



Volume 3 Issue 1, 2023

E-ISSN: **3025-3993**

This work is licensed under a [Creative Commons Attribution 4.0 International License](#)

Juridical Review of The Power Consent Act as Replacement of The Seller's Presence In The Act of Sale and Purchase

El Ha Zastis¹ Abdul Rokhim² Sunardi³

¹Master Of Notarial Universitas Islam Malang

Email : elhazashoma12@gmail.com

²Master of Notarial Universitas Islam Malang

Email : abdrokhimsda@unisma.ac.id

³Master of Notarial Universitas Islam Malang

Email : sunardi_mkn@unisma.ac.id

Abstract : Power of attorney is a necessity that cannot be avoided in the era of rapid economic progress in Indonesia today. People who will do a sale and purchase of land or property they have of course in good faith, then the sale and purchase must be done with a proof such as an authentic deed. An authentic deed can be obtained if a sale and purchase is carried out by and in the presence, of an authorized official, the land deed making officer (PPAT). Furthermore, if there are parties who cannot sign the AJB, then the power of Attorney becomes the easiest and most efficient solution. The seller who cannot attend an AJB submission in front of PPAT can authorize the person he trusts to act as a substitute for the seller signing the AJB and this can protect the legal interests of the buyer as well. This study aims to review from the legal side regarding : (1) What are the legal consequences if the deed of sale and purchase (AJB) is signed by the donee based on the deed of consent of the seller? (2) What is the legal protection for the land deed-making officer (PPAT) who makes a deed of sale and purchase (AJB) signed by another person based on the power of Attorney agreement from the seller? This research method uses juridical normative juridical approach using legislation and conceptual approach. The results of this study indicate that: first, juridically the deed of approval of the power of attorney used by the donee as a substitute for the presence of the seller is not in violation of the law and legitimate existence as long as its form is an authentic deed and is made in accordance with the provisions of the authentic deed, second, that is perfect evidence for legal protection for the PPAT, the existence of the power of Attorney approval deed and the making of AJB is true according to the authentic deed making protocol otentik.

Keywords: *Sale Deed and Purchase, Authority Approval Act, Land Deed Office*

1. Introduction

A country will be developed even developed and considered alive when the wheels of the economy spin well. The economic wheel of a country that rotates well indicates that the country is reaching a point of prosperity of its people. From all elements, ranging from government organizations to the lowest level of society elements provide their participation with their respective competencies to carry out economic activities. This economic wheel is done by business practices by business people. Furthermore , it is important to understand that almost every and all business activity is a legal act. In this case the legal act is in the realm of business law, especially contract law. Business people understand that in the business world, to conduct business activities must be based on a contract. It is then that contracts are important instruments that string together the law and have the

¹ Penulis 1

² Penulis 2

³ Penulis 3

power to give a sense of security in every business transaction they carry out. So, contracts are understood as legal protection (*legal cover*) against business activities, both national and international.

Furthermore, the contract is a legal act that is not Reciprocal or reciprocal in the field of Property Law (Law on movable, or immovable, tangible or intangible objects/goods of economic value, valuable with money, transferable, and can be controlled with property rights) carried out by one or more persons or a legal entity as a subject of law, by binding himself or herself to each⁴ other. The contract is inextricably linked with the alliance. Because the engagement is a legal consequence generated by the contract. Then, considering the contract is an instrument to create a legal certainty, the contract can not be separated from the understanding of the elements of the agreement. This is because a valid agreement in a contract is an engagement for the parties themselves who perform the contract.

Contracts in Indonesia relating to property business will be closely related to the sale and purchase of land. Further, the sale and purchase of land must be done using an authentic deed if it is going to do behind the name of the securities, or in this case the land certificate. This is to ensure the legal certainty of the owner of the rights that have been mandated in the law of the Republic of Indonesia number 5 of 1960 on Basic Agrarian Regulation Agraria (UUPA). The legal certainty that is owned must be accompanied by a legal instrument, which in registering land rights, must use an authentic deed made by the land deed officer (PPAT). The authentic deed related to the land is more done by using the deed of sale and purchase if the legal act carried out is the sale and purchase of land.

Meanwhile, according to civil law, the sale and purchase of land is considered to have occurred with the achievement of an agreement between the seller and the buyer even though the rights in the form of land certificates have not been submitted and the agreed price has not been paid in full. Buying and selling has a consensual nature as provided for in Article 1458 of the Civil Code. The right to the land sold is only transferred to the buyer by the execution of another legal act yang called "juridical surrender" as yang contained in Article 1459 of the Civil Code.⁵

With regard to the definition of buying and selling land, Boedi Harsono stated that the definition of buying and selling land is a legal act in the form of handing over property rights (on land forever) by the seller to the buyer, which at that time the buyer handed over the price to the seller. Sale and purchase that resulted in the transfer of property rights to the land from the seller to the buyer is included in agrarian law or land law.⁶

One of the means of evidence in civil proceedings is written evidence called a deed, especially an authentic deed made by or before a notary. The notary can make all deeds, agreements and decrees, which the interested person wishes to express in an authentic deed. So the authority of a notary is to make a deed regarding perbuatan certain deeds and is general.

