



Legal Consequences of Deposited Funds to Public Notary before Preparation of Sales and Purchase Agreement

A Case Study of Supreme Court Decision Number 508 K/PID/2017

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ABSTRACT

Depositing funds to the notary before the preparation of the Sales and Purchase Agreement (PPJB) is a common property transaction in Indonesia. It ensures the safety of the funds prior to the final agreement between the buyer and seller. However, there are legal risks associated with the management and use of these funds, especially if there is a dispute or a violation of the agreement. This research analyzes the legal consequences of entrusting funds to a notary by examining the case of Supreme Court Decision Number 508 K/PID/2017. This decision provides important insights into the responsibilities and obligations of notaries in the context of fund entrustment and its legal implications for the parties involved. This research aims to analyze the legal consequences of deposited money to public notary before making a land sale and purchase agreement. This research uses a normative method through legal approach and legal concept analysis. Data was obtained from relevant regulations and legal literature. The results indicated that if a notary receives money before the agreement is made, he/she acts outside his/her authority as a notary and only as a trustee. If there is any misuse of the money, the notary can be charged with embezzlement under Article 372 of the Criminal Code. This dispute can be resolved through legal channels (litigation) or negotiation and mediation (non-litigation). Depositing funds with a notary before the sale and purchase agreement can have serious legal consequences if it does not fulfill the correct procedure, as shown in Supreme Court Decision Number 508 K/PID/2017.

Keywords: *Deposit Money, Dispute Resolution, Legal Consequences*

INTRODUCTION

Nowadays, many people are involved in agreements, including land sale and purchase agreements. This transaction requires notarial services to issue an authentic deed as legal evidence, which is contrary to the sale and purchase of movable objects that only require money. Before making the Sale and Purchase Deed (AJB) by the Land Deed Official (PPAT), the notary makes a binding agreement to ensure that both parties are involved.¹ Notary is a public official authorized to issue authentic deeds in accordance with the Notary Position Law (UUJN). In their duties, notaries must ensure the formal truth of statements made by the parties in the deed. Notaries are also bound by an obligation to maintain the confidentiality of the deed contents and information obtained during the performance of their duties.²

A sale and purchase binding agreement (PPJB) is a temporary agreement made before the official sale and purchase deed (AJB). PPJB is used when the elements required for the sale and purchase of land have not been fulfilled, such as the land certificate that is still in process or the payment has not yet been completed.³ PPJB provides flexibility for parties to make agreements that are appropriate to their needs, as long as they do not violate the law. During land sale and purchase transactions, it is common for the buyer to leave a down payment with the notary at the seller's request for the security of the transaction. However, there are notaries who accept the deposit before the PPJB is made and only provide a receipt. This practice is not regulated in the notarial law and risks causing legal issues such as misappropriation.⁴

The deposit of money with a notary without a proper legal basis has the potential to lead to manipulation, such as fraud as stipulated in Articles 372 and 374 of the Criminal Code. The notary law has not regulated strict sanctions for notaries who are proven to have committed embezzlement, only providing administrative sanctions for dishonest notaries.⁵ If there is a problem with the deposited money, such as the money is not returned or misused, the dispute can be resolved through legal or non-litigation action. However, problems occur if the

¹ Kristian Utama and Ery Agus Priyono, "Tanggung Jawab Notaris Terhadap Akta Perjanjian Pengikatan Jual Beli Yang Tidak Sesuai Dengan Harga Sebenarnya," *Al-Manhaj, Jurnal Hukum dan Pranata Sosial Islam* 5, no. 1 (2023).

² Debriana Novianti and Devany Putri Prasetia, "Penerapan Etika Dan Transparansi Notaris Dalam Akta Otentik," *Nusantara: Jurnal Pendidikan, Seni, Sains dan Sosial Humanioral* 1, no. 2 (2023): 1–25.

³ Dewi Kurnia Putri and Amin Purnawan, "Perbedaan Perjanjian Pengikatan Jual Beli Lunas Dengan Perjanjian Pengikatan Jual Beli Tidak Lunas," *Jurnal Akta* 4, no. 4 (2017).

