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## **Legal Force Of The Preliminary Sales Agreement (Ppjb) As Evidence For The Seller Againts The Buyer Who Is In Breach Of Contract (Case Study: Decision Of The Surabaya District Court No.862/Pdt.G/2021/Pn Sby**

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**Abstrak:** This study discusses the legal force of the Sale and Purchase Agreement (PPJB) as evidence for sellers against buyers who commit breach of contract, based on a study of Surabaya District Court Decision Number 862/Pdt.G/2021/PN Sby. This study is based on the prevalence of breach of contract cases in land sale and purchase agreements, which cause legal uncertainty for the parties involved. The main issue in this study is the legal force of a Sale and Purchase Agreement as evidence in Indonesian civil disputes. The purpose of this study is to understand the legal force of a Sale and Purchase Agreement (PPJB) as evidence in civil disputes and to analyze the judge's considerations in Surabaya District Court Decision Number 862/Pdt.G/2021/PN Sby. The research method used is normative juridical with a statute approach and case approach through literature study. The results show that the PPJB has legal force as authentic evidence and that its cancellation must be carried out through a court decision. The judge's considerations in this case are deemed inappropriate because they state that there is a defect of will, whereas both parties agreed on their own will.

**Keyword:** Legal force, Sale and Purchase Agreement (PPJB), Default

## **INTRODUCTION**

Since the dawn of civilization on earth, humans have realized that in order to survive, they need a place to shelter and live. This has not changed to this day; humans still desperately need a place to live and reside. As a large nation that protects the rights of all its citizens, Indonesia guarantees the right of every citizen to live and defend their lives and livelihoods, as stipulated in Article 28A of the 1945 Constitution of the Republic of Indonesia.

Indonesia is also a country that guarantees its people the right to use, manage, and utilize the earth, water, and natural resources contained therein to achieve prosperity for the people based on Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (Arisaputra, 2021). One form of utilization of Indonesia's natural resources is through the

management and utilization of land. Land management and utilization are subject to Article 9 of Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA), which stipulates that only Indonesian citizens have authority over the earth, water, and airspace of Indonesia. In this case, the use and utilization of land vary in purpose based on influencing factors such as the level of community needs, socio-cultural values, education levels, and local physical and ecological conditions. In this case, the use and utilization of land varies in purpose based on influencing factors such as the level of community needs, socio-cultural values, education levels, and local physical and ecological conditions (Sukenti et al., 2019).

To obtain the right to live a comfortable and decent life, it is generally possible to purchase land or buildings as a place of shelter and residence. Sales agreements are essentially subject to Article 1457 of the Civil Code on Sales Agreements, which stipulates that a sale is an agreement whereby one party transfers goods and the other party pays the agreed price. Referring to this, in Indonesian law, an agreement must contain an agreement, the legal capacity of the parties, the object of the agreement must be clear and specific, and the cause or purpose of the agreement must not conflict with legal norms and regulations as stated in the provisions of Article 1320 of the Civil Code concerning the Valid Requirements of an Agreement.

The implementation must also comply with the provisions of the law, which include material and formal requirements (Saputra et al., 2020). In a sale and purchase agreement, the formal requirements include a person with a person or a legal entity that is authorized and competent to own the object of the agreement that they purchase through an agreement on the sale and purchase agreement. The parties referred to in the formal requirements of a sale and purchase agreement are the seller and the buyer. The buyer is the person who receives the right to fulfill the provisions of ownership of the object of the agreement that they will obtain. Meanwhile, the seller is the party who has authority over the land to be sold. The material requirements of a sale and purchase agreement include that the object of the agreement being sold must be clear and for a lawful reason. With a legally binding sale and purchase agreement, it can become a requirement to subsequently make the object of the agreement ownership in the form of a certificate.

