

Legal Protection Against Buyer for Termination Of Binding Selling and Purchasing Agreement (PPJB) Due to Breach of Obligations

Citra Mawar Sari Simamora ^{1)*}, F.X. Arsin Lukman ²⁾, Tetti Samosir ³⁾
^{1,2,3)} Master Program In Notary, Faculty Of Law, University Of Pancasila, Indonesia

*Corresponding Author

Email: citramssimamora@gmail.com, fx_arsin@yahoo.com, tettisamosir@univpancasila.ac.id

Abstract

Life cannot be separated from a legal event, one of which is to carry out an event involving one or more people by binding themselves to one another through an agreement, the agreement is defined by Subekti as the relationship between the two people who make the agreement resulting in a bond in the form of rights and obligations of both parties to an achievement. The execution of an agreement is based on the engagement between the parties who agreed to bind themselves. This is explained by the fact that such an engagement from the words that are poured into the agreement contains a right and obligation between those who agree. In this study using normative research methods. Legal protection of law against parties who have do obligations on PPJB Sarusun canceled based on a court decision resulting in loss of rights in ownership of Sarusun, among others, first related to compensation for the good faith of prospective buyers, each party in instilling and applying the principle of prudence every want to take legal or non-legal action, To prevent something bad from happening, the notary must apply the precautionary principle, this principle serves to keep conditions safe and under control during the exercise of rights and obligations as promised by the parties, in addition, this precautionary principle is a support in carrying out an engagement to remain in accordance with the rules of law, so that no party feels disadvantaged or.

Keywords: *Legal Protection, Renewal of Sale and Purchase Agreement, Default.*

INTRODUCTION

According to Subekti, an covenant is an understanding between two or more people that binds the other party in line with applicable law. The relationship between the two parties creating the covenant creates a bond in the form of entitlement and responsibility for two sides to accomplish a particular goal. An agreement can be put into effect due to the consensus of the parties, the agreement is explained by a set of words that include capabilities or promises that are either written down or uttered. (Subekti, 1987).

According to Indonesian Civil Code, Section 1338, stipulating that every covenant formed in accordance with the relevant provisions of law is valid and binding upon the parties who made and agreed to it in order to achieve the agreed result, a covenant between two parties constitutes a binding legal relationship. Unless both parties consent or there are legitimate legal grounds, the agreement cannot be withdrawn. The agreement needs to be properly made. The rules controlling the legality of agreements, including the agreement itself, are separated into four or four criteria, as stated in Indonesian Civil Code, Section 1320. The basis for executing the rights and responsibilities that bind the parties to an agreement is based on the principle of *Pacta Sunt Servanda*, sometimes known as this explanation.

In order for parties to cooperate or come to an agreement, the community as a whole must agree on a number of procedures. Buildings and land are sold by a binding sale and purchase agreement (PPJB), which forms the foundation of a legally binding contract. According to Subekti, PPJB governs the rights and responsibilities of the buyer and seller as land and building owners in the sale and purchase of real estate. This is required, among other reasons, because the tax due on the sale and purchase of land rights has not been paid by either the buyer or the seller (Subekti, 2001)

According to the study debate on PPJB Sarusun, the developer or management of Sarusun will pay the potential buyer in advance, and the buyer will pay for Sarusun in installments as it develops and includes the appropriate legal paperwork. (Fennieka Kristanto, 2019) When considered in Section 1 numbers 7, 8, 9, and 10 of Act No. 20 of 2011 on flats (“UURS”) explains that the units of flats are divided into several types including public flats, special flats, state flats, and commercial flats. If we associate with the case in this legal research, the flats discussed are commercial flats which can be interpreted that commercial flats are flats that are held for profit or profit. These commercial flats are widespread in the middle of big cities with the purpose of development, namely to meet the needs of residential housing for the community by increasing land use in densely populated areas that have limited land area. (Budi Harsono, 2019) In this case, commercial apartment units are very much in demand by urban communities that are used as residences and used as investment assets. (Su Ritohardoyo, 2015)

