

Responsibilities of a Notary in Making a Deed of Power of Attorney to Sell in a Debt and Receivable Agreement



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ABSTRACT: In the debt and receivable agreement, a Power of Sale is usually also created, which sometimes gives rise to legal problems. This research aims to analyze the validity of the notarial power of attorney deed used as collateral for debts and receivables, as well as examine the civil responsibility of the Notary for the power of attorney deed made before him. The research method is normative juridical, which is analyzed qualitatively with deductive logic. The type of data used is secondary data. The results of this research are: first, The sale of collateral objects by creditors themselves can be carried out as long as the provisions of Article 20 paragraph (2) UUHT are met. selling the object of collateral rights, this agreement between the creditor and the debtor is an agreement agreed upon after a default by the debtor. In the event that the power of attorney deed that has been prepared by the creditor is signed simultaneously at the time of signing the credit agreement between the creditor and the debtor, then the power of sale deed is contrary to Articles 6 and 20 UUHT, so that such power of sale deed does not legally have any legal standing. Second, the Notary's responsibility for the deed of power of sale in a debt and receivable agreement made before him can be borne by the Notary if the error comes from the Notary, for example in the case that the author examined where Notary SN, in making the deed of power of sale, committed an unlawful act because he directed the debtor to sign the deed. which is still blank without explaining the purpose of the deed. So then the debtor is disadvantaged by the existence of the power of attorney deed, because by using the power of attorney deed, the creditor secretly transfers the debtor's collateral to a third party at a very low price, even though the debtor is not in default. In this case Notary SN can be burdened with civil liability, namely Unlawful Actions Article 1365 of the Civil Code.

KEYWORDS: Accounts Receivable, Liability, Notary, Power of Sale.

I. INTRODUCTION

In living in society, humans have various needs for life. As time goes by, human needs become more diverse, causing relationships and collaboration to become more complex. In establishing a relationship or collaboration, the most important thing is an agreement between both parties. The agreement must be mutually beneficial to the parties involved. An agreement will bind both parties in an agreement, for example a sale and purchase agreement, debt and receivable agreement, etc. involving two or more people (Hidayat, Huda and Adjie 2023). Basically, one of the officials who has the authority to make written agreements in the form of authentic deeds which can be used as evidence at a later date is a Notary. Notaries have the authority to make authentic deeds that are able to provide protection to the parties entering into an agreement (Harahap, 2011).

According to Article 1 number 1 of Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (hereinafter referred to as UUJN), a Notary is a public official who has the authority to make authentic deeds and has other authorities as intended in this Law or based on other laws. Notaries are charged with great responsibility for every action carried out in relation to their work, in this case regarding the preparation of authentic deeds. Responsibility is not only limited to when the deed is made, but as long as the deed made by a Notary is used by the parties, then the Notary must always be ready to be responsible for the authenticity of the deed he makes. Not only that, the Notary is also responsible for the correctness of the contents of the deed he makes so that it does not cause harm to any of the parties who come before him (Arlina, 2020). Therefore, a Notary is required to be careful and thorough in making authentic deeds for the parties who come before him, so that the deed he makes does not cause harm to either party (Latumeten, 2011).

The agreements that are often entered into by the public are debt and receivable agreements and sale and purchase agreements. Basically, a sale and purchase agreement and a debt and receivables agreement are different legal acts. However, in practice, creditors, both banks and individuals, enter into legal relations between debt and receivable agreements with debtors, even though the debt and receivable agreements have been guaranteed by certain guarantee institutions regulated by statutory regulations, for example Mortgage Rights, creditors still use power of attorney. selling under a debt and receivable agreement. The reason for

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using the power to sell in a debt and receivable agreement is that if the debtor defaults, the creditor can easily transfer rights to the land that is the object of the debt collateral. In fact, the use of a Power of Attorney to Sell in debts and receivables can be misused by the creditor as the recipient of the power of attorney and is also unfair if the land value of the object of debt collateral is greater than the principal of the debt and interest. Because of the Power of Sale, quite a few creditors abuse the Power of Sale Deed to own land rights which are used as collateral for debt repayment or sell the object of debt collateral to third parties without the knowledge and agreement of the debtor.

