

SALE AND PURCHASE OF HERITAGE LAND AND BUILDINGS CARRIED OUT WITHOUT THE CONSENT OF THE HEIRS

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ABSTRACT

The sale and purchase of inherited land and buildings must be carried out before an authorized public official, namely the Land Deed Drafting Officer, however, problems occurred in making the sale and purchase deed due to objections from the heirs. The procedure for buying and selling land and heritage buildings carried out before the PPAT is that the seller brings the original certificate of title to the land to be sold, KTP (Resident Identification Card), proof of payment of PBB (Building Land Tax), husband/wife's consent letter, for those who are married, KK (Family Card) while the buyer brings their KTP (Resident Identification Card), KK (Family Card), payment money or an order to issue money to the bank as agreed between the seller and the buyer. The legal consequences of the deed of sale and purchase of land and heritage buildings made by PPAT become an authentic deed. The legal force of the deed of agreement is very strong, because the deed of sale and purchase agreement has become a notarial deed so that it is an authentic deed.

Keywords: *Buying and selling, land and buildings, inheritance.*

JUAL BELI TANAH DAN BANGUNAN WARISAN YANG DILAKUKAN TANPA PERSETUJUAN AHLI WARIS

ABSTRAK

Pelaksanaan jual beli tanah dan bangunan warisan harus dilakukan dihadapan pejabat umum yang berwenang yaitu Pejabat Pembuat Akta Tanah akan tetapi dalam pembuatan akta jual beli tersebut terjadi masalah karena adanya bantahan dari ahli waris. Prosedur jual beli tanah dan bangunan warisan yang dilakukan dihadapan PPAT adalah pihak penjual membawa sertipikat asli hak atas tanah yang akan dijual, KTP (Kartu Tanda Penduduk), bukti pembayaran PBB (Pajak Bumi Bangunan), surat persetujuan suami/isteri, bagi yang sudah berkeluarga, KK (Kartu Keluarga) sedangkan pihak pembeli membawa KTP (Kartu Tanda Penduduk), KK (Kartu Keluarga), uang pembayaran atau surat perintah mengeluarkan uang kepada bank yang telah disepakati antara penjual dengan pembeli. Akibat hukum akta jual beli tanah dan bangunan warisan yang dibuat oleh PPAT menjadi sebuah akta yang otentik. Kekuatan hukum dari akta perjanjian tersebut sangat kuat, karena akta pengikatan jual beli tersebut telah menjadi akta notaris sehingga merupakan akta otentik.

Kata Kunci: *Jual Beli, Tanah dan Bangunan, Warisan*

INTRODUCTION

The practice at this time is that there are many land sales that are inherited from the heirs without the knowledge of all existing heirs. One of the heirs tried to control the inherited land and did not want to share it with the other heirs. In the end, this will be a problem that must be resolved through the court, because the parties think that they can no longer solve the problem familiarly and through deliberation and consensus.

The inheritance land and buildings that will be traded certainly have consequences with their heirs, namely that each heir has the right to ownership of the land. One of the heirs sold the inherited land and there was an agreement between the seller of the inherited land and the buyer but after the land was sold and paid by the buyer legally in front of the witness, there were other heirs who actually also had the right to the ownership of the inherited land in dispute because they felt that they were not included in the sale of the land. The heirs of the inherited land do not agree to the transfer of land rights to someone else, so there is a dispute over the sale and purchase of the land.

The inheritance law that exists and applies in Indonesia until now is still not a legal unification, as a result of which the regulation of inheritance issues in Indonesia is still not uniform. The form and system of inheritance law are very closely related to the form of society and the family system, while the family system in Indonesian society is based on the system of pulling lineage.

The pluralistic inheritance law system in Indonesia is not only due to the diversity of customary family systems, but also because of the existence of three other legal systems, namely the Islamic inheritance law system which is based on and sourced from the holy book of the Qur'an and Western Civil Inheritance Law which is a relic of the Dutch East Indies Period which is sourced from the Burgerlijk Wetboek (hereinafter referred to as the Civil Code) and the legal system of customary inheritance that originates from customs or customs that exist in the community, which in the history of the law applies and is applied in Indonesia.

