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***Legal Review of Binding Sale and Purchase Agreements (PPJB) in Transactions of Transfer of Land and/or Building Rights***

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**ABSTRAK**

This research investigates land buying and selling mechanisms in Indonesia, focusing on the role and legal validity of the Sale and Purchase Agreement (PPJB) in transactions involving land and/or buildings. According to Article 1457 of the Civil Code, these transactions establish rights and obligations for both parties. While the PPJB serves as a preliminary agreement, its legal efficacy is limited and cannot replace the official deed issued by a notary/PPAT. The research addresses two primary issues: 1) Mechanisms of land transactions within society; and 2) Legal consequences of transactions conducted without a notary. Using a normative juridical method with a statutory and factual approach, the study concludes that: 1) Urban and rural land transactions in Indonesia exhibit significant differences; urban areas typically involve formal processes with notarial involvement, whereas rural areas often rely on traditional, non-notarial practices. 2) Transactions lacking notarial deeds are only oral agreements, susceptible to dispute and manipulation, thus risking unclear ownership and boundary issues. Purchasers lack legal proof of ownership and face potential claims from other parties, while sellers may remain legally liable for the property.

**Keywords: Transaction, Agreement, Binding Sale and Purchase**

**INTRODUCTION**

Buying and selling activities have been part of human life since ancient times until now and have become an inseparable part of our daily lives (Lefebvre, 2017). In general, buying and selling transactions carried out by humans involves goods or services that aim to meet their needs. In human life, soil is one of the most important elements on earth that is essential for survival. Soil has a very significant role in human life. As a symbol of social status, land is one of the reasons that encourages individuals to master it, often even more than one field (Turner, 2018).

The desire to own and control the land encourages every individual to continue to try. Land ownership is sought as much as possible to improve the welfare of life (Leopold, 2017). Land has a very important role in the life of the Indonesian Nation, as well as in the implementation of sustainable national development in order to realize a just and prosperous society based on Pancasila and the 1945 Constitution. By realizing the importance of land for human survival, Article 1 paragraph (2) of the Basic Agrarian Law (UUPA) states that the entire earth, water, and space, including the natural resources contained in it, are aimed at achieving the greatest possible prosperity of the Indonesian people. This is also affirmed in Article 33 paragraph (3) of the 1945 Constitution which states that the earth, water, and natural resources contained in it are controlled by the state and used as much as possible for the prosperity of the people (Hamonangan, Taufiqurrahman, & Pasaribu, 2021)

To overcome this, in 1999, the Government of the Republic of Indonesia issued Law Number 5 of 1999 concerning Monopoly Practices and Unfair Business Competition. The law is an important milestone in efforts to create a fair, healthy, and competitive business environment in Indonesia. The main goal is to protect consumers, encourage economic efficiency, and prevent practices that harm competitors and damage market structures (Baker, 2019). Thus, the implementation of Law Number 5 of 1999 is crucial in building a sustainable and inclusive economic foundation.

Based on this, all Indonesian people hand over the authority they have regarding the gift from God Almighty to the State (Van Klinken & Barker, 2018). The state, as the Governing Body, has full authority to control, regulate, and manage the earth, water, space, and natural resources contained in it for the realization of social justice for all Indonesian people. One of the activities that is commonly carried out by Indonesian people today is buying and selling land. Usually, land purchase and sale transactions are carried out based on the principle of agreement between the seller and the buyer who wants to buy the land. This transaction is carried out in front of the Land Deed Making Officer (PPAT) in order to obtain legal certainty and is stated in an authentic deed that has permanent legal force (Sutisari & Kurniati, 2023).

Land and/or building purchase and sale transactions involve agreements or engagements, where there is an agreement between the parties that bind each other (Afiyah, 2023). One party submits an object, while the other party makes payment according to the previous agreement, as stipulated in Article 1457 of the Civil Code. This agreement creates rights and obligations for both parties, namely the seller and the buyer. Inland and/or building buying and selling transactions, it is also known as the term money. Based on the provisions of Article 1454 of the Civil Code, with the prohibition, the sale and purchase cannot be canceled, so that if a dispute occurs in the future, it will not be accommodated.

