

The Position of the Notary in the Implementation of the Binding Agreement on the Sale and Purchase of Land Rights

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Abstract. For Indonesians, the land is the most basic problem because the background of life of the Indonesian people is very dependent on activities that are agrarian in nature. The land is also the foundation of hope for the community to carry out their lives, where they live on land and obtain food by utilizing and cultivating the land. In view of Regulation Number 2 of 2014 Corrections to Regulation Number 30 of 2004 concerning the Place of a Public accountant, Article 15 passage (1) certifies that "legal officials are approved to settle on genuine deeds with respect to all arrangements, and arrangements expected by regulations and guidelines or potentially expected by the closely involved individual to be expressed in the deed, to give gross, a duplicate of the portion of the deed, which is all the same length as the creation of the deed isn't likewise affirmed or prohibited to different authorities or individuals specified by regulation, seeing the bona fide deed as alluded to above, it is controlled in Article 1868 of the Common Code, the lawful power in the deal buy arrangement just relies upon where the deal buy authoritative understanding is made, on the off chance that it isn't before a public authority (legal official) then, at that point, it turns into a deed under the hand while on the off chance that it is made by or before a public authority, the deed turns into a notarial deed which is a valid deed. Lawful security for the satisfaction of the freedoms of the gatherings assuming one of the gatherings' defaults in the limiting deal and buy understanding is extremely subject to the strength of the limiting deal and buy arrangement made, that is to say, assuming that it is made with an underhand deed, the assurance is by the insurance of the underhand deed. Though assuming it is made by or before a legal official, the deed consequently turns into a notarial deed so the force of insurance is by the security of the bona fide deed.

Keywords: notary; sale and purchase; authentic deed; law

1 Background

Humans are living beings whose needs are getting more and more aware day by day. If you pay attention to one of the human needs, especially the land because it is very closely related to human life. Everyone needs land, not even just in life, but also for death humans still need a piece of land.

How much land that can be constrained by people is extremely restricted, while individuals who need to possess land are continuously expanding. Notwithstanding the rising number of individuals who need land for lodging, progression in financial and mechanical improvement

requires likewise an enormous stockpile of land for instance for estates, domesticated animals, workplaces, plants, diversion settings, streets, and correspondence ways.

For Indonesians, the land is the barest issue because the background of the life of the Indonesian people depends on activities that are agrarian in nature. The land is also the foundation of hope for the community to carry out their lives, where they live on land and obtain food by utilizing and cultivating the land.

According to Kartasapoetra Mention [1]:

“First, the static State of the land will become the foundation for humans who year after year will develop rapidly. Second, the use of land and natural influences will cause instability in the ability of the land.”

Thus, the land is one of the most important factors for the life and future foundation of human welfare itself, it is obligatory for humans in their utilization and management to pay attention to natural law and community law so that rights and obligations on land are always balanced so that the ability of land lasts as long as possible. As the community's need for land increases, it often causes disputes between the two parties, but it is hoped that the ownership status can be prevented. Includes problems arising from land control by the regions, both lands that have become assets or lands that have not become regional assets but are claimed as regional asset lands.

“The term regional asset land must be distinguished from state land. It is important because there are still perceptions that confuse the two. Regional asset land is born from State land. Regional and State land originated from the concept of state control under Article 33(3) of the 1945 Constitution of the Republic of Indonesia. For maximum prosperity of the State and the people used. These words controlled by the State gave birth to the concept of the State's right to control agrarian resources in Indonesia”[2].

Land freedoms can be moved and communicated starting with one right holder then onto the next which is frequently alluded to as the exchange of land privileges, particularly for land privileges that poor person been enlisted and gone through a public accountant public authority.

In view of Regulation Number 2 of 2014 Revisions to Regulation Number 30 of 2004 concerning the Place of a Public accountant, the improvement of the universe of Public accountants in Indonesia has gone through huge changes concerning his obligations as a public authorities approved to make deeds in common regulation rush hour gridlock. Public accountants as officium nobile or public authorities as a perceived calling in the field of regulation surmise topic capability in common regulation, reasonable to address the issues of the local area for legitimate proof administrations. The power of a legal official in making a true deed is controlled in Article 15 section (1) of the Follow up on the place of a Legal official, Section III, the initial segment concerning the power of a legal official.

