

VALIDITY OF LAND SALE AND PURCHASE AGREEMENTS EXECUTED IN GOOD FAITH AND FULLY PAID

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Abstract

A Sale and Purchase Binding Agreement (PPJB) is an obligatory preliminary agreement, which only creates an obligation to be executed in the future through its main agreement, the Sale and Purchase Deed (AJB). PPJB is established to facilitate the sale and purchase process when the requirements for the execution and signing of the AJB cannot yet be fulfilled. PPJB does not yet provide the transfer of land rights; thus, the ownership of the land object has not yet shifted from the landowner to the buyer. However, in reality, there are still parties who consider that a PPJB has transferred ownership rights over land, one of which is found in the land sale and purchase case in Court Decision Number 3753 K/Pdt/2020. The purpose of this research is to analyze and identify the validity of a PPJB that has been paid in full and entered into in good faith, along with its legal consequences in the Supreme Court Decision Number 3753 K/Pdt/2020, and to analyze and identify the legal protection for buyers in a sale and purchase binding agreement that has been paid in full and conducted in good faith in said decision. The research method used is Normative Juridical, utilizing research specifications of positive law inventory, finding the law in concreto, using secondary data, and employing qualitative normative analysis. The results of the research indicate that the Supreme Court Panel of Judges correctly rendered the decision regarding the issue, in which the Panel of Judges opined that the PPJB made between the Plaintiff and Defendant 1 before a Notary is a general agreement that has not transferred ownership rights; therefore, the AJB made between Defendant 1 and Defendant 2 before the Land Deed Official (PPAT) constitutes valid evidence of transfer. Since the PPJB is a general agreement made before a notary in the form of an authentic deed, the agreement is valid and remains binding on the parties who agreed to it, thereby creating legal consequences for the parties to fulfill their rights and obligations according to the content of the agreement. In the event of a party neglecting or breaching the contents of the agreement, the aggrieved party may file a breach of contract (default) lawsuit to claim compensation as legal protection for the buyer who has paid in full and acted in good faith.

Keywords: *Sale and Purchase Binding Agreement (PPJB), Sale and Purchase Deed (AJB), Land Sale and Purchase.*

Background

The event of sale and purchase constitutes an exchange of property between two parties in which one party makes a payment, as stipulated in Article 1457 of the Civil Code, which states: "Sale and purchase is an agreement by which one party binds himself to deliver a good, and the other party to pay the price agreed upon" (Soebekti, 1995). Sale and purchase is a reciprocal agreement wherein one party (the seller) promises to transfer ownership rights of a good, while the other party (the buyer) promises to pay a price consisting of an amount of money as consideration for the acquisition of such rights.

Generally, the sale and purchase of land rights must be conducted before a Land Deed Official (Pejabat Pembuat Akta Tanah – PPAT). This is because the PPAT acts as the authorized official to verify and validate all required legal documents and procedures. The PPAT is also responsible for ensuring that all agreements and sale and purchase processes are recorded correctly and are legally valid. As stipulated in Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration, which states: "The transfer of land rights and ownership rights of apartment units through sale and purchase, exchange, grants, capital contribution in a company, and other legal acts of transfer of rights, except for the transfer of rights through auction, may only be registered if evidenced

by a deed drawn up by the authorized PPAT in accordance with the prevailing laws and regulations."

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A Sale and Purchase Deed (Akta Jual Beli – AJB) is a deed drawn up by a Land Deed Official (PPAT) in performing the legal act of transferring land rights through a sale and purchase transaction. The AJB serves as one of the mandatory requirements for registering the transfer of land rights at the Land Office, along with several supporting documents. However, an AJB cannot be immediately issued by the PPAT because there are often certain requirements that have not yet been fulfilled by one of the parties. Consequently, a Sale and Purchase Binding Agreement (Perjanjian Pengikatan Jual Beli – PPJB) is first executed before a Notary as a preliminary agreement, which serves to bind the commitment between the seller and the buyer in a land or house sale and purchase transaction. The PPJB is temporary in nature, typically executed while awaiting the issuance of the AJB, which remains in process. (Nugraha, 2024). PPJB constitutes a form of preliminary agreement frequently utilized in the land sale and purchase process in Indonesia. The PPJB becomes particularly essential when the buyer has paid the purchase price in full, yet the execution of the AJB cannot be finalized due to outstanding tax payments, the land certificate being encumbered as collateral at a bank, or other circumstances preventing the immediate execution of the AJB. On the other hand, the execution of the PPJB, as an embodiment of good faith in land sale and purchase transactions, serves as a key element in maintaining trust and ensuring the fulfillment of the rights and obligations of both parties.

In the execution of land sale and purchase, various possibilities may arise that result in losses to either party, whether the seller or the buyer. For instance, a case where a seller resells their land despite the land having been paid in full, and a PPJB having been executed before a Notary and entered into in good faith by the buyer. Consequently, this causes significant losses to the said buyer. A buyer who has paid the land price in full and has physical possession of the sale and purchase object, acting in good faith—even if only based on a PPJB—is legally deemed to have effected the transfer of land rights. On this basis, should a dispute arise regarding such matter, a judge may determine whether the buyer qualifies as a legitimate buyer or not, thereby preventing the seller from reselling the land to any other party.

Based on the description above, the issues to be examined in this research pertain to the case in the Supreme Court Decision Number 3753 K/Pdt/2023, which has obtained permanent legal force (inkracht). Initially, on January 29, 2007, Sale and Purchase Binding Agreement (PPJB) Number 60 was executed between the Plaintiff and Defendant 1 before Notary Iswandono Poerwodinoto, S.H., for which the Plaintiff has made full payment for the object of the dispute, a plot of land measuring 470 m² located in Dragong Village, Taktakan District, Serang Regency, under Parcel Number 54a. Subsequently, Defendant 1 resold the object of the dispute to Defendant 2, as declared in the Sale and Purchase Deed (AJB) Number 608/2014 dated December 8, 2014, executed before the Interim Land Deed Official (PPAT Sementara) of Taktakan District, Serang City.

