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The Binding Power of the Deed of Power to Sell Land Based on the Encounter of Debt

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Abstract

This paper aims to understand the binding power of deed of power to sell based on the encounter of debt (set-off), and the legal protection of the buyer whose payment is based on the encounter of debt when the seller defaults. This research is a normative research supported by primary legal materials and secondary legal materials in the form of interviews. The approach used is a statutory approach and is described in a qualitative descriptive manner. The results of this thesis research conclude: First, the binding power of the deed of power of attorney to sell based on the encounter debt (set-off), and the act of legally protecting the buyer whose payment is based on the encounter debt (set-off) when the seller defaults, it can be explained that the power to sell a plot of land is based on a debt settlement agreement or compensation has no power of legal force, since the basis for the issuance of the power of attorney to sell the object of the land parcel is PPJB. Furthermore, the power of attorney to sell is based on the encounter of debt (set-off) that does not result in the end of the engagement as referred to in Article 1381 in conjunction with Article 1425 B.W., with the sale and purchase of land rights with the power to sell. Hence, if the debtor breaks his promise, the creditor can sue for compensation on the basis of default.

Keywords
power of deed of authorization to sell; land; set-off

I. Introduction

Land rights can be transferred in a variety of ways, including: sale-purchase, exchange, gift, gift by will, gift according to custom, and other acts intended to transfer rights, as specified in Article 26 paragraph (1) of Law No. 5 of 1960 concerning Basic Regulations on Agrarian Principles (hereinafter referred to as UUPA). The transfer of land rights, in order to provide legal certainty, is then carried out by the Government across the territory of the Republic of Indonesia in accordance with the conditions established in a Government Regulation, as referred to in Article 19 paragraph (1) of UUPA.

Legal certainty is ensured for the plot of land used as the subject of sale and purchase provided the transaction is conducted in line with the processes authorized by applicable laws and regulations. According to the provisions of Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration (PP No. 24 of 1997), the transfer of land rights through buying and selling can only be registered if evidenced by a deed prepared by an authorized Land Deed Making Official (hereinafter referred to as PPAT) in accordance with applicable laws and regulations. The statement "can only be registered if evidence of a deed executed before to the PPAT" suggests that if a land parcel is transferred and evidence of a deed executed prior to the PPAT is established, the land parcel cannot be registered with the Land Office for the purpose of changing names.

The sale and purchase of the object in the form of a parcel of land is sometimes not made before the PPAT, for one reason, the payment is not made in cash, which is also known as the Sale and Purchase Binding Agreement (hereinafter referred to as PPJB). According to Herlien Budiono, PPJB is an assistance agreement that functions as a preliminary agreement that free form, meaning that PPJB is a preliminary agreement made before the implementation of the main agreement or the main agreement (Budiono, 2004). PPJB is a type of obligatory agreement, namely an agreement in which the parties agree to bind themselves to carry out the delivery of an object to another party, so that the PPJB has basically not resulted in the transfer of ownership rights to an object from the seller to the buyer. This stage is just an agreement and must be followed by a levering agreement, namely the signing of the sale and purchase deed (hereinafter referred to as AJB) before the PPAT (Amasangsa, M. & Priyanto, 2019).

PPJB as a pre-approval or basic approval, followed by an additional approval (accessoir), namely approval of the grant of power of attorney, with reference to the Supreme Court Decision Number 2709 K/Pdt/2014 in conjunction with the Supreme Court Decision Number 549 PK/Pdt/2016 in which the seller is the principal the power of attorney gives power to the buyer regarding the agreement to bind the sale and purchase in full. The agreement to bind the sale and purchase in full as the main agreement and the approval of the power of attorney to sell as the approval of the assistance (accessoir). Thus, the granting of power of attorney is intended to represent the interests of the power of attorney, not to be a grant of power of attorney to represent the interests of the recipient of the power of attorney (Latumeten, 2017). The agreement to grant power of attorney as an additional agreement or assistance (accessoir) from the main agreement (PPJB), so that the power of attorney to sell shows the accessory nature of a principal engagement, because it serves a certain principal engagement (Muhammad, 2017).

