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Sale of Inherited Land without the Consent of other Heirs in Bener Meriah Regency

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Abstract

According to Article 833 (1) of the Civil Code (KUHPerdata), the heirs of the deceased person automatically acquire ownership rights to all property, rights, and receivables. Since the other heirs are also entitled to the inheritance, an heir wishing to transfer his rights must first obtain permission from the other heirs. In actuality, though, an heir selling inherited land occurs when one heir does so without the other heirs' knowledge or approval,

leaving the other heirs with unrestricted ownership. In order to understand why the Land Deed Making Official (PPAT) granted a sale and purchase deed for inherited land that was sold without the other heirs' permission, this study will examine the following: Why the PPAT issued a sale and purchase deed for inherited land which was sold without the consent of the other heirs.

Keywords: Inherited Land, Heirs, Agreement

Introduction

In the agrarian scope, land is part of the earth, which is called the earth's surface. What is meant here is not regulating land in all its aspects, but only regulating one aspect, namely land in the juridical sense, which is called rights. The object of land law is divided into land control rights as a legal institution and land control rights as a concrete legal relationship.

Disputes regarding land ownership can arise because one of the heirs controls the inherited land in its entirety so that other heirs are harmed. Apart from that, the buying and selling was carried out without the consent of the other heirs, land rights disputes can occur because of a lawsuit from a person or legal entity as a result of legal actions that have harmed the plaintiff's right to land, the material of the lawsuit can be in the form of a demand for legal certainty regarding who has the right to land, evidence that is the basis for granting rights, apart from that it can occur as a result of sales and purchase agreements, leases, or inheritance.¹ In addition, denial of the sale and purchase of inherited land (especially that which has not been divided) without the consent of other entitled heirs, even though the sale and purchase has been stated by the PPAT in an authentic deed² (Deed of Sale and Purchase hereinafter referred to as AJB).

In terms of distribution of inheritance, problems arise regarding the struggle for inheritance, such as each heir feeling that there is no fair distribution of inheritance between heirs and there is no agreement regarding the law that they will use if disputes or problems arise in the future. So, when dividing inheritance assets, it must be based on an agreement between the heirs and heirs, one form of this is by dividing inheritance assets in equal amounts without paying attention to the status of the inheritance recipient, whether male or female. Apart from that, when dividing inheritance, it is better to know by all legal heirs, this will minimize the occurrence of disputes in the future.

In an inheritance case, there must be elements that are fulfilled so that the inheritance can be carried out, namely the existence of heirs, heirs, and the assets left behind. An heir is a person or more who is left behind, who has the rights and obligations as an heir and must exist or have been born at the time of the inheritance. In practice, to prove a person's position as an heir, a document is needed as evidence that can prove that position.

¹ Urip Santoso, *Hukum Agraria*, Jakarta: Kencana, 2013, hlm. 9-10.

² Muyassar, Ali, D., & Suhaimi. (2019). Pertanggungjawaban Hukum Notaris terhadap Peningkaran Akta Jual Beli Tanah Bersertifikat oleh Pihak yang Dirugikan. *Syiah Kuala Law Journal*, 3(1), 147-166.

In principle, when someone dies, all of their assets will go to their heirs, because legally these heirs are divided into several groups, so when buying inherited land, you must make sure you are dealing directly with the legal heirs. If there is more than one heir, it is best to make a transaction with all the heirs to avoid disputes in the future.³

When land is sold after it is inherited, the heirs are the ones with ownership rights, as stated in KUHPerdata Article 833 (1) in conjunction with Article 832 (1). KUHPerdata Article 833 (1): By default, the law gives the heirs ownership rights to all of the deceased person's property, including all rights and receivables. Article 832 (1): The following regulations provide that the heirs are entitled to be blood relatives, whether they are legally related or not, as well as the spouse who survives the longest. As a result, all heirs who receive ownership rights to the land as a result of inheritance shall approve the sale and purchase of inherited land.⁴ So that the sale and purchase made with a Sale and Purchase Deed (AJB) will have legal force and certainty, because deeds made by public officials (both notaries and PPAT) are intended to provide legal certainty for the public.⁵

Since the other heirs are also entitled to the inheritance, an heir wishing to transfer his rights must first obtain permission from the other heirs. The transfer of land shall not be regarded as having been made under implicit terms if the inheritor of the land expresses suspicions that he is the only owner of the land.