The Panel of Judges in the Supreme Court Decision Number 3753 K/Pdt/2020 provided a legal consideration stating that a land sale and purchase agreement, as stipulated by the prevailing laws and regulations, must be conducted before a Land Deed Official in accordance with the provisions of Article 37 paragraph (1) of Government Regulation Number 24 of 1997. Consequently, the Sale and Purchase Deed (AJB) Number 608/2014 executed before the Interim PPAT is valid and has transferred the ownership rights of the said object of the dispute a quo from the original owner, namely Defendant 1, to Defendant 2. Furthermore, the Court stated that the PPJB concerning the object of the dispute, executed between the Plaintiff and Defendant 1 before Notary Iswandono Poerwodinoto, S.H., is a general agreement that has not transferred the ownership rights of the said PPJB object from its owner, Defendant 1, to the Plaintiff.

In relation to the aforementioned description, there is a discrepancy in the legal considerations and rulings issued by the Panel of Judges in resolving the case. The Panel of Judges at the Serang District Court, in Decision Number 39/Pdt.G/2019/PN Srg, ruled that the Sale and Purchase Binding Agreement (PPJB) entered into by the Plaintiff and Defendant 1 before a notary regarding the object of the dispute—which had been paid in full by the Plaintiff—constitutes a valid agreement equivalent to a land sale and purchase deed for the disputed object. Furthermore, the court declared the Sale and Purchase Deed (AJB) executed between Defendant 1 and Defendant 2 before the PPAT to be null and void with all its legal consequences, and characterized the actions between Defendant 1 and Defendant 2 as an unlawful act (tort). This ruling was subsequently upheld by the Panel of Judges at the Banten High Court. Conversely, the Supreme Court Panel of Judges in Decision Number 3753 K/Pdt/2020 stated that the transfer of land rights only occurs if evidenced by a deed executed before and/or by a PPAT. The Supreme Court further asserted that the PPJB is a general agreement that has not transferred the ownership rights of the agreement's object from the owner, Defendant 1, to the Plaintiff. Consequently, regarding Defendant 1's failure to fulfill the agreement, the Plaintiff is entitled to demand the refund of the money paid to Defendant 1.

In the Supreme Court Decision Number 3753 K/Pdt/2020, which has attained permanent legal force (inkracht), the Panel of Judges ruled that the Sale and Purchase Binding Agreement (PPJB) concerning the object of the dispute, executed between the Plaintiff and Defendant 1 before a Notary, is a general agreement that has not transferred ownership rights of the said PPJB object from the owner, Defendant 1, to the Plaintiff. This ruling stands despite the fact that the Plaintiff had paid for the object of the dispute in full and the transaction was conducted by the Plaintiff in good faith. In relation to this, the author is interested in conducting a theoretical and academic study regarding the validity of a Sale and Purchase Binding Agreement (PPJB) that has been paid in full and entered into in good faith, as well as its legal consequences in the aforementioned case. Consequently, these matters will be analyzed in the first research question. Furthermore, based on the aforementioned matters, the author is interested in analyzing the legal

protection afforded to buyers of land objects who have executed a Sale and Purchase Binding Agreement (PPJB) with full payment and acted in good faith, which will be examined in the second research question.

Based on the description of the aforementioned issues, the researcher is interested in further examining and conducting research through a master's thesis entitled: “**The Validity of Land Sale and Purchase Binding Agreements Paid in Full and Entered into in Good Faith (A Study of the Supreme Court Decision Number 3753 K/Pdt/2020)**”

Research Questions

Based on the issues described in the background regarding the disputes arising in the aforementioned case, the researcher is interested in and has formulated the following research questions:

1. **What is the legal status of a sale and purchase binding agreement that has been paid in full and entered into in good faith, and what are its legal consequences in the aforementioned decision?**
2. **How is the legal protection afforded to the buyer in a sale and purchase binding agreement that has been paid in full and entered into in good faith in the aforementioned decision?**

Research Method

The research method to be utilized in this study is normative juridical research. This approach is adopted as the study constitutes library research or a documentary study, which focuses exclusively on written regulations and other legal materials (Kansil, 1989). The research approaches employed in this study are the **statute approach** and the **case approach**. In normative legal research, the data sources utilized consist of **secondary data**, which are obtained from library materials including official documents, academic books, statutory regulations, scientific works, articles, and other documents relevant to the research subject.

In this study, the researcher employs the **library research** method for data collection. Library research is a method of data collection conducted by searching and reviewing literature and legal materials. The data obtained will be presented in the form of systematic, logical, and rational descriptions, whereby the secondary data is tailored to the specific issues addressed by the researcher. The data analysis method utilized in this study is the **qualitative normative** method.

Discussion

A. **The Legal Status of a Sale and Purchase Binding Agreement Paid in Full and Entered into in Good Faith, and Its Legal Consequences**

Pursuant to Article 1313 of the Indonesian Civil Code (KUHPerdata), an agreement is an act whereby one or more persons bind themselves toward one or more other persons. Meanwhile, according to Subekti, an agreement is a legal event between two or more parties based on a mutual consensus to create legal consequences (Subekti, 2002). The said article briefly explains the definition of an agreement, illustrating the existence of two parties binding themselves to one another and the existence of a legal relationship between two or more parties based on mutual consensus to create legal consequences (Miru, 2011). Berdasarkan hal tersebut, dapat dipahami bahwa arti dari perjanjian adalah suatu persetujuan yang dibuat oleh dua pihak atau lebih yang mana masing - masing pihak bersepakat untuk menaati isi dari persetujuan tersebut. Dalam perjanjian, satu pihak atau lebih mengikatkan dirinya

Based on the foregoing, it can be understood that the meaning of an agreement is a consensus made by two or more parties, wherein each party agrees to comply with the contents of such agreement. In an agreement, one or more parties bind themselves to another party to perform certain obligations, thereby making the agreement a legal event that gives rise to legal consequences for the parties involved. This implies that both parties have agreed to determine binding rights and obligations for them to observe and fulfill. Such consensus is intended to create legal consequences, specifically the emergence of rights and obligations; thus, if any party commits a breach, there will be legal repercussions in the form of sanctions against the defaulting party.

