

Legal Position of Absolute Power of Attorney in The Transfer of Land Rights

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Abstract. Absolute power of attorney can be used to transfer land rights provided that the person giving the power of attorney comes directly with the recipient of the power of attorney and signs a statement regarding the agreement to grant absolute power of attorney. Absolute power can be exercised in the transfer of land rights as long as it is purchased for yourself first, what is meant by yourself in this case is the recipient of the power of attorney, to understand the use of absolute power in the transfer of land rights you really have to be really careful, because absolute power means power of attorney. which stands alone means that it is absolutely in the form of a power of attorney, the easiest thing to convince the applicant or the parties that absolute power of attorney can be used in transferring land rights is by appealing to or ordering the person giving the power of attorney to come directly with the recipient of the power of attorney and also sign a statement of agreement. granting absolute power to the recipient of the power of attorney. A form of legal protection for the buyer in the transfer of land rights carried out by a notary based on an absolute power of attorney is by ensuring that the absolute power of attorney is actually made in reality, to ensure this is by having the person giving the power of attorney and the recipient of the power of attorney come face to face. The notary as the authorized official to provide approval and statements regarding the granting of absolute power of attorney, as well as the legal protection that should be applied is to ensure that the money for the transfer of land rights must properly reach the person giving the power of attorney as the seller.

Keywords: Absolute power; legal position; transfer of land rights

1. Introduction

Whereas in principle, based on article 1 paragraph (3) of the Constitution of the Republic of Indonesia, it is determined that the State of Indonesia is a state of law, as a state of law, it is appropriate for every citizen to receive legal protection and certainty, including legal protection in the transfer of land rights. Land is a very important thing in human life as a social creature, this is in accordance with the reality of human life in living their lives. Land is a source of income for people to maintain their lives, this is proven by the benefits of land management itself, that land is actually an immovable object whose economic value is very high in the continuity of human life, land and humans have a very close relationship, without land humans cannot live, land is a source of human livelihood through agriculture and plantations, with the presence of land in human life, humans will get a medium for

farming and cultivating crops, this is emphasized in the function of the land itself, that land is usually used to grow basic commodities food.

In order to improve the level and position of humans, humans compete to control land with certain goals, this is because the influence of land on human life is very large, one of the methods used by humans to control land is by transferring land rights. The transfer of land rights is basically a series of transfers of land from one party to another through certain legal acts, for example through legal acts of sale and purchase, the transfer of land rights through the sale and purchase process is generally carried out on land that has been certified, this is because if The land has been certified, so in the process of transferring ownership rights, the risk of experiencing conflict is less than with land that has not been certified, because land that has not been certified, the status of the land is not yet clear. The process of transferring land rights is generally made before a Land Deed Making Official (PPAT) and a Notary as a public official. In statutory regulations it is determined that the PPAT and Notary are officials whose authority is to make authentic deeds regarding all agreements determined by law. including sales and purchase binding agreements in the framework of the process of transferring land rights, PPAT and Notaries are public officials assigned to make authentic deeds, what differentiates the two are the provisions that regulate them, PPAT is regulated in Government Regulation Number 24 of 2016 Amendment to Government Regulation Number 37 of 1998 concerning Position Regulations for Officials Making Land Deeds, while Notaries are regulated in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries. Their position is the same as a public official as determined by law and their authority to make authentic deeds, the only difference is the provisions in the law. As a public official whose authority is determined in the law to make authentic deeds, when carrying out his/her position it is not always in accordance with what is desired, for example in the process of appearing before the parties to carry out the legal action they desire, sometimes the presenter has other intentions. Generally, the person who enters into a sale and purchase agreement acts on his own behalf in entering into an agreement to achieve the process of transferring land rights, but there are also parties who act on the will of another person based on an absolute power of attorney. The formulation of the problem in this research is as follows: What is the legal strength of the use of absolute power of attorney in the transfer of land rights? What is the legal protection for buyers in the transfer of land rights carried out by a Notary based on absolute power?

2. Method

This research uses a type of normative legal research, normative legal research means research by examining statutory regulations, what is studied is the application of certain laws. Normative legal research is also said to be doctrinal legal research, namely research whose object of study is statutory regulatory documents and library materials. In this case, this means that the focus of this research is to examine statutory regulations. When there are legal regulations that are unclear or not clearly understood, then these legal regulations are analyzed and studied in order to find points of light and clarity. Normative legal research is basically focused on studying the application and rules of positive legal norms. This research is said to be research on written norms, meaning that every norm is outlined

through statutory regulations, and when the norms in the statutory regulations are not clear, then the statutory regulations are studied until the intent and purpose of the legal norms are clear.