The use of power of attorney in signing the deed of sale has an increasingly complex function. Previously, the power of attorney was only written and performed to represent the authorizer to do something, but now the function of the power is also growing, one of which

⁴ DR. Muhammad Syaifuddin. *Hukum Kontrak Memahami Kontrak Dalam Perspektif Filsafat, Teori, Dogmatic, Dan Praktik Hukum (Seri Pengayaan Hukum Perikatan)*. Bandung. Penerbit Bandar Maju. 2012. Halaman 25.

⁵ Harun Al-Rashid. *Sekilas Tentang Jual Beli Tanah*. Jakarta. Ghalia Indonesia. 1987. Halaman 52.

⁶ Boedi Harsono. *Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*. Jakarta. Djambatan. 1971. Halaman 135.

is to represent the presence in carrying out another agreement. In this case, the other agreement is the deed of sale and purchase. It often happens in practice, that the seller can not be present to perform the signature of the deed of sale and purchase. This certainly raises new problems, considering that in carrying out a legal act in an authentic deed, the parties must present their own signatures. This power of Attorney approval deed is then a solution within the scope of notaries and PPAT. The seller who tidak cannot attend, can make the power of Attorney approval deed by conveying his intention to be made in the form of an authentic deed to Notaris the nearest notary can reach. If this is done, it will make the deed of sale and purchase can not stand alone without the power of attorney. It was further explained that the power of attorney referred to in the power of Attorney approval deed must be made in the form of an authentic deed, because of some urgency, one of which is, that the deed of agreement that cannot be presented by the seller is a deed of sale and purchase, which is a legal act to transfer a right atas to land. This is certainly not allowed to arbitrarily give power to anyone without a definite and clear basis of power. Therefore, the power of attorney by the seller to the person he controls must be clearly outlined, and firm and can be considered by law, namely by pouring it in an authentic deed.

Before making the power of attorney deed, the notary asks for what interests the power of attorney is made and asks for the identity of each party, namely the identity card (KTP) of the power giver and the done, the identity card (KTP) of the husband or wife of the power giver, the family composition card (KSK) of the power giver, or marriage certificate.⁷ The request for these documents is related to the interests of legality and the requirements demanded by the provisions of Article 36 paragraph (1) of Law Number 1 of 1974 concerning marriage (law on marriage) which regulates that “regarding joint property, a husband or wife can act upon the agreement of both parties.”

The necessity of the deed of sale and purchase is made by PPAT not only on land rights that have been registered (have been certified) or property rights to apartment units, but also pada on atas land rights that have not been registered at the Regency/City Land Office.⁸

2. Methods

The type of research used in the research for the writing of this thesis is to use a normative type of research normatif, with a conceptual approach that is legal research that seeks principles, doctrines and sources of law in a juridical philosophical sense. This study also examines yang the generally accepted principles or so-called philosophical research on norms, rules and legislation.

Normative jurisprudence is legal research conducted by researching library materials or secondary data as the basis for research by conducting a search for regulations related to the above problems⁹. The reason for using this method to obtain normative data analysis in order to elaborate on the principles of the agreement/contract that meets the sense of justice for the parties, so that the appropriate method used in this study is the normative legal research method. The research method used is normative juridical research which is

⁷ Wicaksono, Frans Satriyo dan Sugiarto, Agung. *Panduan Lengkap Membuat Surat-Surat Kuasa*. Jakarta. Visimedia. 2009. Halaman 21.

⁸ Urip Santoso. *Pendaftaran dan Peralihan Hak Atas Tanah*. Jakarta. Kencana Prenada Media Group. 2010. Halaman 370.

⁹ Soerjono Soekanto & Sri Mamudji. 2001. *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)*. Rajawali Pers. Jakarta. Halaman 13-14.

library research, where more genie research is carried out on that the primary, secondary, and tertiary, which are in library. This research can be normative research¹⁰ which is yuridis approach and conceptual approach. Analisis legal material is legal material primer, secondary and tertiary, use Analisis legal material is qualitative description.

