

Notary's Responsibility As Recipients of Imprest Due To Cancellation of Sales And Purchase Binding Agreement Deed

Brenda Kharisma Rahardjo and Sulistyandari

Notary Office of Dr. Agus Pandoman, S.H., M.Kn

Abstract

The notary has been disputed several times by the parties since he was proven to have violated his position. In one of the cases occurred based on the verdict Number: 1378K/Pdt/2017, the buyer entrusted advance money to the notary, however, there was a cancellation, where the notary did not fully return the advance money. Purpose of this study is to analyse the responsibility of a notary as a recipient of imprest due to the cancellation of the binding sale and purchase of underhand agreement. The research method is normative, using secondary data from literature studies, including primary, secondary, and tertiary legal sources. Notary are based responsible in person and subject to administrative sanctions for violating the code of ethics by the Notary. One of the characteristics of civil law is as a compliment, and the advance money can be returned to the buyer.

Keywords: Responsibility, Notary, Advance money, Sales and Purchase Agreement Deed.

Abstrak

Notaris beberapa kali disengketakan oleh para pihak karena terbukti melanggar jabatannya, salah satu kasus yang terjadi berdasarkan putusan mahkamah agung Nomor: 1378K/ Pdt/2017, pihak pembeli menitipkan uang panjar kepada notaris dan terjadi pembatalan namun notaris tidak mengembalikan uang panjar secara utuh kepada pihak pembeli. Tujuan penelitian ini untuk menganalisis tanggung jawab notaris sebagai penerima uang panjar akibat pembatalan perjanjian pengikatan jual beli dibawah tangan. Metode penelitian yang digunakan adalah normatif, dengan menggunakan data sekunder yang diperoleh dari studi kepustakaan, antara lain primer, sumber hukum sekunder dan tersier. Notaris bertanggung jawab secara perdata dan dikenakan sanksi administratif pelanggaran kode etik oleh Dewan Kehormatan Notaris. Salah satu sifat hukum keperdataan adalah sebagai pelengkap dan ditinjau dari asas kebebasan berkontrak maka uang panjar tersebut dapat dikembalikan ke pihak pembeli.

Kata kunci: Tanggung jawab, Notaris, Uang Panjar, Perjanjian Pengikatan Jual Beli

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Introduction

Notary was firstly established since the community's need to provide legal certainty, especially certainty of the authenticity of an agreement made by the parties, so that the notary profession is not a position that was deliberately created and then socialized to public. This Notary is not placed in the legislative, executive, or judicial institutions due to its appearance is expected to have a neutral position. As an official, a Notary is required to fulfill requirements not only in the intellectual aspect but also valued themselves with high moral integrity carrying out his profession (Anshori, 2009).

A public official is a term from *Openbare Ambtenaren* contained in Law Number 30 of 2004 concerning Notary Positions in conjunction with Law of the Republic of Indonesia Number 2 of 2014 Amendments to Law Number 30 of 2004.

Article 1 point 1 Law Number 2 of 2014 concerning Notary Positions confirms that a Notary is a public official authorized to produce authentic deeds and other authorities as referred to in this Law. When carrying out his duties, the Notary holds fast and upholds the dignity of his profession as a reliable position and respect because the ethics attached to the Notary profession is called a noble profession (*Officium Nobile*) (Anshori, 2009).

According Kelsen, when something is related to the concept of legal obligation is the concept of legal responsibility. A person is legally responsible for an act or he bears legal responsibility. This means that a person must responsible for a sanction in the case of a contrary act. Usually, in the case of sanctions directed at the perpetrators, someone is responsible for his actions (Hidayat, 2018).

Article 16 paragraph (1) of Law Number 2 of 2014 concerning Notary Positions states that one of the obligations of a Notary is to carry out his position, he is obliged to act trustworthy, honest, thorough, independent, impartial, and safeguard the interests of the parties involved in legal actions. Notaries as public officials have the main characteristics, namely in their objective position, impartial to those with interest, and independent and free from anyone's influence, including executive power (Andasasmita, 1981).