When dealing with parties, notaries should provide legal counseling so that legal actions made by the parties do not harm either party. One example of a case related to the Power of Sale as a binding for debts and receivables, which was then used as the basis for the transfer of land rights, is a case that occurred in 2022 in Surakarta, starting with Party A, who is husband and wife (the Defendants) having a debt at Bank Danamon Surakarta, with SHM Guarantee Number 1903/Jebres in the name of Party A. Party A cannot pay the debt, therefore as an alternative so that the SHM Guarantee Number 1903/Jebres is not auctioned, the Bank introduces Party A to Party B (Co-Defendant) so that it can be given bailout funds for the amount of the debt shortfall to Bank Danamon. Party A is willing to receive bailout funds from Party B to pay off the remaining debt at Bank Danamon. So Party A owes Party B. Regarding Party A's debt to Party B, on June 20 2014, Party A and Party B met Notary SN, SH., M.Kn and made a debt and receivable agreement, but it turned out that apart from the debt and receivable agreement, Party A was directed to sign the blank deed, and it turned out that the blank deed was a Deed of Power of Attorney to Sell, where Party A was the giver of the power of attorney and Party B was the recipient of the power of attorney, the object of the power of attorney to sell was SHM Number 1903/Jebres which was used as collateral. the debt. Party A on November 4 2014 returned part of the debt to Party B in cash. However, when Party A wanted to pay off the remaining debt, Party B refused. It turned out that it was later discovered that SHM Number 1903/Jebres had transferred ownership to Party C (Plaintiff) without the knowledge and consent of Party A. It turned out that Party B had transferred SHM Number 1903/Jebres to Party C, which was done in front of Notary RE, S.H as PPAT with the Surakarta City work area, with Deed of Sale and Purchase (AJB) Number 103/2015 dated 27 August 2015. Until now, the land and building SHM Number 1903/Jebres are still occupied by Party A. Party C feels that they have purchased the land and building SHM Number 1903/Jebres. 1903/Jebres, Party B legally felt aggrieved, so they filed an Unlawful Act lawsuit against Party A for controlling land SHM Number 1903/Jebres illegally and without rights. The description of this case is as explained in the Surakarta District Court Decision Number 95/Pdt.G/2022/PN Skt.

Based on the description of the case above, as a result of the Deed of Power of Attorney to Sell made by Notary SN, in the debt and receivables agreement between Party A and Party B, Party A's position was disadvantaged because the land which was used as collateral for the debt to Party B, was apparently secretly sold to Party C at a price below market price which is very detrimental to Party A as the debtor. In fact, in the case of a debt and receivables agreement, it is closely related to a guarantee agreement, where this has been regulated by the existence of a separate guarantee rights institution, so that this should have been paid attention to by Notary SN, which should have been explained to Parties A and B when they wanted to make a Power of Attorney to Sell as collateral for the debts and receivables agreement, in order to minimize any errors in the Notary's deed which could later give rise to legal problems as was the case in this case. By his acts, the notary is able to take accountability for the promises he makes to the parties of the genuine deed. In civil lawsuits, a notary's deed essentially has perfect evidentiary power; however, if it breaches certain provisions, its evidentiary value is reduced to that of a private deed, unless it can be demonstrated that the notary made an error, in which case the deed only has the evidentiary power of a deed. The customer or other parties will suffer losses if the deed is revoked or falls under the hand. As a result, the Notary may be held accountable for his errors and must reimburse the parties that lose money as well as pay expenses and interest.

Therefore, according to the author, it is necessary to study in more depth the validity of the Notarial Authorization to Sell Deed which is used as collateral for debts and receivables, as well as the civil responsibility of the Notary regarding the Deed of Authorization to Sell in the Debts and Receivables Agreement made before him. Based on this, the author is interested in conducting research with the title "Responsibilities of Notaries in Making Deeds of Power of Attorney to Sell in Debt and Receivable Agreements".

