

## Deed of Sale and Purchase in Prudential Principle Application Based on an Absolute Power of Attorney (Study Decision Number: 2255 K/Pdt/2014)

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### Abstract

The displacement of land rights through sale and purchase is required to be carried out before the PPAT either directly by the parties or by the attorney given power, the party which has been given the power of attorney by the land owner (seller) or by the buyer with a power of attorney to sell, made before a Notary, however, power of attorney for selling can be the basis for buying and selling land as stated in the Instruction of the Minister of Home Affairs Number 14 of 1982 concerning the Prohibition of Absolute Power of Attorney as a Transfer of Land Rights issued on March 6 1982, to that, a Notary /PPAT must take an attentive action in the land sales process, despite the fact that the Notary/PPAT does not fully implement the principle of prudence, in addition, the legal validity of the Deed made is questionable. The formulation in this research is: (1) What is the validity of the use of an absolute power of attorney made by a notary in making a land sale and purchase deed? (2) How is the Precautionary Principle applied to the Preparation of Sale-Purchase Deeds by PPAT? This research was conducted using a normative juridical method with a statutory approach and a conceptual approach. The research specification used is an analytical perspective, such as describing and analyzing facts through a statutory approach. The source of legal materials use library research data techniques based on research results. Notaries/PPATs in carrying out their duties and authority must always use the principle of prudence and either PPAT in making authentic deeds should be based on absolute power of attorney and the validity of the power of attorney, in which PPAT should have rejected from the start because absolute power of attorney is prohibited in the land buying and selling process.

**Keywords:** Precautionary principle; Notary/PPAT ; Absolute power of attorney

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### Introduction

Land is one of the main features for human life, land is interpreted to housing, food and other things that support human life. Therefore, as an Indonesian form of implementation, land is regulated by the state, this is contained in a regulation, Law Number 5 of 1960 concerning Basic Agrarian Principles Regulations (hereinafter referred to as UUPA) to regulate all related matters such as earth, water and space. This law is vitally important for the government to avoid problems occurring in society regarding land. In implementing this regulation, the state has an extension, the Registrar in the land sector or also known as a cadastre, they are an official who has the authority to establish authentic deeds regarding land.

The Land Deed Officer, hereinafter referred to as PPAT, is an official agency which has the authority to establish authentic deeds in legal acts related to land, as explained in Article 1 paragraph (1) of Government Regulation no. 37 of 1998 concerning Position Regulations for Land Deed Making Officials (hereinafter referred to as PP No. 37 of 1998), such as "Land Deed Making Officials, hereinafter referred to as PPAT, are public officials given the authority to establish authentic deeds regarding certain legal acts regarding land rights or Ownership Rights over Flat Units", in the next article, this will explain the Main Duties of PPAT, shorten in Article 2 paragraph (1) PP No. 37 of 1998, that "PPAT has the mandatory work to perform some of the land registration activities by making deeds as

proof with certain legal acts that have been carried out regarding land rights or ownership over apartment units, which will be used as the basis for registering changes to land registration data resulting from the action of that law."

Legal acts as explained in Article 2 paragraph (2), is the Legal acts as intended in paragraph (1) as follows:

- a. Buying and selling
- b. Exchanging
- c. granting
- d. incoming to the company (inbreng);
- e. sharing of joint rights;
- f. granting Building Use Rights/Use Rights over Freehold Land;
- g. granting Mortgage Rights;
- h. granting of Power of Attorney imposes Mortgage Rights."

Meanwhile, PPAT's authority explained in Article 3 paragraph (1) PP No. 37 of 1998, "To carry out the main tasks as intended in Article 2, a PPAT has the authority to establish authentic deeds regarding all legal acts as intended in Article 2 paragraph (2) regarding land rights and ownership rights to apartment units located within work area."

The implementation of land control, ownership and the use of regulations needs to be more directed to ensure orderliness in the field of land law, land administration, land use or maintenance and the environment, furthermore, there is legal certainty in the land sector. (Harsono, 2008) Every community has rights in land as regulated in the Article on Transfer of land rights, one of which is by Sale and Purchase, the process of transferring land rights is often referred to as "ownership displacement". ". Buying and selling is one way of acquiring rights or transferring rights, which is a legal act with the aim of removing rights. (Salindeho, 1987) A buying and selling transaction is a legal act in which there is an agreement between the parties who bind themselves to each other as explained in Article 1457 of the Civil Code, "Sales and Purchases agreement by which one party binds himself to hand over an item, and the other party in charge to pay the agreed price." In the sale and purchase of land, there is a delivery (lavering), which according to customary law, is the legal act of handing over land in perpetuity with the seller receiving payment of a certain amount of money, that is the purchase price. (Soepomo, 1982)

The land sale and purchase process between the parties is mediated by a Land Deed Making Officer (PPAT) who authorizes to establish an authentic deed regarding the legal action in question. The deed becomes strong evidence if a dispute occurs between the parties. The deed made by the PPAT is an authentic deed, that is, a deed with a perfect power as evidence explained in Article 1 paragraph (4) PP Number 37 of 1998, "a PPAT Deed is a deed made by the PPAT as proof of the implementation of certain legal acts regarding land rights or Ownership Rights to Flat Units" and in Article 45 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration explains that:

"PPAT Deed is an instrument to prove that a legal act has been declared. Therefore, if the legal action is annulled, the relevant PPAT deed no longer functions as evidence of the legal action. Meanwhile, if a legal action is canceled by the parties concerned, even though the legal action has been registered at the Land Office, then the registration cannot be postponed. "Changes to land registration data according to the cancellation of the legal act must be based on other evidence, for example a court decision or PPAT deed regarding the new legal act."