Broadly speaking, several stages of the buying and selling process before a Notary/PPAT include payment of seller tax and buyer tax, physical check of the original land certificate, signing of the Sale and Purchase Deed (AJB), validation, and so on. However, for various reasons, the AJB process can experience obstacles, for example, one of the parties cannot be present at the specified time, the object of sale and purchase is still pledged or collateralized at the bank, or the object of sale and purchase is still in the process certificate breaking. To overcome these obstacles, Notary/PPAT provides a solution by making a binding agreement between the buyer and the seller, known as PPJB (Purchase and Sale Agreement). However, in practice, PPJB often causes problems, both conflicts originating from buyers, and sellers, and from the Notary/PPAT itself, considering that this PPJB is a preliminary agreement (Sanusi, Prakoso, & Adonara, n.d.). According to applicable regulations, the sale and purchase of land rights must be carried out in the presence of the Land Deed Making Officer (PPAT). However, in practice, there are still many transfers of land rights that are carried out under the hands, meaning that they are not in accordance with the applicable provisions (Antoni, Rahmatiar, & Abas, 2024). This kind of practice is very detrimental to the buyer because they can only control the land physically. Legally, the ownership

of the land remains with the seller. Thus, buyers or people who buy and sell land without involving PPAT will suffer material and immaterial losses. Even though the land is physically controlled by the buyer, legally the land still belongs to the seller. In addition, there are legal consequences for the Land Deed Making Officer who makes the land sale and purchase deed after the transaction occurs without going through the process in accordance with the provisions (Suprayogi & Khisni, 2019).

Land registration activities carried out through Land Deed Making Officials (PPAT) are very important and must be carried out (Sumartoputra & Endipradja, 2020). This is in accordance with the provisions of Article 19 of the UUPA which requires the registration of land rights in Indonesia. Regulations regarding land registration are based on Government Regulation Number 24 of 1997. In the implementation of land administration, the land registration data recorded at the Land Office must reflect the actual state of the land plot, both physical and juridical data. The role of PPAT is very important, especially in recording changes in juridical data that have been recorded previously.

Realizing the importance of land for human survival, Article 1 paragraph (2) of the Basic Agrarian Law (UUPA) states that the entire earth, water, and space, including the natural resources contained in it, are aimed at achieving the greatest possible prosperity for all Indonesian people. This is also affirmed in Article 33 paragraph (3) of the 1945 Constitution which states that the earth, water, and natural resources contained in it are controlled by the state and used as much as possible for the prosperity of the people (Prawira, Nugraha, & Sugiarto, 2022).

Based on this, all Indonesian people hand over the authority they have regarding the gift of God Almighty to the State. The state, as the Governing Body, has full authority to control, regulate, and manage the earth, water, space, and natural resources contained therein, for the realization of social justice for all Indonesian people (Nurhidayah & McIlgorm, 2019). One of the activities that is commonly carried out by Indonesian people today is buying and selling land. Usually, the sale and purchase of land is carried out based on the principle of agreement between the seller and the buyer, and is carried out in the presence of the Land Deed Making Officer (PPAT) to obtain legal certainty and is stated in an authentic deed that has permanent legal force.

The acquisition of land rights requires a specific process or mechanism, such as inheritance, grants, or buying and selling (Tura, 2018). For the acquisition of land and/or buildings through purchase and sale transactions, in principle, it must be done openly and in cash. Bright means that it is done openly with the clarity of the object and subject of the owner, and complete with papers and proof of ownership. Cash means being paid directly and in one lump sum, including tax payment, signing of the Deed of Sale and Purchase, and reprocessing of the name of the certificate at the land office to obtain legal certainty (Brennan, 2015). This is in accordance with Article 19 paragraph (1) of Law No. 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA), which states that "To ensure legal certainty, the Government conducts land registration in all regions of the Republic of Indonesia in accordance with the provisions regulated by Government Regulations."

