



Cancellation of The Deed of Sale and Purchase Binding Made Before a Notary (Study in the West Lombok Regency Area)

Rahmat Agusfiyan^{1*}, Lalu Husni², Salim HS
Universitas Mataram

Corresponding Author: Rahmat Agusfiyan : rahmatagusfiyan@gmail.com

ARTICLE INFO	ABSTRACT
<i>Keywords:</i> Cancellation of Deed, Gradual APJB, Notary <i>Received :</i> 6, March <i>Revised :</i> 20, April <i>Accepted:</i> 25, May ©2024 Agusfiyan, Husni, HS (s): This is an open-access article distributed under the terms of the Creative Commons Attribution 4.0 International. 	The purpose of this study is to examine the progressive cancellation of APJB that took place in the West Lombok Regency area, as well as the legal ramifications of that cancellation when it was done in front of a notary. by applying techniques from empirical normative legal research. The research findings indicate that the notary's involvement in the gradual cancellation of the APJB in the West Lombok Regency area was passive; that is, the notary merely documents and interprets the parties' statements when they appear before him, so long as those statements do not violate any regulations. applicable laws, the conditions of the agreement in Civil Code Article 1320 and the terms that the notary specifies. As a result of the parties' agreement to terminate the agreement contained in the gradual APJB and declare it no longer valid, the engagement agreement is no longer binding on them. This is one of the legal ramifications of gradually canceling the APJB made before a notary. This cancellation makes it impossible to carry out the transfer of land and building rights or to continue with the progressive APJB.

INTRODUCTION

People in their social lives will always interact with each other in various forms. The relationship between legal subjects and each other is often a legal relationship that can certainly be categorized as a legal act that arises to accommodate certain interests of members of society. One example of a legal act that is often carried out by the public is buying and selling.

Some consequences arise between the seller and the buyer with the existence of an agreement, namely the fulfillment of the rights and obligations of each party. The obligations that arise as a result of the sale and purchase agreement between the seller and the buyer are, the obligation of the seller in the agreement to hand over the goods sold to the buyer and the obligation of the buyer to pay the agreed price of the goods to the seller. (Devina Ruth Merida, et al; 2021)

A Sales and Purchase Agreement (PPJB) is a form of agreement that arises from legal needs that develop in society. This agreement is anonymous because it is not included in the agreements regulated in the Civil Code. The context of this PPJB is in principle the same as the legal context of engagements/agreements in Burgerlijk Wetboek for Indonesia (BW), where this PPJB can be said to be an agreement that arises from the open nature of Book III of the Civil Code, which provides the widest possible freedom to the subject. It is legal to enter into agreements containing anything in any form, as long as it does not violate statutory regulations, public order, and morality. (Muh. Taufiq Amin; 2018)

Land Sale and Purchase Agreements (PPJB) are often found in daily practice in the community and Notary offices. This agreement is an agreement that precedes the land sale and purchase agreement which must be executed before the Land Deed Making Officer (PPAT).

In practice, before a land sale and purchase is carried out before the PPAT, the parties first make a PPJB, which essentially contains the aims and objectives of the parties to bind themselves to carry out the land sale and purchase along with the rights and obligations that must be fulfilled by the parties before carrying out the sale and purchase. land. This agreement is intended as a preliminary agreement to the main intention of the parties, namely to transfer land rights.

Although in principle PPJB can be made either privately or notarially, in practice many PPJBs are made in the form of authentic deeds before a Notary and are commonly called Deeds of Sale and Purchase Agreement (APJB). This is intended by the parties to provide more protection and legal certainty for the parties who make it because the APJB has perfect evidentiary power, like other authentic deeds.

The Deed of Sale and Purchase Agreement is made by the parties before the sale and purchase is carried out because there are elements that must be fulfilled to carry out the sale and purchase, but which cannot yet be fulfilled by one/the parties. In practice, these elements include land certificates that do not yet exist because they are still in the process of changing the name from the previous owner, land price payments that cannot yet be made, and tax payments that

cannot be made by either the seller or the buyer. Thus, it can be said that APJB was born as a result of obstacles or the existence of several requirements determined by law relating to the sale and purchase of land rights which ultimately hampered the completion of transactions in the sale and purchase of land rights. Some of these requirements arise from existing laws and regulations and some arise as an agreement between the parties who will buy and sell land rights. Requirements arising from the law, for example, the sale and purchase must be paid off before the AJB can be signed. In general, the requirements that often arise are requirements that arise from an agreement between the parties who are going to buy and sell, for example, when buying and selling, the buyer wants a certificate of title to the land they are going to buy while the right to the land to be sold does not yet have a certificate, and on the other hand, for example, the buyer has not been able to pay the entire price of land rights in full, so they have only paid half of the agreed price (Rusdianto; 2009).

