

## CIVIL LAW ASPECTS IN THE MAKING OF A POWER OF ATTORNEY TO SELL IN THE PROCESS OF TRANSFERRING LAND RIGHTS

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### Abstract

In order to overcome these obstacles, it is necessary to help other individuals resolve them, which then gave rise to the concept of representation, where a person acts on behalf of other individuals when resolving their interests. This is known as power of attorney, which is regulated in Article 1792 of the Civil Code. Power of attorney itself is an agreement that requires authority in taking action. This research relied on a variety of library sources, i.e. references that contain the latest scientific information or updated understanding of known facts or developing ideas. These sources include books, journals, dissertations, theses and other legal documents. The research findings show that abuse of power of attorney, especially when the action taken is not in accordance with the power of attorney granted, can have various legal consequences. Actions that exceed the limits of the power of attorney risk being null and void or at least not binding on the authorizing party, in accordance with the provisions of Article 1804 of the Civil Code which states that actions outside the power of attorney do not create rights and obligations for the authorizer. The liability of the proxy itself relates to two important aspects: freedom of contract and statutory provisions. Although they have different meanings, there are exceptions to the freedom of contract principle that allow the making of agreements as long as they are not contrary to applicable law.

**Keywords:** Power of Attorney, Transfer of Land Title, Civil Law Aspects

## INTRODUCTION

Land is a basic right of every individual, and its existence is protected by the 1945 Constitution. Land is considered as gift from God Almighty, and with the right of control from the state, the government has an obligation to carry out land registration throughout Indonesia in accordance with the Basic Agrarian Law which is individualistic, communal, and religious. The purpose of this registration is to protect land rights by providing certificates as legal proof of ownership. Every individual who owns a piece of land that is recognized as his or her property is obliged to register the land at the local Land Office (Chandra, 2005: 3)

Land plays an important role in human life. Individuals seek access to land to fulfill their basic needs and to support their livelihoods and the ecosystems around them. Given that the total land is limited and cannot expand, it is important to prevent the emergence of individual/group conflicts of interest in the effort to fulfill land needs. In this case, the government has a great responsibility to regulate and manage the use, distribution, maintenance, and allocation of land, as well as regulate legal relationships and actions involving individuals/groups with the land.

The process of buying and selling land with a Right of Ownership (Hak Milik or HM) or Right to Build (Hak Guna Bangunan or HGB) certificate in Indonesia is generally carried out by signing a Sale and Purchase Deed (Akta Jual Beli or AJB) accompanied by tax payments by the buyer and seller. The practice of transferring land rights occurs when the transfer is made through sale and purchase using a power of attorney given by the seller to the appointed attorney. The granting of power of attorney is an agreement that must meet the legal requirements in accordance with Article 1320 of the Civil Code, which includes agreement, capability, clear object, and legitimate reasons.

The issuance of the Power of Sale Deed is done after the seller and buyer agree that the land transaction has been completed, and the notary guarantees that the Power of Sale Deed is valid to be used in any legal action related to the land listed, including to sell it. Article 1792 of the Civil Code stipulates that the granting of power of attorney is an agreement in which a person authorizes another party to take care of an affair on his behalf (J. Satrio, 2018).

The high needs and interests of each party often lead to situations where an individual with rights and obligations cannot handle them alone, usually due to overlapping interests at the same time. In order to overcome these obstacles, assistance from other individuals is needed in resolving these problems, which gave rise to the concept of representation, where a person acts on behalf of others to resolve their interests. This is regulated in Article 1792 of the Civil Code, stating that the granting of power of attorney is an agreement that gives authority to act on behalf of another party.

The background regarding the civil legal aspects in making a power of attorney to sell in the process of transferring land rights is very important because this power of attorney functions as a legal document that authorizes another party to act on behalf of the landowner in carrying out transactions. In the context of land law in Indonesia, the legal aspects of a power of attorney to sell are often ignored, which can cause various legal problems.

First of all, it is important to note that proof of ownership of land rights is often a source of dispute between parties claiming the same rights (Musliadi & Hasanah, 2023). The use of a power of attorney to sell without fulfilling the proper civil aspects can cause legal doubts regarding the validity of the transfer of rights. For example, there are cases where land that is traded based on a power of attorney to sell is not accompanied by a clear understanding of the limitations and rights that have been granted to the power of attorney (Atikah, 2022). This has the potential to cause legal problems in the future, such as illegal claims from other parties.

Furthermore, in the Indonesian legal system, land certificates and power of attorney to sell must be legally accountable. Several studies have shown that the lack of public understanding of the terms and conditions in making a power of attorney can lead to a high risk of fraud and unauthorized transfer of rights (Musliadi & Hasanah, 2023) (Ningrum et al., 2023). This shows that the public needs to be given better education regarding the validity of these legal documents so that they can participate actively and wisely in land transactions.

