

# Legal Force Of The Binding Agreement For Sale And Purchase In Full And The Power To Sell With A Non-Electronic Id Card Identity

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## Abstract.

*A Sale and Purchase Binding Agreement (PPJB) is an obligatoir agreement that usually includes a power to sell clause. Under certain conditions, illegal acts may arise such as the seller disappearing after signing the deed as in the case of a civil case registered in the Karanganyar District court number 2 / Pdt.G / 2021 / PN Krg. The obligation to include an Electronic KTP in the transfer of rights raises problems with the paid PPJB and selling power made during the transition of self-identity from Non-Electronic KTP to Electronic KTP, namely in 2011 at which time the process of transferring rights at the National Land Agency (BPN) office was still received using a non-electronic KTP. This research method is juridical normative to determine the legal strength of paid off PPJB and the power to sell with a non-electronic ID card identity. The legal force of PPJB in full and the power to sell with a non-electronic ID card identity is valid and has binding legal consequences and must be implemented by the parties as ordered by law, if the PPJB is carried out and meets the requirements for the validity of the agreement as stipulated in Article 1320 of the Civil Code, the fulfillment of the principles of the agreement and the elements of the agreement therein and does not violate the provisions, decency and decency and the laws in force at the time the deed was made. Apart from that, the legal force of proof attached to an authentic deed is perfect in the sense that the proof is sufficient with the deed itself unless there is evidence of an opponent who proves otherwise and the judge is bound by the deed itself as long as the deed made is in accordance with the provisions of the validity of a deed as stipulated in the UUJN and Civil Code.*

**Keywords:** Sale and Purchase Binding Agreement (PPJB) paid off, Power to sell and non-electronic ID card.

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## I. INTRODUCTION

The development of diverse legal traffic, especially in public life, increasingly demands legal certainty for individual and legal subjects. An engagement or covenant is an event where a person promises to another person or where two people promise each other to do something. [1] The legal regulation system of agreements is an *open system* that contains the freedom to enter into agreements, both regulated and not yet regulated in the Civil Code (KUHPercivil). Article 1338 paragraph (1) of the Civil Code expressly states that all agreements made validly apply as law to those who make them. If analyzed further, the provisions of the article provide freedom for the parties to (Harahap, 1986): a). Make or not make an agreement b). Entering into an agreement with anyone c). Determine the content of the agreement, its implementation and terms d). Determine whether the form is written or oral. Treaty law is part of civil (*private*) law. Referred to as part of civil law caused because violation of the obligations specified in the agreement is purely the responsibility of the parties to the agreement. [2] According to Article 1457 of the Civil Code, a sale and purchase agreement is an agreement between a seller and a buyer in which the seller binds himself to surrender his title to an item to the buyer, and the buyer binds himself to pay the price of that item. To be able to transfer land rights, you must use the PPAT deed as stipulated in the Law and regulations regarding land rights, [3] Basic Agrarian Law (UUPA), since its promulgation, the definition of land sale and purchase is no longer an agreement as in Article 1457 of the Indonesian Civil Code, but a legal act of transfer of rights forever which is cash and further regulated in the Implementing Regulations of the UUPA namely Government Regulation (PP) Number 10 of 1961 which has been replaced by Government Regulation Number 24 of 1997 concerning Land Registration in Article 37 paragraph (1) which reads:

"Transfer of land rights and property rights to apartment units through sale-purchase, exchange, grants, company data entry and legal acts of transfer of rights because auctions can only be registered if proven by a deed made by a Land Deed Making Officer (PPAT) authorized according to the provisions of the regulation applicable legislation." At the empirical level, under certain conditions resulting in a Sale and Purchase Deed (AJB) cannot be made by PPAT, because there are requirements that must be met first, the

Notary / PPAT provides a solution, namely making a binding agreement between buyers and sellers, in this case known as PPJB (Sale and Purchase Engagement Agreement), which in practice often causes problems, both conflicts originating from buyers, sellers, even from Notaries / PPAT, which in fact PPJB is a preliminary agreement. [4] In general, a sale and purchase binding agreement contains promises that must be fulfilled first by one of the parties or parties before the main agreement can be carried out which is the ultimate goal of the parties. [5] The certified land PPJB is an implementation of the principle of freedom to make agreements, where the parties can freely determine their will in making agreements under any name as long as the agreement does not conflict with the provisions of the applicable laws and regulations as well as the generally recognized principles of propriety and justice". [6] In principle, a Land PPJB is subject to the general provisions of the agreement contained in Book III of the Civil Code on Engagement, Article 1313 of the Civil Code, which provides a formulation of the Agreement, namely "an agreement is an act by which one or more persons bind themselves to one or more other persons".