From this explanation, PPAT has a mandate to manage some land registration activities by making deeds as proof regarding certain legal acts which have been performed due to land rights or ownership rights to apartment units which will be used as the basis for registering changes to land registration data resulting from that legal act. (Santoso, 2016) The handover of land rights through sale and purchase conducted before the Land Deed Making Officer (PPAT), either directly by the parties or those given power of attorney, which is the party given power of attorney by the Land Owner (seller) or by the buyer. By giving a power of attorney, the meaning of the letter itself in the Big Indonesian Dictionary (KBBI) is defined as a paper written on various contents and purposes, (Ningsih, 2012) while regarding the granting power, a legal act in which a person gives power to another person to carry out certain actions, as explained in Article 1792 of the Civil Code, "Giving power of attorney is an agreement by which a person gives power to another person to carry out an affair on behalf of his name.

A Power of Attorney is not only intended for court proceedings to authorize an advocate/attorney, but is often used in everyday life with a simple process aimed at making all matters easier. Power of attorney is an authority that conducts legal action in the interests and on behalf of the person giving the power of attorney in the form of unilateral legal action, which means that the obligation to carry out a performance is only on one party, the party receiving the power of attorney. (Budiono, 2016) When granting a power of attorney is made in writing under the hand or made by an authorized official, it is also called a Notarial Power of Attorney Deed, where this power of attorney is made before a Notary. Even though the legal act of buying and selling land is completely carried out by a PPAT, the Notary also has authority regarding the land sector as explained in Article 15 Paragraph (2) letter f of Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 regarding the position of Notary (hereinafter referred to as UUJN), "making deeds relating to land". A notary is a public official who has the authority to establish an authentic Deed, one of which is making a Deed of Power of Attorney to Sell in the sale and purchase of land. The purpose of this power is that the PPAT is able to process the Deed without the Seller presence since the seller has given the power of attorney to sell to the recipient acted in carrying out the legal act.

In connection with his authority, the Notary is burdened with responsibility for his actions in making an authentic deed, Notary has full responsibility for his actions when making the deed of sale as explained in Article 65 UUJN,: "Notaries, Substitute Notaries and Temporary Notary Officials are responsible for every Deed made even though the Notarial Protocol has been submitted or transferred to the Notarial Protocol custodian." An authentic deed is perfect evidence which can be justified by the contents of each article contained in the Deed. Apart from the PPAT Notary also having full responsibility making the Deed, one of which is making the Land Sale and Purchase Deed which often occurs in violation of good rules. from the parties or from the PPAT itself, therefore a Notary/PPAT must be careful in carrying out his duties as an Authentic Deed maker by applying the precautionary principle.

The principle of prudence means applying a vigilant attitude both to oneself and to others attentively to the consequences of every action taken, both now and in the future. (Smith, 1976) The principle of prudence is an important principle and must be implemented by Notaries/PPATs, in UUJN there is no clear mention of the principle of

prudence as in Article 16 paragraph (1) letter d UUJN states "In carrying out his office, Notaries are obliged to provide services in accordance with the provisions of this law, unless there is a reason to refuse it." The article does not provide in detail how a Notary must implement the precautionary principle, however G.H.S Lumban Tobing provides a valid reason for a Notary to refuse or provide assistance: (Tobing, 1980)

1. The notary is absence due to unhealthy condition and unable to manage his duties

2. The identity of the people present is doubtful because there are no identity cards or identifying witnesses
3. The applicants do not clearly explain the purpose of making the deed to the Notary
4. There are elements conflicting with statutory regulations
5. If the Notary makes the Deed, it will violate or conflict with the provisions of Articles 52 and 53 UUJN.

Meanwhile, the PPAT precautionary principle is only explained in Article 22 PP Number 37 of 1998 which states that the PPAT Deed must be read/explained to the parties in the presence of at least 2 (two) witnesses before being signed immediately by the parties, witnesses and PPAT. The provisions of this article are outlined in Perkaban No. 1 of 2016 which is the implementing regulation, one form of elaboration of Article 22 of PP No. 37 of 1998 is contained in Article 53 and Article 54 of the Regulation of the Head of the National Land Agency (Perkaban) No. 1 of 2016. (Utomo, 2017)

Based on this description, the author will analyze the Cibinong District Court Decision No. 104/Pdt.G/2012/PN.Cbn, Decision no. 438/Pdt/2013/PT.Bdg and Decision No. 2255K/Pdt/2014 which outlines the position of the case as follows: The plaintiff (NPK) is the legal owner of a plot of land located in Pendasari Village, Ciawi District, Bogor Regency, West Java Province covering an area of 1,740 M<sup>2</sup> with Certificate of Ownership No. 477/Pandasari, Pandasari Village, registered on behalf of Ni Putu Kertiari/Plaintiff. The Plaintiff asked Defendant I (S) to offer the land to another person for sale in written form, furthermore, a Deed of Power of Attorney to sell on 1 April 2010 Number 01 was drawn up by the Plaintiff (NPK) with Defendant I (S) before a Notary Martinef, SH, MS.i (Co-Defendant I) in Bekasi. Based on the Power of Attorney made before a Notary, Defendant I sold the land to Defendant II (RL). On 29 July 2011 a Deed of Sale and Purchase Number: 1766/2011 was executed by Defendant I (S) and Defendant II (RL) before a Notary /PPAT Miranti Tresnaning Timur, SH (Co-Defendant III) in Bogor Regency.