In the event that a sale and purchase have taken place without the heirs' signature as owners (due to their lack of authorization), the land has been sold by a person who is not authorized to do so. As a result, in accordance with Article 1471 KUHPerdata, the sale and purchase are canceled. Together with the sale and purchase cancellation, the sale and purchase is deemed to have never existed, and each party is returned to its original state before the "sale and purchase" event occurred, in which the ownership rights the land remains with the heirs.

To provide legal certainty, transactions involving the transfer of land rights, such as purchasing and selling, must be conducted in front of an authorized official. Government Regulation (PP) No. 24 of 2016 concerning Amendments to PP No. 37 of 1998 concerning Position Regulations for Land Deed Making Officials (PPAT) is outlined in Article 1 number 1. It specifies that PPAT is a public official with the authority to create authentic deeds pertaining to specific legal acts concerning ownership rights or land rights over apartment units.⁶ In accordance with the PPAT code of

³ Ni Made Eka Yanti Purnawan, "Penjualan Harta Waris Berupa Tanah Tanpa Adanya Persetujuan Ahli Waris Lainnya", *Jurnal Hukum Kenotariatan*, Program Studi Magister (S2) Kenotariatan, Fakultas Hukum Udayana vol 5, Agustus 2020.

⁴ Baharudin, "Kewenangan Pejabat Pembuat Akta Tanah (PPAT) Dalam Proses Jual Beli Tanah", *Jurnal Hukum*, Fakultas Hukum Universitas Bandar Lampung, Volume 5, 1 Maret 2014.

⁵ Cut Novadilla Halid, Sanusi, Novi Sri Wahyuni, Suhaimi, A Ban on Notary Self Promotion as Public Official in Notary and Ethical Code Act, *International Journal of Multicultural and Multireligious Understanding*. 2023; 10(1): 65-73.

⁶ Addien Iftitah, "Kewenangan Pejabat Pembuat Akta Tanah (Ppat) Dalam Membuat Akta Jual Beli Tanah Beserta

ethics, PPAT is obliged to ask parties who sell inherited assets without the permission of other heirs and must do so honestly, trustworthy and impartially. If this is not done, then in this case the PPAT has actually violated the PPAT code of ethics for the position he holds, the PPAT must explain that the deed cannot be made because there is no approval from the other heirs, and also the other heirs are not present at the time. The deed was made by the applicant as one of the heirs of the property.

The sale of inherited land without the knowledge of the other heirs is a case that often occurs in really lively society, land whose legal basis still belongs to the parents which becomes the inheritance for the heirs is bought and sold by other heirs without their consent, and the sale of inherited land which becomes the basis of rights for other heirs, such as one of the heirs who has a plot of inherited land with the status of the basis of rights being inherited land, with a distance that may be far outside the area so that the plot of land is managed by the person entrusted to the land owner, but when the land owner returns Land whose legal status is inheritance is traded by one of the heirs without the consent of the other heirs.

There is a legal flaw in the procedures for making a sale and purchase deed issued by PPAT Bener Meriah for inherited land sold by heirs because there are no other heirs listed in the information and identity of the person in the sale and purchase deed issued by PPAT. In Bener Meriah Regency, inheritance land disputes often occur. One of the heirs controls and sells the inheritance left by the other heirs unilaterally, and the sale of inherited land that has been partitioned or not is carried out without the consent of the other heirs.

Inherited assets left by heirs are controlled and sold unilaterally by one of the heirs whose status is based on rights. If the other heirs still have rights, if you look at the KUHPerdata, if the inherited land is sold without the consent of the other heirs, then the sale and purchase of the inherited land can be null and void.

Inherited land disputes that occurred in Bener Meriah district, this research covers several areas, namely Bukit, Bandar and Bener Kelipah sub-districts, the land being sold is in the form of garden land, rice fields and also houses, the sale of inherited assets is being sold unilaterally without the other heirs knowing. Such as a unit of a parent's house being sold by one of the heirs, even though the house is still occupied by the heir's parents.