Abdul Kadir Muhammad stated that the definition of agreement has several elements, namely: [7] a. The existence of parties to at least two people b. The existence of agreement of the parties c. The existence of goals to be achieved d. There are achievements to be achieved. Article 1338 paragraph (1) of the Civil Code states that, all consents made validly apply as law to those who make them. Article 1338 of the Civil Code contains the principle of freedom of contract, meaning that everyone is free to enter into an agreement in any form, both its form, content, name and to whom the agreement is addressed. In the provisions of Article 1320 of the Civil Code, there are four conditions to determine the validity of the agreement, namely: a. Agree those who bind themselves b. Able to make a covenant c. A certain thing d. A lawful cause. However, there is a possibility that carrying out all the conditions agreed in the sale and purchase binding agreement may take a long time, so there is also a possibility for prospective sellers to be unable to sign the sale and purchase deed (AJB). [8] PPJB for immovable objects is usually made by including a clause granting power to sell to a second party as a buyer. The inclusion of the power to sell clause is given with the consideration that if the main things in the PPJB have been fulfilled, the second party as the buyer, can sell the object in the PPJB to himself directly. Based on Article 1796 of the Civil Code, the grant of power formulated in general words only includes the act of management, while to transfer objects can only be done by the Owner with a grant of power formulated in express words. Based on these provisions, the power of sale must be given in the form of a special power of attorney, not in the form of a general power of attorney and use firm words.

[9] In registration and transfer of land rights, Government Regulation Number 24 of 1997 concerning Land Registration article 45 paragraph (1) point c states that the Head of the Land Office refuses to register the transfer or encumbrance of rights, if the documents required for registration of the transfer or encumbrance of the rights concerned are incomplete. Regarding the requirements for the transfer of land rights of UUPA, Regulation of the Minister of Agrarian State/Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration and Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 1 of 2010 concerning Service Standards and Land Regulation, for the identity of the parties it is not clearly and unequivocally stated the form of identity whether they must use an Identity Card (KTP) Electronic or can use a Non-Electronic ID Card. The Electronic KTP program itself, Indonesia has been started since 2009 with the appointment of four cities as national pilot projects. The four cities are Padang, Makassar, Yogyakarta and Denpasar. While other districts / cities were officially launched by the Ministry of Home Affairs in February 2011 whose implementation was divided into two stages. The first phase of implementation began in 2011 and ended on April 30, 2012 covering 67 million people in 2348 sub-districts and 197 districts/cities. While the second phase covers 105 million people spread across 300 other regencies/cities in Indonesia. [10] The obligation to include an Electronic KTP in registering the transfer of land rights at the BPN office raises a separate problem with the paid off PPJB and the selling power made by the parties during the transition of identity from Non-Electronic KTP to Electronic KTP.

Namely in 2011 which at that time was still received the process of transferring land rights at the National Land Agency (BPN) using a non-electronic KTP. In this study, we will examine and discuss a

problem related to the transfer of land rights based on the Deed of PPJB in full and the power to sell which was made during the transition period of the non-electronic KTP program to Electronic KTP, namely in 2011 and the registration process for the transfer of rights was carried out when the full Electronic KTP program was carried out, namely in 2021. So there is a policy at BPN at the time of registration that requires identity in the AJB made by PPAT for the transition process must be with an Electronic KTP. In this case, the author takes the example of a civil case registered at the Karanganyar District Court number 2/Pdt.G/2021/PN Krg. The PPJB in full and the power to sell that the author uses as an example, made by the parties in good faith is an authentic deed and based on the UUPA has fulfilled the principle of light and cash proven to have been paid in cash after signing the PPJB deed and making the deed before a Notary and handing over the certificate to the buyer. The PPJB deed is paid off and the power to sell which the transition process cannot be carried out due to the absence of a verified and validated KTP (Electronic KTP) of the seller as required by BPN made before PP, Notary in Karanganyar regency whose case was registered at the Karanganyar District court number 2 / Pdt.G / 2021 / PN Krg with a brief description of the chronology of the case as follows:

That on August 19, 2011 between the Plaintiff (Mr. TP) and the Defendants (Mr. HT and Mrs. ILN) faced PP, as Notary in Karanganyar Regency, to make a full sale and purchase bond agreement No. 67 dated August 19, 2011 and Power of Attorney to sell No. 68 dated August 19, 2011, on a piece of land with a Title Certificate (SHM) on behalf of HT/TLN. That the Certificate of Property Rights (SHM) in the name of HT / TLN from 2011 until this case was registered in the Karanganyar District court was already in the possession of the plaintiff, but the plaintiff encountered obstacles to change the name of the certificate because for the transfer of SHM name a verified and validated KTP or electronic ID card was needed. The plaintiff (buyer) found an obstacle because the buyer did not know the existence of the defendants (seller) to ask for an electronic ID card, so that the condition harmed the Plaintiff and did not protect the plaintiff's legal interests (buyer). Based on the background description above, the scope of discussion and study that the author will conduct is related to the legal strength of PPJB Lunas and the Power to sell with an unverified and validated KTP identity (Non-Electronic KTP) in the process of transferring land rights.

## **II. METHODS**

The research method of this article is juridical normative which is by examining existing legal materials, both from laws and regulations and those derived from various other legal materials in order to examine the legal strength of the Binding Agreement for Sale and Purchase in Full and Power to Sell with a non-electronic ID card identity in the process of transferring rights. Research data sources include primary legal materials and secondary legal materials. Primary materials, including: a. Civil Code, b. Law Number 2 of 2014, c. UUPA, d. PP Number 24 of 1997 e. PerPres Number 112 of 2013. Secondary legal material is legal material that provides an explanation of primary legal material. Secondary legal materials can be in the form of legal expert opinions, legal research results, and scientific work results from legal circles. The analytical method used in this study is qualitative descriptive method.

## **III. RESULTS AND DISCUSSION**

The agreement is essentially a legal act of the community to bind itself to each other which requires the occurrence of an agreement from the parties. [11] In the Law of Treaties, the Main Agreement and the Assistance Agreement are known. The Main Agreement is an agreement that has its own reasons for the existence of the agreement. Assistance Agreements function and have the purpose of preparing, affirming, strengthening, regulating, amending or resolving a legal relationship. As an aid agreement, the agreement can be in the form of a preliminary agreement, which is an agreement where the parties bind each other for the occurrence of a new agreement / principal which is the purpose of the parties, for example PPJB. The Deed of Land Ownership is a sign of proof of binding the land sale and purchase agreement between the parties, in order to provide legal protection and safeguard the interests of the parties who will carry out land or land and building sale and purchase transactions that have not met the requirements for a Sale and Purchase Deed, a binding agreement for Sale and Purchase is made in accordance with the agreement

contained in the agreement. [12] PPJB is an agreement between parties that agrees based on the principle of freedom of contract as long as the agreement made does not conflict with applicable legislation. [13]

Therefore, PPJB is an obligatoir agreement without diminishing, both the elements of the agreement, the terms of validity of the agreement and the legal principles of the agreement. In the theory of legal certainty, it contains the understanding of a general legal rule for individuals where the legal rule is made to find out which actions can or cannot be done. The value of legal certainty is a value that in principle provides legal protection for every citizen from arbitrary power, so that the law gives responsibility to the state to be able to provide guarantees of protection for every citizen. [14] Gustav Radbruch argues that legal certainty is one of the products of law or more specifically a product of legislation. Law is a positive thing that is able to regulate the interests of every human being in society and must always be obeyed even though, the positive law is considered unfair. In essence, the law must be definite and just. That is, definite law is a guide for conduct and fair is a guideline for conduct that must support between an order and be considered reasonable. Only by being certain and fair, can the law be carried out in accordance with its functions and will have legal force in acting. PPJB land rights are basically subject to the provisions of regulations regarding land itself, namely Law Number 5 of 1960 concerning Basic Agrarian Principles (hereinafter referred to as UUPA) and Government Regulation Number 24 of 1997 concerning Land Registration. Article 5 of the UUPA basically states that the land law contained in the applicable UUPA is customary law, so that the sale and purchase of land rights must be based on the principles adopted in customary law (especially in the case of buying and selling land rights), which must be cash, real and clear.

