
Optimalization of the Notary Authority in Binding PPJB: Legal Review of the Job Creation Law

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Abstract

The purpose of this writing is to explain the legal position and role of a Notary in the preparation and approval of land sale and purchase agreements, as required by the legislation. This research focuses on the changes that have occurred in the authority of a Notary, as well as the rights and obligations of the parties involved in making a Sale and Purchase Agreement (PPJB) in accordance with Article 43 paragraph (1) of the Job Creation Law. The research method used is a normative legal approach by analyzing legal regulations and philosophical principles, as well as a prescriptive analysis method. The results of this research confirm that the authority of a Notary in making PPJB is a direct authority granted by the law to a Notary as a public official. This research uses the theory of contract to analyze the legal relationship between the Notary and the parties involved in the contract, while the theory of authority is used to analyze the scope of authority of the Notary in making the contract. The aim of this research is to provide a comprehensive understanding of the dynamics of Notary authority in the context of the Job Creation Law.

Keywords: Notary, PPJB, Theory of Authority, Theory of Certainty

1. INTRODUCTION

1.1 Background of Problem

The property sector, especially in Indonesia, has shown very positive growth in recent years. This growth includes property developments such as housing, apartments and flats. Flat facilities, which are also known as “sarana rumah susun” or “sarusun,” have become one of the housing options that is increasingly in demand, especially in the centers of large cities in Indonesia. Apart from that, the need for housing in large city centers in Indonesia is currently encouraging the development of multi-storey apartment buildings as a type of vertical housing. The process of buying and selling property, including flats, involves a number of very important legal aspects, such as contractual aspects and the authority of a notary. The provision of residential units is the main strategy used by the government to provide access to appropriate and economically viable housing options for individuals. Notaries play an important role in managing apartment transactions by facilitating the creation of a binding agreement known as *Perjanjian Pengikatan Jual-Beli* (PPJB) [a Sale and Purchase Binding Agreement]. This agreement functions as a preliminary agreement before the *Akta Jual-Beli* (AJB) [Sale and Purchase Deed] is signed (Putri, 2017).

Regulation of the Minister of Public Works and Public Housing, namely Regulation Number 11/PRT/M/2019, has stipulated certain requirements and conditions that must be included in the PPJB. The government has taken the initiative to regulate these topics to ensure that PPJB is implemented in accordance with specified guidelines. Article 100 paragraph (2) PP No. 13 of 2021 regarding the Management of Flats regulates that notaries have the authority to make PPJB deeds and sale and purchase deeds (AJB) for flat units (Halim, 2022). In accordance with the provisions of Article 43 paragraph (1) of Government Regulation Number 2 of 2022 concerning Job Creation, procedures for

buying and selling residential units or apartments before they are built can be facilitated by a Pre-Sales and Purchase Agreement made before a notary. This agreement is temporary so it requires further legal action, namely legal handover to ensure the smooth implementation of transactions including buying and selling (Halim, 2022).

The Sales and Purchase Binding Agreement (PPJB) regulations in the context of property development in Indonesia are based on existing legal regulations. PPJB is used to ensure legal protection for both parties, namely property sellers and buyers who want to carry out property transactions. However, it is important to remember that PPJB is not an absolute requirement in all property transactions in Indonesia, and its use may vary depending on various factors, including local laws and agreements between the parties involved. In this particular scenario, a Pre-Sale and Purchase Agreement may be executed as a contractual agreement between the developer and the prospective purchaser during the development phase or prior to completion of construction. PPJB prerequisites include verification of land ownership, resolution of agreed problems, obtaining Building Approval, availability of adequate infrastructure, amenities and public utilities, as well as the feasibility of developing an area is minimum 20%.