Article 1234 of the Indonesian Civil Code (KUHPERDATA) explains that an obligation is aimed at giving something, doing something, or refraining from doing something. Meanwhile, Hasim Purba explains that the relationship between an obligation and an agreement is that an agreement gives rise to an obligation, wherein the agreement serves as the source of the obligation (Purba, 2022). When two persons enter into an agreement, they intend for a legal obligation to prevail between them (Faizin, 2020). Based on this, it can be understood that an agreement is a legal source of an obligation entered into by two or more persons, aimed at giving something, doing something, or refraining from doing something. An agreement can be executed and bind the parties if it meets the requirements for the legal validity of an agreement. The provisions regarding the requirements for the legal validity of an agreement are contained in Article 1320 of the Indonesian Civil Code, which stipulates four mandatory requirements to be met, namely:

Menurut Pasal 1234 KUHPERDATA menjelaskan bahwa perikatan ditujukan untuk memberikan sesuatu, untuk berbuat sesuatu, atau untuk tidak berbuat sesuatu, sedangkan menurut Hasim Purba menjelaskan bahwa hubungan perikatan dan perjanjian adalah bahwa perjanjian itu menerbitkan perikatan, yang mana perjanjian merupakan sumber dari perikatan (Purba, 2022). Apabila terdapat dua orang mengadakan suatu perjanjian, maka mereka bermaksud supaya antara mereka berlaku suatu perikatan hukum (Faizin, 2020). Berdasarkan hal tersebut dapat dipahami bahwa perjanjian merupakan sumber hukum dari perikatan yang dilakukan oleh dua orang atau lebih yang ditujukan untuk memberikan sesuatu, untuk berbuat sesuatu, atau untuk tidak berbuat sesuatu. Suatu perjanjian dapat dilaksanakan dan mengikat para pihak apabila perjanjian tersebut telah memenuhi syarat sahnya perjanjian. Ketentuan mengenai syarat sahnya perjanjian terdapat dalam Pasal 1320 KUHPERDATA yang mana terdapat empat syarat yang wajib dipenuhi, yaitu :

- a. The mutual consent of those who bind themselves;
- b. The capacity to enter into an obligation;
- c. A specific subject matter;
- d. A permissible cause.

1.1. The Mutual Consent Of Those Who Bind Themselves

The parties entering into an agreement must reach a consensus or agree upon the contents of the said agreement in the absence of duress, fraud, or mistake. Essentially, the mutual consent within an agreement represents a meeting of minds or the alignment of will between the parties involved in the agreement (Gumanti, 2012). Menurut Pasal 1321 KUHPERDATA menjelaskan bahwa tidak ada sepakat yang sah, apabila sepakat itu dikarenakan adanya kekhilafan atau diperoleh dengan paksaan atau penipuan. Kesepakatan yang diperoleh dengan Pursuant to Article 1321 of the Indonesian Civil Code, there is no valid consent

if such consent was given due to mistake, or obtained through duress or fraud. Consent obtained under the influence of mistake, duress, or fraud results in a defect of consent, rendering the agreement voidable.

1.2. The Capacity To Enter Into An Obligation

Article 1329 of the Indonesian Civil Code (KUHPerdata) stipulates that every person is competent to enter into an obligation, unless they are declared incompetent by law. Furthermore, Article 1330 of the Indonesian Civil Code explains that certain persons are incompetent to enter into an agreement, namely:

- a. Minors;*
- b. Persons under guardianship (curatorship);*
- c. Married women.*

However, following the enactment of Law Number 1 of 1974 concerning Marriage, married women are deemed to possess legal capacity. Under the Indonesian Civil Code (KUHPerdata), a person is declared to have reached adulthood at the age of 21 or if they are already married. Nevertheless, pursuant to Law Number 1 of 1974 concerning Marriage, the age of majority is determined to be 18 years. The Supreme Court, through Decision No. 447/Sip/1976 dated October 13, 1976, declared that with the enactment of Law Number 1 of 1974 concerning Marriage, the threshold for a person to be considered an adult and no longer under guardianship is when they have reached the age of 18.

1.3. A Specific Subject Matter

A specific subject matter refers to the object of the agreement, which must be clear, identifiable, and determinable. Pursuant to Article 1333 of the Indonesian Civil Code, an agreement must have as its object a thing (matter) whose type is at least determined. The quantity of the object does not need to be certain at the time the agreement is made, provided that the quantity can be determined or calculated at a later date.

1.4. A Permissible Cause

A permissible cause (legal cause) implies that the purpose or substance of the agreement must not contravene the law, public order, or morality. Pursuant to Article 1337 of the Indonesian Civil Code, a cause is prohibited if it is forbidden by law, or if it is contrary to good morals or public policy. An agreement made without a cause, or based on a false or forbidden cause, shall have no legal force and is deemed null and void by law.

The aforementioned requirements for the legal validity of an agreement pertain to the subjective and objective requirements of a contract. The first and second requirements relate to the subjective requirements, while the third and fourth requirements relate to the objective requirements. The distinction between these two categories lies in the legal consequences of non-compliance, specifically whether an agreement is "null and void" or "voidable." If the objective requirements are not met, the agreement is null and void by law (void ab initio), meaning the law deems the agreement as never having existed, and the parties are restored to their original positions. Conversely, if the subjective requirements are not met, the agreement is voidable; thus, as long as the agreement has not been annulled by a court, it remains valid and binding (Gumanti, 2012).

According to G.H.S. Lumban Tobing, a notary is a public official who is solely authorized to draw up authentic deeds regarding all acts, agreements, and stipulations required by general regulations or desired by interested parties to be stated in an authentic deed, to guarantee the certainty of its date, to archive the deeds, and to provide grosses, copies, and excerpts thereof; all of which provided that the drawing up of such deeds is not otherwise assigned or excluded to other officials or persons (Setiawan, 2021). This is also as stipulated in Article 1 paragraph (1) of Law Number 2 of 2014 concerning the Amendment to Law Number 30 of 2004 concerning the Office of Notary, which states that a notary is a public official authorized to draw up authentic deeds and possesses other authorities as referred to in this Law or based on other laws. Based on the foregoing, it can be concluded that a notary is a public official authorized to draw up authentic deeds and bears duties and obligations in accordance with the applicable laws. Notaries play a vital role in ensuring the legality of legal documents, such as agreements, contracts, wills, and other documents that require an authentic deed.

