

ASPECTS OF LEGAL CERTAINTY REGARDING THE TRANSFER OF LAND RIGHTS USING A POWER OF ATTORNEY DEED

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Abstract

This study aims to examine the legal certainty in the mechanism of transferring land rights through a deed of authority to sell, by integrating philosophical, juridical, and sociological perspectives. Philosophically, legal certainty is seen as the embodiment of justice and moral values that require every legal instrument, including the power to sell, to be based on the principles of legality and justice in order to create a harmonious social order. The juridical approach emphasizes that the use of the power to sell must fulfill formal and material requirements under the Basic Agrarian Law and its derivative regulations. In this case, the role of the Notary or PPAT (a government official) as the authorized official is key in realizing the legal force and certainty of the status of land rights. This research uses an empirical juridical method with a legal analysis approach. Data was collected through observation and interviews to verify the procedure for making deeds, the mechanisms of administrative and taxation verification, and the role of authorized officials. The results showed that the validity of the power of attorney to sell depends heavily on administrative completeness, such as clearly stating the identities of the parties, the object, and the power of attorney clause. A systematic and transparent deed-making procedure, conducted by a notary or land official, has been proven to minimize potential disputes. Administrative verification integrated with tax compliance further strengthens the legitimacy of transactions. Thus, a deed of power of attorney to sell made by statutory regulations can increase legal certainty and legal protection for the parties, especially for bona fide buyers.

Keywords: Legal Certainty, Power to Sell, Transfer of Land Rights

Abstrak

Penelitian ini bertujuan untuk mengkaji kepastian hukum dalam mekanisme peralihan hak atas tanah melalui akta kuasa menjual, dengan mengintegrasikan perspektif filosofis, yuridis, dan sosiologis. Secara filosofis, kepastian hukum dipandang sebagai perwujudan keadilan dan nilai moral yang mengharuskan setiap instrumen hukum, termasuk kuasa menjual, berlandaskan asas legalitas dan keadilan guna menciptakan tatanan sosial yang harmonis. Pendekatan yuridis menekankan bahwa penggunaan kuasa menjual harus memenuhi syarat formal dan materiil sesuai Undang-Undang Pokok Agraria dan peraturan turunannya. Dalam hal ini, peran Notaris atau PPAT sebagai pejabat yang berwenang menjadi kunci dalam mewujudkan kekuatan hukum dan kepastian status hak atas tanah. Penelitian ini menggunakan metode yuridis empiris dengan pendekatan

analisis hukum. Data dikumpulkan melalui observasi dan wawancara untuk memverifikasi prosedur pembuatan akta, mekanisme verifikasi administratif dan perpajakan, serta peran pejabat yang berwenang. Hasil penelitian menunjukkan bahwa sahnya kuasa menjual sangat bergantung pada kelengkapan administratif, seperti pencantuman identitas para pihak, objek, dan klausul kuasa secara jelas. Prosedur pembuatan akta yang sistematis dan transparan oleh Notaris/PPAT terbukti dapat meminimalisir potensi sengketa. Verifikasi administratif yang terintegrasi dengan pemenuhan kewajiban pajak semakin memperkuat legitimasi transaksi. Dengan demikian, akta kuasa menjual yang dibuat sesuai ketentuan peraturan perundang-undangan dapat meningkatkan kepastian hukum serta perlindungan hukum bagi para pihak, khususnya pembeli beritikad baik.

Kata kunci: *Kepastian Hukum, Kuasa Menjual, Pengalihan Hak Atas Tanah*

INTRODUCTION

Philosophically, legal certainty is a manifestation of the realization of the principles of justice and certainty in the legal system which functions as a reflection of moral values and social justice. This value requires every legal instrument, including a power of attorney to sell, to be based on the principles of legality and justice which should accommodate humanitarian values and public trust in the legal system (Joesoef, 2022). This philosophical approach emphasizes that every legal action must have a solid epistemological foundation so that it can provide certainty for the parties concerned in order to achieve a social justice order that is in line with basic human values.

From a sociological perspective, the transfer of land rights using a power of attorney to sell is not only technically administrative but also reflects social interaction between transaction actors and legal officials as mediators for protecting the interests of the community. The existence of a power of attorney as an instrument for selling land creates dynamics of trust among the community, where legal certainty resulting from the application of the principles of transparency and accountability plays an important role in maintaining social stability and preventing fraud and ownership conflicts (Apriani & Fikriana, 2023). The enforcement of these social functions, as outlined in the principles of the social function of land rights, requires that agrarian law be able to align individual interests with public interests in realizing justice and equal access to land (Apriyanto & Raspita, 2024).