Regarding the powers of the PPAT, Article 1 of PP No. 37 of 1998 provides that the PPAT is a general officer with the power to draw up instruments of certification in relation to certain legal acts. Property rights or ownership in a residential unit. Guaranteeing certainty as to the date of creation of the deed, preserving the deed, providing master documents, copies and estimates of the deed, all so long as the creation of the deed is not transferred to another official or excluded. The deed created by PPAT is a true and perfect proof, containing formal facts that can be used by any notary authorized to create a true deed for evidentiary/evidentiary purposes. There are legal consequences to a deed for the purchase and sale of inherited land that is signed by the land deeds officer and sold by the heirs without any legal action

Akibat Hukumnya", *Jurnal Kenotariatan*, Fakultas Hukum, Universitas Sam Ratulangi Vol.2, No. 3, Agustus-Oktober 2014.

specified in the deed. Therefore, PPAT plays a very important role in ensuring legal certainty, ensuring justice and legal protection for members of society.⁷

It must be taken into account that, in the area of private/civil law, the State requires the consent of the other heirs. PPAT When Preparing a Sale and Purchase Deed In the absence of the authorization or signature of one of the sellers or the seller's heirs, the deed is legally invalid.⁸ If a land sale occurs without the consent of the heirs, the land will be sold by a person who has no right to sell, since the person who currently holds title to the land is the heir. Therefore, the above-mentioned sale and purchase under Article 1471 of KUHPerduta is invalid. Upon cancellation of a sale, the sale is deemed to have never occurred, the parties are restored to their original position prior to the sale, and title to the property remains with the heirs.⁹

PPAT which has carried out the necessary procedures to ensure the competence of the parties present cannot be separated from responsibility for the contents of the deed they make. In essence, PPAT is only responsible for the formal truthfulness of the representations made by the parties when preparing genuine instruments. PPAT creates a true deed based on the evidence, statements and representations of the parties and is obliged to ensure that what is contained in the true deed is indeed true. Can understand and comply with the wishes of the parties involved.

The information is interpreted by reading so that it is clear what is included in the deed and to enable affected parties to access the relevant information. If it is later discovered that there are legal flaws in the drafted document, then the question will arise in this case: Did PPAT make an error when drafting the document, or was it the party's error in not providing true information when drafting the document? Document. Purchase and sale deeds made by PPAT do not include all legal heirs as parties, which can create problems for the PPAT itself.

Purchase and sale deeds made by PPAT do not include all legal heirs as parties, which can create problems for the PPAT itself. The root of the problem is that PPAT's intentional or unintentional negligence resulted in the deed being merely a private document as evidence or being annulled (transferable), which could serve as grounds for the injured party to claim against it.¹⁰ PPAT. Accordingly,

⁷ Pengurus Pusat Ikatan Pejabat Pembuat Akta Tanah Indonesia, *Jati Diri Notaris Indonesia Dulu, Sekarang dan Dimasa Datang*, PT. Gramedia Pustaka Utama, Jakarta, 2008, hlm. 31

⁸ Muhammad Malik Ibrahim, "Akibat Hukum Pengalihan Hak Jual Beli Melalui Akta Pejabat Pembuat Akta Tanah Atas Tanah Warisan Tanpa Persetujuan Salah Satu Ahli Waris Lainnya", *Jurnal hukum*, Fakultas Hukum, Universitas Islam Kalimantan Muhammad Arsyad Al Banjari, 29 September 2017.

⁹ Ari Rahmatsyah Sinaga, "Penyelesaian Sengketa Tanah Waris Yang Telah Terjual Tanpa Persetujuan Seluruh Ahli Waris", *Jurnal Notarius*, Program Studi Kenotariatan Pascasarjana UMSU Vol. 1, No. 2, Juli-Desember 2022.

¹⁰ M Afit Syahputra "Kekuatan Hukum Akta Jual Beli Yang Tidak Mengikutsertakan Seluruh Ahli Waris Sebagai Para Pihak", *Jurnal Ilmiah Mandala Education*, Vol. 8, No. 3, Agustus 2022, Magister Kenotariatan Fakultas Hukum, Universitas Indonesia.

PPAT may be held liable for issues relating to the AJB it prepared which has been canceled or declared invalid by law. When the relevant PPAT is found guilty in proceedings for the issuance of a sale deed, the court's decision is based on the discovery of legal flaws in the drafting, whether administrative, civil or criminal.¹¹

Pay attention to the authority obtained by PPAT in the sale and purchase of land and the legal product it makes in the form of a sale and purchase deed has such legal force. So it is a necessity that in the process of making a land deed, it is bound by the rules of state administration as an implementation of the principles of the rule of law mandated by the constitution, including: (1) guaranteeing respect and protection for human rights, (2) fulfilling the principles of legality, and (3) providing legal certainty.

