

## **Sale and Purchase Agreement and Notarial Power of Attorney as the basis for making a Land Sale and Purchase Deed**

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**Abstract.** *This study aims to examine and analyze the mechanism of using a notarial power of attorney in the transfer of land rights, the validity of the Sale and Purchase Agreement (PPJB) and the Notarial Power of Attorney as the basis for making a Sale and Purchase Deed (AJB) for the transfer of land rights. The research approach method used in this thesis is the statute approach and the Conceptual Approach. This type of research is normative research. The type and source of data in this study are secondary data obtained through literature studies. The analysis in this study is prescriptive. The results of the study are that the Sale and Purchase Agreement (PPJB) and the Notarial Power of Attorney are authentic deeds made before a Notary and have an important role in the Land Sale and Purchase process, but both have different legal force from the Sale and Purchase Deed (AJB). PPJB serves as an initial binding before AJB which binds the parties to carry out the sale and purchase in the future, and usually contains an agreement regarding the price, the object of the sale and purchase, and other provisions, while the Power of Attorney to Sell gives authority to the buyer or other appointed party to carry out legal actions on behalf of the seller, especially in terms of document management, tax payments, or the process of changing the name on the certificate. The Power of Attorney to Sell can be absolute (irrevocable) or limited, depending on the agreement of the parties and the purpose of granting the power of attorney.*

**Keywords:** *Deed of sale & purchase; Power of Sale; Sale and Purchase Binding Agreement.*

## 1. Introduction

According to customary law, a land sale and purchase is a transparent and cash transfer of land rights. Clearly, the sale and purchase must be conducted in the presence of an authorized official, such as a traditional leader, to ensure the transaction is legal and recognized by the community. Cash means that payment for the land must be made in cash and simultaneously with the transfer of rights, to avoid any disputes regarding payment later.<sup>1</sup>

According to Article 1458 of the Civil Code, a land sale and purchase is considered valid and occurs upon the reaching of an agreement between the seller and the buyer, even if the rights, in the form of a land certificate, have not been handed over and the agreed price has not been paid in full. The sale and purchase are consensual in nature, as stipulated in the article. The rights to the land sold are transferred to the buyer only after the legal act of transferring rights has taken place. This legal act usually takes the form of a sales and purchase agreement authorized by a Land Deed Official (PPAT). The PPAT deed serves as legal evidence that the land rights have been transferred from the seller to the buyer, as stipulated in Article 1459 of the Civil Code.<sup>2</sup>

According to Article 26 of the Basic Agrarian Law (UUPA), land sale and purchase is a legal act intended to transfer ownership of land to another party. This act is further regulated by Government Regulation.

Regarding the definition of land sale and purchase, Boedi Harsono stated that the definition of land sale and purchase is a legal act in the form of the transfer of ownership rights (transfer of land forever) by the seller to the buyer, at which time the buyer also hands over the price to the seller. Sale and purchase that results in the transfer of ownership rights over land from the seller to the buyer is included in agrarian law or land law.<sup>3</sup>

In their daily practice, notaries can be said to be both practicing their profession and serving as public officials, carrying out some government duties in the civil sector. To achieve this balance, notaries must fulfill at least four functions:<sup>4</sup>

- 1) Notary as an official who makes deeds for parties who come to him, whether in the form of a deed of relaas and a deed of partij;
- 2) Notary as an expert in determining the distribution of inheritance;

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<sup>1</sup> Soerjono Soekanto, 1983, *Indonesian Customary Law*, Rajwali, Jakarta, p. 211.

<sup>2</sup> HarunAl Rashid, 1987, *A Glance at Land Buying and Selling*, Ghalia Indonesia, Jakarta, p. 52

<sup>3</sup> Boedi Harsono, 1971, *Basic Agrarian Law, Content and Implementation*, Djangkat, Jakarta, p. 135.

<sup>4</sup> Habib Adjie, 2008, *Civil and Administrative Sanctions Against Notaries as Public Officials*, PT. Refika Aditama, Bandung, pp. 16-17.

3) Notaries act as legal advisors by providing information to parties regarding the preparation of deeds;

4) Notaries as entrepreneurs with all their services try to retain clients so that their office operations continue to run.

