

Responsibilities Of Notaris On Making Authority To Sell Deed Which Contain Power Clause (Case Study Of Decision Number 016 / G / 2014 / Ptun.Semarang)

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Abstract. The granting of power in Indonesian positive law is set forth in Book III Chapter XVI starting from Article 1792 to 1819 of the Civil Code. Giving power to sell is one form of power of attorney that is often found in the community. Article 1813 of the Civil Code on the expiry of the power of attorney may be disregarded, and this is what the power-granting institution is called the Absolute Power. The Absolute Authority is stipulated in the Instruction of the Minister of Home Affairs number 14 year 1982 concerning the prohibition of the use of absolute power clause in the deed of sale and the deed of sale and purchase binding. The legal method used was the normative juridical method, with the specification of descriptive analysis. The data analysis used was qualitative analysis. Based on the results of research and discussion, it can be concluded that the legal protection for the authorizer in the production of the power of sale deed may be granted if the power of sale deed is made in an authentic deed—it is the perfect evidence. Article 1800 to 1806 of the Civil Code that governs the duty of the assignee is a form of legal protection granted by law to the authorizer. The verification and judgment process by the judge to decide the case number 016/G/2014/PTUN.Smg was done equally between the plaintiff and the defendant and given the same right to prove, and the judge in accordance with the principle of the State Administrative Judge is active, of irrelevant evidence, no longer considered, but constituted a unity in the decision of this dispute.

Keywords: Power of Attorney; Power of Sale; Absolute

1. Introduction

Humans are social beings and interact with fellow human beings and their environment. In the life of social society will create to various forms of legal action, the community is a container or a place for the enactment of a law. The law exists because of the existence of society, and the existence of society will be followed by the existence of norms or legal values that live in society.⁴

In the dynamics of society, sometimes, someone cannot do the legal act directly. In this condition then comes the agency representative or power.

The *lastgeving* (giving the power of attorney) agreement has been known since the Middle Ages, which in Roman law is called the *mandatum*. *Mandatum* comes from the word Manus and datum, *manus* means hand, while *datum* has the understanding of giving hands.⁵

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⁴ Widhi Handoko 2014 *Kebijakan Hukum Pertanahan Sebuah Refleksi Keadilan Hukum Progresif* Thafa Media Yogyakarta page. 48.

⁵ Herlien Budiono *Perwakilan Kuasa dan Pemberian Kuasa Majalah Renvoi Nomor 6.42.IV 3* November 2006 page. 68.

Human activities are growing, visible forms of legal relationships by making an agreement, where the agreement often includes a power clause in accordance with what is desired. Provision of power is the most common legal act in society, in addition to the authorization of power is fundamental and important in the process of legal relations and not legal relationships. If someone wants himself represented by other parties in carrying out some activities in accordance with his interests, including in relations with other parties because of the limited time, distance, and other reasons, he will make power of attorney. Therefore, in order to create legal certainty and protection for the parties involved in the power of attorney agreement, an adequate legal order is required to regulate the power of attorney agreement.

The giving of power is provided in Articles 1792 up to Article 1819 of the Civil Code, or in the third XVI Book. The development of the power of attorney provided for in Article 1795 of the Civil Code has undergone a shift. The shift in question is the limitations set forth in Article 1796 of the Civil Code which states that the giving of power consists only of the acts of management, and Article 1797 of the Civil Code which also states that the power of attorney is not allowed to perform anything beyond its power, as well as other limitations of Article 1813 of the Civil Code concerning the time to end up the power of attorney may be diverted, and this shift is what the power-giving institution acts as an absolute power.

In essence, absolute power is a gift of power that cannot be withdrawn by the authorizing party. Also included in the definition of absolute power shall be the power granting authority to the authorized party to control and use the land and perform any legal act which in principle can only be done by a holder of land rights.

In the Instruction of the Minister of Home Affairs number 14 year 1982 regulates the prohibition on the use of absolute power clause in the deed of sale and sale bond binding deed. Although in principle the absolute power is prohibited for use in the making of deeds of transfer of rights (deed of sale and purchase and others), but there are also absolute authorization which is permitted in the sense not included in the prohibition as referred to in Article 39 of Government Regulation No. 24 year 1997 as well as Ministerial Instruction no. 14 year 1982. Excluded from the prohibition are powers which are an integral part or constitute a union of an *integreerend deel* having a valid legal basis. The power is given to someone to run the authorizer interest.⁶

In this case, it is often not realized whether the power is still valid or not. Since with the cancellation of the bond of Sale and Purchase Agreement means that the Power of Attorney was originally an absolute power to become a power that ended up because of the reasons set forth in articles 1813, 1814 and 1816 of the Civil Code.

