

## THE LEGAL POSITION OF THE USE OF ABSOLUTE POWER OF ATTORNEY CLAUSE IN CONNECTION WITH THE TRANSFER OF LAND RIGHTS IN AGRARIAN LAW IN INDONESIA

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### Abstract

Section 1792 of the Civil Code regulates the grant of a power of attorney as a contract in which one person grants a power of attorney to another person who receives the power of attorney to handle matters on his or her behalf. Power of attorney can be general and specific, but in its development it is known to have unrestricted powers in the community, which is the same as the existence of legal acts in the form of transfer/relocation of land rights in Indonesian agrarian law, with the making and signing of a deed of power of attorney to sell before a Notary which seems to give position as a parent / main agreement or stand alone, absolute power of attorney, on the other hand, means granting a power of attorney containing elements that the grantor cannot revoke / cancel overriding Articles 1813 and 1814 of the Civil Code. In principle, not all power of sale deeds contains the authority of the recipient of the power of attorney to transfer/transfer land rights along with receiving payment/payment but can be limited only to signing deeds in order to transfer/transfer land rights. Thus, absolute power of attorney in a sale and purchase binding agreement or power of sale deed is legally valid, if the provisions of the absolute power of attorney are effective when the agreed principal/conditions have been fulfilled/executed, so that the power of attorney should not be canceled or revoked. With due regard to Government Regulation Number 34 Year 2016 on Income Tax on Income from Transfer of Rights on Land and/or Building and Sale and Purchase Agreement on Land and/or building and its Amendments.

**Keywords:** Absolute Power of Attorney, Sale and Purchase Agreement, Deed of Power of Attorney to Sell and Transfer of Land Rights.

### INTRODUCTION

In carrying out life, humans essentially need each other to fulfill their needs. Humans are coded as social beings who always need relationships and interactions between others. To fulfill human needs, a legal relationship will be formed and established between two or more legal subjects (*natuurlijke persoon* and/or *recht persoon*). In this legal relationship, rights and obligations will arise between the parties.<sup>1</sup> Thus, each of these legal subjects will be bound to each other to fulfill their rights and obligations in a legal relationship, as referred to in the provisions of Article 1233 of the Civil Code (hereinafter referred to as the Civil Code), it is stated that the birth of an obligation is due to 2 (two) things, namely because of an agreement and / or based on the law, and Article 1234 of the Civil Code states that the duty is for the purpose of giving, doing, or not doing something.

This can be frequently feared to have an influence a short time later on the work of the deed made as an bona fide deed in making legal certainty and legal security for the parties, so that the deed is expected to dodge clashes / wrangle about / legal issues inside the future.

An agreement always prioritizes the existence of an agreement, what is meant by this agreement is the conformity of will between two people where two wills meet each other and the will must be stated. The statement of will must be a statement that he wants a legal relationship to arise. The existence of the will alone thus does not give birth to an agreement because the will must be expressed, must be real to the other and must be understood by the other party.<sup>2</sup>

Agreements made by the parties based on the will of those who bind themselves based on Article 1338 of the Civil Code, known as the principle of freedom of contract (*Asas Pacta Sunt Servanda*), also pay attention to Article 1339 of the Civil Code. One of the agreements that is often found in practice is a sale and purchase binding agreement (hereinafter referred to as "PPJB"). The understanding of PPJB is a form of preliminary/principal agreement that has a reciprocal nature, namely one party will promise to deliver/sell/transfer an object (in this case the seller) and there is also another party who will promise to accept the delivery/transfer/purchase of the object (in this case the buyer).<sup>3</sup> Objects regulated in a PPJB, among others: immovable objects (land) and movable objects (shares, vehicles, etc.), but for this writing it is focused on PPJB related to land rights, although in practice it is also for objects of former western rights and former customary land.

It is necessary to equalize the thought that the PPJB is made and signed, because there are one reason or another for the conditions agreed by the parties have not been fulfilled, so that the sale and purchase deed (hereinafter referred to as "AJB") cannot be made and signed before the Land Deed Official (hereinafter referred to as "PPAT"), including payment procedures, the process of splitting the land title certificate has not been completed, taxes that have not been paid and validated, etc. AJB can be made and marked when the conditions of arrive deal and buy have been satisfied, to be specific clear and cash. Bright means that it is done openly, the object and subject of the owner are clear, the documents and supporting evidence of the subject and object of ownership are complete and the legal relationship between the subject and object is clear. Cash, means immediate and immediate payment wich is a common law representation as defined in Section 5 of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (hereinafter referred to as "UUPA") and as a manifestation of the legal requirements of an agreement as referred to in Article 1320 of the Civil Code.

