



Notary Responsibility to Make Apartment Agreement According to Indonesian Legal System

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Abstract

In making the deed of the Sale and Purchase Agreement, before the notary must ensure in advance about the requirements ordered by the Act as in Article 43 of the Flats Law, because a Notary in carrying out his authority as a general official is a perfect evidence maker of course must be responsible for the deed he made. The problem here is how to measure against 20% (twenty percent) of the construction, because considering the absence of provisions of construction 20% (twenty percent) are in the apartment or other regulatory provisions. This will certainly make it difficult for the notary to make a binding agreement on the sale and purchase of flats. In making the deed especially on the Binding Agreement for Sale and Purchase Agreement this Flats will be the responsibility of the Notary as the official maker of authentic deeds to pay attention to the provisions of the conditions ordered by the apartment project, so that the deed is made by the notary will not be found later. Based on the description above, the enactment of the apartment law will have an impact on the Notary as a general official who has the authority to make authentic deeds, and here the author wants to see the role of the notary in making a Flat Sale Purchase Agreement, in accordance with Article 43 of the House Law Arrange.

Keywords: *Notary; Responsibilities; Apartment Agreement*

Introduction

The state is a power organization that has the authority to make and set laws and regulations. Laws and regulations made and determined by the state have the content of norms and rules from various sources that exist in people's lives. Its main purpose is to regulate people's lives in order to achieve prosperity and justice. In the formation of legislation, policy makers must stand on the constitution as the highest legal norms, so that there is no conflict between high and low statutory regulations.

In this case, the State of Indonesia has aspirations to provide welfare to the people of Indonesia based on the 1945 Constitution as the basic norm (grundnorm). This is explained by Hans Kelsen, namely the law applies because all the law is rooted in a basic norm (grundnorm), as in his theory of the Stufenbau des Rech which states that the legal system is a hierarchy of the law, namely a certain legal provisions derived from higher provisions, and the highest is the basic norm (grundnorm) which is a

must in the field of law. To achieve the aspirations of the people's welfare, Indonesia must take action based on constitutional principles, systems and institutions so that the formation of a statutory regulation can be accepted and carried out. This is a characteristic of the rule of law in exercising its powers.

Regarding the Right to Own Flats in the Apartment which has been implicitly regulated in Article 4 paragraph 1 of the Basic Agrarian Law, namely the granting of land rights can be given to a group of people, either individually or jointly with other people and legal entities. Law Number 20 of 2011 concerning Flats is born in response to legal developments relating to land issues, so that in Law Number 20 of 2011 concerning Flats is aimed at firmer arrangements and a broader scope than the Law Number 16 of 1985 concerning Flats. After the change of Law Number 16 of 1985 into Law Number 20 of 2011 concerning Flats, then there is a result of legal politics by making new legal norms in the apartment laws. One formation of new legal norms in the law Flats is a regulation CHAPTER V Seventh Part Concerning Marketing, in this section there is Article 43 of the Law on Flats. One of the materials about the marketing section is the Agreement on Binding of Buy and Sell of flats where the Binding Agreement on buying and selling of these flats can be done before a Notary. With the provisions contained in Article 43 of the Law on Flats, then this has an impact on the profession of Notaries as a public official.

Notary in carrying out his position as a public official is an authority obtained by attribution that is normatively regulated through Law Number 2 of 2014 amending the Law Number 30 of 2004 concerning the Position of Notary Public. Notary as a public official has the authority to make an authentic deed regarding all deeds, agreements, and provisions required by legislation and or that are desired by the parties concerned to be stated in an authentic deed, as this authority is stated in Article 15 of Law Number 30 of 2004 concerning Amendment to Law Number 2 of 2014 concerning Position Notary hereinafter referred to as the Position Act.

