ABSTRACT

Background. A notary is a public official authorized to make deeds regarding actions, agreements, and decisions required by general legislation, or to express the wishes of parties involved. This research aims (a) to determine and analyze the authority of notaries in making PPJB for houses followed by debt recognition. (b) to analyze the validity of the PPBJ made by a notary for the purposes of debt recognition.

Research Method. The type of research used is normative juridical, using a statutory approach. This research uses three types of legal materials, namely primary legal materials, secondary legal materials and tertiary legal materials. The process of analyzing legal materials in this research uses the interpretation method.

Findings. The results of the research show that (a) The notary executes the original deed, considering all required deeds, agreements, and provisions. They have the right to keep a certificate. If contested, the Department of Security has a regulatory role regarding the sale and purchase contract. (b) PPJB is a debt recognition form made in an authentic deed, which should be disclosed to the public for completeness. However, the deed's validity may be canceled due to legal cover-up, potentially resulting in a default case, depending on the judge's decision.

Conclusion. Notaries must act honestly and impartially to make authentic deeds, providing counseling before executing the Sales and Purchase Agreement (PPJB) for debt recognition purposes, as the deed's validity may be canceled if it doesn't comply with the law.

Keywords: Debt Acknowledgment, Notary, Purchase Agreement and Sale.

BACKGROUND

When entering into a legal relationship, the parties create a contract. A contract is a legal act between two or more parties and the agreement between the parties is necessary for the legal act to take place. In the event that someone voluntarily enters into an agreement, that is when legal rights and obligations arise to fulfill everything stipulated in the agreement.

Agreements have an important role in a legal relationship, here the contract refers to the situation where one person promises another, or two people agree to do something with each other [1]. A contract or decree includes a definition of a legal relationship of wealth or property between two or more persons, giving one party a right to an outcome and the other party a right to an effect. There is an obligation to fulfill [2].

The agreement has three principles. One is the principle of agreement. This means that the agreement results from the agreement of both parties. Second, the principle that legal contracts are considered and enforced as legal for the parties who enter into them. Third, the principle of freedom of contract. This means that the parties are free to enter into a contract...
with anyone they want, as long as it does not violate any laws, regulations, or laws, and has freedom to determine the content and scope of the contract. In this case, it can also be said that contract law provides very broad freedom to everyone to make agreements as long as the contents of the agreement do not violate public order and morality. Each article in the agreement is called complementary law, because the parties can get rid of these articles if the parties wish. The parties are allowed to make provisions that deviate from the existing articles in the contract law [3].

This is related to the principle of freedom of contract which can be concluded from the provisions of Article 1338 paragraph (1) of the Civil Code which reads: "All agreements made legally are valid as law for those who make them"[4]. However, there are restrictions on the freedom of contract to make agreements where the agreement must be implemented in good faith as stated in Article 1338 paragraph (3) of the Civil Code.

Agreements can be made by the parties in the form of agreements made privately or made by authentic deed. Agreements made privately do not have perfect evidentiary power, but if they are in the form of authentic deeds which are made before an authorized official, they have perfect evidentiary power so they do not require other evidence. A deed will have authentic value if it meets the following conditions [5]:

a. The contract must be made (at the door) or in the presence of an officer (10 overstain).

b. The property must comply with the law.

c. The public officer issuing the document or the public officer issuing the document must have the power to issue the document.

A notary as a public official means an official who is given the task of making authentic deeds that serve the public interest. Notaries have the authority to make authentic deeds regarding all deeds, agreements and stipulations required by statutory regulations or as desired by interested parties, so that notaries in carrying out their professional position must have sufficient knowledge in the field of law and be responsible and know the law. Comply with state laws and ethical standards [6].

The main power of the notary includes the execution of the real work and the date of creation of the legal content and / or deeds, contracts and clauses that are prepared to include the real work. It's about making sure and protecting it. Submit the certificate, the total cost of the certificate, copy and paste. The authentic power of a deed lies in the fact that the deed itself is trusted, without prior investigation, regarding all that is included in it, as a witness from the official who made the deed [7].

A debt acknowledgment deed is a deed that contains a person's acknowledgment that he or she is in debt and has an obligation to pay a certain amount to the creditor. Even though there is no specific definition regarding a debt acknowledgment deed in the legal field, people prefer to use a debt acknowledgment deed made before a notary to reaffirm the debt and receivable agreement between the parties.

