



Legal Aspects of Binding of Sale and Purchase Agreements as Stages of Buying and Selling Land Rights in Installments

Sukma Hidayat Kurnia Abadi¹; Zainal Asikin²; H. Djumardin²

¹ Student of Magister Law Study Program, Postgraduate Program, Mataram University, Indonesia

² Lecture of Law Faculty, Mataram University, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v7i5.1602>

Abstract

To analyze the will of the parties making the purchase agreement before making the sale and purchase deed before the PPAT and to analyze the protection of the parties in the sale and purchase agreement; To analyze the legal consequences of buying and selling transactions made by the parties. The method used is a normative method with a statutory approach. The Binding Agreement of Sale and Purchase is an initial bond which is subordinate to the establishment of an authentic sale and purchase agreement. The clauses in the Binding Sale Agreement can protect both the seller and the buyer if all the aims and objectives of the parties have been clearly stated in the Sale and Purchase Agreement so that the rights of both parties can be protected and both parties can clearly know the obligations obligation that must be done. The legal consequence of this Binding Agreement is that if a party violates the contents of the Agreement, it will be subject to sanctions in accordance with what is stated in the Agreement. If deliberations for consensus are not reached, they can be processed by the Court.

Keywords: *Legal Aspects; Binding of Buying and Selling; Installments*

Introduction

The development of modern society in this modern age no longer places the need for land alone or land with buildings on it which we call houses / shop houses / apartments / apartments and other names, as secondary needs (second choice), but by modern society it may already be a primary need (first requirement) although the majority of our society still has to struggle to achieve it and it is not uncommon to get it, all means are taken even in violation of the law. As we know from various information, there are many cases of land grabbing, buying and selling fraud, land disputes including eviction.

Therefore agreements in the sale and purchase of installments must comply with applicable treaty law. This is based on the provisions of Article 1319 of the Indonesian Civil Code which reads as follows; "All agreements, whether they have a special name, or are unfamiliar with a particular name, are subject to the general rules, contained in this chapter and the previous chapter."

The process of buying and selling and transferring land rights has general and standardized procedures. This procedure is intended to guarantee legal certainty and protect the rights of the parties, both sellers and buyers. But sometimes there are problems in buying and selling land rights because there are no procedures that should be carried out according to the rules of the applicable legal provisions that guarantee or minimize the occurrence of disputes, for example buyers who have not made payments to sellers or payments are made in installments because as explained above that the sale and purchase is cash, so the buyer who has paid the price (in part or in whole) to the seller, based on the agreement of the parties, the sale and purchase agreement can be made, but of course this will be detrimental to the seller and there is a possibility of a dispute with the transfer of rights that have been made. The right way to avoid things like the above is to make a binding purchase agreement before making a sale and purchase deed before the PPAT.

The PPAT deed made is as proof that the relevant legal act has been carried out. Because it is cash in nature, it also proves that the transfer of rights to the land concerned to the recipient of the right, according to Article 40 PP Number 24 of 1997, within 7 (seven) working days after the PPAT deed was signed, the PPAT must submit the deed made together with the following documents: relevant documents to the Head of the Land Office so that the registration process can be carried out.

This research will focus on the effectiveness of the binding purchase agreement which can minimize problems in the sale and purchase of land rights in installments. Examples of objects that are sold are still collateral in a bank, that the buyer wants to buy and is willing to provide a down payment/sign (down payment) of an amount sufficient to redeem credit guarantees or loans.

The issues raised in this study are about: Why did the parties make a binding purchase agreement before making a sale before the PPAT and were the clauses in the Purchase Binding Agreement able to protect the interests of sellers and buyers? What are the legal consequences of the binding purchase agreement for the parties and the problems that may arise in the implementation of the binding purchase agreement?

