

STRENGTH OF PROOF OF AN ABSOLUTE POWER OF POWER IN BUYING AND SELLING OF LAND RIGHTS CASE STUDY NUMBER 69/PDT/G/2018/PN.BNA.

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ABSTRACT

The purpose of writing this article is to find out the validity of the sale and purchase of land rights using absolute power of attorney and sale and purchase deeds made by public officials, namely land deed officials (PPAT) in district court decisions number 69/Pdt/G/2018/PN. Bna. This research is normative juridical, in the form of analysis and perspective, namely court decisions, and legal systematics. Based on the results of the research and discussion, it can be concluded that the absolute power of attorney and the deed of sale and purchase of land rights in the District Court decision number 69/Pdt/G/2018/PN. Bna. invalid and canceled by the judge because in the instruction of the Minister of Home Affairs number 14 of 1982 concerning the prohibition of the use of absolute power as transfer of land rights and government regulation number: 24 of 1997 concerning land registration.

Keywords: Power to sell, Transfer of land rights, Deed of sale and purchase.

INTRODUCTION

Proof in the civil court process is that the truth that the judge seeks and realizes is sufficient formal truth (formeel waarheid). M. Yahya Harahap explained that: From the judge's heart and soul, belief is not required. The litigating parties can submit evidence based on lies and falsehood, but theoretically such facts must be accepted by the judge to protect or defend the individual rights or civil rights of the parties concerned.

Proof of civil cases is very important so that the judge's assessment of the evidence will be closely related to the provisions of the evidence based on the existing and/or submitted evidence. According to Achmad Ali and Wiwie Heryani, there are five types of power of proof or power of evidence from evidence, namely:

1. The power of proof is perfect, complete (volledig bewijskracht);
2. Weak, incomplete evidence (onvolledig bewijskracht);
3. The power of partial proof (gedeeltelijk bewijskracht);
4. The decisive power of proof (beslissende bewijskracht); and
5. The strength of proof of resistance (tegenbewijs or kracht van tegen bewijs).

An example of the power of perfect proof of a deed, the strength of this proof when the deed is used as evidence and this deed has a sale and purchase agreement, the plaintiff has succeeded in proving the deed that there is indeed a sale and purchase agreement, between the plaintiff and the defendant.

Land is a source of life, a source of power and a source of prosperity. Realizing its strategic position, in Indonesia's land law politics, the state acts as the only power organization that has the right to regulate its allocation. This role is then used as much as possible for the prosperity of the people through:

1. Regulation of legal relations between people and land,
2. Regulate legal actions between people against land, and
3. Planning for the allocation and use of land for public purposes. (Luthfi Ibrahim Nasoetion, 2004:1).

Land in the legal sense has a very important role in human life because it can determine the existence and continuity of legal relationships and actions, both in terms of individuals and the impact on others. To prevent land problems from causing conflicts of interest in the community, it is necessary to regulate, control and use land or in other words called land law. (Wantjik Saleh 1982: 7).

Land tenure rights are a concrete legal relationship, if they have been linked to certain lands as objects and certain people or legal entities as subjects or rights holders (Boedi Harsono, 2003: 3-25). The right to control the land requires a transfer of rights or juridische levering. The transfer of land rights is different from the transfer of land rights due to inheritance without a will. The transfer of land rights due to inheritance without a will occurs by law by way of the death of the right holder. Meanwhile, the transfer of rights occurs because the holder of the right in question intentionally transfers his rights to another party. The transfer of rights can be carried out by way of buying and selling, exchanging, grants, gifts according to custom, income in the company or inbreng, and will grants or legaat (Boedi Harsono, 2003: 3-25). The transfer of rights in this case is by way of buying and selling. Government regulation number 24 of 1997 concerning land registration in article 37 explains that the deed of sale and purchase (AJB) is legal evidence (in addition to the minutes of the auction, if the transfer of rights is through auction) that the rights to land and buildings have been transferred to other parties. the deed of sale and purchase is made in the presence of a land deed maker (PPAT) or 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 deemed to have occurred. although 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.

