

The Binding Agreement of Sale and Purchase (PPJB) Done Under Hands Based on The Government Regulation Number 12 Of 2021 (Case of Binding Sale and Purchase Agreement of PT Metropolitan Karyadeka Development on June 14, 2021)

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Abstract. In practice, many house sales and purchase agreements are carried out using a standard sale and purchase agreement (PPJB), which is not made before a notary. Based on Article 1 paragraph (11) of Government Regulation Number 12 of 2021, PPJB must be made before a notary. PPJB making is still often done under the hands. So that the sale and purchase binding agreement will cause problems regarding legal certainty, legal protection and the legal consequences of the agreement in the event of default in the future. The author is interested in studying private PPJB using normative legal research methods. This research was conducted in order to gain new knowledge and to provide answers related to the problems above based on positive law in Indonesia. The results show that even though the agreement was made privately and not in accordance with what is stipulated in Government Regulation Number 12 of 2021, the agreement is still binding on the parties in its implementation because it has fulfilled the elements in Article 1320 of the Civil Code. There are legal consequences regulated in Article 1338 regarding the principle of Pacta sunt servanda. It can be concluded that the existence of Article 1 paragraph (11) of PP Number 12 of 2021 has no effect on the disappearance of the rights and obligations of the agreement. The suggestion from the author is that all individuals who want to carry out PPJB continue to sign in front of a notary, present witnesses where the witness also signs the agreement and initialize each page of the agreement.

Keywords: deed under agreement; sale and purchase

1 Introduction

As indicated by Herlien Budiono, a deal and buy official arrangement is a help understanding that capacities as a free primer understanding. This deal and buy official arrangement are directed in Article 22 passage (3) of Government Regulation Number 14 of 2016 which expresses that line houses or potentially single houses which are still in the advancement interaction can be promoted through an arrangement of fundamental deal and buy arrangements as per the prevailing laws and regulations.

The agreement is recognized as an agreement that has legal force and can be used as evidence both inside and outside the court. After the issuance of Government Regulation no. 12 of 2021 concerning Amendments to Government Regulation Number 14 of 2016, there is an

adjustment of the game plan of the limiting deal and buy arrangement where the limiting deal and buy understanding should be made before a legal official.

As an example, in practice, in the procurement of housing in Tangerang, Banten, one of the developers, namely PT Metropolitan Karyadeka Development which in this case was represented by Thomas J. Angfendy as a legal representative with the position of director of the company, entered into a deal and buy understanding for the house he assembled utilizing an arrangement. the limiting deal and buy are standard which isn't made before a public accountant, in which the shopper or purchaser just necessities to consent to every one of the items and conditions. This raises an issue on the grounds that albeit this deal and buy arrangement is frequently utilized, it has not been plainly controlled in the regulations and guidelines connecting with land freedoms.

Problem Formulation

- a. How is the private sale and purchase agreement based on government regulation number 12 of 2021 (Case of the sale and purchase agreement No. 002/MKT/MKD/VI/2021 PT Metropolitan Karyadeka Development on June 14, 2021)?
- b. What are the legal consequences for the parties who are still practicing the making of an underhand sale and purchase agreement after the issuance of Government Regulation Number 12 of 2021?

2 Juridical Review on Agreements

2.1 Definition of Agreement

According to Van Dunne as a legal expert from the Netherlands, an agreement has the meaning of a legitimate connection between 2 (two) or more individuals in view of "concur" to cause a lawful outcome. As indicated by Subekti, an arrangement is an occasion where one individual vows to someone else or two individuals vow to follow through with something. Based on the statement above, it can be concluded that the agreement is a legal event in which one party either alone or more binds himself to the other party to perform an act that has been mutually agreed upon, resulting in a legal consequence for the parties.

2.2 Valid Terms of Agreement

The conditions for the validity of an agreement are regulated in Article 1320 of the Civil Code, which include the following:

- a. There is an understanding between the people who tie themselves
- b. The capacity of the gatherings to make a commitment
- c. Something specific
- d. Halal (permitted by Islam) reasons

These circumstances have a required or outright nature in pursuing an arrangement. The first and second circumstances are ordinarily alluded to as emotional circumstances, which on the off chance that not satisfied, the understanding can be mentioned for undoing by one of the gatherings. While the third and fourth circumstances are objective circumstances which on the off chance that not satisfied then the understanding is invalid and void or considered to have never existed. Then, at that point, in view of Article 1338 of the Civil Code which expresses

that all arrangements made legitimately apply as regulations that tight spot the gatherings and should be completed as per what hosts been settled upon by the gatherings (Pacta sunt servanda).

