

The Juridical Overview of the Sale of Owned Land on Joint Assets by Husband without Wife's Consent

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Abstract. *The purpose of this research is to analyze: 1). The responsibility of the Land Deed Making Officer (PPAT) for the making of the Sale and Purchase Deed of the object of joint property transferred without the wife's approval based on Decision No. 253/Pdt.Plw/2018/PN.Skt. 2). The legal consequences of the sale of land ownership rights to joint property by the husband without the wife's consent based on Decision No. 253/Pdt.Plw/2018/PN.Skt. The approach method in this research is a normative juridical approach. The data used is secondary data obtained through literature study, data analysis was carried out by qualitative analysis. The results of the research concluded: 1). The responsibility of the Land Deed Making Officer (PPAT) for the making of the Sale and Purchase Deed of the object of joint property transferred without the wife's approval based on Decision No. 253/Pdt.Plw/2018/PN. Skt is an absolute responsibility caused because in making the sale and purchase deed the PPAT was not careful and careful. As a result of decision No. 253/Pdt.Plw/2018/PN.Skt is deed No. 112/ sale and purchase deed is contrary to the law, it will cause losses for the opposing party. PPAT must share responsibility for material losses suffered by the parties. 2). The legal consequences of the sale of land ownership rights to joint property by the husband without the wife's consent based on Decision No. 253/Pdt.Plw/2018/PN.Skt is invalid and null and void. As a result, the Plaintiffs suffered material losses. So that in terms of legal certainty theory, this sale and purchase cannot provide legal certainty for the Buyer, so that the Opponent II and PPAT must be responsible for the unlawful acts they have committed.*

Keywords: Assets; Buying; Joint; Selling.

1. Introduction

Humans live and carry out activities on the ground so that at any time humans are always in contact with the ground. As a follow-up to Article 33 paragraph (3), on September 24, 1960, Act No. 5/1960 on Basic Agrarian Regulations was promulgated.¹ Article 2 paragraph (1) of the Basic Agrarian Law states that the Earth, water and space, including natural resources therein, are at the highest level controlled by the State as an organization of power for the entire people. Through this right of control from the State, the State as the governing body will always be able to control or direct the management of the functions of the earth, water and space as well as the natural resources contained therein in accordance with existing regulations and policies, namely within the scope of juridical control with a public aspect.² Article 16 Paragraph (1) of the UUPA of the Basic Agrarian Law states that there are rights to land, including, among others, property rights, use rights, building rights, and usage rights; lease rights; the right to clear land, and the right to collect forest products.

The transfer of land rights can be carried out by transferring rights such as buying and selling, exchanging, grants, auctions, inheritance, transfer of rights due to merger or consolidation and other rights transfers. One of the transfers of ownership rights to land can be done through buying and selling. Selling-Purchase *الْبَيْعُ* etimologically from *masdar* *بَاعَ* – *يَبِيعُ* spelt *بَاعٌ – يَبِيعُ* means have dan buy. Also word *شَرَى* means take dan sell.³ Some scholars have given the understanding that what is meant by buying and selling is the exchange of property even though it is still in a dependent or permissible benefit with something similar to both, to give permanently.⁴ The law of buying and selling land in Islam is lawful, as long as it can be useful and fulfills the rights of the seller and buyer, according to the rules. The process of buying and selling land that has a certificate consisting of the subjects of the sellers or related parties will have a smaller risk of disputes arising than certificates whose ownership has

¹Bambang Eko Supriyadi. (2013). *Hukum Agraria Kehutana*. Jakarta: Raja Grafindo. 7

²Muhammad Bakri. (2007). *Hak Menguasai Tanah Oleh Negara (Paradigma Baru Untuk Reformasi Agraria)*. Yogyakarta: Citra Media. p.5

³Abdul Aziz Muhammad Azzam. (2010). *Fiqh Muamalat*. trans. Nadirsyah Hawari. Jakarta: Amzah. p.23.

⁴Abdurrahman As-sa`di. dkk. (2008). *Fiqh Jual Beli: Panduan Praktis Bisnis Syari'ah*. trans. Abdullah. Jakarta: Senayan Publishing. p. 143.

not been registered.⁵If a sale and purchase of land is carried out but it turns out that the seller is not authorized to sell or the buyer is not authorized to buy, even though the seller is entitled to the land or the buyer has the right to buy, then the result of the sale and purchase can be canceled by the parties concerned.⁶

The material requirements that determine whether or not the sale and purchase of land are legal are as follows:

- The seller is the person who has the right to the land to be sold.
- The buyer is the person who has the right to own the rights to the land he bought.
- The land in question may be traded or not in dispute.