The Law of Inheritance is essentially to regulate the distribution of inheritance to the heirs, so

that there are no disputes when the inheritance is distributed. The Law of Inheritance is "a matter of whether and how the various rights and obligations of a person's property at the time of his death will be transferred to another living person". A person who dies, will cause a legal consequence, namely about the management and continuation of rights and obligations for someone who has died. "Settlement and rights and obligations as a result of legal events due to the death of a person are regulated by inheritance law".

The legal consequences arising from the occurrence of a person's death legal event include the issue of management and continuation of the rights and obligations of a person who dies. The settlement of rights and obligations as a result of the death of a person is governed by the law of inheritance. Inheritance can be said to be a provision that regulates the way of transmission and transfer of wealth (tangible or intangible) from heirs to their heirs. The issue of inheritance in daily life is often a cause of disputes and causes rifts in family relationships, and can even lead to criminal acts such as murder. The inheritance has not been divided, each heir still has the same right to the inheritance property and if there is more than one heir then the inheritance is a joint property. One of the heirs wants to sell the undivided inheritance, so it must have the approval of all heirs as the party who gets the right to the property.

An heir must seek approval from other heirs if he wants to sell his inherited land, because other heirs also have rights to the land. A person who sells inherited land without the consent of other heirs, there will be a dispute over the sale and purchase of the land. The dispute originated from the heir's complaint which contained objections and demands for the right to inherited land, both regarding the status of the land, and its ownership. Muslims as part of the community in North Labuhanbatu Regency also experience problems with the sale and purchase of inherited land and buildings with property certificates that have not been divided by one of the heirs without the consent of the heirs. The occurrence of buying and selling inherited land and buildings with certified property rights that have not been divided, thus causing disputes and disputes among the heirs.

The practice in the implementation of the sale and purchase of land and buildings must be carried out in front of the authorized general official, namely the Land Deed Making Officer (hereinafter referred to as PPAT) who has the authority to make certain deeds, such as deeds of sale and purchase, exchange, grants, granting building rights to proprietary land, granting

rights of dependents, entry into the company, division of joint rights and granting of use rights to proprietary land. PPAT in transferring land rights, especially the sale and purchase of land and certified heritage buildings, is not all carried out smoothly and quickly, due to the existence of factors that prevent such as not meeting conditions such as photocopies of Identity Cards or Identity Cards (hereinafter referred to as KTP) of both parties when signing it turns out that the party who came to the PPAT Office was not the real person but another person or there was no letter Consent from the heirs to sell the inheritance land and buildings. Based on the above, it is encouraged to carry out research/service activities with the title: Procedures for Buying and Selling Land and Heritage Buildings Carried Out in Front of PPAT. Based on the background description mentioned above, the problem in this research/service activity is how the procedure for buying and selling land and heritage buildings is carried out in front of PPAT. The purpose of this research/service activity is to find out the procedures for buying and selling land and heritage buildings carried out in front of PPAT.

RESEARCH METHODS

This research is descriptive because it will only explain the object of research, investigated by describing the applicable laws and regulations associated with legal theories and practices of implementing legislation related to the problems in this thesis.

The method is carried out with a normative juridical approach and an empirical juridical approach. A normative juridical approach is used to study laws and regulations. The empirical juridical approach method is carried out by obtaining data relevant to the problems in this thesis by conducting interviews with respondents who are PPAT.

RESULTS AND DISCUSSION

One of the material rights to land regulated in Article 16 Paragraph (1) of Law Number 5 of 1960 concerning the Basic Principles of Agrarian Principles (hereinafter referred to as the UUPA) is the most powerful and fulfilled land title. The strongest shows that the term of ownership is unlimited and the property rights are also registered with a proof of rights so that they have power. Full meaning is that property rights authorize the owner in terms of its

unlimited designation. The transfer of land rights is a legal act that is deliberately carried out with the aim that the rights to land transfer from the transferor to the recipient of the transfer. Article 20 Paragraph (2) of the UUPA stipulates that property rights can be transferred and transferred. Switching means that it occurs not because of a legal act (intentional) but because of a legal event (not intentional), for example inherited. Inheritance is the transfer of property rights to another party because the owner dies while being transferred shows intentionality so that there is a legal act against the property rights. One of the legal acts of transferring ownership of land is by buying and selling land. The practice of buying and selling land at this time is expected to have legal certainty that can guarantee the continuation of these activities through land registration.