The power of selling land is one of the authorities of Notary. The basis of the authority is contained in Article 15 paragraph (2) sub-paragraph f of the Notary Law (UUJN), the Notary Authority in land affairs as referred to in Article 15 paragraph (2) letter f of the Notary Law does not increase the authority of Notary in the field land, and not the takeover of authority from the Land Deed Official (PPAT). Notary has authority in the field of land so long as he is not the authority that already exists in PPAT. Therefore, there is no dispute of authority between Notary and PPAT. Each has its own authority in accordance with applicable law rules.⁷

⁶ Herlien Budiono 2008 *Kumpulan Tulisan Hukum Perdata di Bidang Kenotariatan* PT.Citra Aditya Bakti Bandung h. 6.

⁷ Damang "Tugas dan kewenangan Notaris". Artikel. www.negarahukum.com akses internet diunduh tanggal 20 April 2018 pukul 20.00 WIB.

Use of the absolute power clause is prohibited in the Instruction of the Minister of Home Affairs no. 14 year 1982, but in practice the notary in the production of the power of attorney sale still states the clause that the authorizer cannot withdraw the power. Moreover, the authorized power of attorney will also mention in the clause that the authorizer will disregard article 1813, 1814 Book of the Civil Code concerning the expiry of the power of attorney, with the imposition of such clause the authorizer shall not be able to withdraw his/her power without the consent of the accepting party. Whereas it is clear that there is a prohibition of the use of absolute power in the clause of the power of sale, especially for the transfer of land rights.

Research methods

Approach method used in this research was method of juridical normative approach that is a kind of legal research using document data, both legislation and results of court decision and legal literature. Research specification used in this research was descriptive analysis that is research which describes certain case include covering entire life cycle of human being and factors - background of occurrence of a case. Primary, secondary, and tertiary law material were analyzed by using descriptive technique, evaluation techniques and argumentation techniques. Descriptive technique figured out picture or exposure to the object of research as the results of research conducted⁸. The evaluation technique was to justify the results of the research⁹. The argument technique is inseparable from the evaluation technique because the results of the research should be given an argument to get a conclusion. Methods Data analysis used in this study was a qualitative analysis method that is non-statistical analysis. The data already obtained were analyzed in the contents by using legal principles, theories, laws, opinions of legal experts and existing legislation, to be further arranged systematically.¹⁰

2. Research Results and Discussion

2.1. Legal Protection for Authorizer and Receiver of Power of Attorney and in the Implementation of Power of Sale

In the making of Sale deed done in before the Notary, it is necessary to have legal protection for the authorizer and the power. It is very important in the granting of a power of sale considering the authorization of a power of attorney to perform a legal act for the benefit of the power of attorney. Based on the results of the study the authors argued that the making of the power of attorney to sell in an authentic deed can provide a legal protection for the parties. Since in this case, the Notary as a public official, authorized to create an authentic deed, can provide legal advice so that the sale power made can provide protection a balanced law for the parties. The Sale Power of Attorney made before the Notary is an authentic deed so as to provide legal protection to the parties which make it possible to remember authentic deeds as a perfect proof. The power of sale deed made under the terms of the agreement of both parties on the basis of the principle of freedom of contract, that is, a person is free to make or not to enter into an agreement, free to vote with whomever he wishes to

⁸ Mukti Fajar dan Yulianto Achmad 2010 Dualisme penelitian Hukum Normatif dan Empiris Yogyakarta Pustaka Pelajar page.183

⁹ *Ibid*

¹⁰ Arikunto 1997 *Prosedur Penelitian Suatu Pendekatan Praktek* Jakarta Rieneka Cipta page 7.

enter into an agreement¹¹. In the making of the power of attorney of sale, previously, there is an agreement between the authorizer and the authorized person. For the validity of the agreement, the four conditions stipulated in article 1320 of the Civil Code are the agreement of both parties, the existence of the ability of both parties, the object, the existence of good cause.

In Article 1792 of the Civil Code there are elements of empowerment namely: approval, giving power to the authorized person, on behalf of the assignor to carry out an affair. Thus the elements of the treaty as well as the conditions of validity of an agreement (article 1320 Civil Code) must be fulfilled. Generally, a power of attorney is a unilateral agreement in the sense that the obligation to perform the achievement is only on one side only, namely the authorized person.

The duty of the authorized representative is a form of legal protection for the authorizer, which may be described as follows:

- The recipient of the power of attorney shall exercise power and shall be responsible for any costs, damages and relationships arising if the power of attorney is unenforceable (Art. 1800 Civil Code);
- The proxy is liable for negligence either intentionally or unintentionally about the exercise of power (Article 1801 Civil Code);
- The power of attorney shall provide a report on the exercise of power (Article 1802 Civil Code);
- The power of attorney shall be responsible to the person appointed as substitute in the exercise of power (Article 1803);

In the Establishment of the Power of Attorney of sale, there shall be an absolute power clause whereby the power therein contains an irrevocable element by the authorizer, the term "absolute power" is contained in the Instruction of the Minister of Home Affairs Number 14 year 1982 concerning the Prohibition of the Use of an Absolute Power as the Transfer of Rights Land jo Pasa 139 letter d Government Regulation no. 24 year 1997 on Land Registration.

