

Legal Review of the Validity of a Power of Attorney to Sell as an Executorial Guarantee in a Breach of Performance Case (Case Study of Batang District Court Number 64/Pdt.G.S/2022/PN.Btg)

Edward¹, Rodiatun Adawiyah²

Fakultas Hukum Universitas Prima Indonesia

Corresponding authors: Edwardd.d@yahoo.com¹, rodiatunadawiah@unprimdn.ac.id²

ABSTRACT

The power of attorney to sell is frequently employed as an alternative form of security in debt agreements outside of formal collateral mechanisms. Nonetheless, in practical application, such powers of attorney are often misused and treated as executorial guarantees, leading to legal complications when execution is attempted. This study seeks to assess the legal validity of a power of attorney to sell when used as an executorial guarantee in cases of default, and to evaluate the legal reasoning employed by the judges of the Batang District Court in Decision Number 64/Pdt.G.S/2022/PN.Btg. A normative juridical method was utilized, incorporating a statutory and case-based approach. Data were collected through literature reviews and judicial decision analyses and were examined using qualitative methods. The findings demonstrate that a power of attorney to sell cannot be equated with executorial collateral instruments such as mortgage or fiduciary security, as this contravenes the foundational principles of collateral law in Indonesia. The Batang District Court adjudicated that the said power of attorney lacked executorial force and thus required a civil lawsuit mechanism to execute the sale of the collateral. This judgment aligns with the principles of legal prudence and debtor protection, preventing potential abuse of legal authority. Accordingly, the use of a power of attorney to sell must be contextualized within its proper legal function and should not be construed as a substitute for executorial guarantees.

Keywords: Power of Attorney to Sell, Executorial Guarantee, Default, Collateral Law

INTRODUCTION

The expansion of economic transactions and the increasing complexity of societal needs have necessitated the development of legal instruments designed to provide certainty and legal protection in civil legal relations. Among the commonly used instruments in civil law is the debt agreement secured by collateral. In practice, to secure repayment obligations, parties frequently resort to using a power of attorney to sell as an alternative to formal collateral rights such as mortgages or fiduciary guarantees (Abdulkadir, 2000).

The power of attorney to sell is often favored due to its practical nature and the absence of administrative burdens such as registration fees. It typically authorizes a creditor to sell a debtor's asset—most often immovable property—in the event of non-performance. However, the employment of such a power as a substitute for executorial collateral in breach of contract situations invites legal debate regarding its validity and executorial enforceability (Malohing, 2019).

Pursuant to Article 1320 of the Indonesian Civil Code (KUHPerdata), a valid agreement must fulfill both subjective elements (mutual consent and legal capacity of the parties) and objective elements (a defined object and a lawful cause). The power of attorney, as regulated under Article 1792 of the Civil Code, is a legal arrangement

in which one person confers authority to another to act on their behalf. However, this legal construction inherently forms a fiduciary relationship, which is revocable by the grantor at any time. Consequently, this raises concerns about the executorial legitimacy of a power of attorney to sell when used to enforce obligations.

In financial and banking practice, such powers of attorney are frequently positioned as informal collateral instruments. Nonetheless, the Supreme Court, through its jurisprudence, has consistently affirmed that a power of attorney to sell does not function as a legal instrument of direct execution, unlike a *grosse* of a notarial deed or a registered mortgage certificate. It is viewed merely as a civil agreement without executorial strength, except when expressly supported by a principal agreement detailing the terms and mechanisms of enforcement.

Thus, this legal review is important to clarify the boundaries and limitations of using a power of attorney to sell in the context of debt default, especially when judicial enforcement is involved. Through a focused analysis of the Batang District Court Decision Number 64/Pdt.G.S/2022/PN.Btg, this study aims to contribute to the doctrinal development of collateral law and provide guidance for legal practitioners and policymakers in interpreting and applying such instruments within the correct legal framework.