3. Discussion

Legal Strength of the Use of Absolute Power of Attorney in the Transfer of Land Rights

That in principle, legal position or power is a status or position where a legal subject has a function in carrying out legal acts, meaning that when there is a legal act carried out by a legal subject, it can be known about the legal position of the legal subject in carrying out legal acts, position Law emphasizes the issue of what legal actions occur, so that the key to legal position is the role of legal subjects in carrying out legal actions. In other words, it can be said that when legal subjects carry out legal actions, their role is actually able to measure the position or strength of the law. the legal subject. In article 27 paragraph (1) of the Constitution of the Republic of Indonesia it is indeed determined that all citizens have the same position before the law, in this article it is indeed stipulated that way, but this right basically only focuses on the legal protection provided by the State at the same time. , meaning that when a person or legal subject performs a legal act, their legal position is different from that of a legal subject who does not perform a legal act. According to R, Soeroso, S.H, legal standing or locus standi is a situation when a party is deemed to meet the requirements to submit a request for dispute resolution in a court. When a certain party carries out a legal act, then there the legal position of that person or legal subject can be determined.

Legal acts are a series of legal events that contain the occurrence of certain actions which can give rise to a certain situation, legal acts mean every action of a legal subject which can produce legal consequences, legal acts can also give rise to rights and obligations, in legal science legal standing (legal standing) contains a very important meaning, because this legal position is a benchmark for the occurrence of legal actions, legal actions are actually the will of certain legal subjects. Will means the will of a particular legal subject, every legal action that occurs in society contains a legal position, if a legal action occurs which can give rise to certain legal consequences, then if a conflict occurs, what can be measured is what the legal position of the legal action is. Thus, it is very important to know the legal position (legal standing) in an act or legal event, to create conditions that are conducive to the occurrence of the legal act or event, it is necessary to think about whether the position or legal standing of the act which can result in the legal event can be carried out. In the context of legal acts, what is looked at or investigated first is the position or legal standing of the legal act so that it can produce legal events. A legal event is a legal event, the legal event in question is a legal event where a legal act occurs, a legal event is an event in society that can give rise to legal consequences that can move certain laws and regulations so that the regulations contained therein can apply concretely. Every incident that occurs among the community can of course be classified as a legal event, thus this legal event is actually an event or situation regarding how a legal act occurs. By the occurrence of legal events, it can also be explored about the legal position in legal events that occur among society, of course this legal position adapts to the occurrence of legal acts or legal events regarding legal events that occur within a society.

Authority of Land Deed Drafting Officials (PPAT) and Notaries as Public Officials

That basically Land Deed Making Officials (PPAT) and Notaries have a very important role in social, national and state life, because with the existence of Land Deed Making Officials (PPAT) and Notaries as public officials the interests of the community will be resolved in the context of the transfer of land rights. land. That in social life, Land Deed Making Officials (PPAT) and Notaries as public officials have a respected position, besides that, Land Deed Making Officials (PPAT) and Notaries as public officials have very honorable authority and duties and obligations. In fact, the definition of a Land Deed Making Official (PPAT) who is authorized by law to make a deed of transfer of land rights, a deed of encumbrance of land rights and a deed of authorization to impose mortgage rights according to the applicable laws and regulations is a statutory provision that is absolute, which means that the authority of the Land Deed Making Officer (PPAT) is a very honorable profession. Boedi Harsono, who is a legal expert, said that a public official is someone appointed by the government with the task and authority to provide public services to the community in certain areas. Public service in this case means that the Land Deed Making Official (PPAT) is given the task and authority by the government through statutory regulations to protect and fulfill the interests of the community in terms of the process of transferring land rights, thus the view is that the Land Deed Drafting Officer (PPAT) is trusted to provide legal certainty to the community in terms of the process of transferring land rights.

