

# The Practice of Letter of Attorney in Land Sales

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**Abstract:** The research with the title the Practice of Letter of Attorney in Land Sales is a normative study conducted in Bantul Regency by taking resource persons of Notary-Conveyor in the Bantul Regency. The results of the study were analyzed descriptive-qualitatively. Based on the results of the research, there were several reasons for making a power of attorney to sell in land sales was because the requirements for the sale and purchase of Land Title Deed are not complete but the price has been paid in full, or because the seller cannot attend the sale certificate before Land Deed Official (Conveyancer/PPAT). Therefore, in order to provide a guarantee to the buyer, a Sales and Purchase Agreement is made which is accompanied by a Power of Attorney of Selling. The seller cannot attend directly to sign the sale and purchase deed before the Land Deed Official and also because the purchased land will be sold to another party. The power of attorney to sell relating to the Sales and Purchase Agreement is included in the Sales and Purchase Agreement deed whose purpose is to sell to himself (recipient of the power of attorney) as the buyer who has already settled, while the ordinary power of attorney is made separately to sell to other people who are basically intended to represent seller for various reasons the seller cannot attend to sign the sale and purchase deed directly before the Conveyancer. The legal strength of the power of attorney to sell with paid off within Sales and Purchase Agreement Lunas is strong, because the power of attorney to sell is basically to provide legal protection to the recipient of the power of attorney, that is, the buyer who has paid in full the land price, so that the sale and purchase has already occurred. Whereas the power of attorney to sell to other people is basically really intended to represent the seller, the risk resulting from the sale and purchase remains the responsibility of the seller.

## 1 INTRODUCTION

The transfer of rights in the form of buying and selling land is a form of transfer of land rights that is mostly carried out by the community. Land sales is one of the legal actions that must be carried out by making a sale and purchase deed by the Conveyer as stipulated in Article 37 of Government Regulation Number 24 of 1997 which states that the transfer of land rights and ownership rights to apartment units through buying and selling, exchange, grants, income in the company and other legal deeds of transfer of rights, except the transfer of rights through auction can only be registered if proven by a deed made by the authorized Conveyancer according to the provisions of the applicable legislation.

Sometimes the land sales cannot be carried out properly due to various reasons, such as the price has not been paid in full or there are requirements that have not been fulfilled. Nevertheless there are also other reasons why buying and selling is not done as it

should, namely through a sale and purchase deed by Conveyancer.

If the sale and purchase cannot be carried out according to the applicable provisions, namely with the Conveyancer deed, what is often done is to make a deed of the Sale and Purchase Agreement (PPJB). There are two kinds of PPJB, namely *PPJB Lunas*, in the sense that land prices have been paid in full but there are other requirements that have not been fulfilled and PPJB has not been paid off. In the PPJB paid off accompanied by a Selling Power of Attorney. The power of attorney to sell will be used by the buyer for the buying and selling process before Conveyancer. Selling Power of Attorney which will be used by buyers for the sale and purchase process by Conveyancer, without having to be present the buyer is often made for various reasons. Therefore this research was conducted to find out the reason for making the Selling Power of Attorney and the legal force of the power of attorney to sell it. Power of attorney to sell can be defined, as the power of

attorney from the owner of the goods to another party as the recipient of the power of attorney, to sell certain items owned by the owner of the goods, including doing actions in the interest of selling the goods. (Setyawan, 2016)

In this study based on the problems: How does the form of power of attorney sell related to PPJB and power of attorney that are usually not related to PPJB? The method used is to use normative research methods that are supported by empirical data, namely research based on secondary data by reviewing various laws and regulations as well as books, journals as well as writings relating to Selling Power of Attorney, sales deed documents.

