

## The Legal Protection for Buyers of Plots of Land with the Power to Sell in Demak Regency

**Elisya Triwi Dyawati**

Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia, E-mail: [elisyatryw@gmail.com](mailto:elisyatryw@gmail.com)

**Abstract.** *The public's interest in buying and selling land continues to grow because land is an economic factor that plays an important role and has strategic value. The basis of buying and selling land is that there is an agreement between the seller and the buyer, because the limited land population is not commensurate with the increasing population, business people find a new way of doing business by breaking up a plot of land called a plot of land and buying and selling it with a letter. power of attorney granted by the power of attorney as the owner of a plot of land. The aim of this research is to find out how the process of buying and selling plots of land using a power of attorney in Demak is and to find out the weaknesses of buying and selling plots of land using a power of attorney in Demak. This research method cannot be separated from the aim of directing problem solving using an empirical juridical approach method. The research approach is used to look at events or happenings in a society using descriptive research specifications so that in this research it describes, describes or describes an incident of buyer protection through a power of attorney to sell in land buying and selling of plots of land , using data in the form of interview results. along with the application of legal provisions relating to buying and selling using a power of attorney to sell, namely in the Civil Code and Government Regulation Number 24 of 1997 concerning Land Registration. The results of the research obtained are how the buyer's protection through a power of attorney to sell in land sale and purchase transactions always includes the PPAT in accordance with Article 1 point 24 of PP No. 24 of 1997, apart from making deeds related to land, then it can be used as a consultation with the buyer regarding the validity of the status. land along with a power of attorney to sell. The power of attorney to sell can then be examined first regarding the substance in the form of clauses specified by the power of attorney and then in a notarial deed at the notary, because the weakness of the power of attorney is seen in the substance of the power of attorney itself so that it can give rise to a dispute over land.*

**Keywords:** Attorney; Land; Protection.

## 1. Introduction

Land has a very important role, meaning in the life of the Indonesian nation or in the implementation of national development which is carried out as a sustainable effort to realize a just and prosperous society based on Pancasila and the "1945 Constitution". Regulation of control, ownership and use of land needs to be more directed towards ensuring order in the field of land law, land administration, land use, or maintenance of land and the environment, so that there is legal certainty in the land sector.<sup>1</sup>

The state has the authority to regulate land use as stated in "Article 33 Paragraph (3) of the 1945 Constitution" that "the land, water and natural resources contained therein are controlled by the state, and are used for the greatest prosperity of the people". Land is the basic capital for development, as well as an important factor in the lives of people who generally depend on land for their livelihoods. Land has an eternal relationship with the state and the people.<sup>2</sup>

Agrarian affairs in Indonesia are generally regulated in "Law Number 5 of 1960 concerning Basic Agrarian Regulations" which is then commonly referred to as the "Basic Agrarian Law" (UUPA), which regulates, among other things, a number of rights that can be owned by a person either alone or together with other people over land such as Ownership Rights (HM), Cultivation Rights (HGU), Building Rights (HGB), Usage Rights, Lease Rights and other rights that will be determined by law.

The need for a place to live for humans is one of the primary or basic needs besides food and clothing because having a house can provide a sense of security and provide protection from the surrounding environment, besides ensuring that its residents remain healthy and productive, a good house contributes to the sustainability of a household as well as the economic and social development of a country.<sup>3</sup> The increasing population growth from year to year makes the need for houses increase every year. The growth in the need for houses encourages someone to have a house in a housing complex so that they no longer need to look for land to build a house or even to build it themselves because they only need to buy the type or shape of the house according to their ability to buy the house.<sup>4</sup> The development of housing and settlements is an effort to full fill one of the basic human needs, as well as to improve the quality of the living environment, provide direction for regional growth, expand employment opportunities and stimulate economic activity, according to Article

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<sup>1</sup>Boedi Harsono, 2007, Indonesian Agrarian Law, Collection of Land Law Regulations, Jakarta: Djambatan, p. 70.