In the process of transferring land rights, legal certainty is very necessary because this is related to the status of ownership of rights, meaning that legal actions regarding the transfer of land rights can result in the status of ownership of rights changing, thus legal certainty is very necessary. Regulations regarding Land Deed Making Officials (PPAT) are regulated in Government Regulation No. 24 of 2016, an amendment to Government Regulation Number 37 of 1998 concerning regulations for the Position of Land Deed Making Officials. The authority of the Land Deed Making Official (PPAT) is determined in article 1 point 1 of Government Regulation No. 24 of 2016, amendment to Government Regulation Number 37 of 1998 concerning regulations for the Position of Land Deed Making Officials, as for the text of article 1 number 1, namely: "Land Deed Making Official, hereinafter referred to as PPAT, is a public official who is given the authority to make authentic deeds regarding certain legal acts regarding land rights or ownership rights over apartment units.

Position or Legal Power of Use of Absolute Power of Attorney in the Transfer of Land Rights

The granting of a power of attorney to transfer land rights is a prohibited power of attorney and may not be made if the grant of power of transfer of land rights is a transfer of land rights which is classified as absolute power as intended in the Instruction of the Minister of Home Affairs Number 14 of 1982. Instruction of the Minister of Home Affairs State Number 14 of 1982, when compared with the provisions contained in the granting of power of attorney as regulated in article 1796 of the Civil Code (KUHPerdata), it implies the lack of clarity in these provisions. The prohibition of using absolute power does not necessarily mean that for every form of transfer of land rights it is prohibited to use absolute power. If we dig deeper, the meaning of the issuance in the Instruction of the Minister of Home Affairs Number 14 of 1982 is as a result of the existence of conditions that violate justice for the principal. Before the issuance of Instruction of the Minister of State Number 14 of 1982, there was a lot of use of unfair land ownership control and there was also a lot of covert granting of land transfer powers using the form of absolute power of attorney.

That in order to overcome these conditions, by exercising effective control in the use of control and ownership of land, in order to realize equality and justice, preventing the hidden granting of power to transfer land rights using the form of absolute power. However, by revoking and declaring no longer valid the Instruction of the Minister of Home Affairs Number 14 of 1982 based on the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 10 of 2014, the provisions related to the granting of a power of attorney apply the provisions in Book III of the Civil Code Talking about the position or legal power of absolute power in the transfer of land rights means talking about the legal status of the use of absolute power in the transfer of land rights, in this case the problem is whether or not you can use absolute power in the transfer of land rights, so it is appropriate Please understand carefully that absolute power of attorney can be used to transfer land rights provided that the person giving the power of attorney comes directly with the recipient of the power of attorney and also signs a statement agreeing to grant absolute power of attorney. Absolute power can be exercised in the transfer of land rights as long as it is purchased for yourself first, what is meant by yourself in this case is the recipient of the power of attorney, to understand the use of absolute power in the transfer of land rights you really have to be really careful, because absolute power means power of attorney. which stands alone means that it is absolutely in the form of a power of attorney, the easiest thing to convince the applicant or the parties about the permissibility of using absolute power of attorney in the transfer of land rights is by appealing to or ordering the person giving the power of attorney to come directly with the recipient of the power of attorney and also sign a statement of approval. granting absolute power to the recipient of the power of attorney.

Legal Protection for Buyers in the Transfer of Land Rights by a Notary Based on Absolute Power of Attorney

Meaning of Legal Protection

That in principle legal protection is an effort or attempt to protect a person or legal subject. When a person or legal subject commits a legal act, every legal act must actually be legally protected, legal protection is basically provided by the government and every person has the right to obtain legal protection in accordance with the provisions of the constitution, legal protection is interpreted as providing protection by the government to every legal subject, according to Andi Hamzah legal protection is an effort made consciously by every person as well as government and private institutions aimed at providing security, meaning that when legal protection can applied in community life, overall security can be realized. Legal protection is a protection provided by every legal entity and government to every individual or legal subject with the guarantee that the rights they have will be protected from interference and actions that can eliminate or harm the rights owned by the legal subject, legal protection can also be interpreted as all government efforts to guarantee legal certainty, meaning that the main target of the concept of legal protection is to create legal certainty, apart from that legal protection aims to protect the rights of a person or legal subject so that their rights are not violated, thus it can be understood that a form of protection can be said to be legal protection if it meets the following elements:

1. There is protection from the government for its citizens
2. Guarantee of legal certainty
3. Relating to the rights of citizens

4. There are punitive sanctions for parties who violate it Everyone basically has the right to receive full legal protection from the government, because it is the government's duty to protect its citizens so that their rights are not violated.