The issue of transferring land rights has always been a major and classic issue that often occurs in society, with various ways of transferring the rights that occur causing problems both legally and illegally in the process of its implementation. One of them is through a power of attorney to sell land rights, in the transfer process one party makes a power of attorney to sell the land rights and the other party acts as the authorized person to carry out the sale of the land rights. The use of a power of attorney or delegation of power from one person to another has become commonplace, its meaning is no longer only used by advocates or lawyers to their clients, but also in everyday life. The use of a power of attorney often occurs with a simple process with the aim of simplifying matters and tasks. Power of attorney is the authority to represent to carry out unilateral legal actions. In the sense that the obligation to carry out the performance rests only with one party, namely the authorized person.<sup>5</sup>

Granting a Notarial Power of Attorney is a grant of power of attorney in written form made by a Notary. A notarial power of attorney, which is also often called a power of attorney, is a document made by a notary that gives authority to someone to act on behalf of the person giving the power of attorney in certain legal actions. This document is made before a notary and has perfect evidentiary power.

Before making a power of attorney, the Notary asks for what purpose the power of attorney is being made and requests the identity data of each party, namely the Resident Identity Card (KTP) of the Grantor and Grantee of the Power of Attorney, the Resident Identity Card (KTP) of the husband or wife of the grantor of the power of attorney, and the Family Card (KK) of the grantor and grantee of the power of attorney.<sup>6</sup> The request for these documents is related to legal interests and the requirements demanded by the provisions of Article 36 paragraph (1) of Law Number 1 of 1974 concerning Marriage (Marriage Law) which stipulates that "Regarding joint property, the husband or wife may act with the agreement of both parties."

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<sup>5</sup> Herlien Budiono, 2016, Representation, Power of Attorney and Granting of Power of Attorney, Renvoi Magazine, Number 6.42.IV, p. 68.

<sup>6</sup> Frans Satriyo Wicaksono and Agung Sugiarto, 2009, Complete Guide to Making Power of Attorney Letters, Visimedia, Jakarta, p. 21.

Thus, to release a property right if the property right is part of joint property, the husband or wife can only take legal action against the property with the consent of their partner. In addition, the Notary will ask what special conditions have been made by the parties, so that they can be included in the deed.<sup>7</sup> The obligation for a sale and purchase deed to be made by a PPAT is not only for land rights that have been registered (have a certificate) or Ownership Rights for Apartment Units, but also for land rights that have not been registered at the Regency/City Land Office.<sup>8</sup> Power of attorney to sell land is a power of attorney that contains the transfer of authority from the land owner to another party to handle land sale and purchase matters, such as negotiating prices, signing documents and receiving payments.

The actual purpose of the power of attorney to sell is for the Notary/PPAT to directly make the Deed of Sale and Purchase and then process the change of name on the certificate without the seller having to be present, because the seller has previously given the Notary the power of attorney to sell.

There are several Notaries who make a power of attorney to sell the deed of sale and purchase agreement which has not yet been paid off, which in fact should not be done by a Notary. In granting the Power of Sale as mentioned above, the Power of Sale has become the basis for the process of making a Sale and Purchase Deed to change the name and at the same time it is used as a means of registering the transfer of land rights at the land office where the land is located. So that the registration of the transfer of rights is only based on the power of attorney deed without being followed by a Sales and Purchase Agreement (PPJB), this Power of Attorney to Sell needs to be made in the form of an authentic deed or notarial power of attorney deed.

In the practice of buying and selling land in Indonesia, people often make a Sales Purchase Binding Agreement (hereinafter abbreviated as "PPJB") at a Notary before making a Deed of Sale and Purchase before a PPAT. PPJB is made for several reasons, such as the material conditions of the sale and purchase have not been met, the price has not been paid in full by the buyer and other formulations. As an agreement, PPJB is subject to the provisions in Book III of the Civil Code, not all types of agreements are specifically regulated. PPJB is one form of implementation of the principle of freedom of contract as regulated in Article 1338 paragraph (1) of the Civil Code. According to Subekti, a sales purchase binding agreement is an agreement between the seller and the buyer before the sale and purchase is carried out because there are elements that must be met so that the sale and purchase can be carried out.<sup>9</sup>

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<sup>7</sup> Ibid, p. 19.

<sup>8</sup> Urip Santoso, 2010, Registration and Transfer of Land Rights, Kencana Prenada Media Group, Jakarta, p. 370.

<sup>9</sup> Subekti, 2002, Contract Law, PT. Intermasa, Jakarta, p. 17.

In addition, according to Herlien Budiono, PPJB can also be interpreted as an agreement between the seller and the buyer before the sale and purchase takes place because there are elements that must be fulfilled so that the sale and purchase can be carried out.

In addition, a PPJB can also be interpreted as a support agreement that functions as a preliminary agreement in free form.<sup>10</sup> Therefore, as a form of preliminary agreement, a PPJB is obligatory, meaning that a new PPJB attaches reciprocal rights and obligations between the buyer and seller. The PPJB itself consists of a PPJB that is fully paid and a PPJB that is not yet fully paid. In a PPJB that is not yet fully paid, it is usually not accompanied by a Deed of Power of Attorney to Sell, only regulating the conditions for fulfilling the parties' obligations.

