

Responsibility Of A Public Notary On The Making Of Sale And Purchase Agreement And Authorization To Sell Without Legal Effect

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Abstract.

The purpose of this study is to analyze and understand the legal consequences of the Deed of Binding Sale and Purchase Agreement (PPJB) and Power of Attorney to Sell which are declared null and void by law and the responsibility of the Notary in making the Deed of Binding Sale and Purchase Agreement (PPJB) and Power of Attorney to Sell which are declared null and void by law/ The type of research that will be used by the author is normative or commonly called doctrinal. The approach used by the author in this study is the conceptual approach and the case approach. In this study, the legal materials that will be used are primary and secondary legal materials. The results of the study stated that the Supreme Court Decision Number 3162 K/Pdt/2021 stated that the Deed of Binding Sale and Purchase Agreement and Power of Attorney to Sell were null and void because they did not meet the valid requirements of the agreement according to Article 1320 of the Civil Code and violated the formal procedures for authentic deeds. The legal consequences of the cancellation are the return of the parties to their original state, including the return of land rights to the legal owner and the nullity of all legal actions arising from the deeds. Notaries who are negligent in exercising their authority can be held accountable civilly, administratively and criminally.

Keywords: Notary's Responsibility; Sale; Purchase Agreement Deed (PPJB); Power of Attorney to Sell and Void by Law.

I. INTRODUCTION

Notaries have a significant responsibility in ensuring the validity and accuracy of authentic deeds they create, not only for personal interests but also for the legal protection of the community (Amalia, 2021). One important type of document is the Sales and Purchase Agreement (PPJB) and the Power of Attorney to Sell, which are interrelated and serve as the basis for the transfer of rights before the sale and purchase process is finalised (Kurniawati, 2018). In the process of drafting these documents, the Notary must act honestly and professionally, ensuring that all parties understand and agree to the contents of the deed, in accordance with the provisions of Articles 1457 and 1792 of the Civil Code. In cases of deviations, such as the creation of a deed without mutual agreement or the absence of the parties at the Notary's office, the deed may be legally flawed (Meliala, 2012). Under Articles 18 and 19 of Law No. 2 of 2014 amending Law No. 30 of 2004 on the Notary Public Office (UUJN), the signing of a deed must be done at the Notary's office, except in certain cases where it may be done at another location provided it remains within the Notary's jurisdiction or area of authority. If there is a deviation, such as the creation of a deed without the presence of the parties or outside the Notary's jurisdiction, the probative value of the deed is degraded to that of a private document and is potentially legally flawed. An example of this is found in the Supreme Court Decision No. 3162/K/Pdt/2021, which states that the Deed of Sale and Purchase Agreement and Power of Attorney made before Notary Ketut Suryada is declared null and void because it was made based on signatures on a blank form without clear consent from the parties.

The absence of an agreement between the owner of the property and the Notary in drafting the Sales and Purchase Agreement means that it does not meet the elements required under Article 1320 of the Civil Code. Furthermore, during the court proceedings, evidence was found that the signing of the deed did not take place at the Notary's office but was instead conducted at the office of the first defendant, while both deeds state that the parties appeared before the Notary on Thursday, 28 February 2019, at the Notary's Office at Jalan Jenderal Sudirman No. 73 A, Seririt. Given the discrepancy between the facts and what is stated in the deed, it can be concluded that the authentic deed is legally flawed due to the Notary's negligence in drafting the deed. As a public official, the Notary is responsible for the deeds he draws up. This paper focuses on the Notary's responsibility for the Sale and Purchase Agreement and Power of Attorney, which

have been declared null and void. Based on the aforementioned background, the research questions are as follows: (1) What are the legal consequences of a Sales and Purchase Agreement (PPJB) and Power of Attorney to Sell that has been declared null and void? (2) What is the responsibility of the Notary in the preparation of a Sales and Purchase Agreement (PPJB) and Power of Attorney to Sell that has been declared null and void?