The power to sell as an additional approval from PPJB, the notary makes a deed of power of attorney to sell at the will of the appearers with the object of land rights (SHGB 7062 / area of 5,455 m^2), the Deed of Power of Attorney to Sell between GUN as the giver and MAR as the beneficiary (without making PPJB) in front of KNA Notary/PPAT, with the consideration that GUN and MAR agreed on the method of paying the land price, by removing the MAR claim rights on GUN, the total amount of MAR claims is Rp. 11,673,500,000,- (eleven billion six hundred seventy three million five hundred thousand rupiah). The certificate was kept at the KNA Notary's office, without MAR's knowledge, the certificate was taken on the grounds that GUN would take care of splitting the certificate, but in fact, GUN transferred it to another party with the power to sell.

The method of payment by removing the right to collect is known as a encounter of debt (*set-off*) as one of the cancellation of the engagement. The legal basis for a debt settlement as Article 1426 B.W., a debt settlement "If two people owe each other, then there will be a debt meeting (*set-off*) between them which will write off the debts of the two people in the following ways and in the following ways". The debt that encounters (*set-off*) requires two parties to bind themselves in a debt agreement agreement, both of which agree to write off the debt. Settlement of debt as the elimination of each debt caused by two people who owe one another to each other, so that the debt between the two parties is written off. Conditions for the occurrence of the encounter debt (*set-off*); (Febrina, 2014). Settlement of debt (*set-off*) results in the cancellation of the engagement based on the borrowing debt between the two, while the payment of the price of goods is issued from the sale and purchase agreement.

The desired goals to be achieved in this study are: 1) to analyze the binding strength of the deed of power to sell based on the encounter debt (*set-off*), and 2) analyze the act of legally protecting the buyer whose payment is based on the encounter debt (*set-off*) when the seller defaults.

II. Research Method

Normative research is a scientific research procedure to find the truth based on the logic of legal science from the normative side (Ibrahim, 2005) by putting the law as a building system of norms regarding the principles, rules of legislation and court decisions in order to answer the legal problems being faced (Marzuki, 2011), namely a power of attorney to sell a plot of land based on a debt settlement agreement (compensation/*set-off*).

Legal research is a process to find the rule of law, legal principles, and legal doctrines in order to answer the legal issues faced (Marzuki, 2011), namely the act of legally protecting the holder of land rights affected by the acquisition for legal purposes, in this case make a deed of power of attorney to sell based on a debt settlement agreement or compensation.

Analysis of legal materials, legal materials are processed, then continued with legal material analysis techniques using qualitative analysis, namely carrying out a discussion of legal materials that have been obtained by referring to the existing theoretical basis (Marzuki, 2011).

III. Results and Discussion

3.1 The Binding Power of the Power of Attorney to Sell is based on the Encounter of Debt *(set-off)*

The power to sell as an additional agreement (accessoir) from the main agreement (PPJB) (Latumeten, 2017; Muhammad, 2017). The power to sell appears to be an accessory characteristic of a principal engagement, because it serves a particular principal engagement (Muhammad, 2017). The power to sell is subject to the principal agreement. Serving according to the KBBI (Indonesia Dictionary) is defined as servant; to serve oneself or to devote oneself, which means that the power to sell is based on a sale and purchase agreement (PPJB). PPJB define as an agreement that appears, grows and develops in and in society, in order to accommodate the wishes and needs of the community for land to fulfill their lives or for the purposes of buying and selling land rights or rights to land parcels (Gaol, 2021).

