

Due to the Law of Sale and Purchase Interest in Land Certified Based on Irrevocable Power of Attorney (Study Decision No.402/K/TUN/2017)

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ABSTRACT

Irrevocable power of attorney cannot be revoked by principal, but it has been prohibited by PP No.24/1997 on land registration and the decree of The Minister of Internal Affairs No.14/1982 on the prohibition of using irrevocable power of attorney. In practice, however, it is still used. In the Supreme Court's ruling No.402/K/TUN/2017, the claim filed the plaintiff is the use of irrevocable power of attorney as the reason for land title transfer in which it is used by the defendant to sale the land with the certificate No.1/Setaman Jernih; this transaction does not involve the plaintiff as its owner, and The Head of The Land Office of Serdang Bedagai issues it in the name of the defendant. Consequently, the plaintiff is harmed. The research used descriptive qualitative method which describe in detail and systematically. It types was juridical normative. Primary data and secondary data were gathered by conducting library research. The result of the research showed that the position of irrevocable power of attorney in land title transfer is a unity with transaction. Due to the development of the need based on freedom of contract, it is functioned to avoid any problem in the future. However, when it stands by itself it is prohibited by the decre of The Minister of Internal Affairs No.14/1982 on the prohibition of using irrevocable power of attorney and PP No.24/1997 on land registration which can cause the revocation of the certificate, in the ruling No.402/K/TUN/2017, the Supreme Court rejects the defendant's request since it is legally defective and contrary to the decree of The Minister of Internal Affairs No.14/1982 on the prohibition of using

irrevocable power of attorney and PP No. 24/1997 on land registration.

Keywords: Irrevocable Power of Attorney, Land Registration, Contract

INTRODUCTION

A right to land in accordance with the provisions of government Regulation number 24 year 1997 on the registration of land can be done with a sale deed made before the land deed official (PPAT), which aims to obtain a legitimate proof of power and is created by an authentic deed.

In the event of legal action to divert a right to land must be done before a notary or land deed official who aims to acquire a legitimate force of proof and is made with an authentic deed. Especially for the land that is certified to buy or transfer this right is done in the presence of land deed office, but there are times when the implementation of the sale is done before the notary, which is named by the agreement to buy or sell buy.¹

The terms of agrarian law (UUPA) the term buy and sell only mentioned in article 26 that is concerned about buying and selling property rights on land. In other chapters, there is no word mentioning buying and selling, but it is mentioned as diverted. The notion of diverted shows a deliberate legal act to transfer rights to the land to another party through buying and selling, giving, exchanging, testament grants.

At a time when prospective sellers and prospective buyers reach the word agreed to buy and sell the land can directly hold the process of buying and selling deed (AJB) as the deed of land created by the land deed official (PPAT) as a general officer authorized to make evidence about certain legal acts on the land. In article 6 paragraph (2) of government Regulation Number 24 year 1997 concerning land registration, the head of Land Office assisted by the land deed official (PPAT) authorized to make evidence about certain legal acts on the ground as a basis of a tool for the transition of land rights.

The granting of power as formulated in article 1792 of the Civil Code reads, "The granting of power is an agreement by which a person gives power to another, who receives it, for his behalf to conduct a business". From that sense the nature of power grants is no other than representing or representation. That power publishes representatives, which is the presence of someone who represents another person to commit a legal deed, representatives such as the one who was born by law and some by a covenant.²

The power can be given and received in a general deed, in a written hand, even in a letter or orally. The acceptance of a power can also be discreetly and deduced from the enforcement of power by power.³

Irrevocable power of attorney cannot be revoked by principal, but it has been prohibited by PP No.24/1997 on land registration and the decree of The Minister of Internal Affairs No.14/1982 on the prohibition of using irrevocable power of attorney. In practice, however, it is still used. In the Supreme Court's ruling No.402/K/TUN/2017, the claim filed the plaintiff is the use of irrevocable power of attorney as the reason for land title transfer in which it is used by the defendant to sale the land with the certificate No.1/Setaman Jernih; this transaction does not involve the plaintiff as its owner, and The Head of The Land Office of Serdang Bedagai issues it in

the name of the defendant. Consequently, the plaintiff is harmed.

RESEARCH METHODS

The method is a scientific activity related to a way of working to have an object or object of research as an attempt to find a scientifically accountable answer and include its validity.⁴

Research is a fundamental means in the development of science and technology that aims to reveal the truth systematically, methodological and consistent, because through the process of research conducted research methods that find, develop and test the truth of a knowledge, which is done with the effort to use the following scientific methods:

3.1 Nature and Type of Research

The nature of this research is the descriptive analysis, descriptive analysis of the meaning of the research is expected to be obtained a systematic breakdown of the problems to be researched. The analysis is intended based on the idea, the fact obtained will be careful analysis to answer the problem.⁵ On the consequences of the law a land rights transition that is based on irrevocable power of attorney.