The civil aspect in making a power of attorney must also refer to the applicable provisions, including the requirements contained in the Civil Code and Law No. 5 of 1960 concerning Basic Agrarian Regulations (UUPA). Clear regulations regarding the power of attorney to sell and transfer of land rights are very important, considering the rampant cases of land mafia that exploit legal loopholes Angelin et al. (2021) (Allister & Djaja, 2024). Making a power of attorney that does not meet legal requirements can result in the cancellation of the transaction that has been carried out and can lead to dispute resolution in court.

In addition, lack of understanding of the legal material related to the power of attorney to sell often leads to violations of the provisions as referred to in the applicable laws and regulations (Ningrum et al., 2023) (Atikah, 2022). Therefore, a strong understanding of the civil aspects in making

a power of attorney to sell is not only important to protect individual interests but also to maintain legal order and reduce the risk of disputes.

Thus, a more in-depth study of the civil legal aspects in making a power of attorney to sell in the process of transferring land rights is very necessary to increase public awareness and knowledge, as well as to encourage better legal practices in the context of land in Indonesia. A sustainable approach to law enforcement will also contribute to the creation of legal certainty in the land sector.

Based on aforementioned problem, the author choose the title "Civil Law Aspects in the Making of Power of Attorney to Sell in the Process of Transferring Land Rights." Based on this background, the author formulates the problem to be discussed, namely:

How are the Civil Law Aspects in the Making of a Power of Attorney to Sell in the Process of Transferring Land Rights? And what are the responsibilities of the recipient of the power of attorney to sell in the transfer of land rights in the sale and purchase process?

## RESEARCH METHOD

In this research, the method of data collection and analysis relied heavily on literature references, i.e. sources that contain current scientific information or conceptual updates on known facts/new ideas. These sources include books, scientific articles, dissertations, theses, and other legal documents. Research that focuses on normative law is entirely with primary and secondary legal references. (Johan Nasution: 2008).

## RESULTS AND DISCUSSION

There are problems regarding the use of the Power of Attorney to sell in the practice of land transfer. In order to answer the problems in this research we need to define the variables to be studied, namely legal certainty. According to CTS Kansil, Legal Certainty is a regulation that is made and published to the public with the aim of establishing regulation of an abstract and uncertain matter that causes conflict in a clear and definite manner. It is hoped that the existence of such regulations can handle matter that potentially causes conflict. (Cst Kansil, 2009).

One of the important elements in an agreement is the agreement between the parties involved. According to Article 1320 of the Civil Code, there are four conditions for a valid agreement, namely: (1) agreement of the parties, (2) capacity to perform legal acts, (3) clear objects, and (4) lawful causes. This is emphasized by (Fauji, 2017), who asserts that all agreements must meet these requirements to be considered valid and enforceable by law (Fauji, 2017). In this context, the use of the principle of "exceptio non adimpleti contractus," which allows one party to refuse to implement an agreement if the other party does not fulfill their obligations, becomes relevant. This has implications for the availability of legal defense for parties who cannot fulfill their obligations due to the non-compliance of the other party, as explained by Al-Madrusi and Ridwan (2022) (Al-Madrusi & Ridwan, 2022). In the context of an agreement, there are also regulations regarding agreements that do not meet formal requirements. According to research by Purba (2022), in contracts that do not meet formal legal requirements, the entity that entered into the agreement can still file a claim for damages against the other party that does not fulfill its agreement (Sari et al., 2019). Therefore, it is important for all parties to understand the legal consequences of the agreements they make. A common form of agreement found in the society is the granting of power of attorney to sell land rights. The granting of power of attorney usually conducted because difficulty or obstacles found by one or more parties. In this case, the party needs the help of another person to complete his interests. This power of attorney is regulated in Article 1792 of the Civil Code, which states that the agreement between the grantor and the recipient of the power of attorney is useful to perform an action on behalf of the grantor. In this regard, the granting of power of attorney is an agreement that authorizes the recipient of the power of attorney to complete the affairs of the grantor, such as in the case of buying and selling land.

The misuse of a power of attorney, especially if the actions that take place are not in line with the power granted, can have a number of legal consequences.

1. First, actions that exceed the limits of the power of attorney granted may risk being considered legally void or at least not binding on the authorizing party, as stipulated in Article 1804 of the Civil Code which states that actions beyond the limits of the power of attorney do not result in rights and obligations for the authorizer.
2. Secondly, the recipient of the power of attorney can be considered to have violated the agreement (default) because it does not carry out the power of attorney in accordance with the agreement that has been determined.

In this situation, the grantor is entitled to claim compensation from the attorney-in-fact for losses incurred due to actions that exceed the limits of the authority granted. For example, if the

attorney-in-fact sells the grantor's assets at a very low price or without approval, the action is clearly detrimental to the grantor. Since the action is not within the authority granted, the proxy can be held liable for any losses resulting from his or her actions.

