

Liability of Notaries for Debts and Receivables Made With the Deed of Sale and Purchase Binding Agreement and Power of Attorney for Sale Debt Guarantee Certificate

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Abstract. *The results showed that the deed of acknowledgment of debt based on the binding sale and purchase agreement and the selling power of attorney was canceled by the judge, namely the mortgage right in the engagement is the right that gives the mortgage holder the rights to hold the collateral right if there is a default, the mortgage holder can apply for a security confiscation in accordance with the law. The agreement according to article 1320 is a legal agreement made between the two parties whose contents are the rights and obligations of each. The terms of the agreement are subjective terms and objective conditions. The position of the case and the position of the case and the judge's decision related to the binding sale and purchase agreement and the power of attorney to sell, namely the results of the trial by the Panel of Judges, the identity of the defendant, namely Tri Agus Heryono, SH bin Ruyono Sumowidigd, the judge was of the opinion that there was no in persona error in the indictment of the Public Prosecutor, so that the element of whoever was fulfilled. What is meant by benefiting oneself or others is that the maker or other person enjoys the results of their actions either directly or indirectly. What is meant by unlawful means is that the act is carried out in a way that is contrary to the law.*

Keywords: *Accountability; Certificate; Guarantee; Payable.*

1. Introduction

Authentic deed can be made at the request of interested parties to make an agreement. As an agreement, the notarial deed is subject to Article 1320 of the Civil Code regarding the terms of the validity of the agreement, namely the agreement of those who bind themselves; the ability to make an engagement; a certain thing; and a lawful reason. "The first two conditions, namely the existence of an agreement between those who bind themselves and the ability to make an agreement are called subjective conditions, because it concerns the

people or subjects who enter into an agreement, while the last two conditions are the conditions for a certain thing and a because what is lawful is called objective conditions because it concerns the agreement itself or the object of the legal action being carried out.¹ Failure to fulfill one of the four elements causes defects in the agreement and the agreement is threatened with cancellation, namely "can be canceled if it does not meet the subjective requirements or is null and void if it does not meet the objective requirements."²

Agreements are specifically regulated in the Civil Code, for example binding sale and purchase agreements that are not specifically regulated in the Civil Code, such as sale and purchase agreements with trials as regulated in Article 1463 of the Civil Code and sale and purchase with repurchase rights regulated in Article 1519 of the Civil Code. However, based on the system of openness and the principle of freedom of contract, a binding sale and purchase agreement can be entered into based on the provisions of Article 1338 paragraph (1) of the Civil Code. Binding of sale and purchase is "an agreement between the seller and the buyer before the sale and purchase is carried out because there are elements that must be fulfilled for the sale and purchase, including the certificate does not yet exist because it is still in process, or the price has not been settled."³ The binding sale and purchase agreement can also be interpreted as an "assistance agreement that functions as a preliminary agreement in a free form."⁴

The need for written evidence in the form of authentic deeds is increasing in line with the growing demand for legal certainty in social life. Referring to Law no. Including late payments. Article on dispute resolution, this article is useful as a guide to resolve disputes between parties.

It's not uncommon for notaries to deviate from exercising their authority as public officials authorized to make authentic deeds, it's not uncommon for notaries to not only violate Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning Notary Positions (UUJN) and code ethics, but until charged with committing a crime while carrying out his position. UUJN does not explicitly regulate criminal sanctions that can be imposed on a Notary when committing a

¹ Subekti, *Agreement Law*, cet. 19, (Jakarta: PT. Intermasa, 2002), p. 17.

² Kartini Muljadi and Gunawan Widjaja, *Engagement Born from Agreement*, (Jakarta: PT. Raja Grafindo Persada, 2008), p. 94.

³ Subekti, *Covenant Law*, p. 75.

⁴ Herlien Budiono, "Binding of Sale and Purchase and Absolute Power of Attorney," *Renvooi*, Number 10, Th. I, (March 2004), p. 57

crime, so that the sanctions still refer to the Criminal Code (KUHP). For example, a Notary in carrying out his position can be charged with criminal acts of fraud as regulated in Article 378 of the Criminal Code.⁵ Only by adjusting to these various formulations, prosecutors can immediately effectively draw up their charges, as well as judges in drafting their decisions, in this case as described in the Sleman District Court Decision Number: 63/Pid.b/2020/ pn. smn. 2021.