Buying and selling based on the provisions of the Civil Code Article 1457 states that, "A sale and purchase is an agreement, whereby one party binds himself to submit an object, and the other party pays the promised price (Melly, 2016: 2). Based on this, the interested parties are expected to be preceded by entering into an agreement.

An agreement is a legal act that appears to accommodate certain interests of community members. Power is generally given for matters of a management nature, including in this case it is given from a superior to a subordinate in a working relationship. However, power of attorney may also be granted as part of an agreement to perform certain services. If the power of attorney is granted as part of the agreement, the power of attorney governing the grant of power of attorney must be signed by both the giver and the recipient of the power of attorney. The granting of power of attorney is in the form of a unilateral agreement, the recipient of the power of attorney does not need to sign a power of attorney. However, if it is made as a reciprocal agreement, the recipient of the power of attorney must sign a power of attorney, as agreements in general. In the case of revocation of power of attorney, the granting of power of attorney in the form of a unilateral agreement can be carried out by revocation of power of attorney unilaterally. However, if the power of attorney is reciprocal, the power of attorney that has been made cannot be withdrawn unilaterally, and compensation and interest payments apply. (Frans Satriyo Wicaksono, 2009: 7).

Today, it is related to this in the case study of the district court case number 69/Pdt/G/2018/PN. Bna. the use of an absolute power of attorney is used as the basis for the transfer of land rights carried out by the defendant together with the official making the land deed obtained in an unjustifiable way, through the power of attorney to sell the defendant as the beneficiary of the plaintiff has purchased his own certificate of ownership of the land used as a guarantee by the plaintiff who was entrusted to the official making the land deed in the decision, therefore the legal action is legal or not according to the judge of the legal action so that the object of the guarantee can be returned to the rightful owner, namely the plaintiff.

RESEARCH METHODS

This type of research is normative legal research. In this study, based on Peter Mahmud Mazuki, legal research was conducted to provide arguments, theories or new concepts as perceptions in solving the problems faced. Therefore, legal research is a process to find the rule of law, legal principles, as well as legal doctrines (Marzuki, 2005). Normative legal research is also known as doctrinal research. Research by conveying judgments and legal decisions that have occurred in accordance with legal norms. This rule research method uses a case approach to examine Decision number 69/Pdt/G/2018/PN/Bna.

RESULTS AND DISCUSSION

The problem is how to prove the absolute power of attorney which is used as the basis for the transfer of land rights in the case of court decision number 69/Pdt/G/2018/PN. Bna.

Based on the decision of the Banda Aceh District Court number 69/pdt/g/2018/pn.bna. explained that the plaintiff had a debt to the defendant and then the defendant took the initiative to make a debt agreement before a notary and PPAT without the knowledge of the plaintiff with a guarantee of a land certificate belonging to the plaintiff, the power to sell emerged because of a request from the defendant to the notary. The purpose and objective of the defendant is to transfer the land rights from the plaintiff to the defendant so that the land that is the object of collateral from the debt agreement becomes the property of the defendant without the knowledge of the plaintiff as the owner of the land rights.

Based on the Power of Attorney to Sell Number: 02 made by a notary, then the Defendant has made a Sale and Purchase Deed in which the Defendant has purchased the Plaintiff's own land without the knowledge and permission of the Plaintiff as the legal owner of the case object, by making a Sale and Purchase Deed Number: 29/ 2016 dated 09-08-2016 to the Defendant Notary in Banda Aceh without the presence of the Plaintiff before the Defendant, and at the time of making the Deed of Sale and Purchase by the Defendant, the Plaintiff never provided evidence of Land and Building Tax for the last 5 years, which should have been proof of payment of Land Tax and Buildings The last 5 years are a requirement in making the Deed of Sale and Purchase of land, therefore the Deed of Sale and Purchase Number:29/2016 dated 09-08-2016 which was made to the Defendant based on an unauthorized Selling Authorization is a Sale and Purchase Deed which is legally flawed and has no legal force.

