

The Abrogation of Sale and Purchase Binding Agreement (PPJB) Deed of Notary That Contains Standard Clause by a Verdict

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Abstract

The onus of making and undersign the Deed of Sale and Purchase Binding Agreement (PPJB) by a Notary is legally regulated in the PUPR Ministerial Decree No. 11/2019. This provides an obligation for a Notary in contrive the clause of the Binding Agreement that guarantees a legal preservation in the transition of land rights. In this research, the PPJB was using a standard clause containing an exoneration clause, thus causing an abrogation by a Verdict. This article uses a normative juridical research method, with secondary data and qualitative analysis. The eventuate is illustrate that the use of the principle of contract law is not legally valid if it contains an exoneration clause in it. As Public Officials who are charged with important duties and responsibilities, Notaries and PPATs must know all about legal studies related to make the deed so can avoid all lawsuits from parties that been disadvantaged due to disputes from the deed in the future.

Keywords: Legal Preservation; Exoneration Clauses; Notary; Standard Contract; Sales and Purchase Agreement (PPJB)

Abstrak

Kata kunci:

WHO; Covid 19; Hukum Internasional

Kewajiban pembuatan dan penandatanganan Akta Perjanjian Pengikatan Jual Beli oleh Notaris, secara hukum dengan jelas diatur dalam Permen PUPR No. 11/2019. Hal ini memberikan kewajiban bagi seorang Notaris dalam merancang isi PPJB yang dapat memberikan jaminan proteksi hukum dalam peralihan hak atas tanah. Dalam kasus ini pencantuman klausula baku dalam PPJB telah mengandung klausula eksonerasi, sehingga membuat adanya pembatalan oleh Putusan Pengadilan. Artikel ini menggunakan metode penelitian yuridis normatif, dengan data sekunder dan analisis kualitatif. Hasil kajian ini memberikan gambaran bahwa penggunaan asas hukum perjanjian tidak sah secara hukum jika mengandung klausula eksonerasi didalamnya. Sebagai Pejabat Umum yang dibebankan tugas dan tanggung jawab yang penting, Notaris harus menguasai seluruh ilmu hukum terkait dengan akta yang akan dibuatnya sehingga menghindarkan diri dari segala tuntutan hukum dari pihak yang dirugikan karena adanya sengketa dari akta yang dibuatnya dikemudian hari

Kata Kunci: Proteksi Hukum; Klausula Eksonerasi; Notaris; Kontrak Baku; Perjanjian Jual Beli (PPJB).

I. Introduction

Standard clauses are insistently found in the Deed of Sale and Purchase Binding Agreement (PPJB) that made by a Notary. Meanwhile, the PPJB is an indigenous deed that binds the parties which listed in the agreement is supposed to be protected from things that scathe them.

The opus of legal protection that provided by the Government is the obligation to make and sign the PPJB which must be bound in front of a Notary, which legally in the PUPR Ministerial Decree No. 11 of 2019. The existence of this obligation makes the PPJB must stake by a Notary Deed. This creates a necessity for a Notary in contrive the contract¹ to provide guarantees and certainty of law order for protection the transference of land

¹ A contract bear a meaning for a legally enforceable treaty between peoples. See Sarah Field, Formation of a Contract, 1st edition, p.7. ISBN 978-87-403-1499-1

rights.

PUPR Ministerial Decree No. 11 of 2019 have regulates the substance that must stated in the PPJB. PPJB is a sale and purchase covenant between developer and prospective vendee at development phase, which must be informed about the cognizance of the parties, explanation of the object, informed about prices and payments rite, provisions that warrant for developers, authorization and responsibility of the parties, inclusion of the schedule, maintenance of buildings, use of buildings, transference of rights, annulment and expiry of PPJB, and legal settlement.

The use of standard clauses² that are often encountered in PPJB is allegedly by dint of freedom of contract³ and consensualism⁴ adopted in contract law. As stipulated in Article 1338 of the Civil Code where contracts between parties which valid and binding as laws have become the basis for the existence of standard clauses.

