

# The Meaning of the Binding Agreement on the Sale

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# The Meaning of the Binding Agreement on the Sale and Purchase of Land Rights in the Perspective of Legal Certainty and Humanity for the Parties

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**Abstract-** The purpose of this study is first, to discover the meaning, nature and urgency of the binding agreement. Second, to find the purpose, purpose and benefits for the parties when making a binding agreement. The benefit of this research is First, Academically, the findings can be a basic goal for the development and development (law) theoretical, especially in the field of National Agrarian Law, especially related to the sale and purchase of land rights. Second, practically; 1) The results of this study are also expected to be useful for other practitioners, especially for PPAT / Notary in carrying out their duties and obligations so as to be able to make authentic deed that can provide certainty and legal order in the field of land, especially in making a deed of sale and purchase agreement on land rights. 2) As a contribution of thought or correction for the government (state) in order to make legal regulations that provide certainty and legal order in the field of land in order to create a legal order in the future. This research is normative legal research. To expand and sharpen this research, the author also conducted empirical approaches as an alternative approach to complement and add to the discussion in the writing of this study. While the problem approach in this study using conceptual approach, statute approach, and using analytical approach. The technique of collecting legal materials in this study was conducted through the study of literature. This study seeks to find primary and secondary legal materials in the field of law, namely (a) primary legal materials in the form of legislation of 1945 Constitution, UU/Perpu, PP, relevant to this study. (b) Secondary legal materials in the form of books that are of course related to or relevant to the object of this research, papers or articles related to this research. (c) tertiary legal materials, i.e. materials that provide instructions and explanations for primary and secondary legal materials, such as encyclopedias and dictionaries. The results showed that; first, the meaning of the trade binding agreement already includes several fundamental perspectives, namely philosophical, juridical and sociological, and the urgency of the trade binding agreement is a tool that is also influenced by interest factors, and the orientation of the value of the parties is economic value. Second, there are several reasons that the parties choose to use the Deed of Sale and Purchase Binding Agreement such as; 1) for not being able to pay PPH, 2) for not being able to pay BPHTB, 3) for reasons of not knowing the law, 4) for practical and efficient reasons, and so on.

**Index Terms-** Binding Agreement on Sale and Purchase, Land Rights, and Constitution

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## I. INTRODUCTION

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The Constitution of the Republic of Indonesia of 1945 strictly determines that the State of the public of Indonesia is a state of law. The principle of the state of law ensures the certainty, order, and protection of the law that is based on truth and justice. Legal certainty demands that legal traffic in people's lives requires the existence of evidence that clearly determines a person's rights and obligations as a legal subject in the community, namely evidence in the form of an authentic deed.

The authentic act as the strongest and most complete evidence has an important role in every legal relationship in people's lives. In various business relationships, activities in the field of banking, land, social activities and others. The need for written proof in the form of authentic deed is increasing in line with the growing demands for legal certainty in various economic and social relations, both at the national, regional and global levels. Through an authentic deed that clearly determines its rights and obligations, guarantees legal certainty, and at the same time can be avoided the occurrence of disputes. Although the dispute is inevitable, in the process of resolving the dispute, the authentic deed which is the strongest and most complete written evidence tool contributes significantly to the settlement of the case cheaply and quickly. The authentic deed essentially contains formal truth in accordance with what the parties have notified the Notary Public.

The definition of authentic deed is stipulated in HIR (Herziene Indonesisch Reglement) or also referred to as RIB (Reglement Indonesia Refurbished) which states:

*"The authentic deed is a letter made by or before a public servant in power making it realize sufficient evidence for both parties and their heirs and all persons who have the right from it, namely about everything, which is in the letter and also about the one listed in the letter as a notice only, but what it mentions then is just that given directly related to the subject matter in the deed".<sup>1</sup>*

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Definition of authentic deed according to the provisions of Article 1868 of the Civil Code (hereinafter referred to as the KUHPerdota), namely:

<sup>1</sup> Irawan Soerodjo, *Legal Certainty of Land Rights in Indonesia*, (Surabaya: Arkola, 2003), page. 44-45.

