The Legal Strength of the Deed of Power to Sell as the Basis for Transfer of Land Rights

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Abstract

In practice, the granting of a power of attorney to sell as above has caused the power to sell to be used as the basis for the process of making an AJB behind the name and at the same time being used as a registration tool for the transfer of land rights at the Land Office where the land is located. Meanwhile, the power of attorney to sell is accompanied by a statement from a notary that explains that the deed of power of attorney to sell is not an absolute power of attorney prohibited by law or that land and buildings as objects in the deed of power of attorney to sell have been paid in full. The procedure used to collect data in this study is in the form of documentation, namely the guidelines used in the form of notes or quotes, searching for legal literature, books and others related to the identification of problems in this study both offline and online. Analysis of legal materials is carried out using the content analysis method which is carried out by describing the material of legal events or legal products in detail in order to facilitate interpretation in the discussion. The granting of power of attorney is specifically regulated in Chapter XVI, book III of the Civil Code where Article 1792 states: "The grant of power of attorney is an agreement that contains the granting of power to another person who accepts it to carry out something on behalf of the person giving the power of attorney". Furthermore, Article 1793 of the Civil Code states: "Power can be given and received by a general deed, by a letter under the hand even by a letter or by word of mouth. The acceptance of a power of attorney can also occur secretly and is concluded from the exercise of that power by the authorized person. The process of transferring land rights based on the Selling Power of Attorney has a strong legal basis because there are no legal rules that are violated as argued and proven above. So it is correct to say that the Deed of Authorization to Sell has transitional power as well as in the process of transferring land rights through the Deed of Sale and Purchase, as long as no rules are violated in the transition process. The legal protection provided by PPJB is paid off and the power to sell to the buyer if the seller dies is very strong and perfect because of the evidentiary nature of PPJB and the power to sell made before a public official in this case a notary. This is a form of guarantee of legal certainty and as a form of legal protection for buyers who have paid the full price they have paid but have not been able to make AJB and reverse registration because one way or another there are conditions that have not been fulfilled.

Keywords: Deed of Power to Sell, Transfer of Land Rights.

How to cite:

A. Introduction

The existence of land is not only a need for housing, but is a supporting factor for the growth and development of all aspects of human life, both economic, social, political and cultural. Land and land titling are very important considering the amount and area of land controlled by the state remains constant, while population growth is getting faster and faster. So strong is the relationship between humans and land, so that a legal force is needed in it. This legal force may be obtained if the land owner registers the land (as ordered from Article 19 of Law No. 5 of 1960 concerning Agrarian Principles). By registering land rights or granting land rights to the subject of the right, administratively this will certainly achieve legal certainty for the subject, meaning that the subject of the right is guaranteed administratively to use the land ownership right for anything as long as the use of the right is in accordance with its designation. Therefore, if all land parcels have been registered...
and utilized by the right holder, ideally there is a legal guarantee of certainty of rights to all registered land parcels and the positive impact can reduce land problems, especially regarding the use and utilization of land, and it is not impossible if the price of land from time to time has increased due to the registration of a person's land rights.¹

In Indonesia, the main regulation regarding land is Law Number 5 of 1960 concerning Agrarian Principles (UUPA). Regarding what is called land law or agrarian law, it can be briefly said that land law is the law that regulates the relationship between people and land with other people. So it is the protection of people's interests against other people regarding land. The law exists because of humans, here there is a lot of human interaction to fulfill the need for land. Here the law of the land appears to regulate it. As proof of the importance of land registration to obtain evidence of land rights, the government has issued Government Regulation Number 10 of 1961 which has been replaced by Government Regulation Number 24 of 1997 concerning Land Registration on July 8, 1997. expected in UUPA.

So that every change that occurs regarding the ownership of land rights must be registered and must register these rights. Land registration objects include:
1. Plots of land owned with ownership rights, business use rights, building rights and use rights;
2. Land management rights;
3. Waqf land;
4. Ownership rights to the apartment unit;
5. Mortgage rights;
6. State land

The issuance of land certificates is one of the guarantees of legal certainty of property rights for both individuals and groups of people who are members of an entity over a certain amount of land in a certain area after going through a mechanism to guarantee certainty of land rights (recht cadastral) where cadastral itself means a list of land rights, which describes all land parcels in an area based on careful mapping and measurement. Laws and regulations governing land tenure and governance, land rights as well as land measurement and registration should have planning aspects according to a priority scale that is adapted to the pattern of meeting the most basic needs of the community without neglecting the importance of including dynamically supporting aspects of economic growth so that The main focus of the design of legal certainty guarantees related to land ownership rights is to be able to provide the best possible justice. Therefore, all levels of society have the right to guarantee legal protection in order to acquire and utilize land as the implementation of essential human needs.²