II. METHODS

The type of research used by the author is normative legal research, commonly referred to as doctrinal research, which is conducted by examining library materials and legal materials consisting of primary legal materials, secondary legal materials, and non-legal materials. The research conducted is prescriptive and applied in nature, using literature sources to answer problems and employing logical reasoning through inductive, deductive, and systematic reasoning in its analysis, to provide arguments or results of the research conducted (Marzuki, 2017). The approaches used by the author in this study are the conceptual approach and the case approach. The legal materials used in this study are primary and secondary legal materials. The technique used to collect legal materials in this study is document study or literature review. This research is analysed by collecting primary and secondary legal materials using library research techniques. This technique is carried out by reading, studying, reviewing, and analysing legal materials in accordance with the issues being studied by the researcher.

III. RESULTS AND DISCUSSION

1. Legal Consequences of a Sales and Purchase Agreement (PPJB) and Power of Attorney to Sell Declared Null and Void by Law

The Sales and Purchase Agreement and the Power of Attorney to Sell, which have been declared null and void by the Supreme Court Decision No. 3162/K/Pdt/2021, have serious legal consequences for the parties involved. In Case No. 3162 K/Pdt/2021, the Supreme Court rejected the appeal and upheld the decisions of the District Court of Singaraja and the High Court of Denpasar, which declared that the Sales and Purchase Agreement (PPJB) No. 29 and the Power of Attorney to Sell No. 30, executed by Notary Ketut Suryada, are null and void and have no legal binding force. Under Indonesian civil law, a contract that is null and void and has no binding force is a contract that does not meet the requirements for a valid contract as stipulated in Article 1320 of the Civil Code. This article sets out the requirements for a valid contract, which are divided into subjective requirements and objective requirements. The subjective requirements consist of two elements: the agreement between the parties and the capacity of the parties to enter into a contract. The objective requirements consist of a specific subject matter and a lawful cause (Senda et al., 2024). If the subjective requirements are not met, such as the absence of a valid agreement between the parties or the lack of capacity of one of the parties, the contract may be nullified.

If the objective requirements are not met, for example, the object of the agreement is not or the purpose violates the law, the agreement is considered null and void (Priyadi, 2022). In this case, the element of agreement is not fulfilled because the parties only signed a blank form without the intention of making a Deed of Sale and Purchase Agreement or a Power of Attorney to Sell. Additionally, there is a discrepancy between the place and time of signing as stated in the deed, indicating that the deed contains both formal and material defects and may lack legal validity. The Sale and Purchase Agreement and Power of Attorney, which were declared null and void by the court's decision, have serious legal consequences. Since they are deemed to have never existed legally, all legal consequences or actions arising from them are invalid. In this case, the subject of the dispute is a piece of land with a Certificate of Ownership that was pledged as collateral by an unauthorised party, as the rightful owner and grantor of the collateral (Plaintiff II) was not present and did not consent to the execution of the deed. Thus, the absence of the element of agreement renders the deeds legally invalid.

The legal consequences for each party involved in the case of the Supreme Court of the Republic of Indonesia Number 3162 K/Pdt/2021 include:

1. The Plaintiffs (I Nyoman Renten and Komang Terima)
As the rightful owners of the disputed land, the plaintiffs obtained full restoration of their rights to the land. With the legal annulment of the Deed of Sale and Purchase Agreement and Power of Sale, all forms of transfer of rights that occurred without their consent became invalid. Therefore, they are entitled to regain control over the land and the ownership certificates free from any party, including through the assistance of state authorities if necessary. This decision also reaffirms that they have never validly relinquished or transferred any rights to the land in question.
2. The Defendants (Nyoman Suarjaya, S.H. and Gede Putu Winaya)
The defendants were found to have no legal basis for claiming ownership or control of the disputed property because the legal basis used (the Sale and Purchase Agreement and Power of Attorney) had been declared null and void by the court. As a result, they lost their rights to the property and were ordered to return the land and title deeds to the plaintiffs. Additionally, they were ordered to pay the litigation costs at all levels of the court system jointly and severally. Their legal position has been weakened as they are deemed to have acted based on an invalid deed and in violation of the principles of civil law, particularly Article 1320 of the Civil Code.
3. Co-Defendant (Notary Ketut Suryada)
As a public official who drew up the Deed of Sale and Purchase Agreement and Power of Attorney, the co-defendant is subject to legal consequences in the form of an order to comply with the final and binding decision. This decision reflects a procedural violation by the notary, as the deed was drawn up without the presence and consent of one of the parties (the landowner), rendering the deed null and void. As a result, the co-defendant is indirectly deemed to have committed negligence or a violation of the provisions of the Notary Public Act, particularly regarding the formal validity of the authentic deed.