The transfer of land rights based on an absolute power of attorney in this case is invalid because it is based on the actions of the defendant which cannot be justified by applicable law in Indonesia. In practice, a good and correct process of transferring land rights is that the plaintiff and the defendant must make a binding sale and purchase agreement first because the transfer of land rights or the sale and purchase of land must use a deed of sale and purchase made before a public official, namely the official making the land deed. (PPAT) in addition to other officials such as the sub-district head with an underhand agreement.

According to the testimony of the expert witness in the case of the decision, the witness explained that the power of attorney may be used in the transfer of land rights, but it may not be absolute power, because the use of absolute power does not pay the BPHTB, then there are State rights that are deducted. Absolute power can be prevented, does not necessarily create a new certificate. Meanwhile, the exception of absolute power of attorney may be applied to bank credit; That those who hold or control the debt collateral may not sell the collateral, the Bank may use absolute power because of the recognition of the debt, there are requests for justice based on the Almighty God.

Regarding power of attorney evidence, including written evidence, the arrangements are contained in Articles 138, 165, 167 HIR, Stbl 1867 Number 29. What is meant by written evidence or letters is anything that contains reading signs intended to pour out the heart or thoughts. someone and used as evidence. Letters as written evidence can be distinguished in a deed and a

non-deed letter, then the Deed itself consists of an Authentic Deed and an Underhand Deed, so that in the law of proof there are three types of letters, namely as follows:

- a. Authentic deed
- b. Deed Under Hand
- c. Letter Not Deed

According to A Pitlo, a deed is a signed letter, made to be used as evidence and to be used by the person for whom the letter was made (Teguh Samudra, 1992: 37). Sudikno Mertokusumo, said that a deed is a signed letter containing events that form the basis of a right or an engagement, which was made from the beginning intentionally for proof. So to be classified as a deed, the letter must be signed, it is as stated in Article 1869 of the Civil Code. The function of the signature in a deed is to facilitate identification in order to distinguish between a deed made by one person and one made by another. As mentioned above, according to its form, the deed consists of an authentic deed and a private deed. According to Sudikno Mertokusumo, what is meant by an authentic deed is a deed made by an official who is authorized to do so by the authorities, according to the provisions that have been determined, either with or without the assistance of an interested party who records what is requested to be included in it by an interested party. made with the intention of providing information about an important matter. There are 4 (four) kinds of statements: either with or without assistance from interested parties who record what is requested to be included in it by the interested party. A statement is made with the intention of providing information about an important matter. There are 4 (four) kinds of statements: either with or without assistance from interested parties who record what is requested to be included in it by the interested party. A statement is made with the intention of providing information about an important matter. There are 4 (four) kinds of statements:

1. Self Declaration Letter;
2. Debt;
3. ability and
4. Work.

The statement letter also has a general function that is intended for the Maker Party, the Receiving Party, and also the Party stated in the Statement Letter. Legally, a statement letter will only have legally binding force and the power of proof is equivalent to an authentic deed if the truth is recognized by the person who is brought before the person who signed it. This is regulated in Article 1875 of the Civil Code which states:

*"If someone denies his writing or signature, or if his heirs or the person who has rights thereof do not acknowledge it, then the judge must order that the veracity of the writing or signature be examined before the court."*As the decision of the Supreme Court No. 3901K/Pdt/1985 dated November 29, 1988 stated:

"Evidence documents which are mere statements from people who give statements without being examined at trial, do not have any proof of strength or cannot be equated with testimony"

Therefore, a strong statement becomes evidence if it is acknowledged by the person who made the statement and is based on the information/explanation in the trial related to the statement letter. However, in my opinion, the statement should not be considered a blank paper if there is no acknowledgment or examination in court. Because basically, the statement can be made as preliminary evidence or additional evidence in the civil or criminal proof process.