There are two categories of Buy-Sell Covenant (hereinafter referred to as PPJB), namely those made before the law came into effect and those made privately. This study focuses on PPJBs drawn up before a notary. We can define authentic deeds based on Section 1 Verse 7 of the Act Number 30 Year 2004, as amended by the Act Number 2 Year 2014. Thus, PPJB is a conditional agreement in every process of transfer of rights to land and/or buildings, and in accordance with Supreme Court Circular Letter Number 4 of 2016 (hereinafter referred to as SEMA 4/2016), the payment of land rights under the PPJB process is legally valid when the purchaser paid the full amount for the land and took over the object of sale and purchase in good faith in accordance with the agreement of the parties bound by the PPJB. We can define an authentic deed using Section 1 Verse 7 of Act Number 30 Year 2004, as amended by Act Number 2 Year 2014. We can understand the definition of an authentic deed using Section 1 Verse 7 of Act Number 30 Year 2004, as amended by Act Number 2 Year 2014.

The principle of *pacta sunt servanda*, as stated in Section 1338 of the Civil Code, determines how the PPJB is made and implemented based on the agreed terms. In this case, the Apartment Unit Selling Agreement serves as a binding agreement between the buyer and the owner and covers the rights and obligations that must be fulfilled in accordance with the terms agreed upon by both parties.

Example of the case in decision number 524 / PDT.G/2019 / PN JKT. Sel states that the buyer is declared to have committed default or default on PPJB unit flats (hereinafter abbreviated as Sarusun) for not performing the obligations agreed in PPJB since the beginning of the process of handover of this sarusun object on December 11, 2014 by neglecting to never pay the management fee obligations and other payment obligations such as electricity, water, and so forth as stipulated in Section 7.3 letters A, b, c, and D Jo. Section 11.7 Ppjb Sarusun, where such negligence causes loss and may be the fulfillment of one of the conditions for the cancellation of PPJB as stipulated in Section 9.1.g PJB Sarusun. Hereby, the prospective buyer is legitimate in the eyes of the law according to the decision of the panel of judges in the court and/or the Supreme Court declared negligent for the act of not paying the management fee for the apartment unit that has been agreed by the parties as the responsibility of the prospective buyer of the apartment unit. The court decision to cancel the PPJB that has been made before a notary and pay arrears, interest, and pay forced money if the buyer as the defendant of the case does not undergo a full decision. Cancellation of PPJB will cause new legal problems that must be borne by the parties to the agreement.

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accountability in terms of compensation for losses and fines against arrears in sarusun management fees which are one of the main obligations of the buyer that are not fulfilled and not carried out.

The case study demonstrated that prospective customers must still pay 16 (sixteen) units of sarusun bound in PPJB in installment payments. However, because the principle of *pacta sunt servanda* holds that an agreement reached by the parties is legally obligatory on each party who agrees to it, a panel of justices in the court opted to cancel the PPJB. In Section 9.2 PPJB explains that the existence of a result of termination or expiration of the agreement, namely the cost of the booking fee, down payment and 10% (ten percent) of the sales proceeds will be returned to the buyer after 16 (sixteen) sarusun units are sold to other parties, so that under Section 9.2 PPJB there are still rights from the seller if this agreement is canceled in accordance with the court and in accordance with the contents of the court decision does not explain the rights of prospective buyers described in Section 9.2 PPJB, in this case it can be said that the non-fulfillment of the principle of *pacta sunt servanda* as a whole in the implementation of PPJB Sarusun, where the prospective buyer has tried to do good faith in the fulfillment of installment payments on 16 (sixteen) units of the sarusun until the full repayment of all installments.

In accordance with the circumstances that occur in the community, many things stated in SEMA 4/2016 are not carried out as a whole so that problems in the implementation of PPJB often arise which ends with a request for cancellation of PPJB to the Local Court. This is very unfortunate because not a few PPJB that will be canceled is the result of making before a notary but not only under the hand, where the PPJB has the power of proof that is legitimate and perfect in the eyes of the law. PPJB cancellation request has many reasons, but what often happens is due to default during the PPJB is still running.

Based on Indonesian's Civil Code Section 1243 describes elements of the default covenants, including indemnification for fees, damages, and accrued interest due to non-performance, become enforceable if the debtor, despite having been declared in default, remains in default, or if something that must be given or done can only be given or done. According to Subketi including not doing what was promised, doing what was promised but not in accordance with what was promised, doing what was promised but late, and doing something that according to the agreement should not be done. (Subekti, 2001).

