



Legal force of PPJB if not registered at the land office according to article 127 letter B of Permen ATR/KBPN number 16 year 2021

Firyal Arva Orvala¹, FX. Arsin Lukman²

^{1,2}Program Studi Magister Kenotariatan, Fakultas Hukum, Universitas Indonesia, Indonesia

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ABSTRACT

The background of this research is the release of the provisions of Article 127 Letter B Permen ATR/Ka-BPN Number 16 regarding the registration of a Sale and Purchase Agreement (PPJB). Based on this background, the purpose of this research is to examine: (1) the legal position of PPJB in buying and selling transactions; (2) the legal effect of PPJB registration to the Land Office on the legal status of PPJB. This research approach is qualitative. Secondary data collection techniques through satisfaction studies. The results showed that generally, the buying and selling process using the PPJB structure is legally deemed to have not occurred a juridical surrender (juridische levering) or physical submission (levering) in the sale and purchase. In order for a juridical and physical handover from the seller to the buyer, the buying and selling process with the PPJB must be followed up with a Sale and Purchase Deed (AJB). Related to Article 127 Letter B Permen ATR/Ka-BPN Number 16 of 2021 that interested parties can submit requests for recording agreements sale and purchase agreement or lease agreement on registered land with the Land Office; hence legally there is no legal effect of PPJB registration to the Land Office. Such registration does not strengthen or weaken the legal status of PPJB. Likewise, there are no legal sanctions when a PPJB is registered at the Land Office.

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Corresponding Author:

Firyal Arva Orvala,
Master of Notarial Law,
Universitas Indonesia,
Pondok Cina, Beji, Depok, East Java, 16424, Indonesia.
Email: firyalarvaorvala@gmail.com

1. INTRODUCTION

The stages of the legal process of buying and selling in Indonesia so far begin with a Sale and Purchase Bond Agreement (PPJB). The PPJB is binding on the seller and buyer to show the seriousness of the parties in conducting a sale and purchase transaction of land and / or building rights. The seriousness of the parties will then be marked by the fulfillment of the principle of cash and light, namely in the form of overall repayment of the purchase of land rights. The step of paying off the sale-purchase value is then followed by the making and signing of the Sale and Purchase Deed (AJB) in front of a Land Deed Official (PPAT). The next step is the registration of the land with the Land Office of the Level II region (Kota/Kabupaten). In other words, registration with the Land Office is after the AJB stage (Wahyu B and Bambang Tri Bawono, 2021).

However, since 2021 the registration of land and / or building sale transactions is allowed from the PPJB stage. This provision is stated in the Regulation of the Minister of Agrarian and

Spatial Planning (ATR)/Head of the National Defense Agency issued Permen ATR/Ka BPN Number 16 of 2021 concerning the Third Amendment to Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration. This provision has become a topic of discussion among notaries in the last two years or so. One of the articles that has attracted attention in notarial circles is Article 21 Letter B of the Permen ATR/ Ka BPN. Article 127 letter b paragraph (1) reads : (Tri Artanto and Alwan Hadiyanto, 2021) "An interested party may apply to the Land Office to record a sale and purchase binding agreement or lease agreement on registered land." (Muhammad Yamin Lubis dan Abdul Rahim Lubis, 2011)

The wording of the article does not order or oblige, but only invites or allows to register the PPJB with the Land Office. The problem related to Article 127 Letter B is not the existence of legal controversy, or legal defects, but at the implementation level. At the implementation level, there is a tendency among Notary Offices not to register their PPJB Deed with the Land Office. Regarding the reasons why they tend not to register the PPJB Deed, several notaries asked by the author argued that first, Article 21 Letter B is not a legal obligation, so there are no legal sanctions if it is not implemented. The second reason is that the registration of the PPJB with the Land Office incurs some costs, and according to some notaries, these costs are unnecessary costs, which is related to the third reason. The third reason is that legally registering the PPJB with the Land Office does not improve the legal status of the PPJB. After registration, the status of the PPJB remains as PPJB/ There are benefits, for example, for administrative order, legal compliance, and as an announcement to other parties that the land and or building has been sold, even though there has been no juridical or physical transfer of rights from the seller to the buyer because it has not yet reached the stage of signing the Sale and Purchase Deed (AJB).

The permissibility of the PPJB deed to be registered at the Land Office is a matter of discussion, considering that the position of the PPJB is only a preliminary agreement that has a temporary nature, considering that the AJB is suspended due to a certain situation until the time when the sale and purchase can be carried out in front of a PPAT who is an authorized official. (Nadia Fauziah Anugrah dan Suwari Akhmaddhian, 2020)

Based on this background, the purpose of this article is to examine the legal position of PPJB in buying and selling transactions, as well as the legal effect of PPJB registration to the Land Office on the legal status of PPJB.

