

Responsibility of Land Deed Making Officials (PPAT) for Making Deeds of Sale and Purchase of Joint Property Objects Transferred Without the Consent of the Wife

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Abstract. *This study aims to analyze: 1) The legal consequences of making a deed of sale and purchase of joint property objects transferred without the wife's consent. 2) The responsibility of the land deed making official (PPAT) for making a deed of sale and purchase of joint property objects transferred without the wife's consent. The approach method used in this study is the case study approach and the statutory approach. This type of research is qualitative research. The type and source of data in this study are secondary data obtained through literature studies. The analysis in this study is qualitative. The results of the study concluded: 1) The legal consequences of making a deed of sale and purchase of joint property objects transferred without the wife's consent are invalid or null and void, because the making of the deed of sale and purchase before the PPAT is not based on honest intentions. This also results in the PPAT being involved in an unlawful act. A deed of sale and purchase that is declared to have no binding legal force results in the deed becoming an underground deed, and the sale of the land becomes invalid or null and void. This causes losses to the parties, especially in this case the Buyer. With the cancellation of the sale and purchase transaction, the sale and purchase transaction is considered to have never occurred so that the status of the land should return to its original state. 2) The responsibility of the land deed making official (PPAT) for making a deed of sale and purchase of joint property objects transferred without the wife's consent is an absolute responsibility caused by the PPAT being less careful and cautious in making the deed of sale and purchase. As in Article 1366 of the Civil Code, everyone is responsible not only for losses caused by their actions, but also for losses caused by their negligence or lack of caution. By stating that the deed of sale and purchase is contrary to the law, it will cause losses for the buyer, so that the PPAT must also be responsible for the material losses suffered by the parties.*

Keywords: Deed; Joint; Property; Purchase.

1. Introduction

Land is a gift from God Almighty to every human being on the face of the earth because land has many benefits in it, land must be managed, utilized, and maintained as well as possible as a resource to achieve the goal of being a prosperous country.¹Land and humans are inseparable, humans live and develop and carry out daily activities on land. Most of human life depends on land, because land is a source of life and livelihood for humans.²Land plays a central role in the life and economy of Indonesia. The rapid development in various areas of life has caused land to become a commodity that has a very high economic value and is difficult to control.³

The sale and purchase of land rights must be carried out in the presence of a Land Deed Making Officer (PPAT), this is done as proof that a land rights sale and purchase transaction has occurred.⁴ PPAT is given the task and authority so that its presence is to serve the community who carry out legal acts by making deeds of transfer of their rights or deeds of encumbrance of rights on their land.⁵The authority of PPAT based on Government Regulation Number 24 of 2016 Amendment to Government Regulation Number 37 of 1998 Regarding the Regulations on the Position of Land Deed Making Official, the position is to make authentic deeds regarding certain legal acts regarding land rights or ownership rights to apartment units.⁶

The legal acts referred to are buying and selling, exchanging, granting, investing in a company (inbreng), granting building use rights, use rights or land ownership rights, granting mortgage rights, granting power of attorney to impose mortgage rights and dividing joint assets. The deed made by PPAT is one of the main sources in terms of land registration in Indonesia. This is intended to guarantee legal

¹Heru Kurniawan, 2016, Reconstruction and Reactualization of Islamic Social Ecological Literacy, Research Journal Volume 13 Number 2, page 201

²Dyara Radhite Oryza Fea, 2018, Guide to Managing Land, Houses and Permits, Legality, Yogyakarta, p.1

³Adrian Sutedi, 2018, Transfer of Land Rights and Registration, Sinar Grafika, Jakarta, p.22

⁴Ronal Ravianto and Amin Purnawan, 2017, The Role of Land Deed Officials (PPAT) in Collecting Land and Building Acquisition Fees (BPHTB) Using the Self Assessment System Approach, Jurnal Akta, Volume 4 Number 4, Unissula, p.572

⁵Denny Suwondo and Ikhsan Saputra, 2019, Roles and Responsibilities of Land Deed Officials in the Implementation of Land Registration Activities, Unissula Law Journal, Volume 35 Number 2, p.187