However, the Plaintiff felt unfairly disadvantaged by the actions of Defendant I and Defendant II because the Plaintiff did not on purpose to had given a Notarial Power of Attorney to Sell to Defendant I and did not sign the Power of Attorney to Sell, in fact the Plaintiff did not know that there had been a sale and purchase carried out by Defendant I and Defendant II, where the Original Certificate was not attached to the Land sold rather than a photocopy of it because the Original Land Certificate was in the control of the Plaintiff. Due to these actions, the Plaintiff filed a lawsuit to the Court, in the Decision of the Court of First Instance, Appeal and Cassation stated that the actions of Defendant I and Defendant II were unlawful (onrechtmatige daad), also stating that the Deed of Sale and Purchase between Defendant I and Defendant II on July 29 2011 Number 1766/2011 made in the presence of Co-Defendant III was declared null and void and Power of Attorney to Sell Number 01, dated 2010 made by Co-Defendant II was declared null and void because the Power of Attorney was included in the Absolute Power of Attorney.

### **Problem Formulation**

The problems taken in this research are:

1. What is the legality of using an absolute power of attorney made by a notary when making a land sale and purchase deed?
2. How is the Precautionary Principle applied to the Preparation of Sale-Purchase Deeds by PPAT?

### **Research Method**

This research was performed using a normative juridical approach to legislation (statute approach), a legal research using library data collection methods carried out by examining library materials or using secondary sources. The research specification used is an analytical perspective, which describes and analyzes facts through a statutory approach.

Sources and types of data use secondary data, data obtained indirectly through collecting other sources, namely books, books and other documents.

## Discussion

### 1. The Validity Use of an Absolute Power of Attorney made by a Notary in Making a Land Sale and Purchase Deed

A notary is a public official having the authority to establish an authentic deed, a deed that has perfect evidentiary power, as explained in Article 1868 of the Civil Code, "An authentic deed is a deed made in a form determined by law by or before an official authorized to do so in the place where the deed was made". One of the authorized officials is a Notary. The authority of a Notary to establish Authentic Deeds is settled in Article 1 paragraph 1 UUJN: "A Notary is a public official having the authority to establish authentic deeds and other authorities as intended in this law." The authority of the Notary referred to in this article is explained in Article 15 paragraph (1) UUJN, as follows:

"Notaries have the authority to establish authentic deeds regarding all deeds, agreements and provisions that are required by statutory regulations and/or that are desired by interested parties to be stated in authentic deeds, guarantee the certainty of the date for the deed, store the deed, provide grosses, copies and quotations, deeds, all of this as long as the deeds is not also assigned or excluded to other officials or other people as determined by law."

Apart from that, Notaries also have the authority to establish deeds relating to land as explained in Article 15 paragraph (2) letter f, which states that "Making deeds relating to land". Based on this explanation, the Notary has the authority to establish a Deed which contains an agreement between the parties or which contains the wishes of the parties, Deeds made by the Notary represent the Deed of Power of Attorney to Sell. A buying and selling transaction is a legal act in which there is an agreement between the parties binding themselves, Article 1457 of the Civil Code explains the definition of buying and selling: "Buying and selling is an agreement by which one party binds himself to hand over an item, and the other party to pay the agreed price." (Khairandy, 2016) in the book *Sale and Purchase Agreement* explains about buying and selling, namely "Agreement or agreement that binds the seller and the buyer, in which the seller binds himself to hand over an item that has been mutually agreed upon, and the buyer binds himself to establish payment of the price that has been agreed upon. agreed together. (Khairandy, 2016)

Every community has rights in land as regulated in Article 2 PP No. 37 of 1998, one of which is related to the sale and purchase of land, the process of transferring land rights, where this process is related to "displacing the name" of the property rights, in the sale and purchase of land which is a handover (laving), which according to customary law is called a legal act, delivery of land in perpetuity with the seller receiving payment of a certain amount of money, the gift price. The transfer of land rights through sale and purchase must conducted before the PPAT, either directly by the parties or by mandating to another person.

According to article 1792 of the Civil Code, the granting of power of attorney is an agreement between the person giving power of attorney who gives authority to another person, on his or her behalf, to carry out certain legal acts. There are 2 (two) types of power of attorney, they are:

#### 1) Special Powers

The granting of Special Power of Attorney is explained in Article 1795 of the Civil Code regarding one or more specific interests, or in general, covering all interests of the

person giving the power of attorney;

2) General Power

Article 1796 of the Civil Code explains that the granting powers formulated in general only covers actions involving management to transfer goods or place a mortgage on them, to establish a peace, or carry out other actions can only be carried out by an owner, where a power of attorney is required.

