

# **Sales and Purchase Agreement As The Basis of Land Ownership Transfer Registration In The Context of Tax Amnesty**

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## **ABSTRACT**

In 2016, the President of the Republic of Indonesia legislated the Law of the Republic of Indonesia Number 11 of 2016 on Tax Amnesty. One of the regulated policies is that assets that are still registered in the name of another person and have not been disclosed by the Taxpayer must be disclosed and transferred into the name of the Taxpayer with the exemption of income tax imposition. With this provision, the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Released the regulation Number 15 of 2017 concerning the Registration of Transfers on Land Rights in the Framework of Tax Amnesty, and followed up with the issuance of the Circular Announcement Number 9/SE/X/2017 concerning the Implementation Guidelines of the Regulation of the Minister of Agrarian and Spatial Planning/Head of National Land Agency Number 15 of 2017 concerning Registration of Transition of Land Rights in the Context of Tax Amnesty. This Circular Announcement stipulates that the registration of the transfer of land rights is executed by making a nominee statement letter between the Taxpayer and the Nominee, and if previously the nominee statement letter has not been made but a legal act has been carried out, then the party can use the deed of binding and transfer ownership of rights of the land or apartment that are made by a Notary. The agreement of the transfer ownership of land or the apartment unit referred to is the Agreement on the Binding of Sale and Purchase. With this provision, the registration of the transfer of rights of the land is possible on the basis of the Agreement on the Binding of Sale and Purchase whereas the Agreement is a pledge between the prospective seller and the prospective buyer to transfer the rights of ownership of the land at an agreed price.

**Keyword:** Sale and Purchase Agreement, Tax Amnesty, Land Registration

## **1. INTRODUCTION**

Legal action frequently performed by legal subject is making a sale and purchase agreement, both for movable objects and immovable objects. In the sale and purchase of immovable objects, such as land, each party has rights and obligations to be fulfilled so as not to harm the other party. Purchase and sell process begins with an agreement between seller and buyer to transfer ownership of land rights and ends with the signing of Sale and Purchase Act before the Land Deed Officer (hereinafter referred to as PPAT). A deed issued by PPAT is the basis for land ownership transfer registration at the local Land Office as determined in the provisions of Article 37 paragraph (1) of the Government Regulation of the Republic of Indonesia Number 24 of 1997 (hereinafter referred to as PP Number 24 of 1997).

Based on the provisions of Article 5 of the Law of the Republic of Indonesia Number 5 of 1960 on Basic Regulations on Agrarian Principles (hereinafter referred to as UUPA), the land law

we adopt is based on customary land law. Land purchase and sell based on customary law recognizes act of transferring rights in cash, real and clear manners. To bridge the customary law-based land sale and purchase, an agreement is formed which binds prospective sellers and prospective buyers, which are often referred to as the Sales and Purchase Agreement (hereinafter abbreviated as PPJB).

In 2016, the President of the Republic of Indonesia ratified the Republic of Indonesia Law Number 11 of 2016 on Tax Amnesty (hereinafter referred to as Law Number 11 of 2016). One of the regulated policies is that assets registered in the name of another person and have not been disclosed by the Taxpayer must be disclosed and transferred to the name of the Taxpayer with the exemption of Income Tax, as stipulated in the provisions of Article 15 of Law Number 11 of 2016. With this regulation, the Minister of Agrarian and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia issued the ministry rule Number 15 of 2017 on Registration of Transfers of Land Rights in the Context of Tax Amnesty (hereinafter referred to as Agrarian Regulation Number 15 of 2017).

