

## Legal Analysis of the Legal Consequences of a Deed of Sale and Purchase Agreement (PPJB) for Land Ownership Rights That is Unilaterally Cancelled



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**ABSTRACT:** It is undeniable that problems still often occur in society regarding PPJB deeds, one of which is the unilateral cancellation of PPJB deeds which can have legal consequences for the parties. This study aims to examine the legal regulations regarding the cancellation of PPJB deeds of land ownership rights, as well as the legal consequences of PPJB deeds that are unilaterally canceled. The legal research method uses a normative juridical research method with laws and regulations and legal writings as legal materials. The research approach used in this study is the statutory approach and the conceptual approach. Data analysis uses qualitative data analysis. The results of this study are: first, the legal regulations regarding the cancellation of PPJB deeds are regulated in the Civil Code, namely that unilateral cancellation is justified by law if the parties to an agreement expressly agree to set aside the provisions of Article 1266 of the Civil Code under any conditions, on condition that it must be based on a judge's decision. Unilateral cancellation of an agreement due to default without a Judge's decision is not a problem as long as the other party also accepts the decision, but if one party refuses to be accused of default, then the parties submit to the Judge to assess whether or not there is a default. Second, the consequences of the cancellation of the agreement are regulated in Articles 1451 and 1452 of the Civil Code, where the legal consequences are to return the situation to its original position as it was before the agreement was made. In the cancellation of the PPJB deed, the seller has an obligation to return the amount of money that has been paid by the buyer minus the costs that have been incurred by the seller, while the buyer must pay a fine to the seller due to the default that was made.

**KEYWORDS:** Cancellation, Legal Consequences, PPJB, Sale and Purchase.

### I. INTRODUCTION

A contract, or agreement as it is commonly known, is one of the key components of law, particularly civil law. Various sorts of agreements that arise in society give birth to a link between the parties that create it as a legal relationship between the parties that make it (Raharjo, 2009). A promise made to another person or a reciprocal promise made by two persons constitutes an agreement, according to Subekti. R. Setiawan offered an alternative viewpoint, arguing that an agreement is a legal document in which one or more parties commit themselves or themselves to one or more others (Putri, 2020).

In general, it is possible to make an agreement freely, meaning that you may choose the conditions of the agreement, the form of the agreement itself, and the ability to enter into an agreement with anybody. The subjects of an agreement are not only required to engage into agreements whose names are prescribed by law (*benoemde overeenkomsten*) when they have the freedom to enter into agreements (*partij autonomy, contractvrijheid*) (Subekti, 1996). As specified in Book III, Chapters V through XVIII of the Civil Code. In addition, the contract's subject is free to engage into agreements with terms that are not defined by law; this is known as a special agreement (*onbenoemde overeenkomsten*).

Article 1338 of the Civil Code (KUH Perdata) - "All agreements made legally apply as laws for those who make them" - gives the parties the freedom to agree on any terms they want. The use of the concept of freedom of contract as stated in Article 1338 (1) is not instantly carried out readily and freely, but has constraints on its use that must be addressed. The restrictions are to the requirements for a legally binding agreement as stated in Article 1320 of the Civil Code. These requirements include the consent of the parties involved, their ability to bind themselves, a specific object, and a legitimate reason.

According to Article 1338 paragraph (2) of the Civil Code, which stipulates that an agreement must be carried out in good faith, the parties' agreement must be founded on good faith. Generally speaking, good faith can be understood to mean that each party to

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a legally agreed upon agreement is required to give the most comprehensive information or statement that can affect the other party's decision to enter into the agreement or not, regardless of whether such information is requested (Khairandy, 2003).

Land transactions are a common type of legal interaction between individuals. Land sales are a reciprocal arrangement between 2 (two) parties, namely the seller and the buyer. Each of the parties to the agreement has the rights and duties to carry out the terms of the agreement as mutually agreed upon. The promise in question is one in which one party fulfills its commitments and the other either acknowledges it or agrees to pay damages in the event that the terms of the contract are broken (Permana, 2017). In the sale and purchase relationship, in order to create order in the land sector, especially concerning officials who are authorized to make Sale and Purchase Deeds (AJB), the government is assisted by Land Deed Making Officials (PPAT) and Notaries and other officials appointed for this purpose who have the authority to make deeds related to the sale and purchase of land. Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration (PP Number 24 of 1997) contains provisions that for the transfer of land rights an authentic deed is required in the form of a sale and purchase deed made by a PPAT appointed by the government. However, if the requirements for the sale and purchase of land rights have not been met, then the signing of the AJB by the parties cannot be carried out before the PPAT.