The PPJB is made and signed as a main master agreement, in practice the derivative agreement (*accessoir*) is also made separately but as one unit with the PPJB, including the power of attorney in terms of management (*daden van beheeren*) known as the management power of attorney deed, and in terms of ownership (*daden van beschikking / daden van eigendom*) known as the power of sale deed. Granting a power of attorney in a document ensures that an authorized person can represent the principal in legal proceedings in connection with the grant of the power of attorney by the principal. The definition of control of lawyer beneath Segment 1792 of the Civil Code states that the give of control of lawyer could be a contract in which a individual gifts a control of lawyer to another individual who acknowledges the control of lawyer to handle things on his or her behalf. It becomes interesting when the absolute power of attorney clause is regulated in the PPJB deed or the power of sale deed, so that the question

arises as to how the legal protection of the buyer if the sale and purchase of land has been carried out in full but the AJB cannot be carried out before the authorized PPAT because the object of sale and purchase still has a settlement process such as splitting, merging, tax validation etc, or how is the legal protection of the buyer if the sale and purchase of land has been paid in full by the buyer to the seller, but, in doing so, the seller withdraws/cancels the authorization to sell to the Buyer within the meaning of Sections 1813 and 1814 of the Civil Code before the deed is registered/changed in the Land Registry. Legal status of marketing permits in relation to transfer/transfer of sales in Indonesia's agricultural law today.

## LITERATURE REVIEW

### **Legal Review on Power of Attorney, Absolute Power of Attorney in Deed of Attorney to Sell and Sale and Purchase Agreement**

#### **1. Legal Overview of Power of Attorney**

The power of attorney arrangements can be studied based on Chapter 16 (sixteen), Book III of the Civil Code, as stipulated in Articles 1792 to 1819 of the Civil Code. Section 1792 of the Civil Code refers to the grant of a power of attorney as a contract in which one person grants a power of attorney to another person who accepts the power of attorney to handle matters on his or her behalf, so that is a binding entity in the contract. Under Section 1792 of the Civil Code, there are two parties: the agent issuing the order, order, power of attorney or final order (authorization) and the recipient of the power of attorney or brief power of attorney. As a mandated/ordered/authorized party to do everything on behalf of the actual attorney, considering the acceptance aspects of authority and good faith.<sup>4</sup>

In this case, the power of attorney may be given and accepted by official document, signed letter/contract, or written or oral. Acceptance of a power of attorney may be implied and will only occur if the power of attorney is exercised by an authorized person. In granting the power of attorney, paying attention to the provisions of Article 1795 of the Civil Code, it is expressed that the allowing of control can be done particularly, to be specific with respect to as it were one or more particular interface or in common, specifically covering all the interface of the grantor. Furthermore, in the provisions of Article 1796 of the Civil Code, it is stated that:

"A power of attorney that is formulated in general words only covers acts of management. To transfer objects or to put a mortgage on them, or to make a peace, or any other act can only be done by an owner, an express grant of power of attorney is required."

Repudiation of a power of attorney may be surveyed beneath Article 1813 of the Civil Code. If the recipient revokes the power of attorney, it is provided that the grant of the power of attorney lapses either by termination of the power of attorney by the trustee, or by the death, guardianship, or bankruptcy of the grantor and marital partners. In the case of a woman who gives or receives a power of attorney and justifies Article 1814 of the Civil Code, she can revoke the power of attorney if she so desires and can compel the return of the power of attorney if there is a reason for it.

The indebted person has the freedoms alluded to in Article 1338 of the Respectful Code in conjunction with Article 1339 of the Gracious Code when concluding a contract, but must in any case fulfill the legitimate prerequisites of a contract beneath Article 1320 of the Gracious Code. The arrangements of Article 1320 of the Respectful Code have subjective and objective conditions. If the subjective requirement is violated, the contract is revoked (voided) and the offended party can apply to the judge to terminate the contract, but the contract stands to bind the parties pending the judge's decision remains on revocation. On the off chance that it abuses the objective prerequisites, the assentation is invalid and void, meaning that from the starting the assentation is considered never made and / or never existed, so it'll not tie the parties.<sup>5</sup>

## **2. Legal Review of Absolute Power of Attorney Arrangement in Power of Attorney Deed and Sale and Purchase Agreement.**

The Civil Code regulates general power of attorney and special power of attorney, but in the course of its development the absolute power of attorney in the community is known. The definition of outright control of lawyer is the allowing of a control of lawyer that contains components that cannot be repudiated / pulled back by the grantor by setting aside Articles 1813 and 1814 of the Civil Code.

