

## LEGAL PROTECTION OF NOTARIES IN DISPUTES OVER DEFAULT OF SALE-PURCHASE AGREEMENTS

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### Abstract

*This research aims to review and analyse the legal protection provided to notaries in disputes over default of land sale and purchase agreement (PPJB) in Indonesia. The main focus of this research is to identify the extent to which existing legal provisions, both in Law Number 2 Year 2014 on the Notary Position (UUJN) and in the Criminal Code (KUHP), can protect notaries from the legal consequences that may arise in cases of default. Through a normative legal approach, this study finds that although UUJN authorises notaries to draft valid authentic deeds, legal protection for notaries in the context of default disputes is still limited. Therefore, this study recommends the strengthening of more comprehensive regulations and clearer legal protection mechanisms for notaries, in order to provide legal certainty in carrying out their professional duties. This research is expected to contribute to the understanding of the rights and obligations of notaries and strengthen the integrity of the land law system in Indonesia.*

**Keywords:** legal protection, notary, default dispute.

### INTRODUCTION

Notaries play a crucial role in the preparation of a land sale and purchase agreement (PPJB), especially in ensuring the validity of the agreement and the understanding of the parties involved (Laia, et al. 2023). Based on the provisions of Article 1320 of the Civil Code (KUH Perdata), notaries are responsible for upholding the four conditions for the validity of an agreement, namely the agreement of the parties, the ability to act legally, a clear object, and a legitimate purpose. This responsibility creates legal guarantees for the parties, in line with the function of notaries as public officials authorized to prepare authentic deeds.

The PPJB acts as the basis of the legal relationship between the seller and the buyer, ensuring the fulfillment of obligations by each party (Wijaya, 2023). Article 1868 of the Civil Code emphasizes that authentic deeds have perfect evidentiary power. Although PPJBs in the form of underhand deeds may not have as high evidentiary power as authentic deeds, they are still valid as evidence (Adriansa, et al., 2022), especially in cases of default. According to Article 1239 of the Civil Code, default includes failure to fulfill obligations, delay, or breach of agreement, which allows the injured party to claim compensation in the form of costs, losses, and interest.

Furthermore, Articles 1266 and 1267 of the Civil Code provide for the parties' right to cancel the agreement in case of default, either with or without court intervention, depending on the terms of the contract. This provision provides flexibility in dispute resolution without prejudice to the rights of each party. In the context of land, the principles of customary law embodied in the Basic Agrarian Law (UUPA) stipulate that land sale and

purchase transactions must be conducted in cash, clearly, and attended by a notary or authorized official to ensure the validity of the transaction.

Nonetheless, the role of notaries in handling potential defaults faces challenges related to public trust in the land law system. Article 15 of Law No. 2/2014 on the Amendment to Law No. 30/2004 on the Office of Notary (UUJN) emphasizes the authority of notaries in preparing authentic deeds that are valid and have legal force to provide legal certainty for all parties in the transaction. Adequate legal protection for notaries in dispute situations, especially related to default, is essential to maintain the effectiveness of the role of notaries in ensuring legal certainty in PPJB land.

In this research, the main objective is to examine and analyze the forms of legal protection available to notaries in default disputes involving land sale and purchase agreement (PPJB) deeds. Along with the role of a notary as a party responsible for preparing authentic deeds in accordance with the provisions of the Civil Code (KUH Perdata) and Law Number 2 of 2014 concerning the Notary Position (UUJN), this study seeks to understand the legal position of a notary when a default occurs in a sale and purchase agreement. Through this study, it is hoped that the level of legal certainty provided to notaries in facing legal risks due to disputes involving the deeds they make can be identified.

The hypothesis proposed in this study relates to the effectiveness of legal protection provided to notaries in default dispute situations involving land PPJB deeds. Specifically, the hypothesis to be tested is how the existing legal mechanisms and regulations are able to protect notaries from the legal consequences that may arise in such disputes. Thus, this research will focus on the extent to which the current legal provisions provide certainty and protection to notaries, both preventively and in resolving disputes that occur.

The contribution of this research is expected to provide new insights for legal practitioners and policy makers on the need for more comprehensive regulations to protect notaries in the midst of potential default disputes. In addition to providing an understanding of the rights and obligations of notaries in the context of PPJB, this research is also expected to motivate the improvement of regulations to increase legal certainty for the parties involved. This is important given the vital role of notaries in ensuring the validity and legality of land transactions, which in turn can strengthen the integrity of the land law system in Indonesia.