In practice, the transaction of buying and selling land and/or buildings involves an agreement or engagement, where both parties agree to bind themselves (Jamil, Kuspraningrum, & Damanik, 2024). One party submits an object, while the other party makes payment according to the previous agreement, as stipulated in Article 1457 of the Civil Code (KUHPerduta). Thus, this agreement gives rise to rights and obligations for both parties, namely the seller and the buyer. Inland and/or building buying and selling transactions, it is also known as the term money. Based on Article 1454 of the Civil Code, the existence of a ban makes the sale and purchase irrevocable, so that if there is a dispute in the future, it is not. In addition, according to Article 1458 of the Civil Code, "the sale and purchase is considered to have occurred between the two parties when they have reached an agreement on the goods and price, even if the goods have not been handed over or the price has not been paid." If the requirements for the sale and purchase of land rights have not been met, the signing of the Deed of Sale and Purchase of Land Rights cannot be carried out in front of the Land Deed Making Officer (PPAT).

Based on some of the articles mentioned above, a sale and purchase agreement can be carried out by giving a ban in advance, which means that the sale and purchase transaction is still valid even though it is not completely transparent and cash as explained earlier (Ratna & Djajaputra, 2024). The Sale and Purchase Agreement Deed (PPJB) functions as a binding sale and purchase transaction while waiting for repayment. PPJB is made in two ways, namely the new PPJB deed includes promises because the price has not been paid off (PPJB Not Yet Paid) and the PPJB deed where the payment has been paid off, but the sale and purchase deed cannot be made in front of PPAT because there are things that have not been completed (PPJB Paid) These unfinished things can be caused by various reasons, such as one party cannot be present at the specified time, The status of the object of purchase and sale is still pledged or collateralized at the bank, or the object of purchase and sale is still in the process of breaking the certificate. Therefore, PPJB Lunas is used as a temporary binder.

In practice, the creation of PPJB as a preliminary agreement often leads to future issues when one party fails to fulfill agreed rights and obligations. Therefore, this article aims to elucidate the legal implications and protections associated with PPJB for all parties involved. The author seeks to analyze the prevailing mechanisms of land transactions within communities and the legal consequences of land transactions conducted without notarial involvement. These aspects will be explored in depth in a scientific paper titled: "Legal Review of Binding Sale and Purchase Agreement (PPJB) in Transactions of Transfer of Land and/or Building Rights."

## **RESEARCH METHODS**

The research conducted in this journal uses a normative juridical research method, which uses laws regulations, and legal norms as primary legal materials and uses books, literature, and journals as secondary legal materials (Peter, 2016). This research uses a legal approach and a factual approach as well as document study data collection techniques based on legal materials and written data relevant to the research topic. This research is descriptive and uses qualitative

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analysis techniques by collecting primary and secondary data (Jonaedi Efendi, Johnny Ibrahim, & Se, 2018). The primary legal material used in this study is Law No. 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA), Civil Code (KUHPperdata).

## **RESULTS AND DISCUSSION**

### **Mechanism for buying and selling land that applies in the community**

The mechanism of buying and selling land in Indonesian society has diverse characteristics, influenced by traditions, culture, and the level of legal awareness of the community. In urban areas, the process of buying and selling land tends to be more formal, with the involvement of a notary and a valid sale and purchase deed (Firmansa, Anggraeny, & Pramithasari, 2020). However, in rural areas or less accessible areas, the practice of buying and selling land is still carried out traditionally, without the involvement of a notary.

In the practice of buying and selling land in the community, it is often found that the use of a Sale and Purchase Agreement (PPJB) is found as a transaction tool. PPJB is an agreement between the buyer and seller that stipulates the obligations of each party to carry out land purchase and sale transactions in the future. PPJB usually contains an agreement on the price of land, payment methods, delivery time, and other conditions.

The use of PPJB has advantages in establishing agreements and protecting both parties. PPJB serves as a guarantee for buyers that the seller will hand over the land in accordance with the agreement (Judge, 2022). On the other hand, PPJB also guarantees sellers that buyers will pay the land price according to the agreement. However, the use of PPJB also has weaknesses. PPJB does not have the same legal force as the sale and purchase deed determined by a notary. PPJB is only a pre-sale agreement and cannot be used as proof of land ownership. This results in less strong legal certainty and increases the risk of future disputes.

The main problem arising from the use of PPJB is the unclear status of land ownership. Buyers who only have PPJB cannot carry out the land registration process at the National Land Agency (BPN) and do not have strong legal force to enforce their ownership rights. This leaves buyers vulnerable to claims from other parties who have stronger proof of ownership.

