
**THE LEGAL FORCE OF THE DEED OF SALE AND PURCHASE OF LAND ON
CONGENITAL PROPERTY BETWEEN HUSBAND AND WIFE**

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ABSTRACT

Land sale and purchase is an important transaction carried out to obtain rights to land. Land is one of the most valuable assets and has the potential to generate profits in the future. Land is becoming increasingly valuable because land is increasingly scarce, over time and the increasing human population, land prices continue to increase. This makes the business of buying and selling land an investment class that is definitely promising for everyone, ranging from housing, business premises, agriculture, to investment. Therefore, the process of buying and selling land and similar actions must be carried out carefully and in accordance with applicable legal provisions. However, many people do not understand the importance of the procedures for transferring land rights in Indonesia regulated in various laws and regulations. As happened in the journal to be discussed, where there was a sale and purchase between husband and wife that had been made AJB before the Temporary Land Maker Official. Where this agreement violates the objective requirements according to the Civil Code, resulting in the agreement being “null and void”. In this method we use a normative juridical method which is a library law research with an approach that is carried out using reviewing the main legal material focusing on analyzing regulations, doctrines, and legal principles related to the transfer of land rights.

INTRODUCTION

Buying and selling is indeed one of the activities that we often find in everyday life. This is because humans have needs that must be met, and buying and selling is one way to fulfill these needs. Humans need goods and services with the word “agreement” in buying and selling. The buyer gets the right to a good or service and the seller receives the profit for the goods he has sold. Both get their respective benefits. Land sale and purchase is an important transaction carried out to obtain rights to land. Land is one of the most valuable assets and has the potential to generate profits in the future, valuable because land is increasingly scarce, due to the increasing human population, pushing land prices to continue to increase. This makes the business of buying and selling land an investment class that is

definitely promising for everyone, ranging from housing, business premises, agriculture, to investment.

Transfer of land rights is the process of transferring land rights from one party to another (Ekawati et al., 2021). Article 37 paragraph (1) of Government Regulation No. 24/1997 on Land Registration (“GR 24/1997”) regulates the transfer of land rights. The article states that the transfer of land rights and ownership rights over apartment units through sale and purchase, exchange, and grants can only be registered if evidenced by a deed made by an authorized Land Deed Official (PPAT). Ownership rights over land can be transferred to the relevant parties. There are two ways of transferring land rights that are often discussed, namely switching and being transferred. *Beralih* refers to the transfer of land rights without any legal action taken by the owner. On the other hand, *transfer* refers to the transfer of land rights through legal actions taken by the owner. Such legal actions can be in the form of sale and purchase, grants and others (Ekawati et al., 2021).

Often encountered in the community, sale and purchase is one of the most common and frequent ways of transferring land rights. In the sale and purchase process, there is a transfer of land rights from the seller to the buyer in exchange for an agreed price. Based on its validity, the transfer of land rights does have material requirements that must be met so that the process is valid and has binding legal force. If the material conditions for the transfer of land rights are not met, then the transfer can be declared null and void. Therefore, it is important to ensure that all material requirements are met before transferring land rights. The role of the Land Deed Official (PPAT) is very important in the process of transferring land rights, especially in fulfilling the formal requirements. PPAT is authorized to make a Deed of Sale and Purchase (AJB) of land and Certificate of Ownership (SHM) which are important documents in the process of transferring land rights. A legal and secure land sale and purchase process must be carried out by fulfilling complete evidence and involving PPAT as the authorized party. Registration of the transfer of land rights at the Land Office is also mandatory to strengthen the legality of land ownership (Elizabeth & Anggoro, 2022).

Ownership of the land itself must be with a land deed that serves as authentic proof of juridical ownership of the land with the land deed the landowner can legally manage the land in accordance with the wishes of the landowner. Therefore, the process of buying and selling land must be considered carefully and thoroughly, in accordance with applicable regulations. In general, the process of buying and selling land involves several stages, starting from price negotiations, making agreements, signing until the transfer of land rights through a notarial deed process. The sale and purchase deed must be signed by the parties to prove that there has been a transfer of rights from the seller to the buyer at the agreed price, fulfill the conditions and show that the legal action concerned has been carried out (Elizabeth & Anggoro, 2022). In addition, there are also various regulations and requirements that need to be considered in this process, such as land ownership documents, land legality, and so on.

