

Legal Validity Of Power Of Attorney To Sell Which Is Preceded By A Sale And Purchase Binding Agreement On The Transfer Of Land Rights (Sales And Purchases)

Anisa Aulia Rahma^{1*}, Arief Suryono², Noor Saptanti³

¹Master of Notary, Faculty of Law, Sebelas Maret University, Indonesia

^{2,3} Master Lecturer of Notary, Faculty of Law, Sebelas Maret University, Indonesia

*Corresponding Author:

Email: anisa010999@gmail.com

Abstract.

This research aims to examine and analyze the legal validity of the Power of Attorney to Sell, which is preceded by a Sale and Purchase Binding Agreement, in the implementation of the Deed of Sale and Purchase if the person giving the power of attorney dies. This research uses normative research methods, is perspective-based, uses a statue approach and a conceptual approach conceptual approach, and the types and sources of data used are primary legal materials, secondary legal materials, and tertiary legal materials. Data collection techniques are carried out through literature studies and interviews, and qualitative data analysis techniques are used. The results of this research show that the legal validity of the Power of Attorney to Sell, which is preceded by a Sale and Purchase Binding Agreement, in the implementation of the Sale and Purchase Deed if the person giving the power of attorney dies is still valid and legal, so that the buyer has legal certainty to carry out the Transfer of Land Rights with reference to the Deed of Sale and Purchase Agreement and Power of Sale. The power of attorney to sell given by the seller to the buyer is a power of attorney that cannot be withdrawn or terminated for any reason. So if all the requirements have been fulfilled, then the process of making a sale and purchase deed can be continued before the PPAT, and transferring the name of the certificate at the land office should proceed as it should even if the person giving the power of attorney (the seller) dies.

Keywords: Land Rights, Power of Sale, Sale and Purchase Agreement.

I. INTRODUCTION

At the time of the sale transaction, the buyer and the seller require an authentic Sale Act to guarantee the legal certainty of the acquisition of the rights and obligations of the parties involved as powerful proof later on. Pursuant to Article 1, Paragraph 1, of Government Regulation No. 37 of 1998 concerning the Regulations of the Department of the Land Act Maker, as amended to Government Regulation No. 24 of 2016, it is stated that the Land Deed Making Officer (hereinafter referred to as the PPAT) is a public official authorized to make authentic acts concerning certain legal acts relating to the land rights or property rights on the units of houses. So in this case, the act of selling the right to buy the land is done in front of the Land Deed Making Officer.

Fulfillment of all administrative requirements in making a deed of transfer of land rights before the Land Deed Making Officer is often hampered by various things. So a breakthrough was made by the Notary to address this matter and to guarantee legal certainty for the parties, especially buyers who will buy and sell land, so a Sale and Purchase Binding Agreement was made. There are two types of sale and purchase agreements, namely, The Sale and Purchase Binding Agreement has not yet been paid off and Sale and Purchase Binding Agreement in full, namely:

1. Binding Sale and Purchase Agreement has not yet been paid off.

A binding Sale and Purchase Binding Agreement that has not been paid in full occurs if the seller has not received full payment for the sale and purchase agreement price. The articles related to the Sale and Purchase Binding Agreement has not yet been paid off. Agreement describe various aspects, including the amount of the initial down payment made at the time of signing the deed of Sale and Purchase Binding Agreement has not yet been paid off., the method or terms of payment, the repayment period, and the specified sanctions. as agreed in the articles of the sale and purchase agreement agreement. The unpaid sale

and purchase agreement Agreement does not include a power of attorney, only conditions to fulfill an obligation.

