
ANALYSIS OF ISSUES IN THE USE OF FRAUDULENT POWER OF ATTORNEY IN THE PREPARATION OF SALE AND PURCHASE DEEDS

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ABSTRACT

The Power of Attorney to Sell can be used as the basis for drafting a Sale and Purchase Deed if the seller cannot be present during the signing. However, in practice, the Power of Attorney to Sell is often misused for purposes that violate the law, such as the illegal appropriation of land by individuals or groups aiming to seize ownership of others' land unlawfully, as well as the use of falsified Powers of Attorney to Sell as the basis for drafting Sale and Purchase Deeds before the Land Deed Official. This study examines and analyzes the legal consequences and the application of the principle of prudence by Notaries and Land Deed Officials in relation to the forgery of the Power of Attorney to Sell in the drafting of Sale and Purchase Deeds. It also evaluates the legal standing of falsified Powers of Attorney to Sell as the basis for creating Sale and Purchase Deeds, which can result in criminal, civil, and administrative sanctions. This study's findings demonstrate that applying the principle of prudence by Notaries and Land Deed Officials is crucial to preventing misuse and maintaining public trust in authentic deeds.

KEYWORDS

Forgery of Power of Attorney to Sell, Principle of Prudence, Notary and Land Deed Official



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INTRODUCTION

The act of providing power of attorney is typically a type of one-sided legal action. According to the rules set out in Article 1792 of the Civil Code (hereinafter referred to as the Civil Code), the issuance of a power of attorney is a contract that allows one person to confer authority to another individual. The individual who receives the power of attorney is required to use this authority in relation to a legal act (Apriliana, 2018; Arvi Tunaswati & Edy Lisdiyono, 2023; Ginting, 2021; Siombo & Davinia, 2022). One type of power of attorney is known as the power to sell, which is a common form of power of attorney in society. The provision of power of attorney is akin to other forms of authority; specifically, the power granted must not surpass the confines of the authority allotted by the power of

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attorney. This is due to the fact that the power of attorney is strictly limited to the act of representation, which is to act for and on behalf of the individual granting the authority (Putri, 2021). The restrictions on authority should be explicitly outlined in the power of attorney. The limitation is only applicable to third parties if it has been communicated to the relevant third parties (Satrio, 2018).

The Deed of Power of Attorney to Sell can be the basis for making a Deed of Sale and Purchase if the seller cannot be present when signing the Deed of Sale and Purchase. However, in practice, the Deed of Power of Sale is often abused for purposes contrary to the law, such as the illegal expropriation of land rights by certain individuals or groups to control or expropriate land belonging to others illegally. An act without rights that deliberately transfers ownership of land owned by another person is a criminal act, where, if carried out jointly involving many parties, the act can be categorized as an organized land crime.

A notary, serving as a public official, is an individual meeting specific criteria who is granted authority by the state, thus allowing them to perform various public functions on behalf of the state, particularly in civil law, to create official records (Selenggang, 2023). As a public servant, a notary holds a position of trust, representing the state while fulfilling its responsibilities. This includes creating evidence through official documents and offering services to the community. A deed is considered authentic when it fulfills the requirements outlined in Article 1868 of the Civil Code. This article specifies that an authentic deed must be executed in the manner prescribed by law, must be created by or in the presence of an authorized public official, and must be done at the location where the deed is executed.

Notaries and Land Deed Making Officials (hereinafter referred to as PPAT) in carrying out their duties must follow the written rules, the written regulations of Notaries are contained in Law Number 30 of 2004 concerning the Position of Notary as amended by Law Number 2 of 2014 (hereinafter referred to as "UUJN") and the Notary Code of Ethics, while PPAT is contained in Government Regulation Number 37 of 1998 concerning Regulations on the Position of Land Deed Making Officials (PPAT), Ministerial Regulation Number 2 of 2018 concerning the Development and Supervision of Land Deed Making Officials (PPAT), as well as the Code of Ethics of the Association of Land Deed Making Officials (PPAT), as well as other implementing regulations. Even though it has been strictly regulated, some practices of Notaries and PPAT violate the applicable provisions. Negligence of Notaries and PPAT that is contrary to criminal law, such as forgery of letters as stipulated in Article 392 of the Criminal Code (hereinafter referred to as the Criminal Code), can result in criminal prosecution (Nurlete, 2020).

