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The Role of the Notary in Resolving Disputes Regarding the Deed of Sale and Purchase Agreement (PPJB) (Case Study at the Notary/PPAT in Pekanbaru City)

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Abstract

The subject matter of this research is the role of a notary in resolving disputes over the Sale and Purchase Agreement Deed (PPJB) made by the parties before him and how the legal force of peace made by the parties before a notary related to the dispute over the Sale and Purchase Agreement Deed (PPJB). This legal research uses an empirical juridical method, which is a method of approaching the problem by looking at the applicable legal norms and then connecting them with legal facts found in the field. While this type of research is descriptive-analytical, namely describing an event that occurs clearly and in detail. The results of the study, the role of a notary in resolving disputes in the Sale and Purchase Agreement Deed (PPJB) made by the parties in front of him the notary can act by providing input on the dispute between the parties in the deed made by the notary, this function is the role of the notary voluntarily as a parties who understands his duties and functions as a notary, and in this case, the notary is also considered to understand the core of the problems that are happening and the legal strength of the peace made by the parties before the notary regarding the dispute of the Sale and Purchase Agreement Deed (PPJB), namely the notary has such an important authority to provide legal counseling and provide information in connection with the making of authentic deeds.

INTRODUCTION

Indonesia is a state of law,¹ so all aspects of life in society, nation, and state must be based on and must not deviate from the legal norms that apply in Indonesia.² Ensuring certainty, order, and legal protection, which is based on truth and justice in legal traffic generally requires evidence that determines the rights and obligations of a person as a legal subject in society.³ A notary is an office that carries out a profession in the field of law that is closely related to the

¹ Pasal 1 ayat (3) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

² Sjaifurrachman, *Aspek Pertanggung Jawaban Notaris dalam Pembuatan Akta*, (Bandung: Mandar Maju, 2011), 1.

³ *Ibid.*, 7.

making of evidence in the form of deeds. The position of a Notary is desired by the rule of law with the intention of helping and serving people who need written evidence that is authentic regarding circumstances, events, or legal actions.⁴

The Notary Position Law as stipulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position (hereafter abbreviated as UUJN), The sociological basis for the existence of Notary is the increasing public need for Notary services, in various banking, land, development, and social business relationships in all fields that occur in the Republic of Indonesia. Thus, a Notary is an institution created by the State for certain purposes and functions and is sustainable as a permanent work environment. Article 1 paragraph (1) of the UUJN states that a Notary is a public official authorized to make authentic deeds and has other authorities as referred to in this Law or based on other laws. The term authorized (belonged) relates to Article 1868 of the Civil Code which states that an authentic deed is a deed made in the form prescribed by law or before an official authorized to do so in the place where the deed is made.⁵

The notary in this case will assist the parties making the Sale and Purchase Agreement (PPJB) in formulating the matters to be agreed upon.⁶ However, an agreement does not always go according to the agreement desired by the parties. Under certain conditions, various things can occur, which result in an agreement being canceled, either canceled by the parties or by court order.⁷ An authentic deed made before a notary as a public official has 3 (three) functions towards the parties who make it in the form of:⁸

1. As evidence that the parties concerned have entered into a certain agreement;
2. s evidence for the parties that what has been written in the agreement is the purpose and desire of the parties;
3. As evidence to third parties that on a certain date unless otherwise specified the parties have entered into an agreement and that the contents of the agreement are by the will of the parties.

Regarding the authority of the notary as a legal advisor, it can be interpreted that the notary is not passive or acts as a "dictaphone" who only accepts what is requested by the parties

⁴ Habib Adjie, *Hukum Notaris Indonesia Tafsir Tematik Terhadap Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris*, (Bandung: Refika Aditama, 2008), 14.

⁵ Abdul Ghofur Anshori, *Lembaga Kenotariatan Indonesia Perspektif Hukum dan Etika*, (Yogyakarta: UII Press, 2009), 14.

⁶ Sjaifurrachman, *Op.Cit.*, 1.

⁷ R. Setiawan, *Pokok-Pokok Hukum Perikatan*, (Jakarta: Bina Cipta, 2005), 5.

