

Effectiveness of Legal Protection on Heirs in Dispute on Sale and Purchase of Inherited Land

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Abstract. *The purpose of this study is to find out and analyze: 1) The legal consequences of a dispute over the sale and purchase of inherited land without the consent of the heirs. 2) The effectiveness of legal protection for heirs in disputes over the sale and purchase of inheritance land against the law in Surabaya. The approach method used in this study is an empirical juridical approach. The specification of the research used is descriptive analytical research. This type of data uses primary and secondary data. The data analysis method used qualitative data analysis. The results of the study concluded: 1) The legal consequences of the dispute over the sale and purchase of inheritance land without the consent of the heirs are that the land is sold by people who are not entitled to sell it (because those who now hold ownership rights to the land are the heirs), therefore the sale and purchase cancelled. As a result of the law with the cancellation of the sale and purchase, the sale and purchase is considered to have never existed, and each party is returned to its original state before the "sale and purchase" event occurred, in which the ownership rights to the land remain with the heirs. This is in accordance with Article 1471 of the Civil Code which explains that buying and selling other people's goods is void, and can provide a basis for reimbursement of costs, losses and interest, if the buyer does not already know that the goods belong to someone else. 2). The effectiveness of legal protection for heirs in disputes over the sale and purchase of inheritance*

land against the law in Surabaya, namely considering that there are still disputes over the sale and purchase of inherited land, the effectiveness of legal protection for heirs in Surabaya needs to be increased through socialization from the Land Agency (BPN) to the public, especially experts. heirs to register their inheritance land with BPN, as an effort to provide protection to heirs in order to avoid inheritance rights disputes which must be carried out against the law where the result of an unlawful act is loss. Efforts to protect the law on disputes over the sale and purchase of inherited land without the consent and knowledge of the heirs, the legal heirs or holders of legal property rights over the inherited land can file a lawsuit to the Court.

Keywords: Buying; Inheritance; Land; Protection; Selling.

1. Introduction

The Indonesian state based on the 1945 Constitution is a constitutional (constitutional) state that provides guarantees and protections for the rights of citizens, including the rights of citizens to obtain, own and enjoy property rights¹. Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The consequences of this clearly require the state to protect its citizens, including in terms of property rights.

This matter can also be observed in Article 28G paragraph (1) which states that every person has the right to personal protection, family, honor, dignity and property under his control, and is entitled to a sense of security and protection from threats of fear to do or not to do something which is a human right. This also includes inheritance rights, each heir basically has the right to receive inheritance, through the right to receive inheritance, a person can own an object which is an inheritance, this can be seen in Article 584 of the Civil Code which states the right to inherit as one way to obtain inheritance rights ownership.

Recognition of legal protection of the heirs' property rights in its development does not run smoothly. This is because the inheritance law that applies in Indonesia in its implementation has not been able to effectively provide protection for heirs. The ineffectiveness of legal protection for the heirs can be seen in the dispute over the sale and purchase of the object of inheritance carried out by parties who are not legal heirs, this makes heirs who even have received a court order must file a lawsuit against the law for the party selling the

¹ Syarief Husien & Akhmad Khisni, Hukum Waris Islam di Indonesia (Studi Perkembangan Hukum Kewarisan Dalam Kompilasi Hukum Islam & Praktek di Pengadilan Agama), *Jurnal Akta*, Vol 5 No 1 March 2018

inheritance land without rights and suing civilly the buyer parties who have controlled the inheritance land that was obtained against the law without clear rights as well². This situation resulted in the heirs taking a long time and not small costs during the judicial process of claiming the inheritance of land ownership.

The sale and purchase of inheritance is carried out without the knowledge or approval of the heirs, the sale and purchase is considered invalid. In Surah An Nisa' verse 29 Allah SWT says which means: "*O you who believe, do not eat each other's property in a vanity way, except by way of commerce which is mutually exclusive between you, and do not kill yourselves; Verily Allah is Most Merciful to you.*"

Selling and buying an inheritance without the knowledge of the heirs is the same as taking other people's property. Islam equates people who take the rights of others as thieves or takers of other people's property. Islam has forbidden stealing and hacking (stealing). Islam considers all acts of taking other people's property as void, and eating other people's property means eating haram goods.

