

Application on Power of Sale Deed based on Deed Recognition of Debt by A Notary Position

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Abstract. *This study aims to determine and analyze the legal application of the selling power of attorney can still be based on the debt acknowledgment deed related to Decision Number 41/Pdt.G/2020/PN.Kdi. The research method used normative juridical approach with descriptive analytical research specifications. The types and sources of data in this study are secondary data consisting of: a. Primary Legal Materials; b. Secondary Legal Materials; c. Tertiary Legal Materials. Methods of collecting data through the Study of Literature and Documentation. While the data analysis method is a qualitative analysis method. The results of this study indicate that the application of the law to the deed of power of attorney in Decision Number 41/Pdt.G/2020/PN. Kdi can still be based on the deed of acknowledgment of debt because the deed is not absolute with Article 1813 jo. Article 1814 of the Civil Code concerning the termination of the power of attorney. The absolute nature of the power granted will have legal force if it explicitly contains the expression that what the plaintiff is empowered to do contains the phrase "irrevocable".*

Keywords: Application; Confession; Debt; Deed; Power; Sell.

1. Introduction

Notary is an honorable position as well as a noble profession (*officium nobile*) which is appointed and dismissed by the government through the Minister of Law and Human Rights, whose dignity must be maintained. In this regard, they who hold the profession, apart from maintaining their integrity, they are also

professional¹. The capacity of a professional Notary is expected to give satisfaction to those who have used the services of a Notary. For this reason, science is a strategic thing for a professional bearer such as a Notary. Sufficient knowledge for a Notary will determine his professionalism in the future².

Notary is a position whose existence is recognized by the state because it is stated in the legislation. One of its powers is to issue a deed, including a deed of power of attorney to sell. The product in the form of this deed is very open to legal dispute among the parties concerned about the deed. For this reason, notaries need legal protection, the urgency of legal protection is so urgent because considering on the other hand, like inheritance law, the legal protection of heirs' property rights has not been so smooth. "Recognition of legal protection of the heirs' property rights in its development does not run smoothly. This is because the inheritance law that applies in Indonesia in its implementation has not been able to effectively provide protection for heirs."³

The product of the power of attorney to sell is the basis for the disputing party to bring a Notary/Official Making Land Deed (Notary/PPAT) in a legal case. The party who binds himself to the deed of power of attorney when he feels aggrieved by the issuance of the deed, of course tries to bring the Notary/PPAT in the case he faces. Even before the signing of the deed, it was read to both parties first. Reading the deed that has been made must be interpreted that it is to be known by the parties who appear before affixing the signature. Signing means not only agreeing to the contents of the deed, but more than that, it means that the parties have understood the meaning contained in the contents of the notarial deed.

The decision on the case numbered 41/Pdt.G/2020/PN Kdi at the Kendari District Court, Southeast Sulawesi Province, has proven that a Notary/PPAT is

¹ Amalia, D. P., & Widayati, W. (2021). *Juridical Analysis of Notary Responsibilities in the Deed Made When His Term of Office Ends (Retirement) Judging*. In *Jurnal Konstatering*, 1 (1) URL: <http://Jurnal.unissula.ac.id/index.php/jk/article/view/19182>

Ariawan, T., Istinah, S. R. D., & Suwondo, D. (2022). *The Implementation of Child Violence Law which Caused the Fatal Death*. In *Law Development Journal*, 4(1) URL: <http://Jurnal.unissula.ac.id/index.php/ldj/article/view/21246>

² Wicaksono, W. A., & Purnawan, A. (2021). *Juridical Review of Notary Deeds Signing which not Performed Simultaneously by Appearing before Notary*. in *Juridical Review*, 3(4). URL: <http://Jurnal.unissula.ac.id/index.php/SANLaR/article/view/20322>

³ Gumilar, P. R., Purnawan, A., & Khisni, A. (2021). *Unlawful Acts Committed by a Notary in Form of Not Completing the Mortgage Process*. Dalam *Sultan Agung Notary Law Review*, 3(3)URL: <http://Jurnal.unissula.ac.id/index.php/SANLaR/article/view/17005> Sugiarto, Y., Bramandoko, D., & Gunarto, G. (2018). "Peran Notaris/PPAT Dalam Pembuatan Surat Kuasa Membebaskan Hak Tanggungan Dalam Perjanjian Kredit Pemilikan

involved as a disputing party in the case. The involvement of this Notary is closely related to the deed of power of attorney issued by Notary Andi Aulia Jusman, SH., M.Kn. This involvement is interesting in terms of legal studies because to what extent a Notary gets legal protection in carrying out his profession. Whereas in the case of borrowing and borrowing related to the issuance of the deed of granting mortgage rights, even if there is a breach of promise (*wanprestasi*), the Notary/PPAT cannot be held accountable.” Notaries/PPATs cannot be held accountable in the event of a default, by either party from the bank as the creditor or the loan recipient as the debtor.

