee legal certainty for both parties, and to avoid problems in the future.

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