The position of a Notary is a position that was created as the needs of the community rather than a position that is deliberately formed and then socialized to the community. Tan Thong Kie said that the position of a Notary as a functionary in society is still respected today. In general, a Notary is considered a government official from whom the public can get reliable advice. Everything written and determined by a Notary (*constantir*) is an *absolut* correct, he is a document maker with strong evidentiary power to deal with a legal process. Furthermore, since Notary is not only a person who is considered righteous when carrying out his profession, a Notary is bound by ethical rules, where the ethics that touches the most essential element of the human being is the conscience (soul) (Melyana, 2018).

In accordance with its substance, the existence of a Notary's moral and ethical values, the position of a Notary, is a service to the community (clients) independently and impartially to one party. Notary field in its development is stated as a calling for life rooted in the spirit of devotion to others for the public interest and in respect for human dignity in general and the dignity of notaries in particular. Thus, Notary are in needs to guide the Notary's code of ethics. The Notary's code of ethics is all the moral rules serving as guidelines in carrying out the position. The scope of the Notary's code of ethics based on the Notary Code of Ethics of the Indonesian Notary Association (INI), applies to all members of the

association as well as other people who is in charge and carry out the position of a Notary, both in the implementation of office and in daily life.

Based on an Article 15 paragraph (1) Law Number 2 of 2014 concerning Notary Positions, the main authority of a Notary is to adjust an authentic deed regarding all actions namely; agreements, and stipulations required by laws and regulations and/or desired by the interested parties to be stated in an authentic deed, ensuring certainty of the response to the deed, keep the deed, provide grosses, copies and quotations of the deed, all of this as long as the deed is not assigned or excluded to other officials or other people as its stipulated by law. The role of a Notary divided into making deeds, especially those related to land, which is very central and strategic, for example, the Deed of Sale and Purchase Binding Agreement, Deed of Release of Rights and so on.

In fact, it was notified that a Notary position was questioned by the parties who used to employ their service, one of the cases that occurred based on the Supreme Court Decision Number: 1378K/Pdt/2017, between Johanes Hanggariyanto as the Plaintiff (hereinafter referred to as the Buyer) against I Wayan Gede Darma Yuda as Defendant I (hereinafter referred to as Notary) and Ida Ayu Oka Murni as Defendant II (hereinafter referred to as Seller). The seller is the owner of an uncertified plot of land located in Denpasar, Bali and listed on the seller's behalf, by then, the land is in progress to be sold, due to the land has not been certified, the parties agreed to make a preliminary agreement as outlined in a the Deed of Sale and Purchase Binding Agreement below. January 9, 2013 in which the concept or draft of the Deed of Sale and Purchase Binding Agreement was made by a Notary. After the signing is done on the basis of an unwritten agreement, the Buyer will deposit a sign-up fee in the amount of Rp. 489,000,000,- (four hundred and eighty-nine million Rupiah) received and listed in the receipt as proof of receipt of the deposit of money to a Notary. Sometime later a dispute arose between the Buyer and the Seller which subsequently canceled the Sale and Purchase Binding Agreement verbally and unilaterally. Based on the Deed of Sale and Purchase Binding Agreement Article 1 states "If the land mentioned above cannot be processed, then the Signature money that has been paid will be fully returned", but in practice the sign-up money that has been deposited with the Notary is only partially returned to the buyer by the Notary. The buyer's claim argues that there was an act of default by the Seller and the Notary so that he asked for the down payment given to be refunded in full, as a result, the buyer was harmed because there was no good faith from the notary to return the payment that had been deposited.

Notaries, as public officials authorized to do authentic deeds in carrying out their duties, can sue the district court based on the deed they made as a co-defendant. However, the problems involving the notary as the defendant, in this case, started from the lack of faith to refund the down payment. Entrusted by the buyer, it is necessary to understand that a Notary in carrying out his duties must be full of responsibility by living up to the overall dignity of his position and with his skills to serve the interests of the community who request his services by constantly observing the provisions of the law, ethics, and public order by Article 3 of the Code of Ethics. Indonesian Notary Association explains that "Notaries in carrying out their positions must behave honest, independent, not in favor of a thorough mandate, full of responsibility, based on the laws and regulations and the contents of the notary's oath of office." The regulation in UUJN as the basis for the authority and responsibility of a notary as a public official also does not regulate a notary as a recipient of a deposit, so in this case, the notary is suspected of having committed a deviate action from the notary code of ethics and has violated the notary's oath of office where the notary promises to carry out his duties properly. Honest, thorough and impartial and will strictly comply with all the regulations for the position of a notary that are currently in effect. Thus, the authors are interested in reviewing and analyzing the form of responsibility of a notary as a recipient of an imprest due to the cancellation of The Deed of Sale and Purchase Binding Agreement.