Cash in the sense that the sale and purchase of land rights is carried out by surrender of rights in perpetuity and at that time payment is also made by the buyer received by the seller. [15] So that the sale and purchase of land rights in cash can be interpreted that payments must be made in full at once and in the concept of buying and selling land and / or buildings, the transfer of land rights only occurs after the signing of the AJB before the authorized official, namely PPAT. [16] The implementation of the cash principle in the sale and purchase of land rights can also be said to be at the same time the fulfillment of the clear and real principle in the sale and purchase of land rights. Real in the sense that buying and selling carried out before the PPAT shows that there is a real legal act of buying and selling carried out, and it is clear in the sense that by doing the sale and purchase before the PPAT the legal act of buying and selling is not a legal act carried out clandestinely. Herlien Budiono, stated that PPJB is an aid agreement that functions as a preliminary agreement in free form. [17] Meanwhile, R. Subekti defines the sale and purchase binding as an agreement between the seller and the buyer before the sale and purchase is carried out because there are problems that must be met for the sale and purchase, including the land title certificate has not been registered in the name of the seller and is still in the process of turning over its name, and there has not been repayment of the price of the object of sale and purchase or the certificate is still diroya. [18] As the opinion of R. Subekti and Herlien Budiono mentioned above, it can be seen that in principle the PPJB is a form of legal action agreement in general which is subject to Book III of the Civil Code, because its form is free and is only a preliminary agreement before the implementation of Sale and Purchase in front of the PPAT which is based on land provisions, namely the UUPA and Government Regulations on Land Registration.

Although PPJB is basically carried out on land rights, the agreement can be said not to be a sale and purchase of land rights as subject to the UUPA and Government Regulations on land registration. Because as the author has explained above, the UUPA which is the basis of national land law must be based on the principles in customary law above. So that the position of PPJB is the realm of treaty legal acts that are subject to civil law, especially treaty law as contained in Book III of the Civil Code. The position of PPJB on land rights which is a form of legal act of the agreement is the first step for the parties to bind themselves to carry out further legal actions based on the UUPA and Government Regulations on Land Registration, one of which is by buying and selling in front of the PPAT with the signing of the AJB. PPJB is a form of legal action agreement, so the sale and purchase binding agreement must meet the requirements for the validity of the agreement as contained in Article 1320 of the Civil Code, which include:

1. Agree with those who bind themselves

Agreeing in an agreement is a condition that shows both parties do not reject what the other party wants. With agreement, the agreement is in place, binding on both parties and enforceable.

2. Proficiency

Proficiency is a person's ability that is assessed by law in carrying out legal actions.

3. A certain thing

The agreement made by the parties must be about a certain matter or can be determined. A certain thing can be interpreted as an object of agreement. A covenant must have a clear object on the subject matter of the covenant.

4. A lawful cause

A lawful cause is the fourth or final condition for the validity of the agreement.

That PPJB gives birth to rights and obligations between the parties, where after the deed of PPJB is made and the principle of sale and purchase contained in the UUPA is fulfilled, namely light and cash, the seller and the buyer transfer land rights by making AJB before the PPAT. In line with that, in SEMA 4/2016: Civil Chamber Point 7 it is stated that: "The transfer of land rights based on the Binding Sale and Purchase Agreement (PPJB) legally occurs if the buyer has paid in full the price of the land and has taken control of the object of sale and purchase and is carried out in good faith". Apart from article 1320 of the Civil Code related to the legal terms of the agreement, the agreement must also meet several principles that apply in the agreement including:

1. The principle of good faith

In Article 1338 paragraph (3) of the Civil Code which stipulates that the contract must be executed in good faith. The purpose of the formulation of Article 1338 paragraph (3) of the Civil Code concerning good faith is that an agreement made should not be intended since the agreement is closed is not at all intended to harm the interests of debtors, creditors, other parties and other third parties outside the agreement. Referring to the provisions of Article 1338 paragraph (3) of the Civil Code, Agus Yudha Hernoko explained that what is meant by good faith means carrying out the agreement in good faith. That is, in carrying out covenants, honesty must walk in the heartstrings of a human being. [19] That the person who will make the agreement must be done in good faith. Good faith in a subjective sense can be interpreted as a person's honesty, that is, what lies in a person at the time of a legal act. While good faith in an objective sense is that the implementation of a legal agreement must be based on norms of compliance or what is felt to be appropriate in society. Article 1965 of the Indonesian Civil Code further states that good faith must forever be presumed to exist, while anyone who expresses bad faith must prove it.

2. The Principle of Freedom of Contract

The principle of freedom of contract is contained in Article 1338 paragraph (1) of the Civil Code which reads: "All consents made validly apply as law to those who make them". In this principle is contained a view that people are free to do or not to make agreements, free with whom they enter into agreements, free about what is agreed and free to set the terms of the covenant. The principle of freedom of contract is that everyone is free to enter into any agreement, whether the agreement has been regulated in law or has not been regulated in law. The principle of freedom of contract is the most important principle in treaty law, because from this principle it appears that there are statements and expressions of human rights in entering into agreements as well as providing opportunities for the development of treaty law. In addition, this principle is also the basis of the law of treaties.

3. Wings konsensualisme

In the principle of consensualism, the parties to the agreement must agree, agree, or agree on the subject matter of the agreement made. This principle is contained in one of the conditions for the validity of the agreement according to Article 1320 paragraph (1) of the Civil Code, stating that part of the conditions for the validity of an agreement requires the "agreement of those who bind themselves".



Based on the case that the author uses as an example in this study, the legal force of PPJB in that case must be seen and based on the legal conditions of an agreement as contained in Article 1320 of the Civil Code. In that case, when viewed from the terms of the validity of the agreement, the Sale and Purchase Binding Agreement can be said to be valid and binding on the parties. An example of a civil case registered in the Karanganyar district court with number 2 / Pdt.G / 2021 / PN Krg, There is a paid PPJB and a power of attorney, a certificate has been given to the buyer, but in this case the buyer cannot process the transfer of land rights at BPN Karanganyar because there is no verified KTP and validation (Electronic KTP) of the seller as required by BPN. What must be observed in this case is the type of PPJB, the date and year of making the PPJB and the power to sell. In this case, PPJB and power of attorney were made in 2011 at the beginning of the launch of the Electronic KTP program, namely from 2009 to 2011 and no regulations have been issued related to the validity period of non-electronic KTP, namely Presidential Regulation Number 112 of 2013 concerning the Fourth Amendment to Presidential Regulation Number 26 of 2009 concerning the Application of Identity Cards Based on National Identity Numbers, article 10 which states that "Non-Electronic KTP remains valid for residents who have not obtained an electronic KTP until no later than December 31, 2014", so that the policy at BPN that requires identity in the process of transferring land rights must be an Electronic KTP. On this basis, the notary in making the PPJB paid off and the power to sell does not require the identity of the parties to be with an Electronic KTP in the sense that they can use an Electronic KTP or Non-Electronic KTP.