The main purpose of the Preliminary Sale and Purchase Agreement is to establish contractual obligations for the prospective seller to transfer their assets or rights to the prospective buyer within the agreed time period (Alvita, 2021). PPJB juga berfungsi untuk memberikan kejelasan hukum bagi pihak-pihak yang terlibat dan menjaga kepentingan masing-masing. Secara umum perlu diperhatikan bahwa PPJB pada hakekatnya tidak mengakibatkan peralihan hak kepemilikan. Namun, apabila calon pembeli telah memenuhi kewajibannya dengan membayar lunas harga tanah yang telah disepakati dan telah memegang kendali atas obyek transaksi jual beli dengan itikad baik, maka peralihan hak atas tanah secara sah dapat terjadi sesuai dengan ketentuan. dituangkan dalam PPJB

PPJB also functions to provide legal clarity for the parties involved and safeguard their respective interests. In general, it should be noted that PPJB does not essentially result in a transfer of ownership rights. However, if the prospective buyer has fulfilled his financial obligations by paying the agreed land price in full and has taken control of the object of the sale and purchase transaction in good faith, then a legal transfer of land rights can occur in accordance with the provisions. stated in the PPJB (Humberto Avila, 2016). So, the notary has the authority in this case to make a sale and purchase deed, including the PPJB for the sarusun or flat before the construction is completed. The notary must guarantee that every deed he makes is valid and provides legal certainty to the parties. PPJB is made before a notary based on the Article 43 paragraph (1) PP Number 2 of 2022 concerning Job Creation. PPJB made before a Notary is an original deed that can be used in court.

PPJB which is formed privately without a notary has little legal force. The notarial deed is original and can be used as perfect evidence guided by Article 1868 of the Civil Code. In relation to Article 43 paragraph (1) which requires the preparation of a Sales and Purchase Agreement (PPJB) before the construction process occurs before a notary. However, in reality there are still many cases where the parties make the PPJB under their hands. This creates blurry norms between legal provisions that require PPJB to be made before a notary and practice in the field, where parties make PPJB informally without a notary. This vague norm can result in legal uncertainty and difficulties in proving the agreement at trial. In the article entitled "Sales Purchase Agreement (Ppjb) in Transfer of Land and/or Building Rights Transactions" by Ramadhani Hidayat in 2022 is found a novelty which lies in the content of the discussion (Hidayat, 2022).

Previous research is focusing on discussing the problems of making PPJB made before a notary, while this present research discusses the problems that will arise if making PPJB is done privately and the use of legal certainty theory and authority theory which the author will use in this research (Afifah, 2017). Besides that, the research entitled "Authority of notaries in making PPJB after the Job Creation Law is passed" by Kevin Jonathan in 2022 aims to identify the differences between sale and purchase agreements and legal acts of land sale and purchase, as well as the importance of preventive processes to prevent disputes between sellers and buyer. Likewise, this present research discusses the authority of notaries related to making PPJB, but there are several differences, especially the theory and research objects used are different from previous research.

Based on the explanation above, this research aims to provide a broader view of the dynamics of property law in Indonesia, by detailing the impact and implications of the Job Creation Law. The author takes the legal basis for this article from laws and regulations related to Job Creation, which makes this

research relevant to the latest legal changes. The main focus of this research is on optimizing the binding of the Sale and Purchase Agreement and the role of Notaries in land sale and purchase transactions. The study in this article covers the differences between sale and purchase agreements and land sale and purchase legal acts, as well as the authority of Notaries in the context of new regulations, because it not only presents a careful legal analysis, but also provides a comprehensive picture of the dynamics of property law in Indonesia and the impact of regulatory changes, especially in the context of the Job Creation Law.

1.2 Formulation of Problem

Based on the background of the problem described above, there are several problem formulations which are described as follows.

1. How can authority theory and legal certainty theory be used to understand the expansion of notary authority in Article 43 Paragraph (1) PP No. 2 of 2022 concerning Job Creation?
2. How the theory of authority and the theory of legal certainty can be used to resolve legal issues in the making of PPJB under the hand which are contrary to the legal rules in Article 43 paragraph (1) PP No. 13 of 2021 concerning Job Creation?

1.3 Purpose of writing

1. Intended for analyzing the obstacles faced in implementing the expansion of notary authority and providing recommendations to ensure that the expansion of notary authority can run well and in accordance with the expected objectives, notary authority is in the provisions of Government Regulation Number 2 of 2022.
2. To identify efforts that can be made to ensure that the theory of authority and the theory of legal certainty can resolve legal issues arising from inconsistencies between PP No. 2 of 2022 concerning Job Creation, especially in article 43 paragraph (1) regarding the realities in the field.

