

**LEGAL DUE TO LEGAL DEFECTS IN THE USE OF
POWER (NOTARIAL DEED) IN THE PROCESS OF TRANSFER
RING LAND RIGHTS
(STUDY OF DECISION NUMBER 110/PDT.G/2019/PN.PDG)**

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ABSTRACT

This journal discusses the legal defects in absolute power of attorney in the form of a notarial deed. The results of research in the field at this time are still many who use absolute power in various ways, one of which is absolute power used in the process of transferring land rights, where in several regulations, among others, in the Civil Code and Government Regulation Number 24 of 1997 concerning Land Registration. clearly written regarding the prohibition of using absolute power. This study takes the formulation of the problem regarding legal defects in a notarial power of attorney, then the implementation and practice of granting power in a notarial deed and what are the legal consequences of the process of transferring land rights based on a power of attorney in the form of a notarial deed.

Keywords: absolute power of attorney, notarial deed, transfer of land rights

A. INTRODUCTION

1. Background

Economic development, as part of national development, is one of the efforts to realize a just and prosperous people's welfare based on Pancasila and the 1945 Constitution. This is in line with the direction of development policies in the field of law, which include balancing laws and regulations that support economic activities to face the era of free trade without harming national interests. Development activities in the economic field certainly require the provision of large enough capital because it is one of the determining factors in the implementation of development.

The era of globalization has hit the world, including Indonesia and because of that, people can't help but avoid contact with other people. The Indonesian nation as one of the nations in this world will also be more often and more in touch with other communities in the world in this era of globalization.

Roman law adheres to a principle that the consequences of a legal act only apply to the person who commits the legal act itself. This means that a person who commits a legal act can only bind himself with all the legal consequences of his actions.

According to Tobing (1988: 15), if someone wants to obtain a right, then he himself must take action to obtain that right and cannot be represented to others. In line with the development of the standard of living and the increasing needs of society, gradually Roman law gave up this basic principle and at the same time, representative institutions began to be recognized in society. If a person for some reason cannot carry out a legal act himself in order to obtain a right, then he can appoint another person to represent him in carrying out the legal act..

In carrying out legal actions, it is necessary to have an authorized official who is neutral and/or does not take sides with one party, namely Notary and PPAT. Notary is one of the professions that helps in economic development, the role of the notary as a public official who makes legal products in the form of deeds that have strong and perfect evidence. Notary profession or notary has been known in our homeland, since the Dutch colonized Indonesia, because the notary is an institution that is well known in their lives in their own homeland.

Power of attorney is a statement by which a person authorizes someone that the person given the power of attorney is authorized to bind the power of attorney directly with another party. In this case, legal act carried out by the power of attorney is validly valid as a legal act carried out by the attorney himself. It means that the recipient of the power of attorney can be authorized to act and or act as if he is the person giving the power. According to Soegono Notodisoerjo (1993: 1), Article 1792 of the Civil Code provides that the granting of power is an agreement, where by a person gives power to another person, who accepts it, on his behalf, to complete a business.

The definition of an agreement if it is based on Article 1313 of the Civil Code is a legal act in which one or more people bind themselves to one or more other people, and Article 1338 number (1), guarantees freedom to the parties to determine the content of agreement. the meaning of words "for on his behalf", means that the authorized person acts for and on behalf of the authorizer, so that all causes and effects of this agreement become the full responsibility of the authorizer within the limits of power given.

Notary legal product, namely the deed he made is an authentic deed considering that the notary is a public official and is authorized by the state to make an authentic deed. According to Salim (2016: 13), in the deed made by a notary there are principles that are known in the technique of making the notary deed so that it becomes an authentic deed, even though these principles are not specifically stated in Law Number 2 of 2014 concerning Amendment Based on Law Number 30 of 2004 concerning the Position of a Notary, in general there are 2 (two) principles, namely: Legal Certainty; and Legal Protection.