⁸ Salim, HS, *Hukum Kontrak, Teori dan Teknik Penyusunan Kontrak*, (Jakarta: Sinar Grafika, 2006), 43.

to be stated in the deed, but must also play an active role by assessing the contents of the deed requested and should not hesitate to object or reject or if the interests of the parties requesting it are not by the feasibility and contrary to the Law.⁹

Land and buildings are immovable objects that have become fundamental needs in human life. Land can be used as a place to build a house, a place of business, or as a means of investment. Land rights can be obtained in various ways, one of which is obtained through sale and purchase. Sale and purchase is in principle an agreement, an agreement that will later lead to the transfer (levering) of immovable objects, namely land, and is subject to several separate regulations, especially the transfer of rights and registration of rights.¹⁰

PPJB according to R. Subekti, the definition is an agreement between the seller and the buyer before the sale and purchase is carried out because there are elements that must be fulfilled in advance to be able to sell and purchase, among others, the certificate does not yet exist because it is still in process, the price has not yet been paid.¹¹ PPJB is an initial legal act that precedes the sale and purchase. Thus, the provisions of PPJB are different from AJB. Notaries have the authority to make PPJB deeds but are not authorized to make AJB, because the authority to make AJB is with PPAT.¹²

An example of a case that occurred in Pekanbaru City against the dispute of the parties who made the PPJB Deed. In the PPJB Deed Number 12 made before Notary Rina Hamzah, the parties agreed to sell and buy land and buildings, and for that the First Parties as the seller and the Second Parties as the buyer. Regarding this matter, the two parties agreed to hold a sale and purchase binding first. The agreement outlined in Deed PPJB Number 12, contains the agreement of the parties in buying and selling a plot of land Certificate of Ownership Number: 01741 covering an area of 148 M² and the building located thereon. The parties agree on payment in the way that the second parties pays a booking fee of Rp.10,000,000, - (ten million rupiah), before signing the deed and makes a down payment (DP) of Rp.190,000,000, - (one hundred ninety million rupiah) paid by the second parties when signing the PPJB deed No. 12. Payment shortfall of Rp.150,000,000, - (one hundred and fifty million rupiah) will be paid by the second parties to the first parties within a maximum period of 6 (six) months. As the Deed

⁹ A.A. Andi Prajitno, *Pengetahuan Praktis Tentang Apa Dan Siapa Notaris di Indonesia*, (Surabaya: Putra Media Nusantara, 2010), 3.

¹⁰ Yudhi Setiawan, *Instrumen Hukum Campuran (Gemeenschapelijkrecht) Dalam Konsolidasi Tanah*, (Jakarta: PT. RajaGrafindo Persada, 2009), 181.

¹¹ Herlien Budiono, "Pengikatan Jual Beli dan Kuasa Mutlak", *Majalah Renvoi* 1, no. 10 (Maret, 2004): 57.

¹² Muchlis Patahna, *Problematika Notaris*, (Jakarta: Rajawali, 2009), 9.

of PPJB Number 12 was made before Notary Rina Hamzah in Pekanbaru City, after 6 months from the signing of the Deed the second parties has not made payments to the first parties and has tolerated delays that are more than the agreement in the Deed of PPJB Number 12. The first parties who was aggrieved by the default of the second parties asked for help from a Notary to be able to provide legal advice on disputes between the two parties.

In practice in the community, the existence of notaries in law formation is reflected in the participation of Notaries as advisors and legal consultants in various disputes between parties as long as the parties are their clients in civil affairs. For parties who agree on a Notary, if there is a dispute related to the deed, then usually the first person who is asked for advice is the Notary concerned. From the explanation of Article 15 paragraph (2) letter e, Article 16 paragraph (1) letter a of the UUJN, it is very clear that it provides a legal basis that a notary can be used as an option as an advisor or legal consultant in resolving disputes outside the court who has been given a mandate to assist the community to resolve disputes that occur in the community regarding everything related to the deed he made. The role of the Notary as a neutral parties is very possible considering that the Notary understands the problems that occur between the disputing parties who are his clients. Another advantage is that it will be easier to find a solution to the problem because the Notary understands the direction of the settlement that will be chosen, this is because the Notary is the maker of the deed of agreement of the parties, so he really understands the essence and context of the problems that are happening.

This research uses an empirical juridical method approach, which is a research that uses a method of approaching the problem by looking at the applicable legal norms and then connecting them with legal facts found in the field. This type of research is categorized as descriptive-analytical research which aims to describe precisely the characteristics of an individual, situation, symptom, or certain group, to determine the spread of a symptom, or to determine whether there is a relationship between a symptom and other symptoms in society.¹³

¹³ Amirudin dan Zainal Asikin, *Pengantar Metode Penelitian Hukum*, Cet VI, (Jakarta: Raja Grafindo Persada, 2012), 25.