Whereas PPJB Lunas in practice is followed by the creation of a Deed of Power of Attorney to Sell from the seller to the buyer. The Deed of Sale states that the seller authorizes the buyer to carry out legal acts for and on behalf of the seller as the principal. According to Frans Satriyo Wicaksono, a deed of power of attorney to sell is made to provide legal certainty to the land buyer, so that after the terms of the sale and purchase are met, the buyer can make a deed of sale and purchase without requiring the approval and involvement of the seller.<sup>11</sup> If the power of attorney to sell is made purely to sell assets without being related to the PPJB, then the power of attorney can be revoked. However, if the name has been changed, then the deed of sale and purchase has already occurred. To cancel the sale and purchase, a lawsuit can be filed with the competent District Court.

This study aims to examine and analyze the mechanism of using a notarial power of attorney to sell in the transfer of land rights, the validity of the Deed of Sale and Purchase Agreement (PPJB) and the Power of Attorney to Sell made by Notary as the basis for making a Deed of Sale and Purchase (AJB) of land in the context of transferring land rights. Based on the above background, the researcher is interested in discussing a study entitled "Sales and Purchase Agreement and Power of Attorney to Sell as the Basis for Making a Deed of Sale and Purchase of Land".

## **2. Research Methods**

The research approach method used in this thesis is the normative legal research method, which is a legal research conducted by analyzing and researching

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<sup>10</sup> Herlien Budiono, 2004, *Sale and Purchase Agreement and Absolute Power of Attorney*, Renvoi Number 10 Year I, Jakarta, p. 57.

<sup>11</sup> Frans Satriyo Wicaksono, 2009, *Complete Guide to Making Power of Attorney Letters*, Visimedia Pustaka, Jakarta, p. 13.

primary and secondary library materials.<sup>12</sup> The specifications of this research use a prescriptive method, namely an analytical method that provides an assessment (justification) of the object being studied whether it is right or wrong, or what should be according to law in relation to the elements obtained from the results of research on the Sale and Purchase Agreement (PPJB) and Notarial Selling Power of Attorney as the basis for making a Deed of Sale and Purchase (AJB) of land. Data sources come from primary data and secondary data. Data collection methods include Document Study and Library Research.

### **3. Results and Discussion**

#### **3.1. The Mechanism and Legality of a Deed of Power of Attorney to Sell made with a Notarial Deed as the basis for making a Deed of Sale and Purchase (AJB) for Land**

##### **a. Notarial Power of Attorney Deed Mechanism**

A Power of Attorney to Sell is a legal document that authorizes a person (the attorney-in-fact) to sell an asset, such as property or a vehicle, on behalf of the principal. The legal basis for a power of attorney to sell is regulated in the Civil Code, Articles 1792-1819. Article 1792 of the Civil Code defines a power of attorney as an agreement whereby a person grants another person the power to act on his behalf. The validity of a power of attorney to sell is valid and legally acceptable must meet several conditions:<sup>13</sup>

1. Clear identity. Must include the complete identity of the grantor and grantee, including name, address, and other relevant identification.
2. The asset description must clearly describe the asset to be sold, such as the property address or vehicle details.
3. The authority details must plan the authority that must be given to the authorized person, including the actions that can be taken in the sales process.
4. The power of attorney must be signed by both the grantor and the grantee. In some cases, the power of attorney must also be signed in the presence of a witness or notary.

The position of the agreement for the sale and purchase of land rights which is a form of legal agreement is the initial step for the parties to bind themselves to carry out further legal actions based on the UUPA and government regulations

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<sup>12</sup> Soejono Soekanto, 2005, Introduction to Legal Research, University of Indonesia Press, Jakarta, p. 88.

<sup>13</sup> Edi Kusuma Wijaya,., Zuhrah., & Taufik Firmanto., (2024) "The Position and Legal Power of Attorney to Sell in a Deed of Land Sale and Purchase Agreement". In Jurnal Akta, Volume 2 Number 2 July 2024, p. 124. url<https://www.ejurnal.sarauinstitute.org/index.php/nalar/article/download/94/85/570>

on land registration, one of which is by carrying out the sale and purchase in front of the PPAT (signing of the sale and purchase deed). Because the agreement for the sale and purchase is a form of legal agreement, the agreement for the sale and purchase must meet the requirements for the validity of the agreement as stated in Article 1320 of the Civil Code, which include:

1. Agree those who bind themselves;
2. The ability to make a contract;
3. A certain thing;
4. A legitimate reason.

Based on Supreme Court Circular Letter (SEMA) Number 4 of 2016, point 4 establishes clear criteria for determining who is considered a good-faith buyer eligible for legal protection. This criterion is highly beneficial for land buyers, providing legal certainty and protecting their rights in land purchase transactions. It is also crucial for the development and enforcement of Land Law Regulations in Indonesia.

