

LEGAL POSITION OF BONDING THE BUYING OF LAND PLOT ABOVE MASTER CERTIFICATE OF LAND PROPRIETARY RIGHTS IN KAMPUNG SUKAMANDI WAY GUBAK BANDAR LAMPUNG

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Abstract

Agreement is a legal relationship regarding property. The types of agreements in civil law consist of many types, one of which is a material agreement such as a plot of land. Land plots are not only carried out by developing business entities that have met the requirements, but are also carried out by individuals. Plots of land by individuals are very helpful for the government in terms of accelerating the equitable distribution of residents' needs for housing. There are also land issues that arise because of the land acquisition process by individuals. These problems are usually expressed by buyers who feel aggrieved. Because there is a discrepancy between what was purchased from the plot holder and what he received later.

Keywords: *Sale and Purchase Agreement, Plot Land, Master Certificate of Ownership*

I. INTRODUCTION

Land has a very large role in the dynamics of development, so that in the 1945 Constitution article 33 paragraph 3 it is stated that the earth, water and natural resources contained therein are controlled by the State and used as much as possible for the prosperity of the people. Provisions regarding land can also be seen in the Law of the Republic of Indonesia Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA).

Land is given to someone in accordance with the rights provided for by Law Number 5 of 1960 concerning Basic Agrarian Regulations, namely to be used or utilized, but if the ownership or utilization of the land is limited to land as the surface of the earth, then the ownership is become meaningless. So that in paragraph (2) it is stated that the right to land is not only given the authority to use a part of the surface of the earth in question which is called land, but also includes the body of the earth and what is below it, water and the space above it.⁵

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⁵ Boedi Harsono. 2008, *Hukum Agraria Indonesia Sejarah Pembentukan, Undang - Undang Pokok Agraria, Isi dan Pelaksanaanya*, Jakarta: Djambatan. p. 18

The city of Bandar Lampung which is geographically has its own attraction for people to own land or houses in the capital city of Lampung Province. The rapid development of the economic sector in the city of Bandar Lampung, has now become the foundation of life and hope to change the future of most of the urbanites who want to try their luck in the city of Bandar Lampung. Fulfilling the necessities of life for land and houses in Bandar Lampung City, of course not all levels of society can buy land in large sizes, so that businesses related to buying and selling land in small sizes are developed and also land that is ready to be built, hereinafter referred to as "lot".⁶

Engagement is a translation of the original term in Dutch (*verbintenis*). Engagement means something that binds one person to another. The binding thing is a legal event which can be in the form of actions, such as buying and selling, debts and receivables, can be in the form of events, such as births, deaths, and can also be in the form of circumstances, such as side by side yards, flats. These legal events create legal relationships. The object of the legal relationship is in the form of assets that can be valued in money. Engagement is a legal relationship regarding assets that occurs between debtors and creditors.⁷

An agreement that is born from an agreement, the agreement is formulated in article 1313 of the civil law code, which is an act by which one or more people bind themselves to one or more other people. An agreement is an agreement by which two or more people bind themselves to carry out a thing regarding assets.⁸ The agreement will give rise to rights and obligations between the parties that must be fulfilled based on the agreement. Fulfillment of obligations is contrary to default which may not be carried out by the parties to the agreement.⁹

Default is not fulfilling the obligations agreed in the engagement. The sale and purchase agreement is a plot of land that has been prepared for the construction of a house in accordance with the requirements for use, control, land ownership, spatial planning, as well as building and environmental planning plans.¹⁰

The binding sale and purchase agreement (PPJB) is an agreement between the seller to sell his property to the buyer made with a notarial deed. A sale and purchase agreement can be made for certain reasons, such as the unpaid payment of the sale and purchase price and the unpaid taxes arising from the sale and purchase.

This sale and purchase binding agreement arises because there are things (requirements) that have not been fulfilled or there are things (requirements)

⁶ Sahnun. 2016, *Hukum Agraria Indonesia*, Malang: Setara Press. p. 26

⁷ Abdulkadir Muhammad. 2000, *Hukum Perdata Indonesia*, Bandung: PT. Citra Aditya Bakti. p. 198-199

⁸ Ibid, p. 224-225

⁹ Rissa Afni Martinouva, Dina Haryati Sukardi, Satrio Nurhadi, *Perlindungan Hukum terhadap Pelaksanaan Perjanjian Layanan Pemesanan Makanan Melalui Ojek di Bandar Lampung*, Jurnal Supremasi, Volume 11 No 1 Tahun 2021, Penerbit: Fakultas Hukum Universitas Belitar (UNISBA). p.73