Result and Discussion

Purchase binding agreement is a preliminary agreement of a sale and purchase agreement made by a prospective seller and prospective buyer on the basis of an agreement. The purpose of making a binding purchase agreement is to minimize conflicts that might arise in the future. Such agreements can be intended for object agreements in the form of both fixed and non-permanent objects. In this thesis the object of the agreement referred to in the binding agreement of sale and purchase, is specified in the form of fixed objects (land). Binding agreements of sale and purchase are subject to binding law, and arise based on agreements made by the parties, in this case prospective sellers and prospective buyers. Generally, the agreement is written off when the sale and purchase agreement is made before the Land Deed Making Official together with the purchase price paid by the buyer.

Land purchase is essentially one of the transfers of land rights to another party / person in the form of a seller to a land buyer.¹

Transition / transfer of ownership rights over land if we see in terms of the law can occur because of a legal action (legal actions / rechtshandelingen). Prospective sellers promise to sell land rights to prospective buyers.

¹ Rasyid, *Sekilas Tentang Jual Beli Tanah*, p. 50.

And prospective buyers promise to buy land rights for which payments are made in installments. As a result of this promise, the prospective seller is obliged to surrender his land rights to the prospective buyer if the prospective buyer has paid off the price of the land and the prospective seller has the right to demand the settlement of the price. Whereas prospective buyers must pay the agreed price in installments as agreed upon and have the right to demand the surrender of land rights after the settlement is made. If one party does not fulfill its obligations, then the law can "force" the obligation to be fulfilled.

Several backgrounds can be found which made the seller and buyer make the Purchase Binding Agreement as follows:

- a. Developer
 1. That the object to be sold to consumers, in this case the building is still in the stage of the development process so that although consumers are likely to be able to make payment, but because the building has not been handed over so PPJB is made first;
 2. That the land certificate to be sold to consumers is still in the process of solving the certificate, as well as the Land and Building Tax (PBB);
 3. The ability of buyers to buy a house by way of instalments.
 4. The marketing strategy undertaken by the developer by providing a method of payment in installments that are lightweight and long term and can already occupy the building / house.
- b. From the Notary Parties
 1. The buyer needs time to pay off the seller and the seller does not object to the payment being made in installments;
 2. The object of the agreement is still in the condition of being collateralized at the Bank, so that it still requires time to pay off the Bank and arrange ROYA from the certificate;
 3. Supporting documents such as Building Permit (IMB) that do not yet exist or have not been broken down because they are still a unity of several building units, Land and Building Taxes that do not match the name of the Seller or there are errors in objects listed in the United Nations;
 4. The certificate of land on the object of the agreement is still in the process of solving because the seller builds several building units on his property;
 5. The validity period of the land certificate that has matured and has not yet been extended by the seller and from the purchaser requests that the certificate be extended first;
 6. The name listed in the certificate has passed away, so the land certificate must be reversed first on behalf of the heirs and the buyer needs to get a guarantee that when making a sale and purchase before the PPAT all heirs must be present or provide power of attorney to sell the land.
 7. The object of the agreement is land that is not yet certified, so the seller through the Notary Office must first make the land certification process.

Because of the above, in order to buy and sell land rights in installments, the following stages and processes are required:

- a. For land that has been certified the prospective buyer through Notary / PPAT can check the authenticity of the certificate at the Land Office so that it can know for certain whether the certificate is authentic or not and for land that has not been certified the prospective buyer must examine carefully the existing documents, for example, for lots of land there must be a plot of land, for girik land there must be evidence in the form of a girik card, a land history letter and sporadic information, for ex-township land there must be a rental card, and for arable land a recommendation letter from the local kelurahan and kecamatan must be obtained. These letters must be carefully checked whether the letter is correct on behalf of the seller or has been transferred to the heirs. Then a temporary measurement of the land should be carried out so that it can be seen whether the

designation of the land and whether it has been hit by road widening. This process is carried out so that it does not result in disappointment when a price match for land and down payment (Down Payment) has been provided but the documents are not correct (incomplete) as required to enter into an agreement to bind the sale and purchase of the land rights.