However, contract law which should give freedom to the parties to determine the content of the engagement⁵ that they both have interests

² Standard clause is any regulation that has been purposive unilaterally and included in a binding contract document. See *Undang-Undang Perlindungan Konsumen*, Ps. 1 Number 10

³ One of the legal principles adopted in contract law is "freedom of contract", which means that everyone is exempt to incur an covenant containing the terms of any kind of agreement, as long as the agreement was made legally and in good faith, and does not invade communal orderliness and morality.¹ Freedom is the embodiment of free will, the radiance of rights and human rights.² An understanding of this principle brings the understanding that everyone has the freedom to bind himself to others. Freedom of contract is recognized in treaty law of Indonesia, so that contract law in Indonesia adheres to an open system. See Gemala Dewi, *Aspek Hukum Perasuransian dan Perbankan Syariah*. (Jakarta: Kencana, 2004), p. 187

⁴ An agreement occurs when the parties in it agree to bind themselves to each other, so this regard the enforcement of the covenant cannot be cloistered from the principle of consensualism which is a condition for forming an agreement. The principle of consensualism is an absolute requirement in every contract that functions to guarantee legal certainty. See R. Subekti, *Aspek Hukum Perikatan Nasional*, (Bandung: Alumni, 1986), p.5.

⁵ An engagement is a correlation legitimate amongst of legal subjects, accordingly one or more persons there of binds himself to do or not to do something to the other party. See Suharnoko, *Hukum Perjanjian Teori dan Analisa kasus*, (Jakarta: Kencana Prenada Media Group, 2007).p.1.

which they will agreed on, tarnished by the existence of standard contract⁶ that have been made unilaterally by party who has a high palter state, negating negotiations and balance in the agreement for one of the parties who bind themselves in an agreement. A standard contract is not an agreement⁷, thus it may deduce that the existence of a standard clause in a standard contract makes the freedom of contract and consensualism that due be exist in an agreement dissipate. This is a problem point that frequently occurs in the implementation of an agreement.

Contract agreements that have fulfilled the characteristics of a standard contract, namely:⁸

- 1) The text has been specify unilaterally by a party with high hagger position;
- 2) The society not participate in determining the text of the contract;
- 3) Bound by necessity;
- 4) Already in a certain form or in writing;
- 5) Prepared en masse and collectively.

Standard clauses in the agreement is allowed with certain conditions that have been regulated by law. This could be observed in the provisions for the influx of standard clauses in Article 18 Law No. 8 of 1999 on Consumer Protection. The standard clause that is prohibited relates to:⁹

⁶ Mariam Darus Badruzaman, views that a standard contract is a treaty made on unilateral terms, that bent to another party without any prior negotiation. Likewise with Sutan Remy Sjahdeini, who opine that a standard contract is a covenant in which the clause framer has standardized nearly every clauses. so there is no odds confer to convert it. See Ahmad Fikri Assegaf. *Penjelasan Hukum tentang Klausula Baku*. Jakarta: Pusat Studi Hukum dan Kebijakan Indonesia, 2014), p. 10-11.

⁷ Sluiter's opinion states that a standard contract is not a covenant since entrepreneur in forming a contract is more like a private legislator (which is not possible). Pitlo has a similar opinion by stating that the standard contract is a obligated treaty. See Ahmad Fikri Assegaf. *Penjelasan Hukum tentang Klausula Baku*. Jakarta: Pusat Studi Hukum dan Kebijakan Indonesia), 2014, p 16.

⁸ Mariam Darus Badruzaman, *Perjanjian Baku: Perkembangannya di Indonesia*. (Bandung: Alumni, 1980), p. 11

⁹ Salim H.S, *Hukum Kontrak, Teori & Teknik Penyusunan Kontrak*.(Jakarta: Sinar Grafika.2008) p.12

- a) The diversion of charge of entrepreneur;
- b) Repudiation of reversion the goods by consumers to the entrepreneur;
- c) Renunciation to refund money back to consumers;
- d) The entrepreneur has the right to take unilateral pace on installment goods due to the existence of granting power either directly or indirectly;
- e) Necessity for consumers to provide evidence;
- f) The right to diminish the advantage of goods and services by entrepreneurs;
- g) Consumers must comply with any changes or additions to new rules;
- h) Power of attorney for the assessment of mortgage, lien, or warrant rights on installments goods.