By signing a debt acknowledgment deed, the borrower must be liable to repay the loan. So that the guarantee can be executed to pay off the debt if the debtor breaks the contract, this can be done by issuing a gross debt acknowledgment deed. Based on Article 224 HIR/Article 258 Rbg, there are 2 types of grosse which have executorial power, namely grosse deed of debt acknowledgment and grosse confiscation of mortgage. The first copy at the head contains the instructions "For the sake of justice based on belief in the Almighty God" and therefore, if this guarantee is needed, execution can be immediately requested from the Chairman of the District Court.
For example, in the process of buying and selling a house, you often hear about Purchase Agreement (PPJB) and Sale Agreement (AJB). Both terms are contracts, but the legal implications are different. In terms of actual benefits, Article 1870 of the Civil Code ensures that the works are completed before the citizens deny having full recognition, in accordance with Article 1870 of the Civil Code, "An authentic deed provides between the parties and their heirs or people who receive rights from them, a perfect proof of what is contained in them."

Usually PPJB is made up of two parties. This is because there are conditions or conditions that the parties must fulfill before completing the purchase and sale transaction before the Approving Agent (PPAT). Therefore, PPJB (cannot be confused with AJB, which is the proof of transfer of title to the land/building from the seller to the buyer. It is a sale that transfer rights to land or real estate. The main difference between the two is the nature of recognition. The Business Agreement of Purchase and Sale (PPJB) is a legally binding contract that governs the purchase and sale of land and real estate, but its form is limited to contracts sold between parties and is illegal. Notarial / land deed creation is done as it is not real. This ensures that the sale agreement does not bind the land according to the agreement and does not result in a change of ownership, where the PPJB is only a preliminary agreement before the sale and purchase is carried out. This is said, because the position of the PPJB is only an agreement initial agreement of the parties which is stated in writing before complete the contract of sale, because there are certain things that cause the sale and purchase agreement to not yet be implemented, such as the price fees are not paid in full, the land building is still under bank guarantee, the certificate is still in the process of being transferred to the name or splitting process at the National Land Agency (BPN), taxes have not been paid off and other reasons so that the Sale and Purchase has not been carried out, namely the Sale and Purchase as regulated in Article 2 paragraphs (1) and (2) of Government Regulation Number 24 of 2016 concerning Amendments to Regulations Government Number 37 of 1998 concerning Regulations on the Position of Land Deed Makers and Sale and Purchase Deeds are made by Land Deed Maker Officials, prove that some legal action has been taken in relation to land rights or titles.

**RESEARCH METHOD**

The type of research used is normative juridical [8]. By taking a legislative approach that starts with the implementation of law regarding binding sales and purchase agreements made by notaries. The focus of the research that the author will discuss is the authority of notaries in making home PPJB and the validity of PPBJs made by notaries for the purposes of debt recognition.

In this study, the authors use a legislative approach, namely an approach taken to analyze and understand laws and regulations that are related to the legal issue being faced.

The types of legal materials used in this research are: a) Primary legal materials, namely legal materials that are binding, 13 Primary legal materials that will be used in this research are in the form of laws and regulations relating to issues, such as the Law on Notary Position Regulations, the Mortgage Rights Law and other regulations. B) Secondary Legal Materials, which provide explanations of primary legal materials. These secondary legal materials include books, magazines, journals, research results, works from legal circles that contain the thoughts and opinions of legal experts on this topic. C) Tertiary Legal Materials, namely materials that provide instructions and explanations for primary and secondary legal materials. Such as the Big Indonesian Dictionary (KBBI), English Dictionary.
FINDINGS

1. Authority of a Notary in Making a House PPJB Followed by an Acknowledgment of Debt

The powers of a notary public are set out in Article 15(1) of Law No. 2 of 2014 on the amendment of Law No. 30 of 2004 on the status of notaries, which states that the notary public must provide authentic documents for all acts. It is stipulated that he has the authority to create, legal terms and/or agreements and provisions that interested parties may wish to add to the deed ensure certainty of the date of creation, storage of the deed, total value of the deed, copy and delivery. Citations, unless modified or omitted, are all subject to the creation of actions to another official or other persons determined by law.

