

Transfer of Land Ownership through a Binding Agreement of Sale and Purchase under the Hand (Comparative Study Reviewed in the Perspective of Civil Law and Islamic Law)

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ABSTRACT

Keywords: Sale and Purchase Agreement (PPJB), Binding Agreement, Default, Transfer of Land Rights.

This study aims to analyze the legal strength of the binding sale and purchase agreement under the hand and analyze the legal protection for the buyer if the seller commits a Default on the binding sale and purchase agreement. This research is a doctrinal research. In practice, in the implementation of the Sale and Purchase Agreement, there are still many development actors who do not make the Sale and Purchase Agreement in front of a notary in the form of an authentic deed, but make it in the form of a deed under hand. A Sale and Purchase Agreement made with an authentic deed and a deed under hand has a fundamental difference in terms of its evidentiary strength. The Sale and Purchase Binding Agreement in its implementation in the community cannot always run smoothly, sometimes some factors limit the engagement in continuing or until it becomes invalid, The case can be known that PPJB can be asked for compensation if it is not by the agreement of the parties in the agreement, which in this case the seller commits a breach of performance, while the buyer, in this case, is in good faith by fulfilling what has been As stated in the PPJB, the Agreement can be cancelled if it is not by the subjective conditions or the objective requirements of the agreement as stipulated in article 1320 of the Civil Code.



Introduction

Land has a very important meaning for every individual in society because it has a close relationship with the existence of each human being in the environment and its survival (Sulisrudatin, 2018). Apart from being a place to live, the land also contains an economic value for humans, it can be used as a source of livelihood, both for farming and to carry out business, and can also be used as collateral for loans, as well as a source of human livelihood in the future (Ridho, 2022).

The need for a place to live (board) is a primary need for a person, in addition to clothing and food. In addition to housing, it can also be used as an investment. Housing and settlements, both in the form of land and buildings, are very important in supporting

the continuity and improvement of people's lives (Nikmah, Disemadi, & Purwanti, 2020). The rapid development of the population also has an impact on the supply of land and buildings as basic human needs due to the population density factor that occurs, although the provision of housing needs is one of the duties and responsibilities of the state, as mandated by the 1945 Constitution (Sakti & Budhisulistiyawati, 2020).

The acquisition of land rights requires a certain process or mechanism, for example, inheritance, grants, buying and selling, and so on (Silalahi, 2020). The transaction of buying and selling land and/or buildings is inseparable from the existence of an agreement/agreement (Satrianingsih & Wirasila, 2019). An agreement is a legal relationship between two people or two parties, based on which one party has the right to demand something from the other party, and the other party is obliged to fulfil the demand an agreement is an event where one makes a promise to another person or both make a promise to do something that has been agreed (Amanta, Mathon, & Azwar, 2024).

In addition, if referring to the provisions of Article 1458 of the Civil Code, it states that "the sale and purchase is considered to have occurred between the two parties when they have reached an agreement on the goods and price, even though the goods have not been handed over or the price has not been paid". Based on the reading of the article above, the sale and purchase agreement can be carried out by giving a ban first, meaning that the sale and purchase transaction is still valid in addition to the concept of light and cash (Sadewo, 2019).

Agreements in land purchase and sale transactions today are beginning to experience rapid development. The sale and purchase transaction starts from an agreement under hand (Palar & Mekka, 2023). In general, before the parties enter into a sale and purchase agreement, they usually do a sale and purchase agreement (PPJB) first. The meaning of PPJB itself is an agreement between the seller and the buyer before the sale and purchase are carried out because there are elements that must be met for the sale and purchase (Pinem, Purba, & Sembiring, 2022). In terms of buying and selling land rights, the community is still not aware of the need for agreements made in front of the authorized officials for it. In order to ensure legal certainty for the fulfilment of the rights and obligations of the parties (Rosadi, 2020).

Generally, the parties who carry out transactions of buying and selling land and buildings by agreeing without the presence of a public official, where the content of the agreement has been agreed upon by the parties which is often called PPJB (purchase and sale agreement) or Deed underhand (Ubaidi, Dewi, & Koeswarni, 2021).

A deed under hand is a deed that is deliberately made for proof by the parties without assistance from a public official that has been determined by laws and regulations. In addition, the agreement must be equipped with witnesses and other evidence. Therefore, each deed under hand is recommended to contain at least two witnesses who are mature and capable of strengthening the evidence (Prasetyo, 2017).

In an etymological review of Islamic law, as stated by Wahbah al-Zuhaili, the contract includes: "The bond between two things, both tangible and meaningful, from one aspect or two aspects."

