Notary Responsibility for Legal Smuggling in the Issuance of Absolute Deed ofPower of Attorney for Sale and Purchase of Land

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Abstract

This paper analyses the Notary's Responsibility for Legal Smuggling Acts in the Issuance of AbsolutePower of Attorney for The Sale and Purchase of Land. In analysis used juridical-normative legal research methods. The data were collected through literature studies and analyzed qualitatively. This study concluded that in the case of the Batulicin District Court Decision Number 06/Pdt.G/2018/PN Bln, a notary named Pang Andreas Pangestu committed an unlawful act because he issued a Deed of Power of Attorney, which was categorized as an Absolute Powerof Attorney containing the clauses referred to in the Instruction of the Minister of Home Affairs Number 14of 1982, which was a form of legal smuggling to avoid obligations and prohibitions that had been regulated in legislation. Therefore, the Power of Attorney Deed wasannulled. The Notary, in his position as a PPAT in doing the deed, is burdened with his responsibility. Such duties include criminal, civil and administrative liability. In this case, the Notary can be subject to civil commitment, which is punished with compensation of Rp 1,500,000,000 (one billion five hundred millionrupiah) due to unlawful acts committed by him and canbe subject to administrative responsibility also becausethe Notary committed violations in the UUJN, especially Article 16 paragraph 1 letter a.

I. Introduction

The emergence of treasury guarantees such as Dependent Rights can accommodate the needs of banking institutions to secure credit distributed to the public. Then the land rights burdened with Dependent Rights are Property Rights, Building Use Rights and Business Use Rights. This Dependent Rightmakes it easier for the public to obtain credit assistance or financing. In its implementation, there are still various problems in practice, and there are creditors who turn out to abuse their position because they feel that the work issuperior to the debtor's position.[1] Suppose the debtor is negligent in the credit payment or can be said to be bad credit. In that case, the object of the DependentRight can repay the debtor's debt to the creditor on the condition that if the saleof the Dependent Right meets the receivables of the creditor, then returned to the debtor. The creditor cooperates with a Notary to issue a deed of power of attorney can categorize as an absolute power having a guarantee given by the debtor or transferred to another person at a price that does not match the valueof the contract that should be. The issuance of this absolute power of attorney deed contains an irrevocable element. The beneficiary of a power of attorney can perform any action regarding the show of management and the front of land ownership. This absolute power of attorney is used as the basis for transferringland rights that should be attached to the right holder to irrevocably transferredto the recipient of the total power of attorney.[2]

Absolute power is a power in which there is an element of legal smuggling, in which the power implies containing a part of suppression or threat to the authorizer. The granting of power was given initially to make it easier for a person who is directly unable to exercise his rights and obligations in legal traffic due to time constraints, distance travelled, physical, social, economic and othercircumstances. According to Article 1793 of the Civil Code, power of attorney can be granted and received through: (1) a general deed; (2) Underhand writing; (3) A letter; (4) Oral; (5) Secretly.[3] The granting of power is a covenant by which a person givespower to another person who receives it for and on his behalf to conduct an affair. The granting of power of

[1] Kartini Muljadi, Gunawan Widjaja. 2005. *Seri Hukum Harta Kekayaan: Hak Tanggungan*, Jakarta: Kencana, p. 13.
[2] Emelia, Ema, "Tinjauan Yuridis Kuasa Mutlak Dalam Pembuatan Akta Notaris Menurut Perundang-undangan Di Indonesia", Premise Law Journal, Vol. 10, 2015, p. 5.
[3] P.N.H. Simanjuntak. 2015. *Hukum Perdata Indonesia*, Jakarta: Kencana, p. 319.

attorney can generally and specifically be exercised. Ingeneral, it includes all the interests of a power of attorney, where the power is not allowed to do anything that exceeds his power. In particular, it is about only one specific interest or more.[4] This general and special regulation of the grant of power of attorney can be found in Articles 1795 and 1796 of the Civil Code, where the article contains restrictions on granting powers.