Article 15(1) states that “A notary public shall have the power to make a certificate of all acts of a contract and shall comply with any provision contained in the certificate, required by law and regulation, or desired by the parties concerned has the power to create the Provide a copy of the entire deed excerpt. All of these are regulated by the above notarization under Section 1868 of the Civil Code unless the formation of the deed is confirmed or excluded concerning any other official or person required by law.

In practice, notaries usually produce deeds in standard deed format. Its form is determined by the rule of law. That is general notarized documents such as deeds of the grant, deeds of delivery, etc. Notaries also make agreements that are not regulated by law in the performance of their notary duties making all forms of agreements based on existing rules in their duties. Perform deeds and track the evolution of human behavior very fast.

The grounds for acts or obligations of notaries are very clearly laid down in Law No. 2 of 2014 on the Status of Notaries (hereinafter referred to as UUJN), but all acts or obligations of notaries are subject to community requirements. It does not satisfy to meet the need for legal services in the context of conduct due to rapid legal developments in society, as not all agreements made by communities are regulated by law. Notaries enter into anonymous contracts in the performance of their duties, even if anonymous contracts are not regulated by law. The requirements for the purchase and sale of land rights shall be carried out when concluding the contract for the sale and purchase of land rights before the Land Deeds Officer (hereinafter referred to as PPAT) [3].

In buying and selling land, both parties must meet the requirements for binding the sale and purchase.

As per R Subekti in his book the limiting deal and buy are:

"The understanding between the merchant and the purchaser before the deal and buy is completed is because of the components that should be met for the deal and buy, including testaments that don't yet exist since they are still simultaneously, installment of costs. In the interim, as per Herlien Budiono, a limiting deal and buy understanding is a help understanding that capabilities as a free fundamental arrangement.

Lawful activities connected with land freedoms have been controlled (Das Solen), so a few things should be considered prior to making the deed of offer, to be specific the satisfaction of the reasons for the deal and buy understanding in regards to land privileges. Things that should be considered can likewise connect with the prerequisites in regards to the object of the deal and buy or the subject of the deal and buy. The deal and acquisition of land privileges as controlled in Unofficial law Number 24 of 1997 concerning Area Enrollment and Unofficial law Number 37 of 1998 concerning the Guideline of the Place of the Producer of Land Deeds (PPAT) should be completed within the sight of an approved authority in the event that the land is a Deed Creator Official. Land (PPAT), whose functioning region incorporates the region where the land being exchanged is found. What's more, the deed of move of freedoms (deed of offer and buy) made by the Land Deed Making Official (PPAT) is a legitimate deed, where the structure and content not set in stone by the pertinent regulations and guidelines, with the goal that the Land Deed Making Official (PPAT) just fills the accessible deed.

2 Method

The review utilizes a regularizing or humanistic juridical issue approach since this examination doesn't just cover regulation and lawful materials in the library yet additionally the training in the field as supporting information [5]. Likewise, in this review, essential information sources were additionally utilized as supporting information in observing issues to be explored connecting with the responsibility of Public accountants in view of Regulation No. 30 of 2004 concerning Public accountant Positions.

In this study the types of data include:

- a. Primary Data, namely the source of data obtained by conducting direct interviews in the form of questions and answers to competent parties to the problems discussed in this proposal.

- b. Secondary Data, namely data sources obtained from existing library materials, which include literature, scientific writings from experts, and others that the author can collect in completing this thesis.
 - c. Tertiary data, namely data sources obtained from library materials such as existing dictionaries, which are only as additional and or complementary in completing this thesis.
- In any case, this study puts more accentuation on auxiliary information. Essential information is more steady of the information sources utilized, comprising of essential, optional, and tertiary legitimate materials. In regulating legitimate exploration, auxiliary information as sources/materials of data can lawful materials comprise of:
- a. Primary legal materials:
 - Law No. 30 of 2004 concerning the Position of a Notary (UUJN)
 - Notary Position Regulations (PJN)
 - b. Secondary Legal Materials:
 - Rule of the Minister of Guideline and Normal opportunities of the Republic of Indonesia Number: M.02.PR.08.10 of 2004 concerning Procedures for Plan of People, Dismissal of People, Definitive Plan, Work Techniques, and Strategy for Evaluation of the Nearby Managerial Social event.
 - Monthly News Journal/Magazine Notary News/PPAT “RENVOI” published by PT.Jurnal Renvoi Mediatama.
 - Quarterly Magazine of the Indonesian Notary Association, the Information and Communication Forum “Media Notariat”.
 - c. Tertiary Legal Materials:
 - Legal Dictionaries
 - Modern Indonesian Dictionary.
 - Complete English-Indonesian Dictionary