Standard clauses that are not clearly visible, ambiguous or which can lead to different (ambiguous) interpretations are also prohibited.¹⁰ All prohibitions on standard clauses in contract being null and void.¹¹ Therefore, the perpetrators businesses are required to adjust standard clauses in the agreement in accordance with the rules so not contradicting with the law Consumer Protection.¹² The existence of these provisions is of course aimed at providing a balanced position for the parties based on freedom of contract and consensualism.

Although the prohibition is clearly regulated by law, we frequently found that there are infringement on standard clauses. Hence, this article has three subject. First, how is the requisite of standard clauses that accordance with Law Number 8 of 1999 with the PPJB requisite according to the PUPR Ministerial Decree No. 11 of 2019. Second, what are the implications of the abrogation of PPJB that contains standars clause by a

¹⁰ *Ibid.*, Ps. 18 paragraph (2).

¹¹ *Ibid.*, Ps. 18 paragraph (3).

¹² *Ibid.*, Ps. 18 paragraph (4).

Verdict. Third, why Notaries fiddle a notable role in realizing the influx of standard clauses that restricted by law in the PPJB.

B. RESULT AND DISCUSSION

1. Conformity of the requirements for the inclusion of standard clauses under Law Number 8 of 1999 with PPJB material requisite on the PUPR Ministerial Decree No. 11/2019

a. Terms of Inclusion of Standard Clauses in pursuance of Law Number 8 of 1999

Sidharta expressed his opinion posit the stipulation of Article 18 paragraph (1) of the Consumer Protection Act (UUPK), that the Standard Clause is a clause made unilaterally by business actors, but may not lead to an exoneration clause.¹³

The word exoneration means release of someone from a duty or obligation.¹⁴ Exoneration clause¹⁵ according to "I.P.M. Ranuhandoko B.A. in his book Terminology of English-Indonesian Law, is a clause that frees a person or business entity from a claim or responsibility."¹⁶ The crucial thing is whether the clause in the contract is contained in the type of document that is expected to contain the legal terms of the agreement- otherwise the clause should not be included. ¹⁷

It is known that there is a conditional method in the influx of an

¹³ Shidharta, *Hukum Perlindungan Konsumen Indonesia*, Jakarta: Grasindo, 2000, p.123

¹⁴ John M.Echols dan Hassan Shadily, *Kamus Inggris-Indonesia: An English-Indonesia Dictionary*, Jakarta: PT Gramedia, 2005, hal 223

¹⁵ Rijken stated that the exoneration clause is listed as an effort to evade the onus to provide compensation in whole or in part occurs in a contractual relationship. See Ahmadi Miru. *Hukum Kontrak, Perancangan Kontrak..* (Jakarta: PT Raja Grafindo Perkasa, 2007), p. 40

¹⁶ Ahmad Fikri Assegaf. *Penjelasan Hukum tentang Klausula Baku..* (Jakarta: Center for Indonesian Law and Policy Studies), 2014

¹⁷ Sarah Field, *Introduction to the Law of Contract: Formation of a Contract*, 1st edition, p.82. ISBN 978-87-403-1499-1

exoneration clause under contract, including:¹⁸

1. The method of reducing or even eliminating legal obligations imposed on one of the parties. For example, in the expansion of the meaning of the word forcing.
2. Methods of reducing and even eliminating effects law due to improper performance of obligations. For example, reducing or eliminating compensation in case of default.
3. The method of creating certain obligations to one of the parties to the agreement. For example, there is a transfer of responsibility in the event of a loss to a third party who is outside covenant.