Thus, it is vital to equalize the thought that supreme control of lawyer may be a control that cannot be revoked/revoked by the grantor and supreme control of lawyer isn't continuously indistinguishable to a deed of power of lawyer to offer which contains legitimate activities within the shape of lawful transfer/transfer related to arrive rights in agrarian law in Indonesia.

The legal relationship between the disallowance of the utilize of outright control of lawyer in a deed/power of lawyer to offer and agrarian law can at first be considered based on the Minister of Home Affairs Instruction Number 14 of 1982 concerning the Denial of Outright Power of Lawyer as a Exchange of Arrive Rights (hereinafter alluded to as "Serve of Domestic Issues Instruction Number 14 of 1982"), in the dictum of the second part, namely:

- a. The supreme control of lawyer alluded to within the first decree could be a control of lawyer that contains a component of irrevocability by the grantor.
- b. Outright control of lawyer which is basically an appointment of: arrive title is an unlimited control of lawyer authorizing the beneficiary to oversee and utilize the arrive and to require any legitimate activity allowed by law. To the recipient of the control of legal counselor to control and utilize the arrive as well as to perform all true blue exercises that concurring to the law can be performed by the correct holder.

Based on the announcement of the moment portion of Minister of Home Affairs Instruction No. 14 of 1982, it can essentially be learned that the outright control of lawyer in address is the allowing of a control of lawyer that cannot be pulled back by the grantor of the control of lawyer for any reason and in any lawful way, so that the beneficiary of the control of lawyer is given the largest conceivable specialist to physically control and carry out all actions/legal acts on the arrive in question. When considered based on the decree of the third portion of Serve of Domestic Undertakings Instruction No. 14 of 1982, it is additionally expressed that it forbids

agrarian authorities from serving the settlement of arrive rights status utilizing outright control of lawyer as a fabric to demonstrate the exchange of arrive rights. In its development, this Ministerial Instruction No. 14 of 1982 has been revoked, but the spirit of the regulation is embodied in Government Regulation No. 24 of 1997 on Land Registration (hereinafter referred to as "Government Regulation No. 24 of 1997"), as referred to in Article 39 paragraph (1) letter d, which states that.

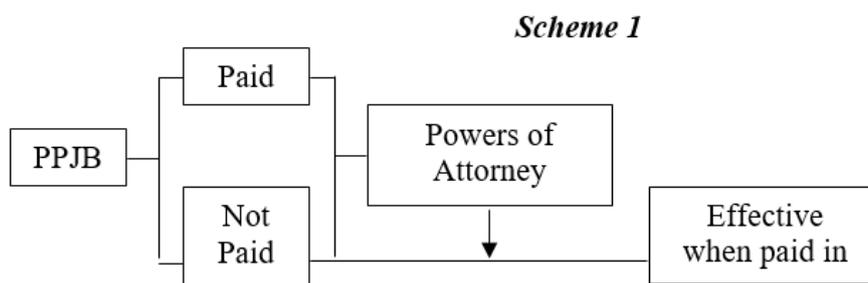
(1) PPAT refuses to make a deed, if:

d. One of the parties or the parties act on the basis of an absolute power of attorney which essentially contains a legal act of transfer of rights.

Based on the arrangements alluded to in the dictum of the moment and third parts of Minister of Home Affairs Instruction No. 14 of 1982, as well as Article 39 paragraph (1) letter d in Government Regulation No. 24 of 1997, there is a legal relationship that in principle, the prohibition of the use of absolute power of attorney in the transfer/transfer of land rights is imposed due to an attempt to circumvent the law, namely:

- a. To maintain a strategic distance from paying pay assess (PPh) on the exchange of arrive and building rights.
- b. To avoid paying taxes that do not match the agreed nominal or price.
- c. The landowner had borrowed money at a high interest rate, and because the debt could not be repaid on time, an absolute power of attorney was made;
- d. The supreme power of lawyer within the control of deal deed acts as if it may be a ace understanding or stands alone, so that the grantor has the specialist to transfer/transfer arrive rights juridically or physically, indeed to the point of accepting payment/payment.