In this study using the type of legal research used in this thesis is a normative juridical method of approach by examining the reading sources relevant to the research theme, covering the research on legal principles, legal resources, theoretical and scientific legislation and can analyze the problems discussed.⁶

3.2 Data Source

In this normative legal research, the library material is the basis of which is classified as secondary data, consisting of primary, secondary and tertiary legal materials.

1.Primary Legal Material

Binding legal material which in this study data from primary legal material will be obtained through the discussion on legislation and government regulations relating to this research.

2.Secondary Legal Material

Materials that provide explanations about the primary legal materials, such as research results, seminar results, works from the law, papers, magazines and others, as well as other documents relating to the irrevocable power of attorney.

3. Tertiary Legal Material

Legal materials that give guidance or explanation to the primary legal material and secondary legal material, which is a dictionary of both the Bahasa Indonesia Dictionary and Dictionary law.

3.3 Data Collection Techniques

The data collection techniques in this study are by conducting Library Research. This literature study was conducted to obtain or seek conception, theories, principles and other thought-provoking outcomes relating to the research problem.

3.4 Data Collection Tools

Based on the method of approach used, the data collection tools are done by document study, studying and analyzing literature or books, legislation and other sources related to the writing of theses that are subsequently used for theoretical frameworks on field study.

3.5 Data Analysis

After the collection of data is done, then the data is analyzed qualitatively by conducting observations of data obtained and linking each of the data obtained by the provisions and principles of laws relating to the problems studied. Because of this normative research, the interpretation and construction of the law by drawing conclusions use the deductive means of answering from the problems and objectives of the research set.⁷

RESULT

Decision Analysis No.402/K/TUN/2017

The above cases can be seen which is the problem is that the "use of an irrevocable power of attorney of attorney" plaintiff is the giver who feels harmed because the proprietary certificate of land is transferred by the defendant on his behalf

by using an absolute letter of authorization that is given plaintiff without notice or confirmation to the plaintiff. In fact, the letter of authorisation is written on June 21, 1983, which was made before the notary Walter Sinatra to sell and transfer the rights of the plaintiff to anyone also including the recipient of authority so that by the existence of such power, defendant is not required to involve the plaintiff again, for the transfer of rights to the land and in the verdict of the defendant knowingly conduct the transfer of land rights in the name of the defendant, evidenced the transfer deed of land rights that were made in the presence of PPAT Hotdin Simbolon No.699/2011 dated 08 June 2016.

In the first degree of court at the ruling No.118/G/2016/PTUN-MDN dated February 16, 2017 the Council of judges in the decision that the plaintiff's lawsuit was accepted as already strengthened in the appeal of a defendant to a trial of the state Administrative High Court with the verdict No.79/B/2017/PT.TUN-Mdn

The status of the applicant in making application to the Supreme Court is in accordance with the provisions. In such applications The Supreme Court claims the applicant's lawsuit was rejected in its verdict No.402/K/TUN/2017 and the reason rejection was the court argued that the ruling *Judex Facti* was correct and did not misapply the law, because the defendant's actions issued the State Administrative decree of the dispute object by noting the transition of land rights using an absolute letter of attorney form and the substance contrary namely article 39 paragraph (1) D and Article 45 government regulation Number 24 year 1997 Juncto instruction Minister of the Interior No. 14 of 1982 and the general principles of good governance (AAUPB), namely the principle of accuracy;

The basis of objection of the applicant that as known in his legal consideration the tribunal *Judex of Facti* level I is only focused on the provisions of article 1 paragraph 3 of the Law No. 5 of

1986 Jo. ACT Number 9 year 2004 Jo. Law number 51 year 2009 concerning the written assignment issued by the State Administration officer, but does not consider the aspect of the speech occurring regarding the aquo dispute based on a written agreement binding on the parties making the agreement.

That assembly judge *Judex Facti* incorrectly implements the provisions of article 45, article 39 paragraph (1) Letter D Government Regulation Number 24 year 1997 concerning land registration JO. The second ministerial instruction of the Minister of Home Affairs No. 14 of 1982 concerning the prohibition of use of irrevocable power of attorney as a transfer of land rights. The applicant's action as the State Administrative office which performs the recording of the name of proprietary certificate No. 1/clear Citaman D/h The clear Setaman in the name of Swinder Singh, Perbaungan Sub-district, Serdang Bedagai, because the procedures and ordinances used by the applicant are guided to the regulation of the head of National Land Agency number 1 year 2010 article 4, article 5, and article 6 concerning the standards of service and land arrangement.

