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SETTLEMENT OF DISPUTES REGARDING THE SALE AND PURCHASE OF INHERITANCE LAND SOLD WITHOUT THE CONSENT OF ONE OF THE HEIRTS, REVIEWED FROM THE PERSPECTIVE OF CIVIL LAW

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Abstract

Buying and selling is an act carried out based on an agreement between the seller and the buyer to bind themselves to an item where the buyer is obliged to hand over an agreed amount of money to the seller and is also entitled to receive the agreed goods, on the other hand the seller is entitled to receive an amount of money and is obliged to hand over the goods according to the agreement. One example of a case of buying and selling a plot of land that occurred in the city of Bekasi, the seller made a sale and purchase of a plot of inherited land based on an agreement of all heirs who are entitled to inherit and agreed to sell a plot of inherited land to the buyer according to the price that has been agreed upon together before the PPAT as Notary X, but it turned out that after the sale and purchase had been carried out, it turned out that later one person appeared who claimed to be one of the heirs and demanded his rights by stating that he was also a legitimate heir to the plot of land that had been sold and stated that the sale and purchase of the inherited land was invalid because it did not involve him as an heir who was also entitled to inherit. How to resolve disputes and the validity of the sale and purchase of a piece of inherited land carried out by several heirs before a notary without involving one of the heirs who are entitled to inherit is also reviewed from a civil law perspective. This study aims to determine the resolution of disputes and the validity of the sale and purchase of inherited land to another party before a notary by several heirs without involving one of the heirs from a civil law perspective. This study uses a normative legal research method with a case approach. The results of this study indicate that the resolution of disputes over the sale and purchase of a piece of inherited land can be carried out non-litigation and litigation, the sale and purchase must involve all heirs who are entitled to inherit to give their consent so that the sale and purchase agreement can be declared valid, because if not, it can be said that the act includes elements of Unlawful Acts Article 1365 of the Civil Code.

Keywords: *Dispute Resolution, Buying and Selling, Inheritance of Land*

INTRODUCTION

Buying and selling is an act carried out based on an agreement between the seller and the buyer to bind themselves to each other regarding the sale and purchase, which among other things the buyer is obliged to hand over an agreed amount of money to the seller and has the right to receive goods that have been mutually agreed upon, on the other hand the seller also has the right to receive an amount of money according to the agreement and is obliged to provide goods according to the mutual agreement between the seller and the buyer. According to Wirjono Prodjodikoro, what is meant by buying and selling is an agreement where one party binds himself and has the obligation to hand over an item to another party and the other party also has the obligation to pay an agreed price between the two of them.¹ According to Article 1457 of the Civil Code, it states that what is meant by a sales and purchase agreement is an agreement made between the seller and the

1 Moch. Ardi et al., "Perlindungan Hukum Konsumen atas Dibatakannya Pengikatan Perjanjian Jual-Beli oleh Konsumen kepada Developer," *Jurnal Lex Suprema* 4, no. September (2022): 235–250.

buyer, in which case the seller binds himself to hand over ownership of an item to the buyer, and the buyer also binds himself to pay an amount of the price of the item that has been agreed upon by the parties.²

Regarding the object of sale and purchase, this research focuses on inherited land, what is meant by inherited land, inherited land is land obtained by heirs from a deceased testator.³ What is meant by heirs, according to Prof. M.A.Pitlo based on Article 842 of the Civil Code, it states that replacement of heirs can only be carried out by legitimate descendants.⁴ So when the testator dies and leaves behind an inheritance in the form of land, then the land becomes inheritance land and the one who has the right to own the land is the heir, and when the heir wants to sell the inheritance land, they must get approval from all heirs. However, there is one example of a case of inheritance land sale and purchase that occurred in Bekasi City, where the seller had made an inheritance land sale and purchase agreement with the buyer according to the agreed price and the sale and purchase was carried out before notary X, but it turned out that later one of the heirs stated that he was one of the legitimate heirs and had the right to inherit the land, but in reality when the inheritance land sale and purchase occurred, this heir was not included or asked for approval regarding the inheritance land sale and purchase.

