

Validity of the Land Sale and Purchase Agreement which is paid in full and carried out in good faith

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Abstract

PPJB is a preliminary agreement that is obligatory, so that it only creates an obligation to be carried out at a later date as outlined in the main agreement, namely AJB. PPJB does not yet provide for the transfer of land rights, so the ownership of the land object of sale and purchase has not yet passed from the land owner to the buyer. But in reality, there are still parties who consider that the PPJB has transferred ownership rights to the land. The purpose of this research is to analyse and identify the validity of PPJB that is paid in full and carried out in good faith and its legal consequences in Supreme Court Decision Number 3753 K/Pdt/2020 and to analyse and identify the legal protection of buyers in a sale and purchase binding agreement that is paid in full and carried out in good faith in the decision. The research method used is Normative Juridical, using positive law inventory research specifications, and finding law in concreto, using secondary data, and qualitative normative analysis. The results showed that the Panel of Judges of the Supreme Court had given a decision related to the problem, in which the Panel of Judges of the Supreme Court was of the opinion that the PPJB made between the Plaintiff and the Defendant before the Notary was a general agreement that had not transferred ownership rights, so that the AJB made between Defendant 1 and Defendant 2 before the PPAT was valid proof of transfer.

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1. INTRODUCTION

A sale and purchase event is an exchange of material goods between two parties with one party making payment, as explained in Article 1457 of the Civil Code which reads "Sales and purchases is an agreement in which one party binds himself to deliver an item, and the other party to pay the price that has been promised". (Soebekti, 1995) sale and purchase is a reciprocal agreement in which one party (the seller) promises to hand over the ownership rights to an item while the other party (the buyer) promises to pay a price consisting of a certain amount of money in return for acquiring the rights.

The sale and purchase of land rights in general must be carried out in the presence of a Land Deed Official (PPAT), this is because the PPAT acts as an authorized official in checking and validating all required legal documents and procedures. The PPAT is also tasked with ensuring that all agreements and purchase and sale processes are recorded correctly and are legally valid. As explained in Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration which reads "Transfer of land rights and ownership rights to apartment units through sale and purchase, exchange, grant, entry into a company and other legal acts of transfer of rights, except transfer of rights

through auction can only be registered if proven by a deed made by the authorized PPAT in accordance with the provisions of the applicable laws and regulations".

(Silviana, 2020) Deed of Sale and Purchase (AJB) is a deed made by PPAT in carrying out the legal act of transferring rights to land due to buying and selling. AJB is used as one of the conditions for registering the transfer of land rights at the Defense Office along with several supporting documents. However, AJB cannot be issued directly by PPAT, this is because there are still several requirements that have not been fulfilled by either party. So, a Sales and Purchase Binding Agreement (PPJB) is first drawn up before a Notary as a preliminary agreement which functions as a binding commitment between the seller and the buyer in the sale and purchase transaction of land or house. PPJB is temporary, usually made while waiting for the AJB to be made which is still in process (Nugraha, 2024). PPJB is a form of preliminary agreement that is often carried out in the land buying and selling process in Indonesia. PPJB becomes important, especially when the buyer has paid the price of the land in full, but the AJB creation has not been completed because there are still unpaid taxes or the certificate is still pledged at the bank or there are other things that result in the AJB being made not being able to be carried out. On the other hand, making PPJB as a form of good faith in land buying and selling transactions is the main key in maintaining trust and ensuring the fulfillment of the rights and obligations of both parties.

In carrying out the sale and purchase of land, there are several possibilities that can occur and harm one of the parties, both the seller and the buyer. For example, if a seller resells his land even though the land has been paid in full and a PPJB has been made before a Notary and this is done in good faith by the buyer. Due to this, it resulted in losses experienced by the buyers of the land. A buyer who has paid the land price in full and has taken control of the object of sale and purchase and is doing so in good faith, even though it is only based on the PPJB, the legal transfer of land rights has occurred. On this basis, if there is a dispute regarding this matter, the judge can determine whether the buyer can be said to be a legal buyer or not, so that the seller cannot resell the land to another party.

Based on what is described above, the problem that will be studied in this research is the case that occurred in the Supreme Court Decision Number 3753 K/Pdt/2023 which has permanent legal force (*inkracht*). Whereas initially on January 29 2007 PPJB Number 60 was made between the Plaintiff and Defendant 1 before Notary Iswandono Poerwodinoto, S.H which had been paid in full by the Plaintiff for the case object of a plot of land measuring 470 M² located in Dragong Village, Taktakan District, Serang Regency, Plot Number 54a. Then Defendant 1 sold the object of the case back to Defendant 2 and it was declared in AJB Number 608/2014 dated 8 December 2014 made before the Temporary PPAT, Taktakan District, Serang City.

Based on this, the Plaintiff felt aggrieved and filed a lawsuit against the law in Lawsuit Number 39/Pdt.G/2019/PN Srg where in the decision of the lawsuit, the Panel of Judges gave a decision stating that the PPJB was valid and the actions of Defendant 1 and Defendant 2 constituted an unlawful act which was detrimental to the Plaintiff and declared AJB Number 608/2014 dated 8 December 2014 which was made before the Provisional PPAT which was carried out by Defendant 1 and Defendant 2 is null and void with all its legal ramifications and consequences. Likewise, the judge's decision at the Banten High Court with Decision Number 19/PDT/2020/PT BTN which strengthened the Serang District Court Decision, however the Panel of Judges in Supreme Court Decision Number 3753 K/Pdt/2020 gave the opposite decision, namely granting the cassation request from Defendant 1 by canceling the Banten High Court Decision Number 19/PDT/2020/PT BTN which confirmed the Serang District Court Decision Number 39/Pdt.G/2019/PN Srg.