2. RESEARCH METHOD

In terms of research approach, this research approach is qualitative (Cooper D.R. and Schindler P.S, 2014). Among the five types of qualitative research methods, the author chose the case study method (Creswell J.H. and Creswell J.D, 2018). Based on its purpose, the research design is descriptive. (Cooper D.R. and Schindler P.S, 2014)

This type of research is normative juridical legal research. (Diantha. M.P, 2019; Soerjono, 1989). The problem approach used to examine legal issues in this research uses a statutory approach (statue approach) and a conceptual approach (conceptual approach). The statue approach is an approach by examining all laws and regulations related to the legal issues studied. Conceptual approach is an approach by starting from the views and doctrines that develop in the science of law. (Diantha. M.P, 2019)

The legal materials used in this research are primary legal materials, secondary legal materials, and tertiary legal materials. (Ali, 2013). The primary legal materials in this research are Permen ATR / K BPN No. 16 of 2021, and Government Regulation No. 24 of 1997 concerning Land Registration. Secondary legal materials in this research are legislation regarding the legal force of PPJB, legal books, legal magazines, and/or legal journals that have relevance to the object of research (Santoso, 2011). Non-legal materials are supporting materials outside of primary legal materials and secondary and tertiary legal materials, which are expected to provide clear instructions or information related to the legal issues discussed. (Butar-Butar, 2018)

The data collection technique is to use secondary data, in the form of literature studies. (Sugiyono, 2011) The analysis technique in this research generally uses data analysis techniques from Miles, Huberman and Saldana. (Miles; et.al, 2014) *has four interrelated*

components in qualitative data analysis: data collection, data condensation, data presentation, and conclusion drawing.

3. RESULTS AND DISCUSSIONS

Theoretical Review and Key Concepts

Legal Certainty

Legal certainty is certainty about the law itself (*sicherheit des Rechts selbst*). There are four meanings of legal certainty, namely: (i) The law is positive, which means that the law is legislation (*gesetzliches recht*); (ii) The law is based on facts (*tatsachen*), meaning that the law is not a formulation regarding the judgment that will later be made by the judge, such as "decency", "good will", and others. (iii) Legal facts must be formulated in a clear way, so as to avoid confusion in interpretation, in addition to the law must be easy to implement. (iv) Positive law must be relatively fixed, not frequently changed. (Rahardjo, 2006).

According to Sudikno Mertokusumo (2007: 160), legal certainty is a guarantee that the law is carried out, that those entitled according to the law can obtain their rights and that decisions can be implemented. Although legal certainty is closely related to justice, law is not identical with justice. Law is general, binds everyone, is generalizing, while justice is subjective, individualistic, and does not generalize.

The characteristics of legal certainty are described by Otto (2006), namely: (i) The existence of clear, clear, consistent, and accessible rules, issued by and recognized by the state power. (ii) Government institutions implement the rules of law consistently, and are subject to and obey them. (iii) Citizens conform their behavior to these rules in principle. (iv) Judges are independent and impartial, and are consistent in implementing laws and resolving legal disputes. (v) Judicial decisions are concretely implemented.

Legal Terms of Agreement

An agreement is an event in which one person promises to another or in which two people promise each other to carry out something. Based on Article 1320 of the Civil Code, there are four conditions for the validity of an agreement which are divided into two categories, namely: First, the terms of the validity of the agreement subjectively, which means regarding the people or subjects who enter into an agreement..(Subekti, 2019)

Referring to Article 1320 of the Civil Code, there are four conditions for the validity of an agreement which are divided into two categories, namely: First, the subjective validity of the agreement, which means regarding the people or subjects who enter into an agreement. The subjective validity of the agreement consists of two conditions, namely (1) Agreement of those who bind themselves; and (2) Capable of making an agreement. Second, the objective validity of the agreement, namely regarding the agreement itself or the object of the legal act performed. The objective validity of an agreement consists of two conditions, namely: (3) concerning a certain matter, and (4) a lawful cause.(Subekti, 2019).

Civil law experts generally think that the Agreement's definition in the regulatory provisions is incomplete and too broad. Incomplete in the sense that because it is only about a one-sided agreement and is said to be broad because it can include matters concerning the marriage promise, namely actions in the field of family law that give rise to an agreement, namely the promise to love each other, etc. However, it is unique because it is regulated in separate provisions so that Book III of the Civil Code does not directly apply to it. It also includes acts against the Law, whereas in this action against the Law there is no Agreement (Darus, 2005).

Based on the provisions contained in Chapter II Book III of the Civil Code, it can be said that the meaning of Agreement and contract can be said to be more or less the same. Thus all provisions related to contract law also apply in contract law. So in this provision, the author agrees with the meaning stated in Chapter II of the Third Book of the Civil Code. For this reason, in this research, the word "agreement" is used to represent the words of an agreement or contract, especially an agreement that is accompanied by default (broken promise). R. Subekti stated that the Agreement is "an agreement is a legal relationship between two or more people, based on

which one party has the right to demand something from the other party, and the other party is obliged to fulfill the demand".(Gumanti, 2015)

The Position of PPJB and AJB

A sale and purchase binding agreement (PPJB) is one form of a sale and purchase agreement between the parties who agree. PPJB is made on the basis of freedom of contract, and PPJB is made not contrary to applicable legislation. Typically, PPJBs are made in relation to certain events. One of the most common such events is that the land title certificate has not yet been split from the parent management right (HPL). This condition means that the prospective seller has not yet taken possession of the land, because of its status as cultivated land. Therefore, an agreement to bind the sale and purchase (PPJB) is required in order to obtain a land title certificate. This PPJB can serve as perfect evidence of the land rights.

