

Legal Force Of Binding Sale Purchase Agreement Under Hand Reviewed From The Principle Of Pacta Sunt Servanda

Thisia Bianty¹, Ariawan Gunadi²

^{1,2}Universitas Tarumanagara, Jakarta, Indonesia

Email : thisia.217231034@stu.untar.ac.id (Corresponding Author)

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Abstract

The Sale and Purchase Agreement is basically an assistance agreement that functions as a preliminary agreement and is free in form . In the making of PPJB in practice in the field, it is found that it is not uncommon for the parties to enter into a PPJB underhand as a preliminary agreement containing several agreements and there have also been many PPJB underhand there is a default from one of the parties who promised. This scientific article uses deductive analysis, as well as normative research types. PPJB made underhand is an agreement made by the parties themselves without any intervention from authorized public officials, and without a specific standard and only adjusted to the needs of the parties. If the parties do not deny and acknowledge their signatures in the agreement, then the PPJB underhand has legal force based on the principle of pacta sunt servanda.

Keywords: Private agreement, PPJB, Pacta Sunt Servanda.

INTRODUCTION

The obligation begins with an agreement . The Dutch term *Verbintenis* can be equated with the term obligation. " *Verbintenis* " comes from *verbiden* which means to bind. (Syamsiah et al., 2023) . So in accordance with the understanding of *verbintenis* legal relations . An agreement is a legal obligation. Article 1233 of the Civil Code, which essentially emphasizes that every agreement that arises, either due to statutory regulations or agreements, has briefly introduced the term "agreement". In the law book, it is explained that every civil obligation can arise either due to the existence of applicable laws and regulations or as a result of an agreement that has been agreed upon by the parties in an agreement (Purwanto, 2012) . An agreement creates rights and responsibilities for the parties involved. An agreement is defined as an action where one or more parties bind themselves to one or more other parties, in accordance with Article 1313 of the Civil Code.

In essence, an agreement is made by considering the best interests of the parties. When an agreement is started in good faith, it is evidence that the intentions of the parties have been followed. When the agreement is approved, the terms agreed upon by the parties will come into

effect, so that each party is obliged to fulfill and implement each. When an agreement has been implemented and agreed upon, Article 1338 of the Civil Code comes into effect. Based on the agreement, the parties must implement the contents of the agreement as a cooperative application of the principle of *pacta sunt servanda*. Each party is required to fulfill its obligations under the agreement. The contents of the concept of *pacta sunt servanda* are applied so that both parties can carry out the performance effectively and prevent losses, so the parties make the agreement a law when implementing it.

In addition to legal certainty, the idea of *pacta sunt servanda* also emerged, that the contents and clauses of the contract drawn up by both parties, as long as they are in accordance with the provisions permitted by statutory regulations, must be upheld by the courts or other third parties. (Angga Adi Utama, 2019). To implement the principle of *pacta sunt servanda*, Indonesian contract law applies the principle of obligations as stated in the Civil Code. An agreement binds the parties and has legal force. The legal principle of *pacta sunt servanda* is contained in paragraph (1) of Article 1338 of the Civil Code. Article 1233 of the Civil Code states that an agreement can arise because of a law or because of the agreement itself. This reason comes from the Indonesian idea of *pacta sunt servanda*.

Article 1313 of the Civil Code (KUHPerdata) states, "An agreement is an act by which one or more persons bind themselves to one or more other persons. In an agreement, the parties are free to determine the contents and terms of the agreement with the provision that the contents of the agreement must not conflict with legislation, not conflict with the law, moral interests, the public, and public order. In Indonesian society, buying and selling is usually done with a buying and selling agreement, because buying and selling is a consensual agreement. This means that the agreement is binding since there is an agreement from both parties. However, in reality, not every buying and selling is carried out in cash, buying and selling that is not carried out in cash in practice gives birth to a preliminary agreement or what is called a Buying and Selling Agreement (PPJB). The birth of PPJB is based on the principle of *pacta sunt servanda* as stated in Article 1338 of the Civil Code that "All agreements made legally apply as laws for those who make them." By emphasizing the word "All", this article contains a statement to the public to make agreements in any form and content, and the agreement will bind those who make it like a law.