Before transferring land rights, the two parties first make an agreement or agreement regarding the land to be transferred and what needs to be considered in this case is the prospective seller and buyer. The sellers are the legal holders of the rights to the land, whether it belongs to individuals or family property, while the object of buying and selling land is the right to the land to be sold. The purpose of buying and selling land is to be able to legally control and use the land, but legally what is bought or sold is not the land but the right to the land. The seller is the legal owner of the land, if the sale and purchase is carried out by another party with a power of attorney from the legitimate seller in bad faith, it can cause the legal act to be null and void. A person who has become a holder of land rights that has not been certified cannot give his rights to another person simply because that right is his authority, but what he can do is to transfer or release the rights to the land he owns by using a deed of release of rights with compensation made before a Notary or a letter of release of rights with compensation legalized by a notary or a statement of release land control with compensation made by the Sub-district Head.

Rendition of rights or surrender of land rights is the activity of releasing the legal relationship between the holder of land rights and the land he controls by providing compensation on the basis of deliberation. One of the keys that is quite decisive in the above legal act is that with regard to compensation in the release of rights or the surrender of the land is a reward in lieu of the value of the land handed over by the owner or holder of rights to the land.

Article 584 of the Civil Code (hereinafter referred to as the Civil Code) reads: "Ownership of

an object cannot be acquired by any other means, but by ownership, by attachment, by expiration, by inheritance, either by law or by will, and by appointment or assignment based on a civil event for the transfer of property rights, carried out by the person who has the right to act freely on the goods". Land rights authorize the holder of the right to use or benefit from the land he owns, by granting the right to the land, then a legal relationship has been established between the person or legal entity with the land in question.

The inherited land that will be traded certainly has consequences for its heirs, namely that each heir has the right to ownership of the land. When there is one heir who sells inherited land and there has been an agreement between the seller of the inheritance land and the buyer. After the land is sold and paid by the buyer legally in front of the witness, there are other heirs who are actually also entitled to the ownership of the inherited land in dispute because they feel that they are not included in the sale of the land. In other words, the heirs of the inherited land do not agree to the transfer of land rights to be owned by others, so there is a dispute over the sale and purchase of the land.

Article 852 of the Civil Code states, among other things, that the heirs are their children or all their descendants, whether born from other marriages, inheriting from both parents, grandparents or all their subsequent blood relatives in a straight line upwards with no difference between men or women and no difference between births. They inherit head by head if they are related to the deceased in the first degree and each has rights for themselves; They inherit stake after stake, if all of them or just part of them act as a substitute. A piece of inherited land if sold after becoming an inheritance land, then the heirs who have ownership of the land are the heirs. If the sale is to be made, all other heirs must be present to give approval. If one of the heirs cannot be present before the PPAT that made the deed, then the heir can make a Letter of Approval under the hands legalized by a local notary or make a Letter of Approval in the form of a Notary deed.

If someone sells the inherited land without the consent of the heirs, other heirs who feel that their rights are not fulfilled can sue the heirs who sell the inheritance without the consent of the other heirs civilly on the basis of unlawful acts.

According to Article 1365 of the Civil Code, what is meant by an unlawful act is an act that is against the civil law committed by a person who, because of his fault, has caused harm to

another person, which requires the person who due to his fault has caused the loss to compensate for the loss. Land that is sold after becoming inheritance land is legally owned by the heirs, by itself because of the law, because the heirs will get ownership of all the goods, all rights and all receivables of the deceased. The heirs who feel that their rights are violated because of their land, in the event that the land is bought and sold without the consent of the heirs, then the land is sold by the person who does not have the right to sell it (because the current owners of the land are the heirs).