"A deed in the form prescribed by law, made by or in the presence of public officials (officials) in power for it in the place where the deed is made".<sup>2</sup>

The explanation of the article specifies that the authentic deed is made by or in the presence of an authorized official called the General Officer. If that makes him an incompetent or unauthorized official or his form is defective, then according to Article 1869 of the KUHPerdata, the deed is invalid or ineligible formil as an authentic deed, therefore it cannot be said as an authentic deed. However, such deed has the power as a deed under the hands, provided that if the deed is signed by the parties.<sup>3</sup>

Specifically regarding the deed under the hand can be found in Article 1874 of the KUHPerdata. According to the Article, the deed under the hand is a writing or deed signed under the hand, made by a person or parties, and generally consists of all kinds of writings that are not made by or in the presence of officials (including: letters, registers, letters of household affairs and other writings made without the request of the general officer<sup>9</sup>

The contents of the deed in the form of a statement of the parties to bind themselves in an act of law buying and selling rights to the land and everything attached to the land. Thus, a deed of Sale and Selling Agreement is basically a proof tool that indicates the binding of the parties in an agreement on the price and goods / objects (land and / or buildings) as the object of the sale and purchase agreement. The existence of the agreed word of the parties on the object of the agreement and has been paid in full / not paid the price of land and / or buildings by the buyer and received by the prospective seller (hereinafter referred to as the seller), On the contrary the seller submits the land and / or building to and has been accepted by the buyer, then the elements of the sale and purchase have been fulfilled and by the Notary is sufficient to be the reason for the creation of the deed of Binding Agreement of Sale and Selling Power after the fulfillment of other conditions of making a notarial deed. In relation to that, Subekti said that a binding agreement of trade is said to be an agreement between the seller and the buyer before the implementation of the sale and purchase due to the elements that must be fulfilled for the sale and purchase, among others, is the certificate does not exist because it is still in process, there has not been a settlement of the price.<sup>5</sup> In connection with the above, deed of binding agreement can be interpreted as a preliminary agreement or obligator agreement that gives rise to rights and obligations.

A deed of Sale and Purchase Binding Agreement also contains a statement on the price of the land and/or building has been paid in full / not yet paid by the prospective buyer (hereinafter referred to as the buyer) to the prospective seller (hereinafter referred to as the seller). Juridically it means that the

<sup>2</sup>R. Subekti, and R. Tjitrosudibjo, *Civil Law*, (Jakarta: PT. Pradnya Paramita, 1995), page 475.

<sup>3</sup>M. Yahya Harahap, *Civil Procedure Law on Lawsuits, Trials, Seizures, Evidentiary and Court Decisions*, Cet. Ketujuh, (Jakarta: Sinar Grafika, 2008), page.566.

<sup>4</sup>M. Yahya Harahap, *Civil Procedure Law on Lawsuits .....Ibid*, page.590.

<sup>5</sup>R. Subekti Tjokrosudibjo, *Indonesian Customary Law in the Jurisprudence of the Supreme Court*, Cet.4, (Bandung :Alumni. 1991).page.75.

deed has qualified as the basis for the transfer of rights to its land. Consequently, the Sale and Purchase Binding Agreement deed will be followed by the Power of Sale Act. In the power to sell from the landowner as the seller to the buyer, then all legal interests can be carried out. Furthermore, with the power to sell, the buyer can then sell to other parties without the need for legal assistance of the seller or in this case used to sell to himself the buyer himself for the purposes of transfer of rights to the land and buildings.<sup>6</sup>

The Binding Agreement on Sale and Sale is domiciled or serves as a preliminary agreement / assistance to prepare or hold the Sale and Purchase Act for the purposes of re-naming. Deed of Binding Agreement of Sale and Selling Power even as an agreement that helps or strengthens the main agreement / principal to be done, namely the Deed of Sale and Purchase itself. In line with this, Herlien Budiono said that "The aid agreement serves and aims to prepare, affirm, strengthen, regulate, change or resolve a legal relationship".<sup>7</sup>

Legally, the parties can directly conduct a sale and purchase transaction of land rights by using the Deed of Sale and Purchase based on the authority owned by the Land Deed Official, without having to make a Deed of Binding of Sale and Purchase through the authority attached to the Notary Public. The background, motivation or purpose of the parties to make the Deed of Sale and Purchase Binding Agreement is not known for exact reasons, because when the parties face the Notary / Land Deed Official to conduct the sale and purchase of land rights usually the parties directly state their will to make a Deed of Binding Agreement on The Sale and Purchase of land without explaining what reasons so that the parties make the deed referred to.

Therefore, a more in-depth assessment of the nature and legal certainty of the binding agreement and the purpose and reason of the parties in making a binding agreement on trade in each land sale and purchase.

Based on the above background, the issues discussed in this study, namely:

1. What is the meaning and urgency of the Sale and Purchase Binding Agreement?
2. Why do the parties choose to use a binding agreement on trade in every trade transaction on land?

## II. RESEARCH METHODS

This research is normative legal research. According to Bagir Manan, what is meant by normative legal research is research on the rule of law itself (provisions of laws and regulations, jurisprudence, Customary Law, and other unwritten laws), and legal principles.<sup>8</sup>

To expand and sharpen this research, the author also conducted empirical approaches as an alternative approach to complement and add to the discussion in the writing of this

<sup>6</sup>R. Subekti Tjokrosudibjo, *Indonesian Customary Law in the Jurisprudence of the Supreme Court*, Cet.4, (Bandung : Alumni. 1991).page.75.