<sup>2</sup>Fia S Aji, 2014, The Role of Usage Rights in Development, Bandung: Alumni, p. 15

<sup>3</sup>Supriyadi, 1998, Agrarian Law, Jakarta: Sinar Grafika, p. 64

<sup>4</sup> Ana Silviana, 2004. Implementation of Article 32 paragraph (2) of Government Regulation No. 24 of 1997 in the Implementation of Land Registration in Indonesia, Legal Issues, Scientific Journal of the Faculty of Law, Diponegoro University, Vol. 33 No. 3 July-September 2004, p. 252.

33 Paragraph (4) of the 1945 Constitution which states that "the national economy is organized based on economic democracy with the principles of togetherness, efficiency with justice, sustainability, environmental awareness, independence, and by maintaining a balance between progress and national economic unity, in the context of increasing and equalizing people's welfare or social welfare."<sup>5</sup>

Social Welfare in Law 11 of 2009 is a condition where the material, spiritual and social needs of citizens are met so that they can live decently and are able to develop themselves, so that they can carry out their social functions. <sup>6</sup>The increase in economic activities that are currently occurring also has an impact on the increasing needs of the community in various aspects of life, one of which is the need for housing or houses. This is also marked by the development of companies engaged in the provision of housing or better known as property development companies.

Fulfillment of housing needs is increasingly difficult to meet, along with rapid population growth resulting in higher land prices. High land prices make it increasingly difficult for people to have decent homes in the places they want, especially for low-income people.<sup>7</sup>

Problems in home ownership can also arise from the land sales mechanism. The current property marketing and sales model can carry out marketing and sales even before the property is completed or is still in the planning stage. Such a sales mechanism is carried out by the buyer placing an order for the property to be purchased where the process is usually stated in a preliminary agreement or sale and purchase agreement or better known as the "Sales and Purchase Agreement" (PPJB).<sup>8</sup> "Sales and Purchase Agreement" (PPJB) which is intended as a preliminary agreement, is basically not regulated in the Civil Code, but the legality of PPJB is in accordance with the provisions of "Law No. 1 of 2011 concerning Housing and Settlements". Article 42 Paragraph (1) of the Law states that "residential houses, terraced houses, and/or flats that are still in the construction process can be marketed through a preliminary sales and purchase agreement system in accordance with the provisions of laws and regulations".

The problem that is often raised in research is the problem of the need for legal protection for buyers where sellers often cannot fulfill their obligations to provide land / plots ready for occupancy for buyers. This is also a problem especially when the sale and purchase of land plots is carried out using a power

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<sup>5</sup>Boedi Harsono, Op. Cit., p. 173

<sup>6</sup>Saleh K. Wantjik, 1992. Your Rights to Land, Jakarta: Ghalia Indonesia, p. 18.

<sup>7</sup>SF Marbun and Mahfud MD, 2006, Principles of State Administrative Law, Yogyakarta: Liberty, p. 21

<sup>8</sup>Nurul Helmi, Teuku Yudi Afrizal, Fatahillah, 2021. Legal Review of Absolute Power of Attorney to Sell in Land Sale and Purchase Transactions. JIMFH Malikussaleh Vol 4 No 1, Page 4

of attorney.<sup>9</sup> Granting power of attorney or also called last geving cannot be separated from community life, especially for those who are conducting land sales transactions between individuals, groups or institutions. Business owners often delegate their affairs to other parties who can be trusted, because granting power of attorney has become a common thing today where affairs are increasingly dense while the portion of time remains the same.<sup>10</sup>Article 1792 BW itself defines what the granting of power is. "A grant of power of attorney is an agreement by which one person gives power to another person, who receives it, to carry out an affair on his behalf."

There are three types of power of attorney that can be chosen by the person making the power of attorney according to the power required, including general power of attorney, special power of attorney and special power of attorney. Article 1793 BW: "A power of attorney can be given and received in a public deed, in private writing, even in a letter or verbally. Acceptance of a power of attorney can also occur secretly and be concluded from the exercise of that power by the power of attorney."