The material requirements must also be supported by formal requirements. After all the material requirements are met, a sale and purchase is carried out before the PPAT. In the implementation of buying and selling made by PPAT, the things that must be considered are:

- The making of the deed must be attended by the parties conducting the sale and purchase or the legal proxy of the seller and the buyer and witnessed by 2 (two) witnesses who meet the requirements as witnesses.
- The deed is made in the original form in 2 (two) copies, namely the first 1 (one) copy is kept by the PPAT concerned and the second sheet in 1 (one) copy is submitted to the Land Office for registration purposes and to interested parties can given a copy.
- After the deed is made, not later than 7 (seven) working days from the date of signing the deed in question, the PPAT is obligated to submit the deed he made along with the relevant documents to the Land Office for registration and PPAT is obligated to submit a written notification regarding the submission of the deed to the Land Office who the parties concerned.

Based on Article 531 of the Civil Code, it can be said that a person is considered to have good faith if that person acquires an object by obtaining ownership rights and knowing that there are no defects contained in the object.⁷The most

⁵Bethari Laksita. Tinjauan Yuridis Perlawanan Terhadap Sita Eksekusi Sengketa Tanah Warisan Yang Belum Dibagi Dan Diakui Sebagai Harta Gono Gini (Studi Kasus Pengadilan Negeri Surakarta). *Publikasi Ilmiah*. Universitas Muhammadiyah Surakarta 2020. p.4

⁶Effendi Perangin. (1987). *Praktek Jual Beli Tanah*. Jakarta: Rajawali Pers. p.4.

⁷Arie S. Hutagalung dan Suparjo Sujadi. "Pembeli Beritikad Baik Dalam Konteks Jual Beli Menurut Ketentuan Hukum Indonesia." *Jurnal Hukum dan Pembangunan*. Volume 35 Nomor 1 (January-March 2005). p.43.

important thing in the implementation of the sale and purchase of land is to ensure that the object of land being traded is not disputed land, and the seller is the person who actually has the right to sell it.

The buyer must also make sure that the status of the land is included in the property, or not. If the object of the sale and purchase is a gono gini property, then the buyer must obtain approval from both husband and wife, because the object is joint property. If one of the parties does not agree with this transaction, the sale and purchase is categorized as an unlawful act. This is as explained in Article 36 paragraph (1) of the Marriage Law: "Regarding joint property, husband or wife can act with the consent of both parties." This is also explained in Article 92 of the Compilation of Islamic Law (KHI): "Husband or wife without the consent of another party is not allowed to sell or transfer joint property."

Article 35 Paragraph (1) of the Marriage Law explains that property acquired during marriage becomes joint property. A dispute over the sale and purchase of land with the status of joint property or 'gono' property occurred in the city of Surakarta. As for the case in this dispute, it began on September 26, 1994, when P (Terlawan II) sold a plot of land and building (the object of the dispute) to the late AJ (Y or Pelawan's biological father) located on Jl. Adi Sumarmo No.51 Nusukan Village, District, Banjarsari, Surakarta City, covering an area of +/- 498 m², with SHM No. 1576 and this sale and purchase was carried out in front of PPAT TS. This land and building is SHM in the name of P (Terlawan II), but this property was obtained by P during his marriage to AZ (Terlawan I). The sale of the object of dispute between Defendant II and his father was carried out without the knowledge and approval of Defendant 1, although Defendant I and Defendant II were divorced on December 5, 1994, but the sale and purchase of the object of this dispute was carried out while they were still husband and wife. This means that the object of this dispute is indeed a joint property or property of Gono Gini. This case was submitted to the Surakarta District Court with Decision No. 253/Pdt.Plw/2018/PN Skt.

The dissolution of a marriage due to divorce will have an impact on the joint assets obtained during the marriage.⁸As regulated in the legislation, husband and wife are not allowed to sell or transfer joint property without the consent of

⁸Abdul Manan. "Problematika Perceraian Karena Zina dalam Proses Penyelesaian Perkara di Lingkungan Peradilan Agama." *Jurnal Mimbar Hukum*. al-Hikmah & DITBINBAPER. Jakarta. No. 52 Th XII 2007. p. 7

both parties. This means that if there is a sale and purchase of joint property without the consent of both parties, then the sale and purchase is an unlawful act. Based on the description above, the author is interested in conducting a thesis research with the title Juridical Review of the Sale of Land Ownership on Joint Assets by Husbands Without Wife's Consent.