<sup>7</sup>Herlien Budiono, Artikel "Pengikat Jual Beli Dan Kuasa Mutlak" Renvoi Magazine, year I issue, No 10, March 2004, page. 57.

<sup>8</sup>Bagir Manan, *Law Research, Legal Journal*, Puslitbangkum, Universitas Padjajaran, Bandung, Perdana; Januari, 1999, hlm.4



study. While the problem approach in this study using conceptual approach, statute approach, and using analytical approach).

The technique of collecting legal materials in this study was conducted through the study of literature. This study seeks to primary and secondary materials in the field of law, namely (a) primary legal materials in the form of legislation of the 1945 Constitution, Law / Perpu, PP, relevant to this research, such as the 1945 Constitution, the Law on W, and so forth related to the subject matter of research. (b) secondary legal materials in the form of books that are of course related to or relevance to the object of this research, papers or articles related to this research. (c) tertiary legal materials, i.e. materials that provide guidance and explanation of primary and secondary legal materials, such as encyclopedias and dictionaries.

### III. LITERATURE STUDY

#### Legal Protection<sup>9</sup>

Legal protection is a protection given to legal subjects into the form of devices both preventive and repressive, both oral and written. In other words, it can be said that the protection of the law as a separate description of the function of the law itself, which has the concept that the law provides a justice, order, certainty, benefit and peace.

Below are quoted the opinions of some legal experts on the concept of legal protection as follows:<sup>10</sup>

- a. Muktie, A. Fadjar, Legal Protection is a narrowing of the meaning of protection, in this case only protection by law only. Protection provided by law, related to the existence of rights and obligations, in this case owned by man as the subject of law in his interaction with fellow human beings and their environment. As a subject of law man has the right and obligation to take a legal action.
- b. Satjipto Raharjo, defining legal protection is to give protection to the human rights of others harmed and the protection is given to the community so that they can enjoy all the rights granted by law.
- c. Philipus M. Hadjon, argues that legal protection is the protection of dignity, as well as recognition of human rights possessed by legal subjects based on the legal provisions of the

Carrying out and providing legal protection the need for a place or container in its implementation is often referred to as a means of legal protection. Legal protection facilities are divided into two kinds that can be understood, as follows:<sup>11</sup>

- a. Preventive legal protection facilities. In this preventive legal protection, legal subjects are given the opportunity to file their objections or opinions before a government decision gets a definite form. The goal is to prevent disputes from happening. In Indonesia there are no specific arrangements regarding the protection of preventive law.

<sup>9</sup>Philipus M. Hadjon, *Introduction to Constitutional Law*, ( Yogyakarta : Gajah Mada University Press, 2011), Hlm.25

<sup>10</sup>Philipus M. Hadjon, *Introduction to Legal Science* .....Ibid.Hlm.26

<sup>11</sup>Philipus M. Hadjon, *Introduction to Legal Science* .....Ibid.Hlm.27

- b. Means of protection of repressive laws. Repressive legal protection aims to resolve disputes. Handling of legal protection by the General Court and Administrative Judiciary in Indonesia belongs to this category of legal protection. The principle of legal protection against government actions rests and stems from the concept of recognition and protection of human rights because historically from the west, the birth of concepts of recognition and protection of human rights is directed to the restrictions and laying of obligations of society and government.

#### Legal Certainty

Legal certainty can be understood that a person will be able to obtain something expected under certain circumstances. Certainty is interpreted as clarity of norms so that it can be used as a guideline for people who are subject to the regulation. Such certainty can be interpreted as judicial protection against arbitrary actions which means that a person will be able to obtain something expected under certain circumstances.<sup>12</sup> Legal certainty is a guarantee that the law is exercised, that the legal subject can obtain its rights and that the verdict can be exercised. The law is tasked with creating legal certainty because it aims to create order in society. Legal certainty is a feature that can not be separated from the law, especially for written legal norms, because the law without certainty, then the law will lose meaning because it can no longer be used as a guideline for behavior for all people.

#### Agreement

As we already know together, the Agreement in Dutch is termed "overeenkomst" and in English is termed with a contract stipulated in Article 1313 of the KUHPerdata.<sup>13</sup> The definition of the agreement under Article 1313 of the KUHPerdata is "an act by which one or more persons bind themselves to one or more others." Another opinion was expressed by Schoordijk that the binding power of the treaty should be sought in the trust raised or raised on the opposing side. The trust is focused on a particular factual behavior.<sup>14</sup>

In Burgerlijk Wetboek (BW) which is later translated by R. Subekti and R. Tjitrosudibio into CIVIL CODE determines the law of the agreement stipulated in Book III of the Alliance, which governs and contains the rights and obligations applicable to certain persons or parties.<sup>15</sup>

Handri Raharjo who stated that there is a word of agreement between the subjects of the law, and bind each other so that the one subject is entitled to achievement and the subject of the law one is obliged to carry out his achievements in

<sup>12</sup>Van Apeldoorn, *Introduction to Legal Science*, Cetakan Ke 24, (Jakarta : Pradnya Paramita, 1990). Hlm.24-25.