One of the legal cases related to the use of fake selling power involving the land mafia occurred in 2017, which befell NZ artists, with a total loss of Rp 17 billion. In this case, the NZ family's domestic assistant, RK, embezzled six land certificates belonging to CIM, the mother of NZ, with the help of the three Notaries and PPAT (F, IR, and ER). Two certificates were sold to third parties, while the other four were mortgaged to banks for the perpetrator's interests. In November 2021, four certificates were blocked by the Ministry of ATR/BPN.

RK and her husband were sentenced to 13 years in prison in 2022, while the three PPAT were each sentenced to prison (F and IR: 2 years and 8 months; ER: 2 years), and subject to civil sanctions in the form of compensation of Rp 1 billion, and administrative sanctions in the form of freezing PPAT accounts. In March 2024, the Deputy Minister of ATR/BPN returned four land certificates to NZ. Based on this case, the author analyzes the problems of using fake selling power to prepare the Sale and Purchase Deed.

Previous research by Sari and Wulandari (2021) indicated that weak verification mechanisms and the lack of internal control within notarial practices often lead to the

misuse of power of attorney, especially in land fraud cases. Similarly, Lestari (2020) emphasized the importance of notarial vigilance in ensuring the accountability and legality of deeds they produce. However, both studies mainly focused on procedural or technical aspects of deed issuance and have yet to explore the specific fraudulent use of forged powers of attorney involving notaries or Land Deed Officials (PPATs) in organized land mafia schemes. This study addresses that gap by comprehensively analyzing how forged powers of attorney are used to prepare Sale and Purchase Deeds by notaries. It evaluates the legal and ethical liabilities of notaries and PPATs in the context of actual adjudicated cases. The novelty of this research lies in its integration of normative juridical analysis with current case law involving organized land crimes. It uniquely contributes to the legal literature on land rights protection and professional ethics, focusing on how public officials' authority is exploited in land-related crimes.

This study aims to analyze the misuse of forged powers of attorney by notaries in drafting sale and purchase deeds and assess the legal and ethical responsibilities that notaries and PPATs bear in such practices. It also seeks to evaluate the effectiveness of legal regulations and professional oversight mechanisms in preventing such abuses in the future.

RESEARCH METHOD

The preparation of this research uses doctrinal legal research, which specifically focuses on the study of written legal materials such as laws, regulations, and other legal literature. Doctrinal research produces the author's view or paradigm towards the normal being studied (Wibisana, 2023). The data used in this study came from secondary sources obtained through literature studies. The secondary data will be in the form of primary and secondary legal materials. Primary legal materials are written legal regulations; secondary legal materials refer to textbooks and scientific articles that serve as a reference for understanding and analyzing primary legal materials.

The analysis was conducted systematically and logically to develop sound, academically defensible legal arguments. Furthermore, deductive reasoning was used to draw conclusions from general legal principles and apply them to the specific legal problems presented in the court decisions studied.

RESULT AND DISCUSSION

Legal Consequences and Application of the Principle of Prudence by Notaries and Land Deed Making Officials Related to the Forgery of Power of Attorney to Sell in the Making of Sale and Purchase Deed

As trusted public officials, Notaries and PPAT are required to uphold the integrity of a legal document. Imagine that a mistake in creating a legitimate document, whether done deliberately or carelessly, results in harm or losses for others. In this situation, the Notary has engaged in an illegal act. Tampering with official documents breaches legal statutes and professional ethics, which may lead to criminal, civil, and administrative penalties. This action negatively affects those engaged in the transaction and undermines public confidence in Notaries and PPAT as public officials authorized to create authentic deeds.

