



Legal Consequences of a Sale and Purchase Deed Declared Void Due to an Unlawful Act (Decision Study Number: 2811 K/Pdt/2019)

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Abstract: This study examines the legal issues regarding the sale of collateral objects that are not bound by a deed of debt recognition, where in Decision No. 2811 K/Pdt/2019 there is a deed of sale and purchase issued as a guarantee of the return of rights. Through the normative legal research method, it was found that the sale of collateral objects based on a power of attorney to sell when the credit is in default is only valid if the debtor is proven to be in default and there is an agreement of the parties in accordance with Article 20 paragraphs (2) and (3) of the UUHT, while the power of attorney to sell made when the credit is binding is invalid because it is contrary to Law No. 4 of 1996 concerning Mortgage Rights and results in the cancellation of the power of attorney by law.

Keywords: Deeds, Buying and Selling, Unlawful Actions.

1. Introduction

The definition of a sale and purchase based on Article 1457 of the Civil Code states that a sale and purchase is an agreement, by which one party binds himself to hand over an object and the other party pays the promised price. (Adi, 2021), (Dalimunthe & Rizkianti, 2020). The legal act of buying and selling is often carried out as one way to obtain goods that are used to fulfill daily living needs. (Saprida, Umari, & Choiriyah, 2023), (KRISMAWAN, 2022).

In carrying out legal acts, sometimes a person needs the help of another person. This can happen due to limitations of time, distance, physical condition, social condition, economic condition and others, so that this can be done through a power of attorney as regulated in Articles 1792 to 1819 of the Civil Code (KUHPerdara). (Lumongga, 2017), (Soetjningsih, 2018). Power of attorney is a statement by which a person grants authority to another person that the person given the power of attorney has the authority to bind the principal directly with another party, so that in this case the legal act carried out by the person receiving the power of attorney is valid as a legal act carried out by the principal himself. (Wiguna, 2018), (Irawan, 2023). In the case of granting power of attorney, it can be done under hand or in the presence of an authorized official. (Mongdong, 2017), (Saputro & Huda, 2024).

Based on the above, absolute power of attorney is a covert sale and purchase of land, where the absolute power of attorney clause always includes "irrevocable power of attorney" and the person receiving the power of attorney can carry out any action, be it management actions or ownership actions of the land in question. (Ramadan, 2023), (Nurchahya, 2016). The negative impacts of absolute power as referred to above are tax evasion, transfer of land rights with absolute power does not provide legal certainty. (Rachmandhani, 2023), (Mawar et al., nd) (Sumarja, 2021).

Regarding the power of attorney given by someone in carrying out the sale and purchase of immovable property, it is not uncommon for errors or even legal defects to occur in its implementation as in the case discussed in this proposal, namely Decision No. 30/Pdt.G/2018/PN.Jmb where in the case it is explained that Ati (the plaintiff) gave the power of attorney to sell land with Certificate of Ownership number 6939/Thehok

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covering an area of 140 m² and 2 floors of buildings standing on it with a first floor area of 96.60 m² and a second floor area of 106.95 m² "located on Jalan Rd. Wijaya, SD.183 alley, RT.23, Thehok Village, South Jambi District, Jambi City to Sumaidi (Defendant)(Kosasih & Sh, 2021),(Azella, 2023). The sale and purchase was carried out with a transaction value of Rp. 993,000,000,- (nine hundred and ninety three million rupiah), which then experienced a renvoi on the transaction value to Rp. 425,000,000,- (four hundred and twenty five million rupiah). The plaintiff who did not accept the sale and purchase and transaction price did not match the plaintiff's expectations filed a lawsuit, where the decision given by the judge explained that it canceled the deed of sale and purchase issued for the object and assigned the defendant to return the object to the plaintiff(NADIA, n.d.). Furthermore, the district court decision was appealed by Sumaidi and Tina, hereinafter referred to as the appellants in Decision No. 96/Pdt/2018 of the Jambi High Court, where in the main submission it was explained that Sumaidi felt right in its implementation where Ati had given him the power of attorney to sell, and it was explained that the power of attorney to sell was a legitimate tool to carry out sales transactions as regulated by law. The judge who decided the case upheld the district court decision on the grounds that the sale and purchase carried out violated the rules where it was not permitted to sell the object of power of attorney to the wife of the recipient of the power of attorney, namely Tina.(Kurniadi, 2017),(Hartono, 2022).