The definition of the contract in terms of fiqh scholars can be reviewed from two aspects, namely in general and in particular (JODHI, Suryadi, & Ayu, 2021). In general, the contract in a broad sense is almost the same as the meaning of the contract in terms of language according to the opinion of the scholars of Shafi'iyah, Malikiyah, and Hanabilah, namely: "Everything that is done by a person based on his own will, such as waqf, talaq, liberation, or something whose formation requires the desire of two people, such as buying and selling, representation, and pawn." The meaning of akad in a special sense put forward by fiqh scholars includes: "The bond between ijab and Kabul is based on the provisions of sharia which have implications for the object." "The relationship of the speech of one of the people who contract with the other in a sharia manner in terms of what appears and has implications for the object."

The inclusion of words by the will of the provisions of Sharia in the definition above means that any agreement made by two or more parties is not considered valid if it is not in line with the will or provisions that have been stipulated by Sharia (Allah) and the Prophet), for example, an agreement to carry out prohibited transactions such as riba or other prohibited transactions (Mayasari, 2017). If the ijab and Kabul have been carried out by the conditions and will of the shari'a', then the legal consequences of the agreement will arise.

Arising from legal consequences/influencing means providing legal consequences, namely the transfer of goods to the buyer and money to the seller in the sale and purchase contract. Thus, the contract is a bond between ijab and kabul which shows the willingness of the parties and the emergence of legal consequences for the object to be contracted.

Hasbi Ash-Shiddieqy, quoting the definition put forward by Sanhury, stated that what is meant by a contract is: "An alliance of ijab and Kabul that is justified by sharia which stipulates the willingness between the two parties."

Based on the description put forward by the scholars above, three important points must be considered in the contract. First, the contract is a meeting/relationship between ijab and Kabul that gives rise to legal consequences. Ijab is an offer submitted by one party, and Kabul is an answer to the agreement expressed by the other party in response to the offer of the first party. Second, the contract is a legal action between two parties because the contract is an ijab meeting that represents the will of one party and a Kabul that expresses the will of the other party. Third, the purpose of the contract is to give birth to a legal effect.

Thus, if there are elements that are not fulfilled, then the sale and purchase are invalid. However, from the development of science and information technology along with the development of the times, the values of the elements mentioned above can change and must undergo changes that can result in the development of each element of buying and selling.

The purpose of this research is directed to answer two things, First, to find out and analyze the Legal Strength of Binding Sale and Purchase Agreements under the Hand in the Perspective of Civil Law and Islamic Law. Second, this study aims to find out and

analyze the Legal Protection for Buyers If the Seller Defaults on the Binding Sale and Purchase Agreement Under the Hand.

Research Methods

Research Approach

Research with a doctrinal approach is directed at a set of norms as the research target through analysis of relations between norms, content analysis, the merger of norm theories, and legal principles. Research like this was born as a premise that the law is a norm formed by the state and must be avoided from non-judicial factors. In simple terms, researchers will connect one norm to another, or connect it to a specific legal event. The doctrinal approach with a normative character as a form of approach in legal research specializes in efforts to solve legal problems based on written law and legal practice.

Source of Materials

The sources of materials presented in normative research are three types of legal materials used as follows:

a. Bahan Primer

Primary legal materials are legal materials that have binding legal force. In this study, the primary legal materials used are the 1945 Constitution, the Civil Code, the Basic Agrarian Law, and Government Regulation Number 24 of 1997 concerning Land Registration. Islamic law in the form of the Quran, Sunnah and Al-Hadith, as well as the Compilation of Islamic Economic Law.

b. Secondary materials

Secondary legal materials, namely legal materials whose function complements the primary legal materials and are non-binding. For example, the results of legal research, legal theories, official and unofficial legal literature (scientific books) are published, legal journals, mass media, papers and opinions of legal scholars.

c. Material Analysis

The analysis of the materials used in this study will be analyzed qualitatively to describe the answer to the research statement:

Problem Formulation (R1)

The material obtained during the research was directed to analyze several main things, including the concept of the process of settling a binding sale and purchase agreement under the hands from the perspective of Civil Law and Islamic Law. In this section, the researcher explores from the perspective of the concept of regulation related to the legal force of the binding agreement of sale and purchase under the hand.

Problem Formulation (R2)

To answer the question from the formulation of problem 2 (two), the researcher focuses on efforts in terms of Legal Protection for Buyers If the Seller Defaults on the Binding Agreement of Sale and Purchase under the Hands in the Perspective of Civil Law and Islamic Law.

Time allocation

Research is carried out for approximately 1 (one) year starting from the preparation of research design, research design seminars, literature studies, data collection, report preparation, seminars on research results, final exams and publications.