The panel of judges in Supreme Court Decision Number 3753 K/Pdt/2020 gave the consideration that the land sale and purchase agreement determined by statutory regulations must be executed in front of the Land Deed Drafting Officer in accordance with the provisions of Article 37 paragraph (1) of Government Regulation Number 24 of 1997 so that the Sale and Purchase Deed Number 608/2014 made before the Temporary PPAT is valid and has transferred ownership rights to the land object of the case. *a quo* from the original owner, namely Defendant 1, to Defendant 2 and stated that the PPJB for the object of the case made by the Plaintiff and Defendant 1 before Notary Iswandono Poerwodinoto, S.H was a general agreement which had not transferred the ownership rights of the PPJB object from the owner, namely Defendant 1, to the Plaintiff.

In connection with what is described above, there are differences in the considerations and decisions made by the panel of judges in deciding the case that occurred. The Panel of Judges at the Serang District Court Number 39/Pdt.G/2019/PN Srg gave a decision stating that the Sale and Purchase Agreement (PPJB) executed by the Plaintiff with Defendant 1 before a notary for the object of the case which had been paid off by the Plaintiff was a valid agreement as a deed of sale and purchase of the land of the object of the case and declared the Deed of Sale and Purchase (AJB) executed by Defendant Defendant 1 and Defendant 2 before the PPAT are null and void with all the consequences and consequences and stated that the actions between Defendant 1 and Defendant 2 were unlawful, as was the case with the Panel of Judges at the Banten High Court which upheld the Decision of the Panel of Judges at the Serang District Court Number 39/Pdt.G/2019/PN Srg, while the Panel of Judges at the Supreme Court in Decision Number 3753 K/Pdt/2020 stated that the transfer of land rights only occurs if it is proven by deed made in front of and/or by PPAT and stating that the Sale and Purchase Agreement (PPJB) is a general agreement which has not transferred the ownership rights of the object of the agreement from the owner, namely Defendant 1, to the Plaintiff, so that Defendant 1 does not fulfill the agreement, the Plaintiff has the right to demand back the money he has given to Defendant 1.

Supreme Court Decision Number 3753 K/Pdt/2020, Panel of Judges which has permanent legal force (*inkracht*) decided that the Sale and Purchase Agreement (PPJB) for the object of the case made by the Plaintiff with Defendant 1 before a Notary is a general agreement which Not yet transferred the ownership rights of the object of the Sale and Purchase Agreement (PPJB) from the owner, namely Defendant 1, to the Plaintiff, while the Plaintiff had paid the object of the case in full to the Plaintiff and the sale and purchase had been carried out in good faith by the Plaintiff. In this regard, the author is interested in studying theoretically and academically the validity of the Sale and Purchase Agreement (PPJB) which has been paid in full and carried out in good faith as well as the legal consequences in the case mentioned above, so that this will be analyzed in the formulation of the first problem. Based on this, the author is interested in analyzing how legal protection is for buyers of land sale and purchase objects who have entered into a Sale and Purchase Agreement (PPJB) in full and are carried out in good faith which will be studied in the formulation of the second problem.

2. RESEARCH METHOD

The research method that will be used in this research is normative juridical research, this is because this research is library research or document study which only focuses on written regulations or other legal materials (Kansil, 1989). The approach method that researchers use is approach legislation (*Statute Approach*) and case approach (*Case Approach*). In normative legal research, the data sources used are secondary data sources, where the data sources in this research are obtained from library materials which include

official documents, library books, statutory regulations, scientific works, articles and documents related to research material.

In this research, researchers used data collection methods using the literature study method. Literature study is a way of collecting data by searching library materials. The data obtained will be presented in the form of descriptions arranged systematically, logically, rationally, where the secondary data obtained is adjusted to the problem to be studied by the researcher. The data analysis that researchers used in this research was a qualitative normative method.

3. RESEARCH RESULTS AND DISCUSSION

3.1. Research result

The results of the research in this case will provide an overview of the status agreement binding sale and purchase that is paid in full and carried out in good faith and the consequences of terminating this matter, as well as legal protection for the buyer in the agreement binding sale and purchase that must be paid in full and carried out in good faith in the decision

3.2. Discussion

A. What is the status of the sale and purchase agreement which was paid in full and carried out in good faith and the legal consequences in the decision mentioned above?

According to Article 1313 of the Civil Code, it is explained that an agreement is an act in which one or more people bind themselves to one or more other people, whereas According to Subekti, an agreement is a legal event between two or more parties based on an agreement to give rise to legal consequences (Subekti, 2002). This article explains in simple terms the meaning of an agreement which describes the existence of two parties binding themselves to each other and the existence of a legal relationship between two or more parties based on an agreement to give rise to legal consequences (Muru, 2011). Based on this, it can be understood that the meaning of an agreement is an agreement made by two or more parties in which each party agrees to comply with the contents of the agreement. In an agreement, one or more parties bind themselves to another party to carry out certain obligations, so that the agreement becomes a legal event that gives rise to legal consequences for the parties involved. This means that both parties agree to determine the rights and obligations that are binding for them to obey and implement. The purpose of this agreement is to create legal consequences, namely giving rise to rights and obligations, so that if a party violates it, there will be legal consequences in the form of sanctions for the violating party.