Furthermore, the previous appellant, the defendant, filed an appeal, namely the Supreme Court Decision Number 2811 K/Pdt/2019, in which it was explained that before granting the power of attorney to sell, the cassation defendant had borrowed money from the cassation applicant in the amount of Rp. 993,000,000, and it was also explained that in the power of attorney it was explained that the recipient of the power of attorney had the right to sell the object to anyone who the judge considered did not violate the rules even if it was sold to the applicant's wife, therefore the judge in his decision overturned the high court decision which had revised the district court decision. Therefore, it is important to conduct research in the form of a thesis with the title Legal Consequences of a Sale and Purchase Deed Declared Void Due to an Unlawful Act (Study of Decision No. 96/Pdt/2018/PT.Jambi)(Linati, 2022),(MUHAMMAD, 2021). Based on the formulation of the problem set by the author, the following research objectives are obtained: To find out the legal regulations related to the power of attorney to sell in the Law applicable in Indonesia. To find out the validity of the sale and purchase of collateral objects of debt receivables bound by the power of attorney to sell (Study of Decision No. 96/Pdt/2018/PT.Jambi). To find out the Legal Consequences of the Sale of Collateral Objects of Mortgage Rights Not in Accordance with the Provisions (Study of Decision No. 96/Pdt/2018/PT.Jambi).

2. Materials and Methods

This study uses a normative legal method with an analytical descriptive approach that examines laws and regulations, legal theory, and jurisprudence related to the legal consequences of the cancellation of a deed of sale and purchase. The data sources used include primary data through interviews with Notaries and PPATs as informants, as well as secondary data consisting of primary legal materials (laws and regulations), secondary (literature and scientific works), and tertiary (dictionaries and encyclopedias). Data collection techniques are carried out through literature studies and document studies, then analyzed qualitatively to answer research problems with deductive methods.

3. Results and Discussion

3.1. Legal Regulations Regarding Collateral Binding in Debts and Receivables

The sale and purchase agreement is actually no different from the agreement in general. It's just that the sale and purchase agreement is an agreement that arises due to the open nature of book III BW and the principle of freedom of contract, which provides the broadest possible freedom to legal subjects to enter into agreements containing anything and in any form, as long as it does not violate laws and regulations, public order and

morality (Putri Metama, 2017). The sale and purchase agreement made before a Notary is an agreement that is raised and made from the BW concept which is an agreement of the parties regarding the rights and obligations made based on Article 1320 BW in conjunction with Article 1338 BW so that it can provide legal certainty and legal protection for the parties who make it (Tiara Metama Putri, 2017). A personal guarantee is to give verbal rights to the creditor to the entire object of the debtor to obtain fulfillment of his receivables. The collateral of a material nature can be maintained (fulfilled) against anyone, namely against those who obtain rights based on general rights or special rights. Against creditors and opposing parties. The rights always follow the object in the sense that what follows the object is not only the right but also the authority to sell the object and the right to execute.

The recipient of the power of attorney is obliged to fulfill the obligations made by the person giving the power of attorney according to the power he has given him. He is not bound by what has been done more than what has been agreed, other than merely agreeing to it tacitly or expressly, then a power of attorney, in exercising his power, if he has incurred costs to cover the failure or to carry out the power, then to the party The person giving the power of attorney is given the obligation to return the rent or pay wages to the recipient of the power as explained in Article 1808 of the Civil Code (Anastasia Adha Rizka, 2003).

