

# LEGAL ANALYSIS OF THE PRACTICE OF TRANSFER OF RIGHTS BY FINANCING INSTITUTIONS THROUGH AN ABSOLUTE POWER OF POWER: A REVIEW OF VIOLATIONS OF LAW AND ITS LEGAL IMPACT

Indah Rohmawati<sup>1,\*</sup>, Ariy Khaerudin<sup>2</sup>, Dika Yudanto<sup>3</sup>

<sup>1,2,3</sup>Legal Studies Program, Faculty of Law, Batik Islamic University Surakarta, Indonesia  
rohrawatiindah405@gmail.com<sup>1,\*</sup>, arkha@uniba.ac.id<sup>2</sup>, dikayudan@gmail.com<sup>3</sup>

Received 30 Oct 2023 • Revised 23 Nov 2023 • Accepted 30 Nov 2023

## Abstract

This research aims to examine unlawful practices committed by financing institutions in the process of transferring rights by using absolute power of attorney and examine the legal consequences of using absolute power of attorney against the law. The research uses a statutory approach and applicable regulations along with legal principles used to examine the problem under study. The conclusion obtained is that in practice there are still many financing institutions in collaboration with authorized officials who still practice debt and credit mixed with buying and selling, therefore the use of absolute power of attorney in the transfer process is a legal act prohibited by laws and regulations which can be canceled and null and void and is a form of abuse of circumstances and vigilante efforts. The legal consequences of the practice of unilateral transfer of rights using an absolute power of attorney are a form of legal smuggling where when the conditions for the validity of the agreement are not met, which include subjective conditions in the form of an agreement containing elements of unlawful acts and objective conditions regarding legal causes because they violate the Civil Code and Presidential Instruction Number 14 of 1982 concerning the Prohibition of the Use of Absolute Power of Attorney as a Transfer of Land Rights which was later replaced and refined in Government Regulation No. 24 of 1997 concerning Land Registration.

**Keywords:** transfer of rights; absolute power of attorney; unlawful practice; financing institutions

## INTRODUCTION

As time goes by and advances in technology, human needs and desires increase (Iftitah, 2017). Every human being cannot live alone without cooperation between one human being and another human being. In fulfilling their daily needs, every human being also depends on other creatures and the natural environment. Apart from depending on nature and other creatures, humans must adapt to the surrounding environment, in which there are norms that must be obeyed. In psychology, social adjustment is called adjustment. Adjustment is a process of finding a common ground between one's own condition and environmental demands (Chaplin, 2008). Human primary needs are clothing, food and shelter, besides these primary needs humans also need secondary needs. Secondary human needs include household equipment such as refrigerators, laptops, internet, television, washing machines, make-up, etc. After primary and secondary needs are met, every human being will pursue tertiary needs, namely the need for luxury goods such as cars, jewelry, cruise ships, holidays abroad, etc. Of course, all these needs are not easy to fulfill, it takes hard work and perseverance to be able to achieve all the desired needs (Iftitah, 2018).

All power and efforts are made in order to fulfill all desired needs. The abilities and fate of each human being are of course different, some can only fulfill primary needs, however, there are also those who can fulfill all needs, including primary, secondary and tertiary needs. In fulfilling these needs, of course there are various ways to fulfill them, including working independently by opening your own business. Or, by working with other people or working as a state civil servant (Anik Iftitah, Nanda Romei Puspitasari, Niken Yulianti, Mukhammad Taufan Perdana Putra, 2023).

Financing institutions such as cooperatives, BPR, Pegadaian, and banks, both private and government banks, provide a large contribution to people who need funds. The community uses these funds to enlarge and develop its businesses. However, it does not rule out the possibility that funds will be used to meet tertiary needs, this is what usually causes problems. Misuse or use of funds that are not in accordance with their function will of course give rise to new problems that must be faced by people who live a consumptive life (Lastuti Abubakar, 2018).