In principle, land registration as described in Article 19 of the LoGA has the aim of providing legal certainty covering land objects, rights and subjects as well as land administration order for both the owner and the parties who control the land, as evidenced by the ownership of a land certificate in the name of the person concerned. as a strong and valid means of proof. According to book II of the Civil Code Article 506 paragraph (1), land is included in the category of immovable objects (fixed objects) so that the buying and selling process is different from the process of buying and selling movable objects such as vehicles. Legal actions, namely the buying and selling process which results in the transfer of rights to land ownership, must always be followed by the making of an authentic deed required as specifically regulated in this regard. The intended authentic deed is made by an authorized public official, namely the Land Deed Making Officer (PPAT), which in certain cases involves a Notary deed. Provisions regarding PPAT can be found in Government Regulation Number 24 of 1997 concerning Land Registration which regulates the positions and duties of PPAT; Government Regulation Number 37 of 1998 concerning the Position of Land Deed Making Officer with the implementation of tasks further regulated in the Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 4 of 1998. The juridical aspect regarding the position of a notary can be found in Law Number 30 of 2004 concerning Position Notary, which is enhanced by Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary. The process of transferring ownership rights to land from the seller to the buyer

has been regulated in Government Regulation Number 24 of 1997 concerning. Land Registration and Government Regulation Number 37 of 1998 concerning the Position Regulations of Land Deed Maker Officials (PPAT). The transfer of ownership rights to land must be carried out in the presence of the authorized official, in this case the PPAT, whose work area includes the area where the land is being traded. Article 4 paragraph (1) of Government Regulation Number 37 of 1998 states: "PPAT is only authorized to make a deed regarding land rights or Ownership Rights to Flat Units located in its working area".

Based on these events, PPAT has the right and is obliged to prepare a deed of change of ownership (transfer of name) in the form of an authentic Sale and Purchase Deed (AJB), where the form and content have been determined by the applicable laws and regulations so that PPAT only fills in the available form of the deed. There are prerequisites that must be met before PPAT can ratify the process of buying and selling land by marking the release of AJB by the official concerned. These prerequisites include land rights that are traded and are legal land rights owned by the seller as evidenced by a land certificate or other legal evidence relating to the status of ownership or control over the land. In addition, the land being traded is not in dispute with other parties. The prerequisite related to the subject of sale and purchase is the existence of a buyer who requires that the rights to the land purchased have a certificate as proof of legal ownership of the land so that the land without a certificate or other legal proof of ownership cannot be paid in full by the buyer.

The deed of sale and purchase behind the name can also be made based on the deed of binding sale and purchase agreement (PPJB) and the power to sell in an authentic form made by a notary. The deeds are made between the parties, on the one hand as the owner of the land as the seller and on the other hand as the buyer of the land, before a notary so that it is commonly referred to as a notarial deed. In practice, the granting of a power of attorney to sell as above has caused the power to sell to be used as the basis for the process of making an AJB behind the name and at the same time being used as a registration tool for the transfer of land rights at the Land Office where the land is located. Meanwhile, the power of attorney to sell is accompanied by a statement from a notary that explains that the deed of power of attorney to sell is not an absolute power of attorney prohibited by law or that land and buildings as objects in the deed of power of attorney to sell have been paid in full.

Normatively, the existence of the power to sell in the registration of the transfer of land rights is not found in Government Regulation No. 24 of 1997 concerning Land Registration. This void of norms has led to the completion of different registrations of land rights transfers between PPATs according to their knowledge and courage to make legal discovery efforts. Based on the description above, the main problem can be drawn, namely how is the legal arrangement regarding the power of attorney to sell which is used as the basis for the transfer of land rights? And how is the legal force of the power of attorney to sell as the basis for the transfer of land rights? The procedure used to collect data in this study is in the form of documentation, namely the guidelines used in the form of notes or quotes, searching for legal literature, books and others related to the identification of problems in this study both offline and online. Analysis of legal materials is carried out using the content analysis method which is carried out by describing the material of legal events or legal products in detail in order to facilitate interpretation in the discussion.