Then the question is how is the validity of the inheritance land sale and purchase agreement made by the heirs to the seller before a notary without including one of the heirs? And how is the settlement of inheritance land sale and purchase disputes without the approval of one of the heirs reviewed from a civil law perspective? Regarding research related to the sale and purchase of inherited land, it has been previously studied by Miftahuljannah Sidik et al, with the research title Settlement of inheritance land sale and purchase disputes, in his research he wrote that inherited land has a risk when it is to be traded because the inherited land is still in the name of the owner, namely the heir, on the other hand the heirs want to be able to sell the inherited land as soon as possible so that it can be given to the family of the heirs, the results of his research stated that the mediation process is a resolution process that can be used as one of the solutions when problems arise during the process of buying and selling inherited land, then in the conclusion the researcher also wrote that the process of buying and selling inherited land has similarities with the process of buying and selling land in general, the only difference is in the tax imposed on the seller, and in buying and selling land usually the person on the land certificate can attend to sign the AJB while in buying and selling inherited land the heirs can attend.⁵

Other research related to the sale and purchase of inherited land has also been studied by Alyssa Adelia and Ridha Wahyuni, with the title Validity of land sale and purchase agreements from inherited land objects that have not been divided based on the Civil Code, in their research they stated that the problem in the transfer of inheritance assets in the form of inherited land is a complex problem, where legal disputes are very likely to occur in the process of the sale and purchase agreement for inherited land that has received a Sale and Purchase Deed made by the Land Deed Making Officer (PPAT) when the agreement made does not meet the requirements in accordance with the provisions of applicable regulations, the results of their research state that the agreement related to the sale and purchase of inherited land that has not been divided among the heirs of the WO is an invalid legal act because one of the conditions of the agreement in Article 1320 of the Civil Code has not been fulfilled and there are heirs whose rights are harmed related to the sale and purchase can take legal action by filing a lawsuit or compensation.⁵

Another study written by Puspita Farahdillah and Devi Siti Hamzah Marpaung, entitled Efforts to resolve disputes over the sale and purchase of inherited land without the consent of all heirs through mediation, the study discusses that inherited land is very risky to be traded because

the land is still in the name of the deceased person on the other hand the heirs want to sell it immediately so that it can be shared by their families, regarding the ownership of the inherited land of the testator is the right of the heir who has a legal relationship with the testator, this study uses a normative legal research method, the results of this study indicate that the mediation process is very useful when resolving disputes over the sale and purchase of inherited land, in this case the mediator has an important role in resolving problems peacefully to the parties.⁶

From several previous studies related to the sale and purchase of inherited land, the focus of the research that the author examines is based on the case of the sale and purchase of inherited land that occurred in the city of Bekasi where after carrying out the sale and purchase of inherited land to the buyer before a notary, it was later discovered that the heirs as the seller did not include one of the heirs who had the right to inherit the land, so that this caused problems between the parties, that is why the author is interested in writing a study entitled the settlement of disputes over the sale and purchase of inherited land that was sold without the consent of one of the heirs reviewed from a civil law perspective, which turns out that when the heirs want to carry out the sale and purchase of inherited land, it must be based on the consent of all heirs who are entitled and legitimate according to the law, the question is how is the validity of the sale and purchase agreement for inherited land made by the heirs to the seller before a notary without the consent of one of the heirs? And how is the settlement of disputes over the sale and purchase of inherited land without the consent of one of the heirs reviewed from a civil law perspective.

METHODE

Research methods are the science of the stages that must be passed in a research process or science is the science that discusses scientific methods in seeking and testing the truth of knowledge. Regarding the knowledge in question, it is legal knowledge.⁷ While the normative legal research method can be interpreted as a research method regarding legal regulations both vertically and horizontally. In qualitative research methods, data quality is prioritized. This research is normative legal research that uses an approach that refers to applicable laws and regulations.⁸ In this study, the data related to the sale and purchase of inherited land without the consent of one of the heirs in Bekasi City was studied using the Civil Code and several related regulations. Among them are Article 832 of the Civil Code regarding heirs, Article 1320 of the Civil Code regarding the requirements for the validity of an agreement, Article 1457 of the Civil Code regarding Sale and Purchase, Article 1338 of the Civil Code regarding Good Faith, Article 1365 of the Civil Code regarding PMH and the Notary Law, regarding the notary who issued the Sale and Purchase Deed in the case studied, as well as several other regulations related to the settlement of inheritance land sale and purchase disputes.

