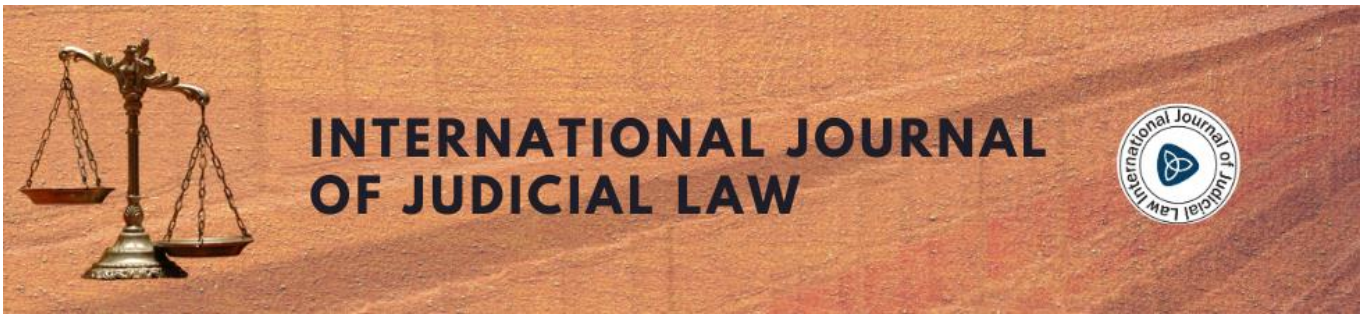




Notary's Responsibility for the Deed of Power of Attorney to Sell (Analysis of Decision Number: 20/PK/PID/2020.PN.Bali)

Baiq Jhifya Aurelie Mauliza ^{1*}, H Zainal Asikin ², Aris Munandar ³

¹⁻³ Master of Notary Study Program, Faculty of Law, Social and Political Sciences, Indonesia

* Corresponding Author: Baiq Jhifya Aurelie Mauliza

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Abstract

This study aims to understand and explain the authority of a Notary in making a power of attorney to sell and analyze the legal consequences if proven to have committed an act as charged to the Notary, but the act is not a criminal act. The research method used in this thesis is normative legal research with a statutory approach, a case approach, and a conceptual approach. The results of the study show that the legal consequences of the Deed of Power of Attorney to Sell made by the Notary as stated in Decision Number: 20/PK/PID/2020/PN.BALI indicate that the notary is freed from the clutches of criminal acts, but does not eliminate the potential for civil liability. The problematic deed of power of attorney to sell is declared null and void, which means that its cancellation applies *ex tunc* (from the beginning), and thus all legal consequences are considered never to have existed. In this context, the legal standing of the parties is restored to its original state, namely the victim's witness receivables can be collected again.

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Introduction

The growing need of society for legal certainty and protection has an impact on the need of society to create written evidence that has strong evidentiary power, namely an authentic deed. The official who is authorized to make an authentic deed is a notary. Based on Article 1 Number 1 of the Notary Law (UUJN), a Notary is a public official who has the authority to make authentic deeds and also other authorities as referred to in the Notary Law and/or other laws. The position of a Notary is an honorable position given by the State attributively through law to someone it trusts (the State) ^[1].

Referring to the Great Dictionary of the Indonesian Language, a Notary is a person who obtains power from the state or government through appointment and promotion by the Minister of Law and Human Rights, and is then given the task of witnessing and ratifying various letters of agreement and others that have been determined by law ^[2]. Thus, it can be said that a notary is a public official who is appointed and given authority by the government to provide services to the public in terms of making authentic deeds, where this authentic deed is a deed made by or before a notary according to the form and procedures stipulated in the UUJN.

¹ Rifa'I, A & Anik Iftitah, Forms of Legal Violations in the Implementation of Notary Position, Scientific Journal of Legal Science: Supremacy, Vol.8 No.2, Blitar Islamic University, 2018, p.38.

² Language Development and Fostering Agency, Ministry of Education, Culture, Research, and Technology of the Republic of Indonesia, Great Dictionary of the Indonesian Language, Balai Pustaka, Jakarta, 2016.

Notaries in carrying out their duties and authorities for the sake of implementation of service functions and achievement of legal certainty in providing services to the community has been regulated in Article 1 number 1 of Law No. 30 of 2004 concerning the position of notary has been amended by Law No. 2 of 2014 concerning amendments to the Position Law Notaries, hereinafter referred to as or both referred to as the Notary Public Law (UUJN), are stated that, "A notary is a public official who has the authority to make authentic deed and has other authorities as referred to in this law or under other laws".

It is hoped that the enactment of the Notary Law will an authentic deed made by/or before a notary is capable of guaranteeing certainty, order and legal protection. In the Law The position of Notary has been regulated regarding the Authority of Notary in Article 15 Article (1) of the UUJN which states the following matters.