The interesting side of this case is that the Notary who was drawn as "Defendant III" in the case numbered 41/Pdt.G/2020/PN Kdi is related to the issuance of the deed he made. The withdrawal of a Notary into this case is of course from the aggrieved party seeing that there is a legal loophole, either from a formal or material aspect in the issuance of the power of attorney to sell. What legal considerations are the reference for the plaintiff so that he is so sure that the notary is the third Defendant in the case in question. This is a paradox with the honorable position of a notary and can be asked for advice by the public. “The position of a Notary as a functional in society is still being respected. A Notary is usually considered an official from whom a person can obtain reliable advice⁴.”

In case number 41/Pdt.G/2020/PN Kdi, as a PPAT Notary Andi Aulia Jusman, SH., MKn, was involved as a party with the status of Defendant III. Of course, with such a predicate, in terms of his image as a professional in the notarial sector, it certainly becomes an unfavorable spotlight. Status as a defendant for a Notary in the eyes of the public, especially those who are cloudy, will lead to the perception that the Notary is unprofessional. For this matter, it becomes interesting to examine the case because the status of a Notary as a defendant is an interesting legal issue.

2. Research Methods

This research approach uses a normative juridical approach with descriptive analytical research specifications. The types and sources of data in this study are secondary data consisting of: a. Primary Legal Materials; b. Secondary Legal Materials; c. Tertiary Legal Materials. Methods of collecting data through the

⁴ Sidiq, M. E., Sunarsa, A., & Purnawan, A. (2018). “Peran Notaris Dalam Transaksi Pengadaan Tanah Untuk Lokasi Pembangunan Komplek Perkantoran Pemerintah Kabupaten Sekadau””. In *Jurnal Akta*, 5(1), URL : <http://Jurnal.unissula.ac.id/index.php/akta/article/view/2552>

Study of Literature and Documentation. While the data analysis method is a qualitative analysis method.

3. Results and Discussion

The application of the law to the deed of power of attorney based on the deed of acknowledgment of debt can be done by analyzing the decision of the Kendari District Court Number 41/Pdt.G/2020/PN.Kdi. Through the plaintiff's reasons in the lawsuit file. It is known about the background of the issuance of the selling power of attorney. This background will then be analyzed to find the legal application of the power of sale deed based on the deed of debt acknowledgment⁵.

Based on the plaintiff's overall reasons, it can be seen substantively that the issuance of the debt acknowledgment was because the plaintiff borrowed IDR 100,000,000 (one hundred million rupiah) with an interest of 20% (twenty percent) and then the Plaintiff and Defendant I made a debt agreement which was stated in the debt acknowledgment letter. This was followed up by making a deed of power of attorney to sell from the Plaintiff as the power of attorney to sell to Defendant I as the power of attorney to sell before Notary Andi Aulia Jusman (Defendant III) with Deed number 100 dated March 14, 2018, hereinafter referred to as "the power of attorney to sell". The role of a notary is needed in relation to the required notarial deed because in the future it is needed for land registration.⁶

Based on the background of the issuance of the deed of power of attorney based on the deed of acknowledgment of debt from the plaintiff, it can be implicitly interpreted that the legal application of the deed of power of sale based on the deed of acknowledgment of debt between the plaintiff and the defendant is a consensual sale and purchase in accordance with Article 1458 of the Civil Code where land rights are sold transferred to the buyer by taking another legal action. If it is not done then the buyer in this position is very weak⁶. The definition of "other legal actions" is intended to be reflected at the end of clause number 2 of the Plaintiff's reasons above where it is stated that "If the payment of the debt has passed the agreed time period, the Plaintiff

⁵ Rumah (Studi Di Pt. Bank Tabungan Negara Tbk. Cabang Cirebon)". In *Jurnal Akta*, 5(1) URL: <http://Jurnal.unissula.ac.id/index.php/akta/article/view/2525>

⁶ Hartoyo, E., Widayati, W., & Maerani, I. A." *The Law Enforcement in Judges' Decisions based on Hartoyo, E., Widayati, W., & Maerani, I. A. (2022). The Law Enforcement in Judges' Decisions based on Progressive Law. In Law Development Journal, 4(1) URL: http://Jurnal.unissula.ac.id/index.php/ldj/article/view/20783*

agrees to exercise the power to sell which will be made and is an integral part of the debt acknowledgment letter.”

