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LEGALITY OF DEBT RECOVERY LETTERS WITH THE POWER OF SELLING BASED ON ARTICLE 224 HIR (HERZIEN INLANDSCH REGLEMENT)

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Abstract

This research aims is to determine the basis for judges' considerations in ratifying the sale and purchase deeds based on the Debt Recognition Letter with Power of Attorney to pay off debts in the Decision of the Supreme Court No. 2290 K / PDT / 2012 which can be justified based on the prevailing laws and regulations and knowing the matters that need attention concerning the legal consequences of the deed of selling right for guarantee of Land Rights. This recent study uses a normative legal research method that examines and analyzes existing legal issues through existing legal sources and applicable laws and regulations. The results of this study found that the Judge's Consideration in the Supreme Court Decree No. 2290 K / PDT / 2012 which stated that *Judex Facti* was not wrong to apply the law, decided two legal actions of the plaintiff were legally valid and the legal consequences that occurred after the Supreme Court Decision No. 2290 K / PDT / 2012, then the creditor can have a Guarantee for Land Based on a Credit Recognition Letter made imperfectly (Authentic and Unilateral) on the basis of a Deed of Sale and Purchase without a number authorized by the Panel of Judges in the Decision.

Keywords: Debt recovery letters; power of sale

1. INTRODUCTION

In the human life, particular in community it is known that the agreement to borrow money is accompanied by collateral in the form of land, which is realized in the form of Debt Acknowledgment with Selling Power. A debtor who borrows a sum of money to a creditor with a land collateral and guarantees his land by making a debt statement and then signing a new sales authorization letter that can be applied when the debtor cannot repay the debt to the creditor. In essence, this step is a way to place a burden on Land Rights as collateral for repaying debt.

The debt recognition letter is made for the benefit of creditors so that the debt can be immediately executed against the

obligation to repay the entire amount of debt that must be paid by the debtor in debt repayment.

Every permanent land rights (Right of Ownership, Right to Business, Right to Build, Right to Use, Right to Lease, Right to Collect Forest Products, Right to Flats) have different characteristics from one another. Only rights to ownership, rights to business, rights to build and rights on state land can be charged (guaranteed) with mortgage rights. According to the object, Guarantee is divided into two forms, namely guarantee for movable objects and guarantee for immovable objects. Guarantee for immovable objects is divided into two forms, namely non-land and land objects. In this research the authors focus on discussing the Law of

Guaranteed Immovable Objects over Land objects. Therefore, this study is conducted for the development of legal science related to the paradigm of science as a process (science as a process). With this paradigm, science will never stagnate (final) in extracting the truth in the field of their respective objects, and to know the Legal Reasoning for the imposition of Land Rights carried out outside the Mortgage Rights Institution. Specifically, this study was conducted to find out how judges' considerations in ratifying the sale and purchase deed based on Debt Recognition with Selling Power to pay off debts in the Supreme Court Decree No. 2290 K / PDT / 2012 can be justified based on the prevailing laws and regulations and knowing the subject that need to be considered regarding the legal consequences of the deed of selling power of the guarantee of Land Rights.

Talking about debt repayment guarantees, the object of collateral is a form of security in the loan agreement. Without the object of collateral, debt repayment will be felt difficult to obtain by creditors because with the object of collateral, then one of the protections for creditors to be able to get back the debt repayment that is due. The existence of collateral in the loan agreement will provide protection for the security and legal certainty of the creditor that the debt will still return even if the debtor is in default, namely by executing the object of the relevant debt collateral.

The obligation to provide debt guarantees by the borrower in the context of borrowing money is closely related to the agreement between the parties that lend and borrow money. In general, lenders require debt guarantees before lending money to borrowers (Muljadi & Widajaja, 2008). The ideal guarantee meets the following criteria (Mantayborbir, 2006) such as 1) who can easily help the loan acquisition by those who need, 2) which does not weaken the potential (strength) of loan seekers to carry out (continuously) their business activities, 3)

which gives certainty to the lender in the sense that the collateral is available at any time to be executed, that is, if necessary, it can easily be cashed in to repay the debt.