If the notarial deed is disputed by a party or parties in interest, the determination shall be based on the invalidity and annulment of the notarial deed as absolute proof. In this regard, it is necessary to emphasize and explain written evidence, which can be in the form of writing that has evidentiary value. In writing, this can be in the form of a letter (in general) and a letter in a certain form as well as procedures for making it by an official appointed by statutory regulations. In this case, regarding Notarial deeds and Authentic deeds as mentioned in Articles 1 and 15 of the Notarial Position Law (UUJN), there is the term Notarial deed [9].

The responsibility of a notary as a profession arises from the existence of an obligation and authority given to him, this obligation and authority is legally and binding from the moment the notary takes the oath of office as a notary profession. The oath that has been pronounced should be able to control all the notary's actions in carrying out his office. A notary must be able to ensure that the implementation of his office is carried out correctly and in accordance with his authority based on applicable regulations, so that the parties can obtain legal certainty regarding the legal actions they carry out. Therefore, the notary must be more careful in making the deed so as not to cause losses to the parties.

Notary public as a public official duties from the government which require notaries to provide assistance in legal actions for the sake of legal certainty for the parties. Making an authentic deed by a notary that causes losses to other parties, the notary can be held accountable and receive sanctions in the form of administrative sanctions as regulated in UUJN and section 6 of the Notary Code of Ethics provides that notaries may be subject to sanctions in the form of verbal warnings, written warnings, temporary dismissal, honorable dismissal or dishonorable dismissal.. Notaries are entrusted with making authentic deeds that provide certainty, order and legal protection. If the deed is cancelled, the Notary does not provide these three things to the parties, whereas in carrying out his office the Notary is required to act in accordance with article 16 paragraph (1) letter a jo. Article 4 paragraph 2 of the Notary Position Law [10].

However, notaries are also human beings who are not free from mistakes in making authentic deeds, therefore if an error occurs, whether an error or negligence, then Notaries may be held liable both from administrative, civil and criminal aspects. The invalidity of a deed will have implications for the notary who made it. Based on the position case involving the Notary/PPAT above, it can be explained that the notary, in making a deed based on the wishes of the parties, must apply the principle of prudence, by carrying out and providing legal counseling to the parties.

In the a quo case, without realizing it, the notary did not fully ensure the relationship between the parties that was actually agreed upon, so that the notary was not aware of the debt and
receivable relationship agreed upon by the parties, which then caused losses to one of the parties. The notary only makes a deed based on his authority, the parties who appear want to make a binding sale and purchase agreement and power of attorney. In this case, the notary's obligation is to ensure formal correctness regarding the formal and material requirements in every deed he makes because the deed will be perfect evidence, this aims to ensure that the parties obtain legal certainty and protection. In this case, the notary can take responsibility administratively, namely in relation to the formal aspects of the Sale and Purchase Agreement (PPJB) deed made by him.

2. Validity of the PPJB made by the Notary for the Purposes of Debt Recognition

PPJB is a preliminary agreement which is temporary because it is suspended by certain circumstances until the time when the sale and purchase can be carried out before the Land Deed Making Officer (PPAT). PPJB itself does not yet bind land, houses or property in the object of the agreement, so there has not been a transfer of rights from the developer to the buyer. PPJB is an agreement regarding the implementation of buying and selling between development actors and prospective buyers based on certain conditions. The PPJB contains several important factors, including the parties' agreement, seller's obligations, description of the object of sale and purchase agreement, seller's guarantee, building handover time, building maintenance, building use, transfer of rights, cancellation, and dispute resolution.

PPJB is an agreement that must be followed by an agreement to hand over objects after the achievements between the two parties have been carried out. PPJB binds the developer and the buyer through a sale and purchase agreement made before a Notary based on the provisions of Law no. 2004 of the Privacy Act as amended by Act No. 2 of 2014 of the Constitution. Article 15(2) of 30 letters f. Law no. of 2004 at the Ministry of Security. 30 (hereinafter referred to as UUJN). A notary is a public officer with the power to create authentic deeds so that the deed can be used as formal evidence with absolute truth in accordance with Article 1870 BW.

Authentic deeds are considered very powerful and successful. It clarifies the relationship between the two parties in terms of rights and responsibilities, and the contract is designed to ensure legality and avoid future disputes. As stated in Article 1 of the UUJN, one of the powers to create authentic acts is the notary public, which means that the notary public has the power to create authentic acts and any other authority contemplated by law. It is explained that he is a public servant with the details of Section 15 of UUJN [11].