A notary, as a state official exercising a profession in providing legal services to the public, requires protection and guarantees in the performance of their duties to achieve legal certainty. Furthermore, as a state official capable of ensuring certainty, order, and legal protection, a notary provides the necessary authentic written evidence regarding circumstances, events, or legal acts conducted through a specific office (Abdullah, 2017). The position of a notary as an official authorized to draw up authentic deeds is stipulated under Article 1 paragraph (1) of Law Number 2 of 2014 concerning the Amendment to Law Number 30 of 2004 concerning the Office of Notary, which states that a notary is a public official authorized to draw up authentic deeds and possesses other authorities as referred to in this Law or based on other laws. Furthermore, Article 15 paragraph (1) of Law Number 2 of 2014 concerning the Amendment to Law Number 30 of 2004 concerning the Office of Notary explains that a Notary is authorized to draw up authentic deeds regarding all acts, agreements, and stipulations required by laws and regulations and/or desired by interested parties to be stated in an authentic deed, to guarantee the certainty of the date of the deed, to archive the deed, and to provide grosses, copies, and excerpts of the deed; all of which provided that the drawing up of such deeds is not otherwise assigned or excluded to other officials or persons as determined by law.

The validity of an agreement is a fundamental aspect of any contract. Every agreement must satisfy the requirements for legal validity to be deemed valid and to possess legal force. This validity serves as the foundation ensuring that the agreement is not only morally binding between the parties but also recognized by law as an enforceable document or commitment. In practice, the validity of an agreement is not only the responsibility of the involved parties but also a primary concern for the notary. Thus, the notary acts as a state official exercising a profession in providing legal services to the public. In performing their duties, the notary serves as an instrument to provide legal certainty and to ensure that agreements made by and/or before them comply with the requirements for legal validity. This aims to mitigate future legal risks and ensure that the agreement functions as an effective legal protection for all parties involved.

Based on the Supreme Court Decision Number 3757 K/Pdt/2020, it is established that there is an agreement between the Respondent in Cassation/Plaintiff and the Co-Respondent in Cassation I/Defendant I regarding the sale and purchase of a plot of land measuring 470 square meters, located in Dragong Village, Taktakan District, Serang Regency, under Parcel Number 54a, with the following boundaries:

- *To the North: an alleyway;*
- *To the East: bordering with the land of H. Yusuf;*
- *To the South: bordering with the Serang-Cilegon Main Road; and*
- *To the West: bordering with the land of Yudi Lukman.*

as embodied in a Sale and Purchase Binding Agreement (PPJB) which has been paid in full and entered into in good faith by the Respondent in Cassation/Plaintiff, executed in the form of an authentic deed before Notary Iswandono Poerwodinoto, S.H., dated January 29, 2007, under Number 60. Since the said agreement is a deed drawn up by and/or before a notary, the Sale and Purchase Binding Agreement constitutes an authentic deed, wherein based on the provisions of Article 1870 of the Indonesian Civil Code, an authentic deed provides conclusive evidence (perfect proof) of its contents for the interested parties, their heirs, or those obtaining rights from them.

Pursuant to the provisions of Article 1868 of the Indonesian Civil Code, an authentic deed is defined as a deed drawn up in a form prescribed by law, by or before a public official authorized for such purpose at the place where the deed is executed. Furthermore, Article 1 paragraph (1) of Law Number 2 of 2014 stipulates that a notary is a public official authorized to draw up authentic deeds and possesses other authorities as referred to in this Law or based on other laws. In drawing up an agreement in the form of an authentic deed, a notary must satisfy the requirements for the legal validity of an agreement as set forth in Article 1320 of the Indonesian Civil Code, as further explained under Article 1 paragraph (7) of Law Number 2 of 2014. Consequently, the Sale and Purchase Binding Agreement dated January 29, 2007, Number 60, executed before Notary Iswandono Poerwodinoto, S.H., constitutes a valid agreement in the form of an authentic deed and is binding upon the parties to obtain their respective rights based on the clauses contained within the said agreement, which were mutually agreed upon.

A Sale and Purchase Binding Agreement (PPJB) is a preliminary agreement made in land sale and purchase transactions. This is because a PPJB serves as an initial agreement between a seller to sell their property to a buyer, executed in the form of a deed drawn up by a notary (Putri, 2017). According to Agus Pandoman, an agreement that gives rise to or creates an obligation is referred to as an obligatory agreement (**obligative overeenkomst**). An obligatory agreement is one in which the parties are bound by the duty to perform a specific prestation; therefore, such prestation may be carried out at a later date after the said prestation (Pandoman, 2019). Based on the foregoing, a Sale and Purchase Binding Agreement (PPJB) is categorized as an obligatory agreement that gives rise to an obligation. This implies that the agreement only creates the legal binding between the parties; it does not yet result in the transfer of rights or delivery of title, as the actual transfer is still pending the formal delivery (levering)(Sutisari, 2023). The covenants contained within a Sale and Purchase Binding Agreement (PPJB) depend on whether the payment under the said agreement has been settled in full.

According to Herlien Budiono, a Sale and Purchase Binding Agreement (PPJB) is an accessory agreement that serves as a preliminary agreement, which is free in its form (informal) (Budiono, 2004). Given the status of a Sale and Purchase Binding Agreement (PPJB) as a preliminary agreement, the PPJB serves to prepare for or even strengthen the main/principal agreement that will be executed, as the Sale and

Purchase Binding Agreement constitutes the initial stage for the formation of the principal agreement (Putri, 2017). Based on the foregoing, a Sale and Purchase Binding Agreement (PPJB) constitutes a preliminary agreement entered into prior to the execution of the principal agreement, which serves and aims to ensure that both parties have a fundamental consensus and are mutually bound by the rights and obligations agreed upon before the sale and purchase agreement occurs as the principal agreement.