The Deed of Sale and Purchase Binding Agreement can be made privately or with an authentic deed before a Notary. This agreement model is adopted and made from the conception of the Civil Code (from now on abbreviated as the Civil Code), which is an agreement of the parties regarding the rights and obligations made based on Article 1320 jo. Article 1338 of the Civil Code is expected to provide legal certainty and legal protection for the parties who make it (Haryanti, 2014).

The Deed of Sale and Purchase Binding Agreement is a type of obligatory agreement, namely an agreement where the parties agree to bind themselves to hand over an object to another party so that the Deed of Sale and Purchase Binding Agreement would not resulted in the transfer of ownership rights to an object from the seller to the buyer and contains the following conditions: regarding the object, price, method of payment, imprest, power of attorney granted to the buyer, responsibilities of the heirs of the parties and other promises (Soeroso, 2011).

In the case of The Deed of Sale and Purchase Binding Agreement made under the hand, there is a clause for granting Down Payment or down payment. Down payment or imprest is a gift of money or goods from the seller or the lessee as a sign of completion or binding stating that the purchase has been made, and if it

turns out that the buyer cancels the down payment, it cannot be requested back (Simorangkir, 2011).

As stated in Article 1464 of the Civil Code, "If the purchase is made by giving a down payment, then one of the parties cannot cancel the purchase by ordering to have or return the down payment." The provision of down payments can occur verbally or in writing, which in the Civil Code is a form of agreement that is part of the engagement in Book III of the Civil Code (Badruzaman, 2016).

However, in the clause in the Deed Of Sale and Purchase Binding Agreement in Article 1, it states, "If the land mentioned above cannot be processed, then the money that has been paid will be returned in full," so this clause is contrary to existing legal norms, resulted in question which arises from how the legal consequences of canceling the sale and purchase binding agreement privately made deed of the down payment.

Based on the problems that arise, the researcher is interested in describing the problems in this research with the title Responsibility of Notary as Recipients of an imprest Due to Cancellation of Sales and Purchase Binding Agreement Deed.

Research Problems

Based on the brief description above, the researcher wants to raise a problem formulation as follows:

1. What is the responsibility of notary as a recipient of down payment due to the cancellation of the sale and purchase binding agreement deed?
2. What are the legal consequences of canceling the sale and purchase binding agreement deed privately made of the down payment?

Research Method

This type of research in legal research is normative or doctrinal legal research. Normative legal research, the other name is doctrinal legal research is also known as library research or document study because this research is conducted or aimed only at written regulations or other legal materials (Soekanto, and Sri Mamudji, 2004). In essence, research is carried out by examining library materials or secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials.

The sources of data, researchers used secondary data sources. Secondary data sources are those that obtained by researchers from literature reviews, scientific papers, research results or expert theories related to this research problem.

The primary legal materials used consist of statutory regulations, official records, minutes in the making of legislation and judges' decisions. In this study, the primary legal materials used are as follows: The 1945 Constitution. Civil Code,

Burgerlijk Wetboek voor Indonesie, (Staatsblad 1847 Number 23). Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary Public. Notary Code of Ethics. Verdict of the Supreme Court of the Republic of Indonesia Number 1378K/Pdt/2017.

Secondary Legal Materials The main secondary legal materials are textbooks because they contain the basic principles of law science and the classical views of highly qualified scholars. In this research, the secondary legal materials used including: scientific books in the field of law; Papers; Scientific journals, and scientific articles.

Tertiary legal materials are materials that provide guidance and explanation for primary and secondary legal materials. In this study, the tertiary legal materials used including: A comprehensive Indonesian Dictionary, Legal Dictionary, Internet sites related to the accountability of notaries and the principles of good notary duties implementation.

Discussion

1. Responsibility of Notary as a Recipient of a Down Payment Due to The Cancellation of The Sale and Purchase Binding Agreement Deed

The definition of a notary has been regulated in article 1 number 1 Law Number 2 of 2014 concerning Notary Positions; a notary is a public official who has the authority to do an authentic deed and has other authorities as referred to in the Law Number 2 of 2014 concerning Notary Positions or based on other laws. The position of Notary is presented in the community with the will of the rule of law in the form of the State as the implementation of the State in providing services to the community to assist the community in providing authentic written evidence regarding legal conditions, events, and actions and authentic evidence recognized by the State. In order to enforce the law, a Notary carries a mandate that concerns the interests of the community in general. Therefore, it is obligatory for a Notary to have professional authority and responsibility for the mandate given.