Authentic deeds as the strongest and most comprehensive evidence have an important role in every legal action in social life. A deed is authentic if it is made by or in the presence of a public official [12].

That genuine deed is a term given to certain officials who qualify as civil servants, and genuine deeds can be drawn up not only by a notary public, but also, for example, by a land deed preparation officer (PPAT). Auction officials and civil registrar officials [13].

Apart from that, the legal protection for the parties provided in the PPJB is very strong because the nature of the proof of the PPJB is executed before a public official, in this case a public notary. That is, it is created by signing the contract in the presence of a notary public or an official appointed to approve the signature (such as a consular official, embassy, or local head of state of regent level or above). It is first explained to both parties and then signed in the presence of a notary public or authorized public official who has strong evidence as evidence of a the real deed. The legal protection provided by the prospective seller is usually in the form of rights maintained by the buyer himself [14].
A sale with the right to buy back (koop en verkoopmet bed van wederinkoop) is a sales contract in which the seller has the right to buy the goods back (recht wederinkoop, right to buy back). If sold by return, the purchase price received includes all costs incurred by the buyer in selling, purchasing and shipping.

For example, in the case of a sales contract with a right of repurchase, it could be based on someone needing money immediately. The way he can do this is by selling an item he owns. Even though this item was something he really loved because it was a memory of what his parents had given him, on the other hand, he was in an urgent situation and really needed money, so he was forced to sell the item. He hopes that one day he can buy the goods he sold again.

A sales contract with a right to purchase can be classified as a non-rights contract. If the conditions of the right have been fulfilled, the seller can cancel the contract of sale. When the sales contract is canceled, the property will return to its original state. These results are also relevant to third parties. According to the provisions of Article 1532 of the Civil Code, the seller requests the return of the goods, the return of the purchase price, and the payment of the debt.

According to M Yahya Harahap, this will definitely cause complications. For example, A owns land from B with the right to buy. Before B exercised his right to repurchase, A had sold his land to C and changed the name. There would clearly be complications if B did exercise his rights. It would be more appropriate to take a solution not to return it to the way it was before. It is enough for A to pay a certain amount of compensation to B, so that C is truly safe in enjoying the goods he bought, which perhaps when buying them, A did not tell him the conditions for buying them back from the original owner [15].

In this case, the risk is more borne by the parties (clients) if agreement of sale and purchase deed is combined with the debt/lending/borrowing money deed, with the existence of the sale and purchase binding deed for the purposes of debts and receivables then the ownership has directly transferred to the creditor, so that According to the creditor's point of view, the creditor's legal certainty becomes more secure, but does not pay attention to the debtor's risk if undesirable things happen in the future, so this should not be justified.

In this case, the deed should not be biased, so that it has the same legal force, because if the deed is made then the deed is a pseudo-agreement, and is void by law if the Notary knows that sales contract is intended for debts and receivables, the Notary should Knowing this, the parties are advised to use a debt and receivable agreement using Mortgage Rights, so that no one party feels disadvantaged in the future.

**DISCUSSIONS**

One concept of legal obligation as an implementation of legal certainty is legal responsibility. A person can be said to be legally responsible for an act that is contrary to the law itself and therefore he accepts and carries out sanctions. Normally, sanctions are imposed as a result of the person's own actions which make the person responsible. In connection with this, in terms of the duties and authority of the position of Notary, as stipulated in Article 15 UUJN, where this authority is part of the state authority given to the Notary. Considering his position as a public official, the Notary bears responsibility for the deeds he makes. So that every deed he makes must follow the legal provisions that have been established, including when making a deed of agreement which describes a certain legal act, sales contract etc, [16].
If a party is prejudiced by a deed executed by a notary, the aggrieved party may file a claim for damages against the notary, provided that the loss must be proven in litigation. You can file a lawsuit. It is a direct result of notarization. Notaries are responsible for all their actions in the performance of their duties and functions as public officers authorized to act in real terms. This role is the willingness to fulfill a role in the form of accurate information about an action. In this case, the notary public may have administrative responsibilities, i.e. depending on the formal aspects of the deed of Purchase and Sale Agreement (PPJB) prepared by the notary.