In practice, land sale and purchase agreements are formalized to have legal force through a Sale and Purchase Agreement in the form of a Binding Sale and Purchase Agreement (PPJB) or a Deed of Sale and Purchase (AJB) made before a Land Deed Official (PPAT) subject to Government Regulation No. 24 of 1997 concerning Land Registration. The Binding Sale and Purchase Agreement (PPJB) has the status of an authentic deed that provides legal certainty for the parties before the issuance of the Deed of Sale and Purchase (AJB), especially as evidence of ownership for the buyer in the event of a dispute. According to Dr. Syaiful Bakhri, S.H., M.H., the Sale and Purchase Agreement (PPJB) functions as written evidence that has legal force as *probatiois causa*, which is a document that is the only valid evidence to prove the existence of a legal event or a specific agreement (Bakhri, 2012). The Sale and Purchase Agreement (PPJB) acts as a legal document that functions as a preliminary agreement to bind the parties (Halim, 2022). Its implementation must be based on good faith to ensure that the rights and obligations of the parties are fulfilled fairly and in accordance with the agreement (Dalimunthe, 2021).

A phenomenon occurring in society is the clash between norms and legal ideals, where buyers often default on their obligations in land or building sales transactions. The case decided by the Surabaya District Court with decision register No. 862/Pdt.G/2021/PN Sby is a clear example of the implementation of the law not being in accordance with norms, namely the occurrence of default by the buyer. The buyer did not fulfill their obligation to pay for the land they purchased from the seller. However, in the Sale and Purchase Agreement (PPJB) made before a notary, the payment was considered complete. The plaintiff's objective as the seller in

the land sale and purchase agreement was to cancel the Sale and Purchase Agreement (PPJB) drawn up before a Land Deed Official (PPAT) through a court decision, as per the procedure for canceling a notarial deed, which can only be done through a court process to assess whether there are indeed legal defects with perfect evidence.

The legal issue above is a form of default which, based on the provisions of Article 1238 of the Civil Code, is defined as a situation where a party bound by an agreement fails to perform its obligations or fulfill the terms agreed upon in the agreement (Ridwan & Permana, 2022). There are three types of default, namely: first, the debtor does not fulfill their obligations or fails to meet the agreed guarantees; second, the debtor fulfills their obligations but is late from the specified time; and third, the debtor's fulfillment of their obligations is not in accordance with the stipulated provisions (Hikmah et al., 2024).

Through the above description, this study is considered very important for understanding the power of the Sale and Purchase Agreement (PPJB) in a land sale and purchase agreement as a means of evidence for the seller against a defaulting buyer through an analysis of the judge's considerations in the Surabaya District Court's decision with case registration number No.862/Pdt.G/2021/PN Sby. The type of research used in this study is normative juridical through a statute approach and a case approach.

## METHOD

The research method used in this paper is normative legal research with a statute approach and a case approach. By examining the research through a statute approach, researchers can draw conclusions about the patterns of judges' considerations and the consistency of law enforcement in certain cases. Law is considered an instrument of social engineering by describing laws in a rational, humanistic, and pragmatic manner (Purwati, 2020). The case approach is used by examining court decisions based on the reasons used by judges (Marzuki, 2017). Through a combination of these two approaches, the study aims to find normative clarity and legal consistency in answering the issues raised. Data collection for this study was conducted using library research with qualitative data analysis techniques. The library research was conducted by searching for, reading, and analyzing various legal materials relevant to the issues under study, namely the Civil Code, Ministerial Regulations, and Government Regulations (Saraswati & Winanti, 2021).

## RESULT AND DISCUSSION

### **The Legal Force of a Sale and Purchase Agreement (PPJB) in Sale and Purchase Agreements Under Indonesian Civil Law**

A Sale and Purchase Agreement (PPJB) is a preliminary agreement (*voor overeenkomst*) in which the seller and buyer agree on the sale and purchase of an object, with ownership of the object to be transferred at a later date agreed upon by both parties (Atlantic & Caesar, 2020). In other words, a Sale and Purchase Agreement (PPJB) cannot transfer the rights to the object of sale and purchase, but rather forms a binding legal relationship between the seller and the prospective buyer to carry out a sale and purchase transaction in the future. The contents of the agreement contained in the Sale and Purchase Agreement (PPJB) will be legalized through the creation of a Deed of Sale and Purchase (AJB) as the main agreement that forms the basis for the legal and legally binding transfer of ownership rights. Referring to Article 1253 of the Civil Code, which states that an agreement that arises is conditional if it is dependent on a future event, it can be said that the Sale and Purchase Agreement (PPJB) is a conditional agreement.

