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# Transfer of Rights to Land And Buildings with A Binding Sale And Purchase Agreement Reviewed From SEMA No 4 of 2016

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**Abstract:** The transfer of land and/or building rights through a sale and purchase agreement, as stipulated in the Circular Letter of the Supreme Court Number 4 of 2016, is valid without necessitating a deed of sale and purchase, in accordance with Article 1338 of the Civil Code, while the deed constitutes an authentic deed per Article 1868 of the Civil Code. Nonetheless, it does not ensure that the conveyance of land rights to another individual may be substantiated unless the transfer is executed in accordance with Article 1459 of the Civil Code; a PPJB prior to an AJB is permissible provided that the required requirements in the regulation are satisfied. The legal protection acquired by the parties in the transfer of land and/or building rights through PPJB is preventive in nature. This is achieved by including specific clauses in the PPJB that ensure legal protection for the parties involved, thereby facilitating realization and safeguarding their interests. Repressive legal protection for the parties can be addressed by alternatives to judicial and court institutions.

**Keyword:** Transfer of Rights, Land, Buildings, Binding Sale and Purchase Agreement.

## INTRODUCTION

Land and housing are primary needs for everyone besides clothing and food. The existence of land is a must because most of the Indonesian people still rely on land as a livelihood and also the Indonesian people live from an agrarian or agricultural economy while housing and settlements are very important in supporting the sustainability and improvement of community life (Kholismu Farida, 2021). The increasingly rapid population growth also has an impact on the supply of land and housing as basic human needs due to the population density factor that occurs, so that it is not uncommon for land and housing to become the subject of disputes, especially in terms of ownership, in addition, increasing population growth makes land prices and housing high. Acquisition of land rights can go through several processes, namely inheritance, grants, buying and selling and so on. In terms of such acquisition, there is a sale and purchase transaction carried out before a notary/PPAT (Land Deed Making Official) in order to carry out the transfer along with the land registration process at the land office in order

to achieve legal certainty. For land use and how to regulate it so that disputes do not arise, it is regulated in the Basic Agrarian Law (UUPA) no. 5 of 1960, the regulation of which was issued on September 24, 1960 (Rizal & Busro, 2024) .

In Article 1458 of the Civil Code, it states that "A sale and purchase is deemed 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 delivered or the price has not been paid." Based on this, it can be seen that an agreement is deemed to have existed since an agreement was reached, even though the goods agreed upon have not been delivered or the price has not been paid. (Prawira et al., 2022) . When viewed in customary law, a sale and purchase agreement is a real agreement. This means that the delivery of the agreed goods is an absolute requirement for an agreement to exist. In other words, if something has been agreed upon but in practice the object of the agreement has not been delivered, then the agreement is considered non-existent or there is no agreement (Ainayah et al., 2022) . Parties who carry out legal acts concerning or related to land rights must comply with the legal rules that regulate or relate to the regulation of land rights or in other words, parties who carry out certain legal acts concerning land rights are not free to do so, but they are bound by the provisions of the law governing land rights.

In general, there are several stages of the buying and selling process before a Notary/PPAT, namely payment of sales tax, purchase tax, physical check of the original land certificate, signing of the AJB, validation and so on. However, due to some reason, the AJB process is constrained, for example, one of the parties is not present, or the status of the object is still guaranteed or collateralized at the bank or the object of the sale and purchase is still in the process of splitting the certificate and so on (Slamet, 2021) . Therefore, the Notary/PPAT provides a solution, namely making a binding agreement between the buyer and seller, in this case known as PPJB (Sales and Purchase Binding Agreement), which in practice often causes problems, both conflicts originating from the buyer, seller and even from the Notary/PPAT where previously PPJB was a Preliminary Agreement. A sale and purchase agreement is an agreement between the seller and the buyer before the sale and purchase is carried out due to the elements that must be fulfilled for the sale and purchase, including the fact that the land title certificate does not yet exist, because it is still in process or the price or taxes due to the sale and purchase of land rights have not yet been paid by either the seller or the buyer.