Restrictions on granting power are not only contained in the two articles above. They included Article 1813 of the Civil Code regarding the time of the expirationof a power of attorney, where a power of attorney expires if the authorizer withdraws his power of attorney, dies, is under custody and is in a state of bankruptcy.

In this regard, the Notary, in carrying out his position, has a huge role in doing adeed so that the act he makes does not harm the interests of the parties. By taking into account the obligations and duties carried out by the Notary as a general officer authorized to make authentic evidence, the deed he made must contain absolute truth where the act he made must not conflict with applicable law.[5] In practice, many Notaries are less clear in explaining the parties involved in doing deeds. As a result, in the future, various problems will arise. Notaries tend to beindifferent because they feel they are not harmed if there is a dispute in the future. After all, many Notaries think that what they do is only to state the parties' wishes to the deed. Of course, it can harm the debtor because it violates the interests and debtors. After all, the absolute power of attorney issued by the Notary at the creditor's request is contrary to the applicable legal regulations.

II. Research Method

The subject matter described in the background is analyzed by normative legalresearch methods known as doctrinal research, namely by examining problemsbased on principles, legal principles, legal rules, legal theories and doctrines of legal experts.[6] The legal material used is primary

[4] Widjangkoro, Hanung. "Analisa Yuridis Pencantuman Klausul Kuasa Mutlak di dalam Perjanjian Hibah"Perspektif: Kajian Masalah Hukum dan Pembangunan, Vol. 21, no. 3, 30 September 2016, pp. 211-219.

[5] Maslikan, Maslikan, and Sukarmi Sukarmi. "Kewenangan Notaris dalam Pembuatan Akta Otentik Berkaitan dengan Kontrak Kerjasama." Jurnal Akta, Vol. 5, no. 1, 5 Mar. 2018, doi:10.30659/akta.5.1.11 - 16.

[6] Nurhayati, Y., Ifrani., & Said, M. Y. Metodologi Normatif dan Empiris dalam Perspektif Ilmu Hukum. *Jurnal Penegakan Hukum Indonesia,* 2(1), 1-20. 2021, p. 8.

legal material used in the research is the Primary legal source consisting of laws and regulations, court decisions and basic norms where the source has binding force. In contrast, secondary legal material is sourced from books and scientific journals. All legal materials are analyzed qualitatively by studying legal materials or literature to obtain an overview and conclusions on the studied subject matter.[7]

III. Results and Discussion

1. Acts of Legal Smuggling in the Issuance of a Deed of Absolute Power of Attorney for The Sale and Purchase of Land in the Decision of the Batulicin District Court Number 06/Pdt.G/2018/PN Bln

Initially, Plaintiff, under the name Abdul Samad applied for a money loan of Rp180,000,000 (one hundred and eighty million rupiahs) with credit agreement Number 036 / ULM-BTLN / PK MMR-200 / XII / 2013 dated December 27, 2013, with collateral for land and building Certificate of Property Rights Number 01 of 2008 and then applied for a money loan of Rp150,000,000 (serratus fifty million rupiahs) on behalf of Defendant I, namely Martiniah with the same collateral, namely land and building certificate of Rights Owned By Number 01 of 2007 which is located on Jalan Provinsiinsi RT.03 Sungai Loban Village, Sungai Loban District, Tanah Bumbu Regency. Then as long as the credit agreement is in progress, Plaintiff's obligations proceed by the contents of the contract. However, over time Plaintiff experienced a disaster, and there began to be a delay in payment. During the delay in payment by Plaintiff, Plaintiff always seeks to complete the payment.

After 3 (three) months of late payment of the current credit, Plaintiff has not been able to carry out his obligations to complete the payment. Therefore Defendant I, i.e. PT. Permodalan Nasional Madani Unit Micro Capital Services Unit Batulicin, through the Manager of the Batulicin Unit Micro Capital Service Unit, met Plaintiff and conveyed the land and buildings that Plaintiff guaranteed to Defendant. I wanted to buy it worth Rp1,500,000,000 (one billion five hundred million rupiahs). Then Defendant I, through the Manager of the Batulicin Unit Micro Capital Services Unit,

[7] Disemadi, H. S., & Mustamin, W. Pembajakan Merek Dalam Tatanan Hukum Kekayaan Intelektual Di Indonesia. *Jurnal Komunikasi Hukum,* Vol *6*(1), 83-94, 2020. p. 86.

presented a letter to be signed by Plaintiff. Still, I did not read the letter due to the limited time to visit the custody of the Tanah Bumbu Police.