Article 18 of the Consumer Protection Law requires the existence of rules regarding of Standard Clauses, which provides an obligation for every business actor to be obliged to adjust every content in the contract agreement he makes so as not to include standard clauses that are prohibited under the UUPK, which if violated will make the contract agreement declared null and void, and the violation will result in criminal sanctions, scilicet a maximum of 5 (five years) imprisonment and a maximum of Rp. 2,000,000,000.00 (two billion rupiah) for a fine. And can be imposed with additional penalties, namely through statement by verdict, sequestration of goods, cessation of particular activities, punishment of indemnity, retraction of business licenses and revocation of goods..¹⁹

b. Material Terms in Binding Agreement (PPJB) according to the Regulation of the PUPR Ministerial Decree No. 11/2019

The existence of a legal connection that occurred during the

¹⁸ Munir Fuady. *Hukum Kontrak (Dari Perspektif Hukum Bisnis)*. Cetakan Kedua. Citra Aditya Bakti: Bandung, 2003.

¹⁹ *Ibid.*, Ps.63

process of marketing a property ere to signature the Sale and Purchase Deed (AJB) is in the realm of Binding Agreement System (PPJB System).²⁰ This stage is being offered because the property were in the process of construction so that the agreement between the developer and people who want to buy a house or apartment unit were using a Notary Deed contained in the PPJB.²¹

The Deed of PPJB is an authentic deed that has an impeccable evidence of what is conceive therein because there is no need for additional evidence, where the authentic deed has the power of proof both outwardly, formally and materially, provided that the notarial deed is made according to the provisions of the applicable legislation, the deed will be binding on the parties as an authentic deed.²²

Developers are required to provide explanations to prospective buyers regarding the material content listed in the PPJB at the time of marketing. Where when the prospective buyer makes a payment during the marketing, the developer is required to provide an explanation of the schedule for starting construction, the schedule for signing PPJB and the Deed of Sale and Purchase (AJB), as well as the key handover schedule.²³ If the developer fails to comply with the

²⁰ The Preliminary Sale and Purchase Agreement system named as the PPJB system is a concatenation of treaty that transpire through the marketing process which is bound in the sale and purchase binding agreement ere the signing of the sale and purchase deed (AJB) between consumer and developers. See Ministry of PUPR, *Regulation of the Minister PUPR* Number 11/PRT/M/2019, ps. 1 digit (1)

²¹ Preliminary Sale and Purchase Agreement or Sale and Purchase Binding Agreement called as PPJB is a sale and purchase agreement amongst developer and consumer that may made in advance of stated in a notary deed by the developer when the construction process or transpire ere the development process. See Ministry of PUPR, *Regulation of the Minister PUPR*, Number 11/PRT/M/2019, Ps 1 point (2)

²² The Civil Code [Burgerlijk Wetboek], translated by R. Tjitrosudibio, (Jakarta: Pradnya Paramita, 2009), Ps. 1870.

²³ Ministry of Public Works and Public Housing, *Regulation of the Minister of Public Works and Public Housing of the Republic of Indonesia*, Number 11/PRT/M/2019, ps. 7 paragraph (2)

implementation of the schedule, the prospective buyer can cancel the purchase for which the annulment solititation have to lodge in inscribed format to the developer. If the cancellation request has been submitted in written form, the developer must return all payments received, namely 100% (one hundred percent) or in full to the prospective buyer. However, if the negligence is not caused by the developer, the developer returns the payment with a discount of 10% (ten percent) of the total funds received from the prospective buyer and is also reduced by calculated tax costs. After the cancellation letter is approved and signed, at the latest 30 (thirty) calendar days the payment must be refunded. If the refund period is passed, the developer will be subject to a fine of 1‰ (one per mil) per calendar day of late return which is calculated from the amount of payment that must be returned.²⁴

The developer has to fulfilled the requirements regarding the status of ownership of rights which must be assured by a certificate of land rights represent at the time of signing the PPJB, there is clear information regarding the status of land and buildings, if they are in collateral or not, about the condition of the house, facilities and infrastructure and public facilities that must be fulfilled with complete permits such as a building permit (IMB) or a permit to construct a main building, and the existence of buildings that have been constructed at least 20% (twenty percent).