B. Discussion

1. Legal Arrangements Regarding the Deed of Authorization to Sell Used as the Basis for the Transfer of Land Rights

Land rights based on national land law can basically be transferred and transferred. One of the causes of the transfer of a land right from one party to another is caused by a legal act in the form of buying and selling. Within the scope of Indonesian private law as regulated in the Boergelijk Wetboek (BW) or commonly known as the Civil Code (KUH Perdata), the sale and purchase is within the scope

3 Ibid., p. 697.
4 Ibid.
of the law of engagement in the form of an agreement. Buying and selling is an agreement, whereby one party binds himself to deliver an object, and the other party pays the promised price.\textsuperscript{7}

The law of engagement is regulated in Book III BW (Book III of the Civil Code) which is broadly divided into two parts, namely first, engagements in general, both those born from agreements and those born from law and second, are engagements born from certain agreements. Covenant Law adheres to an open system, meaning that the law of the agreement provides the widest possible freedom to the public to enter into an agreement containing anything, as long as it does not violate public order and decency. An agreement is an event where one person promises to another person or where two people promise each other to do something.

Article 1313 of the Civil Code states that an act by which one or more people bind themselves to one or more other people. A valid agreement means an agreement that meets the conditions determined by law, so that it is recognized by law. Article 1320 of the Civil Code stipulates that for the validity of an agreement, four conditions are needed, namely: agreeing those who bind themselves, the ability to make an engagement, a certain thing, a lawful cause. These four conditions are absolute conditions that must be met when making an agreement, because without these conditions the agreement can be considered as never existed.

The first and second conditions (the agreement of those who bind themselves and the ability to make an engagement) are referred to as subjective conditions because they relate to the people or subjects who enter into the agreement. If one or both of the subjective conditions are not met, then the agreement can be canceled or canceled. While the last two conditions (a certain thing and a lawful cause) are referred to as objective conditions, and if the objective conditions are not met then the agreement is null and void. In making an agreement made before an authorized official, the agreement will be stated in the form of an authentic deed.\textsuperscript{8}

Furthermore, an authentic deed as explained in Article 1868 of the Civil Code is a deed which in the form determined by law is made by an authorized official. The deed must be made in the presence of public officials who have power for that at the place where the deed was made. Based on Article 1868 of the Civil Code mentioned above, it can be seen that the form of the deed is determined by law and must be made by or before an authorized employee. The authorized employee referred to here is, among others, a Notary, this is based on Article 1 point 1 of Law Number 1 of 2004 concerning the Position of a Notary which states that a Notary is a Public Official authorized to make an authentic deed. The authenticity of a deed can be said to be an authentic deed when the deed is made by an authorized official. As required in article 1868 of the Civil Code, an authentic deed must meet the following requirements:

\begin{enumerate}
\item The deed must be made by a public official.
\item The deed must be made in the form determined by law.
\item Public officials by or before whom the deed was made, must have the authority to make the deed
\end{enumerate}

As the position of the sale and purchase binding agreement as an assistance or preliminary agreement, the sale and purchase binding agreement serves to strengthen the main agreement to be carried out. so as to its function, the sale and purchase binding agreement can be used to reinforce the main agreement, as well as complete the legal relationship to the things that have been agreed upon in the sale and purchase binding agreement if it has been fully implemented. The power to sell is a form of special power of attorney, which is made following the making of a binding agreement for the sale and purchase of land rights before a notary. The making of the power of attorney to sell itself is motivated by various things, including the holder of land rights/the power of attorney cannot be present before the authorized official because he is sick, the holder of the land title/authorizer cannot be present before the authorized official because he is not present. temporary.

Such conditions and circumstances will cause problems when a deed of sale and purchase will be made due to the absence of the seller, so it needs to be addressed by granting a power of attorney to sell in order to facilitate the process of transferring land rights before the authorized official. The


power to sell itself contains things that have been agreed upon by the parties that are delegating power, including regulating the rights and obligations of the parties, what must be carried out and what should not be carried out.

The deed of sale and purchase is one of the requirements for proving the transfer of land rights, which includes the source of the juridical data. And the authority in making the deed of transfer of land rights as explained in Article 1 paragraph 1 of Government Regulation Number 24 of 1997 concerning Land Registration states that the Land Deed Making Official (PPAT) is a public official who is given the authority to make authentic deeds regarding certain legal actions. regarding land rights or ownership rights to flat units.