3 Purchase Binding Agreement (PPJB)

3.1 Definition of Sale and Purchase Binding Agreement

The deal and buy official understanding is a sort of required arrangement, in particular an arrangement in which the gatherings consent to tie themselves to move the freedoms of an item to another party, with the goal that the deal and buy authoritative arrangement has not moved the privileges to the article from the dealer to the purchaser. This deal and buy authoritative arrangement is managed in Article 22 passage (3) of Government Regulation Number 14 of 2016 which expresses that line houses or potentially single houses which are still in the improvement interaction can be advertised through an arrangement of starter deal and buy arrangements as per the common regulations and guidelines.

After the issuance of Government Regulation no. 12 of 2021 concerning Amendments to Government Regulation Number 14 of 2016, there is an adjustment of the plan of the deal and buy authoritative understanding. In view of article 1 passage (11), it is expressed that the limiting deal and buy arrangement is an understanding between the improvement entertainer and everybody to do the deal and acquisition of a house or condo unit which can be done by the development entertainer preceding development for pads or in the development cycle for single houses and a series made before a legal official. In view of these guidelines, all deal and buy official arrangements made by the designer or engineer should be made before a public accountant.

3.2 Functions of the Sale and Purchase Binding Agreement

As stated in the definition above, it can be concluded that the binding sale and purchase agreement has the function of, among others, to prepare and/or even to strengthen the legal force of the main/principal agreement which will be executed in the future after all the elements are fulfilled. This is in accordance with what was conveyed by Herlien Budiono who said that an assistance agreement is an agreement that has a function and aims to provide preparation, affirmation, change, regulate, strengthen, and to settle a legal relationship.

4 Analysis and Discussion

4.1 The Case of the Position of the Sale and Purchase Agreement of PT Metropolitan Karyadeka Development on June 14, 2021

PT Metropolitan Karyadeka Development in Tangerang, Banten entered into a private sale and purchase agreement (PPJB) with the first party, namely Anhar Sudrajat as the main director of PT Metropolitan Karyadeka Development in Tangerang, Banten and the second party, namely Dewi Muthia Ulfa as a private employee, on dated June 14, 2021. The first party is a developer company that will build/is building/has built a residential area/environment called "METLAND CYBER CITY" which is located on Jl. Metland Boulevard, Pondok Bahar, Karang Tengah, Tangerang, Banten with an area of six hundred thousand square meters. The first party has the intention of selling as the second party intends to buy from the first party, a plot of land and buildings located in the METLAND CYBER CITY residential area, and will be used by the second party as a residence.

The first and the second party agree that the land and buildings that are the object of this Sale and Purchase Agreement (PPJB) are land and buildings with an area of 72 square meters having their address at Jl. Cyber Boulevard, sector -/MK-G/00-007, Northbend type 6 which will be equipped with a Building Permit (IMB) from the authorized agency, namely METLAND CYBER CITY, Tangerang, Banten.

This PPJB is carried out privately because the signed agreement is only made between PT Metropolitan Karyadeka Development and a second party without being made before a notary, as has been written in Article 1868 of the Civil Code. With the client in the deal and acquisition of freedoms to land and structures on it just as an authoritative understanding or a primer arrangement, assuming the client has satisfied every one of the prerequisites, PT Metropolitan Karyadeka Development will make a deed of offer before a public accountant for the exchange of land privileges and structures that have been settled completely constantly party.

