



## Analysis and the Legal Result of Cancelling Sale and Purchase Agreements Notary

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### **Abstract**

The type of research used in this research is normative legal research. By using primary and secondary legal materials, along with tertiary legal materials as supporting materials. The contents of the sale-to-buy agreement constitute a preliminary agreement to give birth to the main or main agreement which usually consists of promises from the parties which contain provisions regarding the agreed terms to legally carry out the main agreement. For example, in the process of contracting the sale and purchase of land rights, which in one of the agreement clauses can contain promises from both the seller of the land rights and the buyers regarding the fulfillment of the conditions so that the main agreement, namely the sale and purchase agreement and the sale and purchase certificate, can be signed immediately before the official a promise to carry out the management of such land rights before the selling process is carried out as usually requested by the buyers, or a promise to immediately make payments by the buyer as a condition of the seller as a sales deed that can be signed before the official who makes the land certificate.

**Keywords:** *Legal Result; Purchase; Notary*

### **Introduction**

An agreement is a joint commitment or agreement from two or more parties making an agreement, so that it doesn't preclude the possibility of each fulfilling the agreement contained in the agreement. The achievement of the agreement is the implementation of the various contents that have been agreed upon or that have been written in the agreement by the two parties who have bound themselves. The opposite of the word achievement is default, that is, the failure to fulfill the achievement or promise that is the obligation of each party according to the contents that have been conveyed in the agreement, and is a distortion of the implementation of the agreement, so that it has an adverse impact due to the actions of one or the parties. (Halim, 2018)

The things that are required for the agreement to be considered valid have been regulated in Article 1320 of the Civil Code (KUHPdt) concerning the valid terms of an agreement, and there must be good faith from each party in the agreement deed. This is when in the sale and purchase agreement when

there is an agreement between the debtor and creditor, where one binds himself to hand over an object and / or service, then on the other hand is willing to pay the price of the object that has been agreed (Article 1457 KUHPdt).(Ridwan, 2016)

The buying and selling process is an agreement that is widely carried out in the community. Objects that are objects of sale and purchase must be certain or determinable objects or goods, either tangible, certain types, certain amounts, or have prices and objects that can be traded. Thus, the goods being traded have a clear status and position and the legality of which can be accounted for.

In the Law of the Republic of Indonesia Number 5 of 1960, especially Article 19, it's emphasized that the aspect of land sale and purchase must be proven by the existence of documents in the form of deeds drawn up and in the presence of Land Deed Making Officials (PPAT) or Notaries. It's at this level that the real evidence of the sale and purchase or transfer of the sale and purchase rights of land and / or buildings, then the PPAT or Notary proves in the making of the sale and purchase deed. In fact, there are often transferring transactions of rights made under hand, without going through a Notary Deed or PPAT on the grounds of mutual trust and problems arise that are detrimental to each other in making deeds of sale and purchase of land and or buildings.(Harijanto, 2010)

Departing from this, the researcher wants to formulate a descriptive analysis of the implementation of the sale and purchase agreement deed and legal remedies for both debtors and creditors if in a deed of sale and purchase agreement for land and or buildings there is a default in the agreement that has been notarized, especially on the elements of the Agreement Binding. Buy and sell a house with an *inhouse* sales system.

### **Research Method**

The type of research used in this research is normative legal research.(Michael, 2020) By using primary and secondary legal materials, along with tertiary legal materials as supporting materials.(Michael, 2019)

### **Discussion**

#### **Analysis of Legal Arrangements for the Sale and Purchase of Land and / or House Agreements**

Sale and Purchase Agreement (PPJB) of land or house can be included in a conditional agreement. Based on the provisions stipulated in article 1253 of the Criminal Code that "An engagement is a conditional promise that if it's hung on an event in the future and it's still not certain that it will occur, either in the form of suspending the engagement until an event occurs, which may or may not occur in an event". Article 1457 of the Criminal Code explains that "Sale and purchase is an agreement whereby one party has committed itself to surrender an object, and on the other hand is willing to pay the price that has been promised".(Bukit et al., 2018)

Notaries have the authority to ratify the sales agreement, which is regulated in Article 15 paragraph (1) of Law of the Republic of Indonesia Number 2 of 2014 which has been amended several times regarding the amendment of Law of the Republic of Indonesia Number 30 of 2004 concerning Notary Position (Widjiastuti et al., 2020) which confirms that the annotary has the authority to make authentic deeds. regarding all the actions, contents of the agreement, and provisions required by the laws and regulations and / or which are desired by everyone who wishes to be stated in authentic facts, which

can guarantee the certainty of the date of manufacture of the document, save the facts, provide *grosse* copies and excerpts of deeds.