It can be said that Notaries and PPAT have an important role in ensuring the validity and authenticity of documents related to property purchase and sale transactions in Indonesia, to prevent unlawful acts such as forgery of authentic deeds. The crime of forgery of letters as stipulated in Article 391 paragraph (1) of the Criminal Code states that "any

person who unlawfully makes or forges a letter that may give rise to rights, obligations, or debt relief, or that is intended as evidence of a matter, to use or ask others to use it as if the contents are accurate and not false, if the use of the letter may cause harm, can be punished for forgery of letters, with a maximum prison sentence of 6 (six) years or a fine (Law on the Criminal Code, Law Number 1 of 2023, 2023)." The crime of forgery of letters is determined with the main purpose of protecting public trust in the validity and truth of the content of a letter, as well as providing legal protection for public trust (Fatimah, 2020).

Notaries and PPAT who deliberately forge authentic deeds violate the applicable legal provisions and are also personally responsible for these violations. The accountability of Notaries and PPAT who commit the crime of forging deeds can result in the imposition of sanctions, including:

1. Criminal sanctions;

Accountability of Notaries and PPAT who forge deeds is stipulated in Article 392, paragraph (1) of the Criminal Code, which regulates documents included in the object of forgery. These include authentic deeds, debt securities, shares, talons, letters of credit, certificates of land rights, and various other types of securities specified in laws and regulations. Notaries and PPAT who commit the crime of forging letters can be charged with imprisonment for a maximum of 8 (eight) years.

2. Civil sanctions; and

Civil sanctions against Notaries who do not fulfill their obligations according to the provisions of the Code of Ethics and the UUJN and cause losses to interested persons or parties can be sued civilly in accordance with the provisions of article 1365 of the Civil Code.

3. Administrative Sanksi

The provision of administrative sanctions against Notaries and PPAT who violate the provisions regarding the obligations and prohibitions of their positions can be subject to sanctions in the form of verbal warnings, written warnings, temporary dismissals, respectful dismissals, and disrespectful dismissals.

The act of the Notary in making the Deed of Power of Attorney to Sell and PPAT in the Deed of Sale and Purchase involving the forgery of the deed is unlawful. Article 1365 of the Civil Code defines illegal acts as prohibited acts that harm other parties and obliges the perpetrator to be responsible for the loss. Furthermore, Article 1366 of the Civil Code emphasizes that this liability not only includes losses caused by his actions, but also losses for his negligence and carelessness (Fithriah, 2021).

Based on the provisions of Article 1365 of the Civil Code, an act can be categorized as an unlawful act if it meets the following five elements:

a) Unlawful acts;

An unlawful act indicates the existence of a person's act or action that is contrary to the applicable law. For example, if the Notary and PPAT participate in forging authentic deeds, then it is an unlawful act.

b) Causing losses;

Unlawful acts, such as forgery of authentic deeds committed by authorized public officials, can result in losses for the victim, both material and immaterial. This loss is one of the conditions for using Article 1365 of the Civil Code in a lawsuit.

c) There is a causal relationship between unlawful acts and losses caused;

This element indicates the existence of a causal relationship. Namely, illegal acts committed by notaries and PPAT in forging authentic deeds directly result in material and immaterial losses.

d) There is an error.

In Civil Law, unlawful acts can be imposed if the perpetrator contains an element of error (*schuld*) in carrying out the act. Article 1365 of the Civil Code requires the existence of an element of "wrong" in an unlawful act, so it is necessary to know the category and breadth of the problem of the offense element. Actions considered by law contain elements of error, so that they can be held legally responsible if they meet the following elements:

- a. There is an element of intentionality, or
 - b. There is an element of negligence (*negligence, culpa*), and
 - c. There are no justifications or excuses (*rechtvaardigingsrond*), such as overmacht, self-defense, insaneness, etc (Tuelah, 2024).
- e) Violating legal obligations
- Notaries and PPAT must maintain the authenticity of a deed when carrying out their positions. Forging deeds committed by Notaries and PPAT is a violation of the authority mandated to them.