⁶Inicafony Prasasti, and Yunanto, 2021, Implementation of Deed of Sale and Purchase Evidence Letter C by the Sub-district Head as the Temporary Land Deed Making Official in Tirtomoyo District, Notarius Journal, Volume 14 Number 1, p.255

certainty regarding rights and obligations and even legal consequences by the parties.⁷

A sale and purchase is a consensual agreement, meaning that it has been born as a valid agreement (binding or has legal force) at the moment an agreement is reached between the seller and the buyer regarding the main elements, namely goods and price, even though the sale and purchase concerns immovable goods. The consensual nature of this sale and purchase is emphasized in Article 1458 which reads, "A sale and purchase is deemed to have occurred between the two parties when they have reached an agreement regarding the goods and price, even though the goods have not been delivered or the price has not been paid."⁸ The sale and purchase of land rights which are joint property should be agreed upon by the husband and wife, because each party, husband and wife, receives the same share, namely half of the total joint property. This is due to the status of husband and wife in a marriage without a prenuptial agreement, after marriage there is a mixing of personal property obtained from each husband and wife into joint property.⁹

Joint property is defined as property generated by a husband and wife during the marriage. Therefore, joint property is categorized as *syirkah muwafadlah* because the husband and wife's partnership in joint property is unlimited, all property generated during the marriage becomes joint property, except for inheritance and gifts or presents. Meanwhile, joint property is referred to as *syirkah abdaan* because most husbands and wives in Indonesian society work together to support their families.¹⁰ Joint property in a marriage will continue to bind the husband and wife as long as they are still married because the husband and wife have rights to the property, so that if the husband or wife wishes to transfer joint property, they must ask for the consent of their partner as regulated in Article 36 paragraph (1) of the Marriage Law which states "regarding joint property, the husband or wife may act with the consent of both parties."¹¹ Consent is an absolute requirement in all legal actions such as selling, mortgaging and pledging joint property.

⁷Istanti and Akhmad Khisni, 2017, Legal Consequences of Land Sale and Purchase Deeds Before Ppat Which Are Not Made in Accordance with PPAT Deed Making Procedures, *Jurnal Akta*, Volume 4 Number 2, Unissula, p. 274

⁸Ferri Adhi Purwantono and Akhmad Khisni, 2018, Legal Review of the Implications of Sale and Purchase Agreements in the Family Made by Notaries on the Position of Heirs, *Jurnal Akta*, Volume 5 Number 1, p.102

⁹Elva Monica, 2021, Transfer of Land Rights from Joint Property Without the Consent of the Husband and Wife, *Indonesian Notary*, Volume 3, Article 19, p.287

¹⁰Arifah S. M Aspeke and Akhmad Khisni, 2017, The Position of Joint Property in Marriage According to Fiqh and Positive Law of Indonesia and the Practice of Religious Court Decisions, *Khaira Ummah Law Journal*, Volume 12 Number 2, Unissula, p.98

¹¹Abdul Manan, 2007, Problems of Divorce Due to Adultery in the Case Settlement Process in the Religious Court Environment, *Mimbar Hukum Journal*, Number 52, p. 7.

2. Research Methods

The approach method used in this study is the case study approach and the legislative approach. This type of research is normative legal research. The type and source of data in this study are secondary data obtained through literature studies. The analysis in this study is qualitative.

3. Results and Discussion

3.1. Legal Consequences of Making a Deed of Sale and Purchase of Joint Property Objects Transferred Without the Wife's Consent

Every person or couple (man and woman) if they have entered into marriage then there is a bond of obligations and rights between them both and the children born from the marriage. Marriage according to Law Number 1 of 1974 concerning Marriage (hereinafter referred to as the Marriage Law), is not only a civil act, but also a religious act, because the validity or otherwise of a marriage is entirely determined by the laws of each religion and belief that is adhered to.¹² Before the birth of the Marriage Law, regarding the provisions, procedures and validity of a marriage for Indonesians in general were based on religious law and customary law of each. According to customary law, marriage is a bond between a man and a woman to form a household that is carried out according to custom and religion by involving the families of both parties, relatives and relatives.¹³

Wealth is an important factor in marriage because it can be said to be the driving force of married life. Joint property in a marriage will continue to bind the husband and wife as long as they are still married because the husband and wife have rights to the property, so that if the husband or wife wishes to transfer joint property, they must ask for the consent of their partner as regulated in Article 36 paragraph (1) of the Marriage Law which states that regarding joint property, the husband or wife can act with the consent of both parties.¹⁴ Consent is an absolute requirement in all legal actions such as selling, mortgaging and pledging joint property.

