

Legal Aspects In The Making of The Buying Boarding Deed And The Power of Sale

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Deed And The Power of Sale

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ABSTRACT

The process of buying and selling land has a procedure that has been regulated in the legislation. In the process of buying and selling land, problems are often found, such as the inability to sign the deed of sale because it has not been paid off. One way to keep the binding on the object of sale and purchase is through the making of a PPJB deed and the power to sell. The function of PPJB and the power of attorney is to prevent the seller from committing fraudulent acts to the buyer by reselling the object's land to other prospective buyers. There have been criminal law cases in connection with the making of the PPJB deed and the power to sell which will be analyzed in this legal research. The formulation of the problem in this legal research is the procedure for making a sale and purchase binding deed and the power to sell, a juridical review of a criminal decision against a notary in making a sale and purchase deed and PPJB. That this legal research uses normative legal research and uses a conceptual approach, and a case approach as a means of supporting legal research. The benefits of this legal research are as a guide so that law enforcers have a better understanding of how notaries work and as a means of increasing knowledge.

Keywords: Notary/ PPAT, power to sell, PPJB

1. INTRODUCTION

Contract law in the Indonesian Civil Code is open or flexible in nature as in the principle of freedom of contract. This principle has a meaning which means that the parties can have the widest freedom to enter into an agreement containing anything, as long as it does not violate applicable regulations, public order, and morality. The agreement makers may make provisions in the agreement itself that deviate from the Articles in the law of the agreement. Articles of contract law are complementary, which means that these articles can be waived if desired by the parties making an agreement. If they do not regulate something themselves, it means that it will be subject to the applicable law (Subekti: 2002). That this open system in the KUHPERDATA can be found in Article 1338 paragraph (1), which is quoted as follows "all agreements made legally apply as law for those who make them". Making an agreement can be used in a land sale and purchase agreement that accommodates land supplies for those in need. One of the methods used to obtain land today is through buying and selling. Buying and selling transactions have actually existed since before the independence of the Republic of Indonesia, known as transactions through customary mechanisms that are accommodated in the current legislation.

With the times, of course, changes in the regulations in the field of buying and selling land have also changed. To achieve this legal certainty, authentic written evidence is needed regarding legal circumstances, events, or actions. Notaries and PPAT are officials who have the authority to make authentic deeds based on the law. Authentic deeds as the strongest and fullest evidence have



an important role in every legal relationship in people's lives. In various sales and purchases of land. Through authentic deeds that clearly define rights and obligations, guarantee legal obligations, and it is also hoped that disputes can also be avoided (Supriyadi: 2008). The principle of buying and selling there is a real principle or real delivery that occurs if the price according to the agreement has been paid, there will be real levering or delivery.

The customary law principles used in the sale and purchase of land in Article 5 of Law no. 5 of 1960 concerning Basic Regulations on Agrarian Principles requires that buying and selling must be cash and clear. This clearly means that the sale and purchase is carried out in the presence of an authorized public official, in this case the Land Deed Making Officer (PPAT), while what is meant by cash is the transfer of ownership rights when the sale and purchase of land is carried out and the sale and purchase at that time. However, for certain cases, if the AJB cannot be implemented, the sale and purchase can be postponed and a deed of sale and purchase agreement or a deed of Sale and Purchase Binding Agreement (PPJB) made before a notary. The Sale and Purchase Binding Agreement made before a notary is an agreement of the parties based on Article 1320 in conjunction with Article 1338 of the Civil Code so as to provide legal certainty and protection for those who make it.