With regard to authority, the standard of authority referred to is the authority of a notary public in carrying out legal actions in forming a perfect evidence. The notary authority obtained by attribution in the making of an authentic deed, of course, the notary must comply with and comply with the laws and regulations that have been set in exercising his authority, so that people who use notary services can provide legal certainty and legal protection for him. The notary public is a public official whose statements can be trusted, and the authority he has provides guarantees of legal certainty to those who use the legal services of the Notary profession to make various forms of authentic deeds. The strength of the authenticity of a notary deed is not due to the process of making the deed but is based on the form of the deed that has been determined by law, and made by or before an authorized official, this is as stated in Article 1868 of the Civil Code

An authentic deed is a deed made in a form determined by the law, made by or in front of the public official in charge for that where the deed was made. An act of authenticity can be recognized if it has fulfilled the element requested in Article 1868 of the Civil Code, but if one of the elements requested is not fulfilled, it will have an effect on the deed, especially in the drafting of the Agreement on Binding of Buy and Sell Flats, which of course will also affect the parties. both the developer (seller), consumer (buyer), and the Notary himself as the official of the deed of the maker.

With regard to the deed relating to flats, this is in line with Article 1 number 1 of the Law of Notary Position, explaining that the Notary Public is authorized to make an authentic deed and has other authorities as referred to in this Law or based on other Laws . One of the authorities based on other laws as meant in Article 1 number 1 of the Law on Notary Office is the Notary authority regulated in Article 43 of the Law on Flats, which states that in the process of buying and selling flats which are still under construction or flats which cannot be completed can be done through a Binding Sale Agreement made before a Notary. Then the legal issue in this study is regarding the authority of a notary public in making an apartment purchase agreement. Article 43 Paragraph (1) of the Flats Act states that the sale and

purchase process of a Flats before the construction of the Flats is completed can be done through the Agreement on the Sale and Purchase of Flats made before a Notary, but furthermore in Paragraph (2) it mentions the Binding Agreement Buying and selling as referred to in paragraph (1) is made after fulfilling the certainty requirements for;

- a. Land ownership status,
- b. Ownership of Building Permit (IMB),
- c. Availability of infrastructure, facilities and public utilities,
- d. Construction of at least 20% (twenty percent),
- e. The thing promised.

In this requirement it can be interpreted that in addition to the notary has the authority to make the deed of the Purchase Binding Agreement, before the notary must ensure in advance about the requirements ordered by the Law as in Article 43 of the Law on Flats, because a Notary Public in carrying out His authority as a general official who makes perfect evidence certainly must be responsible for the deed he made. The problem here is how to measure the 20% (twenty percent) of the building, because there is no provision of the construction of the 20% (two percent) in the apartment laws or other regulations. This will certainly complicate the notary public in making the deed of binding agreement for the sale and purchase of flats. In making the deed, especially in the binding agreement on the Sale and Purchase of the Flats, it will be the responsibility of the Notary as an official of the authentic deed to pay attention to the provisions of the conditions stipulated by the Law on Flats, so that the deed made by a notary will not be found defective in the future.

So it is no longer adequate and able to deal with the development of existing law. One form of development that occurs is the sales pattern of the Flats (Strata Title) by quoting in advance the payment for the Flats in an apartment or office building that is still under construction.¹ Then the legal issue in this study is regarding the authority of a notary public in making an apartment purchase agreement. Article 43 Paragraph (1) of the Flats Act states that the sale and purchase process of a Flats before the construction of the Flats is completed can be done through the Agreement on the Sale and Purchase of Flats made before a Notary, but furthermore Paragraph In this requirement it can be interpreted that in addition to the notary has the authority to make the deed of the Purchase Binding Agreement, before the notary must ensure in advance about the requirements ordered by the Law as in Article 43 of the Law on Flats, because a Notary Public in carrying out His authority as a general official who makes perfect evidence certainly must be responsible for the deed he made. Based on the description above, the enactment of the apartment law will have an impact on the Notary Public General who is authorized to make an authentic deed, and here the author wants to see how the notary's role in making the Deed of Agreement on Binding of Buy and Sell Houses, related to the provisions of Article 43 of the House Law Arrange and also explain the requirements as stated in paragraph 2, according to the description above, there are some discussions can be studied, (1) How Notary Responsibility To Make Apartment Agreement According To Indonesian Legal System (2) How the analysis Article 43 paragraph 2 Indonesian Apartemen Regulation.

Research Method

This study uses an empirical legal research method which is a legal research that obtains its data from primary data or data obtained from the public². Research with descriptive analytical decomposition specifications, intended to provide as detailed data as possible about a situation or other symptoms.³

¹ Adrian Sutedi, *Laws of Flats and Apartments*, Sinar Grafika, Jakarta, 2010, p.152.