The Land Deed Maker Official, as part of his duties in carrying out land registration activities by making a deed of transfer of rights as evidence that a legal action has taken place regarding land rights which can then be used as the basis for registering changes in data as a result of legal actions. However, along with the fulfillment of all administrative requirements in making a deed of transfer of rights before the Land Deed Maker Officer, various things are often constrained.

So that a notary made a breakthrough to address this, by making a preliminary agreement, which is better known as the Sale and Purchase Binding Agreement (PPJB) and the Power to Sell. The power of attorney given by the seller to the buyer is usually an irrevocable power of attorney where the power is only valid if all the conditions agreed in the binding sale and purchase agreement set by the seller have been fulfilled by the buyer. This situation is then referred to by many as absolute power because the power cannot be revoked.\(^9\)

Further arrangements mentioned in the PPJB are related to further actions that can be taken if the requirements regarding the process of buying and selling land ownership rights have been met. This clause is included if in certain situations and conditions the prerequisites for buying and selling have been met and the process of signing the Deed of Sale and Purchase (AJB) can be carried out, the seller is not able to attend due to long distance considerations or illness and so on, the buyer is given the power to appear in person PPAT to carry out the signing of AJB on its own behalf and on behalf of the seller.

Legal arrangements relating to the granting of power of attorney have been specifically regulated in Chapter XVI, Book III of the Civil Code. Article 1792 of the Civil Code states: "The grant of power of attorney is an agreement that contains the granting of power to another person who accepts it to carry out something on behalf of the person giving the power of attorney". Furthermore, Article 1793 of the Civil Code states: "Power can be given and received by a general deed, by a letter under the hand even by a letter or by word of mouth. The acceptance of a power of attorney can also occur secretly and is concluded from the exercise of that power by the authorized person.

The granting of power of attorney in the case of PPJB implementation is a form of written power of attorney made by a notary official (Notarial Power of Attorney) or commonly called a power of attorney as a result of preparation by and on the ideas of the notary official himself, or adapting to a standard draft that has been commonly used. Before compiling a deed of power, the notary must inquire about the need for its preparation accompanied by the submission of valid population data from the parties in the form of identity cards (KTP) of the giver and recipient of the power of attorney, KTP of the husband or wife of the authorizing, family card (KK) of the authorizing or marriage certificate. This is pursued in connection with the interests of legality and the requirements of the demands of the applicable laws and regulations where in order to relinquish a material right, a person must obtain the approval of his partner. The notary is also obliged to ask for other special requirements that the parties want to include in the deed of power.\(^{10}\)

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\(^9\) Ibid., p. 65-66.

Based on the nature of the agreement, the power of attorney can be general and specific. The granting of a general power of attorney is the granting of power of attorney formulated in general words which usually only includes administrative actions. The granting of a special power of attorney is the granting of power of attorney related to a particular interest. So that to carry out certain actions, it is necessary to grant special powers that state the actions that must be carried out. Article 1796 of the Civil Code states: “The grant of power of attorney formulated in general only includes actions related to management. To transfer goods or place a mortgage on it, to make a peace, or to take other actions that can only be carried out by an owner, an authorization is needed in firm words.

In practice, this power of attorney often experiences deviations. The deviation in question is that the limits set out in Article 1796 of the Civil Code are not always respected, as is the case with the limitations provided in Article 1813 of the Civil Code regarding the expiration time of the grant of power of attorney. This condition is often analogous to the term absolute power.\(^{11}\)

In connection with the absolute power of attorney, the Instruction of the Minister of Home Affairs Number 14 of 1982 concerning the Prohibition of the Use of Absolute Power for the Transfer of Land Rights. In the instructions it states:

a. Prohibit sub-district heads and village heads or officials of the same level to make/strengthen the making of an Absolute Power of Attorney which is essentially a transfer of land rights.

b. Absolute Power referred to in the First Dictum is power in which it contains elements that cannot be withdrawn by the giver of the power of attorney;

c. Absolute Power which is essentially a transfer of land rights is Absolute Power which gives authority to the recipient of the power to control and use his land and to carry out all legal actions which according to the law can be carried out by the right holder.

d. Prohibiting Agrarian Officials from serving the settlement of land rights status using an Absolute Power of Attorney as proof of transfer of land rights.

The transfer of land rights, both in the form of transfer and transfer, can occur if the material requirements in the sale and purchase of land are fulfilled, namely the land owner or holder of land rights as the seller has the right and authority to sell his land rights, while the buyer must meet the requirements as the subject of land rights that become the object of buying and selling land.\(^{12}\) Any agreement that intends to transfer land rights, especially for land that has been registered (certified), must be proven by a PPAT/Notary deed.