An agreement is a legal relationship (regarding property wealth) between two people, which gives one the right to demand something from another, while the other person is obliged to fulfill that demand. (Subekti, 1996). Based on Article 1233 of the Civil Code, an agreement arises because of an agreement or because of law (Civil Code: *Burgelijk Wetboek/Translated by R. Subekti, R. Tjitrosudibio, 2001*). Words are born out of agreement, which means that the agreement can be made verbally or in writing by stating it in an agreement (Susanti, 2021). Both parties can make an agreement with a private agreement or an authentic deed made by an authorized official, namely a notary (Rifa'i & Iftitah, 2018). A sale and purchase agreement is a form of agreement that has a reciprocal nature, where in a sale and purchase agreement there is one party who will promise to hand over ownership rights to an item (the seller) and another party who will promise to pay the price of the item in return. from the acquisition of property rights (buyer) (Subekti, 1995).

Doing any business always requires capital, whether the business is large or small scale. Capital is usually obtained by seeking loans from financial institutions, whether at government banks, private banks, BPRs, cooperatives and quite a few even seek loans from individuals using collateral in the form of land certificates. Regarding guarantees, it is stated in the Civil Code Book II concerning Objects and Book III concerning Engagements. Based on Article 1132 it is determined that material is guaranteed jointly for everyone who borrows it; sales object revenue is divided by the balance, that is, according to the size of each receivable, except among those who owe money, there is a valid reason for priority (Hartanto, 2022). The law of debt is that the party making the claim is called the debtor or creditor, while the party who is obliged to fulfill the claim is called the debtor or debtor. (Subekti, 1996). The resolution of bad credit problems must be resolved in the correct manner according to applicable law in Indonesia, it is not permissible to resolve it by taking advantage of the debtor's situation. Transferring the collateral object without involving the debtor to a third party is a form of vigilantism.

The granting of power of sale can be found in connection with the making of a Sale and Purchase Agreement (PPJB) where the buyer has paid the entire sale and purchase price in full, but the sale and purchase cannot yet be carried out; or, on the grounds that the building land, the object of sale and purchase, will be resold to another party. This is usually done by those engaged in buying and selling land or land brokers to avoid paying taxes (Kuncoro, 2015).

In practice, there are still many irregularities in the process of transferring rights using an absolute power of attorney. These deviations are not only carried out by the general public but are also carried out by financing institutions such as cooperatives who collaborate with officials related to this process. Debts should not be confused with buying and selling because these are two different things. Cooperatives are not permitted to immediately transfer the collateral object to a third party

using an absolute power of attorney, this is a prohibition on bedding property. If bad credit occurs, the cooperative can file a lawsuit for default which will later be used as a basis for auctioning the collateral object rather than unilaterally transferring the collateral object (Kartika, 2017).

From the description above, two problems need to be dissected to find out the extent of the power of an absolute power of attorney in the process of transferring rights, namely why there are still many unlawful practices carried out by financing institutions in transferring rights to collateral objects using an absolute power of attorney and what the consequences are. the law regarding the unlawful use of an absolute power of attorney for the object of debt collateral?

## RESEARCH METHOD

This research uses normative legal research methods with a descriptive approach and diagnostic analysis of similar problems (Sonata, n.d.). This research aims to reveal the truth systematically, methodologically and consistently, especially in the context of law as a science that has its own characteristics. According to Andy Hartanto in his book on land law, guarantee law and company law, it is stated that natural and social science research methods cannot be applied in legal science (Fuad, 2020).

This research uses primary legal materials in the form of the decision of the Sukoharjo Religious Court in case Number 126/Pdt.G/2019/PN.Skh., as well as secondary legal materials such as the Civil Code, Mortgage Law, regulations, jurisprudence Supreme Court decisions, books and journals. The approach in this research involves a statutory, conceptual and case approach.

The legal materials used involve both primary legal materials and secondary legal materials (Iftitah, 2023). The technique for collecting legal materials is carried out through studying decisions by reading, analyzing, analyzing and conducting interviews with practitioners and academics who have competence in the field related to this research. The approach used aims to gain an in-depth understanding of the problem that is the focus of the research (Teguh, 2019).