In general, a Sale and Purchase Agreement (PPJB) can be made in two forms, namely a Full Payment Sale and Purchase Agreement (PPJB) and a Partial Payment Sale and Purchase Agreement (PPJB) (Fadlan & Prasetyasari, 2023). A paid Sales and Purchase Agreement (PPJB) is drawn up when the sale price has been paid in full by the buyer but the sale and legal

process of transferring ownership cannot yet be carried out due to certain obstacles relating to the object of sale, such as the status of the object's rights still being in the process of being upgraded to a Certificate of Ownership (SHM), in the process of inheritance division, clearing of title status, removal of encumbrances, and/or tax settlement. This type of Sale and Purchase Agreement (PPJB) includes the seller's power of attorney to the buyer, which is issued by a notary after the conditions are met. Conversely, an Unpaid Sale and Purchase Agreement (PPJB) is made if the payment is made in installments, including a down payment, installments, and late fees, so it has greater legal consequences for both parties.

Referring to Article 1 of the Regulation of the Minister of Public Works and Public Housing of the Republic of Indonesia Number 16 of 2021 concerning the Implementation of Preliminary Sale and Purchase Agreements or Sale and Purchase Binding Agreements for Public Houses and Public Apartment Units, it is stipulated that Sale and Purchase Binding Agreements (PPJB) may be entered into by the Developer as the seller prior to the construction or during the construction of the House or Apartment Unit. This explains that a Binding Sale and Purchase Agreement (PPJB) may be made if the object of sale and purchase already exists or is under construction. The regulations regarding the certainty requirements for making a Binding Sale and Purchase Agreement (PPJB) are further regulated in Article 42 paragraph (2) of Law Number 1 of 2011 concerning Housing and Settlement Areas (UUPKP), namely that the Binding Sale and Purchase Agreement (PPJB) must include the status of land ownership, the subject matter of the agreement, ownership of the main building permit, availability of infrastructure, facilities, and public utilities, as well as at least 20% (twenty percent) of the housing development being completed.

Thus, the Sale and Purchase Agreement (PPJB) serves as a link or initial stage of an agreement that is binding on the parties involved in the agreement (Ramadhani, 2025). Basically, a Sale and Purchase Agreement (PPJB) is drawn up in the form of a private Sale and Purchase Agreement (PPJB) or in the form of an authentic deed drawn up by a notary. A Sale and Purchase Agreement (PPJB) drawn up privately without the involvement of a notary has weaker legal force compared to a Sale and Purchase Agreement (PPJB) drawn up before a notary, but it is still considered valid as long as its content and existence are recognized by the parties who drew it up (Adriansa et al., 2025). However, generally, a Sale and Purchase Agreement (PPJB) is drawn up in the form of an authentic deed because it provides legal protection and certainty for the parties in implementing the agreement. This is in accordance with Article 1 paragraph (1) of Law Number 30 of 2004 concerning the Position of Notary Jo Law Number 2 of 2014 concerning Amendments to Article 1 paragraph (1) of Law Number 30 of 2004 concerning the Position of Notary, which states that a notary is a public official authorized to draw up authentic deeds that have legal force. With the existence of a valid written document, the potential for disputes due to differences in interpretation can be minimized because it has legal evidentiary force. However, generally, the Sale and Purchase Agreement (PPJB) is made in the form of an authentic deed because it provides legal protection and certainty for the parties in implementing the agreement. This is in accordance with the meaning of Article 1 number (1) of Law Number 30 of 2004 concerning the Position of Notary Jo Law Number 2 of 2014 concerning Amendments to Article 1 paragraph (1) of Law Number 30 of 2004 concerning the Position of Notary, which states that a notary is a public official authorized to draw up authentic deeds that have legal force. With the existence of a valid written document, the potential for disputes due to differences in interpretation can be minimized because it has legal evidentiary force in the event of a violation or negligence committed by one of the parties (Safatullah & Adriaman, 2025).