Conceptually, this research will use a framework that combines legal protection theory and contract theory to understand the roles and responsibilities of notaries in land contract default disputes. Through this framework, it will explore how the legal provisions stipulated in the Civil Code and UUJN can guarantee protection for notaries, as well as how contract theory can be used to analyze aspects of default in land PPJBs. This conceptual framework is expected to provide a strong theoretical foundation for a comprehensive analysis of the legal protection of notaries in such disputes, which in turn can help provide solutions to existing problems in land law practice in Indonesia.

## LITERATURE REVIEW

In this study, the theoretical basis used includes several important concepts related to the legal protection of notaries in disputes over default of land sale agreements. Legal protection is an effort to provide protection for human rights that are harmed by other parties, with the aim that individuals or groups can enjoy the rights guaranteed by law (Satria & Handoyo, 2022; Putra, et al., 2023). In the context of this research, legal protection serves to ensure that the notary, as a party involved in making a deed of agreement, receives legal guarantees for his actions, and can obtain legal certainty in the event of a dispute.

In the theory of dispute resolution, there are five approaches, namely competing, giving in, problem solving, withdrawing, and not acting (Wajdi, Lubis, & Susanti, 2023). Each of these approaches has relevance in resolving default disputes in land sale and purchase agreements. For example, in a *contending* situation, one party may seek a more favorable solution for itself, while in the *yielding* approach, the aggrieved party is willing to reduce its demands in order to reach a settlement. The *problem-solving* approach prioritizes finding a solution that is acceptable to both parties, which is essential for creating a fair settlement for notaries in dispute resolution.

There are two main paths in dispute resolution, namely litigation and non-litigation (Hidayat & Komarudin, 2020; Ananda & Afifah, 2023). Litigation involves a formal process through the courts, where the dispute will be decided by a judge based on the facts and law presented by both parties. Litigation dispute resolution is usually more formal in nature, with the judge being a neutral party and having the authority to give a binding decision. In contrast, non-litigation dispute resolution, such as arbitration, mediation and negotiation, provides an opportunity for disputing parties to resolve their issues outside of court, with the involvement of a neutral third party, which can result in more flexible and efficient solutions.

One of the most frequently used forms of non-litigation dispute resolution is mediation. Based on Supreme Court Regulation No. 1/2016, mediation is defined as a dispute resolution process that involves negotiations to reach an agreement between the parties, with the assistance of a mediator who acts as a neutral party. Unlike arbitration which results in a binding decision, mediation focuses on reaching a voluntary agreement between the parties involved without forcing either party to accept the outcome of the decision set by the other party. Therefore, mediation can be an effective alternative in resolving default disputes in land sale agreements, particularly to avoid lengthy and costly litigation.

Both litigation and non-litigation methods have their own advantages and disadvantages in dispute resolution. Litigation is generally more appropriate for handling disputes that require firm and formal decisions, although the process is often lengthy and costly. On the other hand, non-litigation channels, such as arbitration or mediation, offer a more flexible and speedy process, suitable for cases that do not require a formal decision or that relate to the personal relationship between the parties. Therefore, the selection of dispute resolution methods must be tailored to the characteristics of the dispute at hand, including in the context of legal protection for notaries in disputes over default of land sale-purchase agreements.

## METHOD

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## **RESULT AND DISCUSSION**

In the Indonesian legal system, the role of notaries as public officials authorized to make authentic deeds is very important, especially in transactions involving the sale and purchase of land. Notaries are responsible for ensuring that every sale and purchase transaction is carried out in accordance with the applicable legal provisions, so that the deed produced can be valid evidence before the court in the event of a dispute. This also applies in the context of land sale and purchase binding agreements (PPJB), where notaries have a strategic role in maintaining the validity and clarity of the agreement between the parties. According to Suherman & Bawono (2022), legal protection of notaries in this case is highly dependent on the provisions in Law Number 2 of 2014 concerning Notary Offices (UUJN) which clearly regulates the authority and responsibility of notaries in making authentic deeds.