¹⁰ Soedharyo Soimin. 2001, *Status Hak Dan Pembebasan Tanah*, Jakarta: Sinar Grafika. p. 23

agreed by the parties to be fulfilled. These things (requirements) can be an obstacle to the completion of the sale and purchase agreement, which can be divided into 2, namely because the factors have not fulfilled the requirements required in the laws and regulations as stipulated in Article 39 PP Number 24 of 1997 concerning Land Registration or other factors. the seller/buyer agreement itself, for example regarding the payment mechanism. With the above conditions, of course, it will hinder the making of the deed of sale and purchase, because the official making the land deed will refuse to make the deed of sale and purchase because all of these requirements have not been completed. taken care of, or after the price is paid in full and so on. In order to ensure that the agreement is carried out properly while the requested conditions can be taken care of, usually the party who will carry out the sale and purchase puts the initial agreement in the form of an agreement which is then known as the sale and purchase binding agreement.¹¹

The types of agreements in civil law consist of many types, one of which is a material agreement, the object in question can be an immovable object such as a plot of land. Plot land is a plot of land that has been prepared for the construction of a house in accordance with the requirements for use, control, land ownership, spatial planning, as well as building and environmental planning plans. Land plots are not only carried out by developing business entities that have met the requirements, but are also carried out by individuals who have sufficient capital for it.

Land plots by individuals are very helpful for the government in terms of accelerating equitable distribution of the fulfillment of the population's needs for housing, but there are also land problems that arise because of the land plot process by the individual parties. This problem is usually expressed by a buyer who feels disadvantaged because it turns out that there is a discrepancy between what he bought from the plot holder and what he later received, both related to the certificate solving process, land area and location that had been previously promised by the plot holder. In practice, to ensure a legal transaction, the land plot holder will invite the prospective buyer to the Notary's Office and or the land deed official to make a deed of sale and purchase (AJB). In the case of buying and selling land plots, the official making the land deed cannot directly make the deed of sale and purchase, but by his position as a Notary, make an agreement between the plot holder and the prospective buyer which is called the sale and purchase binding agreement (PPJB).

¹¹ Subekti R. 2005, *Hukum Perjanjian*, Cet. 21, Jakarta: Internusa. p. 75

II. DISCUSSIONS

1. Basis of binding sale and purchase of land plots above the Parent Certificate of Ownership of Land in Sukamandi Village, Way Gubak, Bandar Lampung

Land plots are in development, land plots are not only carried out by developing business entities that have met the requirements, but will also be carried out by individuals who have sufficient capital for that. On the one hand, land plots by individuals are very helpful for the government in terms of equitably meeting the needs of the population for housing.

The results of the author's interview with Mr. Blueardhi as the developer of Mooi Eco Living. Resistant plots worked on by Mooi Property located in Sukamandi Village, Way Gubak Village, Sukabumi Bandar Lampung District, the concept of plots carried out by Mooi Property is an environmentally friendly plot that has a hill view and is equipped with facilities that support consumer comfort as the owner of the lot. in the future. The land plot with certificate number 01680 covers an area of 10490 m², which is divided into 73 plots of land. Lazuardhi explained that the plots of land being worked on by mooi property have several types such as Ararat, Taftan, Sabalan, Damavand (VIP), Sahan and different prices for each type of land ranging from 950-1,100 per meter. The requirements for buying a plot of land are enough with the Family Card and Identity Card of the husband and wife. So far, the process of buying and selling land plots worked on by Mooi Property has had no problems from either the buyer or the seller. The buyer receives the Ownership Certificate (SHM) of the plot after payment has been made.

In the implementation of buying and selling plots of land, there are often land problems that arise because of the land plotting process by the individual party. This is usually done by the buyer who feels disadvantaged because it turns out that there is a discrepancy between what he bought from the applicant and what he bought later, both land and the location previously associated with the applicant. Because of the above, there is a need for a basis for binding the sale and purchase of the main plot of land which of course protects both parties, both the seller and the buyer of the lot.

In practice, to ensure a valid transaction, the applicant will invite the prospective buyer to the office of the Notary & Land Deed Making Officer to make a deed of sale and purchase. In the case of sale and purchase of plots of land, the official making the land deed cannot directly make the deed of sale and purchase, but by his position as a notary, make an agreement between the applicant and the prospective buyer which is called a binding sale and purchase agreement which is usually also followed by a power of attorney.