According to Article 1234 of the Civil Code, it explains that an agreement is intended to give something, to do something, or not to do something, whereas according to Hasim Purba, it explains that the relationship between an agreement and an agreement is that the agreement issues an agreement, where the agreement is the source of the agreement (Purba, 2022). If two people enter into an agreement, then they intend that a legal agreement will apply between them (Faizin, 2020). Based on this, it can be understood that an agreement is a legal source of an agreement made by two or more people which is intended to give something, to do something, or not to do something. An agreement can be implemented and binds the parties if the agreement meets the requirements for the validity of the agreement. Provisions regarding the conditions for the validity of an agreement are contained in Article 1320 of the Civil Code, where there are four conditions that must be fulfilled, namely:

- . Those who bind themselves agree;
- . Ability to create an engagement;
- . A certain thing;
- . A legitimate reason.

1.1.They agreed to bind themselves

The parties making an agreement must agree or consent to the contents of the agreement without any coercion, fraud or error. Basically, an agreement is a meeting or agreement of will between the parties to an agreement (Gumanti, 2012). According to Article 1321 of the Civil Code, it is explained that there is no valid agreement, if the agreement was due to a mistake or was obtained through coercion or fraud. Agreements obtained through error, coercion and fraud result in the agreement being flawed and can be cancelled.

1.2.The ability to create an engagement

According to Article 1329 of the Civil Code, it is explained that every person has the authority to make an agreement, unless he is declared incompetent to do so, then according to Article 1330 of the Civil Code it is explained that there are several people who are not competent to make an agreement, namely:

- . Immature children;
- . People placed under guardianship;
- . Women in marriage.

However after promulgation Law Number 1 of 1974 concerning Marriage, women in marriage are considered legally competent. According to the Civil Code, a person is declared an adult if they are 21 years old or married, but according to Law Number 1 of 1974 concerning Marriage A person's maturity is determined when they are 18 years old. The Supreme Court through decision no. 447/Sip/1976 dated 13 October 1976 stated that with the enactment of Law Number 1 of 1974 concerning Marriage, then a person is considered to be an adult and not under guardianship is when he was 18 years old.

1.3.A certain thing

A certain thing in an agreement refers to a clear and definite object or purpose of the agreement, meaning that the agreement must have specific content regarding what is being agreed, so that it can be understood by all parties involved. This object can be goods, services, or actions that are the rights and obligations of each party in the agreement. Thus, certain things function to ensure that the objectives of the agreement can be achieved and that each party understands their rights and obligations towards the object of the agreement.

1.4.A legitimate reason

A halal reason is that the contents of the agreement itself must be in accordance with law, morality and public order. In other words, the agreement must not conflict with applicable legal regulations or violate social and moral norms recognized by society. If the purpose of the agreement is illegal or contrary to public order, then the agreement is invalid and considered null and void.

The conditions for the validity of the agreement above relate to the subjective terms and objective terms of the agreement. The first and second conditions for the validity of an agreement are related to the subjective terms of the agreement.

The third and fourth conditions for the validity of an agreement are related to the objective conditions of the agreement. The difference between these two conditions relates to the legal consequences of not fulfilling these requirements, such as the issue of being null and void or whether an agreement can be cancelled. If the objective conditions in the agreement are not fulfilled then the agreement is null and void or deemed to return to its original state, the law assumes that the agreement never existed. If the subjective conditions are not met then the agreement can be canceled or as long as the agreement has not been or is not canceled by the court, then the agreement in question will still continue to be valid (Gumanti, 2012).

According to G.H.S Lumban Tobing, a notary is a public official who has the sole authority to make authentic deeds regarding all deeds, agreements and stipulations which are required by a general regulation or which interested parties wish to be stated in an authentic deed, guarantee the certainty of the date, keep the deed and give *fat*, copies and excerpts, all during the making of the deed are not assigned or excluded to other officials or people (Setiawan, 2021). This is the same as well explained in Article 1 paragraph (1) Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries, namely that a notary is a public official who has the authority to make authentic deeds and has other authorities as intended in this Law or based on other laws. Based on this, it can be concluded that a notary is a public official who has the authority to make authentic deeds and has duties and obligations in accordance with applicable law. Notaries have an important role in ensuring the legality of legal documents, such as agreements, contracts, wills and other documents that require authentic deeds.

Notaries as state officials who carry out the profession of providing legal services to the public, who in carrying out their duties need to receive protection and guarantees in order to achieve legal certainty. Apart from that, notaries as state officials are able to provide guarantees of certainty, order and legal protection, which requires authentic written evidence regarding conditions, events or legal actions carried out through certain positions (Abdullah, 2017). The position of a notary as an official who makes authentic deeds is explained according to Article 1 paragraph (1) Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries, namely that a notary is a public official who has the authority to make authentic deeds and has other authorities as intended in this Law or based on other laws. Then, according to Article 15 paragraph (1) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary, it is explained that a Notary has the authority to make authentic deeds regarding all deeds, agreements and stipulations which are required by statutory regulations and/or which are desired by interested parties to be expressed in authentic Deeds, guarantee certainty of the date of making the Deed, store the Deed, provide grosses, copies and quotations of the Deed, all of this during the making of the Deed. nor is it assigned or excluded to other officials or other people as determined by law.