The Sale and Purchase Agreement is basically a support agreement that functions as a preliminary agreement and is free in form. In general, a sale and purchase binding agreement contains promises that must be fulfilled first by one of the parties before the main agreement can be executed, which is the ultimate goal of the parties. (Haedar Djidar & Muhammad Salam Amrullah, 2022). In the making of PPJB in practice in the field, it was found that it is not uncommon for the parties to enter into PPJB underhand as a preliminary binding containing several agreements. What is meant by an underhand agreement is an agreement made by the parties without involving authorized officials such as Notaries, Land Deed Officials, or other officials authorized to do so. Although in the Law there is not a single provision that requires PPJB to be made in the form of an authentic deed before an authorized official, in practice many underhand PPJBs that are made result in default by one of the parties who made the promise.

METHOD RESEARCH

This scientific article uses deductive analysis, as well as normative research. The research approach used is the statute approach (Yanova et al., 2023) by inventorying related regulations to then be used in solving legal issues in this article. The collection of legal materials is carried out by using primary, secondary and tertiary legal materials by documenting legal materials and then classifying and compiling them systematically so that they can be used in solving a legal problem.

DISCUSSION

1. The Relationship of Pacta Sunt Servanda with the Law of Treaties

Pacta sunt servanda means a promise that must be kept. This principle means that it must be adhered to in order to implement the provisions of the contract agreed upon by the parties. Pacta sunt servanda comes from the *Roman praetorical doctrine* known as *pacta conventa sevabo*, which roughly translates to “I honor or respect the covenant.” The idea of obedience is supported by the ancient Roman legal maxim *pacta sunt servanda* and the sacred commandment *motzeh Sfassecha tismar*, which means “You must keep your word.” According to the traditional contract law doctrine, the agreement must be properly complied with and *the pacta sunt servanda* respected. If one party defaults, then the person concerned is considered to have committed a great sin (Iffan & Iffan, 2018).

The concept of *pacta sunt servanda* influences the contract based on the consensual nature of the parties. The concept often known as the principle of autonomy is seen as the principle of a sacred contract that prioritizes the right to freedom of contract. The idea of *pacta sunt servanda* is expressly regulated in the Civil Code (*Burgerlijk Wetboek*), in Article 1338 paragraphs (1) and (2). Every agreement drawn up by the parties involved, based on these provisions, must be implemented or adhered to in all provisions of the agreement made and made together. If one of the parties breaks or violates a promise, then the party who broke the promise can be brought to court to force the violator to carry out his performance (Yunanto, 2019). The principle of *pacta sunt servanda* binds the relationship of the parties who make the agreement. If the parties involved adhere to the principle of *pacta sunt servanda*, then they rely on an agreement and the obligations that have been agreed upon will be fulfilled. *Pacta sunt servanda* is a fundamental legal principle in the formation and implementation of an agreement or agreement (Benuf et al., 2019).

The principle of *pacta sunt servanda* creates protection and trust instilled by the parties in making an agreement. Parties who commit based on the agreement have the expectation that the agreement will be respected and fulfilled. This principle plays a role in resolving disputes due to failure to reach an agreement. In accordance with the principle of *pacta sunt servanda*, a party who is in default can be asked for payment from the other party who is harmed, even forced to fulfill its obligations. The principle of *pacta sunt servanda* provides a basis for the validity of an agreement that has been made. One of the main principles of contract law is *pacta sunt servanda* as a principle that guarantees the consistency, stability, and integrity of the contractual relationship between the parties. The principle of *pacta sunt servanda* itself offers legal protection to obtain certainty regarding the agreement of the parties when an agreement is signed and approved by both parties.

Pacta sunt servanda affirms the absolute right of the parties involved in civil consensualism to defend their rights and obligations. Once the terms of the agreement are reached, the parties are obliged to obtain their rights. Before there is a clause that changes the agreement, the parties adjust to their agreement. An agreement cannot be changed unilaterally by one party for certain reasons. Changes to the agreement made unilaterally will result in

default and the loss of all conditions that have been agreed upon. Both parties must agree to the terms of the agreement, and any changes that arise due to certain circumstances must also be mutually agreed upon, in accordance with Article 1338 paragraph (2) of the Civil Code. The open system outlined in Book III of the Civil Code allows the parties to freely negotiate terms and formats with anyone, whether they do so verbally or in writing in accordance with Article 1338 paragraph (1) of the Civil Code which states that each party in an agreement that is legally made is bound by law.