"A notary is authorized to make authentic deeds regarding all acts, agreements and stipulations required by statutory regulations and /or desired by interested parties to be stated in an authentic deed, guaranteeing the certainty of the date making deeds, storing deeds, providing grosses, copies and deed excerpt. All of this, as long as the deed is made, is not assigned or excluded from other officials or other people determined by law."

The task of carrying out the notary's office is to make evidence needed by the parties for a particular legal action. Notary make a deed at the request of the parties. The notary makes the deed based on evidence, information or statements from the parties stated, explained or shown to a notary. The notary also play a role in providing legal advice to related parties with the existing problems. Related to the profession of office, in practice it is found that often a deed as a notary product is disputed by the parties facing the notary or other third parties. Notaries are also often called as witnesses or suspects in the investigation process. In fact, it is not uncommon for a notary become a defendant or co-defendant in a criminal trial or civil. In this case, the notary is passive when making an agreement or deed.

P there are several transactions carried out by the community Indonesia, a notarial deed is required to provide certainty law and have complete proof. One of the deeds that is often made by a notary based on the request of his client is a power of attorney selling. Article 1792 of the Civil Code provides limitations on the Granting of Power of Attorney, namely "Granting of power of attorney is an agreement by which a person grants power or authority to another person who receives it to and on his behalf carry out an affair".

The recipient of the power of attorney must not do anything that exceeds his or her power. The power given to resolve a case peacefully does not contain the right to rely on the referee's decision to resolve the case. Various mistakes experienced by notaries in making things the deed can be executed by the notary himself. This is possible too caused by the parties being dishonest in providing information or giving false information that gives rise to loss to one of the parties. In fact, causing loss separately to the notary who made the agreement. This is require a notary be responsible for his actions, in the form of civil sanctions, administrative sanctions criminal sanctions.

This is what happened in Decision Number:

20/PK/PID/2020/PN.BALI. In this case, Notary Ketut Neli, SH, MKn, became a defendant because of the deed of power of attorney to sell that he made, namely the Deed of Power of Attorney to Sell Number: 03 dated September 4, 2014 based on an agreement between Gunawan Priambodo and Mahendro, the deed of power of attorney to sell was made with the aim of erasing Gunawan Priambodo's debt to Mahendro, with Gunawan Priambodo coming to the office of Notary Ketut Neli, SH, MKn showing the Building Use Rights Certificate in the name of PT. Nuansa Bali, the Sale and Purchase Agreement (PPJB) and the Deed of Power of Attorney to Sell given to Gunawan Priambodo to control the HGB Certificate. What was not known by Notary Ketut Neli Asih, SH., Mkn was the hidden intention of Gunawan Priambodo who at that time in fact the Deed of Power of Attorney to Sell from PT. Nuansa Bali given to Gunawan Priambodo had already its validity was revoked by another Notary, namely Notary Putu Trisna Rosilawati SH., Mkn. As is known, if the Deed of Power of Attorney to Sell was made by Notary Ketut Neli Asih SH., MKn then Gunawan Priambodo's obligation to pay the Debt to Mahendro automatically disappeared, and at the time the signing was made, Notary Ketut Neli Asih SH., Mkn. Only a photocopy of the Certificate was shown Building Use Rights (HGB) without the original HGB certificate.

In the verdict, the Public Prosecutor (JPU) charged that the Defendant Notary Ketut Neli Asih, SH, Mkn, intentionally provided an opportunity, means or information for Witness Gunawan Priambodo to commit an act intentionally and unlawfully to possess something that is wholly or partly owned by another person under his control. Therefore, the Public Prosecutor (JPU) considered this to be a crime and was subject to criminal penalties under Article 385 paragraph (1) of the Criminal Code in conjunction with Article 56 paragraph (2) of the Criminal Code. However, in the Judicial Review (PK) Decision, the Judge stated that the Convicted Notary Ketut Neli Asih, SH, was proven to have committed the act as charged to him, however, the act did not constitute a crime; rather, this is an administrative matter as a Notary and Land Deed Making Officer (PPAT).

So, based on the background and description of the case position that has been explained by the author, the author has formulated two main problems, as follows: How is the responsibility answer Notary Public in make deed power sell ? And what are the consequences law deed power sell those made in advance Notary Public according to Decision Number: 20/PK/PID/2020/PN.BALI?

Research Methods

The type of research that the author uses is normative legal research. Normative research is that law is conceptualized as what is written in the Law in Books or law is conceptualized as a rule or norm that is a benchmark for human behavior that is considered appropriate ^[3]. Normative legal research is an approach that is carried out based on primary raw materials, examining theoretical matters concerning legal principles, legal concepts, legal views and doctrines, regulations and legal systems using secondary data, including principles, norms, and legal rules contained in the Law, Court decisions and studying other documents that are closely related to the research ^[4].