- b. The Seller is required to complete supporting documents such as Building Permit (IMB), Land and Building Tax (PBB), previous Deed of sale and purchase, existing accounts and other required documents. If there are documents that are not owned by the seller, then the deficiency will be included in the Purchase Binding Agreement so that in the future the buyer will not be disadvantaged.
- c. The parties enter into a written agreement (contract). This written agreement is in practice called a binding sale and purchase agreement or an agreement to buy and sell. Binding agreements of sale and purchase can be carried out under the hand or carried out notarized before a notary (authentic deed).

In the binding purchase agreement contained, among others:

1. Identities of the parties (prospective sellers and prospective buyers);

Every making an agreement in this case the Binding Agreement of Sale and Purchase must be seen and considered the identity of the parties, namely prospective sellers and prospective buyers. This is very important because it is related to proof of ownership of land rights which are the object of the Binding Agreement of Sale and Purchase in the sense of whether the seller is actually the owner of the promised land object.

- a. Whether the seller has received approval from the husband or wife if the seller is married. By looking at the KTP and Family Card and Birth Certificate from the seller to ascertain whether the seller is married or not and then must attach a marriage certificate from the Office of Religious Affairs (KUA) or from the Civil Registry because it is in accordance with the Marriage Law Number 1 of 1974 Article 35 paragraph (1) that the assets obtained during marriage become joint property and to carry out legal actions on the said property requires the approval of the husband or wife. If the husband / wife of the certificate owner dies first, then the children in marriage must give approval in the sale because in accordance with the inheritance law in the Civil Code Article 852a, the husband / wife lives the longest along with the children who become heirs from husband / wife who died first.
- b. Whether the object of the binding purchase agreement has been transferred to the heirs (if the prospective seller has died). This can be proven by the existence of a Certificate of Inheritance which was made under the hand and has been known by the Kelurahan and the local District, or a certificate of Inheritance Rights made by a Notary and for citizens of Arab descent the inheritance must be made at the Heritage Property (BPH).
- c. If the seller is a limited liability company (PT), then the articles of association must be considered, then the articles of association have been adjusted in accordance with Law No. 40/2007, whether there has been an endorsement or approval from the Minister of Law and Human Rights of the Republic of Indonesia and whether the Directors who signed the Agreement are still authorized or not to represent the Company.

2. The promised Object;

In every agreement of binding sale and purchase of land rights, the object of the agreement in the form of ownership rights, building rights or usage rights that are promised must be expressly regulated / described in the agreement. This is very important because if there is a dispute the object of the agreement must be clearly and explicitly described both the holders of land rights, area, boundaries and location of land, and also stated whether there is a building on the land or not. And if there is a building, what facilities are in the building must be clearly stated.

For the purchase of land and buildings from the developer, if the PPJB is signed before the house is finished, the contents of the clause regarding the selling object must be clear, this relates to the promise of the developer as a seller to the consumer. Thus at the time of delivery the buyer can check whether the house has been built in accordance with the specifications. The description of the object listed in the form of building area is accompanied by architectural drawings and drawings of the technical specifications of the building, the area of the land along with its licensing and the location of the land with the inclusion of the plot number.

3. The prospective seller's guarantee that what was promised is really his property;

In this case the prospective seller must guarantee that the object promised is true property of the prospective seller. Things that are guaranteed by prospective sellers, among others, have not been sold to other parties, there is no dispute, not in a condition guaranteed to other parties and others. After the guarantee from the prospective seller, the prospective buyer has the confidence to obtain protection and legal certainty when buying the object of the agreement. If the guarantee from the prospective seller as stated above turns out to be incorrect, the prospective seller will receive legal sanctions. Therefore, the prospective purchaser is freed by the prospective seller from another party's claim regarding the object of the agreement to be purchased. For purchases through the developer / developer in addition to the guarantees mentioned above, the developer is obliged to provide guarantees of building and delivering housing units / plots as offered and the promised time so that this clause becomes a legal guideline to the buyer.