## 2 RESULT AND DISCUSSIONS

### 2.1 Reasons for Making Power of Attorney of Selling

Land buying and selling according to national agrarian law that uses the basis of customary law is buying and selling that is *cash, clear and real*. *Cash* means that delivery of rights by the seller to the buyer is carried out together with the payment of the price by the buyer. With this act, the right to change was immediately implemented. Prices paid at the time of delivery do not have to be paid off, the remainder will be considered as debt from the buyer to the seller who is subject to the debt payable law. *Real* nature means that the intention or intention spoken must be followed by a real action to show the purpose of the sale and purchase, while *Clear* means that the legal act must be carried out before the Conveyancer as a sign that the act does not violate applicable law, means to be carried out openly, clearly the object and subject of the owner, complete letters and proof of ownership (SW and Sumardjono, 1993)

The process of buying and selling land according to national agrarian law, in addition to the agreement regarding prices and goods (land), a deed must be made by Conveyancer. Sometimes the buying and selling process before Conveyancer cannot be done yet, because there are some requirements that have not been fulfilled, such as the price has not been paid in full, or there are other requirements documents that do not yet exist. Therefore, before the sale and purchase process with the sale and purchase deed made by the Conveyancer was carried out, the parties entered into a sale and purchase agreement (PPJB). In practice, many people execute the land sales, which are one of the legal actions related to land

rights in cash or in full, are made more often using a Sale and Purchase Agreement (PPJB) due to various factors or reasons. (Kurniawati, 2018)

Sale and Buy Agreement is made to temporarily bind before making AJB officially before the Land Deed Making Officer (Conveyancer). In general, the contents of the PPJB are the agreement of the seller to bind themselves to sell to the buyer accompanied by the giving of a sign or advance based on the agreement. There are two kinds of Sale and Buy Agreement (PPJB), namely *PPJB Lunas*, in the sense that the land price has been paid in full, but there are requirements that have not been fulfilled, so that the land price has not been paid in full. Sale and Purchase Agreement.

Some of the reasons for using Power of Attorney of Selling in buying and selling land are:

- a. The price of land has been paid in full, but the requirements for making a sale and purchase deed are not complete. Therefore, because the price has been paid in full, then in order to provide a guarantee to the buyer, a Sales and Purchase Agreement (PPJB) is made which is accompanied by a Selling Power of Attorney. With this power of attorney, then when all the requirements have been fulfilled, without the need for the presence of the seller because it has been represented by giving power, with the power of attorney to sell to the buyer, the PPAT can immediately make the Sale Deed to process the name of the certificate. The Power of Selling is intended to provide protection for buyers who have paid the price of the land in full. Basically the power of attorney to sell aims to simplify the work of the Notary if the seller cannot attend to sign the deed of sale due to certain reasons. In addition, the purpose of using the power to sell is to protect the interests of the parties from things that are not desirable, for example a broken promise from one of the parties. With the power to sell it becomes a kind of juridical safeguard in protecting the interests of the parties who make it. (Meiliyanza, 2016) The granting of the power of sale in the binding deed of sale and purchase is not included in the meaning of absolute power which is prohibited because the power of attorney is made in order to perpetuate a valid causal agreement, and legal actions referred to in the power of sale are not for the power of attorney but for the benefit of the power of attorney, which is the release of legal obligations by the power of attorney as the seller to the power of attorney as the buyer because the price has been paid in full. (Latumenten, 2003). The deed of power to sell is not an absolute power,

absolute power is an irrevocable power, the term absolute power is not a legal term, in the sense that there is no strict arrangement regarding that right. To be able to understand the true meaning of absolute power, it must be interpreted etymologically (Andasasmita. 1991).

- b. The seller cannot attend directly to sign the sale and purchase deed before the Land Deed Maker Officer (Conveyancer).

A power of attorney to sell is made if the buyer does not want to directly attend himself to sign the sale and purchase deed before the Land Deed Maker Officer (Conveyancer), so as to empower other people to represent him. But there are times when there are other reasons, because the land purchased will be sold to another party. This is done with the aim of avoiding taxes and also the double / twice transfers of rights. This is usually done by developers or buyers whose profession is buying and selling land / houses. They buy land and have been paid in full and all the requirements for buying and selling have been fulfilled, but do not want to buy and sell as they should because they do not want to pay taxes, especially the Land and Building Rights (BPHTB) fees and the cost of making a Deed of Sale and Purchase and transfer of rights. Therefore *PPJB Lunas* is made with a Selling Power of Attorney, so that later those who will pay taxes and transfer fees are when buying and selling to new buyers. Still according to the resource person, even in the form of PPJB, the land office requires proof of income tax (PPh), this is to avoid PPJB being used as a way to avoid taxes. The income tax paid is income tax on a sum of money from the value of the transaction that has been paid, not the overall price. But if it has been paid in full, it means that the income tax that must be paid is calculated from the total value of the transaction price as a whole. Whereas for BPHTB that must be paid by the buyer will be paid during the process of making AJB. So with this Power of Attorney Selling a new BPHTB will be charged when making a Deed of Sale before PPAT, for the production of PPJB BPHTB not yet paid.

