

## **Legal Effects of Default on Land and Building Sale and Purchase Agreement in PPJB**

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### **Abstrak**

Along with the increase in property prices in Indonesia every year, many people choose to buy houses with installment payments. Therefore, the sale and purchase process is carried out by making an agreement, namely the Sale and Purchase Binding Agreement (PPJB) before the signing of the Sale and Purchase Deed (AJB). However, over time there is a problem where one party does not implement the contents of the agreement or is called default. This research was conducted with the aim of knowing how the legal consequences caused by defaults in land and building sale and purchase agreements and how to resolve disputes due to defaults in land sale and purchase agreements. Using normative juridical research methods, it can be concluded: 1. Legal consequences arising from default in a sale and purchase agreement, especially if one party does not implement the contents of the mutually agreed sale and purchase agreement, then the party has violated the agreement so that it is called committing a default act. 2. Settlement of disputes due to default in the sale and purchase agreement, can be done through deliberation from the parties for the settlement of the obligations of the parties in dispute to then be fulfilled / realized / paid by the parties who are considered in default. In addition, a party who feels aggrieved by the other party in the sale and purchase agreement, has the right to sue the other party who does not carry out the contents of the agreement through the intercession of a court judge or through existing legal channels.

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### **Abstract**

Seiring dengan terjadinya peningkatan harga properti di Indonesia setiap tahunnya, maka banyak masyarakat yang memilih untuk membeli rumah dengan pembayaran cicilan. Oleh karena itu dalam proses jual belinya dilakukan dengan membuat perjanjian yaitu Perjanjian Pengikatan Jual Beli (PPJB) sebelum dilakukannya penandatanganan Akta Jual Beli (AJB). Namun, berjalannya waktu terjadi permasalahan dimana salah satu pihak tidak melaksanakan isi di dalam perjanjian tersebut atau disebut dengan wanprestasi. Penelitian ini dilakukan dengan tujuan untuk mengetahui bagaimana akibat hukum yang disebabkan adanya wanprestasi dalam perjanjian jual beli tanah dan bangunan serta bagaimana penyelesaian sengketa akibat adanya wanprestasi dalam perjanjian jual beli tanah. Dengan menggunakan metode penelitian yuridis normatif, maka dapat disimpulkan: 1. Akibat hukum yang timbul disebabkan adanya wanprestasi dalam suatu perjanjian jual beli, khususnya bilamana salah satu pihak tidak melaksanakan isi perjanjian jual beli yang telah disepakati bersama, maka pihak tersebut telah melanggar kesepakatan sehingga disebut melakukan perbuatan wanprestasi. 2. Penyelesaian sengketa akibat adanya wanprestasi dalam perjanjian jual beli, dapat dilakukan melalui musyawarah dari para pihak untuk penyelesaian kewajiban-kewajiban para pihak yang dipersengketakan untuk kemudian dipenuhi/direalisasikan/dibayar oleh pihak-pihak yang dianggap wanprestasi. Selain itu, pihak yang merasa dirugikan oleh pihak lain dalam perjanjian jual beli, berhak menuntut pihak lainnya yang tidak melaksanakan isi perjanjian itu dengan perantaraan hakim pengadilan atau melalui saluran hukum yang ada.

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## **1. INTRODUCTION**

Property prices in Indonesia are currently quite fantastic. The increase in property prices in Indonesia occurs annually based on the results of the Bank Indonesia Residential Property Price Survey (SHPR) indicating that residential property prices in the primary market on an

annual basis continue the upward trend in the second quarter of 2023. The Residential Property Price Index (IHPR) in the second quarter of 2023 increased by 1.92% (yoy), higher than the increase in the previous quarter of 1.79% (yoy). The increase in property prices in Indonesia that continues to occur every year has resulted in millennials currently finding it difficult to have a residential house that is obtained at affordable prices.

Humans have basic needs, one of which is the need for boards or houses that need land, because land has a dual function, namely as a *social asset* and *capital asset*. The need for housing for millennials in Indonesia is currently very much needed, considering that for couples who have just married, of course, housing is a primary need in addition to food and clothing needs. Humans in meeting their needs are inseparable from the assistance and cooperation carried out which often has been made an agreement for the implementation of work against agreements that have been made previously for the fulfillment of an achievement, including in terms of business carried out, especially in buying and selling transactions.