Even though the APJB is made in the presence of a Notary who can help formulate the matters agreed upon by the parties, the parties do not always carry out the contents of the APJB as agreed until the AJB is made by the PPAT. Under certain conditions, various things can happen that result in an agreement being annulled, either canceled by the parties or by court order (Setiawan Rahmat; 2025).

As stated previously, the APJB contains rights and obligations agreed upon by the parties, so if the matters agreed upon in the APJB are violated or not fulfilled by the parties who made it, it can be said that there has been a default by one or both parties. However, in practice, the APJB can be canceled unilaterally by one of the parties, with the agreement of both parties or by a court decision, as happened with the APJB made by several Notaries in West Lombok Regency, West Nusa Tenggara. With the cancellation of the APJB which was made authentically in the presence of a Notary, of course, it has an impact on both the seller and the buyer, namely in the form of certain juridical consequences for the parties who made it.

Based on the background description above, the author formulates two main issues, namely what is the role of the Notary in the gradual cancellation of the APJB that occurred in the West Lombok Regency area and what are the legal consequences of the gradual cancellation of the APJB made in the presence of a Notary.

METHODOLOGY

The type of research carried out by the author is normative-empirical research, namely legal research regarding the application or implementation of normative legal provisions (codification, laws, or contracts) in action on each specific legal event that occurs in society. It is hoped that implementation in action will take place perfectly if the formulation of normative legal provisions is clear, firm, and complete. (Abdulkadir Muhammad; 2014)

Legal research recognizes several approaches used to study each legal problem or issue being researched, the types of approaches in legal research according to Father Mahmud in his book entitled "Legal Research" namely: 36

statutory approaches, conceptual approaches (conceptual approach) and Sociological Approach (sociological approach)

The approach methods used in studying the problems in this research are the statutory approach, conceptual approach, and sociological approach.

Secondary data collection techniques by collecting, and documenting books, journals, scientific papers, dictionaries, encyclopedias, and documents (Muhaimin; 20200) related to research problems.

The primary data collection technique is carried out by interviewing respondents directly to obtain information related to the problem being studied. Interviews were conducted with 5 (five) Notaries domiciled in West Lombok Regency, whose APJB was gradually canceled.

The data that has been collected is then analyzed descriptively qualitatively, namely data expressed by respondents in writing or orally as well as real behavior, which is researched and studied as a whole (Muhaimin; 20200). All legal materials collected are reviewed and analyzed according to the legal issues faced. Analysis is carried out to find answers and conclusions to the problems that have been formulated.

DISCUSSION

1. The role of the notary in the gradual cancellation of APJB that occurs in the West Lombok Regency area

The position of a notary is a position of trust given by law to a notary who has been legally entrusted with making an authentic deed. If a Notary makes a mistake in his or her position, whether intentional or unintentional, then there are consequences that he or she must bear.

Authentic deeds are the strongest and most complete evidence and play a crucial role in all legal relations in society. The notary has the authority to formulate the wishes of the parties to the deed. However, along with the development of law in Indonesia, the passive nature of Notaries is considered too rigid. For this reason, there is an opinion that notaries now have the authority to: (M. Yahya Harahap; 1996)

- a. Determine what happened at any time or in front of the notary;
- b. Therefore, the Notary has the right to confirm or determine the facts he obtains to correct the contents of the deed more perfectly and appropriately.

Notaries in carrying out their profession must be guided by the provisions in the UUJN. Notaries have personal and social responsibilities, especially those related to positive legal norms or rules, and must follow professional norms, thereby strengthening applicable positive legal norms. (Liliana Tedjosaputro; 1995)

An authentic deed is a letter that is hand-indicated as evidence, containing the events that form the basis of an agreement. (Herlien Bodiono) Article 1 point (7) UUJN states that a Deed is an authentic deed drawn up by or before a notary based on the form and procedures stipulated in this law. According to Article 1868 of the Civil Code, it is stated that an authentic deed is a deed whose form is influenced by law or before an authorized public official in the place where the

deed was drawn up.