The validity of the agreement is an important thing in an agreement. Every agreement must meet the requirements for a valid agreement in order to be considered valid and have legal force. This validity is the basis that ensures that the agreement is not only morally binding between the parties, but is also recognized by law as a document or commitment that can be enforced. In

practice, the validity of the agreement is not only the responsibility of the parties involved, but is also the concern of the notary. So that the notary is present as a state official who carries out the profession of legal services to the community. In carrying out his duties, the notary has a role as a tool to provide legal certainty and ensure that agreements made by and/or in front of him has complied with the legal terms of the agreement. This aims to prevent future legal risks and ensure that the agreement can function as an effective legal protection tool for all parties involved.

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

- The north side is an alleyway,
- To the east it borders the land of H. Yusuf,
- To the south it borders the Serang-Cilegon Highway and
- To the south it borders Yudi Lukman's land.

which is stated in the Sale and Purchase Agreement which has been paid in full and executed in good faith by the Cassation Respondent/Plaintiff, made in the form of an authentic deed before Notary Iswandono Poerwodinoto, S.H. dated 29 January 2007 with Number 60. Because the agreement is a deed made by and/or before a notary, the Sale and Purchase Agreement is an authentic deed, which based on the provisions of Article 1870 of the Civil Code explains that for interested parties and their heirs or for people who obtain rights from them, an authentic deed provides perfect proof of what is contained therein.

Based on the provisions in Article 1868 of the Civil Code, it explains that an authentic deed is a deed made in a form determined by law by or before a public official who has the authority to do so in the place where the deed is made, then Article 1 paragraph (1) of Law Number 2 of 2014 explains that a notary is a public official who has the authority to make authentic deeds and has other authorities as intended in this Law or based on other laws. When a notary makes an agreement in the form of an authentic deed, he must fulfill the conditions for the validity of the agreement in Article 1320 of the Civil Code, this is as explained in Article 1 paragraph (7) of Law Number 2 of 2014. So the Sale and Purchase Agreement dated January 29 2007 Number 60 before Notary Iswandono Poerwodinoto, S.H. is a valid agreement in the form of an authentic deed and binds the parties to obtain their respective rights based on the clauses contained inside the agreement has been mutually agreed upon.

A Sales and Purchase Binding Agreement or is a preliminary agreement made in a land sale transaction, this is because the Sales and Purchase Binding Agreement is an initial agreement between the seller to sell his property to the buyer made with a deed by a notary (Putri, 2017). According to Agus Pandoman, an agreement that gives rise to an alliance is called an obligatoir agreement (*obligate agreement*). A mandatory agreement is an agreement that results in the parties in the agreement being obliged to provide certain performance, therefore the performance can be done later after the performance (Pandoman, 2019). Based on that, the Sales and Purchase Binding Agreement includes a mandatory agreement that gives birth to an alliance, which means that the agreement only gives birth to the alliance, there is no transfer of rights or transfer of rights, for the transfer is still waiting for the transfer (Sutisari,

2023). The contents of the Sales and Purchase Binding Agreement are usually promises from the parties that contain provisions about the terms and conditions agreed to legally carry out the main agreement (Sutisari, 2023). The promises contained in the Purchase and Sale Binding Agreement depend on whether or not the Purchase and Sale Binding Agreement has been completed.

According to Herlien Budiono, a Sale and Purchase Agreement is an assistance agreement that functions as a preliminary agreement in free form (Budiono, 2004). The position of the Sale and Purchase Binding Agreement is as a preliminary agreement, the Sale and Purchase Binding Agreement functions to prepare or even strengthen the main/main agreement that will be executed because the Sale and Purchase Binding Agreement is the beginning for the birth of the main agreement (Putri, 2017). Based on this, the Sale and Purchase Agreement is a preliminary agreement made before the implementation of the main agreement which functions and has the aim of ensuring that both parties have a basic agreement and are mutually bound by the rights and obligations agreed upon before the sale and purchase agreement as the main agreement occurs.

A Sale and Purchase Agreement in full is a Sale and Purchase Agreement which is made when the buyer has paid the selling price of the sale and purchase object but the process of making the sale and purchase deed cannot be completed, this is because there are several things which have not been processed yet, such as taxes (PPh & BPHTB) that have not been paid, certificates that have not been completed. day, certificate / ownership rights are still guaranteed, etc. In general, a sale and purchase agreement that has been paid off contains a power of attorney to sell from the seller to the buyer, so that when the sale and purchase deed signed before the PPAT.

An incomplete sale and purchase agreement is a sale and purchase agreement that is made when the buyer has not paid off the selling price of the sale and purchase object. An incomplete sale and purchase agreement occurs when the buyer pays the selling price of the sale and purchase object in stages, such as by payment *down payment* (DP) accompanied by installments, credit facilities, or other means. In the Sales and Purchase Agreement that has not yet been fully paid, at least the amount of the down payment paid at the time of signing the Sale and Purchase Agreement, the method or terms of payment, when it will be repaid and the agreed sanctions if one of the parties defaults is stated.