The person giving the power of attorney is obliged to return to the power of attorney the expenses and costs that have been incurred by this person to carry out the power of attorney, as well as to pay his wages if this has been agreed. If the power of attorney does not commit any negligence, then the person giving the power of attorney cannot escape the obligation to return the fees and costs and pay the wages in advance, even if the matter is not successful. A person giving a power of attorney is burdened with the obligation to provide compensation to the recipient of the power for losses suffered while exercising his power, provided that in this case the power of attorney has not acted carelessly. However, if the recipient of the power of attorney commits an act that is careless or negligent, then the party giving the authority becomes irresponsible.

A power of attorney has been appointed by various people to represent a matter which is their joint concern, so each of them will be fully responsible for the power of attorney regarding all the consequences of the granting of power. Responsibility for the granting of power is shared, not imposed on one person. In the case of granting a power of attorney jointly, one person receiving the power of attorney will be faced with various people who have given the power of attorney. This joint responsibility according to the law is to make it easier for the person receiving the power of attorney to claim his wages or other rights arising from the grant agreement. power (Subekti, 1982). If the power of attorney is exhausted from being carried out as well as possible, the recipient of the power of attorney will demand responsibility for the power of attorney jointly to pay wages or allowances in accordance with what has been agreed by the parties.

This release is done by notifying the principal on the condition that it is not done at an inappropriate time, namely at a time that can result in losses to the principal or if the power is continued, it will cause the recipient of the power to suffer losses. Article 1818 of the Civil Code states that in the event that the principal dies and the attorney does not know about it, and continues to carry out his duties as an attorney, then the act remains valid. Article 1819 of the Civil Code states that if the person who dies is the recipient of the power, then his heirs must notify the principal and, as far as possible, take the necessary actions for the benefit of the principal. If these heirs are negligent in notifying the principal of the death, then the heirs are obliged to bear the costs, losses and interest payments.

In addition to the methods for terminating the grant of power of attorney contained in Articles 1813 to 1819 of the Civil Code, it turns out that outside of these methods there are still other methods, namely if the grant of power of attorney is made for a certain pe-

riod of time, then the grant of power of attorney ends with the passing of the period of time, and the grant of power of attorney with certain conditions, where the grant of power of attorney ends if the conditions for that are met (Wirjono Prodjodikoro, 2016).ude.

3.2 The Validity of Sale and Purchase of Collateral Objects of Debt Receivables Bound by Power of Attorney to Sell (Study of Decision No. 2811 K/Pdt/2019)

The first Mortgage Holder does not need to request prior approval from the Mortgage Provider and does not need to request a determination from the Head of the local District Court to carry out the execution. It is sufficient if the Mortgage Holder submits an application to the Head of the local State Auction Office for the implementation of a public auction in order to execute the object of the Mortgage. Because the authority of the first Mortgage Holder is an authority granted by law. In the event of a bad debt, the last resort is to carry out the execution of the guarantee.

In practice, the power of attorney to sell is often used in the transfer of land rights. The basis for the transfer of land rights based on Article 37 paragraph (1) of PP No. 24 of 1997 is through sale and purchase, exchange, grant, income in a company and other legal acts of transfer of rights. In the sale and purchase of land, the use of a power of attorney to sell is that the principal (certificate owner) grants an authority to the recipient of the power of attorney to sell to act on behalf of the principal to carry out the legal act of selling and purchasing land. The contents of the land power of attorney to sell agreement must clearly and in detail describe the object of the power of attorney, namely: land area, certificate number, land boundaries, name of rights holder, name of the principal, name of the principal. And the power of attorney to sell only describes a legal act, namely a representative action to carry out the sale and purchase of land for and on behalf of the principal. Therefore, a power of attorney to sell is a special form of deed. The granting of a power of attorney to sell related to debts between debtors and creditors, with the aim of executing the collateral object in the form of land and buildings on it, can be done if in accordance with legal procedures.