³ Amirudin and Zainal Asikin, Introduction to Legal Research Methods, 9th ed., PT. Rajagrafindo Persada, Depok, 2016, p.118.

⁴ Soerjono Soekanto, Normative Legal Research, PT. Raja Grafindo Peresada, Jakarta, 2006, p. 24.

As a normative legal research, this research is included in the category of descriptive-prescriptive legal research type which aims to find a solution to the problem (problem-solution) ^[5]. In this research, several approach methods are used, including: First; Statute Approach is an approach used to study and analyze all laws and regulations related to the legal issue being handled ^[6]. This approach is carried out by making the law the main guideline in the research being conducted. Second; Case Approach, the case approach in normative research aims to study the application of norms or legal rules carried out in legal practice. This type of approach is usually used for cases that have received decisions. In normative research, these cases can be studied to obtain a picture of the impact of the normative dimension in a legal rule in legal practice ^[7]. Third; Conceptual Approach, Conceptual approach, namely the conceptual framework is a description of how the relationship between the concepts to be studied and expert views with the problems to be discussed ^[8].

The processing and analysis of legal materials is carried out systematically by selecting legal materials, then classifying them according to the classification of legal materials, and compiling the legal materials so as to obtain research results systematically and logically. The analysis used is qualitative analysis, namely by interpreting the legal materials that have been processed ^[9]. The nature of analysis in normative legal research is prescriptive, namely to provide arguments for the results of the research carried out, which can mean opposing, criticizing, supporting, adding or providing comments and making conclusions with the help of the theory used ^[10].

Discussion

1. Notary's responsibilities in making a deed of power of attorney to sell

Notaries have legal and ethical obligations in carrying out their duties as public officials who are authorized to make authentic deeds. This responsibility is regulated in Law Number 2 of 2014 concerning the Position of Notary (UUJN), which states that notaries are tasked with ensuring that the deeds they make meet the elements of legal certainty, order, and legal protection for interested parties. Activity in fulfil need social activities that are carried out that is one of them in matter making deed authentically done by someone Notary Public in prove a incident the law that occurs. According to Article 1866 of the Civil Code states that evidence consists of: ^[11]

- 1) Written evidence;
- 2) Evidence with witnesses;
- 3) Suspicions;
- 4) Acknowledgement, and
- 5) Oath

The evidentiary power of an authentic deed is the most basic power in civil cases so that an authentic deed becomes very important to be used as evidence. According to the general

opinion adopted in every authentic deed as well as in a Notary deed has 3 (three) evidentiary powers, namely: ^[12]

a) The power of external proof (Uitwendige Bewijskracht)

The external ability of a notarial deed is the ability of the deed itself to prove its validity as an authentic deed (*acta publica probant seseipsa*) when viewed from the outside (its appearance) as an authentic deed, and in accordance with the legal rules that have been determined regarding the requirements of an authentic deed, then the deed is valid as an authentic deed until proven otherwise. This means that until someone proves that the deed is not an authentic deed in terms of its external nature. In this case, the burden of proof lies with the party who denies the authenticity of the deed, the parameters for determining a notarial deed as an authentic deed are the signature of the Notary concerned, both on the minutes of the deed, a copy of the deed, and the beginning of the deed from the title to the end of the deed.

b) The power of formal proof (Formale Bewijskracht)

Notarial Deed must provide certainty that an event and fact mentioned in the deed was actually carried out by the Notary or explained by the parties appearing at the time stated in the deed in accordance with the procedures determined in the deed proof. Formally to prove the truth and certainty about the day, date, month, year, time of appearing, and the identity of the parties appearing (*comparanten*), the initials and signatures of the parties/appearers, witnesses and Notary, as well as the place where the deed was made, and prove what was seen, witnessed, heard by the Notary in the official deed/minutes and record the information or statements of the parties/appearers in the party deed.

c) The power of material proof (materiele bewijskracht)

It is certainty about the material of a deed, because what is stated in the deed is valid evidence for the parties who made the deed or those who have the rights and applies to the public, unless there is evidence to the contrary (*tegenbewijs*) information or statements that are stated/contained in an official deed or a deed of minutes or information or parties that are given/delivered before a Notary, the deed of the parties and the parties must be considered to have said the right thing which is then stated/contained in the deed applies as the right thing or every person who comes to the Notary whose information is then stated and the deed must be considered to have said the right thing.

The making of an authentic deed by/before a notary is based on the order of the Law or at the request of the parties, but the notary is obliged to explain and provide information of a legal nature relating to matters that will be contained in a deed. Thus, the parties are free to determine whether or not to approve the contents of the deed to be signed.