4. The agreed price;

The actual price to be agreed is very important explained in the binding purchase agreement. So, both prospective buyers and prospective sellers must list the actual price and are not allowed to include prices that have been engineered by the parties. Price manipulation by the parties is intended to minimize the tax that must be paid. The price is very important in determining the amount of compensation or sanctions that must be borne by the parties, if in the future one of the parties defaults.

5. The amount of installments, stages and repayment period;

Above has been confirmed the actual price that must be included in the deed of the binding purchase agreement. Usually at the time of making the deed of the binding purchase agreement, the prospective buyer has already paid a portion of the agreed purchase price. While the remainder will be paid in installments several times on each date that has been mutually agreed upon. Each payment must be proven with a separate receipt, if a payment is made through a bank, it must be proven by a payment receipt through the designated bank. Every proof of payment must be kept by prospective buyers for proof in the future.

Terms of cancellation due to a cause, for example: the buyer does not perform its obligations, the seller performs a default. If the parties carry out their obligations properly, then the terms of cancellation or sanctions in an agreement need not be made. But the ability of the parties or interference from other parties that causes the parties are forced to default is not impossible to arise. Can be explained here, for example on the specified date, prospective buyers cannot carry out their obligations to pay the agreed installments. After being given an extension of the payment term, the prospective buyer does not also carry out his obligations (to pay installments), then in such an event the engagement can be sanctioned as follows:

- a) The agreement becomes null and void, the amount of money that has been paid by the buyer to the seller is lost, the whole is the seller's right or only 50% (fifty percent) is the seller's right while the

rest is returned to the buyer. Furthermore, both parties released the provisions of Article 1266 and 1267 of the Civil Code.

- b) The buyer is sanctioned with a fine, for example paying 2 thousand of the total deferred liabilities calculated daily. The fine must also be given within a certain time or limit. This is intended to prevent potential buyers from fulfilling their obligations on an ongoing basis. For example the fine is only valid for 2 (two) weeks, if after a period of time has passed the prospective buyer does not also carry out his obligations, then sanctions can be promised as stated in the above.

In the event that the seller who defaults, for example the object of the agreement turns out to be a guarantee of debt to another party, or the supporting documents that were promised were not there then the PPJB becomes null and void and all money paid must be returned entirely to the purchaser without any deductions with certain period of time. In such case if the seller does not carry out his obligations then in such an event the Notary will not return the original land certificate to the seller without the consent of the buyer. For the developer who is the seller, then if the seller cannot surrender the house along with the inherent rights in a timely manner and does not match the floor plan and technical specifications of the building as agreed, in that case the seller must pay the money that has been received, added with penalties, interest, and other costs in accordance with applicable regulations. Sanctions in the binding purchase agreement are not an absolute thing. The parties can also make other agreements agreed by the parties, for example if the buyer does not carry out his obligations, not subject to any sanctions, but this will cause legal uncertainty.

Power of attorney from the seller to the buyer if because later in the future if the seller cannot be present during the sale and purchase before a Notary / Land Deed Making Officer, while the buyer has made the settlement. If the buyer has paid all the agreed installments, the parties will return together with the power of attorney before the Notary / Land Deed Making Officer to sign the deed of sale and purchase of the agreed land rights. But sometimes the seller cannot present an obstacle, so as a way out in the binding sale and purchase agreement, the power of attorney is usually stated from the seller to the buyer to sign the sale and purchase deed before a Notary / Land Deed Making Officer. So based on that power, the buyer represents the seller and acts for himself as the buyer. Provided that the buyer must prove that he has paid the agreed sale and purchase price.