In the legal context, this study examines how the power of attorney to sell is positioned in the legal mechanism of land rights transfer. The legal basis in the Indonesian agrarian legal system, as mandated in the Basic Agrarian Law and its derivative regulations, provides a legal framework to realize legal certainty through clear administrative procedures (Baihaqi & Surbakti, 2023). The use of a power of attorney to sell as a transaction tool must meet formal and substantial requirements so that the transfer is not only legally binding but also provides protection for the parties involved. Several previous studies have revealed that negligence in the registration or validation of legal apparatus, including the role of Notaries and Land Deed Making Officials (PPAT), can result in legal uncertainty which harms the certainty of land ownership status (Putri dkk., 2020). Therefore, an in-depth study of the application of the power of attorney to sell is very necessary to analyze whether the existing legal mechanisms have met optimal legal

protection standards and provide clarity on land ownership status. Legal certainty resulting from the land rights transfer procedure through a power of attorney to sell is essential in order to maintain the integrity of the land system. Previous studies have shown that if the procedure is not carried out following legal norms, the legal consequences that arise include sale and purchase transactions that do not have the proper legal force, resulting in disputes and public distrust of the land system (Bintarawati, 2024). Therefore, this study will not only discuss the formal aspects of the administration of the rights transfer process using a power of attorney, but will also examine the substantive aspects which include the fulfillment of the values of justice, transparency, and legal protection for land rights holders, thus contributing to the development of a land law system that is more accommodating and responsive to the social dynamics that occur.

METHOD

This study uses an empirical juridical method with a juridical analysis approach. This approach views the law not only as a written and abstract norm but as an inseparable part of human life that is reflected in people's social behavior (Juniatmoko, 2019). In this context, the law is seen, accepted, and understood as a social phenomenon that lives and develops in the practice of everyday life. Therefore, the approach of juridical analysis in empirical legal research does not only examine legal texts normatively but also looks at how the law is applied and carried out in social reality. This approach allows researchers to understand the law through the behavior of society in practice, especially in the process of transferring land rights through a deed of authority to sell. The main focus is on the verification of empirical data relating to the procedure for making deeds, the implementation of administrative and taxation obligations, and the role of authorized officials such as notaries or land deed officials (PPAT). In addition, this approach is also used to test the conformity between applicable legal norms and legal practices in the field. The main objective of using this approach is to obtain a complete picture of how the mechanism of power of attorney to sell is carried out factually, and the extent to which the procedure fulfills the principles of legality, fairness, and legal certainty. By directly observing the implementation of the law in society, this research can identify potential legal loopholes, administrative obstacles, and efforts to optimize legal protection for parties involved in land transactions. Thus, the empirical juridical approach is an important means of testing the effectiveness of the law in a dynamic social context.

RESULT AND DISCUSSION

Validity of the Deed of Power of Attorney for Sale (According to the Provisions of Statutory Regulations)

Based on the results of research on the validity of deeds per the provisions of laws and regulations, it was found that the validity of a deed in the transfer of land rights is highly dependent on the fulfillment of formal and substantial requirements that have been stipulated by laws and regulations. The results of the study show that a deed of power of attorney to sell made before an authorized official, such as a Notary or Land Deed Making Officer (PPAT), will have authentic legal force if the document explicitly contains the identities of the parties, the object of the transfer, along with a clear power of attorney

clause that does not cause ambiguity (Ariffani dkk., 2023). In the implementation of the transfer of land rights, the deed legalized by the PPAT has shown a high level of validity, as long as all administrative procedures are fulfilled by statutory provisions. This legitimacy emphasizes the central role of PPAT in ensuring that every deed issued is not only a means of proof of transaction, but also an instrument that provides legal certainty. In this context, the validity of a deed is not only seen from the perspective of its physical existence but also from its compliance with the formal standards required by regulations, such as Article 37 paragraph (1) of Government Regulation Number 24 of 1997.

The power of attorney to sell must fulfill clauses that are firm and specific because any ambiguity in writing the contents of the deed has the potential to give rise to disputes in the future. Deeds that do not meet these requirements can be categorized as invalid or have limited legal force, thereby reducing the level of legal certainty in the transfer of land rights. Thus, the validity of the deed becomes a synergy between the fulfillment of administrative criteria and legal substance to achieve optimal legal protection for the parties involved (Kusnandar & Rahma, 2023). In addition, research findings also show that the involvement of authorized officials, especially Notaries and PPAT, is a determining factor in the deed validation process. The authority granted by law requires these officials to conduct a thorough verification of the document, including ensuring that all formal and material elements have been properly fulfilled (Harmono, 2024). Errors or omissions in this verification stage are considered legal loopholes that can be exploited for detrimental practices, thereby reducing the level of legal certainty that should be guaranteed by the implementation of the deed authentically (Hamidah dkk., 2023). Overall, the results of this study conclude that the validity of a deed, especially in the context of the transfer of land rights through a power of attorney to sell, must always be measured by the extent to which the document has met all the requirements both formally and substantially, by the provisions applicable laws and regulations. Compliance with these norms is the main foundation for providing legal certainty and preventing future disputes (Grunwald, 2022).