A "Paid-in-Full" Sale and Purchase Binding Agreement (PPJB Lunas) is a binding agreement executed when the buyer has settled the entire purchase price of the object of the sale, yet the execution of the definitive Sale and Purchase Deed (AJB) cannot be finalized. This delay is typically due to outstanding administrative matters, such as unpaid taxes (Income Tax/PPH & Land and Building Title Transfer Duty/BPHTB), uncompleted mortgage deletions (roya), or instances where the land certificate/title is still pledged as collateral, among others. Generally, a Paid-in-Full PPJB includes a power of attorney to sell granted by the seller to the buyer, which facilitates the eventual signing of the Sale and Purchase Deed before a Land Deed Official (PPAT).

An "Installment" Sale and Purchase Binding Agreement (PPJB Belum Lunas) is a binding agreement executed when the buyer has not yet settled the full purchase price of the object of the sale. This type of agreement occurs when the buyer pays the purchase price in stages, such as through a down payment (DP) followed by installments, credit facilities, or other payment schemes. At a minimum, an Installment PPJB must stipulate the amount of the down payment paid at the time of the signing of the deed, the payment methods or schedules, the deadline for full settlement, and the agreed-upon sanctions in the event that either party commits a breach of contract (default).

Based on the Plaintiff's petition in the Serang District Court Decision, it is indicated that Co-Respondent in Cassation I/Defendant I resold the object of the dispute without the knowledge or consent of the Respondent in Cassation/Plaintiff by means of "...ordering the insertion of false information into an authentic deed,..." as regulated under Article 266 paragraph (1) of the Indonesian Penal Code (KUHP), which constitutes an unlawful act (tort) that caused injury to the Plaintiff as regulated under Article 1365 of the Indonesian Civil Code. In fact, Co-Respondent in Cassation I/Defendant I and the Respondent in Cassation/Plaintiff had entered into an agreement for the sale and purchase of the object of the dispute, which was embodied in a valid and binding preliminary agreement in the form of a Paid-in-Full Sale and Purchase Binding Agreement (PPJB), which included a power of attorney to sell from the seller to the buyer. Consequently, Co-Respondent in Cassation I/Defendant I has breached the terms of the Sale and Purchase Binding Agreement; whereas the PPJB, as an obligatory agreement, imposes an obligation upon the parties to perform specific prestations as previously agreed, given that the contents of the PPJB consist of covenants containing the terms and conditions agreed upon for the validity of the principal agreement.

Every agreement lawfully entered into is binding upon the parties and gives rise to legal consequences in the form of rights, obligations, and responsibilities. An agreement results in legal consequences because it is binding in nature for the parties who executed it. This is as regulated under Article 1338 of the Indonesian Civil Code, which stipulates that all agreements lawfully made shall serve as law for those who made them.

Legal consequences are the results of an action performed to achieve a certain effect intended by the actor and recognized by law. The action performed is a legal act,

namely an action carried out to obtain an effect intended by the law. Therefore, legal consequences encompass all results arising from any legal acts performed by legal subjects toward legal objects, or other consequences caused by certain events which, by the relevant law, have been determined or are deemed to be legal consequences (Muhammad, 1980). Legal consequences serve as the source of rights and obligations for the respective legal subjects. For instance, by entering into a sale and purchase agreement, a legal consequence arises from said agreement; specifically, there is a legal subject who possesses the right to receive the goods and bears the obligation to pay for them. Conversely, the other legal subject possesses the right to receive the payment and bears the obligation to deliver the goods. It is evident that acts performed by a legal subject toward a legal object give rise to legal consequences. The manifestation of a legal consequence is that when an individual enters into a sale and purchase transaction, a legal relationship is established between the parties. (Simamora, 2015).

Fundamentally, a Sale and Purchase Binding Agreement (PPJB) differs from a sale and purchase agreement (contract of sale). A Sale and Purchase Binding Agreement is a transaction involving an object where the parties agree that the title to the said object shall transfer to the buyer at a future date. In contrast, a sale and purchase agreement (*contract of sale*) is a transaction where the title to the object transfers immediately to the buyer (Muhammad, 1980). Similarly, a Sale and Purchase Binding Agreement (PPJB) constitutes a preliminary agreement that is consensual in nature, yet it has given rise to rights and obligations between the parties who executed it. (Simamora, 2015). The consequence of a Sale and Purchase Binding Agreement (PPJB) is not the transfer of material rights (proprietary rights) from the seller to the buyer, but rather the creation of an obligation between the seller and the prospective buyer to execute a sale and purchase transaction, wherein the consensus reached in the said PPJB shall subsequently be incorporated into a Sale and Purchase Deed (AJB) as the principal agreement (Simamora, 2015).

According to civil law, there are four fundamental principles known in an agreement, namely the principle of freedom of contract, the principle of **pacta sunt servanda**, the principle of good faith, and the principle of consensualism. The principles of freedom of contract, **pacta sunt servanda**, and good faith are summarized in Article 1338 of the Indonesian Civil Code, which stipulates that all agreements made in accordance with the law shall serve as law for those who made them. Such agreements cannot be revoked except by mutual consent of both parties, or for reasons prescribed by law. Furthermore, agreements must be performed in good faith.

A legal obligation arising from an agreement possesses two attributes: legal rights and legal duties. A legal duty constitutes binding oneself to perform a certain act for another party, whereas a right or benefit consists of the claim to the performance of what was promised in the agreement. Consequently, in every agreement, each party must fulfill their promise to carry out their obligations and likewise respect the rights of the other party (Badrulzaman, 2001).

Accordingly, in the researcher's view, based on the aforementioned description, it can be concluded that the Sale and Purchase Binding Agreement (PPJB) Number 60, dated January 29, 2007, executed before Notary Iswandono Poerwodinoto, S.H., constitutes a valid agreement as an obligatory preliminary agreement. Although such an agreement only gives rise to an obligation to be performed at a later date, it remains legally binding upon the parties. This is because the legal consequence of a PPJB as a preliminary agreement is to bind the parties thereto—namely the seller and the

buyer—which is also in accordance with the provisions of Article 1338 of the Indonesian Civil Code. Therefore, pursuant to these provisions, the Sale and Purchase Binding Agreement creates legal consequences in the form of rights and obligations that must be fulfilled by the parties, and the parties are required to perform what has been agreed upon in the agreement, specifically the land sale and purchase process, to be subsequently incorporated into a Sale and Purchase Deed (AJB) drawn up before a Land Deed Official (PPAT).