The legal consequences of the cancellation are that the parties are restored to their original state, meaning that there is no valid legal relationship of sale or power of sale between them. The rights to the land that were transferred based on the deed that has been declared null and void must be returned to the rightful owner. In addition, the actions of the Notary who drafted the deed based on false facts may be considered an unlawful act. Furthermore, if the Notary draws up a deed based on facts that do not correspond to reality, such an act may be classified as an unlawful act, as provided for in Article 1365 of the Civil Code. In such a case, the Notary may be held liable civilly, administratively, and even criminally. Law No. 2 of 2014 amending Law No. 30 of 2004 on the Office of the Notary sets out sanctions in several provisions, including Article 7(2), Article 16(11), Article 17(2), Article 19(4), Article 32(4), Article 54(2), and Article 65A. Administrative sanctions include: a) written warning, b) temporary suspension, c) dismissal with honour, and d) dismissal without honour.

Furthermore, if criminal elements are present, the Notary may also be subject to the provisions of Article 264(1) of the Criminal Code regarding the forgery of authentic documents, which is punishable by imprisonment. The Supreme Court's decision reinforces the importance of the Notary's responsibility as a public official in ensuring the formal validity of the documents they prepare. In notarial practice, failure to maintain integrity and due diligence can harm the public and undermine public trust in authentic documents (Adjie, 2009). The responsibility of a notary is not merely administrative but may also extend to the civil realm if their actions cause harm to others, and may even result in criminal sanctions if there is evidence of intentional misconduct or gross negligence in the performance of their duties (Fuady, 2011). The invalidity of a sales and purchase agreement and power of attorney not only nullifies the legal relationship but also opens up a wide scope of legal liability for negligent notaries.

2. The Notary's Responsibility in the Preparation of a Deed of Sale and Purchase Agreement (PPJB) and Power of Attorney to Sell Declared Null and Void by Law

According to Article 1457 of the Civil Code, a sale and purchase agreement is a contract in which one party undertakes to transfer ownership of a certain item and the other party undertakes to pay an agreed price. A sale and purchase agreement is a reciprocal obligation in which one party (the seller) promises to

transfer ownership of a good, while the other party (the buyer) promises to pay the price consisting of an amount as compensation for the acquisition of such ownership. A sale and purchase agreement is a consensual agreement, meaning that the agreement becomes valid and binding upon the agreement between the seller and the buyer regarding the object and price.

Even if the goods have not been delivered or the price has not been paid, the agreement remains the basis of the legal obligation between the two parties. (Subekti, 2014). In the Supreme Court Decision No. 3162 K/Pdt/2021, involving I Nyoman Renten and Komang Terima as the Plaintiffs, against Nyoman Suarjaya, S.H. (Defendant I) and Gede Putu Winaya (Defendant II), as well as Notary Ketut Suryada, S.H. as the Co-Defendant. The dispute originated from a plot of land owned by the Plaintiffs measuring 150 m² with SHM No. 06917/Banyuning, which was pledged at PD. BPR Bank Buleleng 45 for a loan in the name of Komang Terima. During the process, Defendant I presented two blank forms to the Plaintiffs to be signed, claiming that this was necessary to avoid interest on the loan. However, it was later discovered that the two blank forms were used as the basis for the creation of Deed of Sale and Purchase Agreement No. 29 and Power of Attorney to Sell No. 30 without any agreement or the presence of the Plaintiffs, and furthermore, the name of Defendant II, who was not even known to the Plaintiffs as the buyer, was included in the documents. The signing of the deed took place outside the notary's office, specifically at the location of Defendant I, and the land certificate remains in a mortgaged status without a release. The Court ruled that the deeds did not meet the subjective and formal requirements as stipulated in Article 1320 of the Civil Code and violated the principle of authentic deeds, and therefore declared them null and void and only valid as private documents.