The formal requirement in the sale and purchase of jointly owned land is a letter of consent from the wife or husband. This statement of consent is very important, because it aims to avoid disputes if the land being traded is joint property and is sold without the consent of the husband and wife. There are

¹²Abdurrahman, 1978, Problems of Marriage Law in Indonesia, Alumni, Bandung, page 9

¹³Hilman Hadikusuma, 2007, Indonesian Marriage Law According to Legislation, Customary Law, Religious Law, Mandar Maju, Bandung, p. 5

¹⁴Elva Monica, 2021, Transfer of Land Rights from Joint Property Without the Consent of the Husband and Wife, Indonesian Notary, Volume 3 Article 19, p.288

several cases related to joint property being sold without the consent of the husband or wife. Such as in the case of a dispute over jointly owned land that was sold without the knowledge of the wife in the decision of the Surakarta District Court number 253 / Pdt.Plw / 2018 / PN.Skt. The case in this dispute began on September 26, 1994, when P (Object of the dispute II) sold a plot of land and buildings (disputed object) to the late AJ (Y's biological father or Pelawan) located on Jl. Adi Sumarmo No. 51, Nusukan Village, Banjarsari District, Surakarta City, covering an area of +/- 498 m², with SHM Number 1576 and this sale and purchase was carried out before PPAT TS. This land and building are SHM in the name of P (Defendant II), but this property was obtained by P during her marriage to AZ (Defendant I). The sale of the disputed object between Defendant II and Pelawan's father was carried out without the knowledge and consent of Defendant 1, even though Defendant I and Defendant II were divorced on December 5 1994, the sale and purchase of the disputed object was carried out while they were still husband and wife. This means that the object of this dispute is indeed joint property or mutual property. So a dispute arises which results in material losses from the opposing party (buyer).

Another case example is the Serang District Court Decision Number 39/Pdt.G/2017/PN Srg Juncto Banten High Court Decision Number 60/PDT/2018/PT BTN Juncto Supreme Court Decision Number 227 K/Pdt/2019. This case began in 2012, a land sale and purchase transaction had occurred between the Plaintiff's husband (namely H) and Defendant II (PT Makmur Persada Indonesia) in Tonjong Village with a land area of 22,215 M² which was then made into a Deed of Sale and Purchase (AJB) No. 53/2012 by Defendant I (PPAT) on December 14, 2012. At the time of the AJB, the seller gave power of attorney to the buyer (Defendant II) as in the PPJB made by Notary/PPAT L. so that the Plaintiff's husband as the seller was not present to face the PPAT. With the sale and purchase transaction with the AJB made by Defendant I, it has caused losses to the Plaintiff because the transaction was carried out without the knowledge and consent of the Plaintiff (S) as the wife of H because it turned out that the seller (the Plaintiff's husband) used a fake identity in the form of an ID card and Family Card (KK) which stated that the seller was not married when in fact he was married to the Plaintiff and the land object being sold was joint property, so the sale and purchase transaction with the AJB was declared invalid and null and void by law, thus the PPAT is responsible for every deed he made.

In terms of language, buying and selling means taking and giving something. While according to the term, it is an exchange transaction that results in the transfer of ownership rights, and this can be carried out with a contract, either a verbal contract or a deed. In other words, buying and selling is a transaction between one person and another in the form of exchanging one item with

another item in a certain way and contract.¹⁵The main elements in a sales and purchase agreement are goods and price, where there must be an agreement between the seller and the buyer on the price and the object of the sale and purchase. A valid sales and purchase agreement is born when both parties have agreed on the price and goods. The consensual nature of the sales and purchase agreement is emphasized in Article 1458 of the Civil Code which states that the sale and purchase is deemed to have occurred between the two parties immediately after they reach an agreement on the goods and price, even though the goods have not been delivered or the price has not been paid.¹⁶