These aspects are the perfection of the Notary's deed into an authentic deed and all parties are bound by the deed. If it can be proven at a court hearing that there is one wrong aspect, then the deed only has the power of proof to be a private deed. (Habib Adjie; 2013) A notarial deed is a means of evidence that has strong evidentiary power, if all the provisions on procedures for making a deed are met. If there are procedures that are not fulfilled, and the requirements for the procedures that are not fulfilled can be proven, the deed can be declared through a court process to be a deed that has the power of proof to become a private deed that is decided by a judge.

The notary is responsible for determining what can be included in the form of a deed. Therefore, the application of the precautionary principle in contract design must pay attention to the following aspects: (Habib Adjie; 2007)

- a. The notary is obliged to identify who will appear before him based on the identity given to the notary
- b. The notary is obliged to ask, listen, and pay attention to the wishes of the parties involved
- c. obliged to investigate documentary evidence relating to the wishes of the claimants
- d. The notary is obliged to advise and organize the framework of the deed so that it can fulfill the wishes of the parties
- e. The notary must complete all administrative stages related to making an authentic deed, such as reading, signing, providing a copy, and archiving records
- f. Notaries are obliged to fulfill other obligations related to fulfilling the obligations of their position.

The presenter can appear before the notary and depending on the notary's authority, state the desired legal action in the notarial deed. The notary then testifies to the wishes of the presenters who come to him. In making a deed, the applicant submits his wishes to the notary with his conscience. Therefore, it can be said that an authentic deed is not made unless a party requests it (Vitto Odie Prananda; 2006).

Passivity in terms of ratios never occurs. However, this can be applied relatively in principle and it is not permissible to investigate to what extent the information provided by the parties is correct. Therefore, if the information provided by the parties is proven to violate law, order, and morality, the notary must firmly reject the parties' request (Vitto Odie Prananda; 2006).

Article 16 UUJN explains that a Notary must act seriously and thoroughly in carrying out his duties, but in this case, the diligence and thoroughness here are formal to fulfill the requirements, namely to confirm the truth of the authentic deed. If a formal truth is violated, the Notary must be responsible for this. This violation must be proven and there must be a court decision showing that the notary violated the formal aspect based on the actual making of an instrument. The formal aspect of a notary is the full responsibility of a notary. (Habib Adjie; 2009)

Notary as a position that carries out a profession in the legal field is of

course expected to be able to have uniformity in the way of working professionally and with noble character. This can be realized by having a standard or SOP that applies to Notaries both in carrying out their duties and in living their daily lives.

A notary is a public official who is a personification of the law of truth, justice, and even a guarantee of legal certainty for the community. (Handayana, I. G. A. P., & Puspawati, I. G. A.) Notaries in carrying out their duties must be thorough and careful in making authentic deeds so that the deeds are valid. its creation is not legally flawed because it must be accountable to society and not harm other people. (Damara, I. P. E., & Parwata, A. G. O.; 2015) Before carrying out his duties, a Notary must carry out his oath of office. Before becoming a Notary, the contents of the oath taken by the Notary must be mandatory to maintain confidentiality for clients who will use his services. (Widiada, M. P., Kasih, D. P. D., & Purwanti, N. P.; 2018)

As stated by Mr. Stevanus Prima Rintoko Baskoro, SH., M.Kn. that the role of the notary as in Article 15 paragraph 1 and paragraph 2 is as follows:

"Notaries have the authority to make authentic Deeds regarding all acts, agreements, and stipulations that are required by statutory regulations and/or that are desired by those interested to be stated in authentic Deeds, guarantee certainty of the date of making the Deed, store the Deed, provide grosses, copies, and quotations The deed, as long as the deed is made, is not assigned or excluded to other officials or other people as determined by law.

Apart from the authority as intended in paragraph (1), the Notary also has the authority to: a. validate the signature and determine the certainty of the date of the underwritten letter by registering it in a special book; b. record letters under hand by registering in a special book; c. make a copy of the original letter under your hand in the form of a copy containing the description as written and depicted in the letter concerned; d. validate the suitability of the photocopy with the original letter; e. provide legal counseling regarding the making of Deeds; f. make deeds relating to land; or g. make a Deed of auction minutes." As stated by Stevanus Prima Rintoko Baskoro above, it is the same as stated by Mrs. Dr. Nining Herlina, SH., M.kn. explains as follows:

"The role of a notary is by the authority regulated in the UUJN that a notary has the authority to make a deed as long as the deed does not conflict with statutory regulations."

