

USE OF ABSOLUTE POWER IN PROCESS RETURN THE NAME OF PROPERTY CERTIFICATE IN KAMPAR DISTRICT

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Abstract: Absolute power is a form of agreement whereby one person gives power to another person, who accepts it, to carry out an affair on his behalf. The main problem is how strong the proof of absolute power of attorney in land tenure is, why the parties use absolute power of attorney in land control and what are the legal consequences of the transfer of title to property rights certificates in Kampar Regency based on a sale and purchase deed that uses absolute power. This legal research uses an empirical juridical approach, namely a study that uses an approach to the problem by looking at the applicable legal norms and then connecting them with the legal facts found in the field.

Key Words: Absolute Power, Transfer of Name, Certificate of Ownership.

1. INTRODUCTION:

One of the grounds that the Land Deed Maker Official (PPAT) refuses to make a deed is that one of the parties or the parties acts on the basis of an absolute power of attorney which essentially contains the legal act of transferring rights. From this, it is known that according to the applicable provisions, PPAT must refuse to make a deed if one of the parties or the parties acts on the basis of an absolute power of attorney which essentially contains the legal act of transferring rights. However, based on data and facts in Kampar Regency, several PPATs do not refuse to make a Sale and Purchase Deed even though one party or parties based the Sale and Purchase Deed using an Absolute Power Deed which essentially contains the legal act of transferring land rights. In fact, the PPAT Sale and Purchase Deed using the Absolute Power Deed was accepted by the Kampar Regency (State Land Agency (BPN) of Kampar Regency as one of the requirements in the registration of title transfer certificates on land. While the legal actions referred to in this Instruction of the Minister of Home Affairs are acts transfer/transfer of land rights covertly, namely a transaction which is essentially a transfer/transfer of land rights, but is carried out in a way that is not in accordance with the procedures stipulated in Article 19 of Government Regulation Number 10 of 1961 in conjunction with Government Regulation Number 24 1997 concerning Land Registration Article 39 letter D, namely by making a deed of sale and purchase before the Land Deed Maker Official (PPAT), but it is carried out by giving absolute power to the buyer, who based on the power of attorney can take all legal actions and actions regarding the land concerned. everything as can be done by the power of attorney himself as the owner. If you pay attention to the process of granting absolute power of attorney in the transfer of land rights, in practice this can be detrimental to the power of attorney because many of the recipients of this absolute power of attorney abuse the power they receive for different interests or for their personal interests.

2. THEORITICAL FRAMEWORK:

a. Legal Certainty Theory

According to Sudikno Mertokusumo, legal certainty is a guarantee that the law is carried out, that those entitled by law can obtain their rights and that decisions can be implemented.[1]

b. Land Tenure Theory

According to Miriam Budiardjo, power is the ability of a person or group of human beings to influence the behavior of another person or group in such a way that the behavior is in accordance with the wishes and goals of the person or state.[2]

c. Theory of Absolute Power of Attorney

With such power and power of attorney, the recipient of the power of attorney becomes authorized to take legal actions or actions for the benefit of and on behalf of the power of attorney. Based on this power of attorney, he can act on the basis of the *volmacht* and the party giving the power of attorney to administer and carry out all actions relating to the object in the agreement.[3]

3. LITERATURE REVIEW:

Rahmat Soemitro in his book, quoted from Polderman states that public sales are a tool to enter into the Ida Bagus Wyasa Putra has the view that agreement and contract are the same term. Wyasa emphasized that the term contract is an absorption term that is absorbed from English, *contract*, which is a term that refers to an agreement, written (*written agreement*) or unwritten (*oral agreement*), which is made by two or more people to regulate ties and commercial bonding materials. among them.[4]

In general, a power of attorney is a one-sided agreement in the sense that the obligation to carry out an achievement lies only with one party, namely the recipient of the power of attorney.[5]

4. METHOD:

The method used in this study is an empirical juridical approach, namely an approach based on field research methods, namely examining applicable legal provisions and what is happening in people's lives.[6]