The sale and purchase of inherited land without the consent and knowledge of the heirs took place in Surabaya. The case of the sale of inherited land by Warsito in Karangpilang, Surabaya. The 250 m² land owned by Andy in Karangpilang, Surabaya was initially entrusted to Warsito as his uncle³.

This was done because Andy was accepted to work on an oil palm plantation in the Sambas area of West Kalimantan. After three years Andy returned to his village, later it was discovered that the land entrusted to his uncle had been sold. Andy, who did not accept this, also sued his uncle and the land buyer, in the end Andy won and his land was returned⁴.

The case above shows that in terms of protection of the rights of heirs to inheritance in this country, it is still weak, there are legal loopholes and transactional legal bureaucratic practices make inheritance, especially land, easy

² Patricia Kacabiru, Analisis Yuridis Penguasaan Tanah Dengan Melawan Hukum Oleh Seorang Yang Mengaku Sebagai Ahli, *Tesis Hukum*, Universitas Sumatera Utara, Medan

³ Wagirin, Jessica, Tinjauan Yuridis Sengketa Hak Waris Tanah Yang dikuasai Secara Melawan Hukum (Studi Putusan No.09/Pdt.G/2013/PN.Binjai), *Jurnal Ilmu Hukum Prima*, Universitas Prima Indonesia

⁴ Ong Argo Victoria, Ade Riusma Ariyana, Devina Arifani. (2020). *Code of Ethics and Position of Notary in Indonesia*. Sultan Agung Notary Law Review 2 (4), 397-407, <http://lppm-unissula.com/jurnal.unissula.ac.id/index.php/SANLaR/article/view/13536>

to sell by parties who are not heirs to third parties.⁵ Based on the description above, this research will discuss further about "Effectiveness of Legal Protection Against Heirs in Disputes on Sale and Purchase of Inherited Land in an Unlawful manner in Surabaya". This study seeks to answer the legal consequences of the dispute over the sale and purchase of inheritance land without the consent of the heirs and the effectiveness of legal protection for heirs in disputes over the sale and purchase of inheritance land against the law in Surabaya.

2. Research Methods

The approach method used in discussing this research problem is an empirical juridical approach. The specification of the research used is descriptive analytical research. This type of data uses primary and secondary data. The data analysis method used in this research is qualitative data analysis.

3. Results and Discussion

3.1. Legal Consequences of Dispute on Sale and Purchase of Inherited Land without the Approval of the Heirs

In practice, there are often disputes in the sale and purchase of land. These land disputes include debts and land as collateral, state administrative disputes regarding the issuance of certificates, land grabbing, and even disputes regarding inheritance can lead to legal consequences for both⁶. Dispute resolution can be done in two ways, namely litigation (dispute resolution in court) and non-litigation (outside court). Dispute resolution through non-litigation is much more effective and efficient because in recent times, various methods of dispute resolution (settlement methods) outside the court have been developed, known as ADR in various forms, such as: arbitration, negotiation, mediation, conciliation, expert judgment, fact finding.⁷

Although the 1945 Constitution has been amended for the fourth time, until now the people's demands for the birth of a law that regulates property rights to land as guarantees for the 1945 Constitution have not materialized and often lead to disputes. Handling land disputes structurally is the task and function of the Sub-

⁵ Deen, Thaufiq., Ong Argo Victoria & Sumain. (2018). *Public Notary Services In Malaysia*. *JURNAL AKTA*: Vol. 5, No. 4, 1017-1026. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/4135>

⁶ Op.Cit.