The legal certainty in question is the provisions or clauses that are able to guarantee the rights and obligations of every citizen or party, that certainty is contained in every deed of agreement. Ensuring order means that the deed made by the parties guarantees order in society. Order is defined as a state of being well-organized or neat. Legal protection for every citizen means that the deed made by or before a notary must provide a sense of security to the parties and other parties.

The legal product in the form of a deed made by a notary is needed for interested parties and also parties who run businesses that require notary services by coming to a notary and making a deed to run their business, the parties feel safe because there is strong documentary evidence, namely the deed made by a notary, It can be said that the role of a notary is also to assist economic development in social life. The notary as the hand of state where the deed made by or before him is an authentic deed that can be used as written evidence, therefore in making a notary deed must meet the requirements in order to achieve the authentic nature of the deed made, for example, the reading of the deed which aims to let the parties know the contents of the deed made and desired by the parties. In Civil Law, valid evidence or recognized by law, one of which is written evidence which is carried out in authentic writings or in handwritten writings. According to Habib Adjie (2008: 120), difference between the two types of deed is that the proof value of an authentic deed has perfect proof, while an underhand deed has proving power as long as the parties acknowledge it and there is no denial from either party.

In an absolute power of attorney, problems can occur if the parties or objects have problems and can cause legal defects. Legal defects can be interpreted as an agreement, policy or procedure that is not in accordance with applicable law, so it is said to be defective and not legally binding. Legal defects can be divided into 2 (two) namely :

1. formal legal disability
2. material law defects

Related to the above, the authors take an example of a case that comes from the decision number 110/pdt.g/2019/PN.Pdg where in the decision one of the parties (plaintiffs) filed a lawsuit to the Padang District Court against 4 (four) parties, wherein the plaintiff and several defendants entered into a partnership regarding project funding on behalf of PT Kasih Sejati amounting to Rp. 1,500,000,000, - (one billion five hundred million rupiah) with a benefit compensation of Rp. 180,000,000,- (one hundred and eighty million rupiah), in the cooperation agreement there is a written provision that Defendant 1 and Defendant 2 provide guarantees to the Plaintiff in the form of 2 (two) Ownership Certificates on behalf of Defendant 3 and Defendant 4 who have provided approval to be used as Collateral by making a Power of Attorney to sell to the Plaintiff with the Deed of Power of Attorney Number 03 dated December 15, 2014, and the Deed of Power of Attorney Number: 4 of 2014 dated December 15, 2014, the certificate has been submitted from the defendant to the plaintiff. Along

with the passage of the cooperation agreement, Defendant 1 and Defendant 2 did not meet the achievements of Plaintiff as stated in the contents of Cooperation Agreement, in other words, Defendant 1 and Defendant 2 had defaulted on the Plaintiff, causing material loss to the Plaintiff.

The plaintiff had warned Defendant 1 and Defendant 2 to carry out their achievements, but Defendant 1 and Defendant 2 did not carry out their performance properly so that the Plaintiff filed a lawsuit and transferred land rights based on the power of attorney to sell (Notarial Deed) given by the defendants. Based on the background of the research above, the writer will discuss following matters: 1) How is implementation in practice regarding the provision of power of attorney in a notarial deed? and 2) What are the legal consequences for the process of transferring land rights based on power of attorney in the form of a notarial deed?

The type of research used in this research is empirical normative research, which is a combination of legal approaches and normative methods with the necessary additions of various empirical elements. The research methods conducted on normative-empirical research refers to the implementation of normative legal provisions (laws) where in the process there are certain legal events that occur in society. The type of data used in this study is secondary data where data obtained from collected sources include library materials which include official documents, laws and regulations, books, research results in the form of reports and so on. The method of data acquisition used by the author in this research is the study of legal materials accompanied by in-depth interviews using several techniques and data acquisition in the field.

