

LEGAL RECONSTRUCTION OF THE POWER OF ATTORNEY TO SELL DEED TO STRENGTHEN LEGAL PROTECTION IN LAND RIGHTS TRANSFERS

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Abstract

This research is motivated by the fact that the practice of using a power of attorney to sell in land transactions has developed as a security measure before the transfer of rights, but in practice it often functions as a substitute for a sale and purchase. This situation creates a conflict between the principle of freedom of contract in the Civil Code and the system of transfer of rights in land law, which requires a deed. Land Titles Registrar (Land Deed Official) and land registration as a constitutive requirement. As a result, a dualism arises between factual control and legal ownership, triggering disputes and legal uncertainty for the parties and public officials. This study uses a normative legal method with a statutory, conceptual, case, and comparative legal approach. The analysis is conducted through an inventory and harmonization of norms to determine the legal status of the power of sale in the civil and land law systems. The results of the study indicate that, first, the power of sale is essentially a representative act within the realm of obligations, so it does not produce material consequences and cannot transfer land rights. Second, the power of sale must be limited to administrative representation and may not be used for the transfer of land rights, in order to ensure legal certainty and prevent legal smuggling. Third, legal certainty is only achieved if the power of sale is positioned as an administrative authority, while the transfer of rights is still carried out through a PPAT deed and land registration, supported by technical regulations and professional supervision to prevent legal smuggling.

Keywords: Power of Attorney to Sell, Transfer of Rights, Legal Certainty, Land, Notary.

INTRODUCTION

The Republic of Indonesia is a state of law where power is subject to law. As a state of law, all power and government are subject to applicable law. Furthermore, law also regulates all its citizens without exception. Law is a tool to safeguard the interests of society. Law regulates all relationships between individuals, individuals with groups or communities, and individuals with the government. (Kusumaatmadja & Sidharta, 2000) The relationship between individuals that occurs continuously when completing their privileges and commitments then creates requirements for evidentiary instruments used to establish rights or opportunities. Verification has been determined in Article 1865 of the Civil Code (KUH Perdata), which states that every individual who claims to have a right, or names an opportunity to confirm their rights or to compete for the rights of others, must demonstrate the existence of that right or the opportunity presented.

A contract is one of the means of proof, where one of the means of proof according to Article 1866 of the Civil Code is written evidence or a contract, which is further regulated in Article 1867 of the Civil Code that proof in writing is carried out with authentic writing or with private writing. The definition of an authentic deed in Article 1868 of the Civil Code is interpreted as

a deed made in a form determined by law by or before a public official authorized for that purpose at the place where the deed was made. A deed that has fulfilled the requirements as stipulated in the Law has binding force and if used as evidence, it provides perfect proof of what is contained therein, as regulated in Article 1870 of the Civil Code.

In society, entering into an agreement is a means of obtaining legal certainty. If there is a future breach of contract, the agreement can serve as evidence. The agreement above is reflected in the buying and selling process. According to the definition in Article 1457 of the Civil Code, "Buying and selling is an agreement in which one party binds himself to deliver an object, and the other party to pay the promised price.

"The ownership of the goods sold does not transfer to the buyer, as long as the handover has not been carried out according to Articles 612, 613, and 616."

The three articles above, which are contained in Article 1459 of the Civil Code, namely Articles 612, 613, and 616, regulate the transfer of tangible and intangible movable property. However, this is different from freehold land which is an immovable object as explained in Article 20 paragraph (1) of Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA).

Land ownership rights in the UUPA whose ownership rights are hereditary and have a very strong ownership status over the land. The holders of land rights are all Indonesian people as subjects of national rights. The subjects of national rights are all Indonesian people throughout time who are united as the Indonesian Nation, namely previous generations, present generations, and future generations. Because land is an absolute object in human life, in addition to having economic value, land is also an inseparable unity with humans, therefore its ownership status can be transferred based on the provisions of Article 20 paragraph (2) of Law Number 5 of 1960 concerning Basic Agrarian Principles, which explains "Ownership rights can be transferred and assigned to other people".

In the context of transfer of rights due to sale and purchase, Article 37 of Government Regulation Number 24 of 1997 concerning Land Registration stipulates that the transfer of land rights can only be registered if evidenced by a deed made by a Land Deed Making Officer (PPAT). In this regard, if a transaction cannot be deeded by a PPAT, for example because it is still in the process of land registration or related to tax administration, a contract can be made which is usually made with a sale and purchase binding agreement (hereinafter abbreviated as PPJB).