THE ROLE OF A NOTARY IN RESOLVING DISPUTES OVER THE DEED OF SALE AND PURCHASE BINDING AGREEMENT (PPJB) MADE BY THE PARTIES IN HIS PRESENCE

On September 20, 2021, Mr. Raja Fauzi Pramana Putra and his wife Mrs. Elni Marleni, who in this case is called the Seller, and Mrs. Wissa Dewi Sari, who in this case is called the Buyer, together attended the office of Notary/PPAT Rina Hamzah and agreed to sign a Deed of Sale and Purchase Agreement (hereinafter abbreviated as PPJB). The reason the parties agreed to sign the PPJB Deed was because the object of sale and purchase in the agreement had not been paid in full. If the terms of the agreement are not met, there will be legal consequences, namely that it can be canceled and null and void. Agreements that do not meet subjective requirements such as those made by parties who are not legally capable and are made under pressure or duress so that there is no agreement between the two parties, the agreement can be canceled. Meanwhile, agreements that can be said to be null and void are agreements that do not meet objective requirements such as the goods in the agreement are goods prohibited by law.¹⁴

First parties' arguments at the time of 6 (six) months after the signing of the PPJB Deed, the buyer turned out to be negligent / did not fulfill his obligations in this case defaulted to pay off the rest of the sale and purchase of the house to the seller. The seller then came to the Notary/PPAT Office to tell the Notary/PPAT about the buyer's negligence and asked the Notary/PPAT to contact the buyer. By the agreement on the existence of a tolerance period of 1 (one) month, the seller agreed to wait for the next 1 (one) month. When the tolerance period had passed, the buyer was also unable to make payments to the seller, and in this case, the seller felt very disadvantaged and returned to the Notary / PPAT Office. The argument of the second parties, the second parties defaulted to the first parties because they did not have the money to make payments on the sale and purchase of land and buildings. However, the second parties still wants to own the house by promising to pay off the remaining payments and requesting additional time for the first parties. The dispute in the implementation of the PPJB that occurred due to negligence by the buyer to the seller was related to the late payment process that had not been paid in full according to the agreed time to the seller, resulting in the buyer defaulting and

¹⁴ Ninda Afifah Permatasari, "Peran Notaris dan Analisis Pembatalan Perjanjian Pengikatan Jual Beli Tanah Akibat Wanprestasi", *Jurnal Kertha Semaya* 10, no. 1 (2021): 41 (39-50)

harming the seller. In this case, the PPJB was made before Notary/PPAT Rina Hamzah in Pekanbaru City.

Regarding the role of a notary in resolving disputes over the Sale and Purchase Agreement Deed (PPJB) made by the parties before him, namely the notary can act by providing input on the dispute between the parties in the deed made by the notary, this function is the role of the notary voluntarily as a parties who understands the duties and functions as a notary, and in this case, the notary is also considered to understand the core of the problems that are happening between the disputing parties who are his clients.¹⁵

Regarding the role of a notary in resolving disputes over the Sale and Purchase Agreement Deed (PPJB) made by the parties before him, namely considering that the Notary / PPAT knows and understands the problems that occur from the time before the PPJB Deed is made until after the issuance of the PPJB Deed, and hopes that the Notary / PPAT can be neutral and can also provide input on disputes that occur. The parties and the notary sat together and the buyer admitted that he could not pay off the sale and purchase because he did not have money, in this case, the notary sought the seller and the buyer to resolve the dispute by deliberation and consensus, with the result that it did not burden either parties. The result of the deliberations carried out by the seller and the buyer before the notary is to continue to settle the buyer's obligation to the seller by paying off the money for the sale and purchase of the house by borrowing money from other parties he trusts. The requirements for being a neutral parties include being able to communicate well, knowing a particular field, having a good personality, being able to build a good atmosphere, being able to build trust, and being neutral/impartial. The point is that everyone can act and be a mediator according to their knowledge and expertise.¹⁶

The notary has an important role related to the existence of a sale and purchase binding agreement. Sale and purchase agreements made under the hand still cause various problems, one of which is the validity of ownership of land rights. Furthermore, problems can also occur due to default / broken promises in the sale and purchase binding agreement which is the initial agreement before the Sale and Purchase Deed can be completed. Meanwhile, the legal protection of the fulfillment of the rights of the parties if one of the parties defaults or breaks

¹⁵ Wawancara dengan Notaris & PPAT Rina Hamzah di Kota Pekanbaru, Pada 15 Maret 2023, Pukul 10.00 Wib

¹⁶ Lathifah Widyalestari, Pratis, Hanim, "Akibat Hukum Notaris Merangkap Jabatan Sebagai Arbiter Ditinjau Dari Undang-Undang Nomor 2 Tahun 2014 Tentang Jabatan Notaris", *Jurnal Akta* 4, no. 4 (2017): 768.