The Sale and Purchase Binding Agreement (PPJB) is the initial bond between the seller and the buyer in the transaction, and must be followed up with the making of a Sale and Purchase Deed (AJB), because PPJB has not legally transferred rights. the achievement of the real intent and purpose of buying and selling. A PPJB deed also contains a statement that the price of the land and/or building has been paid in full (repayment occurs) by the buyer to the seller/land owner. Juridically, this means that the deed has fulfilled the requirements as the basis for the transfer of land rights. Consequently, the PPJB deed will be followed by the Deed of Authorization to Sell. In the power of sale from the land owner as the seller to the buyer, all legal interests can be carried out. Furthermore, with the power to sell, the buyer can later sell to other parties without the need for legal assistance from the seller or in this case it is used to sell to himself the buyer himself for the purpose of transferring the rights to the land and buildings. The granting of power (lastgeving) is an agreement by which one person gives power (authority) to another person, who receives it, to carry out an affair on his behalf. Provisions regarding the granting of power of attorney are regulated in the Civil Code, namely Book III Chapter XVI starting from Article 1792 to Article 1819. Power of attorney (volmacht) is not regulated, either specifically in the Civil Code or in other provisions of the Act, but is described as one part of the grant power (Herlien Budiono: 2008). Notaries are required to pay attention to aspects of making binding deeds of sale and purchase and authorization to sell, this is done by checking the original certificate and other documents.



A criminal law case has been found that occurred after the PPJB deed was made which was actually not purely the fault of the notary but rather of the appellants themselves. This case is taken from a decision that has permanent legal force and can be categorized in an interesting decision to be studied more deeply. This legal research paper is published under the title Legality Aspects In The Making Of Buying And Sale Bonding Deeds

2. RESEARCH METHODS

A research according to Soerjono Soekanto is a scientific activity based on analysis and construction which is carried out in a systematic, methodological and consistent manner and aims to reveal the truth. as a manifestation of human desire to know what they are facing (Soerjono Soekanto: 1986). This research is not social research but legal research which is normative law, which is a process to find the rule of law, legal principles, and legal doctrines in order to answer the legal issues faced (Peter Mahmud Marzuki, Legal Research, 2011). The researcher uses a normative type of research because this study aims to find coherence, namely whether there are legal rules in accordance with legal norms and are there norms in the form of orders or prohibitions in accordance with legal principles, and whether someone's actions are in accordance with legal norms or legal principles (Peter Mahmud Marzuki , Legal Research Revised Edition, 2014). This study aims to examine legal facts juxtaposed with regulations and concepts in law. In this study, the researchers used three problem approach methods, namely, the statutory approach, the conceptual approach, and the case approach.

The statutory approach is carried out by reviewing all laws and regulations related to the legal issue being researched. The conceptual approach departs from the views and doctrines that develop in the science of law. Studying the views and doctrines in legal science, researchers will find ideas that give birth to legal understandings, legal concepts, and legal principles that are relevant to the issues at hand. In the conceptual approach, it will be possible to find the concept of responsibility attached to the position of a notary if there is negligence in reporting the will. In this study, researchers used legal sources, including:

- a. Primary legal materials are legal materials that are authoritative, meaning they have authority. Primary legal materials consist of legislation, official records or minutes in the making of legislation and judges' decisions.
- b. Secondary legal materials are all publications on law that are not official documents. Publications on law include textbooks, legal dictionaries, legal journals, and commentaries on court decisions. In this study, the secondary legal materials used include books in the field of law, papers, articles, and theses.

The formulation of the problem that will be discussed in this paper can be formulated as follows:



1. Procedure for making a deed of binding sale and purchase and power of sale
2. Juridical review of criminal decisions against a notary in making a deed of sale and purchase and PPJB

3. RESULTS AND DISCUSSION

Procedure for making a deed binding sale and purchase and power to sell

There is an expression that from the land and will return to the land, the expression is none other than that land is a major natural resource and has strategic value. The need for land for humans is increasing day by day but is not balanced with the amount of land area, so that the availability of land is increasingly limited. These limitations make land a very valuable asset for humans and it is not uncommon as a result of this a dispute occurs. Therefore, in land ownership it is mandatory to attach a right which is usually called a land right. Land rights are rights to certain limited parts, two dimensions in length and width. A person who has land rights will be authorized to utilize the land according to its function and use. (Harsono Boedi, Indonesian Agrarian Law:2008). One of the authorities in land ownership is to transfer land rights through buying and selling procedures. The procedure for buying and selling land rights that have been certified can be done through PPAT, but if the buyer has not been able to fulfill Article 5 of the UUPA, a sale and purchase agreement can be made on the land rights. Other provisions regarding PPAT are regulated in Article 37 Paragraph (1) Government Regulation Number 24 of 1997 concerning Land Registration, transfer of land rights and ownership rights to apartment units through buying and selling, exchanging, grants, income in the company and legal acts of transfer of rights. others, except that the transfer of rights through auction can only be registered if it is proven by a deed made by the authorized PPAT according to the provisions of the applicable laws and regulations.