Based on the findings in the Decision of the Supreme Court of the Republic of Indonesia No. 3162 K/Pdt/2021, it can be concluded that the preparation of the PPJB Deed and the Power of Attorney to Sell by the notary in the aforementioned case did not comply with the applicable legal provisions, particularly regarding the validity requirements of a contract.

1. The debtor never knew the party referred to as the prospective buyer in the Sale and Purchase Agreement (PPJB) made before a notary, not by the notary, because the PPJB is a private deed, i.e. a deed containing the statements of intent of the parties appearing before the notary. The debtor's lack of knowledge regarding the buyer indicates the absence of a valid agreement between the parties as required under Article 1320 of the Civil Code. Furthermore, if it is proven that the agreement was obtained through fraud or deception to gain an advantage over another party, it may be classified as fraud, which, according to Article 1328 of the Civil Code, is one of the grounds for the nullification of a contract.
2. The documents in question in this case are the Sales and Purchase Agreement (PPJB) No. 29 and the Power of Attorney to Sell No. 30, which were executed before a Notary Public, and which were found to have been drafted based on two blank forms that had been previously signed by the Debtor without a clear understanding of their content or purpose. The Debtor signed the documents solely based on trust in the good faith of the Defendant I, who was at the time involved in a credit process at PD. BPR Bank Buleleng 45. Since the agreement was obtained without a clear cause and used for a purpose not openly disclosed to the Debtor, the agreement contained in the documents cannot be deemed to have a valid cause. This is contrary to Article 1335 of the Civil Code, which states that an agreement without cause, or made with a false or prohibited cause, has no legal force.

According to Article 1320 of the Civil Code, an agreement is considered valid and effective upon the reaching of an agreement between the parties involved. In this process, the parties involved express their intention to bind themselves in a legal relationship (Abubakar, 2009). The elements of agreement and legal capacity of the parties are included in the category of subjective requirements. If these subjective requirements are not met, the agreement can only be cancelled. Conversely, elements relating to a specific object and a lawful cause are categorised as objective requirements. If the objective requirements are not met, the agreement is declared null and void, meaning that it is considered never to have existed and has no legal effect. (Kamilah, 2013) In the process of drafting a Sale and Purchase Agreement (PPJB), it was found

that the notary did not perform his duties in accordance with the applicable legal provisions. Some of the violations that occurred include: (Haryani, 2021)

1. The signing of the deed was not carried out at the Notary's office.

Pursuant to Article 3(15) of the Notary Code of Ethics, a Notary is required to perform their duties at their office, except for certain valid reasons. This provision is consistent with Articles 17 and 18 of the Notary Office Act (UUJN), which state that a Notary has a fixed place of office and may only exercise their authority within the jurisdiction of their office. Therefore, if the signing of a deed is conducted outside the Notary's office without a valid reason and outside the boundaries of the designated jurisdiction, such an act is not only an administrative violation but also constitutes an ethical breach of office that may affect the formal validity of the deed in question.

2. Absence of prospective buyers at the signing of the deed.

Based on the provisions of the Notary Public Act, a Notary Public, as a public official providing legal services to the public, is required to perform their duties honestly, objectively, carefully, and independently, without favouring the interests of any party. The deed should ensure legal certainty and justice for all parties involved. Therefore, the presence of all parties, including the prospective buyer, is crucial during the reading and signing of the deed, which, according to the regulations, must also be witnessed by at least two witnesses. In addition, the contents of the Sale and Purchase Agreement (PPJB) made before a Notary do not specify a time limit for its validity, which may cause confusion or uncertainty for the parties regarding when their respective obligations must be fulfilled. Although there are no direct legal provisions requiring a time limit in the PPJB, in notarial practice, it is important to provide clarity and prevent disputes in the future. The PPJB itself is a *partij akte*, i.e., a deed containing statements made by the parties who appear directly before the Notary. Since this deed originates from the parties' intentions, it should include all important matters agreed upon, including the timeframe. Without clarity on the timeframe, the primary function of an authentic deed as a legal instrument to provide legal certainty, establish order, and protect the rights of the parties cannot be effectively fulfilled.