As previously stated, the binding sale and purchase agreement is an agreement between the seller and the buyer before the sale and purchase is carried out due to the reasons that must be met for the sale and purchase, including the certificate of

land rights that has not been registered, is still in the process of transferring names, not yet registered. the occurrence of settlement of the price of the object of sale and purchase or certificate is still being paid for, or is still in the process of breaking the certificate at the National Land Agency Office of Bandar Lampung City.

The results of the author's interview with Mr. Rendy Renaldy, S.H., M.Kn. as a Notary & PPAT who explained that the sale and purchase binding agreement and the power to sell were made before the PPAT sale and purchase deed in the case of buying and selling land plots were as follows¹²:

- a. Because the binding sale and purchase agreement and the power to sell are made to bridge before the sale and purchase is carried out before the PPAT, so that in the future the parties, both the seller and the buyer, cannot deny it, that the seller has sold and handed over the object to the buyer, and as of the date of that day has change hands to the buyer. By making a binding sale and purchase agreement and power of attorney, the seller may not sell, transfer or enter into any transaction on the object to another person or party.
- b. By making a binding sale and purchase agreement and the power to sell the buyer's rights already exist and can be protected, just waiting for the splitting process to be completed and after that it is processed over the name of the buyer. The agreement does not end because one of the parties, both the seller and the buyer, dies, but is passed on to the heirs.
- c. For the completion of a plot of land, a process and time of approximately 2 to 3 months is required, and before the certificate of separation is completed, no sale and purchase can be made before the PPAT, for this reason a sale and purchase binding agreement and power of attorney are made so that between the seller and the buyer can carry out a sale and purchase transaction.
- d. If the purchase price of the object has been fully paid by the buyer, the seller authorizes the buyer with the right to transfer this power to another party, for and on behalf of the seller to exercise the rights and interests of the seller to take all actions, both in the form of management and in the form of ownership, but provided that all gains and losses arising from the action become the rights and responsibilities of the buyer himself and everything is carried out at the expense of the buyer, and the buyer has the right to appear before the official or agency concerned to make a deed or necessary documents and sign them. The power of attorney is specific and detailed, where the power is a permanent power that cannot be revoked and does not end because of the causes or grounds stated in the law or the law ends a power of attorney, because the power is an integral part of the power of attorney. inseparable part of this agreement which will not be made if such power can be revoked or terminated.

¹² The results of the author's interview with Mr. Rendy Renaldy, S.H., M.Kn. as a Notary & PPAT

The results of the author's interview with Mr. Rendy Renaldy, S.H., M.Kn. It is known that the sale and purchase binding agreement and the power to sell before the PPAT sale and purchase deed are made in the case of buying and selling land lots there are several factors:

- a. To guarantee legal certainty for prospective buyers who have submitted an amount of money that cannot be processed at the National Land Agency Office.
- b. In the sale and purchase agreement that has not been paid off, the payment is sometimes convoluted, so it is not possible to immediately make a Sale and Purchase Deed as a condition for carrying out the transfer of names at the National Land Agency Office.
- c. One of the parties dies so that before the Deed of Sale and Purchase, the inheritance process must be carried out first and it requires time and money.

The sale and purchase binding agreement and the power to sell were made prior to the PPAT sale and purchase deed in the case of buying and selling land plots in an interview with Notary Rendy Renaldy the sale and purchase binding agreement was carried out as a temporary binding before the official AJB was made before PPAT.

- a. If the certificate is still in the process of splitting at the BPN, then the Sale and Purchase Deed cannot be made directly, because from the results of the split the rights are still in the name of the land owner. paid off.
- b. After the sale and purchase binding agreement and power of attorney have been made and before the signing of the Sale and Purchase Deed the owner dies, then the buyer will not be confused about taking care of the transfer of the name of the certificate, because the power of attorney has been made so the buyer can immediately take care of the transfer of name with proof of the binding sale agreement The purchase is accompanied by a power of attorney, but first the inheritance process is carried out.
- c. By making a binding sale and purchase agreement, it can be used as a binder for the purchase of a plot of land, as a sign of the completion of the sale and purchase transaction, while waiting for the incomplete requirements.
- d. Some requirements for buying and selling have not been fulfilled, such as not being paid off or in installments, certificates are still in process, not being able to pay taxes or other legal conditions.

According to the author, based on the results of interviews with the two informants regarding the basis for binding the sale and purchase of land plots using a notarial deed, to provide legal protection for both parties. The sale and purchase binding agreement is carried out because the process of splitting the master certificate of land rights into several certificates of property rights, this can be carried out with the mechanism of the seller and buyer facing a Notary & PPAT authorized to sign the binding sale and purchase of the land plot.