Apart from special powers and general powers, there are also other powers known as absolute powers. Regarding absolute power, it is not explained in the Civil Code, however it is explained in the Instruction of the Minister of Home Affairs Number 14 of 1982 (Instruction of the Minister of Home Affairs No. 14 of 1982) concerning the Prohibition of Absolute Power of Attorney as a Transfer of Land Rights which was issued on March 6 1982, an absolute power of attorney is a power that contains elements that the power given cannot be withdrawn by the power of attorney.

The absolute power clause is not based on law rather than is based on the principle of freedom of contract, however, there are limitations in making such agreements, the rules that limit the making of such agreements are contained in Article 1320 j.o Article 1337 j.o Article 1338 paragraph (3) j.o Article 1339 of the Civil Code.(Marhainis, 1982) These restrictions are:

- 1) Article 1320 is a condition for the validity of an agreement, it is an absolute condition fulfilled in its entirety in an agreement because if one of the conditions is not fulfilled, it will cause defects in the agreement.(Muljadi, 2014)
- 2) In paragraph (4) of Article 1320 of the Civil Code in conjunction with Article 1337 concerning causes that are prohibited by law or contrary to morality and public interests, if the elements of the objective point requirements contained in paragraph (3) and paragraph (4) of Article 1320 are not fulfilled Civil Code, this will be resulted in the agreement to be null and void, which means the process of an agreement is considered to have never been made or never exist. (Salim, 2017)
- 3) Article 1338 paragraph (3), agreements are made in good faith
- 4) Article 1339 explains propriety, customs or laws

The reason for the prohibition on the use of absolute power is due to the creation of absolute power of attorney misused in carrying out hidden buying and selling of land. The prohibition regarding absolute power is also explained in Article 39 Paragraph (1) letter d PP No. 24 of 1997 which states: "PPAT refuses to establish a deed if one of the parties or parties acts on the basis of an absolute power of attorney which essentially contains a legal act of transferring rights." In the explanatory section of the article, it is explained that what is meant by an absolute power of attorney is the granting of power cannot be withdrawn by the party giving the power, so that in essence, it is a legal act of transferring rights. Meanwhile, if it is related to Article 1813 of the Civil Code regarding the end of the grant of power of attorney:

- 1) By withdrawing the power of attorney, the recipient of the power of attorney;
- 2) With notification of termination of power of attorney by the recipient power of attorney;
- 3) With the death, pardon or bankruptcy of the person giving the power of attorney or the recipient power of attorney.

If the elements contained in Article 1813 of the Civil Code are fulfilled, the power of attorney agreement made will no longer have legal force, especially if the power of attorney agreement is included in a clause of a main agreement, one of which is the Sale and Purchase agreement. If the main agreement is invalid or null and void, then the power of attorney clause becoming no legal force and vice versa, if the main agreement is valid then the power of attorney clause obtained the legal force provided that the power of

attorney clause does not conflict with applicable laws and regulations. If the granting of power is contrary to statutory regulations then the main agreement remains valid, except that the power of attorney clause has no legal force. (Sinelele, 2020)

Minister of Home Affairs Instruction No. 14 of 1982 has now been revoked and is no longer valid since the issuance of Regulation of the Head of the Land Agency of the Republic of Indonesia Number 10 of 2014 concerning the Revocation of Legislative Regulations Regarding Land which was promulgated on 28 August 2014 and came into force on 23 September 2014. Regarding the provisions of the Instruction Minister of Home Affairs No. 14 of 1982 is still used as a reference due to the prohibition on the use of absolute power as regulated in Article 39 Paragraph (1) letter d PP No. 14 of 1982, namely an absolute power of attorney which essentially contains the legal act of transferring rights.

The rules regarding absolute power are not only found in Minister of Home Affairs No. 14 of 1982 and PP no. 24 of 1997, but absolute power also can be found in the Supreme Court Jurisprudence, the Decision of the Supreme Court of the Republic of Indonesia Number: 3176 K/Pdt/1988 dated 19 April 1990, which has a legal rule which states that: "The government, for the reason of avoiding negative consequences, has issued regulations containing prohibitions on making or ratifying absolute power of attorney deeds as outlined in Minister of Home Affairs Instruction no. 14 of 1982 dated 6 March 1982 and Letter from the Director General of Agrarian Affairs on behalf of the Minister of Home Affairs of the Republic of Indonesia Number 594/493/AGR dated 31 March 1982 essentially prohibits ratification of absolute power of attorney deeds concerning land." The use of absolute power is excluded or does not include absolute power as prohibited in the Minister of Home Affairs Instruction No. 14 of 1982, regarding PPBJ where the deed is made by a notary, to install mortgages where the deed is made by a notary and other uses of absolute power which are not intended as a transfer of land rights. (Vania, 2018)