Having a home is indeed very important, not only important but along with the increase in property value every year, it can be a promising long-term investment. Currently, many programs are offered in buying a house, one of which is a payment program with installments or credit, this is done to make it easier for people who want to have a house but the economy is not sufficient. Payment by installments or credit generally begins with a *down* payment (down payment) or down payment with an amount agreed upon by the buyer and seller, then the remaining payment will be paid by the buyer gradually or in installments.

Sale and purchase is "a form of agreement that gives birth to an obligation or engagement to give something, which in this case is manifested in the form of delivery of objects sold by the seller and the delivery of money by the buyer to the seller". A legally concluded sale and purchase agreement may not be canceled by one party alone. An agreement can only be canceled, if there is agreement from both parties to the agreement. But in practice not a few of the parties involved in a sale and purchase agreement, commit violations with various reasons and arguments that tend to justify why they violate the agreement, such as economic problems such as falling purchasing power of the community, causing the agreement cannot be fulfilled. Not infrequently in practice there are parties who deliberately avoid the implementation of the sale and purchase agreement even in reality some parties flee with the aim of not implementing the agreement they have previously made including the sale and purchase agreement that has been made notarially, so that it has the power of legal proof.

A covenant is an event in which a person promises one or more people promise to another or more mutually to do something. The agreement must meet the requirements for the validity of the agreement, as stipulated in Article 1320 of the Civil Code, namely agreeing that they bind themselves, the ability to make an agreement, a certain thing, and a lawful cause. With the fulfillment of the four conditions of the validity of the agreement, it is legally binding on the parties who make it. The parties to the agreement are given the freedom to make the contents of the agreement according to their needs. In this case, the law that regulates the law of the agreement, does not interfere with the subject matter or terms that will be the agreement of the parties, as long as the agreement does not violate laws and regulations, decency and public order.

In land sale and purchase transactions, you often hear two terms, namely, PPJB is a Sale and Purchase Binding Agreement, while AJB is a Sale and Purchase Deed. PPJB is made to carry out temporary binding before making an official Sale and Purchase Deed (AJB) before a Notary / Land Deed Making Officer (PPAT). PPJB is an agreement between the seller and the buyer before the sale and purchase is carried out because there are elements that must be met for the sale and purchase. In general, the content of the Sale and Purchase Binding

Agreement (PPJB) is the seller's agreement to bind himself to sell to the buyer accompanied by the provision of a milestone or down payment based on the agreement.

In the event of making land PPJB in a sale and purchase transaction, problems that may arise due to the unfulfillment of the elements of the sale and purchase include land certificates that do not yet exist because they are still in the process of issuance, or have not been carried out to pay off the price or sale value of land, or other matters related to the sale and purchase of land rights which ultimately hinder the completion of transactions in buying and selling land. In the sale and purchase binding agreement (PPJB), it is usually regulated about certain conditions that must be met by the parties in order to carry out the Sale and Purchase Deed (AJB). Thus, the Sale and Purchase Binding Agreement (PPJB) is an initial bond that is under hand for an authentic Sale and Purchase Deed (AJB) to be carried out Terms arising from the law, for example, the sale and purchase must have been paid off and then the Sale and Purchase Deed (AJB) can be signed.

In general, the requirements that often arise are requirements that are born into the agreement of the parties who will make the sale and purchase, for example when going to make a sale and purchase, the buyer wants a certificate of title to the land to be purchased while the right to the land to be sold does not have a certificate, the buyer has not been able to pay all the price of land rights in full so that it has only been paid half of the agreed price and on the other hand for example repayment It will only be done when the building is completed and ready for occupancy. Therefore, for these reasons in buying and selling activities, in order to ensure legal certainty the parties are made a Sale and Purchase Binding Agreement (PPJB) which is agreed and signed by the seller and buyer.

In its implementation, the agreement always does not run in accordance with the agreement desired by the parties. Under certain conditions, problems can arise that result in broken promises/defaults. Some of the forms of broken promises that occur in the implementation of the sale and purchase binding agreement regarding late payment from the buyer, the seller who sells the object of sale and purchase to another party, the seller who does not perform his obligations such as not submitting proof of ownership of the land as well as a certificate to the buyer, not submitting the object of sale and purchase to the buyer and making The object of buying and selling as collateral in the bank, selling or renting to others.