Relating to land in relation to the imposition of land rights to use has been done before. (Abidin & Hernawan, 2018) in his research found legal construction in case 28 / Pdt.G / PN Btl is the existence of a legal relationship between accounts receivable and debt which is then packaged in the form of Deed of Sale and Purchase of Sales Agreement (PJB LUNAS) Number: 169 and Deed of Sales Authority Number: 170, dated December 26, 2016 without the knowledge or approval of the debtor which results in disability of one of the terms of the legal agreement so that the agreement can be canceled. In other studies, (Prasminda, Usfunan, & Udiana, 2017) found that the granting of power to sell land rights as an instrument to fulfill debtor obligations in a debt agreement in the form of notarial deeds can still be found in daily notarial practices. The power of attorney to sell this notary is used by the power of attorney to sell the land rights of the power of attorney when the authorizer (debtor) experiences a default. (Rio, 2016) in his research found that the Power of Attorney Imposing Mortgage Rights (SKMHT) must be made in a Notarial Deed or PPAT deed, although in practice the notarial SKMHT deed can only be carried out by following the form of SKMHT Perkaban Number 8 of 2012, because in SKMHT Registration with the notarial form not accepted, the Land Office is guided by the procedure for filling in the MHT SK stipulated in Perkaban Number 8/2012. Non-conformity with the form of Notarial deed regulated in Article 38 of the UUJN, namely there are deficiencies resulting in the SKMHT deed not fulfilling the criteria as an authentic notary deed.

Based on the background above, this research is gap on the basis of judges' considerations in ratifying the sale and purchase deeds on the basis of a Debt Recognition with Power of Attorney to pay

off debts in the Decision of the Supreme Court No. 2290 K/PDT/2012 can be justified based on Laws and Regulations applicable and legal consequences to parties who use debt recognition documents with the power to sell as the basis for debt repayment in the Supreme Court Decision Number 2290K / PDT / 2012.

2. METHOD

This current study is a normative legal research that examines and analyzes existing legal issues through existing legal sources and applicable laws and regulations. The data is collecting by library research that can be obtained by searching for legal materials or related topics through primary, secondary or tertiary sources. Data analysis uses a systematic interpretation of Law Number 4 of 1996 and Minister of Home Affairs Instruction Number 14 of 1982 concerning Prohibiting Use of Absolute Power of Attorney for Transferring Land Rights, to answer the imposition of land rights using a debt acknowledgment along with the power of sale.

3. RESULT AND DISCUSSION

Basic Analysis of Judges' Considerations in the Decision of the Supreme Court Number 2290 K/PDT/2012 Based on Legislation and Regulations Applicable.

A judge is required to uphold law and justice impartially. The term impartiality is interpreted not literally, impartial means the judge is not justified in choosing what will be defended because in giving his decision must be in favor of the truth. Being impartial means to be impartial in its consideration and judgment. It is stated in the Judicial Power Law article 5 paragraphs (1) that state the Court shall judge according to the law without discriminating against people.

In passing a decision on a case, the judge must really live up to and absorb the meaning of the mandate and responsibility given to him in accordance with the

function of his authority, each towards the upholding of the law itself namely justice, expediency and legal certainty based on *Pancasila*, and the Law 1945 Constitution.

Decisions handed down by judges must be based on clear and sufficient considerations. Decisions that do not meet these conditions are categorized as decisions that are not sufficiently considered or *onvoldoende gemotiveerd*. The reason for the consideration can be in the form of certain articles of legislation, customary law, jurisprudence or legal doctrine (Harahap, 2013). This is confirmed in Article 50 Paragraph (1) of the Judicial Power Law confirms that the court's decision must not only contain the reasons and grounds for the decision, it also contains certain articles of the relevant statutory regulations or unwritten legal sources which are used as the basis for hearing.