2. Research Methods

The research method used in this research is normative juridical research, where the law is conceptualized as what is written in the legislation (law in books) or the law is conceptualized as a rule or norm which is a benchmark for human behavior that is considered appropriate.⁹ The research specification used is descriptive analysis. Data sources come from secondary data. Methods of data collection using library research techniques. The data analysis method in this study used qualitative analysis.

3. Results and Discussion

3.1. Responsibilities of Land Deed Officials (PPAT) for Making Deeds of Sale and Purchase of Joint Assets Transferred Without Wife's Approval Based on Decision No. 253/Pdt.Plw/2018/PN.Skt

Not quite enoughThe responsibility of the Land Deed Making Officer (PPAT) is that in making and issuing the Deed of Transfer of Land Rights, it must be in accordance with the provisions of the applicable regulations. PPAT in transaction buying and selling land, will usually ask for conditions. There are two conditions for buying and selling land, namely material conditions and formal conditions. If the formal and material requirements are not fulfilled, it will be possible if the sale and purchase deed issued will contain an element of dispute. If this deed contains a dispute, it will not only result in losses to the seller and the buyer, but will also result in losses for the PPAT who made the deed. Some of the causes of the cancellation of a deed of sale and purchase or land certificate are the falsification of documents from the parties who submitted a deed of sale and purchase / land certificate.

The formal requirement in buying and selling land is a letter of approval from the wife or husband. This statement of agreement is very important, because it aims

⁹Amiruddin & Zainal asikin. (2012). *Pengantar Metode Penelitian Hukum*. Jakarta: Raja Grafindo Persada. p.118

to avoid disputes if the land being traded is joint property and is sold without the consent of the husband and wife. As in the case of dispute in decision No. 253/Pdt.Plw/2018/PN.Skt.

The object of dispute in this case is land and building located at Jalan Adi Sumarmo No. 51 Kalurahan Nusukan, Banjarsari District, Surakarta City, covering an area of +/- 498 m². The status of the land and buildings is the common property of Defendant 1 (AZ) and Defendant II (P). When Terlawan II sold his land, Pelawan's late parents did not check the status of the land beforehand. So that a dispute arises which results in material losses from the Opposing Party. In this case, PPAT did not pay close attention to the object of land and building for which the deed of sale and purchase was made, so that in this case PPAT was categorized as having committed an unlawful act. Regarding the form of PPAT's responsibility for the disputed deed, they are:

- Administrative Responsibilities
- PPAT Liability in Civil
- PPAT's Criminal Liability

PPAT must be responsible for the violation of the law that it commits. In writing this thesis the author uses the theory of legal responsibility. According to Hans Kelsen in theory the responsibility which states that a person is legally responsible for a certain act or that the person bears legal responsibility, the subject means that he is responsible for a sanction in the case of a contrary act.¹⁰

Judging from the theory of responsibility, PPAT responsibility can be referred to as an absolute responsibility, not an individual responsibility. This is because the mistakes made by PPAT were not done intentionally themselves, but because of inadvertence due to lack of accuracy or lack of prudence in making the deed of sale and purchase. PPAT should first check the status of the land for which the deed of sale and purchase will be made. As in case No. 253/Pdt.Plw/2018/PN.Skt, where the object of the dispute is joint property land that has not been divided. And the appearer or seller in buying and selling does not have the permission of all parties who are entitled to the land.

Absolute responsibility due to unlawful acts without questioning the fault (stirck liability), is based on his actions either intentionally or unintentionally, meaning

¹⁰Hans Kelsen. (2006). *Teori Hukum Murni*. Bandung: Nuansa dan Nusamedia. p.140

that the PPAT remains responsible for the losses that arise as a result of his actions. Violation of a provision of the law and causing harm to others is called an unlawful act or *onrechtmatige daad*.¹¹

Regarding the sanctions, civil sanctions are imposed on PPAT for violating the law. The sanctions in the form of reimbursement of costs, compensation, and interest are the consequences that will be received by PPAT on the demands of the appearers if the deed he made only has the power of proof as an underhand deed or the deed becomes null and void. The PPAT deed sanction has the power of proof as an underhand deed and the deed becomes null and void as an external sanction, namely the sanction against PPAT in carrying out his duties of office does not take a series of actions that must be taken against (or for the benefit of) the parties facing PPAT and other parties which results in the interests of the parties being unprotected.¹²