It is known that the land and buildings used as collateral by Plaintiff with TitleCertificate No. 1 of 2007 have changed hands to Defendant II under the name ofBurhanuddin without prior notice to Plaintiff. It turned out that the letterDefendant I gave through the Batulicin Micro Capital Services Unit Manager wasa power of attorney for sale that Plaintiff signed. After that, Defendant I, through his Manager, transferred the land and building to Defendant II under Power of Attorney to Sell No. 12 Deed dated November 10, 2015. The land and buildings have been shared at a price of around Rp300,000,000 (three hundred million rupiahs) without an auction procedure according to Article 6, number 1 letter cof wealth, "The Debtor in whole or as a matter of other parties", and in Article 8on the publication clause announcing the name of the problematic Debtor in themass media or other media by Defendant I was not manifestly done, so that Defendant I had neglected the contents of the Credit Agreement.

It is known that so far, Plaintiff has requested that Defendant II, namely Notary Pang Andreas Pangestu, S.H., M. Kn a copy of The Power of Attorney to Sell Number 12 Deed dated November 10, 2015, because Plaintiff is a related party and has the right to request and have a copy of the Power of Attorney to Sell Number 12 Deed dated November 10, 2015. In the Power of Attorney for Sale in question, it reads, "Facing me, Pang Andrean Pangestu Bachelor of Law, Master of Notarial Affairs, and so on" it is very clear far-fetched, and gives incorrect information. At that time, Plaintiff never faced Defendant II because Plaintiff was in the Custody of the Tanah Bumbu Police. The Said Power of Attorney to Sell has been written: "specifically to sell, transfer, or waive the rights to the land below, to any other person or party at the price and conditions determined by the beneficiary himself". What is very detrimental to Plaintiff is that Defendant I, through his Manager, said that someone wanted to buy the land and buildings that were Plaintiff's guarantee for Rp1,500,000,000 (one billion five hundred million rupiahs). Still, I had transferred the land and buildings for only Rp300,000,000 (three hundred million rupiahs) to Defendant I without prior notice to Plaintiff.

Defendant carried out the transfer of land and buildings belonging to PlaintiffI through the Manager of the Batulicin Unit Micro Capital Service Unit by way of sale and purchase and transfer of rights to land and buildings

by The Certificateof Property Rights No. 1 of 2007 belonging to the Plaintiff based on the Sale andPurchase Deed Number 1006/2016 dated September 20, 2016, made by Defendant II. It is known that Plaintiff's actual obligations, coupled with an interest, are only around Rp. 240,000,000 (two hundred and forty million rupiahs), while the value of the guarantee provided by Plaintiff is estimated at around Rp. 1,500,000,000 (one billion five hundred million rupiah). Therefore, it is very illogical if the guarantee estimated at a high price is sold for only IDR 300,000,000 (three hundred million rupiahs).

According to Plaintiff, it appears that what Defendant I did was a ruse and that Defendant I's act of transferring the bail without notice to Plaintiff was an Unlawful Act. Initially, in the name of Plaintiff, the certificate of Property RightsNo. 1 of 2007 was reversed into Certificate of Property Rights Number 05001 in2016 on behalf of Co-Defendant II by Co-Defendant III, namely the Head of the National Land Agency of Tanah Bumbu Regency. It is evident that Defendant I and Defendant II cooperate in legalizing the sale and purchasing under Sale andPurchase Deed 1006/2016 dated September 20, 2016, to the detriment of Plaintiff materially and immaterially. Whereas there is that the Defendants and Co- Defendants II wish to unlawfully own the land and buildings belonging toPlaintiff because so far Plaintiff in good faith had to settle in a familial manner. Still, the Defendants and Co-Defendants II did not have good faith to resolve it.