All court decisions are only valid and have legal force when pronounced in a trial that is open to the public. The legal requirements for a judge's ruling include two things, which include the things that are required and spoken in a hearing that is open to the public. This must be fulfilled by the judge in every decision making process. The hearing and decision pronounced in a court session that is open to the public or in public is an inseparable part of the principle of fair trial. Through the principle of fair trial, the trial examination must be based on an honest process from beginning to end. The principle of justice is open to the public starting from the initial examination until the verdict is handed down, Article 13 paragraph (2) of the Judicial Power Law that state a court decision is only valid and has legal force if it is stated in a hearing open to the public.

Judge's consideration is one of the most important aspects in determining the realization of the value of a judge's decision that contains justice (*ex aequo et bono*) and contains legal certainty, in addition it also contains benefits for the parties concerned so this judge's

consideration must be addressed carefully, both , and careful. If the judge's judgment is not thorough, good, and careful, then the judge's decision derived from the judge's consideration will be overturned by the High Court/Supreme Court (Arto, 2004).

Judges' considerations or *Ratio Decidendi* are arguments or reasons used by judges as legal considerations that are the basis before deciding a case. In the practice of the judiciary on the judge's decision before this juridical consideration is proven. Then the judge will withdraw the facts in the trial that arise and a cumulative conclusion from the statements of witnesses, the defendant's statements and evidence. Judges' considerations can be divided into 2 categories namely, juridical considerations and non-juridical considerations.

Juridical considerations are judges' considerations based on juridical facts revealed in court proceedings and stipulated by law as must be included in decisions such as statements of the parties, witness statements, evidence, and articles in civil law regulations. While non-juridical considerations can be seen from the background of the plaintiff and the defendant, the condition of the plaintiff and the defendant. In addition, the judge's consideration in essence should also include the following matters:

Issues and things that are recognized or arguments that are not denied.

There is a juridical analysis of the verdict on all aspects concerning all facts / proven matters in the trial.

The existence of all parts of the *Plaintiff's petitum* must be considered / tried one by one so that the judge can draw conclusions about the proven / not and can be granted / whether the claim is in the ruling.

The judge because of his position must suffice all legal reasons not stated by the parties to the litigation. According to Article 178 paragraph (1) HIR, states, "at the time of deliberation, the judge, due to

his position, must complete all legal reasons not stated by both parties."

To fulfill this obligation, Article 5 Paragraph (1) of the Law on Judicial Power instructs judges to explore values, follow, and understand the legal values and a sense of justice that lives in the community. That states that judges and constitutional justices are required to explore, follow and understand the legal values and sense of justice that lives in society.

Judge's Rationale in the Decision of the Supreme Court with Number 2290 K/PDT/2012 which states that *Judex Facti* is not wrong to apply the law, presumably needs to be reviewed because it is contrary to Laws and Regulations.

The following is the sound of the verdict being decided and stated in *Judex Facti*. According to the law, the Deed of Purchase between the Plaintiff and the Defendant on the land and the building above it with a length of land = 14.50 M, 14.30 M and Width = 10.75 M and 6.50 M is located at Jalan Tirtayasa No. 42 RT. 58 Kelurahan Gunung San Ilir, Central Balikpapan District, City of Balikpapan;

In this Amendment this Decision does not mention the number of Deed of Purchase which is declared legally valid, because in fact, the Deed of Sale and Purchase was indeed never made, the basis for transferring a plot of land that is guaranteed is a Letter of Recognition of Debt with Power of Sale (Proof of P- 2 and P-3).

In *Judex Facti* it was found that, in the imperfect Debt Confession Letter (Exhibit P -2), an additional agreement was also agreed on the Selling Power of Attorney which can be categorized as an absolute power of attorney because it cannot be revoked by the debtor (Exhibit P-3), aiming that the Creditor can sell his own land as collateral, when the debt recipient (Debtor) cannot pay the debt.