In general, most people who agree in PPJB include that if there is a default, the DP (down payment) or down payment that has been paid cannot be returned. Regarding the DP (down payment) or down payment that has been paid but cannot be returned, of course, many people also object because the amount of down payment paid is also not small. This can also certainly be about how consumer protection is. This is because the inclusion of these standard clauses is often interpreted as rules or provisions that have been prepared and determined unilaterally in advance by business actors.

Based on this, the author found several cases regarding defaults in PPJB that have resulted in court decisions. The first case refers to Decision Number 86/PDT/2017/PT BTN, where the parties as the seller and buyer have agreed to sign a Sale and Purchase Binding Agreement (PPJB) regarding the sale and purchase of a plot of land and buildings. That upon the agreement that had taken place the plaintiff and the defendant had agreed to make payments in accordance with what had been agreed, but it turned out that the defendant had never carried out its obligation to make payments in accordance with the agreed manner and time. Therefore, for the defendant's negligence in making payments, the plaintiff filed a lawsuit in court. Based on the decision, the judge stated that the defendant had committed default, namely due to not carrying out its obligations as specified in the Sale and Purchase Binding Agreement (PPJB), and declared the cancellation of the PPJB and sentenced the defendant to vacate and hand over the plaintiff's land and buildings.

In the case that the author found next was Decision Number 94/PDT. G.S/2020/PN Btm, where the parties are the plaintiff as the seller or property developer and the buyer as the defendant. That the buyer orders 1 unit of land and building with an agreement through the signing of a Sale and Purchase Binding Agreement (PPJB). In the PPJB, the buyer has agreed to make 24 installment payments. In the process of traveling with what has been agreed in the PPJB that the defendant should make payment of the remaining settlement of the selling price to the defendant at a predetermined time, but the defendant did not carry this out. Because the defendant did not make payment of the selling price of the unit, the plaintiff filed a lawsuit in court. In this case, the judge has ruled by stating that the defendant has committed an act of promise injury or default, stating that the advance payment that has been paid by the defendant cannot be returned, and punishing the defendant to return the controlled unit to be returned to the plaintiff.

Based on several cases described above, the author is hereby interested in discussing further in this article related to how the legal consequences arise from the occurrence of default on the land and building sale and purchase agreement in PPJB and how to resolve disputes that occur against default on the land and building sale and purchase agreement in PPJB.

## **2. RESEARCH METHODS**

The research method used in this study uses normative law, namely studying legal rules such as what is written or literature law that refers to legal norms contained in laws and regulations. Normative legal research is problem solving based on literature and laws and regulations related to problems that are discussed starting from gaps in legal norms or principles.

## **3. RESULTS AND DISCUSSION**

### **3.1 Legal Effects of Default in the Sale and Purchase Binding Agreement or PPJB**

The definition of agreement in Book III of the Civil Code is regulated in Article 1313 of the Civil Code, which states that an agreement is an act by which one or more people bind themselves to one or more other people. From the understanding of the agreement, it can be understood that what is meant by an agreement is a legal event between two people or two parties based on the word agreement to exercise a right that is a legal relationship and causes legal consequences for both parties. The implementation of the agreement cannot always run smoothly, sometimes things happen that make the agreement cannot be continued or even until the deed becomes void.

Article 1458 of the Civil Code states that "a sale and purchase shall be deemed to have taken place between the two parties, as soon as the persons have reached an agreement on the goods and their price, even though the goods have not been delivered and the price has not been paid." The article explains that a sale and purchase has been deemed to occur between the seller and the buyer, even though the goods that are the object of sale and purchase have not been handed over but the parties have agreed on the goods and their prices. Therefore, prospective sellers and buyers are obliged to comply with the substance of the mutually agreed agreement.

However, the obligations of the parties are not only limited to what is agreed, but must pay attention to what is required by propriety, custom and public order. So that in a sale and purchase binding agreement that uses an authentic deed to guarantee legal certainty, it must meet the requirements for the validity of the agreement specified in Article 1320 of the Civil Code, in addition to the conditions for the validity of the agreement, there are conditions that must also be met in the implementation of making

an authentic deed before a notary, so that the legal certainty of the authentic deed is guaranteed.