2. RESEARCH METHODS

Normative investigations were used in the preparation of this publication. It means that research topics can be researched using legal sources or publications available in the library. The review process serves as a means of obtaining legally enforceable authority through the creation of laws and evaluation of library resources in the legal and literary domains. The research approaches used in this research are the conceptual approach and also the analytical approach (Nurhayati, Ifrani, and Said, 2021). This study utilizes statutory regulations as the main legal source, namely the rules outlined in Article 43 paragraph (1) of Government Regulation Number 2 of 2022 concerning Job Creation which regulates PPJB. In addition, sources of secondary legal materials include Legal Studies Journals, documents relating to relevant problem formulations, and online legal publications.

3. RESULTS AND DISCUSSION

3.1 Understand the expansion in notary authority in Article 43 Paragraph (1) Government Regulation No. 2 of 2022 concerning Job Creation in relation to Authority Theory

The authority of a notary as regulated in UUJN-P Number 2 of 2014 precisely in paragraph (1), (2), and (3) states that a notary has the authority to make authentic deeds regarding all deeds, agreements and provisions required by law. In line with this, this research places more emphasis on article (3) which reads “in addition to the authority as intended in paragraph (1) and (2), Notaries have other authorities regulated in statutory regulations.” In other words, as referred to in article 3, notaries also have other authorities apart from the provisions of statutory regulations regarding notary functions. One of them is in Government Regulation Number 2 of 2022 concerning Job Creation, specifically regarding the authority of notaries, it is stated in article 43 paragraph (1) that “The process of buying and selling flats before the construction of flats is completed can be carried out through a PPJB made in the presence of a notary.” Where in practice, notaries need to understand the basic concepts of making notarial deeds, including the anatomy of deeds, notary authority, and types of deeds. Notaries also need to be careful and more accurate in making notarial deeds to avoid mistakes and violations of regulations. In this case, the notary must also ensure that the deed he or she makes complies with applicable laws and regulations, because a notarial deed is an official government deed that must be

used in Indonesia and must comply with applicable Indonesian language rules. In this context, authority theory refers to the conceptual framework used to determine the extent of notaries' authority in carrying out their duties and functions. In this research, notaries have functional authority in accordance with the theory of functional authority. This means that a notary has the authority to make authentic deeds related to legitimate legal interests and in accordance with the law, and related to the role of the notary as a public official who protects the legal rights of the community. This expansion of notary authority aims to increase efficiency, accessibility and legal certainty in transactions involving notaries.

Expansion of notary authority in Article 43 paragraph (1) Government Regulation No. 2 of 2022 concerning Job Creation shows that notaries have the authority to make deeds for various types of transactions, including transactions that may previously have been considered outside the notary's authority. This can include creating deeds for property transactions, business, family law, and so on. According to the theoretical definition of authority, the expansion of a Notary's authority can be based on legal considerations, protecting the interests of interested parties and efforts to create favorable conditions for Notaries to access Notary services. However, it is important to understand that notaries must still operate in accordance with applicable legal principles; in addition, maintaining legal compliance, and carrying out their responsibilities ethically. Authority theory is a theory that explains the authority or authority possessed by an institution or profession in carrying out its duties. In the notarial context, the theory of authority explains the authority of a notary in making authentic deeds and other authorities granted by law. One of the figures who originated this theory of authority is Prof. Dr. Jimly Asshiddiqie, S.H., LL.M. He is an Indonesian legal expert who is known as the figure who introduced the theory of authority in Indonesian law. According to Jimly Asshiddiqie, authority theory is a theory that explains the power or authority possessed by an institution or profession in carrying out its duties (Asshiddiqie, 2011).