Joint property, or what we usually call joint property, is property acquired during the marriage.¹⁷All assets acquired by husband and wife during the marriage bond become joint property, whether the assets were obtained separately or jointly. Likewise, for property purchased by the husband or purchased by the wife, it also does not matter in whose name the property is registered.¹⁸

The mixing of assets between husband and wife makes the joint property become the property of both of them. To explain this, there are actually two kinds of rights in joint property/joint property, namely ownership rights and use rights. The joint property of husband and wife has indeed become joint property, but do not forget that there are also use rights. This means that they both have the right to use the property on condition that they must obtain the consent of their spouse. If the husband is going to use his joint property, he must obtain the consent of his wife if he is going to use the joint property.¹⁹

Likewise, if the husband and wife divorce, then everything if they want to use this joint property must get the approval of the ex-husband or ex-wife. The use of joint property that does not get the approval of one of the parties, then the action can be considered unlawful. This violation is what happened as in the case above. A married couple who broke up due to divorce and the division of their property is not regulated in the decision, then the division of their joint property is regulated based on their respective laws. This provision is regulated in Law Number 1 of 1974 concerning Marriage Article 37 which reads: "If the marriage ends due to divorce, the joint property is regulated according to their respective laws."

¹⁵Riris Ari, 2023, Legal Consequences of Land Sale and Purchase Without Consent in Realizing Legal Certainty, *Journal of Legal Science*, Volume 01 Number 2, p.104

¹⁶R. Subekti, 1995, *Various Agreements*, Citra Aditya Bakti, Bandung., pp. 2-3.

¹⁷Happy Santoso, *Division of Marital Assets in the Event of Divorce*, Op.cit, p. 13.

¹⁸Abdul Manan, 2006, *Various Problems of Islamic Civil Law in Indonesia*, Kencana, Jakarta, p. 108.

¹⁹Happy Santoso, Op.cit, pp. 33-34

The transfer of land rights which are joint property should be approved by the husband and wife, because each party of the husband and wife receives the same share, namely half of the total joint property. This is due to the status of husband and wife in a marriage without a prenuptial agreement after marriage there is a mixing of personal property obtained from each husband and wife into joint property.²⁰The legal rule regarding husband or wife without the consent of the other party is not allowed to sell or transfer joint property is also regulated in Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law, Article 92 which states that husband or wife without the consent of the other party is not allowed to sell or transfer joint property. So a husband who sells joint property either partially or in whole such as land and a house without the consent of his wife is not valid, this is strengthened by the Jurisprudence of the Supreme Court of the Republic of Indonesia Number: 681 K / SIP / 1975 Jo. Number: 2690 K / Pdt / 1985 dated November 19, 1986 Jo. Number: 1851 K / Pdt / 1996 dated February 23, 1998 Jo Number: 701 K / Pdt / 1997 dated March 24, 1999 states:

1. The sale and purchase of land which is joint property must be approved by the wife or husband.
2. Joint property sold without the consent of one of the parties (husband/wife) is invalid and null and void by law.
3. Certificates made/changed to a different name based on an invalid sale or purchase are legally defective and have no legal force.

Therefore, the act of transferring joint property without the consent of the husband/wife is an unlawful act and the transfer of objects in any form is declared invalid and null and void by law.

The object of dispute in Decision No. 253/Pdt.Plw/2018/PN.Skt and Decision of the Serang District Court Number 39/Pdt.G/2017/PN Srg Juncto Decision of the Banten High Court Number 60/PDT/2018/PT BTN Juncto Decision of the Supreme Court Number 227 K/Pdt/2019 is land and buildings which are joint assets that were sold without the knowledge of his wife. Even though they are divorced, the former couple should have obtained the approval of all their heirs, because the object of the dispute is assets that have not been divided. The subject of the sale and purchase in dispute No. 253/Pdt.Plw/2018/PN.Skt and the Decision of the Serang District Court Number 39/Pdt.G/2017/PN Srg Juncto the Decision of the Banten High Court Number 60/PDT/2018/PT BTN Juncto the Decision of the Supreme Court Number 227 K/Pdt/2019 cannot meet the requirements of sale