In the Power of Attorney for Sale made before a Notary, there is a clause stating that the power of attorney cannot be revoked, withdrawn, or terminated for any reason. Such a clause is known as an absolute power of attorney, which does not allow the grantor to revoke it, and is typically used for transferring ownership of property, such as land. However, according to Article 1813 of the Civil Code, the grant of authority ceases with the revocation of the authority by the grantee, upon notification of the termination of the authority by the grantee, and upon the death, incapacity, or bankruptcy of either the grantor or the grantee. The Director General of Agrarian Affairs' letter on behalf of the Minister of Home Affairs of the Republic of Indonesia No. 594/493/AGR dated 31 March 1982 states that absolute power of attorney is prohibited if used to transfer rights over land, as it may conceal a non-transparent sale and purchase transaction. The absolute power of attorney in the Power of Attorney to Sell in the present case, which was used to sell land on behalf of the principal, is deemed contrary to the principle of due diligence and violates the principle of legal protection. Herlien Budiono (2006) explains that absolute power of attorney is a form of legal engineering that is abused to conceal legal acts of transfer of rights without going through legitimate and open mechanisms.

This is contrary to the principles of consensualism and transparency in contract law. In the case of Judgment No. 3162 K/Pdt/2021, the Power of Attorney to Sell containing the absolute power of attorney was made after the PPJB and used to facilitate the transfer of rights over the land, which was still under collateral at the time. The existence of this absolute power of attorney was then used without the knowledge of the grantor to sell the land to a party unknown to the landowner, and this was categorised by the Court as a legal violation resulting in the deed losing its authentic force. Therefore, although the PPJB and the Power of Attorney to Sell stand as two separate documents, both are deemed legally defective because they were based on documents signed without the proper understanding and consent of the parties involved. As a result, the Court declared both documents null and void. The Supreme Court of the Republic of Indonesia's Decision No. 3162 K/Pdt/2021 indicates that the notary in this case failed to perform their duties and authorities in accordance with the provisions of applicable laws and regulations. This non-compliance is evident from the

failure to fulfil the formal and material elements of truth in the deed, even though authentic deeds have greater value because they guarantee validity regarding the place, time, and presence of the parties. When these elements are ignored, the full probative force of the authentic deed is nullified.

Although the notary's violation in this case has been proven, the Supreme Court's decision did not impose any sanctions on the notary in question. However, if a notary is proven to have violated the provisions of their office, they may be held accountable not only administratively but also criminally if the deed was made based on false information. Notaries have the authority to refuse to make a deed that is not in accordance with the law. In this case, criminal liability for a notary who issues a deed based on false information may be imposed under Article 263(1), Article 264(1)(1), and Article 266(1) of the Criminal Code in conjunction with Article 55(1) of the Criminal Code. (Subiyantana & Octarina, 2020) The Notary Public Act (UUJN) does not specifically regulate criminal provisions for notaries who commit criminal offences. However, in the current Notary Public Act, sanctions against notaries who violate their official duties are regulated through various provisions scattered throughout the Act, such as Article 7(2), Article 16(11), Article 17(2), Article 19(4), Article 32(4), Article 54(2), up to Article 65A of the Notary Public Act (UUJN). These administrative sanctions include written warnings, temporary suspension, dismissal with honours, and dismissal without honours. In addition, civil and criminal liability may also be imposed on a Notary if their actions involve unlawful acts or negligence that cause harm to others.