The sale and purchase of land before PPAT must be a complete sale (free from congenital and artificial defects of title) and then approved in a legal product called sale deed, as PPAT is an extension or part of the government to ensure flow of sales and purchases order. In practice, however, many of the land purchase and sale procedures approved by PPAT through its legal product called the "Deed of Sale" are fraught with legal issues (which contain references to congenital or artificial defects). Either because the document is manipulable, the data is not invalid/inaccurate, or because the seller's subject matter is incomplete or unauthorized, etc. All of these may occur intentionally or due to negligence (negligence).¹²

PP No. 24 of 1997 concerning land registration, requirements for buying and selling inherited assets in the form of land and buildings, the presence of an inheritance certificate from the local village head, family cards of all heirs, ID cards of all heirs, and other documents included in the land buying and selling process that legacy.

Research Methods

In this particular type of research, known as empirical legal research, the focus is on gathering empirical data through research or observation conducted in the field. The analysis of any identified issues in the field takes on a qualitative approach, deriving descriptive data from individuals and their behaviors through written or verbal means.¹³ Thus, the study in this research is how legal rules in society are practiced.¹⁴

In light of the problem identification and research objectives outlined, this study employs both a legal sociology approach and a legal anthropology approach. The legal sociology approach delves into the analysis of reactions and interactions that take place within society when the norm system is in operation.

¹¹ Herlien Budiono, *Kumpulan Tulisan Hukum Perdata Dibidang Kenotariatan*, PT Citra Aditya Bakti, 2008.

¹² Solahudin Pugung, *Peralihan Tanah Dan Hukum Jual Belinya Serta Tanggung Jawab PPAT Terhadap Akta Yang Mengandung Cacat Persepektif Negara Hukum*, CV. Budi Utama, Yogyakarta 2021.

¹³ Cholid Narbuko dan Abu Achmadi, *Metodologi Penelitian*, Jakarta: PT. Bumi Aksara, 2003, hlm. 1

¹⁴ Suhaimi, Roslaini Ramli, Nurdin MH, Enzus Tinianus, *Arrangements and Stages of Implementation of Land Acquisition for Development for Public Interests, International Journal of Multicultural and Multireligious Understanding*. 2023; 10(11): 10-18.

Furthermore, this research also uses a legal anthropology approach. The legal anthropology approach is an approach that examines ways of resolving disputes in both modern and traditional societies. There are 3 (three) strands of the legal anthropology approach, namely ideological, descriptive and studying tensions, disputes, troubles and complaints that exist in society.¹⁵

The chosen research site is within the Bener Meriah Regency of the Aceh Province. This particular location was selected due to the absence of prior studies on the topic of selling inherited land without the consent of other heirs, specifically within the Bener Meriah Regency where instances of unauthorized land sales still persist. The research conducted employs qualitative methods for data analysis. Qualitative research begins with assumptions about the intricate and distinct nature of reality or social phenomena. These assumptions are then examined to gain a deeper understanding of problem-solving strategies, and conclusions are drawn in a deductive manner, moving from general concepts to specific ones. The analysis of legal materials serves as a valuable tool in addressing the research questions at hand.

Results and Discussion

1. Factors that cause PPAT to issue a sale and purchase deed for inherited land that is sold without the consent of other heirs

Selling inherited land without the consent of other heirs is a problem that often occurs in the Bener Meriah Regency community. Although the law states that the rights to land left behind by inheritance pass to the heirs left behind, practice shows that the sale of inherited property without the consent of all heirs is quite common. There are several factors that cause land deed officials to issue sale and purchase deeds for inherited land without obtaining approval from all the heirs.

In general, factors that cause conflict over the sale of inherited land within the family include child factors, economic factors relating to needs, environmental factors and struggles over inheritance. In such a situation, they may be inclined to sell the land without obtaining the consent of other heirs in order to gain quick financial gain.

