

# The Power of a Blank Form in the Fully-settled Sale-purchase Deed

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**Keywords:** The Power of a Blank Form, Sale-Purchase Deed, Ownership Transfer.

**Abstract:** A fully-settled sale-purchase deed is usually used for the sale and purchase of land that has been paid in full, but has not fulfilled the requirements to transfer the ownership title, so that it has created the rights and obligations for the parties but there has been no transfer of ownership rights. In Indonesia, according to the Government Regulation number 24 of 1997 concerning Land Registration, the transfer of property rights occurs after all of the requirements in the Government Regulation number 24 of 1997 concerning Land Registration are fulfilled. For this purpose, in a fully-settled sale-purchase deed, the power of a blank form is included for the purpose of signing the sale-purchase deed before the Land Deed Official (PPAT). This study used a normative legal approach. All fully-settled sale-purchase deeds include the power of a blank form, which is prohibited according to article 42 paragraph 2 of Notary Law (UUJN). If required in the sale and purchase agreement, there should be another authorized recipient in addition to the second party who signs the sale-purchase deed before the PPAT, so there is no blank phrase in the copy of the notary deed.

## 1 INTRODUCTION

Laws in Indonesia stipulate that a land ownership transfer must be followed by a process of title transfer over the land certificate in accordance with the Government Regulation Number 24 of 1997 concerning Land Registration. Article 37 Paragraph 1 states that a land and a house ownership transfer through sale and purchase, exchange, grant, revenue of a company and any other legal ownership transfer, except the ownership transfer through auction, can only be registered if proven by a deed made by an authorized Land Deed Official (PPAT).

Pursuant to Article 34 Paragraph 1 of the Government Regulation Number 24 of 1997 concerning Land Registration, every interested party has the right to know the physical and juridical data stored in the registration map, land list, letter of measurement and land book (physical land data checking).

The provisions of laws and regulations relating to the aforementioned Article are contained in the Government Regulation Number 34 of 2016 concerning Income Tax from Ownership Transfer of Land and/or Building, and Fully-settled Sale-Purchase Deed on Land and/or Building together with

Its Amendment stating that the land and/or building which will be sold or to which a fully-settled sale-purchase deed has been made shall pay the Income Tax. Article 7 of such Government Regulation states that the Ministry of Agrarian Affairs and Spatial Planning/Land Agency shall only issue a decree of granting of rights, recognition of rights, and transfer of land rights if the proposal is supplemented with a Tax Payment Slip or other printed means of administration similar to the Tax Payment Slip as intended.

Furthermore, Law Number 21 of 1997 that has been amended by Law Number 20 of 2000 (hereinafter referred to as Law of BPHTB) requires the buyer to make payment of BPHTB (Land and Building Title Transfer Tax). According to Article 1 Number 1, BPHTB is a tax imposed on the transfer of land and/or building title.

In fact, if the parties conduct a fully-settled sale and purchase of land and/or buildings, in the context that one of the administrative requirements has not been fulfilled, then a notary will make a sale and purchase deed. This deed is a preliminary agreement or obligatory agreement which means that when the agreement has been valid, the agreement is then binding, but only limited to giving rise to rights and

obligations of the parties and ownership transfer has not yet occurred (Fuady, 1999). A sale-purchase deed is a preliminary agreement made before the execution of the main agreement or principal agreement (Subekti, 2005). Article 1457 of the Civil Code states that sale and purchase constitute an agreement with which one party binds itself to submit a material and the other party pays the agreed price.

Engagement is a legal relationship that occurs either because of an agreement or a law (Rusli, 1996). The legal relationship is a binding legal relationship that incurs legally enforceable obligations if the matters agreed in the sale-purchase deed have been fully implemented (Salim, 2004). Therefore, a non-binding or unenforceable agreement is not an engagement (Rusli, 1996). The principal obligations in such engagement is the transfer of ownership of land and building for sale, which will only be valid after the signing of a Sale Deed before the Land Deed Official following by a title transfer at the local Land Office.