4.2 Sale and Purchase Binding Agreement Based on Government Regulation Number 12 of 2021 (Case of Sale and Purchase Binding Agreement No. 002/MKT/MKD/VI/2021 PT Metropolitan Karyadeka Development On June 14, 2021)

Hans Kelsen argues that law is a system of norms or rules made by humans which contains guidelines for an individual to behave in a society. The rules that have been made become a limitation for the community in acting. The existence of rules and the implementation of these rules creates legal certainty. The lawful conviction of an endorsement can be perceived as a result of an administration organization which is proof of a sacred right of proprietorship to a land. As made sense of in Article 32 section (1) of PP Number 24 of 1997, a testament is a solid indication of proof as long as it can't be demonstrated in any case the actual information as well as the juridical information contained in that are acknowledged as right information. This is expressly controlled in Article 37 section (1) of Government Regulation Number 24 of 1997 concerning Land Registration which peruses: move of privileges to land and freedoms to houses through trading, trading, awards and other legitimate demonstrations of move.

Land privileges play a significant part in individuals' lives, particularly in the UUPA it has been resolved those terrains all through Indonesia should be enlisted as per the arrangements of Article 19 section (1) of the UUPA, which states to guarantee lawful assurance by the public authority, land enrollment is directed. with the public authority design. Essentially, in view of positive regulation in force in Indonesia, the legitimacy of a land or potentially constructing deal and buy understanding is on the off chance that it is made before the authority making the land deed or trading utilizing a valid deed gave or legitimized by an approved authority.

A bona fide deed in light of Article 1868 of the Civil Code has the significance as a deed made in a structure that not entirely settled by regulations and guidelines by/or before a public authority who has the position to make the deed, where the deed was made. A valid deed should meet every one of the components of the prerequisites recorded in Article 1868 of the Civil Code, and have an aggregate nature, on the off chance that one of the components isn't satisfied then the deed can't be utilized as a legitimate deed however turns into a private deed.

Arrangements with respect to the power of a legal official in making a true deed are managed in Law Number 30 of 2004 concerning Notary Positions (UUJN) which was subsequently corrected by Law Number 2 of 2014. Article 1 number (1) of the Law on Notary Positions expresses that a legal official is a public authority who have the power to make true deeds and have different abilities as determined in this regulation and different regulations. Prior to examining further about the deal and buy authoritative arrangement, the creator will make sense of the order of regulations and guidelines in Indonesia in order to get a clearer picture related to

the formulation of the problem raised. There are several principles in the process of making laws, including: *Lex superior derogat legi inferiori*, which generally means that higher regulations will take precedence over lower ones. The source of the law is the "origin of law" in the form of a decision by the authorities authorized to give the decision.

The decision must come from the ruler who has the authority to do so. Sources of law in this sense carry the law in an investigation of the kinds, types and forms of regulations and provisions. The source of law in its meaning is the "place" for which the applicable regulations are put forward. Sources of law are divided into two, namely formal legal sources and material legal sources. Material legal sources are places where legal materials are taken and do not receive formal recognition from the legal system. While formal legal sources are sources that are directly recognized by the legal system and can create law. In the Indonesian legal system, sources of law are divided into statutory regulations, customs, jurisprudence, treaties and doctrines.

Legislation is a source of law written intentionally by the authorized body. Legislation has a great degree of predictability because it has a prospective level of the law itself aimed at the future. Then the second is habit, habit is a pattern of behavior of certain people that is done repeatedly. Habits can become customary law if they are carried out consistently, there is an opinion *necessitatis* (the opinion that it should be), and there are legal consequences.

Jurisprudence is a source of law that comes from the judge's decision. In practice in Indonesia, the judge's decision must go through an examination process by the Supreme Court to become a jurisprudence. There are several elements that must be met by a judge's decision in order to become jurisprudence, namely legal events that do not have clear regulations in the legislation, already have permanent legal force, have repeatedly been used as the basis for deciding the same case, and are justified by the Court Great through giving *annotatie*. Based on the description of the sources of law above, the Civil Code has a higher position than Government Regulation Number 12 of 2021, so that the Civil Code can be used as the legal basis for a binding sale and purchase agreement made underhand.

The prerequisites for the exchange of freedoms to an article, for this situation land as well as structures, are with an arrangement and installment of the cost, then the exchange of privileges is expressed in the Sale and Purchase Deed (AJB), to guarantee that the understanding can be completed appropriately while the mentioned necessities are being ready. then the party who will make the deal and buy pours the underlying understanding as an arrangement which is then known as the deal and buy official understanding.