3. The legal consequences of AJB signed by others based on the power of attorney Agreement Deed.

Before the enactment of the UUPA, there was a dualism of agrarian law so that there were two arrangements regarding the sale and purchase of land, namely the sale and purchase of Western legal land and the sale and purchase of customary legal land. However, since September 24, 1960, the government issued a new legal product, namely Law Number 5 of 1960 on the Basic Rules of Agrarian principles which became known as the (UUPA). After the enactment of the UUPA, there was a unification of agrarian law which also means land law, so that the regulation of land sale and purchase also uses the UUPA. In the UUPA, the term sale and purchase is only mentioned in Article 26, which concerns the sale and purchase of property rights to land, there is no other article that mentions the sale and purchase, but it is mentioned as transferred. The definition of transferable indicates a deliberate legal act to land rights to other parties through sale and purchase, grants, exchanges, and probate grants. However, because Article 5 of the UUPA states that our National Land Law is \customary law, the sale and purchase of land under the UUPA is in accordance with customary law.

Buying and selling is done in the presence of PPAT, fulfilled the conditions of light (Not Dark legal acts, which are carried out secretly). The deed of sale and purchase signed by the parties proves that there has been a transfer of rights from the seller to the buyer along with the price, has fulfilled the cash requirements and shows in real or riil tangible terms that the legal act in question has been carried out. The deed proves that it is correct to have carried out the act of transfer of the law in perpetuity and the payment of its price. Because the legal act committed is a legal act of transfer of rights, the deed shows that the buyer as the recipient of the new rights. On the of the legal act jual of buying and selling land which is proved by PPAT deed registration of land rights transfer at the Land Office and the issuance of strong evidence of ownership in the form of a certificate of land rights on behalf of the assignee, containing excerpts from land books and measurement letters, the of rights can be said to have occurred perfectly¹¹. Consensualism or consensuality has important role in an agreement. The principle of consensuality is what determines that in an agreement there has been a binding engagement between the parties involved in it. It is then, as soon as there is a binding agreement, a rights and obligations between the parties are born. This is not only true for written agreements, but also verbal agreements are essentially a manifestation of the principle of consensualism.

Deed of sale or commonly referred to as AJB is an authentic deed in which contains an agreement on the sale and purchase of land and buildings. The deed of sale and purchase is made by an authorized official, in this case the official who made the land deed. The sale and Purchase Deed is made to perform Land Registry Management. Land registration is

¹⁰ Suratman & Philips Dillah, *Metode Penelitian Hukum*. Bandung : CV Alfabeta, 2015, Hal. 51.

¹¹ Husnul Munfarid, Imam Kuswahyono, Suhariningsih. *Implikasi Yuridis Jual Beli Tanah yang Tidak Dilakukan di Hadapan PPAT Terhadap Proses Pendaftaran dan Peralihan Hak Atas Tanah (Analisis Putusan No. 18/Pdt.G/2012/PN.Lmg)*. Fakultas Hukum Universitas Brawijaya. Halaman 8.

carried out by the head of the Land Office in accordance with the location where the object of sale and purchase is located. This has become a mandate promulgated in Law No. 5 of 1960 on Basic Agrarian Principles (UUPA), which was then issued a Government Regulation No. 37 of 1998 on the regulation of the Office in land deed officer (PPAT) as a complement to the Government Regulation on Land Registration and has been promised in Government Regulation No. 24 Of 1997 On Land Registration. It also then explains more about the duties and scope of PPAT positions. Then it is also regulated in Government Regulation No. 10 of 1960 concerning the implementation of the UUPA Article 19 which states that the sale and purchase of land must be proven by a deed made by and in the presence of the land deed officer. Further re-elaborated on PPAT the same PPAT position as the Notary, as pejabat yang an authorized official. One of the PPAT authorities among them is to make an authentic deed. In this case, akta the authentic deed for a land sale and purchase transaction is a deed of sale which in practice is often also called or abbreviated as AJB. PPAT furthermore, in making a deed, of course, must follow the protocol or regulations set by law. The deed made by PPAT as an authorized official, is an authentic deed. So for the sake of the authenticity of a deed made by PPAT, in this case AJB, then to make it there are several things that must be considered. One of the things that becomes crucial to note is the presence of parties who intend to enter into a sale and purchase agreement. The presence of the parties becomes important in the framework of a deed of sale. The presence is useful for making final agreement and signing the deed made by PPAT and done in front of PPAT.

The presence of both parties to make an agreement in carrying out a deed of sale and purchase is certainly also a form of manifestation itikad of good faith from the parties. PPAT in practice, in addition to being a deed maker as a means of binding the sale and purchase between the seller and the buyer, also acts as an intermediary interests between the parties. Furthermore, the legal events that occur in society are very diverse, causing an imbalance of interests between sellers and buyers. Some crucial things that must be done by the seller and the buyer, such as one of them is that the seller and the buyer as interested, must be present in front of PPAT to do AJB. But in practice, many things happen that result in the seller who is the owner of the certificate/object can not be present before the PPAT to perform AJB.