This power to sell can be entered as a clause in the PPJB, it can also stand alone, in the form of a separate deed. So, when signing, signed two deeds: PPJB and the Deed of Power to Sell. In the event that the power to sell is entered as a clause in the PPJB, the PPJB deed will only be signed. There are two types of power of attorney to sell, namely a power of attorney to sell to himself (the recipient of the power of attorney), and the power to sell to another party. The

power of attorney to sell to itself is usually related to PPJB while an ordinary power of attorney, in the sense that the power to sell to another person is not related to PPJB.

The power to sell to oneself can be a part of the PPJB, it can also be a separate deed of authority. If the power to sell Kediri itself is made in its own deed, then when the rights are transferred at the land office, the PPJB must be included. To distinguish ordinary power of attorney from the power of attorney to sell to oneself is the editorial sentence. For the power of attorney to sell to oneself the sentence used is "sell to the recipient of the power of attorney", while the usual power of attorney reads "giving power to and on behalf of the authorizer to sell to anyone".

In the event that the selling power is separately made with the PPJB, then when registering the sale deed to the Land Office, the PPJB must be accompanied. Because basically the power of selling is made based on PPJB which has paid off, so that both are interconnected and inseparable. This is to avoid misuse of the selling power, for example, for example, the power of attorney is used to make a sale and purchase deed, which the buyer is different from the buyer listed in the PPJB. This can cause legal problems in the future, including can be used for irregularities in the tax field.

In the case of the seller or the buyer acting through a power of attorney, then there must be a special power to sell. General power, which is usually only for management action does not apply to selling. The power must be firm in selling the land sold. The form of power must be written, verbal power cannot be used as a basis for buying and selling land. The written power of attorney is also at least legalized (by a Notary / Registrar of District / State Representatives abroad) (Wicaksono and Sugiarto, 2009).

However, the special power of attorney is different from the absolute power of attorney as stated in the Instruction of the Minister of Home Affairs on March 6, 1982 Number 14 of 1982 jo. Supreme Court Jurisprudence dated April 14, 1988 number 2584 K / Pdt / 1986 which affirmed that absolute power, regarding the sale and purchase of land, cannot be justified because in practice it is often misused for smuggling buying and selling of land.

Authorization to sell is of the nature or type of special power of attorney because it only concerns one particular interest or more, the contents of which are clearly and explicitly stated regarding acts or legal actions authorized by the recipient of the power of attorney. (Zainudin, 2017)

## 1.2 Legal Protection using Power of Attorney of Selling for Buyers

Protection of buyers who have paid off and made using PPJB, besides being carried out with conditions must be followed by making irrevocable power-giving clauses. The point is that if the seller does not fulfill it, the buyer can sue and request compensation in accordance with the agreement stipulated in the sale and purchase agreement.

The Selling Authorization contained in the *PPJB Lunas* deed is absolute, meaning that it cannot be revoked and will not end due to the reasons set out in Article 1813 of the Civil Code. This is to ensure legal certainty for buyers who have paid in full the price they have paid in full but cannot yet be implemented because of one thing or another there are conditions that have not been fulfilled. It should also be noted that, if the power to sell this an inseparable part of PJB is complete, then in the event the said PJB certificate is completely signed without any erroneous, coercive or fraudulent elements, then the PJB process is complete, which continues to be AJB and comes back the name of the certificate, it is already running as it should.

A power of attorney to sell, subject to the regulation of power of attorney in article 1792 - article 1819 of the Civil Code Law (KUHPer). In these articles, there is no regulation regarding the period of validity of a power of attorney. So, the validity period of a power of attorney depends on the agreement of the parties, in accordance with the principle of freedom of contract in article 1338 of the Civil Code Law (KUHPer).