⁷ Umi Setyawati, Antonius Iwan Murdianto, & Amin Purnawan, Akta Penegasan Keterangan Waris Sebagai Pengganti Surat Keterangan Waris dalam Pengurusan Balik Nama Waris di Kantor Pertanahan Kota Semarang, Akta Penegasan Keterangan Waris Sebagai Pengganti Surat Keterangan Waris Dalam Pengurusan Balik Nama Waris di Kantor Pertanahan Kota Semarang, *Jurnal Akta*, Vol. 5 No. 1 January 2018

Directorate of Legal Dispute Settlement at the BPN, the Land Problem Settlement Section at the Office Regional BPN Province and Sub-Section for Settlement of Land Problems at the Regency/City Land Office.

The settlement of the National Land Agency (BPN) is a form of legal protection for heirs regarding inheritance land which is sold without their consent. Disputes over the sale and purchase of inherited land without the consent of the heirs are land disputes for which the Land Deed Making Officer (PPAT) and the National Land Agency (BPN) must share responsibility. The practice in resolving land disputes can not only be carried out by the National Land Agency, but can also be resolved by the General Courts and State Administrative Courts⁸.

If the land is sold after it becomes inherited land, then the heirs who have the ownership rights to the land are the heirs. The transfer of ownership rights to land is regulated in Article 20 paragraph 2 of the UUPA, namely that property rights can be transferred and transferred to other parties. The definition of the word "transfer" is a transfer of rights because the owner of the right has died, his rights automatically become transferred to his heirs the transfer of land rights or property rights from the right holder to another party because the right holder dies or through inheritance. The transfer of land rights or property rights occurs by law, meaning that with the death of the right holder (subject), the heirs obtain the rights to the land or property rights.

The problem of buying and selling inherited land without the consent and knowledge of the heirs is void, because the seller in this case does not have the requirements as the holder of land rights or property rights. This is in accordance with Article 1471 of the Civil Code which explains that buying and selling other people's goods is void, and can provide a basis for reimbursement of costs, losses and interest, if the buyer does not already know that the goods belong to someone else. This means that the seller must be the owner of the object being sold. In the buying and selling process, the heirs must also submit a certificate of inheritance as one of the conditions for buying and selling inherited land. PPAT in making the Deed of Sale and Purchase if there is a lack of approval or signature of the heirs then the deed is null and void⁹.

The legal consequences of buying and selling inherited land that do not get approval from the heirs, then the land is sold by people who are not entitled to sell it (because those who now hold ownership rights to the land are the heirs),

⁸ Chuasanga A., Ong Argo Victoria. (2019). *Legal Principles Under Criminal Law in Indonesia and Thailand*, Jurnal Daulat Hukum, Vol 2, No 1 (2019) <http://jurnal.unissula.ac.id/index.php/RH/article/view/4218>

⁹ Urip Santoso, 2010, *Pendaftaran & Peralihan Hak Atas Tanah*, Kencana Prenada Media Group, Jakarta, p. 32-33

therefore the sale and purchase is cancelled. As a result of the law with the cancellation of the sale and purchase, the sale and purchase is considered to have never existed, and each party is returned to its original state before the "sale and purchase" event occurred, in which the ownership rights to the land remain with the heirs. The act of people selling the land of the heirs without the consent of the heirs is an act that violates the subjective rights of the heirs. Heirs who feel that their rights have been violated because the inheritance has not been divided are sold without their consent, can file a lawsuit to the Court.

Legal heirs who are harmed can file a lawsuit to request that all rights to the inheritance be handed over to him along with all proceeds, income, and compensation. Regarding whether the heirs can withdraw the ownership rights to the land that has been sold, it depends on what the heirs ask in the petition and depends on the judge's decision. Thus, against the sale and purchase of inherited land that is carried out against the law, a lawsuit can be made to the Court to cancel the sale and purchase of the inherited land. With the deed of sale and purchase of inherited land being declared null and void by a Court Decision as a result of the discovery of a legal defect in its manufacture, namely the sale and purchase was carried out without the consent of the other heirs¹⁰.