In practice, a Notary usually makes a PJB Deed which contains a power of attorney or the Notary also sometimes not only makes the PJB deed, but the Notary also makes a separate (stand-alone) Power of Attorney to Sell deed. The buyer with the power of attorney can later sell to a third party without requiring legal assistance from the seller or in this case it is used to sell to the buyer himself (transferring the name to the next buyer's name). The granting of this power of attorney is considered detrimental to the principal because not a few power recipients abuse this power of attorney for their personal interests.

In practice, the transfer of land rights based on a power of attorney to sell is usually only related to the time of granting the power of attorney, namely whether the power of attorney has passed 1 (one) year or not, as permitted by the National Land Agency. This is certainly very risky. However, obstacles that arise if the transfer of land rights based on a power of attorney to sell is that the grantor dies and the transfer of land rights has not been carried out, thus giving rise to the problem of the transfer not being able to occur because the power of attorney to sell is canceled.

In the case of granting power of attorney to sell a plot of land/building, then as stipulated in Article 1796 of the Civil Code, such power of attorney must be made specifically and expressly stated in the deed. The specific definition and express wording here certainly do not only concern the right to sell an object of land/building in the name of the seller, but also concerning who the buyer is and what the agreed price is, all of which must be stated in the deed of power of attorney to sell.

Basically, the power of sale is not known or regulated in the Civil Code. The existence of the power of sale in the practice of transferring land rights is the result of legal discoveries based on the principle of freedom of contract, which in its development, the existence of the power of sale has been recognized and can be applied in legal traffic provided that the power of attorney is made to guarantee the implementation of certain legal action obligations arising from agreements or agreements that have been made previously. (Syamsudin & Nensy, 2022)

The granting of power of attorney is part of a contractual relationship which is subject to the principle of freedom of contract as implied in Article 1338 of the Civil Code, which gives the parties the authority to freely determine the content, form and terms of the agreement as long as it does not conflict with the law, public order and morality. Based on this principle, the practice of granting authority to sell in a binding sale and purchase agreement developed as a form of legal engineering to guarantee the interests of the buyer before the formal conditions for the transfer of rights are fulfilled. Thus, the power to sell is understood as an accessory agreement that arises from the free will of the parties in order to guarantee the implementation of the main agreement.

However, in land law regulations, there are normative restrictions on this freedom. On the other hand, Article 39 paragraph (1) letter d of Government Regulation Number 24 of 1997 prohibits the use of absolute power of attorney as the basis for transferring land rights. This norm is essentially intended to prevent legal smuggling through the use of power of attorney that substantially functions as a means of transferring rights. However, this general prohibition approach has not been able to comprehensively resolve the problem, because it does not address the root of the problem, namely the lack of a monitoring mechanism for preliminary transactions in the form of PPJB.

The intersection of these two regulations creates a conflict of norms. On the one hand, civil law opens up a space for contractual freedom, allowing for the creation of a power of attorney to sell as collateral for the performance of an obligation. On the other hand, land law limits or even eliminates the legal consequences when such a power of attorney is used as a means of

transferring rights. As a result, a legal act may be considered valid under civil law but not recognized in the land registration system. This inconsistency creates legal uncertainty, particularly for good-faith buyers who have paid in full but are denied protection because their transfer is deemed not to meet administrative-constitutive requirements.

The conflict between freedom of contract and the principle of formal legality in land registration demonstrates a functional vertical disharmony between civil and agrarian norms. This situation not only gives rise to disputes but also places notaries and Land Deed Officials (PPAT) in a dilemma between fulfilling the parties' wishes based on contract law or adhering to land law restrictions. Therefore, a reconstruction of the power of attorney concept is necessary to bridge contractual certainty with the certainty of land rights registration.