Furthermore, a lack of understanding of inheritance-related laws and regulations can also be an influencing factor. Many of those involved in the sale of inherited land may not fully understand that the consent of all heirs is required by law. They may believe that because they own a share of the inheritance, they have the right to sell the land without considering the consent of the other heirs. Additionally, social and cultural factors may also play a role in facilitating the sale of inherited land without proper approval. In some communities, there is social pressure to sell inherited property for the benefit of the family or community as a whole.

This can lead individuals to feel compelled to ignore due process and sell inherited land without the necessary approvals. The lack of strict law enforcement against this violation is also another factor. Although selling inherited land without the consent of other heirs is against the law, inconsistent or weak law enforcement can provide

incentives for individuals or land deed officials to continue carrying out this practice.

Engaging in transactions involves a mutual understanding, whereby a simple agreement is sufficient to establish a legally binding contract. This agreement materializes the very instant consensus is achieved, encompassing any asset of value, whether tangible or intangible. Ongoing conflicts within society arise from issues surrounding inheritance, often stemming from a lack of comprehensive understanding among heirs.

The PPAT's execution of the sale and purchase deed (AJB) serves as a connection, while the certificate undergoes processing to serve as evidence of ownership. The land title certificate is the outcome of the land registration process, which encompasses various activities outlined in Article 19 (2) of the Basic Agrarian Law (UUPA). This process culminates in the issuance of proof of title documents, which hold significant legal weight. A land rights certificate is a copy of the land book and measurement letter (for systemic land registration) or a picture of the situation (for sporadic land registration) which are stitched together and the form is determined by the Minister. The existence of a land rights certificate has an important meaning indicating that the land rights in question have been registered where the right is proven by the existence (issuance) of a certificate by the authorized agency.

The current practice is that many land sales which are inherited from heirs are sold without the knowledge of all the existing heirs. One of the heirs is trying to control the inherited land and does not want to share it with other heirs. Sometimes inheritance issues are seen as less important in scientific terms, considering that these issues are considered something normal in life. However, once a dispute arises in the community regarding this matter, the heirs do not know how the process of buying and selling inherited land is sold according to the applicable regulations.

Inheritance of ownership rights to land must still be based on the provisions of the UUPA and its Implementing Regulations. The recipient of the transfer of ownership rights to land or the new holder of ownership rights to land must be an Indonesian citizen in accordance with the provisions of Article 9 and Article 21 (1) UUPA that only single Indonesian citizens can have ownership rights, without distinction. Opportunities between men and women who have the same opportunity to obtain rights to land and to obtain the benefits and results, both for themselves and their families.

Any heir who feels that their rights have been violated because their land was sold without their consent can file a civil lawsuit on the basis of an unlawful act, as regulated in Article 1365 KUHPerdata, which reads: Every act that violates the law and brings harm to other people, requires the person who caused the loss through his fault to compensate for the loss.

In buying and selling inherited assets, there must also be provisions so that there are no misunderstandings between fellow heirs. The division of inherited assets that is not in accordance with one of the share rights of each heir left by the heir after death can result in fellow heirs who previously agreed with each other. Harmonious and peaceful, now divided due to the greed and greed of one of the heirs. Heirs who sell their rights to inherited land without the knowledge and consent of the other heirs may have their rights null and void because the rights of the other heirs are not fulfilled.

¹⁵ Ihromi, TO, *Antropologi Hukum: Sebuah Bunga Rampai*, Jakarta: Yayasan Obor, 2001, hlm. 196-197.

The sale of inherited land requires that all entitled heirs must be present to give approval. However, if one of the heirs is unable to appear before the PPAT, then the heir can still give approval through a private Letter of Approval that has been legalized by a local notary or in the form of a Letter of Approval made in a notarial deed. This aims to ensure that sales decisions are not only based on the approval of a small number of heirs, but reflect the agreement of all interested parties.

The sale of inherited land without the consent of all heirs leads to serious legal consequences. According to Article 1471 KUHPperdata, sales made by someone who does not have the right to sell them will be declared void. In this context, the plaintiff as the biological child of the heir has clear inheritance rights which are regulated in Article 832 in conjunction with 852 KUHPperdata. Therefore, the plaintiff should have been included in the sale and purchase transaction of the inherited land.