Article 1 number 1 of the Notary Law states that a Notary is a public official who is authorized to make authentic deeds

⁵ Soerjono Soekanto, Introduction to Legal Research, UI Press, Jakarta, 2008, pp. 50-51.

⁶ Salim HS and Erlies Septiana Nurbani, Application of Legal Theory in Thesis and Dissertation Theory, Raja Grafindo, Jakarta, 2013, pp. 17-18.

⁷ Mukti Fajar and Yulianto Achmad, Dualism of Normative and Empirical Legal Research, Pustaka Pelajar, Yogyakarta, 2010, p.157.

⁸ Amirudin and Zainal Asikin, Introduction to Legal Research Methods, Rajawali Pers, Jakarta, 2013, p. 47.

⁹ Muhaimin, Legal Research Methods, 1st ed., UPT Mataram University Press, Mataram, 2020, p.67.

¹⁰ Ibid.

¹¹ R. Subekti and R. Tjitjard, Civil Code, Pradanya Paramita, Jakarta, 2002, p. 475

¹² Habib Adjie and Sjaifurrachman, Habib Adjie and Sjaifurrachman, Aspects Accountability Notary Public in Making Deed, CV. Manjar Maju, Bandung, 2011 pp. 115-118

and has other authorities as referred to in this Law or based on other Laws. Notaries who will exercise their authority must be appointed and sworn in for their position as public officials. This is done so that notaries remain guided by the rules that bind them. The appointment and swearing in of notaries is carried out by the Minister of Law and Human Rights. A notary must uphold his oath as regulated in Article 4 of the Notary Law that notaries in carrying out their positions must be trustworthy, honest, thorough, independent, and impartial.

In general, the notary's responsibilities in making a Deed of Power of Attorney to Sell include several key aspects:

1) Ensuring the identity and authority of the parties

The notary must ensure the identity of the parties appearing (the principal and the principal) by checking their identity cards (KTP) and ensuring that they match the data listed in the ownership documents. In the case of a power of attorney to sell, the notary must ensure that the principal actually has the right to grant power of attorney. If the principal acts on behalf of a legal entity (PT), the notary must check the company's deed of establishment, articles of association, and letter of appointment of directors to ensure the authority of the principal.

2) Checking the object of power of attorney

The notary must carefully examine the object authorized in the Deed of Power of Attorney to Sell. The object must be clear, well identified, and not cause doubt. If the object of the power of attorney is land and/or buildings, the notary must examine the land rights certificate (SHM, HGB) and ensure that the data matches that stated in the certificate. The notary should also check with the land office (BPN) to ensure that there are no disputes or blocking of the land.

3) Explaining the contents of the deed and its legal consequences

The notary must explain in detail the contents of the deed to the parties appearing before him, including the intent and purpose of making the deed, the rights and obligations of the parties, and the legal consequences arising from signing the deed. The notary must ensure that the parties understand the contents of the deed and agree to it voluntarily, without any coercion or pressure from any party.

4) Acting honestly, carefully, independently and impartially

Notaries are obliged to act honestly, thoroughly, independently, impartially, and safeguard the interests of all parties involved in making the deed. Notaries must not take sides with one party or give unfair advantages to certain parties. Notaries must provide objective legal advice and help parties understand the legal consequences of their actions.

5) Ensuring the deed complies with laws and regulations

Notaries must ensure that the deeds they make are in accordance with applicable laws and regulations, including the Notary Law, the Civil Code, and other relevant regulations. Notaries must refuse to make a deed if it is contrary to the law or violates public order.

6) Storage of Deeds

The notary is obliged to keep the minutes of the deed (original deed) properly and safely in the notary's office. The notary is also obliged to provide a copy of the deed (official copy of

the deed) to the entitled parties.

2. Legal consequences of a deed of power of attorney to sell made at a notary according to decision number: 20/PK/PID/2020/PN.BALI

The Deed of Power of Attorney to Sell made by a notary has legal force that binds the parties involved. However, the validity of the deed is highly dependent on the fulfillment of applicable legal principles, including the principles of prudence, good faith, and transparency. This case highlights the potential legal consequences that arise if the Deed of Power of Attorney to Sell is made without fulfilling these principles, especially if it results in losses to third parties.

The Deed of Power of Attorney to Sell issued by the Defendant gave Witness Gunawan Priambodo the opportunity to eliminate the obligation or receivables that should have been paid to Witness (victim) Mahendro Anton Inggriyono. This action resulted in financial losses for the Witness (victim), because the receivables that should have been received by the victim from Gunawan Priambodo were lost after the transaction was agreed upon, and there was no effort to ensure the certainty of the status of the land that was the object of the transaction.