## RESULTS AND DISCUSSION

### The Parties and the Sitting of the Unlawful Act Lawsuit Case Number 126/Pdt.G/2019/PN.Skh.

#### 1. Subject

This case was filed by Sriharyati (Plaintiff) at the Sukoharjo District Court registered Number 526/SK/2019/PN.Skh at the Registrar's Office of the Sukoharjo District Court on November 13 2019

oppose

Drs. Bambang Susanto, having the address at DK. Kijilan Rt. 001 Rw. 006, Sukoharjo Subdistrict/Village, Sukoharjo Regency, Defendant I;

Suwaty, Spd, having the address at DK. Kijilan RT. 001 RW. 006, Sukoharjo Village, Sukoharjo Regency, Defendant II;

Mr Suparmin, address at DK. Healed Wetan Rt. 01 Rw. 05, Kwangsans Village, Jumapolo District, Karanganyar Regency, hereinafter referred to as Defendant III;

Sri Haryanti, resides in Dukuh Ngantirejo RT. 001 RW. 007, Malang Jiwan Village, Colomadu District, Karanganyar Regency, hereinafter referred to as Defendant IV;

Gunawan Bambang Irawan, SH, Notary and PPAT domiciled at Jalan Jenderal Sudirman Number 108, Sukoharjo District, Sukoharjo Regency, hereinafter referred to as Defendant V;

Noor Saptanti, SH, MH, Notary and PPAT domiciled on Jalan Raya Ngadirojo - Jatipuro, Kenteng, Ngadirojo Kidul, Ngadirojo District, Wonogiri Regency, Co-Defendant I;

BPN Sukoharjo Regency, the seat of Jalan Jenderal Sudirman Number 310 Sidorejo, Sukoharjo District, Sukoharjo Regency. Hereinafter referred to as Co-Defendant II.

#### 2. Object

The object of this case is:

- SHM Number 2388, covering an area of  $\pm 210$  m<sup>2</sup> in the name of Drs. Bambang Susanto, S.Pd., SE, MM, located in Sukoharjo Village/Subdistrict, Sukoharjo subdistrict;
- Ownership Certificate Number 2387, covering an area of  $\pm 214$  m<sup>2</sup> in the name of Suparmin, located in Sukoharjo Village/Subdistrict, Sukoharjo sub-district;
- Certificate of Ownership Number 5039, covering an area of  $\pm 92$  m<sup>2</sup> in the name of Drs. Bambang Susanto, S.Pd., SE, MM, located in Sukoharjo Village/Subdistrict, Sukoharjo subdistrict;

#### 3. Lawsuit Arguments

- a. In essence, the Plaintiff argued that on September 26 2017 he had purchased 3 (three) disputed objects in accordance with the Sale and Purchase Deeds Numbers 532/2017, 533/2017 and 534/2017 which were made at the office of Notary and PPAT Gunawan Bambang Irawan. Deed of Sale and Purchase Number 533/2017 was made based on Deed of

Power of Attorney to Sell Number 04 dated 18 December 2015 and Deed of Sale and Purchase Number 534/2017 was made based on Deed of Power of Attorney to Sell Number 05 dated 18 December 2015 with the parties including Drs. Bambang Susanto, S.Pd., SE, MM (Defendant I) has been approved by his wife Suwaty, Spd. as Power of Attorney and Sri Haryanti (Defendant IV) as Power of Attorney;