A notary is given the authority to write down all deeds, agreements, and stipulations desired by the parties who come to him to make them permanent and put them into an Authentic Deed, with the aim that the deed has complete evidentiary power and is valid. Therefore, Notaries are obliged to fulfill all the provisions of their position and other regulations. The notary also has the role of assessing whether something that the person wishes to include in the Deed does not conflict with the applicable laws and regulations. Notaries are obliged to know and understand the terms of authenticity, validity, and reasons for the invalidity of a deed, this is very important to preventively avoid legal defects in Notarial Deeds which can result in the Deed being invalidated and causing losses to interested parties.

A Notary has the task of providing legal certainty services in the form of making land deeds or making authentic deeds which have two main functions, namely: (I Putu Gunartha Adi Laksana and Ini Made Ari Yuliarti Griadhi)

- 1) Give responsibility for legal certainty to the public in ratifying binding agreements and provide legal reinforcement for legal bindings provided by law.
- 2) Apart from that, the Notary has the authority to carry out his duties, namely to ratify the legalization of legal obligations carried out by the community, especially in the land sector.

In carrying out the duties of a notary as a public official, they act passively, in other words, the notary only waits for the public to come to them to be served, but not the notary who approaches the public. (Tobing, Y. J. J; 2010)

As explained above, according to the results of interviews with the source, Mr. Stevanus Prima Rintoko Baskoro, SH., M.Kn. as follows:

"The role of the notary in making the APJB is gradual, only passive because the notary only waits for the parties and records what is conveyed and the wishes of the parties, the important thing is that the parties convey their aims and objectives and do not conflict with statutory regulations"

From the explanation above, the author concludes that the role of the notary in making the APJB is gradual, and massive, which only records and concludes what is conveyed by the parties when facing the notary as long as what is conveyed by the parties does not conflict with the applicable laws and regulations, either the terms of the agreement in Article 1320 of the Civil Code and the terms set by the notary.

In accordance with the results of the interview with Mr. Stevanus Prima Rintoko Baskoro, SH., M.Kn. as follows:

"The process that must be carried out by the parties when appearing before a notary is as follows: a. The parties, both seller and buyer, come to the notary to submit the documents needed to make the sale and purchase agreement deed, b. The requirements that must be fulfilled are original SHM, seller, and buyer ID cards, seller and buyer family cards, and other supporting documents if necessary, c. The notary checks all existing documents, d. The notary carries out an official check of the SHM and e. "After the SHM has been officially checked by a notary at BPN, the notary will then make a deed of engagement."

Apart from the process explained above, what must be included in the APJB is in stages as Mr. Stevanus Prima Rintoko Baskoro, SH., M.Kn. as follows:

- 1) The parties are the seller and the buyer
- 2) Make sure the object of sale and purchase is there
- 3) Sale and purchase agreement price
- 4) Reach the buying and selling time
- 5) Legal certainty
- 6) Rights and obligations of the parties.

So from the explanation from the sources above, the author can conclude that the role of the notary in making the APJB is gradual, and massive, which only records and concludes what is conveyed by the parties when facing the

notary as long as what is conveyed by the parties does not conflict with statutory regulations. applicable, both the terms of the agreement in Article 1340 of the Civil Code and the terms set by the notary.

2. Legal consequences of gradual cancellation of APJB made before a notary

In practice, the Deed of Sale and Purchase Agreement for land is often made in the form of an authentic deed made before a Notary, so the Deed of Sale and Purchase Agreement is an authentic deed that has perfect evidentiary power. This is intended by the parties to provide more protection and legal certainty for the parties who make it, because the Notary in making the deed is impartial and safeguards the interests of the parties objectively, with the help of the Notary the parties who make the sale and purchase agreement will get assistance in formulating things to be agreed upon. However, an agreement cannot always run according to the agreement desired by the parties, in certain conditions various things can occur, which result in an agreement being canceled, whether canceled by the parties or by court order.

In principle, an agreement that has been made can be canceled if the implementation of the agreement will harm certain parties. These parties are not only parties to the agreement but also include every individual who is a third party outside the parties agreeing. In this case, cancellation of the agreement can occur, either before the agreement is implemented or after the agreed performance is carried out based on the agreement made.