The Deed of Power of Attorney to Sell made by the Defendant gives the impression of being legitimate and legal for a transaction that is actually invalid due to forgery or negligence in handling documents. Witness Gunawan Priambodo, who should be responsible for his obligation to return the receivables to the Witness (victim), can instead use this deed to cover his receivables, reduce his obligations, and allow the Witness (victim) to feel confident about the status of the land, even though there is no valid guarantee.

Third parties such as Witness SARIYANTO who purchased part of the land from the object listed in the deed are also affected. Although they may have acted in good faith, this action can be considered as a result of the Defendant's negligence in not fully verifying the previous transaction. Witness (victim) Mahendro Anton Inggriyono who feels aggrieved may be able to sue or take legal action against third parties (including Witness Sariyanto) who obtained part of the land that should have been his right.

The direct result of the Defendant's actions was the loss experienced by the Witness (victim) Mahendro Anton Inggriyono, who lost money amounting to Rp. 11,673,500,000,- which had been paid, but did not receive the land certificate which should have been the object of collateral. The Defendant's actions in facilitating the transaction without checking the validity of the documents and the legality of this transaction resulted in a major loss for the victim who not only lost money but also the opportunity to obtain the desired land.

If one of the parties in the agreement (in this case the making of the Deed of Power of Attorney to Sell) gives consent due to an error (dwaling), coercion (dwang), or fraud (bedrog), then the agreement can be canceled. In the context of this case, if Mahendro Anton Inggriyono gives consent to sign the Deed of Power of Attorney to Sell due to an error or misleading information from the notary, then Mahendro Anton Inggriyono can file a lawsuit to cancel the deed in court. As a result, if the lawsuit to cancel is granted, then the Deed of Power of Attorney to Sell is considered to have never existed (null and void). All legal acts based on the deed are also invalid.

If the Power of Attorney Deed is cancelled, then the parties

must be returned to their original state before the deed was made. This means that the person giving the power of attorney must return the money he has received, and the recipient of the power of attorney must return the object of the power of attorney he has received. If the Deed of Power of Attorney to Sell is cancelled, then Gunawan Priambodo must return the receivables that have been written off to Mahendro Anton Inggriyono. If Gunawan Priambodo is unable to return the receivables, then Mahendro Anton Inggriyono can claim compensation for the losses he suffered. If there is a third party involved in a transaction based on a cancelled Deed of Power of Attorney to Sell, then the rights of the third party must also be protected. For example, if Gunawan Priambodo has sold part of the land to a third party based on a cancelled Deed of Power of Attorney to Sell, then the third party still has the right to the land, unless the third party knows or should have known that the Deed of Power of Attorney to Sell is legally flawed.

Notaries can be held civilly liable if proven to have committed negligence or error in making a deed that results in losses to other parties. This liability is based on Article 1365 of the Civil Code (unlawful acts). If Notary Ketut Neli Asih is proven to be negligent in verifying the object of power of attorney and providing misleading information, the notary can be sued by Mahendro Anton Inggriyono to pay compensation for the losses he suffered. The amount of compensation that must be paid by the notary depends on the amount of loss suffered by the victim and the level of the notary's error. Compensation can be in the form of reimbursement of costs that have been incurred, reimbursement of lost profits, and compensation for immaterial losses (for example, losses due to loss of trust). Once it is known that the power of attorney has been revoked, various legal consequences arise as follows:

a) Deed of power of attorney to sell becomes invalid

According to Article 1813 of the Civil Code, the granting of power of attorney ends if the principal revokes it. Thus, even though the deed is made by a notary, if the power of attorney has been revoked previously, the deed has no legal force. In this case, the use of the revoked power of attorney to sell for personal interests (to erase Gunawan Priambodo's debt to Mahendro) can be considered as misuse of documents which has legal consequences.

b) Potential for civil lawsuit by aggrieved party

The injured party, in this case Mahendro and PT. Nuansa Bali, can file a civil lawsuit on the basis of: Unlawful acts (PMH) based on Article 1365 of the Civil Code, because an invalid power of attorney is used to transfer rights without a strong legal basis. Cancellation of the sale and purchase agreement, because an agreement based on an invalid deed can be considered legally flawed and null and void.

c) Notary's administrative and ethical responsibilities

Although in the Judicial Review (PK) the judge stated that the actions of Notary Ketut Neli Asih did not constitute a criminal act, this still shows the potential for administrative violations in carrying out his duties.

d) Administrative sanctions that can be imposed on notaries in cases like this include:

Reprimands and warnings from the Notary Supervisory Board if it is proven that there was a lack of care in checking the validity of the power of attorney granted and/or temporary

or permanent suspension if there is serious negligence found in carrying out his duties as regulated in Article 7 paragraph (2) of the UUJN and the emergence of a civil lawsuit against the notary if it is proven that his negligence caused losses to another party.

e) Implications for public trust in notaries

This case also has an impact on public trust in the notary profession. Notaries are expected to provide legal protection for the parties in a transaction, but if there is an error or negligence, it can result in a decrease in public trust in the deeds made by the notary.