II. RESEARCH METHOD

Normative legal research was the research methodology employed in this authoring. Legal study conducted by looking at secondary data or library materials is known as normative legal research or library legal research (Soekanto & Mamudji, 2013). In order to investigate the legitimacy of the Deed of Power of Attorney to Sell, which is used as collateral for debts and receivables, as well as the Notary's duty to draft the deed of power of attorney to sell in a debt and receivables agreement, the author uses a normative type of research. To do this, the author looks through library materials using a theoretical and conceptual approach. - concepts, laws, and regulations pertaining to this notary research topic. The research approach uses a statutory approach and a conceptual approach. The type of research carried out is library research which involves collecting data and information from literature and normative law as the main source. Meanwhile, the descriptive qualitative approach is a method used to convey an overview of current phenomena based on existing reality. Data sources come from laws and regulations as the main source, as

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well as literature and reference books as additional sources. Data review is carried out by referring to existing facts or additional sources, then connected to applicable legal regulations (Ammirudin, 2021). The data analysis used in this research is qualitative analysis. The focus of qualitative analysis is to show that there is a gap between what should be and what is actually from a scientific perspective so that it requires photography, mapping and in-depth understanding that can be used to overcome the problem of power of attorney to sell in debt and receivable agreements based on the data obtained, which is explained from general things and then draw more specific conclusions (Danim, 2002).

III. RESEARCH RESULTS

Validity of Notarial Power of Attorney to Sell Used as Collateral for Debts and Receivables

In positive law Indonesia, the Civil Code's Book III, Chapter XVI, Articles 1792 through 1819, govern the granting of powers of attorney. In notarial practice, one type of power of attorney that is frequently utilized is a deed of power of attorney to sell. The transfer of land ownership is typically connected to a power of attorney to sell. The ability to sell can be expressed as either a pure or accessory power of sale, depending on whether it stands alone or not. An integral component of the primary agreement is the granting of the power of sale, which is not stand-alone. The power of sale which is an accessory agreement is an agreement that is different from a stand-alone (pure) power of sale agreement. The reasons for granting the power of sale which do not stand alone (accessory) and are preceded by the main agreement are as follows (Bukit, Warka, & Nasution, 2018):

- a. The credit agreement is between the creditor and the debtor, which then in the power of attorney deed sells: the creditor, namely the bank as the recipient of the power of attorney and the debtor, namely the individual customer/legal entity as the giver of the power of attorney. By continuing to make an APHT and register it at the land office, to receive a certificate of mortgage rights, based on this the creditor can carry out private execution with a statement that the debtor is willing to hand over the private sale voluntarily to the creditor at the highest price that benefits the parties.
- b. The sale and purchase agreement is between the seller and the buyer, which then in the power of attorney deed: the power of attorney (seller) gives power of attorney to the power of attorney (buyer) to carry out the interests of managing the sale and purchase and transferring the name of the land certificate being traded which should already be the right of the buyer .
- c. The construction agreement is between the land owner and the contractor or contractor, which then in the power of sale deed, the land owner authorizes the contractor or contractor to manage and carry out what is stated in the deed.
- d. Separation and division where the owner of the land is in joint ownership, for this reason the power of attorney gives power of attorney to the recipient of the power of attorney to sell the jointly owned land so that each party is entitled to the share that is their right.

In actuality, land rights are frequently transferred through the power of sale. According to Government Regulation Number 24 of 1997 concerning Land Registration, Article 37 paragraph (1), the transfer of land rights can occur by sale and purchase, exchange, grant, incorporation into a company, or other lawful actions of transfer of rights. Using a power of attorney deed to purchase and sell land allows the certificate owner to grant the recipient the authority to sell on their behalf. This allows the recipient to carry out the legal actions associated with purchasing and selling land. The land sale power of attorney agreement must have the following information: land acreage, certificate number, land boundaries, name of the right holder, name of the right giver, and name of the power of attorney. This information must be stated clearly and in full. The power of attorney deed is a unique type of deed since it solely defines a legal act—that is, a representative action to carry out the sale and purchase of land for and on behalf of the person giving the power of attorney.

The granting of a power of attorney deed relating to debts and receivables between the debtor and creditor aims to execute the collateral object in the form of the debtor's land and buildings. In general, guarantees are divided into two, namely personal guarantees and material guarantees. Special material guarantees for land are subject to UUHT. So, when granting credit with collateral, land title certificates should be tied to a Mortgage Guarantee Institution. Based on Article 20 paragraph (2) UUHT, the execution of mortgage guarantees can be done privately if there is an agreement between the debtor and creditor to carry out the sale privately. The aim is to get the highest price that is profitable for the parties. Apart from that, Article 12 UUHT also regulates that the collateral object cannot be transferred to the creditor itself if the debtor defaults.