Authorization to sell is of the nature or type of special power of attorney because it only concerns one particular interest or more, the contents of which are clearly and explicitly stated regarding acts or legal actions authorized by the recipient of the power of attorney. It should be noted that the prohibition on absolute power of attorney, namely a power of attorney containing the element "cannot be withdrawn by the authorizer". In accordance with article 1813 of the Civil Code Law (KUHPer), one of the reasons for the termination of power of attorney is if the authorization withdraws its power. This absolute power ban was strengthened in the Instruction of the Minister of Home Affairs No. 14 of 1982 concerning Prohibition on the Use of Absolute Authorities as the Transfer of Land Rights.

The deed of power to sell is not an absolute power, absolute power is an irrevocable power; the term absolute power is not a legal term, in the sense that there is no strict arrangement regarding that right. To

be able to understand the true meaning of absolute power, it must be interpreted etymologically (Andasasmita. 1991). From the contents of the Power of Attorney mentioned, the Power of Attorney can be categorized as a General Power of Attorney or an Absolute Power of Attorney, because the object is very broad. Instruction of Minister of Home Affairs No. 14 of 1982, in the second part, describes the definition of Absolute Power of Attorney, namely:

a. Absolute Power is the power in which the element of irrevocability is given by the authorizer.

b. Absolute Power is the transfer of rights to land that gives authority to the recipient of the power to control and use the land and to do all legal actions that according to the law can be carried out by the right-holders.

In practice, this type of Absolute Power of Attorney is prohibited from being used in the process of transferring land rights / sale and purchase of land, as stipulated in the Instruction of Minister of Home Affairs No. 14 of 1982 aimed at regulating public order in the transaction of sale and purchase of land. Letter c, considering that the Instruction states: The purpose of the prohibition is to avoid misuse of the law which regulates the power of attorney by holding the transfer of land rights in a covert manner using the form of "absolute power". Such action is one form of legal action that interferes with efforts to control land status and use.

Even though the power of attorney to sell is irrevocable, the authorization to sell in the binding deed of sale and purchase is not included in the meaning of absolute power which is prohibited because the power of attorney is made in order to perpetuate an agreement with a valid causal, and legal actions referred to in the power of sale, not for the interests of the power of attorney, but for the interests of the power of attorney, which is the implementation of legal obligations by the power of attorney as the seller to the power recipient as the buyer because the price has been paid in full (Latumenten, 2003). It becomes a fair thing if someone has paid in full the price of land to get protection with the power of attorney to sell it.

Basically the responsibility in fulfilling the rights and obligations in the power of attorney becomes the responsibility of the principal which is in this case the attorney acts for and on behalf of, and represents the principal. An attorney does a business not for himself, but for the interest of the person he represents, who is the true owner of the interest. That means the legal actions carried out by the attorney are the legal actions of the principal (Adnyana, 2015). In theory,

the power to sale is the delegation of some or all of the authority that is in the power of attorney to the person who receives power in the event and / or to carry out legal actions to transfer the right to land owned by the authority (Zainuddin, 2017).

### 3 CONCLUSIONS

From the results of the analysis and discussion of the problem of using the power of selling in land sale and purchase, several conclusions can be drawn as follows:

1. The power of attorney to sell relating to PPJB is included in the PPJB deed which aims to sell to himself (the recipient of the authorization) as the buyer who has already settled, while the ordinary power of attorney is made separately to sell to others which is basically really intended to represent the seller for various reasons because the seller cannot attend to sign the deed of sale directly before the Land Deed Maker Officer (Conveyancer).
2. The legal strength of the power of attorney to sell with *PPJB Lunas* is strong, because the power of attorney to sell is basically to provide legal protection to the recipient of the power of attorney, i.e. the buyer who has paid the land price in full, so that the sale and purchase has already occurred, and therefore it is natural that the power of attorney to sell is irrevocable. Whereas the power of attorney to sell to other people is basically intended to represent the seller, for various reasons, the seller cannot attend to directly sign the sale and purchase deed before the Land Deed Maker Officer (Conveyancer), so that the authority of the authorized person is only to sign the deed of sale buy before Conveyancer. Against the risks resulting from the implementation of the sale and purchase remains the responsibility of the seller.

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