In practice, a Notary can make a Deed of an Absolute Power of Attorney for the benefit of the seller and buyer from unwanted actions or deeds, but a Notary cannot make a Deed of Absolute Power of Attorney to sell land objects or make an Absolute Power of Attorney on the basis of buying and selling land because the Absolute Power of Attorney is based on these provisions, prohibited in the use of land buying and selling, according to Radbruch as quoted by Theo Huijbers. The theory of legal certainty is: "The relationship between justice and legal certainty needs to be taken into account, legal certainty must be maintained for the sake of security in the country, so positive law must always be obeyed, as well as if the content is unfair, or also less in accordance with legal objectives. "When the conflict between the content of the legal system and justice becomes remarkable that the legal system appears to be unjust, at that time the legal system may be abandoned." (Huijbers, 1982) Therefore, the legal validity of making a Deed of Sale and Purchase made by PPAT based on Absolute Power of Attorney does not have legal validity due to the rules governing absolute power which is prohibited in the sale and purchase transfer process as explained in Article 39 Paragraph (1) letter d PP No. 24 of 1997 which states: "PPAT refuses to establish a deed if one of the parties or parties acts on the basis of an absolute power of attorney which essentially contains a legal act of transferring rights." So, the Notary must also be responsible for the deed he made because the Notary has violated statutory regulations and did not carry out his duties and authority in accordance with the UUJN.

Notarial Deeds are made based on statutory regulations and if these regulations are violated then the deed made by the Notary can be declared null and void by law, this is as

explained in Article 1320 of the Civil Code:

1. The agreement binding them;
2. The ability to establish an agreement;
3. A particular subject matter;
4. Fined - allowed reasons.

The legal conditions of the agreement are divided into 2 (two) aspects, they are Subjective Conditions and Objective Conditions, that is, if the subjective conditions are not fulfilled, the agreement can be postponed and the agreement is still considered existed, whereas if the objective conditions are not fulfilled, the legal agreement is null and void. and it is, on the other word, the agreement was not made or is not considered exist. In making the Deed of Absolute Power of Attorney, the elements of the conditions for the validity of the agreement were not fulfilled, in the Civil Case Decision Number: 2255 K/Pdt/2014 the Plaintiff did not give the power of attorney to sell notarially and did not sign the deed of power of attorney to sell, which was made before a Notary Public, then point 1 and 3, "The agreement of those who bind themselves" and "A certain subject matter" in article 1320 of the Civil Code is not fulfilled because the Plaintiff does not come or appear before the Notary and the object to be bought and sold is in the name of the Plaintiff, so the third element cannot be fulfilled , apart from that, in the case of making a power of attorney to sell, it is included in the category of absolute power of attorney which is prohibited in transferring land rights, as a result , the element of the legal requirements for the agreement, at point 4, "fine-allowed causes" is not fulfilled because it violates statutory regulations.

Based on the explanation related to the conditions for the validity of the agreement, it can be concluded that the Absolute Power of Attorney is declared null and void, because the power of attorney as the basis for the sale and purchase of land is null and void, the Land Sale and Purchase Deed based on the Absolute Power of Attorney cannot be made, which should be made by a PPAT from the start, must reject the making of the deed, and if the land sale and purchase deed based on an absolute power of attorney has been made, then it is null and void and deemed to have never existed. In the sale and purchase of land, it is prohibited to use absolute power of attorney because the regulations governing it prohibits the use of absolute power of attorney, but in reality, many people still use absolute power of attorney to sell. PPAT should be more careful and cautious in making Land Sale and Purchase Deeds by using a Power of Attorney because the power of attorney may include an absolute power of attorney, in this case, the absolute power of attorney is considered invalid and prohibited, so any legal action that uses a absolute power of attorney and included in the prohibited category, the legal act has no legal validity and therefore is null and void.

Prohibition in Minister of Home Affairs Instruction No. 14 of 1982 dated March 6 1982, this is because of an absolute powers of attorney are often used unfairly by parties carrying out hidden land sales and purchases, the contents of the absolute power of attorney clause always include the phrase "irrevocable power", when making a power of attorney, an agreement is required. Basically, if this additional agreement is not justified then the main agreement can still be run, but in this case there is an element of unlawful action where the seller sells the land object without the permission of the land owner, which he felt to never have a power of attorney, then the PPAT should refuse because it is not fulfilled. The element in the sale and purchase of land is that the original certificate is not attached and the power of attorney to sell turns out to be in the category of absolute power of attorney. Therefore, the validity of the legal action was not justified and the court considered that the Absolute Power of Attorney and Deed of Sale and Purchase were null and void.



## **2. Application of the Prudential Principle to the Preparation of Sale-Purchase**

### **Deeds by PPAT**

The PPAT precautionary principle is only explained in Article 22 PP Number 37 of 1998 stating that the PPAT Deed must be read/explained to the parties in the presence of at least 2 (two) witnesses before being signed immediately by the parties, witnesses and PPAT. The provisions of this article are outlined in Perkaban no. 1 of 2016 which implement regulation, one form of elaboration of Article 22 of PP No. 37 of 1998 is contained in Article 53 and Article 54 of the Regulation of the Head of the National Land Agency (Perkaban) No. 1 of 2016. (Utomo, 2017)