According to Indroharto, authority is the ability given by laws and regulations to cause legal consequences. Sources of authority can be obtained for government officials or organs (institutions) by way of attribution, delegation and mandate. Theoretically, the authority that comes from the laws and regulations is obtained in three ways, namely: (Indroharto, 1993)

a) Authority obtained by attribution, namely the granting of new government authority by a provision in the legislation.

- b) Authority obtained by delegation, namely the delegation of an existing authority by a state administration or position that has obtained an attributive government authority to another state administration or position. So, a delegation is always preceded by an attribution of authority
- c) Authority obtained through a mandate, i.e. there is no granting of new authority or delegation of authority from one state administration or position to another.

Based on the Law Number 2 of 2014 concerning Notary Positions, when viewed from Indroharto's opinion, the Notary has the authority by attribution because the authority was created and granted by the Law Number 2 of 2014 concerning Notary Positions itself. So, the authority obtained by a notary does not consider from other institutions. The authority attached to the position of a notary is special, namely, doing an authentic deed. This authority is a limitation that the Notary may not take any action outside the authority.

Based on the provisions of Article 15 paragraph (1) of the Law Number 2 of 2014, the authority of a notary is to do an authentic deed regarding all actions, agreements, and provisions required by laws and regulations and or desired by the interested parties to be stated in an authentic deed, guaranteeing the certainty of the date, keep the deed, provide grosses deed, copy and quote of the deed, all of which are, as long as the making of the deed, is not assigned or excluded to other officials or other people stipulated by law.

Article 1694 of the Civil Code states that safe keeping occurs when a person receives an item from another person, in a condition that he will keep it and return it in its original form. Submitted. Based on Article 1694 of this Civil Code, it can be seen that safekeeping occurs if the goods that are the subject of the agreement have been handed over. Money safekeeping is when one party receives a certain amount of money from another party on the condition that he will keep it and return it in its original form so that the type of money deposit agreement is not a loan agreement or a debt agreement (Hermansyah, 2019).

Notary in carrying out their positions as public officials must be able to responsible for any deed or other actions taken, no exception to the actions of a Notary in terms of becoming a recipient deposit of the client's land rights certificate or money. Although in practice, it is not uncommon found a Notary who carried out the action, but the Notary Action who are willing to accept the deposit of a certificate of land rights belonging to their clients are actions that exceed his authority as a Notary (Anjasmara, 2019).

The position of a Notary in his position as a recipient of a down payment money actually cannot be allowed because, as regulated by Law Number 2 of

2014 concerning Notary Positions, the authority of a notary is to do an authentic deed regarding all actions, agreements, and provisions required by laws and regulations and or desired by the interested parties. And This is outside of the authority of the Notary in Law Number 2 of 2014 concerning Notary Positions. However, it is necessary to understand that the Notary acts as a service provider to the client above all. Because of the sense of responsibility both individually and socially, especially obedience to legal norms and willingness to comply with the Code Ethics of Notary positions.

The Notary in making land based on sale and purchase binding agreement deed or any deed, which there are provisions or clauses in it his involvement, for example over the agreement of the parties to entrust letter/document to the Notary, can be categorized as a Notary as parties and allow to make a deed for himself itself as stated in Article 52 paragraph (1) of the Law Number 2 of 2014. This is the violation as referred to in Article 52 paragraph (3) of the Law Number 2 of 2014. which results in a deed only has the power of proof as a private deed if the deed was signed by the them without reducing the Notary's obligations to make the deed of fees, compensation, and interest to those who concerned (Malau, 2014).

Notary as recipient of down payment deposit for payment of a plot of land based on sale and purchase binding agreement deed made privately, the notary is responsible in his position to receive and has a role to make a report in the form of an official report regarding cash and consignment payment offers. The implementation of the cash payment offer followed by consignment in the provisions of Article 1405 paragraph (7) of the Civil Code stipulates "that the offer is made by a notary or a bailiff, both accompanied by two witnesses." This article determines who is the legal subject in the consignment, so it becomes clear that other parties may not carry out the consignment except a notary or bailiff.