The establishment of regulatory bodies is based on the idea of legality. According to paragraph 3 of Article 1 of the 1945 Constitution of the Republic of Indonesia, the Indonesian state is characterized by a state of law. It means that state administration must comply with established legal standards, and it is the state's responsibility to guarantee the protection of the basic rights of its citizens. Therefore, the main determinant of effective state governance lies in the legitimacy of authority (Rais, 2022). Of the two ways in which authority is obtained, namely *Attributive* and *Derivative*, which are related to the Expansion of Notary Authority in Article 43 Paragraph (1) of Government Regulation no. 2 of 2022 concerning Job Creation, granting notary authority through a delegation process. Delegation of authority in this context is the transfer of authority from a higher Government Agency and/or Government Official to a lower Government Agency and/or Government Official, so that responsibility and accountability are completely transferred to the recipient of the delegation (Abdullah, 2017). Specifically in Article 43 paragraph (1) Government Regulation no. 2 of 2022 concerning Job Creation gives the notary the authority to make a Sale and Purchase Agreement (PPJB) in the sale and purchase process of the flat before the construction of the flat is completed. This delegation of authority is carried out through delegation from higher government bodies and/or officials to the notary. The aim of the authority theory in this research is to consider the position and authority of Notary officials in their duties in making authentic deeds. It aims to provide services to the community with a focus on creating legal certainty and justice in the practice of making deeds of agreement which is the responsibility of Notary officials as respected officials. The authority of Notary officials in making PPJB deeds is based on the principle of freedom of contract, responsibility and the principle of good faith. In addition, the relationship between the Notary and the theory of authority reflects how the actions and legal actions of the Notary are measured in the context of making PPJB deeds, with an emphasis on the principles of legal certainty and good faith (Wijayanta, 2014).

3.2 The Relevance of Legal Certainty Theory in Overcoming Legal Conflicts in Underhand PPJB based on Regulation Article 43 paragraph (1) Government Regulation No. 13 of 2021 concerning Job Creation

A Sales and Purchase Agreement (PPJB) is a contractual agreement that functions as a preliminary agreement in an informal format. Therefore, PPJB can be classified as a preliminary agreement made before the implementation of the main agreement. The term PPJB does not appear in the Civil Code; However, in practice it is commonly used because of the broad coverage of Book III of the Civil Code. It gives every person (legal entity) the freedom to enter into an agreement with the

content and form they wish, as long as it does not conflict with statutory regulations relating to ethics and order. The purpose of this Pre-Sales Purchase Agreement (PPJB) is to establish contractual obligations between the seller and buyer, which is often facilitated by the developer. PPJB can be divided into two types, namely PPJB that has not been entirely completed and PPJB that has been entirely completed. Pre-Sales and Sale and Purchase Agreement is a kind of contractual obligation where the parties involved agree to transfer ownership of an item to a designated party. It should be remembered that PPJB does not inherently mean a transfer of ownership rights from the seller to the buyer. This stage includes the implementation of the handover agreement, namely through the formalization of the Sale and Purchase Deed (AJB) before an authorized Notary or Land Deed Drafting Official (PPAT). This PPJB can help avoid the occurrence of unclear legal norms in the future, by ensuring that the agreement is made clearly and in accordance with applicable provisions, so as to avoid legal conflicts in the future, if the PPJB is made before a notary (Arthadana, 2017). Due to PPJB made before a notary has perfect evidentiary power; in contrast to making PPJB privately it does not have perfect evidentiary power like an authentic deed whose truth cannot be disputed by a judge, in the case of opposing parties who submit evidence of “falsity” of the deed (Arthadana, 2017).

The Sale and Purchase Binding Agreement is a legal form of agreement involving the developer as the seller and the consumer as the buyer of the apartment. After an agreement is reached in the PPJB, obligations arise for both parties, where the developer must hand over the flat to the consumer (the consumer’s main right), and the consumer must pay the price of the house according to the agreement (the developer’s main right) (Firdansyah, 2023). It creates a reciprocal relationship between the obligations and rights of each party to the agreement. To ensure legal certainty for all parties involved, the transfer of land rights to be recorded in the Deed of Sale and Purchase (AJB) cannot be represented by any party, including through the granting of a power of attorney. This is in line with the provisions in Article 38 paragraph (1) of Government Regulation Number 24 of 1997 concerning land registration, which states that:

“The making of a deed as intended in Article 37 paragraph (1) must be attended by the parties carrying out the legal action in question and witnessed by at least 2 (two) witnesses who meet the requirements to act as witnesses in the legal action” (Butarbutar, 2011).

It is important for the parties carrying out the legal action in question to clearly explain that the transfer of land rights cannot be represented by anyone or through the granting of a power of attorney. In this case, those directly involved are the individuals who own the land. In current conditions, compliance with the provisions outlined in the Sale and Purchase Agreement (PPJB) and Power of Attorney to Sell is very important when transferring ownership rights. This requirement is in accordance with Government Regulation Number 24 of 1997 which regulates land registration and strictly prohibits non-compliance. From a normative point of view, legal certainty can be interpreted as the embodiment of statutory regulations or legal consequences resulting from decisions that have long-lasting legal validity, which have been well formulated and announced with a high level of certainty. Legal certainty is very important in order to create clear and rational regulations so as to minimize ambiguity and prevent the emergence of various interpretations. The originator of the Legal Certainty Theory was Gustav Radbruch, a philosopher and legal expert from Germany.