The application of the law to the deed of power of attorney based on the deed of acknowledgment of debt from a Notary is part of the legal protection. The deed of recognition is a form of engagement which is a human right for everyone to use it and is guaranteed by a state of law and democracy as in Indonesia because law enforcement is a form of enforcing human rights. This is understood because theoretically, legal protection is the protection of dignity and recognition of human rights owned by legal subjects based on legal provisions from arbitrariness or as a collection of rules or rules that will be able to protect one thing from another⁷.

The fact that there is a deed of power of attorney to sell from the Plaintiff as the power of attorney to sell to Defendant I as the recipient of the power of attorney to sell before Notary Andi Aulia Jusman (Defendant III) is an application of law as referred to in Article 1870 of the Civil Code. The authentic nature of the power of attorney to sell is a guarantee of legal certainty, order and legal protection for the holder of the power of attorney to sell. Authentic deeds are believed to be strong written evidence when there is a litigation dispute to be perfect evidence⁸.

The authentic nature attached to the deed of Notary Andi Aulia Jusman (Defendant III) which is the application of law as referred to in Article 1870 of the Civil Code. The existence of Article 1870 of the Civil Code emphasizes the legal certainty of the product in the form of an authentic deed. As it is understood that in legal certainty everyone has the same interpretation of the law that is applied. The same interpretation is because Article 1870 of the Civil Code is a positive law that is generally binding which cannot be avoided simply for reasons of not knowing the law. This is because judges are sometimes too normative so that they do not reflect justice. The legal principle of *presumptio iures de iure* states that everyone is considered to know the law without exception. The interpretation as a form of legal certainty is referred to because Article 1870 of the Civil Code is generally binding. In terms of legal protection, the deed of Notary Andi Aulia Jusman (Defendant III) which is the application of law as referred to in Article 1870 of the Civil Code, in the long

⁷ Hudallah, M., & Mashdurohaturun, A. (2022). *Responsibilities of Notaris/PPAT in Credit Agreements & Deed on Granting of Liability Rights (APHT) When the Debtor is in Default*. Dalam Sultan Agung Notary Law Review, 4(1). URL: <http://Jurnal.unissula.ac.id/index.php/SANLaR/article/view/20505>

⁸ Pravitasari, E., & Witasari, A. (2021). *Legal Protection for Buyers against the Understanding of Home Ownership Loans*. Dalam Sultan Agung Notary Law Review, 3(4). URL: <http://Jurnal.unissula.ac.id/index.php/SANLaR/article/view/18357>

term must be viewed as a means of repressive legal protection aimed at resolving disputes. Those who bind themselves through a deed of power of attorney based on a deed of acknowledgment of debt. The existence of Article 1870 of the Civil Code is a form of protection by law so that the object of protection is not harmed morally and materially⁹.

The application of the law as stated in point 13 of the plaintiff's reasons that Defendant III's act of making the deed of power of attorney to sell is against the law because the deed of power of attorney to sell belongs to the type of "absolute power of attorney" which has been prohibited based on the Instruction of the Minister of Home Affairs Number 14 of 1982 Jo. No. 12 of 1984. It is interesting to further analyze the absolute nature of the power of attorney to sell as intended by the plaintiff. The acknowledgment of debt and power of attorney made by the Plaintiff and Defendant I cannot be qualified as an "absolute power of attorney" as referred to in the Instruction of the Minister of Home Affairs Number 14 of 1982 Jo. No. 12 of 1984 concerning the Prohibition of the Use of Absolute Power. From an editorial point of view, the acknowledgment of debt and power of attorney made by the Plaintiff and Defendant I do not appear absolute. The absolute nature of the power granted will have legal force if it explicitly contains the expression that what the plaintiff is authorized to do is irrevocable. If not, then the plaintiff as the power of attorney is still given space to renew the power of attorney given, which means that the absolute nature of the power of attorney referred to by the plaintiff cannot be applied. This is driven by the nature of the civil service which always accommodates the need for written evidence¹⁰.