The granting of a power of attorney to sell following a debt and receivables agreement has often been carried out in banking practice where when the debtor signs the debts and receivables agreement and a debt acknowledgment deed, the debtor usually immediately also signs a deed of power of attorney to sell on the collateral of the credit, as is the case with a power of sale that does not follow. debt and receivable agreement or stand alone (Hadid, 2019). Basically, the power to sell in a debt and receivable agreement can be exercised if it is in accordance with legal procedures, this is based on the principle of freedom of contract Article 1338 of the Civil Code (Hernako, 2011). The power to sell in a debt and receivables agreement is invalid if the power to sell is made simultaneously at the time of signing the credit agreement for a debts and receivables agreement, because it violates public order, namely if the debtor defaults on his obligation to pay the debt then the act of selling the collateral, if not done voluntarily, is mandatory. carried out by auction in public.

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The parties are indeed free to make an agreement based on the principle of freedom of contract, freedom with anyone, any time, the content of the agreement, and the form of the agreement, however, the principle of freedom of contract still has limitations in the form of provisions that must not be deviated from and are coercive in nature, namely that they must not violate law, public order and morality. This means, for example, that a credit/receivables agreement that is made and then immediately followed by the making of a power of sale is an act that is contrary to the public interest, therefore it can result in it being cancelled. This statement is in line with the Supreme Court Decision of 31 May 1990 No. 1726K/Pdt/1986: "(..) that the cessie, handover and transfer of land rights which is carried out at the same time as the signing of a Bank Credit Agreement, then the essence of the status of the land, is only as collateral (collateral) for the existence of a Debt and Receivable Agreement Thus, the existence of a "Cessie deed" accompanying the "credit agreement" is only an apparent act or Schijnhandeling (Linati, 2022).

Making a power of attorney to sell in a debt and receivable agreement is valid if it is carried out in accordance with Article 20 paragraph (2) UUHT, namely with the intention of selling privately, with the aim of obtaining the highest price that benefits all parties, provided that:

- a) If the debtor has breached his contract;
- b) Implementation of sales with the conditions specified in Article 20 paragraph (3) UUHT.

The parties are free to enter into an agreement and add promises (beding) to a guarantee imposition, but there are also provisions which are van openbare orde in nature, therefore they cannot deviate from these provisions as if taking action on a guarantee. "Een dergetijke overeenkomst kan echter niet bij voorbaat ten tijde van de inpandgeving warden aangegaan" (Such an agreement (a promise to sell privately) cannot be given when the pledge is given). However, if the granting of a power of attorney or promise occurs after the debt has matured then the promise is said to be valid because at that time the debtor is not in a situation dealing with creditors as credit seekers so that a debtor can make free wills without any pressure or coercion from a situation of being constrained. Therefore, in this situation, the granting of power of attorney is carried out voluntarily, without any pressure from any party, especially from creditors (Setyawan, 2022).

Based on this description, if it is related to the case that the author is examining, the deed of power of attorney to sell in the aquo case is invalid, because the granting and signing of the power of sale was carried out at the same time as the signing of the debt and receivables agreement, apart from that, the making of the power of sale between the creditor and the debtor contained defects. will, because the debtor does not know that the debtor has signed the power of attorney deed to sell. So that the transfer of the debtor's collateral by the creditor to a third party on the basis of the power to sell the debt and receivables is invalid and null and void by law.