the promise in the sale and purchase binding agreement depends on the strength of the Sale and Purchase Binding Agreement made, namely the Notarial Deed or under the hand.¹⁷

Article 1458 of the Civil Code states that a sale and purchase is regarded as having taken place between the two parties when they have reached an agreement on the goods and price, even though the goods have not been handed over nor the prices paid. As for the sale and purchase transaction of land and/or building objects, it is also known as the existence of a fee, where based on the provisions of Article 1454 of the Civil Code it is explained that with a fee, the purchase and sale cannot be canceled, so it is also not accommodated if later in the process there is a dispute.¹⁸ The Civil Code Book III, it is discusses the bond, where according to legal science, the bond is a relationship between two or more people, which is located in the field of property, where there are parties who are obliged to fulfill the performance and parties who are entitled to the performance. The obligation born from the agreement is indeed desired by the parties because the agreement is made and based on the agreement and will of the parties, while the obligation originating from the Law according to Article 1352 of the Civil Code is a bond born by law, arising from the Law alone, or the law as a result of people's work. The Civil Code also provides an understanding of the agreement. In the case of a land sale and purchase binding agreement, the agreement is referred to as a promise in advance with the main purpose that the parties exchange land rights.¹⁹

A Notary in carrying out his duties related to his authority also has duties that must be obeyed by the Notary Position Regulations and the Notary Code of Ethics. A Notary must know the legal relationship between the parties in written form and a certain format so that it becomes an authentic deed. A notary is a document maker that is recognized in a legal process. Therefore, the main task of a Notary is to make authentic deeds, as stated in Article 1868 of the Civil Code. In carrying out his/her position, the Notary is obliged in Article 16 paragraph (1) letter of the UUJN to "act honestly, carefully, independently, impartially, and safeguard the interests of related parties in legal actions".²⁰

¹⁷ Dyah Ayu Silviana, "Perlindungan Hukum Terhadap Para Pihak Dalam Perjanjian Pengikatan Jual Beli Tanah Yang Dibuat Dibawah Tangan Oleh Pt.Cisadane Perdana Di Kota", *Diponegoro Law Review* 1, no.2 (2013): 12.

¹⁸ Supriyadi, "Kedudukan Perjanjian Pengikatan Jual Beli Hak Atas Tanah Dalam Perspektif Hukum Pertanahan." *Jurnal Arena Hukum* 9, no. 2 (2016): 210.

¹⁹ Sesa Merindah Putri, "Akibat Hukum Pembatalan Akta Perjanjian Pengikatan Jual Belii (PPJB) Yang Dikerjakan Oleh Debitur Tanpa Memenuhi Prestasi Dalam Perjanjian (Studi Putusan Nomor: 571/Pdt/2017/Pt.Bdg)", *Jurnal Hukum Adigama* 2, no.1 (2019): 4.

²⁰ Soetardjo Soemoatmodjo, *Apakah Notaris, PPAT, Pejabat Lelang Kelas II*, (Yogyakarta: Liberty, 1986), 48.

THE LEGAL FORCE OF PEACE MADE BY THE PARTIES BEFORE A NOTARY RELATED TO THE DISPUTE OVER THE DEED OF SALE AND PURCHASE BINDING AGREEMENT (PPJB)

Law has an essential role in people's lives, one of which is as a means of achieving a safe and peaceful society. This means that the law is a basic need for the security of individuals. Peace is regulated in Articles 1851 to 1864 of the Civil Code. The definition of peace, Article 1851 states that "Peace is an agreement by which the two parties, by giving, pledging or withholding an item, end a pending case or prevent a case from arising". Based on Articles 1851-1864 of the Civil Code, Article 130 HIR Article 154 R.Bg and Article 11 paragraph (1) of Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court states "An agreement is not valid unless it is written".

Regarding the legal force of the peace made by the parties before a notary related to the dispute over the Deed of Purchase Agreement (PPJB), the notary has such an important authority to provide legal counseling and information in connection with the making of authentic deeds, as stipulated in Article 15 Paragraph (2) letter e of the Law of Jurisdiction. In this problem, the notary provides legal counseling to make the next deed after the parties reconcile, namely in the form of a deed of peace and accompanied by a deed of power of sale because the name of the certificate has not been transferred to the name of the buyer.²¹

Power of sale is one form of power of attorney that is often found in daily practice in notary offices. The Power of Sale is usually closely related to the transfer of land rights. The existence of the power of sale is motivated by various things including:

1. The land rights holder/authorizer is unable to appear before the authorized official due to illness;
2. The land right holder/grantor of power of attorney cannot appear before the authorized official due to temporary absence. Such conditions and circumstances will give rise to the granting of a power of sale to facilitate the conduct of legal actions desired by the parties, namely the transfer of land rights through the sale and purchase process.