Based on Article 1471 of the Civil Code, if the sale and purchase has occurred and without the signature of the heirs as the owner (because there is no consent from the heirs), then the land is sold by a person who does not have the right to sell it so that based on Article 1471 of the Civil Code above, the sale and purchase is void. With the cancellation of the sale, 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, where the ownership of the land remains with the heirs. In addition, buying and selling without including a land certificate is also contrary to the requirements in the land buying and selling process. Heirs who feel that their rights are violated because their land is sold without their consent, can file a civil lawsuit on the basis of unlawful acts, as stipulated in Article 1365 of the Civil Code which reads: "Every act that violates the law and causes harm to another person, obliges the person who caused the loss due to his fault to compensate for the loss".

The act of a person who sells the land of the heirs without the consent of the heirs is an act that violates the subjective rights of the heirs. To be able to sue the seller of the land on the basis of an unlawful act, it must be able to prove that the person to be sued fulfills all the elements of the unlawful act as mentioned above. The position of PPAT as a general official is emphasized in Government Regulation No. 24/1997. The position of PPAT as a general official is confirmed in Article 1 Number 1 of Government Regulation Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning Regulations on the Position of Land Deed Making Officials (hereinafter referred to as Government Regulation No.24/2016). PPAT as a public official authorized to make deeds regarding land, must have special abilities and skills in the field of land so that the deed it makes does not cause problems in the future, considering that the deed it makes is an

authentic deed that can be used as evidence, and has absolute power regarding the things or events mentioned in the deed.

PPAT as a public official who is authorized to make deeds in the transfer of land rights, deeds of encumbrances and power of attorney for the encumbrance of dependent rights, is also tasked with assisting the Head of the National Land Office in carrying out land registration by making certain deeds as evidence of the implementation of certain legal acts regarding land rights and or buildings that will be used as the basis for proof of land registration. According to Boedi Harsono, the PPAT deed serves as a means of proof that the sale and purchase has been carried out. The buying and selling can still be proven by other means of proof. However, in the land registration system according to the improved regulations, namely Government Regulation PP No. 24/1997, the registration of buying and selling can only be done with a PPAT deed as valid evidence. A person who buys and sells without being proven by a PPAT deed will not be able to obtain a certificate, even if the sale is legal according to the law.

PPAT in providing services to the community is tasked with serving applications to make certain land deeds mentioned in the regulations related to land registration. PPAT in dealing with these applications is obliged to make a decision to reject or grant the application concerned. According to respondent Tresna Hariadi, the forms of legal actions that can be carried out by PPAT regarding land rights, namely:

1. Buying and selling;
2. Convert;
3. Grants;
4. Income into the company;
5. Distribution of common rights;
6. Granting Building Use Rights on proprietary land;
7. Granting of dependent rights;

The granting of power imposes the right of dependent.

PPAT as a public official, the deed he made is given the status of an authentic deed, which is a deed made to prove the existence of certain legal acts that result in the transfer of rights to land and heritage buildings. Regarding the certainty of ownership of land rights and heritage

buildings, any acquisition of rights that occurs from a legal act must be made with an authentic deed. This is important to provide legal certainty for the party who obtains these rights so that he can defend his rights from lawsuits from any party. Without an authentic deed, legally the acquisition of these rights has not been recognized and in fact the rights to land and buildings still exist with the party who transferred the rights. To protect the party who obtains the right, the authentic deed made at the time the acquisition of rights is a strong evidence that states that there is a legal act of transferring the rights to the land and building in question to the party who is declared to have obtained the right.

A person who buys and sells land and heritage buildings in front of the PPAT must meet the conditions stipulated by law. According to Adrian Sutedi, there are two conditions for buying and selling land, namely:

1. Material requirements, namely material requirements, greatly determine the validity of the sale and purchase of the land, including:
2. The buyer has the right to purchase the land in question. This means that the buyer as the beneficiary of the right must be qualified to own the land he bought.