5. DISCUSSION:

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 is issued as an effort to eliminate legal actions regarding land that often occur in the community. The transfer of land rights is usually carried out by giving absolute power to the buyer, who based on the power of attorney can carry out all legal actions and actions regarding the land in question, all as can be done by the power of attorney himself as the owner. Based on the Instruction of the Minister of Home Affairs dated March 6, 1982, Number 14 of 1982 *in conjunction with* Jurisprudence of the Supreme Court of April 14, 1988 Number 2584. This prohibition is due to the fact that the making of absolute power is widely misused by parties who carry out covert buying and selling of land. In the absolute power of attorney clause, the sentence "irrevocable power" is always included, so that the recipient of the power of attorney can perform any actions, both management actions and actions of ownership of the land in question. Meanwhile, the making of absolute power of attorney for transactions other than buying and selling land is still possible, because the law of the agreement is only regulating and can arise due to the agreement of the parties involved. In relation to land, the transfer of new rights occurs when the deed of sale and purchase of the transacted land is made and signed, as well as when the name transfer has been carried out or has been registered at the Land Office.

6. ANALYSIS:

A. The power of proof of absolute power of attorney in land control

The power of proof of absolute power of attorney in land control is that in essence it can be implemented as long as it is an integral part of the sale and purchase agreement. Absolute power arises because of the development of needs based on the principle of freedom of contract whose limitations are regulated in Article 1320 *jo* 1338 of the Civil Code. In the absolute power of attorney, there is a clause that the power that has been given by the power of attorney to the recipient of the power of attorney cannot be revoked and does not end with the death of the power of attorney. This absolute power serves to avoid problems in the future and provides a sense of security when the buyer has paid in full but has not received proof of ownership of rights (certificates) that can be reversed in his name. However, if the absolute power stands alone to make the transfer of land rights, then the absolute power includes those prohibited by the Instruction of the Minister of Home Affairs No. 14 of 1982 and PP 24 of 1997 concerning Land Registration.

In a sale and purchase agreement, absolute power is used, which aims to protect the interests of the parties in the sale and purchase agreement. The emergence of absolute power in question is basically used to deal with further legal actions needed after the signing of the sale and purchase agreement deed according to the legal needs to be achieved.

B. The parties use an absolute power of attorney in land control

The existence of an irrevocable power of attorney to sell to oneself, which is given by the prospective seller to the prospective buyer in the framework of the binding agreement for the sale and purchase of land, is not an absolute power which is prohibited based on the Instruction of the Minister of Home Affairs Number 14 of 1982 which has now been regulated in Article 39 point d of Government Regulation Number 24 of 1997. So it does not necessarily make the power of attorney classified as absolute power as long as it does not contain elements of the second point of the instruction.

Thus, the binding sale and purchase must be followed by a power of attorney. Binding and power is also an inseparable pair. The power of attorney in the binding agreement for the sale and purchase of land aims to provide guarantees to the recipient of the power of attorney (buyer), after the conditions required in the sale and purchase of land are met, to be able to carry out the rights that arise in the binding sale and purchase or to sign the deed of sale and purchase themselves without the need for the presence of the power of attorney (seller) before the PPAT.

C. The parties use an absolute power of attorney in land control The legal consequences of changing the name of a certificate of ownership in Kampar Regency based on a deed of sale and purchase using absolute power

Absolute power has been prohibited from using in the transfer of land rights. The absolute power referred to here is an absolute power that stands alone, in contrast to the use of absolute power in the deed of binding sale and purchase. The legal consequence of the cancellation of the deed is the return to its original state, as was the case before the deed was made. For example, in a cancelled sale and purchase deed, the goods and prices must be returned to each party, and if it is no longer possible to return the goods, they can be replaced with similar or equivalent objects according to the agreement of the parties.

7. CONCLUSION:

From the discussion as explained earlier, several conclusions can be drawn, including:

- 1) The power of proof of absolute power of attorney in land control can essentially be implemented as long as it is an integral part of the sale and purchase agreement.
- 2) The parties use an absolute power of attorney in land control due to the ignorance of the parties regarding absolute power which is a power that is prohibited from being used in the transfer of land rights; for the sake of time efficiency so that the rename process can be faster; Notary/PPAT initiative in providing protection for the interests of the parties; so that the process of signing the deed of sale and purchase before the PPAT becomes easier; at the time of sale and purchase of the certificate of the object of sale and purchase, certain processes must still be carried out; and at the time of sale and purchase, the certificate of the object of sale and purchase is still a guarantee of debt.

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