Considering that Indonesia is a country with a very wide archipelago geographical conditions, this can then hinder a meeting-a meeting because of the long distance between regions. The presence of the seller in addition to the itikad good faith of the seller, also as a form of consensuality from the seller to the buyer to sell his house. Realization of consensual agreement stating that the seller with the signing akad of the legally sell, transfer, and transfer the object of sale and purchase to the buyer. This is then further, can be accepted by the buyer who legitimately buys, accepts the alienation, and accepts the transfer of the object of sale and purchase while signing AJB.

The presence of the seller as the owner of the land and building objects to be sold is also a form of legal certainty for the buyer. This is related to the obligation of the buyer, who at the time of signing the AJB makes the payment to the seller, as well as the seller receives his rights in the form of payment. Then the seller's obligation arises to hand over the object of sale and purchase to the buyer. The presence of the seller is a means for the buyer to ensure the return of legal certainty and the legal position of the object of sale and purchase in the form of land and or building. The seller has the responsibility to ensure that

the object is his own. This is also the principle of the subject of law which speaks of identity, namely the legal status of the subject and the legal status of the object to be traded. In the presence of PPAT, and carried out by PPAT, the truth about the object must be checked regarding the truth of Juridical data and physical data. Among them such as the certainty of ownership of the right which is true that the object is the property of the seller. And certainty about the existence of a burden, or whether it is attached to the object, which in this case is a dependent burden¹². In the presence of the buyer and in the presence of PPAT, the seller is obliged to provide clear and clear certainty about everything that is inherent in the object of the land and the building. The buyer's legal protection in this case depends on the seller's good faith to be able to attend AJB before PPAT.

Furthermore, if the seller cannot be present to sign the deed of sale and purchase (AJB), then the seller can make an agreement containing the power of attorney. This power of attorney can be made by the seller to someone who is trusted. Moreover, in practice, an authorized person is someone who is able to perform attendance and perform signatures to represent and for on behalf of the seller in front of PPAT and buyers. This power of attorney in practice, often occurs in the era of human civilization that has solid mobility. The granting of power of attorney is also a new legal breakthrough in the field of civil law, especially in the agrarian scope. This has also been agreed upon by all notaries and PPAT throughout Indonesia who have many similar cases regarding clients who cannot attend to perform AJB signatures.

Further authorization does not necessarily take place orally, even in writing freely by the seller as the owner of the object with the donee as the donee mandated to perform AJB. It should also pay attention to some points, that the granting of a power of attorney by the owner of the object to the donee is a temporary and special power of attorney. The grantor should be very careful in conducting the granting of powers to the donee. This is because the absence of the seller, obviously raises the potential for new legal problems that can lead to the degradation of legal protection for the buyer, even for the seller himself. If the seller cannot declare his presence, then he must convey his intention to PPAT and to the buyer. With this then, the seller must complete his own business which is an obligation to do AJB. Furthermore, the seller in granting the power of attorney has a new legal position as the authorizer. Furthermore, penerima the donee by the seller also owns the position as the seller's party. This is because the donee receives the power of attorney from the seller in this case the owner of the object, and represents for and on behalf of the seller to carry out the signing of the deed of sale and purchase (AJB).

Previously discussed about the power to conduct a transition sale and transition purchase. In general, AJB is carried out by the seller and the buyer if a transaction related to the object has been completed and is clear. If it has not been completed, both in payment and in documents, then di within the scope of notaries and PPAT can make a preliminary agreement. This preliminary agreement in practice is carried out to bind both parties on a temporary, while the payment process or document settlement process is carried out and completed and completed. This preliminary agreement is usually known as the deed of sale and purchase Binding Agreement known as the PPJB deed. The PPJB Act is valid and only temporarily binding on the parties. This is then, if the parties have

¹² Arlene Agustina dan Hanafi Tanawijaya. 2016. *Tanggung Jawab Pejabat Pembuat AKta Tanah (PPAT) dalam Penandatanganan Akta Jual Beli yang Didasari atas Blangko Kosong (Contoh Kasus : Putusan Mahkamah Agung Nomor 1201/K/PDT/2016*. Jurnal Hukum Adigama Universitas Tarumanegara. Halaman 7.

completed and completed their business regarding payments and documents, then an act of selling power is made. The power to sell Act is an act which contains the complementary agreement of the PPJB Act. The deed of sale contains a statement that the seller has received all payments and completed his obligations as a seller, and the buyer has made payments and completed his obligations as a buyer. And the deed of sale contains the statement that, with the completion of the preliminary business in order to achieve a sale and purchase, the seller gives the right to sell the object to the buyer. Further in this case what is meant is that, if the buyer will not intend to make the transition over the object, then at least the buyer has been authorized by the seller to control the object.