²⁰Elva, Liza, Transfer of Land Rights from Joint Property Without the Consent of the Husband and Wife (Study of Kotabaru District Court Decision Number 1/Pdt.G/2019/PNKTB), *Jurnal Hukum*, p. 294

and purchase, because the Seller is not a person who has full rights to sell the land. In a sale and purchase, the seller must be a person who has full rights to the land. So that the sale and purchase in this case can be said to be invalid because it does not meet the elements or requirements of a sale and purchase.

Legal consequences are consequences caused by the law to an act carried out by a legal subject.²¹ The dissolution of a marriage due to divorce will have an impact on joint assets acquired during the marriage.²² Joint property objects transferred without the consent of the ex-husband or ex-wife also have legal consequences. As in the case of joint property land disputes in Decision No. 253/Pdt.Plw/2018/PN.Skt, as well as the Decision of the Serang District Court Number 39/Pdt.G/2017/PN Srg Juncto Decision of the Banten High Court Number 60/PDT/2018/PT BTN Juncto Decision of the Supreme Court Number 227 K/Pdt/2019, the deed of sale and purchase made before the PPAT is declared invalid or null and void by law, because the making of the deed of sale and purchase before the PPAT is not based on the honest intentions of the Applicant. This also results in the PPAT being involved in an unlawful act. The deed of sale and purchase which is declared to have no binding legal force results in the deed becoming an underground deed, and the sale of the land becomes invalid or null and void by law.

The transfer of land rights which are joint property without the consent of the spouse through a deed of sale and purchase made by is not valid because it does not meet the requirements for a valid deed of sale and purchase. By continuing to make the deed of sale and purchase, an unlawful act occurs so that the deed is null and void by law. Buyers who act in good faith in making a sale and purchase must be protected by law. Legal regulations are expected to regulate all aspects of life in society and can guarantee legal certainty for society. In the sale and purchase of land with the status of land ownership rights, there is a very close and inseparable relationship, based on the authority of the husband and wife, whether or not they can have ownership rights to the land. So it is necessary to have a marriage agreement made before or at the time of the marriage, because it will facilitate the arrangement of each person's property. The marriage agreement must be explained in more detail, for example from the explanation it is interpreted as a means of proof in the future if there is a divorce, inheritance, or when the land will be sold to another party to avoid legal smuggling. So it is clear that the ownership of the land rights is not part of the joint property. For this reason, the Government must immediately fix it by including an explanation, or issuing a land law that guarantees legal certainty.

²¹Ahmadi Miru, 2007, *Contract Law and Contract Drafting*, Raja Grafindo Persada, Jakarta, p.192.

²²Abdul Manan, *Problems of Divorce Due to Adultery in the Process of Settlement of Cases in the Religious Court Environment*, *Jurnal Mimbar Hukum*, al-Hikmah & DITBINBAPER, Jakarta, No. 52 Th XII 2007. p. 7.

3.2. Responsibility of Land Deed Making Officials (PPAT) for Making Deeds of Sale and Purchase of Joint Property Objects Transferred Without the Consent of the Wife

PPAT (Land Deed Making Official) who is a public official is given the authority to make authentic deeds regarding certain legal acts regarding land rights, especially one of which is regarding buying and selling.²³In carrying out his duties, the PPAT also carries out some land registration activities, where the deed he makes is proof that a legal act is carried out which serves as the basis for registering changes to land registration data resulting from that legal act.²⁴

PPAT must be responsible for every deed he made, if the AJB he made is found to have problems so that there are parties who feel disadvantaged by the AJB made and issued by the PPAT. In the case of decision number 253 / Pdt.Plw / 2018 / PN.Skt. and the Serang District Court Decision Number 39 / Pdt.G / 2017 / PN Srg Juncto Banten High Court Decision Number 60 / PDT / 2018 / PT BTN Juncto Supreme Court Decision Number 227 K / Pdt / 2019, the PPAT did not first examine the land and building objects for which the sale and purchase deed was made, so that in this case the PPAT is categorized as having committed an unlawful act. Thus, an unlawful act has occurred with the wife's rights to joint property being violated, resulting in losses due to the sale and purchase transaction stated in the AJB made by the Defendant or husband, then he can be responsible by providing compensation. Claims for compensation in Article 1365 of the Civil Code according to Moegni Djodirdjo include compensation in the form of money, compensation in kind or return to the original condition, a statement that the act committed is unlawful, a prohibition on carrying out an act, eliminating something that is carried out unlawfully, an announcement of a decision or something that has been corrected.²⁵Compensation in this case can be done by returning the land status to its original state.