The next question is what the legal relationship between the PPJB and the power of attorney deed is and when is the absolute power of attorney legally valid.



Based on scheme 1, it can be analyzed that

- a. PPJB can be made in an true shape made by or some time recently a Legal official concurring to the shape stipulated in as alluded to in Article 1 point 7 in conjunction with Article 38 of Law Number 2 of 2014 on the Alteration to Law Number 30 of 2004 on the Office of Legal official (hereinafter alluded to as "Law 2/2014"), or in an underhand frame.

When linked to Article 15 paragraph (2) letter f of Law 2/2014, it is stated that a Notary is authorized to make deeds related to land. PPJB can be divided into 2, namely:

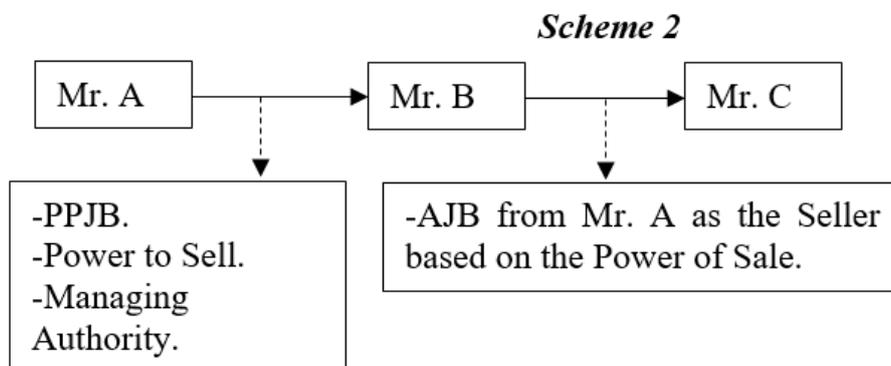
- 1) PPJB has not been paid in full, namely payments made in stages until the time limit agreed by the parties. This PPJB usually does not contain a power of sale clause and only regulates the conditions for the fulfillment of an obligation and the consequences if an obligation is not fulfilled by one of the parties, but if the PPJB has not been paid off, it should be stated that the power of sale clause will only become effective after the agreed conditions are fulfilled (payment has been paid).
  - 2) A PPJB in which the payment has been made in full, but it is not yet possible to make an AJB in front of an authorized PPAT, because there is still an unfinished process, for example: the certificate is still in the process of being split, the merger is still in process and various other reasons that cause the AJB cannot be made. Because in this PPJB the payment has been paid in full, a power of sale clause is stipulated, from the seller to the buyer. So, when all the prerequisites have been met, without the require for the dealer to be display, since he has been spoken to and has given the control of lawyer as expressed within the PPJB, with the wording of the control to offer to the buyer, the AJB can be made and marked to at that point handle the exchange of the certificate title.
- b. PPJB is additionally taken after by the making of a deed of control of lawyer to offer and a deed of control of lawyer for administration which is *accessoir*, so what should be caught on is that without the making of a deed of control of lawyer to offer and a deed of control of lawyer for administration, it'll not diminish the substance of the lawful actions carried out by the two parties, since essentially within the PPJB there's as of now a clause with respect to the giving of control of lawyer, so that the specialist that can be worked out by the beneficiary of the control of lawyer all alludes to the control of lawyer clause within the PPJB. Because of its *accessoir* nature, it means that the nature of the deed is only an addition, so it becomes inseparable from the main agreement. The power of sale in the PPJB must remain valid as long as the main agreement, namely the PPJB is valid and binding on the parties.
  - c. Outright power of lawyer in a PPJB is lawful in the event that the PPJB requires a control of deal, at that point the control of deal ought to not be canceled or pulled back. The absolute power of attorney granted is only effective with a note that the main points of agreement in the PPJB have been implemented and have been paid in full. Usually the restriction of the enforceability of outright power of lawyer in PPJB, deed of control of deal and deed of control of administration. Basically, this absolute power of attorney is only valid if it has been done with the PPJB in full.
  - d. The giving of power of attoenance may as it were be given by the vender to the buyer, so that the control of lawyer cannot be exchanged or substituted to parties who don't have an intrigued. Basically, the making of the PPJB of land / Power of Attorney to Sell / deed of power of attorney for management must also protect the interests of the buyer. If the power

of attorney is given to another party, it is possible for the seller to transfer the agreed object (already paid in full) to another party at the time of the execution of the AJB process.