The abrogation after signing the PPJB due to negligence on the part of the developer, causing all payments that have been paid by the buyer and have been received by the developer must be returned

²⁴ *Ibid.*, Ps.9

100% (one hundred percent) to the buyer. However, if the cancellation is caused by the negligence of the buyer, then:²⁵

- a. if the payment has been made by the buyer at a maximum of 10% (ten percent) of the transaction price, the entire payment becomes the rights of the development actor; or
- b. if the payment made by the buyer is more than 10% (ten percent) of the transaction price, the developer has the right to deduct 10% (ten percent) of the transaction price.”

All material content that has been regulated and must be included and fulfilled in each clause in the PPJB, so that it may not violate the provisions as regulated and stipulated in the Regulation of the Minister of PUPR No. 11 of 2019.

The clear limitation of the material content that must be included in PPJB should be an important affection for the notary, as the official authorise to make the Deed of PPJB. The Instruction of main points of material that must be included in PPJB were listed in the Appendix of PUPR Ministerial Decree No. 11/2019 which must be used as a guide in making the contents of the material in the PPJB. The incompatibility of the application of the contents on the deed with the applicable rules causes the non-fulfillment of one of the objective requisite legality of the agreement, namely a lawful cause, which can cause the deed to be null and void.²⁶

2. Implications of The Abrogation of PPJB That Contains Standard Clause by a Verdict

²⁵ *Ibid.*, Ps 13 paragraph (2)

²⁶ *The Civil Code [Burgerlijk Wetboek]*, translated by R. Tjitrosudibio, (Jakarta: Pradnya Paramita, 2009), Ps. 1320.

The parties elicit the option to make an agreement by the enforcement requisite on form of a contract, scilicet both in writing and orally, as it in the open system that used in the Civil Code. This option is also granted for contracts as regulated by the Civil Code and other contracts that not been regulated by the Civil Code.²⁷

The inclusion of standard clauses contained in PPJB if it includes standard clauses which prohibited according to the Consumer Protection Law then it has violated the provisions of the engagement as stated in Article 1320 of the Civil Code paragraph (4)²⁸, namely a lawful cause as one of the objective conditions²⁹ for a valid agreement which is null and void if not fulfilled. Where the explanation of the lawful cause in Article 1335 of the Civil Code is an agreement made based on a false cause, resulting in the absence of statutory power. Where a false cause is one that is prohibited by law. Article 1337 The Civil Code assert the lawful cause, videlicet should not discord by the law, prevalent order, and ethics.³⁰

Article 1338 of the Civil Code state all agreements made legally legitimate as statute for those who bind. A treaty may not be deprivation by law is declared sufficient for that. Based on the

²⁷ Sudikno Mertokusumo, *Hukum Acara Perdata*, (Yogyakarta: Liberty.1999) p.53

²⁸ The states of validity an agreement based on the Article 1320 of the Civil Code are : 1) There is an agreement; 2) the existence of skills; 3) A certain subject; and 4) lawful reasons. See Subekti. *Pokok-Pokok Hukum Perdata*.(Jakarta: Intermasa, 2003). p.33

²⁹ The first two conditions represent subjective conditions, which are related with the subject in the agreement, and the last two conditions relate with objective conditions consecutive to the agreed object by the parties and will be carried out as achievements or debts from the parties party. in case objective condition not fullfilled, the agreement is null and void , as the agreement never existed from beginning (nieteg atau null and ab initio). when subjective conditions are not fullfilled, it may be abrogation (vernietigbaar = voidable) or throughout it has not been or has not been repeal by judiciary, the agreement still valid. See Kartini Muljadi dan Gunawan Widjaja, *Perikatan yang lahir dari Undang-Undang* (Jakarta : Raja Grafindo Perkasa, 2005), p. 53

³⁰ Hardijan Rusli, *Hukum Perjanjian Indonesia dan Common Law*, Cet. 2, (Jakarta : Pustaka Sinar Harapan, 1996), p.99