DISCUSSION

In the case of the sale and purchase of inherited land that occurred in Bekasi City, where the seller had made a transaction of a sale and purchase agreement for inherited land with the buyer according to the mutually agreed price and the sale and purchase agreement was made before a notary X, but it turned out that after the sale and purchase agreement for inherited land occurred, one of the heirs claimed that he was one of the legal heirs and had the right to inherit the inherited land that had been sold, meaning that at the time the sale and purchase of inherited land occurred, one of the heirs was not asked for approval regarding the sale and purchase of inherited land. Then the question is how is the validity of the sale and purchase agreement for inherited land made by

the heirs to the seller before a notary without involving one of the heirs? And how is the settlement of disputes over the sale and purchase of inherited land without the approval of one of the heirs reviewed from a civil law perspective? To answer this question, we need to know what is meant by sale and purchase according to civil law.

According to Wirjono Prodjodikoro, what is meant by a sale and purchase is an agreement in which one party binds himself to another party and has an obligation to hand over an item to the other party and the other party also has an obligation to pay a price that has been mutually agreed upon. According to Article 1457 of the Civil Code, it states that what is meant by a sale and purchase agreement is an agreement made between the seller and the buyer, where in this case the seller binds himself together to hand over ownership of an item to the buyer on the other hand the buyer also binds himself to pay a price according to the mutual agreement. Regarding the mutual agreement, of course it involves the parties in the sale and purchase agreement for the inheritance of land, where the parties are the buyer and the seller, in this case the seller is the heir of the heir who owns the inheritance land. So, we need to know more about what is meant by heirs and heirs? According to Prof. Dr. Wirjono Prodjodikoro, inheritance law is defined as the law that regulates the position of a person's assets after he dies (heir), and the ways in which the assets are transferred to other people (heirs). Meanwhile, based on Presidential Instruction Number 1 of 1991, the definition of inheritance law is the law that regulates the transfer of ownership rights to the inheritance of the testator, then determines who is entitled to be an heir and how much each portion is. According to the Civil Code, there are 2 ways to obtain an inheritance.

First, as heirs according to the law (called inheriting according to the law or *ab intestato*). Regarding heirs who have the right to inherit according to the Civil Code, they are divided into 4 (four) groups, including:

1. Group I, namely the longest living husband or wife and their children or descendants (the legal basis is Article 852 of the Civil Code)
2. Group II, namely the biological parents of the Testator and the biological siblings of the Testator
3. Group III, namely the family in a straight line upwards after the father and mother of the testator
4. Group IV, namely the uncles and aunts of the testator from the father's and mother's side, descendants of uncles and aunts up to the sixth degree counted from the testator, siblings of grandfathers and grandmothers and their descendants, up to the sixth degree counted from the testator.

Second because they are appointed in a will or testament (called inheriting by testamentary).⁹ Regarding a Will, it is a decision of a person (usually stated in a deed) that must be implemented after he dies. A person who dies is also called an heir. In the event that the heir dies, the heir is the one who has the right to the inherited land. In this case, the seller is the heir of the testator who owns the inherited land, for that it is necessary to know more about what is meant by inherited land? Before discussing what inherited land is, we need to know what inherited land is. Inheritance is all the inheritance of the testator in the form of rights and obligations or all assets left by the deceased after deducting all debts. Meanwhile, what is meant by inherited land is land obtained from the distribution of inheritance of a deceased person (parents) inherited to the legitimate heirs. When the legitimate heirs have made an agreement to buy and sell the inherited land before a notary, but it turns out that later on there is one of the legitimate heirs whose approval was not asked for in the sale and purchase of the inherited land, how is the validity of the agreement to buy and sell the inherited land made before Notary X? According to Article 1320 of the Civil Code regarding the requirements for a valid agreement, there are 4 elements, including:

⁹ Chatib Susanto, *Hukum Waris* (Jakarta: Kanwil Kementrian Hukum dan HAM, 2024).

1. Agree
2. Capable
3. A certain thing
4. A lawful cause

Regarding paragraphs 1 and 2, there are subjective requirements that if not fulfilled in the agreement, then the agreement made can be canceled. Regarding paragraphs 3 and 4, they are objective requirements in the agreement that if not fulfilled then the agreement is null and void. If we analyze the case of the sale and purchase of inherited land before notary X but without the consent of one of the heirs, it means that from the seller, the element of agreement is not fulfilled, because one of the heirs was not asked for his consent when the inherited land was sold. For the elements of competence and a certain thing, it can be said to be fulfilled, but for the requirement of a lawful cause, it has not been fulfilled. For that, we need to know what the principles of inheritance are according to the Civil Code, including:

1. inheritance assets are only open (can be inherited to other parties) if a death occurs (Article 830 of the Civil Code);
2. there is a blood relationship between the heir and the heir, except for the husband or wife of the heir. (Article 832 of the Civil Code), with the provision that they are still bound by marriage when the heir dies.