This situation is certainly not beneficial or can even be detrimental to the parties who are buying and selling land rights, because it makes the seller have to postpone the sale of his land. For the buyer, it causes his desire to obtain rights to the land he will buy to be delayed. To overcome this and for the smooth orderly administration of land, a legal innovation was found, namely by making a Deed of Sale and Purchase Agreement (PPJB), although the contents are about the sale and purchase, the format is only limited to a land rights sale and purchase agreement made before a Notary (Afifah, 2020). A notary is a public official who has the authority to make various types of agreements (Adjie, 2008) as referred to in Article 15 paragraph (1) of the Republic of Indonesia Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (UUJN).

In the course of implementing PPJB in the community, a number of situations may arise that lead to the cancellation of an agreement—either by the parties themselves or by a court ruling with long-term legal implications (Mulyadi and Widjaja, 2013). Although canceling an agreement made in front of a notary is not a new issue, it is still important to research the legal requirements surrounding the cancellation of the PPJB deed in order to understand the potential legal ramifications for the parties involved and to find a workable solution that will ensure no party suffers as a result of the PPJB deed's creation. Therefore, the author is interested in conducting research with the title "Legal Analysis of the Legal Consequences of Deeds of Sale and Purchase Agreements for Land Ownership Rights that are Unilaterally Canceled".

## **II. RESEARCH METHOD**

The author employs a normative legal approach in this study. Normative legal study is an endeavor aimed at analyzing the issues gleaned from positive law. The idea that the law is an independent entity with no connection to other social institutions is the reason behind this. A technique of review known as the normative legal approach method involves interpreting theoretical issues pertaining to principles, doctrines, legal norms, or conceptions that are governed by relevant laws and regulations. A library research is used in the research specification (Benuf & Azhar, 2020). The legislative approach and the conceptual approach are the methods employed. Primary, secondary, and tertiary legal documents are among the secondary data types that are employed. The literature review process is used to obtain data. The process of turning data into information through data analysis allows for the understanding of the data's features and their use in problem-solving, particularly in the context of research. The end product of the data analysis process is descriptive data, which is based on qualitative methodologies. In addition, it also employs deductive-inductive analysis and comparative analysis.

## **III. RESEARCH RESULT**

### **Legal Regulations Regarding Cancellation of Deed of Sale and Purchase Agreement (PPJB) for Land Ownership Rights**

One type of agreement that emerges from the legal demands that evolve in society is the Sale and Purchase Agreement (PPJB). PPJB for certified land rights is an application of the principle of freedom to make agreements, wherein the parties may freely decide what constitutes an agreement and call it whatever they like, provided that it does not violate any generally accepted standards of propriety and justice or the terms of any applicable laws or regulations. The implementation of PPJB for land rights in the form of an authentic notarial deed is often carried out in society in everyday life. PPJB is made in an authentic deed made by and before a Notary, so that the PPJB deed has perfect evidentiary power. This provides more protection and legal certainty for the parties who make it.

Subekti claims that because there are conditions that must be met before the sale and purchase can proceed, such as pending certificates or unpaid payments, the Sale and Purchase Agreement (PPJB) is an agreement made by both parties prior to the sale and purchase being carried out or before signing the Sale and Purchase Deed (AJB) (Danew, 2020). So PPJB is done because the Deed of Sale and Purchase (AJB) cannot be made because the payment has not been paid in full, because basically AJB can only be made if the payment has been paid in full, this refers to the AJB form Perkaban No. 8 of 2012, where there is a premise that confirms that

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the Seller has received the full sale and purchase price from the Buyer. Basically, the sale and purchase agreement adheres to the principle of clear and cash, clear is done in the presence of an authorized official to make the sale and purchase deed, namely a notary and/or Land Deed Making Officer (PPAT) and witnessed by 2 (two) witnesses, while cash is the transfer of rights forever from the seller to the buyer and the sale and purchase is completed at the time of signing the Deed of Sale and Purchase (AJB) (Chaerunnisa, 2020).

The implementation of the preparation of PPJB for the sale and purchase of land and/or buildings is regulated in the Regulation of the Minister of Public Works and Public Housing Number 11/PRT/M/2019 concerning the Preliminary Agreement System for the Sale and Purchase of Houses (abbreviated as Permen PUPR Number 11/PRT/M/2019). According to Article 1 number 2 of the PPJB, it states as follows: "The Preliminary Sale and Purchase Agreement or Sale and Purchase Binding Agreement, hereinafter referred to as the PPJB, is an agreement between the developer and any person to carry out the sale and purchase of a house or apartment unit which can be carried out by the developer before construction for apartments or in the construction process for single houses and terraced houses which is stated in a notarial deed."