Supreme Court Decision, Decision Number 182/Pdt.Sus-BPSK/2016/PN Bks, what actually means in Article 1338 of the Civil Code is to contain meaning:

1. An agreement "lawfully made" contains the following meanings:
 - a. The agreement does not violate the Act.
 - b. The object is regulated in the Act.
 - c. The object of the agreement is not regulated in the Act, such as rental agreements, borrowing and use, debt and reconciliation.
2. If the object of the agreement has been regulated in the law, it is obligatory for those who made it to submit and obey the law that governs it. If those who make it do not follow the law that regulates it then the agreement is "illegitimate".
3. The object of the agreement that is not regulated in the law, the agreement is licit on it through the method of making it is legal.

The use of principles in contract law is not unlimited, but is limited to the application of the law to specialist law, where a standard contract must be drawn up in compliance with the enactment and amercement, and must place a balanced, fair and reasonable position between the parties in which an agreement has rights, bargaining and negotiation opportunities. Each standard contract must conceive stipulation that suited to the provisions of the legislation. In looking at the restrictions on freedom of contract on the permissibility of carrying out standard contracts, there are two opinions put forward by Treitel, namely there are 2 (two)

restrictions:³¹

1. Restrictions made to suppress abuse induce by the exertion of freedom of contract. For example, the application of exemption clauses in standard agreements.
2. Curtailment on freedom of contract wherefore of public interest.

Thus, it can be concluded that there are new restrictions adopted on freedom of contract, which derived from the jurisprudence as an endeavors to performing its role as a law maker, as well stems from government as a policy maker (legislature). Legal products and policies must be made in order to limit the absolute freedom of contract, it is fitting that law makers in Indonesia in protecting individual dignity that able to appreciate and embodied the fundamental rights of citizens as regulated in the 1945 Constitution.

Every action that infringed the law because it violates enactment which in this issue has included a standard clause that is prohibited by the Consumer Protection Act, it is compulsory for him because of his fault release the loss, indemnify the loss, by demanding a return to the original condition on the abrogation by a verdict.

3. Notaries present a prominent part in realizing the influx of standard clauses which restricted by law in the PPJB.

a. The Role of Notaries in Forming PPJB Deed Using Standard Clauses

As the representative of government, notaries are mandated by law directly as officials entrusted by the State to enforce some

³¹ Ridwan Khaerandy. *Aspek-aspek Hukum Franchise dan Keberadaannya dalam Hukum Indonesia*. (Yogyakarta: Majalah Unisa, UII. 1992), p.34

government functions. As Public Officials that trusted by the government, Notaries are obliged to vouch the certitude date of deed, save the deed, present grosse, duplicate and excerpt, which is also related to this is to provide legal counseling for the parties in hook of framing the deed of contract agreement.³² The authority granted by the State to Notaries is to render authentic deeds concerning every actions, covenant and stipulations compulsory by enactment and amercement or volition by those with an interest to be stated in an Authentic Deed, all of this as long as the forming of the deeds does not defined to other officials specify by law.³³

High knowledge and accuracy of a Notary in the preparation of the PPJB is a must. This is because, the ability of Notaries in interpreting things that are desired to be included in an Authentic Deed must be based on the applicable legal rules, especially related to the limitations of the rules on contract law related to special regulations (lex specialist) regarding the deed that For example, if want to make a fiduciary deed, the Notary must know the Fiduciary Law. PUPR Regarding PPJB, and related to the contents of the clause bordering the Consumer Protection Act. If a Notary has a lack of knowledge, it provides an opportunity for parties to deceive, thereby eliminating the precautionary principle that must be possessed by a Notary, which is caused by negligence of the lack of knowledge within the scope of these disciplines, which provide a loophole for the possibility of a dispute arising from the deed made at a later date.

This is in accordance with the definition of a Notary in the

³² Indonesia, *the Law on Amendments to Law Number 30 of 2004 concerning the Position of a Notary*, Law no. 2 of 2014, (LN.2004/No. 117, TLN No. 4432, Ps. 15 letter (b).