So it can be concluded that the sale of the collateral object by the creditor can be carried out independently as long as the provisions of Article 20 paragraph (2) UUHT are met which regulates that upon agreement between the giver and the holder of the mortgage right the sale of the mortgage object can be carried out privately if in this way the highest price can be obtained. and which benefits all parties, based on this provision linked to the power of attorney deed to sell, the sales process using the power of sale deed is permitted, as long as there is an agreement between the creditor and the debtor to sell the collateral object of the mortgage right, this agreement between the creditor and the debtor is an agreement that agreed upon after a default by the debtor or after the credit experiences a bottleneck. So the granting and signing of the power of attorney deed to sell is not carried out at the same time as the debt agreement and debt acknowledgment deed, but the granting and signing of the power of attorney deed to sell is carried out after the debtor is in default, with the intention of carrying out private execution in accordance with Article 20 paragraph (2) UUHT. Thus, the power to sell in the debt and receivable agreement is valid because there are no legal defects, defects of will, and do not conflict with the public interest. In the event that the power of attorney deed that has been prepared by the creditor is signed at the time of granting or distributing credit to the debtor or at the same time as the credit agreement being challenged between the creditor and the debtor, then the power of sale deed is not recognized in the UUHT, so that such power of sale deed is legally The law does not have any legal standing, the sale of the object of mortgage rights carried out by the creditor based on the power of attorney deed to sell is contrary to the provisions of Article 6 and Article 20 UUHT.

Responsibilities of a Notary for the Deed of Power of Attorney to Sell in a Debt and Receivable Agreement made before a Notary

According to the UUJN, a notary has been granted the power to record any agreements, stipulations, or deeds that the party or parties consciously bring before the notary in order to record this information in an authentic deed and to ensure that the document the notary creates is supported by substantial evidence. whole and legitimate. Notaries are required by the UUJN and other general laws and regulations to complete certain forms and procedures as part of their official activities. They are also not allowed to make deeds in any format they choose (Widijatmoko, 2012). Unless it can be demonstrated otherwise, a Notarial Deed has perfect evidentiary power as an authentic deed (Adjie, 2011). Given the significance of a notary's work, it follows that he has obligations under the Law on the Position of Notaries that must be fulfilled.

Although the definition of duty is fairly broad, Peter Salim claims that it can be divided into three categories: accountability, responsibility, and liability. Accountability in the context of finance, bookkeeping, or payments is typically associated with

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responsibility. Trust can also be understood as responsibility in the sense of accountability. One way to understand responsibility is as bearing some of the consequences of one's own actions. The need to make amends for past transgressions can also be understood as a component of responsibility. Accepting the burden coming from your own or other people's conduct can also be understood as bearing all responsibility. In the event of an incident, you may be held legally liable, sued, and threatened with penalty by law enforcement. In terms of liability itself, responsibility might entail accepting full responsibility for any damages resulting from one's own acts or the actions of others acting on their behalf. Liability responsibility can be interpreted as the obligation to pay compensation for losses suffered. If something happens, a civil lawsuit can be filed before the court by the injured person according to national law. Titi Triwulan interprets that responsibility must have a basis, namely things that give rise to legal rights for someone who sues another person as well as things that give rise to legal obligations for other people to provide responsibility (Martono & Sudiro, 2011).

As previously discussed, creating a power of attorney deed in a debt and receivables agreement is permissible under the Civil Code's Article 1338 on the freedom of contract, provided that it complies with Article 1320 Civil Code's requirements for agreement validity and does not violate any applicable laws, rules, or public order. Therefore, in order for a power of attorney deed to be legitimate in a debt and receivable arrangement, it must be based on an agreement between the debtor and the creditor, not in violation of any laws, and satisfy certain requirements. If the collateral used in the debt and receivable agreement is a land title certificate, then it is subject to Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land (hereinafter referred to as UUHT). The main provisions in the UUHT are that the debtor's debt guarantee can be executed if the debtor defaults, and the execution can be carried out by auction or privately with the aim of getting the most profitable price for all parties, as regulated in Article 20 UUHT, and the creditor does not it is permissible to make an agreement to own objects as collateral as a form of repayment of the debtor's debt to the creditor as regulated in Article 12 UUHT. As long as the Power of Sale deed made by the creditor and debtor before a Notary does not violate Articles in the UUHT, meets the legal requirements for an agreement under Article 1320 of the Civil Code, and does not contain an absolute power of attorney clause, then the Power of Sale in the debt and receivables agreement is valid, for the purpose of making the power of sale. is to sell the debtor's debt collateral if the debtor defaults privately, at a price that benefits the creditor and the debtor, and with the knowledge and consent of the debtor.