This means that legally PPJB is paid off and the power to sell made before a notary with a non-electronic ID card identity in this case is valid because it is in accordance with the provisions, rules and laws in force at the time the deed was made so that it has perfect evidentiary legal force and binds the parties who agree to make the agreement. That the existence of PPJB is already a valid and strong legal act because PPJB and the power of attorney made before a Notary Public is an authentic deed that has perfect and binding evidentiary power, but in this case because it is related to land, it is bound by Government Regulation number 24 of 1997 concerning land registration because every transfer of rights must be proven by a PPAT deed, This is done to fulfill the principle of publicity. The evidentiary power attached to an authentic deed is perfect strength in the sense that the proof is sufficient with the deed itself unless there is opposing evidence (*tegen bewijs*) that proves otherwise or proves otherwise from the deed, this binding word means that the judge is bound by the deed itself as long as the deed made is in accordance with the provisions of the validity of a deed as stipulated in the UUJN and Civil Code. So that in this case, accuracy, thoroughness and accuracy are needed not only in administrative techniques for making deeds, but also the application of various legal rules contained in the relevant deed for the facers, and the ability to master the science of Notary in particular and law in general. [20] As an authentic deed, a notary deed has the same function as other deeds. A deed can function as a formal function (*formality causa*) and can also function as evidence (*probationis causa*), namely:[21]

1. Formil Function(*Causa Formality*). A deed has a formal function, meaning that for the completeness or perfection (not for validity) of a legal act, a deed must be made. The parties who commit a legal act must make it in written form, both authentic deed and underhand deed in order to be perfect.
2. Function of Evidence (*Probationis Causa*). Since the beginning the parties deliberately make a deed (authentic or under hand) for a future proof. The written nature of an agreement does not make the agreement valid, but so that the deed can be used by them as evidence if disputes arise in the future.

If the land PPJB is carried out in full and accompanied by the power to sell by the seller to the buyer, it should have been paid in full and have fulfilled the principles of light, direct and cash as stipulated in the UUPA and the existence of a power of attorney to sell which is an integral part of the PPJB deed and the fulfillment of the conditions for the validity of the agreement, the elements of the agreement, and the legal principles of the agreement, then the buyer's legal actions in terms of transfer of land rights in BPN Karanganyar with the AJB deed made by PPAT there are no obstacles. PPJB is paid off if it has been paid in cash and clearly, which means that the principle of the land is fulfilled / in accordance with customary law.

PPJB is a named agreement, therefore PPJB is subject to the Civil Code, but because the discussion contained in it is land, cash and light elements are still applied, which have been fulfilled when paid in full the amount of money in accordance with the agreed price, followed by the submission of a certificate from the seller to the buyer. Judging from the principles that apply in the agreement, the case of making PPJB has been fulfilled because it is carried out in good faith by the seller and the buyer and the principle of freedom of contract where both parties are free and mutually agree in determining what is desired as stated in the PPJB and does not contradict the law, decency or decency.

PPJB made by the parties based on the legal terms of the agreement will bind the parties to perform achievements (rights and obligations) as stipulated in the sale and purchase binding agreement. As in Article 1338 of the Civil Code which states that all agreements made validly apply as law to the parties who make them. So that in general it can be concluded that the legal force of PPJB in full and the power to sell is valid and has legal consequences, namely that the PPJB is binding and must be implemented by the parties as ordered by the Law, if the PPJB is carried out and meets the requirements for the validity of an agreement as stipulated in Article 1320 of the Civil Code, the fulfillment of the principles of the agreement and the elements of the agreement therein and does not violate the provisions, applicable rules and laws. If the PPJB does not fulfill the conditions for the validity of the agreement, namely in the event of non-fulfillment of subjective conditions, namely agreement and taste, it can be canceled, or null and void in the case of objective conditions, namely a certain thing (object) and the lawful cause is not fulfilled in making a binding agreement for sale and purchase of land rights.

#### IV. CONCLUSION

The legal force of PPJB in full and the power to sell with a non-electronic ID card identity is valid and has legal consequences, namely that the PPJB is binding and must be implemented by the parties as ordered by the Law, if the PPJB is carried out and meets the requirements for the validity of an agreement as stipulated in Article 1320 of the Civil Code, the fulfillment of the principles of the agreement and the elements of the agreement therein and does not violate the provisions, decency and decency and the laws in force at the time the deed was made. Apart from that, the legal force of proof attached to an authentic deed is perfect strength in the sense that the proof is sufficient with the deed itself unless there is evidence to the contrary that proves otherwise or proves otherwise from the deed, binding this means that the judge is bound by the deed itself as long as the deed made is in accordance with the provisions of the validity of a deed as stipulated in the UUJN and Civil Code.

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