³³ *Ibid.*, Ps.15 Letter (a)

stipulation of Article 1 Instructie voor De Notarissen in Indonesia, where a Notary is a general official that must know all applicable laws and regulations, summoned and appointed to make deeds and contracts, with the intention of to give him provisions and ratification, determine and confirm the date, keep the original or the minutes and issue the grosse, as well as a legal and correct copy thereof.³⁴

Notaries is required for being expert in every statutory regulation related to the agreement. Not only writing the contents of the deed posit the will of the parties, must also providing information bound the rules that do not conflict with the law. If there is a request to make a deed that is not guided by the laws and regulations, the notary should refuse, especially if the contents are contrary to the adjustment of the laws and regulations.

Notaries as General Officials have a very important role and are required to act professionally to act devoutly, thoroughly, self sustainly, truthfully, and to preserve on behalf the parties in forming the deed.³⁵ In framing the deed, a notary has the authority to provide legal counseling regarding the contents of the clause which will put in the agreement.

When a Notary have previously understood and known about the prohibition on the inclusion of an exoneration clause in the deed he made but the Notary still applied it to the clause in the agreement, then the attitude of the notary can be suspected of participating in an unlawful act because the agreement deed has violated the law. Where based on Article 1320 jo. Article 1337 of the Civil Code, an agreement

³⁴ G.H.S. Lumban Tobing, *Peraturan Jabatan Notaris (Notaris Reglement)*, Cet.3, (Jakarta: Erlangga, 1983), page 28

³⁵ Indonesia, *the Law on Amendments to Law Number 30 of 2004 concerning the Position of a Notary*, Law no. 2 of 2014, (LN.2004/No. 117, TLN No. 4432, Ps. 16 paragraph (1).

that invade the statute, morality and public orderliness is a treaty with a prohibited cause, so it does not comply the requirements for a legitimate covenant, especially Article 1337. 1320 of the Civil Code paragraph (4), which is a cause that is not forbidden (a lawful cause). Article 1335 of the Civil Code stipulates that: "A consent without a reason, or made based on prohibited cause, has no power."

In the verdict of Supreme Court as the highest judicial in Indonesia, it has repeatedly emphasized the application of Article 1320 jo. Articles 1337 and 1335 of the Civil Code, including the following decisions:

(1) Supreme Court Decision No. 1572 K/Pdt/2015 dated October 23, 2015 which basically states: this proves that the agreement made by the parties is contrary to the proviso of Article 31 paragraph (1) of Law Number 24 of 2009 so the Loan Agreement a quo is an agreement made based on prohibited causes, so that according to the provisions of Article 1335 in conjunction with Article 1337 of the Civil Code, the covenant is null and void;

(2) Supreme Court Decision No. 758 K/Pdt.Sus-KPPU/2015 dated 27 January 2016 jo. Decision No. 02/PDT.SUS/2015/PN.SPG dated September 8, 2015 which basically stated: "... according to the panel of judges, because the content of the cooperation agreement made by the Petitioner for Objection was made based on prohibited causes which are contradictory to the law and general orderliness, accordingly the cooperation agreement is null and void because it does not fulfill the objective requisites for the legality of an agreement in accordance with Article 1320 of the Civil Code, which is a permitted cause, as referred to in Article 1335 of the Civil Code.

(3) Supreme Court Decision No. 1043 K/Pdt/2016 dated August

3, 2016 which basically states: "...Thus the sale and purchase of the disputed entity does not comply the legal provision of a sale and purchase as stipulated in Article 1320 of the Civil Code, namely a specific substance and a lawful cause, so that the sale and purchase invalid and null and void."