In an agreement, both parties agree to determine the binding legal and regulatory methods for them to obey and implement. Of course, in the implementation of buying and selling, parties must want the sale and purchase to run perfectly based on good faith. However, there are still various legal problems that arise in society. One of the problems is when one party does not fulfill its achievements. The non-fulfillment of an achievement between the parties is called a default.

Default comes from the original term in Dutch "*wanprestatie*" which means the non-fulfillment of achievements or obligations that have been set against certain parties in an engagement, either an engagement born of an agreement or an engagement arising from law. R. Subekti, suggests that "default" is negligence or negligence which can be of 4 kinds, namely:

- a. Not doing what he was willing to do.
- b. Carry out what he has promised, but not as promised.
- c. Do what was promised but too late,
- d. Do an act that according to the covenant cannot be done.

In the event that the grace period for the implementation of the fulfillment of the achievement is not determined, it is deemed necessary to warn the debtor to fulfill his achievement, and in the event that the grace period for the implementation of the fulfillment of the achievement is determined, according to the provisions of Article 1238 of the Civil Code, the debtor is considered negligent with the lapse of the specified time. According to Article 1238 of the Civil Code which states that:

"The debtor is negligent, if he by warrant or by a deed of the like that has been declared negligent, or by his own engagement, is if this provides that the debtor shall be deemed negligent by the lapse of the time specified."

The legal consequences or sanctions if the party defaults according to the provisions of the Civil Code are as follows:

1. The buyer is required to pay compensation for losses suffered by the seller in accordance with the provisions of Article 1243 of the Civil Code;
2. In bilateral agreements, if there is a default, one party gives the right to the other party to cancel or terminate the agreement through a trial in accordance with the provisions of Article 1266 of the Civil Code.
3. The risk shifts to the buyer when there is a default in the provisions of Article 1237 paragraph (2) of the Civil Code, only applies to the engagement to provide something;
4. Pay the cost of the case if it is estimated before the judge in the provisions of Article 181 paragraph 1 (HIR), the buyer who is proven to have committed default is certainly defeated in the case;
5. Fulfill the agreement if it can still be done, or by cancellation of the agreement accompanied by payment of compensation for the provisions of Article 1267 of the Civil Code. Furthermore, according to Abdulkadir Muhammad, that Articles 1243 to Article 1248 of the Civil Code are restrictions in nature as legal protection for debtors from arbitrary actions of creditors as a result of default.

The legal consequences of default resulting in other parties being harmed will also cause several possibilities that occur, namely:

- a. Cancellation of agreement only
- b. Cancellation of the agreement is accompanied by claims for compensation, in the form of: costs, losses and interest.

- c. Fulfillment of the contract only, where the creditor only asks for the fulfillment of achievements from the debtor.
- d. Fulfillment of the contract is accompanied by a claim for damages. The creditor demands that in addition to the fulfillment of achievements must also be accompanied by compensation by the debtor (Article 1267 of the Civil Code).
- e. Demand compensation only.

Based on several cases that the author has described, namely in Decision Number 86 / PDT / 2017 / PT BTN that the defendant who in this case is the buyer has been found legally guilty of committing acts of default by not making payments on time in accordance with what has been agreed in the PPJB. Therefore, the judge declared the defendant in default, declared void the Sale and Purchase Binding Agreement (PPJB) of the land and building, and sentenced the defendant to vacate and hand over the land and building to the plaintiff.

In the case of Decision Number 94/PDT.G.S/2020/PN.Btm, because the defendant did not make payment of the selling price of the unit at the price and time agreed in the PPJB, the plaintiff filed a lawsuit to the court. In this case, the judge has ruled by stating that the defendant has committed an act of promise injury or default, stating that the advance payment that has been paid by the defendant cannot be returned, and punishing the defendant to return the controlled unit to be returned to the plaintiff.

By stating that the advance payment that has been paid cannot be returned, according to Article 1338 of the Civil Code, it is explained that all agreements made in accordance with the applicable law as law for those who make them. This means that the agreement is irrevocable other than by agreement of both parties, or for reasons prescribed by law, so the agreement must be executed in good faith. This is also related to the standard clause that occurs in the PPJB where advances cannot be returned in case of default. In this case, the standard clause itself has been regulated in Article 18 paragraph 1 letter c of the Consumer Protection Law, namely:

*"states that business actors have the right to refuse the reimbursement of money paid for goods and/or services purchased by consumers".*

Therefore, if there is a cancellation of the sale, the agreement will be void, but the down payment that has been paid cannot be withdrawn. Similarly, in customary law, it is explained, if the advance giver keeps the agreement, the advance is declared lost. However, the exception if it has been agreed or stated in an agreement if there is a cancellation then the advance can be returned, then the party who receives the advance must return the amount he received.

