

Penyalahgunaan Keadaan Dalam Pembuatan Akta Perjanjian Pengikatan Jual Beli Dan Adanya Kuasa Mutlak Berakibat Pada Peralihan Hak Atas Tanah Berdasarkan Putusan Mahkamah Agung Republik Indonesia Nomor 197 Pk/Pdt/2019 = Abuse of Circumstances on Drawing Up of the Sale and Purchase Binding Agreement and the Existence of Irrevocable Power of Attorney Causing Conveyance of Land Rights Based on the Supreme Court of Republic of Indonesia Decision Number 197 Pk/Pdt/2019

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Abstrak

Tesis ini membahas mengenai Pembuatan Akta Perjanjian Pengikatan Jual Beli (PPJB) dengan penyalahgunaan keadaan dan kuasa mutlak yang mengakibatkan berpindahnya kepemilikan hak atas tanah tanpa diketahui oleh pihak penjual. Adapun rumusan masalah dalam tesis ini adalah pembuatan akta PPJB 01/2010 dengan penyalahgunaan keadaan serta Akta Kuasa Mutlak 02/2010 yang berakibat pada peralihan hak atas tanah berdasarkan putusan Mahkamah Agung Republik Indonesia Nomor 197 PK/Pdt/2019 dan tanggung jawab PPAT yang membuat Akta Jual Beli Nomor 02/2011 berdasarkan Akta Kuasa Mutlak. Bentuk penelitian ini adalah yuridis normatif dan tipe penelitian ini problem identification. Hasil analisa dari permasalahan tesis ini adalah batal demi hukum karena PPJB 01/2010 dan Akta Kuasa melanggar Pasal 1320 KUH Perdata yaitu syarat subyektif dan objektif. Sehingga AJB 02/2011 batal demi hukum, PPAT yang membuat AJB 02/2011 yg berdasarkan kuasa mutlak dapat dikenakan pertanggung jawaban secara perdata, karena menimbulkan kerugian dan melanggar hak pihak lain. Bagi pemerintah harus segera membuat Undang-undang mengenai penggunaan kuasa mutlak untuk pemindahan hak atas tanah, sehingga di kemudian hari tidak terjadi lagi permasalahan yang merugikan pihak pembeli maupun penjual, dan bagi masyarakat yang ingin melakukan perbuatan hukum harus lebih memperhatikan lagi klausul-klausul yang terdapat dalam akta, agar tidak ada sengketa di kemudian hari. PPAT sebagai pejabat umum pembuat akta autentik harus lebih berhati-hati dan teliti dalam membuat akta autentik, agar tidak dijadikan turut tergugat. PPAT wajib menolak untuk membuat AJB, apabila terdapat kuasa mutlak yang bertentangan dengan Instruksi Mendagri Nomor 14 Tahun 1982 dan Pasal 39 ayat 1 huruf d Peraturan pemerintah nomor 24 Tahun 1997 tentang pendaftaran tanah, terkait larangan PPAT untuk membuat akta atas dasar kuasa mutlak.

<hr>This thesis discuss about drawing up a Sale and Purchase Binding Agreement with abuse of circumstances and utilization of the Irrevocable Power of Attorney on Attorney for Conveyancing Land Rights Deed would causing those deed void by law. That because of drafting a Sale and Purchase Binding Agreement should be based on the conformity and consensus between parties while the use of Irrevocable Power of Attorney on acquittal

sale and purchase for legal protection of the buyer. The issue in this thesis is the drawing up of Sale and Purchase Binding Agreement Number 01/2010 with the abuse of circumstances and the Irrevocable Power of Attorney Number 02/2010 which results in the conveyance of land rights based on the Supreme Court of Republic of Indonesia Decision Number 197 Pk/Pdt/2019 and the responsibility of Land Deed Official related to its jurisdiction to drafting the Sale and Purchase Deed Number 02/2011 based on the Irrevocable Power of Attorney. This research uses normative judicial research and problem identification type of research. The result of this research is The Sale and Purchase Binding Agreement Number 01/2010 as well as the Irrevocable Power of Attorney Number 02/2010 caused to void by law because they contravene Article 1320 of Civil Code which ruled about subjective and objective requirements. Because of the Sale and Purchase Binding Agreement Number 01/2010 is void by law, the Land Deed Official that draft the Sale and Purchase Deed Number 02/2011 with Irrevocable Power of Attorney could be subject to civil accountability for causing losses to other parties. The government must immediately make a law regarding the use of absolute power to transfer land rights, so that in the future there will be no more problems that harm buyers and sellers, and for people who want to take legal actions, they must pay more attention to the clauses contained in the deed, so that there are no disputes in the future. PPAT as a general official who makes authentic deeds must be more careful and thorough in making authentic deeds, so that they are not made a defendant. PPAT is obliged to refuse to make AJB, if there is absolute power that contradicts the Instruction of the Minister of Home Affairs Number 14 of 1982 and Article 39 paragraph 1 letter d Government Regulation Number 24 of 1997 concerning land registration, related to the prohibition of PPAT from making deeds on the basis of absolute power.