The control exercised by the seller based on the Selling Power is an absolute authorization exercised by the seller. After the seller gives a power of attorney for the buyer to control the object, the buyer *yuridis* has juridically owned the object of sale and purchase. This authorization to sell from seller to buyer is absolute power. Absolute power of Attorney means a power of attorney in which there are provisions for the seller not to be able to revoke the power of attorney. If the buyer has pocketed a PPJB deed and deed of power of attorney to sell from the seller, then the *yuridis* buyer has juridically has the right to the objek land object. This is then by the buyer can be carried out the land rights from the ownership of the seller into the ownership of the buyer by doing AJB.

As has been stated in the instruction of the Minister of Home Affairs No. 14 of 1982, that to carry out a transfer of the object of land rights is prohibited based on absolute power. This then does not apply to absolute power in the power to sell Act. This is because the deed of sale has had a previous agreement, namely the deed of sale and purchase Binding Agreement. In this case, what is meant by the previous agreement is that in the deed of sale and purchase Binding Agreement there is a reciprocal agreement in which there is a reciprocal agreement on the rights and obligations for the seller and the buyer which makes the buyer entitled to ownership of the land rights. The absolute prohibition of power of Attorney included in the instruction of the Minister of Home Affairs No. 14 of 1982 is that the power of attorney is given from the seller to another person who is not a buyer, without entering into a binding sale and purchase agreement. But then the other party can immediately own and control the object.

Subsequently, in practice it has developed about the presence of a power of attorney in the granting of power of attorney. In addition to the power of attorney to sell, there is also a power of Attorney approval deed that is currently circulating within the scope of notaries and PPAT as well as within the scope of the transition of land rights in the Land Office. Power of Attorney approval deed now has become a legal solution for PPAT, notary, and for the parties concerned in doing the deed of sale and purchase if the seller can not be present to sign the deed of sale and purchase in the presence of PPAT. This is because the deed of approval of the power of attorney in it already contains everything that is needed by the seller. The power of Attorney approval deed is different from the power of attorney to sell in which there is no element of absolute power clause. The power of Attorney approval act only contains the authorization of a person designated as a donee for and on behalf of the seller replacing and representing to perform the signature of the deed of sale and purchase. The Power of Attorney approval Act is a power of attorney that has the function of delegating duties to the donee to act as a seller. The assignment also includes all documents that were originally required to be signed by the seller. In addition to the signing of documents, also all legal acts that are then considered necessary for the

seller to carry out the sale of his land and premises.

The power of Attorney approval deed has a difference with the power of attorney to sell because it lies in the nature of the granting of power of attorney. While the power to sell Act has the nature of absolute power, the consent and Power Act cannot and is prohibited from imposing an absolute power clause. For the seller, the donee only assists the seller to act as the seller, to perform duties as the seller, and to accept delegation of duties from the seller on any action that needs to be performed. In the consent and Power Act, the donee will act as the seller, which in this case will be outlined in the comparison in the PPAT sale deed and purchase deed to make the transfer of land rights. In the act of sale and purchase will then be poured and explained about the absence of the seller, and poured also about the granting of authority to the donee by the seller to perform the signature. Further in practice, because the nature of the power is not an absolute power, there are some things that the donee should not do. One of them is that you cannot receive payment for the sale and purchase value from the buyer. Then, the donee may not determine the purchase and sale price of the land object sold by the seller (in this case, as the donee). This is done solely to limit the power of the donee who has the potential to do things that are against the law without the knowledge of the seller as the owner of the land rights.

The realization of this power of Attorney approval deed has been proven in the scope of agrarian sector by notary and PPAT and Land Office. Further, the transfer of land rights was previously known that it should be carried out in the Land Office of the region where the land object is located. This also makes AJB conducted by PPAT must also be done by PPAT who work in the same working with the land object. If then the seller is outside the region, which can not reach the PPAT place to make AJB, then the seller must perform a deed of approval of the authority in its territory at that time. Of course, the deed of approval of the power of attorney in question is an authentic deed drawn up before a notary. Furthermore, in making the power of attorney approval deed, which because in this case it is a power of attorney that contains elements of delegation of duties, the donee does not need to be present to sign the power of attorney approval deed before a notary. The power of attorney Agreement Act is simply signed by the seller. Then, after the seller signs the power of attorney approval deed, then like the deed in general, the notary must issue a copy of the deed required by the seller. The copy is the basis for the absence of the seller and the donee to perform AJB in front of PPAT.

Furthermore, if in conducting the management of the transfer of land rights, then in addition to the original deed of sale and purchase, the original copy of the deed of consent and power that has been brought by the donee must also be included. This, in addition to being the basis for identity comparison in AJB, the deed of power of attorney approval is also the basis for the Local Land Office to review documents on the transfer of land rights. The Land Office will ask and ask for the original copy of the deed of consent to the power of attorney to the buyer, to ensure that indeed the seller is correct to authorize the donee, and not an absolute power of attorney. This needs to be done by the Land Office to re-ensure that the power of attorney granted by the seller to the donee is not a power of attorney that can cause the transfer of land rights that are being carried out by the seller to the buyer. In this case, it is also to avoid land disputes, such as among them or in hal this case tax irregularities by eliminating one step prosedur of taxation procedures for taxes arising from sales and purchases between the parties.