Basically, a Notary is only limited to consolidating the legal relationship between the parties in written form and a certain format, so that it is an authentic deed which becomes a strong document in a legal process, and the Notary's obligations are also limited to formal truth, not reaching material truth (Harahap M. Y., 2000). The notary's only duty is to consolidate the wishes of the parties into a deed. However, this does not mean that the Notary does not take precautions in making the deed to avoid negligence. The notary is obliged to prevent legal problems from arising in the future and not cause losses to the parties who make an agreement in front of him. Notaries are required to be responsible for the deed they have made, if the deed they have made turns out to contain a dispute in the future then this can be questioned as to whether this deed was the Notary's fault or the fault of the parties who did not want to be honest in providing their information to the Notary. If the deed issued by the Notary contains legal defects that occur due to the Notary's fault, whether due to his negligence or the Notary's own intention, then the Notary must be fully responsible for this. However, if the error is the fault of the parties/persons, the Notary cannot be held legally responsible.

When making a deed of power of attorney to sell in a debt and receivable agreement, if the Notary, when the creditor and debtor appear before the Notary to make a debt and receivable agreement, a debt acknowledgment agreement and a deed of power of sale, the Notary has explained all the legal consequences of making a deed of power of attorney to sell in a debt agreement, receivables, and the creditor and debtor agree to it, then it means that the making of the Power of Attorney to Sell deed is based on the agreement and knowledge of both parties. In this case, the Notary must also explain to the parties the clauses that must be included and are prohibited from being included in the Power of Sale deed in the debt and receivable agreement, such as the absolute power of attorney clause. If the Notary has explained what clauses are required and prohibited to be included in the Deed of Power of Attorney to Sell, then if in the future one of the parties does not carry out the obligations stated in the Deed of Power of Attorney to Sell, or commits an act that is prohibited in the Deed of Power of Attorney to Sell, this will result in legal issues, then the legal responsibility lies with each party, and the Notary does not have any responsibility because he has carried out his duties and obligations in making an authentic deed in accordance with the wishes of the parties.

Essentially, a notary must always proceed cautiously while handling legal matters. This means that, before to executing a deed, the notary must thoroughly review all pertinent information in light of the relevant rules and regulations. As a basis for considering what should be included in the deed, it is necessary to examine all of the legality and completeness of the evidence or documents presented to the notary, as well as to hear any information or statements from individuals in attendance. So, even though the Notary's job is only to consolidate the information of the parties into a deed, the Notary must still provide an explanation to the parties regarding the legal action they intend to carry out and the consequences of that legal action, and also not include clauses that are contrary to the law and could detrimental to one party. In making a debt and receivables agreement which is accompanied by a power of sale as collateral for the debt, if the creditor, as a party with a stronger position than the debtor,

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wants to include clauses which are detrimental to the debtor or which conflict with the debtor, or even by tricking the debtor into signing a deed of power of attorney to sell without the debtor knowing the purpose of making the power of attorney deed to sell, the Notary is obliged to reject the creditor's wishes, however the Notary does not necessarily reject the creditor and debtor who appear before the Notary, but rather the Notary provides legal counseling to the creditor that the creditor's wishes are not in accordance with the applicable legal provisions.

If the Notary, in making a power of attorney deed to sell in a debt and receivable agreement, has acted carefully and has also explained to the parties all the legal consequences of making the power of attorney deed, and has not made a power of attorney deed whose contents are contrary to the law, and has carried out The obligations of a Notary as regulated in Article 16 UUJN are that the Notary is obliged to read and explain the contents of the deed before signing it. If the presenter or client does not understand, the Notary is obliged to explain until it is truly believed that the presenter understands the deed he is about to sign (Firdaus, 2022). So if there are problems in the future, the Notary cannot be subject to legal responsibility because he has carried out his duties and obligations in accordance with the UUJN.