In connection with the existence of bad intentions by the parties related to the making of a power of attorney to sell, for example there is an element of fraud on the part of the other party, or even the Notary in carrying out his duties and positions in making the deed makes mistakes or errors caused by unprofessional behavior and favors one of the parties so that problems arise with the deed he made, resulting in the Notary being suspected of a criminal act in making an authentic deed. Therefore, in terms of pouring the agreement of the parties into the form of an authentic deed, especially regarding the power of attorney to sell, it must be carried out with caution, as stated in Article 16 paragraph 1 letter a UUJN, which states that the obligations of a Notary in carrying out his position, the Notary must act trustworthy, honest, thorough, independent, impartial and be in the interests of the parties involved in legal actions. (Adjie, 2015)

In the practice of transferring land rights, the use of a power of attorney to sell deed drawn up before a Notary is still common and is often positioned as an alternative instrument when the parties have not or do not formally carry out a sale and purchase through a Deed of Sale and Purchase before a Land Deed Making Official. At the normative level, the use of a power of attorney to sell should be placed within the framework of granting power of attorney as regulated in the Civil Code, which is representative in nature and not intended as a means of transferring rights. However, in practice, the power of attorney to sell has actually shifted in function and is used as a tool for control and transfer of land rights covertly, thus giving rise to legal uncertainty and land disputes that end in the court process. This phenomenon can be clearly seen in the Mataram District Court Decision Number 234/Pdt.G/2020, which has permanent legal force, where the power of attorney to sell deed is used as the main instrument in a series of legal acts that essentially disguise the legal relationship of sale and land control without a legal mechanism.

The novelty of this research lies in the attempt to reconstruct the nature of the use of the power of sale in the transfer of land rights, which has experienced deviations both conceptually and practically. Normatively, granting a power of attorney is a legal act of representation as regulated in Article 1792 of the Civil Code, which is not essentially intended as a means of transferring rights. However, in practice, the power of sale has developed into an instrument used as a substitute for the legal act of sale and purchase, and is often given an absolute, irrevocable, and valid for a long period of time, so that it substantially functions as a hidden

transfer of land rights. Normatively, Article 37 of Government Regulation Number 24 of 1997 only emphasizes that the transfer of land rights must be evidenced by a PPAT deed, but does not regulate the protection mechanism for preliminary transactions that do not meet the material requirements for the transfer of rights. This normative vacuum causes the PPJB to be outside the land administration control system, even though in practice the PPJB is the most widely used instrument before the AJB is implemented. Therefore, it is necessary to reconstruct the norms of Article 37 of Government Regulation Number 24 of 1997 by adding a mechanism for recording or registering PPJB at the BPN as a form of preventive legal protection for the parties as well as an administrative control instrument before the transfer of rights through AJB is carried out.

RESEARCH METHODS

This research is classified as a type of normative legal research, namely legal research that places law as a building system of norms, namely research on legal principles, research on legal norms, and research on legal rules from legislation, court decisions, agreements and doctrines (teachings). (Nasution, 2008) The approaches used are the conceptual approach, the legislative approach, the case approach, the philosophical approach and the comparative approach. The types and sources of legal materials in this research are secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials. The legal material collection technique used is the library research technique. All legal materials obtained are then analyzed and processed by building arguments based on logical thinking, also interpreting various legal materials. (Nasution S, 1992). The secondary data that has been obtained is then systematically inventoried by collecting all legal sources relevant to the issue of the use of the power of sale in the transfer of land rights, both in the form of legislation, doctrine, and court decisions. Furthermore, all legal materials are analyzed normatively-qualitatively by interpreting the meaning contained in each norm and looking at the relationship between norms to find the right legal principles.

DISCUSSION

1. The essence of the deed of power of attorney to sell by a notary in the transfer of land rights

In the Indonesian civil law system, power of attorney or lastgeving is regulated in Article 1792 of the Civil Code (KUHPerduta), which defines power of attorney as an agreement in which a person grants power to another person to carry out an affair on his behalf. (Subekti, 2004) Power of attorney can be general or specific, and in the practice of land sales and purchases, what is used is a special power of attorney, namely the power given to carry out certain actions, namely selling land objects on behalf of the principal. Although in civil law this power of attorney is valid, in agrarian and land practices, the use of a power of attorney deed by a notary for the transfer of land rights raises various issues from a public law perspective, especially regarding the principle of formality and the validity of the transfer of rights.