Procedure for Making a Deed of Power of Attorney for Sale before an Authorized Official (Notary/PPAT)

Procedures for making a deed of power of attorney before an authorized official, research results show that the procedure for forming a deed of power of attorney must be carried out in an orderly and systematic manner through a mechanism that prioritizes the principles of caution, transparency, and accountability. This process involves a number of stages, including verification of the identity of the parties, fulfillment of administrative and material requirements, and a comprehensive explanation of the rights and obligations of each party by a Notary or PPAT (Judge, 2022). The deed-making procedure begins with the document preparation step, where the authorized official collects all data and supporting documents, such as personal identity, proof of land ownership, and initial agreement documents. Furthermore, the Notary or PPAT is required to verify the authenticity and conformity of the documents with the provisions of the relevant laws and regulations. At this stage, the verification process is key to avoiding disputes in the future, as emphasized by Haryani, (2021) that the legal force of the deed is highly dependent on

compliance with the signing procedure before the authorized official. Furthermore, the authorized official must read and explain the entire contents of the deed in detail to the parties involved. This reading mechanism includes an explanation of important clauses, formal requirements, and legal consequences if there is a failure to fulfill the agreed provisions. According to Lev, (2021), the principle of caution in managing deeds is very important, because incomplete or inaccurate explanations can become legal loopholes that have the potential to cause disputes in the future. This detailed explanation also functions as a form of legal protection for the parties conducting the transaction, as well as proof that all requirements have been met formally and substantively.

Furthermore, the research results also emphasize that Notary officials or PPAT have great legal responsibility in making deeds. If there is an error or material deviation in the preparation of the deed, the official concerned can be subject to civil and criminal liability. Ariffani dkk., (2023) noted that the existence of such liability provides an incentive for officials to strictly comply with the procedures at each stage of making the deed in order to ensure the validity of the document and provide legal certainty for all parties involved. This strict procedure, as described by Silalahi & Zhafarina, (2024) not only guarantees the validity of the document but also protects the interests of legal consumers through a transparent and legally valid power of attorney mechanism. Overall, this study reveals that the procedure for making a power of attorney deed before an authorized official is an integral and inseparable process from efforts to realize legal certainty in land rights transfer transactions. The stages of document verification, reading and explaining the contents of the deed, and applying the principle of prudence are crucial components that, if carried out carefully, can minimize the potential for disputes and provide legal protection to the parties. Thus, the implementation of procedures that have been regulated normatively and consistently becomes the main foundation for the development of a fair and trustworthy land system (Alhababsah & Yekini, 2021).

Administrative and Tax Verification Process in the process of transferring land rights through power of attorney

The administrative and tax verification process in the transfer of land rights through a power of attorney reveals that the success of a land transfer transaction depends not only on the preparation of legally valid documents but also on the implementation of an integrated and systematic verification mechanism to ensure that all administrative and tax requirements have been met. Administrative verification includes checking the completeness of documents, the validity of the identities of the parties, and the conformity of land ownership data with population archives and land registration. Meanwhile, tax verification mainly involves checking the payment of Land and Building Acquisition Fees (BPHTB) and related taxes as stipulated in applicable laws and regulations (Gürer & Weichenrieder, 2021).

In practice, the administrative verification process begins with a series of examinations by authorized officials such as Notaries or Land Deed Officials (PPAT). In the initial stage, officials validate ownership documents, identity documents, and other permits related to the land object whose rights will be transferred. The involvement of authorized

officials is crucial because they have the authority to assess and ensure that each legal instrument has met the formal standards set. This verification aims to avoid errors or misuse of data that could lead to disputes in the future. This regular administrative verification has been identified as an important stage in increasing legal certainty and protection of parties in transactions using power of attorney (Budiyanto dkk., 2021).

In addition to administrative verification, the taxation aspect plays a key role in the process of transferring land rights. The results of the study show that taxpayers such as BPHTB must be verified through strict procedures to ensure that all tax levies have been paid correctly and recorded administratively. This process is carried out by cross-checking the proof of payment deposited by the parties with official data from the taxation agency. Tax verification not only emphasizes the aspect of collecting regional revenue but also functions as an internal control mechanism to prevent tax crimes, such as embezzlement or falsification of payment documents (Auerbach & Hines, 2002). The performance of this verification has a positive impact on increasing the effectiveness of tax revenue, which in turn contributes to public trust in the land system and public services, as expressed by (Cahyaningrum dkk., 2023).