2. Legal Force of Private Sale and Purchase Agreement (PPJB)

In principle, PPJB is subject to the general provisions of the agreement contained in Book III of the Civil Code (KUHPPerdata) concerning Contracts. Article 1313 of the Civil Code provides a formulation of the Agreement, namely "an agreement is an act by which one or more people bind themselves to one or more other people" (Zipora and Abdul Salam, 2023) . The definition of an agreement is "An event where one person promises another person or where two people promise each other to do something". Meanwhile, the requirements for a valid agreement according to Article 1320-Article 1337 of the Civil Code, namely:

- a. Agreement of the parties Agreement means that there is a free agreement of will between the parties regarding the main matters desired in the agreement.
- b. Competence of the parties Basically, everyone is competent in making an agreement, unless determined to be incompetent according to law.
- c. Regarding a certain matter A certain matter means that in the agreement there is an object that is agreed upon, at least the type of object referred to in the agreement can be determined.
- d. Because it is lawful means that the agreement made does not conflict with the law, morality, or public order (Wijaya et al., 2023).

Article 1338 paragraph (1) of the Civil Code states that all agreements made legally apply as laws for those who make them. Article 1338 contains the principle of freedom of contract, meaning that everyone is free to enter into an agreement in any form, whether in form, content, name and to whom the agreement is addressed (Wahyuni, 2021) . From this principle, it can be described that people are allowed to make agreements in any form and content and the agreement binds those who make it like a law. The legal force of a sale and purchase agreement is strong as long as the parties make the agreement according to the valid conditions of the agreement stipulated in Article 1320 of the Civil Code and the parties do not deny the existence of the agreement (Kholismu Farida, 2021) .

The underhand Sale and Purchase Agreement (PPJB) is included as evidence of a letter . The underhand PPJB is still a valid agreement. Although the legal force of the underhand sale and purchase agreement is not as strong as an authentic deed, as long as the underhand sale and purchase agreement is not denied by the parties, the agreement is legally valid. This is regulated in Article 1338 of the Civil Code (the principle of *pacta sunt servanda*) which states that all agreements made in accordance with the law apply as laws for those who make them. The agreement cannot be withdrawn except by agreement of both parties, or for reasons determined by law. The agreement must be carried out in good faith.

Based on Article 1875 of the Civil Code, in the case of proving a private letter, it only has formal evidentiary force, namely if the signature and statement contained in the letter are acknowledged and justified, then the private letter actually has legal force in evidence. Materially, the evidentiary force of the private letter only applies to the person who is given the statement, while the judge provides an assessment or free evidence against the other party (Sinaga, 2019) . If a private letter is acknowledged by the party using it, then the letter can be perfect evidence against the person who signed it. In a civil case trial, a private letter can be

perfect evidence or have legal force that is in line with an authentic letter, but on condition that the parties who signed the agreement do not deny the truth of their signatures. Because what needs to be proven by the parties to the case is not the law, but the event or legal relationship or the nature of the case.

If one party denies and claims that he did not sign the letter, then the party submitting the letter must try to convince or prove that the signature was affixed by the party who denied it by one of the ways, namely by bringing witnesses who were present when they saw and heard the letter being made. These witnesses are to prove that the private letter submitted as evidence, that the PPJB was really signed by the party who denied it in court.

Conclusion

Pacta sunt servanda is a principle that can make an agreement signed and stipulated the parties' agreement will be implemented. The concept which is often known as the principle of autonomy is seen as the principle of a sacred contract which prioritizes the right to freedom of contract. The concept of *pacta sunt servanda* in positive law is in the Civil Code (Burgerlijk Wetboek), especially paragraphs (1) and (2) of Article 1338. PPJB made underhand is an agreement made by the parties themselves without any intervention from authorized public officials, and without a specific standard and only adjusted to the needs of the parties. If the parties do not deny and acknowledge their signatures in the agreement, then the PPJB underhand has legal force based on the principle of *pacta sunt servanda*.

Suggestion

The government needs to play an active role in providing legal education to the public regarding the importance of understanding the principle of *pacta sunt servanda* in making agreements, including private sale and purchase agreements (PPJB). To increase legal certainty and protection, the government can encourage the preparation of minimum standard guidelines for the contents of PPJB, even if made underhand, so as not to harm either party. In addition, the government through authorized institutions should also expand access to legalization services or ratification of agreements by notaries or authorized officials, especially in areas where legal services are still minimal, so that the validity and evidentiary power of agreements can be more guaranteed.

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