² Mukti Fajar and Yulianto achmad, *Dualism of Normative and Empirical Law Research*. Student Library, Yogyakarta, 2010, p.153.

³ Soerjono Soekanto, *Introduction to Legal Research*, University of Indonesia, Jakarta, 2005, p.10.

Discussion

1. Notary Responsibility To Make Apartment Agreement According To Indonesian Legal System

a. Responsibilities To Make Apartment Agreement

The agreement is a form of legal relations conducted by a person with another person or several people in the form of assets, in which there are rights and obligations that must be fulfilled. A valid agreement can be made if it meets the conditions in Article 1320 of the Civil Code, namely:

1. The agreement of those who bind themselves
2. The ability to make an engagement
3. A certain thing
4. A good cause

If the conditions requested by article 1320 of the Civil Code have been fulfilled, then a person can then commit. an engagement that can be made orally or in writing. With regard to the choices given then related to the development of society now people who want to make agreements prefer to make them in writing, because by making an agreement in written form it will be clearer and in fact an agreement is held given the lack of trust in the current era, because with made in writing the stronger the evidence is for those who enter into the agreement. Article 1867 of the Civil Code states that written evidence can be done in authentic writing or underhanded, which can be referred to as a deed.

Binding agreement of sale and purchase is one form of development of an existing agreement in general. This agreement is not regulated in the Law or specifically the Civil Code, but this agreement arises on the basis of the agreement of the parties who want to make it as long as it does not violate the applicable rules and conditions and must comply with existing regulations and provisions of Book III. Kitab Civil Law. Because this agreement was created because of the agreement of the parties, the binding purchase agreement can be classified as a consensual agreement.

The binding purchase agreement includes a preliminary agreement that can be used as an introductory agreement prior to the sale and purchase agreement, and there are agreements which are based on legislation and some are based on the agreement of the parties only. This agreement was raised because of the result of obstruction or obstruction of parties who want to carry out buying and selling related to land and or buildings, because the sale and purchase cannot yet be carried out on the grounds of several things such as: the building is still under construction or has not been completed, the land rights certificate has not completed, the certificate of the apartment has not been completed, the payment has not been paid or the taxes have not been paid by the parties, but the parties still want to make a sale, an agreement must be made first, for example, the binding agreement of sale and purchase, because the callus in the sale and purchase agreement is paid.

Apartment agreement is a form of legal relationship between the buyer and the seller whose contents are the rights and obligations of the parties and if with absolute conditions if all obligations of the buyer and seller have been fulfilled then the agreement ends and if there are obligations that are not carried out by the parties, the binding of the sale and purchase can be used as a basis for fulfilling the achievements of each party to be brought to justice both by settling disputes through the court and outside the court. It can be said that the essence of the binding purchase agreement is an agreement containing the rights and obligations of each party that must be fulfilled based on the provisions of the legislation or agreed upon.

b. Legal Standing Of Apartement Agreement

Regarding the position of a deed means we together mention the legal position of a deed. Legal status or Locus standing is a condition when a party is deemed to be eligible to submit a dispute resolution request in a court. Usually the legal position can be demonstrated in the following way :⁴

1. A party is directly harmed by the law or action in question, and this loss will continue unless the court intervenes by ordering compensation, stipulates that the law in question does not apply to that party, or states that the law is null and void. for the sake of law.
2. The prosecutor is not directly disadvantaged, but they have a reasonable relationship with the situation that caused the loss, and if left unchecked can befall others who cannot ask for help from the court.
3. A party is given a legal position by a law
From the above understanding related to the deed, it can be said that the position of a deed is a deed whose existence or position is regulated by law, so that a deed made can have legal consequences.

Related to the title, this apartment agreement can be done by the developers or developers who are marketing their products, namely flats that are still under construction or not yet completed to consumers who are interested in having housing units. the offered flats as this already mentioned in Article 42 paragraph (1) of the apartment laws. The apartment agreement made by the developer and the purchaser can be done in the form of a deed under the hand or a deed made before a Notary with the terms of the apartment agreement can be made if it meets the requirements as ordered by the law contained in Article 43 Paragraph (2) of the apartment laws, namely:

"The binding sale and purchase agreement referred to in paragraph (1) shall be made after fulfilling the certainty requirements for;

- a. Land ownership status
- b. Ownership of a building permit
- c. Availability of infrastructure, facilities and public utilities
- d. The development is at least 20% (twenty percent) and
- e. What was promised "