The regulation states that the transfer of land ownership is carried out by making a nominee statement letter made between nominees, i.e a person whose name is registered for a taxpayer's property and the taxpayer before a notary. The Minister of Agrarian Regulation was then followed up with the issuance of Circular Number 9/SE/X/2017 as the Implementation Guidelines for the Minister of Agrarian and Spatial Planning/Head of National Land Agency Number 15 of 2017 on Registration of Transfers on Land Rights in the Amnesty Amount with the following conditions:

1. Issuance of nominee statement letters between nominees and taxpayers used as the basis for registration of land rights;
2. Where the nominee statement letter has not been made and legal action has been made, the nominee statement letter can be replaced with the deed of transfer of land rights or ownership rights to the apartment unit made by the PPAT, the binding deed of transfer of rights to land or ownership rights over apartment units made by a Notary or an underhanded deed intended to transfer ownership of land parcels and/or land rights or ownership rights to a flat unit;
3. in the event that the Nominee has passed away, the process of changing the name of the Nominee to the name of the Taxpayer shall be based on the Statement of the Nominee between all heirs of Nominees and Taxpayers completed with a statement/statement made by the heirs who explain the inheritance.

With this policy, the deed of binding agreement transfers the rights to land or ownership rights to the apartment unit made by a Notary. Underhanded deed that is intended to transfer

ownership of land parcels and / or land rights or ownership rights to flats, which in practice is often referred to as PPJB can be used as the basis for registering the transfer of land rights, while in Article 37 paragraph (1) PP Number 24 of 1997 which stipulates that the transfer of rights to land or property rights of apartment unit can only be registered if proven by a deed made by the authorized PPAT.

## 2. METHOD

This is legal research because the problems in it are examined and answered based on legal principles, legal concepts, doctrines of laws and related laws and regulations.

This research uses 2 (two) approaches, i.e statute approach and conceptual approach. Statute approach is an approach taken by examining relevant laws and regulations, especially regarding Agreement on Binding of Sale and Purchase, Deed of Sale, Land Registration and Tax Amnesty.

## 3. RESULT AND DISCUSSION

### 3.1. Agreement on Sale and Purchase Transferring Land Ownership Rights

PPJB emerged because of the open system of Book III Burgerlijk Wetboek (hereinafter referred to as BW) about engagement that provides the widest freedom to the community to enter into an agreement containing anything, provided that it does not violate public order and morality.

The open system in Book III BW can be seen in the provisions of Article 1338 paragraph (1) BW which determines that "All agreements made legally apply as laws for those who make them." In general, the agreement is divided into 2 (two), they are named agreement (*nominaat*) and an unnamed agreement (*innominaat*). PPJB is unnamed agreement (*innominaat*) because the arrangement has not been regulated in BW, yet the stipulation of Article 1319 BW determines that "all agreements, whether having a special name, or those not known by a certain name, are subject to general regulations, contained in this chapter and other chapters." With this provision, PPJB which is an agreement is also subject to legal conditions of an agreement as specified in the provisions of Article 1320 BW:

For an agreement to be valid, the following four conditions are required:

1. agreement of those who bind themselves;
2. ability to make an engagement;
3. a particular thing;
4. a reason that is allowed.

PPJB is an agreement made by prospective sellers and prospective buyers who bind themselves to transfer ownership of land rights. Prospective sellers commit themselves to surrender their ownership rights to land to prospective buyers; prospective buyers bind themselves to pay the

price of the land rights. PPJB is frequently found in Property Sale and Purchase Transaction over a Flat Unit where the developer markets the apartment unit before the construction is carried out.

PPJB is made to make protection for both sellers and buyers. PPJB guarantees that buyer will pay off the apartment unit in accordance with the agreed time while the developer is bind not to sell the apartment unit to another party other than the buyer at the specified time. PPJB is also a guarantee that the seller is bound to complete the construction of the apartment unit purchased by the buyer. At present, PPJB is not only often made for sale and purchase of property rights over flats but also buying and selling houses. Some of the reasons for making PPJB are as follows:

- a. The certificate has not been issued on behalf of the seller and is still in process at the Land Office;
- b. The certificate is not on behalf of the seller, and is still in the process of title transfer documents to be made with seller's name.
- c. The certificate has been issued and is already on behalf of the seller but the purchase agreed has not been fully paid by the buyer to the seller.
- d. The certificate has been issued on behalf of the seller's name and the price has been paid off by the buyer to the seller, but the requirements are not complete.
- e. Certificates have been used as collateral in the Bank and there is still no guarantee.

The use of PPJB in purchase and sell agreement does not contradict or violate the National Land Law because PPJB is a preliminary agreement to allow legal actions to sell before the competent authority. PPJB made between parties must be followed up with the issuance of a Deed of Sale in the presence of an authorized land deed maker.