<sup>13</sup>Tan Tong Kie, *Notariat and All-Round Studies - Notary Practice Sundries*, (Jakarta: PT. Ichtiar Baru van Hoeve 2003). hlm. 402

<sup>14</sup>Elly Erawati dan Herlien Budiono, *Legal Explanation of the Limits of the Agreement*, (Jakarta : Nasional Legal Reform Program 2010). hlm. 68

<sup>15</sup>Subekti Tjitrosudibio, *KCivil Code translation burgerlijk Wetboek*, Cet.28 (Jakarta : PT. Pradnya Paramita, 1996). hlm. 323.

accordance with "the agreement that has been agreed by the parties and cause legal consequences."<sup>16</sup>

Van Dunne as the originator of the new theory defines the agreement as follows: "A legal relationship between two or more parties is based on the word agreed to cause legal consequences". The new theory not only sees the covenant alone, but also must be seen as the previous or preceding action. There are three stages in making an agreement according to the new legal theory, namely: a) The precontractual stage, namely the offer and acceptance, b) The contractual stage, namely the conformity of the statement of will between the parties and the post contractual stage, namely the implementation of the agreement.<sup>17</sup>

The terms of the validity of the agreement one of which is to agree to bind itself, as stated in Article 1320 of the KUHPerdata, with the fulfillment of the four terms of the validity of the agreement, then an agreement becomes valid and legally binding for the parties who make it. A covenant is an event where one promises to another or where the two men promise each other to do something.<sup>18</sup> However, not every statement can give rise to a covenant, but a statement that gives rise to trust alone that gives rise to the agreement. Belief in the sense that the statement is truly desirable.<sup>19</sup>

The treatise published an alliance between the two men who made it. O.W Holmes argues that "The duty on keep contract in common law means a prediction that you must pay damages if you do not keep it, if you commit a tort, you are liable to pay compensatory".<sup>20</sup> It means that the obligation to keep an agreement in the law of society is interpreted as a prediction that the person must pay the damages, but if the person does not keep it, if the person commits to the lawsuit, then he is responsible for paying the compensation.

Sucithra Vasu says that "The purpose of setting down the terms of contract are; firstly, it stipulates the rights and obligations of the parties. Secondly, in the event of a dispute between parties, it enables the court to decide which is the defaulting party so that the dispute can be resolved".<sup>21</sup> It means that the agreement or contract is intended, firstly with the contract will be able to demonstrate the rights and obligations of each party, secondly there will someday be a dispute between the parties of this contract can decide which party violates the contract, so that the dispute can be solved.<sup>19</sup>

The process of making an agreement is "just a drafting is the process of converting the underlying intention of party or parties in to a written document, construction is the process of deriving the true intention of the party or parties from the document".<sup>22</sup>

<sup>16</sup> Handri Raharjo, *Treaty Law in Indonesia*, (Yogyakarta: Pustaka Yustisia, 2009).hlm. 42

<sup>17</sup> Salim H.S., *Contract Law Theory & Technical Contract Preparation*, Cet. VIII, (Jakarta: Sinar Grafika, 2011). hlm.25.

<sup>18</sup> R. Subekti, *Law of The Covenant*, (Jakarta : PT. Intermedia, 2001) , hlm. 1.

<sup>19</sup> Salim, HS., *The Development of Theory in Legal Sciences*, (Jakarta: Rajawali, 2010). hlm. 168

<sup>20</sup> M.P Golding, *The Nature of Law Readings in Legal Philosophy*, (Columbia University, Random House, New York), hlm. 180.

<sup>21</sup>Sucithra Vasu, *Contract Law For Business People*, (Rank Books, Singapore, 2006).hlm.1

<sup>22</sup> Ros Macdonald & Denise McGill, *Drafting Second Edition LexisNexis Butterworths*, (Australia, 2008). hlm.3.