2. Legal position in binding sale and purchase of land plots above the master certificate of land ownership in Sukamandi Village, Way Gubak, Bandar Lampung

The sale and purchase binding agreement on the plot of land is one form of binding that comes from the agreement, and is born from an agreement between the parties who made it. Agreements are an important source of binding, because through an agreement the parties have the freedom to enter into all types of binding, with limitations that are not prohibited by law, contrary to decency or public order. With the freedom to enter into agreements (partij autonomy, contractvrijheid), the subjects of the binding are not only bound to enter into bindings whose names are determined by law (benoemde overeenkomsten), namely as stated in Chapter V of Chapter XVIII Book III of the Book of Civil Law Act. In practice, the binding sale and purchase agreement is made due to an event that prompted the agreement to be made.

For example, the sale and purchase of land rights is carried out in installments, land certificates that are the object of the agreement are still in the application for rights, requests for the split process and so on. The binding sale and purchase agreement is an agreement made in connection with certain events.

These certain events, among others:

- a. Buying and selling because it has not been paid off, because the terms in full are the main requirements for a sale and purchase deed to be made as an instrument to be able to register land in order to transfer a land right and provide legal certainty for the parties;
- b. Because the object of the implementation of the sale and purchase binding agreement is because the certificate of land rights does not yet exist or the prospective seller has not controlled the land because of the status of the land, so a sale and purchase binding agreement is needed to administer the certificate of land rights which can be perfect evidence of the land rights;
- c. The certificate of land rights is in the process of being transferred to the name of the potential seller at the office of the national land agency.

The sale and purchase binding agreement on the plot of land above the master certificate of land rights is a development of the agreement because the law does not regulate the discussion of the sale and purchase binding agreement but the law only regulates the sale and purchase which results in the transfer of land rights, namely by making a deed. buying and selling before a land deed official, namely Article 37 PP Number 24 of 1997 concerning Land Registration which is the implementation of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles which among other things states that land rights through buying and selling can only be registered by attaching proof of the sale and purchase deed made before the authorized PPAT according to the provisions of the applicable legislation, and the making of a binding sale and purchase agreement is an agreement between the

parties who agree based on the principle of freedom of contract as long as the agreement does not conflict with applicable laws.

A notarial sale and purchase binding agreement is a deed made before and ratified by a notary as an authorized official in making a deed, namely a sale and purchase binding deed made based on the agreement of the parties and the deed made by the notary has not resulted in the transfer or transfer of rights to the object. traded from a prospective seller to a prospective buyer, but only an agreement that binds the prospective seller and prospective buyer in the exercise of the rights and obligations of the parties, namely to pay the price for the object and the seller to hand over the object if payment has occurred. The content of the binding sale and purchase agreement is a statement to provide something (for example: the prospective seller will hand over the ownership rights to his land to the prospective buyer, if the payment has been paid off) and or perform an achievement (eg: the prospective buyer is obliged to pay off the payment at the agreed time).) to other parties related to an object, before the ownership transfers from the seller to the buyer. Besides that, it can also be about not doing something, for example a prospective seller is prohibited from selling the land to other parties.

Business actors in the housing sector or so-called developers aim to gain profits by targeting housing development for the upper middle class. The developer's responsibility to consumers is actually not only fixed on the contents of the housing sale and purchase agreement, but in general the developer's responsibility has existed since the developer wanted to build a housing.

In general, developers / developers have obligations that are divided into three stages:

- a. Pre Contractual; In the preparation stage for developers, there are several things that need to be considered, namely: location, permits, technical specifications of buildings, facilities, prices, and environmental infrastructure and facilities.
- b. Contractual; the stage taken if the transaction preparation process has made a sale and purchase agreement, namely after an agreement has occurred between the developer and the consumer as the buyer. This stage of the sale and purchase agreement is carried out in front of the PPAT and signed by the developer and the consumer. Continued the stage of handing over the land as well as the house building from the seller to the consumer. At this stage the developer and the consumer agree to sign the minutes of the handover of land and house buildings. At the stage of buying and selling a house there are two things that need to be clarified; (a) Payment system for buying and selling houses. (b) The material/content of the binding transaction for the sale and purchase of a house.

- c. Contractual Post; At this stage is the result of the realization of the sale and purchase of houses that have been held. Consumers have occupied land and houses that have been purchased from developers.