Dispute resolution is an effort to restore the relationship of the disputing parties to its original state. So that they can establish relationships, both social and legal relationships between one another. The function of an authentic deed in the form of a Deed of Peace can be

²¹ Wawancara dengan Notaris & PPAT Rina Hamzah di Kota Pekanbaru, Pada 15 Maret 2023, Pukul 10.00 Wib

used in terms of evidence, of course, it is expected to be able to explain completely in the evidentiary process. Deed of Peace as a notary product in evidence is categorized as letter evidence. As regulated in Article 1 paragraph (1) of the UUJN. Peace agreements fulfill the legal provisions must fulfill provisions of Article 1320 of the Civil Code, namely regarding the validity of an agreement, the following authors explain the definition of an agreement and fulfill Article 1851 paragraph (2) of the Civil Code, determining that the peace agreement is made in writing. As an authentic deed, the deed of peace made before a notary has complete evidentiary power.

In practice, a peace agreement is a deed, because the agreement is deliberately made by the parties concerned to be used as evidence to resolve disputes, for this reason, a peace agreement must meet the following criteria:

1. Deed of reconciliation in the form of an authentic deed A deed of reconciliation made in the form of an authentic deed fulfills the following conditions: The deed must be made “before” a public official. The word “before” indicates that the deed is categorized as a partij deed (partij aktein), and the public official in question is a Notary. In a deed of partij, the parties involved in a dispute have agreed to settle the dispute out of court and have managed to reach a particular agreement, then they come to a Notary to make a peace agreement that is written in the form of an authentic deed.
2. The deed must be made in the form prescribed by law. Based on Article 1868 of the Civil Code, an authentic deed in the form prescribed by law must fulfill certain formalities. In notarial practice, the particular form of notarization that is commonly used consists of three parts, namely:
 - a. Head of the Deed; consists of the title of the deed, the day and date of the deed, the name of the notary, the place of domicile, and the composition (the names of the confronters, their positions and places of residence, along with information on whether they are acting for themselves or as a wakul/power of attorney from another person, along with provisions on whether they are acting as a guardian or power of attorney).
 - b. The body of the deed; states what provisions or agreements are desired by the parties as long as they do not conflict with the law, public order, and decency. The body of the deed consists of Premises (preliminary information submitted by the confronters, in the case of this peace agreement deed, explaining the conflict and other information deemed

necessary). and clauses (usually written in the form of articles containing an agreement that must be obeyed by the parties). The clauses are in the form of:

- 1) Agree to end the dispute;
 - 2) Submission of the object in dispute;
 - 3) Sanctions if one of the parties defaults;
 - 4) Charges for the cost of making a peace deed.
- c. End of Deed/Closing; is a form that contains the place where the deed was made and formalized and states the names, positions, and residences of the additional witnesses who witnessed the making of the deed (instrumental witnesses). Furthermore, in the closing section, it is stated that the deed was read to the presenters and witnesses, and after that, it was signed by the presenters, witnesses, and notary.
- d. The notary must have the authority to make the deed. A notary is only authorized to make deeds that are assigned to him because not all can be made by a notary. The authority to make a deed of peace agreement is in the hands of a notary because other public officials are not allowed to make such a deed. A notary is not authorized to make a deed for himself, his wife or husband, blood family, or the notary's immediate family in a straight line without limitation of degrees and lateral lines up to the third degree. Apart from that, a notary is only authorized to make deeds in the area specified for him as long as he still holds his position as a notary.

CONCLUSION

The role of the notary in resolving disputes over the Deed of Sale and Purchase Agreement (PPJB) for the parties in front of him is that the notary can act by providing input regarding disputes between the parties in the deed made by the notary, this function is the role of the notary voluntarily as a parties who understands his duties. and its function as a notary, and in this case the notary is also considered to really understand the essence of the problems that are occurring between the disputing parties who are his clients. When The legal strength of the peace agreement is carried out by the parties before a notary regarding the dispute over the Deed of Sale and Purchase Agreement (PPJB), namely Notaries have such important authority to provide legal counseling and information regarding the making of authentic deeds, as regulated in Article 15 Paragraph (2) letter e UUJN. In this case, the notary provides legal

counseling to make the next deed after the parties have reconciled, namely in the form of a deed of peace and accompanied by a deed of power of attorney to sell.

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