Based on the plaintiff's Petition in the Decision of the Serang District Court, it shows that the Cassation Respondent I/Defendant I resold the object of the case without the knowledge and permission of the Cassation Respondent/Plaintiff by "... Ordering to place false information into the authentic deed,..." as regulated in Article 266 paragraph (1) of the Criminal Code is an unlawful act that is detrimental to the Plaintiff as regulated in Article 1365 of the Civil Code. In fact, the two Co-Respondents of Cassation I/Defendant I and the Respondent of Cassation/Plaintiff have entered into an agreement to carry out the sale and purchase of the object of the case which is outlined in a preliminary agreement that is valid and binding on the parties in the form of a fully paid Sale and Purchase Agreement which contains the power of attorney to sell from the seller to the buyer. So, based on this, the Cassation Respondent I/Defendant I has violated the contents of the Agreement of Sale and Purchase, in which the Agreement of Sale and Purchase as an obligatory agreement is an agreement which results in the parties to the agreement being

obliged to provide certain achievements that have been previously agreed upon, this is because the contents of the Agreement of Sale and Purchase are promises from the parties which contain provisions regarding the agreed terms for the validity of carrying out the main agreement.

Every agreement made legally binds the parties and gives rise to legal consequences in the form of rights, obligations and responsibilities. An agreement gives rise to legal consequences because the agreement is binding on the parties who make it. This is as regulated in Article 1338 of the Civil Code which states that all agreements made legally apply as law for those who make them.

Legal consequences are the result of an action carried out to obtain a result desired by the perpetrator and recognized by law. The action taken is a legal action, namely an action carried out to obtain a result desired by the law. Therefore, legal consequences are all the consequences that occur from all legal actions carried out by legal subjects against legal objects or other consequences that are caused by certain events that the relevant law has determined or considered as legal consequences (Muhammad, 1980). Legal consequences are the source of the birth of rights and obligations for the legal subjects concerned. For example, by entering into a sale and purchase agreement, a legal consequence is born from the sale and purchase agreement, namely that there is a legal subject who has the right to obtain the goods and has an obligation to pay for the goods. Vice versa, other legal subjects have the right to receive money, apart from that they also have the obligation to hand over goods. It is clear that actions carried out by legal subjects towards legal objects give rise to legal consequences. The manifestation of legal consequences is that when someone buys and sells, a legal relationship is born between the two of them (Simamora, 2015).

Basically, a Sale and Purchase Agreement is different from a sale and purchase agreement. A Sale and Purchase Agreement is a sale and purchase of an object where the parties agree that the ownership rights to the object will be transferred to the buyer at some time in the future. Meanwhile, a sale and purchase agreement is a sale and purchase where the ownership rights to the object are immediately transferred to the buyer (Muhammad, 1980). Likewise, the Sale and Purchase Agreement is a preliminary agreement which is consensual in nature, but has given rise to rights and obligations between the parties who make it (Simamora, 2015). The result of the Sale and Purchase Agreement is not the transfer of property rights from the seller to the buyer, but rather the occurrence of an agreement between the seller and the prospective buyer to carry out the act of sale and purchase, where the agreement in the Sale and Purchase Agreement will later be stated in the Sale and Purchase Deed as the main agreement (Simamora, 2015).

According to civil law, in an agreement there are four important principles, namely the principle of freedom of contract, the principle *agreements are to be kept*, the basis of good faith and the basis of consensualism. The basis of freedom of contract, *agreements are to be kept* and good faith can be concluded in Article 1338 of the Civil Code which states that all agreements made in accordance with the law are valid as law for those who make them. This consent cannot be withdrawn other than by agreement of both parties, or for reasons determined by law. Agreements must be carried out in good faith.

A legal agreement that is born from an agreement has two attributes, namely legal rights and obligations. Legal obligations are binding oneself to do something to another party, while rights or benefits are in the form of demands for the implementation of something agreed to in the agreement. Therefore, in every agreement, each party must keep its promise to carry out its obligations and also respect the rights of the other party (Badrulzaman, 2001).

Thus, according to the researcher, if we look at the description above, it can be seen that the Sale and Purchase Agreement Number 60 on January 29 2007 which was made before Notary Iswandono Poerwodinoto, S.H. is a valid agreement as a preliminary agreement that is obligatory in nature, where the agreement only creates an obligation to be implemented at a later date, but the agreement is still binding on the parties. Because the legal effect of the Sale and Purchase Agreement as a preliminary agreement is that it binds the parties making it, namely the seller and the buyer, this is also in accordance with the provisions according to Article 1338 of the Civil Code. Therefore, based on these provisions, the Sale and Purchase Agreement gives rise to legal consequences in the form of rights and obligations that must be carried out for the parties who make it and the parties must carry out what has been agreed in the agreement in the form of a land sale and purchase process for later poured into the Sale and Purchase Act made in front of the Land Deed Maker's Office.

B. Legal protection for buyers in sales and purchase agreements that are paid in full and carried out in good faith in the decision mentioned above?