2. Binding Sale and Purchase Agreement in full

A Binding Sale and Purchase Binding Agreement in Full is a sale and purchase agreement that has been carried out in full but the Deed of Sale and Purchase cannot be made before the Land Deed Officer because there are processes that have not been completed, for example the tax payment process. The Sale and Purchase Binding Agreement in full includes a deed of Power of Attorney to Sell from the seller to the buyer so that when all the conditions have been met, without the need for the presence of the seller because he has given power of attorney to the buyer, the Land Deed Making Officer can immediately make a Deed of Sale and Purchase to then process the transfer of name on the certificate. The Binding Sale and Purchase Agreement is a product of customary law due to obstacles or several requirements determined by law relating to the sale and purchase of land rights that hinder the completion of transactions in the sale and purchase of land rights. (Kuncoro, 2015). The main purpose of making a Sale and Purchase Binding Agreement is to bind the parties, namely the seller and the buyer, even though the sale and purchase have not been carried out before the Land Deed Official. (Sudiro, 2021). A Sale and Purchase Binding Agreement has legal force and is considered valid if the parties involved have mutually reached an agreement. In practice, the Sale and Purchase Agreement can be executed privately or by notarial deed. A Binding Sale and Purchase Agreement made privately in accordance with the provisions in Article 1875 of the Civil Code states that a private deed can have perfect proof like an authentic deed if the signature on the deed is acknowledged by the parties who signed it. The provisions in Article 1875 of the Civil Code refer back to Article 871 of the Civil Code, which states that a private deed can be like an authentic deed but does not provide perfect proof of what is contained therein.

Meanwhile, the Sale and Purchase Binding Agreement made with a notarial deed has very strong legal force because the sale and purchase binding agreement made before a notary is a notarial deed, so it is included in an authentic deed. (Kuncoro, 2015). A Binding Sale and Purchase Agreement made privately or in the form of an authentic deed made before a notary has legal force if it is made based on an agreement and does not conflict with statutory regulations. The requirements in the Deed of Binding Sale and Purchase Agreement are in the form of an agreement between the parties who will carry out the sale and purchase of land rights, but the Deed of Sale and Purchase cannot yet be signed before the Land Deed Official. In practice, the sale and purchase agreement is made because the buyer's achievements have been fulfilled but the seller's have not been completed. So, in this case, the Sale and Purchase Binding Agreement, the payment of which is already extensive, must be followed by the creation of an authorization to sell deed, which is made authentically in order to provide legal protection to the buyer if at any time they want to transfer land rights. If the person giving the power of attorney dies, the buyer has legal certainty; that is, he can transfer land rights using the deed of Binding Sale and Purchase Agreement and power of attorney to sell. One of the problems in the transfer of land rights that occurs in the community is through a deed of power of attorney to sell where after the Deed of Agreement for Binding Sale and Purchase Agreement and Power of Attorney to Sell is made, one of the parties as the power of attorney (seller) dies. So based on the previous description, the legal issue in this paper is what is the legal validity of the Power of Attorney to Sell which is preceded by a Binding Sale and Purchase Agreement in the execution of the Deed of Sale and Purchase if the person giving the power of attorney dies?

II. METHODS

This research uses normative research methods, is perspective-based, uses a legislative approach and a conceptual approach, and the types and sources of data used are primary legal materials, secondary legal materials, and tertiary legal materials. Data collection techniques are carried out through literature studies and interviews, and qualitative data analysis techniques are used.

III. RESULTS AND DISCUSSION

A Sale and Purchase Binding Agreement is an agreement between the parties to make an agreement, for this reason it is included in an agreement that arises because of an agreement based on an agreement that has been made. Article 1313 of the Civil Code states that an agreement is an act in which one or more people bind themselves to one or more people. The rules regulated in Book III of the Civil Code that regulate this agreement are open, that is, they give freedom to each person to make any agreement they wish, but still do not violate public order or morality. A Binding Sale and Purchase Agreement as a preliminary agreement (*pactum de contrahendo*) is subject to and included in the provisions of Book III of the Civil Code concerning agreements as a preliminary agreement (Gaol, 2020).

In this case, it is an agreement where the parties bind themselves to the implementation of a main agreement which is the main objective. Binding Sale and Purchase Agreement and Power of Attorney to Sell, in this case the seller or power of attorney binds himself to the buyer or recipient of the power of attorney, so that both parties bind each other and give birth to the rights and obligations outlined in the authentic deed before the main agreement, namely the sale and purchase with a Deed of Sale and Purchase. made before the PPAT. The Binding Sale and Purchase Agreement is a product of customary law due to obstacles or several requirements determined by law relating to the sale and purchase of Land Rights that hinder the completion of transactions in the sale and purchase of Land Rights (Kuncoro, 2015). According to the author's interview with Mrs. Winih Respati, S.H. states that a Binding Sale and Purchase Agreement in full can occur and the parties do not immediately make a Sale and Purchase Deed due to several reasons, namely:

1. Inheritance process, if you buy inherited land you have to wait for the inheritance process first.
2. A land rights certificate in the process of writing off mortgage rights.
3. Seller's tax (PPH) and buyer's tax (BPHTB) are in the verification and validation process.
4. The certificate has not been issued in the name of the seller and is in the process of transfer of rights (Sales and Purchases, Exchange, Grant, APHB) at the Land Office
5. The Land Rights Certificate is in the process of changing its rights status or changing the status of the land. For example, from farm to yard.
6. The certificate is in the process of resolving land rights.