Based on the description above, the responsibility of the Land Deed Making Officer (PPAT) for the making of the deed of sale and purchase of the object of the joint property which was transferred without the wife's consent based on Decision No. 253/Pdt.Plw/2018/PN.Skt studied from the theory of responsibility is an absolute responsibility caused because in making the deed of sale the PPAT was not careful and careful. As a result of decision No. 253/Pdt.Plw/2018/PN.Skt is deed No. 112/Banjarsari/94 which is a deed of sale of joint property/*gono gini* (object of dispute) by the Respondent II to the Pelawan parents is an act that is against the law. By stating that the sale and purchase deed is contrary to the law, it will cause losses for the opposing party. PPAT must share responsibility for material losses suffered by the parties.

3.2. Legal Consequences of Sale of Owned Land on Joint Assets by Husband without Wife's Consent Based on Decision No. 253/Pdt.Plw/2018/PN.Skt

Buying and selling is part of civil law and is a legal event in the eyes of the law that binds two or more parties, initially there was an agreement between the parties concerned. If there is a discrepancy or there is an aggrieved party, this can be sued or suggested in court. The condition that the sale and purchase of

¹¹Rosa Agustina. (2012). *Hukum Perikatan (Law of Obligations)*. Edisi ke-1. Bali: Pustaka Larasan. p. 4

¹²Habib Adjie. (2009). *Sanksi Perdata Administratif Terhadap Notaris Sebagai Pejabat Publik*. cet.2. Bandung: Refika Aditama. p.99.

land rights that are certified or not certified must be proven by an authentic deed made by the official of the land deed maker. The things above raise problems regarding the rights that will be demanded by the heirs who feel aggrieved, the buyer who also wants to get legal protection,¹³

The object of the land dispute in Decision No. 253/Pdt.Plw/2018/PN.Skt are land and buildings which are assets obtained during Terlawan II's marriage to Terlawan I. The object of the joint property was sold by Terlawan II to the late Pelawan's biological father without the consent of Terlawan I (his ex-wife) . Even though they are divorced, the Respondent II should obtain the approval of the Respondent I and all the heirs who are entitled, because the object of the dispute is property that has not been divided.

The subject of sale and purchase in dispute No. 253/Pdt.Plw/2018/PN.Skt cannot fulfill the terms of sale and purchase, because the Seller (Opponent II) is not the person who is fully entitled to sell the land. In buying and selling, the seller must be the person who has full rights to the land. So that the sale and purchase between the opponent II and the late father of the opponent in this case can be said to be invalid because it does not meet the elements or conditions in the sale and purchase.

Based on the explanation of Article 1471 of the Civil Code, it is stated that buying and selling other people's goods is void, and can provide a basis for compensation for losses and interest, if the buyer does not already know that it belongs to someone else. The article has stated that the buying and selling process is invalid or void, and the seller must return the money and goods, or other equivalent forms.¹⁴

The dissolution of a marriage due to divorce will have an impact on the joint assets obtained during the marriage.¹⁵Based on the land dispute case in Decision No. 253/Pdt.Plw/2018/PN.Skt, the deed of sale and purchase No. 112/Banjarsari/1994 dated 26 September 1994 between Terlawan II and Pelawan's biological father is invalid or null and void. The making of the deed of sale and purchase before the PPAT was not based on the honest intention of the

¹³Indah Widya. Kajian Hukum Terhadap Ahli Waris Yang Menjual Harta Warisan Tanpa Persetujuan Ahli Waris Lain. *Skripsi Hukum*. 2019. Universitas Muhammadiyah Sumatera Utara. Medan. p. 7

¹⁴Ibid. p.31

¹⁵Abdul Manan. Op.cit. p. 7.

Defendant II. This also resulted in PPAT being involved in unlawful acts. The deed of sale and purchase which is declared to have no binding legal force results in the deed becoming a deed under the ground, and the sale of the land becomes invalid or null and void. Decision on dispute case No. 253/Pdt.Plw/2018/PN.Skt, also decided that the land and buildings were subject to confiscation of execution.