### **3.2 Dispute Resolution Due to Default in the Sale and Purchase Binding Agreement or PPJB**

In general, alternative dispute resolution is the resolution of disputes or differences of opinion through the procedures desired by the parties, which can be done by means of consultation, negotiation, mediation, consolidation, expert assessment and arbitration (Article 1 letter 1 of Law No. 30 of 1999). Settlement due to default on the land sale and purchase binding agreement can be resolved in non-litigation or litigation. The non-litigation process is a cooperative settlement strategy. Because in the process this strategy is very different from the litigation process in dispute resolution. Some non-litigation settlement strategies such as amicable kinship, negotiation, mediation, consolation, and arbitration. Meanwhile, dispute resolution by litigation is by submitting a case to the court which intends to obtain certainty of permanent legal force and obtain justice in accordance with applicable law.

According to Article 6 paragraph (1) of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, it states that civil disputes or differences of opinion can be resolved by the parties through alternative dispute resolution based on good faith by setting aside settlement by litigation in the District Court. In Indonesian law, there are known to be 2 ways of dispute resolution, default, namely through non-litigation and litigation channels.

1. Dispute resolution through non-litigation channels is the settlement of legal cases carried out outside the court. In this case, the settlement is carried out peacefully with kinship, things that can be done are to carry out good communication between the parties. Based on this case, the parties can communicate with each other regarding the agreement, for example in good faith to settle the remaining installment payments, and the developer can understand and tolerate the buyer.
2. Dispute resolution through litigation is an effort to resolve disputes through the courts. Based on the example of the case that the author describes in this study that has produced several court decisions, all of which were taken through court channels.

According to Article 1 paragraph (10) of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, states that alternative dispute resolution is a dispute resolution institution or disagreement through procedures agreed by the parties, namely out-of-court settlement by means of consultation, negotiation, mediation, conciliation, or expert opinion. While arbitration is a process that is easily chosen by the parties voluntarily because they want the case to be decided by a neutral separator according to the choice where their decision is based on the arguments in the case. In the case of settlement by litigation or through the court, to file any conflict of interest of the citizens of the community, the way they must take has been determined in advance in a civil procedural law rule. The form of filing the violated interest must be made a letter of claim, both the form and content of which have been determined by the civil procedure law and to obtain guarantees of legal protection and complete settlement that can be provided by the court to prevent *eigenrichting*. There are 2 kinds of forms of interest submission, namely:

1. With a petition, a claim that does not contain a dispute, in which only one party is involved.
2. With a lawsuit, a claim of rights contains a dispute, where the case cannot be resolved peacefully by both parties.

Based on several cases that the author describes, namely in Decision Number 86 / PDT / 2017 / PT BTN and Decision Number 94 / PDT. G.S/2020/PN, both cases occurred over a dispute over the occurrence of default on the sale and purchase agreement in which the parties could not fulfill the performance in accordance with what had been agreed in the PPJB. Therefore, the aggrieved party filed a lawsuit to the court, so that with the birth of the decision, the dispute resolution taken based on this case is by litigation or through filing a lawsuit to the court. Therefore, this is also in accordance with the rules governing the legal consequences of default that if there is a default, one party gives the right to the other party to cancel or terminate the agreement through a trial.

#### 4. CONCLUSION

1. The legal consequence of the default on the binding agreement for the sale and purchase of land and buildings is that accountability must be carried out with the claim for settlement of the default which can be in the form of cancellation of the agreement, fulfillment of the agreement, payment of compensation, cancellation of the agreement

with compensation, fulfillment of the agreement with compensation, this is stated in Article 1243 of the Civil Code.

2. Dispute resolution occurs in default of the binding agreement for the sale and purchase of land and buildings, so this is entirely the right of the parties to determine the way of resolution whether to go through non-litigation processes such as family peace, negotiation, mediation, consolation, and arbitration or dispute resolution by other means, namely by litigation, namely by submitting a case to the Court which intends to obtain certainty of permanent legal force and obtain appropriate justice by applicable law.

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