Based on Article 20 paragraph (2) of the UUHT, the execution of the mortgage guarantee can be carried out privately if there is an agreement between the debtor and creditor to carry out a private sale. The aim is to obtain the highest price that benefits all parties. The provisions in Article 20 paragraph (2) of the UUHT state: based on the agreement of the grantor and holder of the mortgage, it can be carried out privately if in this way the highest price can be obtained that benefits all parties. The implementation of a private sale can only be carried out after 1 month has passed since the buyer or holder of the mortgage has notified the interested party in writing and announced in at least two newspapers circulating in the relevant area or local mass media, and no party has expressed any objections (Article 20 paragraph (3) of the UUHT).

The implementation of the sale of collateral objects as long as there is an agreement between the creditor and the debtor and/or guarantor to sell the collateral object, and a reasonable price agreement is obtained that benefits all parties, namely sufficient to fulfill the debtor's obligations to the creditor, then the creditor will hand over the debtor's rights to obtain land rights to the buyer of the collateral object in accordance with the agreement and mutual consent. The results of the sale are the result of an agreement and joint decision between the parties so as to provide a guarantee of certainty and legal protection, both for the creditor or debtor and the buyer. The process of transferring collateral objects is carried out faster, with simpler procedures, and is completed in one process with the settlement of the credit (Edy Puwanto, 2008).

The mechanism for selling the mortgage object is in line with the provisions of Article 20 of Law Number 4 of 1996 concerning Mortgage Rights. Thus, the sale of the mortgage object carried out by the creditor using a power of attorney to sell that does not meet the mechanism of Article 20 of Law Number 4 of 1996 concerning Mortgage Rights is a sale

that is contrary to the provisions of Law Number 4 of 1996 concerning Mortgage Rights or the sale of a mortgage object that is legally flawed.

The content of legal defects in the agreement on the object of the mortgage right is what then has the legal consequence of not protecting the creditor and the buyer of the object of the mortgage right, however, if the power of attorney of sale used by the creditor is in accordance with the mechanism of the provisions of Article 20 of Law Number 4 of 1996 concerning Mortgage Rights, then legal protection will be obtained by both the creditor and the buyer of the object of the mortgage right, because the sale and purchase agreement for the object of the mortgage right made by the creditor with the buyer does not contain legal defects or does not conflict with the law.

The sale of collateral objects carried out by creditors using a power of attorney to sell that does not meet the provisions or is contrary to Article 20 of Law Number 4 of 1996 concerning Mortgage Rights. It can be concluded that the sale and purchase of collateral objects based on a power of attorney to sell made at the time of credit binding is invalid because the power of attorney to sell made at the time of credit binding is contrary to the provisions as regulated in Law Number 4 of 1996 concerning Mortgage Rights.

3.3 Analysis of Unlawful Acts and Legal Consequences of the Sale of Collateral Objects Not in Accordance with Provisions (Study of Decision No. 2811 K/Pdt/2019)

Every act that is contrary to the law certainly has legal consequences. This is as contained in the elements of unlawfulness itself. In the case of a legal act that is carried out contrary to the law, it certainly has the effect that the unlawful act that is carried out is considered never to have been carried out or never existed. Based on the description above, it can be concluded that the Legal Consequences of the Sale and Purchase of collateral objects based on a power of attorney to sell made at the time of the credit binding are contrary to Article 6 and Article 20 of Law No. 4 of 1996 concerning Mortgage Rights so that the legal consequences are null and void, because the objective requirements are not met as stipulated in the conditions for the validity of the agreement in Article 1320 of the Civil Code.

The power of attorney to sell cannot be used as a basis for the bank to carry out the sale and purchase because the power of attorney to sell is invalid and has legal consequences that are null and void, so that the series of subsequent events carried out based on the power of attorney to sell, in this case if the sale and purchase of the collateral object is carried out, then the legal act is an unlawful act with the following considerations: (a) There is an unlawful element because the sale and purchase of the collateral object based on the power of attorney to sell carried out at the time of the credit binding is contrary to the provisions of Article 6 and Article 20 of Law No. 4 of 1996 concerning Mortgage Rights. also violates the subjective rights of others. (b) There is an element of error In this case the legal act carried out was not careful or thorough so that it caused losses to others. (c) There is an element of causal relationship between the loss and the act. there is a causal relationship between the act carried out and the consequences that arise. In this case there is a cause and effect of loss to the debtor as the owner of the collateral object. (d) There is an element of loss In this case the element of loss incurred is to the buyer who has good intentions. So from these four elements the legal action carried out can be classified as an unlawful act.