As contained in Article 1338 of the KUHPerdata, the *Pacta Sunt servanda* principle states that "all agreements made lawfully apply as law to the parties who make them". So it is clear that there can be an agreement that contains anything as long as it does not violate the provisions of law, public order and decency or better known as the principle of freedom of contract. Judging from the terms of the validity of the agreement and the principle of freedom of contract, Asser distinguishes the content of the agreement, the core part (*wesentlich oordeel*) which is the element of *essentia* and the non-core part (*nonwesentlich oordeel*) namely the *naturalia* element and the element of *axentalia*.<sup>23</sup>

The *naturalia* element is an element that is already stipulated in the law and applies to an agreement, if the parties do not regulate it.<sup>24</sup> *Essentia* elements are elements usually found in certain agreements, but without the inclusion of the terms in question, an agreement remains valid and binding on the parties who make it, unless otherwise stated. Element of *axentalia* is a condition that does not have to exist, but is also listed by the parties for certain purposes with a specific purpose as an affirmation and as a certainty.<sup>25</sup>

### Trade Binding Agreement

Before it is understood about the meaning of the deed of Sale and Purchase Binding Agreement, it will first be presented about the binding agreement of the trade itself as an obligator agreement specifically stipulated in the KUHPerdata is a trade agreement. Understanding of the trade agreement is stipulated in Article 1457 of the KUHPerdata which specifies that: "Buying and selling is an agreement with which one party binds itself to submit a material and the other party to pay the promised price".

The rights and obligations of the parties in the event of a binding agreement on sale and purchase, the obligation of the seller to deliver the goods sold so on the contrary for the buyer to pay the price of the purchased goods, intended to be property land that if there is a building that has been erected, then the goods in question are land and buildings as the object of the agreement in question.

The binding agreement on trade was born based on the basic article of consensualism. Consensualism comes from the word agreed. Consensus in the Black S Law Dictionary is defined as "a general agreement; collective opinion".<sup>26</sup> According to Subekti, a deal is an agreement of understanding and will between the two parties, what is desired by the other party is also desired by the other party, although not immediately but reciprocally the two wills meet each other.

Based on its principle, a binding agreement on trade is born and occurs at the moment an agreement is reached between the parties. That is, that an agreement was born from the moment of the agreement reached between the two parties. This is in

<sup>23</sup> Mariam Darus Badruzaman, *Civil Code Book III Law Of Alliance With Explanation, cet.2* (Bandung, 1993). hlm. 99

<sup>24</sup> Satrio, J., *Alliance Law, Alliance Born Of Treaty*, (Bandung, Citra Aditya Bakti, 1995). hlm. 67

<sup>25</sup> Soejono, J., *Alliance Law .....Ibid*. hlm.67-68

<sup>26</sup> Henry Campbell Black, *Black's Law Dictionary*, (West Publishing, USA, 2009).hlm. 345



accordance with the terms of the validity of an agreement. In accordance with the principle of consensualism that animates the law of civil agreements, the trade agreement was born at the moment of agreement on the goods and prices once both parties agreed on the price of goods, a valid sale and purchase agreement was born. The consensual nature of the trade is affirmed in Article 1457 of the KUHPerdata which states that: "The sale and purchase is considered to have occurred between the two parties as soon as they reached an agreement on the price of the goods, the intention even though the goods have not been delivered or the price has not been paid".

The binding agreement on trade was born based on the article of principle of freedom of contract. On that principle the parties to the agreement are free determining their rights and obligations. This means that the agreement made legally applies as law to those who make it (Article 1338 paragraph (1) of the KUHPerdata). This principle of freedom of contract should not be contrary to public order, decency and laws.

Based on the description above, then a binding agreement on trade is an obligatoir agreement born based on the principle of consensualism that contains the consequences that in the binding agreement of the sale and purchase of each party, namely between the seller and the buyer freely and based on the agreement can promise things that have not been fulfilled in order to make a deed of sale and purchase of the name as a means of ratification of the transfer of property rights to his land based on article 37 of Government Regulation No. 24 of 1997 concerning Land Registration. This is in line with what R. Subekti said, that the binding agreement is an agreement between the seller and the buyer before the sale and purchase is carried out because there are elements that must be fulfilled for the sale and purchase, among others, the certificate does not exist because it is still in process, there has not been a settlement of prices. Similarly, Herlien Budiono said that the binding agreement is a relief agreement that serves as a preliminary agreement that is free form. Reality in practice, the binding agreement of the sale and purchase is made and poured in the form of an authentic deed made by Notary public so that it is commonly referred to as the Deed of Sale and Purchase Binding Agreement.

#### IV. DISCUSSION

##### Meaning and Urgency of the Binding Agreement

###### a. Philosophically

When viewed from philosophy, UUPA wants a society that is socially just. Such desire arises based on the experience in the colonial period that the earth, water and natural wealth contained in it has mainly been taken advantage of not for the benefit of the people.

Landreform is one of the objectives desired by the UUPA in creating a social justice that will touch the lives of both landless farmers, farmworkers, and farmers with narrow land, all of which boils down to efforts to eradicate people from poverty. Experts who drafted the national land law (UUPA) explained that the concept of national land law is excavated from the source of customary law, namely religious communalities that allow

individual land tenure with rights to land that are private while containing togetherness.