As a rule, this deal and buy authoritative arrangement isn't excessively not quite the same as the understanding overall. It's simply that this arrangement emerges in view of the opportunity given by book III of the Criminal Code concerning commitment. This understanding fills in as an underlying arrangement that the gatherings have consented to make legitimate moves which will then, at that point, be expressed in one more arrangement assuming the freedoms and commitments of the gatherings have been satisfied. The limiting deal and buy understanding can be made before a legal official or secretly. In view of article 1874 of the Criminal Code, private deeds are altogether deeds, letters, compositions, registers and others made without delegate community workers.

The sale and purchase binding agreement is a type of obligatory agreement, namely an agreement in which the parties agree to bind themselves to transfer the rights of an object to another party, so that the sale and purchase binding agreement has not transferred the rights to the object from the seller to the buyer. This stage is only the stage of agreement and must be followed by the stage of delivery (levering), namely the signing of the deed of sale and purchase before the Land Deed Making Officer (PPAT). As for the sale and purchase of land and/or

building objects, the term down payment is known, which is based on article 1464 of the Civil Code it is explained that with this down payment, the sale and purchase cannot be canceled by either party.

Article 1320 of the Civil Code states that an agreement will be considered valid and become law for those who make it if all conditions including the agreement of the parties, skills, a certain matter, and lawful causes are met. Therefore, it can be concluded that the sale and purchase binding agreement is considered valid by the state and binding on the parties who made it as long as the agreement is recognized and fulfills the specified conditions.

To get a clearer picture of the legal terms of the agreement on Article 1320 of the Civil Code, here are some explanations:

- a. There is an agreement between those who bind themselves
Agreement or commonly called consensus according to Salim H.S is the conformity of the statement of will between one or more people with other parties. The conformity in question is the statement because the will or intention cannot be known by others. Furthermore, according to article 1321 of the Civil Code, it is stated that no agreement has the power if it is given by mistake or obtained by coercion or fraud. Therefore, a valid agreement according to law is an agreement made without coercion or oversight and fraud. The definition of coercion is explained in article 1324 of the Civil Code which means, if an action in such a way gives the impression and creates a fear in a reasonable person that he, his people or his wealth are threatened with great loss in the near future. In this consideration, the age, gender and position of the person concerned will be taken into account.
- b. The ability of the parties to make an engagement
Every person/individual has the right to enter into an agreement unless it is expressly prohibited by law or deemed incompetent to enter into an agreement. People who under the law are considered legally incompetent.
- c. A certain thing
A certain thing in question is the object of the agreement, the Civil Code determines that certain things are goods whose value can be determined and can be traded.
- d. Halal reasons
Article 1335 of the Civil Code expressly states that an agreement without cause or has been made with a false or prohibited cause has no binding legal force, or is considered invalid. For example: drug trafficking is not allowed by positive laws in force in Indonesia.

The legitimacy alluded to in the limiting deal and buy understanding made secretly by Article 1320 of the Civil Code is just an "required" arrangement, with the goal that the understanding made has not moved possession freedoms to land or potentially structures. This understanding just gives freedoms and commitments to the gatherings, in particular giving the purchaser the option to request the exchange of proprietorship privileges to a land or potentially working to be sold, while for the dealer there is an option to request a measure of cash in the concurred esteem and inside a specific time. indicated time. This is directed in Article 1459 of the Civil Code which specifies that the possession freedoms to a thing offered won't move to the purchaser as long as the conveyance has not been made (in view of foreordained arrangements).

Furthermore, the sale and purchase binding agreement is regulated in Government Regulation Number 12 of 2021. The sale and purchase binding agreement based on Article 1 Paragraph (11) of Government Regulation Number 12 of 2021 must be held before a notary, this causes the agreement made not before a notary or made the person under the hand does not

meet the requirements determined by the legislation so that it does not have strong evidentiary power in court if in the future there is a breach of promise (default) between the parties.

Based on the Decision of the Pengadilan Negeri Surakarta (Surakarta District Court) No. 153/Pdt.G/2010/PN. Ska, the buyer, in this case the plaintiff, who entered into an underhand sale and purchase agreement, wants to change the name based on the inheritance certificate. Customary law has confirmed the legality of buying and selling land rights that are not carried out at PPAT, but buyers have difficulty proving the rights to the land they have purchased. The Land Deed Maker cannot make a deed of sale and purchase for land rights due to incomplete administrative requirements. Judging from this case, the district court finally granted the plaintiff's application as the legal owner of the land even though the sale and purchase binding agreement was carried out privately without being carried out before a notary or PPAT.