However, many people do not understand the importance of the procedure for transferring land rights in accordance with applicable regulations. So that we often encounter in the community, unscrupulous officials who make deeds (land deeds) who deliberately make land deeds that contradict the laws and regulations for personal gain without providing education about the legal basis for buying and selling land to the public, so that buying and

selling does not occur in accordance with the provisions listed. People who tend not to know the provisions of the laws and regulations make a sale and purchase so that the validity of the goods does not have permanent legal force. As happened in one of the cities in West Java, where there was a sale and purchase between husband and wife of inherited property that had been made a Deed of Sale and Purchase before the Temporary Land Maker Official.

METHOD RESEARCH

The method used is normative juridical, library legal research using an approach that is carried out using reviewing legal materials that primarily study theories, concepts, legal principles as well as laws, basic norms, laws, decrees of the People's Consultative Assembly, jurisprudence, treaties and all applicable legal provisions. The data collection method uses observation in a way that is taken to make direct observations made by us regarding the legal object in question by paying attention and studying related to a legal product. As well as conducting interviews to obtain information related to the research that we took by asking several questions to the sources in order to obtain more in-depth information on this issue.

RESULTS AND DISCUSSION

Currently, the sale and purchase of land is becoming increasingly important as land is becoming scarce and land prices continue to rise. The transfer of land rights must be carried out using the applicable statutory provisions. It must be in accordance with the method and object of land that is not in a state of dispute so as not to cause disputes in the future.

But what if the sale and purchase is carried out with marital ties such as the case of sale and purchase between husband and wife in P Village, District I, West Java. The land was purchased in 2015 and made AJB before PPAT with Number: 8XX/2015, S as the Husband of Mrs. K who is S's Wife has made a sale and purchase in the form of 2400 m² (cubic meters) of land by the Temporary Deed Official.

Based on the material terms of validity, if reviewed in Article 1320 of the Civil Code, the sale and purchase is carried out based on the valid terms of the agreement. Subjective conditions of sale and purchase Husband and wife have "agreed" to make a sale and purchase and legally can be said to be "capable" because the husband and wife are more than 21 years old according to the Civil Code, and the seller as the husband has authority over the land being bought and sold, the "object" in the form of land being bought and sold is not an object that is in dispute. This means that the object does not violate legal provisions. So that it can be traded. However, based on the "lawful cause", the sale and purchase made by husband and wife is contrary to 1467 of the Civil Code "the sale and purchase agreement may not be made by husband and wife". After conducting more in-depth research through interviews with the heirs who are the biological children of Mr. S from a previous marriage, from 4 heirs it is known that Mrs. K is the Step Wife of Mr. S who got married in 2000 and has no offspring while Mr. S and Mrs. K are married, Mrs. K only has 3 siblings.

According to the testimony of the heirs who are the children of Mr. S, three of the heirs said they did not know the reason why the sale and purchase took place because at that time they did not witness and were not informed of the sale and purchase process. They questioned why there had been a sale and purchase between Mr. S as their biological father selling land to

Mrs. K as a stepmother because the sale and purchase action carried out by the husband and wife was odd, because Mrs. K as a stepmother only worked as a housewife, and the property which was the object of the sale and purchase was the inherited property of Mr. S as the parent of the heirs, The heirs also argue that the sale and purchase of the land being bought and sold is the inherited property obtained from the previous marriage which is the inherited property of the heirs who have not been distributed, the ownership rights of the husband and wife's property do not automatically become joint property after marriage (Fitrah, 2022) law "where the agreement does not meet the objective requirements or does not have a clause or the cause is prohibited (Isnandya, 2020).

Congenital property is regulated in Article 35 of the Marriage Law paragraph (2). The article means that the property obtained by the husband or wife as a gift or inheritance remains the property of each, not included in the joint property. Then in Article 87 paragraph (1) of the Compilation of Islamic Law regulates the innate property where "The innate property of each husband and wife and the property obtained by each as a gift or inheritance are under their respective control, as long as the parties do not determine otherwise in the marriage agreement."