METHOD

This research employs a normative juridical approach, also known as doctrinal legal research, which focuses on the study of legal norms, principles, and doctrines relevant to court decisions concerning minimum penalties for corruption offenses. This approach involves a comprehensive analysis of legal theories, legal concepts, statutory regulations, and provisions contained in the Criminal Code, aiming to understand the legal framework applicable to the issue at hand.

In addition, the study adopts an analytical-descriptive approach to systematically and comprehensively examine the empirical and normative dimensions of disputes, particularly in the context of brand-related conflicts. This approach is intended to explain, identify, and interpret relevant legal facts and norms that are central to the problem being investigated.

The legal research methods employed include the statute approach, the conceptual approach, and the case approach, each of which serves to enrich the analysis by integrating statutory interpretation, conceptual clarification, and case law review. These methodological tools enable a more nuanced understanding of the legal issues surrounding the research topic.

RESULTS AND DISCUSSION

1. Legal Protection in Credit Agreements Utilizing a Power of Attorney to Sell as an Executory Guarantee

Legal protection refers to the state's effort to ensure legal certainty and security for individuals in exercising their rights under the law. According to Satjipto Rahardjo, legal protection encompasses all measures undertaken to safeguard legal subjects from arbitrary actions that may infringe upon their legal entitlements. In the context of credit agreements, legal protection for involved parties must reflect principles of

justice, balance, and equality, thereby preventing the abuse of dominant positions—especially by creditors against debtors.

Although credit agreements originate from the legal construct of loan agreements, they differ in important respects from conventional loan agreements as regulated in the Indonesian Civil Code. Pursuant to Article 1754 of the Civil Code, a loan agreement (*pinjam pakai*) presupposes that the object of the agreement comprises consumable goods, whose utility results in their exhaustion. Thus, if the object of the agreement is not consumable, the legal consequence is the formation of a different type of contract, leading to differing legal implications (Adawiyah, 2022).

Article 1313 of the Civil Code defines an agreement as a legal act by which one or more persons bind themselves to one or more other persons. This formulation underlines the consensual nature of contractual relationships, emphasizing that an agreement must be realized through the manifestation of mutual intent and action. From this provision emerge various types of agreements, including consensual, formal, and real agreements.

In consensual agreements, a mere meeting of the minds between parties—regardless of form—can suffice to generate binding legal obligations. Formal agreements, on the other hand, require the fulfillment of specific formalities, while real agreements are constituted only upon the actual delivery of the subject matter. A loan agreement falls under the category of a real agreement, as stipulated by Article 1754 of the Civil Code, which mandates the transfer of a certain quantity of consumable goods (Prasetyo, 2022).

Consequently, the inclusion of a power of attorney to sell as part of a credit agreement—especially when used as a substitute for traditional collateral instruments—can be considered legally valid under the principle of freedom of contract, provided that the agreement has been mutually consented to by both parties.

2. Judicial Considerations in Case No. 64/Pdt.G.S/2022/PN.Btg Concerning the Validity of a Power of Attorney to Sell as a Basis for Execution

In Indonesian civil law practice, a power of attorney to sell is often employed as an alternative form of security in credit agreements, alongside mortgages (*hak tanggungan*), pledges (*gadai*), and fiduciary transfers. This instrument constitutes a legal authorization from the debtor to the creditor, allowing the latter to sell specific assets—typically immovable property—in the event of the debtor's default.

Under Article 1792 of the Civil Code, a power of attorney is defined as an agreement in which one party grants authority to another to act on their behalf in certain legal matters. Legally, a power of attorney is consensual and personal in nature (*intuitu personae*), which means it can, in principle, be revoked by the grantor (principal) at any time prior to execution. Moreover, such authority is generally terminated upon the death of either the grantor or the attorney-in-fact.

However, in financial and banking practice, powers of attorney to sell are frequently drafted with an irrevocable clause, and are stated to remain valid regardless of legal circumstances that would ordinarily nullify such authority. This creates a legal debate: can a power of attorney to sell, in this form, function as an executory instrument equivalent to a mortgage?