3 Result and Discussion

3.1 Notary Job

A legal official is an expansion of the express that has given the trust to a public accountant to do some state undertakings or obligations, particularly in the field of common regulation. As per Article (I) of Regulation Number 30 of 2004 concerning the Place of a Public accountant, what is implied by a Legal official is: "Legal official is a public authority who is approved to make bona fide deeds and different specialists as planned in this Regulation."

The utilization of "approved" in Article 1 of Regulation Number 30 of 2004 concerning the Place of a Legal official is essential since it connects with the arrangements of Article 1868 of the Common Code which makes sense of that: "A genuine deed is such, which is made in still up in the air by regulation by or before a public authority approved to do as such, where it was made."

For the execution of Article 1868 of the Common Code, the officials make a legal guideline to name authorities who are approved to make credible deeds, and consequently Public accountants are selected as approved authorities in view of Article 1 of Regulation No. 2004 concerning the Place of Public accountant. As indicated by R. subject, a credible deed is:

"A deed that has been made by or before a public official who is authorized to do so provides between the parties and all their heirs and all those who have rights from them, a perfect proof of what is described therein, even about what is contained

therein as a mere narrative but regarding the latter only what is said has a direct relationship with the contents of the deed" [6].

In regulating the social life of fellow individuals who need evidence regarding the legal relationship between them, R. Soegondo Notodisoeijo said:

"A notary who in his profession is an institution that with its deeds produces written evidence tools and has an authentic nature, in our opinion, can do much to encourage the public to use evidence" [7].

The place of a Public accountant as a functionary in the public arena is as yet being regarded. A legal official as an authority is a spot for somebody to ready to get dependable exhortation. All that not set in stone by the Public accountant is right, the Public accountant is a certified record producer in a legitimate occasion.

The obligations of a Public accountant as well as making true deeds are likewise relegated to enroll and confirm letters or deeds made under the hand. Likewise, the Public accountant additionally gives legitimate exhortation and clarifications in regards to the law to the gatherings concerned. Subsequently, a legal official is a public authority who is named and excused by the public authority, however a legal official is definitely not a government worker as indicated by the law or business guidelines. It is an unquestionable necessity to unveil a Public accountant as a public authority, regarding the meaning of article 1868 of the Common Code, however this doesn't imply that a Legal official is a government worker. The place of a public accountant isn't a place that is paid by the public authority as a government employee, a legal official procures pay from the individual who accepts his administrations. Public accountants are Government workers without pay from the Public authority and Legal officials are resigned from the Public authority yet don't get annuity benefits from the Public authority.

3.2 Binding Agreement of Sale and Purchase of Land Rights Based on Notary Deed

Among the guidelines concerning land privileges, among others are the Fundamental Agrarian Regulation (UUPA), Unofficial law Number 40 of 1996 concerning Development Freedoms, Building Use Freedoms, and Land Use Freedoms, Guideline of the State Clergyman of Agrarian Undertakings Number 3 of 1997 concerning arrangements for the execution of Unofficial laws. Number 24 of 1997 and others are explicitly directed for each lawful activity connected with land privileges, implying that every individual who will make legitimate moves connected with land freedoms should conform to all guidelines connecting with land privileges. For instance, on account of trading land privileges, where Unofficial law Number 24 of 1997 concerning Area Enlistment and Unofficial law Number 37 of 1998 concerning the Guideline of the Place of the Creator of Land Deeds (PPAT). It specifies that buys and deals of land titles should be made before an approved authority, on account of land, the Land Deeds Authority (PPAT).