To create conducive legal protection, the first thing that must be explored is how to enforce the law, meaning law enforcement. can be used as a benchmark or illustration. When you want to explore the legal protection provided by the state and government to its citizens, as a rule of law, it is appropriate for citizens to receive legal protection from the government in order to obtain justice, because justice is the right of every person as a legal subject, protection The law is very important to enforce because it can realize the supremacy of the law

The relationship between legal protection and the transfer of land rights

Whereas in principle legal protection is the right of every person as a legal subject in a country, the state has an obligation to protect its citizens so that the rights of its citizens are not violated, apart from that when citizens act on a legal subject, the state is also obliged to protect them as long as the citizens' actions do not violate order. generality and morality, because in the context of a legal state, everyone has the same position before the law, equal position before the law means that every person as a legal subject in a country is seen as the same without distinguishing between one another.

As a legal state, of course it must uphold a sense of justice and not differentiate between its citizens. Every citizen who does not violate the provisions of laws and regulations, public order and morality has the same position before the law, in other words, the view is that a person's legal position can be seen from their behavior. as well as the person's legal actions. One of the legal acts of a person as a legal subject is for example the legal act of transition or transfer of land rights, in the context of the transition or transfer of land rights, one of the methods used is to carry out a buying and selling process, of course in legal acts regarding the transfer or transfer of land rights. The land must be legally protected.

Legal Protection for Buyers in the Transfer of Land Rights by a Notary Based on Absolute Power of Attorney

Whereas in the context of a rule of law, legal protection is an effort made by government agencies or related parties in carrying out or carrying out authority related to the protection or protection of their citizens, of course this legal protection refers to the laws and regulations that apply in society, that In general, there are two types of legal protection, namely preventive legal protection and repressive legal protection. Preventive legal protection places more emphasis on prevention efforts, meaning that this legal protection is created in order to prevent legal incidents from occurring in the future, while repressive legal protection is the main point of study. legal protection carried out after a legal event occurs Legal protection must be applied in the context of a rule of law, because according to the constitution every citizen has the right to legal protection, this is of course in accordance with the provisions of article 28 d paragraph (1) which stipulates that: Every person has the right to recognition, guarantee, protection and legal certainty fair and equal treatment before the law Legal protection is something that is very important in carrying out legal actions, because legal protection is the main bridge in realizing legal certainty, meaning that in carrying out legal actions, for example, legal actions regarding the transfer of land rights must be based on legal protection,

because in the context of the action legal subjects do not only act on themselves, in other words there are also legal subjects acting on the basis of absolute power.

The legal definition of absolute power is determined in the Instruction of the Minister of Home Affairs Number 14 of 1982 which regulates the prohibition on the use of absolute power as a transfer of rights over land. The elements of absolute power itself are:

1. Irrevocable
2. Give authority to the recipient of the power of attorney to control and use the land and carry out all legal actions that according to law can only be carried out by the holder of the right The use of absolute power in the transfer or transfer of land rights cannot be separated from the existence of a binding sale and purchase agreement (PPJB).

The real issue that needs to be studied is whether the use of an absolute power of attorney clause in a binding sale and purchase agreement (PPJB) is able to shake the strength of the authentic deed made. by an authorized official such as a Notary, because as long as this does not reduce the strength of the authentic deed, the use of absolute power in the case of the transfer of land rights can be carried out. The use of absolute power in the transfer of land rights is an agreement that arises as a result of an agreement, of course This is in accordance with the provisions of article 1338 of the Civil Code (Perdata Code) which in principle recognizes freedom of contract in an agreement, with the limitation that the agreement does not conflict with the law and is based on good faith.