The PPJB deed and the deed of power of attorney to sell are agreements made by the parties before the AJB is carried out or it can be called a preliminary deed. This power of attorney to sell is an authentic deed made by a notary in accordance with the authority in the Notary Position Act and other regulations. A PPJB must be based on an agreement as outlined in the agreement. The parties in making PPJB are based on the agreement as stated in the agreement in accordance with the provisions of Article 1320 of the KUHPER which is a condition for the validity of an agreement, namely:

- a. Agreed;
- b. Legal proficient;
- c. a certain matter, and
- d. a reason that is allowed



PPJB's position in contract law is an agreement that was born because of the principle of freedom of contract where there must be an agreement between the parties making the agreement, so that if there is no agreement in an agreement, then the agreement made is invalid and tied. In making PPJB it is not only motivated by the non-fulfillment of elements in buying and selling according to Article 5 of the UUPA, the fact that PPJB can be motivated by the existence of a debt agreement which in this case becomes a legal smuggling as if the sale and purchase of land that is guaranteed has been agreed. where in general a Deed of Debt Recognition should be made with the guarantee of the land by also making a Deed of Granting Mortgage which if the debtor breaks his promise, the auction process will be passed. Protection for buyers in PPJB is usually carried out with conditions that are also followed by a request for an irrevocable power of attorney with the aim that if the seller does not fulfill it, the buyer can claim and ask for compensation in accordance with the agreement stipulated in the PPJB. In general, the legal procedure for making a PPJB deed and the power of attorney to sell is carried out by the parties, with the buyer first giving a down payment of 30% of the transaction price or funds that have been agreed upon by both parties, then depositing the certificate at a notary so that the seller does not immediately resell the object's land. The deposit is provided with a receipt issued by a notary. If the buyer pays the sale and purchase price as evidenced by receipts and proof of transfer as well as other tax provisions, then the process of signing the deed of sale and purchase is carried out before the PPAT.

Judicial Review of Criminal Decisions Against Notaries in Making Sale and Purchase Deeds and PPJB

That in this case a notary became a defendant with the initials KNA, SH, Mkn who was accused of committing a crime in September 2014 located at the Notary's Office belonging to the Defendant on Jalan Nakula No. 8 Legian Kuta, Badung Regency or at least in other places that are still included in the jurisdiction of the Denpasar District Court, intentionally providing an opportunity, means or information, for Witness GUNAWAN PRIAMBODO (the defendant in a different case file) to commit an act intentionally and against the law owning something wholly or partly belongs to another person, but which is in his control not because of a crime, the act is carried out in the following way:

1. Witness GUNAWAN PRIAMBODO and Witness (victim) MARHENDRO ANTON INGRIYONO, both of whom are fellow businessmen / property agents in Bali , until August 8, 2014 The Defendant was visited by Witness SUGIARTINI, who is Witness GUNAWAN PRIAMBODO's personal staff, with a letter of completeness for land located at the Taman Griya Housing Complex, Villa Paradise Loft (hereinafter referred to as Tanah paradise loft) in the form of HGB Certificate: 7062/ Kelurahan Benoa covering an area of 5,455 m2 on behalf of PT . NUANSA BALI UTAMA to make a sale and purchase



agreement between Witness GUNAWAN PRIAMBODO and the Witness (victim) but not by making a ⁵ Sale and Purchase Agreement (PPJB) but only making a Deed of Power to Sell between Witness GUNAWAN PRIAMBODO and the victim's Witness), which according to Witness SUGIARTINI that the Witness GUNAWAN PRIAMBODO and the Witness (victim) agreed that the payment method for the land was to write off the receivables belonging to the Witness (victim) that were still with Witness GUNAWAN PRIAMBODO then accumulated the receivables together with several transactions between Witness GUNAWAN PRIAMBODO and the Witness (victim) who failed, including:

1. Rp.5,542,250,000,- (Five Billion Five Hundred Forty Two Million Two Hundred Fifty Thousand Rupiah) which is the total payment for Paradise Loft land (February 8 2013, February 9, 2013, and October 31, 2013);
2. Rp. 750,000,000,- (Seven Hundred and Fifty Million Rupiah) which is a receivable from the Buyback of 1 shophouse unit on Jalan Diponegoro on October 18, 2012 which should have been returned by Witness GUNAWAN PRIAMBODO;
3. Rp. 50,000,000,- (Fifty Million Rupiah) which is a payment receivable for shop houses in Nusa Dua in July 2013 which should have been returned by Witness GUNAWAN PRIAMBODO;
4. Rp.5,493,750,000,- (Five Billion Four Hundred Million Ninety Three Million Seven Hundred Fifty Thousand Rupiah) which is a receivable (Failed Transaction due to permit) for the Payment of 4 lots of land in Bangsing Pecatu, South Kuta in July 2013;

So that it becomes a total of Rp. 11,673,500,000, - (Eleven Billion Six Hundred Seventy Three Million Five Hundred Thousand Rupiah), then after knowing the condition of the HGB certificate which is still in the name of PT. NUANSA BALI UTAMA and not on behalf of Witness GUNAWAN PRIAMBODO, the Defendant was still willing to agree to the making of the Power of Attorney to sell, so that the HGB Certificate was kept at the Notary Office of the Defendant, however on August 13, 2014 Witness SUGIARTO returned to the Defendant's Notary Office, which in At that time, Witness SUGIARTINI admitted that he was ordered by Witness GUNAWAN PRIAMBODO to take back the HGB Certificate: 7062/ Bena Village covering an area of 5,455 m2 which at that time was in/still being kept in the Defendant's Office, on the grounds that Witness GUNAWAN PRIAMBODO himself would take care of the splitting of the certificate. Furthermore, without asking about where the certificate will be taken for resolution or other problems related to the plan to make the previous Power of Attorney, the Defendant easily gave the certificate to Witness SUGIARTINI, until finally on September 4, 2014 Witness GUNAWAN PRIAMBODO together with the Witness (victim) MARHENDRO ANTON

INGGRIYONO and the Witness SHANTY RAHARDJO came to the Defendant's Office to carry out the Transaction and the engagement, by bringing the following documents:

- Sale and Purchase Agreement (PPJB) No.30 dated 20 November 2012 between Witness GUNAWAN PRIAMBODO with PT. NUANSA BALI UTAMA, and Deed of Power of Attorney No. 31 dated November 20, 2012 which contains PT. NUANSA BALI UTAMA authorized Witness GUNAWAN PRIAMBODO to sell a plot of land with an area of 4179 m2 with HGB: 6237/ Benoa from a base area / global area of 6063 m2 on behalf of PT. NUANCE BALI UTAMA, both PPJB and the Deed of Authorization to Sell were made at the Notary Office of Witness PUTU TRISNA ROSILAWATI, SH, Mkn who is a professional colleague of the Defendant or fellow Notary and PPAT who served in the Badung Regency area, but even though he knew this the Defendant who was a Notaries should have more ability and knowledge in the land sector than other general public, which then the Defendant did not check with the Notary Witness PUTU TRISNA ROSILAWATI, SH, Mkn regarding the legality of PPJB and the Power of Attorney to Sell, then the Defendant received land documents and The identity cards of the parties for further processing, apart from that the Defendant also did not inform the Witness (victim) of the existence of the HGB Certificate No. 7062 / Benoa Village which had previously been taken back by the Witness GUNAWAN PRIAMBODO and was no longer in the Defendant's office. so that it gives happiness Opposition to Witness GUNAWAN PRIAMBODO to continue to carry out the Deed of Power of Attorney to Sell with the Witness (victim), even though the Defendant is very understanding and knows that the making of the Deed of Power of Attorney will have an impact on the loss of Witness GUNAWAN PRIAMBODO's obligation to return the money / write off the receivables belonging to the Witness (victim) was with Witness GUNAWAN PRIAMBODO, but the Defendant continued to make the Deed of Authorization to Sell, which before signing the Deed the Defendant had shown a Photocopy of HGB Certificate No: 7062 / Benoa Village while providing information to help Witness GUNAWAN PRIAMBODO convince the Witness (victim) in the form of a statement. "That it is true that the Paradise Loft land that the Witness (victim) is going to buy belongs to Witness GUNAWAN PRIAMBODO, and a transaction can be carried out" so that upon hearing this statement, the Witness (victim) felt more confident and trusted to enter into an engagement, so that finally Ak Power of Attorney to Sell Number: 03 dated September 04, 2014, in which the contents of the letter are Witness GUNAWAN PRIAMBODO as the attorney who has sold part of the land covering an area of approximately 2962 m2 and has been paid in full by the beneficiary namely Witness (victim) MARHENDRO ANTON INGGRIYONO, and will be completed within a period of 3 months and so on..., then after the completion of the Deed the Witness



(victim) can no longer collect his money which is with Witness GUNAWAN PRIAMBODO (receivables) and considers the Deed of Authorization to Sell as collateral for the sale and purchase transaction between himself and Witness GUNAWAN PRIAMBODO, namely in the form of a portion of Paradise Loft Land covering an area of 3021 m2 for Rp. 11,673,500,000,- (Eleven Billion Six Hundred Seventy Three Million Five Hundred Thousand Rupiah) which subsequently due to an agreement with Witness GUNAWAN PRIAMBODO was changed to an area of 2962 m2 for Rp. 11,538,000,000, - (Eleven Billion Five Hundred Thirty Eight Million Rupiah, then after 6 (Six) Months since the Deed of Authorization to Sell above, the Witness (victim) has not yet received a HGB Certificate from the Defendant or from Witness GUNAWAN PRIAMBODO, so the Witness (victim) asked the Defendant this, and only then did the Defendant tell the Witness (victim) that the HGB Paradise Loft Certificate No: 7062 / Kelurahan Benoa had been taken a long time ago by Witness SUGIARTINI, so the Witness (victim) was confused and felt very disadvantaged, then tried to contact Witness GUNAWAN PRIAMBODO, but to no avail, so he can only ask about it to Witness SUGIARTINI, and Witness SUGIARTINI explained that the HGB certificate No: 7062 / Kelurahan Benoa was already at the Witness Notary Office TRISKA DAMAYANTI then the Witness (victim) checked the Notary office MARHENDRO ANTON INGGRIS YONO made various efforts to Witness GUNAWAN PRIAMBODO to collect / get back all of his money in the amount of Rp. 11,673,500,000,- (Eleven Billion Six Hundred Seventy Three Million Five Hundred Thousand Rupiah) which is still with the Defendant, but never found a meeting point / solution so that he finally reported all the actions of the Defendant to the Police. However, he was unable to meet Witness TRISKA DAMAYANTI, SH, Mkn and was only able to meet Witness I MADE JULI ARDIKA, SSTPAR who is an employee of Witness TRISKA DAMAYANTI, SH, Mkn, then the witness (victim) received an explanation that it was true that the Paradise Loft (HGB) land certificate No : 7062 / Benoa) located at the Notary Office of the Witness TRISKA DAMAYANTI and some of the land, covering an area of 1746 m2 has been sold by the Defendant GUNAWAN PRIAMBODO to Witness SARIYANTO for Rp. 3,500,000,000, - (Three Billion Five Hundred Million Rupiah), so that Next, the Witness (victim) tried to meet Witness SARIYANTO, and got the same information, so the Witness (victim)