This is also done by kantor the land office in order to realize legal protection for both parties. In practice, when performing AJB signature in front of PPAT, PPAT is obliged to ensure the correctness of the identity and give confidence to the buyer that the donee as the seller is the actual donee. In addition, PPAT is also obliged to ensure itself to the seller to ask again that the donee who was present before PPAT is actually the person appointed by the seller to perform AJB. If necessary, PPAT can contact a notary colleague who previously made a power of attorney approval deed to make sure again that it is true that the seller authorizes the si done who is currently ini present before him. The seller needs to be reassured because it is related to the potential legal resistance by the done to do other things beyond his power as stated in the power of attorney approval deed.

The land deed making officer (PPAT) when it has been completed confirms the existence of the power of attorney approval deed to various parties, then the signing of the deed of sale and purchase can be done. Then the transfer of land rights by the buyer can be carried out. If reviewed juridically, the power of attorney approval deed does not violate the law and is valid as long as its manufacture is carried out in accordance with the provisions of the law regarding the authenticity of the deed. This can be reaffirmed in the next screening process, namely the process of transferring land rights at the Land Office. If the previous document certainty screening process dokumen by PPAT, then the next by kantor the Land Office. In the land office, if after a juridical review by looking at the history of the deed of sale and purchase based on the deed of power of attorney approval is valid and in accordance with the provisions, and its authenticity is guaranteed, then the deed jual of sale and the deed of power of attorney approval is valid in existence, and can be carried out the transition of land rights to the name of the buyer's ownership.

Based on the description above, it can be concluded that juridically due to the law of the land sale and purchase deed signed by another person based on the deed of consent and power of attorney from the seller is not in violation of the law and its legitimate existence as long as its manufacture is carried out in accordance with the provisions of the law regarding the authenticity of the deed through the verification process and screening of document certainty by PPAT.

4. Legal protection for the Land deed officer (PPAT) who makes the deed of sale and purchase (AJB) of Land signed by another person based on the deed of consent from the seller.

Article 1 of Law No. 2 of 2014 concerning the position of Notary states that a notary is a public official authorized to make authentic deeds and other authorities referred to in this law. The general office in question is a Notary, so that the act made by the notary in his position acquires the nature of an authentic deed. Notarial deed is authentic not because a specific legislation states so, but because the deed was made by or before public officials¹³. This is in accordance with what is meant in Article 1868 of the Civil Code which states that "an authentic deed is a deed that is in the form prescribed by, made by or in front of public employees who have authority for it at the place where the deed is made."

A deed made by not fulfilling article 1868 of the Civil Code is not an authentic deed which can then be degraded into a letter under hand, there are several differences

¹³ I Ketut Tjukup, dkk. *Akta Notaris (Akta Otentik) sebagai Alat Bukti dalam Peristiwa Hukum Perdata*. Acta Comitatus. Jurnal Ilmiah Prodi Magister Kenotariatan. Universitas Udayana. Halaman 184.

between an authentic deed and a deed made under hand, including :

1. Authentic deed is a perfect proof as stipulated in Article 1870 of the Civil Code.

This deed has such strength of evidence because it is considered to be attached to the deed itself that it does not need to be proved again and for the judge it is "mandatory evidence" (*Verplicht Bewijs*), so that any party who declares that the authentic deed is false then he must prove the falsity of the deed, therefore the authentic deed has the power of proof both outwardly, formally and materially.

2. Action under the hand.

The deed under hand for the judge is "free evidence" (*VRU Be wijs*) because the deed under hand only has the strength of material evidence after the formal strength is proven while the formal proof strength only occurs, if the parties concerned know the truth of the contents and how to make the deed, the deed under hand is different from the authentic, because if a deed under the hand is declared false, then using the deed under the hand as evidence must prove that the deed is not false.

The land deed maker or PPAT official as a state official or public official is authorized to make an authentic deed. As previously described that, in making an authentic deed, notary/ PPAT must pay attention to several things, one of which is the truth of the identity of the parties facing him.

Furthermore, in this case, in relation to the power of attorney in the power of attorney Agreement Act brought by the donee as the seller party validation of its correctness must also be carried out. It is the obligation of PPAT as a public official to do so in order to maintain the authenticity of a deed of sale and purchase made. And this is also to protect the interests of the buyer, the seller's own interests, as well as the interests of PPAT. This legal protection must be enforced and reaffirmed with measures as well. Furthermore, it has been explained about the validity of a power of attorney approval deed which can be ascertained that the deed is valid and can be used to make the transition back the name of the certificate of power of attorney approval deed can be called valid as long as in making it a notary and PPAT follow the protocol of making the deed that has been determined.