In the context of legal certainty, the use of PPJB is limited and cannot replace the role of a notary in the process of buying and selling land (Abu, Subekti, & Djaja, 2024). The Notary has the authority to establish a valid and legally binding sale and purchase deed. The sale and purchase deed determined by a notary is proof of legal ownership and can be used to register land at BPN.

Although the practice of buying and selling land with PPJB is still widely found in the community, it is important to understand that the sale and purchase deed set by a notary is a safer and legally secure solution (Mandela, Ismansyah, & Fendri, 2019). The community is expected to increase legal awareness and choose a more formal and secure path in the land purchase and sale process to avoid conflicts and losses in the future

### **Legal impact of buying and selling land without the presence of a notary**

Buying and selling land is a transaction that has high economic value and contains complex legal risks. In practice, the involvement of a notary in the process of buying and selling land is very important to ensure legality, legal certainty, and protection for both parties (Ramadhani, Paserangi, & Heryani, 2021). However, sometimes land sale and purchase transactions are carried out without involving a notary, for various reasons, such as ignorance of the law, a desire to avoid fees, or trust in other parties. In fact, the decision not to involve a notary in the sale and purchase of land can have serious and detrimental legal consequences.

Without a notary deed as valid written evidence, the land sale and purchase agreement is only verbal and prone to be disputed (Nitama & Nurdin, 2020). Oral evidence is difficult to legally strengthen and can be easily manipulated, opening up opportunities for lengthy disputes and harming the aggrieved party. In addition, unclear land ownership status, land boundaries, and land areas that are not officially documented can trigger disputes later on. The buyer may lose the rights to the land he bought, while the seller is also at risk of being sued because the land he sells is still registered in his name.

Without a notary as a witness to ensure the validity of the transaction, the buyer does not have strong legal protection in the event of fraud or embezzlement (Aspan, Wahyuni, Prabowo, & Zahara, 2023). They find it difficult to uncover evidence and strengthen ownership claims. The buyer also risks losing the money that has been paid if the seller breaks the agreement or sells the land to another party.

Furthermore, land purchased without a notary deed is not registered with the National Land Agency (BPN), so the buyer does not have legal proof of ownership. This makes the buyer vulnerable to ownership claims by other parties, especially if the land is an asset that was inherited or acquired through unclear means.

In conclusion, buying and selling land without a notary has a very high legal risk and is not recommended (Garcia-Teruel, 2020). Notaries play an important role in ensuring validity, and legal certainty, and protecting the rights and interests of both parties. Choosing not to involve a notary can lead to financial losses and serious legal problems later in life. Therefore, it is important to understand the risks and legal implications of buying and selling land without a notary and choose a safe and legally secure path.

## CONCLUSION

The mechanism of buying and selling land in Indonesia shows significant differences between practices in urban and rural areas. In urban areas, the process of buying and selling land is generally more formal and involves a notary and a valid sale and purchase deed. On the other hand, in rural or remote areas, the practice of buying and selling land is still often carried out traditionally without the involvement of a notary. One of the transaction tools that is often used is the Binding Sale and Purchase Agreement (PPJB). PPJB has several advantages, such as providing guarantees for both parties in the buying and selling process. However, PPJB also has significant weaknesses, especially in terms of legal certainty, and cannot be used as proof of legal land

ownership. This increases the risk of future disputes and shows that a notary sale and purchase deed is a safer and more legally secure solution.

The legal impact of buying and selling land without involving a notary is very serious and detrimental. Without a notary deed, land sale and purchase agreements are only verbal and are vulnerable to objections and manipulation, which opens up opportunities for disputes. Unclear land tenure status and unofficially documented land boundaries can trigger disputes later on. The buyer risks losing the rights to the land he bought, and the seller is also at risk of being sued because the land is still registered in his name. Without a notary as a witness to ensure the validity of the transaction, the buyer does not have strong legal protection and it is difficult to strengthen ownership claims in the event of fraud or embezzlement. In addition, land purchased without a notary deed cannot be registered with the National Land Agency (BPN), so the buyer does not have legal proof of ownership and is vulnerable to ownership claims by other parties.

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