In the provisions of Article 1867 of the Civil Code, it is explained that deeds can be divided into:

a. Authentic Deed

The significance of a genuine deed ought to be apparent in Article 1868 of the Normal Code which scrutinizes: "A Certifiable Deed is a deed in not completely settled by guideline made by or before open experts in power. for that where the deed was made." From Section 1868 of the Normal Code above, it follows that the sort of the deed is restricted by guideline and will be executed by or before a supported specialist. Endorsed delegates implied here consolidate public

bookkeepers, this relies upon Article 1 number 1 of Guideline number 1 of 2004 concerning the spot of a public bookkeeper which communicates that a lawful authority is a public power who is supported to make genuine deeds and various experts suggested in the law this.

The realness of the public bookkeeper deed relies upon Article 1 point 1 of Guideline number 1 of 2004 concerning the spot of a lawful authority, where a legitimate authority is a public power; and in case an action wishes to get a stamp of believability true to form by Article 1868 of the Normal Code, then, at that point, the deed being alluded to ought to meet the going with necessities:

- 1) The deed should be made "by" (entryway) or "before" (ten overstaan) a public authority;
- 2) the deed should be made in not entirely settled by regulation;
- 3) Public authorities by or before whom the deed was made, should have the position to make the deed.

Therefore, a document cannot be alleged to be authentic under legal provisions because it was prepared by or in the presence of a public official by the conditions laid down in Article 1868 of the Civil Code.

b. Deed under Hand

An underhand deed is a deed purposely made by the gatherings for confirmation without the help of an authority making the deed, at the end of the day, an underhand deed is a deed planned by the gatherings as proof, however isn't made by or before the Overall Authority of the Deed Creator.

From the clarification of the sort of deed above and assuming it is connected with the place of the Deal and Buy Authoritative understanding (PJB), the place of the Deal and Buy Restricting (PJB) really relies on how the Deal and Buy Authoritative arrangement (PJB) was made. Then, at that point, assuming the Deal and Buy Restricting (PJB) is made previously or by a public accountant, the deed of offer and buy understanding (PJB) caused will to turn into a notarial deed and can be legitimate.

So the lawful power in the deal buy understanding just relies upon where the deal buy authoritative arrangement is made, in the event that it isn't before a public authority (legal official) then, at that point, it turns into a deed under the hand. while whenever made by or before a public authority, the word turns into a notarial deed that is credible in nature, despite the fact that it is completed under the hand yet has legitimate power, specifically following the arrangements of Article 1338 of the Common Code where the understanding made and concurred becomes regulation. for the people who made it.

For a sale and purchase contract to be considered valid by law so that it binds both parties, the contract must meet certain conditions, namely as follows according to 1338 and 1339 of the Civil Code:

- 1) good faith conditions;
- 2) conditions according to custom;
- 3) conditions according to propriety;
- 4) conditions in accordance with the public interest;
- 5) Specific legal conditions consisting of;
- 6) written terms of certain contracts;
- 7) notarial deed requirements for certain contracts;
- 8) certain official deed requirements (not notary) for certain contracts;
- 9) conditions for authorized permits [8].

The lawful outcomes of not satisfying at least one of the provisions of the legitimacy of the agreement shift as per which conditions are abused. The legitimate results are invalid and void; can be dropped, and the arrangement can't be authorized. A deal and buy understanding is an understanding wherein one party embraces to surrender proprietorship privileges to a thing, while the other party attempts to pay an amount of cash as the cost.

It is not the same as trading as per public land regulation which depends on standard regulation, where what is implied by trading is definitely not a lawful demonstration yet is a compulsory understanding. Trading (land) in standard regulation is a lawful demonstration of moving privileges that should meet three (3) qualities, specifically:

- 1) Must be in real money, implying that the commonly concurred cost is settled completely at the hour of the deal and buy being referred to.
- 2) It should be clear, implying that the exchange of freedoms is done before the Land Deed Making Official who is approved to the object of the legitimate activity.
- 3) Real or substantial, actually intending that by marking the deed of move of privileges, the deed will obviously show and as proof that the legitimate activity was completed.