In this regard, a Sale and Purchase Agreement (PPJB) can be legally binding and serve as evidence if it is legally valid by fulfilling the elements of a valid agreement. This is subject to Article 1320 of the Civil Code regarding the requirements for a valid agreement. The agreement must be made with parties who are competent to enter into an agreement, as further regulated in Article 1330 of the Civil Code, which defines competent persons as those who are not minors, those who are of sound mind and body, those who are under guardianship, and women who are married or have been married. Furthermore, the agreement must be based on the agreement of the parties to bind themselves to do something, the object of the agreement must be stated as clearly as possible, and for a lawful reason. With the fulfillment of the requirements for a valid agreement as stipulated in Article 1320 of the Civil Code, the Sale and Purchase Agreement (PPJB) obtains binding legal force based on the principle of *pacta sunt servanda* or the principle of certainty. The principle of *pacta sunt servanda* or the principle of certainty states that agreements made legally by the parties are valid as laws for those who make them and have binding legal force (Gayo & Sugiyono, 2021). This principle is contained in Article 1338 of the Civil Code, which states that “All agreements made legally are valid as law for those who make them”. The principle of *pacta sunt servanda* or the principle of certainty provides assurance of the trust built between the parties to an agreement, because this principle emphasizes the principle of obedience, namely the obligation to comply with and implement every provision in the mutually agreed contract (Syamsiah & Yuliana, 2023). Article 1338 of the Civil Code also adheres to the principle of freedom of contract, whereby every individual has the freedom to enter into agreements in accordance with their wishes that do not violate the provisions of the law, public order, or moral norms, and these agreements are as binding as the law (Subekti, 2014).

The agreement arising from the Sale and Purchase Agreement (PPJB) as an obligatory agreement is a binding reciprocal relationship, which confirms the balance between the rights and obligations of the bound parties. In a Sale and Purchase Agreement (PPJB), the buyer is obliged to pay for the object of the agreement either in installments according to the agreed schedule or in full, while the seller is obliged to complete the construction on time as mutually agreed or to resolve any issues surrounding the object of the agreement that may cause obstacles (Binela & Prananingrum, 2024). This statement is subject to Article 1457 of the Civil Code, which states that a sale and purchase agreement is an activity in which one party commits to transferring an object and the other party pays the agreed price.

The rights that can be accepted by the buyer are different from those in the Deed of Sale and Purchase (AJB), whereby the buyer obtains the right to transfer ownership of the object of the agreement as stated in Article 37 paragraph (1) of Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land Registration, which states that the transfer of rights or other legal acts of transfer of rights through sale and purchase can only be registered if proven by a deed made by an authorized Land Deed Official (PPAT) in accordance with the provisions of the applicable laws and regulations. A Sale and Purchase Agreement (PPJB) cannot be used as a basis for transferring ownership of the object of sale and purchase because, in essence, a Sale and Purchase Agreement (PPJB) is only a preliminary agreement drawn up by a Notary before the Sale and Purchase Deed (AJB) is drawn up as the main agreement.

In the event of a breach or non-compliance by either party, such as failure to fulfill the agreed-upon obligations or the occurrence of unlawful acts, the Sale and Purchase Agreement (PPJB) still has legal force that can be used as a basis for dispute resolution. As explained above, the Sale and Purchase Agreement (PPJB) has legal force to serve as strong evidence as



an authentic deed in proving default, but the Sale and Purchase Agreement (PPJB) does not have executory force, whereby the settlement must go through court proceedings based on a judge's decision (Budiman, 2025).

In generally, default is defined as a situation where a party bound by an agreement fails to perform its obligations or fulfill its commitments as agreed in the agreement (Ridwan & Permana, 2022). There are three types of default, namely: first, the debtor does not fulfill their obligations or fails to meet the agreed guarantees; second, the debtor fulfills their obligations but is late from the specified time; and third, the debtor's fulfillment of obligations is not in accordance with the stipulated provisions (Hikmah et al., 2024). If this default occurs, the Sale and Purchase Agreement (PPJB) can serve as legal evidence of the default through the clauses created and agreed upon by the parties bound by the Sale and Purchase Agreement (PPJB), as well as the basis for demanding the fulfillment of obligations or cancellation of the agreement.