In Article 53 paragraph (3) and paragraph (4) of Perkaban No. 1 of 2016, PPAT establishes the deed accompanied by 2 witnesses who have fulfilled the requirements in accordance with statutory regulations, these witnesses testify: a) identity and facing capacity; b) the presence of the parties or their proxies; c) the correctness of the physical data and juridical data of the object of legal action prior to be registered; d) existence of documents shown in making the deed; e) the legal action has been implemented by the parties concerned. The application of the Precautionary Principle is reflected in Article 54 paragraph (1) of Perkaban no. 1 of 2016 which states that before making a deed, it is mandatory to check the suitability/validity of certificates and other records at the local Land Office by explaining its aims and objectives. This provision was created to provide legal certainty and protection for the parties regarding the object to be transacted, especially regarding the authenticity of proof of ownership of land rights. In general, the precautionary principle can be interpreted as a basis of truth as a basis for thinking and acting carefully. (Usman, 2003)

PPAT (Land Deed Maker Official) has the authority to establish authentic deeds as stated in Article 3 paragraph (1) PP No. 37 of 1998 concerning Position Regulations for Officials Making Land Deeds "To carry out the main duties as intended in Article 2, a PPAT has the authority to establish authentic deeds regarding all legal acts as intended in Article 2 paragraph (2) regarding land rights and ownership rights over units. Flats located within the work area." PPAT's authority is made to back up and prevent PPAT from carrying out its main duties from causing consequences that give the impression its office disturbed the interests of the parties, this provision was made

in order PPAT to be able to carry its duties as well as possible so that there is justice and impartiality.(Parlindungan, 1999) Deed made by PPAT as proof that certain legal acts have been implemented regarding land rights or ownership rights over condominium units, the deed has 2 (two) functions, they are:

1. PPAT Deed as proof of certain legal acts have been carried out regarding land rights and ownership rights to apartment units
2. The natural PPAT Deed is used as the basis for registering changes to land registration data with the Registry/City Land Office whose working area includes the location of the land in question. (Santoso, 2016)

Certain legal acts referred to in the provisions on the main duties of PPAT in Article 2 PP No. 37/1998, one of these legal acts is Sale and Purchase, a reciprocal agreement in which one party (seller) promises to hand over ownership rights to an item, while the other party (buyer) promises to pay a price consisting of a certain amount of money to acquire the property right.(Subekti, 1995) In the buying and selling process there is an agreement in which the parties bind themselves to each other, this is as explained in article 1457 of the Civil Code which states that buying and selling is an agreement, in which one party binds himself to hand over an object and the other party pays re due to agreed price.(Soimin, 2008)

Buying and selling land can be performed by lavinging, which means that there is a handover in buying and selling process according to Baharudin in the Journal "Authority

of Land Deed Making Officials (PPAT) in the Land Buying and Selling Process" Buying and selling is a process of preserving rights that have existed since ancient times, and is usually regulated in customary law, with the principles of light and cash. This means to carried out the hope of the authorized Public Official and an authorized party, if the price has not been paid in full, then the process cannot be carried out.(Baharudin, 2014) The transfer referred to is that by buying and selling land, the rights in the land object are transferred. In this process, there needs to be a Public Official who records the legal action, PPAT authenticated the deed as proof of the existence of the legal action. The transfer of land rights through buying and selling is regulated in the Basic Agrarian Law (UUPA) which is only explained in Article 26, such as:

(1) Buying and selling, exchanging, giving away, giving by will, giving according to custom and other acts which. intended to transfer ownership rights and their supervision is regulated by Government Regulation.

(2) Every sale and purchase, exchange, gift, gift by will and other acts intended to directly or indirectly transfer property rights to a foreigner, to a citizen who, in addition to his Indonesian citizenship, has foreign citizenship or to a legal entity except for those stipulated by the Government as intended in article 21 paragraph (2), is void by law and the land falls to the State, provided that the rights of other parties encumbering it continue and all payments received by the owner cannot be redemanded.

The sale and purchase of land can be carried out either directly by the parties or by being represented through their proxies, by giving authority to another person to carry out the legal act, perform everything that is in the interests of the person giving the power of attorney in all matters, including in relationships with parties other than the power of attorney.(Sinilele, 2020) The granting of power of attorney is

explained in Article 1792 of the Civil Code, namely: "The granting of power of attorney is an agreement by which a person gives power to another person to carry out an affair on behalf of his name." This article shows that the nature of the granting of power of attorney is none other than representation, which is made through agreement or is called a power of attorney (Volmacht) which is included in a notarial deed. So the power of attorney has the authority to carry out legal actions for the benefit and on behalf of the person giving the power of attorney, however, in the exercise of this power, there are restrictions, as stated in Article 1797 of the Civil Code "The recipient of the power of attorney, may not do anything that exceeds his or her authority", meaning that the recipient of the power of attorney may not carry out legal actions which according to law can only be carried out by the person giving the power of attorney, in this case the owner/holder of the rights.

In making an authentic deed, the PPAT must always act carefully by first examining all the completeness and validity of the evidence or documents shown to the PPAT, as well as hearing the statements of the presenters as a basis of consideration to be included in the deed. (Aulia, 2022) One of the documents in making a Deed of Sale and Purchase is a Warkah as explained in Article 1 Paragraph

(6) PP Number 37 of 1998, namely "Warkah is a document that is used as the basis for making a PPAT deed", the unclear document is in the form of the identities of the parties from identity card, family card, tax card, Marriage Certificate (if married), and Power of Attorney if the legal action is authorized by the Buyer or Seller, then these documents must be correct in accordance with the facts and have validity or certainty in law.