PPAT must be responsible to provide a deterrent effect for PPAT because the position of PPAT is a position of trust as an extension of the National Land Agency. The violation committed by PPAT is making a deed regarding land rights/ whose object is still in dispute or an object of joint property that has not been divided and sold without permission and knowledge of the heirs. This is in accordance with the provisions of the explanation of government regulation number 24 of 2016 number 8, and is included in the category of serious violations. So according to Government Regulation Number 24 of 2016 Article 10

²³Solahudin Pugung, 2021, Regarding Land and the Law of Its Sale and Purchase and the Responsibility of PPAT for Deeds Containing Defects from the Perspective of the Rule of Law, Budi Utama, Yogyakarta, p.30.

²⁴Rudi Indrajaya et al., 2020, Notaries and PPAT: An Introduction, Refika Aditama, Bandung, p. 62

²⁵Moegni Djodirdjo, 1976, Unlawful Acts, Pradnya Paramita, Jakarta, p.102

paragraph (2), PPAT can be subject to sanctions in the form of dishonorable dismissal.

Based on the theory of responsibility, the responsibility of PPAT can be called absolute responsibility, not individual responsibility. This is because the mistakes made by PPAT were not done intentionally, but rather because of unintentional actions due to lack of care or caution 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, and Decision of the Serang District Court Number 39/Pdt.G/2017/PN Srg Juncto Decision of the Banten High Court Number 60/PDT/2018/PT BTN Juncto Decision of the Supreme Court Number 227 K/Pdt/2019, where the object of the dispute is joint property land that has not been divided. And the party or seller in carrying out the sale and purchase did not have the permission of all parties entitled to the land.

Absolute liability due to unlawful acts without questioning fault (strict liability), is based on his actions whether intentionally or unintentionally, meaning that the PPAT remains responsible for losses arising from his actions. Violation of a provision of the law and causing losses to others is called an unlawful act or *onrechtmatige daad*.²⁶ An unlawful act based on the provisions of Article 1365 of the Civil Code is any unlawful act, which causes loss to another person, requiring the person whose fault caused the loss, to compensate for the loss. This must also pay attention to the element of intent or not. If no element of intent is found, this means that in carrying out his position a PPAT carried it out with carelessness or did not pay attention to caution.

4. Conclusion

The legal consequences of making a deed of sale and purchase of joint property objects transferred without the wife's consent are invalid or null and void, because the making of the deed of sale and purchase before the PPAT is not based on honest intentions. This also results in the PPAT being involved in an unlawful act. A deed of sale and purchase that is declared to have no binding legal force results in the deed becoming an underground deed, and the sale of the land becomes invalid or null and void. This causes losses for the parties, especially in this case the Buyer. With the cancellation of the sale and purchase transaction, the sale and purchase transaction is considered to have never occurred so that the status of the land should return to its original state. The responsibility of the land deed making official (PPAT) for making a deed of sale and purchase of joint property objects transferred without the wife's consent is an absolute responsibility that results because in making the deed of sale and purchase the PPAT was less than careful and careful. As in Article 1366 of the Civil

²⁶Rosa Agustina, et.al., 2012, Law of Obligations, 1st Edition, Pustaka Larasan, Bali, p. 4

Code, every person is responsible not only for losses caused by his actions, but also for losses caused by his negligence or lack of care. By declaring the deed of sale and purchase to be contrary to the law, it will cause losses to the buyer, so that the PPAT must also be responsible for the material losses suffered by the parties.

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Law Number 1 of 1974 concerning Marriage.

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