The legal consequence of the sale and purchase agreement on a land is the transfer of ownership of the land rights *tanah* that are the object of the sale and purchase agreement, the ownership of these rights from the seller passes to the buyer. Other legal consequences arising from the land purchase agreement are:

1. The creation of new conditions in the form of regulations on the basis of the agreement of the parties to the agreement;
2. The emergence of the obligation to comply with the laws created by the agreement of the parties.

Based on the description above, it can be seen that a legal act will cause *akibat* legal consequences, in this *akibat* case, the legal consequences arising from the sale and purchase agreement on a land are the creation of obligations and rights between the seller and the buyer who entered into the sale and Purchase Agreement, and caused the transfer of land rights from the seller the buyer after the land sale and purchase agreement is carried out by making a deed made and signed by and in front of authorized officials in this case PPAT and the deed made PPAT is an authentic deed which is one of the strongest evidence and fulfilled in. The authority of the land deed making officer (PPAT) in the land sale and purchase agreement is: PPAT carry out some of the activities of land registration

with the task of making (the deed (authentic) as evidence that certain legal acts have been carried out regarding hak land rights tanah or property rights to flats units that serve as the basis for registration of land registration the law is in the area of work determined by the government (absolute competence), namely the regency or city of one region with the working area of the Land Office, and for temporary PPAT (camat) is the position camat of the sub-district head when in office¹⁴.

PPAT in carrying out its duties has a working area. This is in accordance with mandated in Government Regulation No. 37 of 1998 article 12 paragraph 1 on land deed officials which states that *"PPAT work area is a working area of the Regency/municipality land office."*

Based on the provisions mentioned above, PPAT in carrying out its duties already has its own working area, namely in the District/Municipality of its territory is located. This means that the PPAT deed in its manufacture and ratification when the signature should not be outside the working area of PPAT. If in certain cases, there are parties or one of the parties or clients who want to sign the PPAT deed, then the parties must be present to face and deal with the PPAT in question. PPAT deed also in doing the signing must be read to the facade first. This will certainly not be conducive situation if PPAT who is in charge of doing his job outside his work area or in this case outside his office. If a PPAT deed is made and legalized outside the PPAT working area, then the deed becomes invalid, and its authenticity can be degraded intensity.

Furthermore, in PP 24 of 1997 it was explained that the Land Office was assisted by PPAT in registering and transferring land rights or property rights over one apartment. This is because PPAT in his position is authorized to make authentic deeds regarding certain legal acts related to land. It can be recalled in the UUPA regulation of 1960 which confirms that all legal acts relating to the registration and transfer of land rights must be carried out and proven by an authentic deed made before the land deed making officer (PPAT). It is certainly becoming clear that all legal acts inherent in the steps towards making a deed of sale and purchase must be carried out in the form of an authentic deed, such as power of attorney, representation, guardianship, and other legal acts. In this case, it can be ascertained that PPAT can perform a deed of sale and purchase based on the deed of power of attorney approval without concern about dubious legal standing. This can be done as long as the making of the power of attorney approval deed is carried out in accordance with the provisions of f existing legislation, so that the deed becomes authentic and can be used as the basis for making the deed for other legal acts.

The use of the power Consent Act in the conduct of sale and purchase in lieu of the seller's absence is frequent in the practice of transfer of land rights. The transfer of land rights to be changed from the name of the seller to the name of the buyer, must be done and proven by a deed jual of sale made in the presence of PPAT. If the seller cannot appear before the PPAT and authorize his presence to someone he appoints, then the power of attorney must be in the form of a notarial deed. The act is referred to as the power Consent Act. In its implementation in the field, the power of Consent Act is valid and can be used to sign the deed of sale and purchase in the presence of PPAT can be used to manage the transition of land rights.

Preventive legal protection preventif for PPAT who make a deed of sale and purchase

¹⁴ Baharudin. 2014. *Kewenangan Pejabat Pembuat Akta Tanah (PPAT) dalam Proses Jual Beli Tanah. Lampung. Keadilan Progresif. Volume 5 Nomor 1. Halaman 100.*

signed by another person based on the approval of the seller is given based on its authority set forth in PP 37/1998, where PPAT is authorized to make an authentic deed regarding legal acts related to the transfer of land rights or rights to apartment units. This regulation is in line with PP 24/1997 which can then be concluded that in registering the transfer of land rights, it must be proven by an authentic deed made by PPAT. Preventive legal protection preventif can be given to PPAT who make AJB signed by others based on the deed of approval and power of attorney from the seller, as long as the deed of approval and power of attorney is made with the correct protocol and in accordance with laws and regulations.