A form of legal protection for the buyer in the transfer of land rights carried out by a notary based on an absolute power of attorney is by ensuring that the absolute power of attorney is actually made in reality, to ensure this is by having the person giving the power of attorney and the recipient of the power of attorney come face to face. The Notary as the authorized official to provide approval and statements regarding the granting of absolute power of attorney, to guarantee that it is true that the person giving the power of attorney gives absolute power of attorney to the recipient of the power of attorney, in the presence of a Notary as a public official, the person giving the power of attorney and the recipient of the power of attorney must sign a document regarding the approval of the absolute power of attorney. This absolute power of attorney must be made on the basis of an agreement or agreement between the two parties, with an agreement between the two parties, legal protection will be obtained, because when there is an agreement or agreement between the two parties, the principle of freedom of contract will be applied in an agreement, in addition to What needs to be explored in the use of absolute power in the transfer of land rights is that it is true that absolute power is created on the basis of the will of both parties to the agreement, this will must arise perfectly, because defects in the will occur if someone has carried out a legal act. , even though the will is formed imperfectly. In principle, legal protection for buyers in the case of transferring or transferring land rights based on absolute power of attorney is to ensure that the money from the sale of the land is transferred or paid directly to the power of attorney as the previous land owner.

4. Conclusion

That in principle, talking about legal position means talking about legal power. When a person or legal subject commits a legal act, then that is where the legal position or legal standing of the legal

subject's actions can be explored. From the legal position, legal power can be obtained. , the legal force will actually reflect the legal position, the legal position can be known in the process of legal action, the granting of power of transfer of land rights is a prohibited grant of power and may not be made if the grant of power of transfer of land rights is a transfer of land rights which classified as absolute power as intended in the Instruction of the Minister of Home Affairs Number 14 of 1982. Instruction of the Minister of Home Affairs Number 14 of 1982, when compared with the provisions contained in the granting of power of attorney as regulated in article 1796 of the Civil Code (Civil Code), implies the lack of clarity in these provisions. The prohibition of using absolute power does not necessarily mean that for every form of transfer of land rights it is prohibited to use absolute power.

If we dig deeper, the meaning of the issuance in the Instruction of the Minister of Home Affairs Number 14 of 1982 is as a result of the existence of conditions that violate justice for the principal. Before the issuance of Instruction of the Minister of State Number 14 of 1982, there was a lot of use of unfair land ownership control and there was also a lot of covert granting of land transfer powers using the form of absolute power of attorney. Regarding the position or legal power of absolute power in the transfer of land rights, it means talking about the legal status of the use of absolute power in the transfer of land rights, in this case the problem is whether or not absolute power can be used in the transfer of land rights, so it is appropriate to It is carefully understood that absolute power of attorney can be used in transferring land rights provided that the person giving the power of attorney comes directly with the recipient of the power of attorney and also signs a statement agreeing to grant absolute power of attorney. Absolute power can be exercised in the transfer of land rights as long as it is purchased for yourself first, what is meant by yourself in this case is the recipient of the power of attorney, to understand the use of absolute power in the transfer of land rights you really have to be really careful, because absolute power means power of attorney. which stands alone means that it is absolutely in the form of a power of attorney, the easiest thing to convince the applicant or the parties that absolute power of attorney can be used in transferring land rights is by appealing to or ordering the person giving the power of attorney to come directly with the recipient of the power of attorney and also sign a statement of approval. granting absolute power to the recipient of the power of attorney

Legal protection is an effort made by government agencies or related parties in carrying out or carrying out their authority related to the protection or protection of their citizens, of course this legal protection refers to the laws and regulations that apply in society, legal protection must be applied when carrying out a legal act, for example the legal act of transferring land rights based on absolute power, a form of legal protection for the buyer in the transfer of land rights carried out by a notary based on absolute power is by ensuring that the absolute power is actually made in reality, to ensuring this is by having the power of attorney and the power of attorney come face to face with the Notary as the authorized official to give approval and a statement regarding the granting of absolute power of attorney, to guarantee that it is true that the power of attorney has given absolute power of attorney to the power of attorney, in front of the Notary as the public official. , the person giving the power of attorney and the recipient of the power of attorney must sign a document agreeing to the absolute power of attorney. This absolute power of attorney must be made on the basis of an agreement or agreement between the two parties, with an agreement between the two parties, legal protection will be obtained, because when there is an agreement or agreement between the two parties, the principle of freedom of contract will be applied in an agreement, in addition to What needs to be explored in the use of absolute power in the transfer of land rights is that it is true that absolute power is created

on the basis of the will of both parties to the agreement, this will must arise perfectly, because defects in the will occur when someone has carried out a legal act. Even though the will was formed imperfectly, in principle the legal protection for the buyer in the case of transferring or transferring land rights based on absolute power of attorney is to ensure that the money from the sale of the land is transferred or paid directly to the power of attorney as the previous owner of the land. , in this case it is actually necessary to provide serious legal protection.

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