A power of attorney to sell made in the form of an authentic deed by a notary has perfect evidentiary power as stated in Article 1868 of the Civil Code. (Harahap, 2015) However, in the context of the transfer of land rights, the existence of this deed cannot immediately replace the Deed of Sale and Purchase (AJB) which should be made by the Land Deed Making Officer (PPAT) according to the provisions of Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration. Therefore, a power of attorney to sell cannot be used as the sole basis for changing the name of the land title certificate at the Land Office, but must be followed by a formal sale and purchase agreement that fulfills the legal elements stipulated in land law.

From agrarian law perspective, the transfer of land rights must be subject to the principles of legal certainty and formal legality. Using a permanent power of attorney to replace a legitimate sale and purchase transaction risks violating the principles of transparency and legal protection for the legitimate owner and third parties. (Harsono, 2007) Furthermore, several practices indicate that power of attorney deeds are often misused to avoid tax burdens or as a means of disguised sales and purchases, which substantially violates the principles of contract law because they do not reflect good faith. (Mertokusumo, 2009)

From a legal perspective, it is important to emphasize that the essence of a power of attorney to sell is limited to granting authority, not the transfer of rights itself. The recipient of the power of attorney merely carries out the will of the grantor and has no substantial rights to the land object, unless the transfer of rights occurs through a legal mechanism in accordance with land law. In this context, the distinction between a power of attorney to sell and a sale and purchase must be clarified to avoid future legal uncertainty. (Sumardjono, 2005)

Although normatively a power of attorney to sell is only a civil agreement of a representative nature, in practice the power of attorney to sell often experiences a "shift in meaning and function", from merely a delegation of authority to a means of indirect transfer of rights. This phenomenon occurs because of the gap between civil law and agrarian law, which does not expressly prohibit the use of a power of attorney to sell as part of a sale and purchase transaction, especially if the parties involved mutually agree tacitly that the power of attorney to sell will function to replace the deed of sale and purchase (AJB). As a result, the power of attorney to sell is often used as a substitute instrument for the AJB, even though in formal and substantial law, this deed does not fulfill the elements and functions of a deed of transfer of land rights. (Sumardjono, 2008)

Article 1320 of the Civil Code stipulates that every valid agreement must meet four requirements: agreement of the parties, legal capacity, a specific matter, and a lawful cause. A notary's power of attorney for sale does formally meet these requirements, but when used to circumvent agrarian law, the agreement can be considered to have an "illegal cause," namely avoiding the provision that requires the transfer of rights to be carried out through a valid Deed of Sale and Purchase. In this context, the Supreme Court has emphasized in several of its decisions that the use of absolute power of attorney intended to transfer land rights constitutes an unjustifiable form of legal smuggling (*rechtsverduistering*).

In addition, if the power of attorney to sell is used in the form of an irrevocable power of attorney, and the recipient of the power of attorney uses the deed to sell the land to himself (self-dealing), then the act is prone to conflicts of interest and opens up room for abuse. Whereas in the legal principle of representation, the recipient of the power of attorney may not act as a party transacting with himself unless expressly permitted by the grantor of the power of attorney. (Setiawan, 2002) This kind of practice is very often found in the transfer of rights to inherited land or land belonging to indigenous communities that have not been fully administered in the national land system.

2. Legal Protection for Parties in a Binding Agreement for the Sale and Purchase of Land Rights with Notarial Power of Sale

Legal protection for parties in a Sales and Purchase Agreement (PPJB) with the power of attorney is a crucial issue in Indonesian land law practice. This is due to the obligatory nature of the PPJB, which creates rights and obligations but does not transfer ownership of the land. (Subekti, 2004) Therefore, legal protection must be designed so that the rights of both buyers and sellers are maintained during the process of transferring rights through a Deed of Sale and Purchase (AJB).

In the context of civil law, legal protection is provided through clear, transparent agreement arrangements that fulfill the elements of Article 1320 of the Civil Code regarding the valid conditions of an agreement. (Subekti & Tjitrosudibio, 2006) If the valid conditions of an agreement are met, then both parties have a strong legal basis to demand fulfillment of performance or compensation in the event of a breach of contract.

However, when the PPJB is accompanied by a power of attorney to sell, legal protection becomes more complex. Power of attorney to sell, according to Article 1792 of the Civil Code, is the granting of authority to act on behalf of the principal, which can basically be revoked at any time. (Subekti & Tjitrosudibio, 2006) In practice, power of attorney to sell is often made in the form of an irrevocable power of attorney on the grounds of the benefit of the principal, but this often contradicts the general principles of contracts and Instruction of the Minister of Home Affairs Number 14 of 1982 which prohibits the use of absolute power of attorney as a means of transferring land rights.