⁴ Melyana, "Penggelapan Terhadap Uang Titipan Oleh Notaris Dalam Pembuatan Perjanjian Kerjasama," *Indonesian Notary* 3 (2021).

⁵ Menteri Hukum dan Hak Asasi Manusia Republik Indonesia, *Undang-Undang Republik Indonesia Nomor 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris*, 2014, <https://www.kemhan.go.id/ppid/wp-content/uploads/sites/2/2016/11/UU-2-Tahun-2014.pdf>.

money is deposited before the PPJB is made, as there is no notarial authority to accept money in this situation under the Law.

The first research by Ripah Wardana from Hasanuddin University, Makassar, discussed the criminal responsibility of notaries who embezzled the Fees for Acquisition of Rights on Land and Building (BPHTB). This research found that if a notary is proven to have embezzled the money, he/she is legally responsible and can be subject to criminal sanctions in accordance with Article 372 of the Criminal Code. An example is a court decision that sentenced a notary found guilty of embezzlement to 6 months' imprisonment, although this sentence need not be served unless otherwise ordered by the judge within the following 10 months.⁶ The second research by Brenda Kharisma Rahardjo from Jenderal Soedirman University, Purwokerto, examined the notary's responsibility as the recipient of the deposit due to the cancellation of the sale and purchase binding agreement (PPJB). The results showed that the notary is obliged to refund the money and compensate the loss if the agreement is canceled. If the notary is negligent in performing his duties, he/she may also be subject to administrative sanctions by the Notary Honor Council. If the PPJB is executed illegally, the retainer money can be returned if the parties agree to it, despite the inconsistency with Article 1464 of the Civil Code.⁷ The third study by Putri Resa Utami from Lambung Mangkurat University, Banjarmasin, examined the embezzlement of land and building tax (PBB) payments by notaries or PPATs from the perspective of corruption. The research concludes that money embezzled by a notary/PPAT can be considered state finances if it involves the falsification of documents or proof of PBB payments. Notaries or PPATs who commit this embezzlement may be subject to criminal penalties under the Corruption Eradication Law, with a minimum imprisonment of 3 years and a maximum of 15 years, and a fine of between IDR 150 million and IDR 750 million.⁸ This research differs from previous research in its title, problem, and discussion content. This research focuses on the legal consequences of deposited money to a notary before making a land sale and purchase agreement, and the procedures for resolving disputes if the deposited money is not used according to the agreement. As this topic has never been discussed before, this research is considered original. This research aims to analyze the legal consequences of deposited money to the notary before the notarial agreement is made and to determine the settlement of disputes if the money is not managed according to the agreement.

⁶ R. W. Ripah Wardana, "Pertanggungjawaban Pidana Notaris Yang Melakukan Penggelapan Atas Titipan Uang Bea Perolehan Hak Atas Tanah Dan Bangunan (BPHTB)" (Universitas Hassanudin Makassar, 2021).

⁷ Brenda Kharisma Rahardjo, "Tanggung Jawab Notaris Sebagai Penerima Penitipan Uang Panjar Akibat Pembatalan Perjanjian Pengikatan Jual Beli" (Universitas Jenderal Soedirman Purwokerto, 2022).

⁸ P. R. Utami, "Penggelapan Uang Titipan Pembayaran Pajak Bumi Bangunan Oleh Notaris/PPAT Dalam Perspektif Tindak Pidana Korupsi" (Universitas Lambung Mangkurat Banjarmasin, 2022).

LITERATURE REVIEW

The Role of Notary in Sale and Purchase Transactions

Notary is a public officer assigned by the government to make authentic deeds and has other authorities stipulated in the law. In civil law, notaries have an important role in providing legal certainty to parties involved in transactions or agreements. Deeds made by notaries are considered to have legal evidentiary power before the law.⁹ The position of Notary in Article 1 of *Staatsblad* 1860 No. 3 on the Notary Position Regulations in Indonesia (Reglement op het Notaris-ambt in Indonesia), as a public official. A public official is someone who has the authority to administer public interests. There are main roles of a notary in civil law is described as below:

1. Making an Authentic Deed
Notaries are authorized to draft and certify legal documents that are considered authentic, such as sale and purchase agreements, deeds of company establishment, wills, and others.¹⁰
2. Providing Legal Consultation
Notaries also function to provide legal advice to clients about their rights and obligations in an agreement or transaction.
3. Maintaining Archives and Documents
Notaries have the responsibility to keep and maintain archives of legal documents they have created, providing legal copies when needed by authorized parties.
4. Ensuring Legal Certainty
The notarized deed guarantees the parties to the agreement legal certainty, reducing the risk of disputes in the future.¹¹

The obligation of a notary is actually a mandatory thing that must be implemented by a notary, if it is not implemented or violated, then sanctions will be imposed on the notary who violates the obligation. The obligations of a notary according to Article 16 Paragraph (1) of the Law on Notary are as such following below:

1. Act with integrity, honesty, thoroughness, independence, impartiality, and safeguard the interests of all parties involved in legal actions.

⁹ Bunga Mentari Paskadwi, "Peran Dan Tanggung Jawab Notaris Terkait Pengenalan Penghadap Serta Akibat Hukum Atas Pembuatan Akta Autentik Oleh Notaris (Studi Putusan Pengadilan Negeri Jakarta Selatan Nomor 366/PID.B/2021/PN.JKT.SEL)," *Indonesian Notary* 4 (2022).

¹⁰ Fachria and Wahyu Prawesthi, "The Ratio Legis Liabilities and Repudiation Rights of Land Deed Officers Based on Criminal Code Perspectives," *Journal Of Law Theory And Law Enforcement* 2, no. 1 (February 24, 2023): 22–34, <https://journal.jfpublisher.com/index.php/jlte/article/view/261>.

¹¹ Pemerintah Pusat, *Peraturan Jabatan Notaris Di Indonesia (1860) (Reglement Op Het Notaris-Ambt in Indonesie)* (Jakarta, 1860).

2. Prepare Deeds in the form of original documents (original deed) and keep them as part of the Notary's archives.
3. Include letters, documents, and fingerprints of the parties present in the original deed.
4. Issue official copies of the Deed based on the original deed.
5. Provide services in accordance with legal regulations, unless there are valid reasons to refuse them.
6. Keep confidential all matters related to the Deed created and the information obtained for the preparation of the Deed, except as required by law.
7. Bind the Deeds made within 1 month into a book containing no more than 50 Deeds, and if the number of Deeds exceeds this limit, they may be bound into more than one book. The number of original deed, the month, and the year of their creation should be recorded on the cover of each book.
8. Create a list of protest Deeds if negotiable instruments are not paid or accepted.
9. Create a list of Deeds related to wills in chronological order each month.
10. Send a list of will Deeds or a nil report (if there are no wills) to the central will registry at the relevant ministry within 5 days of the first week of the following month.
11. Record in a special logbook (reportorium) the date of sending the will list at the end of the month.
12. Have a seal or stamp containing the emblem of the Republic of Indonesia, with the name, title, and place of office written around it.
13. Read out the Deed in the presence of the parties involved, witnessed by at least 2 people, or 4 witnesses specifically for underhand wills, and have it signed immediately by the parties involved, the witnesses, and the Notary.
14. Accept notary candidates for internships.¹²

The responsibilities of a notary are very important in the legal system as a public official in the making and validation of legal documents. The notary is legally responsible for properly managing the trust fund. If mistakes or misuse occur, the notary can be legally held accountable. If a loss occurs due to the notary's negligence in managing the entrusted funds, the notary is obliged to compensate the injured party.

¹² Pemerintah Pusat, *Undang-Undang Republik Indonesia Nomor 30 Tahun 2004 Tentang Jabatan Notaris*, 2004.

The Process and Procedures followed by Notary in the Management of Deposited Money

The process and procedure of managing deposited money by a notary begins with the receipt of funds. Parties who would like to entrust money to the notary submit the funds directly or through bank transfer to an account that has been determined by the notary. After receiving the funds, the notary will provide an official receipt and record the amount and intended use of the money. Once the funds are received, the notary usually keeps them in a special account separate from his operational account. It aims to ensure that the funds are safe and not mixed with other funds. The notary is obliged to keep the funds until there are further instructions from the entrusted party or until the funds are used according to the agreed agreement.