A Binding Sale and Purchase Agreement can be called a preliminary agreement if it is followed by a Power of Sale. The buyer receives a guarantee of legal certainty due to the fulfillment of his performance. However, the Unsettled Binding Sale and Purchase Agreement does not qualify as a preliminary agreement. Therefore, the Binding Sale and Purchase Binding Agreement has not yet been paid off is a preliminary agreement that contains promises from the parties which contain provisions if the conditions for the sale and purchase before the Land Deed Official have been fulfilled. After fulfilling the conditions for the sale and purchase, the parties can return to complete the transaction in front of the Land Deed Official. However, there is a possibility that the seller is unable to attend to sign the sale and purchase deed. To overcome this problem, the buyer is given the power to carry out his own buying and selling, either on behalf of the seller or for himself as a prospective buyer, to be able to represent in general the management rights (*daen van beheer*) over the land rights as long as the sale and purchase have not been carried out before an official has authorized it. This is necessary considering the possibility that the seller will not be present to carry out legal action which is still his obligation and so that the buyer will not be prejudiced in his right to carry out the Transfer of Land Rights. This power of attorney is granted with the condition that it cannot be revoked. The Power of Sale which is preceded by a Binding Sale and Purchase Agreement in full overrides the provisions of Article 1813 of the Civil Code and Article 1814 of the Civil Code. The power of attorney to sell is given to the buyer (recipient of the power of attorney) by including a clause that the power of attorney will not expire due to all matters regulated in Article 1813 of the Civil Code regarding the method of ending the power of attorney, which is commonly referred to as an irrevocable power of sale.

This clause is the nature of power, while Article 1813 of the Civil Code which is regulated in Book III of the Civil Code has an open nature so that Article 1813 of the Civil Code can be overridden. The parties are free to waive the provisions of Article 1814 of the Civil Code which states that "The person giving the power of attorney can withdraw his power of attorney whenever he wishes (...)" this is deemed not to be contrary to the public interest. Thus, the granting of an irrevocable power of attorney is said to be valid if the irrevocable power of attorney clause is expressly agreed to and the Power of Sale is granted for the benefit of the power of attorney and is an inseparable part of the agreement. This is because the Power of Attorney to Sell is an *accessoir* that follows the main agreement and does not stand alone. So in this case it means that the granting of an absolute power of attorney clause is a right that is inseparable from the main agreement so that it is not included in the prohibition and cannot be revoked. This power of attorney is made to guarantee the implementation of the rights of the buyer who has paid the sale and purchase price in full to the seller or for the interests of the power of attorney and there is no longer any interest of the seller in the power of sale and the granting of power of attorney is a form of carrying out the obligations of the power of attorney (seller) to the recipient. proxy (buyer). With the power of sale, when signing the Deed of Sale and Purchase, the buyer no longer needs the presence of the seller. The buyer legally represents the seller and represents himself. This clause is important considering the death of one of the parties, with this clause granting irrevocable power of attorney.