Thus, if the party feels aggrieved by the authentic deed made by the Notary, then the imposition of sanctions on infringement by the Notary may result for the deed as an underhand deed or the deed being null and void. This might be an excuse for the party that suffers the loss to sue the Notary for repayment fee, indemnity, and interest.³⁶ Notaries may have a sanctions of verbal warnings, written warnings, temporary suspension, respectful dismissal, or dishonourable discharge.³⁷

In essence, a Notary only guarantees the formal truth, which is in comformability of the information that declared him of by the parties, but the Notary required to read it to ensure that the parties have truly understood and understood the contents of the Notary Deed in accordance with what was desired. Here the Notary provide information including obtain to the related lex and ordinance prior to the signing of the deed. Thus, even though there is an understanding that the parties can freely determine the contents of the Notary Deed to be signed, the obligation to include the provisions in the Deed must be guaranteed to be in compliance with the enactment and rules, this is to ensure that the parties understand the law, so that if there are things listed in the Notary Deed that are different from the provisions of the law, it can result in the deed being officially invalid. The

³⁶ *Ibid.*, Ps.84

³⁷ *Ibid.*, Ps.85

contents of the Notary Deed are not only desired by the parties but are also required to cater with the postulate and statute, this is to ascertain the rights and necessity of the parties to assure certitude, neatness and rightful surveillance for interested parties nor for the entire community.³⁸

b. Legal consistency with the presence of an exoneration clause in PPJB by a Notary

Deed of Agreement and Binding of Sale and Purchase (PPJB) which uses standard clauses that are prohibited by law is null and void. It is clearly stated in Article 18 paragraph (3) of Law Number 8 of 1999 concerning Consumer Protection which contains provisions that:

"Each reciprocal clause that has been set by entrepreneur in paper or treaty that certainty fulfill as appoint to paragraph (1) and paragraph (2) is asserted null and void."

Judging from the law of the agreement, what is prohibited in Article 18 of Law Number 8 of 1999 provides an in-depth explanation of the application of freedom of contract as regulated in Article 1320 in conjunction with Article 1337 of the Civil Code. So legally it implies that any standard contract containing standard clauses prohibited by law, is considered to have never existed and is not binding on the parties.

There is a difference of understanding in interpreting the principles in contract law, giving a power to the judge to see the contents of an agreement if the content and implementation of an agreement has caused harm and is not useful and negatively

³⁸ *Ibid.*, General Explanation

suppresses values in society, namely the existence of a prohibited clause listed in the agreement so that it is not in accordance with the values of public order, in this case it must be cancelled.

C. CONCLUSION

Law Number 8 of 1999 regulated about the exertion of standard forms of clauses which prohibited by law albeit existed because of based on legal principles of agreement which have been recognized and agreed upon by both parties, it still illegitimate if it contains an exoneration clause in it.

Illegitimate here imply that the agreement is null and void, that legally signify the agreement is considered to have never abide and is not binding on the parties so that things return to normal. The enactment of Article 18 UUPK is a guarantee given by government as a policy maker to provide a balance in the freedom of contract which is usually applied as the basis for making agreements so as to provide equality of position for a balanced bargaining position. The application of Article 18 of the UUPK must be used as a clear standard in making a standard contract in an agreement, which if violated will result in legal consequences of both criminal and civil sanctions as well as cancellation by law of the agreement.

The author hopes that there will be a similar understanding regarding the imposition of interpretation the freedom of contract and consensualism which is used as the basis of the agreement that have to pay attention against limitations of the applicable amercement for the realization of an equal rights from the interests of the parties. In fact, with the provisions of the rules regarding the requirements for the inclusion of standard clauses and content material in accordance with the provisions, it certainly makes it easier to make deeds related to the realm of the agreement. So it should not be necessary to make their own laws in the name

of freedom of contract which is considered every agreement agreed by the parties to be valid as law. Standard contracts posit on the freedom of contract are allowed as long as its not contrary and have been adjusted to the amercement.

Notaries as public officials are concede to render authentic deeds which are the strongest and most complete written evidence, which exist because they are obliged by laws and regulations and are appetite by parties to assure the due and onus in order to define certitude, order and patronage of the law. Thus, as public officials who are charged with important duties and responsibilities, Notaries must knowing all legal knowledge related to the deed so can avoid all lawsuits from parties who are harmed due to disputes from the deed made in the future.

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