



# Judge's Considerations in Land Sale and Purchase Agreements Through Absolute Power of Attorney (Case Study of Denpasar District Court Decision Number 679/Pdt.G/2021/PN Dps)

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**Abstract:** Civil Lawsuit Decision Number 679/Pdt.G/2021/PN.Dps which states that the Deed of Strengthening Sale and Purchase which is an Absolute Power of Attorney Deed made before a Notary is SAH and binding. This is contrary to the law of binding sale and purchase agreements which are often used by community, but the absolute power of attorney agreement in binding sale and purchase is also not specifically regulated in statutory regulations: how the judge considers the agreement to bind the sale and purchase of land through absolute power (Case Study of Denpasar District Court Decision Number 679/Pdt.G/2021/ PN Dps); This research uses a type of normative juridical research, namely research that focuses on examining the rules or norms in positive law; Civil Decision in Lawsuit Number 679/Pdt.G/2021/PN.Dps Provides legal considerations that because the payment of the land purchase price has been made in full by the buyer, the power of attorney used in PPJB Deed Number 32 and Power of Attorney to Sell Deed Number 33 cannot be categorized as a form of absolute power whose use is prohibited. Regarding PPJB which is paid in full, based on research results, this is one of the conditions that is absolutely mandatory to be fulfilled if the parties are to exercise absolute power in the Land PPJB. (Making PPJB Land which uses absolute power of attorney has also fulfilled its obligation to provide legal protection and certainty for the parties. The agreement between the parties to make an absolute power of attorney is made based on the principle of freedom of contract as regulated in Article 1338 of the Civil Code. The parties are free to arrange the agreement as they wish as long as This does not conflict with law and legislation, morals, decency, decency and religion, public interests (van openbare order. The granting of power of attorney which cannot be revoked is valid if the agreement which is the basis for the granting of power has valid legal reasons.

**Keywords:** Consideration ; Agreement ; Absoslute Power

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## 1. Introduction

Indonesia has a State Constitution as the root of the constitutional formation of government implementation and development of the nation and state in various spheres of life, prosperity and well-being, including the starting point for legal development.(Rina Yulianti, 2022),(Ridwan & Sudrajat, 2020). In article 33 paragraph 3 of the 1945 Constitution which states that Water, Earth (Land) and other natural resources contained therein are controlled by the State and used as much as possible for the prosperity of the People(Wattimena, Uktolseja, Mantayborbir, & Kesaulya, 2023),(Elviana, nd).

Ownership of land is formed through transactions, generally through a sale and purchase agreement for land rights between the seller and the buyer. Indonesia has two legal systems regarding buying and selling land, namely buying and selling land based on customary law and buying and selling land based on western law contained in the Civil Code (KUHPerdata).(Yudhantaka, 2017). According to customary law, buying and

selling is a legal act in the form of handing over the land in question by the seller to the buyer forever (Rondonuwu, 2022). This is done when the buyer hands over the price to the seller, payment of the price and surrender of his rights at the same time, even though the payment is partial, according to customary law it is considered to be paid in full, in customary law buying and selling is done in cash. (Teni, 2021). Meanwhile, according to civil law (Civil Code), the sale and purchase of land is deemed to have occurred by reaching an agreement between the seller and the buyer even though the rights in the form of a land certificate have not been handed over and the agreed price has not been paid in full. (Syahrudin, 2022). Buying and selling has a consensual nature as stipulated in Article 1458 of the Civil Code. The rights to the land being sold are only transferred to the buyer by carrying out another legal action called (juridical transfer) as contained in Article 1459 of the Civil Code (Adisiswanto, Maghfuroh, & Alviedo, 2023), (Apriyanto, 2023).

In making an IJB there are two parts, first, namely the paid-off IJB and the non-paid-off IJB. IJB in full is used for buyers who make cash payments without installments for the land object being bought and sold (ELITA, 2022). Second, IJB is not used in full for buyers who carry out sales and purchase transactions of land rights using an installment system. So, if the sale and purchase deed (AJB) cannot be implemented through the above section, then the seller and buyer agree to make a temporary binding agreement by making a Sale and Purchase Agreement (PPJB) which contains the seller's agreement to bind themselves to sell to the buyer accompanied by a sign. ready or advance payment based on agreement (Amelia, 2022). The AJB is made after all taxes arising from the sale and purchase have been paid by the parties in accordance with their respective obligations. The next step is to submit a registration for the transfer of rights to the local land office or what is commonly known as transfer of name (Manueke, 2018). In making it, each party has the right to make and grant power of attorney, the limitations of which are regulated in Article 1338 in conjunction with Article 1320 of the Civil Code. (Mubarok, 2020).