This means that if they are divorced when the testator dies, then the husband/wife is not an heir of the testator. In addition to the principle of inheritance, there is also the term Legitime portie which is an absolute part, namely a part of the inheritance that cannot be reduced by testament and other gifts by the testator. According to Article 1471 of the Civil Code (KUHPPer), which talks about buying and selling, which implicitly requires that the seller must be the owner of the goods being sold: "The sale and purchase of other people's goods is void and can provide a basis for the buyer to demand compensation for costs, losses and interest, if he did not know that the goods belonged to someone else." In this case, there is a right from one of the heirs to the inherited land that was sold. Therefore, the sale and purchase of this inherited land should be approved by all heirs as parties who receive ownership of the land due to the inheritance. In the event that one of the heirs cannot be present before the PPAT who made the deed, then the heir can make a Letter of Agreement under hand which is legalized by a local notary or a Letter of Agreement is made in the form of a notarial deed. If the sale and purchase have occurred and without the signature of one of the heirs as one of the owners, then the inherited land that has been sold by the other heirs. Based on the provisions of Article 1320 of the Civil Code above, there are elements that are not fulfilled, then the inheritance land sale and purchase agreement does not meet the requirements for a valid agreement. And if the act of selling and buying the inheritance land is carried out without the consent of one of the heirs, then this is included in the Unlawful Act (PMH) Article 1365 of the Civil Code.

According to Mariam Darus Badruzaman, the elements of an unlawful act include:

1. The existence of an act;
2. The act is against the law;
3. There is an error on the part of the perpetrator;
4. There is a loss;
5. There is a causal relationship between the act and the loss.¹⁰

The act of buying and selling inherited land without the consent of one of the heirs is an act that causes losses to one of the heirs and is an unlawful act. How can a dispute over the sale and

¹⁰ Daud, "Perbuatan Melawan Hukum dan Akibat Hukumnya (Studi Putusan Nomor: 214/Pdt.G/2016/JKT.Sel)," *Wahana Inovasi* 7, no. 2 (2018).

purchase of inherited land be resolved before notary X without the consent of one of the heirs? It is prioritized to be resolved through family deliberation, because all the heirs are siblings so that a win-win solution can be resolved for all parties, don't let the resolution cause problems for all blood family heirs which can cause relationships between families to become strained and less good. However, if the family consensus process has been carried out but there has been no agreement on a settlement, then it can be continued to a non-litigation process such as alternative dispute resolution (APS) including mediation, conciliation and arbitration with the hope that the problem of buying and selling inherited land involving the heirs can be resolved. settlement by peace, According to Article 58 of Law Number 48 of 2009 concerning Judicial Power, it is stated that "Efforts to resolve civil disputes can be carried out outside the state court through arbitration or alternative settlement" and in Article 60 paragraph (1) it is stated that "Alternative settlement "Dispute is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely settlement outside the court by means of consultation, negotiation, mediation, conciliation, or expert assessment". From the provisions of the legislation, mediation is one of the alternatives provided and recognized by the state in dispute resolution.

According to Article 834 of the Civil Code, which gives heirs the right to file a lawsuit to fight for their inheritance rights against people who control all or part of the inheritance, whether the person controls it based on the same rights or without any basis for any rights to the inheritance. This is called *hereditas petitio*. If the settlement through non-litigation channels has not reached a meeting point, then the dispute resolution can be taken through litigation channels and when taken through litigation channels based on the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2016 Concerning Mediation Procedures in Court (Hereinafter referred to as PERMA No. 1/2016) which is a replacement for Supreme Court Regulation Number 1 of 2008. In resolving disputes, the mediation process must be carried out first. If the mediation procedure is not followed, the dispute resolution violates the provisions of Article 130 HIR and/or Article 154 Rbg which results in the decision is null and void by law.