In fact, this PPJB was only drawn up unilaterally by the developer so that there is no possibility for consumers to negotiate about the contents of this agreement. An agreement that is only drawn up by one party is called a standard contract. Standard agreements are widely used in various kinds of agreements in the business world. Because of its practical nature, this type of agreement is favored by business actors in various fields, both in the housing sector, banking services, trade, insurance, to better synergize easy business activities so as to save time and costs that may arise when using the type of agreement that required by the Civil Code.

Because in this standard agreement, the consumer only needs to sign the deed of agreement or simply accept the memorandum of sale and purchase without negotiating between the seller and the buyer as mandated by the Civil Code, so that in the future, if there is a default on the part of the business actor, the position of the consumer is to make a loss claim to the business actor. is in a very weak position because it has signed a letter of agreement or has received a memorandum of sale and purchase. So that if there is a dispute in court, the consumer will be defeated by the business actors because they have strong enough evidence signed by the consumer. With the existence of Law Number 8 of 1999 concerning Consumer Protection which has substantively accommodated the interests of consumers throughout Indonesia, it is hoped that the practice as mentioned above can be eliminated in the world of trade or the situation can be minimized so that later claims for losses caused by the practice standard agreements can be eliminated so as to create a conducive business climate that benefits both parties, both business actors in this case developers and consumers.

PPJB made in a notarial deed has provided legal protection for the parties who make it remember that the authentic deed is the perfect evidence. Agreements made legally by the parties are binding on those who made them and the agreement acts like a law. Thus the parties cannot get a loss because of their actions and also do not get a profit from it, unless the agreement is for a third party. The purpose of this principle in an agreement is to obtain legal certainty for the parties who make it.

The rules of life that give ancer-ancer which actions can be carried out and which actions should be avoided¹³. All agreements made lawfully apply as law to those who make them. The agreement cannot be withdrawn, other than the agreement of both parties or for reasons by law. Approval must be executed in good faith. With the term "all" the legislators indicate that the agreement in question is not merely a collective agreement, but also includes an unnamed agreement. In all of these terms, there is a principle known as the partijautonomie principle. With the

¹³ C.S.T. Kansil dan Christine S.T. 2014, Kansil. *Pengantar Ilmu Hukum Indonesia*. PT Rineka Cipta:Jakarta, p.47.

term "legally" the legislators want to show that the making of the agreement must be legally valid. What is meant by legally here is that the act of agreement must follow what is determined by Article 1320 of the Civil Code. Sudikno Mertokusumo defines an agreement as a legal relationship between two or more parties, based on an agreement to cause legal consequences.¹⁴ The result of what is described above is that the agreement cannot be withdrawn unilaterally unless there is an agreement between the two. In the agreement there is the principle of a balanced position between the two parties.

Law is basically not just a black and white formulation as outlined in various forms of legislation, but the law should be seen as a symptom that can be observed in people's lives through the behavior patterns of its citizens.¹⁵ According to the author, based on the description above, it can be seen that the legal position of binding the sale and purchase of land plots in a notarial deed has provided legal protection for the parties who make it remember that the authentic deed is perfect evidence. In addition to this, the agreement made legally by the parties binds those who make it and the agreement applies like a law.

III. CONCLUSION

The basis for binding the sale and purchase of land plots above the master certificate of land ownership is carried out because it is to ensure legal certainty for the parties, namely the seller and the buyer. This binding sale and purchase is carried out because the process of splitting the master certificate of land rights into several certificates of property rights, this can be carried out with the mechanism of the seller and buyer facing a Notary & PPAT authorized to sign the binding sale and purchase of the land plots. The position of binding the sale and purchase of plots of land above the master certificate of ownership of land made in a notarial deed has provided legal protection for the parties, which makes it clear that the authentic deed is the perfect evidence. In addition, the agreement made legally by the parties binds those who make it and acts like a law.

The making of the sale and purchase binding deed should be accompanied by the making of a power of attorney in an inseparable unit. Thus, the Authorized Person can exercise their rights in 2 (two) qualities, namely as the Authorizer (Seller) and as the Authorized Person (Buyer). When signing the sale and purchase agreement, it must be in front of and at the relevant Notary & PPAT Office, so that the parties can understand the interpretation of the clauses contained in the Sale and Purchase Binding Deed of the plot of land.

¹⁴ Sudikno Mertokusumo. 2001, *Mengenal Hukum, Suatu Pengantar*. Liberty: Yogyakarta, p. 97.

¹⁵ Muhammad Kadafi. 2016, *Ilmu Sosiologi Hukum*. Perdana Publishing: Medan, p. 112.

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