5. Conclusion

1. Juridically as a result of the law of the land sale and purchase deed signed by another person based on the deed of consent and power of attorney from the seller is not in violation of the law and its legitimate existence as long as the Making Of The Deed of sale and purchase is carried out in accordance with the provisions of the legislation regarding the authenticity of the deed. This can be done by PPAT by conducting a verification of the documents submitted or shown by the faces by ensuring the validity and correctness of the documents in question.
2. The Deed of buying and selling Made in front of and by PPAT is an authentic Deed. This is if a PPAT performs The Making of the act correctly and in accordance with the protocol, then formally and materially the act is authentic. So, the deed of sale and purchase can be perfect evidence and can be used as a basis for strong legal protection for PPAT itself.

6. References

- Boedi Harsono, *Hukum Agraria Indonesian agrarian law-history of the formation Undang- Undang of the basic agrarianlaw, its content and implementation*, Jakarta, 1999.
- Frans Satriyo Wicaksono and Agung Sugiarto, *Panduan A Complete Guide To Making power of attorney letters*, Visimedia, Jakarta, 2009.
- Harun Al Rashid, *Overview Of Jual Buying And Selling Land*, Ghalia Indonesia, Jakarta, 1987.
- Muhammad Syaifuddin. *Hukum Contract Law Understands Contracts In The Perspective Of Philosophy, Theory, Dogmatic, And PraktikLegal Practice (Enrichment Of The Law Of Engagement Series)*. Bandung. Penerbit Bandar Advanced City Publishers. 2012.
- Soerjono Soekanto & Sri Mamudji. 2001. *Penelitian Hukum Normative Legal Research (A Tinjauan Brief Review)*. Eagle Press. Jakarta.
- Suratman & Philips Dillah, *Methods PenelitianOf Legal Research*. Bandung: CV Alfabeta, 2015,
- Urip Santoso, *registration and transfer Hak of land rights*, Kencana Prenada Media Group, Jakarta, 2010.
- Arlene Agustina and Hanafi Tanawijaya. 2016. *TanggungThe responsibility of Pembuat AKtathe land deed officer (PPAT) in signing the deed of sale and purchase based on a blank blank (Example Case : Putusan Supreme Court decision number*

- 1201/K/PDT/2016. Jurnal Adigama Law Journal Adigama Universitas Of Tarumanegara University.
- Baharudin. 2014. *Authority Pejabat Pembuat Akta of the land deed officer (PPAT) in the process of buying and selling land*. Green. Keadilan Progressive Justice. Volume 5 Number 1.
- Husnul Munfarid, Imam Kuswahyono, Suhariningsih. *Implikasi Juridical implications of buying and selling land that is not done in the presence of PPAT on the process of Registration and transfer of Land Rights (analysis of Decision No. 18 /Rev.G/2012 /PN.Lmg)*. Faculty Of Law Universitas Brawijaya.
- I Ketut Tjukup, dkk. *Akta Notarial (deed (authentic deed) as evidence in Peristiwa Hukum Civil Law events*. Acta Comitas. Jurnal Scientific Journal Of The Master Of Notary. Udayana University.
- Code of Civil Law Hukum Perdata (Civil Perdata Code).
- Law No. 2 Tahun of 2014 Perubahan amendment to Law No. 30 Tahun of 2004 on Jabatan notary position (Lembaran Statute Book Of The Republic of Indonesia Tahun of 2004 No. 117, supplement Lembaran to statute book No. 4432).
- Law No. 5 Tahun of 1960 on Peraturan basic agrarian regulations- Pokok Agraria (Lembaran Statute Tahun Book of 1960 No. 104, supplement Lembaran to statute book No. 2043).
- Peraturan Government Regulation No. 24 Tahun of 1997 on Pendaftaran land registration (Lembaran statute Tahun book of 1997 No. 59).
- Peraturan Government Regulation No. 24 2016 of 2016 amendment Peraturan to Government Regulation No. 37 Tahun of 1998 concerning the regulation on the position of officials making Akta land deeds (Lembaran Statute Book of 2016 No. 120, supplement Lembaran to statute book No. 5893).
- Regulation of the Minister of Agrarian Affairs No. 3 Tahun of 1997 on the implementation of Law No. 24 Tahun of 1997.
- Peraturan Government Regulation No. 37 Tahun Of 1998 On Officials Pembuat Akta Pembuat Land Deed.
- Peraturan Government Regulation No. 10 Tahun Of 1961 On Pendaftaran Land Registration.
- Instruction Of The Ministry Of Internal Affairs No. 14 Tahun Of 1982 On The Prohibition Of The Use Of Absolute Power Of Attorney As The Transfer Of Land Rights.