The procedure for transferring land rights is in accordance with the existing provisions, based on the authentic deed of sale and Purchase Act No. 03/2016, made by Hotdi Simbolon, where the definition of an authentic deed pursuant to the provisions of article 1868 of the Civil Code is "an authentic deed is a deed within the prescribed form of law made or in front of a general officer in power for it in the place where the deed was created". From the definition it is known that a deed can be established as an authentic deed must be made in the form of a prescribed law, made by an official or a general officer, and the official or officer of the public shall be authorized to make the deed in which the deed was made.

The legal basis governing the power of authentic deed as the perfect proof can be seen in article 1870 Civil Code that reads

"for the parties concerned with the heirs of or to those who get the right from them, an authentic deed gives a perfect evidence of what it contains".

Then based on article 36 and article 37 PP number 24 year 1997 concerning land registration of Serdang District office Bedagai was given a duty to conduct the register in the form of logging on the land book and other listings in the framework of maintenance of land registration because there has been a change of juridical data related to the subject of its rights.

However, it should have been sued as a recipient of power should confirm in advance the actions of the civil law that the plaintiff had enforced him. Essentially the plaintiff and defendant have been aware of the prohibition on the use of irrevocable power of attorney of attorney but only adhering to the belief system between them makes irrevocable power of attorney for personal benefit without considering the risks, as stipulated in government Regulation Number 24 year 1997 on land registration.

The use of irrevocable power of attorney to transfer rights to land is prohibited under the instruction of the Minister of Home Affairs No. 14 of 1982 concerning the prohibition of use of irrevocable power of attorney as a transfer of land rights as well as the ban on the makers of the Sale and purchase Act and re-affirmed in the Government regulation of the Republic of Indonesia number 24 of 1997 concerning land registration, article 39 Paragraph 1 letter d is asserted that PPAT shall not and should refuse to make the buy and sell act on the basis of the irrevocable power of attorney and prohibit the use of irrevocable power of attorney in the transfer of ownership rights on land.⁸ Publication number 2394/2016 Setaman Jenrih in the name of Swinder Singh by applicant I certainly has violated the rules that apply so that the rights reserved No. 2394/2016 on behalf of Effendy Tandry must be canceled by the defendant and certificate of rights of

number 2394/2016 the clear Setaman must remain in the name of Sulalkhan Singh.

In this case Swinder Singh as the new landowner suffered a loss by the loss of ownership rights to the certificate of Rights 2394/2016 Setaman clear which was published by the applicant I on behalf of Swinder Singh.

The irrevocable power of attorney in the transfer of land rights is the irrevocable power of attorney authorizes the recipient of authority to master and use its land and to do all legal deeds that the law can only do by the rightsholders.

The irrevocable power of attorney herein can be described as a given power accompanied by a broad right and power to a particular object, in which the authorship cannot withdraw its power and will not fall when or for any reason. The power is freed from the obligation to give accountability as power to the Authorer and act as if the object is its belong.⁹

The basis of the consideration of the prohibition is that the misuse of the law governing the granting of power by conducting a covert land transfer by using the form of irrevocable power of attorney, is a form of legal action that disrupts the effort to regulate the status and use of land, so that it is necessary to be prevented immediately.

The Supreme Court has been in accordance with the verdict because it is in accordance with the provisions governed by the prevailing laws and regulations in the making of the deeds carried out by the applicant and the respondent is also not under pressure. Essentially the government regulation number 24 year 1997 and in the second dictum of the Ministry of Interior Instruction No. 14 year 1982 has asserted about the prohibition on the use of an irrevocable power of attorney against the transfer of land rights as set forth in article 39 paragraph 1 letter d, so for the sake of legal certainty and judicial authority in providing justice in the community then it is supposed that the court should not decide to reject this matter and conclude that there is

no violation of the rules violated by the defendant.

Supreme Court ruling No 2584 K./Pdt/1986 also confirms that the use of an irrevocable power of attorney in buy and sell land cannot be justified because in practice it is often misused to smuggle buy and sell land, in this case that the buy and sell property of plaintiff Sulalkhan Singh is a legal buy and sell land that is not based on the practice of trafficking mafia to buy and sell land due to the fact that Gurnam Kaur as heir to the owner of the land legal owner (certificate of title number 1) never know the sale and also never informed about the sale of such a plaintiff Gurnam Kaur heir of Sulalkhan as a legally valid land owner (certificate of Property No. 1 in the clear Garden) has lost its rights without ever known and without ever been approved.

The granting of irrevocable power of attorney is not set out in the Civil Code, but is recognized in the business traffic in the community by some judges' decisions are seen as the discovery of the law. The granting of irrevocable power of attorney is an agreement arising out of the agreements, which is governed by article 1338 of the Civil Code, which recognizes the freedom of contract with the limitation that the Agreement shall not be contrary to statutory regulations and shall be settled in good faith.