The termination of the engagement by consignment is preceded by an offer of payment. The offer of payment is made by the debtor or it can also be made by a notary or bailiff accompanied by two witnesses to the creditor or his proxies at the agreed time and place at the end of the agreement on the condition that all debts have been fulfilled. The existence of a consignment determination from the court is what ends all agreements that occur between the creditor and the debtor (Lawalata, 2021).

The notary in his position fulfills the error elements. In this case, the deposit is not returned in full to the buyer because with an error made by the notary in carrying out his duties; there will be a loss for the party requesting the

services of a notary. A notary must responsible. The forms of responsibility of a Notary due to non-fulfillment of the refund deposited to the buyer including:

a) Civil Liability legal relationship between Buyer and Notary.

Civil liability of a Notary is imposed for errors that occur due to default or acts against the law (*onrechtmatige daad*). In this case, the buyer feels disadvantaged due to non-fulfillment of achievements, namely the full refund of the deposited money by a Notary. Civil sanctions can be reimbursement or it, compensation, and interest. Compensation of costs, compensation, and interest can be sued against a notary based on the notary's legal relationship with the parties against the notary. The notary can be held civilly responsible for the deed he made. The claim for reimbursement of costs, compensation, and interest against a notary is not based on the position of the evidence that has changed due to violating specific provisions of the Law Number 2 of 2014 concerning Notary Positions, however, it is based on the legal relationship that occurs between the notary and the party who appears before the notary. Even if the notary has retired, the notary must still be held civilly responsible for the deed he has made.

b) Administrative responsibilities based on the Code of Ethics Notary.

Supposed it is proven and has been proven guilty of violating the professional notary code of ethics. In that case, the notary concerned may be subject to ethical sanctions by the Notary Honorary Council. The ethical sanction given by the Notary Honorary Council does not automatically revoke his position as a notary. The ethical sanction is only limited to the notary concerned who has been proven to have violated the professional code of ethics, revoked, or dismissed from the notary membership. So that the notary concerned can still carry out his position as a notary and perform other legal actions. It is different from when the notary has committed an unlawful act that is not subject to ethical sanctions. The moral sanctions are only for violations of the professional code of ethics. If they are outside the realm of the notary code of ethics, their position as a notary can be revoked. Revocation of the position of a notary is the authority of the Minister of Law and Human Rights, either honorable or dishonorable revocation or termination.

c) Criminal law liability if the notary does not return the down payment.

Article 372 of the Criminal Code states Whoever intentionally owns against the rights of an item which wholly or partly belongs to another person and the item is in his hands not because of a crime is punished for embezzlement with a maximum imprisonment of four years or a maximum

fine of Rp. 900. Based on this, the action of the notary who is suspected of committing a violation in the event that the deposit money is not returned from the buyer, the blindness committed by the notary is a criminal act, which results in losses for his client. Then the notary can be suspected of having committed an unlawful act that is contrary to Article 16 of the Law Number 2 of 2014 concerning Notary Positions, the notary will be subject to sanctions as contained in Article 85 of the Notary Position Act, and the Notary may also be subject to a code of ethics sanction. The notary can also be subject to criminal sanctions for causing losses to his clients. Article 13 of the Law Number 2 of 2014 concerning Notary Positions explains that the legal consequences for a notary in carrying out his professional duties will only arise when the notary has been found guilty of committing a crime which is punishable by imprisonment of 5 (five) years or more based on a court decision with its permanent legal force.

A notary is a quite risky profession because its services must commit to client of obedience to morals and legal norms that are subject to the professional code of ethics to strengthen existing positive legal norms. A notary must uphold his profession as a public official, which is carried out quickly and honestly by his professional code of ethics. Notaries are responsible for civil, code of ethics, and even criminal liability due to non-fulfillment of the deposited money.

2. Legal Consequences of Canceling The Sale and Purchase Binding Agreement Privately

Humans are social creatures who interact with each other in their daily life activities. Interactions occur between one individual and another, between individuals and other groups. This can be seen from the existence of an agreement between the parties. The development of the flow of economic globalization in the service sector is increasing causing more and more people bind themselves to other communities. The emergence of agreements is very often used and required in society.