3.3 Legal Strength of the Deed of Sale and Purchase Agreement of Land Rights Made by a Notary

As recently made sense of, the limiting deal and buy (PJB) is a legitimate advancement utilized by parties who will trade land privileges. The Deal and Buy Arrangement (PJB) is utilized to make it simpler for the gatherings to trade land privileges, since, supposing that you observe every one of the guidelines set out in trading land freedoms, not all gatherings can satisfy them without a moment's delay, for example, following through on the selling cost in a concurred buy. Among the guidelines concerning land freedoms, among others are the Fundamental Agrarian Regulation (UUPA), Unofficial law Number 40 of 1996 concerning Development Privileges, Building Use Freedoms, and Land Use Freedoms, Guideline of the State Pastor of Agrarian Undertakings Number 3 of 1997 concerning Arrangements for Executing Guidelines Government Number 24 of 1997 and others, directs each legitimate activity connected with land freedoms. Each and every individual who will make a legitimate move connected with land privileges should conform to all guidelines connecting with land freedoms.

Prior to having the option to make a deal and buy before an approved authority, on the off chance that the land is a Land Deed Making Official (PPAT), the gatherings who will direct the deal and acquisition of land privileges should meet every one of the necessities specified in the execution of the deal and acquisition of land. Necessities in regards to the object of offer and buy, for instance, the option to exchange the land is a lawful right to land possessed by the merchant as confirmed by the presence of a land declaration or other legitimate proof of such freedoms, and the land being exchanged isn't in debate with different gatherings, and so on.

Likewise, the deal and buy have been settled completely and all duties connected with the deal and buy, like the vender's expense (SSP) and the purchaser's assessment, to be specific the Land and Building Freedoms Securing Charge (BPHTB) have additionally been paid by the party who will do the deal and buy. . After everything are finished or satisfied. then the gatherings who will complete the deal and acquisition of land can do the deal and acquisition of land privileges and make a deed of offer and acquisition of land before the Land Deed Creator Official (PPAT) and afterward do land enrollment for the exchange of their freedoms. Nonetheless, on the off chance that these necessities have not been met, the making and marking of the deed of offer and acquisition of land privileges can't be completed in that frame of mind

of the Land Deed Making Official (PPAT), and the concerned Land Deed Producer (PPAT) will likewise decline to make the deed of offer and buy, because of not satisfying every one of the necessities in regards to the creation of a deed of offer and buy (AJB), which without help from anyone else the deal and acquisition of land privileges can't be done.

To conquer this, and to smooth the precise organization of land, a Deal and Buy Restricting Deed (PJB) is made, where the items as of now control the deal and acquisition of land yet the configuration is simply restricted to a deal and buy understanding, in particular a type of arrangement which is or can be supposed to be a primer arrangement before it is done. The deal and buy arrangement is controlled in the regulation called the Deal and Buy Authoritative Understanding.

As indicated by R. Subekti in his book says:

"A limiting deal and buy are an understanding between the vender and the purchaser before the deal and buy is completed in light of the fact that there are causes that should be met for the deal and buy, among others, the endorsement of land privileges has not been enrolled in that frame of mind of the merchant and is still during the time spent being renamed, and installment has not yet happened. the cost of the object of offer and buy or authentication is as yet being paid for" [6].

Discussing the legitimate power moved by the Deal and Buy Authoritative Arrangement, then we should look at the Deal and Buy Official Understanding in more profundity. The Deal and Buy Official Understanding (PJB) is a lawful advancement made by Public accountants to defeat the issues looked in the execution of the deal and acquisition of land privileges as recently made sense of.

Considering Article 1868 of the Normal Code referred to above, it might be seen that for a genuine deed the sort of the still hanging out there by the law and ought to be made by or before a supported delegate. The supported delegate implied here is, among others, a Legitimate authority, considering the game plans of Article 1 point 1 of Guideline number 1 of 2004 concerning the Spot of a Public bookkeeper which communicates that a Public bookkeeper is a Public Authority endorsed to make certified deeds and various experts as suggested in this guideline.