Legal certainty on the Instruction of the Minister of Home Affairs Number 14 of 1982 Jo. No. 12 of 1984 concerning the Prohibition of the Use of Absolute Power of Attorney is not binding on the actions of Notary Andi Aulia Jusman as Defendant III who made a deed of power of attorney to sell for the Plaintiff and Defendant I. Certainty refers to the guarantee that the law (which contains justice and norms that promote goodness) is correct. The form of obedience referred to is not merely what was ordered by the Instruction of the Minister of Home Affairs Number 14 of 1982 Jo. No. 12 of 1984 concerning the Prohibition of the Use of Absolute Power. On the contrary, If the instruction from the Minister of Home Affairs does not have binding force for certain legal subjects including Notary Andi Aulia Jusman as Defendant III who made the power of attorney to sell, then this power of attorney to sell is not a

⁹ Pratama, M. R. E. (2022). *Effectiveness of Legal Protection on Heirs in Dispute on Sale and Purchase of Inherited Land*. In Sultan Agung Notary Law Review, 4(1).URL: <http://Jurnal.unissula.ac.id/index.php/SANLaR/article/view/20532>

¹⁰ Ong Argo Victoria, Ade Riusma Ariyana, Devina Arifani. (2020). *Code of Ethics and Position of Notary in Indonesia*. Sultan Agung Notary Law Review 2 (4), 397-407, <http://lppm-unissula.com/jurnal.unissula.ac.id/index.php/SANLaR/article/view/13536>

category of absolute power of attorney so this is a form of legal certainty. As perfect evidence, the authentic nature of the deed will bind anyone¹¹.

Legal protection for the actions of Notary Andi Aulia Jusman as Defendant III who made the deed of power to sell for the Plaintiff and Defendant I is a separate aspect theoretically. Justifying the notarial deed as an absolute power of attorney which is not in accordance with the Instruction of the Minister of Home Affairs Number 14 of 1982 Jo. No. 12 of 1984 concerning the Prohibition of the Use of Absolute Power is a problem from the aspect of legal protection in the Indonesian state which is based on law and democracy. The act of justification that is not in accordance with the Instruction of the Minister of Home Affairs No. 14 of 1982 Jo. No. 12 of 1984 violates human rights which does not reflect the existence of legal protection. Notaries in carrying out their authority make the deed subject to Act No. 30 of 2004 concerning Notary Positions (UUJN) jo. Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning Notary Positions (UUJN-P). The basis for the validity of the law has been in accordance with the hierarchy so that its validity depends on a higher norm (the constitution). When Notary Andi Aulia Jusman as Defendant III who made the deed of power of attorney to sell for the Plaintiff and Defendant I did not violate any of the provisions in the UUJN and UUJN-P, theoretically legal protection has been in effect based on the existence of adequate legal instruments so that legal protection can be applied effectively. In a legal relationship, it is necessary to have adequate legal instruments so that legal protection can be applied effectively to every legal subject. Lack of legal instruments adequate of course no have function optimal in apply protection for legal subjects in need. This is also in line with the preamble of letter c of the UUJN which states, Notaries as public officials who carry out the profession in providing legal services to the public, need to get protection and guarantees in order to achieve legal certainty.

In addition, supervision is needed to guard against abuse of authority or errors. Based on the results and discussion described above, the application of law to the deed of power of sale in Decision Number 41/Pdt.G/2020/PN. Kdi can still be based on the deed of acknowledgment of debt because the deed is not absolute with Article 1813 jo. Article 1814 of the Civil Code concerning the termination of the power of attorney. The absolute nature of the power given will have legal force if it explicitly contains the expression that what is authorized by the plaintiff contained the phrase "irrevocable".

¹¹ Deen, Thaufiq., Ong Argo Victoria & Sumain. (2018). *Public Notary Services In Malaysia*. *JURNAL AKTA*: Vol. 5, No. 4, 1017-1026. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/4135>

4. Conclusion

The conclusion of this study is that the application of the law to the deed of power of attorney in Decision Number 41/Pdt.G/2020/PN.Kdi can still be based on the deed of recognition of debt because the deed is not absolute in which editorially the letter of acknowledgment of debt made by the Plaintiff and Defendant I and the attorney the sale made by Notary Andi Aulia Jusman as Defendant III for the Plaintiff and Defendant I does not appear absolute in nature so it is still bound by Article 1813 jo. Article 1814 of the Civil Code concerning the termination of the power of attorney. The absolute nature of the power granted will have legal force if it explicitly contains the expression that what the plaintiff is empowered to do contains the phrase "irrevocable".