The granting of power of attorney Article 1792 of the Civil Code is an agreement by which one person gives power to another. who accepts it to carry out an affair on his behalf. Because the power of attorney is an agreement, the power of attorney and the recipient of the power of attorney can make a power of attorney in accordance with the agreement other than what has been determined by law (Yahya Harahap, 1986: 306). In Article 1793 of the Civil Code it is further explained that: "Power of attorney can be given by a general deed, a letter under the hand and orally." in general, for all the interests of the power of attorney. (Soedharyo Soimin, 2010: 445).

Permissible Absolute Power In order to avoid uncertainty in the granting of power of attorney, related to the right of the power of attorney to be able to revoke unilaterally on the one hand, and the right of the recipient of the power of attorney to unilaterally release on the other hand, the traffic of legal association has introduced and justified the granting of absolute power. This power of attorney agreement, entitled "absolute power of attorney", contains the following clauses:

1. absolute power of attorney cannot be revoked to be given to the beneficiary;
2. The death of the power of attorney does not terminate the power of attorney agreement. (Yahya Harahap, 2010: 5)

The two forms of the clause above are characteristics of the creation of absolute power of attorney. This clause overrides Article 1813 of the Civil Code, so that there are those who argue that the absolute power of attorney is against the law. However, that opinion is ruled out in judicial practice which justifies such an agreement. It is permissible to make an absolute power of attorney agreement, starting from the principle of freedom of contract as outlined in Article 1338 of the Civil Code. This principle emphasizes that the parties are free to arrange the agreement they want, as long as it does not conflict with Article 1337 of the Civil Code, namely the agreement does not contain anything prohibited by law or is contrary to decency and public order. The opinions and stances are guided by jurisprudence. One of them, is the Supreme Court Decision Number: 3604 K/Pdt/1985. This decision is a reaffirmation of the legal considerations stated in the Supreme Court Decision Number: 731/K/Sip/1975, which among other things states:

Absolute power of attorney, the rules are not found in the Civil Code. However, jurisprudence recognizes its existence as a condition that is always agreed upon according to custom, or according to habit, which is always agreed, or also called perpetual and usual or customary condition.

The Supreme Court's decision Number: 731/K/Sip/1975 has confirmed the provisions of Article 1813 of the Civil Code, which are neither limitative nor binding. Therefore, if the parties to the agreement so desire, it can be agreed that the power of attorney cannot be revoked. This stance is based on the doctrine that the articles of contract law are additional law. Likewise, the death of the power of attorney is associated with an absolute power of attorney, his opinion has been accepted in Indonesia as something that has been bestend, so it is considered not contrary to Article 1339 and Article 1347 of the Civil Code.

It is important to remember that absolute power is prohibited, not all affairs can be carried out by absolute power, there is a prohibition contained in the Instruction of the Minister of Home Affairs Number: 14 of 1982. that a notary is prohibited from making an absolute power of attorney in the sale and purchase of land. Land owners are prohibited from giving absolute power to the power to sell their land. The reason for the prohibition, explained in Supreme Court Decision number: 2584 K/Pdt/1986 (14-4-1988), reads "absolute power of attorney, regarding the sale and purchase of land, is not justified because in practice it is often misused to smuggle the sale and purchase of land".

The granting of power is consensual, that is, it is made based on an agreement and binding force. The act of power of attorney is only limited to the authority granted by the power of attorney, as well as in terms of the responsibilities of the parties in granting power of attorney, one of which is the power to sell. When viewed from the way the recipient of the power of attorney acts, the restrictions on the granting of power can be divided into two, namely:

1. The power of attorney acts on his own behalf. This is often done by a commissioner who carries out legal actions as if for himself.
2. The recipient of the power of attorney acts on behalf of another person, the act is done for another person and at the time of doing it the recipient of the power of attorney declares that he is doing it for another person (Setiawan, 1992: 11).