Furthermore, in one of the *petitum* claims the creditor asked the judge to ratify the Sale and Purchase Deed without

the actual Deed number. The Deed of Sale and Purchase never existed, only the No. 1 Deed of Sale and Purchase Agreement (PJB) before the Notary and Land Drafting Officer (PPAT) Arif Wahyudin, SH. Number 1 dated May 12, 2007, has not been followed up to make a Deed of Sale and Purchase.

Deed of Sale and Purchase (AJB) with a Sale and Purchase Agreement (PJB) is the same form of agreement, but is a different product. Sale and Purchase Agreement (PJB) is a Notary Product while the Sale and Purchase Deed (AJB) is a product of the Official Land Deed Maker (PPAT). Sale and Purchase Deed (AJB) is an authentic Deed made by the Land Drafting Official for the transfer of land and building rights in accordance with Article 2 paragraph (1) of Government Regulation Number 37 of 1998 concerning the Official for Making Deed of Land, State Gazette of the Republic of Indonesia Number 52 (*hereinafter* referred to as PP PPAT). The form of the Sale and Purchase Deed (AJB) has been regulated in the Head of National Defense Agency Regulation (*Perkaban*) No. 08 of 2012 concerning Land Registration. Making Deed of Purchase (AJB) is also a requirement that must exist in the sale and purchase of land.

Whereas judges' considerations are not thorough in examining the truth of an event in *Judex Facti*. The judge cannot render a decision before it is evident for him that the event / fact really happened, that is, proven by its truth, so that there appears to be a legal relationship between the parties. Related to this, all parts of the Plaintiff's *petitum* must be considered / tried one by one so that the judge can draw conclusions about whether the Plaintiff's claim is proven or not. Based on Article 178 paragraph (2) HIR, which states the judge must try all parts of the suit.

Based on the article, the Judge must totally and thoroughly examine and try every aspect of the lawsuit filed. It is not allowed to just check a part and ignore the rest of the lawsuit. In making decisions,

each Judge has the same right in carrying out the three stages that the Judge must do to obtain a good and correct decision (Mertokusumo, 1988). First, the constituency stage. Constituting the legal event submitted by the parties to him by seeing, acknowledging or justifying the occurrence of the proposed event. So, to mean means that the Judge sees, knows, justifies, events have taken place, must be certainly not allegations, which are based on evidence.

1) The proof process begins by placing the right burden of evidence, to whom the burden of evidence is placed. Assess the evidence submitted, whether the evidence meets formal requirements, material requirements, meets the minimum limit of evidence and has the strength of evidence.

2) Determine whether or not the proposition is proven. For the Judge the facts of the event are important, not the law. Proof is the spirit of the judge's decision.

Second, the qualification stage. Qualifying the legal event that the parties have submitted to him. The event that has been conceptualized as an event that actually happened must be qualified. Qualifying means assessing the event that is considered to have actually taken place, including which legal relationship and what law, in other words, the legal relationship must be found for the event that has been contextualized. So, qualifying means looking for / determining the legal relationship to the proof / event that has been proven. The judge assesses the evidence / event that has been proven or assesses the argument / event that is not proven by the legislation that is material law or can be said to be looking for the proper application of the law to the argument / event that has been contextualized.

Third, the constituent stage that establishing the law or providing justice to litigants (Manan, 2008). Based on the description above, if the stage that must be passed by a Judge to make the decision

above (constituents, qualifiers and constituents) is used as a measurement tool to assess the legal considerations of a decision, then it can be concluded if the judge does not carry out one of the processes of that stage or fails to carry out. For example, the Judge did not succeed in carrying out the constituency stage, because it did not set the burden of proof and did not assess the evidence, or did not succeed in carrying out the qualification stage, because it did not conclude which legal facts were proven and what the legal basis was related to the subject matter. Unsuccessful in the two previous stages above, has the potential to cause unsuccessful in passing the verdict that is the stage of this constituency. Therefore, based on the description above, the Judge in the *Judex Facti* decision failed to carry out the qualification stage because it failed to determine the legal relationship to the proof / event that has been proven. The judge fails to judge the evidence / event that has been proven or assesses the argument / event that has not been proven by legislation.