PPJB aims to meet the community's need for land to fulfill their life or for the purpose of buying and selling land rights, so that it does not include general agreements, so that it is classified as an anonymous agreement born based on the principle of freedom of contract does not mean it can be made freely, but has limitations with subject to the general provisions of Book III BW (Hernoko, 2016). PPBJ as an unnamed agreement or *Nominee* approval is an anonymous agreement, meaning that this agreement has no arrangement specifically regulated in book III BW. The agreement to borrow the name arises because of the principle of freedom of contract and the good faith of the parties (Kosuma, 2013).

PPJB is temporary in nature, in this case it is a temporary binder between the seller and the buyer while the parties are waiting for the AJB process which will be made before the PPAT. What is meant by this temporary binder is that the seller is willing to bind the buyer to sell the agreed object, and the buyer is also willing to bind himself to the seller to buy the object as stated in the contents of the PPJB charge. The parties in the process of buying and selling land and/or buildings implement PPJB for several reasons including the following:

a. Payment of the object has not been made in full or in full;
b. Administrative files in the form of object letters/documents cannot be completed;
c. The parties, sellers, or buyers have not been able to control the object; and
d. Considerations regarding the value of the object being traded for which there is still no agreement between the parties (Amasangsa, M. & Priyanto, 2019).

PPJB arrangements in the Civil Code are basically not found explicitly. The context of this PPJB is in principle the same as the legal context of engagement/approval in the Civil Code, where this PPJB can be said to be an agreement arising from the open nature of Book III of the Civil Code, which gives the legal subject the widest possible freedom to enter into an agreement that contains anything and in any form, as long as it does not violate laws and regulations, public order, and decency.

Furthermore, PPJB is a type of obligatory agreement, namely an agreement in which the parties agree to bind themselves to carry out the delivery of an object to another party, so that the PPJB has basically not resulted in the transfer of ownership rights to an object from the seller to the buyer. This stage is just an agreement and must be followed by a leasing agreement, namely the signing of the AJB before the PPAT. The context of this PPJB is in principle the same as the legal context of the engagement/approval in the B.W., where this PPJB can be said to be an agreement arising from an open nature, which gives the legal subject the widest possible freedom to enter into an agreement containing anything and in any form. only, as long as it does not violate the laws and regulations, public order, and morality". PPJB "is a type of obligatory agreement, namely an agreement where the parties agree to bind themselves to carry out the delivery of an object to another party, so that the PPJB has basically not resulted in the transfer of ownership rights to an object from the seller to the buyer. This stage is just an agreement and must be followed by a leasing agreement, namely the signing of the AJB before the PPAT (Amasangsa, M. & Priyanto, 2019).

Moreover, PPJB object is in the form of a parcel of land as a preliminary or introductory approval of the next agreement, namely the sale and purchase agreement made before the Land Deed Making Officer as referred to in Article 37 paragraph (1) of Government Regulation Number 24 of 1997 (PP No. 24 of 1997) concerning Land Registration (Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flat Units, and Land Registration, that the transfer of land rights through buying and selling, is evidenced by a deed made by the authorized PPAT according to the provisions of the applicable laws and regulations. Not later than 7 (seven) working days from the date of signing the deed in question, the PPAT is obligated to submit the deed he made along with the relevant documents to the Land Office for registration.Land registration is based on buying and selling for the purpose of changing the name of the certificate from the seller to the name of the buyer.

The power to sell, in the B.W, is regulated in Article 1792 B.W, that power is an agreement by which one person gives power to another person, who accepts it, to carry out an affair on his behalf. According to Wirjono Prodjodikoro, the granting of power of attorney states that: "the words on behalf of the party who are authorized act on behalf of the party giving the power of attorney. There is also agreement that the issue of power of attorney and the issue of representation are two separate matters that do not always exist together in a legal relationship" (Prodjodikoro, 1986). According to Suryodiningrat "granting power of attorney is an agreement in which a person gives power (authority) to another person who receives it for and on behalf of the giver of power to carry out legal actions" (Suryodiningrat, 1996).