The author argues that the Supreme Court ruling No.402/K/TUN/2017 rejects the applicant's application as appropriate due to unfulfilled administrative requirements and violates article 39 paragraph (1) Letter D Government Regulation Number 24 year 1997 concerning land registration JO. The third dictum of the Minister of Home Affairs No. 14 year 1982 of the prohibition of use of the irrevocable power of attorney is asserted that PPAT must not and should refuse to make the buy and sell act on the basis of the irrevocable power of attorney and prohibit the use of irrevocable power of attorney in the transfer of ownership rights to the land.

However, in fact, there is a right of being violated in the implementation of the regulation if it is seen in the Civil Code of article 1338 stating that all legally-established contracts (agreements) apply as laws for those who make them, and is also known as article 1866 Civil Code which is "an authentic deed is a deed prescribed by law, by or in the end of a public officer in power for it in the place where the deed was made". Thus the authentic deed has the perfect power of proof. The legal basis governing the power of authentic deed as well as the perfect evidence can be found in article 1870 of the Civil Code which reads "For the parties concerned and its heirs or to those who have acquired their rights, an authentic deed gives a perfect evidence of what it contains". Clearly, there is contradictory in the rules.

Initial purpose is to be enforced by the regulation to prevent *penyelendupan* or evasion of the reason of the prohibition of use of irrevocable power of attorney is clearly mentioned in the letter C of the instructions in question, namely to avoid the misuse of laws governing the granting of power by providing the removal of land rights in a covert by using the form of irrevocable power of attorney. Such action is one of the legal acts that interfere with the government's efforts in issuing land use status. But it should be noted also the right of the law of a person, it should be addressed by the government authorities so that the mappation between the giver and the receiver is not harmed.

CONCLUSION AND SUGGESTION

CONCLUSION

The result of the research showed that the position of irrevocable power of attorney in land title transfer is a unity with transaction. Due to the development of the need based on freedom of contract, it is functioned to avoid any problem in the future. However, when it stands by itself it is prohibited by the decre of The Minister of Internal Affairs No.14/1982 on the prohibition of using irrevocable power of

attorney and PP No.24/1997 on land registration which can cause the revocation of the certificate, in the ruling No.402/K/TUN/2017, the Supreme Court rejects the defendant's request since it is legally defective and contrary to the decree of The Minister of Internal Affairs No.14/1982 on the prohibition of using irrevocable power of attorney and PP No.24/1997 on land registration.

SUGGESTION

1. It should be given clarity about the existence of an irrevocable power of attorney that is forbidden with the Unforbidden so that the Authorer understands and knows the consequences if he wants to keep an irrevocable power of attorney. Because it is essentially irrevocable power of attorney there is no law governing it but it is the law made by the judge to make it easier for people who are alienated to be represented by others.
2. It is necessary and more effective if the matter with respect to the irrevocable power of attorney is governed by the higher laws and regulations such as in the form of law so it will be more effective to socialize the regulation in the community. Especially practitioners of land law.
3. The Supreme Court should also take into consideration from the side of the law in order not to violate the civil rights of the authorship or the recipient of power and need a new parrule to govern the irrevocable power of attorney.

REFERENCES

1. Siregar, Nelly Sri Wahyuni. 2008. *Tinjauan Yuridis Kedudukan Kuasa Mutlak dalam Peralihan Hak Atas Tanah Oleh Notaris/ Pejabat Pembuat Akta Tanah (PPAT)*. Tesis: Program Magister Kenotariatan USU.
2. Harahap, M. Yahya. 1986. *Segi-Segi Hukum Perjanjian*. Bandung: Alumni.
3. Subekti, R. 1990. *Hukum Perjanjian*. Jakarta: PT. Intermasa.
4. Ruslan, Rosady. 2003. *Metode Penelitian Relation dan Komunikasi*. Jakarta: Rajawali Pers.

5. Hartono, Sunaryati. 1994. *Penelitian Hukum Indonesia pada Akhir Abad ke-20*. Bandung: Alumni.
6. Soekanto, Soerjono & Mamudji, Sri. 1995. *Penelitian Hukum Normatif Suatu Tinjauan Singkat*. Jakarta: Raja Grafindo Persada.
7. Sunggono, Bambang. 1997. *Metodelogi Penelitian Hukum*. Jakarta: Raja Grafindo Persada.
8. Harsono, Boedi. 2008. *Hukum Agraria Indonesia Jilid I Hukum Tanah Nasional*. Jakarta: Djambatan.
9. Asshiddigie, Jimly. 2003. *Independensi dan Akuntabilitas Pejabat Pembuat Akta Tanah*. Jakarta: Renvoi.

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