In practice, in land and/or building sale and purchase transactions, there is an agreement/binding, where there is an agreement between the parties that bind themselves to each other, with one party submitting an object, and the other party will make a payment as previously agreed, as stipulated in Article 1457 of the Civil Code (hereinafter referred to as the Civil Code). Thus, the agreement creates rights and obligations for the parties that make it, in this case the seller and the buyer. In land and/or building sale and purchase transactions, the term down payment is also known, where based on the provisions of Article 1454 of the Civil Code, it is explained that with a down payment, the sale and purchase cannot be canceled, so it is not accommodated if later in the process there is a dispute. The Deed of Sale and Purchase Agreement (PPJB) is a binding sign of the sale and purchase transaction while waiting for payment in full. The Deed of Sale and Purchase Agreement is made in 2 (two) ways, namely: "(1) The new PPJB Deed is a promise because the price has not been paid in full (PPJB Not Paid in Full); (2) PPJB Deed whose payment has been made in full, but the deed of sale and purchase cannot be made before the PPAT because there are still some things that have not been completed. (PPJB Paid in Full). Not finished here means, because of something the AJB process cannot be made, for example one of the parties cannot be present at a certain time, or the status of the object of the sale and purchase is still guaranteed or collateralized at the bank, or the object of the sale and purchase is still in the process of being divided, so it is bound first using PPJB Paid in Full." In practice, the making of PPJB as a preliminary agreement often

causes problems later on, due to the rights and obligations of one of the parties not being implemented as agreed.

in the Circular of the Supreme Court Number 4 of 2016 Part B of the Legal Formulation of the Civil Chamber, General Civil Law Number 7 as a Guideline for the Implementation of Duties for the Court, states that: "The transfer of land rights based on the Sale and Purchase Agreement (PPJB) legally occurs if the buyer has paid the full price of the land and has taken control of the object of the sale and purchase and is carried out in good faith. " The quote above can be understood that the transfer of land ownership from the selling party to the buying party has occurred legally if the land has been paid in full and has been controlled by the buyer which is carried out in good faith even though it is only based on the PPJB that has been made. However, the validity of land rights with this PPJB has become a boomerang for the community because until now in the Laws and Regulations there have been no specific provisions governing PPJB. Based on the description of the problem above, the first question arises, what is the status of the transfer of land rights with a sale and purchase agreement based on SEMA No. 4 of 2016 which does not require a deed of sale and purchase?.

## **METHOD**

The technique of writing this article uses a legal research method with a Normative research type, using a statute approach and conceptual approach (Hendrik Mezak, 2006) . The secondary data sources are using primary legal materials in the form of regulations that are relevant to legal issues, and secondary legal materials which are opinions or legal theories that are relevant to legal issues in this writing. The data collection technique used is using a documentation guide from secondary data sources, this writing uses a descriptive analysis technique with a deductive thinking method.

## **RESULTS AND DISCUSSION**

Transfer of rights caused by legal action is a transfer of rights that is carried out intentionally so that the rights are transferred to another party. Meanwhile, the transfer of rights caused by a legal event occurs when a person who has one of the rights dies, then the rights are automatically transferred to his heirs (Yora Selia Permono, 2017) . Transfer of rights to land and/or buildings and ownership rights to apartment units through sale and purchase, exchange, grants, income in companies and other legal acts of transfer of rights, except for the transfer of rights through auction, can only be registered, if proven by a deed made by an authorized PPAT according to the provisions of applicable laws and regulations. People who have problems with their economy or the land is still under bank guarantee or has not been paid in full regarding the payment of taxes from the seller so that the buyer has not made an AJB before the PPAT (Ekawati et al., 2021) . Often people make a PPJB first before a Notary, in addition to the low costs and only being bound by an agreement, the transfer of land rights has not been fulfilled. PPJB is a basic agreement made by the parties, both the seller and the buyer, before the AJB is made before the PPAT.

The role of a Notary/PPAT in making a PPJB to avoid conflicts that will occur later, it is necessary to examine the documents with the principle of caution. According to R. Subekti, a sale and purchase agreement is: "An agreement between the seller and the buyer before the sale and purchase is carried out because there are elements that must be met first in order for the sale and purchase to be carried out, including the certificate does not yet exist because it is still in process, the price has not been paid in full". Herlien Budiono in his book study stated that a sale and purchase agreement is an assistance agreement that functions as a preliminary agreement whose form is free (Faridy, 2019) . PPJB is a type of obligatory agreement , namely an agreement where the parties agree to bind themselves to hand over a certain object to another party, so that the existence of PPJB basically does not result in the transfer of ownership of an

object from the seller to the buyer. This stage is only an initial agreement and must be followed by a handover agreement (levering), namely the signing of the AJB before the PPAT (Putri et al., 2022).