So that in the event of the death of the person giving the power of attorney, the power of attorney will remain in effect. Likewise, remember that this power of attorney is an inseparable part of an agreement. The Power of Attorney to Sell which is preceded by a Binding Sale and Purchase Agreement in full with a clause overriding Article 1813 and Article 1814 of the Civil Code aims to strengthen the position of the buyer as the recipient of the power of attorney which is the exercise of his rights. This aims to ensure that if all the conditions for making a Deed of Sale and Purchase have been fulfilled, for the transfer of land rights there is no need for approval or involvement from the seller, thereby providing legal certainty for the buyer. So that the Power of Attorney that has been given remains valid and is not affected by the death of the person giving the power of attorney. So in this case the validity of the Power of Attorney to Sell which is preceded by the Sale and Purchase Binding Agreement in full if the person giving the power of attorney dies remains valid so that the buyer has legal certainty to carry out the Transfer of Land Rights using the Deed of Sale and Purchase Agreement and the Power of Sale. The Power of Sale which is preceded by the Binding Sale and Purchase Agreement is absolute, which means it overrides Article 1813 of the Civil Code and Article 1814 of the Civil Code to guarantee legal certainty for the buyer. Legal certainty in this case is very important because it provides protection for all parties involved. The Sale and Purchase Agreement is signed by the parties in front of a Notary in full without any elements of coercion, deception or mistake, which is binding for both parties (seller and buyer) even if the principal dies because this is in accordance with the clauses in the Binding Sale and Purchase Agreement in full.

IV. CONCLUSION

The legal validity of the Power of Attorney to Sell which is preceded by Binding Sale and Purchase Agreement in full in the execution of the Sale and Purchase Deed if the person giving the power of attorney dies remains valid and legal so that the buyer has legal certainty to carry out the Transfer of Land Rights using the Deed of Sale and Purchase Binding Agreement in full and the Power of Sale. The Power of Attorney to Sell given by the seller to the buyer is a power of attorney that cannot be withdrawn or terminated for any reason. So, if all the requirements have been met, the process of making a Sale and Purchase Deed can be continued before the PPAT and transferring the name of the certificate at the Land Office, which should proceed as it should even if the person giving the power of attorney (the seller) dies.

REFERENCES

- [1] Gaol, S. L. (2020). Keabsahan Akta Perjanjian Pengikatan Jual Beli Tanah Sebagai Dasar Pembuatan Akta Jual Beli Tanah Dalam Rangka Peralihan Hak Atas Tanah Dan Penyalahgunaan Keadaan (Misbruik Van Omstandigheden). *Jurnal Ilmiah Hukum Dirgantara*, *II*(1), 80-106.
- [2] Kuncoro, N. W. (2015). *97 Risiko Transaksi Jual Beli Properti*. Jakarta: Raih Asa Sukses.
- [3] Harahap, A. P. Hrp, N.K.A.R. Dewi, Macrozoobenthos diversity as anbioindicator of the water quality in the River Kualuh Labuhanbatu Utara, *International Journal of Scientific & Technology Research*, *9*(4), 2020, pp. 179-183.
- [4] Rahmani, S. R., & Octarina, N. F. (2020). Akta Perjanjian Pengikatan Jual Beli Rumah/Rumah Susun Sebagai Perlindungan Hukum Bagi Penjual dan Pembeli. *Jurnal Supremasi*, *10*(1), 36-46.
- [5] Setiyaningsih, D. (2020). Kedudukan dan Kekuatan Hukum Memorandum of Understanding (MoU) sebagai Tahap Prakontrak (Kajian dari Sisi Hukum Perikatan). *Jurnal Privat Law*, *VIII*(2), 173-179.
- [6] Sudiro, D. A. (2021). Kekuatan Hukum Perjanjian Pengikatan Jual Beli (PPJB) Lunas yang Belum Mendapatkan Pemecahan Sertipikat dari Developer yang Dipailitkan. *Binamulia Hukum*, *12*(1), 59.
- [7] Harahap, A. et, all, Macrozoobenthos diversity as anbioindicator of the water quality in the Sungai Kualuh Labuhanbatu Utara, *AACL Bioflux*, 2022, Vol 15, Issue 6.
- [8] Wahyuni, S. (2021). Analisis Wewenang Notaris dalam Pembuatan Akta Perjanjian Jual Beli Hak Milik Atas Tanah di Kota Makassar. *Jurnal Paradigma Administrasi Negara*, *3*(2), 135.
- [9] Code of Civil law
- [10] Harahap, Arman ,2018, Macrozoobenthos diversity as bioindicator of water quality in the Bilah river, Rantauprapat, Medan. *J. Phys.:* Conf. Ser. 1116 052026.
- [11] Government Regulation Number 37 of 1998 concerning Position Regulations for Officials
- [12] Making Land Deeds which has been amended to become Government Regulation Number 24 of 2016.