Although Government Regulation Number 12 of 2021 states that the sale and purchase agreement of land and/or buildings must be made before a Notary, this does not make the agreement invalid and cannot be used as evidence inside or outside the court. However, the agreement remains valid because it has fulfilled all the legal conditions of the agreement as stipulated in Article 1320 of the Civil Code and also Article 1338 of the Civil Code which states that all agreements made legally applied as laws that bind the parties (*Pacta sunt servanda* principle). So, it can be concluded that the binding sale and purchase agreement made under the hand still gets legal protection as determined by the laws and regulations in Indonesia.

4.3 The Legal Consequences for Parties Who Are Still Practicing the Making of An Underhand Sale and Purchase Agreement After the Issuance of Government Regulation Number 12 of 2021

As per Van Dunne as a legitimate master from the Netherlands, an arrangement has the significance of a lawful connection between 2 (two) or more individuals in view of "concur" to cause a legitimate result. As indicated by Subekti, an understanding is an occasion where one individual vows to someone else or two individuals vow to follow through with something. In light of the assertion above, it very well may be reasoned that the understanding is a lawful occasion wherein one party either alone or more ties himself to the next party to play out a demonstration that has been commonly settled after, bringing about a legitimate ramification for the gatherings.

The legal consequences imposed on the parties for the binding sale and purchase agreement under the hand have not been clearly regulated in Government Regulation Number 12 of 2021. There has been no detailed explanation of civil law sanctions or administrative sanctions that can be accepted by parties who violate these regulations. So that in practice there are still many developers who enter into binding sale and purchase agreements based on old government regulations or those that have not been changed.

The legal consequences that arise in the event of a default in the binding sale and purchase agreement between Anhar Sudrajat as the President Director of PT Metropolitan Karyadeka Development having his address at the Kantor Proyek Perumahan Metland Puri Blok A Kel. Petir Kec. Cipondoh, Tangerang Banten with Dewi Mutia Ulfa domiciled on Jl. Adhyaksa VII No. 52, RT/RW 003/009, Karang Mulya, Karang Tengah Tangerang on Monday, June 14 2021. Referring to article 1338 which states that all agreements made and agreed upon by the parties, are made legally and do not conflict with public order, bind the parties, such as laws that cannot be canceled or withdrawn unilaterally without the consent or agreement of the parties who made the agreement (*Pacta sunt servanda*) or for reasons regulated by law to cancel the agreement. Therefore, if there is a default in the future, the sale and purchase binding agreement will be used as evidence inside and outside the court.

Furthermore, the cancellation of the sale and purchase agreement between the parties is regulated in Article 14 of the sale and purchase binding agreement between Anhar Sudrajat and Dewi Mutia Ulfa who is domiciled on Jl. Adhyaksa VII No. 52, RT/RW 003/009, Karang Mulya, Karang Tengah Tangerang on Monday, June 14, 2021, will result in the following legal consequences:

- a. The land and buildings that are the object of this AGREEMENT remain the full property of the FIRST PARTY and therefore the FIRST PARTY is fully entitled to offer and or resell the said land and buildings.
- b. THE SECOND PARTY is obliged to hand over the said Land and Building in an empty and good condition to the FIRST PARTY no later than 14 (fourteen) days after the cancellation of the AGREEMENT and the SECOND PARTY receives a letter of cancellation of the AGREEMENT which will be made separately by the FIRST PARTY, for every day the delay in emptying the SECOND PARTY agrees to pay a fine of Rp. 500.000,00 (five hundred thousand rupiah) per day to the FIRST PARTY.
- c. If the SECOND PARTY is late in handing over to the FIRST PARTY the said Land and Buildings are empty and in good condition, then the FIRST PARTY has the right and is hereby given absolute and irrevocable power and approval now and for the time being to enter in order to vacate itself. The land and buildings with, but not limited to, requesting assistance from the authorities, the Housing Service or the Police, without going through a court process first. All fees charged by the authorities for this matter, including fines will be deducted directly from the amount of money that has been paid by the SECOND PARTY to the FIRST PARTY according to this AGREEMENT, while the rest (if any) will be returned to the SECOND PARTY, when the house is handed over by the SECOND PARTY to the FIRST PARTY in good and perfect condition as at the time the house was received by the SECOND PARTY from the hands of the FIRST PARTY and furthermore the SECOND PARTY releases the FIRST PARTY from all costs and other obligations related to it. For the vacancy and all the consequences that arise, then the SECOND PARTY will not sue the FIRST PARTY in any form in the future.
- d. If the Credit application made by the SECOND PARTY is rejected by the Lending Institution and the SECOND PARTY does not apply to change the method of payment, then this AGREEMENT will be canceled provided that the FIRST PARTY will return the payment received by the FIRST PARTY after deducting the paid VAT., the money sign so (Booking Fee) as well as fines that must be paid by the SECOND PARTY. However, if the cancellation is made prior to the refusal of credit by the Crediting Institution, the provisions that will be applied are as referred to in paragraph 5 of this Article.
- e. The FIRST PARTY and the SECOND PARTY agree that if this AGREEMENT is canceled due to delays in payment which is the obligation of the SECOND PARTY or for other reasons including but not limited to lowering the credit ceiling and implementing Buy Back from the Lending Institution, the Land and Building will remain the property the FIRST PARTY with the agreed terms.
- f. The FIRST PARTY and the SECOND PARTY agree that if the SECOND PARTY makes payment for the Sale Price of Land and Building using payment by installments/developer credit, and this AGREEMENT is canceled due to late payment which is the obligation of the SECOND PARTY, the Land and Building shall remain the property of the FIRST PARTY and all payments for the Sale Price of Land and Buildings that have been made by the SECOND PARTY and received by the FIRST PARTY shall become the full rights of the FIRST PARTY and the SECOND PARTY will not ask for a refund for the payments

made to the FIRST PARTY. The SECOND PARTY both now and in the future releases the FIRST PARTY from all claims relating to the payment.

5 Closing

Conclusion

The conclusion from the results of the research regarding "Underhand sale and purchase binding agreement based on government regulation number 12 of 2021 (Case of sale and purchase binding agreement No. 002/MKT/MKD/VI/2021 PT Metropolitan Karyadeka Development on June 14, 2021)" is as follows:

- a. The private deal and buy understanding in light of Government Regulation number 12 of 2021 (Case of the deal and buy authoritative arrangement No. 002/MKT/MKD/VI/2021 PT Metropolitan Karyadeka Development on 14 June 2021) is restricting on the gatherings and is legitimate in light of positive law of Indonesia since it satisfies the components of Article 1320 of the Civil Code with respect to the lawful terms of the understanding and furthermore Article 1338 of the Civil Code which expresses that all arrangements made lawfully apply as regulations that tight spot the gatherings (Pacta sunt servanda principle).
- b. The legal consequences imposed on the parties for the binding sale and purchase agreement under the hand have not been clearly regulated in Government Regulation Number 12 of 2021. Until now, there has been no detailed explanation regarding civil law sanctions or administrative sanctions that can be accepted by the parties who violates these regulations or does not meet the elements that have been determined by the laws and regulations.

Suggestion

Based on the conclusions described above, the authors suggest that an agreement made under the hand has valid evidentiary power inside and outside the court if one of the parties does not admit that the agreement has been agreed upon or refuses to have signed the agreement as follows:

- a. The agreement is made under the hand, but signed before a notary. Then the notary will certify the signatures of the parties that it is true that the signature is the signature of the party who made the agreement (signature legalization). So that the parties cannot deny that they have signed the agreement, although in this case the notary has no responsibility for the form and content of the agreement made by the parties.
- b. If the agreement is not made before a notary, then at least the signing of the agreement is attended by a minimum of 2 (two) witnesses who know for sure the form and content of the agreement made underhand, and participate in signing the agreement. The existence of witnesses in an agreement made under the hand is often forgotten, even though the witness is very necessary and has a very important role in the agreement made under the hand as an aspect of proof in court as regulated in Article 1877 of the Civil Code.

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