Cancellation of a Sale and Purchase Agreement (PPJB) is a form of legal protection for both the seller and the buyer. Subject to Article 1381 of the Civil Code, which states that the termination of an agreement arising from an agreement between the bound parties has been completed or the agreement has been removed. The cancellation of an agreement is generally divided into two legal actions, namely voidable and void. An agreement can be voidable if it does not fulfill the subjective elements of competence and agreement as stipulated in the conditions for a valid agreement. Meanwhile, it is nullified by operation of law because the agreement does not meet the objective elements or cannot be implemented because the object of the agreement is unclear and was made in violation of the law. With the cancellation of this Sale and Purchase Agreement (PPJB), it protects the parties from legal obligations and restores them to their original state.

### **Analysis of the Judge's Considerations Regarding the Surabaya District Court Decision No. 862/Pdt.G/2021/PN Sby**

The case underlying the judge's consideration in Surabaya District Court Decision Number 862/Pdt.G/2021/PN Sby was the defendant's breach of contract as the buyer. This case began when the Defendant, as the buyer, failed to continue with the agreed payment in full for the object of the agreement, namely a vacant plot of land owned by the Plaintiff as the seller, at the agreed price of IDR 5,500,000,000 (five billion five hundred million rupiah). The case explained that the conclusion of the Full and Final Sale and Purchase Agreement (PPJB) was based on an agreement between the two parties before Notary Tri Sinta Krisnaningrum, S.H., M.Kn. The Sales and Purchase Agreement (PPJB) deed was issued on November 11, 2013, No. 92, followed by a power of attorney to sell No. 93 dated November 11, 2023, with an agreement that payment would be made in full when this deed was signed and would serve as a receipt. However, in reality, the Defendant paid for the subject matter of the agreement in installments through his personal account to the Plaintiff's account. Payments made in installments were made only twice, with a total amount of Rp. 2,037,500,000 (two billion thirty-seven million five hundred thousand rupiah). The Plaintiff has repeatedly inquired with the Defendant through its notary regarding the payment shortfall, but there has been no good faith on the part of the Defendant for 8 (eight) years. That with strong reasons and evidence, the Plaintiff has filed a petition with the Surabaya District Court to rescind the Sales and Purchase Agreement (PPJB) as stipulated in the Sales and Purchase Agreement (PPJB) and agreed by both parties that if a case or dispute arises, it shall be resolved by selecting the law of the place where the object of sale and purchase is located.

Regarding the Surabaya District Court Decision Number No.862/Pdt.G/2021/PN Sby, the judge ruled to grant the Plaintiff's claim in its entirety by default and declared the Sale and Purchase Agreement (PPJB) made before a notary to be null and void and without legal binding force. The Defendant was ordered to return all payments made and to pay the costs of the case. The judge's decision was based on several considerations regarding the facts of the case.

First, the judge considered that based on the chronology described by the Plaintiff in the case, the Sale and Purchase Agreement (PPJB) with deed number No.92 no longer fulfilled the requirements of a valid agreement because the Defendant did not fulfill the agreed terms, namely the agreement for full payment, resulting in a defect of consent. However, referring to the requirements for a valid agreement as stipulated in Article 1320 of the Civil Code, the judge's consideration in the Surabaya District Court Decision No. 862/Pdt.G/2021/PN Sby was erroneous in terms of the intended element of agreement. Based on the understanding of agreement as stated by R. Subekti, agreement is a form of permission from both parties or legal subjects who bind themselves by making an agreement. The parties involved in the agreement must agree or consent to the main points of the agreement itself and mutually desire the same thing, referred to as rights and obligations (Subekti, 1987).