In terms of legal protection for buyers, a PPJB with a power of sale guarantees that the buyer can execute the AJB signing without the seller's presence if the seller is unable to attend. However, without clear provisions in the deed, the buyer risks losing their rights if the power of sale is unilaterally revoked or canceled for legal reasons. Meanwhile, for sellers, legal protection is necessary to prevent the buyer from misusing the power of sale to sell the land to another party at a different price or without fulfilling payment obligations. (Santoso, 2019)

Preventive legal protection can be achieved by ensuring that the PPJB and power of attorney are authentically drawn up before a notary/PPAT, containing clauses governing the conditions for revocation of the power of attorney, the limits of the power of attorney's authority, and dispute resolution mechanisms. Meanwhile, repressive legal protection is provided through civil lawsuits, criminal reports if fraud or embezzlement is found, and deed cancellation in

court if legal defects are found. Thus, legal protection in PPJB with the power of sale must be placed in a balance between the interests of the seller and the buyer, referring to the principles of legal certainty, justice and good faith which are the foundation of contract law and land law in Indonesia.

Legal protection is crucial because, in practice, a PPJB is often used as a means of transaction between parties who are not yet ready to execute an AJB, either because the sale price has not been paid in full, administrative requirements have not been met, or the BPHTB (land acquisition and sale) has not been paid. To anticipate these obstacles, the seller grants the buyer a power of attorney to handle the sale and purchase process once all requirements have been met, even if the seller is not present.

However, as explained previously, the misuse of the power of sale, for example as a substitute for AJB to directly transfer rights, has the potential to violate the provisions of Article 37 of PP 24/1997 concerning Land Registration and Instruction of the Minister of Home Affairs Number 14 of 1982 which prohibits the use of absolute power of attorney, where even though Instruction of the Minister of Home Affairs Number 14 of 1982 has been revoked by Regulation of the Head of BPN No. 10 of 2014 concerning the Revocation of Laws and Regulations Concerning Land, the substance regarding the prohibition on the use of absolute power of attorney remains relevant and is strengthened through the PP on Land Registration. Based on the legal protection perspective, this inappropriate use can lead to disputes, for example, the buyer feels that he has become the owner, while legally the certificate is still in the name of the seller.

Legal protection for parties in a Sales Contract (PPJB) with the power of sale can be divided into two main forms: preventive protection and repressive protection. These two forms of protection complement each other, ensuring the rights and interests of the parties are protected from the initial drafting of the agreement through to the dispute resolution stage.

a. Preventive Protection

Preventive protection is implemented through mechanisms to prevent disputes or losses. In the context of a PPJB with power of sale, preventive measures include:

1) Making Authentic Deeds

The PPJB and the deed of power of attorney should be made in the form of an authentic deed before a notary/PPAT as regulated in Article 1868 of the Civil Code. (Subekti & Tjitrosudibio, 2006) With an authentic deed, the parties obtain perfect evidentiary power so that if a dispute occurs, the burden of proof becomes lighter.

2) Protection Clause in the Agreement

The agreement must contain clauses that detail the limits of the power of attorney, the conditions for exercising the power of attorney, the consequences of violations, and the conditions for revocation of the power of attorney. This is to avoid multiple interpretations, which often lead to disputes. (Harahap, 2016)

3) Registration of Mortgage Rights or Notes on Certificates

If the land has not been fully paid for, the seller can request that the buyer enter into an additional agreement in the form of collateral (such as a mortgage) to protect the seller's rights. Furthermore, a registration in the land register can serve as a reminder that the land is bound by a specific agreement. (Santoso, 2019)

4) Compliance with Prohibition of Absolute Power of Attorney Provisions.

Referring to Article 39 paragraph (1) letter d of Government Regulation Number 24 of 1997 concerning Land Registration, it is stated that Notaries/PPAT are prohibited from making deeds of sale and purchase based on absolute power of attorney. Therefore, notaries are required to ensure that the power of attorney made is specific and limited to the implementation of the AJB, not replacing the AJB itself.

b. Repressive Protection

Repressive protection is a resolution effort undertaken after a violation or dispute has occurred. Its forms include:

1) Civil Lawsuits on the Basis of Default or Unlawful Acts.