The panel of judges in giving the judge's decision must be based on appropriate evidence and legal considerations (Paramita, 2024). The judge's consideration is one of the most important aspects in ensuring the creation of value norms from the judge's decision which must be based on justice and legal certainty; therefore, the judge's consideration must be addressed well and carefully, the judge's decision will give rise to legal consequences which must be borne by the losing party (Aro, 2004). According to Article 50 of Law Number 48 of 2009 concerning Judicial Power, it is explained that every court decision must contain the reasons or grounds for the decision, as well as containing certain articles from the relevant statutory regulations or sources of unwritten law which are used as the basis for adjudication. The purpose of the explanation of this article is to provide legal certainty, ensure accountability, and prevent abuse of authority. Because of these reasons, the decision has authority and it is not a particular judge who handed it down (Mertokusumo, 1999).

An agreement is an agreement in written or oral form made by two or more parties in which each party agrees to comply with the contents of the agreement. In an agreement, one or more parties bind themselves to another party to carry out certain obligations, so that the agreement becomes a legal event that gives rise to legal consequences for the parties involved.

Buying and selling land is a form of agreement, but buying and selling land must also pay attention to the process of transferring rights that has existed since ancient times, namely customary law. In customary law, buying and selling land uses the principle of clear and cash, so that if there is a full price then the buying and selling process cannot be carried out. With the clear cash principle, the transition process for buying and selling land is different from the process of buying and selling other objects. This is also as explained according to civil law, where land is classified as an immovable object, so that based on Article 1459 *Because*

Article 616 of the Civil Code states that ownership rights to immovable goods being sold do not transfer to the buyer as long as the goods have not been delivered, which delivery is carried out by announcing a deed. Making the deed is an implementation of the clear and cash principle.

Ownership rights to land can only be transferred after the deed of transfer is made and signed, the deed is made by the Land Deed Official, this is as explained in Article 26 of Law Number 5 of 1960 concerning Basic Agrarian Regulations explaining that buying and selling, exchange, gift, gift by will, gift according to custom and other acts intended to transfer property rights and their supervision are regulated by Government Regulations. Then, regarding the transfer of ownership rights, it is further regulated in Government Regulation (PP) Number 24 of 1997 concerning Land Registration, specifically according to Article 37 paragraph (1) which explains that the transfer of land rights and ownership rights to apartment units through sale and purchase, exchange, grant, entry into a company and other legal acts of transfer of rights, except for the transfer of rights through auction can only be registered if proven by a deed made by an authorized Land Deed Official according to the provisions of the applicable laws and regulations.

In the process of buying and selling land, the deed made by the Official Land Deed Maker is a Deed of Sale and Purchase, but in practice a Deed of Sale and Purchase cannot be made directly, this is because the conditions for making a Deed of Sale and Purchase have been fulfilled, such as:

- . Inspection at the National Land Agency Office;
- . Payment of income tax by land sellers;
- . BPHTB payments by land buyers;
- . Removal of warranty/roya records (if any);
- . dst.

So that in order to guarantee the rights and obligations of the buyer and the seller, a preliminary agreement is first made, namely the Sales and Purchase Binding Agreement, which in the agreement functions as a supporting agreement to later give birth or create an alliance for the main agreement, which is the Sale and Purchase Act. According to Agus Pandoman, an agreement that gives rise to an alliance is called an obligatoir agreement (*obligate agreement*). A mandatory agreement is an agreement that results in the parties in the agreement being obliged to provide certain performance, therefore the performance can be done later after the performance (Pandoman, 2019). Based on that, the Sales and Purchase Binding Agreement includes a mandatory agreement that gives birth to an alliance, which means that the agreement only gives birth to the alliance, there is no transfer of rights or transfer of rights, for the transfer is still waiting for the transfer (Sutisari, 2023). This is also reinforced according to the opinion of Herlien Budiono who thinks that the Sales and Purchase Binding Agreement is an aid agreement that functions as an advance agreement that is independent in form (Budiono, 2004). The position of the Sales and Purchase Binding Agreement which is a preliminary agreement, then the Sales and Purchase Binding Agreement serves to prepare or even strengthen the main/principal agreement that will be done because the Sale and Purchase Binding Agreement is the beginning of the birth of the main agreement (Putri, 2017).

The legal effect of the Sale and Purchase Agreement as a preliminary agreement is that it binds the parties who make it, namely the seller and the prospective buyer. The legal basis used in the Sale and Purchase Agreement is Law No. 1 of 2011 concerning Housing and Settlements as *special law*, Decision of the Minister of

People's Housing No. 9 of 1995 regarding the Guidelines for Binding Sales and Purchases and linked to the Provisions of Article 1338 paragraph (1) of the Civil Code as *general law*.

Basically, a Sale and Purchase Agreement is different from a sale and purchase agreement. A Sale and Purchase Agreement is a sale and purchase of an object where the parties agree that the ownership rights to the object will be transferred to the buyer at some time in the future. Meanwhile, a sale and purchase agreement is a sale and purchase where the ownership rights to the object are immediately transferred to the buyer (Muhammad, 1980). It is the same as the Sale and Purchase Agreement which is a preliminary agreement which is consensual in nature, however, it has given rise to rights and obligations between the parties who make it. The result of the Sale and Purchase Agreement is not the transfer of property rights from the seller to the buyer, but rather the occurrence of an agreement between the seller and the prospective buyer to carry out the act of sale and purchase, where the agreement in the Sale and Purchase Agreement will later be stated in the Sale and Purchase Deed as the main agreement (Simamora, 2015).