The PPJB is created with a real deed executed by a notary public, making the Purchase and Sale Contract (PPJB) deed a real deed with full evidentiary value. This increases protection and legal certainty for the creating party. This is because citizens have full rights to protect the interests of both parties when creating a contract. With the help of a public defender, the parties entering into the contract of sale can get help in writing the issues to agree. The authenticity of notarial deeds comes from Article 1 paragraph (1) UUJN, namely that notaries are made public officials, so that deeds made by notaries in their position have the character of authentic deeds. A deed made by a notary is authentic, not because the law stipulates this, but because the deed was made by or in the presence of a public official. This is as intended in Article 1868 of the Civil Code which states: "an authentic deed is a deed determined by law [17]."

Written proof is carried out using authentic writings or handwriting. Real writing in the form of real actions, which are made in the form prescribed by law, are made in the presence of authorized officials (public servants) and in the place where the deed is made. In this case the notarial deed has a juridical character, namely [18]:

a. Notarial deeds must be made in the form determined by law (UUJN).
b. A notarial deed is made at the request of the parties, and not the Notary's wishes.
c. Although the contract has the name of the public, in this case, the public has no association with the parties or persons whose names appear on the paper.
d. It can prove to be good. Everyone is bound by the registration form and cannot interpret anything other than what is written in the registration form.
e. The binding force of the registration form can be canceled only with the agreement of the parties whose names appear on the registration form. If a person does not agree, a request must be made in the General Court to have the questions in question without binding on things, evidence is due how

The legal position of the PPJB deed is made as a continuation of the existence of debts and receivables between the parties. The Land Rights Sale and Purchase Agreement contains the contents of an agreement that binds prospective sellers and prospective buyers who will carry out land rights sale and purchase transactions. PPJB is used to make it easier for parties who want to carry out land rights buying and selling transactions, because the parties cannot fulfill the requirements at one time. The position of PPJB itself in contract law is that it is an agreement it was born out of the principle of freedom of contract. PPJB is a type of binding and consensual contract which is subject to the provisions of Article 1320, Article 1457 and Article 1338 of the Civil Code.

In practice, if the exercise of sale with right of repurchase deviates to a greater or lesser extent from the provisions of the Act or the essence of the provisions of Article 1519 of the Civil Code for other purposes, for example:

a. For the purpose of earning money. For example, someone needs money. Then he looked for a creditor to borrow money. Next, the contract of sale ends with the right of purchase, but the house and land being sold are still controlled by the seller
(debtor). So, here there is no transfer of ownership. Thus, in concrete what is happening is not a sale and purchase agreement, but an agreement to borrow and borrow money with a "hold" which is as if it were a pawn (pand verhouding).

b. For the purpose of strengthening the position of creditors. Here, initially there was actually an agreement to borrow and borrow money, but then the formality was to create a contract of sale with the right of purchase. With the sale and purchase agreement deed, the creditor's interests in fulfilling the debtor's achievements are more guaranteed. If the goods are transferred again or encumbered with rights to a third party, the debtor can fight (verzet) on the basis of ownership rights with the right of sale and purchase.

c. For the purpose of avoiding legal prohibitions on bidding property clauses. Here, if the loan agreement with collateral contains a bidding clause, the creditor may realize that this is contrary to the law. Therefore, it is really the goods that the creditor "holds" if the debtor breaks his promise to pay the loan at the time specified in the agreement. For this purpose, the method used is to carry out a sale and purchase with a pretended right to repurchase. In this way, it is deemed that there are no longer any legal provisions that prevent you from directly owning the goods that serve as collateral for borrowing and borrowing money.

CONCLUSION

The Notary Public executes the real deed and prepares the deed with respect to the legal terms and/or all acts, agreements and provisions that the interested parties wish to include in the real deed. It guarantees the confirmation of the date and has the authority to hold the certificate. Prepare bonds and submit bond totals, copies and appraisals. If the notary's deed is contested by a party or interested parties, in this case the notary has administrative responsibility, that is, the responsibility regarding the formal aspects of the purchase and sale deed (PPJB) prepared by the notary.

The PPJB is created with a real deed drawn by a notary public, making the PPJB deed a real deed with full evidentiary value. However, a contract of sale has no legal effect for the purpose of recognizing the debt, and the validity of the deed is likely to be canceled because it does not comply with the law, so that if there is a default there is a high possibility that the deed will be canceled by the court, because there is a legal cover-up in it, this depends on the judge's decision in deciding the case.

REFERENCES


Article Text-27-1-10-20210602.