The elements of unlawful acts are cumulative, meaning the five elements mentioned above must be fulfilled simultaneously. If any of the required elements is not fulfilled, then the action cannot be classified as unlawful according to Article 1365 of the Civil Code. An unlawful action may take place if the action goes against relevant legal standards, violates the rights of others, breaches legal duties, or is in opposition to acceptable moral principles and social order. Moreover, an action deemed unlawful must be subject to legal responsibility, regardless of whether it includes a component of fault (Abdillah, 2020).

Notaries and PPAT, in carrying out their duties, are obliged to apply the principle of prudence. This principle refers to an attitude of vigilance that includes concern for oneself and others, considering the impact of any action taken, both now and in the future. In general, the principle of prudence can be interpreted as the basis of the truth that is the basis for thinking and acting with a cautious attitude (Usman, 2003).

The application of the principle of prudence in general, to protect Notaries and PPAT from mistakes in making authentic deeds, Notaries and PPAT must be guided by the following matters:

- A. Verify the faces that come to the audience, based on the identity shown
To carry out their duties to make legally binding authentic deeds, Notaries and PPAT must first carefully verify the identities of the parties before making authentic deeds, such as checking whether the ID card, driver's license, or passport is in accordance with the identity of the witnesses who make the authentic deed. This is done to prevent identity forgery of the authentic deed he made.
- B. Carefully identify the evidence in the letter regarding the will or desires of the parties
This is intended to examine the data of the subject of the witnesses to determine the authority of the witnesses to perform legal acts, so that they can meet the legal requirements of the authorized person to perform legal acts as stated in the deed. For example, whether the witnesses are 18 years old or married, based on Article 39 paragraph (1) letter a of the UUJN, or related to the Deed of Sale and Purchase, one of the faces has reached the age of 21 years and is of age. Meanwhile, part of the object data validation procedure is part of the process of reviewing the object documents provided by the witnesses, for example, verifying the land certificate to the authority of the National Land Agency whether the certificate is real or fake, and ensuring that the certificate is registered in the name of the witnesses (Sutedi, 2007).
- C. Providing legal counseling in making deeds in accordance with the will of the witnesses, and impartial;
As stated in Article 15, paragraph (2), letter e of the UUJN states that the Notary has the authority to provide legal counseling in connection with the making of authentic deeds.

Before making authentic deeds, notaries and PPAT also need to pay attention to the structure of the deed and arrange it according to its anatomy. The preparation of the substance of the deed contains, among other things:

- a. The position of the parties (Mulyoto, 2011);
 - b. Limitations (which are allowed or not allowed) according to the applicable law;
 - c. Things that are restricted in their implementation;
 - d. Choice of law and choice of court;
 - e. Dispute resolution clause, related to other deeds (if any).
- D. In making authentic deeds, Notaries are required to follow the provisions in the UUJN in a "*verlijden*" manner.

The word *verlijden* comes from a Dutch legal term meaning "based on rules". In this context, it is guided by the procedures regulated in detail in the UUJN. Some of these procedures include:

1. Notary Authority
Notaries can only make authentic deeds within the scope of their authority in accordance with Article 15 of the UUJN.
2. Identity Verification and Legality of the Parties
Under Article 16, paragraph (1), letter c of the UUJN, the Notary is obliged to ensure the suitability of the parties' identities. This is a form of applying the principle of prudence by the Notary to prevent misuse or falsification of documents.
3. Deed reading procedure
Article 16, paragraph (1), letter m of the UUJN requires the Notary to read the deed in front of the parties before signing the authentic deed.
4. Neutrality and impartiality
Article 16 paragraph (1) letter a of the UUJN, Notaries are obliged to act neutrally and impartially to maintain the integrity and professionalism of their positions.
5. Responsibilities in protocol storage
Article 16, paragraph (1), letter i of the UUJN, Notaries are obliged to keep documents and protocols in accordance with the provisions of the law.