A land sale and purchase agreement can be canceled unilaterally by one of the parties or with the agreement of both parties. Even the land sale and purchase agreement can also be canceled by a court decision. The cancellation of a deed of agreement that was made authentically will certainly have certain juridical consequences.

An agreement made with a notarial deed can be null and void or canceled based on a judge's decision which has permanent legal force (in Kracht). To find out whether an agreement made legally can be canceled during the period the agreement is in force and what the consequences of canceling the agreement are, you can look at the clause that regulates the possibility of canceling the agreement along with the causes and consequences for the parties to the agreement.

Based on Article 1266 of the Civil Code (Civil Code), an agreement cannot be automatically canceled when the debtor neglects his obligations, but the cancellation of the agreement must be requested by a judge. If the judge with his decision cancels the agreement, the legal relationship between the parties who originally agreed becomes null and void so that each party no longer needs to fulfill its achievements. The ratio of the provisions of this article is propriety because it is considered to be contrary to justice and decency if one party obtains an achievement without carrying out the achievement himself. Claims for cancellation can only be made against reciprocal agreements. A reciprocal agreement is an agreement in which each party commits itself to performance and conversely, the opposing party has the right to performance. In a unilateral

agreement, the cancellation cannot be demanded based on Article 1266 of the Civil Code (Civil Code) because in a unilateral agreement, the obligation to perform is only on one of the parties and the demand for cancellation is a way to free oneself from the obligation to perform for the party who does not perform. default.

The provisions of Article 1266 of the Civil Code are regulatory so that this article can be overridden by the parties as in a land sale and purchase agreement made between land owners which includes a clause overriding the application of Article 1266 of the Civil Code. For this reason, it must be stated in the agreement that the rights owned by the parties based on the provisions of this article have been expressly waived. In Notarial practice, it often happens that in a reciprocal agreement such as a sale and purchase agreement with or without a void condition, a provision is included that the parties waive Articles 1266 and 1267 of the Civil Code.

Notwithstanding the provisions of Article 1266 of the Civil Code in the land sale and purchase agreement, cancellation of the agreement does not have to be requested through a judge if there is a default by one of the parties. Thus, the land owner can demand cancellation of the agreement without going through a judge for breach of contract due to negligence in making payments. In practice, the view is accepted that if the parties agree to waive Article 1266 of the Civil Code, in the event of default the agreement will be null and void without the mediation of a judge's decision.

Article 1267 of the Civil Code states that the party against whom this is not fulfilled may have the right, if this can still be done, to force the other party to fulfill the agreement or he will demand cancellation of the agreement along with compensation for costs, losses and interest. Based on this article, the land owner is given the right to choose whether to demand fulfillment or cancellation of the agreement with compensation for costs, losses and interest. This article is an exception to Article 1338 of the Civil Code, part two, which states that an agreement cannot be withdrawn other than with the agreement of both parties.

The land owner only demands compensation, then the land owner is deemed to have waived his right to request fulfillment and cancellation of the agreement. Meanwhile, if the land owner only demands fulfillment, this demand is not actually a sanction for negligence because fulfillment has from the beginning been an ability to carry it out, however, there is the possibility for those who are negligent to clear themselves of this negligence by fulfilling their obligations, even though they have been declared negligent.

The land owner's right to sue those who are negligent arises from the existence of a legal relationship between two parties, which means that the land owner's rights are guaranteed by law or statute. So if these demands are not fulfilled voluntarily, the land owner can sue them before a judge. In conclusion, if there is a default, the land owner can choose between several possible claims as stated in Article 1267 of the Civil Code.

The party to whom this is not fulfilled is given a choice, including:

- 1) The usual legal tool, namely the Court's demand to fulfill it with compensation or just compensation without a demand to fulfill the

obligation.

- 2) Special legal instrument, namely a demand to cancel reciprocity followed by a claim for compensation, with the legal basis that in every reciprocity it is deemed that there is a condition of cancellation if one of the parties does not fulfill its obligations.

Even if the parties do not include a void condition in a mutual agreement, the law assumes that the void condition exists.