B. Legal Protection for Buyers in a Paid-in-Full Sale and Purchase Binding Agreement Executed in Good Faith

In rendering a decision, the Panel of Judges must base their ruling on admissible evidence and sound legal reasoning (Paramita, 2024). Judicial reasoning, as one of the most critical aspects in ensuring the creation of normative values within a court decision, must be grounded in justice and legal certainty; therefore, judicial reasoning must be approached with due care and diligence, as a court decision will result in legal consequences that must be borne by the losing party (Aro, 2004). Menurut Pasal 50 Undang - Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman menjelaskan bahwa setiap putusan pengadilan harus memuat alasan-alasan atau dasar-dasar putusan, serta memuat pula pasal-pasal tertentu dari peraturan perundang-undangan yang bersangkutan atau sumber hukum tidak tertulis yang dijadikan dasar untuk mengadili. Tujuan dari pada penjelasan pasal tersebut adalah untuk memberikan kepastian hukum, menjamin akuntabilitas, dan mencegah penyalahgunaan wewenang. Karena adanya alasan - alasan begitulah maka putusan mempunyai wibawa dan bukan hakim tertentu yang menjatuhkannya (Mertokusumo, 1999).

An agreement is a consensus, whether in written or oral form, entered into by two or more parties wherein each party agrees to abide by the contents of such consensus. In an agreement, one or more parties bind themselves to another party to perform certain obligations, thereby rendering the agreement a legal event that gives rise to legal consequences for the parties involved.

The sale and purchase of land is a form of agreement; however, it must also take into account the process of rights transfer that has existed since ancient times, namely Adat Law (Customary Law). In Adat Law, land transactions apply the principles of "clear and cash" (terang dan tunai); thus, if the price has not been paid in full, the sale and purchase process cannot be executed. Due to these "clear and cash" principles, the transfer process for land differs from that of other objects. This is also explained under civil law, where land is classified as an immovable object. Consequently, pursuant to Article 1459 in conjunction with Article 616 of the Indonesian Civil Code, the title to a sold immovable object does not transfer to the buyer as long as the delivery has not occurred, which delivery is conducted through the registration of the deed. The execution of said deed serves as the implementation of the "clear and cash" principles.

The title to land can only be transferred after the deed of transfer is drawn up and signed; the execution of such deed is carried out by a Land Deed Official (PPAT). This is as explained in Article 26 of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA), which stipulates that sale and purchase, exchange, granting (gift), bequest by will, granting according to customary law, and other acts intended to transfer title, as well as the supervision thereof, shall be regulated by Government Regulation. Furthermore, the transfer of title is further regulated under Government Regulation (PP) Number 24 of 1997 concerning Land Registration, specifically Article 37 paragraph (1), which states that the transfer of

rights to land and ownership rights to apartment units through sale and purchase, exchange, grant, capital contribution into a company, and other legal acts of transfer, except for transfer through auction, can only be registered if evidenced by a deed drawn up by a Land Deed Official (PPAT) authorized under the prevailing laws and regulations.

In the process of land sale and purchase, the deed drawn up by a Land Deed Official (PPAT) is the Sale and Purchase Deed (AJB). However, in practice, the Sale and Purchase Deed cannot always be executed immediately, as there are certain requirements for the preparation of the Sale and Purchase Deed that must first be fulfilled, which include, among others:

- a. Verification and clearance at the National Land Agency Office;
- b. Payment of Income Tax (PPH) by the seller;
- c. Payment of Land and Building Title Transfer Duty (BPHTB) by the buyer;
- d. Discharge of encumbrance / *Roya* (if any); etc.

Therefore, to guarantee the rights and obligations of the buyer and the seller, a preliminary agreement is first executed, namely the Sale and Purchase Binding Agreement (PPJB), which functions as a supporting agreement to subsequently create or give rise to an obligation for the principal agreement, the Sale and Purchase Deed (AJB). According to Agus Pandoman, an agreement that creates or gives rise to an obligation is referred to as an obligatory agreement (**obligative overeenkomst**). An obligatory agreement is one that compels the parties therein to perform specific prestations; consequently, such prestations may be carried out at a later date once the said prestations (Pandoman, 2019). Based on the foregoing, the Sale and Purchase Binding Agreement (PPJB) is classified as an obligatory agreement that gives rise to an obligation, meaning that such agreement merely establishes the legal relationship and obligation between the parties, but does not yet result in the transfer or delivery of rights; as for the transfer of title, it remains pending until the formal delivery (levering) is conducted (Sutisari, 2023). This is further reinforced by the opinion of Herlien Budiono, who posits that a Sale and Purchase Binding Agreement (PPJB) is an auxiliary agreement that serves as a preliminary agreement, the form of which is unrestricted (Budiono, 2004). Given the status of the Sale and Purchase Binding Agreement (PPJB) as a preliminary agreement, the PPJB serves to prepare for or even reinforce the principal agreement to be executed, as the Sale and Purchase Binding Agreement constitutes the inception for the formation of the principal agreement. (Putri, 2017).

The legal consequence of a Sale and Purchase Binding Agreement (PPJB) as a preliminary agreement is that it binds the parties thereto, namely the seller and the prospective buyer. The legal basis governing the Sale and Purchase Binding Agreement includes Law Number 1 of 2011 concerning Housing and Settlement Areas as the **lex specialis**, the Decree of the Minister of Public Housing Number 9 of 1995 concerning Guidelines for Sale and Purchase Binding, and is further associated with the provisions of Article 1338 paragraph (1) of the Indonesian Civil Code as the **lex generalis**.

Fundamentally, a Sale and Purchase Binding Agreement differs from a sale and purchase agreement. A Sale and Purchase Binding Agreement constitutes a sale and purchase of objects whereby the parties agree that the title to such objects shall transfer to the buyer at a future date. In contrast, a sale and purchase agreement is a transaction where the title to the object transfers immediately to the buyer (Muhammad, 1980). Similarly, although a Sale and Purchase Binding Agreement is a preliminary agreement that is consensual in nature, it nevertheless gives rise to rights

and obligations between the parties who entered into it. The consequence of the Sale and Purchase Binding Agreement (PPJB) is not the transfer of material rights from the seller to the buyer, but rather the creation of a legal obligation between the seller and the prospective buyer to execute a sale and purchase transaction, wherein the consensus reached in the said Sale and Purchase Binding Agreement shall subsequently be incorporated into a Sale and Purchase Deed (AJB) as the principal agreement (Simamora, 2015).