Documents needed in the process of buying and selling land rights that have been certified include: Evidence of land rights, land identity and the identity and authority of the seller and buyer. Therefore, the sale and purchase of land rights must be carried out before the PPAT/Notary. As evidence that there has been a sale and purchase of a land right, the PPAT/notary makes a deed of sale and purchase. The sale and purchase is carried out before the PPAT/notary in the presence of the seller, the buyer and two witnesses.

2. The Legal Strength of the Deed of Power to Sell as the Basis for Transfer of Land Rights

Land is a gift from God Almighty, therefore land registration is important to do, which includes: measurement, mapping and bookkeeping of land, registration of land rights and their transfer, providing legal evidence of rights as strong evidence.\(^{13}\) Law is the basis of various implementations, one of which is for orderly administration and legal certainty of mortgage status which has been regulated in positive law in Indonesia. Because Indonesia adheres to positivism, it must be based on

\(^{11}\) Ibid., p. 700.


applicable law, for example, the implementation of mortgage registrations that used to be done manually is now done digitally.\textsuperscript{14}

Every agreement that intends to transfer land rights from one legal subject to another legal subject, for example buying and selling, exchanging, wills, grants must be proven by a deed made by and before the local PPAT.\textsuperscript{15} After the land that is the property right is certified, then the buying and selling process can be carried out according to the UUPA. This buying and selling process consists of 2 (two) main stages, namely an agreement between the prospective seller and the buyer which ends with an agreement and consensus in determining everything, regarding the land and its price, then the prospective buyer and prospective seller face the local PPAT to transfer the rights to the land. the land. For land that is already certified, in making the deed of sale and purchase it is attended by 2 witnesses, not necessarily the Village Head and members of the Village government, other people can also be witnesses. But usually this witness is taken from the PPAT office employee concerned.\textsuperscript{16}

Likewise for land rights holders, if they are going to make a transfer of land rights, the purpose of which is to transfer rights from one party to another, it must be proven by a deed drawn up by and before the PPAT appointed by the Minister of Agrarian Affairs, the National Land Agency. This is in accordance with Government Regulation Number 10 of 1961 Article 19, which regulates the transfer of land rights, which states:\textsuperscript{17}

\begin{quote}
Any agreement that intends to transfer land rights, grant new land rights, pawn land or lend money with land rights as collateral, must be proven by a deed drawn up by and before an official appointed by the Minister of Agrarian Affairs.
\end{quote}

Article 1 paragraph (1) Government Regulation Number 37 of 1998 concerning Position Regulations for Land Deed Maker Officials, defines that: PPAT is a public official authorized to make authentic data regarding certain legal actions regarding land rights or property rights to flat units.\textsuperscript{18} Based on the Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 Article 19 paragraph (1), states that:\textsuperscript{19}

Before executing the deed regarding the transfer or assignment of rights or land or property rights to the apartment unit, the PPAT is obligated to first conduct an inspection at the Land Office regarding the suitability of the certificate of land rights or ownership rights to the apartment unit concerned with the lists contained in the the local Land Office by showing the original certificate.

Thus, before the PPAT makes the transfer of land rights, especially property rights through buying and selling as evidenced by the making of a deed, in this case a deed of sale and purchase, the PPAT concerned is obliged to check/check the certificate at the local Land Office to match the original certificate with existing lists. at the local Land Office, by showing the original certificate.\textsuperscript{20}

Making a deed of power of attorney to sell, the deed must include 3 things, namely the beginning of the deed or the head of the deed, the body of the deed and the closing of the deed. the deed body, which in English is called the deed agencies or the deed bodies, while in Dutch it is called deed lichaam regarding the principal or main parts that must be included in the deed. The body of the deed is stated in Article 38 paragraph (3) of Law Number 2 of 2014 amendments to Law 30 of 2004 concerning the Position of Notary, which reads:\textsuperscript{21}

The body of the deed contains:

1. Full name, place and date of birth, nationality, occupation, position, position, residence of the appearers and/or the person they represent;
2. Information regarding the position to act against;
3. The contents of the deed which is the will and desire of the interested parties; and

\textsuperscript{16} Ibid.
\textsuperscript{17} Ibid., p. 103-104.
\textsuperscript{18} Ibid., p. 104.
\textsuperscript{19} Ibid.
\textsuperscript{20} Ibid.
\textsuperscript{21} Salim HS, Op. Cit., p. 75.
4. Full name, place and date of birth, as well as occupation, position, position, and residence of each identifying witness.