It can be concluded that the creation of a Deed of Power of Attorney to Sell that does not comply with the principle of caution can cause various legal consequences that are detrimental to the parties involved. The deed can be canceled by the court, resulting in the restoration of the original state and legal responsibility for the negligent notary. It is expected that notaries will always act carefully and professionally in carrying out their duties, and ensure that the deeds they make meet all applicable legal requirements.

3. Legal Opinion

In the Indonesian legal system, criminalization is the ultimum remedium, which is the last resort in law enforcement. Before imposing criminal sanctions, administrative or civil sanctions should be considered first. In this case, although Notary Ketut Neli Asih is suspected of negligence in making the Deed of Power of Attorney to Sell, it is more appropriate if the action is qualified as an administrative violation regulated in the Notary Law (UUJN).

The notary has the right to trust the information and documents submitted by the parties, as long as there is no clear indication of any untruth or forgery. In this case, Sugiantini came to the notary's office with the HGB Certificate No. 7062 in the name of PT. Nuansa Bali Utama, although not in the name of Gunawan Priambodo. The notary can assume that Gunawan Priambodo has a legal basis to control and transfer the land, for example through an agreement or power of attorney from PT. Nuansa Bali Utama. The notary's statement regarding Gunawan Priambodo's land ownership can be interpreted as a professional opinion based on the documents available at that time. The notary does not provide any guarantee that the transaction will be successful or that Gunawan Priambodo will fulfill his obligations. The parties have the freedom to determine the form and content of the agreement they agree to, as long as it does not conflict with the law, public order, or morality (Article 1338 of the Civil Code). The creation of a power of attorney to sell as a substitute for a PPJB is the choice of the parties, and the notary has no obligation to force them to make a PPJB. Assumption of Understanding of the Parties: The notary can assume that the parties understand the legal consequences of their choice. If Mahendro Anton Inggriyono feels that he does not understand the risks of a power of attorney to sell, he should consult a legal expert before signing the deed.

To qualify a notary's actions as a criminal act of providing false information or participating in fraud, there must be strong evidence that the notary has malicious intent (*mens rea*) to deceive or help others commit fraud. Based on the existing case position, it is difficult to prove the existence of such malicious intent. The notary is only based on information provided by the parties and does not have

sufficient knowledge regarding the existence of bad faith from Gunawan Priambodo. Even though the notary knows that the HGB certificate has been taken back by Gunawan Priambodo's staff, the notary may assume that this was done for the purpose of splitting the certificate or other administrative purposes that are common in the land sale and purchase process.

Based on the case of position, it is difficult to prove that there is an element of intent from the notary to harm the victim. However, there is an element of gross negligence because the notary did not disclose important information regarding the existence of the HGB certificate. This negligence can be categorized as a violation of the notary's professional standards. Legal Basis Article 16 paragraph (1) letter a of the Notary Law states that Notaries are required to act honestly, carefully, independently, impartially and protect the interests of all parties involved in making the deed. If a notary violates these obligations, administrative sanctions may be imposed in accordance with Article 85 of the UUJN.

Basically, the principal is responsible for all actions taken by the principal in carrying out the power granted. The principal should choose a trusted principal and provide clear limitations in the power of attorney. The notary's action in handing over the certificate to Sugiantini can be considered as an act of carelessness, but does not necessarily indicate bad faith. The notary can assume that Sugiantini acted on Gunawan Priambodo's orders and had a legitimate purpose. There are 3 gradations of intention, namely *opzet* which can be translated as "intentionally or with intention", *opzet als oogmerk* or intention with intention, intention as awareness of possibility and intention as awareness of certainty and there is also what is meant by *willen and the wetten*, namely knowing and wanting.

Article 56 paragraph 2 of the Criminal Code, namely intentionally providing an opportunity / information, there are examples of actions as providing an opportunity for others to commit a crime (*delict*), there are 2 forms of assistance, namely assistance given at the time an act is carried out and before the crime is committed in the form of providing advice, the first and second methods are alternatives which are carried out including criminal acts in the form of association can be seen from 2 theories, namely the subjective element is the intentional assistance of the perpetrator, intentionally given but not completed, the act is completed by the perpetrator (*medeplegen*), the objective element is a form of action that facilitates the criminal act, a form carried out by the main perpetrator, which is clearly the act is not completed, the act cannot be carried out.