Article 1338 paragraph (1) of the Indonesian Civil Code stipulates that all agreements made in accordance with the law shall serve as law for those who made them. Such agreements cannot be revoked except by mutual consent of both parties, or for reasons prescribed by law. Furthermore, agreements must be performed in good faith. Consequently, pursuant to these provisions, a Sale and Purchase Binding Agreement (PPJB) also creates legal consequences for the parties involved, namely to fulfill what has been agreed upon in the said agreement. This article further asserts that every individual is required to act in good faith when performing an agreement, with reference to the norms of propriety. Parties acting in good faith ought to receive legal protection. Legal protection is afforded to legal subjects regarding their rights, obligations, and physical interests. The legal protection granted to good faith buyers can be observed in several Jurisprudences of the Supreme Court of the Republic of Indonesia, which utilize good faith as a benchmark in their rulings, such as the Supreme Court Decision No. 251k/Sip/1958 dated December 26, 1958, and the Supreme Court Decision No. 3201k/Pdt/1991, which states that a good faith purchaser (**te goeder trouw**) must be protected. (Simamora, 2015).

Legal protection is a safeguard afforded to legal subjects in the form of instruments that are both preventive and repressive in nature, whether oral or written (Tampubolon, 2016). Preventive legal protection is the protection provided by the government with the aim of preventing violations before they occur. This is found within laws and regulations intended to preclude infringements and provide guidelines or boundaries in the performance of obligations. Repressive legal protection is the final form of protection involving sanctions, such as fines, imprisonment, and additional penalties, which are imposed once a dispute has arisen or a legal violation has been committed.

According to Soerjono Soekanto, legal protection is an action aimed at the fulfillment of rights and the provision of assistance to ensure a sense of security for the public, which can be manifested in various forms, such as through the provision of legal services (Soekanto, 1984). Legal protection functions to safeguard the rights and interests of individuals and groups by guaranteeing such rights and interests through prevailing legal norms. Legal protection provides refuge for human rights that have been prejudiced by others, and such protection is afforded to the public to ensure they can enjoy all rights granted by the law; in other words, legal protection constitutes legal efforts that must be provided by law enforcement officials to ensure a sense of security, both mentally and physically, from interference and various threats from any party (Rahardjo, 2000).

Legal protection acts as a supervisor to prevent parties in authority (the government, institutions, or influential individuals) from acting arbitrarily. This principle ensures the existence of controls over actions that could prejudice other parties. Through the existence of legal protection, every legal subject is aware that clear rules exist regarding what is permitted and what is prohibited, thereby providing a sense of security and stability within society. Legal subjects may encounter

situations where their rights are deprived or violated; legal protection provides mechanisms for seeking justice, such as through the courts or mediation institutions.

Based on the case in the Supreme Court Decision Number 3753 K/Pdt/2020, there is an issue regarding the land sale and purchase process in which the Respondent in Cassation/Plaintiff had paid in full for a parcel of land belonging to Co-Respondent in Cassation I/Defendant I as the landowner. Said payment for the land was incorporated and declared in a preliminary agreement, namely the Sale and Purchase Binding Agreement (PPJB) Number 60, dated January 29, 2007, executed before Notary Iswandono Poerwodinoto, S.H. However, Co-Respondent in Cassation I/Defendant I, as the landowner, resold his land without the knowledge or consent of the Respondent in Cassation/Plaintiff, as declared in the Sale and Purchase Deed (AJB) Number 608/2014, dated December 8, 2014, executed before the Interim Land Deed Official (PPAT), Taktakan District.

The Panel of Judges of the Supreme Court, in rendering its decision, provided a legal reasoning stating that the Sale and Purchase Binding Agreement over the object of the case dated January 29, 2007, Number 60, entered into by the Plaintiff and Defendant I before Notary Iswandono Poerwodinoto, S.H., is a general agreement that has not yet transferred the ownership rights of the said object from its owner, Defendant I, to the Plaintiff. The Court further declared that the Sale and Purchase Deed (AJB) Number 608/2014, dated December 8, 2014, executed before Arif Rahman Hakim, S.Sos., M.Si., the Interim PPAT of Taktakan District, Serang City, entered into by and between Defendant I and Defendant II regarding the disputed land, is a valid land sale and purchase agreement and has transferred the ownership rights over the land *a quo* from the original owner (seller), Defendant I, to Defendant II (buyer). The Panel of Judges of the Supreme Court also considered that regarding Defendant I's failure to fulfill the sale and purchase binding agreement with the Plaintiff, the Plaintiff is entitled to demand the refund of the money paid to Defendant I.

Thus, in the researcher's view, based on the aforementioned description, it can be identified that through the legal reasoning in the Supreme Court Decision Number 3753 K/Pdt/2020, the Panel of Judges provided repressive legal protection to the Respondent in Cassation/Plaintiff by considering that the Respondent in Cassation/Plaintiff is entitled to demand the refund of the money paid to Co-Respondent in Cassation I/Defendant I. However, the Panel of Judges of the Supreme Court did not provide consideration regarding the losses suffered by the Respondent in Cassation/Plaintiff as outlined in the Plaintiff's Petition in the Serang District Court Decision; namely, that the Respondent in Cassation/Plaintiff suffered losses due to the actions of Co-Respondent in Cassation I/Defendant I, who resold the object of the case and failed to fulfill the consideration (*causa*) contained in the agreed-upon agreement, amounting to Rp4,820,000,000.00 (four billion eight hundred and twenty million rupiahs) with the following details:

Material Damages:

- **Appreciation of the land's selling price:** The increase in the market value of the land object in 2019, with an estimated price of Rp6,000,000.00 (six million rupiahs) per square meter, calculated as $Rp6,000,000.00 \times 470 \text{ m}^2 = \text{Rp}2,820,000,000.00$ (two billion eight hundred and twenty million rupiahs);

Immaterial Damages / Consequential Losses:

- **Loss of potential profit from investment:** The loss of projected income from the investment of the land object, which the Plaintiff intended to develop into 4 (four) shophouses (*ruko*) for lease, with a targeted average rental price of Rp50,000,000.00 (fifty million rupiahs) per unit per year, detailed as: Rp50,000,000.00 x 4 units x 10 years (from 2009 to 2019), totaling **Rp2,000,000,000.00** (two billion rupiahs);

When associated with Article 1239 and Article 1246 of the Indonesian Civil Code, Co-Respondent in Cassation I/Defendant I is obligated to provide compensation in the form of monetary damages for his actions toward the Respondent in Cassation/Plaintiff, having committed a breach of contract (*wanprestasi*) that resulted in losses. This prompted the Respondent in Cassation/Plaintiff to file a Tort/Unlawful Act (*Perbuatan Melawan Hukum*) lawsuit at the Serang District Court under Case Number 39/Pdt.G/2019/PN.Srg on November 14, 2019.

Article 1246 of the Indonesian Civil Code stipulates that the costs, damages, and interests which a creditor is entitled to claim consist of the losses he has suffered and the profits he would have otherwise reasonably obtained. Such compensation can only be rendered in the form of a sum of money, as explained in Article 1239 of the Indonesian Civil Code, which states that every obligation to do something, or not to do something, shall be resolved by providing compensation for costs, damages, and interests if the debtor fails to fulfill his obligation.

In a general sense, a breach of contract (**wanprestasi**) is defined as the failure to fulfill the obligations established within an obligation, whether such obligation arises from an agreement or from the law (Muhammad, 1992). The forms of breach of contract (**wanprestasi**) may consist of: a party failing to perform their prestation, a party improperly performing their prestation, or a party being late in performing their prestation (Satrio, 1993). A breach of contract (**wanprestasi**) occurring within an agreement may result in four legal consequences, namely (Gumanti, 2012) :

- a. The obligation remains in force;
- b. The debtor must pay compensation for damages to the creditor;
- c. The burden of risk shifts to the debtor's detriment if the impediment arises after the debtor is in default, unless there is intentional misconduct or gross negligence on the part of the creditor;
- d. The creditor may be released from their obligation to provide counter-performance by invoking Article 1266 of the Indonesian Civil Code, provided that the obligation arises from a reciprocal agreement.

The occurrence of a breach of contract results in one party being prejudiced; therefore, the defaulting party must bear the consequences of the aggrieved party's claims in the form of (Sinaga, 2020):

- a. Rescission of the agreement only;
- b. Rescission of the agreement accompanied by a claim for damages consisting of costs, losses, and interests;
- c. Specific performance of the contract only;
- d. Specific performance of the contract accompanied by a claim for damages;

- e. Claiming compensation for damages only.

Based on the aforementioned description, the researcher opines that regarding the legal protection for the buyer in a Sale and Purchase Binding Agreement (PPJB) which has been paid in full and entered into in good faith under Case Number 3753 K/Pdt/2020, the buyer has obtained repressive legal protection through the legal reasoning of the Supreme Court Panel of Judges. In its reasoning, the Panel of Judges stated that the Plaintiff is entitled to demand the refund of the money paid to Defendant I; however, the Panel of Judges provided no consideration regarding the magnitude of the losses suffered by the Plaintiff. Consequently, in the researcher's view, the Plaintiff, as the aggrieved party under the Supreme Court Decision, may file a breach of contract (*wanprestasi*) lawsuit to claim compensation based on the actual losses sustained.

Kesimpulan

Based on the results of the research and discussion conducted by the researcher, the following conclusions are drawn:

1. **The Sale and Purchase Binding Agreement (PPJB) Number 60**, executed on January 29, 2007, before Notary Iswandono Poerwodinoto, S.H., constitutes a preliminary agreement executed in the form of an authentic deed by a notary. Such preliminary agreement merely creates an obligation to be performed at a later date, which shall be incorporated into a Sale and Purchase Deed (AJB). Since the agreement has fulfilled the requirements for the validity of a contract and does not violate any statutory provisions or other regulations, it serves as law for the parties who entered into it, namely Co-Respondent in Cassation I/Defendant I and Respondent in Cassation/Plaintiff. This is in accordance with the provisions of **Article 1338 of the Indonesian Civil Code**, which stipulates that all agreements made legally shall serve as law for those who made them. Consequently, the legal consequence of a PPJB that has been paid in full and entered into in good faith is the emergence of rights and obligations for the parties, as well as the binding of the parties to fulfill such rights and obligations—specifically, to carry out the sale and purchase process through the execution of a Sale and Purchase Deed once all conditions set forth in the PPJB are fulfilled in the future.

2. **The legal protection for the buyer** who has paid in full and acted in good faith regarding PPJB Number 60, executed on January 29, 2007, before Notary Iswandono Poerwodinoto, S.H., has been manifested through **repressive legal protection** via the legal reasoning of the Supreme Court Panel of Judges, which declared that the Plaintiff is entitled to demand the refund of the money paid to Defendant I. Regarding the losses suffered by the Plaintiff, as outlined in the claims of the Unlawful Act (Tort) lawsuit under Case Number 39/Pdt.G/2019/PN Srg dated November 14, 2019, the Plaintiff may file a **breach of contract (*wanprestasi*) lawsuit** with the District Court to claim compensation for the actual losses sustained from Defendant I.

Saran

Based on the discussion and conclusions conducted by the researcher, the researcher offers the following suggestions:

1. **Each party entering into an agreement** should clearly understand the rights and obligations stipulated therein and ensure that all provisions comply with the prevailing laws and regulations. The parties to an agreement should also adhere to, perform, and respect the contents of the agreement to which they have consented, thereby ensuring that no party suffers any loss or prejudice.

2. **Notaries**, when executing a Sale and Purchase Binding Agreement (PPJB), should ensure that the land certificate or evidence of ownership of the land object is no longer under the control of the landowner/seller. The certificate or evidence of ownership should be held by a third party or placed under the **escrow/custody of the Notary** as a neutral party. This measure ensures that the landowner/seller is unable to resell the land to another party once the land has been paid for in full and a Sale and Purchase Binding Agreement has been executed.

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