RESEARCH METHODS

To answer the questions in this study, the researcher used the normative research method. Normative legal research can be described as a research process to discover legal principles, legal foundations, and legal doctrines that will later be used to answer legal questions. (Peter M. Marzuki, 2023)

Problem approach is a method used in the process of solving a problem to achieve the goals of what will be studied by each researcher. Where the problem approach is used to analyze a legal phenomenon as a solution to problems that arise in a study. Problem approach used in the process of making this research is to use research legislation (statute approach), which can be interpreted as an approach taken in analyzing by reading, reviewing, summarizing the records of legislation related to legal issues to be studied and specifically based on the Civil Code, because it is in accordance with the study of legal protection against buyers for the cancellation of the binding sale and Purchase Agreement (PPJB) of apartment units by the court due to default.

RESULT AND DISCUSSION

Apartment units (Sarusun), it is currently in high demand among the public, especially for the middle of the city community as a solution for choosing a place to live, besides that sarusun is also used as an investment asset in the general public. We can understand the definition of an apartment unit in accordance with Section 1 Verse (3) of the UURS stating that “Apartment units that are generally used as residences and also have good access to public roads are called apartments or apartment units (Sarusun).”

The apartment unit (hereinafter referred as Sarusun) is also described in Section 1 Verse (3) Indonesia’s Act Number 103 Year 2015, state that owner dwelling house or residence by foreigners residing in Indonesia stating that apartment units that are generally used as residences and also have good access to public roads are called apartments or apartment units (Sarusun), meanwhile, according to the Indonesian dictionary (KBBI) explains that flats are buildings or multi-storey buildings divided into several dwellings each for one family. In accordance with the description of the definition of the apartment unit above, it can be interpreted that an apartment is a building in the form of a multi-storey building that becomes a residential unit that can be owned by everyone with the aim of choosing a house to live in, but it is also possible that it can be used for commercial purposes as well and in the current situation flats are also provided by the government as an assistance program for low-earning people (MBR) to meet housing needs. The sale and purchase of building and land objects is characterized by one of the main needs, namely making an engagement with prospective buyers as outlined in the sale and purchase Binding Agreement (PPJB) which contains matters related to prospective buyers will make a payment of a certain amount of money in the form of an advance payment to the developer or manager of unfinished construction. (Fennieka Kristanto, 2019) The implementation of PPJB is basically the same as the implementation of agreements in general, where the rights and obligations as achievements that must be fulfilled. However, often the parties in PPJB have a tendency to commit acts of default either intentionally or unintentionally. In this case there are several elements of the act of default itself, in accordance with the opinion of the Subekti there are 4 elements of default among them: 1) not doing what should be agreed or not carrying out the performance; 2) carrying out what was agreed but not as promised; 3) doing what he promised but was too late; and 4) doing something that according to the agreement should not be done. (Subekti, 2001)

The four elements of default that have been described above if carried out by one of the parties in PPJB, then the party has committed a default so that it is obliged to resolve the problems arising from the default. Settlement is often done by way of deliberation or negotiation, but if it does not find the results of the negotiations agreed upon then it can be resolved through the Local Court by filing a lawsuit on the basis of deeds that are all acts of default that have been committed. Implementation of efforts to resolve the problem to determine what legal consequences will be borne by the party who commits default, either legal consequences in the form of compensation in accordance with the nominal losses for actions that have occurred or up to legal consequences in accordance with the court decision of the panel of judges whose content of the decision.