5. References

Journals:

- [1] Amalia, D. P., & Widayati, W. (2021). *Juridical Analysis of Notary Responsibilities in the Deed Made When His Term of Office Ends (Retirement) Judging*. In *Jurnal Konstatering*, 1 (1) URL: <http://Jurnal.unissula.ac.id/index.php/jk/article/view/19182>
- [2] Ariawan, T., Istinah, S. R. D., & Suwondo, D. (2022). *The Implementation of Child Violence Law which Caused the Fatal Death*. In *Law Development Journal*, 4(1) URL: <http://Jurnal.unissula.ac.id/index.php/ldj/article/view/21246>
- [3] Deen, Thaufiq., Ong Argo Victoria & Sumain. (2018). *Public Notary Services In Malaysia*. *JURNAL AKTA*: Vol. 5, No. 4, 1017-1026. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/4135>
- [4] Gumilar, P. R., Purnawan, A., & Khisni, A. (2021). *Unlawful Acts Committed by a Notary in Form of Not Completing the Mortgage Process*. Dalam *Sultan Agung Notary Law Review*, 3(3)URL: <http://Jurnal.unissula.ac.id/index.php/SANLaR/article/view/17005>
- [5] Hartoyo, E., Widayati, W., & Maerani, I. A." *The Law Enforcement in Judges' Decisions based on Hartoyo, E., Widayati, W., & Maerani, I. A. (2022). The Law Enforcement in Judges' Decisions based on Progressive Law*. In *Law Development Journal*, 4(1) URL: <http://Jurnal.unissula.ac.id/index.php/ldj/article/view/20783>
- [6] Hudallah, M., & Mashdurohatun, A. (2022). *Responsibilities of Notaris/PPAT in Credit Agreements & Deed on Granting of Liability*

- Rights (APHT) When the Debtor is in Default.* Dalam Sultan Agung Notary Law Review, 4(1). URL: <http://Jurnal.unissula.ac.id/index.php/SANLaR/article/view/20505>
- [7] Ong Argo Victoria, Ade Riusma Ariyana, Devina Arifani. (2020). *Code of Ethics and Position of Notary in Indonesia.* Sultan Agung Notary Law Review 2 (4), 397-407, <http://lppm-unissula.com/jurnal.unissula.ac.id/index.php/SANLaR/article/view/13536>
- [8] Pratama, M. R. E. (2022). *Effectiveness of Legal Protection on Heirs in Dispute on Sale and Purchase of Inherited Land.* In Sultan Agung Notary Law Review, 4(1).URL: <http://Jurnal.unissula.ac.id/index.php/SANLaR/article/view/20532>
- [9] Pravitasari, E., & Witasari, A. (2021). *Legal Protection for Buyers against the Understanding of Home Ownership Loans.* Dalam Sultan Agung Notary Law Review, 3(4). URL: <http://Jurnal.unissula.ac.id/index.php/SANLaR/article/view/18357>
- [10] *Rumah (Studi Di Pt. Bank Tabungan Negara Tbk. Cabang Cirebon)*". In *Jurnal Akta*, 5(1) URL: <http://Jurnal.unissula.ac.id/index.php/akta/article/view/2525>
- [11] Sidiq, M. E., Sunarsa, A., & Purnawan, A. (2018). *"Peran Notaris Dalam Transaksi Pengadaan Tanah Untuk Lokasi Pembangunan Komplek Perkantoran Pemerintah Kabupaten Sekadau"*". In *Jurnal Akta*, 5(1), URL : <http://Jurnal.unissula.ac.id/index.php/akta/article/view/2552>
- [12] Sugiarto, Y., Bramandoko, D., & Gunarto, G. (2018). *"Peran Notaris/PPAT Dalam Pembuatan Surat Kuasa Membebaskan Hak Tanggungan Dalam Perjanjian Kredit Pemilikan*
- [13] Wicaksono, W. A., & Purnawan, A. (2021). *Juridical Review of Notary Deeds Signing which not Performed Simultaneously by Appearing before Notary.* in *Juridical Review*, 3(4). URL: <http://Jurnal.unissula.ac.id/index.php/SANLaR/article/view/20322>

Regulation:

- [1] Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notary
- [2] Act No. 30 of 2004 concerning Notary Positions (UUJN) concerning

Notary Positions

[3] Code of Civil law

[4] Instruction of the Minister of Home Affairs Number 14 of 1982 Jo. No. 12
of 1984 concerning the Prohibition of the Use of Absolute Power