So according to the guidelines in Article 1868 of the Normal Code, it is determined or can be contemplated that the necessities for a genuine deed are according to the accompanying:

- a. the deed should be made "by" (entryway) or "before" (ten overstaan) a public authority;
- b. the deed should be made in still up in the air by regulation;
- c. public authorities by or before whom the deed was made, should have the position to make the deed.

On the off chance that the deal and buy arrangement isn't made before a public authority, the Deal and Buy Arrangement (PJB) turns into a confidential deed, and for a confidential deed, it is additionally directed in Article 1874 of the Common Code which peruses: Hands are viewed as deeds that are endorsed under the hand, letters, registers, family association records and others, works made without the mediator of a public worker.

From the data above, for a Deal and Buy Understanding (PJB) which isn't made before a public authority or another deed has control over outsiders, among others, in the event that an assertion is joined with a date from a Legal official or one more representative named by regulation. the law as managed in Article 1874 and Article 1880 of the Common Code.

This dated assertion is all the more usually alluded to as Sanctioning and Waarmerkmg, specifically:

- a. Legalization is confirmation done by a Legal official on an insidious deed that gives sureness about:

- 1) Date of signing;
 - 2) Authenticity of the signatory person or parties; 3) The contents of the deed that have been known by the parties.
- b. Waarmedking

As to, it is managed in Article 1880 of the Common Code which peruses: "Underhand deeds, only without a statement as referred to in the second paragraph of article 1874 and Article 1874a, have no power against third parties. , regarding a date other than the day the statement is affixed by a notary or other employee appointed by the law and recorded under the rules promulgated by law, or from the day it is proven that there are deeds under the hands of the deeds made by the law. Public Employees, or also since the day the private deeds are recognized in writing by third parties against whom the deeds are used."

Waarmedking just gives proof to Outsiders with respect to the accuracy of the date of the letter yet doesn't give proof in regards to the marks of the gatherings in the deed. In any case, in deal buy authoritative arrangements practice, there is no requirement for endorsement as depicted above, since deal buy official arrangements are typically made before a Public accountant who is an Overall Authority so the deed made against the deal and buy restricting has turned into a legitimate deed so the evidence is vital.

In light of all the data that the creator has expressed above, it very well may be reasoned that the legitimate power of the deed of a limiting deal and buy settlement ashore freedoms made by a Public accountant in the execution of the creation of Offer and Buy Deed is strong. It is on the grounds that, in the Deal and Buy Arrangement (PJB), which is made before a public accountant, the deed has turned into a notarial deed so it is a true deed, while for those made not before a public accountant, it turns into an underhand deed whose confirmation is under a valid deed, despite the fact that it is in Article 1875 of the Book of Regulation. The Common Regulation carries out express that an underhand thing can have amazing proof like a genuine deed assuming the mark on the deed is perceived by the gatherings who marked it.

4 Conclusion

The place of the limiting deal and buy (PJB) relies heavily on how the limiting deal and buy understanding (PJB) is made, so if the limiting deal and buy (PJB) is made previously or by a legal official, the deed of a limiting deal and buy understanding (PJB) caused will to turn into a deed that legal official and can be valid. Thus, despite the fact that the official arrangement for the deal and acquisition of land freedoms that happened in Tegal was made under the hands, particularly those made by the vender and the purchaser, it is equivalent to the legitimate power moved by the deed of a limiting deal and buys arrangement (PJB) which was made under the hand, where the power is just in light of Article 1338 of the Common Code which peruses: "all arrangements made lawfully substantial as regulation for the people who make them"

The legitimate power in the deal buy arrangement just relies upon where the deal buy authoritative arrangement is made, on the off chance that it isn't before a public authority (legal official) then it turns into a deed under the hand while assuming it is made by or before a public authority, the deed turns into a notarial deed which is a deed. true.

Legitimate security for the satisfaction of the freedoms of the gatherings assuming that one of the gatherings defaults in the limiting deal and buy understanding is extremely reliant upon the strength of the limiting deal and buy arrangement made, that is to say, assuming it is made with an underhand doing, the security is by the defend of the underhand deed, while assuming

that it is made by or before a legal official, the deed naturally turns into a notarial deed so the force of security is following the insurance of the bona fide deed.

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