The legal consequences of the PPAT Deed containing legal defects due to the PPAT's fault either due to negligence or because of the PPAT's own intention, then the PPAT must provide accountability both morally and legally. The cause of the problem can arise directly due to the negligence of the PPAT, it can also arise indirectly if it is done by someone else. As a result, the deed only has the power of proof as an underhand deed or becomes null and void, which can be a reason for the party suffering the loss to demand compensation from the PPAT. The cause of the problem did not arise from the PPAT's error, but rather because of the client's dishonesty regarding the correctness of the administrative requirements as the basis for making the deed, resulting in the deed being null and void to the laws and regulations and the notary code of ethics. This is because the Sale and Purchase Deed made before the PPAT aims to provide legal certainty to the holder of the right to a plot of land (land buyer).

3.2. Effectiveness of Legal Protection Against Heirs in Unlawful Sale and Purchase of Inheritance Land in Surabaya

The transfer of land rights is the transfer or transfer of land ownership that originally belonged to a person or group of people to other communities. The transfer of ownership of a plot of land to a new owner due to certain legal acts

¹⁰ M. Jefry Maulidi, Analisis Hukum Tentang Peralihan Hak Milik Atas Tanah Dengan Bukti Akta Di Bawah Tangan Sebagai Dasar Pendaftaran Tanah Untuk Pertama Kali (Studi Di Kabupaten Lombok Tengah), *Jurnal IUS*, VolV No. 3 Desember 2017

or activities. Legal actions can be interpreted as any actions carried out by legal subjects that have legal consequences. One of the transfers of land rights is through buying and selling. A sale and purchase is an agreement in which one party (the seller) binds himself to surrender the ownership rights to an object and the other party (the buyer) pays the promised price in accordance with Article 1457 of the Civil Code. In terms of buying and selling land rights, according to Government Regulation.

The problem of buying and selling inherited land without the consent and knowledge of the heirs that occurred in Surabaya also raises questions about the effectiveness of legal protection for the heirs who hold legal ownership rights to the inherited land. The theory of legal protection Philipus M. Hadjon suggests that in legal protection there is an effort to provide the rights of the protected party in accordance with the obligations that have been carried out. Legal protection is the protection of dignity and respect for human rights owned by state legal subjects based on the legal provisions in force in the country in order to prevent arbitrariness. Legal protection is generally in the form of a written regulation¹¹.

These theories show that there is a necessity in the form of the state's obligation to provide protection for its citizens. BPN as a state institution has been given a regulation in terms of carrying out its duties and authorities. Therefore, BPN as a state institution, the existing regulations especially relating to this issue are used as signs to prevent abuse of rights.

The 1945 Constitution provides guarantees and protection for the rights of citizens, among others, the rights of citizens to obtain, own, and enjoy property rights. Property rights to land as one type of property rights are very important for the state, nation and people of Indonesia as an agrarian society that is developing. In accordance with Article 20 Paragraph (1) concerning the Basic Agrarian Law (UUPA), property rights are hereditary, strongest, and fullest rights that people can have on land. The word hereditary indicates that the right can continue as long as the owner is alive and if he dies the right can be continued by the heirs. The strongest shows that the position of the right is the strongest when compared to other land rights. Therefore, property rights are one of the rights that must be registered.

The registration of the transfer of rights due to inheritance regarding the registered parcel of land rights must be submitted by the recipient of the land rights to the land office, to register it by bringing a document of proof as an heir

¹¹ Anita Sofiana, Akhmad Khisni, Akibat Hukum Pengalihan Hak Jual Beli Melalui Akta Pejabat Pembuat Akta Tanah Atas Tanah Warisan Tanpa Persetujuan Salah Satu Ahli Waris Lainnya, *Jurnal Akta*, Vol. 4. No. 1, March 2017: 65-70, Unissula, Semarang

in the form of a certificate of inheritance rights, or a letter of determination of heirs or an expert statement inheritance, certificate of right concerned, death certificate of the person whose name is recorded as the holder of the right.