It is of concern that the regulation of the granting of power of attorney clauses in the PPJB deed that has not been paid off and/or the Power of Attorney to Sell / power of attorney deed for management is not prohibited, but there are restrictions so that a power of attorney can be issued according to the purpose of the power of attorney, among others:

- a. Clauses that emphasize that the granting of power of attorney in the PPJB / deed of power of attorney to sell / deed of power of attorney for management is effective can be implemented after all obligations of the party promising to buy / accept the transfer have been fulfilled in full according to this agreement, as evidenced by proof of payment / receipt of payment from the party promising to sell. This needs to be done so that there is no wrong interpretation regarding the granting of the power of sale.
- b. The power of attorney is only granted by the seller to the buyer and may not be given or represented by a person in whom there is no conflict of interest. Basically, the making of the PPJB / Power of Attorney to Sell / power of attorney deed must also protect the interests of the buyer. If the power of attorney is given to another party, it is possible for the seller to transfer the agreed object (already paid in full) to another party at the time of the execution of the AJB process.

### 3. Legal Review of Transfer of Land Rights



Based on scheme 2 above, the author can analyze that:

- a. Since the entry into force of Decree No. 34 of 2016 on Income Tax on Income from Transfer of Rights to Land and/or Buildings and Agreement on Sale and Purchase of Land and Buildings and Amendments thereto (referred to as "PP 34/2016"). In the provisions of Article 1 paragraph (1) of GR 34/2016, it is stated that:
  - (1) On income received or accrued by an individual or entity from:
    - a. exchange of arrive and/or building rights; or
    - b. agreement for sale and purchase of land and/or building and its amendment shall be subject to final Income Tax.

This means that if one of the parties or the parties (Mr. B) acts based on a deed of power of attorney to sell which essentially contains a legal act of transfer of rights, then based on the provisions of Article 1 paragraph (1) of PP 34/2016 must be subject to income tax.

- b. Since the sanctioning of Law No. 1/2022 on Budgetary Relations Between the Central Government and Territorial Governments (hereinafter referred to as "Law 1/2022"), specifically regulated in Article 49 letter a, which states that the time when the Tax on Acquisition of Land and Building Rights becomes payable is determined on the date the PPJB for sale and purchase is made and signed. This means that even though AJB has not yet taken place, only with the making and signing of PPJB, there is an obligation from the buyer/rights recipient to pay BPHTB.

## RESEARCH METHOD

Research is the most important foundation for the development of science aimed at revealing the truth in a systematic, methodical and consistent way,<sup>6</sup> while legal research method is one of the ways in which scholars work, one of which is characterized by the use of methodology. A method is a well-thought-out and organized way to achieve a purpose (in science).<sup>7</sup> The science of *sui generis*, it means that legal science is also a certain science that has a distinctive, normative, and natural character. Natural and social research methods and procedures are basically inapplicable to research in the field of legal studies. Legal inquire about may be a investigating prepare legal rules, legitimate standards, and legitimate tenets to reply the legitimate questions at hand.<sup>8</sup>

The sort of inquire about is regulating statute, that is legitimate inquire about that considers law as a standardizing framework. The framework of guidelines in address concerns standards, guidelines, rules of law, and convention (teaching).<sup>9</sup>

The subject of normative law research is law, and law is conceptualized as norms or rules. Norms that are subject to investigation include laws, government regulations, etc.<sup>10</sup>

The strategy of inquire about in law is to utilize a normative lawful approach, counting an audit and different analyzes of legitimate issues related to legitimate materials and analyzed issues. The purpose of this research is to solve the problems that have arisen. It can be used to solve various problems in the field.

Philosophy, comparison, structure and composition, coherence, general description and description of each article, form and binding force of law, and language used are legal terms. The study uses law as a framework and links to other supporting material.

The approaches utilized in this ponder incorporate legitimate approaches conducted through the investigation of laws and controls important to the lawful issues examined. A legitimate approach offers analysts the opportunity to consider the clauses and correspondences between one statute and another within the setting of clarifying and examining different standards and/or standards. A conceptual approach implies that the approach starts with suppositions and speculations in lawful inquire about, and with the improvement of lawful directions and

speculations in law. These suppositions and lessons will discover thoughts that lead to lawful understandings, lawful concepts, and lawful standards related to the lawful issues found in this consider.