If you pay attention to Article 38 paragraph (3) above, there are four things that are contained in the body of the deed, which include: 22
1. Full name, place and date of birth, nationality, occupation, position, position, and residence of the appearers and/or the person they represent;
2. Information regarding the position to act against;
3. The contents of the deed which is the will and desire of the interested parties; and
4. Full name, place and date of birth, as well as occupation, position, position, and residence of each identifying witness.

The position of acting before in paragraph (3) letter a and letter b is the same in content, the provisions of Article 38 paragraph (3) letter d, which contain witnesses are the same as the provisions of Article 38 paragraph (4) letter c of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, which contains witnesses. However, in practice, the complete identity of the witness is contained or included at the end of the end of the deed, not included in the body of the deed. In the body of the deed, the description of the witness is only mentioned in passing, such as the words: "in the presence of witnesses whom I, the notary know, know and will mention at the end of this deed". 23

Based on the form, the terms of sale and purchase of land consist of two things, namely: 24 First, the material requirements include: The buyer has the right to buy the land in question. The point is that the buyer as the recipient of the rights must meet the requirements to own the land to be purchased. To determine whether or not the buyer has the right to the land he bought, it depends on what rights exist on the land, whether it is property rights, building rights or use rights. According to the LoGA, only single Indonesian citizens and legal entities determined by the government can have ownership rights over land (Article 21 of the LoGA); The seller has the right to sell the land in question. Only the rightful holder of the land rights is entitled to sell a certain plot of land, which is called the owner; The right of the land in question may be traded and is not in dispute.

Second, Formal Requirements. After all the material conditions are met, the PPAT will make a deed of sale and purchase. Deed of sale and purchase according to Article 37 PP No. 24/1997 must be made by PPAT. Sales and purchases made without the presence of PPAT are still valid because the LoGA is based on customary law (Article 5 of the LoGA), while in customary law the system used is a concrete, cash, real, real system. Nevertheless, to realize the existence of a legal certainty in every transfer of land rights, PP No. 24/1997 as an implementing regulation of the UUPA has determined that any agreement that intends to transfer land rights must be proven by a deed made by and before the PPAT.

In principle, the power to sell is actually given because the seller (land owner) cannot be present at the time of making the deed of sale for certain reasons, for example:
a. The execution of the sale takes place out of town or he cannot leave his job.
b. The buyer has paid in full the entire sale and purchase price, but the sale and purchase is not yet possible.
c. The land in question will be resold to another party, this is usually made by those engaged in buying and selling land or by land brokers to avoid paying taxes.

In general, the granting of power of attorney is not too much of an issue, it's just that for the granting of power of attorney carried out in the binding sale and purchase agreement with the words "irrevocable" in the granting of power of attorney, many parties then identify this with the granting of absolute power as described above. prohibited by the Instruction of the Minister of Home Affairs Number 14 of 1982 concerning the Prohibition of the Use of Absolute Power for the Transfer of Land Rights.

22 Ibid.
23 Ibid., p. 76.
Meanwhile, as the consideration of the issuance of the Instruction of the Minister of Home Affairs Number 14 of 1982 concerning the prohibition of the use of absolute power is because the use of absolute power as a way to carry out the transfer of land rights, is nothing but a disguised way because many parties use and use absolute power as a tool to exercise control over land rights even though By law he has no right to own it, like many foreign nationals who are legally prohibited from having property rights to land, it turns out that they can freely own land rights by using absolute power.

In addition, the consequences arising from the use of absolute power are the accumulation of land ownership in someone which is clearly contrary to the provisions contained in Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA) which in the end also hampers the purpose of land reform, namely equalizing land ownership may not be achieved. Besides causing a lot of abandoned land in the countryside as a result of which the owner turns out to be a person who lives in the city who purchases rights with absolute power, even though in the village records the owner is still a local villager. Based on the information on the element of absolute power as stated in the Instruction of the Minister of Home Affairs Number 14 of 1982 concerning the prohibition of the use of absolute power, it can be interpreted that the power used in binding sales and purchases is not included in absolute power. 25

This is because as a preliminary agreement, the sale and purchase binding agreement awaits the fulfillment of the conditions to arrive at the main agreement, and the inclusion of power of attorney with irrevocable conditions is required to carry out the sale and purchase before the Land Deed Maker Official (PPAT). In addition, the granting of power of attorney with irrevocable provisions used in the sale and purchase binding agreement does not contain provisions regarding prohibited matters as regulated in dictum Two point b of the Instruction of the Minister of Home Affairs Number 14 of 1982, namely absolute power which is essentially a transfer of rights. Land rights are absolute powers that give authority to the recipient of the power of attorney to control and use his land and carry out all legal actions which according to law can only be carried out by the holder of the right, even though the power of attorney cannot be withdrawn.