In practice, sometimes land sale and purchase transactions cannot be carried out because there are things that have not been fulfilled. Not being able to be fulfilled here does not mean that the transaction cannot be carried out, sometimes there are other instruments such as payments that have not been paid in full, land certificates are still in the process of being divided, not being able to pay taxes or other legal conditions. Because of this condition, there are two versions of the making of a sale and purchase agreement, namely, a deed of sale and purchase agreement that has been paid in full and a deed of sale and purchase agreement that has not been paid in full.<sup>11</sup>

If the form is a full sale and purchase agreement, then there is no power in it except for the conditions for fulfilling an obligation. Meanwhile, if the payment is not yet paid in full and a full sale and purchase agreement is made, the seller can take care of it himself or make a power of attorney to sell if he feels he cannot take care of it himself. The power to sell can be included as a clause in the sale and purchase agreement or can stand alone in the form of a separate deed.<sup>12</sup> One way that can be taken to grant the power to sell is by letter or general

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<sup>9</sup>Shinta Andriyani, Arief Rahman, and Wiwiek Wahyuningsih, Implementation of Land Plot Sale and Purchase (Study in Lingsar District, West Lombok Regency), Indonesian Journal of Social Sciences and Humanities. Vol 2 No 4, 2022, Pg 8

<sup>10</sup>Safira Dini Laksita, Ana Silviana, R Suharto, Legality of Power of Attorney in the Deed of Sale and Purchase of Land as the Basis for Making a Deed of Sale and Purchase. Diponegoro Law Journal Vol 6 No 1. 2017, Page 3

<sup>11</sup>Rumelda Silalahi, 2019. Legal Power of Land Sale and Purchase Through a Power of Attorney, Rectum Journal Vol 1 No 2, Pg 188.

<sup>12</sup>Mutiara Indah Parawansa and Hanafi Tanuwijaya, 2021. Transfer of Land Rights Using Power of Attorney to Sell by PPAT Based on Government Regulation Number 24 of 2016 concerning

deed. The term deed is a translation from Dutch, namely acte, while in English, it is called deed. A deed is a letter or writing. In French law, a deed is a formal document.<sup>13</sup>

Giving power selling by public deed is an agreement that carried out between the grantor of the power of attorney and the recipient of the power of attorney using a deed issued by an authorized official, in this case a notary or better known as a notarial deed. A deed made before a notary will provide perfect evidentiary power for the parties contained in the deed.<sup>14</sup> Because with the existence of a power of attorney agreement to sell under agreement The sale and purchase agreement ensures that the related parties will have a legal consequence as stated in the agreement clause. In simple terms, the principal delegates representation or delegates to the principal to take care of his/her interests (selling), in accordance with the functions and authorities specified in the power of attorney.<sup>15</sup>

One of the cases that occurred was the case of the sale and purchase of land plots owned by four heirs of the late Mr. H with Mr. J as the power of attorney to sell the land plot. The problem that arose was when Mr. J as the power of attorney to sell the land plot entered into a land plot sale and purchase agreement with Mrs. K as the buyer of the late Mr. H's land plot for an amount of Rp. 85 million.

The problem occurred because after Mrs. K paid a down payment of Rp 20 million, Mr. J as the power of attorney ran away with the down payment while the land plot had not been handed over. Meanwhile, the heirs of the late Mr. H still had not received the down payment from Mr. J. The existence of cases such as in the example makes it necessary to conduct research on protection as a buyer from the power of attorney to sell land plots.