The granting of power of attorney to the party receiving the power of attorney exercises his power for and on behalf of the power of attorney, therefore as long as the recipient of the power of attorney carries out affairs in accordance with the contents of the power of attorney, then everything that happens is the responsibility of the power of attorney, this is in line with the provisions of Article 1797 BW which stipulates that: The power of attorney is not allowed to carry out anything that exceeds his power, the power given to settle a matter by way of peace, in no way does it contain the power to leave the case to the affairs of the referee. Carrying out actions that go beyond the contents of the power of attorney, means that the recipient of the power of attorney in this case the intermediary performs his duties as an intermediary not for and on behalf of the power of attorney, therefore everything that happens is the personal responsibility of the power of attorney.

The granting of power of attorney can be made specifically or approval of the granting of power in general, that: "the granting of power of attorney can be carried out specifically, namely regarding only one particular interest or more, or in general, which includes all interests of the power of attorney". The location of the difference between the granting of power of attorney specifically and in general is related to the scope of duties or affairs, if the power of attorney is given specifically, then the scope of duties or affairs is only of one interest, for example the power to impose mortgage rights is only limited to carrying out actions to impose mortgage rights not included to deliver goods for sale or receive the selling price. The granting of power according to Subekti (2021)can be carried out specifically, namely regarding only one particular interest or more. Carrying out certain actions requires the understanding of a special power of attorney that mentions the actions that must be carried out, for example to impose mortgage rights on a house, to find a partner in the business. The special power of attorney describes what actions the power of attorney may take, therefore the actions that can be taken by the power of attorney are detailed in the power of attorney, then the power of attorney becomes a special power of attorney.

According to Suryodiningrat (1996), the general power of attorney only covers management, does not include acts of ownership such as the transfer of property rights, while the power to sell is included in the category of power used to transfer objects which in fact can only be exercised by the owner, a grant of power of attorney with firm words in the deed as stipulated in Article 1796 B.W. PPJB as the main agreement and the power to sell as an additional agreement, the power referred to is the power to appear before the PPAT for the purpose of signing the deed of transfer of rights, without the need to present of the seller. Essentially, proof of ownership in the name of the right holder at the time the UUPA is implemented, and if the right is subsequently transferred, evidence of successive transfer of rights that reaches the right holder at the time the book of rights is recorded, constitutes the basic elements of proof of ownership (Nuzul Indrawan et al., 2021).

Settlement of debt is one form of annulment of the engagement as referred to in Article 1381 B.W. Regarding the set-up of debts is regulated in Article 1425 BW, that a debt or compensation (*set-off*) occurs if there are two people who owe each other, then there is a debt encounter (*set-off*) between them which writes off the debts of the two people with manner and in the following ways. Settlement of debts is an encounter of two debts (*set-off*) and receivables between the same person in a reciprocal manner in a reciprocal manner, so that one or both of them are deleted. Settlement of debts of each party is as a creditor and debtor to each other (Butarbutar, 2019).

In order for two debts to be reconciled, it is necessary for the two debts to be immediately determined the amount or amount and immediately collectible. The encounter (*set-off*) occurred without distinction and the source of the debt between the two parties was born, with the exception of:

1. If he demands the return of an item which is unlawfully confiscated by the owner;
2. If he demands the return of goods that are deposited or lent;
3. There is a debt originating from a subsistence allowance which has been declared unconfiscated (alimentation).

Debt encounter or compensationoccurs by law, even without the knowledge of the debtor, and the two debts write off each other when the debts exist together, reciprocally for the same amount, as Article 1426 B.W. A debt encounter occurs automatically, as a reaction between the two parties who have the same rights and obligations in two accounts payable agreements where in the agreement one is a debtor while in the other agreement as a creditor.

Settlement of debt or compensation as an agreement, the agreement is binding on both parties whose contents end is an agreement with the set-off of debt. As an agreement, it must be in accordance with the agreement and the agreement must not conflict with the law.