Even though PPJB is a deed that gives parties a way to create legal protection and certainty if they want to enter into a formal sale and purchase relationship even if payment is not made in full or the certificate cannot be transferred directly due to pending other processes, PPJB implementation is not always flawless; occasionally, there are issues that prevent the binding from continuing or even render the deed void. A contributing element to the PPJB deed's cancellation is the existence of cancellation clauses that were stipulated in the contract and approved by the parties involved. An agreement's cancellation provision often includes a justification section that allows any party or both to withdraw from the contract (T. Baswedan, 2013).

Basically, in a deed of agreement, the parties have obligations that must be fulfilled or called performance, which consists of giving, doing, or not doing something in accordance with Article 1234 of the Civil Code (Muru, 2014). A Sale and Purchase Agreement (PPJB) generally includes a form of achievement in the form of land rights by the seller to the buyer and the buyer must pay the price for the land rights. If one party does not carry out its performance, it is called a breach of contract, because an agreement that has been agreed upon and has been stated in writing or a deed either in the form of an authentic deed or a private deed and has been signed by the parties, has binding legal force for the parties to be obeyed and complied with and implemented by the parties who signed it as befits the law.

Without the consent of the other party who signed the agreement, the parties who have signed it cannot unilaterally withdraw from it. One party's unilateral cancellation of an agreement is a violation of the terms of the sale and purchase agreement. This is because of the Civil Code's Article 1338, paragraph (1), which stipulates that all legally binding agreements become the laws of their parties. Therefore, it may be claimed that a breach of a contract that the parties have agreed upon and signed carries legal ramifications for the offending party and gives rise to the right to demand that the offending party complete the performance under the terms of the agreement.

Basically, the cancellation of a previous agreement must use a warning process to the party in default, to find out whether the default was done intentionally or there was a certain reason, then approximately two or three written warnings or summonses are given, if until the last warning the party concerned has not carried out his good faith in fulfilling his performance, then it can be said to be a party who has run away from his responsibility or is in default, as explained in Article 1267 of the Civil Code, among others, as a party whose obligations are not fulfilled can choose or force the opposing party to comply with the agreement or arrangement and if this is still possible, then he can demand the cancellation of the agreement by receiving compensation for costs, damages, losses and benefits that are agreed upon, thus considered useless. Furthermore, in accordance with Article 1320 of the Civil Code, which explains that an agreement can be cancelled if subjective or objective conditions are not met, which can then result in the legal consequence of an agreement being cancelled (Atma, 2009).

To declare the nullity of a legal act, the terms "null and void", "cancel it" (Article 1449 of the Civil Code), "demand cancellation" (Article 1450 of the Civil Code), "declaration of nullity" (Article 1451-1452 of the Civil Code), and "null and void" (Article 1553 of the Civil Code) are found. The PPJB deed made before a notary is canceled if it does not fulfill the subjective elements of Article 1320 of the Civil Code. A PPJB deed that does not meet the objective requirements of Article 1320 of the Civil Code will result in it being null and void by law, the objective requirement, namely the requirement for there to be a certain thing that is the object of this agreement, is formulated in Articles 1332 to 1334 of the Civil Code concerning certain things in the agreement followed by Articles 1335 to 1336 of the Civil Code which regulate the formulation of a lawful cause, namely a cause that is not prohibited by law and does not conflict with morality or public order in an agreement. Article 1338 paragraph (3) of the Civil Code has determined that "Agreements must be carried out in good faith." An agreement made with an unlawful cause will only create a natural obligation that cannot be demanded to be fulfilled before the law (Sumarna, 2022).

Article 1338 paragraph (2) of the Civil Code states that the cancellation of the PPJB deed is subject to several restrictions, including the need that both parties agree or that the cancellation be for grounds that the law deems adequate. Article 1266 of the Civil Code stipulates that the conditions for cancellation must always be communicated to the judge. Even when the agreement specifies the cancellation criteria about the failure to meet duties, this request must still be submitted. In the event that the

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cancellation terms are not specified in the agreement, the court may, based on the circumstances, grant the defendant an extension to complete his duties; this extension, however, may not exceed one month."The conditions for an agreement to be canceled by one of the parties are (i) the agreement must be reciprocal, (ii) there is a breach of contract, and (iii) cancellation must be requested to the judge, as per the provisions of Article 1266 of the Civil Code regarding cancellation conditions that are considered to exist in every agreement.