The case approach in regulating legitimate inquire about points to think about lawful standards or rules in lawful hone. This can be drained arrange to know the genuine circumstances or conditions that happen at this time to bolster the destinations anticipated in this composing.

A historical approach to normative law research aims to gain a deeper understanding of the changes and developments in the legal philosophy of legal norms and examine the background of each legal issue.

The inquire about sources come from basic legal materials and assistant legal materials, particularly by looking at fundamental, assistant and tertiary true blue materials. The collection of legal materials is carried out by infers of composing considers, particularly collecting by exploring library materials and after that the materials are analyzed with a genuine theory approach.

## CONCLUSION

Based on the explanation and description that has been explained above, it can be analyzed that:

1. Absolute power of attorney is not identical with the power to sell, while the definition of absolute power of attorney is the granting of a power of attorney that contains elements that cannot be revoked/revoked by the grantor by overriding Articles 1813 and 1814 of the Civil Code, while the power to sell deed contains legal actions in the form of legal transfer/transfer related to land rights in agrarian law in Indonesia.
2. The absolute power of attorney that is prohibited is based on Minister of Home Affairs Instruction Number 14 of 1982 in *conjunction with* Government Regulation Number 24 of 1997, power of attorney in the context of transferring/transferring land rights, so that there is an attempt at legal smuggling, namely:
  - a. To avoid paying taxes that do not match the agreed nominal or price.
  - b. The landowner had already borrowed money at a high interest rate, and because the debt could not be repaid on time, an absolute power of attorney was made.
  - c. The absolute power of attorney in the power of sale deed is treated as if it is a master agreement or stands alone, so that the grantor has the authority to transfer/transfer land rights juridically or physically, even to the point of receiving payment/payment, so that it is misused for other purposes, not for the completion of the process/transfer of transfer of land rights in a civil manner followed up with registration/recording of land administration at the land office/National Land Agency.

3. Absolute power of attorney set forth in an authentic letter/deed is a form of engagement/agreement in an agreement, so a prohibited absolute power of attorney will violate the objective requirements of an agreement based on Article 1320 of the Civil Code, namely a lawful cause. This is due to the prohibition of making absolute power of attorney, therefore because it has violated the objective requirements of an agreement, the absolute power of attorney that stands alone is null and void and the agreement is deemed never made or never existed.
4. The absolute power of attorney clause in the PPJB Deed is valid, when such absolute power of attorney does not stand alone but has a main agreement which is a unity and cannot be separated. In the case of making a PPJB Deed, the absolute power of attorney is only valid or can be exercised when a full payment (clear and cash) has been made for the land object. By completing the payment transaction, the object is basically already owned by the buyer, but the process of transferring land rights must still be completed legally and legally after signing the AJB if the conditions for making the AJB have been fulfilled.
5. Based on PP 34/2016, the power of deal deed must be subject to pay assess in association with the transfer/transfer of arrive rights, as well as after the sanctioning of Law 1/2022, then with the making and signing of PPJB BPHTB at that time also becomes payable.

## **SUGGESTION**

1. If the conditions of an agreement have not or are not fulfilled, the Notary and PPAT must expressly reject the absolute power of attorney to be used as the basis for making a deed. This is often dreaded to have an affect afterward on the work of the deed made as an bona fide deed in making lawful certainty and lawful security for the parties, so that the deed is anticipated to avoid conflicts / debate / lawful issues within the future.
2. The proper utilize of outright control of lawyer in hone is really exceptionally supportive and encourages the parties in completing the stages of the method of transferring/transferring arrive rights. In the event that utilized accurately and completely caught on from the utilize of outright control of lawyer that's not disallowed by laws and directions, it will be very effective in current practice. It is also expected that the use of the PPJB Deed and the power of sale deed can significantly help the parties.
3. Legal officials and PPATs as open authorities authorized to create an bona fide deed have an critical part moreover within the prepare of making deeds with respect to the exchange / exchange of arrive rights or previous western rights and previous standard arrive. Notaries and PPATs must use the precautionary principle in making a deed. This is because the products they make have legal force, so that if in the future the deed arises a problem, the Notary and PPAT will be the party that will be held accountable for the deed. Notaries and PPATs must also provide education and correct understanding of the use of absolute power of attorney that is justified by laws and regulations so that the agreement made between the parties will not cause losses in the future.

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