- Whereas the defendant's actions gave Witness GUNAWAN PRIAMBODO the opportunity to enter into an engagement without checking the legality of the Alas Hak object of the engagement, then providing facilities in the form of a place to carry out transactions / engagements and information to the Witness (victim) MAHENDRA ANTON INGGRYONO for a It made it easier for Witness GUNAWAN PRIAMBODO to carry out his actions



resulting in the write-off of the receivables belonging to Witness (victim) MARHENDRO ANTON INGGRIYONO who was with Witness GUNAWAN PRIAMBODO, resulting in the Witness (victim) suffering a loss of Rp. 11,673,500,000, - (Eleven Billion Six Hundred Seventy) Three million five hundred thousand rupiah);

From this description, it can be concluded that the notary concerned did not check the legality of the rights mat attached by the seller, lacked accuracy in his work, provided a certificate which should not be allowed until the buying and selling process was completed and provided a means to commit a criminal act of fraud. The Defendant's actions were regulated and threatened with crime in Article 372 of the Criminal Code Jo. Article 56 paragraph (2) of the Criminal Code. In the decision of the District Court No. 196/Pid.B/2019/PN.Dps has been given a verdict that:

1. Stating the Defendant Ketut Neli Asih, SH. above, it has been legally and convincingly proven guilty of committing the criminal act of "Intentionally Providing Opportunities or Facilities in the Criminal Act of Fraud" as stated in the second indictment of the Public Prosecutor;
2. Sentencing the Defendant therefore with imprisonment for: 1 (one) year and 4 (four) months;
3. Determine the period of arrest and detention that has been served by the Defendant to be deducted entirely from the sentence imposed;
4. Determine that the Defendant remains in custody;

In this case, the judge considered that the notary's office was used by the defendant as a means of committing the crime of fraud committed by the witness, even though from a civil law perspective, the notary is not a party but an independent official who does have an office designated as a place to work. The administrative error committed by the defendant was related to the administrative aspect of making the deed. The judge should look at the aspect of the presence or absence of intention or mens rea in the defendant. With regard to mens rea, that the locus delicti of the perpetrator commits the act, the perpetrator has the will (willen) of the act and or the consequences of his action, also knows or understands (weten) these things. If Actus reus involves an act that is against the law (unlawful act), then mens rea includes the elements of the offense maker, namely the mental attitude, which by the monistic view of the offense is called the subjective offense or psychological state of the maker (Utrecht, Criminal Law I: 1967). . That the judge is obliged to judge in terms of the presence or absence of intentions and actions. If viewed from the mens rea doctrine, that the defendant made a mistake in terms of administration of making the PPJB deed and the power to sell, but the indictment of providing a notary office facility as a locus delicti for a criminal act of fraud by witnesses is not appropriate and tends to have to participate in "dragging" a notary as a defendant even though he is not Thus, if he commits an act

of administrative error that results in a person feeling a loss, a civil lawsuit should be made, not a criminal one. Meanwhile, in the decision of the Bali High Court Number 27/Pid/2019/PT DPS, the defendant was sentenced as follows:

1. Accepting the request for an appeal from the Defendant Ketut Neli Asih, SH, said;
2. Correcting the decision of the Denpasar District Court Number 196/Pid.B/2019/PN Dps dated April 25, 2019 for which an appeal was requested, only regarding the sentence imposed on the Defendant, so that the sentence reads as follows: "Impressing the Defendant with a sentence of imprisonment for: 1 (one) year and 2 (two) months";
3. Confirming the decision of the Denpasar District Court Number 196/Pid.B/2019/PN Dps dated April 25, 2019 for the rest;
4. Determine that the Defendant remains in custody;
5. Charges case fees to the Defendant at both levels of court, which at the appeal level is set at Rp. 5,000.00 (five thousand rupiahs).