Results and Discussion

The Process of Implementing a Binding Sale and Purchase Agreement Under Hands in the Perspective of Civil Law

Relationships that often occur between fellow communities result in legal relationships such as buying and selling transactions, or business negotiations that inevitably occur every day. An agreement between two parties or more based on the desire to get something or rights. A person's rights can be obtained if we carry out obligations or interactions with other parties, commonly called civil legal relationships. But not all rights and obligations can be planned as agreed, there must be one party or individual who does not agree, making disputes between parties until a default occurs. The purpose of a binding sale and purchase agreement is only a temporary binding agreement, which is the essence of the seller's agreement to bind himself to the buyer.

Before agreeing, the two parties should discuss the contents of the agreement letter that is used so that there is no default or one of the parties does not accept the result of the agreement. In theory, an agreement arises based on an agreement, it occurs because there is an intention of the people concerned, but in practice what is the handle is the statement of will or intention. Based on the statement of reciprocal intent, an agreement occurs and from that agreement comes the rights and obligations of both parties or one of the parties.

The Process of Implementing a Binding Sale and Purchase Agreement Under the Hand in the Perspective of Islamic Law

Islam is a perfect religion that focuses on the issue of Aqidah and Sharia, in explaining the relationship between the servant and his Rabb, the relationship between the Rabb and his servant and his manners, Islam also explains various kinds of rules of life, including muamalah and the economic system, especially buying and selling. Allah commands people to earn a living using a business that is allowed by Islamic law after a person has carried out his duty to worship.

Basically, in living their lives, humans have various needs, both food, clothing, and boards. However, man is aware of his impossible ability to meet his own needs without having relationships with others to meet his life needs. In Islam, buying and selling are legalized by law and justified by religion, as long as they meet the requirements and the pillars. Thus, this law has been agreed upon by ijma' (mujahidin scholars). It has been affirmed in the Qur'an which explains that selling is halal, while buying and selling that contains ambiguity is prohibited.

Al-Sunnah

The legal basis of buying and selling in the sunnah of the Prophet (peace and blessings of Allaah be upon him) is as follows: "From Sulaiman Ibn Daud added, the

Prophet (peace and blessings of Allaah be upon him) said, "Those who agree are bound by the conditions they make." (HR. Abu Daud)

Jabir Ibn Abdullah (may Allah be pleased with him) said, "The conditions between them." Ibn Umar said, "Every condition that is contrary to the book of Allah is a false condition, even if it is a hundred conditions." (HR. Bukhari)

Then Allah created them with the instinct of helping to meet the needs of their lives. If Allah does not provide a just way to meet their needs, it will certainly cause harm, narrowness, and difficulties in human life, especially for the weak. To bridge this, Allah SWT. Sharia buying and selling fairly.

The Difference Between Binding Agreements of Sale and Purchase under Hands in the Perspective of Civil Law and Islamic Law

There are several comparisons of binding agreements of sale and purchase underhand from the perspective of civil law and Islamic law, namely:

Table 1

The Difference Between an Agreement according to Islamic Law and an Agreement According to the Civil Code

Variable	Agreements in Civil Law	Akad in Islamic Law
Form of Agreement Deed	Authentic and under the hands of Non-Authentic (under the hands)	Written, spoken and deed
Elements of the Agreement	Terms of validity of the agreement: <ol style="list-style-type: none"> 1. Agree with those who bind themselves 2. The ability to make an alliance 3. Something specific 4. A halal cause. 	Elements of the Contract: <ol style="list-style-type: none"> 1. Rukun Akad; <ol style="list-style-type: none"> a. Parties who make the contract b. Statement of the will of the parties c. The object of contract d. Purpose of the contract 2. Conditions of the contract <ol style="list-style-type: none"> a. Conditions for the formation of the contract b. Conditions for the validity of the contract c. Conditions for the validity of the contract

			d. The conditions bind it to the contract.
Parties and Witnesses	and	It is made in front of a notary and attended by the parties and witnessed by 2 witnesses in agreeing, while the agreement under hand is only attended by the parties and witnessed by 2 witnesses in agreeing.	In Islam, all acts of agreements/contracts have been believed by religious norms to be accountable before ALLAH SWT. When there is a denial between the parties to the contract. And it was attended by the parties and witnessed by 2 male witnesses or if the witness was 1 man, then 2 female witnesses were added.

In the explanation of the binding agreement of sale and purchase according to the Civil Code and Islamic law in the KHES in general, there are differences including Article 1313 of the Civil Code states that "An agreement is an act in which one or more persons bind themselves to one or more other persons". The meaning of the explanation of the agreement in Article 1313 of the Civil Code here can be said to be the same as the contract. As explained in Article 20 of the KHES, "An agreement is an agreement between two or more parties to do and or not perform certain legal acts".