An agreement for the release of land rights must meet the criteria of light and cash, as the provisions of customary law accommodated in Article 5 of Law No. 5 of 1960 concerning basic rules of agrarian principles. Terang means the sale and purchase is done in front of the authorized public officials, in this case the Land Deed Official (PPAT), while what is meant by cash is the property rights switched when the sale and purchase of the land is done and the sale and purchase at that time. For the case of buying and selling land that has not met the requirements of light and cash, then the legal instrument used is the Binding Agreement on Buyir and Selling (PPJB) conducted in front of a Notary Public. The Binding Agreement on Buying and Selling (PPJB) made before the Notary Public is the agreement of the parties based on Article 1320 jo Article 1338 of the Civil Code so as to provide certainty and legal protection for the parties who make it. The Sale and Purchase Binding Agreement (PPJB) is the initial bond between the seller and the buyer in the transaction, and must be followed up with the creation of the Sale and Purchase Deed, because the Sale and Purchase Binding Agreement has not transferred the rights legally.

###### b. Juridically

- 1) Binding Agreement on Sale and Purchase as a means to obtain legal certainty and legal protection.
- 2) The principle of freedom of contract as a means and reason for justification to make a binding agreement on trade.
- 3) The principle of benefits as one of the foundations and urgency of making the Deed of Binding Agreement.
- 4) Existence of 'authentic' Deed with Deed 'under hand' as the choice of the community in the transfer of land rights in the Binding Agreement on Sale and Purchase.
- 5) Juridical consequences of the Act of binding trade agreements with trade agreements under hand as a comparison in the transfer of rights.
- 6) There are provisions regarding bribes, defaults, damages, coercive circumstances, risks in the Sale and Purchase Binding Agreement.

###### c. Sociological Analysis

- 1) The concept of "installment" in the binding agreement that applies in the community.
- 2) The effectiveness of the binding agreement as an act of law on the sale and purchase of land rights in the principle of "installments".
- 3) Provide Public Relations with the law in the Trade Binding Agreement.
- 4) Public relations with the State (Laws and Regulations) in the Binding Agreement on Trade.
- 5) Community relationship with other communities (society relationship) in the binding agreement.
- 6) The forms of conduct of the parties when deciding to make a Deed of Agreement binding trade, namely: first, the parties living in rural areas whose economic level and legal understanding is still low. Second, the parties living in urban areas, especially those domiciled in economic centers and the area around the tourist area.

- d. Analysis of the rights and obligations of the parties in the existence of the trade binding agreement.
- 1) To prepare, affirm, strengthen, regulate, change or resolve a legal relationship, as well as to provide legal certainty and protection for both parties.
  - 2) Substantive or the content of the binding agreement of trade which is a preliminary agreement for the birth of the main agreement is usually in the form of promises from the parties containing provisions on the terms agreed to the validity of the main agreement.
  - 3) It is necessary to balance the rights and obligations of the parties in the trade binding agreement, for example; ownership guarantee, emptying of objects, submission of property rights, paying prices, obligation to pay BPHTB, paying the cost of returning the name of the certificate of land rights, and others.
  - 4) Resulting in the legal consequences of the Binding Agreement on the Sale and Purchase of Land Rights, if either party commits an act of reversion.
- e. Urgency and Perception of the parties to the Trade Binding Agreement Act

The views, assumptions and perceptions of each person towards a particular legal action can vary. Similarly, the Sale and Purchase Binding Agreement Act perception arises because it is influenced by various factors, including the importance of.

The Deed of Sale and Purchase Binding Agreement for some parties is a means to obtain legal certainty and legal protection, but for some others, the Sale and Purchase Binding Agreement Act is only a tool that can be used for various purposes, including to carry out legal smuggling. Although considered as a tool to achieve certain purposes, but this party still argues that the purpose of the establishment of the Deed of Sale and Purchase Agreement is also to obtain legal certainty and legal protection as well, although the other means of legal action that should be.

In connection with that, because the Deed of Sale and Purchase Binding Agreement is considered as a tool, the use of the Deed of Sale and Purchase Binding Agreement depends on the interests and needs of the parties. The Deed of Sale and Purchase Binding Agreement shall not be used for the purposes of legal acts of sale and purchase of land rights alone, but may also be used for other legal acts, for example for the purpose of paying debts, for the purpose of exchanging goods, or for the benefit of third parties.

The Sale and Purchase Agreement Act is also seen as a means to facilitate a business, so that it can be used to support a particular purpose. For some parties who do not want to be bothered with a certain formality or procedure, then the Deed of Binding Agreement of Sale and Purchase is one of the right choices to meet its legal needs.

- f. Orientation of The Values of the Parties to the Deed of Trade Binding Agreement.

The high value and effectiveness of the Sale and Purchase Binding Agreement Act in meeting the needs and supporting the interests of the parties invites the high interest of the parties to use this deed in any transaction of sale and purchase of land rights or other transactions.