Land Purchase Agreement (PPJB) is a problem that may arise regarding to uncertainty of the elements of the agreement and the purchase, among others, land certificates that have not yet materialized because they are still in the process, they still have not paid the taxes used on the sale of land that have not been paid by the landowners. seller. The binding sale and purchase agreement (PPJB) was born as a result of the delay in obtaining a number of conditions stipulated by law relating to the sale and purchase of land rights which in the

end slightly hindered the completion of business transactions in the sale and purchase of land rights (Putri, 2018).

Legal certainty can be realized with the stipulation of law in the event of a concrete event. The applicable law is not allowed to deviate, this is also known as *fiat Justitia et al pereat mundus* (even though this world is collapsing the law must be enforced). That is what legal certainty endowed. Legal certainty is justifiable protection against arbitrary actions, which means that someone will be able to get something that is expected under certain circumstances. The community expects legal certainty to be more orderly. Law is tasked by creating legal certainty because it aims at public order. On the other hand, the community expects benefits in implementing or enforcing the law. The law is for humans, so the implementation of the law or law enforcement must provide benefits or uses for the community. Law is not synonymous with justice (Moho, 2019).

According to Article 1313 of the Civil Law the definition of an agreement is "An act by which one or more people bind themselves to one or more other people". According to Subekti, "An agreement is also called an agreement because both parties agree to do something, it can be said that the two words (agreement and agreement) are the same in meaning" (Subekti, 2005).

Meanwhile, according to M. Yahya Harahap what is meant by an agreement is a legal relationship of wealth or property between two or more people which gives strength to the rights of one party to obtain achievements and at the same time obliges the other party to fulfill achievements. So, it can be concluded that the agreement contains several elements, including: (Harahap, 1986)

- a) The parties who are the object of the agreement would consist of at least two people or legal entities and must have the authority to carry out legal actions as stipulated by law.
- b) There is an agreement between the parties, which is permanent and not a negotiation.
- c) There is a goal to be achieved. This means that the objectives of the parties should not conflict with public order, morality and the law.
- d) There are achievements to be made. This means that achievement is an obligation that must be fulfilled by the parties in accordance with the terms of the agreement.

An agreement can be implemented if it accommodate the elements and conditions of the validity of an agreement as stated in Article 1320 of the Civil Code, namely, the agreement of those who bind themselves, the ability to make

an engagement, a certain matter, and a lawful cause. The existence of an agreement between the parties in the agreement means that the parties who make the agreement have agreed or there is a conformity of will or mutual agreement with each other's will, which was born by the parties without coercion, error and fraud. With the emergence of rights and obligations between the parties, then through this legal event a relationship arises between the two people which is called an engagement. Based on Article 1233 of the Civil Code, the engagement is born either by agreement or by law. Furthermore, Article 1234 of the Civil Code states that each engagement is to give something, to do something or not to do something. In the engagement that arises between the parties, a right and obligation arises. The right of the buyer is to obtain the goods purchased from the seller while the obligation of the buyer is to give the agreed amount of money as the price of an item. On the other hand, the right of the seller is to receive money from the buyer who has agreed on the price of the goods to be purchased and the obligation of the seller is to provide the goods purchased.

According to R. Subekti in his book, the understanding agreement can be explained before, while the definition of a Sale and Purchase Binding according to R. Subekti in his book is an agreement between the seller and the buyer before the sale and purchase is carried out because there are elements that must be met for the sale and purchase, among others, the certificate does not exist because it is still under construction. process, the price has not yet been paid (Subekti, 2005).

Meanwhile, according to Herlien Soerojo, a sale and purchase binding agreement is an assistance agreement that functions as a free preliminary agreement (Soerojo, 2003).

The advantages of a land sale and purchase agreement with a down payment system where the buyer cancels the agreement according to Civil Law are: (a) The position of the seller gets legal protection if the buyer cancels the sale and purchase agreement with the down payment system; (b) There is no difference of opinion among legal experts regarding the permissibility or non-permissibility of a sale and purchase agreement with the down-payment system (urbuun); and (c) Prevent the buyer from acting arbitrarily with the seller in canceling the sale and purchase agreement with the down payment system (down payment) (Bauty, 2017).

From the understanding described above, it can be concluded that the meaning of a binding sale and purchase agreement is a preliminary agreement made before the implementation of the main agreement or the main agreement.