- b. The specifics of the Power of Attorney are as follows: selling, releasing, transferring and/or transferring land rights as will be explained further in this deed, anywhere and to anyone, buying to individuals and legal entities, in carrying out legal actions, completing and signing documents. related to the sale, disposal, transfer and transfer of two plots of land Number 2388 and Number 5039;
  - c. The three objects of dispute have now been registered in the name of Sri Haryati (Plaintiff) on the basis of transition using Power of Attorney to Sell Number 04 dated 2015 which was then converted into Deed of Sale and Purchase Number 533/2017 and Power of Attorney to Sell Number 05 dated 18 December 2015 which was converted into Deed of Sale purchase Number 534/2017 as well as one disputed object of Certificate of Ownership Number 2387 in the name of Suparmin (Defendant III) with Deed of Sale and Purchase Number 532/2017. All the Deeds of Sale and Purchase were made at the office of Notary and PPAT Gunawan Bambang Irawan, SH;
  - d. The Plaintiff argued that Defendant I and Defendant II had committed unlawful acts because they were unwilling to abandon or vacate the object of the dispute which was currently registered in the Plaintiff's name.
4. **Petitum**  
In the Petitum, the Plaintiff asks the Panel of Judges examining and adjudicating the case to:
- a. Grant all claims submitted by the Plaintiff;
  - b. The Sale and Purchase Deed made and signed at Defendant V's office is valid;
  - c. Declare that the Plaintiff is the legal owner of the three disputed objects;
  - d. Declare that Defendant I and Defendant II committed an unlawful act because they were occupying the object of dispute which had been purchased by the Plaintiff;
  - e. Sentencing the Defendants to pay the court costs incurred in this case.
5. **Judge's considerations**
- a. The Panel of Judges rejected the objections of Defendant I and Defendant II with the consideration that based on the jurisprudence of the Decision of the Supreme Court of the Republic of Indonesia Number 305 K/Sip/1971 dated 16 June 1971, in essence what determines who is sued is entirely the right of the Plaintiff. Based on this jurisprudence, the Panel of Judges interpreted that the Plaintiff as the party filing the lawsuit has the authority to determine the parties who are felt to have harmed their interests;
  - b. The Panel of Judges was of the opinion that the evidence presented by Defendant I and Defendant II was not sufficient to be the basis for allegations of engineering and subterfuge regarding the transfer of the object of the dispute. On the other hand, the plaintiff can prove that there was a sale and purchase until the process of changing the names of the three disputed objects occurs;
  - c. The Panel of Judges declared the sale and purchase valid with the Deed of Sale and Purchase made by Defendant V with Number 533/2017 based on Power of Attorney to Sell Number 04 dated 18 December 2015 and Deed of Sale and Purchase Number 534/2017 based on Power of Attorney to Sell Number 05 dated 18 December 2015 which was made at the office of Notary and PPAT Noor Saptanti, SH, MH Notary and PPAT Wonogiri (Co-Defendant I) and Deed of Sale and Purchase Number 532/2017 Certificate of Ownership Rights Number 2387 in the former name of Suparmin (Defendant III);
  - d. The actions of Defendant I and Defendant II have met the elements of an Unlawful Act as regulated in Article 1365 because they are occupying land that does not belong to them, thereby causing losses to Plaintiff who is unable to utilize his rights;
6. **Announcement of Decision**  
The decision in this case is to reject all objections from Defendant I and Defendant II. Meanwhile, in the main case, the Panel of Judges granted the Plaintiff's claim in its entirety; The Sale and Purchase Deed made and signed at Defendant V's office is valid; The plaintiff is the legal owner of the three disputed objects; Defendant I and Defendant II were declared to have committed unlawful acts; ordering Defendant I and Defendant II to vacate and hand over the object of dispute if necessary and request assistance from the Bailiff or the authorities.

### **Unlawful Actions by Financing Institutions in the Process of Transferring Collateral Objects Using Absolute Power of Attorney**

Power of attorney based on the Civil Code has general power and special power, but there is also the term absolute power. To understand power of attorney in general, Article 1792 of the Civil Code can be referred to, which states "The granting of power of attorney is an agreement by which a person gives authority to another person, who receives it, for and on behalf of him to carry out an affair (R. Subekti, nd). The granting of power of attorney means that since the power of attorney is made and signed by the power of attorney and the power of attorney, all matters mentioned in the power of attorney are represented and become the authority of the power of attorney. All actions and decisions of the recipient of the power of attorney are considered to be those of the person giving the power of attorney. Starting from the provisions of this article, in a power of attorney agreement, there are two parties, consisting of (Harahap, 2017):

- a. authorizer or lastgever (instruction, mandate);
- b. the recipient of the power of attorney or abbreviated as power of attorney, who is given an order or mandate to do something for and on behalf of the person giving the power of attorney.

The power of attorney is the person who delegates or gives authority to the person who receives the power of attorney for all matters mentioned in the power of attorney.