Based on the application of the principle of prudence in general that has been described above, the responsibilities of the Notary in making the Deed of Power of Attorney to Sell and PPAT in the preparation of the Deed of Sale and Purchase based on the principle of prudence can be extracted in the form of the following table:

Table 1. The Principle of Prudence

Aspects	Notary	PPAT
Identity Verification of Presenters	Ensure that the person's identity (KTP, SIM, Passport) is valid and in accordance with the parties present to prevent identity forgery.	Ensuring the identity of the seller, buyer, or power of attorney is in accordance with official documents and that the power of attorney or landowner is still alive at the time of the deed.
Identify the Parties' Wishes	Examining documents that show the will or desires of the parties, ensuring that the person is an adult (18 years old or married) in accordance	Ensure that the seller, buyer, or authorized person is of the age (at least 21) and legally authorized to carry out the sale and purchase transaction.

Aspects	Notary	PPAT
	with Article 39 paragraph (1) letter a of the UUJN.	
Object Data Validation	Checking the authenticity of supporting documents for objects such as land certificates through the National Land Agency (BPN) and ensuring that the objects are in accordance with the parties' wishes.	Ensuring the authenticity of the land certificate through BPN to check that the land is not in dispute and that the certificate is registered in the name of a legal party.
Legal counseling	Providing legal counseling related to the making of deeds, such as ensuring that the structure of the deed is appropriate, the position of the parties, legal limitations, legal options, and dispute resolution clauses.	Provided legal counseling related to transactions, explained the rights and obligations of the parties, and ensured that transactions were carried out in accordance with legal provisions.
Procedure for Making an Authentic Deed	Follow the procedures in accordance with the UUJN, including reading the deed in front of the witness (Article 16 paragraph 1 letter m), identity verification (Article 16 paragraph 1 letter c), and acting neutrally (Article 16 paragraph 1 letter a).	Reading the Deed of Sale and Purchase in front of the parties ensures the validity of all supporting documents.
Neutrality and Impartiality	Act neutrally and impartially in the making of authentic deeds to maintain the integrity of the position.	Act neutrally and impartially, ensuring that all parties understand the content and legal consequences of the transaction.
Documentation and Archives of Deeds	Record and store the deed protocol in accordance with Article 16, paragraph (1), letter i of the UUJN, and maintain the security and validity of documents.	Keeping documents and archives related to the preparation of the Deed of Sale and Purchase, ensuring that the documents are safe and legally accountable.

Source: Law

The Position of the Falsified Power of Sale Act as the Basis for Making the Sale and Purchase Act

The Power of Attorney document may be utilized during the creation of the Sale and Purchase Deed if the seller is unable to attend the signing. Nevertheless, in reality, this document is frequently misused to create a Deed of Sale and Purchase unlawfully, typically by individuals or groups seeking to wrongfully seize control of land that belongs to others. As public officials, notaries possess the power to create official documents and perform additional tasks provided they are not operating under the specific authority of other public officials. Article 15 of the UUJN outlines the powers of a notary, which includes the ability to create official documents pertaining to all actions, agreements, and decisions mandated by laws and regulations. In performing their responsibilities, notaries must act with trustworthiness, honesty, diligence, independence, fairness, and the protection of all parties' interests as stated in Article 16 of the UUJN. Furthermore, a notary may simultaneously serve as a PPAT (Land Deed Making Officer). A PPAT is a public official with distinct powers related to land law, which includes the ability to create a Deed of Sale and Purchase (AJB). This document serves as formal proof of a transaction involving the sale and purchase or transfer of ownership rights pertaining to land, houses, and buildings (Pugung, 2021).