The use of the deposited money can only be made in accordance with the instructions of the party who deposited the money. For example, the deposited money can be used to pay off the property price in accordance with the Sales and Purchase Agreement (PPJB). The notary will ensure that all procedures for the use of funds are in accordance with the agreed agreement and applicable legal provisions. After the deposit has been used or if there is a change of instruction, the notary must provide a written report to the parties on the status of the deposited money. The notary must also ensure that all entrusted funds have been used or returned in accordance with the instructions of the entrusting party. When a dispute occurs related to the deposited money, the notary has the obligation to act in accordance with the applicable legal provisions. In addition, the notary can also be a witness in court if needed to resolve the dispute.¹³

Concept of Sale and Purchase Agreement (PPJB)

PPJB is the initial agreement between the seller and the buyer in a property sale and purchase transaction before the sale and purchase agreement (AJB) is officially made.¹⁴ PPJB serves as a binder for both parties to continue the transaction to the next stage, which is the making of AJB in front of a Land Deed Official (PPAT). The main characteristic of PPJB is that although it is not yet a full proof of ownership like AJB, it already gives rights and obligations to the seller and buyer. PPJB is often used when there are still conditions that need to be fulfilled before the sale and purchase process can proceed, such as payment settlement or completion of legal documents.

The stage of making a PPJB involves several important steps. First, the seller and buyer agree to conduct a property sale and purchase transaction, then they draft the initial agreement in the form of a PPJB. The notary plays an

¹³ Riyan Hidayat, "Kewenangan Notaris/PPAT Dalam Menerima Penitipan Pembayaran Pajak Bea Perolehan Hak Atas Tanah Dan Bangunan," *Acta Comitatus : Jurnal Hukum Kenotariatan* 3, no. 3 (2018).

¹⁴ Salim HS, *Hukum Kontrak : Perjanjian, Pinjaman Dan Hibah*, Cetakan 1. (Jakarta: Sinar Grafika, 2015).

important role in this process by ensuring that all clauses in the PPJB are in accordance with applicable legal regulations and protect the interests of both parties. The notary also ensures that all necessary documents are complete and provides legal advice regarding the content of the agreement. Once the PPJB is signed, the notary will keep a copy of the agreement and direct the parties to proceed to the next stage, which is the creation of the Sale and Purchase Deed (AJB).¹⁵

Depositing money before the PPJB is made is often done to show the buyer's seriousness in buying the property as well as to provide assurance to the seller that the buyer is committed to proceeding with the transaction. The deposited funds will usually be used for down payment or as a token. The money is deposited through a notary so that the funds are safe and used in accordance with the agreement contained in the PPJB. Thus, the notary acts as a neutral third party and ensures that the money is only used according to the instructions of the parties. Deposits also provide a sense of security for the seller that funds are available, and for the buyer that their money is safe until the transaction process is complete.

RESEARCH METHODOLOGY

This research is a normative legal research, known as doctrinal legal research. This research focuses on the law as written in legislation, with the aim of understanding the legal norms and rules that guide human behavior. The researcher uses three main approaches, such as first, the statutory approach, which involves a review of laws and regulations related to the legal issues discussed; second, the case approach, which examines concrete cases relevant to the research topic; and third, the legal concept analysis approach, which analyzes legal issues based on views and doctrines in legal science.

The sources of legal materials used in this research include primary, secondary, and tertiary legal materials.¹⁶ Primary legal materials include binding laws and regulations, such as the 1945 Constitution, the law on the office of notary, and the civil and criminal codes.¹⁷ Secondary legal materials consist of non-official legal publications, such as books, journals, and commentaries on court decisions.¹⁸ Meanwhile, tertiary legal materials provide additional

¹⁵ Erizon Khairunyah et al., "Kedudukan Hukum Atas Perjanjian Pengikatan Jual Beli Yang Pembayaran Dilakukan Secara Bertahap Yang Telah Dibatalkan Oleh Mahkamah Agung (Studi Putusan Mahkamah Agung Nomor: 1650K/PDT/2015)," *Visi Sosial Humaniora (VSH)* 2, no. 2 (2021).