A power of attorney to sell is issued to sell or transfer, either to the person receiving the power of attorney or to another party, the object under the power of attorney, to sign the deed of sale/transfer and to receive the proceeds of the sale.<sup>16</sup> This power of attorney is valid since it is signed by the principal and continues to be valid until the principal notifies the principal of the revocation of this power of attorney in writing so that this power of attorney is often misused

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Amendments to Government Regulation Number 37 of 1998 concerning Regulations on the Position of Land Deed Making Officials. Adigama Law Journal, Vol 4 No 2.. Page 3481

<sup>13</sup>Rosa Lianda Islami, Dahlan, Suhaimi, 2020. Use of a Deed of Power of Attorney to Sell as Collateral for Debt Settlement in the Transfer of Ownership of Land Ownership Rights. Udayana Master of Law Journal, Vol 9 no 4. Pg 841

<sup>14</sup>Dwi Hartiningsih, 2020. Sale and Purchase of Land Rights Based on a Notarial Power of Attorney Deed,

<sup>15</sup>Muchammad Ekky Prandika and Supriyadi, 2021. Legal Consequences of a Notarial Power of Attorney to Sell in the Imposition of Tax Payable. Jurnal Cakrawala Hukum Vol 12 No 3, Pg 328

<sup>16</sup>Paulus Meldif Dika Pratama, 2017. Legal Consequences of a Deed of Authorization to Sell Freely Made in Making a Deed of Sale and Purchase of Land and Buildings by a Notary. Journal of Deeds Vol 4 No 4. Pg 722.

in the sale and purchase of land plots by irresponsible sellers.

## **2. Research Methods**

Legal research is a scientific activity based on certain methods, systematics and thinking, which aims to study one or several specific legal phenomena by analyzing them, except that in-depth implementation is also carried out on the legal facts, then trying to find a solution to the problems that arise in the relevant phenomena.

As a way to draw conclusions from the collected research results, a qualitative normative analysis method will be used. Normative, because this research is based on existing regulations as positive legal norms. While qualitative is intended as data analysis that is based on efforts to discover principles and information that are monographic expressions from respondents.

## **3. Results and Discussion**

### **3.1. Implementation of Sale and Purchase of Land Plots with Power of Attorney to Sell in Demak Regency**

The land sale and purchase process is carried out by both parties who have the same interests between the seller and the buyer, as has been done in the land sale and purchase process, both parties also have an obligation where the seller transfers ownership rights to the land to the buyer, and the buyer makes payments and the process of changing the name of the certificate for the land. The sale and purchase process is carried out based on applicable laws and regulations, namely Government Regulation Number 24 of 1997 in conjunction with Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units and Land Registration. By fulfilling the principles in the implementation of land registration as regulated in Article 2 of PP No. 24/1997, namely the principle of simplicity, the principle of safety, the principle of affordability, the principle of modernity, and the principle of openness.

Fulfillment of the conditions in the sale and purchase of land also determines whether the sale and purchase is successful or not. The conditions of the sale and purchase in question are material and formal conditions, failure to fulfill the material conditions will result in the sale and purchase being null and void, meaning that the sale and purchase carried out by both parties is considered never to have occurred. This land sale and purchase is in the context of the sale and purchase of land ownership rights as the land registration is determined by the organizer, namely the National Land Agency of the Republic of Indonesia and the land registration is carried out by the Head of the Regency/City Land Office and then assisted by the Land Deed Making Officer (PPAT) in accordance with the provisions of Article 5 and Article 6 of PP No. 24/1997. In practice, in the process of buying and selling land in Demak, there are several differences regarding the parties who make tax payments, namely the seller and the buyer, regarding the provisions of PP No. 34 of 2016 and Law No. 28 of 2009, which are

Ideally, PPH is by the seller while BPHTB is by the buyer. However, in reality, it is different,

Sandy Rahardjo, SH, M.Kn, said that<sup>17</sup>This tax imposition is carried out based on an Agreement or agreement between the two parties where it can be stated in the Sale and Purchase Agreement or by agreement at the beginning when carrying out the sale and purchase process. This is usually done when the seller says a clean sale as is with no other burdens on the seller, then other costs such as PPH payments, name transfer fees and so on are borne by the buyer, or when the buyer says a clean purchase at a price that has been agreed upon, then other costs are borne by the seller.