The absolute power which is essentially a transfer of land rights shall be an absolute power granting authority to the authorized party to control and use its land and perform any lawful acts which can only be done by the rights holder".

The term "absolute power" is not essentially a legal term. Therefore, in order to understand its true meaning, we must interpret it etymologically. Etymologically, the definition of the absolute power of attorney is the granting of a power to a person, accompanied by the wide rights and authority and power of a particular object. The power by the authorizer cannot be revoked and will not be null and void for any reason, and/or causes terminating the granting of a power referred to in Article 1813 of the Civil Code and in addition to that the authorized representative is also exempt from the obligation to give due responsibility to the power of attorney.

In our laws, there is no provision that specifically regulates the absolute power. This so-called "absolute power" institution arises from the need for legal practice, intended for the purpose of overcoming an interest. The legal basis for the production and the granting of such power is freedom of contract embraced in the Civil Code, whose restrictions are stipulated in Article 1338 in conjunction with Article 1320 of the Civil Code.

2.2. The process of evidence and legal considerations used by judges to decide cases Number 016 / G / 2014 / PTUN.Semarang

¹¹ Daeng Naja Seri Ketrampilan Merancang Kontrak Bisnis "Contract Drafting" Citra Aditya bakti page 9-10

The present power of attorney is indispensable, given the growing dynamics and mobility of community members. A person can be represented by others in performing a legal act. Power that is often encountered in the life of society is the power to sell. The making of a power of attorney selling in the form of a notarial deed is a familiar matter in the practice of a notary daily.

The development of the power of attorney provided for in Article 1795 of the Civil Code has been shifted, Article 1813 of the Civil Code regarding the expiration of the power of attorney can be disregarded, and this shift is what the power-granting institution acts as an absolute power. In essence, absolute power is a gift of power that cannot be withdrawn by the authorizing party.

The Absolute Power is stipulated in the Instruction of the Minister of Home Affairs number 14 year 1982 concerning the use of absolute power clause in the deed of sale and the sale and purchase bond deed. Although in principle the use of absolute power is prohibited for use in the making of deeds of transfer of rights (deed of sale and purchase and others). In the case study of the verdict number 016 / G / 2014 / PTUN.Smg, the plaintiff filed a lawsuit to the government agency namely the National Land Board Semarang. In one of the principal case there is a power of attorney selling which is the absolute power because the power of attorney selling cannot be revoked within a certain period of time and the power of attorney is used for the transfer of land rights. It is contrary to the instruction of the Minister of Home Affairs No.14 year 1982 the second part letter c, among others, prohibits the Agrarian Officials to serve the settlement the status of rights that use the power of attorney as a proof of the transfer of land rights. Moreover, it is also contradictory to Article 39 paragraph (1) Sub-Paragraph d of Government Regulation No.24 of 1997 which reads as either a party or parties acting on the basis of an absolute power of attorney which essentially contains legal action of transfer of rights, the plaintiff pleads to the judge to be able to declare null and void the registration of the right of ownership right to be the object of the dispute.

The source of the judge's law in determining the case number 016 / G / 2014 / PTUN.Smg was based on the jurisprudence and Consistency of the decision and the legal considerations. It was used to decide a verdict based on the evidence presented by the defendant to reason the plaintiff's argument. The judge agreed that the plaintiff's claim shall be declared rejected, and in the evidentiary process by which the judge shall judge the case equally between the plaintiff and the defendant, and grant the same right to verify.

3. Closing

3.1. Conclusion

Based on the results of research that has been discussed, it can be concluded that:

- Legal protection for the authorizer in the making of the power of sale may be granted if the deed of sale is made in an authentic deed as the perfect evidence. In addition, Article 1800-1806 of the Civil Code that governs the duty of the assignee is a form of legal protection granted by law to the authorizer.
- The process of verification and legal considerations used by judges in deciding the case number 016/G/2014/PTUN.Smg was originated from the plaintiff who sued the Government Agency that is the National Land Agency, which previously the plaintiff has filed a lawsuit in the District Court of Semarang. The verdict was rejected by the judge, who then appealed to the High Court of Semarang, the plaintiff undertook a cassation appeal which the ruling of the Supreme Court of the

Republic of Indonesia and rejected again. Against the decision of the Supreme Court, the plaintiff made an effort the judicial review law which was rejected. And finally filed a lawsuit to the PTUN Kota Semarang, where the source of the judge's law in deciding the case number 016/G/2014/PTUN.Smg based on the jurisprudence and Consistency of the decision.

3.2. Suggestions

The suggestions that writers can provide after doing research are:

- For people who want to make power, especially the power to sell to guarantee a certainty and legal protection for the parties, it is advisable to make the deed of selling power done in front of the notary.
- Notary in the making of the power of sale is expected not to make in the form of absolute power that is contrary to the laws and regulations, and the Notary must be more thorough and careful in the making of the deed which he made, especially the deed of sale, and in carrying out the profession as a notary, he/she should be more notice of the Act of Notary and Notary Code of Ethics, so that in carrying out the mandate can be run perfectly without any dispute in the future.

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