In the legal position of the apartment agreement for the ownership of these flats, the aim is to have a strong hold for the parties involved in legal relations as well as evidence for the parties, especially for buyers to be protected from irresponsible developers. Because the function of a deed can be divided into 2 (two), namely:

a) Function as evidence

Deed as evidence because a deed has a written nature that cannot be denied anymore, so with the deed made in carrying out a legal act, it will be able to be used as evidence in the future for the parties if a dispute arises to be brought to court.

b) Formal functions

Deed as a formal function means in life in a legal state will certainly make the deed as a complement in carrying out legal actions which later to be recognized in the eyes of the law, so the deed can be said to function as a perfection for those who carry out a legal act.
as the function of the deed mentioned above because a deed already has the strength of proof of what is contained therein. The strength of proof of deed can be divided into 3 (three), namely:

⁴ R. Soeroso, Introduction to Legal Studies, PT. Sinar Grafika, Jakarta, 1993, p. 106.

1. The power of outward proof

The strength of outward proof means that the deed itself has the ability to prove itself as an authentic deed. Starting from the initial process that is since the intention of the parties concerned to give birth to evidence.

2. Formal proof strength

The strength of formal proof means that the authentic deed is proven that what is stated and included in the deed is true.

3. The power of material production

The strength of material evidence means that legally the contents of the deed have proven its truth as true to the information given by everyone, who makes or orders to make a word as proof of himself (including his heirs or other people (his proxies) who have rights from him)

Therefore, an agreement contained in the form of the deed means that the deed has a legal status that is recognized, and encodes evidence that a legal relationship has been done between the parties between the developer or the developer and the buyer who wants to have a product from the developer, namely the apartment unit he promotes. and the deed can be used as evidence for the parties if there is a default from one of the parties to be brought to court. Provided that the said purchase agreement deed, especially the binding agreement on the sale and purchase agreement for flats, must be made in the form and provisions of the legislation that are strict and not contrary to normal.

- a. Obligation of the Notary Public to request information on the ownership status of the apartment land

Article 43 letter b of the apartment law requires that to ensure ownership status of land, the issue of land ownership status can be guided by the Basic Agrarian Law, but more than that many things must be considered by the Notary as follows:

1. Is the status of the land in a condition charged with mortgage rights, because this is noteworthy for the Notary especially the agreement between the mortgage rights grantor and the mortgage right recipient.
2. Whether the land status is not in dispute, ask for an official statement from the developer company that the land is not in dispute with any party.
3. Request a copy of the certificate of land to be built in a building and save it as an archive.

The Notary's obligation to request information about the construction of 20% of the building

2. *Analysis of Article 43 Paragraph 2 According To Indonesian Apartement Regulation*

- a. Regulation For Apartement

Article 43 paragraph 2 letter d requires that prior to the binding purchase agreement be issued, then the construction of at least 20% of the building must be fulfilled, before the binding purchase agreement made before a notary is made, the notary must do the following:

1. Asking for information in the form of a development report (progress report) to the developer, information can be in the form of an official letter from the Development Company that is signed and stamped by the representative of the developer in this case the board of directors, along with an attachment to the development progress report which has shown construction of 20% (two twenty percent), and include evidence in the form of photos of development.

2. Requesting an official statement from the developer that a development has actually taken place that has reached 20% of the development.
3. Keep documents relating to development progress (progress report) as an archive Obligations of the Notary Public request information on the provision of Infrastructure, Facilities and Public Utilities.

Article 43 paragraph 2 letter c requires ensuring the availability of Public Facilities and Utility Infrastructure, so the notary is required to take the following steps:

1. Requesting information in the form of reports on the provision of infrastructure, facilities and public utilities of development to developers, information can be in the form of an official letter from the Development Company that is signed and stamped by those representing the developer in this case the directors, along with an attachment to the report on the development of the development of infrastructure, facilities and public utilities.
2. Request an official statement from the developer that it has fulfilled its obligations to provide infrastructure, facilities and public utilities.
3. Keep documents relating to the provision of infrastructure, facilities and public utilities as an archive.

What is intended by "agreed terms" is the condition of the building that is built and sold to consumers who are marketed, including through promotional media, including, location of flats, shape of sarusun, building specifications, price of sarusun, infrastructure, facilities and public utilities of flats, other facilities, as well as the time of handover.