According to Article 1338 paragraph (1) of the Civil Code, it is explained that all agreements made in accordance with law are valid as law for those who make them. This consent cannot be withdrawn other than by agreement of both parties, or for reasons determined by law. Agreements must be carried out in good faith. Therefore, based on these provisions, the Sale and Purchase Agreement also gives rise to legal consequences for the parties who make it, namely to carry out what has been agreed in the agreement. Based on this article, it also states that everyone is required to have good intentions in implementing agreements by referring to the norms of propriety. Parties who have good intentions should receive legal protection. Legal protection is given to legal subjects regarding rights, obligations and physical matters. The legal protection given to buyers who have good intentions can be seen from several jurisprudence of the Supreme Court of the Republic of Indonesia which uses good faith as a benchmark in its decisions, namely MARI Decision No. 251k/sip/1958 dated 26 December 1958, MARI Decision No. 3201k/Pdt/1991 which states that buyers who have good intentions (*te goede trouw*) must be protected (Simamora, 2015).

Legal protection is protection given to legal subjects in the form of instruments both preventive and repressive, both verbal and written (Tampubolon, 2016). Preventive legal protection is protection provided by the government with the aim of preventing violations before they occur. This is contained in statutory regulations with the aim of preventing violations and providing signs or limitations in carrying out an obligation. Repressive legal protection is final protection in the form of sanctions such as fines, imprisonment and additional penalties given if a dispute has occurred or a legal violation has been committed.

According to Soerjono Soekanto, legal protection is an action aimed at fulfilling rights and providing assistance to provide a sense of security to the community which can be realized in various forms, such as through the provision of legal services (Soekanto, 1984). Legal protection functions to protect the rights and interests of individuals and groups by guaranteeing those rights and interests through applicable legal norms. Legal protection provides protection for human rights that are harmed by other people and this protection is provided to the community so that they can enjoy all the rights granted by law or in other words legal protection is a legal effort that must be provided by law enforcement officials

to provide a sense of security, both mentally and physically from disturbances and various threats from any party (Rahardjo, 2000).

Legal protection acts as a supervisor to prevent parties in authority (government, institutions, or influential individuals) from acting arbitrarily. This principle ensures control over actions that could harm other parties. With legal protection, every legal subject knows that there are clear rules about what is permitted and what is not permitted. This provides a sense of security and stability in social life. Legal subjects can face situations where their rights are taken away or violated. Legal protection provides a mechanism for seeking justice, such as through courts or mediation institutions.

Based on the case contained in the Supreme Court Decision Number 3753 K/Pdt/2020, there is a problem regarding the land sale and purchase process in which the Cassation Respondent/Plaintiff has paid in full for a plot of land belonging to the Cassation Respondent I/Defendant 1 as the land owner. The payment for the land has been stated and stated in a preliminary agreement, namely the Sale and Purchase Agreement Number 60 on January 29 2007 which was made before Notary Iswandono Poerwodinoto, S.H. However, the Cassation Respondent I/Defendant 1 as the land owner resold his land without the knowledge and permission of the Cassation Respondent/Plaintiff as stated in the Deed of Sale and Purchase Number 608/2014 dated 8 December 2014 which was made before the Temporary PPAT, Taktakan District. The Panel of Judges of the Supreme Court in giving its decision gave considerations stating that the Binding Sale and Purchase Agreement on the object of the case dated 29 January 2007 Number 60 which was made by the Plaintiff and Defendant I before Notary Iswandono Poerwodinoto, S.H., was a general agreement which had not transferred the ownership rights of the object of the binding sale and purchase agreement from its owner, namely Defendant I, to the Plaintiff and stated the Deed of Sale and Purchase Number 608/2014 dated 8 December 2014 which was made before Arif Rahman Hakim, S.Sos., M.Sc., Temporary PPAT, Taktakan District, Serang City, which was executed by and between Defendant I and Defendant II on the disputed object of land, is a valid land sale and purchase agreement and has transferred ownership rights to the a quo disputed object of land from the original owner (seller), namely Defendant I, to Defendant II (buyer). The Panel of Judges at the Supreme Court has also given consideration, namely that Defendant I does not fulfill the sale and purchase agreement with the Plaintiff, the Plaintiff has the right to demand back the money he has given to Defendant I.

Thus, according to the researcher, if we look at the description above, it can be seen that based on the considerations of the Panel of Judges of the Supreme Court with Decision Number 3753 K/Pdt/2020, the Panel of Judges has provided repressive legal protection to the Cassation Respondent/Plaintiff by considering that the Cassation Respondent/Plaintiff has the right to claim back the money he has given to the Cassation Respondent I/Defendant I, however, the Supreme Court Panel of Judges has not given consideration to the losses experienced by the Cassation Respondent/Plaintiff as explained in the Petitem. The Plaintiff in the Serang District Court Decision, namely the Respondent of Cassation/Plaintiff, suffered losses due to the actions of Co-Respondent Cassation I/Defendant I who resold the object of the case and did not fulfill the reasons contained in the agreement which he had agreed in the amount of IDR 4,820,000,000.00 (four billion eight hundred and twenty million rupiah with the following details:

Material loss:

- Increase in the selling price of land subject to the case in 2019 with an estimated price of IDR 6,000,0000.00 (six million rupiah) per one square meter, calculated at $\text{IDR } 6,000,000.00 \times 470 \text{ m}^2 = \text{IDR } 2,820,000,000.00$ (two billion eight hundred and twenty million rupiah);

Immaterial losses:

- Loss of profit prospects from investment in the land of the object of the case which will be built 4 (four) shophouses to be rented out by the Plaintiff with an average targeted rental price for one shophouse of IDR 50,000,000.00 (fifty million rupiah) per year with details: $\text{IDR } 50,000,000.00 \times 4 \times 10 \text{ years}$ (2009 to 2019), which is calculated in the amount Rp. 2,000,000,000.00 (two billion rupiah);

If it is related to Article 1239 and Article 1246 of the Civil Code, then the Cassation Respondent I/Defendant I is obliged to make compensation for losses in the form of money for his actions against the Cassation Respondent/Plaintiff because he has committed a breach of contract which resulted in losses, this is what made the Cassation Respondent/Plaintiff file a lawsuit against the law to the Serang District Court with Case Number 39/Pdt.G/2019/PN.Srg on November 14 2019.

Article 1246 of the Civil Code explains that the costs, compensation and interest that creditors may claim consist of the losses they have suffered and the profits they could have obtained. Compensation can only be done in the form of a sum of money, this is as explained in Article 1239 of the Civil Code, namely that every agreement to do something, or not to do something, must be resolved by providing compensation for costs, losses and interest, if the debtor does not fulfill his obligations.

Default in the general sense is not fulfilling the obligations that have been stipulated in the agreement, both obligations arising from agreements and obligations arising from law (Muhammad, 1992). The manifestation of default can be in the form of one of the parties not carrying out their achievements, one of the parties making a mistake in carrying out their achievements, and one of the parties being late in carrying out their achievements (Satrio, 1993). Defaults that occur in an agreement can have four consequences, namely (Gumanti, 2012):

- . The alliance remains;
- . The debtor must pay compensation to the creditor;
- . The risk burden shifts to the debtor's losses, if the obstacle arises after the debtor defaults, unless there is deliberate or major error on the part of the creditor;
- . Creditors can free themselves from their obligation to provide counter performance using Article 1266 of the Civil Code if the obligation arises from a reciprocal agreement.

The occurrence of a breach of contract results in one party being harmed, therefore the party committing the breach of contract must bear the consequences of the aggrieved party's demands in the form of (Sinaga, 2020):

- . Cancellation of agreement only;
- . Cancellation of the agreement is accompanied by demands for compensation in the form of costs, losses and interest;
- . Fulfillment of the contract only;
- . Fulfillment of contracts accompanied by demands for compensation;
- . Just demand compensation for losses.

Based on the description above, the researcher is of the opinion that regarding legal protection for buyers in the Sale and Purchase Agreement which is paid in full and carried out in good faith in Case Number 3753 K/Pdt/2020, the buyer has

received repressive legal protection through the consideration of the Panel of Judges of the Supreme Court. In these considerations, the Panel of Judges stated that the Plaintiff had the right to demand back the money he had given to Defendant I, but regarding the number of losses suffered by the Plaintiff, the Panel of Judges did not provide an opinion. So according to the researcher, the Plaintiff as the party who is disadvantaged by the results of the Judge's Decision can file a lawsuit for breach of contract by demanding compensation based on what he has suffered.

4. CONCLUSION

Based on the results of the research and discussions that the researchers have conducted, it can be concluded as follows: Sale and Purchase Agreement Number 60 made on January 29 2007 before Notary Iswandono Poerwodinoto, S.H. is a preliminary agreement made in the form of an authentic deed by a notary, where the preliminary agreement only creates an agreement to be implemented at a later date which will be stated in the Deed of Sale and Purchase, because the agreement has fulfilled the legal requirements of an agreement and does not violate the provisions of the law or other regulations, then the agreement is valid as law for the parties who made it, namely the Respondent of Cassation I/Defendant I and the Respondent of Cassation/Plaintiff. This is in accordance with the provisions of Article 1338 of the Civil Code which explains that all agreements made legally are valid as law for those who make them. Thus, the legal consequences of a Sale and Purchase Agreement that is paid in full and carried out in good faith are the emergence of rights and obligations for the parties and the parties are bound to carry out their rights and obligations, where the rights and obligations are to carry out the sale and purchase process as outlined in the Sale and Purchase Deed after all the conditions contained in the Sale and Purchase Agreement are fulfilled at a later date. Legal protection for buyers who have paid in full and acted in good faith in the Sale and Purchase Agreement Number 60 which was made on January 29 2007 before Notary Iswandono Poerwodinoto, S.H. is that it has received repressive legal protection through the consideration of the Panel of Judges of the Supreme Court which stated that the Plaintiff has the right to demand the return of the money he gave to Defendant I. Regarding the losses suffered by the Plaintiff as described in his claim in the lawsuit for unlawful acts with Case Number 39/Pdt.G/2019/PN Srg dated 14 November 2019, the Plaintiff can file a lawsuit for breach of contract with the District Court demanding compensation for what he suffered from Defendant I.

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