With the completion of the title transfer, the rights attached to the land and building have been transferred from the seller to the buyer (PRATHAMA, 2023). However, if the buyer fulfills all the terms and conditions agreed upon in the sale-purchase agreement, it could happen for quite a long period of time so that when all the requirements are fulfilled regarding the sale and purchase of land rights by the buyer, it turns out that the seller is unable to come back to sign. sale and purchase deed, due to absence, urgent needs and so on (Utari, 2021). This situation becomes an obstacle for buyers to transfer rights to land which is the object of sale and purchase. To avoid this, the buyer in the sale and purchase agreement will ask for a power of attorney from the prospective seller containing certain provisions (Binsneyder & Rosando, 2020). A binding sale and purchase agreement in which the object of land rights is absolute power of attorney, the contents of which authorize the buyer to act as the seller. Buying and selling can be done even if the seller cannot be present at the signing of the sale and purchase deed before a notary, after fulfilling all the conditions in the previously agreed sale and purchase agreement. (Adiani, 2021).

The use of power of attorney is not prohibited if the PPJB is paid in full, if the use is used as an act of transferring/transferring land rights in a disguised manner, namely when a transaction is essentially a transfer/assignment of land rights. (AS & RIGHTS, nd), however, it was carried out in a manner that was not in accordance with the procedures regulated in Article 19 of Government Regulation No. 10 of 1961 concerning land registration. And as an implementing regulation, it is explained again in the Instruction of the Minister of Home Affairs of the Republic of Indonesia dated 6 March 1982 Number 14 of 1982 which, among other things, contains a prohibition on the use of absolute power of attorney as proof of the transfer of land rights. (Laksita, Silviana, & Suharto,

2017). This prohibition is explained in Supreme Court Decision Number 2584 K/Pdt/1986, dated 14 April 1988, which states:

"Absolute Power of Attorney regarding land buying and selling cannot be justified because in practice it is often misused to smuggle land buying and selling."

So it can be concluded that the existence of a sale and purchase agreement with an absolute power of attorney over the collateral object in the agreement in which the signing of the sale and purchase deed is due to his absence, or debts and receivables is an unlawful act, so that all legal relations that occur between the two are invalid, defective and void. by law. However, the granting of absolute power of attorney associated with a sale and purchase agreement for land is considered not to be identical with the prohibited power of attorney as regulated in the Minister of Home Affairs Instruction Number 14 of 1982. It is easier to find out whether an absolute power of attorney is prohibited or not according to the applicable laws and regulations is to know whether there is one. whether there is a strong reason and whether there is a principal agreement which is the basis for making the power of attorney.

As is the case in the Civil Lawsuit Decision Number 679/Pdt.G/2021/PN.Dps which states that the Deed of Strengthening the Sale and Purchase, which is a Deed of Absolute Power of Attorney made before a Notary, is VALID and binding. That the Deed of Sale and Purchase Agreement in the decision number 02, dated 17-11-2020, Deed of Authorization to Sell Number 03, dated 17-11-2020 and Deed of Sale and Purchase Number 08/2021, dated 18-02-2021 is an agreement which is prohibited or contrary to law, so that it does not fulfill the requirements for the validity of an agreement, namely the existence of a lawful cause. And conditions that are not fulfilled are objective conditions, so this agreement is null and void.

This is contrary to the law of binding sale and purchase agreements which are often used by the public, but the absolute power agreement in binding sales and purchases is also not specifically regulated in the laws and regulations relating to land rights, so the position and legal force of the binding agreement The validity of buying and selling is sometimes still questioned. Absolute power can be used as long as it does not violate the law. A statement that does not violate the law can also mean that it does not contain things that are prohibited by law and is due to a lawful cause. An absolute power of attorney is a grant of power that cannot be withdrawn by the party giving the power, so that in essence it is a legal act of transferring rights(Jannah, 2020).