The legal framework governing contracts in Indonesia is grounded in the principle of freedom of contract, as enshrined in Article 1338 of the Civil Code. This

principle allows parties to freely formulate the terms of their agreements, provided the agreements are entered into in good faith, do not contravene statutory regulations, public order, or morality, and meet the essential validity requirements laid out in Article 1320 of the Civil Code: (1) mutual consent; (2) legal capacity; (3) a definite subject matter; and (4) a lawful cause.

Accordingly, any agreement that satisfies these conditions possesses the binding force of law for the parties involved. This normative framework provides a basis for the legitimacy of powers of attorney to sell, even when deployed in the context of credit guarantees, so long as they do not infringe upon legal norms.

In practice, however, judicial interpretations may diverge. For instance, in the decision of the Batang District Court, Case No. 64/Pdt.G.S/2022/PN.Btg, involving PT Bank Rakyat Indonesia (Persero) Tbk as the plaintiff and individuals Slamet Suroto and Kuniyah as the defendants, the court was presented with a credit agreement that incorporated a power of attorney to sell. The agreement stipulated that the defendants authorized the plaintiff to sell the collateral property in the event of default.

Upon default by the defendants, the plaintiff sought judicial authorization to sell the collateral either via public auction or private sale, based on the previously executed power of attorney. However, the court rejected the plaintiff's petition. The rationale for the decision rested on established jurisprudence from the Supreme Court, particularly Rulings No. 1520/K/Pdt/1984 and No. 3309/K/Pdt/1985, which hold that a simple acknowledgment of debt cannot serve as a basis for collateral arrangements. Furthermore, in Decision No. 1400 K/Pdt/2021, the Supreme Court emphasized that collateral may only be executed through a formal auction process, and that creditors are not authorized to unilaterally dispose of pledged property.

This judicial stance reflects a restrictive interpretation of contractual freedom, where the court places greater weight on procedural safeguards for collateral execution than on the contractual terms mutually agreed upon by the parties. Such interpretation raises critical questions about the alignment of judicial decisions with the fundamental tenets of contract law, particularly the principle of freedom of contract.

From the foregoing analysis, it becomes evident that although powers of attorney to sell are often utilized in financial agreements as practical instruments of security, their enforceability as execution titles remains contentious. This legal ambiguity necessitates further doctrinal and jurisprudential clarification to ensure harmony between contractual practice and legal enforcement mechanisms.

Discussion

In the context of credit agreements, the use of a power of attorney to sell as an executory guarantee raises complex legal questions. Under Article 1792 of the Indonesian Civil Code (KUHP), a power of attorney is defined as a legal act whereby one person grants another the authority to perform legal acts on their behalf. In banking and financing practices, this power is often formulated as irrevocable and intended to serve as a substitute for conventional collateral instruments. Although such arrangements are commonly justified by the principle of freedom of contract under Article 1338 of the Civil Code, the use of a power of attorney in this manner remains legally controversial, as it contradicts the inherently personal and revocable nature of power of attorney agreements.

The core issue arises when such powers of attorney are treated as having

executory legal force comparable to that of a mortgage (hak tanggungan). In Batang District Court Decision No. 64/Pdt.G.S/2022/PN.Btg, the court rejected the plaintiff bank's claim to sell the debtor's land based on a power of attorney to sell, despite the debtor's default. The judge cited Supreme Court precedents (e.g., No. 1520/K/Pdt/1984 and No. 3309/K/Pdt/1985), which hold that a simple acknowledgment of debt cannot include promises of collateral execution, and reaffirmed that the sale of collateral must be conducted through public auction. This decision underscores the judiciary's inclination to prioritize procedural justice and debtor protection, even when such positions appear to conflict with the mutually agreed terms of the contract.