Based on this theory, Gustav Radbruch concluded that legal certainty is a product of law or more specifically a product of legislation (Butarbutar, 2011). This research adopts Sudikno Mertokusumo’s perspective to define the meaning of legal certainty. According to Mertokusumo, legal certainty refers to guarantees that the law is enforced effectively, allows those who are entitled to obtain legal rights, and guarantees that decisions can be implemented. Although legal certainty and justice are closely related, it is important to note that law and justice are not the same (Mertokusumo & H.Salim, 2010). Law, according to the legal certainty theory of experts, must remain consistent and must not contain contradictions. Because, if these laws are mixed up and conflicting, then this will cause uncertainty and confusion. Thus, the concept of legal certainty functions as a legal regulatory tool for a country that provides clarification and guarantees the rights and responsibilities of every citizen in accordance with the cultural values that apply in that society (Prodjodikoro, 2002). In addition, legal certainty is one of the main goals in law and is a step towards achieving justice. The real manifestation of legal certainty is the implementation and enforcement of the law for every action, regardless of who the perpetrator is.

Legal certainty has a central role in facilitating individuals’ understanding of the consequences of their legal decisions, and this element of certainty is the most important foundation in efforts to

achieve justice. Legal certainty is a basic characteristic of the legal system, especially in the context of codified legal regulations. It concerns unclear or ambiguous laws (Cst Kansil, 2009). The implementation of the Sale and Purchase Agreement for condominium units must comply with applicable laws and regulations. In particular, it is carried out before a Notary in the form of an original deed, so that the Preliminary Sale and Purchase Agreement (PPJB) for the apartment unit has complete certainty and evidentiary force. If the Sale and Purchase Agreement made before a Notary is submitted as evidence, then its truth must be proven in court accompanied by further evidence and statements from witnesses (Deviana, 2017). In addition, the Preliminary Sale and Purchase Agreement (PPJB) which is prepared in accordance with statutory provisions also guarantees equal representation of the interests of the parties thereby mitigating the potential risk of loss for both parties. If the developer does not comply with the agreed PPJB provisions, condominium consumers can seek legal protection through a discourse process aimed at reaching consensus. If consensus cannot be reached, consumers have the option of taking legal action through the general courts (Halim, 2012). As an alternative, if a consumer chooses a non-judicial route, arbitration is often considered the preferred course of action. This shows that apart from going through the formal justice system, there are alternative dispute resolution options that can be taken to achieve justice in the context of property law, especially in the case of buying and selling condominium units (Subekti, Lestari, and SE, 2020).

4. CONCLUSION

UUJN-P Number 2 of 2014 is a law that regulates original notarial deeds. According to this Law, a Notary has the authority to ratify all legal acts, agreements and provisions required in accordance with the law. Article 43 paragraph (1) Government Regulation Number 2 of 2022 concerning Job Creation allows Notaries to make a Sale and Purchase Agreement (PPJB) before the construction of the flat is completed. This PPJB is a preliminary agreement before the main/main agreement and can be considered as a free form assistance agreement. In practice, Notaries must understand the basic principles of notarial deeds, maintain compliance with the law, and carry out their responsibilities in good faith.

The relationship between the Notary and the theory of authority reflects how the Notary's actions and legal actions are measured in the context of making authentic deeds, with an emphasis on the principles of legal certainty and good faith. Implementation of PPJB for apartment units involves the role of a Notary who will ratify the deed on behalf of the parties. The involvement of a Notary in this process guarantees the complete certainty and validity of the evidence. If the developer does not fulfill the conditions agreed in the PPJB, condominium customers (buyers) are protected by law. This protection can be achieved through consensus, public courts, or arbitration proceedings. The main goal in the legal field is to provide legal certainty, which is considered an important pillar towards achieving justice. Thus, the Notary has a central role in ensuring the validity and legal certainty in property agreements such as PPJB for apartment units.

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