If the parcel of land which is inherited has not been registered, it is also obligatory to submit documents from the village/kelurahan head stating that the person concerned controls the land, a certificate stating that the land parcel has not been certified from the land office or a certificate from the village head/lurah if the location of the land is far from the land office of the right holder concerned. Besides that, written evidence, such as tax receipts, girik, pipil, witness statements and/or statements in question, the content of which is deemed sufficient to register rights, rights holders and the rights of other parties that are burdensome. The registration of the transfer of rights is required in order to provide legal protection to the heirs and as information in the administration of land registration, so that the data stored and presented always shows the real situation¹².

Considering that there are still disputes over the sale and purchase of inherited land, the effectiveness of legal protection for heirs in Surabaya needs to be increased through socialization from the Land Agency (BPN) to the public, especially heirs, to register their inherited land with BPN, as an effort to provide protection to heirs so that avoid the occurrence of inheritance rights disputes which must be carried out against the law where the result of an unlawful act is the emergence of losses. The essence of this registration is to obtain strong evidence of the validity of legal actions when a dispute occurs.

Efforts to protect the law on disputes over the sale and purchase of inherited land without the consent and knowledge of the heirs, the legal heirs or holders of legal property rights over the inherited land can file a lawsuit to the Court. Regarding inheritance rights disputes over land controlled illegally, the elements that must be met are:

- There is an unlawful act.
- This action must cause harm
- The act must be done by mistake (negligence);
- There must be a causal relationship between the act and the resulting loss.

¹² Ali Ahmad Chomzah, 2003, *Seri Hukum Pertanahan III Penyelesaian Sengketa Hak Atas Tanah & Seri Hukum Pertanahan IV Pengadaan Tanah Instansi Pemerintah*, Prestasi Pustaka, Jakarta, p. 87

In this case, if the four elements above have been met, then a lawsuit can be made for actions against the law. In the trial the heirs must show valid evidence showing that the land that was sold to him by other people is really his.

The dispute resolution process through the Court results in a decision in the form of a win-lose solution. Legal protection for heirs who have been determined by the court in a dispute over the sale and purchase of inheritance land against the law can be carried out by a lawsuit to the Court to cancel the sale and purchase of the inherited land. With the deed of sale and purchase of inherited land being declared null and void by a Court Decision as a result of the discovery of a legal defect in its manufacture, namely the sale and purchase was carried out without the consent of the heirs.

Legal protection is only given to the right land owner based on evidence of legal ownership of land rights, because the legitimate land owner has juridical data and physically controls the land directly, meaning that the land owner has the right, is free in the control of his land and ownership. attached to the heirs as long as it is not transferred to another party. Certificate as a strong evidence in proof of ownership, the Certificate guarantees legal certainty regarding the person who is the holder of land rights, legal certainty of the location of the land, boundaries and area of land parcels and legal certainty regarding the rights to his land, with legal certainty it can given legal protection to the person whose name is listed in the certificate as the owner of the land.

4. Conclusion

The legal consequence of a dispute over the sale and purchase of inherited land without the consent of the heirs is that the land is sold by people who are not entitled to sell it (because those who now hold ownership rights to the land are the heirs), therefore the sale and purchase is cancelled. As a result of the law with the cancellation of the sale and purchase, the sale and purchase is considered to have never existed, and each party is returned to its original state before the "sale and purchase" event occurred, in which the ownership rights to the land remain with the heirs. The act of people selling the land of the heirs without the consent of the heirs is an act that violates the subjective rights of the heirs. Heirs who feel that their rights have been violated because the undivided land is sold without their consent, can file a lawsuit in court. The effectiveness of legal protection for heirs in disputes over the sale and purchase of inheritance land against the law in Surabaya, namely considering that there are still disputes over the sale and purchase of inheritance land, the effectiveness of the protection Law against heirs in Surabaya needs to be improved through

socialization from the Land Agency (BPN) to the public, especially heirs to register their inheritance land with the BPN, as an effort to provide protection to heirs in order to avoid inheritance rights disputes which must be carried out against the law where The result of an unlawful act is the loss. Efforts to protect the law on disputes over the sale and purchase of inherited land without the consent and knowledge of the heirs, the legal heirs or holders of legal property rights over the inherited land can file a lawsuit to the Court.

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