2. Research Methods

The approach method used in this research is a normative juridical approach (legal research). The normative juridical approach emphasizes positive legal inventory research, research on legal principles and legal research to find laws and comparative law. The juridical approach is an approach that refers to applicable laws and regulations, while the normative approach is an approach that is carried out by examining literature or secondary data on legal principles and case studies which in other words are often referred to as library law research. ⁶This research was conducted by examining the contents of the Civil Code, and the notary's accountability for debts and receivables made with the deed of sale and purchase binding agreement and selling power of attorney for debt guarantee certificates. In this study, analytical research specifications were used, namely describing the condition of the object under study and a number of factors that influenced the data obtained were collected, compiled, explained and then analyzed.⁷ namely research that aims to describe something in a certain area and at a certain time.⁸ Research that is descriptive in nature and aims to obtain a complete description of the legal situation that applies in a certain place and at a certain time, or regarding existing juridical phenomena, or certain legal events that occur in society.⁹

3. Results and Discussion

3.1. The deed of acknowledgment of debt based on the sale and purchase binding agreement and the selling power of attorney is legally canceled by the judge

Based on the facts, namely the opinion of the witness of this deed, according to Article 1320, the rights of biological children must be clear. according to the

⁵Wirjono Prodjodikoro, Principles of Criminal Law in Indonesia, (Bandung: Refika Aditama, 2003), p. 36.

⁶ Soerjono Soekanto and Sri Mamudji, 2004, Normative Legal Research A Brief Overview, Jakarta: PT. Raja Grafindo Persada, page 13

⁷Roni Hanitjo Soemitro, Op. Cit, page 230

⁸*Ibid*, page 35

⁹Abdulkadir Muhammad, 2004, Law and Legal Research, Bandung: PT Citra Aditya Bakti, page 102

witness the object is in the form of ownership rights to 11 plots of land located in Bokoharjo Sleman Yogyakarta which were obtained by the first party based on a sale and purchase agreement and the power of attorney for all of them was obtained before a Notary. In the opinion of the witness of this deed, in order to fulfill the provisions of Article 1320 of the Criminal Code, it must be stated on whose behalf, otherwise it will be biased. For the deed of sale and purchase agreement No. 9 there is a name and the object is clearly inherited while for this deed it is not clear whether the object is inherited or not because the name is not mentioned.

The deed is an authentic deed because it was made by a Notary, but if later the deed has legal defects, there are things that are not yet clear, it can be regraded into an underhanded deed and can be canceled by a judge, not null and void. But as long as it has not been canceled by the judge it remains an authentic deed. As long as the judge concedes. In article 1 paragraph (3) of the 1945 Constitution it relates to article 27, while for land articles 52 and 54 PP No.24/1997. Our country is a country where the law of legal representation is in the hands of judges, so the judge's decision is authentic. When a deed has fulfilled its form according to the law, its authenticity is guaranteed by law if it fulfills the conditions specified by law according to Article 1338 of the Indonesian Criminal Code, but can be degraded if the conditions are not met. Requirements must be met first, meaning that the transfer of rights cannot be carried out before the conditions are met. based on Article 1320. PPJB even though there is a power of attorney before the sale and purchase deed is processed before the PPAT because the power of attorney is only a delegation from the prospective seller to the prospective buyer. So in the PPJB it is not permissible to mention sellers and buyers but prospective sellers and prospective buyers. It could be that the Notary advises other things in practice during the consultation period if the parties do not understand the law as long as they do not violate the law. It is already in the HIR that the person making the deed aims to obtain evidence because it is the Notary's obligation if the parties have also given their obligations.

Considering, that at the time of examining the identity of the accused it was stated that the work of the Defendant was a Notary, in which case the proof of the letters submitted and the testimony of the witnesses identified that the Defendant was indeed a Notary by profession. The indictment that was filed at trial the defendant was charged with having malicious intent to make Deeds whose clauses were not in accordance with the legal events that actually occurred by preparing administrative data and lying words to trick the witness Suhartinah to change the debt agreement into a sale and purchase agreement so that it was detrimental Suhartina's witness.

Taking into account the public prosecutor's indictment and the demands filed by the Public Prosecutor, it is explained that the initial involvement of the defendant in this case, as stated by witness Suhartinah, was directly at the signing of the deed on Friday, 19 August 2011 at the Defendant's office on Jl. Ngorojo No. 03 Gowok, Caturtunggal Village, Depok District, Sleman Regency, Prop. Special Region of Yogyakarta because the witness Nora Laksono called him who was actively looking for a notary to make a deed of binding debts. Regarding the charges and considerations of the Public Prosecutor, as well as the facts revealed at trial, they were not appropriate where according to the testimony of witness Suwarna (Bank BRI Account Officer), witness Intan Rahayu Nur Hidayah (daughter of witness Suhartinah),

3.2. Analyzing the position of the case and the position of the case and the judge's decision regarding the binding sale and purchase agreement and the selling power of attorney for Decision Number: 63/pid.b/2020/pn.smn.2021

1. Case Position

It started with a breakdown in loan installments guaranteed by 14 certificates experienced by witness Suhartinah at Bank BRI Cik Di Tiro Yogyakarta starting in 2010 and a warning letter from Bank BRI Cik Di Tiro was given 3 times, the last dated 09 June 2010, but it turned out that witness Suhartinah had not been able to completed its obligation to continue its loan installments so that Bank BRI Cik Di Tiro submitted a notification letter for auction registration dated November 4 2010 to witness Suhartinah.