The default committed by a party to an agreement will have legal consequences for the actions of the party concerned or by the debtor, then the creditor can sue the creditor based on the agreement agreed by both parties. In accordance with Indonesia Civil Code Section 1267 explains that there is a claim that can be made with “compensation, fulfillment of the engagement, fulfillment of the engagement with compensation, termination of the engagement, or termination of the engagement with compensation” so that the claim will be submitted to the creditor who has a determination to the debtor who committed the act of default. As for the opinion of Mariam Darus Badruzaman explained that “Breach of contract may be grounds for

terminating a reciprocal agreement. A reciprocal agreement is an agreement in which each party, whether debtor or creditor, has rights and obligations that must be fulfilled.. (Subekti, 2001)

In addition, if triggered in Indonesia Civil Code Section 1266, it explains that there is a void condition that is considered always included in an agreement when one of the parties commits an act of default. And there are other conditions that must be met to achieve the legal consequences of acts of default, namely the fulfillment of a court decision from a judge who decides that the agreement must be terminated or terminated or canceled because of a legitimate act of default committed by the party concerned with the agreement. So that an agreement that refers to Indonesia Civil Code Section 1266 and Section 1267, provides an opportunity to be released from liability in carrying out its achievements, especially in default of the reciprocal agreement made by the parties to the agreement. That it can be said that the legal consequences of an act of default include the cancellation of an agreement, it can also go hand in hand with Section 1265 of the Civil Code which explains that the agreement is canceled and everything will be returned to its original state or retroactive, (Herlian Budiono, 2005) that is, payments that have been made by the debtor in the provisions of Section 1359 Verse (1) of the Civil Code. But it must be understood that the existence of the validity of the terms of the invalidation of an agreement stipulated in Indonesia Civil Code Section 1265 explains that the provisions of the agreement have given birth to an engagement, where the agreement will be void in the event of conditions stipulated in the agreement as a confidential clause. (Suharnoko, 2014) Thus, it can be understood that the condition does not negate the fulfillment of the engagement, but obliges one of the parties that committed the act of default to return what was obtained when the event intended in the agreement occurred. (Gunawan Widjaja dan Kartini Muljadi, 2003)

In addition to what has been described above, there are also consequences of acts of default made in Section 1239 of the Civil Code, which explains that each party to do something, or not to do something, must be resolved by providing reimbursement of costs, losses and interest, if one of the parties to the agreement does not fulfill its obligations. In the law of engagement there is also an explanation regarding interest for the consequences of disputes arising due to the engagement described by J. Satrio explained that interest can be classified into 3 (three) types of interest including: 1) Moratory interest, which is interest owed because the debtor is late in fulfilling its obligations; 2) conventional interest, which is interest agreed by the parties; 3) compensatory interest, which is all interest outside the interest in the agreement; 4) conventional interest, which is interest agreed by the parties; and 5) compensatory interest, which. (J. Satrio, 2008)

It can also be a result of the dissolution of the alliance under Section 1381 of the Civil Code explains that the alliance is abolished because of the cancellation or cancellation as provided for in Section 1446-1456 of the Criminal Code and it is also a condition of Void provided for in Section 1265 of the Civil Code which states that “a condition of Void is a condition when fulfilled, stop the engagement and bring everything back, to its original state, as if there had never been an engagement. This condition does not delay the fulfillment of the alliance, only it obliges the creditor to return what has been received, when the intended event occurs.” So *actio pauliana*, this is one of the factors that can be used to cancel the agreement that can be abolished alliance between the debtor and the creditor in the agreement.

Referring to Act No. 8 Year 1999 About Consumers Defends (“UUPK”) specifically regulated the rights that can be obtained by every consumer or buyer in Section 4 which reads: "The Customers have the following right: a. Convenience, Ensure safety and security in consuming goods and / or services; b. Selecting products and/or services and procuring such consignments in return for the foreign currency and the terms and guarantees offered.; c. Accurate, clear, and honest information regarding the condition and warranty; d. hearing opinions and complaints; e. Obtaining suitable advocacy, defense, and dispute resolution; f. assistance and education; g. treated or served well, honestly, and without discrimination.; h. Receive

compensation, damages, and/or replacement if the goods and/or services received do not comply with the agreement or are not as they should be.; i. as stipulated in the provisions of laws and other regulations.”