According to the testimony of the heirs that in the marriage of Mr. S and Mrs. K did not make a prenuptial agreement before Mr. S and Mrs. K entered into marriage and in the Deed of Sale and Purchase that had been made by the Temporary Land Deed Official. That the implementation was witnessed by one heir. According to the testimony, Y as the heir and Village Official P who also participated in witnessing the sale and purchase process that, Mr. S wanted to distribute one of the plots of land to Y but, because Y needed some money, since the grant deed had not been made, Mrs. K as Stepmother bought the land so that the land then gave some money to Y because on the grounds of minimizing the cost of making a deed to PPAT, the AJB was made between husband and wife in front of PPATS.

Based on the information explained above, that to minimize the cost of making a deed that has been carried out by the husband and wife, who have committed an unlawful act which is contrary to the laws and regulations in article 1320 paragraph (4) and article 1467 of the Civil Code. So that it can be said to be null and void, so that the sale and purchase process is "void ab initio" which means it is considered invalid from the start. However, with the legal act of sale and purchase in front of PPATS, a Deed of Sale and Purchase has been made, giving rise to a legal product resulting from an illegal act, the deed made by PPATS can be canceled by law because there has been an illegal act.

The ownership rights to the inherited land remain with the heirs, even if the land is sold after the inheritance process. In the process of selling inherited land, the consent of all heirs must be obtained. Their presence to give consent in person is essential. If one of the heirs is unable to appear before the Land Deed Official (PPAT) when the deed is made (for example, because he is out of town), the heir can make a letter of consent under hand which is then legalized by a local notary. Alternatively, the heirs can make a consent letter in the form of a notarial deed. The act of selling inherited land without the consent of all heirs may result in a civil lawsuit by the heirs on the basis of unlawful acts. Ownership rights over land that has been sold can be reclaimed by the rightful owner, by filing a lawsuit at the local District Court.

A sale and purchase agreement does not have valid legal force if it does not meet one of the objective conditions, namely “halal cause” or the purpose and objectives of the agreement are contrary to law, morals and public order as stipulated in Article 1320 paragraph (4) and Article 1467 of the Civil Code. As stated in the agreement, the sale and purchase is said to be “null and void” where the agreement does not meet the objective requirements or does not have a clause or the cause is prohibited.

In the cancellation of the Land Sale and Purchase Deed, it can be canceled in two ways, namely by holding a mediation in the presence of the parties to the dispute and an arbitrator who has the authority and the Land Deed Official is also present. Meanwhile, if the mediation results in a “Deal” with the cancellation of the land sale and purchase deed, a Cancellation Application must be submitted to the local District Court. by attaching supporting documents such as joint agreements, sale and purchase deeds and identity cards of the parties. If the mediation process does not find an agreement, then the heirs as plaintiffs can file a lawsuit at the local District Court. Accompanied by supporting documents stating that the deed is “null and void” such as marriage certificate, deed of sale and purchase and others.

CONCLUSION

Sale and purchase between husband and wife according to the law should not be done because it contradicts Article 1467 of the Civil Code “the sale and purchase agreement cannot be made by husband and wife. In the case of land sale and purchase between husband and wife, the object of the agreement is potentially invalid because it contradicts Article 1467 of the Civil Code.

Sale and purchase of inherited property without the consent of the heirs, the heirs are authorized to sue the court so that the transaction is declared invalid because they have committed an illegal act, which violates Article 1471 of the Civil Code and the property is returned to the legitimate heirs, in accordance with applicable laws and regulations through a legal process by filing a lawsuit at the local District Court.

Cancellation of a Sale and Purchase Deed made by a Temporary Land Deed Official can be canceled by a judge's decision. Notaries can be punished to pay losses if the cancellation of the deed made has a detrimental impact on the parties involved, as long as there is proven fault on the part of the notary. This is in accordance with Article 55 of Law No. 30/2004 on the Position of Notary (UUJN) which regulates the responsibility of notaries.

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