B. DISCUSSION

1. Position Case

The author has conducted research on the decision Number 110/Pdt.G/2019/PN pdg. Where the case contained in the decision originated from Plaintiff AM to I President Director of PT. KASIH SEJATI as Defendant I, M as Defendant II, Y as Defendant III, Z as Defendant IV. Through the registration of a lawsuit to the Registrar of the Padang District Court on June 28, 2019 with Case Register Number 110/Pdt.G/2019/PN pdg. Plaintiff AM is the person who provides project funding to be implemented by Plaintiff I, Plaintiff II, Plaintiff III, and Plaintiff IV.

The legal relationship between the Plaintiff and Defendants I, Defendant II, Defendant III, and Defendant IV was formed based on the Deed of Cooperation Agreement Number 1 dated December 4, 2014 between Defendant I and Defendant II and the Plaintiff, and in the Deed of Agreement the certificate has been used as collateral. Ownership of Defendant III and Defendant IV by making a Deed of Sales Power to the Plaintiff made before Notary Dasrizal, SH, whose office is at Jl. Proclamation No. 30 A Padang.

The legal relationship between the Plaintiff and Defendant III and Defendant IV was formed based on the Deed of Cooperation Agreement

between the Plaintiff and Defendant I and Defendant II drawn up before Notary Dasrizal, S.H., whose office is at Jl. Proclamation No.30 A Padang, where Defendant III and Defendant IV have provided collateral for a plot of land in the form of :

1. Certificate of Ownership Number 2736, with an area of 489 M2 in the name of YUSNI AZWAR with Situation Picture Number: 510/1981 dated November 28, 1981, on a plot of land located in Nanggalo Subdistrict, Nagari Nanggalo Village, Padang City.
2. Certificate of Ownership Number 5284, with an area of 1177 M2 in the name of ZAINAL with Measurement Letter Number: 01100/2004 dated March 31, 2004, on a plot of land located in Koto Tengah District, Batipuh Panjang Village, Padang City.

The Letter of Cooperation Agreement between the Plaintiff and Defendant I and Defendant II is a Project Funding Cooperation Agreement by the Plaintiff for a Project carried out by Defendant I and Defendant II as Director and Commissioner of PT Kasih Sejati at Sungai Gelam Regional General Hospital, Muaro Jambi Regency with Contract Number: 215 /KONTRAK-APBN-TP/RSUD.SG/MA.JBI/2014, dated October 29, 2014 in which the contents of agreement are that the plaintiff is willing to fund the project undertaken by Defendant I and Defendant II on behalf of PT Kasih Sejati amounting to Rp1,500,000,000 ,00 (one billion five hundred million rupiah) with compensation for funding gains (profit sharing) of Rp180,000,000.00 (one hundred and eighty million rupiah) after the project implementation is completed and on the cooperation agreement between Defendant I and Defendant II by providing guarantees to the Plaintiff in the form of 2 (two) Ownership Certificates on behalf of Defendant III and Defendant IV who have given their approval to be used as Collateral by making a power of attorney to sell to the Plaintiff in the form of: 1) Power of attorney Number: 03 dated December 15, 2014; and 2) Power of Attorney Number: 04 dated 15 December 2014.

Whereas with Defendant I and Defendant II not meeting the achievements of the Plaintiff, Defendant I and Defendant II have committed acts of default (breach of promise) which have harmed the Plaintiffs materially and up to the date this lawsuit was filed, the Defendants have not fulfilled the achievements that have been agreed with the plaintiff even though the project carried out by Defendant I and Defendant II on behalf of PT Kasih Sejati had been completed at the end of December 2014. The Plaintiff had repeatedly warned Defendant I and Defendant II to immediately fulfill their achievements, as the Defendant Plaintiff suffered material loss and therefore the Plaintiff intends to transfer the rights to the object of guarantee of the cooperation agreement on behalf of the Plaintiff and or sell it to another person in accordance with the applicable provisions. the purpose and content of agreement as well as to restore the losses arising from the default by Defendant I and Defendant II. The Plaintiff has also reported Defendant I and Defendant II to the Police on

suspicion of committing a criminal act of fraud and embezzlement, with SPK, wherein the plaintiff's report is currently under investigation by POLRI investigators due to the lack of goodwill from Defendant I and Defendant II to compensate for the losses incurred. caused The Plaintiff suffered as a result of not fulfilling the achievements in the a quo agreement, so the Plaintiff filed this lawsuit as the best way to resolve the problem between the Plaintiff and Defendant I and Defendant II.