2. Notarial Liability for Legal Smuggling Acts in the Issuance of Absolute Deeds of Power of Attorney to Buy and Sell Land

The evidence produced by the Notary is an authentic deed that from the beginning was deliberately officially made for the needs of proof where the Notary deed as an original deed has perfect evidentiary power. This is certainlynot in line with UUJN; in carrying out their position, notaries are required to acttrustworthy, honest, thorough, independent, impartial and maintain related interests in legal acts and Article 3 of the Notary Code of Ethics.

Ex officio, the cancellation of the contents of the authentic deed can only be made by a judge if there is a lawsuit for annulment by filing evidence of the opponent. In addition to Defendant II having violated the rules of the Notary Code of Ethics and also the Notary Position Act, the issue regarding the issuance of Absolute Power of Attorney No. 12, dated November 10, 2015, is also not by propriety and justice because it was issued while the

Plaintiff was in the custodyof the Tanah Bumbu Police Which can be assessed as an abuse of circumstances(misbruik van omstandigheden). An agreement or legal action can be cancelledin case of abuse of patients.

The judge's consideration of the issuance of the Absolute Power of Attorney isrelated to the teachings and jurisprudence regarding the reasons for the cancellation of the agreement, there are reasons for misuse of circumstances (misbruik van omstandigheden) in accordance with MARI Decision No. 3956 K/Pdt/2000 dated December 23, 2003 (Determination of the increase in agreement interest by banks that take advantage of the uncertain circumstances of Bank Indonesia's interest policy is unilateral and without regard to the appropriateness and feasibility that should be carried out the bank, at once the bank has abusedthe circumstances in order to pressure the debtor to meet its own rules); MARIDecision No. 1329 K/Pdt/2001 dated July 18, 2008 (Although the imposition offines/interest has been promised by the debtor and creditors, with the economic position of the creditor being more than the debtor, the imposition of the penalty is too high and constitutes an abuse of circumstances); Hoge Raad's ruling of January 11, 1957 (A treaty may lose its lawful cause in connection with the occurrence of the agreement if the one party is severely harmed as a result of the abuse of circumstances by the other party).

After seeing the reasons for the above cancellation, it can be concluded that what defendant II did in terms of issuing the Deed of Absolute Power of Attorneyand at the time the Plaintiff signed the Deed of Power of Attorney, the Plaintiff was in an economically weak condition and was in a state of distress where at that time the Plaintiff was in the Detention Center of the Tanah Bumbu Police Station because he was involved in a criminal case. The conditions contained inthe clause of the Power of Attorney's Act are very unusual to include wherein itis required that the sale value of the collateral object be determined by the beneficiary of the power of attorney where an independent assessment body should determine it called an appraisal. Later in the judgment, the Judge also mentioned punishing Defendant III, namely the Head of the National LandAgency of Tanah Bumbu Regency, to return in the name of title certificate No. 05001 in 2016 on behalf of Plaintiff. The Judge's decision, in this case, is by the Instruction of the Minister of Home Affairs Number 14 of 1982, which prohibits Agrarian officials from serving the settlement of the status of land rights usingan Absolute Power of Attorney as evidence for the transfer of land rights. After seeing the consideration by the

Judge, it was appropriate for the Judge to decide to declare the Deed of Power of Attorney No. 12, dated November 10, 2015, made by Defendant II null and void.

The existence of notary responsibility as a general official because the Notaryin carrying out his duties is given authority and obligations. A new notary can be delegated authority and obligations after taking an oath as stated in Article 4paragraph 1 of the UUJN, which requires a Notary to take an oath or promise according to his religion before the Minister or appointed official. The pronouncement of the commitment or office of a Notary is carried out within nolater than two months from the date of the decision on appointment as a Notary.The Notary, in the pronouncement of his oath, has promised to maintain his attitude and behaviour and vowed to perform his obligations by the prevailing laws and regulations, the code of professional ethics and to uphold his dignity and dignity as an honourable profession. In connection with this authority, the Notary is burdened with responsibilities which include the responsibility of theNotary profession itself, which is attached to the Notary during his time as a general official related to the deeds he made, which are divided into 3 (three) namely Civil, Criminal, and Administrative.[8]