¹⁶ Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: Penerbit Universitas Indonesia (UI-Press), 2015).

¹⁷ Amiruddin and Zainal Asikin, *Pengantar Metode Penelitian Hukum*, Edisi revi. (Jakarta: Rajawali Pers, 2018).

¹⁸ Peter Mahmud Marzuki, *Penelitian Hukum*, Cet 13. (Jakarta: Kencana, 2017).

explanation of primary and secondary legal materials, such as legal dictionaries or encyclopedias.

RESULT AND DISCUSSION

Legal Consequences for Notary that Receives Deposited Transaction Payment of Land Sale and Purchase before the Preparation of Sale and Purchase Agreement

The regulation of notary authority in land sale and purchase transactions is based on civil law which stipulates that sale and purchase is an agreement in accordance with the agreement that one party hand over property and the other party pays the agreed price. In order for a land sale and purchase agreement to be valid, certain conditions must be fulfilled, both in material and formal terms. Material requirements include the ownership of land rights by the seller and buyer, and the land must be capable of being sold and is not in dispute. The formal requirements involve the making of a sale and purchase deed before a Land Deed Official (PPAT).

Notaries have an important role in the land sale and purchase process as officials authorized to make authentic deeds, as stipulated in the Civil Code and the Notary Office Law. In addition to making authentic deeds, notaries also have other authorities such as certifying signatures and providing legal counseling related to deed making. This notary authority is an attribution authority given directly by the law. Many land buyers leave the payment with a notary before the binding agreement is made. However, this practice can lead to legal problems, such as embezzlement by the notary. If the notary accepts the money, this is considered a deposit agreement and is not part of the notary's duties, as the notary cannot be a party to the deed he/she is making. If a loss occurs due to the notary's actions in accepting the entrustment, the notary is responsible for compensating the loss. Deeds made by notaries in their capacity as trustees do not have the full legal force of an authentic deed. In addition, if there is a criminal element in the misuse of entrusted money, the notary can be prosecuted under the articles on embezzlement in the Criminal Code and can also be subject to administrative sanctions. In general, the authority of notaries in land sale and purchase transactions is very important to ensure legal certainty. However, notaries must be careful in conducting their duties so as not to violate legal provisions, especially when it comes to accepting money deposits that are not part of their official duties. If they violate the law, notaries can face legal charges, both civil and criminal.

A notary public named Eti Susanti was accused of embezzling money related to a land sale and purchase transaction. In this case, Eti Susanti was entrusted with handling the payment for the land sale and divided the land into two plots. However, in the process, she did not transfer the entire amount of

money received to the landowner, I Made Puanya, so there was a deficiency amounted to IDR 79,472,000.00. The public prosecutor charged Eti Susanti with 2 years and 6 months imprisonment because she was suspected of committing embezzlement. The Mataram District Court found Eti Susanti guilty and sentenced her to 6 months imprisonment, however the sentence did not have to be served if she did not commit any other crimes during the 1 year probation period. The case then proceeded to the Mataram High Court, which confirmed the decision of the District Court, and the Supreme Court, which rejected the appeal by Eti Susanti and the Public Prosecutor. The verdict against Eti Susanti remained valid and she had to pay court costs at all levels of court. The Supreme Court rejected the reasons for the cassation filed by Eti Susanti and stated that the previous court's decision was correct. As a result of her actions, Eti Susanti was legally proven to have committed embezzlement in her position as a notary, which caused losses to her clients.

In Supreme Court Decision Number 508 K/PID/2017, the Judges stated that the Defendant, Notary Eti Susanti, S.H., M.Kn., was found guilty of committing the crime of "embezzlement in office for a fee" in accordance with Article 374 of the Criminal Code. This case is related to the money amounting to IDR 4,750,000,000.00 sent by Marazi Maurizio to be handed over to Sang Made Puanya in a land sale and purchase transaction, but the Notary only handed over part of the money, and there was still IDR 79,472,000.00 that had not been handed over. The Panel of Judges considered that the Accused's actions in not handing over all of the money to Sang Made Puanya constituted a violation of Article 374 of the Criminal Code. It caused a loss to Sang Made Puanya in the amount of IDR 79,472,000.00. The Judges placed the Defendant in the position of a notary because the money was received in within the context of an employment relationship between the client and the notary. The researcher argues that the Panel of Judges should have seen the Defendant as an individual, not as a notary, because entrusting money for a sale and purchase transaction is not the authority of a notary according to the Notary Law. If criminal charges were applied, the Defendant should have been convicted under Article 372 of the Criminal Code (Usual Embezzlement) because she acted as an individual, not in her capacity as a notary.