Fundamental principles in contract law, such as freedom of contract and good faith, affect the extent of the authority granted to the attorney-in-fact. Article 1338 of the Civil Code stipulates that a valid agreement will bind the parties like a law, provided that it is executed in good faith. In this case, good faith means that the proxy must act responsibly, transparently, and within the scope of the authority granted. If the proxy exceeds these limits, his or her actions not only violate the agreement, but also deny the principle of good faith that should be the basis of every contract. Such violations can damage the relationship between the grantor and the grantee, and reduce public confidence in the power of attorney process, which should be used to facilitate transactions and legal matters.

According to Article 1313 of the Civil Code, an agreement in Indonesian law is a legal event involving one or more parties who promise to perform a certain obligation to another party. In simple terms, an agreement is a form of legal agreement between the parties involved, who are mutually committed to taking certain actions. R. Subekti, an Indonesian civil law expert, explains that an agreement is an event in which one or more parties make a promise to another party, or two parties promise each other to do a certain thing (Subekti, 2005). Based on this explanation, it can be understood that an agreement creates a legal relationship between two parties referred to as "obligation". In this context, the agreement serves as the basis that forms the binding relationship between the parties involved, which then results in interrelated obligations and rights.

In the context of Indonesian law, legal certainty in a sale and purchase transaction using a power of attorney to sell is highly dependent on the validity and conditions that must be met by the power of attorney. A power of attorney to sell, which is often used in land sale and purchase transactions, must fulfill the conditions set by law in order to be considered valid and legally binding.

First, when a power of attorney made abroad would be used in Indonesia, it must be legalized by the Embassy in that State, the Ministry of Foreign Affairs, and the Ministry of Law and Human Rights. This shows that the validity of a power of attorney depends not only on the content of the document itself, but also on the legalization process it must go through. Moreover, in the context of land sale and purchase, it is important to ensure that the party granting the power of attorney has legal title to the object to be sold. This finding is in line with the study which revealed that in land title sale transactions, the authority to act must be exercised jointly between husband and wife, and the process must be carried out in front of a Land Deed Official (PPAT).

Secondly, the legal power of attorney to sell is also affected by whether the power of attorney meets the requirements set out in the law. For example, research shows that a power of sale used in the purchase of unreversed land for a housing developer has weak legal force if it does not comply with the applicable laws. This shows that the power of attorney must be carefully drafted and comply with all relevant legal provisions so as not to cause problems in the future. Furthermore, in practice, the deed of sale and purchase agreement made by a notary also plays an important role in providing legal protection to the parties involved.

This research shows that notaries have the authority to draft a deed of sale and purchase agreement, which provides legal support for all parties involved in the transaction. Therefore, it is important for the parties involved in the sale and purchase process to ensure that all documents are complete and valid, drafted and signed before a notary to enhance its legal certainty. Finally, in the context of Indonesian law, a power of attorney to sell used in a land sale and purchase transaction must meet certain requirements and must be properly drafted in order to provide legal certainty. This includes the legalization of the power of attorney, the fulfillment of the authority to act, and the making of the deed by a notary. By fulfilling all these requirements, the sale and purchase transaction can be considered valid and legally binding, thus protecting the interests of all parties involved.

The legal responsibility of a notary in making a land trade deed is very important to maintain the validity and legality of the transfer of rights from the owner to the buyer (Neonardi & Gunanegara, 2022). With a certified power of attorney to sell, landowners can safely transact without high legal risks.

Power of attorney to sell is often used in land buying and selling practices without an official deed, which increases the risk of fraud and claims on the land (Hidayati & Tanjung, 2022). Therefore, it is necessary to educate the public about the importance of a valid power of attorney and the legal procedures that must be followed in the process of transferring land rights.

Legal certainty regarding the transfer of land rights through a power of attorney is also a concern, as stated by (Rachmawati, 2021) who highlighted the need for legal protection for land rights holders so that they are not harmed in various transactions (Rachmawati, 2021).

### **Liability of Power of Attorney to Sell in Land Rights Litigation in the Sale and Purchase Process**

In principle, the granting of power of attorney can be seen as a form of legal agreement between two mutually bound parties. This is explained in Article 1792 of the Civil Code, which states that the granting of power is an agreement in which a person authorizes another person to manage affairs on his behalf. From this provision, there are several important elements that make up the grant of power of attorney (Budiono, 2016). First, the granting of power of attorney is an agreement involving two parties who agree to be legally bound. Second, the grantor grants authority to the proxy, and then the proxy will act on behalf of the grantor. Third, the proxy has the responsibility to complete the affairs that have been mutually agreed upon, for the benefit of the grantor. According to Herlien Budiono, the essence of power of attorney consists of three main elements, namely a legal agreement between the parties involved, the granting of authority to the power of attorney, and the obligation of the power of attorney recipient to carry out the task for the benefit of the grantor (Budiono, 2016).