In connection with the explanation above, to apply the Precautionary Principle in making a Land Sale and Purchase Deed, PPAT can refuse to establish a deed as explained in Article 39 PP No. 24 of 1997 concerning Land Registration:

(1) PPAT refuses to establish a deed if:

a. regarding plots of land that have been registered or ownership rights to apartment

units, the original certificate of unclear is not delivered to him or the certificate submitted is not in accordance with the registers at the Land Office; or

b. regarding plots of land that have not been registered, the following are not conveyed to him:

1) A letter of proof of rights as intended in Article 24 paragraph (1) or a statement from the Head of the Village/Subdistrict stating that the person concerned controls the plot of land as intended in Article 24 paragraph and

2) A certificate stating that the plot of land in question has not been certified by the Land Office, or the land located in an area far from the Land Office, from the relevant right holder, confirmed by the Village/Subdistrict Head; or

c. one or the parties who will carry out the relevant legal action or one of the witnesses as intended in Article 38 does not have the right or fulfill the requirements to act; thus, or

d. one of the parties or parties acts based on an absolute power of attorney which essentially contains a legal act of transferring rights; or

e. for the legal action to be carried out without obtaining permission from an authorized official or agency, if such permission is required according to applicable laws and regulations; or

f. the object of the legal unclear action is in dispute regarding physical data and/or juridical data; or

g. other requirements are not met, or the prohibitions specified in the relevant laws and regulations are violated

(2) Refusal to establish the deed is notified in writing to the parties concerned including the reasons.

Therefore, PPAT is obliged to refuse once the deed made are things as described in Article 39 PP No. 24 of 1997, regarding letter a "concerning plots of land that have been registered or ownership rights to apartment units, the original certificate of title is not submitted to him, concerned or the certificate submitted does not match the lists at the Land Office" there is an obligation for PPAT to check the suitability/validity of the certificate at the local land office. This is called checking, in order to ensure the formal correctness of the transaction object data submitted by the parties. (Isnaini & Wanda, 2017) This article also explains regarding Absolute Power of Attorney, in letter d "one of the parties or parties acts based on an absolute power of attorney which essentially contains the legal act of transferring rights", which is meant by an absolute power of attorney is a power of attorney that cannot be withdrawn by the party giving the power of attorney, and in the formulation of the contents of the power of attorney, it is essentially a transfer of rights, not a grant of power. (Harsono, 2018)

When making a Deed of Sale and Purchase of Land, PPAT must stay focus and thorough in exercising its authority, if there are careless actions then the Deed made by the PPAT can be canceled by law because it does not meet the terms and conditions in making the deed. The precautionary principle is an action that will be taken if there is sufficient evidence, thus, if there is no adequate evidence, the action will not be taken. The Precautionary Principle has the aim of anticipating and taking precautions from the start when an uncertain consequence of a particular action occurs. (Wartini, 2007) PPAT's principle of caution in making a Land Sale and Purchase Deed must be seen formally and materially, the absolute power of attorney is included in the material which becomes the basis for making the Land Sale and Purchase Deed and in this decision, apart from

Defendant 1, has attached The absolute power of attorney also does not attach the original certificate when making the sale and purchase deed, consequently, this is legally flawed because in the land sale and purchase process carried out before the PPAT, the original certificate is required to be attached.

The Absolute Power of Attorney referred to, as regulated in the Minister of Home Affairs Instruction No. 14 of 1982, is prohibited from being used in the process of transferring land rights/buying and selling land, intended and aimed at regulating public order in land buying and selling transactions, as explained in letter c, the preamble to the Instruction states: "The purpose of this prohibition is to avoid abuse of the law which regulates the granting power of attorney by carrying out a covert transfer of land rights using the form of "absolute power", such action is a form of legal action that disrupts efforts to regulate the status and the use of land." So, the Land Sale and Purchase Deed referred to ,by the party to whom the power of attorney is given, cannot be transferred, but only the power to act carrying out legal acts intended by the person giving the power of attorney, so power of attorney is absolutely prohibited in the process of buying and selling land.

### Conclusion

The validity of an absolute power of attorney in establishing Sale and Purchase Deed is shown in Article 39 Paragraph (1) letter d PP No. 24 of 1997 which states: "PPAT refuses to establish a deed if one of the parties or parties acts on the basis of an absolute power of attorney, which essentially contains a legal act of transferring rights." Apart from that, in relation to the legal requirements of the agreement as regulated in Article 1320 of the Civil Code in point 4, "fine – allowed causes" are not fulfilled, therefore, the agreement is null and void. Thus, the legal certainty in the power of attorney to sell does not have legal force because the Absolute Power of Attorney is null and void by law where the Land Sale and Purchase Deed based on the Absolute Power of Attorney cannot be made, PPAT should have rejected the deed from the start and if the sale deed -purchasing land based on which an absolute power of attorney which has been made is null and void and therefore is deemed to have never existed. In the sale and purchase of land, it is prohibited to use an absolute power of attorney because the regulations governing it prohibit the use of absolute power.