The agreement made by the seller and buyer regarding the payment of taxes to each party based on the regulations and practices can be taken as the main content of the difference, namely that the fulfillment of PPH and BPHTB payments paid by any party, both the seller and the buyer. Then the Deed made by the PPAT is printed in the original form of two sheets, namely the first sheet is kept by the PPAT and the second sheet is submitted to the Land Office for registration purposes and the parties (seller and buyer) are given a deed in the form of a copy. The process of buying and selling under hand carried out by parties who are categorized as still lay regarding the sale and purchase of land, it should be or the parties choose a short process.

The process of buying and selling land underhand is associated with buying and selling land according to customary law, according to Article 5 of the UUPA, which states that national land law is customary law, the customary law in question is not the original customary law but customary law that has been sanitized, its defects removed or customary law that has been perfected or customary law that has been removed from its regional nature and given a national nature. The connection in buying and selling according to customary law is in the application of the principles of buying and selling land, the nature

clear, real and cash. The clear nature means that the act of transferring rights must be carried out before the customary head, meaning that he has a role as an official who is responsible for the regularity and validity of the act of transferring rights so that the act is known to the public, the cash nature means that the act of transferring rights and payment of the price are carried out simultaneously or simultaneously. The clear nature carried out according to the applicable written regulations is in accordance with what is regulated in Article 37 of PP No. 24 of 1997 which regulates that the transfer of land rights through sale and purchase can only be registered through a deed made by a PPAT who is authorized according to statutory regulations.

### **3.2. Legal Protection for Land Plot Buyers with Power of Attorney to Sell**

Basically, the use of a power of attorney to sell is used in the process of buying and selling land plots from a piece of land with partial or unpaid payment as the

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<sup>17</sup>Interview Results with Sandy Rahardjo, SH, M.Kn. as Notary/PPAT Demak Regency April 27, 2024

seller of the plot, to anticipate land disputes that will occur, the power of attorney to sell is also used in the process of buying and selling land plots as stated in the power of attorney of the land owner as the grantor of power and the seller of the plot as the recipient of power. The power of attorney to sell that is used still has an impact or risk, meaning that the power of attorney to sell that will be made must really pay attention to the contents of the substance and object, incomplete contents of the substance can cause disputes or losses for the parties. The purpose of the completeness of the substance and object is to avoid disputes or bad intentions in the form of authority that is misused by the recipient of the power of attorney or the seller of the plot. More clearly, the weaknesses of buying and selling land plots using a power of attorney to sell are based on the contents of the substance of the power of attorney to sell so that it can cause disputes over the land and losses borne by the land owner and the buyer of the plot.

Sandy Rahardjo, SH, M.Kn explains<sup>18</sup>regarding protection for buyers of land plots with a power of attorney to sell used in the process of buying and selling land plots, this is outlined in the parties involved who may bear the risk when not careful in taking every step in the transaction of buying and selling land plots. The purpose of being careful in every step taken by the parties from the land owner must include the time limit for the authority of the recipient of the power of attorney, which land is listed for sale, and the money received by the recipient of the power of attorney must be handed over directly to the land owner. Likewise with buyers of land plots, even though there is already this power of attorney, it is expected that the buying and selling process will still be carried out in front of the PPAT as well as the payment to be submitted, then an AJB is made as evidence as the payment made. The weakness of this power of attorney is the emergence of disputes over land and losses that will be borne by the owner and buyer of the land plot.