Criminal liability due to intent is regulated as a reason for forgiveness and justification outside the Criminal Code, liability for unlawful acts that deserve to be punished there is no reason for justification/forgiveness, outside criminal law it is known as the teaching of unlawful nature in a negative sense, for example as in Law No. 3 of 1971 concerning Corruption, namely a material crime when the desire for the return of the proceeds of corruption is not a crime, it is not regulated in the Criminal Code.

Regarding the reasons for forgiveness and justification, there are no regulations outside the Criminal Code, a theory in the sense of being against material law. Related to Law No. 2 of 2014 concerning amendments to Law No. 30/2004 concerning the Regulation of Notary Positions, in the Law on Notary Positions, the duties and authorities of a Notary are not to determine criminal penalties, regarding functions and

authorities, not formal criminal penalties, it is more about administrative law.

In accordance with Law No. 2 of 2014, the Notary's position is civil law, for example in the form of an agreement/sale and purchase into a civil relationship. There are no rules regarding criminal liability because there are criminal acts that regulate the reasons for forgiveness/justification related to criminal, Notary as a Public Official, related to the duties of a notary has a regional honorary body, if the civil problem is sometimes the Notary harms others, whether in the form of an unlawful act, is it a loss, if so the Notary can be sued for damages as an unlawful act, in criminal law to be seen per case, a notary can be held accountable or not, for example regarding authentic deeds as in Article 266 of the Criminal Code and related to that the party says it is not true, the definition of Law No. 2/2014 as an amendment to the previous Law, Notaries in carrying out their duties and authorities there is a "principle of caution", at least clarification of what was conveyed by the parties. Criminal liability, for example, in Article 50 of the Criminal Code as an official order, then can an act be categorized as an official order, the requirement is to carry out an illegal official order, here carrying out an official order is still legal.

For clear job orders by superiors, for example the Head of Criminal Investigation Unit orders to arrest a suspect, it is valid in good faith, if it is not valid it cannot be accounted for. Related to the order of the Law, for example an order to a firing squad in carrying out a death penalty, it cannot be punished. Related to a Notary Officer making a deed product which by Law in Article 66, may refuse to make a deed and is that a form of a Law order, the answer is not refusing is allowed yes, it is allowed no, refusing on his orders the parties do not provide certainty, not an exception to Article 55. It is unreasonable if a notary before carrying out a power of attorney to sell does not first check the legal basis used as the basis for making the deed in question, considering that the basis for the deed of sale from the Defendant to the victim witness is the power of attorney to sell from PT NBU to the Defendant and the power of attorney has been revoked previously, a notary before making a deed of binding, the Notary should first check the legal basis used as the basis for making the deed, in carrying out a contract, the object can be made an agreement, the object is clear.

Regarding the parties in this case, the buyer and seller have not made a deed of obligation in the name of the parties, is that wrong, there are formal/material requirements that must be met by the buyer/seller, there is a breakthrough in the sale and purchase agreement, because the formal/material requirements have not been met, one of which is the issuance of a PPJB followed by a deed of power of attorney to sell.

What must be fulfilled by a Notary when making a product such as a PPJB or a deed of power of attorney to sell, in accordance with Article 15 of Law No. 2 of 2014 concerning amendments to Law No. 30 of 2004 concerning the Position of Notary, the authority given to a Notary in making an agreement is as desired by the parties and stated in an authentic deed, here there are 3 authorities given, namely, authority for individuals/independently, because of power and because of position, if the authority over him is what is the object in the sale and purchase agreement or what will be stated in the deed of power of attorney to sell including land, because if independent it is based on a notarial deed or under the hand the transfer is given by a notarial deed, if by position at the time the sole authority of the parties binds themselves

in the agreement as a requirement is KTP, KK if by power there is an authentic deed of power of attorney to sell made there must be a copy and it must be treated by a Notary before an agreement is made That the authority of a Notary in checking the validity of all the completeness of the parties.

The Obligations of a Notary as stipulated in Law No. 2 of 2014 concerning amendments to Law No. 30 of 2004 concerning the Position of a Notary, the authority of a Notary here is only formal, not material/not an investigation into the existence of the identities of the parties, that which must be received based on identity, if there is a power of attorney there must be a copy of the power of attorney so that acting on the authority received is made.

In notary, there are two powers, namely absolute power and independent power, between these two powers are different, in independent power can be revoked, for example the person dies so that this power cannot be used, while absolute power is power in terms of changing the name, if those who make the power die can still apply to their heirs. The absolute power referred to here is a power that cannot be revoked, what is prohibited is independent power not based on the main agreement, an agreement that precedes the main power, inherent power of sale is not separated from the implementation agreement.