The granting of irrevocable power of attorney in the binding sale and purchase agreement is not included in the absolute power which is prohibited by the Instruction of the Minister of Home Affairs Number 14 of 1982 concerning the Prohibition of the Use of Absolute Power as Transfer of Land Rights, so that its legal status is legal to do. To ensure legal certainty regarding the control or transfer of land rights, it is necessary to register the transfer of land rights. On the basis of the binding sale and purchase agreement as the initial agreement, the transfer of land rights can be immediately made a deed of sale in front of the Land Deed Making Officer (PPAT). 26

Because the PPAT deed is proof that a legal act of transferring land rights has been carried out, the parties concerned must appear in person to carry out the signing of the deed of sale and purchase. For sale and purchase where the initial agreement was made in the form of a binding sale and purchase agreement accompanied by the power to sell, it is sufficient that only the buyer who then acts as the seller based on the power to sell is present. To ensure legal certainty regarding the control or transfer of land rights, it is necessary to register the transfer of land rights. On the basis of the binding sale and purchase agreement as the initial agreement, the transfer of land rights can be immediately made a deed of sale in front of the Land Deed Making Officer (PPAT). Because the PPAT deed is proof that a legal act of transferring land rights has been carried out, the parties concerned must appear in person to carry out the signing of the deed of sale and purchase. For sale and purchase where the initial agreement was made in the form of a binding sale and purchase agreement accompanied by the power to sell, it is sufficient that only the buyer who then acts as the seller based on the power to sell is present.

The process of transferring land rights based on the Selling Power of Attorney has a strong legal basis because there are no legal rules that are violated as argued and proven above. So it is correct to say that the Deed of Authorization to Sell has transitional power as well as in the process of transferring land rights through the Deed of Sale and Purchase, as long as no rules are violated in the transition process. The legal protection provided by PPJB is paid off and the power to sell to the buyer

26 Ibid., p. 68.
if the seller dies is very strong and perfect because of the evidentiary nature of PPJB and the power to sell made before a public official in this case a notary.

This is a form of guarantee of legal certainty and as a form of legal protection for buyers who have paid the full price they have paid but have not been able to make AJB and register their name behind because one way or another there are conditions that have not been fulfilled. In addition to having a strong and perfect proof, with the establishment of PPJB and the power to sell, it can also provide legal protection for buyers as follows:27

a. Regarding taxes, the buyer does not bear the sales tax, if the seller has died because when the PPJB was signed, the PPh was paid in full before the PPJB was signed. 34 of 2016 concerning Income Tax on Income from the Transfer of Rights to Land and/or Buildings, and Sale and Purchase Agreements on Land and/or Buildings and their amendments. Because before the enactment of this PP, in practice, when making PPh and the power to sell without paying PPh first, so that if the seller has died, it is the buyer who bears the PPh, and usually the new PPh is paid at the time of making the AJB.

b. Legal ownership can be proven by PPJB and the power to sell made before a Notary is very strong, if the seller dies then the heirs cannot interfere with the lawsuit over the ownership of the land even though the land has not been made AJB. Because the heirs must comply with the provisions contained in the PPJB clause and the power to sell.

In Article 52 of Law Number 30 of 2004 it is stated that a notary is not allowed to make a deed for himself, his wife/husband, or another person who has a family relationship with a notary, either because of marriage or blood relations in a straight line of descent and/or upward without restrictions. degrees, as well as in a line to the side up to the third degree, as well as being a party for oneself, or in a position or through an intermediary of power (paragraph (1)).28

The provisions as referred to in paragraph (1) do not apply if the person referred to in paragraph (1), except the Notary himself, appears as a face in a public sale, as long as the sale can be made before a Notary, general rental, or general chartering, or becomes a member of a meeting. whose minutes are made by a notary. Therefore, the violation of the provisions as referred to in paragraph (1) results in the deed only having the power of proof as an underhand deed if the deed is signed by the appearer, without reducing the obligation of the Notary who made the deed to pay fees, compensation and interest to the person who made the deed. concerned.29

In line with the provisions in Article 52 of Law Number 30 of 2004 above, a Notary is prohibited from making stipulations or provisions that give something or benefit to his family. This is in accordance with the provisions in Article 53 of Law Number 30 of 2004, it is stated that a Notary deed may not contain stipulations or provisions that give rights and/or benefits to:30

1. Notary, wife or husband of Notary
2. Witness, wife or husband of witness; or
3. People who have a family relationship with a Notary or a witness, either blood relationship in a straight line up or down without any restrictions on degrees or marital relations up to the third degree.