Absolute power is power that the power giver cannot revoke. Due to the irrevocable nature of this absolute power, in practice many people are disadvantaged by this provision. In 1982, the Government, through the Minister of Home Affairs, issued regulations regulating the use of absolute power of attorney, namely Instruction of the Minister of Home Affairs Number 14 of 1982 concerning the Prohibition of the Use of Absolute Power of Attorney to Transfer Land Rights. The purpose of issuing this Instruction is to provide protection for the public if there is an absolute power of attorney used that violates statutory regulations. The use of an absolute power of attorney can only be used in conjunction with the making of a PPJB provided that the sale and purchase transaction has been paid off and is not a process of transferring rights to a third party which originates from debts. Debts should not be mixed up with buying and selling, especially in the transition process using an absolute power of attorney. The consequence of using an absolute power of attorney in the process of transferring rights which are actually debts is that it violates the terms of the validity of the agreement as stated in Article 1320 of the Civil Code, which has the implication that the agreement can be canceled or the agreement is null and void.

The use of absolute power of attorney as a basis for transferring rights is still common in society. In fact, this is still openly done by unscrupulous officials, including officials at financing institutions, Notary/PPAT officials and officials from the Land Agency, where in fact these officials know and are aware that the use of power of attorney is absolutely contrary to existing norms. Many financing institutions still commit irregularities by transferring rights to collateral objects with absolute power of attorney. The object of the guarantee should be within the scope of the guarantee law. If collateral in the form of land and buildings is included in Mortgage Rights based on Law Number 4 of 1996 concerning Mortgage Rights which states "that Mortgage Rights on land and objects related to the land, hereinafter referred to as mortgage rights, are collateral imposed on the rights of on land as intended in Law no. 5 of 1960 concerning Basic Regulations on Agrarian Principles". For debts made to financial institutions using collateral in the form of certificates, the collateral must be encumbered with mortgage rights as mandated in Law Number 4 of 1996 concerning Mortgage Rights.

If in the future the debtor is stuck in credit payments, the financing institution must file a lawsuit for default. The default decision will later be used as a basis for submitting an auction for the collateral object and it must also involve the owner of the collateral object or the debtor. If there is an excess in the auction results, the excess must be given or returned to the debtor. However, if the transfer of rights to the collateral object uses an absolute power of attorney as happened in this case, this is a violation of norms because it does not go through the existing mechanism as described above. The transfer of rights over the collateral object to a third party without involving the owner of the collateral object or the debtor is prohibited by the beding and is a violation of statutory regulations such as:

- Article 1178 of the Civil Code "All promises by which the debtor is authorized to own the object given the mortgage are void (vervalbeding);
- Article 12 of Law Number 4 of 1996 concerning Mortgage Rights "Promises that give authority to the Mortgage Rights holder if the debtor breaks the contract are void;
- Article 39 paragraph (1) letter d PP Number 24 of 1997 concerning Land Registration which states that "PPAT refuses to make a deed if one of the parties or parties acts on the basis of an absolute Power of Attorney which essentially contains a legal act of transferring rights";
- Instruction of the Minister of Home Affairs Number 14 of 1982 concerning Prohibition of the Use of Absolute Power of Attorney as a Transfer of Rights.

There is several jurisprudence related to the use of absolute power of attorney in the process of transferring rights:

- Jurisprudence of Supreme Court Decision Number 3337 K/Pdt/1991, dated 18 March 1993 states that if the Defendant is unable and unable to pay off its debts along with all interest/service fees, then the object of the dispute becomes collateral for the debts made by The Defendant to the Plaintiff henceforth legally belongs to the Plaintiff; Considering that based on the above, the Panel of Judges thinks that the formulation of the claim in the Plaintiff's claim is based on an illegal agreement, namely belonging to the beding, which is an agreement containing conditions, if the debtor in the a quo case is the Defendant, commits a default, collateral or the collateral falls into the possession of the creditor, which in the a quo case is the Plaintiff.
- Jurisprudence of Supreme Court Decision number 1400 K/Pdt/2001, states firstly, collateral can only be sold at auction, the Bank has no right to sell the land pledged to the Bank itself without the owner's permission. Second, the transfer of land rights based on an absolute power of attorney is null and void;
- Jurisprudence of Supreme Court Decision Number 252 K/Pdt/2002. June 11 2004, which stated that "If the sale and purchase of land is not followed by the handover of the land and the land sale money is used to pay the debt to the buyer, the difference is very large, the amount is fabricated and declared legally defective."