The Instruction of the Minister of Home Affairs of the Republic of Indonesia dated 6 March 1982 Number 14 of 1982, which among other things contains a prohibition on the use of absolute power of attorney as proof of the transfer of land rights, prohibits absolute power of attorney agreements. From this, it is evident that there is no clear legal certainty in binding sales and purchase agreements through absolute power of attorney. Because the transfer of rights resulting from the granting of absolute power of attorney is one which contains the granting of power to another person who receives it to carry out something on behalf of the person who gave the power as contained in Article 1792 of the Civil Code, such as an agreement adhering to an open system or the principle of freedom of contract as stated in Article 1338 of the Civil Code. , which means that the giver and recipient of the power of attorney have the right to make any agreement as long as it does not conflict with the law, morality or public order. If it has been agreed by the debtor and creditor at the time of applying for and granting credit that the debtor gives the creditor power of attorney to deduct the debtor's account and it cannot end without any reason until the debt is paid off to the Bank, then the power of attorney is valid until the debt is paid off. This is based on the principle of *pacta sunt servanda* which relates to the consequences of agreements. With this principle, the judge or third party must respect the substance of the contract made by the parties, as befits a law. They may not intervene in the substance of the contract made by the parties(Purnomo, 2018).

Based on the description above, the author is interested in discussing the issue of absolute power in IJB land rights, entitled: "Judge's Considerations in Land Sale and Purchase Agreements Through Absolute Power (Case Study of Denpasar District Court Decision Number 679/Pdt.G/2021 /PN Dps).

## 2. Materials and Methods

This research uses a type of normative juridical research, namely research that focuses on examining the rules or norms in positive law. The definition of normative juridical research is research that refers to legal norms contained in statutory regulations and court decisions as well as norms that apply and bind society or also concern customs that apply in society. (Asikin, 2004)

In the research carried out, the researcher used normative research that is descriptive-analytic in nature, namely a method that aims to describe or illustrate facts in the form of data using primary legal materials, secondary legal materials and tertiary legal materials. Normative legal research is library research, namely research on secondary data (Ronny Hanitijo Soemitro, 1990). In the Civil Lawsuit Decision Number 679/Pdt.G/2021/PN.Dps, you will find juridical facts which state that the Deed of Strengthening the Sale and Purchase is a Deed of Absolute Power of Attorney made before a Notary with the content that the decision is VALID and binding. However, the consideration of the judge who decides the case will be related to the norms that apply to sales and purchase agreements and absolute power of attorney.

The legal material collection technique is intended to obtain legal material for research. The technique for collecting legal materials that supports and is related to the presentation of this research is document study (library study). Document study is a tool for collecting legal materials which is carried out through written legal materials using content analysis (Peter Mahmud Marzuki, 2011).

For this research process, the data analysis method used is qualitative juridical analysis, namely data is obtained, then arranged systematically, comprehensively (holistically) and completely and integrated to achieve clarity on the problem to be discussed. The analytical presentation is presented through a review of the sharpness of thought analysis, without using numbers or statistical data (Peter Mahmud Marzuki, 2011).

## 3. Results and Discussion

As, according to Article 1313 of the Civil Code (KUHPperdata), an agreement or agreement is an act by which one or more people bind themselves to one or more other people. The word agreement is a translation of *overeenkomst*, which is one of the sources of engagement (*verbintenis*). The substance of the agreement in this article is action (*handeling*). The word act has been criticized by legal experts on the grounds that it is unsatisfactory, incomplete and very broad (Satrio J, 2001).

The basic (essential) elements of a sales and purchase agreement are goods and price. Price must be interpreted as an amount of money that is used or recognized as a legal means of payment because if this is not the case, then there is no sale and purchase agreement but rather an exchange agreement. This provision is regulated in Article 1457 of the Civil Code which states that the meaning of sale and purchase is an agreement in which one party binds himself to hand over an object, and the other party to pay the price. This article states the understanding that sale and purchase is an agreement in which one party binds himself to hand over an object, and the other party to pay the price.

The Sale-Purchase Agreement (PPJB) is a form of agreement that is subject to the provisions of Law No. 1 of 2011 concerning Housing and if it is linked to the provisions of Article 1320 paragraph (1) of the Civil Code (*lex generalis*) then the PPJB complies elements as an agreement, which can give rise to obligations originating from the agreement. However, in a binding sale and purchase agreement, the community still

adheres to customary law, one of which is a binding agreement on land sale and purchase, which is the law of transferring land rights with the price being paid in cash, meaning that the mutually agreed price has been paid at the time of the sale and purchase ( Boedi Harsono, 2007).