The seller has the right to sell the land in question and the one who has the right to sell a plot of land is of course the holder of the legal right to the land called the owner. If the owner of a piece of land is only one person, then he has the right to sell the land himself. If the owner of the land is two people, then the two people have the right to sell the land together. It is not allowed for one person to act as a seller.

The land rights in question are tradable and are not in a state of dispute. Formal requirements. After all material requirements are met, PPAT will make a sale and purchase deed. The sale and purchase deed according to Article 37 Paragraph (1) of Government Regulation No. 24/1997 must be made by PPAT. Buying and selling that is carried out without the presence of PPAT is still valid because the UUPA is based on Customary Law (Article 5 of the UUPA), while in Customary Law the system used is a concrete/concrete/real/real system. However, in order to realize the existence of legal certainty in every transfer of land rights, Government Regulation No. 24/1997 as the implementing regulation of the UUPA has determined that every agreement that intends to transfer land rights must be proven by a deed made by and before the PPAT. The material conditions for the sale and purchase of rights to

land and heritage buildings are aimed at the subject and object of the rights to be traded. The holder of the land rights must have the right and the authority to sell the rights to the land. In addition, the buyer must also be qualified as a holder (subject) of land rights that are the object of sale and purchase.

A seller to be able to carry out a transaction of buying and selling rights to land and heritage buildings, must have the right and authority to sell land rights with the following conditions:

1. A seller is a person whose name is listed on a certificate or other evidence other than a certificate. The first thing that must be clear is that the prospective seller must have the right to sell the land and heritage building, namely the owner of the heritage land and building.
2. The seller must be of age according to the provisions of the applicable laws and regulations, meaning that he has been authorized to sell the land.
3. If the seller is still an adult or a minor, the seller must be represented by his guardian to make the sale.
4. If the seller is in the custody, then to carry out the sale and purchase transaction must be represented by the guardian or the curator.
5. If the seller is represented by another person who is part of the power of attorney, then the power of attorney shows a power of attorney made by an authorized official.

If the owner of a piece of land and heritage building is only one person, then he has the right to sell the land himself but if the owner of the land and heritage building is two people, then the one who has the right to sell the land is the two people together, not one person who acts as the seller. Likewise, if there are three or more owners, then all owners must act as sellers and if one person does not participate, then the others are not entitled to sell the land and heritage buildings. One of the material conditions is not met in the sense that the seller is not a person entitled to the land he is selling or the buyer is not qualified to be the owner of the land or the land being traded is in dispute or is land that cannot be sold, then the sale and purchase of the land is illegal. Buying and selling land carried out by those who do not have the right is null and void. This means that from the beginning the law considered that there had never been a buying and selling. The thing that needs to be considered by the seller and the land buyer is that the PPAT that will be asked to make a deed of land sale and purchase agreement

is the PPAT which is in the area of its position and authority which includes the area of the land that is used as the object of the sale and purchase transaction.

Based on the description above, if the land and buildings are sold after becoming inherited land, then the heirs who have ownership of the land are the heirs. If the sale is to be made, then all other heirs must be present to give approval. In the event that one of the heirs cannot be present before the PPAT that made the deed (because he is out of town), the heir can make a Letter of Approval under the hands legalized by a local notary or make a Letter of Approval in the form of a notary deed. If there is a party who sells the inherited land without the consent of the heirs, the heirs can sue civilly on the basis of unlawful acts. As for whether you can reclaim title to the land that has been sold, it depends on what you are asking for in your lawsuit petition and depends on the judge's ruling.

CONCLUSION

Buying and selling inherited land/buildings without the consent of all heirs is invalid (legally flawed) and can be canceled, because the property belongs to the joint. This transaction is unlawful, potentially civil dispute, and can even be criminally reported for alleged mail forgery. The buyer risks losing the rights to the land. Buying and selling transactions are considered invalid or null and void. According to Article 1471 of the Civil Code, selling someone else's property (other heirs) makes the sale and purchase void. The aggrieved heirs can file a civil lawsuit with the District Court for the cancellation of the sale and purchase and reclaim their rights on the basis of unlawful acts (Article 1365 of the Civil Code).

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