Based on court decision number 69/Pdt/G/2018/PN. Bna. In fact, a power of attorney may be used in relation to the sale and purchase of land, but it cannot be an absolute power of attorney, because the use of absolute power does not pay the BPHTB, so there are state rights that are deducted. Absolute power can be prevented, does not necessarily create a new certificate. Meanwhile, the exception of absolute power of attorney may be applied to bank credit.

that those who hold or control the debt collateral may not sell the collateral;

There are 3 powers, namely:

1. arise because of the law,
2. Lastgeving and
3. Organic.

Lastgeving's power of attorney is a granting power where the authorized person exercises authority for the benefit of the power of attorney. Absolute power is not allowed. Voolmacht or absolute power is the power to run that can not be revoked. The prohibition of absolute power of attorney related to land can be found in the Instruction of the Minister of Home Affairs number: 14 of 1982 concerning the prohibition of the use of absolute power of attorney as a transfer of land rights so that agreements made with absolute power are invalid. Justice Based on God Almighty, Regarding the transfer of the name of the certificate, the making of the deed is based on article 38 of government regulation number: 24 of 1997 concerning land registration that the making of the deed must be present by both parties who will carry out the agreement and be witnessed by at least 2 (two) witnesses who meet the requirements to act as witnesses in the legal act. that according to the Instruction of the Minister of Home Affairs Number 14 of 1982 in the second part it explains the meaning of absolute power of attorney, namely:

1. Absolute Power is power in which there is no element.
2. can be withdrawn by the power of attorney.

Absolute power is the transfer of land rights for the benefit of the recipient of the power to control and use the land and carry out all legal actions that can be carried out by the right holder. the fact that occurs in the practice of making a deed of sale and purchase often happens that the seller is represented by another party using a power of attorney to sell or an absolute power of attorney. In principle, the power to sell is given because the seller (land owner) cannot be present at the time of making the deed of sale for certain reasons, for example, the sale takes place outside the city or he cannot leave his job.

The practice of granting power of attorney develops according to practical needs, such as a sale and purchase of land based on a debt agreement with a certificate of ownership as collateral, using an absolute power of attorney the debtor can sell the collateral if the creditor cannot pay off the debt. The legal action referred to in the Instruction of the Minister of Home Affairs Number 14 of 1982 concerning the Prohibition of the Use of Absolute Power as Transfer of Land Rights is the act of transferring/transferring land rights in a covert manner, namely a transaction which in essence is a transfer/transfer of land rights, however, it is carried out in a way that is not in accordance with the procedures regulated in Article 19 of government regulation number 10 of 1962 jo. PP number 24 of 1997 concerning land registration article 39 letter D, namely by making a deed of sale and purchase before the Land Deed Maker Official (PPAT), but carried out by giving absolute power to the buyer, absolute power of attorney can take legal action related to the land, as which can be done by the power of attorney himself as the owner. (Gedion Ardana Reswar,2014:3).

CONCLUSION

Based on the results and discussion above, it can be concluded that the absolute power of attorney used as the basis for the transfer of land rights in the case of decision number 69/Pdt/G/2018/PN. Bna. is invalid and has no legal force because it has overridden the provisions of the law. - civil law, government regulations and instructions from the minister of home affairs, the power of attorney is absolute power that is problematic, buying and selling is based on a problematic power of attorney, the object of sale and purchase is invalid and the deed of sale and purchase has no legal force and can be canceled for violating the provisions of the legislation - applicable invitation. The absolute power of attorney is due to contain the meaning of power that cannot be revoked. There is an absolute power of attorney.

SUGGESTION

The Notary or Land Deed Making Official (PPAT) in making the agreement deed using absolute power must be more careful and must be more observant in seeing the interests of the seller and the buyer. Notaries/PPATs in carrying out their duties are obliged to provide complete and clear explanations regarding the legal consequences of each agreement made, as well as in terms of providing services and services to the parties as far as possible to avoid disputes in the future in order to create a legal certainty, especially in the field of land in accordance with applicable government regulations. It is recommended to the power of attorney not to ask the Notary to make a sale and purchase agreement accompanied by absolute power of attorney because the absolute power of attorney cannot be revoked.

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