The decision of the high court is not much different from the verdict handed down to a notary, and this is very detrimental to the notary. On this basis, a judicial review was submitted which was decided in the decision Number 20 PK/Pid/2020. In the review decision, the panel of judges had different opinions on the judges of the district court and the high court. Judges have legal opinions, including the following:

1. Judex Facti at the first instance has erred in assessing and concluding the legal facts revealed before the trial:

That the Legal Considerations of the Panel of Judges at the First Level on page 59 paragraph 2 (two) point 3 (three) which stated "In the end, PPJB was not made but only made a power of attorney to sell between witness Gunawan Priambodo and witness (victim) "That the consideration of the Panel of Judges was wrong and misleading and did not match the facts of the trial, as if the Defendant did not allow making PPJB and only wanted to make PPJB. power of attorney to sell. Based on the facts of the trial, the testimony of Witness Marhendro Anton Inggriyono, Gunawan Priambodo, the corresponding statement of the Defendant explained that AJB could not be carried out because the HGB Certificate No. 7062/Benoa had not been renamed in the name of Gunawan Priambodo and because it could not be made an AJB, the Defendant suggested that it be made Deed of Authorization to Sell on the basis of PPJB No.30 Dated 20 november 2012, Authorization to Sell No. 31 dated 20 November 2012, Receipt of Payment from Gunawan Priambodo to PT. The NBU and the statements of Witnesses Mahendro Anton Inggriyono and Gunawan Priambodo who stated that they had paid off the payment for land with HGB Certificate No. 7062/Benoa covering an area of 2962M2 in

Paradise Loft based on a payment agreement by accumulating the victim's witness receivables. On the basis of these evidences, the Defendant made a Deed of Authorization to Sell.

2. The fact that the Defendant/Comparant described above is contained in the judge's consideration on page 60 which states that "because the HGB certificate is still in the name of PT. Nuansa Bali Utama (PT.NBU) and not on behalf of Witness Gunawan Priambodo, the defendant made a Deed of Power of Attorney to sell between witness Gunawan Priambodo and Witness Victim"/:

That the Legal Considerations of the First Level Judges on page 61 point 2: "The defendant did not check regarding the legality of PPJB and the deed of power of attorney for which the deed has been revoked.....", That the consideration of the Panel of Judges was incorrect and misleading and ignored the facts of the trial, as if the Defendant was forced by the Panel of Judges to exceed the authority of the Defendant as a Notary which is regulated by the Law on the Position of Notary to carry out investigations into the truth of PJB and the Selling Authorization made by another Notary. Only checking the formalities of the appearances such as the original ID card and other required completeness so that it cannot be criminally prosecuted for the product made, the product is in the form of a notarial deed (p. safe 48). And the opinion of the Criminal Expert is in accordance with the opinion of the Notary Expert Dr. I Made Pria Dharsana, SH., M.Hum who is of the opinion that based on Article 15 of the Law of the Republic of Indonesia number 2 of 2014 concerning the Position of a Notary, the obligation of a Notary is only a formality, not material in nature, there are no obligations given by the law on the position of a Notary for a Notary act to investigate/investigate or examine materially the original or fake files that are used as the basis by the parties that are submitted to the Notary, such as the party's ID card/KK, especially when brought by the parties it is a copy of the original deed and the original certificate of the land object to be transferred /for sale (page 51). The testimony of the witness Trisna Rosilawati, SH, MKN on page 37 the witness stated that after the witness made the deed of cancellation of PPJB and revocation of the power of attorney to sell the witness had asked for a copy of the PPJB and the power to sell. Based on the information from Witness Sugiartini, it was shown that the Defendant made the Deed of Authorization to Sell No. 3 dated September 4, 2014 on the basis of the ORIGINAL HGB CERTIFICATE No. 7062/BENOA which has been checked for the certificate at the BPN BADUNG office and the results are not problematic, the original copy of PJB and the original power of attorney Selling, so the judge's judgment stating that the defendant made the power to sell based on a photocopy of the certificate has been refuted with the testimony of witness Sugiartini. And in accordance with the statement with the opinion of the Criminal Law Expert, Dr. I Gusti Ketut Ariawan, SH., MH. who is of the opinion that if the Notary when signing the Deed of

Authorization to Sell only shows a Photocopy of the Certificate of Ownership which has previously been submitted to the Original Certificate of Ownership to the Notary, and has been checked with BPN and from BPN there is no problem with the Certificate of Ownership, then it is said to be valid even though when The signing is only shown a photocopy because it is in accordance with the procedures in UUJN.