The things that need to be studied if Exhibit P-3 (Absolute Power of Attorney) which associated with the Sale and Purchase Deed which is ratified in the *Judex Facti* decision is contrary to the applicable laws and regulations. Based on the provisions of Article 39 paragraph 1 letter d Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land Registration, State Sheet Number 3969 (hereinafter referred to as PP Land Registration). The provisions state that: "PPAT refuses to make a deed, if one of the parties or parties acting on the basis of an absolute power of attorney which essentially contains the legal act of transfer of rights.

Then the further provisions are precisely in article 62 PP Land Registration, regulating the sanctions obtained, when the PPAT violates the provisions of article 39. In Article 62 PP Land Registration stated that;

"PPAT which in carrying out their duties

ignores the provisions as referred to in Article 38, Article 39 and Article 40 as well as the provisions and instructions given by the Minister or Officer appointed shall be subjected to administrative measures in the form of a written warning until dismissal from his position as Land Deed Official, without prejudice to the possibility sued for damages by those who suffer losses resulting from the neglect of these provisions"

Therefore, it can be concluded that there are sanction provisions that are regulated, if the PPAT does not implement the provisions in accordance with article 39 of the PP Land Registration. Therefore, the PPAT must refuse to make a Deed of Purchase if based on a Proxy of Sale (Exhibit P-3) which is essentially an absolute power of attorney containing the legal act of transfer of rights.

The actions of creditors who buy debt guarantees in the form of land and buildings owned by the Debtor due to Default Debtor based on the Power of Attorney to Sell (Exhibit P-3) cannot be legally justified, this violates Article 1470 paragraph (1) of the Civil Code that has been previously explained, that the Creditors as Receivers The power of attorney is prohibited from becoming the purchaser of goods authorized by him. One legal action that can be done by a creditor in the case of a Default Debtor that is justified under the Statutory Regulations is to hold the Debtor's guarantee as the recipient of the power of attorney until the debtor is able pay off the debt. This is in accordance with Article 1812 of the Civil Code, which states the recipient of the power of attorney has the right to withhold the power of the giver in his hand until he has been paid in full for everything he can claim due to the power of attorney.

Declares valid and valuable confiscation of the object of the dispute over land and buildings on it with a length of land = 14.50 M, 14.30 M and Width = 10.75 M, 6.50 M is located on Jalan Tirtayasa No. 42 RT. 58 Kelurahan Gunung Sari Ilir, Central

Balikpapan District, City of Balikpapan

In each decision the size and place of the land is always mentioned, because there is no formal evidence that shows that the land has been legally transferred from the borrower to the creditor. Confiscated collateral that is declared valid and valuable must also not be stated as such. Because the confiscation that was carried out was based on the imperfect Loan Recognition Debt, which was not made authentically, unilaterally, and was not made an *Assecoir* document that was separate from the main agreement. Because of this, the Debt Recognition Grosse made must also be deemed not to have an Executive Power because its making imperfect, not in accordance with the provisions contained in Article 224 of the HIR. According to the Law, Confiscations based on the Debt Acknowledgment of the Debt Recognition can indeed be done, because the Debt Recognition Grosse has an Executorial Power equivalent to the Court's Decision. But the debt recognition Grosse as the basis for the right to seize collateral must be made in accordance with applicable provisions, namely Article 224 HIR, which requires the debt recognition debt must be made authentically, unilaterally and contains the principle of "For Justice Based on Almighty God".