In addition to being given the right to execute the agreed agreement, the attorney also carries a number of responsibilities that must be fulfilled. These obligations are part of the responsibility of the attorney in carrying out the duties assigned to them. In accordance with Article 1800 of the Civil Code, the attorney-in-fact will remain liable until he or she is relieved of such obligations. When exercising the power of attorney granted, the attorney-in-fact is responsible for bearing all costs, losses, and interest that may arise due to his negligence / inability to carry out the power of attorney in accordance with existing rules. In accordance with Article 1801 of the Civil Code, the attorney-in-fact is fully responsible for any action taken in his/her capacity as an attorney-in-fact. This responsibility covers both intentional acts and negligence that occur in the exercise of the power of attorney. In other words, the beneficiary of the power of attorney is liable not only for intentional misconduct, but also for negligence that may cause harm or legal consequences, even if the act is not motivated by malicious intent.

The liability held by the power of attorney recipient basically involves two aspects, namely freedom of contract and statutory provisions. Although these two aspects have different meanings, there is an exception to the principle of freedom of contract which states that agreements can be made according to the wishes of the parties involved, as long as they do not conflict with the law, public order, or norms of decency. Therefore, the liability of the power of attorney recipient will again refer to the provisions in the deed or agreement that has been agreed upon. Liability arising from laws and regulations can be found in Articles 1800 to 1806 of the Civil Code.

The responsibility of the power of attorney to sell in the transfer of land rights is an important aspect of the sale and purchase process that involves various legal considerations. The attorney-in-fact, as the party authorized to sell the land, has responsibilities that are governed by the law and the agreement that has been concluded. These responsibilities include two main aspects: the freedom of contract aspect and the statutory aspect that regulates the obligations of the attorney (Hasan & Santoso, 2022; Sari et al., 2022). In the context of land sale and purchase, the attorney must act in accordance with the provisions set out in the power of sale deed. If the attorney acts beyond the limits of his authority, or if there is negligence in carrying out his duties, then they can be held liable.

Research shows that negligence in performing this duty can result in losses for the grantor or third parties involved in the transaction (Hasan & Santoso, 2022; , Syahputra & Dewi, 2022). For example, if an attorney sells land without the permission of all the heirs, the deed of sale may be deemed invalid and the attorney may be held liable for any losses incurred (Syahputra & Dewi, 2022). Furthermore, the attorney-in-fact also has the responsibility to ensure that all the necessary legal documents and requirements for the transfer of land rights have been fulfilled. This includes ensuring that the sale and purchase deed is drawn up before a Land Deed Official (PPAT) and registered in accordance with applicable regulations (Laksmono & Dharsana, 2023; , Silviana et al., 2020). Failure to fulfill these requirements can result in the sale and purchase deed becoming null and void, thus increasing the burden of responsibility for the attorney (Rizky et al., 2020).

In situations where the attorney also acts as a buyer, his responsibilities become more complex. Research shows that in cases where the attorney is both selling and buying, he or she must maintain transparency and avoid conflicts of interest (Sari et al., 2022; , Maulida & Arba, 2023). In the event of a dispute, the aggrieved party can file a lawsuit against the attorney-in-fact based on the principle of good faith and the responsibilities attached to their role in the transaction (Putro & Zuhairi, 2017). Overall, the responsibility of the power of attorney to sell in the transfer of land rights is crucial and must be well understood by all parties involved in the sale and purchase transaction. The obligation to act in accordance with existing laws and agreements is the foundation for protecting the rights of all parties involved in the process (Hasan & Santoso, 2022; , Sari et al., 2022; , Silviana et al., 2020).

## CONCLUSION

Actions that exceed the power of attorney granted are potentially considered void or invalid, or at least not binding on the grantor, in accordance with the provisions of Article 1804 of the Civil Code which describes actions carried out outside the scope of the power of attorney will not create rights or obligations for the grantor.

The recipient of the power of attorney can be considered to have committed a breach of contract/default for not carrying out duties in accordance with the agreed provisions. This means that the power of attorney grantor has the right to file a claim for any losses arising from the actions of the power of attorney recipient who exceeds the existing authority. The liability of the power of attorney covers two main aspects, namely freedom of contract and applicable legal provisions. Although these two aspects have different meanings, there are exceptions to the principle of freedom of contract that allow parties to make agreements as they wish, provided that they do not conflict with the law, public order, or norms of decency. Therefore, the responsibility of the power of attorney recipient must refer to the provisions stated in the deed or agreement that has been agreed upon. Liability regulated by law can be found in Articles 1800 to 1806 of the Civil Code.

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