This legal tension highlights the need for regulatory clarity regarding the enforceability of powers of attorney to sell within credit agreements. On one hand, such instruments offer practical advantages for creditors seeking legal certainty in debt recovery. On the other hand, if left unchecked, their use may undermine fundamental principles of fairness and equality, particularly in debtor-creditor relations. Thus, a balanced legal framework—whether through legislative reform or jurisprudential development—is essential to ensure that the use of such instruments remains consistent with both contractual autonomy and the protection of parties with weaker bargaining power.

CONCLUSION

Equitable legal protection for all parties must be grounded in a balanced recognition of their respective rights and obligations. Creditors are entitled to seek repayment of debts; however, the execution of collateral must be conducted through legitimate legal procedures. Conversely, debtors are equally entitled to protection against unilateral actions that contravene the principles of justice and legal certainty. In the case at hand, the Panel of Judges affirmed that a power of attorney to sell does not possess executorial authority and may only serve as evidentiary support. Although the breach of contract claim was partially upheld, the debt repayment process must nonetheless adhere to established legal mechanisms, rather than being enforced through a unilateral sale by the creditor. This ruling exemplifies a fair approach to legal protection for both parties. The court clarified that collateralized property may only be sold via public auction, thereby disallowing the bank from selling the collateralized land independently. Although the plaintiff invoked the principle of freedom of contract in drafting the agreement, the court's decision underscores the importance of consistency with the interpretation of prevailing laws in resolving civil disputes.

Acknowledgment

There is a pressing need for specific legal regulations that explicitly govern the use of a power of attorney to sell as a form of collateral in debt agreements. Such regulations would serve to establish legal certainty for the involved parties and prevent misinterpretations that could potentially harm one side. The judiciary must consistently uphold the principle of fair and balanced legal protection for all stakeholders. Judicial decisions in similar cases should be used as precedents to promote legal certainty and prevent deviant practices in the use of a power of attorney to sell as collateral for debt obligations.