Looking at the provisions in SEMA Number 4 of 2016 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2016 as a Guideline for the Implementation of Duties for the Court The formulation of the civil chamber plenary point 7 which reads: "The transfer of land rights based on the Sale and Purchase Agreement (PPJB) legally occurs if the buyer has paid the full price of the land and has taken control of the object of the sale and purchase and is carried out in good faith" (Erlinda et al., 2020). Thus, the PPJB can be canceled if it does not comply with what has been agreed upon by the parties in the agreement and can lead to Default and Unlawful Acts. If in the case of the parties having good intentions and both parties have fulfilled what has been stated in the PPJB if in the future it is not accompanied by an AJB, it remains valid as if it fulfills the payment that has been paid in full and is based on good faith. However, if we look at the conditions in Article 1459 of the Civil Code which states that the transfer of ownership of the goods sold does not transfer to the buyer, as long as the transfer has not been carried out according to Articles 612, 613, and 616 As the Position of PPJB, the transfer of land rights made by a Notary based on his authority refers to Article 15 paragraph (2) letter (f) of the Notary Law, must be recognized as a valid agreement, because this authority has been normatively regulated in positive law (Romavita & Yetniwati, 2022). In addition to the fulfillment of material and formal requirements in the transfer of land rights, there is a transfer of land rights based on PPJB, although in principle PPJB cannot result in the transfer of ownership rights to land and/or buildings, if we look at the provisions in SEMA No. 4 of 2016 which states that the transfer of land rights based on PPJB can legally occur if the buyer has paid the full price of the land and has controlled the object of the sale and purchase and is carried out in good faith. PPJB that has been canceled by the Judge even though it is only based on PPJB, the agreement is still canceled because there are acts that are violated between the parties that have agreed in the PPJB. In addition, considering that the transfer of rights to land and/or buildings can only occur if it is based on AJB as stipulated in the laws and regulations, while the provisions in SEMA No. 4 of 2016 concerning the implementation of the formulation of the results of the plenary meeting of the civil chamber paragraph 7, the transfer of rights to land can only be transferred if the land has been controlled by the buyer and has been paid in full.

Legal protection for the parties, especially the buyer in a sale and purchase agreement is very strong because the proof of the sale and purchase agreement is made before an authorized public official, in this case a Notary, by signing the deed before a Notary or PPAT and then explaining its contents to the parties who made the sale and purchase agreement, then signing it before a Notary or authorized public official, the deed has valid and strong proof as other authentic deeds (Widayat, 2016). In addition, legal protection for buyers in making a sale and purchase agreement must be followed by a request for an irrevocable power of attorney, meaning that if in the future the seller does not fulfill what has been agreed, the buyer can sue and ask for compensation in accordance with what has been agreed by both parties in the sale and purchase agreement. A sale and purchase agreement can be interpreted as an instrument that can provide legal force for the parties who will carry out a sale and purchase transaction with the terms of the clauses contained in the sale and purchase agreement not conflicting with the law, morality and public order and the signing of the agreement by the parties before an authorized Official. For this reason, the agreement can be ratified by a Notary as an Authentic Deed. One of the keys to making a binding sale and purchase agreement is trust between the parties. Because if both parties lack mutual trust in each other, the desired agreement will never be achieved.

## CONCLUSION

The transfer of land and/or building rights with a sale and purchase agreement based on the Circular of the Supreme Court Number 4 of 2016 which does not require a deed of sale and purchase is valid, as in Article 1338 of the Civil Code and the deed is an authentic deed Article 1868 of the Civil Code. However, it does not guarantee that the transfer of land rights to another person can be proven as long as the transfer has not been carried out based on Article 1459 of the Civil Code, PPJB before AJB is permitted as long as the requirements as stipulated in the regulation are met. The legal protection obtained by the parties in the case of the transfer of land and/or building rights with PPJB is preventive or preventive legal protection, namely by means of, in the PPJB must contain clauses that must be included in order to provide legal protection to the parties so that it can be realized and protected. Repressive legal protection the parties can resolve by taking a path outside the judicial and court institutions.

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