The chronology of the Civil Lawsuit Decision Number 679/Pdt.G/2021/PN.Dps is as follows:

Whereas on 17-11-2020 the Plaintiffs and Defendant I entered into a binding sale and purchase agreement for a plot of land with Certificate of Ownership No. 2126/Peguyangan Kaja Village, Land Plot Identification Number (NIB): 22.09.04.06.02277, Measurement Letter dated 10-20-2009 Number: 01302/Peguyangan Kaja/2009, Area 307 M2, in the name of Ni Luh Gde Suari, Bachelor of Education (Plaintiff I), located on Jalan Gajah Sura No. 26 Y, Banjar Belusung, Peguyangan Kaja Village, North Denpasar District. Whereas the terms and conditions regarding the sale and purchase agreement for the disputed object are stated in the Sale and Purchase Agreement Deed Number: 02, dated 17-11-2020, which was made before Defendant II as Notary and PPAT in Badung Regency, the sale and purchase price for the disputed object set at Rp. 460,500,000,- (four hundred and sixty million five hundred thousand rupiah). Whereas then on the basis of the Deed of Sale and Purchase Agreement Number: 02, dated 17-11-2020 and Deed of Power of Attorney Number 03, dated 17-11-2020, which is the absolute power of attorney, Defendant I executed a Deed of Sale and Purchase Number 08/2021, dated 18 -02-2021, in the presence of I Made Kusuma Dwijayanti, SH., MKn., (Defendant III) as Notary and PPAT in Denpasar City. In the sale and purchase deed, Defendant I acted as both seller and buyer. Whereas from the descriptions above, it is very clear that the process of buying and selling or transferring rights to the object of dispute from the rights holder in the name of Ni Luh Gde Suari, Bachelor of Education (Plaintiff I) to being in the name of Kadek Edy Putra Wirawan (Defendant I) using absolute power .

In this case, the absolute power of attorney clause, which is contained in the sale and purchase agreement deed: is not what is intended in the Second Dictum letter a of the Instruction of the Minister of Home Affairs Number 14 of 1982 concerning the prohibition of the use of Absolute Power of Attorney as a Transfer of Land Rights. Meanwhile, what is meant in letter a of the Instruction of the Minister of Home Affairs Number 14 of 1982 concerning the Prohibition of the Use of Absolute Power of Attorney as a Transfer of Land Rights. Meanwhile, what is meant in this regulation is a special form of granting power of attorney, which in this case if it is linked to Government Regulation Number 24 of 1997 concerning Land Registration, especially Article 37 and the provisions of Article 1813 of the Civil Code, is a deviation and contrary to the applicable laws and regulations.

In the Judge's consideration in the Civil Lawsuit decision Number 679/Pdt.G/2021/PN.Dps, it was stated that the issuance of Power of Attorney Deed Number 03 dated 17-11-2020 was an agreement between the parties to make an absolute power of attorney made based on the principle of freedom of contract as regulated in article 1338 Civil Code which reads:

All agreements made in accordance with law apply as law to those who make them. This consent cannot be withdrawn other than by agreement of both parties, or for reasons determined by law. Agreements must be carried out in good faith.

The parties are free to arrange the agreement as they wish as long as it does not conflict with: Laws and regulations, morals, decency, morality and religion, public interests (van openbare orde). The granting of an irrevocable Power of Attorney is valid if the agreement which is the basis for the granting of the Power of Attorney has valid legal reasons. Thus, the Deed of Sale and Purchase Number 08/2021 made by Notary /PPAT Ni Made Kusuma Dwijayanti, SH, M.Kn is valid and binding, thus petitum number 4 of the Reconvension Plaintiff's lawsuit can be granted;

As for the general legal perspective of consumer protection, the principles of responsibility in law are differentiated as follows; 1) fault (liability base on fault), 2) presumption of always being responsible (presumption of liability), 3) presumption of always being irresponsible (presumption of non liability), 4) absolute responsibility (strict liability), and (5) limitation of responsibility (limitation of liability)(Sidharta, 2000).

The provisions for legal certainty in the case of absolute power of attorney in binding agreements for the sale and purchase of land rights lie in the Pacta Sunt Servanda Principle which explains that the substance of the contract made by the parties regarding the subject matter of the case, as befits a law. The parties holding the power of attorney may not intervene in the substance of the main contents of the contract which is made binding and must be implemented by the parties holding the power of attorney.