This sale and purchase deed is often made by a notary if the administrative requirements have not been fulfilled according to the regulation. It can also be because the object of sale and purchase, the land and/or buildings, is located outside the Land Deed Official coverage area (city/regency), but is included in the notary coverage area (province). Thus, in the full sale-purchase deed, it should include the full power of attorney and the power of a blank form.

In its practice, every sale-purchase deed made by a notary always includes the power of a blank form which, in the notary practice, is referred to as a blank form which will be filled by the intended recipient in the future. The blank form is called the power of a blank form because in the power to which a sale-purchase deed is attached, the recipient's (donee's) name is emptied which can be filled in by any name. Such power is intended to anticipate the absence of the buyer as the donee in the signing of the sale deed before the Land Deed Official (Danuri, 2011). The use of the power of a blank form in a sale-purchase deed motivates the writer to conduct a study with the purpose of finding out the legal basis and how is the implementation of the power of a blank form in every fully-settled sale-purchase deed?

## 2 RESEARCH METHODOLOGY

This research uses a normative legal approach. This is a doctrinal law research, also called a library research, whose objects are written regulations or other legal materials (Waluyo, 1996). This method is

used to analyze Laws and legislations, jurisprudence, and contracts (Marzuki, 2005). The use of a normative legal approach is expected to facilitate the data analysis to answer legal issues concerning the legal basis of the power of a blank form in every fully-settled sale-purchase deed and to find out whether such power does not break the other legal rules relating to the title transfer of land and/or buildings.

## 3 RESULT AND DISCUSSION

A treaty law in Indonesia is regulated in the third book of the Civil Code, Article 1233-1864, stating that all types of agreements set forth in those articles are named agreements (*nominaat*). Other agreements beyond such agreements, including a full sale-purchase deed, belong to unnamed agreements (*in nominaat*), i.e. the agreements arising, growing and developing in the practice of the community life (Salim, 2004), along with the development of the principle of freedom of contracting in accordance with Article 1338 of the Civil Code. Article 1319 of the Civil Code states that every named or unnamed agreement is subject to general provisions of the treaty law.

The general provisions of an agreement which serve as the legal requirements are regulated in the Article 1320 of the Civil Code stating the four legal conditions for a valid agreement: a. an agreement between the two parties, b. the capability of the parties to carry out legal actions, c. the object, and d. the causal cause (Salim, 2004). A fully-settled sale-purchase deed is legal after meeting such four elements. According to the theory of statements (*uitingsstheorie*), agreement (*toesteming*) occurs when both of the parties have agreed and accepted an offer (Salim, 2004). There must be a shared view to achieve the goal of an agreement. A valid agreement will have binding power, i.e. the agreement made by the parties is binding and irrevocable which then acts as a law for the parties (Hariri, 2011). Even though the parties are free to enter into an agreement, and are not bound to a particular form of agreement, the freedom is limited by the condition that the agreement a. is not prohibited by law; b. is not contradictory to the law; and c. is not contradictory to public order (Hariri, 2011).

The use of power of a blank form in a fully-settled sale-purchase deed made by a notary is contradictory to Article 16 Paragraph 1 point b of Notary Law (UUJN) stating that it is a general requirement for every agreement to make a notary deed in the form of minuta and keep it as part of Notary Protocol. Article

42 Paragraph 2 of the UUJN clearly states that no empty spaces are allowed in a minuta deed (Budiono, 2015). The fully-settled sale-purchase deed issued in the form of a copy with the power of a blank form is prohibited by UUJN.

The power of a blankformis only issued in the original deed in one copyin accordance with Article 16 Paragraph 5 in conjunction with Article 42 of UUJN permitting the blank or empty space in an original deed, i.e. the original deed contains the power in which the donee's name is not yet written. Consequently, the original deed can only be made in one copy. The power of a blank form is the power of attorney where the name of the donee (to whom the power of attorney is addressed) is, at first, emptied. It is then filled by the donee at the time when the power of attorney needs to be used.