In order for the debt to be met, the following conditions must be met:

a) In the form of a sum of money or objects that can be spent of the type and quality at the same one;
b) The debt must be collectible; and
c) The amount of debt can immediately be (Article 1427 B.W.)

In order for two debts to be reconciled, it is necessary for the two debts to be immediately determined the amount or amount and immediately collectible. If one can be collected now but the other is only a month away, it is clear that the two debts cannot be reconciled. Both debts must be both about money or goods that can be spent, of the same type and quality. Any debt for whatever reason can be settled, except as quoted from Arrisman (2020), in the following cases:

1) If it is demanded to return an object that was unlawfully confiscated from its owner, (i.e. due to theft);
2) If it is demanded to return the goods, something that was deposited or owed;
3) Against a debt originating from a living allowance which has been declared unable to be confiscated (Article 1429 B.W.);
4) State debts in the form of taxes are not possible to be set off (jurisprudence); and
5) Debts arising from a fair engagement are not possible to be set off (jurisprudence).

The provisions of Article 1429 B.W, as well as those contained in jurisprudence, have a clear meaning. If it is allowed to meet in the matters mentioned above, it means legalizing a person who is taking the law into his own hands. Therefore, the above article prohibits compensation in such cases, it means that there are 3 (three) exceptions to receivables that should not be taken into account with each other, namely: (Arrisman, 2020)

a) If one party demands the return of his property by way of against the rights that have been taken by the other party.
b) If one party demands the return of an item that is deposited or owed to the other party.
c) If one party demands to be given a living allowance which has become his right.

If a debt guarantor is billed, while the person who is borne (the debtor) has a receivable from the collector, the debt guarantor has the right to request that a calculation be made between the two receivables. On the other hand, if the debtor is billed to pay his debt, while the person who bears the debt has a debt against the collector, then compensation cannot be done. This is in accordance with the principle adopted by the law, that the debt guarantee agreement is only a mere aftermath of the principal engagement, namely an agreement on debt and money between the debtor and the debtor (Chandra, 2017).

Encounter debt or compensation (*set-off*) as one of the termination of the engagement, which requires at least two parties, each of which acts as a creditor and a debtor. In the sale and purchase agreement (PPJB) as the main agreement, while the additional approval is the power to sell, if an agreement for the power of sale is made without a PPBJ being made, but based on an agreement to set off debt or compensation as referred to in Article 1425 B.W, regarding the termination of the agreement, the power to sell is not made. based on law or null and void, it is deemed that the agreement has never been made.

3.2 The Act of legally protecting the Buyer whose Payment is based on the Encounter of Debt (*set-off*)

Satjipto Raharjo (2010), interpreting the act of protecting legally is to provide protection for human rights that have been harmed by others and that protection is given to the community so that they can enjoy all the rights granted by law. Sudikmo Mertokusumo (1999) linked the function of the act of protecting legally that the function of law and the act of protecting legally, as the protection of the interests of human beings, the law has the main purpose of the law, which is to create an orderly society, to create order and balance. Organization must have a goal to be achieved by the organizational members (Niati et al., 2021). In achieving this goal, the law is tasked with dividing rights and obligations between individuals in society, dividing authority and regulating how to solve legal problems and maintaining legal certainty.