Therefore, it is evident that if the parties to an agreement specifically agree to set aside the terms of Article 1266 of the Civil Code in any situation, it is legally justifiable to do so, provided that the basis for the cancellation is a judge's ruling (Pradipta, 2022). These clauses comply with Article 1266, paragraph (1) of the Civil Code; in the event that one of the parties to the agreement disputes any of the terms, the cancellation criteria are always deemed to be a part of the reciprocal agreement. The Civil Code's Article 1266, paragraph (2), specifies that a judge's ruling is required in order to terminate an agreement. Furthermore, even though the agreement contains cancellation requirements, Article 1266 paragraph (3) of the Civil Code underlines that the request for cancellation must be submitted. Although the judge's order just declares that the agreement has been terminated, jurisprudence holds that the termination of the agreement is the result of default. But there is also jurisprudence that says that even though it has been agreed upon, the seller cannot remove the items that are the subject of the agreement in the event that the buyer breaks his word.

Therefore, in theory, an agreement may be canceled and restitution may be sought under the Indonesian Civil Code legal system provided that a duty is not fulfilled and that the failure to fulfill the obligation is sufficiently substantial (material breach). As long as there is another legal area—that is, the law controlling force majeure and risk—and the inability to fulfill the obligation is not the result of a force majeure event, which is not covered by the default legislation (Amin, 2018).

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In society, buying and selling are reciprocal agreements that are frequently made. The essence of buying and selling is reciprocal because each party is entitled to and required to perform, meaning that each party has the right to perform and is also required to perform for the other party in return. One example of a reciprocal agreement in this context is the purchase and sale of land. A deed executed by and before a land deed making official, or PPAT, is required as proof of purchase and sale of land. Only land held based on land rights, that is, in the sense that the land object is legalized as proof of ownership of land rights, may be purchased or sold in order to provide legal certainty and order in the transaction. As a result, it is established that the seller is an individual or entity with the authority to sell (Permana, 2022).

The PPJB deed is a type of "Partij akte", a deed that contains the will of the parties, the promises of the parties and the rights and obligations of the parties, in the deed contains various contents desired by the parties before a notary. Clauses regarding the time period for fulfilling rights and obligations must be included in the PPJB deed, because there will be uncertainty for the parties to obtain their rights and obligations. A deed will be a problem if one party feels disadvantaged. This causes losses for the parties who have made and agreed to the deed that has been made, but in its course a deed does not run according to the agreement of the parties who made it, there are conditions that result in an agreement having to end not according to the initial agreement (Amasangsa, 2021). Thus, in order to avoid future disputes between the parties, the Deed of Sale and Purchase Agreement must include a detailed, unambiguous, and comprehensive explanation, along with information on the penalties that will be applied if one of the parties defaults.

Cancellation (can be canceled) is a statement of cancellation of a legal action upon a claim from a party that by law demands such. After the declaration of cancellation by the judge, the existence of the contract is the same as being canceled by law. Basically, the cancellation condition is always considered to exist in a reciprocal agreement. If the cancellation condition occurs, the agreement is not legally canceled, but the cancellation must be requested to the judge. The request must also be made even though the breach of promise as a condition of cancellation is stated in the agreement. Good faith or honesty is the main factor or the most important factor in contract laws. An agreement in an agreement is considered to have occurred if one party has agreed to or accepted the offer made by the other party. In a contract that has been made, it cannot be immediately canceled by one party without the agreement or consent of the other party.

An agreement may be canceled in accordance with Indonesian law if one of the parties breaches a commitment (default). In essence, defaulting parties engage in behaviors that fall into one of three categories: a) performing late; b) not performing; or c) performing incorrectly. Articles 1266 and 1267 of the Civil Code govern the cancellation of agreements. Essentially, they state that, regardless of whether the conditions for cancellation are specified in the agreement, the party who feels wronged may file a lawsuit to have the agreement canceled and receive damages for costs, forfeitures, and interest (Pahlefi, 2019). Nevertheless, the agreement's actual execution frequently deviates from what is stated in the two articles' provisions. In actuality, the parties frequently insert a stipulation in the agreement stating that they consent to waive or set aside the terms of Civil Code Article 1266, paragraph (2). A violation of contract results in the agreement being deemed invalid from a legal standpoint. If such a clause exists, it goes against the Civil Code's Article 1338, paragraph (2), which states that "An agreement cannot be withdrawn except by agreement of both parties, or for reasons that are stated by law to be sufficient for that purpose." According to Abdulkadir Muhammad, an agreement

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that has been made legally binds the parties; it cannot be withdrawn or terminated unilaterally; instead, you must obtain the consent of the other party in order to do so. This is because Article 1338 paragraph (2) of the Civil Code emphasizes that the agreement cannot be canceled unilaterally and must be based on an agreement between the two parties or because the law states that it is sufficient for that. This is compliant with Civil Code Article 1338, paragraph (2).