The notary profession is a noble profession and has an important role in the Indonesian legal system. Therefore, there needs to be protection for the notary profession from excessive criminalization. If every negligence or error in making a deed is immediately criminalized, then this can cause fear and doubt for notaries in carrying out their duties. As a result, notary services to the public can be disrupted. Therefore, there needs to be a balance between law enforcement and protection of the notary profession. Criminal action may only be imposed if there is truly evidence of malicious intent or gross negligence on the part of the notary.

Based on the facts, the notary's actions are more appropriately qualified as violations of the professional code of ethics and/or administrative violations. These violations can be in the form of negligence in carrying out duties, not acting carefully, and not protecting the interests of all parties. Sanctions that can be imposed can be in the form of reprimands, warnings, temporary suspensions, or even permanent suspensions as a notary.

Administrative sanctions are more appropriate because the focus is on improving the notary's performance and preventing similar negligence in the future. In addition, administrative sanctions also do not provide a long-term negative stigma for the notary. Criminal sanctions, on the other hand, can have a huge impact on the lives of notaries and their families. Criminal sanctions can also damage the reputation of the notary profession as a whole.

Although the Denpasar High Court agreed with the Denpasar District Court regarding the proof of the crime, the Panel of Judges considered the defendant's 11 years of service as a notary as a mitigating factor. This shows an effort to balance the mistakes made with the defendant's experience and contribution in providing services to the community.

This decision implicitly provides protection to the victim (victim witness) by ensuring that the perpetrator who committed the fraud (Gunawan Priambodo) did not gain any benefit from his actions. By declaring the defendant guilty of providing the means or opportunity for the crime to occur, the court seeks to restore justice for the victim.

The legal conformity of this decision can be analyzed based on several points:

- 1) Fulfillment of Criminal Act Elements: The Panel of Judges is of the opinion that all elements of the criminal act charged by the Public Prosecutor have been proven legally and convincingly. This shows that the verdict is based on relevant legal evidence and facts.
- 2) Implementation of the Principle of Prudence: The judge's considerations emphasize the importance of the principle of prudence for a notary in carrying out his duties. This is in accordance with the Notary Law which requires notaries to act carefully and meticulously in making deeds.
- 3) Clear Legal Basis: This decision is based on Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary. This shows that the decision has a strong legal basis and is in accordance with applicable laws and regulations.

In addition to the legal considerations already mentioned, the Judge needs to prove that there is a causal relationship between the notary's actions or negligence and the losses suffered by the victim. If there is no clear causal relationship, then the notary cannot be found guilty.

Conclusion

Notaries have a great responsibility in making a Deed of Power of Attorney to Sell, not only as an official who legalizes the agreement of the parties, but also as a party who is obliged to act carefully, thoroughly, honestly, and independently. This responsibility includes conducting adequate verification of the legality of the object of power of attorney, providing a complete and transparent explanation to the parties regarding the contents and legal consequences of the deed, and acting in good faith to protect the interests of all parties involved. In the case of this position, Notary Ketut Neli Asih is considered not to have met the standards of responsibility, which is indicated by the failure to conduct adequate verification of the legality of the PPJB and Deed of Power of Attorney, not informing the Witness (victim) regarding the existence of the HGB Certificate that has been taken back, and providing information that helps Witness Gunawan Priambodo convince the Witness (victim) to enter into an agreement.

The legal consequences of the Deed of Power of Attorney to Sell made by Notary Ketut Neli Asih as stated in Decision Number: 20/PK/PID/2020/PN.BALI show that even though the Notary is freed from criminal charges, this does not necessarily eliminate the potential for civil liability. The decision confirms that criminal liability must be based on the existence of mens rea or malicious intent, which must be proven legally and convincingly in court. However, exemption from criminal liability does not preclude the possibility of civil claims, especially if there is proven negligence in the implementation of the notary's office that results in losses for other parties. In the context of civil law, such negligence can be the basis for liability, either in the form of compensation or restoration of the rights of the injured parties. The further legal consequences of the problematic power of attorney to sell deed are that it is null and void. In this case, the cancellation is *ex tunc*, namely having legal consequences that apply from the beginning (as if the deed never existed). Thus, all rights and obligations arising from the deed are considered never to have been born,

and must be returned to their original state (restitutio in integrum). The consequence of this *ex tunc* cancellation is that the legal position of the parties is returned to the position before the deed was made. In this case, the victim's witness's receivables can again be collected, because the legal relationship modified by the legally defective power of attorney to sell deed is considered never to have occurred. On the other hand, if the cancellation is *ex nunc*, then the cancellation only applies in the future, without changing the legal consequences that have occurred previously. However, because the cancellation of the deed in this case was related to legal defects from the start, the *ex tunc* approach is more appropriate to use to provide comprehensive legal protection to the aggrieved party.

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