In the example of the case that the author examined as described in the introduction, where a deed of power of attorney to sell was made in a debt and receivables agreement with Party A as debtor and Party B as creditor, Notary SN directed the debtor to sign a deed of power of attorney to sell whose form was still blank, and did not explain or read to the debtor what deed he signed and all the legal consequences, then Notary SN in this case can be considered to only side with the wishes of the creditor without considering the potential losses that will be experienced by the debtor by making a power of attorney deed to sell in the debt and receivables agreement, especially in the power of attorney deed. The sale also includes a clause which states that the land title certificate which is used as collateral by the debtor can also be transferred to the proxy (creditor), which means this clause violates the provisions of Article 12 UUHT. Then the Deed of Power of Attorney to Sell is used by the creditor without the knowledge and consent of the debtor to transfer the collateral for the debtor's debt to a third party who is the wife of the creditor himself through buying and selling on the basis of the power of sale, which behind the name of the debtor's debt security to the third party is very detrimental to the debtor, because the debtor is not in default, and the creditor sells the collateral at a very low price. In this case, Notary SN can be charged with civil liability on the basis of Unlawful Actions Article 1365 of the Civil Code. The elements of unlawful acts, contained in Article 1365 of the Civil Code, are: a. there is an unlawful act b. there is an error c. there is a loss; and d. there is a causal relationship between the loss and the action (Carolin, 2023).

There was an unlawful act committed by Notary SN, namely ordering the debtor to sign a deed of power of attorney to sell whose form was still blank without explaining first that what the debtor was signing was a deed of power of attorney to sell. Apart from that, Notary SN also did not carry out his obligation to read the power of attorney deed to sell after it was signed by the parties. So, with the power of attorney deed to sell, the creditor can sell the debtor's debt collateral without rights to a third party, even though the debtor is not in default and not with the knowledge and consent of the debtor. With the power of sale deed made by Notary SN without the debtor's agreement, it causes losses for the debtor because the land title certificate which is used as collateral is transferred to a third party without the debtor's consent and is sold at a very low price. Based on this, Notary SN makes the deed. The power to sell in the debt and receivables agreement between the creditor and the debtor in this case can be subject to civil liability, namely an Unlawful Act based on Article 1365 of the Civil Code.

IV. CONCLUSION

The sale of the collateral object by the creditor can be carried out individually as long as the provisions of Article 20 paragraph (2) UUHT are met, which regulates that upon agreement between the giver and the holder of the mortgage right, the sale of the mortgage object can be carried out privately if by doing so the highest price can be obtained and which benefits all parties. , based on this provision linked to the power of attorney deed to sell, the sales process using the power of attorney deed is permitted, as long as there is an agreement between the creditor and the debtor to sell the mortgage object. This agreement between the creditor and the debtor is an agreement agreed upon after a default by debtor or after credit is experiencing a problem. So the granting and signing of the power of attorney deed to sell is not carried out at the same time as the debt agreement and debt acknowledgment deed, but the granting and signing of the power of attorney deed to sell is carried out after the debtor is in default, with the intention of carrying out private execution in accordance with Article 20 paragraph (2) UUHT. Thus, the power to sell in the debt and receivable agreement is valid because there are no legal defects, defects of will, and do not conflict with the public interest. In the event that the power of attorney deed that has been prepared by the creditor is signed at the time of granting or distributing credit to the debtor or at the same time as the credit agreement being challenged between the creditor and the debtor, then the power of sale deed is not recognized in the UUHT, so that such power of sale deed is legally The law does not have any legal standing, the sale of the object of mortgage rights carried out by the creditor based on the power of attorney deed to sell is contrary to the provisions of Article 6 and Article 20 UUHT.

The Notary's responsibility for the power of attorney deed to sell in the debt and receivables agreement made before him, if the error comes from the Notary, the Notary is subject to legal responsibility, one of which is civil liability. However, if the error originates from the parties/persons, and the Notary has carried out his duties and obligations, then the Notary cannot be held

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legally responsible. Based on the wishes of the parties, in making a deed of power of attorney to sell in a debt and receivable agreement, because of the potential for legal problems to arise in the future, the Notary in making a deed of power of sale must first explain to the parties all the legal consequences and clauses that are required and prohibited to be included in the agreement. deed of power of attorney to sell. In the case that the author examined, Notary SN, in making the deed of power of sale, committed an unlawful act because he directed the debtor to sign a deed that was still blank without explaining the purpose of the deed, so that Notary SN could be burdened with civil legal responsibility based on Unlawful Actions Article 1365 of the Civil Code. Civil.

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