2. Implementation in practice regarding the provision of power of attorney in a notarial deed

Based on Article 1 point 1 of Law Number 30 of 2004 as amended in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the position of a notary, a notary is defined as:

Notary is a public official who is authorized to make an authentic deed and has other authorities as referred to in this Law or based on other laws.

A notary has the authority to make an authentic deed regarding all actions, agreements and stipulations required by laws and regulations and/or desired by the interested parties to be stated in an authentic deed, guaranteeing the certainty of the date of making the deed, storing the deed, providing grosse, copies and quotations of the deed. , as long as the making of the deed is not assigned or excluded to other officials or other people stipulated by law.

The deed in the description above is an authentic deed made by or before a notary according to the form and procedure stipulated in the Notary Law and its amendments, which is referred to as a Notary Deed. However, it should be noted that the notary's obligation to keep the minutes of the deed as intended does not apply if the notary issues the original deed. One of the original deeds based on Article 16 paragraph (3) letter d of Law 2/2014 is a power of attorney.

Minutes of deed based on Article 1 point 8 of Law 2/2014 are minutes of deed are original deeds that include the signatures of the appearers, witnesses, and notaries, which are kept as part of the notary protocol. The difference between a deed made by a notary and a deed made before a notary, various notarial deeds consist of:

1. Deed made by a notary (relaas deed or official deed)
2. This deed is also called the official report deed, which is a deed made by a notary that contains an authentic description from the notary regarding an action taken or a situation seen or witnessed by a notary in carrying out his position as a notary, for example a deed of minutes general meeting of shareholders of a limited liability company, deed of recording of the budget, and others.
3. Deed made before a notary / party deed (deed partij), namely a deed made before a notary containing a description of what was explained

or told by the parties who appeared before a notary, for example credit agreements, and so on.

Thus, the power of attorney in question is included as a deed made before a notary and is in the form of a power of attorney. Signing of Power of Attorney The granting of power according to Article 1792 of the Civil Code (“Civil Code”) is the granting 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. Article 1793 of the Civil Code states that power of attorney 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. because there is no provision that requires the power of attorney to be signed by the recipient of the power of attorney, even if the power of attorney is not signed the power of attorney is still valid. Regarding the signing of the power of attorney, the power of attorney appears before a notary and signs the deed as a appearer. The deed must be read out and signed by each appearer, witness, and notary, unless there are appearers who are unable to sign by stating the reasons explicitly at the end of the deed. Violation of these provisions results in a deed only having the power of proof as an underhand deed and can be a reason for the party suffering losses to demand reimbursement of costs, compensation, and interest from a notary.

Related, the implementation procedure in practice is still carried out by a notary even though there is a prohibition from the Minister's instruction number 14 of 1982, because this can often lead to conflicts in the future, because the use of absolute power is considered contrary to the existence of a statutory regulation in force in Indonesia. The conflict that occurs between the parties can also cause harm to the notary who is blamed for the agreement made by the parties, so it is necessary to know the extent of the validity of the use of absolute power and what are the legal consequences of land using absolute power.

In this case, the author examines that the absolute power of attorney should not be reused because it can cause a loss from the party giving the power of attorney and the absolute power of attorney on its use is contrary to the Civil Code Law, namely in article 1813 of the Civil Code and is also considered to have violated the Civil Code. The fourth condition of the agreement is valid, namely a lawful cause which is regulated in Article 1320 of the Civil Code. An absolute power of attorney is also regulated in the Instruction of the Minister of Home Affairs number 14 of 1982. The use of a power of attorney is also regulated in Government Regulation Number 24 of 1997 concerning Land Registration.