Point 7 of the SEMA also explains that land transfers carried out using a Sales and Purchase Agreement (PPJB) are legally considered to have occurred if the buyer has paid the full price of the land and has also taken possession of the object of the sale and purchase, and this is done in good faith. This explains that for a buyer acting in good faith, even though the sale and purchase has not yet taken place before the PPAT, the sale and purchase is considered valid and transferred to the buyer. The PPJB is made with the aim of binding the prospective seller, so that at the agreed time he will sell his land to the prospective buyer, and at the same time binding the prospective buyer to purchase the object that has been agreed. Although the PPJB has been signed, the physical and legal handover has not yet occurred.

#### **b. Legality of Notarial Power of Attorney to Sell**

The legality of the power of attorney contained in the Deed of Sale and Purchase Agreement is a form of authentic deed that is valid or legal if viewed from the perspective of the Law of Agreements where the conditions for a valid agreement contained in Article 1320 of the Civil Code have been fulfilled, however, when viewed from the Agrarian Law, the Deed of Sale and Purchase Agreement is not a valid deed as a condition for a land sale and purchase transaction because the land sale and purchase transaction will be valid or legal if the deed of sale and purchase is made by a PPAT, but the absolute power of attorney that follows the main agreement that In this case, the Deed of Sale and Purchase Agreement is not included in the prohibitions contained in the Minister



of Home Affairs Instruction No. 14 of 1982 because this power of attorney is needed to protect the interests of the parties, especially the buyer.

Notaries/PPAT play an important role in ensuring the validity and legality of the power of attorney to sell, as well as protecting the interests of the parties involved in the transaction. Notaries/PPAT must act carefully in making deeds, ensuring there is no abuse of power and protecting the interests of all parties involved, must ensure that the power of attorney granted is clear and specific, including the object being sold and the validity period of the power of attorney, ensure that the grantor and recipient of the power of attorney are legally competent and have the authority to carry out the legal actions granted, the power of attorney deed must be made for a lawful reason and not in conflict with statutory regulations, must explain the legal consequences of making the power of attorney deed to the parties, including the possibility of revocation power. By ensuring the validity of documents and transaction processes, Notaries/PPAT play a role in preventing disputes in the future.<sup>14</sup>

### **3.2. The validity of the Notarial Power of Attorney Deed which is based on the Sale and Purchase Agreement which has not yet been paid off.**

A Sales and Purchase Agreement (PPJB) is a preliminary agreement or preliminary agreement that binds the seller and buyer before the main agreement, namely the signing of the Sales and Purchase Deed (AJB). The PPJB contains promises that must be fulfilled by the parties before the transfer of ownership occurs. PPJB binds both parties to fulfill the agreed obligations.<sup>15</sup>

1. Legally, the use of a power of attorney to sell that is given when the PPJB has not been paid in full raises legal doubts, because:
2. There has not been full payment (not in cash), so the clear and cash principle has not been fulfilled.
3. Potential abuse of power by the power of attorney if the buyer has not fulfilled his obligations.
4. Contrary to the principles of justice and the principle of expediency.

In this case, the use of the power of attorney to sell hastily (before full payment) can be considered as legal smuggling, because it is as if the rights have been transferred even though there has not been full payment.

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<sup>14</sup> Farida Kholismu, 2021, "Legal Force of Sales and Purchase Agreements (PPJB) for Land and Buildings with Power of Attorney to Sell," Jurnal Signifikan Humaniora 2 Vol 1, pp. 1–12.<https://jim.unisma.ac.id>

<sup>15</sup> Agus Dwi Haryanto, 2013. "Notary's Principle of Caution in Making a Deed of Power of Attorney to Sell", Faculty of Law, Batik Islamic University, Surakarta 102, Bevinding Journal Vol 01 No 01,<https://journal.uniba.ac.id/index.php/JB/article/view/646>.