In addition, the synergy aspect between administrative and tax verification also optimizes integration between related institutions. Collaboration between PPAT, land offices, and tax offices produces a reporting and data recapitulation system that can reduce administrative gaps and errors in recording. This synergy has proven effective in preventing data differences that usually occur in informal or underhand land sale and purchase transactions. By integrating administrative and tax verification data, land rights transfer transactions through the power of sale not only gain legal legitimacy but also guarantee that all fiscal obligations have been fulfilled transparently and accountably (Alhababsah & Yekini, 2021). Overall, this study confirms that the administrative and tax verification process is a vital component in efforts to ensure legal certainty in the transfer of land rights through power of sale. The implementation of systematic and integrated procedures between document verification, tax payment validation, and collaboration between related agencies contributes significantly to legal protection for the parties, as well as optimizing tax revenues and transparency of land administration. The results of this study indicate the need for continuous improvement in the verification and monitoring system to anticipate the dynamics of legal and policy developments related to the transfer of land rights (Haig, 1937).

Legal Certainty and Legal Protection for Parties in Land Rights Transfer Transactions Using Power of Sale

Legal certainty and legal protection for parties in land transfer transactions using a power of sale reveal that legal instruments in the form of a power of sale play a central role in ensuring clarity of ownership status and protecting the legal rights of the parties conducting the transaction. Legal analysis shows that legal certainty is achieved if the creation of a power of sale meets all formal and material requirements stipulated by national laws and regulations so that the document can provide authentic and binding legal force (Bintarawati, 2024). In terms of legal protection, research conducted by Akbar,

(2024) emphasizes the importance of protection for buyers in good faith in land sale and purchase agreement transactions, especially when the transaction is carried out “underhand” without official registration. The findings state that even though the transaction is carried out outside the formal administrative system, the value of legal certainty can still be maintained if the power of sale is prepared carefully, by including clear clauses regarding the rights and obligations of each party. This is in line with the findings of Kusnandar & Rahma, (2023) which state that legal protection for land sales, especially for objects that are not yet certified, depends on the regularity of the preparation of the deed and compliance with applicable legal norms so that both parties obtain a guarantee of legal certainty. On the other hand, Effendi, (2022) revealed that land sales transactions that are not accompanied by certification are prone to legal risks, such as disputes over the transfer of rights and unclear ownership status. From this perspective, the use of a power of attorney supported by proper legal procedures can reduce these risks, because well-structured documents will facilitate the registration process at the land office and integrate relevant tax obligations. Verification of the validity of documents through the role of a notary or PPAT, as analyzed by Hines & James, (2007), provides a strong legal basis so that if a dispute occurs, the parties can file objections and obtain a court decision that supports the validity of the transfer of land rights through a power of attorney. Furthermore, the analysis conducted by Mahendra dkk., (2024) shows that a power of attorney must contain a clear statement regarding the transfer of rights in order to achieve the principle of legal certainty. This instrument functions as a tool to minimize legal loopholes that can be exploited by irresponsible parties.

Legal protection here is strengthened through the application of the principles of legal formality, where the power of attorney for sale is required to be registered and legalized by an authorized official. Research by Surjono dkk., (2024) also strengthens this argument by showing that even though there is a temporary registration mechanism through PPAT, legal protection must still be ensured so that the buyer's rights are not harmed even though the deed has not been registered. In conclusion, this study concludes that legal certainty and legal protection for the parties in land rights transfer transactions through power of sale can be achieved if: (1) the preparation of the power of attorney for sale is carried out carefully by including legally binding clauses; (2) the notary or PPAT as the authorized official carries out the deed-making process systematically and transparently, and (3) there is an integrated administrative and tax supervision mechanism to ensure that each transaction meets all applicable legal requirements. Thus, the use of the right power of sale not only increases legal certainty over the transfer of land rights but also provides optimal protection for the rights and interests of the parties, especially for buyers in good faith.

CONCLUSIONS

Based on a number of findings obtained from the research results, it can be concluded that legal certainty in the transfer of land rights through the use of a power of attorney deed is highly dependent on the fulfillment of formal and material requirements stipulated by laws and regulations. The validity of a power of attorney deed is determined by

compliance with administrative and substantial standards which include the inclusion of the identities of the parties, the object of the transfer, and a clear power of attorney clause without ambiguity. Thus, if the deed is prepared and legalized by an authorized official (Notary or PPAT) by legal provisions, the document will obtain authentic legal force which is the basis for increasing legal certainty and preventing future disputes. The procedure for making a power of attorney for sale is also an important component in realizing this legal certainty. The process of making it is carried out in an orderly, systematic manner, and prioritizes the principles of caution, transparency, and accountability as the main requirements so that each stage starting from document preparation, verification of the authenticity of the document, to explaining the contents of the deed to the parties can be carried out properly. The active involvement of a Notary or PPAT in the verification and explanation of the deed not only ensures that all administrative requirements are met but also provides legal protection for the parties by minimizing the potential for legal loopholes that can cause disputes.

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