In connection with this, legal protection is needed to fulfill the rights of land owners. Legal protection for the fulfillment of the rights of the parties if one of the parties defaults in the land sale and purchase agreement is very dependent on the provisions of the land sale and purchase agreement made. If the sale and purchase agreement is not made before a Notary, then the protection of the deed is only as a private deed, whereas if it is made before a Notary, then the deed automatically becomes a notarial deed so that the strength of its protection is in line with the protection of an authentic deed.

In practice, the land sale and purchase agreement is often made in the form of an authentic deed made before a Notary, so that the land sale and purchase agreement deed is an authentic deed that has perfect evidentiary power. This is intended by the parties to provide more protection and legal certainty for each party, so a written land sale and purchase agreement will certainly make it easier for the parties to resolve disputes if this happens in the future.

Claims for cancellation can only be made against reciprocal agreements. A reciprocal agreement is an agreement in which each party commits itself to performance and conversely, the opposing party has the right to performance. In a unilateral agreement, cancellation cannot be demanded based on Article 1266 of the Civil Code because in a unilateral agreement the obligation to perform is only on one of the parties and the demand for cancellation is actually a way to free oneself from the obligation to perform for the party who has not defaulted.

If the parties are prosecuted in court, the engagement deed can be canceled or, conversely, the engagement deed can be continued until the installments are paid off. If it is cancelled, there are consequences of claims for compensation, interest and fines which are demanded in court from the party who feels disadvantaged by the cancellation of the agreement to the party who cancels.

The legal consequence of canceling a sale and purchase agreement made before a Notary is that there will be a legal claim for compensation from the party who feels aggrieved by the cancellation of the land sale and purchase agreement. The legal claim for compensation can be made to the Court (litigation), after previously being preceded by a warning (*somatie*) which is conveyed by the party who feels aggrieved to the party who cancels or the party who has made a breach of contract/default in the sale and purchase agreement.

In practice, land sale and purchase agreements are often made in the form of authentic deeds made before a Notary, so that the land sale and purchase agreement deed is an authentic deed that has perfect evidentiary power. This is intended by the parties to provide more protection and legal certainty for each party, so a written land sale and purchase agreement will certainly make it easier for the parties to resolve disputes if this occurs in the future.

The parties who make a sale and purchase agreement will receive assistance in formulating the matters to be agreed upon. However, an agreement cannot always run according to the agreement desired by the parties. Under certain conditions, various things can occur, which result in an agreement being canceled, whether canceled by the parties or by court order. From this perspective, the implementation of the land sale and purchase agreement is interesting to study further considering that the sale and purchase agreement is a legal act that precedes the process of transferring land rights. As a form of a land sale and purchase agreement, a land sale and purchase agreement contains the rights and obligations of the parties who made it, so that if the matters agreed upon in the sale and purchase agreement are violated or not fulfilled by the parties who made it, then this can be said to have occurred. .

A land sale and purchase agreement carried out before a Notary does not result in the right to the land transferring at that time from the hands of the land owner to the prospective buyer. This is because the sale and purchase agreement is a conditional agreement or preliminary agreement before the implementation of the sale and purchase agreement through a deed from the Land Deed Maker (PPAT) official. As is known, the agreement is the source of. As it was made deliberately based on the wishes of the parties, everything that has been agreed upon by the parties must be carried out by them. As a form of agreement, a land sale and purchase agreement contains the rights and obligations of the parties who make it. These rights and obligations outlined in an agreement are referred to as achievements. Achievement is something that must be fulfilled by debtors and creditors in each case. Achievement is the content of the engagement.

According to the provisions of Article 1234 of the Civil Code, there are three possible forms of achievement, namely giving something, doing something, or not doing something. The achievement of giving something aims to hand over an object to be enjoyed or owned or to return an object to be controlled or enjoyed by a creditor, for example a rental agreement or sale and purchase agreement.

If the matters agreed upon in the land sale and purchase agreement are violated or not fulfilled by the parties who made it, then this can be said to have occurred. This means that any form of negligence committed in the form of being late in making payments in fulfilling one's obligations can be said to be a default. Thus, a breach of contract is the non-performance of an agreement due to an error or negligence or broken promise by the party bound by the agreement. One party is considered underperforming or performing poorly if:

- 1) Not doing what he said he would do.
- 2) Carrying out what was promised but not as it should be.
- 3) Did what was promised but was late.