The legal consequences of being null and void by law have the impact of the legal act that is carried out being considered as never having existed or being returned to its original state so that it does not provide any legal certainty to the interested parties. For unlawful acts, sanctions are born as a form of unlawful legal consequences carried out by the creditor/bank as the seller who carries out the sale and purchase of collateral objects that are not in accordance with these provisions.

The form of sanctions imposed is as stipulated in Article 1365 of the Civil Code, where the provision states "Every unlawful act, which causes loss to another person, requires the person whose fault causes the loss, to compensate for the loss". So in this case

the bank is required to compensate for the loss. The author's study in the case when the sale and purchase of the collateral object is valid, then the form of the legal consequences that arise is a change in rights, namely there is a legal subject who has the right to obtain goods, and has the obligation to pay for the goods.

In practice, the power of sale is often used to transfer land rights. The basis for transferring land rights is based on Article 37 paragraph (1) PP No. 24 of 1997 is through buying and selling, exchange, grants, income in companies and other legal acts of transfer of rights. In buying and selling land, the use of a power of attorney deed is that the person giving the power of attorney (certificate owner) gives authority to the recipient of the power of attorney to sell, acting on behalf of the person giving the power of attorney to carry out legal acts of buying and selling land.

The contents of the power of attorney to sell land must clearly and in detail describe the object of the power of attorney, namely: land area, certificate number, land boundaries, name of the rights holder, name of the grantor of rights, name of the grantee of power of attorney. And the power of attorney to sell only describes a legal act, namely a representative act to carry out the sale and purchase of land for and on behalf of the grantor of power of attorney, therefore the power of attorney to sell is a special form of deed. The granting of a power of attorney to sell related to debts between debtors and creditors, aims to execute the collateral object in the form of land and buildings on it can be done if in accordance with legal procedures.

In general, collateral is divided into two, namely personal guarantee and material collateral. Special material collateral for land no longer uses mortgage institutions and *credietverband*, mortgage institutions and *credietverband* have been revoked since the enactment of Law No. 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land (Mortgage Rights). Article 1 paragraph 1 of Law No. 4 of 1996 concerning Mortgage Rights, states the definition of mortgage rights, namely: "The right of collateral imposed on land rights as referred to in Law Number 5 of 1960 concerning Basic Agrarian Regulations with or without other objects that are an integral part of the land for the repayment of certain debts, which give a priority position to certain creditors over other creditors."

Based on Article 20 paragraph (2) of the UUHT, the execution of the mortgage guarantee can be carried out privately if there is an agreement between the debtor and creditor to carry out a private sale. The aim is to obtain the highest price that benefits all parties. The provisions in Article 20 paragraph (2) of the UUHT state: based on the agreement of the grantor and holder of the mortgage, it can be carried out privately if in this way the highest price can be obtained that benefits all parties.

Likewise, the subsequent provisions in Article 20 paragraph (3) of the UUHT state that the implementation of a private sale may only be carried out after 1 month has passed since written notification by the buyer or mortgage holder to the interested party and announced in at least two newspapers circulating in the relevant area or local mass media, and no party has expressed any objections.

A notary may refuse to make a deed of power of attorney to sell which is used as collateral for debts between the parties. With the following considerations: (a) A debt with land collateral already has a collateral institution that regulates it, such as the UUHT. (b) A deed of power of attorney to sell as collateral for debt repayment is very risky and detrimental to the debtor, because a deed of power of attorney to sell, once made, can immediately carry out a land sale and purchase transaction, regardless of whether the debtor has paid off his debt or is in default on his debt. (c) The transaction price in the sale can be detrimental to the debtor because it is not based on a mutual agreement with the highest price but can be because the sale made by the creditor only takes payment of the debtor's debt.