Witness Suhartinah tried not to auction the 14 (fourteen) certificates that were used as collateral by bank BRI, so witness Suhartinah asked for help from her business partner, namely witness Ny. Rodiah to find a loan to cover her bad credit, then Mrs. Rodiah introduced the witness Mrs. Suhartinah to Nora Laksono Binti Go Sek Lak, who is known among traders as a person who can lend large amounts of money. Furthermore, still in November 2010, witness Suhartinah met Nora Laksono Binti Go Sek Lak alias Nora who stated that she was ready to lend money to pay off witness Suhartinah's loan at Bank BRI Cik Di Tiro and after witness Suhartinah discussed with her family an agreement was made between witness Suhartinah and Nora Laksono Binti Go Sek Lak alias Nora for providing a loan of Rp. 6,000,000,000 (six billion rupiah) with an interest of 2% per month with a guarantee of 11 (eleven) certificates and at that time Nora Laksono Binti Go Sek Lak alias Nora also said that she would give the certificate back to the witness Suhartinah if witness Retno Yuliasuti (daughter of witness Suhartinah) got a loan to return Nora's money Laksono Binti Go Sek Lak alias Nora. Furthermore, on December 29 2010 witness Suhartinah, witness Retno Yuliasuti, witness Yusa Tri Indra Putra and witness Lehan Junaedi left for PT.

Bank BRI Cik Di Tiro Yogyakarta to request a postponement of the auction at the Yogyakarta State Assets and Auction Service Office by depositing Rp. 150,000,000 (one hundred and fifty million rupiah) to Bank BRI Cik Ditiro through witness Suwarna as AO at the said bank.

Then on the forgotten day before January 19 2011 witness Suhartinah was called by Nora Laksono Binti Go Sek Lak alias Nora to come and meet at the BRI Bank Office Cik Di Tiro Yogyakarta to meet witness Suwarna as AO at PT. After failing at the notary Agus Supraptini, SH, then Nora Laksono Binti Go Sek Lak alias Nora invited witness Suhartinah to Notary/PPAT Emanuel Retinanto with a request to make a loan agreement, but was rejected by Notary Emanuel Retinanto, SH on the grounds that the certificate was still guaranteed at Bank BRI and some are in the form of paddy fields.

2. The position of the case and the judge's decision regarding the binding sale and purchase agreement and the selling power of attorney for Decision Number: 63/pid.b/2020/pn.smn.2021

Based on the facts mentioned above, after the Panel examined the evidence submitted by the Public Prosecutor and the Defendant's Legal Counsel, it turned out that the decision in civil case No. 53/Pdt.G/2014/PN.Smn dated 19 January 2015 jo. Appeal Decision No. 68/PDT/2015/PT YYK dated 08 October 2015 jo. cassation decision No: 2385 K/PDT/2016 dated 14 December 2016, both the Subjects and Objects submitted are interrelated, so if during this trial the witnesses and the Defendant are identified and acknowledged, then according to the Assembly insofar as the matters considered are relevant and legally must be judged as a fact except for the material in the indictment put forward otherwise which will be considered in this case. As the Public Prosecutor's indictment after an agreement was reached between witness Suhartinah and witness Nora Laksono regarding the settlement of credit at Bank BRI, it was then explained that witness Nora Laksono actively sought a Notary to make an agreement so that witness Suwarna was introduced as Bank BRI Account Officer to the defendant. At the trial when examining the identity of the accused it was stated that the work of the Defendant was a Notary, which according to the evidence submitted and the testimony of the witnesses identified that the Defendant was indeed a Notary by profession.

The indictment that was filed at trial the defendant was charged with having malicious intent to make Deeds whose clauses were not in accordance with the legal events that actually occurred by preparing administrative data and lying words to trick the witness Suhartinah to change the debt agreement into a sale and purchase agreement so that it was detrimental Suhartina's witness. Taking into account the public prosecutor's indictment and the demands filed by the Public Prosecutor, it is explained that the initial involvement of the defendant in

this case, as stated by witness Suhartinah, was directly at the signing of the deed on Friday, 19 August 2011 at the Defendant's office on Jl. Ngorojo No. 03 Gowok, Caturtunggal Village, Depok District, Sleman Regency, Prop.