PPAT as a public official has the authority to carry out legal actions in the form of creating deeds related to legal actions regarding land rights based on laws and regulations. The deed made by PPAT has the following functions:

- a. PPAT deed is proof of certain legal actions regarding land rights and ownership rights to the apartment unit;
- b. PPAT deed is the basis for registration of changes to land registration data to the Regency/City Land Office whose working area covers the location of the land concerned.

The deed made by PPAT is the basis for land registration in the Regency/City Land Office as determined in the provisions of Article 37 paragraph (1) of PP Number 24 of 1997. The parties that have bound themselves to make PPJB must conduct follow up by creating a Deed of Sale in front of Land Officer, hence, the transfer of land rights or Ownership Rights over an apartment unit can be registered at the local Regency/City Land Office.

With the signing of Sale and Purchase Deed by the parties signs that the sell and purchase object has become the property of the buyer. UUPA stipulates that "The registration referred to in paragraph 1 is a strong evidentiary instrument regarding the abolition of property rights and the validity of the transfer and assignment."

PPJB is used by the community as a bridge remembering sale and purchase of land according to customary law is cash and clear. PPJB contains promises from the parties to transfer ownership of land rights. PPJB does not result in the transfer of ownership of land rights. The transfer of ownership of land rights is proven by the existence of a deed made by the authorized PPAT and registered with the local Regency/City Land Office. According to Maria Sumardjono, purchase and selling of land rights based on customary law is done in cash and the rights are transferred to the buyer when purchase and selling is done before PPAT. However, to bind third parties including the government, registration is required.

According to Boedi Harsono, while Article 23 paragraph (2) of UUPA determines that ownership rights are transferred when the PPAT deed is made, the evidence does not apply to third parties, because what third parties has to know is what is listed in the land book and certificate of rights concerned. Therefore, the position of the new owner is immaculate (in terms of proof) after the registration of the transfer of rights to the land has been carried out by the Head of the Land Registration Office even though the buyer has become the owner since the sale and purchase. The deed made by the PPAT must be registered to the local Regency/City Land Office because the UUPA adheres to a registration of title registration system in which the registration system creates new rights. The transfer of rights including the assignment must be proven by a deed. The deed is not registered but the rights emerged from the deed are registered. Therefore, the deed is only used as a data source to obtain clarity regarding the occurrence of a right or transfer of rights.

Based on this description, PPJB made by the parties does not transfer ownership of land rights, because the transfer of land rights or ownership rights of an apartment unit can only be proven by a deed made by the authorized PPAT, in this case the Deed of Sale and Purchase. The deed must be registered to the local Regency/City Land Office.

### **3.2. Validity Land Rights Transfer Registration Based on Sales and Purchase Agreement in the Context of Tax Amnesty**

Taxes are regulated in the Law of the Republic of Indonesia Number 28 of 2007 on the Third Amendment to Law Number 6 of 1983 on General Provisions and Procedures for Taxation (hereinafter referred to as Law Number 28 of 2007). Article 1 number 1 of Law Number 28 of 2007 defines taxes as "compulsory contributions to the state owed by private or coercive bodies

based on the Law, by not receiving direct compensation and being used for state needs for the greatest prosperity of the people. "Article 1 number 2 determines that the Taxpayer is an individual or entity, including taxpayers, tax cutters, and tax collectors who have the right and obligation to pay according to the provisions of the legislation.

Law Number 11 of 2016 in the provisions of Article 1 number 1 defines tax amnesty as "the elimination of taxes that should be owed, not subject to tax administration sanctions and criminal sanctions in the field of taxation by disclosing assets and paying ransoms as stipulated in this Act." This tax amnesty is for every taxpayer who still has tax obligations until the end of the last tax year that has not been or has not been fully resolved by the taxpayer.

The tax obligations referred to are:

- a. Income Tax obligations;
- b. Value Added Tax obligations; and
- c. Sales Tax obligations on Luxury Goods.