This condition demands legal certainty in the ownership of land rights for every citizen and legal entity. The state's obligation to realize legal certainty is the embodiment of state goals based on the values of social justice for all Indonesian people. Thus realizing legal certainty is the duty and responsibility of the state that must be realized by state administrators. The 1945 Constitution of the Republic of Indonesia (UUD 1945) has explicitly provided guarantees for protection and legal certainty for everyone, namely that everyone has the right to recognition, guarantee, protection, and legal certainty that is fair and equal treatment in before the law.¹⁶To guarantee legal certainty that a legal act has been carried out regarding the transfer or encumbrance by the parties, the transfer of rights must be made with an authentic deed where the deed must be made before an official appointed/authorized for that so that it can be used as perfect evidence. This is intended to guarantee legal certainty regarding the rights and obligations of the parties and even the legal consequences.¹⁷

According to Jan Michael Otto's legal certainty theory, legal certainty can be achieved if:

- There are clear, consistent and easy-to-obtain legal rules.
- Ruling agencies (government) apply these legal rules consistently and are also subject to and obedient to these rules.

Legal certainty can be interpreted as a condition that is certain and in accordance with the provisions and provisions of the purpose of the establishment of a law. Legal certainty is closely related to a sense of security and comfort, because the essence of legal certainty is to create certainty in everything that involves human doubt, uncertainty and fear. Furthermore, the study of legal certainty is closely

¹⁶Draft Law on the Position of Land Deed Maker Official. Academic Papers. Expertise Body of the House of Representatives of the Republic of Indonesia. 2019. p.106

¹⁷ Istanti. Akhmad Khisni. Akibat Hukum Dari Akta Jual Beli Tanah Dihadapan Ppat Yang Dibuat Tidak Sesuai Dengan Prosedur Pembuatan Akta PPAT. *Jurnal Akta*. Volume 4 Nomor 2 June 2017. Unissula. p.274

related to the study of legitimacy. A definite situation is considered a legitimate condition according to statutory regulations, both formally and materially.¹⁸

The PPAT deed is one of the sources of data for the maintenance of land registration data, so it must be made in such a way that it can be used as a solid basis for registration of the transfer and encumbrance of the rights concerned. Therefore, PPAT is responsible for examining the conditions for the validity of the legal action concerned.¹⁹

The transfer of rights to land which is a joint property without the consent of the spouse through the deed of sale and purchase made by the person is not valid because it does not meet the legal requirements of the deed of sale and purchase. By continuing to make the sale and purchase deed, an unlawful act occurs so that the deed is null and void. Buyers who have good intentions in buying and selling must be protected by law, PPAT must be responsible civilly and administratively in order to provide a deterrent effect for PPAT because PPAT's position is a position of trust as an extension of the National Land Agency.

Based on description then, the legal consequences of selling land with ownership rights to joint assets by the husband without the wife's consent based on Decision No. 253/Pdt.Plw/2018/PN.Skt is invalid and null and void. As a result, the Plaintiffs suffered material losses. So that in terms of legal certainty theory, this sale and purchase cannot provide legal certainty for the Buyer, so that the Opponent II and PPAT must be responsible for the unlawful acts they have committed.

4. Conclusion

The responsibility of the Land Deed Making Officer (PPAT) for the making of the Sale and Purchase Deed of the object of the joint property which was transferred without the wife's consent based on Decision No. 253/Pdt.Plw/2018/PN.Skt is the absolute responsibility caused because in the making of the deed of sale the PPAT was not careful and careful. As a result of decision No. 253/Pdt.Plw/2018/PN.Skt is deed No. 112/Banjarsari/94 which is a deed of sale of joint property/gono gini (object of dispute) by the Respondent II to the Pelawan parents is an act that is against the law. By stating that the sale and

¹⁸Rahmat Ramadhani. Jaminan Kepastian Hukum yang Terkandung dalam Sertipikat Hak Atas Tanah. *Jurnal De Lega Lata*. Volume 2. Nomor 1. January –June 2017. p. 139-157.

¹⁹ Ahmad Khisni. Op.Cit.. p.274

purchase deed is contrary to the law, it will cause losses for the opposing party. PPAT must share responsibility for material losses suffered by the parties. The legal consequences of the sale of land ownership rights to joint property by the husband without the wife's consent based on Decision No. 253/Pdt.Plw/2018/PN.Skt is invalid and null and void. As a result, the Plaintiffs suffered material losses. So that in terms of legal certainty theory, this sale and purchase cannot provide legal certainty for the Buyer, so that the Opponent II and PPAT must be responsible for the unlawful acts they have committed.

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