Furthermore, at the time of signing the deed as indicted by the Public Prosecutor relating to deception and lying words to persuade witness Suhartinah to change the debt agreement into a sale and purchase and lease agreement, the indictment and considerations of the Public Prosecutor are described based on the testimony of witness Retno Yulastuti and witness Yusa Tri Indra Putra, who received information from witness Suhartinah and witness Intan on Friday 19 August 2011 at the Defendant's office on Jl. Ngorojo No. 03 Gowok, Caturtunggal Village, Depok District, Sleman Regency, Prop. Special Region of Yogyakarta, an agreement has been made which the Defendant stated that «there will be a sale and purchase agreement between Hj. Suhartina with Ms. Nora Laksono regarding 11 certificates»,

Taking into account this situation after the Panel examined the evidence presented at trial, based on the facts revealed at trial as stated by witnesses Nora Laksono, witnesses Suwarno, witnesses Supriyono, witnesses Aziz Zamkarim and witnesses Rodyah and witnesses Lehan Junaedi when connected with evidence of inheritance certificates , IPT letters and deeds as well as decisions on civil cases No. 53/Pdt.G/2014/PN.Smn dated 19 January 2015 jo. Appeal Decision No. 68/PDT/2015/PT YYK dated 08 October 2015 jo. cassation decision No: 2385 K/PDT/2016 dated 14 December 2016 submitted at trial,

3. Judge's decision regarding binding sale and purchase agreement and selling power of attorney for Decision Number: 63/pid.b/2020/pn.smn.2021

Based on the element "with the intent to unlawfully benefit oneself or others, by using a false name or false prestige, by deception, or a series of lies, to incite other people to hand over something to him, or to give debts or write off debts" in above is not met, then the Panel of Judges does not need to consider it further because Article 55 paragraph (1) of the Criminal Code is an accessoir to its main article, namely Article 378 of the Criminal Code. Because one of the elements of Article 378 of the Criminal Code jo. Article 55 paragraph (1) to 1 of the Criminal Code is not fulfilled, then the Defendant must be declared legally and convincingly not proven to have committed the crime as charged in the first alternative indictment so that the Defendant must be acquitted of the indictment. Because the first alternative indictment that had been considered was not proven, the Panel of Judges considered the second alternative indictment as stipulated in Article 266 paragraph (2) of the Criminal Code jo. Article 55 paragraph (1) to 1 of the Criminal Code.

Taking into account Article 191 paragraph (1) of Act No. 8 of 1981 concerning Criminal Procedure Code and other relevant laws and regulations, the Judge Tries:

1. Declare that the Defendant Tri Agus, SH bin Ruyono Sumowidigdo mentioned above, has not been proven legally and convincingly guilty of committing a crime as charged in the first alternative indictment, the second alternative indictment and the third alternative indictment;
2. Acquitting therefore of the Defendant from all charges of the Public Prosecutor;
3. Restore the rights of the Defendant in terms of ability, position, dignity and worth;
4. Determine the evidence presented at the trial court.
5. Burden case costs to the state;

4. Conclusion

The premise has the meaning of past legal actions related to present legal actions. If a person has signed a sale and purchase, then a person's rights switch when the deed is signed in front of an authorized official. In this deed. The terms of the agreement are subjective terms and objective terms. Objective requirements, namely 1. Certain things, namely the type and form of objects that are clear and justified in law and 2. Halal reasons, namely the way to obtain them must be for reasons that are in accordance with legal provisions. As long as the judge concedes. In article 1 paragraph of the 1945 Constitution it relates to article 27, while for land articles 52 and 54 PP No.24/1997. Our country is a country where the law of legal representation is in the hands of judges, so the judge's decision is authentic. The position of the case and the position of the case and the judge's decision regarding the binding sale and purchase agreement and the selling power of attorney for Decision Number: 63/pid.b/2020/pn.smn.2021. Based on the results of the trial the identity of the Defendant has been thoroughly examined by the Panel of Judges, this identity has also been confirmed by the witnesses and by the Defendant as his identity, namely Tri Agus Heryono, SH bin Ruyono Sumowidigd. The aforementioned Judge is of the opinion that there is no in persona error in the Prosecutor's indictment General, so that the element of "whosoever" has been fulfilled. If Article 55 paragraph 1 of the Criminal Code is not fulfilled, then the Defendant must be declared legally and convincingly not proven to have committed the crime as charged in the first alternative indictment so that the Defendant must be acquitted of the indictment.

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