Legal Protection for Buyers If the Seller Commits an Act of Default on the Sale and Purchase Agreement under the Hands in the Perspective of Civil Law

Legal protection is a universal concept of the state of law. Legal protection consists of two forms, namely preventive legal protection and repressive legal protection, namely: Preventive Legal Protection which is preventive is interpreted as prevention. According to Satjipto Rahardjo, legal protection is to protect human rights that are harmed by others and that protection is given to the community so that they can enjoy all the rights provided by the law.

Philipus M. Hadjon argued that legal protection is an act to protect or provide assistance to legal subjects, using legal tools.

A buyer in good faith is a buyer who does not know and cannot be considered to have known about defects in the process of transferring the rights to the land he has purchased. From the results of the literature review, it can be seen that there is agreement among the authors that the "buyer in good faith" should be interpreted as: "an honest buyer, not knowing the defects of the goods purchased". Regarding the definition of a buyer in good faith, R. Subekti formulated that in this regard, it is strengthened in the provisions of the Civil Code which provides freedom for the parties to make an agreement that determines the content of the agreement is entirely under the authority of the parties. Like the law of treaties in general, binding agreements on sale and purchase adhere to an open system. An open system in this case can be interpreted as everyone can make any

agreement, even though the laws and regulations do not regulate it, in other words, the open system is referred to as the "Principle of freedom of contract".

Restrictive Legal Protection

Meanwhile, repressive legal protection is legal protection provided in the event of a violation of the law. The form of legal protection includes law enforcement, which includes the provision of sanctions, such as fines, compensation, imprisonment and other additional punishments by resolving disputes that are taken to court.

Legal protection aims to protect human rights that are harmed by others and that protection is given to the community so that they can enjoy all the rights guaranteed to be protected by law. The law can be used to realize legal protection that is adaptive and flexible, as well as predictive and anticipatory. The law is urgently needed for the weak and not yet strong socially, economically and politically to obtain social justice.

Legal Protection for Buyers If the Seller Commits a Breach of Sale and Purchase Agreement Under the Hands in the Perspective of Islamic Law

Islamic law contributes quite a lot as a measure to protect buyers. The purpose of Islamic Law is to regulate the relationship between sellers and buyers solely to realize the benefits for mankind. As we know, Islamic Law has the purpose of maintaining the benefits of human life, both individually and socially.

As Islamic Law is used as a guideline for life, it is appropriate for Islamic Law to take part in regulating human relationships. One of them is the relationship between the seller and the buyer. Islamic law cannot allow the seller to act as he pleases while executing a transaction.

It can be understood that the law of buying and selling such as buying and selling land is allowed by Islam or halal. In Islam, of course, something that is allowed or halal has its limitations and can become haram if it is not carried out according to the rules and justice of each other. Buying and selling land in Islam is certainly not something that is prohibited, as long as it has clarity of ownership, the obligations carried out are fulfilled and does not affect society, it does not contain gharar, which is a vague buying and selling and there is a possibility of fraud. We should not sell or buy land whose ownership is unclear, and the land is not disputed land if the disputed land is sold will certainly harm one of the parties, and not waqf land and the completeness of documents and legal procedures in the country, it must be clear the status, price of the land and ownership, for that there is a land certificate which means that the owner of the certificate has the right and can use the land while it is still in the applicable legal rules.

Conclusion

In the process of implementing the binding agreement of sale and purchase under the hands of this research case, the principle is subject to the general provisions of the agreement contained in Book III of the Civil Code (KUH Perbaik) concerning Engagement and in Islamic law is subject to the provisions of the Quran, Hadith and Compilation of Sharia Economic Law. The implementation of the binding sale and purchase agreement between the buyer and the seller has been by the provisions that have

been agreed upon by both parties based on the agreement made, but in its implementation, there is a default caused by the seller not fulfilling its obligation to follow up the process from PPJB which has been paid off to the making of a sale and purchase deed before PPAT and the seller has also not handed over the purchased land and buildings to the buyer. Meanwhile, the difference in the implementation of binding agreements on the sale and purchase of land based on civil and Islamic law lies in the halal and haram of the agreement or contract, the difference in the source of the agreement, the difference in the age limit of proficiency, the difference in the halal substance, the difference in the rights and obligations of the seller and the buyer.

As for the legal protection of the parties who default in the sale and purchase agreement carried out under the hand, it can be resolved by two channels in general, namely dispute resolution outside the court (non-litigation) and dispute resolution in court (litigation). The difference here is the settlement of disputes in court where civil law disputes are resolved in the District Court while Islamic civil law or sharia economic disputes are resolved in the Religious Court.

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