UUJN, particularly in Article 15 paragraph (1), authorizes notaries to make deeds that have legal evidentiary power, which serves as evidence that can be accepted in court. Deeds made by notaries in land sale and purchase agreements, including the Sale and Purchase Bond Agreement (PPJB), have an important role as evidence that can be used as the basis for dispute resolution in the event of default or violation of the contents of the agreement. Article 16 of the UUJN also emphasizes that notaries are responsible for ensuring that the deeds made reflect the will of the parties appropriately and in accordance with applicable legal provisions. Notaries, as authorized parties, must ensure that the agreements made are not only formally valid, but also substantially valid and do not violate existing regulations (Guspitawaty & Santiago, 2023).

However, in practice, there are legal risks that must be considered by notaries, especially related to errors in making deeds that can result in default disputes. If errors or omissions occur, the notary can be held liable for the losses incurred, both civilly and criminally. Hadyanto (2021) notes that if notaries are proven to be negligent or make mistakes in making deeds, they can be subject to sanctions stipulated in the UUJN as well as in the Criminal Code (KUHP). Article 263 of the Criminal Code regulates the forgery of letters, which also includes notarial deeds. If a notary is proven to make a deed that contains elements of forgery or if the deed is used for unlawful purposes, then the notary can be charged with criminal sanctions. This underscores the importance of caution in notarial work, which is not only limited to the provisions of the UUJN, but also includes provisions in the Criminal Code related to the criminal act of document forgery (Hadyanto, 2021).

In addition, Cintiadewi et al. (2020) suggest that notaries also have an obligation to ensure that the agreements they make not only fulfill the formal aspects, but also comply with all relevant legal provisions. For example, in a land sale and purchase transaction, the notary must verify the validity of the legal status of the land being traded, ensure there are no disputes regarding ownership, and check whether the parties involved in the transaction have legal capacity. Negligence in this verification can be fatal, where the notary can be held liable for any losses arising from the error. Therefore, in addition to complying with the provisions of the UUJN, notaries must also understand and comply with other legal

provisions that apply in land sale and purchase transactions, whether civil, administrative, or criminal in nature.

To reduce the risk of disputes, notaries can also include clauses that clearly regulate the rights and obligations of each party in the agreement. Thus, the notary's role is not only as a legal witness, but also as a mediator who can draft agreements that can reduce potential disputes in the future. This is an important preventive measure, where the notary can help the parties to understand the legal consequences of default, as well as the efforts that can be made to resolve disputes amicably without involving lengthy and expensive litigation (Aprilia, 2023).

Overall, legal protection of notaries in the context of land sale and purchase agreement default disputes requires notaries to comply with various applicable legal provisions. The UUJN provides the legal basis for the notary's authority to make authentic deeds, while the Criminal Code provides criminal sanctions if the notary is proven to have made a mistake that can harm other parties. Through compliance with these two regulations, as well as the application of the precautionary principle in notarial practice, notaries can protect themselves from potential legal sanctions and provide greater legal protection to the parties involved in land sale and purchase transactions.

## **CLOSING**

### **Conclusion**

Based on the results of the research, it can be concluded that the legal protection of notaries in disputes over default of land sale and purchase agreements (PPJB) in Indonesia still faces challenges related to the legal certainty provided by existing regulations. Law No. 2/2014 on Notary Position (UUJN) authorizes notaries to prepare authentic deeds that have legal force, but in the case of default disputes, notaries are not necessarily protected from lawsuits, both civil and criminal. The role of the notary as the party responsible for ensuring the validity of the land sale and purchase agreement, including verifying the legal status of the land and the capacity of the parties, is crucial in preventing disputes. However, the provisions in the Criminal Code governing the criminal offense of forgery of documents, as well as the potential sanctions stipulated in the UUJN, provide legal risks for notaries in the event of negligence or errors in the preparation of deeds. Overall, the legal protection provided to notaries is sufficiently regulated in the UUJN, but there is still a void in the implementation of a more specific and comprehensive legal mechanism to protect notaries in PPJB default disputes.

### **Suggestion and Recommendation**

Based on the results of the research, it can be concluded that the legal protection of notaries in disputes over default of land sale and purchase agreements (PPJB) in Indonesia still faces challenges related to the legal certainty provided by existing regulations. Law No. 2/2014 on Notary Position (UUJN) authorizes notaries to prepare authentic deeds that have legal force, but in the case of default disputes, notaries are not necessarily protected from lawsuits, both civil and criminal. The role of the notary as the party responsible for ensuring

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