In practice the use of Sales and Purchase Binding Agreement Deed has often been used as a preliminary agreement to assist in making a sale-purchase agreement of land rights, Sales and Purchase Binding Agreement Deed can be made by the parties without involving the role of an authorized official or carried out before a notary.

a) Sale and Purchase Binding Agreement with Authentic Deed

Provisions regarding authentic deed are regulated in Article 165 *Herzien Inlandsch Reglement*, which has the same sound as Article 285 *Rechtreglement voor de Buitengewesten*, which affirms: An authentic deed is a deed made by or before an official authorized to do so, is complete evidence between the parties of his heirs and those who have rights from him about what is contained therein and even as a mere notification, but the latter is only notified directly with the matter on the deed. Article 165 of the *Herzien Inlandsch Reglement* and Article 285 of the *Rechtreglement voor de Buitengewesten* above contain the meaning and power of proving an authentic deed at the same time. The definition of authentic deed in Article 1868 of the Civil Code, which states that "An authentic deed is a deed made in the form determined by law, made by or before a public official in power for that purpose and at the place where the deed was made." Based on the provisions of Article 1868 of the Civil Code, there are limits to what is meant by an authentic deed, namely: (Adje, 2017)

- a) The deed must be made by or before a public official;
- b) The deed must be made in the form determined by law
- c) A public official (public official) by or before whom the deed was made, must have the authority to make the deed.

An authentic deed has perfect evidentiary power, it can also be determined that whoever is bound by the deed, as long as it cannot be proven otherwise based on a permanent legal decision. Authentic deed is a designation given to certain officials who are qualified as public officials, but authentic deeds can not only be made by a Notary, for example also by Land Deed Making Officials, Auction Officials, and Civil Office Officials (Adjie, 2017).

b) Privately Made Deed Sales and Purchase Binding Agreement

In Article 1874 of the Civil Code, it states that "What is considered to be handwritten is deed signed underhand, letters, registers, household affairs letters and other writings. made without the intercession of a public official." Underhand writing or also known as an underhand deed made in a form not

determined by law, without an intermediary or not before an authorized public official.

In contrast to an authentic deed which has perfect power, a private deed is relative. This means that the private deed is free as long as the parties admit it or there is no denial from one of the parties, if the parties admit it, then the private deed has perfect evidentiary power as an authentic deed. If there is one party who does not admit it, the burden of proof is handed over to the party who denies the deed, and the assessment of the denial of the evidence is submitted to the judge (Adjie, 2017).

Sales and Purchase Binding Agreement Deed in practical can be canceled unilaterally by one party or upon the agreement of both parties. The Sales and Purchase Binding Agreement Deed can also be canceled by a court decision. The cancellation of an agreement will certainly bring legal consequences. However, the problem in the clause of the Sales and Purchase Binding Agreement Deed is that there is a clause stating - If the land above cannot be processed, then the money that has been paid will be fully returned.

According to Herlien Budiono, the agreement formulated in Article 1313 of the Civil Code is an obligatory agreement, namely an agreement that creates, fills, changes or abolishes an engagement that creates legal relationships between the parties, who makes an agreement in the field of assets on the basis of which one party is obliged to carry out an achievement, while the other party has the right to demand the implementation of the achievement, or for the sake of and at the expense of both parties reciprocally. Furthermore, Herlien Budiono, also gave an addition regarding the parts of the agreement consisting of the Essentiali part, the Naturalia part and the Accidentalialia (Budiono, 2009).

If based states from Herlien Budiono's statement above, the clause is part of the Accidentalialia, namely the part of the agreement in the form of provisions specifically agreed upon by the parties. According to Article 1339 of the Civil Code, an agreement does not only bind the contents stated explicitly in it, but also binds other matters which according to the nature of the agreement are required by law, public order and morality. Regarding the interpretation of an agreement or agreement, it is regulated in Articles Article 1342 of the Civil Code: That if the words of an agreement or agreement are clear, we must not interpret otherwise, and Article 1343 of the Civil Code: That if the words can be interpreted differently or in various ways, then we

must first investigate what the meaning of the parties who have made the agreement or agreement.