Indeed, a notary in his post only makes a deed in accordance with what the client asks him to, but If the applicant does not want to provide true information regarding the status of the Building Permit, Land Ownership Status, Building Construction 20% (twenty percent), Provision of Infrastructure, Public Facilities and Utilities, and other matters promised, or one of the conditions of Article 43 paragraph 2 laws of flats are not fulfilled, so the Notary is obliged to reject those who request the services of a Notary Public to make an Agreement on the Sale and Purchase of Flats on the grounds that it is contrary to the laws and regulations.

It is intended that Notaries as general officials are obliged to guarantee legal certainty and protect buyers from irresponsible developer actions. For this reason, the principle of prudence must be exercised by the Notary in exercising his authority as explained in Article 16 paragraph 1 of the Notary position law, explaining that acting trustworthy, honest, thorough, independent, impartial, and safeguarding the interests of parties involved in legal actions.

The notary in carrying out his jabtanya as an authentic deed maker entrusted by the state and the community in general must be careful and careful, because with such trust, it certainly will lead to the responsibility that must be held by the notary to the jabtana owned. The responsibility of a notary as the author of an authentic deed not only on the deed, but the notary is also responsible for the material truth of the deed he made. For this reason, the notary must be careful and must pay attention to the provisions of the applicable law in carrying out his jabtaan both the jabtan notary law and other laws.

b. Principle for Notary

In accordance with the principles that must be considered by the Notary in carrying out his duties, the principles in question are:

1. The principle of accuracy

The notary in carrying out his position must be based on the applicable laws and regulations and examine all documents provided by the customer, according to Habib Adjie, there are elements of accuracy, namely:

- a. Make an introduction to the eater, based on his identity shown to the Notary.
- b. Ask and then listen and pay attention to the wishes or desires of the parties.
- c. Check the evidence of the letter relating to the wishes or wishes of the parties.
- d. Give advice and make a deed framework to fulfill the desires and wishes of the parties.
- e. fulfilling all administrative techniques for making a notarial deed such as reading, signing, providing a copy of the deed and filing for a minutes.

2. The principle of legal certainty

The notary in carrying out his position must be guided by the normative to the rule of law relating to all actions to be taken and then poured in the deed, because, if the notary has acted on the basis of the applicable legal rules will certainly provide certainty to the parties, that the deed made before or by a notary in accordance with the applicable legal rules. Notary in carrying out their duties can determine that the actions of the parties can be set forth in the form of a notarial deed or not, before arriving at that decision, the Notary must consider and see all documents shown to the notary so that the resulting deed can provide legal certainty, especially for the parties.

3. The principle of equality

Notaries in carrying out their positions must act to safeguard the interests of the parties involved in legal actions. Besides that, it is obligatory to prioritize a balance between the rights and obligations of the parties. The principle of trust. Notary profession is a profession in the form of a trust that is placed on it, especially the trust of the people who need their services, so it is obliged to make a notary in making an authentic deed to be careful and to consider first what is desired of the parties.⁵ The notary in carrying out his jabtanya as an authentic deed maker entrusted by the state and the community in general must be careful and careful, because with such trust, it certainly will lead to the responsibility that must be held by the notary to the jabtan owned. The responsibility of a notary as the author of an authentic deed not only on the deed, but the notary is also responsible for the material truth of the deed he made. For this reason, the notary must be careful and must pay attention to the provisions of the applicable law in carrying out his jabtaan both the jabtan notary law and other laws In accordance with the principles that must be considered by the Notary in carrying out his duties, the principles in question are:

4. The principle of trust

Notary profession is a profession in the form of a trust that is placed on it, especially the trust of the people who need their services, so it is obliged to make a notary in making an authentic deed to be careful and to consider first what is desired of the parties.

⁵ Ibid, hlm.87

Conclusion

According to the result of this research, so the notary is responsible for making an agreement relating to the apartment agreement according to apartment regulation in Indonesia, so in this case the notary is regulated in the law, and the notary is authorized to make the agreement.

Suggestion

The notary should provide legal counsel to the parties before entering into an agreement, so that the parties know clearly about the agreement to be made, therefore it is necessary to pay attention to the provisions of the law.

Reference

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