The notary who makes the Land PPJB using absolute power has also fulfilled his obligation to provide protection and legal certainty for the parties. Therefore, PPJB Land that uses absolute power will still have its existence recognized and remain valid and binding for the parties who have made the agreement. Then, even though absolute power is power which has elements that cannot be withdrawn or revoked and violates the provisions of Article 1813 of the Civil Code regarding the end of the granting of power, if it is found that the PPJB which is the main agreement is invalidated or annulled, then the validity of the absolute power will be invalid. also valid. (Vania et al., 1982) So with this statement it can be concluded that the issuance of Power of Attorney Number 03 dated 17-112020 is an agreement between the parties to make an absolute power of attorney made based on the principle of freedom of contract as regulated in article 1338 of the Civil Code. The parties are free to arrange the agreement as they wish as long as it does not conflict with law and legislation, morals, decency, decency and religion, public interests (van openbare orde). The granting of an irrevocable Power of Attorney is valid if the agreement which is the basis for the granting of Power of Attorney has a valid legal basis. Thus, the Deed of Sale and Purchase Number 08/2021 made by Notary /PPAT Ni Made Kusuma Dwijayanti, SH, M.Kn is valid and binding and can be granted by the Denpasar District Court.

### 3.1 Discussion

The Judgment in Civil Lawsuit Number 679/Pdt.G/2021/PN.Dps provides legal considerations that because the payment of the land purchase price has been made in full by the buyer, the power of attorney used in the PPJB Deed Number 32 and the Power of Attorney to Sell Deed Number 33 cannot be categorized as a form of absolute power whose use is prohibited. Regarding PPJB which is paid in full, based on research results, this is one of the conditions that is absolutely mandatory to be fulfilled if the parties are to exercise absolute power in the Land PPJB. This is because the basis for the use of absolute power is to provide legal protection for the parties entering into an agreement, especially legal protection for the buyer who has paid in full the price of the object of sale and purchase, and also to provide legal certainty that later the sale and purchase can be carried out. carried out as agreed without any problems when the conditions for buying and selling to be carried out have been fully fulfilled.

In Article 1320 of the Civil Code, it is necessary for the fulfillment of the agreement to be valid, so if one of the conditions is not fulfilled, the consequence is that the agreement can be contested by each party, that is, it is null and void or can be cancelled. As for the regulations in Article 1807 of the Civil Code, the recipient of the power of attorney acts for and on behalf of the person giving the power of attorney, so that all causes and consequences of the power of attorney agreement are the full responsibility of the power of attorney within the limits specified in the main contents of the power of attorney. So that the power of attorney carries out its obligations in accordance with and is limited by the existence of the power of attorney agreement, so that if it is revoked unilaterally by

the power of attorney, it could be detrimental to the power of attorney, even though the power of attorney agrees to the power of attorney agreement that has been made.

Legal certainty is the implementation of the law in accordance with its sound, so that society can ensure that the law in statutory regulations requires requirements relating to the internal structure of the legal norm itself.

These internal requirements are 1) Clarity of the concepts used. Legal norms contain descriptions of certain behavior which are then combined into certain concepts. 2) Clarity of the hierarchy of authority of the institutions that form laws and regulations. The clarity of this hierarchy is important because it concerns the validity or not and whether or not the laws and regulations that are made are binding. The clarity of this hierarchy is important because it concerns the validity or not and whether or not the laws and regulations that are made are binding. The clarity of the hierarchy will provide direction to law makers who have the authority to form certain laws and regulations. 3) Consistency of statutory legal norms. The provisions of a number of laws and regulations relating to a particular subject do not conflict with each other. Legal certainty requires efforts to regulate law in legislation, made by authorized and authoritative parties, so that these rules have a juridical aspect. This aspect can later guarantee certainty that the law functions as a regulation that must be obeyed. (Indriani et al., 2023). The judge in the Civil Lawsuit Decision Number 679/Pdt.G/2021/PN.Dps gave legal considerations that according to the principle of freedom of contract contained in the Law of Agreements, power of attorney is absolute. There are certain restrictions in statutory regulations, both those regulated in the Civil Code itself and other statutory regulations, namely UUPA, UUPK and Employment Law. Apart from the principle of good faith, abuse of circumstances and values in society will limit the freedom of the parties in making agreements. In this way, the judge, through the authority vested in him, can intervene by interpreting the agreement made, so that the Denpasar District Court judge can state whether the agreement violates the values existing in society or not.

#### 4. Conclusion

Civil Lawsuit Decision Number 679/Pdt.G/2021/PN.Dps Provides legal consideration that because the payment of the land purchase price has been made in full by the buyer, the Land PPJB which uses absolute power has also fulfilled its obligation to provide protection and legal certainty for The parties agree that an absolute power of attorney is made based on the principle of freedom of contract as regulated in Article 1338 of the Civil Code. The parties are free to arrange the agreement as they wish as long as it does not conflict with law and legislation, morals, decency, decency and religion, public interests (van openbare orde). The granting of an irrevocable Power of Attorney is valid if the agreement which is the basis for the granting of the Power of Attorney has valid legal reasons.

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