If it is made other than that, the Debt Recognition Grosse referred to is not the Debt Recognition Grosse in accordance with article 224 HIR. In this case, the Debt Recognition Grosse made not in accordance with the provisions of Article 224 HIR must be declared as having no executive power and is considered as an ordinary debt recognition letter. So that, a debt recognition letter like that, it cannot be used as the basis for the rights of the creditor (creditor) as the basis for confiscating collateral when the recipient of the debt (Debtor) Default. Unfortunately Debtor as the petitioner appealed, directed the argument to the loss he received when the land and building was executed. According to NJOP, the market price of the

house is 300,000,000 rupiahs, but only diverted at 60,000,000 according to the total debt. Whereas more basic than that, the legal action of Confiscation carried out by plaintiffs in this case the Respondent cannot be declared legally valid, because it is based on the imperfect Debt Recognition Deed Grosse, not made authentic, not made separately from the main agreement and not one-sided.

In addition, the basis for consideration of Judges in the Supreme Court Decision No. 2290 K/PDT/2012 which states that the Defendant who has re-entered / snatched the object of the dispute that has been sold to the Plaintiff and has been handed over to the Plaintiff is against the law. Therefore the Defendant must submit the object of the dispute to the Plaintiff.

The acts against the law have been broadly interpreted, which includes one of the following acts:

The acts that are contrary to the rights of others. The rights violated are the rights of a person who is recognized by law, including but not limited to the following rights:

- Personal rights
- Property rights
- Right to materiality
- Right to honor and reputation

The actions are contrary to their own legal obligations. With the term "legal obligation", what is meaning that an obligation given by law to someone, both written and unwritten law. So it is not only contrary to written law but also contrary to the rights of others according to the law.

The acts are against morality. If the act of infringement has caused harm to another party, the party suffering the loss can claim compensation based on acts against the law (Fuady, 2005).

The actions are contrary to prudence or necessity in good community relations. Obligations in the community are certainly not written but recognized by the community concerned.

Regarding the abuse of rights, which is an act that is based on the legal authority of a person in accordance with applicable law, but the act is done in violation or with the other purpose of giving the right then it is not considered an illegal act. However, if the act of abuse of rights fulfills article 1365 of the Civil Code as there is a loss for others, there is a violation of propriety, decency or inadvertence, a causal relationship with a loss, then the act of abuse is already an act against the law according to article 1365 of the Civil Code.

Defendant's actions in this matter cannot be considered as illegal acts. Because the action of the Defendant (Debtor) who re-entered the disputed land is one of the efforts to defend material rights confiscated based on the Debt Acknowledgment of Debt Recognition that does not have an executorial power (made imperfect). And the debtor does not feel that selling the land to the creditor, the sale occurs due to an absolute power of attorney that makes the creditor as the buyer of the disputed land object, this is not legally justified.

Legal Consequences for the Parties When Using a Debt Recognition Letter with the Power of Attorney to Sell as the Basis for Debt Repayment in the Decision of the Supreme Court Number 2290K / PDT / 2012

The legal act of lending and borrowing with an agreement results in a legal relationship between 2 (two) parties who give the right to one to claim something from another, while the other person is obliged to fulfill the demand. Article 1754 of the Civil Code that states a loan agreement is an agreement by which the first party gives to another party a certain amount of goods which are spent due to usage, on the condition that the latter party will return the same amount of the same type and condition. In the Borrowing and Loan Agreement can also be accompanied by collateral as the repayment of the loan. For this matter, the following provisions Article 1131 of the

Civil Code states all debtors' movable and immovable property, both existing and future, are collateral for the debtor's individual engagements.

In a Lending and Borrowing Agreement between lenders and loan recipients is usually done by an agreement. The legal basis for the agreement or contract is contained in Article 1313 of the Civil Code, which reads as agreement is an act by which one or more parties commit themselves to one or more persons.

All treaties made legally apply as a law to those who make them. The agreements cannot be withdrawn, other than the agreement of the two parties or for reasons that are stated by law to be sufficient. In accordance with Article 1338 of the Civil Code all agreements made in accordance with the law apply as the law for those who make them. The agreement cannot be withdrawn other than by agreement of the two parties, or for reasons determined by law. Agreement must be carried out in good faith.