If one party fails to fulfill its obligations or abuses its power, the other party may file a lawsuit in court for fulfillment of the obligation, compensation, or cancellation of the deed. (Harahap, 2017)

2) Cancellation of Deed in Court.

If a power of attorney to sell or PPJB is proven to be legally flawed, a judge can order its annulment. For example, in West Nusa Tenggara High Court Decision Number 42/PDT/2017/PT.MTR, the annulment was granted because the power of attorney was exercised before the land price was paid in full.

3) Criminal Action if There are Elements of Fraud or Embezzlement.

Under certain circumstances, misuse of the power of attorney to sell may meet the elements of Article 372 of the Criminal Code (embezzlement) or Article 378 of the Criminal Code (fraud). This step is usually taken when there are indications of malicious intent from the outset. (Moeljatno, 2010)

With this combination of preventive and repressive protection, potential losses for both parties can be minimized. Preventive protection serves to build a strong and clear foundation from the outset of the agreement, while repressive protection provides a way out if the agreement is violated. The relationship between the two demonstrates that legal protection is not sufficient only at the initial stage; a clear and fair dispute resolution mechanism must be in place if problems arise.

3. Concept of Power of Sale which provides legal protection for parties in the transfer of land rights

From the perspective of the theory of legal certainty, the system for forming national legislation requires a clear, non-overlapping institutional structure and firm authority in every stage of regulatory formation, including harmonization and evaluation.

Based on the perspective of legal certainty theory, the law is not only required to provide normative certainty, but must also be able to create order and substantive justice in social practice. When land law only emphasizes formal legality through AJB and land registration without regulating the preliminary legal relationships that actually develop in society, the legal system loses its preventive capacity. Therefore, legal reform is not sufficient to be carried out by prohibiting the use of absolute power, but must be directed at a systemic reconstruction of Article 37 of Government Regulation Number 24 of 1997 as a central norm in the mechanism for the transfer of land rights.

Article 37 of Government Regulation No. 24 of 1997 has so far only emphasized that the transfer of land rights through sale, exchange, gift, company investment, and other legal acts can only be registered if evidenced by a deed drawn up by an authorized Land Deed Official (PPAT).

Conceptually, this norm affirms the constitutive character of the Indonesian land registration system. However, this norm does not yet regulate how the state supervises preliminary transactions that have actually created a civil legal relationship between the parties. This gap has led to the development of PPJB and power of attorney to sell as private security instruments without administrative control.

In this context, this research proposes a paradigm shift from the "absolute prohibition of power of attorney" approach to the "administrative oversight of preliminary transactions" approach. This paradigm shift is crucial because the primary issue is not the existence of the power of attorney, but rather its use as a substitute for the transfer of land rights. Therefore, legal reconstruction should be directed not at eliminating the power of attorney, but rather at limiting the substance of its authority, clarifying its legal nature, establishing administrative oversight mechanisms, and defining the boundaries between obligatory and material relationships.

Theoretically, this idea aligns with Roscoe Pound's thinking on law as a tool of social engineering, where law must be able to direct social practices to run in accordance with the goal of protecting the interests of society. (Pound, 1922) In Indonesian land practice, PPJB and power of sale are legal needs that arise from factual conditions, such as land objects that are still in the process of being divided, still being pledged to banking institutions, unfulfilled tax obligations, or incomplete land administration documents. Therefore, a legal approach that is only prohibitive is no longer adequate. What is needed is a regulatory mechanism that is able to integrate these practices into the national land administration system.

The reconstruction of Article 37 of Government Regulation Number 24 of 1997 in this study is based on four main foundations. First, the need for a clear separation between the obligation

relationship and the property relationship. The PPJB and the power of sale must be positioned only as an obligatory relationship that does not yet produce a material consequence.

Second, the need to limit the substance of the authority in the power of sale to prevent it from becoming a disguised tool for transferring rights. Third, the need to strengthen the supervision of notaries and PPAT through active administrative mechanisms. Fourth, the need for synchronization of norms between the Civil Code, the Notary Law, the Basic Agrarian Law, and Government Regulation Number 24 of 1997 to avoid norm conflicts in practice.