So what is the legal protection for buyers of land plots with the power to sell, Sandy Rahardjo, SH, M.Kn as Notary/PPAT in the Demak district area to respond to the sale and purchase of land plots<sup>19</sup>known more precisely because of the use of a plot of land that has not been paid in full, then from the protection and security side for land sales and purchases carried out on a plot of land with partial payment should be avoided. In the sale and purchase transaction of a plot of land carried out by the authorized party as the seller with the buyer, not using a notarial Deed of Sale and Purchase, only using PPJB to regulate the payment scheme for the settlement. The PPJB above proves that a legal act of transferring land rights has been carried out forever and the payment of the price has been made, thus also proving that the buyer has become the new holder of land rights. Meanwhile, in the transfer of land rights, it must be done before the PPAT

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<sup>18</sup>Interview Results with Sandy Rahardjo, SH, M.Kn as Notary/PPAT Demak Regency April 27, 2024

<sup>19</sup>Interview Results with Sandy Rahardjo, SH, M.Kn as Notary/PPAT Demak Regency, October 7, 2022



then signing the Deed of Sale and Purchase.<sup>20</sup>In this case, it is a form of preventive legal protection. A deed of sale and purchase is a document that proves the transfer of land rights from the owner as the seller to the buyer as the new owner. In principle, land sales and purchases are transparent and cash, namely carried out before the Land Deed Making Officer (PPAT) and the price has been partially paid. What the PPAT does before the transaction is carried out is to examine the land title certificate which aims to ensure that the land is not involved in a legal dispute, is not being pledged, or is not being confiscated by the authorities. If a land sale and purchase transaction is disputed to the point of giving rise to a case that goes to court, then before the verdict is issued, the judge must take three steps in stages. The three actions are to constitute, qualify, and then constitute so that the verdict given by the judge can provide considerations regarding the truth of an event or determine its law. In the case of a land sale and purchase transaction that does not yet have a deed of sale and purchase, the case will be resolved in accordance with its duties based on the provisions of applicable laws. The court may not create laws but only seek and declare the existence of legal regulations. The judge's decision in relation to the making of a deed of sale and purchase is to be used as a basis for applying for a land title certificate, but this depends on the content of the decision. If the content of the decision validates a sale and purchase, then the court decision can be used as a basis for applying for a land certificate. The function of the court decision is to validate a land sale and purchase process which has the same function as the deed of sale and purchase made by the PPAT. Therefore, both the PPAT deed and the court decision are both authentic evidence of the occurrence of a land sale and purchase transaction. This is a repressive legal protection step in the event of a dispute. In this case, if the Power of Attorney for Sale is only used for the transfer of rights by the authorized party as the seller to the new buyer, without ignoring the payment obligation to the previous buyer, then it is valid and can be used. Then the authorized party as the seller with the new buyer can still transfer land rights and sign the Deed of Sale and Purchase in general. Because according to Article 1320 of the Civil Code, an agreement can be made according to the agreement of both parties and there is a lawful cause. Therefore, the use of a power of attorney for the transfer of rights can be implemented if it is in accordance with the previously agreed agreement. However, if you have not yet completed the payment with the land owner, but still use the Power of Attorney to carry out the land transaction in question, then the party receiving the power of attorney as the seller is considered negligent and the power of attorney can be revoked at any time by the principal or owner of the object. Because the agreement that has been agreed in the PPJB has not been fulfilled and considering that the power of attorney cannot be applied absolutely. In this case, the power of attorney for the

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<sup>20</sup>Interview Results with Sandy Rahardjo, SH, M.Kn as Notary/PPAT Demak Regency, October 7, 2022

sale used by the recipient of the power of attorney for the plot that has been purchased but not transferred to another name is less protected by law in accordance with Article 28D paragraph (1) of the 1945 Constitution which states that all citizens have the right to legal protection.

#### **4. Conclusion**

The process of buying and selling land plots using a power of attorney in Demak, the process of buying and selling land plots carried out by sellers in the form of legal entities, requires a split application along with a site plan that has been determined on the land plot, The importance of the role of a power of attorney to sell in the process of buying and selling land plots from a plot of land that has not met or paid in full to the landowner is to prevent the emergence of a land dispute and losses from the parties involved, but it can be seen in the practice of selling land plots that are actually carried out by individuals are not regulated in laws and regulations, where this still occurs in the Demak community with various methods used for the sale, this is why a power of attorney is used because the land sold is in the form of land plots.

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