1. Civil sanctions

Civil sanctions may be imposed on a Notary in the form of an obligation to pay compensation, costs, and interest if the deed drawn up only has the force of a private document or is declared null and void by law. In the event that the deed is still recognised by the parties despite being contrary to the provisions of the Notary's official duties, the deed is still considered to have full probative force and remains binding on the parties. The assessment of the probative value of a notarial deed, whether it remains an authentic deed or has been downgraded to a private deed, is part of the evidentiary process in court. If a party suffers direct harm as a result of a deed drawn up by a notary, the notary may be sued in civil court.

2. Administrative Sanctions

Administrative sanctions against notaries are regulated in Law No. 30 of 2004 on the Notary Profession, which includes preventive and repressive mechanisms. Preventive measures are carried out through routine inspections of notary protocols to detect possible violations of the code of ethics. Repressive measures involve the imposition of sanctions by the Supervisory Board. The Regional Supervisory Board may issue verbal or written warnings and recommend temporary suspension or dismissal without honour to the Central Supervisory Board. Meanwhile, the Central Supervisory Board has the authority to impose temporary suspension and recommend dismissal without honour to the Minister.

3. Criminal sanctions

Criminal sanctions against notaries are not specifically regulated in the Notary Law, but refer to general criminal law provisions, such as the Criminal Code (KUHP). A notary may be subject to criminal sanctions if, in the course of their duties, they commit an act constituting a criminal offence, such as forging a document, as provided for in Article 264 of the Criminal Code, which governs the forgery of authentic documents and is punishable by imprisonment for a maximum of eight years. Additionally, the dismissal of a notary by the Minister may be carried out if it is proven that they have committed a criminal offence directly related to the performance of their duties, as stipulated in Article 12(c) in conjunction with Article 13(1) of Law No. 2 of 2014 amending the Notary Public Act.

The Notary Public Act does not mention the application of criminal sanctions for the offence of providing false information by a Notary Public. However, in exercising their authority, Notaries may commit a criminal offence, namely forgery of a deed of relation, which is a deed drawn up by the Notary Public themselves based on what they have experienced, heard and witnessed. In relation to the forgery of documents, Notaries should be subject to criminal sanctions under Article 264 of the Criminal Code, which states that: 'The forgery of a document is punishable by imprisonment for a term of eight years if committed

against an authentic document.' (Handayani & Aminah, 2023). In the explanation of the Civil Code by R. Soesilo (1991), it is stated that a person may be punished for violating the law under Article 264 of the Criminal Code if they meet the elements of Article 263 of the Criminal Code-Criminal Code, but if the forged document must also be one of the documents mentioned in Article 264 of the Criminal Code, where authentic documents are one of them. Similarly, in Case No. 3162/K/Pdt/2021, the Sales and Purchase Agreement drawn up by a notary was declared null and void. This was according to the judge's reasoning because the preparation of the document did not comply with the procedures stipulated in the applicable regulations, as previously explained.

IV. CONCLUSION

Based on the Supreme Court Decision Number 3162 K/Pdt/2021, the Deed of Sale and Purchase Agreement (PPJB) and the Power of Attorney to Sell made before a notary are declared null and void because they do not meet the requirements for a valid agreement as stipulated in Article 1320 of the Civil Code-Civil Code, both subjectively and objectively, and there was a violation of the formal requirements for the creation of an authentic deed. The deed was drafted using a blank form signed without the consent and presence of one of the parties, and it contained an absolute power of attorney that is prohibited, thereby nullifying its authentic force and rendering it merely a private document. The legal consequences of the nullity of the deed require the return of rights to the original owner and the cancellation of all forms of transfer of rights over the land. In this case, the Notary may be held liable in civil, administrative, and criminal proceedings if proven to have acted negligently or intentionally to the detriment of another party, as provided under the Criminal Code and the Notary Public Act. This decision underscores the importance of a Notary's responsibility to exercise due diligence, ensure formal validity, and maintain integrity in every stage of the deed preparation process to safeguard the legal rights of all parties involved.

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