A notarial Power of Attorney for Sale that is not based on the payment of the Sales Agreement (PPJB) creates legal uncertainty for the seller, as the land can potentially transfer ownership without the buyer's obligations being fulfilled. Granting a Power of Attorney for Sale before the seller's rights have been fulfilled also creates an imbalance in the legal relationship. Such legal validity does not reflect justice. While this practice simplifies the administrative process (transferring ownership without the seller's presence), it carries the risk of harming one of the parties. Therefore, the principle of benefit is not fully met.

Because it is included in the scope of contract law, the validity of the Sale and Purchase Agreement is subject to the provisions of Article 1320 of the Civil Code. In Article 1320 of the Civil Code there are four conditions that must be met for an agreement to be valid and binding on the parties, namely the agreement of those who bind themselves, the capacity to make a contract, a certain thing and a lawful cause.

These conditions are absolute requirements that must be met for an agreement to be considered valid and binding on the parties. Violation of any of these conditions can result in a flaw in the agreement, resulting in the agreement being cancelled or void by law.<sup>16</sup>

The validity of the PPJB and Notarial Power of Attorney is very important. If the PPJB is made due to abuse of circumstances (*misbruik van omstandigheden*) or is legally flawed because there is an element of fraud (*bedrog*).

According to Subekti, fraud occurs when one party intentionally provides false information, accompanied by cunning tricks so that the other party is persuaded to give their consent.<sup>17</sup>

The validity of a Deed of Sale and Purchase Agreement, Power of Attorney to Sell, and/or Release of Rights to an Object that has not been fully paid for is invalid. Although a power of attorney to sell does not have executorial power, the principle of prohibiting the use of absolute power and its conformity with the rights held by the principal are crucial factors. The Sale and Purchase Agreement (PPJB) plays a crucial role in ensuring an understanding of the rights and obligations between the seller and the buyer. Documents with standard clauses must be agreed to in good faith, and compliance with legal provisions is necessary to avoid legal uncertainty and losses for all parties involved. Second, the use of deeds in property transactions can have serious consequences for legal practice. The use of a power of attorney to sell often violates legal procedures, especially in debt-creditor relationships. Notaries, as the creators of deeds, must ensure compliance with applicable regulations in their legal

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<sup>16</sup> Munir Fuady, 2001, *Contract Law (From a Business Law Perspective)*, 2nd Edition, Citra Aditya Bakti, Bandung, p.30.

<sup>17</sup> Subekti, 2003, *Principles of Civil Law*, Intermasa, Jakarta, page 135.

documents to avoid losses and maintain the rights and legal certainty for all parties.<sup>18</sup>

This research highlights the importance of understanding property law and the role of notaries, and promotes awareness of compliance with legal provisions in property transactions to prevent future risks and disputes.

#### **4. Conclusion**

The Sale and Purchase Agreement (PPJB) and Notarial Power of Attorney are authentic deeds made before a Notary and have an important role in the Land Sale and Purchase process, but both have different legal force from the Sale and Purchase Deed (AJB). The PPJB functions as an initial binding before the AJB which binds the parties to carry out the sale and purchase in the future, and usually contains an agreement regarding the price, the object of the sale and purchase, and other provisions, while the Selling Power authorizes the buyer or other appointed party to carry out legal actions on behalf of the seller, especially in terms of document management, tax payments, or the certificate name change process. The Selling Power can be absolute (irrevocable) or limited, depending on the agreement of the parties and the purpose of granting the power of attorney. The validity of the Sale and Purchase Deed (AJB) based on the Sale and Purchase Agreement (PPJB) and the Selling Power of Attorney, is highly dependent on the fulfillment of the legal requirements of the agreement and the clarity of the rights and obligations of the parties. A valid and fully paid PPJB, as well as a valid Selling Power of Attorney, can be a strong basis for making an AJB. However, if the PPJB is problematic or the Power of Attorney is misused, the validity of the AJB can be questioned. The PPJB and Notarized Power of Attorney are often preparatory steps before the AJB is drawn up, especially in situations where the sale and purchase process cannot be carried out in person. However, it is important to note that the PPJB and Power of Attorney cannot replace the AJB in terms of transferring land rights. The PPJB and Power of Attorney provide legal protection for buyers, especially in the event of default by the seller or other obstacles in the sale and purchase process. However, buyers also need to be careful and ensure that the PPJB and Power of Attorney are legally drawn up and do not conflict with applicable laws.

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<sup>18</sup> Agus Purwo Saputro, 2024, "The Validity of Deeds of Sale and Purchase Agreements, Power of Attorney to Sell, and/or Release of Rights to Objects that Become Collateral at Banks", *Ar-Risalah Scientific Journal*: Volume 22 Number 1, url.<https://ejournal.iaiibrahimiy.ac.id/index.php/arrisilah/article/download/2339/1119/>

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