From the description mentioned above, the actions taken by the financing institution have fulfilled the elements of an unlawful act because the financing institution has transferred the rights to the collateral object to a third party using an absolute power of attorney without involving the collateral owner, which is a violation of norms. The actions of financial institutions are a form of abuse of circumstances and taking the law into their own hands. Abuse of the situation is by taking advantage of the condition of the debtor or debtor who is in a state of urgency and cannot do anything. A vigilante is where a financing institution transfers rights over a collateral object to a third party using an absolute power of attorney and without involving the debtor.

From a series of trials and evidence in Case Number 126/Pdt.G/2019/PN.Skh. The author sees that there are still things that have not been considered by the Panel of Judges who examined and tried the case. There was an oddity in the statement given by the witness, namely the chairman of the Bougainvillea cooperative, who the Plaintiff presented. The witness said that the debt of Defendant I and Defendant II had been paid off but who paid it did not know. If you look at this statement, it is very strange because the witness is the leader of the Bougainvillea cooperative, but why doesn't he know about the repayment and if you look closely at this witness' statement, it is clear that this case arose because of debts between Defendant I and Defendant II and the Bougainvillea cooperative, not buying and selling as usual? as argued by the Plaintiff. The transfer of the object of the dispute using an absolute power of attorney violates the norms. There is a conflict of interest in this case which turns out that the object of the guarantee has been transferred to the name of the younger sibling of the manager of the Bougenvil cooperative.

Apart from that, there are still other irregularities that need to be examined in this case, namely from the statements of 2 witnesses, namely the chairman of the cooperative and the manager of the Bougenvil cooperative, who explained that in December 2015 the debt was paid off and then the Plaintiff would buy it. Why, if it was a sale and purchase, why? the process uses a power of attorney to sell to Sriharyanti (Defendant IV), why is the power of attorney not to sell directly to the Plaintiff or why is not a Deed of Sale (AJB) made directly? The next oddity, in this case, is that the sale and purchase transaction was carried out in December 2015 using a power of attorney to sell, but why was it only in 2017 that a Deed of Sale and Purchase (AJB) was made at Defendant V's office? These irregularities still need to be explored and dissected by the Judge. examine and adjudicate a quo case to find the truth and realize justice.

### **Legal Consequences of Unlawful Use of an Absolute Power of Attorney for Debt Collateral Objects**

Buying and selling with debts is very different in the preparation of the agreement and its implementation. Debts secured by immovable property in the form of houses and buildings or land at financing institutions must be encumbered with mortgage rights registered 7 (seven) days after signing the APHT at the National Land Agency office where the object of collateral is located as mandated in Article 15 Paragraph (1) Law Number 4 of 1996 concerning Mortgage Rights. Debts cannot be mixed with buying and selling. If there is a problem in payment, the financing institution must file a lawsuit for default as a basis for submitting an auction for the collateral object. Using an absolute power of attorney as a basis for transfer to a third party is not permitted (Benda et al., 2020).

Article 1475 of the Civil Code states that delivery (levering) is the delivery of goods by the seller to the authority of the buyer (Prakoso., 2007). The buying and selling process occurs when one party has agreed to the agreed price of goods and the other party accepts the price. Furthermore, based on Article 1457 of the Civil Code "Sales and purchases is an agreement by which one party binds himself to deliver an item, and the other party pays the promised price" and Article 1458 of the Civil Code "Sales and purchases are deemed to have occurred between the two parties, as soon as the person "The person reached an agreement regarding the onions and the price, even though the goods had not been handed over and the price had not been paid."