Regarding the absence of the seller at the last stage of payment:

- a) To better protect the buyer who has already made the most payments to the seller, then the solution that can be done is in the PPJB stated that for the final payment / repayment will be done at the Notary / PPAT office on a certain date and will immediately sign the Purchase Deed after the settlement is made by the Buyer to the Seller on that day, the seller will not then find excuses not to be present at the signing of the Sale and Purchase Deed because there is still left over money.
- b) If until the final stage of payment to be made at a Notary / PPAT office, it turns out that the seller is still absent without a clear reason, the Purchaser Party can make a consignment as regulated in Article 1404 of the Civil Code, namely if the creditor (the party that notion, the prospective seller) rejects the payment, the debtor (the debtor, the prospective buyer) can make a cash payment offer for what he has to pay. If the creditor rejects it, the debtor can deposit money or goods in court. Such an offer, which is followed by safekeeping, frees the debtor and applies to him as payment as long as the offer is made according to law. The offer referred to herein is in the sense of an alternative solution if the creditor refuses payment from the agreed debtor. In other words, the offer referred to in the Civil Code is implementation of the agreement and not an offer submitted by the prospective buyer and has not yet obtained the seller's approval. Legitimate offers are according to the criteria:
 - 1) The offer is made by the creditor or his proxy;
 - 2) The offer is made by the person who is obliged to make the payment;

- 3) The offer includes the principal debt, interest and costs that have been determined;
- 4) The arrival of time provisions;
- 5) The conditions charged to the Debtor have been fulfilled;
- 6) The offer is made according to the place agreed by the creditor to pay;
- 7) The offer was made by a notary or bailiff who was attended by 2 (two) witnesses. Thus it becomes the obligation of the Notary Public to make minutes consisting of the deposited currency, seller's refusal or absence of the seller to receive the final payment as agreed in the deed of the binding purchase agreement.

Obligations to be borne by the parties in the agreement, for example who must bear sales tax (PPh), the cost of making the deed and purchase tax (BPHTB). The inclusion of the obligations of the parties needs to be emphasized in the binding sale and purchase agreement, so that there is no mutual throwing of responsibilities, from one party to another party. For example:

- a. The seller is responsible for payment of Income Tax of 5% (five percent) of the agreed price if the sale and purchase object price is above Rp. 80,000,000 .- (eighty million rupiah);
- b. The buyer bears the cost of the acquisition fee on land and buildings in the amount of the sale and purchase price less NPOPTKP (acquisition value of the non-taxable tax object) of Rp. 60,000,000 .- (sixty million million rupiah) for the West Nusa Tenggara region multiplied by 5% (five percent), this provision applies to land in the West Nusa Tenggara region;
- c. Who should be responsible for the cost of the sale and purchase deed and registration of the transfer of rights at the Land Office.
- d. If the land has not been certified, then who pays the costs of the certification process at the Land Office;

If there is a ROYA process, the extension of the certificate, the process of solving the certificate, the UN process, supporting documents must be promised whether it is borne by the seller or the buyer or jointly borne.

If these provisions are not regulated, it often creates conflicts between the parties.

Legal domicile Legal domicile is always included in each agreement so that the parties can reach a consensus on which legal domicile is used when a dispute arises. The legal domicile used in the binding purchase agreement is the location of the promised land object.

Whereas in the binding purchase agreement made by the developer, which is always made in the form of a hand, the developer uses a standard contract (standard contract), that is the developer has prepared the agreement in advance in written form because the contents of the agreement involve what is become the rights and obligations of both the developer and the consumer. Because the binding purchase agreement is made by the developer, the developer subjectivity factor is very influential in including his interests in the Agreement.

Conversely it is difficult for consumers to fight for their interests in the binding purchase agreement. Standard contracts made by the developer often contain exclusion clauses such as negating the developer's responsibility in terms of delay in submitting the building, freeing the developer from the demands of the condition / quality of the building which exceeds the limit of 100 (one hundred) days from the physical handover of the house, otherwise if the consumer late payment in installments will be subject to a penalty / fine.