According to the Civil Code in force in Indonesia, freedom of contract can be concluded from the provisions of article 1338 paragraph (1) of the Civil Code, which states that all contracts (agreements) made legally apply as a law for those who make them. The source of freedom of contract is individual freedom so that the starting point is the individual's interests as well. Thus it can be understood that individual freedom gives him freedom to contract. This means that the parties must obey the agreement the same as he obeys the Law. This results in if there is one party who violates the agreement they have made, then he is considered to have violated the Law which has the effect of the infringing party being subjected to a legal sanction that has been specified in the agreement concerned or specified in the Act. The agreement must contain legal certainty, this certainty is revealed from the strength of the binding agreement, namely as a law for those who make it (Bakri, 2015).

Good faith regulated in article 1338 paragraph (3) of the Civil Code must exist on both parties that carry out the agreement, so that this good faith is then made into a legislator into one of the strict and binding laws and has sanctions if not fulfilled, as one of a condition for the validity of the agreement, given how important this element of good faith is. The intention of good faith here is to act as a good person. Good faith in a very subjective sense can be interpreted as someone's honesty, which is located in someone when legal actions are held while good faith in an objective sense is that the implementation of an agreement must be based on propriety norms or something that feels appropriate to what is appropriate in society (Permadi, 2016).

In addition, Article 1339 of the Civil Code states that agreements are not only binding for matters expressly stated therein, but also for anything that requires the nature of the agreement, required by propriety, custom or law.

The article also clearly stipulates that the agreement not only respects the norms of decency and propriety, but also habits without ignoring the law. An agreement is said to have legal consequences if the agreement is made legally by fulfilling the legal requirements of the agreement. In making a loan agreement, it must be based on Article 1320 of the Indonesian Criminal Code that contains the following provisions:

- Their binding agreement;
- The ability to make an engagement;
- A certain thing;
- A lawful cause.

Article 1320 paragraph (1) determines that an agreement or contract is invalid if it is made without consensus or agreement from the parties that made it. The provisions contain the understanding that the freedom of a party to determine the contents of the agreement is limited by the agreement of the other party. In other words the principle of freedom of contract

is limited by the agreement of the parties.

Article 1320 paragraph (2) can also be concluded that the freedom of people for make an agreement is limited by their ability to make an agreement. For someone who according to the provisions of the law does not have the right to make an agreement, there is absolutely no freedom to make an agreement.

Article 1320 (3) stipulates that the object of the agreement must be determined. A certain thing is the subject of the agreement, an achievement that must be fulfilled in an agreement. The achievement must be certain or at least can be determined. What has been promised must be clearly specified in its type, the amount may not be stated as long as it can be calculated or specified. The condition that the achievement must be certain or can be determined, the point is to establish the rights and obligations of both parties, if a dispute arises in the implementation of the agreement. If the achievement is vague or is felt unclear, which causes the agreement cannot be implemented, then there is no object of the agreement and the legal consequences of the agreement are null and void.

Article 1320 (4) According to the law of *causa* or cause it is *halal* if not prohibited by law and does not conflict with public order and morality. In the Decision of the Supreme Court No. 2290 K / PDT / 2012, the Parties made a loan agreement to borrow money accompanied by collateral in the form of land and buildings as outlined in a debt recognition letter (Exhibit P-2) whose form was not in accordance with Article 224 HIR and Article 1878 of the Civil Code. Where the debt acknowledgment (Exhibit P-2) is not made authentically by a Notary Public and is not made and signed unilaterally by the Debtor. With the deed of selling power of attorney (Exhibit P-3) obtained by the Creditor from the Debtor based on the debt recognition letter (Exhibit P-2), then there will be a legal relationship between the author (*last gever*) with the recipient (*last hebber*), then the proxy acting for

himself, but he acts in the interests of the power of attorney, namely selling land and buildings owned by the power of attorney in order to pay off the debt he has to the power of attorney. This is not justified based on Article 1470 paragraph (1) of the Civil Code that prohibits the Recipient of the Power of Attorney from purchasing the goods authorized by him.