In addition, there are also problems that exist in the Deed of the Sale and Purchase Agreement (PPJB), namely the problem of paying for Land and Building Tax (PBB), where there have been payment transactions made in the previous year which in the end the transition is made in the following year. With the tax year which has not been determined who is obliged to make the payment, whether it is paid by the seller or the buyer. Article 7 (seven) of the Deed of Sale and Purchase Agreement (PPJB) only states "*The fees for this deed and other costs incurred in connection with this deed and the fee for the Sale and Purchase Deed (AJB) before the authorized official as well as the fee for the transfer of name which will later be paid and become the responsibility of the Second Party.*"

With this viewpoint, according to the researcher, there should be an explanation of what payments both the seller and the buyer should fulfill, so that there is no gap by either party.

### **Legal Consequences for the Cancellation of PPJB Which Were Not Made in a Notarized Manner**

The binding to the sale of land and building or house functions as a means of proof if one of the parties is in default and to sue the party based on the agreed articles. The forms of achievement that can occur in the agreement to tie up sellers of houses are:

- a. The buyer delays the payment of the house price which should have been paid or has only paid sometime after the due date, or the buyer makes a payment but not as promised.
- b. The buyer doesn't pay late fees, or pay the land price or is late paying the fine.
- c. The seller performs actions that clearly violate the agreement to sell-buy land and buildings, for example selling a house that has been purchased by another party.

Claims for cancellation can only be made on a reciprocal agreement. A reciprocal agreement is an agreement that the parties bind themselves to perform achievements and vice versa, the parties are entitled to achievement. In an agreement which is unilaterally cancellation based on Article 1266 KUHPdt because in a one-sided agreement the obligation to perform is only on one party and the demand for cancellation is precisely a means of exempting oneself from the various obligations of performing performance for parties who don't perform in default.

The contents of the sale-to-buy agreement constitute a preliminary agreement to give birth to the main or main agreement which usually consists of promises from the parties which contain provisions regarding the agreed terms to legally carry out the main agreement. For example, in the process of contracting the sale and purchase of land rights, which in one of the agreement clauses can contain promises from both the seller of the land rights and the buyers regarding the fulfillment of the conditions so that the main agreement, namely the sale and purchase agreement and the sale and purchase certificate, can be signed immediately before the official a promise to carry out the management of such land rights before the selling process is carried out as usually requested by the buyers, or a promise to immediately make payments by the buyer as a condition of the seller as a sales deed that can be signed before the official who makes the land certificate (PPAT). (Patradi, 2010).

The sale and purchase agreement is not made before the official or general, so the Sales and Purchase Agreement (PJB) can be classified as an underhanded deed or without a notary, (Hidayat et al., 2020) and a signed deed is further regulated in Article 1874 of the Criminal Procedure Code, household affairs letters and so on, written without the intermediary of a public employee ".

The legal consequence is that if there is a default in the form of a sale and purchase agreement for land and / or buildings that has not been repaid, then generally in accordance with the Sales and Purchase Agreement made by the parties for that sale and purchase becomes invalid automatically or can be cancelled by the buyer and the money that has been paid by the buyer to the seller can always be the party and the seller deemed as compensation for the cancellation of the sale. In addition, in fact, only 50% belongs to the seller and the other 50% is returned by the seller to the buyer, which in the event that the purchase order is canceled immediately and at once. (Widodo, 2020)

## Conclusion

The existence of this default, then the legal consequence that arises is that the agreement made by the parties can be canceled or canceled by itself. The legal consequences of the cancellation of the sale and purchase agreement made before the notary may be in the form of *First*, compensation for damages; *Second*, cancellation of the agreement; and *Third*, cancellation accompanied by compensation.

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