Related to the case contained in substance 4.1 that the author took one example of a case that was sourced from the decision number 110/pdt.g/2019/PN.Pdg where in the decision one of the parties (plaintiffs) filed a lawsuit to the Padang District Court against 4 (four) parties, in which the plaintiff and several defendants entered into a cooperation regarding project funding on behalf of PT Kasih Sejati amounting to Rp. 1,500,000,000,- (one billion five hundred million rupiah) with a benefit compensation of Rp. 180,000,000,- (one hundred and eighty million rupiah), in the cooperation agreement there is a written provision that Defendant 1 and Defendant 2 provide guarantees to the Plaintiff in the form of 2 (two) Ownership Certificates on behalf of Defendant 3 and Defendant 4 who have provided approval to be used as Collateral by making a Power of Attorney to sell to the Plaintiff with the Deed of Power of Attorney Number 03 dated December 15, 2014, and the Deed of Power of Attorney Number: 4 of 2014 dated December 15, 2014, the certificate has been submitted from the defendant to the plaintiff. Along with the passage of cooperation agreement, Defendant 1 and Defendant 2 did not meet the achievements of the Plaintiff as stated in the contents of Cooperation Agreement, in other words, Defendant 1 and Defendant 2 had defaulted on the Plaintiff, causing material loss to the Plaintiff.

3. Legal consequences and accountability for notaries and PPAT as public officials in making authentic deeds

The transfer of land rights is the transfer of land rights from the old right holder to the new right holder according to the provisions of applicable laws and regulations. The transfer of land rights is based on Government Regulation Number 10 of 1961 concerning Land Registration (PP No. 10 of 1961) as amended by Government Regulation Number 24 of 1997 concerning Land Registration (PP No. 24 of 1997). In Article 37 paragraph (1) PP No. 24 of 1997 states that: "The transfer of rights to land and ownership rights to apartment units through buying and selling, exchanging, grants, income in companies and other legal acts of transferring rights, except for the transfer of rights through auction can only be registered if it is proven by a deed. made by the authorized PPAT according to the provisions of applicable laws and regulations."

PP No. 24/1997 divides the transfer of land rights in several forms, namely transfer of rights, transfer of rights by auction, transfer of rights due to inheritance of rights, transfer of rights due to merger or consolidation of companies or cooperatives and assignment of rights. There are 2 (two) ways of transferring land rights, namely switching and being transferred. Switching indicates the transfer of land rights without any legal action being taken by the owner, for example through inheritance. Meanwhile, transfer refers to the transfer of land rights through legal actions carried out by the owner, for example through buying and selling.

The types of transfer of land rights are:

a. Transfer of Land Rights Through Inheritance

Inheritance is the act of transferring property rights to objects from someone who has died to another person appointed by him and/or appointed by the court as heir. After the enactment of PP No. 24 of 1997, the information regarding obligation to register the transfer of ownership rights to land due to inheritance is regulated in Article 36 of PP. 24 of 1997 stated that:

- 1) Maintenance of land registration data is carried out if there is a change in the physical data or juridical data of the registered land registration object.
- 2) The right holder concerned must register the changes as referred to in paragraph (1) to the Land Office.

b. Transfer of Land Rights through Grants:

Based on Article 1666 of the Civil Code, a grant is an agreement whereby the donor in his lifetime, free of charge and irrevocably, delivers something for the purposes of the recipient of grant who receives the delivery. Basically every person and/or legal entity is allowed to be given/receive a grant, unless the recipient of grant is deemed incompetent by law to take legal action. The transfer of land rights due to a grant does not necessarily occur when the land is handed over by the grantor to the grantee. Based on Article 37 PP No. 24 of 1997 it is stated that the transfer of land rights must be proven by a deed made by the authorized PPAT according to the applicable laws and regulations.