Within this framework, this study proposes that normative changes should no longer be focused on Article 39 of Government Regulation Number 24 of 1997, but rather be systematically implemented through the reconstruction of Article 37 as the primary norm concerning the transfer of land rights. Technically, the most appropriate legislative model is to maintain the substance of Article 37 paragraphs 1 and 2, but add Article 37a, which regulates the recording of PPJB, restrictions on the power of sale, the obligation to verify by notaries and PPATs, and the prohibition on the use of constitutive powers of attorney.

The registration of a PPJB, as proposed in the reconstruction of Article 37, is not intended to provide material consequences for the PPJB, but rather as a preventive legal protection instrument.

From an administrative law perspective, such registration serves as a form of administrative notification that a preliminary legal relationship exists between the parties regarding a particular land object. Thus, the Land Office can monitor if another transaction is proposed for the same object that could potentially give rise to a conflict of interest.

This concept also emphasizes the separation between the principle of consensualism in contract law and the principle of publicity in land law. A PPJB remains understood as an obligatory relationship arising from an agreement between the parties under Articles 1320 and 1338 of the Civil Code, while property rights are still only established through formal mechanisms such as AJB and land registration. With this construction, contractual certainty and registration certainty can be harmoniously reconciled without negating each other.

This reconstruction also places notaries and Land Deed Officials (PPAT) in a more active and responsible position. Previously, notaries and PPATs tended to be positioned as formal administrative officials who merely reflected the parties' wishes in authentic deeds.

However, from a modern legal protection perspective, notaries and PPATs should be understood as gatekeepers in the land law system. Therefore, they are not only required to ensure the formal aspects of documents but are also required to substantiate the authority and legal purpose of the deeds they create.

This obligation is in line with the prudential principle in Article 16 paragraph (1) letter a of the Notary Law which requires notaries to act in a trustworthy, thorough, independent and impartial manner. In the context of this reconstruction, the prudential principle is no longer interpreted narrowly as checking the identity of the parties, but also includes the obligation to identify the potential for legal smuggling through the use of power of attorney.

Furthermore, the reconstruction of Article 37 of Government Regulation No. 24 of 1997 also reflects vertical and horizontal synchronization between legal norms. Vertically, this reconstruction maintains the basic principle of the Basic Agrarian Law (UUPA) that the transfer of land rights must be carried out through a mechanism determined by law. Horizontally, this reconstruction aligns the legal provisions of contracts in the Civil Code with the land administration system, thus respecting the principle of freedom of contract without sacrificing legal certainty regarding land.

CONCLUSIONS AND SUGGESTIONS

1) Conclusions

- a) The essence of a notary's power of attorney to sell in the transfer of land rights is merely the granting of representative authority to the power of attorney to act on behalf of the principal in order to prepare for the transaction, so it does not contain any material nature and does not transfer land rights. Its position is solely in the realm of obligations, while the transfer of rights is a separate legal act that is constitutive and is only valid if it is carried out through a deed of transfer of rights before a PPAT and registered in the land registration system.
- b) Legal protection for the parties in a notarial power of attorney must be realized through an administrative mechanism that actively rejects any use of a power of attorney that indicates legal smuggling, especially powers that function as a substitute for the transfer of rights or permanent control over land. The Land Office, PPAT, and Notary are required to assess the substance of the authority in the power of attorney, not just the formal form of the deed, so that any power of attorney containing constitutive authority must be rejected for use in the transfer of rights process.
- c) The concept of power of attorney to sell which provides legal protection for the parties in the transfer of land rights must be reconstructed to provide effective legal protection for the parties, by no longer positioning the power of attorney as an instrument for the transfer of rights, but rather returning it to its essence as a limited representative relationship.

2) Suggestions

The government and law-making institutions through the Ministry of Law and the National Land Agency need to strengthen technical regulations through four integrated legal instruments, namely the revision of Article 37 of Government Regulation Number 24 of 1997 concerning Land Registration by adding measurable parameters regarding the prohibition of absolute power of attorney and introducing the concept of limited intermediary power of attorney for selling. In addition, it is recommended that regulations regarding the use of power of attorney for selling in the transfer of land rights be updated through the revision of Government Regulation Number 24 of 1997 concerning Land Registration with a norm reconstruction approach that no longer relies on general and absolute prohibitions, but rather on functional regulations that provide clear limits on the authority, time period, and legal consequences of power of attorney.

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