Problems in the Sale and Purchase of Land Rights Practices in Installments

Legal actions carried out by legal subjects may cause a dispute if not fenced with a legal concept. But disputes that might exist in the future can be minimized by making an agreement between the parties and the rights of the parties that are there will be protected. As is the case with the sale and purchase of land, a binding sale and purchase agreement is made if the payment has not been paid by the buyer to the seller and in the future if there is a default party, then a binding purchase agreement for the party that feels disadvantaged can demand justice.

Problems that often occur in the practice of buying and selling land for which payments are made in installments and with an agreement to make a sale and purchase agreement (binding purchase agreement), this problem can be resolved even though it is likely due to weaknesses in the clauses in the agreement so that the settlement gets to court.

In the sale and purchase of land rights with installment payments, it would be prudent for the parties to make a binding purchase agreement which contains the agreement of the parties before making and signing the sale and purchase deed before the Notary with as much clarity as possible, for example rights and obligations or achievements to be done individually - each party, as well as for the payment period and payment due date as well as what steps can be taken if one party defaults. Likewise for subjects and objects, it must be considered whether those who come as the seller are competent to enter into the agreement and the promised object whether it still belongs to the seller or is pledged to another party. The purpose of making a binding purchase agreement is to prevent and minimize disputes that will harm the parties. So that the dispute will not occur, because in the binding agreement of the sale and purchase will clearly state the rights and obligations of the parties as well as additional clauses that have been mutually agreed upon.

Binding agreements of sale and purchase can be made both notary and underhanded. The agreement made must contain the things that are actually desired by the parties. The parties must dare to express their wishes to the other party to prevent conflicts that arise in the future. The making of a binding purchase agreement must be witnessed by two witnesses and should be legalized by a notary public or at least known by the village head where the plot of land is located. So if something happens, the notary or headman can help solve it well and not take sides.

Settlement taken by the Notary Public after an agreement between the two parties, whereby the seller gives up the land price in installments by the buyer, the Notary will make a notarial deed, the deed of the binding purchase agreement. Original certificates for the promised land should be kept in a notary. If there is a maturity period and the buyer still does not carry out his obligations, then in accordance with the agreement made purchase agreement will be canceled by law and original documents can be returned to the seller, and during the agreement the seller may not sell or collateralize it to other parties. This will not happen if the original documents are kept by the Notary Public.

Conclusion

1. A Binding Agreement of Sale and Purchase is necessary because there are conditions that have not yet been fulfilled so that the sale and purchase before the Land Acting Maker cannot be implemented. The purpose of making the Sale and Purchase Agreement is to minimize disputes that may arise in the future until the settlement is made. In a Sale and Purchase Binding Agreement, it is usually stipulated that certain conditions must be fulfilled by the parties in order for the Deed of Sale and Purchase. Accordingly, the Binding Agreement of Sale and Purchase is an initial bond which is subordinate to the sale and purchase agreement which can be authentic. The clauses in the Binding Sale Agreement can protect both the seller and the buyer if all the aims and objectives of the parties have been clearly

stated in the Sale and Purchase Agreement so that the rights of both parties can be protected and both parties can clearly know the obligations obligation that must be done.

2. The legal consequences of this Binding Sale Agreement are that if a party violates the contents of the Agreement, it will be subject to sanctions in accordance with what is stated in the Agreement. If deliberations for consensus are not reached, they can be processed by the Court.

Recommendations

1. The Binding Agreement of Sale and Purchase should be made in the form of a Notariil so that it can provide legal protection to the parties as well as the legal protection force possessed by an authentic deed.
2. It is better if the Binding Agreement of Sale and Purchase is regulated further in the legislation especially relating to land so that the parties that use the Binding Agreement of Purchase as a preliminary agreement in the sale and purchase of land rights are more protected.

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