Based on these legal considerations, the panel of judges at the Supreme Court held another opinion and gave a verdict that:

1. Granted the petition for judicial review from the Petitioner for Judicial Review of the Convicted KETUT NELI ASIH, SH, mentioned;
2. Cancel the decision of the Denpasar High Court Number 27/Pid/2019/PT DPS dated 27 June 2019;

TRIAL BACK:

1. Declaring that the convict KETUT NELI ASIH, SH, is proven to have committed the act as charged against him, but the act was not a criminal act;
2. Release the convict therefore from all lawsuits (ontslag van alle rechtsvervolging);
3. Restoring the rights of the convict in terms of ability, position and dignity and worth;

From this case it can be concluded that:

1. In the case of making a deed of sale and purchase / PPJB along with the power to sell, the Notary is obliged to check the original certificate through the local land office if a transaction is to be carried out on the binding of land rights, preferably after the signing of the transaction the certificate is stored by entrusted to the notary so as not to be traded by the seller before signing the deed of sale and purchase
2. Administrative errors made by a notary do not necessarily become the realm of criminal law, the judge is obliged to conduct a review based on the regulations of the position of a notary and other regulations regarding the position of a
3. notary. accused of providing advice to the appearer to commit a criminal act. This must be reviewed, the prosecutor must understand the function of the notary office as a place of work for a notary in accordance with the Law on Notary Positions, and must understand the concept of "facing" by the parties to make a deed. Referring to the case, the defendant was purely working according to the rules in the Notary Position Act and did not help clients commit fraud. The author appreciates the panel of judges who are very pro in carrying out legal protection for the position of a notary by releasing the defendant and returning the position of a notary. As a legal consequence of the review decision, if the Minister of Law and Human Rights has made a decision to dismiss a notary, then

according to the *contrarius actus* principle, the convicted notary can be reappointed as a notary.

4. CONCLUSIONS

The making of the PPJB deed and the power to sell is a preliminary agreement made by a notary as a means of binding down payments on the transaction. If the payment for the object of land rights has been paid off, a Deed of Sale and Purchase in front of the PPAT can be signed which is attached with a receipt for payment by the buyer. In the case of making a deed of sale and purchase/PPJB with the power to sell, the Notary is obliged to check the original certificate through the local land office if a transaction is to be carried out on the binding of land rights, preferably after the signing of the transaction the certificate is stored by depositing it with a notary so as not to be traded by the seller before signing the deed of sale and purchase. Administrative errors made by a notary do not necessarily become the realm of criminal law, the judge is obliged to conduct a review based on the regulations for the position of a notary and other regulations regarding the position of a notary. In this case, it is unfortunate that the notary was charged with providing advice to the court to commit a criminal act. This must be reviewed, the prosecutor must understand the function of the notary office as a place of work for a notary in accordance with the Law on Notary Positions, and must understand the concept of "facing" by the parties to make a deed. Referring to the case, the defendant was purely working according to the rules in the Notary Position Act and did not help clients commit fraud. The author appreciates the panel of judges who are very pro in carrying out legal protection for the position of a notary by releasing the defendant and returning the position of a notary. As a legal consequence of the review decision, if the Minister of Law and Human Rights has made a decision to dismiss a notary, then according to the *ius contrarius actus* principle, the convicted notary can be reappointed as a notary.

Suggestions

1. The notary must provide an explanation to the parties who appear regarding the PPJB procedure and the power to sell up to the stage of the Sale and Purchase Deed. The notary should be careful so as not to be dragged as a party in the making of the deed.
2. The preparation of the PPJB deed must be carried out carefully and thoroughly regarding the legality of the certificate as evidenced by checking the certificate through the local land office, the notary has the right to refuse the making of the deed if the appearer is not willing to submit the original certificate as a condition of checking.

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