The above consumer rights can be the basis for every consumer in terms of undergoing all transaction processes and can be the limits for every business actor to be able to better understand which things are his obligations in giving all rights to each consumer. Specifically in letter (h) aquo Section describes the right of every consumer to obtain compensation or replacement for something that is not obtained perfectly, this is also regulated in Section 19 of the UUPK regarding the responsibility of business actors to provide compensation for damage, pollution, and/or consumer losses and compensation can be in the form of Return of goods, replacement of similar or equivalent goods or services, health care, and compensation in accordance with the calculation of losses experienced by consumers. When associated with the case study in this study is very clear in the UUPK explained that the defendant as the owner or buyer Sarusun have rights that are maintained by law as the legal basis for its implementation and all of these things are the responsibility of the business actors, namely the plaintiff or manager Sarusun, but this is not fully obtained by, so that the PPJB object, namely Sarusun, cannot be controlled by the owner/buyer again but must be emptied and returned to the plaintiff or sarusun manager, without providing compensation, so that the fulfillment of Section 1266 and Section 1267 of the Civil Code is carried out perfectly.

It can be concluded that protection can also come from each party in instilling and applying the precautionary principle Every want to take legal or non-legal action, where the precautionary principle is a decisive action in the implementation of an activity that will bind one party to another, aims to maintain a healthy state during the exercise of all rights and obligations in, so that no party feels aggrieved or does not arise a sense of heaviness in carrying out obligations and one-sided in getting their respective rights.

As for the existence of legal protection against buyers who have paid off 16 (sixteen) units of Sarusun for the cancellation of Ppjb Sarusun by the court due to default, the interviewees argue that it does not exist because in that case there is already a verdict inkracht or there has been a decision from the panel of judges with permanent legal force and can not be filed further legal remedies so that the ppjb sarusun cancellation decision must be executed and implemented by the buyer as the defendant in the case. However, this case can be a lesson for all parties concerned, both for notaries, sellers, and especially buyers during the binding process of buying and selling.

Because in essence, installment payments and sarusun management fee payments are not a unity of the same nature, so they must be separated in relation to these two provisions. There is no specific legislation for the implementation of Ppjb Sarusun, but only based on the terms of validity of the agreement in Indonesia Civil Code Section 1320 which is the basic basis for the implementation of this Agreement and from this incident the buyer would also be more careful in studying each Section by Section to be agreed, and it can be seen that there are arrangements related to compensation for an end of the Alliance, namely in Section 4 Jo. Section 19 of the Act of Costumer Defense, Regulating consumers' rights to obtain compensation from businesses in the event of losses resulting from the actions of businesses, this is also regulated in Indonesia Civil Code Section 1495, hich states that there is an obligation for sellers or businesses to provide compensation in the form of a refund or delivery of goods in accordance with the quantity and price of goods that have been delivered by consumers.

CONCLUSION

Legal protection law against parties who have do obligations on PPJB sarusun canceled based on a court decision resulting in the loss of rights in ownership of Sarusun, among others, first related to compensation for the good faith of the prospective buyer as the defendant in the case study in making installment payments repayment of Sarusun as agreed in Section 9.2 Pppjb Sarusun, it is better that the compensation is in the decision of the panel of judges and is in the consideration that must be done by the plaintiff as a developer who carries out compensation for losses to the defendant as a prospective buyer and/or owner of Sarusun because it is regulated in Section 9.2. PPJB Sarusun which explains the mechanism of return due to cancellation PPJB Sarusun.

It is better for each party who will make a Sarusun transaction, especially prospective buyers of Sarusun in the future to buy Sarusun tied to their obligations in a PPJB, you should first understand what will be agreed because the PPJB made before the notary will be the basis for transferring juridical rights to the Sarusun when all the conditions in the PPJB have been met. Therefore, the role of the notary should be a place for legal consultation or legal counseling regarding the contents contained in the PPJB which is used as the authentic deed. The goal is for the buyer to know what are the obligations and rights that must be lived and obtained, and for the buyer to know that the obligation is not only to pay the installment payment but also the payment of dues from the beginning of the handover of the Sarusun and in addition for the buyer to know that the transfer of juridical rights, namely ownership of the Sarusun, is to carry out all obligations in the Sarusun without exception. So that the buyer is not negligent in performing their obligations and so as not to be a reason for the breakup of an engagement or the cancellation of PPJB because if it happens it can lead to the loss of ownership of Sarusun even though it has been controlled or has been repaid because it has been agreed in the agreement that binds the buyer.

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