The amount of responsibility carried out by the Notary as a general official requires the Notary always to pay attention and be careful in carrying out theirduties. However, of course, a Notary sometimes does not escape the blame because of intentional or unintentional things, which have the same consequences, harming the wider community.[9]

After seeing the responsibilities of the Notary mentioned above, the Notary must be responsible for the deed he made if there are the following reasons:

a. In matters expressly determined by the Notary Office Rules;
b. If a deed due to non-fulfilment of the conditions regarding the form (gebrek in de vorm) is annulled in advance of the court or deemed valid only as a deed made under the hand
c. In all cases, according to the provisions of Articles 1365, 1366 and 1367

[8] Ramadhan, Eka D., and Eni D. Suhardini. "Pertanggungjawaban Pidana Notaris dalam Pembuatan Akta yang Didasarkan pada Keterangan Palsu Dihubungkan dengan Kitab Undang- Undang Hukum Pidana dan Undang-Undang Nomor 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan." *Wacana Paramarta*, vol. 18, no. 1, 2019, pp. 29-38, doi:10.32816/paramarta.v18i1.64.
[9] Kadir, Rahmia, et al. "Pertanggungjawaban Notaris pada Penerbitan Covernote." *Jurnal Mimbar Hukum*, vol. 31, no. 2, 2019, p. 191-204, doi:10.22146/jmh.35274.

of the Civil Code, there is an obligation to pay compensation.[10]

All sanctions that can be imposed on the Notary are intended so that the Notary does not take for granted his position. The sanctions given are used so that the Notary does not repeat his mistakes because the legal product he makesis in the form of evidence that, if completed improperly, can harm the relevant parties and the wider community. In the case of Batulicin District Court DecisionNo. 06/Pdt.G/2018/PN Bln, it can be seen that the Notary, in carrying out his office, has abused his authority. Abuse of power is the use of force by Government Agencies and Officials in making decisions and actions in the administration of government that are carried out by exceeding capacity, mixingup rules, and acting arbitrarily, as referred to in Article 17 and Article 18 of Law Number 30 of 2014 concerning Government Administration.[11]

According to Minarno, "abuse of authority" is inherent (the same) as unlawful since abuse of authority is essentially a criminal act. The criminal element is itsgenus, while the aspect of abuse of power and against the law is its species. Hereis a table of the differences in the aspects of abuse of authority and against the law.[12]

Table 1. Differences in Elements of Abuse of Authority and Countermeasures Law

No.	Identification	Misuse Authority	Against the Law
1	Scope	*Species*	*Genus*
2	Delik Subject	*Officials*	*Everyone*
3	Parameters	*The principle of legality and the focus on speciality*	*The principle of legality (against the law formal)*
4	Error form	*Opzet/dolus*	*Opzet/dolus or culpa*

In the case of a deed, the Notary must pay proper attention to the scope

[10] A.A Andi Prajitna, 2010. *Pengetahuan Praktis Tentang Apa dan Siapa Notaris di Indonesia* Surabaya: Putra Media Nusantara, p. 102.
[11] Jiwantara, Firzhal A., et al. "Konsep Penyalahgunaan Wewenang dalam Perspektif Hukum Administrasi di Indonesia." *Jurnal Indonesia Sosial Sains*, vol. 3, no. 2, 2022, doi:10.36418/jiss.v3i2.545.
[12] Syamsudin, 2012. *udaya Hukum Hakim: Berbasis Hukum Progresif* Edisi Kedua. Jakarta: Kencana, p. 186

of hisauthority, which is related to the place, time, person and deed he made. However, within the limitations of the power that has been regulated in the making of the deed in question, it is still found that the Notary abused his authority as in the above case written at the beginning of the deed, which states, "Facing me, Pang Andrean Pangestu Bachelor of Law, Master of Notarial Affairs,and so on" which is not at all the case because at that time Defendant I through his Manager gave the Deed of Power of Attorney when the Plaintiff was at the Tanah Bumbu Police Station and signed at that time. This is included in one formof abuse of authority by a Notary where the deed is a proforma deed, or there isa false statement. The Notarial Deed does not contain material truth, so it is considered a proforma deed because there is bad faith by giving incorrect information. Therefore, it is regarded as a deed that does not have authentic evidentiary power.