In the development of legal practices, power that is independent of land parcels is prohibited if it contains clauses:

The power of attorney will not expire due to any reasons according to the law including the causes stated in article 1813 of the Civil Code;

The power of attorney cannot be revoked by the grantor;

The recipient of the power of attorney is exempt from accountability to the grantor of the authority;

The power of attorney is given the authority to sell / transfer the said plot of land to the power of attorney himself.

The authorization given and signed by the debtor or the collateral owner to the creditor on the date that coincides with the date of signing the deed of debt recognition or credit agreement to sell goods, collateral under the hand, according to Herlin Budiono, is against the principle that is contrary to public interest (van openbaare order) because the sale of collateral if it is not done voluntarily must be carried out in public in an auction according to local customs, so that the granting of such sales authorization is null and void (Budiono, 2006). Clauses that are listed and regulated in a Confession of Debt (Exhibit P-2) then followed by the deed of selling power of attorney (Exhibit P-3) is an agreement that binds both parties because the agreement issues an agreement for the parties that made it. Based on Article 1337 states that a cause is prohibited, if it is prohibited by law or if it is against morality or public order.

Then it can be concluded that the loan agreement made by the parties in the

Supreme Court Decree No. 2290 K / PDT / 2012 based on Debt Recognition (Exhibit P -2) with Proxy of Selling (Exhibit P-3) is contrary to the Applicable Laws and Regulations and Public Order.

Article 1320 paragraph (4) jo 1337 specifies that the parties are not free to make agreements concerning causa that are prohibited by law, decency and public order. The legal effect of an agreement containing an unlawful cause is that the agreement is null and void.

4. CONCLUSION

Judge's Rationale in the Supreme Court Decree No. 2290 K / PDT / 2012 which stated that Judex Facti was not wrong to apply the law, decided two legal actions of the plaintiff were legally valid. Firstly, stating the legal and valuable seizure of the object of the dispute over the land along with the building on it with the size of the land length = 14.50 M, 14.30 M and Width = 10.75 M, 6.50 M is located on Tirtayasa street No. 42 RT. 58 Gunung Sari Ilir Village office, Central Balikpapan Subdistrict, Balikpapan city is contrary to article 224 herzien indlansch reglement (hir), which in essence is a Recognition Grosse then only has an executorial power when it is made authentically, one-sidedly and contains slaves, "For Justice Based on the Almighty Godhead while the Debt Recognition Letter which is the basis of the Confiscation Guarantee is made imperfectly. (Authentic and Unilateral). Secondly, stating according to the law, the Deed of Purchase between the Plaintiff and the Defendant on the land along with the building on it with a length of land = 14.50 M, 14.30 M and Width = 10.75 M and 6.50 M is located on Jalan Tirtayasa No. 42 RT. 58 Kelurahan Gunung San Ilir, Kecamatan Balikpapan Tengah, Kota Balikpapan Is contrary to Article 178 Paragraph (2) herzien indlansch reglement (hir), that the judge does not thoroughly examine and try every aspect of the lawsuit submitted. In this case the Judge decides a Sale and Purchase Deed that has never been made before, and therefore

also in the Decision Amar there is no Deed Number, in the Deed of Purchase that is ratified according to law.

As a result of the law that occurred after the Supreme Court Decree No. 2290 K / PDT / 2012, the creditor can have a Guarantee for Land on the basis of a Letter of Recognition of Debts made imperfectly (Not Authentic and Unilateral) on the basis of the Sale and Purchase Act without a number that was authorized by Panel of Judges in the Decision. Legal Consequences for Debtors, legal actions to defend the land carried out by them are considered as unlawful acts, therefore debtors are required to pay court fees and vacate their land to be submitted to creditors as a result of debt repayment.

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