Financing institutions in accepting collateral objects must refer to Law Number 4 of 1996 concerning Mortgage Rights. The use of absolute power of attorney as a basis for transferring rights is still common in financing institutions and the community. Debts that use collateral in the form of a certificate, then an absolute power of attorney is included in the debt agreement, if the debtor is unable to return the loan when it is due, the certificate can automatically be transferred to the party receivable without any further involvement of the debtor or the owner of the object of collateral. Or, developers who aim to avoid taxes use this absolute power of attorney. After purchasing the land, the developer only uses an absolute power of attorney and the object has not been transferred to the name of the new developer after there is a new buyer, the name is transferred to the buyer's name. Practices like this are, of course, very risky for the emergence of conflict because existing laws and regulations prohibit such practices. An absolute power of attorney is only permitted or used with a Sales and Purchase Agreement (PPJB). The use of an absolute power of attorney in conjunction with PPJB is not prohibited and does not violate the law provided that payment is paid in full, this aims to protect the buyer. The consequence of using an absolute power of attorney not by existing laws and regulations is that it is null and void because it violates the conditions for the agreement's validity as regulated in article 1320 of the Civil Code. Using an absolute power of attorney constitutes an unlawful agreement, namely that it belongs to the bedding. Thus, the agreement is null and void because it violates objective conditions. As the agreement is null and void, the agreement is considered to have never existed (Weydekamp, 2013).

## CONCLUSION

The use of an absolute power of attorney is prohibited even though from the start the debtor states explicitly that if in the future he cannot fulfill his obligations, the debtor agrees that the collateral object will become the property of the creditor. The transfer of collateral objects using an absolute power of attorney is legal smuggling and is a form of abuse of circumstances and taking the law into your own hands. The legal smuggling in question is by inserting an absolute power of attorney in addition to the debt and receivables agreement. Abuse of circumstances can be interpreted as meaning that the financing institution or creditor has taken advantage of the condition of the debtor who is in a weak condition or it could be said that the debtor has reached a dead end in efforts to resolve his debt.

Vigilante means that the financing institution or creditor immediately transfers the collateral object to a third party without going through an auction process and does not involve the owner of the collateral object or the debtor. The use of an absolute power of attorney in transferring rights to a collateral object violates the conditions for the validity of the agreement, namely the objective conditions as regulated in Article 1320 of the Civil Code. The use of an absolute power of attorney is an unlawful agreement, namely the property of the bedding, which results in the agreement being null and void. As a result of an agreement that is null and void because it violates the conditions for the validity of the agreement, namely objective conditions, from the start the agreement is considered to have never existed.

Civil Case Number 126/Pdt.G/2019/PN.Skh. If we examine and examine carefully, there is still a lot that needs to be revealed to find the truth so that justice can be realized. Quoting the opinion of Satjipto Raharjo, it is said that "the law is neutral but its neutrality does not guarantee that what is right will definitely win and what is wrong will definitely lose". The use of an absolute power of attorney in transferring rights to objects of collateral that are used as collateral at a financing institution is prohibited by the bedding. The use of a power of attorney is absolutely prohibited and is a violation of statutory regulations, such as:

- a. Article 1178 of the Civil Code "All promises by which the debtor is authorized to own the object given the mortgage are void (vervalbeding);
- b. Article 12 of Law Number 4 of 1996 concerning Mortgage Rights "Promises that give authority to the Mortgage Rights holder if the debtor breaks the contract are void;

- c. Article 39 paragraph (1) letter d PP Number 24 of 1997 concerning Land Registration which states that "PPAT refuses to make a deed if one of the parties or parties acts on the basis of an absolute Power of Attorney which essentially contains a legal act of transferring rights";
- d. Instruction of the Minister of Home Affairs Number 14 of 1982 concerning Prohibition of the Use of Absolute Power of Attorney as a Transfer of Rights.