So if the collateral object has a higher asset value than its debt to the creditor, it is very detrimental to the debtor. However, in practice, the legal act that will be carried out

with the issuance of a deed of power of attorney to sell made by a notary is not in accordance with the laws and regulations, due to the following: (a) The notary is faced with the problems of the parties, if the parties can provide the truth and honesty of the legal act to be carried out, the notary can provide appropriate legal counseling to make an authentic deed. (b) The notary does not master the material, is not up to date with the laws and regulations of a legal act to be carried out by the parties, so that the authentic deed is made incorrectly. (c) The notary is faced with a request from the parties to make an authentic deed in accordance with what they agreed upon.

In relation to this, a power of attorney to sell that does not comply with laws and regulations raises legal issues and becomes a lawsuit between the parties. The usual treatment of collateral, especially land rights owned by the debtor, is not by directly owning the collateral, but for the sake of public interest, it is carried out by holding a public auction and then the proceeds from the sale of the collateral are used to pay off the debtor's debt, with the note that if there is an excess value of the transaction for the sale of the collateral object over the debtor's debt, the excess is given to the debtor, because generally the transaction value for the sale of the collateral object over the debtor's debt is greater than the debt, so the provisions of the public auction fulfill justice and protection for all parties.

Apart from being contrary to both, the power of attorney deed to sell is also contrary to the principle of freedom of contract in the agreement. The deed of power of attorney to sell as an agreement must meet the legal requirements for an agreement as stated in Article 1320 of the Civil Code and based on the principle of freedom of contract as reflected in Article 1338 paragraph (1) of the Civil Code which stipulates that: "all agreements made legally are valid as law for those who make it." This means that every person who can carry out legal actions can make agreements with other parties about whatever they want. However, this does not mean that freedom of contract can eliminate or override the principle of balance, even though the agreement made by the parties is binding as required by law (Bukit and Nasution, 2018).

In its application, the principle of freedom of contract cannot be implemented freely without limits by the parties to the agreement because they still have to remember and consider the principles in the agreement and other provisions in making an agreement (Bukit and Nasution, 2018). A principle of balance is also an indicator of good achievement of the principle of freedom of contract in an agreement. If one party is in a weak position and one of them has a stronger position, then the party who has the stronger position can impose his will for his personal gain.

This does not reflect a fair and proper agreement, therefore the state is present to protect the weak party with the presence of the Mortgage Rights institution in the event that the object of guarantee is land rights. The deed of power of attorney to sell as an agreement based on freedom of contract which is used as a basis for transferring ownership rights to land due to default on debts and receivables, does not provide a balanced bargaining position between the parties, for this reason the state has regulated debts and receivables through the mortgage rights institution regulated in the UUHT which provide a more balanced bargaining position between the parties. A collateral object in the form of rights to land on which a building stands is included in the mortgage rights guarantee institution.

Mortgage rights provide convenience in terms of execution which is an adequate facility, namely it can be carried out by the mortgage holder himself by conducting a sale through a public auction without having to have execution approval from the District Court or what is known as parate execution, because the nature of the mortgage certificate is to have executorial power which has the same power as a court decision that has obtained permanent legal force.

4. Conclusions

This study concludes that the sale of collateral objects through a power of attorney to sell when the credit is in default is declared valid if the debtor is proven to be in default and there is an agreement of the parties in accordance with Article 20 of the Mortgage Law, but the power of attorney to sell made when the credit is binding becomes invalid because it is contrary to Law No. 4/1996 concerning Mortgage Rights, which results in the cancellation of the power of attorney by law and the obligation to return it by the defendant. Based on the results of the study, it is recommended that there is a need for clearer legal regulations regarding personal debt and power of attorney to sell, increasing legal understanding for notaries/PPATs in providing explanations to customers about the prohibition on making power of attorney to sell for personal debt collateral, and the importance of determining firm legal consequences not only for the parties but also for the notary/PPAT who issued the deed.

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