Dispute Resolution when Deposited Funds to the Notary are Not Implemented in accordance with the Agreement

A notary who receives a deposited funds in a land sale and purchase transaction before the Sale and Purchase Binding Agreement (PPJB) is not considered to be act in his or her capacity as a notary, but only as a depositor. If misuse occurs, the notary may be subject to civil, criminal, or administrative charges. Dispute resolution through litigation involves the courts, where judges will decide cases based on the law. The court's decision has the force of law and

can be enforced. If the misuse of deposited funds by a notary fulfills the criminal elements, the notary can be charged with embezzlement, such as Article 372 of the Criminal Code (ordinary embezzlement) or Article 374 of the Criminal Code (aggravated embezzlement). Notaries may be subject to criminal liability if they commit an offense, even though the Notary Position Law does not provide for criminal sanctions. However, before being punished, it is necessary to consider the existence of justification or excuse. Ordinary embezzlement is regulated in Article 372 of the Criminal Code with the element of unauthorized possession of another person's property, with unlawful intent. Meanwhile, embezzlement with aggravation (Article 374 of the Criminal Code) has additional elements related to employment or position.

If the notary fails to fulfill his/her obligations or misuses the entrusted money, he/she can be sued civilly for default, which means not performing the agreed agreement. Default is a failure to fulfill an agreement which can be in the form of not fulfilling, fulfilling but not perfect, late, or doing what is prohibited. This is regulated in Articles 1243 and 1238 of the Civil Code. In addition to default, notaries who misuse entrusted money can be sued for unlawful acts (Article 1365 of the Civil Code), provided that there are unlawful acts, faults, losses, and causal relationships. Unlawful acts must fulfill four elements, namely the unlawful act, fault, the existence of loss, and the causal relationship between the act and the loss. In cases of misappropriation of money, the loss can be material (financial loss) and immaterial (psychological loss). Notaries can be held liable for damages caused by their actions. Under this understanding, notaries have a serious responsibility in performing their duties and must ensure that every action taken is in accordance with the law and the agreement that has been agreed upon.

CONCLUSION AND SUGGESTION

Conclusion

Based on the results of the discussion, the conclusions obtained from this research are as follows: (1) if a notary receives money deposited for a land sale and purchase transaction before the binding agreement is made, then the notary does not act in his capacity as a notary, but only as a deposit recipient. If a problem occurs that harms the depositor, the notary can be prosecuted for embezzlement under Article 372 of the Criminal Code; and (2) if there is a dispute because the money deposited with the notary is not used as agreed, the problem can be resolved through legal channels (in court) or outside the court. Legally, the notary can be reported or charged with embezzlement under Article 372 of the Criminal Code. Settlements can usually be resolved through negotiation or mediation, involving a third party as an intermediary.

Suggestion

Based on the results of the discussion, the suggestions that researchers can offer regarding this research are as follows: (1) notaries in performing their duties and positions as public officials are expected to be more careful in their actions related to the acceptance of deposited funds. It is better if the notary is not attached to the acceptance of deposited funds, even if he/she has to accept the deposited money due to certain conditions, the notary must implement it in accordance with the agreement. Therefore, the dignity of the notary position can be maintained and people who use notary services can trust the competence of the notary profession; and (2) notaries should prevent situations that could lead to potential problems in the future if the deposited funds are not managed according to the agreement. Although the law does not specifically regulate the entrustment of funds by notaries, if there is a dispute due to the deficiency or loss of the money, this could be considered as a criminal offense of embezzlement according to Article 372 of the Criminal Code. In considering several cases that involved notaries in depositing funds, it is expected that notaries should be careful so as not to damage the reputation of their profession.

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