The duties and responsibilities of a Notary is to make an authentic deed, whether determined by laws and regulations or by the wishes of certain people and legal entities that require it. 31 An authentic deed made by a notary has strong evidentiary provisions as long as the truth is not disputed by anyone, unless the refutation of the deed can be proven otherwise. In the sense that the deed made by the Notary has a lie or defect, so that the deed can be declared by the judge as a legally flawed deed.32

The specialty of an authentic deed is a perfect proof (volleding bewijs-full evident) about what is contained in it. This means that if someone submits an official deed to the judge as evidence, the judge

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29 Ibid.
30 Ibid.
31 Ibid., p. 37.
32 Ibid., p. 39.
must accept and consider what is written in the deed an event that has really happened and the judge may not order additional evidence.

A deed can be called authentic and has perfect proving power if it fulfills two conditions, both formal and material. Formal requirements are: made by an authorized official, at the place where the official is domiciled, signed by the parties who were present on the date stated in the deed. Material requirements, namely: the content or material of the deed is correct. Notaries are in charge of making and ratifying (legalizing) private letters, for example: power of attorney, statement letter, letter of approval.

So important is the information contained in the deed that every writing must be clear and firm. This is in accordance with the provisions in Article 42 of Law Number 30 of 2004 which states that the Notary deed is written clearly in an unbroken relationship and does not use abbreviations. Therefore, blank spaces and gaps in the deed are clearly outlined before the deed is signed, except for the deed which is printed in the form of a form based on the laws and regulations. Thus, all numbers to determine the amount or amount of something mentioned in the deed, such as mentioning the date, month, and year are stated with letters and must be preceded by numbers.

One of the deeds that can be made by a notary is the power of attorney to sell. However, as described above, a notary is not allowed to make a deed for himself, his wife/husband, or other people who have a family relationship with a notary, either because of marriage or blood relations in a straight line of descent and/or upwards without restrictions on the third degree. and become a party for oneself, or in a position or with an intermediary of power.

C. Conclusion

Based on the results of the research conducted, several conclusions can be drawn, namely: First, the legal arrangements relating to the granting of power of attorney are regulated in Chapter XVI, Book III of the Civil Code including Article 1792, 1793, 1796 of the Civil Code and Article 1868 of the Civil Code. Special Civil Code regulates the Authentic Deed. In relation to the transfer of land rights, Government Regulation no. 24 of 1997 concerning Land Registration jo. Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Instructions for Implementing Government Regulation Number 24 of 1997 concerning Land Registration requires that any agreement which intends to transfer land rights, especially for land that has been registered (certified), must be proven. with the PPAT/Notary deed. However, along with the fulfillment of all administrative requirements in making a deed of transfer of rights before the Land Deed Maker Officer, various things are often constrained. So that a notary made a breakthrough to address this, by making a preliminary agreement, which is better known as the Sale and Purchase Binding Agreement (PPJB) and the Power to Sell. Second, the Deed of Authorization to Sell has the power of transition as well as in the process of transferring land rights through the Deed of Sale and Purchase, as long as no rules are violated during the transfer process. The legal protection provided by PPJB is paid off and the power to sell made before a public official, in this case a Notary.

The suggestions given on the basis of these conclusions are as follows; First, it is recommended for future researchers to deepen their research on the time limit for granting power of attorney as regulated in Article 1796 and Article 1813 of the Civil Code in relation to absolute power (irrevocable) which correlates with the Instruction of the Minister of Home Affairs Number 14 of 1982 concerning the Prohibition of the Use of Power of Attorney. Absolute as Transfer of Land Rights. Second, it is recommended to the next researcher to conduct a study on parties who are prohibited from being appointed as beneficiaries in the context of the Deed of Authorization to Sell and PPJB in relation to the transfer of land rights by referring to Article 52 and Article 53 of Law Number 30 of 2004 concerning Notary Positions. which regulates the prohibitions for Notaries in making Authentic Deeds.

33 Ibid.,
References