Doing something that according to the agreement must not be done. The party accused of breach of contract can put forward several reasons to defend himself, namely:

- 1) There is a force situation (overmacht)
- 2) The buyer himself has been negligent
- 3) The buyer has waived his right to claim compensation

If you have been warned or have been strictly given your promise and still

do not fulfill your promise, then you are in a state of negligence or negligence, and sanctions can be imposed on them, namely compensation and cancellation of the agreement. However, because default has such important consequences, it must first be determined whether there is a breach of contract and if this is denied, you must prove it before a judge.

Article 1238 of the Civil Code regulates how to warn a debtor so that they can be said to be in default if they do not comply with the warning. Article 1238 of the Civil Code states that: the debtor is negligent, if by means of a warrant or a similar deed he has been declared negligent, or for his own sake if this stipulates that the debtor will have to be considered negligent after the specified time has passed.

Thus, in committing a breach of contract the law requires the land owner to provide a statement of default. A statement of negligence is an assertion that if you have not performed at the time specified in the statement of negligence, then at that time it is sufficient evidence that you are negligent and are responsible for all the consequences. The warning (*sommatie*) must be carried out in writing with an order or similar deed made and delivered by a bailiff, and the Judge will not consider a verbal warning valid. However, the obligation to provide a statement of default can be eliminated by making provisions in the agreement regarding when or in what cases a default can be considered, such as stating that the default is sufficiently proven by the expiration of the payment period or from the time the prohibited acts are carried out according to an agreement made by the parties, without the need for a written statement from the land owner.

The existence of this exception is because the articles regarding contract law regulated in the Civil Code (KUHP *Perdata*) are only regulatory (not coercive) and the principle of freedom of contract as regulated in Article 1338 of the Civil Code applies so that parties are allowed to make self-regulation as long as it does not conflict with the law, public order and morality. In the practice of Notaries, they also often stipulate firmly in every reciprocal agreement made before them that simply missing the specified time for performance is sufficient evidence for both parties that one party has been negligent.

This land sale and purchase agreement functions as a means of proof if one of the parties is in default and to make it based on the agreed articles. Forms of default that can occur in a land sale and purchase agreement include:

- 1) The buyer delays payment of the land price which should have been paid or only pays several days after the due date, or the buyer makes payment but not as agreed.
- 2) The buyer does not pay the fine for the delay in pricing the land or is late in paying the fine.
- 3) The seller carries out actions that clearly violate the land sale and purchase agreement, for example selling the object of the agreement to another party.

The land sale and purchase agreement does not end because one of the parties dies. The land sale and purchase agreement can be concluded by both parties. The seller can terminate the land sale and purchase agreement if the buyer is unable to continue his obligation to pay the land price as agreed. In addition, if the buyer withdraws or cancels the transaction for any reason, the

land sale and purchase agreement can be terminated.

The buyer can also terminate the land sale and purchase agreement in circumstances where the seller is unable to hand over the object and the rights attached to it in accordance with the agreed time period, and does not match the floor plan or technical specifications of the building as agreed. If this situation occurs, the seller is obliged to return what has been received, plus fines, interest and other costs in accordance with applicable regulations.

If one party to the agreement does not carry out the agreed achievements, the other party to the agreement has the right to enforce its implementation through applicable legal mechanisms and channels. Enforcing the enactment and implementation of an agreement can only be carried out by one or other parties to the agreement against the other party to the agreement as confirmed in the personnel principles of an agreement.

A land sale and purchase agreement made with a notarial deed contains the rights and obligations of the parties who make it. In a land sale and purchase agreement, the buyer must pay the price of the land at the time and place as determined according to the agreement in the sale and purchase agreement between the buyer and is obliged to pay the land price in several installments.

An agreement is fulfilled if the contents of the agreement are paid in full. By fulfilling the contents of the agreement completely, the agreement has achieved its objective so that the legal relationship between the land owner is terminated and the agreement is terminated, but if the purchase price is not paid, the land owner can demand cancellation of the purchase according to the provisions of Article 1517 of the Civil Code.