In practice, the creation of an AJB is preceded by an agreement known as a Sale and Purchase Agreement (hereinafter referred to as PPJB), which a Notary can make. The PPJB must clearly state that transferring rights will be carried out before the authorized PPAT. If the payment in PPJB has not been paid off, the transfer of land rights through AJB cannot be done. However, if the payment in the PPJB has been paid off but the seller is unable to sign the AJB, the seller can act on behalf of the buyer to sell the land to himself. As a result of this absence, it is necessary to make a Deed of Power of Attorney to Sell, which is a unification with PPJB. The granting of power, also known as *lastgeving*, is an agreement to give power of attorney to the recipient to receive it and the power of attorney conducts the affairs of the power of attorney. Provisions regarding granting power of attorney are regulated in Articles 1792 to 1819 of the Civil Code.

The power to sell is a special power used to transfer an object that can only be done by the owner. The purpose of the power of attorney to sell in PPJB is to provide guarantees or legal protection to the power of attorney, so that in the process of making AJB, the presence of the power of attorney as the seller is not required in front of PPAT. If, in the preparation of the Deed of Power of Attorney to Sell, it is proven to be forged, all legal acts based on the deed are considered to have never occurred. This refers to the principle that an invalid deed does not produce legal consequences. The transfer of land rights based on a fake Power of Attorney Deed must be returned to the actual owner, as stipulated in the Regulation of the Minister of ATR/BPN Number 21 of 2020 (Oktaviani, 2022).

Forgery of a Power of Attorney may include the use of false identification, unauthorized signatures, or the granting of power of attorney by a deceased party. This can result in the Deed of Power of Sale not having the legal force to be the basis for making a Deed of Sale and Purchase (AJB), so that the Deed of Sale and Purchase (AJB) made based on a forged Deed of Power of Sale can also be declared null and void. Forgery of the Power of Attorney to Sell endangers the document's validity and poses a legal risk to the Notary and PPAT. Notaries involved in the preparation of forged Power of Attorney Deed of Sale can be considered to have violated the professional code of ethics and the provisions of the Notary Position Law (UUJN), especially related to the responsibility to verify the validity of the documents used (Setiabudhi, 2024). Similarly, PPATs that use a fake Power of Attorney Deed as the basis for making a Sale and Purchase Deed (AJB) can be subject to criminal, civil, and administrative sanctions for violating the principle of prudence. In addition, the forgery of the Power of Attorney to Sell can cause material and immaterial

losses for the parties involved and give rise to legal disputes over land or property ownership.

To prevent the use of fraudulent Power of Attorney Deeds, Notaries and PPAT must adhere to the principle of caution in every step of creating official documents. This principle involves confirming the identity and validity of the documents presented by the parties, ensuring that the power of attorney is active and holds legal authority, and validating the authenticity of supporting documents, like land certificates, with the National Land Agency (BPN). Hence, applying the principle of caution is a crucial measure to safeguard all parties involved and ensure the integrity of a document. The presence of a counterfeit Deed of Power of Attorney poses a risk to the legitimacy of the Deed of Sale and Purchase (AJB) and has the potential to undermine public confidence in the role of the Notary and PPAT. These officials hold a position of trust as representatives of the state, responsible for creating documentation in the form of authentic deeds.

CONCLUSION

Based on the findings and discussion presented, it can be concluded that notaries and PPAT (Land Deed Officials) hold a crucial legal responsibility in maintaining the authenticity and integrity of the Power of Attorney to Sell and the Sale and Purchase Deed. The occurrence of forgery in such documents, whether involving false identities, unauthorized signatures, or power of attorney from deceased individuals, constitutes an unlawful act that fulfills all elements stipulated under Article 1365 of the Indonesian Civil Code. These violations undermine the legality of subsequent Sale and Purchase Deeds and expose the involved parties to material and immaterial losses and legal disputes. Notaries and PPATs, as public officials, must consistently apply the principle of prudence, act in good faith, and ensure rigorous document verification to prevent such abuses. Failure to do so may lead to criminal, civil, and administrative sanctions and erode public trust in the profession. For future research, it is recommended to explore preventive legal frameworks and propose systematic verification mechanisms or technological integrations (such as digital authentication) that can assist notaries and PPAT in verifying the validity of legal documents to prevent forgery and enhance legal certainty in property transactions.

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