The clause in Sales and Purchase Binding Agreement Deed in the above case which states "If the land mentioned above cannot be processed, the money that has been paid will be returned in full". If viewed from Article 1343 of the Civil Code the word "cannot be processed" can be interpreted differently or in various ways, so that the consequences can affect the agreement, and cause disputes in the future, thus an appropriate understanding is needed and the agreement is possible so that the agreement can be implemented. Regarding imprest in Article 1464 of the Civil Code it is explained If the purchase is made by giving a down payment, then one of the parties cannot cancel the purchase by ordering to have or return the imprest.

This is in line with the provisions in Article 1457 states Buying and selling is an agreement in which one party binds himself to deliver an item, and the other party pays the promised price and Article 1458 states purchase is deemed to have taken place between the two parties, as soon as the persons reach an agreement on the goods and their prices, even though the goods have not been delivered and the price has not been paid.

- c) According to the author, if in a sale and purchase transaction carried out by the person making the down payment is canceled or terminated before the completion of the transaction period, then based on the provisions in Article 1464 of the Civil Code the down payment that has been paid cannot be returned. However, in practice there is also a sale and purchase of an item which is carried out through a written agreement. In this case, there is a clause which basically states that if the Signature money that has been paid will be returned in full. If such an agreement is agreed upon by the parties, the down payment must be returned. This happens because the agreement made by the parties binds the parties to the agreement as *pacta sunt servanda* in Article 1338 of the Civil Code which states as follows All agreements made in accordance with the law apply as law for those who make it. The agreement cannot be withdrawn other than by agreement of both parties, or for reasons determined by law. Approval must be carried out in good faith. Based on these provisions, unless the parties agree to cancel the agreement, the down payment that has been paid by the buyer cannot be returned as stipulated in Article 1464 of the Civil Code. Furthermore, based on the jurisprudence of the Supreme Court Number 2661 K/Perdata/2004, it states that Considering that it cannot be canceled unilaterally, if the cancellation is due to the seller's default, he must return the down payment along with the costs that have

been incurred to the buyer, while if the cancellation is because of a default on the part of the buyer, the seller is not obliged to return the money. It can be concluded that due to the cancellation of Sale and Purchase Binding Agreement with Authentic Deed by the seller, the seller must return the down payment to the buyer. While the cancellation of Sale and Purchase Binding Agreement with Authentic Deed as the buyer defaults or breaks a promise, the seller is not obliged to return the down payment to the buyer.

The application of the principle of freedom of contract also has a negative side, where with the principle of freedom of contract to make an agreement, the party with a stronger bargaining position will be able to act more pressingly against the contracting party, so that there will be an imbalance and create injustice that can lead to an imbalance. harm the weak. In the activity of owning land and or buildings, a person will need a large amount of funds, which sometimes will not be fulfilled if it is measured by their standard of living (Permana, 2017).

Conclusion

1. The responsibility of the notary as the recipient of the down payment due to the cancellation of the sale and purchase binding agreement deed is to make an official report on the offer of cash and consignment payments. Meanwhile, the notary's responsibility for his failure to return the down payment is to be subject to civil sanctions in the form of compensation, fees and interest. In addition, administrative sanctions can also be given, including in the form of verbal warnings, written warnings, temporary dismissals, and criminal liability if the notary is suspected of having committed acts of embezzlement based on Article 372 of the Criminal Code.
2. The agreement made by the parties binds the parties to the agreement according to the principle of *pacta sunt servanda*, the clause related to the deposit is part of the *accendatalia* which is one of the elements of the agreement. If it refers to Article 1464 of the Civil Code due to the cancellation of sale and purchase binding agreement deed the down payment that has been paid by the buyer cannot be returned but due to the cancellation of the sale and purchase binding agreement deed by the seller, the seller must return the down payment to the buyer. While the cancellation of sale and purchase binding agreement deed because the buyer defaults or breaks a promise, the seller is not obliged to return the down payment to the buyer. While the cancellation of sale and purchase binding agreement deed because the buyer defaults or breaks a promise, the seller is not obliged to return the down payment to the buyer.

Suggestions

Notary in carrying out their duties must full of responsibility by living up to the overall dignity of their position, and with their skills to serve the interests of the people who ask for their services by always heeding the provisions of the law and the code of ethics. As the party needed by the client, the Notary must understand his position as the recipient of the deposit from the party, by making an authentic deed, and full of responsibility once the goods are entrusted. So that in the future the Notary will not be the party to blame for his position.

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