The consequences of an annulment are in principle the same as being null and void, can be canceled or nonexistent, namely that all three result in the legal act becoming invalid or the legal act having no legal consequences. Or the absence of something essential/main in the agreement. So, in terms of the cause, it is null and void due to non-fulfillment of objective conditions, as well as non-fulfillment of conditions which are the essence of the agreement and due to non-fulfillment of the formal form as required by the applicable law/provisions which are called non-existent void. The differences are: (Suhartati and Akbar; 2023)

- 1) Null and void, as a result, the legal action taken has no legal consequences since the legal action occurred, in practice null and void is based on a court decision that has permanent legal force;
- 2) Can be canceled, as a result, the legal action taken has no legal consequences since the cancellation occurs, and where the cancellation or ratification of the legal action depends on a certain party, which causes the legal action to be canceled. Deeds whose sanctions can be canceled remain valid and binding as long as no court decision has permanent legal force canceling the deed;
- 3) Nonexistent, as a result of which the legal action being carried out does not exist, which is caused by not fulfilling the essentials of an agreement or not fulfilling one or all of the elements in a particular legal action. Dogmatically non-existent sanctions do not require a court decision, but in practice, a court decision is still required which has permanent legal force and its implications

are the same as being null and void.

As explained above, the results of the interview with Mr. Stevanus Prima Rintoko Baskoro, SH., M.Kn. conveyed that the legal consequences that arise when canceling APJB are gradual as follows:

"The legal consequences that arise when the APJB is canceled in stages are that the agreement in the APJB is no longer binding on the parties, because the parties have agreed to end the agreement by appearing before a notary, so the agreement is no longer valid"

In accordance with what was conveyed by Mrs. DR. Nining Herlina, SH., M.kn. that gradual cancellation of APJB can be done in the following way: 116

"Cancellation of an APJB must have both parties appear before a notary and there are two ways of canceling the mechanism, namely using a civil lawsuit because one of the parties has defaulted and submitting a request to a judge so that the agreement can be canceled as regulated in Article 1266 of the Civil Code. "And if the parties have agreed to cancel the agreement, then all parties must appear before a notary and jointly sign the deed of cancellation that was made."

So the author concludes that the legal consequences that arise when there is cancellation of the gradual APJB are that the engagement agreement is no longer binding on the parties because the parties have agreed to terminate the agreement contained in the gradual APJB and declare it no longer valid. With this cancellation, the gradual APJB cannot be continued or the transfer of land and building rights cannot be carried out.

By the decision of the Mataram District Court Number 1657/K/Pdt/2015, the aims and objectives of the plaintiff's lawsuit are as described. 1. In Exception Considering, that Defendants 1 and 2 in their answers have submitted an exception to the Plaintiffs' lawsuit which includes: a) That after the Tribunal studied the power of attorney signed by the Plaintiffs to the Power of Attorney, it is true that the power of attorney was only given to carry out a lawsuit. to Ni Komang Diarmini and Made Rasna and not to sue Rinanto Agus Chundori, S.H, M.Kn, however according to the Tribunal even though the name of Rinanto Agus Chundori, S.H., M.Kn. is not stated in the power of attorney, it is not an obstacle or hindrance for the recipient of the power of attorney from the Plaintiffs to sue Rinanto Agus Chundori, S.H., M.Kn. because this lawsuit cannot be separated from deed number 37 seal 2 February 2013 which was made and signed before Rinanto Agus Chundori, S.H_M.Kn. so that what the Plaintiffs' Attorneys did to sue Defendant 3 did not exceed their authority and fulfilled the requirements for private power so that the exceptions of Defendants 1 and 2 must be rejected, b). Apart from the above, it turns out that Defendant 2 is the husband of Defendant 1, which automatically means that every act and deed of Defendant 1 must be known and permitted by Defendant 2, so that Defendant 2's withdrawal, in this case, is correct, so Defendants 1 and 2's exception is point C. and D must be rejected, c) Considering that based on the considerations above because the exceptions of Defendants 1 and 2 are unreasonable, the exceptions of Defendants 1 and 2 must be declared to be rejected in their entirety.

CONCLUSION

The role of the Notary in the gradual cancellation of the APJB which occurred in the West Lombok Regency area, was passive, only recording and concluding what was conveyed by the parties when appearing before the notary as long as what was conveyed by the parties did not conflict with the applicable laws and regulations, including the requirements agreement in Article 1320 of the Civil Code and the requirements set by the notary.

The legal consequences of canceling the gradual APJB made before a Notary, the legal consequences that arise when the gradual cancellation of the APJB occurs, the engagement agreement is no longer binding on the parties, because the parties have agreed to terminate the agreement contained in the gradual APJB and declare it no longer valid. With this cancellation, the gradual APJB cannot be continued or the transfer of land and building rights cannot be carried out.

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