In this case, the Notary can be held civilly liable. He has committed an unlawful act where the Notary has committed an act that causes harm to the Plaintiff because he issued Absolute Power of Attorney Deed No. 12 dated November 10, 2015, and Deed of Sale and Purchase No. 1006/2016 datedSeptember 20, 2016, as derivatives of which the issuance is based on the Said Deed of Absolute Power of Attorney. Thus, in this case, Plaintiff suffered material and immaterial losses. According to the judge's consideration, defendant I's action through the Manager of the Micro Capital Services Unit, Unit Batulicin, met the Plaintiff, saying that there was a party who wanted to buy the guaranteeworth Rp1,500,000,000 (one billion five hundred million rupiah) then the Manager gave a letter to be signed by the Plaintiff but did not actually and clearly read the letter then not long ago Title Certificate No. 01 of 2007 which was the Plaintiff's guarantee in the form of land and the building has changed hands to Co-Defendant II without any notice to the Plaintiff first and it is later discovered that the letter given by Defendant I through the Manager is a Deed of Power of Attorney for Sale which can be categorized as a prohibited Absolute Power of Attorney Deed, in addition to the transfer of land rights to The Co-Defendant II by way of sale and purchase through Defendant II based on the Said Deed of Power of Attorney for Rp300,000,000 (three hundred million rupiah) without procedure auction and neglect of Article 8 regarding the publication clause in the Credit Agreement.

In the Deed of Power of Attorney for Sale, it is stated that Plaintiff seems to befacing Defendant II to sign the Deed of Attorney, which Plaintiff has

never actually done and in that Deed also contains writing wherein in the case of transfer or relinquishing the right to the land at a price and conditions determined by the beneficiary of a power of attorney is certainly very detrimental to the Plaintiff and the acts committed by Defendant I and Defendant II constitute an Unlawful Act because it is by the elements of the Act Against the Law itself, namely the existence of an act and the Act is against the law, the guilt of the perpetrator, the Act harms the victim, and there is a causal relationship betweenthe Act and the loss. Therefore, the Judge's Decision ordering that Defendant I and Defendant II pay material losses and immaterial losses, including the loss ofland rights in the amount of Rp1,500,000,000 (one billion five hundred million rupiahs) and pay a case fee of Rp4,501,000 (four million five hundred and one thousand rupiah).

Notary Pang Andreas Pangestu, in the implementation of his position, has violated several provisions in the UUJNP, such as Article 16, primarily letter a, which states that the Notary is obliged to act trustworthy, honest, careful,independent, impartial and take care of the interests of the parties involved in legal acts. Therefore the Notary as Defendant II can be subject to sanctions contained in Article 85 of the UUJN in the form of an oral reprimand; written reprimand; temporary dismissal; respectful dismissal; or disrespectful dismissal.

IV. Conclusion

In the case of the Batulicin District Court Decision Number 06/Pdt.G/2018/PN Bln, the Notary named Pang Andreas Pangestu has committed an unlawful act for issuing a Deed of Power of Sale, which is categorized as Absolute Power of Attorney, which contains the clauses referred to in the Instruction of the Minister of Home Affairs Number 14 of 1982, which is a form of legal smuggling to avoid obligations and prohibitions that have been regulated in the legislation. Therefore, the Power of Attorney Deed was annulled. The Notary, in his positionas a PPAT in doing the deed, is burdened with his responsibility. Such duties include criminal, civil and administrative liability. In this case, the Notary can be subject to civil commitment, which is punished with compensation of Rp1,500,000,000 (one billion five hundred million rupiah) due to unlawful actscommitted by him and can be subject to administrative responsibility also because The Notary committed violations in the UUJN, especially

Article 16 paragraph 1 letter a so that it can be subject to sanctions according to Article 85of the UUJN, namely in the form of an oral reprimand; written reprimand; temporary dismissal; respectful dismissal and disrespectful dismissal.

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