References

- Adawiyah, Rodiatun, et al. (2023). Analisis Yuridis Tentang Pembuktian Kebenaran Dasar Terhadap Penguasaan Tanah. *Jurnal Darma Agung*, 31(3), 103–111.
- Abdulkadir Muhammad. (1992). *Hukum Perikatan*. Bandung: PT. Citra Aditya Bakti.
- Abdulkadir Muhammad. (2004). *Hukum dan Penelitian Hukum*. Bandung: Citra Aditya.
- Ahmadi Miru. (2007). *Hukum Kontrak Perancangan Kontrak*. Jakarta: Raja Grafindo Persada.
- Ahmadi Miru & Sakka Pati. (2012). *Hukum Perikatan: Penjelasan dan Makna Pasal 1233 BW sampai 1456 BW*. Jakarta: Rajawali Pers.
- Budiono, Herlien. (2010). *Ajaran Umum Hukum Perjanjian dan Penerapannya di Bidang Kenotariatan*. Bandung: Citra Aditya Abadi.
- Djaja S. Meliala. (1982). *Pemberian Kuasa Menurut Kitab Undang-Undang Hukum Perdata*. Bandung: Tarsito.
- Heriyanti. (2016). Perlindungan Hukum terhadap Notaris yang Terindikasi Tindak Pidana Pembuatan Akta Otentik. *Yustisia*, 5, 26.
- Herlien Budiono. (2008). *Asas Keseimbangan Bagi Hukum Perjanjian Indonesia*. Jakarta: Citra Aditya.
- Herowati Poesoko. (2007). *Parate Executie Obyek Hak Tanggungan*. Yogyakarta: Laksbang Pressindo.
- HS., Salim. (2005). *Perkembangan Hukum Jaminan di Indonesia*. Jakarta: Raja Grafindo Persada.
- H. Salim. (2004). *Hukum Jaminan di Indonesia*. Jakarta: Rajawali Pers.
- Isnainul, O. K. (2018). Analisa Hukum Eksistensi Jaminan Fidusia Pada Perjanjian Pembiayaan (Finance) Menurut Undang-Undang Nomor 42 Tahun 1999 Tentang Jaminan Fidusia. *Kalam Keadilan*, 6(1).
- Lubis, Ikhsan. (2018). Perlindungan Hukum terhadap Direksi yang Diberhentikan tanpa melalui Rapat Umum Pemegang Saham (Studi pada PT. Sumber Andalan Mandiri (Sam)). *UNES Law Review*, 1(2), 172–183.
- Malohing. (2018). *Kedudukan Perjanjian Baku Kaitannya dengan Asas Kebebasan Berkontrak*. Fakultas Hukum Universitas Sam Ratulangi.
- Mariam Darus Badruzaman. (1994). *Aneka Hukum Bisnis*. Bandung: Alumni.
- Mukti Fajar & Yulianto. (2017). *Dualisme Penelitian Hukum Normatif dan Empiris*. Yogyakarta: Pustaka Pelajar.
- Noor, Tajuddin, & Suhaila Zulkifli. (2021). Wanprestasi yang dilakukan oleh pengelola (Bandar) pada perjanjian arisan online (Studi Putusan Nomor 99/Pdt. G. 2017/PN. Bjm). *Jurnal Hukum Al-Hikmah: Media Komunikasi dan Informasi Hukum dan Masyarakat*, 2(3), 543–556.
- Pakpahan, Elvira Fitriyani, et al. (2020). Peran dan Kewenangan Profesi Penunjang Pasar Modal (Notaris) dalam Menghadapi Era Globalisasi. *JCH (Jurnal Cendekia Hukum)*, 5(2), 323–332.
- Pakpahan, Marlina Elisabeth, Suhaila Zulkifli, & Atika Sunarto. (2022). Perlindungan Hukum Pemberian Kredit Secara Digitalisasi Kepada Debitur Masa Perkembangan Financial Technology (Fintech). *Jurnal RECTUM: Tinjauan Yuridis Penanganan Tindak Pidana*, 5(1), 120–137.
- Peter Mahmud Marzuki. (2005). *Penelitian Hukum*. Jakarta: Prenada Media Grup.
- Prasetyo, Muhammad Arif, et al. (2024). Analisis Yuridis Putusan Nomor 811 K/Pdt.

- Sus-Hki/2021 Tentang Sengketa Merek Yang Memiliki Persamaan Pada Pokoknya. *Unram Law Review*, 8(1).
- R. Setiawan. (1979). *Pokok-pokok Hukum Perikatan*. Bandung: Bina Cipta.
- R. Subekti. (1963). *Hukum Perjanjian*. Jakarta: PT. Intermasa.
- R. Wiryono Prododikoro. (1987). *Asas-asas Hukum Perjanjian*. Bandung: Sumur.
- Soerjono Soekanto. (1986). *Pengantar Penelitian Hukum*. Jakarta: Universitas Indonesia Press.
- Syifa Septiariani. (2021). Tanah Sebagai Jaminan Hutang Berdasarkan Surat Kuasa Menjual Studi Putusan-Putusan Pengadilan. *Indonesian Notary*, 3.
- Tanjaya, Willy, et al. (2023). Tinjauan Yuridis Perbuatan Melawan Hukum atas Suatu Perjanjian Kredit dengan Jaminan Suatu Kepemilikan Tanah yang Belum Terpisah dari Sertifikat Induk Tanah (Studi Putusan Nomor 388 Pk/Pdt/2020). *JPPi (Jurnal Penelitian Pendidikan Indonesia)*, 9(2), 1048–1056.
- Tommy Leonard. (2018). Perlindungan Hukum terhadap Pembeli Tanah Bersertifikat Ganda dengan Cara Iktikad Baik dengan Kepastian Hukum. *Assets: Jurnal UNPRIMDN*, 5(2), 10.