In general, unilaterally terminating an agreement due to default without a judge's ruling is acceptable as long as the other party agrees. However, if one party objects to the accusation of default, the parties should submit the decision to the judge so that the judge can determine whether or not a default occurred. The default is measured from the moment one party ends the agreement, if the judge finds that the default is legitimate and substantiated (Baswedan, 2014). Accordingly, based on Article 1266 of the Civil Code, which makes a breach of contract a condition for cancellation, the Judge will determine whether a violation of contract is a requirement for cancellation or if a request for cancellation must be submitted. Not an issue if both parties choose to annul the agreement and acknowledge that one of the parties has broken the terms of the agreement. The issue arises, though, if the party allegedly in breach of the agreement disputes it. In this case, the Court must cancel the agreement in order to ascertain whether a breach of contract has occurred and to prevent one of the parties from acting arbitrarily and ending the agreement abruptly without providing a justification.

The consequences of the cancellation of the agreement are regulated in Article 1451 and 1452 of the Civil Code, where the legal consequences are to return the situation to its original position as it was before the agreement. Cancellation of the purchase contract will have legal consequences, namely:

- 1) At the time of termination of the contract, the parties may waive the provisions of Article 1266 and 1267 of the Civil Code as far as necessary, and the seller is obliged to return the amount of money that has been paid by the seller. The buyer must reduce a few percent of the selling price to offset the costs incurred by the seller, as well as the fine that the buyer must pay to the seller. The fine must be reimbursed by the seller. Notification from the seller to the buyer must be given at the agreed time.
- 2) A fine may be imposed on the parties involved, the amount of which will be adjusted according to joint provisions and must be paid from the Buyer to the Seller or vice versa, and will be paid immediately on each date of delay.

Including multiple requirements, such as asking the buyer to finish the payment in accordance with the agreement followed by cancellation conditions or fines if the payment exceeds the specified time, is one way to ensure that there is no loss to one party and to minimize the occurrence of unilateral cancellation of the PPJB deed, specifically against the seller. The policy established by the seller serves as one of the penalties meted out to potential buyers who fail to fulfill their commitments, and vice versa for the buyer. In other words, if the buyer complies with every agreement outlined in the PPJB, the subject matter of the agreement becomes the property of the buyer, and the seller is prohibited from selling it to a third party (Dewi, 2020). The agreement between the two parties must be truly understood by the parties, so that if there is a unilateral cancellation due to default, the party committing default can understand the legal consequences.

Here lies the importance of the payment term affirmation clause to ensure legal certainty for the parties and the formulation of the term for the fulfillment of rights and obligations in the deed must be clearly detailed because it relates to sanctions if the binding agreement is violated by the parties. Both clauses can provide legal certainty for the parties. The clause regarding sanctions for parties who violate the agreement, for example, a fine imposed by the seller on the buyer if the buyer's payment is not on time (Arthadana, 2017).

## IV. CONCLUSION

Legal provisions regarding the cancellation of a deed of sale and purchase agreement (PPJB) for land ownership rights are regulated in the Civil Code, namely that unilateral cancellation is justified by law if the parties to an agreement expressly agree to set aside the provisions of Article 1266 of the Civil Code under any circumstances, provided that it must be based on a judge's decision. Unilateral cancellation of an agreement due to default without a judge's decision is not a problem as long as the other party also accepts the decision, but if one party refuses to be accused of default, then the parties should submit the decision to the judge to assess whether or not there is a default.

Articles 1451 and 1452 of the Civil Code govern what happens when an agreement is canceled. The legal ramifications of this are to put things back to as they were before the agreement. Legal ramifications of the PPJB deed cancellation include the seller's need to reimburse the buyer for the money they have already paid. In order to cover the seller's expenses and the fines the buyer must pay the seller, the buyer must deduct a small percentage of the selling price. The buyer must get notification from the seller at the scheduled time.

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