The Deed of Sale and Purchase Binding Agreement provides added value for some parties in supporting businesses, activities and other purposes desired by the parties. The added value is also the motivation and orientation of the parties so that it tends to use this deed.

The high economic value resulting from the creation of the Sale and Purchase Binding Agreement Act is the highest motivation for the parties when deciding to make this deed. That value is very beneficial to the parties. How not, by using this institution, in addition to the relatively low cost of making the deed, can also prevent both parties from the obligation to pay taxes, be it Income Tax (PPH) or Land and Buildings Acquisition Duty (BPHTB). Moreover, by using the Deed of Binding Agreement on Sale and Purchase, the parties can choose other legal acts that are also relatively cheap deed costs, even can be avoided from paying taxes.

The view of the high economic value of the use of the Sale and Purchase Binding Agreement Act is relative, but because the advantages of making the deed can be directly felt by the parties, making the parties tend to take advantage of this Deed of Sale and Purchase Binding Agreement in various transactions and interests.

The orientation of economic value is also a fundamental consideration in every transaction. The question of whether the act violates the norms and the rule of law is another matter. For the parties, the norms and rule of law are not the main issues in every transaction, because more importantly, the needs and interests of the parties are met. All legal acts in the views of the parties, all of which have the same legal force, which can equally provide legal certainty and legal protection for the parties.

#### The Reason the Parties Choose to Use the Deed of Binding Agreement on Sale and Purchase in Conducting Land Rights Sale and Purchase Transactions

Based on the results of the study the authors found a variety of reasons and arguments of the parties when deciding to make a Binding Agreement to buy and sell to meet their legal needs. As for some of these reasons are:

- a. For not being able to pay Income Tax (PPH).

As we know, that in every transaction of buying and selling on land, the problem of paying income tax (PPH) is one of the crucial problems and often causes problems. Usually the parties bargain on the price of land to be done trade transactions. After the price has been agreed, the parties then determine which Notary / PPAT to choose as the place to make a trade agreement. After determined Notary / PPAT will submit several conditions that must be met in the form of documents / letters such as KTP and Tax Return Owed Land and Buildings Tax (SPPT PBB) last year, including conveying the amount of PPH to be paid by the seller and the amount of Land and Building Rights Acquisition Duty (BPHTB) that must be carried by the Buyer.

- b. For not being able to pay the Land and Buildings Acquisition Duty (BPHTB).

The same incident with the above event is when the buyer refuses to pay Land and Buildings Acquisition Duty (BPHTB) because it feels unable to pay it. The average refusal to pay BPHTB is always initiated after the Notary / PPAT informs the



amount of tax to be paid by the parties. The amount of tax that is not proportional to the selling price of the land is the main reason for the buyer to fulfill his obligation to pay BPHTB. Another reason for refusing to pay BPHTB is because there is a prior agreement with the seller as to who should pay tax on the sale and purchase of the land rights. To avoid the deadlock of this, the buyer requested that the trade transaction be continued using the Deed of Sale and Purchase Binding Agreement.

c. *Because to avoid paying PPh and BPHTB.*

If there are parties who want to make a Deed of Binding Agreement on Sale and Purchase because it is not able to pay PPh and BPHTB because the parties forget or do not discuss and agree on it from the beginning of the sale and purchase transaction concerning taxes / duties to be paid by both parties, but known after facing the Notary / PPAT. In contrast, if the parties deliberately make a Deed of Binding Agreement to buy and sell solely to avoid PPh and BPHTB, if that happens, then the parties expect the tax / duty is charged to a third party (new buyer) if the land is sold again and will automatically be made a new Deed of Binding Agreement.

d. *Because it is unable to pay the cost of returning the name of the certificate of land rights.*

The issue of the cost of returning the name of the certificate in a transaction to buy and sell land rights for some parties is a very burdensome thing, especially at the beginning of the agreement to hold a sale and purchase transaction, the cost of returning the certificate name is charged to the buyer. Even in the sale and purchase transaction, both parties are not obliged to pay Income Tax (PPh) or Land and Buildings Acquisition Duty (BPHTB), the issue of the cost of returning the certificate name is still considered a non-light thing. Therefore, in order for the sale and purchase transaction to be carried out, the parties decided to make a Deed of Sale and Purchase Agreement and a Power of Attorney to take care of the name of the certificate in the future.

e. *For reasons of not knowing the law.*

The public understanding and legal knowledge of land rights sale and purchase agreements is one of the triggers for the parties to use the Sale and Purchase Binding Agreement Act in every land sale and purchase transaction. For them, the important deed is made before a Notary Public, it is considered official and feels it is protected by the law. The parties cannot distinguish between the Deed of Sale and Purchase which is the authority of the PPAT and the Deed of Binding Agreement on Sale and Purchase which is the authority of the Notary.