The sale and purchase process using the PPJB structure is legally considered not to have occurred juridical delivery (*juridische levering*) or physical delivery (*levering*) in the sale and purchase. In order for there to be juridical and physical delivery from the seller to the buyer, the sale and purchase process with PPJB must be followed up with a Sale and Purchase Deed (AJB). The juridical delivery occurs with the making and signing of the AJB in front of a Land Deed Official (PPAT).(Christian E. Papendang, 2013) This is regulated in Government Regulation No. 24 of 1997 concerning Land Registration. This means that in a sale and purchase process, when it has only reached the PPJB process, it is legally considered that there has been no juridical or physical delivery from the seller to the buyer.(R Ramadhani, 2022)

Based on PP No. 24/1997, the position of PPJB and AJB is very different. When AJB is signed before a PPAT, there is a transfer of "goods or objects" both juridically and physically from the seller to the buyer. This is different from a PPJB. In a PPJB, the transfer of the goods or object occurs in the future. In AJB, the juridical and physical transfer of "goods or objects" occurs immediately when the AJB has been signed by the parties concerned. Thus, in the concept of sale/purchase of land and/or buildings, the transfer of rights to land and buildings occurs when the AJB is signed. (Ramadhani, 2020)

The first objective of this research is to examine the legal position of PPJB in a sale and purchase transaction. In general, it can be stated that the sale and purchase process using the PPJB structure is legally considered not to have occurred juridical delivery (*juridische levering*) or physical delivery (*levering*) in the sale and purchase. In order for there to be juridical and physical delivery from the seller to the buyer, the sale and purchase process with PPJB must be followed up with a Sale and Purchase Deed (AJB). In contrast to PPJB, with the signing of AJB, there is an automatic juridical delivery (*juridische levering*) and physical delivery (*levering*) of an item or object being bought and sold, from the seller to the buyer.

If we refer to the Civil Code. Then PPJB does not include a named agreement, because its name is not explicitly mentioned in the Civil Code. PPJB includes agreements that arise as a consequence of the open nature of Book III of the Civil Code which gives the widest possible freedom to legal subjects to enter into any agreement and take any form as long as it does not violate legislation, public order, and decency.

PPJB was born as a result of the obstruction of a number of requirements determined by the law relating to the sale and purchase of land and/or building rights, which in turn somewhat hampers the completion of transactions in the sale and purchase of land and/or building rights. These requirements can arise from legislation stipulating that the Sale and Purchase Deed (AJB) signing must first fulfill the repayment factor (Supriyadi, 2016). They may also arise from the agreement of the parties, for example, that the purchaser requires a certificate of land and/or building before payment is made; or that the purchaser has not yet been able to pay the full price of the land and/or building. Based on these unfulfilled conditions, while the parties are serious about the sale and purchase transaction, all parties can put all the requirements they want in the PPJB as long as the other party agrees. This means that PPJB is a preliminary agreement made and agreed upon by the parties (seller and buyer) before the implementation of the main agreement or the main agreement called AJB.

The second objective of this study is to discuss the legal effect of PPJB registration to the land office on the legal status of PPJB. In general, it can be stated that there is no legal effect of

PPJB registration to the Land Office on the legal status of PPJB. When a PPJB is registered with the Land Office, the registration step does not increase the legal status of the PPJB. Likewise, when a PPJB is not registered with the Land Office, it does not negate the legal status of the PPJB. The factor of PPJB registration at the Land Office does not increase or decrease the legal status of the PPJB deed. The PPJB deed remains as a PPJB deed, even if it is registered or not registered at the Land Office.

So far, only the court can affect the legal status of the PPJB. The court can make the legal status of the PPJB null and void. Conversely, the court can also confirm the position of the PPJB that the deed remains valid.

4. CONCLUSION

Based on the description above, it can be concluded that in general it can be stated that the sale and purchase process using the PPJB structure is legally considered to have not occurred juridical delivery (*juridische levering*) or physical delivery (*levering*) in the sale and purchase. In order for there to be juridical and physical delivery from the seller to the buyer, the sale and purchase process with PPJB must be followed up with a Sale and Purchase Deed (AJB). In contrast to PPJB, with the signing of AJB, there is an automatic juridical delivery (*juridische levering*) and physical delivery (*levering*) of an item or object being bought and sold, from the seller to the buyer.

Regarding Article 127 Letter B of Permen ATR / Ka-BPN Number 16 of 2021 that interested parties can apply for registration of binding agreements for sale and purchase or lease agreements on registered land to the Land Office; then legally there is no legal effect of PPJB registration to the Land Office. The registration neither strengthens nor weakens the legal status of the PPJB. Similarly, there is no legal sanction when a PPJB is registered at the Land Office. So far, apart from the parties concerned with the APPJB, only the court can change the legal status of the PPJB. The court can cancel or strengthen the existence of a PPJB.

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