The act of protecting legally is an illustration of the workings of the legal function to realize legal goals, namely justice, expediency and legal certainty. The act of protecting legally is a protection given to legal subjects in accordance with the rule of law, whether it is preventive in nature or in a repressive form, both written and unwritten in the context of enforcing legal regulations. Almost all legal relationships must receive protection from the law. Therefore, there are many kinds of acts to protect legally. The act of protecting legally as the beginning of the birth of a legal relationship is the interaction between legal subjects that have legal relevance or have legal consequences. Legal relationship (*rechtsbetrekkingen*) according to Soeroso (2006) is "the relationship between two or more legal subjects regarding rights and obligations on the one hand faced with rights and obligations on the other". Meanwhile, according to Peter Mahmud Marzuki, a legal relationship is essentially a relationship governed by law (Marzuki, 2009). The relationship between fellow legal subjects can occur between a person and another person, between a person and a legal entity, and between a legal entity and other legal entities. The legal relationship between the parties is based on an agreement on a debt settlement as referred to in Article 1425 B.W, and the power to sell as referred to in Article 1792 BW Article 1425 B.W, a set-off or compensation encounter, which means that by meeting the debt, the underlying engagement i.e. the agreement of receivable debt becomes terminated.

Debt is an agreement whereby one party gives to another party a certain amount of goods which are used up, provided that the borrower is able to repay the loan in accordance with the same type and conditions as specified in Article 1754 B.W. Debt is an agreement, which requires the borrowing party to return the debt at the agreed time, in accordance with the provisions of Article 1763 of the Civil Code that "the party who gets it is required to return it in the same amount and condition and at the specified time". Regarding the obligations of the borrower, Yahya Harahap (1986) stated:

About the time, namely when the goods/money must be returned, there are several kinds, namely:

a. The goods/money that must be returned on time;
b. goods/money that must be returned must be "of the same kind and in the same condition"; with goods owed back;
c. the amount to be returned in principle:
   1. as much as re-accepted;
   2. but it can be promised "bigger" than the original debt.

Therefore, in the loan agreement, the obligation of the debtor is to return the debt according to the certain time that agreed.

In this case, debt is made between MAR as the lender and GUN as the borrower. GUN as the borrower, has an obligation or achievement according to Abdulkadir Muhammad (1992) "an obligation that must be fulfilled by the debtor in every engagement", achievements in the approval of accounts payable, namely repaying the loan. In fact, GUN is unable to repay the loan, so it can be said to have broken a promise or is in default which defined as "not fulfilling the obligations that have been set in the engagement" (Abdulkadir, 1992).

It is said to have been in default, if in its implementation one of the parties does not carry out the obligations arising from the agreement made, then if it causes harm to the other party, it can be said to have broken a promise or is in default. According to Subekti (2021), a person is said to have defaulted if:

a) Not doing what was promised;
b) Carry out what he promised, but not as promised;
c) Carry out the agreement, but exceed the time limit;
d) Do something that according to the agreement should not be done.

Based on the loan agreement agreement, both parties are still bound and binding according to the law, if in practice GUN is unable to return the loan, legal protection for MAR as the lender can claim compensation on the basis of default or broken promise. The principle is default, giving the creditor the right to claim compensation in the form of reimbursement of costs, losses and interest as stipulated in Article 1243 B.W.

The binding legal relationship is based on an agreement to grant a power of attorney to sell with the payment of a parcel of land through a debt settlement or compensation as referred to in Article 1425 BW, because it is not based on PPJB as the main agreement, the meeting of debt (*set-off*) or compensation cannot be used as the basis for the issuance of an agreement granting the power to sell. In this condition, MAR as the buyer, even though he has agreed that the sale and purchase is based on a debt or compensation agreement, has no binding force, even the power to sell has no legal basis or is null and void.

IV. Conclusion

1. The binding power of the deed of power to sell is based on the encounter debt (*set-off*), and the act of legally protecting the buyer whose payment is based on the encounter debt (*set-off*) when the seller defaults, it can be explained that the power to sell a plot of land based on a debt settlement or compensation agreement has no legal force, because the basis for the issuance of the power to sell the object of the land parcel is PPJB.
2. The power to sell based on a the encounter debt (*set-off*) does not result in the end of the engagement as referred to in Article 1381 in conjunction with Article 1425 BW, with the sale and purchase of land rights with the power to sell. Therefore, if the debtor breaks his promise, the creditor can sue for compensation on the basis of default.

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