## REFERENCES

- Anik Iftitah, Nanda Romei Puspitasari, Niken Yulianti, Mukhammad Taufan Perdana Putra, & K. K. (2023). Kesetaraan Gender dalam Hukum Ketenagakerjaan. *Eksekusi : Jurnal Ilmu Hukum dan Administrasi Negara*, 1(2). <https://doi.org/https://doi.org/10.55606/eksekusi.v1i2.471>
- Benda-Benda, B., Berkaitan, Y., Tanah, D., & Silviana, A. (2020). Fungsi Surat Kuasa Memasang Hak Tanggungan (SKMHT) dalam Pemberian Hak Tanggungan (Studi Perspektif UU No.4 Tahun 1996 tentang Hak Tanggungan. *Diponegoro Private Law Review*, 7(1).
- Chaplin, J. P. (2008). *Kamus Lengkap Psikologi*. Jakarta: PT. Raja Grafindo Persada.
- Fuad. (2020). Socio Legal Research dalam Ilmu Hukum. *Jurnal Widya Pratama Hukum*, 2(2), 41–44. <https://law.ui.ac.id/hukum-dan-masyarakat/>
- Harahap, M. Y. (2017). *Hukum Acara Perdata: Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, dan Putusan Pengadilan*. Jakarta: Sinar Grafika.
- Hartanto, A. (2022). *Bunga Rampai Hukum Pertanahan, Hukum Jaminan dan Hukum Perusahaan* (2nd ed.). Yogyakarta: LaksBang Justitia.
- Iftitah, A. (2017). *Pancasila Versus Globalisasi: Antara Konfrontasi dan Harmonisasi? dalam Al Khanif dkk, Pancasila dalam Pusaran Globalisasi*. Yogyakarta: LkiS.
- Iftitah, A. (2018). Peranan Jaminan Sosial Tenaga Kerja Dalam Perwujudan Cita Pembangunan Hukum Tenaga Kerja Di Indonesia. *Jurnal Supremasi*, 7(2), 1. <https://doi.org/10.35457/supremasi.v7i2.377>
- Iftitah, A. (Ed.). (2023). *Metode Penelitian Hukum* (Mei 2023). Sada Kurnia Pustaka.
- Kartika, N. O. D. (2017). *Penggunaan Kuasa Mutlak Sebagai Pemindahan Hak Atas Tanah*. <https://repository.unej.ac.id/handle/123456789/82850>
- Kitab undang-undang hukum perdata: Burgelijk Wetboek / diterjemahkan oleh R. Subekti, R. Tjitrosudibio, (2001).
- Kuncoro, W. (2015). *97 Risiko Transaksi Jual Beli Properti*. Jakarta: Raih Asa Sukses.
- Lastuti Abubakar, T. H. (2018). Implementasi Prinsip Kehati-Hatian Melalui Kewajiban Penyusunan Dan Pelaksanaan Kebijakan Perkreditan Atau Pembiayaan Bank. *Rechtidee*, 13(1), 62–81. <https://doi.org/10.21107/ri.v13i1.4032>
- Prakoso., D. (2007). *Dasar Hukum Persetujuan Tertentu di Indonesia*. Jakarta: Bina Aksara.
- R. Subekti, R. T. (n.d.). *Kitab Undang-Undang Hukum Perdata*. Pradnya Paramita.
- Rifa'i, A., & Iftitah, A. (2018). Bentuk-Bentuk Pelanggaran Hukum Dalam Pelaksanaan Jabatan Notaris. *Jurnal Supremasi*, 8(2), 4. <https://doi.org/10.35457/supremasi.v8i2.486>
- Sonata, D. L. (n.d.). Metode Penelitian Hukum Normatif Dan Empiris: Karakteristik Khas Dari Metode Meneliti Hukum. *Fiat Justicia Jurnal Ilmu Hukum*, Volume 8(1).
- Subekti. (1995). *Aneka Perjanjian* (6th ed.). Bandung: Alumnus.
- Subekti. (1996). *Pokok Pokok Hukum Perdata*. Jakarta: PT Intermedia.
- Susanti, D. O. (2021). *Hukum Perdata. Hukum tentang Orang*. Rajawali Pers.
- Teguh, P. (2019). *Penelitian Hukum (Suatu Perspektif Teori Keadilan Bermartabat)*. Pernebit Nusa Media.
- Weydekamp, G. R. (2013). Pembatalan Perjanjian Sepihak Sebagai Suatu Perbuatan Melawan Hukum. *Lex Privatum*, 1(4).