In Article 1684 of the Civil Code it is stated that a gift given to a woman who is married cannot be accepted. Article 1685 of the Civil Code stipulates that grants to minors who are still under the control of their parents must be received by the parents who control the recipient of grant. Similar to grants to people under guardianship, the goods that are donated must be received by the guardian by being authorized by the District Court. According to Article 1672 of the Civil Code, the grantor has right to take back the goods that have been donated if the grantee and his descendants die before the grantor, provided that an agreement has been made which is agreed upon by both parties.

c. Transfer of Land Rights Through Auction

Auction is every sale of goods in public by way of offering prices verbally and/or in writing through an effort to gather interested or prospective

buyers. Based on its nature, the auction is divided into 2 (two) parts, namely:

- 1) Executorial auctions are auctions in the context of court decisions relating to mortgages, tax confiscations, confiscations carried out by the Prosecutor's Office or Investigators and confiscations carried out by the State Receivable Affairs Committee.
- 2) Non-executory auctions, namely auctions of goods controlled or owned by central or regional government agencies, State-Owned Enterprises or Regional-Owned Enterprises, and auctions of land rights or property rights to apartment units. owned or controlled by individuals or legal entities badan.

d. Transfer of Land Rights Through Sale and Purchase

Based on Article 37 of Government Regulation Number 24 of 1997 concerning Land Registration, Sale and Purchase Deed (AJB) is legal evidence (other than the minutes of auction, if the transfer of rights is through auction) that the rights to land and buildings have been transferred to other parties. AJB is made before Land Deed Making Officer or the sub-district head for certain areas where PPAT is still rare. By law, the transfer of rights to land and buildings cannot be done under the hands. In the Civil Code Articles 1457, 1458 and 1459 state that the sale and purchase of land is an agreement in which one party binds himself to surrender the land and the other party to pay a predetermined price. When both parties have reached an agreement, the sale and purchase is considered to have taken place, even though the land has not been handed over and the price has not been paid. However, even though the sale and purchase is considered to have occurred, the land rights have not yet been transferred to the buyer. In order for land rights to be transferred from the seller to the buyer, another legal action is still needed, namely in the form of a juridical transfer (transfer of name). This juridical transfer (transfer of name) aims to strengthen the rights of the buyer as the new land owner and this notarial power to sell is used by the power of attorney to sell the land rights of the power of attorney when the power of attorney (debtor) is in default. For the responsibilities of the giver and the power of attorney related to the deed of power of attorney to sell that he made in relation to the obligations and rights of the giver and the power of attorney.

The power of attorney to sell in principle only contains a legal act, namely the act of a representative to make a sale and purchase for and on behalf of the power of attorney. Therefore the power to sell is a special form of power. The process of transferring ownership rights is carried out by making AJB by a notary from the party giving the power of sale and the party receiving the

power of attorney. The process of legitimacy can be proven by a deed of power of attorney to sell which is notarized by an authorized notary. the power to sell is a form of special power of attorney, which is made following the making of a binding sale and purchase agreement 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 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 done and what should not be carried out.

C. CONCLUSION

Based on the descriptions in the previous chapters, the results of this study can be concluded as follows:

1. Notary power of attorney is a power of attorney made in the form of a deed made by a notary that contains an authentic description from a notary regarding an action taken or a situation seen or witnessed by a notary in carrying out his position as a notary. The provisions in the notarial deed basically do not have material legal force even though the formal power is in accordance with the provisions of legislation so that it can cause material legal defects which in the making of the notarial power of attorney can be null and void.
Notary power of attorney is essentially a transfer of land rights which gives authority to the recipient of the power of attorney from the power of attorney to be able to control, give, use and to carry out all legal actions that can be carried out by the holder of the right, therefore the power of attorney is absolutely prohibited by the instructions minister number 14 of 1982 and government regulation number 24 of 1997 on land registration.
2. Notary power of attorney as its function to transfer land rights is very contrary to the fourth requirement in the validity of an agreement in Article 1320 of the Civil Code, which is a lawful cause because it is very detrimental to the power of attorney (party). Until now, an absolute power of attorney is still used by notaries because basically an absolute power of attorney in practice is an irrevocable power of attorney and is required if the grant of power is an inseparable part of an agreement that has a valid legal basis and power of attorney. given to the beneficiary.

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