Taxpayers who carry out tax amnesty must first submit a statement and their attachments to the Minister and pay a ransom. Within ten days after receipt of a statement from the Taxpayer, the Minister or appointed official on behalf of the Minister will issue a Certificate. With the issuance of Certificates, Taxpayers can enjoy tax amnesty facilities, one of which is immovable property in the form of land and/or buildings that have not been reversed in the name of Taxpayers as Article 15 of Law Number 11 of 2016. The transfer title must be carried out within a period of no later than December 31, 2017, and if it exceeds December 31, 2017 Taxpayers are subject to tax in accordance with the provisions of legislation governing Income Tax.

The provisions of Article 15 of Law Number 11 Year 2016 underlie the establishment of the Agrarian Ministerial Regulation Number 15 of 2017. The Agrarian Regulation Number 15 Year 2017 stipulates that land and buildings belonging to Taxpayers registered under other people's names, or hereinafter referred to as Nominees must be transferred in the name of Mandatory Tax. This transition is carried out by making a statement letter by both parties, i.e Taxpayers and Nominees before a Notary who states that the land and the intended building are true of the Taxpayer's property, followed by BPHTB payments calculated based on NJOP current year on land and building and exemption from income tax for nominees. Transfers of land rights carried out by Taxpayers and Nominees must be registered with the local Land Office for registration of transfer of rights by recording in the Land Book and the relevant Certificate of Land Rights as follows:

"A statement by both parties stating that the land and building are the property of the Taxpayer made before a Notary ..., in ... on the day ..., date ..., month ..., year. ..., Number ..., in accordance with the provisions of Article 15 of Law Number 11 Year 2016 on Tax Amnesty juncto Article 37 paragraph (2) Government Regulation Number 24 of 1997 on Land Registration."

Law of the Republic of Indonesia Number 12 of 2011 on the Establishment of Legislation (hereinafter referred to as Law Number 12 of 2011) in the provisions of Article 1 point 2 stipulates that "Legislation is a written regulation containing generally binding and established legal norms or stipulated by state institutions or authorized officials through the procedures stipulated in legislation. "

Legislation includes laws and regulations under it; therefore a legislative hierarchy is formed. The hierarchy of statutory regulations is the order and order of all legal regulations on a regular basis, starting from the highest legal regulations to the lowest degree. The type and hierarchy of laws and regulations based on the provisions of Article 7 paragraph (1) of Law Number 12 of 2011 are as follows:

1. 1945 Constitution of the Republic of Indonesia;
2. Decree of the People's Consultative Assembly;
3. Substitute Government Law / Regulations;
4. Government Regulations;
5. Presidential Regulation;
6. Provincial Regulation; and
7. Regency/City Regional Regulations.

Based on the provisions of Article 8 paragraph (1) of Law Number 12 Year 2011, the types of legislation as referred to in Article 7 paragraph (1) include regulations stipulated by the People's Consultative Assembly, House of Representatives, Regional Representative Council, Supreme Court, Court Constitution, Supreme Audit Agency, Judicial Commission, Bank Indonesia, Minister, equivalent agency, institution or commission established by Law or Government at the behest of the Law, Provincial Regional Representative Council, Governor, District Regional Representative Council/City, Regent/Mayor, Village Head or equivalent. These laws and regulations are recognized and have binding legal force insofar as they are ordered by higher laws or established based on authority.

There are two authorities possessed by officials, i.e bound authority and free authority. Free authority, often referred to as *freies Ermessen* comes from the word *frei* which means free, free, unbound and free. *Freies Ermessen* means people who have the freedom to judge, suspect and consider something. This term is then used in the field of government which is interpreted as one of the means that provides space for officials or state administrative bodies to take action without having to be fully bound by the law. The authority of *Freies Ermessen* cannot be used as freely as possible because its use must be within the limits possible, that is, it must not conflict with applicable law both written and unwritten law, and is intended for the public interest.

*Freies Ermessen* is embodied in a juridical instrument is called a policy of wisdom. This policy regulation is outlined in various forms such as *beleidslijnen* (lines of wisdom), *het beleid* (wisdom), *voorschriften* (rules), *richtlijnen* (guidelines), *regelingen* (instructions), *circulaires*, *resoluties* (resolutions), *aanschrijvingen* (instructions), *beleidsnota's* (wisdom notes), regulations (*ministriële*) (ministerial regulations), *beschikkingen* (decisions) and *en bekenmakingen* (announcements).