Although the legal event of fully-settled sale has been carried out openly and each of the parties has exercised their rights and obligations in accordance with the treaty law, the agreement is not yet completely done before the ownership is transferred to the buyer. Therefore, for the purposes of title transfer, the seller has given the power which is essentially the title transfer of the land and has given an authority to the donee to control and use the land, and to perform all legal actions which, according to the law, can be carried out by the title holder.

Never the less, the process of title transfer of the land certificate requires several other regulations, one of which is the Government Regulation Number 24 of 1997 concerning Land Registration stating that the certificate of land title must be checked to the land office,the certificate shall not become collateral for debt, and the sale deed has been signed before the authorized Land Deed Official. In addition, based on Law Number 21 of 1997 that has been amended by Law Number 20 of 2000 (Law of BPHTB/Transfer Tax) the buyer is required to make payment of the transfer tax. Furthermore, based on the Government Regulation Number 34 of 2016 on 8 August 2016 concerning Income Tax from Ownership Transfer of Land and/or Building, the seller has paid the income tax.

The fully-settled sale and purchase deed shall contain the absolute power which contains irrevocable elements and which is not void pursuant to Article 1813 in conjunction with 1814 of the Civil Code because the sale is already clear and paid in cash (Subekti, 2008). Besides, it also contains a clause stating that the buyer has full ownership. Such power is very important for the signing of the Sale Deed before the Land Deed Official whose working area is

in accordance with the Regency/City where the land and/or the building is located.

The results show that the presence of power of a blankformenables the buyer, based on the sale-purchase deed,to sell the land to another party. Consequently, the government is disadvantaged because several transactions have not paid income tax and have been executed without land title transfer, denying the Instruction of the Minister of Home Affairs Number 14 of 1982 concerning prohibition of the use of absolute power as theland right transfer to avoid legal smuggling of tax obligations.

The legal analysis of the need for the power of a blankformin the fully-settled sale-purchase deed is that, based on Article 5 Paragraph 2 of the Government Regulation Number 34 of 2016, the seller will only signs the amendment or addendum of the sale-purchase deed if it is proven that the obligation as referred to in Paragraph 1 has been fulfilled by submitting a photocopy of the Tax Payment Slip or other printed administrative facilities which are equated with the relevant Tax Payment Slipwhich has been examined by the Tax Service Office. This means that the fully-settled sale-purchase deed can be made by the parties before a notary after the seller pays income tax; thus the seller will not be able to avoid tax obligations, and the power of a blankformis no longer needed. If, in the future, the buyer feels unable to sign the saledeed before the Land Deed Official, the buyer must have appointed a name as the representative. Then, the sale-purchase deedmust be immediately followed up with the sale deed of Land Deed Officialbecause the agreement is merely an obligatory agreement. This means that when an agreement is valid, it is binding, but limited only to giving rise to rights and obligations, and at that stage, the ownership transfer has not yet occurred (Fuady, 1999).

As a result, the agreement function is legally and economically fulfilled. Legally, the agreement can provide a legal certainty of the parties and economically, through such agreement, the usage value becomes higher (Salim, 2004).

## 4 CONCLUSION

Based on the Government Regulation Number 34 of 2016 on August 8, 2016 concerning Income Tax from Ownership Transfer of Land and/or Building, and Law Number 21 of 1997 that has been amended by Law Number 20 of 2000 (Law of BPHTB/Transfer Tax), the Government Regulation Number 24 of 1997 on Land Registration, and Notary Law (UUJN), the

power of a blank form in a fully-settled sale-purchase deed is prohibited. This makes the parties unable to avoid their obligations to pay the income tax and the transfer tax. The presence of power of a blank form provides opportunity to the parties to deny their obligations of the title transfer. By including the name of the donee, the buyer will immediately make the sale deed before the Land Deed Official as one of the requirements of a title transfer.

As long as the land office apparatus, as the official in charge of title transfer, continues legalizing the power of a blank form in a fully-settled sale-purchase deed, then this violation of law is unstoppable.

## 5 SUGGESTIONS

Strict sanctions from the Notary Supervisory Board are required against the notary who violates his position because the sanctions given by the Notary Law (UUJN) still provides a space for a notary to make an underhand deed, allowing the parties to claim for a compensation.

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