f. *Make a binding agreement because it is for the benefit of the nominee agreement (borrow the name).*

The nominee agreement here means if there are colleagues, acquaintances or relatives of one of the parties who need his help for the purposes of borrowing money in one of the Banks. While the certificate of land rights is still in the name of one of the parties. So in this case, one of the parties make the agreement is the party that has an interest with the Bank,

while the other party is the rightful owner of the certificate of land rights to be used as collateral in the Bank.

g. *Because it is for the benefit of foreigners (Foreign Nationals).*

Foreign nationals who visit the island of Lombok are many. They come not only for vacation, but also to do business and invest. The rule of law that does not allow foreigners to own land with Property Rights becomes difficult for foreigners who want to invest in the country. Foreigners are only allowed to own land with temporary land rights, such as Hak Pakai. Generally foreigners want to control land with the strongest land rights such as Property Rights, but because of the constrained rule of law that prohibits it, foreigners look for other ways to be able to own land with Property Rights. One way taken is to enter into a separate agreement with the original Indonesian to be loaned his name when he wants to reverse the name of the certificate of rights to the land.

h. *For more practical and efficient reasons.*

In certain cases the parties make the Deed of Sale and Purchase Binding Agreement on the grounds that it is more practical, more efficient and not convoluted to follow more complicated procedures if for example must make a Deed of Sale and Purchase based on the authority of PPAT. The many requirements and procedures that must be passed when making the Deed of Sale and Purchase makes the parties decide to make a transaction using the Deed of Sale and Purchase Binding Agreement only.

i. *For reasons of being chased by time (rush factor).*

For certain parties who have a certain busy life, time is really worth it. For a business that is considered more important than another, then the more important business that will be the priority to take precedence over the other.

j. *Because it wants to resell the land to other parties.*

The Deed of Sale and Purchase Binding Agreement becomes one of the favorite deed for the parties who do not want to own and own the land for themselves. The Binding Agreement on The Sale and Purchase is only as a means for the parties to control the land while waiting for another party to buy the land.

k. *The parties make a Deed of Binding Agreement on Sale and Purchase due to the issue of Hutang Pihutang.*

The problem of debt is often a very complicated problem for certain circles. Borrowing money is a certain thing in everyday life to meet urgent needs. For business people, borrowing money is a must to support a particular business.

l. *The parties make a Deed of Sale and Purchase Binding Agreement as it relates to the exchange agreement.*

Between a trade agreement and an exchange agreement is a different legal act. The two acts of law are subject to different rules, where the provisions, the terms, the elements, and the rights and obligations of the parties are not the same. In the act of buying and selling law for example, the element that must be fulfilled is mandatory for goods and prices, while in legal acts



exchange elements that must exist are goods with goods. It's definitely a different thing.

m. *Because it is for business purposes.*

The rapid development and development of housing on the island of Lombok, especially in the area of Mataram City and West Lombok Regency is one of the strong reasons for the parties to buy land in a very large amount

## V. CONCLUSION

The meaning and urgency of the binding agreement is seen in several perspectives, namely philosophically seen from the enactment of the LAW, juridically seen from the principle benefit for the parties, legal certainty, legal protection and the principle of freedom of contract. Sociologically, it is seen from the principle of benefit to society, both in relation to the law, the State and with the community itself. While the urgency of the binding agreement is as a tool and also influenced by interest factors, and the Deed of Binding Agreement on Sale and Purchase is also seen as a means to facilitate an affair, so that it can be used to support a particular need. For some parties who do not want to be bothered with a certain formality or procedure, then the Deed of Binding Agreement of Sale and Purchase is one of the right choices to meet its legal needs. And the orientation of value for the parties in the Act of Binding Agreement on Trade and Purchase is the high economic value, economic value is the main trigger. There are several reasons that the parties choose to use the Deed of Binding Agreement on Sale and Purchase in conducting a sale and purchase of land rights; 1) Because it cannot afford to pay Income Tax (PPh), 2) Because it cannot afford to pay Land and Buildings Acquisition Duty (BPHTB). 3) Because to avoid paying PPh and BPHTB. 4) Because it is unable to pay the cost of returning the name of the certificate of land rights. 5) For reasons of not knowing the law. 6) Make a binding agreement because it is for the benefit of the nominee agreement (borrow the name). 7) Because it is for the benefit of foreigners (Foreign Nationals). 8) For more practical and efficient reasons. 9) For reasons of being chased by time (rush factor). 10) Because it wants to fill the land again to other parties. 11) The parties make a Deed of Sale and Purchase Binding Agreement due to the issue of Debt Pihutang. 12) The parties make a Deed of Sale and Purchase Binding Agreement as it relates to the exchange agreement. And 13) Because it is for business purposes.

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