Through this understanding, what is meant by agreement in the elements of a valid agreement is agreement on the content of the agreement that is consciously desired when the agreement is made. Conversely, the agreement referred to in the judge's consideration in Surabaya District Court Decision Number 862/Pdt.G/2021/PN Sby is an agreement after the conclusion of the Sale and Purchase Agreement (PPJB). The defendant's failure to fulfill its obligation to pay the price of the subject matter of the agreement is not a form of non-agreement or defect of will, but rather a failure to perform its obligations as required. This is in line with the theory of will (*wilstheorie*), which emphasizes that the essence of an agreement lies in the expression of the parties' will, not in their actual will (Fuady, 2015). The formation of a contract begins with a mutual declaration of intent, while its implementation or failure to implement it is something that occurs after the agreement has been formed. Therefore, the Sale and Purchase Agreement (PPJB) still fulfills the elements of agreement for the validity of an agreement and has legal force to serve as evidence of default by the buyer.

In addition, the judge ruled that there was a defect of consent because the Defendant did not agree to the payment. Basically, a defect of consent is a situation where there is an imperfection in the agreement between the parties (Arrodli et al., 2024). The agreement that was made was not purely based on the consent of the binding party, but was influenced by another person. Referring to Article 1321 of the Civil Code, a defect of consent occurs when an agreement is made due to negligence, coercion, and/or fraud. The defect of consent included in the judge's consideration was not based on law because in the testimony of witness 1 (first) as the notary who drew up the Sale and Purchase Agreement (PPJB), stated that both the Plaintiff and the Defendant, as the seller and buyer, came directly to draw up the agreement of their own free will, which was reinforced by a re-reading of the Sale and Purchase Agreement (PPJB) and questioning the accuracy of the contents of the agreement. Thus, the agreement between the two parties was not influenced by any external factors and there was no defect of consent.

Secondly, the Sale and Purchase Agreement (PPJB) made before a notary with No. 92 and followed by the Power of Attorney to Sell No. 93 was accepted as evidence of the allegations in the lawsuit as authentic evidence, reinforced by sworn testimony from the notary and witnesses who acted as intermediaries in the sale and purchase between the Plaintiff and the Defendant. In the judge's consideration, the judge accepted and stated that it was true that the Defendant had committed a breach of contract regarding the unpaid payment. This was proven in the agreement deed with the provisions in Article 1 and Article 2 of the Sale and

Purchase Agreement (PPJB) No. 92 dated November 11, 2013, which stated that the payment for the object must be made in full.

With the evidence of default, the Sale and Purchase Agreement (PPJB) can still be requested to be canceled even though the Sale and Purchase Agreement (PPJB) remains valid as an agreement. This is because the Defendant, as one of the parties bound by the agreement, has committed a breach of contract, so the Plaintiff, as the party who feels aggrieved, can file a request for cancellation of the agreement. Subject to Article 1266 of the Civil Code, the cancellation of an agreement due to default must be requested from a judge through court proceedings. As a result of legal cancellation, the agreement is declared void and deemed never to have been made, so that the conditions of the parties must be restored to what they were before the agreement was executed (Aula & Cahyono, 2023).

## CONCLUSION

A Sale and Purchase Agreement (PPJB) has binding legal force because it is made based on the principle of *pacta sunt servanda* in Article 1338 of the Civil Code. As long as it meets the valid requirements of an agreement under Article 1320 of the Civil Code, a Sale and Purchase Agreement (PPJB) is considered valid and can be used as strong legal evidence in cases of default, especially if it is made in the form of an authentic deed before a notary. A Sale and Purchase Agreement (PPJB) drawn up in the form of an authentic deed before a notary has perfect evidentiary value because it reflects the valid intentions of the parties, thereby providing legal protection and certainty for the parties involved.

While analyzing the Surabaya District Court Decision No. 862/Pdt.G/2021/PN Sby, the judge found that the Defendant, as the buyer, was in breach of contract because they didn't fulfill their payment obligations under the Sale and Purchase Agreement (PPJB). However, the judge's consideration that there was a defect of will was deemed inappropriate because the inability to make payment was not a defect of will, but rather a breach of performance. Therefore, the Sale and Purchase Agreement (PPJB) remains valid as an agreement and can be used as evidence of default, while its cancellation is carried out through the court in accordance with the provisions of Article 1266 of the Civil Code, with the legal consequence that the agreement is deemed never to have occurred and the parties are returned to their original state.

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