The application of the PPAT principle of prudence in making authentic deeds aims to ensure that a PPAT is always alert in carrying out his duties and authority. If the formal and material requirements are not fulfilled in the implementation and implementation of the PPAT's principle of prudence as an authorized official, then the Deed of Sale and Purchase based on an Absolute Power of Attorney should be rejected by the PPAT because an Absolute Power of Attorney is prohibited in the process of transferring land rights, in the sale- buy land. In carrying out its duties and authority, PPAT must always refer to the governing regulations because the precautionary principle explains that PPAT's actions are not in accordance with regulations and that are not in accordance with its authority.

### Suggestion

Notaries/PPATs when performing their duties and authority must be based on applicable laws and regulations and act responsibly, independently, honestly, carefully and not taking sides with anyone. So that the deed made by the Notary/PPAT does not harm other parties and the action does not conflict with the law or could create problems in the future. When making an Authentic Deed, you should be more careful and thorough and apply the precautionary principle in order the legal certainty of the Deed can be guaranteed. Even though in reality there are still many Notaries/PPATs who put little attention to this, therefore there should be rules governing the Prudential Principle and Notaries/PPATs must always obey the rules to avoid committing acts against the law.

## References

- Aulia, A. (2022). Prinsip Kehati-Hatian PPAT Dalam Proses Pengikatan Jual Beli Tanah Sebagai Perwujudan Kepastian Hukum. *Recital Review*. <https://doi.org/10.22437/rr.v4i1.13364>
- Baharudin. (2014). Kewenangan Pejabat Pembuat Akta Tanah (PPAT) Dalam Proses Jual Beli Tanah. *JDIH Perpustakaan Hukum UBL*.
- Budiono, H. (2016). Perwakilan, Kuasa dan Pemberian Kuasa. *Majalah Renvoi*.
- Harsono, B. (2008). Hukum Agraria Indonesia. In *Himpunan Peraturan-Peraturan Hukum Tanah*. Djambatan.
- Harsono, B. (2018). *Hukum Agraria Indonesia*. Universitas Trisakti. Huijbers, T. (1982). Filsafat Hukum Dalam Lintasan Sejarah. In *Kanisius*.
- Isnaini, H., & Wanda, H. D. (2017). Prinsip Kehati-Hatian Pejabat Pembuat Akta Tanah Dalam Peralihan Tanah Yang Belum Bersertifikat. *Jurnal Hukum Ius Quia Iustum*. <https://doi.org/10.20885/iustum.vol24.iss3.art7> Khairandy, R. (2016). *Perjanjian Jual Beli*. FH UII Press.
- Marhainis, A. (1982). *Hukum Perdata Material*. PT. Pradnya Paramita.
- Muljadi, K. (2014). *Perikatan Yang Lahir Dari Perjanjian*. Raja Grafindo Persada. Ningsih, u. d. (2012). *Kamus Besar Bahasa Indonesia*. Widya Karya.
- Parlindungan, A. P. (1999). *Pendaftaran Tanah di Indonesia*. Mandar Maju.
- Salim. (2017). *Teknik Pembuatan Akta Perjanjian (TPA Dua)*. Raja Grafindo Persada.
- Salindeho, J. (1987). *Masalah Tanah Dalam Pembangunan*. Sinar Grafika.
- Santoso, U. (2016). *Pejabat Pembuat Akta Tanah, Perspektif Regulasi, Wewenang dan Sifat Akta Teknik Pembuatan Akta*. Prenada Media Group.
- Sinilele, A. (2020). KLAUSUL KUASA MUTLAK DALAM AKTA JUAL BELI TANAH DI KOTA PALOPO. *El-Iqthisadi : Jurnal Hukum Ekonomi Syariah Fakultas Syariah Dan Hukum*. <https://doi.org/10.24252/el-iqthisadi.v2i1.13836>
- Smith, A. (1976). *The Theory Of Moral Sentiments Indianapolis*. Oxford University Press.
- Soepomo, R. (1982). *Hukum Perdata Adat Jawa Barat*. Djambatan.
- Soimin, S. (2008). *Status Hak dan Pembebasan Tanah*. Sinar Grafika. Subekti. (1995). *Aneka Perjanjian*. Citra Aditya Bakti.
- Tobing, G. L. (1980). *Peraturan Jabatan Notaris*. Erlangga.
- Usman, R. (2003). *Aspek-Aspek Hukum Perbankan Indonesia*. Gramedia Pustaka.
- Utomo, H. I. W. (2017). Prinsip Kehati-Hatian Pejabat Pembuat Akta Tanah dalam Peralihan Tanah yang Belum Bersertifikat. *Jurnal Hukum IUS QUIA IUSTUM*, 24(3).
- Vania, C. (2018). Keabsahan Penggunaan Kuasa Mutlak Dalam Perjanjian Pengikat Jual Beli (PPJB) Tanah Yang Dibuat Oleh Notaris. *Jurnal Hukum Adigama*.
- Wartini, S. (2007). Implementasi Prinsip Kehati-hatian dalam Sanitary and Phythosanitary Agreement, Studi Kasus: Keputusan Appellate Body WTO dalam Kasus Hormone Beef antara Uni Eropa dengan Amerika Serikat. *Jurnal Hukum IUS QUIA IUSTUM*. <https://doi.org/10.20885/iustum.vol14.iss2.art7>