According to J. van van Kreveld, the characteristics of policy regulations are as follows:

- a. direct or indirect regulations, not based on the provisions of a formal law or a constitution that provides the authority to regulate, in other words the basic of the regulation is not found in the law;
- b. unwritten regulations and appear through a series of decisions by government agencies in exercising government authority that is free of citizenship or stipulated in writing by the government agency;
- c. regulation provides general instructions, in other words without statements from individual citizens about how government agencies exercise their free governmental authority over each individual citizen who is in a situation formulated in that regulation.

In the hierarchy of laws and regulations, Circular is not included in the laws and regulations, as stipulated in the provisions of Article 7 of Law Number 12 of 2011. Circular is a policy regulation made by government officials based on the free authority of their *ermessen*. Government officials cannot use *Freies ermessen* as freely as possible because there are restrictions that may not conflict with applicable laws in both written and unwritten law (Yustianti, Susilo, & Roesli, 2019). The policy made by the government is a statutory regulation or a policy regulation is not permitted if it is contrary to the policies regulated in the regulations above, this can be seen from the theory of "Stufenbau Theory" proposed by Hans Kelsen as follows:

1. Legal norms are composed of the lowest to the highest norms.
2. Every norm is always based on higher norms and the higher norms is also based on the higher norms and so on to the highest norm called the basic norm or basic rule (*grundsnorm*).
4. Higher norms are fundamental and universal, while lower norms are more actual and specific because they are basically implementing regulations rather than higher norms in their respective fields.

Lower norms outnumber the higher degree of norms, thus, the construction of the hierarchy of legal norms looks like a cross section of a pyramid. In the context of tax amnesty, the government issued a policy through Circular Number 9/SE/X/2017 that allows registration of land at the local land office based on PPJB. PP No. 24 of 1997 stipulates that land registration in the

land office can only be proven by a Deed made by the authorized PPAT, and in this case the PPJB is not a deed made by PPAT.

In principle, the transfer of land ownership in the context of tax amnesty based on the PPJB cannot be justified because PPJB is only an agreement that binds prospective sellers and prospective buyers regarding the agreement they have made. With this agreement the ownership of land rights has not been changed because the transfer of ownership of land rights must be proven by a deed made before the PPAT authorized to be registered with the local Land Office.

In practice, there are two forms of PPJB, i.e PPJB fully paid off and PPJB non-fully paid. While a transaction has been paid in full by the buyer to the seller, the PPJB cannot directly be registered to the Land Office for title transfer. PPJB which is followed by the authority to sell can be used as the basis for issuing PPAT deeds that they can be registered. It is different from the policy of transferring of ownership in the framework of tax amnesty which is regulated in Circular Number 9/SE/X/2017.

Registration of transfer of land ownership in the framework of tax amnesty is carried out by the authorized official, i.e the local Regency/City Land Office. However, the basis of the government official in carrying out his authority will cause problems because of the basis of the authority of the District Land Office/City is Minister of Agrarian Regulation Number 15 of 2017 juncto Circular Number 9/SE/X/2017. This Circular is a policy that may not contradictory with the laws and regulations of Article 37 paragraph (1) of Government Regulation Number 24 of 1997. Two different policies will lead to different interpretations. Legal certainty is not achieved because it will confuse the public regarding which policies must be obeyed.

#### **4. CONCLUSION**

The Sale and Purchase Agreement (PPJB) is an agreement made by prospective sellers and prospective buyers to transfer land ownership at an agreed price. PPJB is made by the parties because the requirements for buying and selling have not been fulfilled. However, many do not have enough knowledge about PPJB, its strengths and legal consequences. The right to land is only changed when the Deed of Sale is made by the authorized PPAT and registered to the local Regency/City Land Office.

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which determines that the registration of the transfer of land rights at the local Land Office is based on the the Deed created by the authorized PPAT. The conflicting policy will hamper the legal certainty aspired to prosper the society.

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