According to PERMA Number 1 of 2016, mediation is a way to resolve disputes through a negotiation process to obtain an agreement between the parties assisted by a Mediator. If the mediation fails, the lawsuit will proceed to the next stage through the examination mechanism in court until a verdict. The PMH lawsuit can be used as a basis for one of the heirs who is not included in the inheritance land sale and purchase agreement made before a notary and PPAT, while what is meant by the provisions of Article 1365 of the Civil Code in conjunction with Article 834 of the Civil Code has given the heirs a basis to request the return of the inheritance land. So, the expert the heir can file a lawsuit to request that all his rights to the inheritance be handed over to him along with all proceeds, income, and compensation. So, if the sale and purchase of the inherited land is carried out before a notary and a Deed of Sale and Purchase of the inherited land has been issued, then the deed of sale and purchase can only be cancelled by a court decision. So that the demands of the PMH lawsuit regarding compensation, both materially related to losses experienced by one of the heirs who was not involved in the sale and purchase agreement for inherited land and immaterial compensation, namely being returned to its original condition or *restitutum integrum*.

CONCLUSION

When an agreement to buy and sell inherited land is made before a notary, there must be an agreement from all heirs who are entitled according to the provisions of the applicable law. If one of the heirs cannot be present before the PPAT who made the deed, then the heir can make a Letter of Approval under hand which is legalized by a local notary or a Letter of Approval in the form of

a notarial deed. And if the sale and purchase of inherited land has been carried out without the approval of one of the heirs, the sale and purchase agreement can be said to be invalid according to the provisions of Article 1320 of the Civil Code and the act of buying and selling inherited land is included in the PMH Article 1365 of the Civil Code, for its settlement it can be done through non-litigation and litigation. Because this concerns family relationships related to inheritance, it would be better if it is resolved through family consensus because the disputants still have elements of blood relatives in order to create a win-win solution, and family consensus can be used as one of the requirements when wanting to submit a problem through non-litigation or APS (alternative dispute resolution) such as mediation, conciliation and arbitration if the dispute resolution through non-litigation has not been successful, a PMH lawsuit can be filed based on Article 1365 of the Civil Code whose demands are in the form of material damages that can be measured in terms of loss and immaterial losses, namely being returned to their original state or *restitutio in integrum*. Because if the sale and purchase agreement for the inheritance land has occurred and there is a deed of sale and purchase, then canceling the deed of sale and purchase can only be done with a court decision.

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Buku *Prosiding Konferensi Nasional IX Hukum Perdata: Pembaruan Hukum Perikatan Indonesia: Peluang dan Tantangan* hadir sebagai wujud konkret dari ikhtiar akademik untuk merespons urgensi pembaruan hukum perikatan dalam sistem hukum perdata nasional. Selama lebih dari satu abad, ketentuan dalam Buku III Kitab Undang-Undang Hukum Perdata (BW) masih menjadi rujukan utama dalam praktik perikatan, padahal realitas sosial, ekonomi, dan teknologi telah berubah secara signifikan. Di tengah pluralisme hukum Indonesia yang mempertemukan hukum adat, hukum Islam, dan hukum barat, serta tuntutan harmonisasi dengan sistem hukum global akibat interdependensi perdagangan internasional, kebutuhan pembaruan hukum perikatan tidak dapat lagi ditunda. Maka dari itu, prosiding ini merekam diskursus akademik dan praktis yang dilaksanakan dalam Konferensi Nasional IX Asosiasi Pengajar Hukum Keperdataan (APHK).

Kepengulisan buku ini didasarkan pada kerja sama Fakultas Hukum Universitas Islam Indonesia yang mengangkat tema besar tentang tantangan dan peluang pembaruan hukum perikatan Indonesia. Berbagai tulisan dalam buku ini menyoroti isu-isu mutakhir, mulai dari perikatan dalam transaksi digital, perlindungan data pribadi, perjanjian elektronik, perlindungan konsumen di era digitalisasi, hingga pengaturan perikatan non-kontraktual, semuanya dipandang dalam kerangka pemikiran untuk menghadirkan hukum perikatan yang modern, adaptif, dan responsif terhadap perkembangan zaman. Dengan demikian, prosiding ini tidak hanya berfungsi sebagai dokumentasi akademik, tetapi juga sebagai kontribusi substantif untuk meneguhkan arah pembaruan hukum perdata Indonesia, sekaligus menjadi rujukan penting bagi akademisi, praktisi, dan pembuat kebijakan dalam merumuskan fondasi hukum perikatan nasional yang lebih relevan dengan kebutuhan masyarakat kontemporer.



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