Therefore, the material conditions of sale are not fulfilled if one of the heirs is ignored in the sale process. This causes the PPAT deed issued to become null and void. In this context, the existence of the plaintiff as an heir who was not included in the transaction provides a strong basis for declaring the PPAT deed invalid. This is an important step to ensure that legal justice is upheld and the rights of heirs are properly protected in accordance with applicable legal provisions.¹⁶

The act of buying and selling land occurs by making a AJB which is executed before the PPAT, however, for a AJB that does not meet the requirements in Article 1320 KUHPperdata, the deed can become void. KUHPperdata divides the term void into 2 (two), namely absolute nullity (absolute nietigheid) and relative nullity (relatief nietigheid), the distinction between these two types of nullity is related to the consequences that can arise from the legal relationship created.

As an official appointed by law to resolve matters in the land sector, PPAT creates a legal product in the form of an Authentic Deed. Article 1868 KUHPperdata states that an authentic deed is "a deed made in the form determined by law by or before a public official authorized to do so in the place where the deed is made."¹⁷ Article 1870 KUHPperdata also states: "For interested parties and their heirs as well as for people who obtain rights from them, an authentic deed provides perfect evidence of what is contained therein."

Notaries and PPATs in carrying out their positions are certainly guided by the principle of carrying out the duties of a Notary public well, this principle is known as the principle of accuracy. In taking an action, the Notary and PPAT must be prepared and based on the applicable legal rules, as well as examine all the evidence shown to them as a condition for making a deed, and listen clearly to the information or statements of the parties as the basis for this and then put it into an authentic deed.

The principle of precision can also be seen as a form of application of the precautionary principle and must be

carried out step by step. When a presenter faces him and tells about his wishes and desires, there the Notary and PPAT must provide legal counseling and legal education to the presenter. After that, it is written down in the form of an authentic deed. When making the deed, it must be in accordance with the governing regulations and all conditions must be fulfilled by the applicant. These requirements are then checked by the Notary/PPAT at the relevant agency that issued the document to ensure its authenticity.

In the context of making a sale and purchase deed, the PPAT has the precautionary principle regulated in PP No. 24 of 2016. This principle emphasizes that PPAT must act with caution and ensure that the process of making a sale and purchase deed is carried out in accordance with applicable legal provisions.

One important aspect of this precautionary principle is the PPAT's obligation to ensure the validity of the documents presented to them, especially in terms of identifying heirs. Although it is not PPAT's direct duty to verify the material truth of the data or documents obtained, PPAT has the responsibility to take the necessary steps to ensure the validity and validity of the documents.

In terms of identifying the heirs, PPAT must ensure that the documents shown are true and constitute the legal identity of the heirs who are authorized in the buying and selling process. Even though PPAT does not have the authority or expertise to verify the material truth of the document, they still have to take precautionary measures, such as checking the authenticity of the document and matching it with existing data.

By taking these precautionary measures, PPAT can avoid negligence which has the potential to cause legal problems in the future. Even though PPAT is not directly responsible for the material truth of the document, they have a professional responsibility to ensure that the process of making the sale and purchase deed is carried out carefully and in accordance with applicable ethical standards and regulations.

The precautionary principle possessed by PPAT is an important basis in carrying out their duties in making sale and purchase deeds, by ensuring that all steps taken are in accordance with applicable legal provisions and by avoiding potential legal problems in the future.¹⁸

If the AJB by the PPAT lacks approval or signatures from several heirs, then the deed can be declared null and void. Approval or signatures from all parties who have an interest in the land sale and purchase transaction are very important to ensure the validity and enforceability of the deed according to law.

The identity of the parties, such as the signature of the letter of agreement, is a fake document made by one of the heirs who wants to control the inherited land, with data obtained by the PPAT from the parties, the PPAT makes a AJB of the inherited land without first verifying the documents provided. To them to ensure the validity and enforceability of the document before making the sale and purchase deed.

In the process of making a sale and purchase deed, PPAT has an obligation to ensure that all legal requirements are met, including approval or signatures from all parties involved. Failure to obtain the consent or signature of either

¹⁶ Hayyik Lana Lie Ulin Nuha, *Peralihan Hak Atas Tanah Warisan Tanpa Persetujuan Ahli Persetujuan Ahli Waris Linnya*, *Jurnal Kenotariatan*, Fakultas Hukum Universitas Indonesia, vol 3, 2021.

¹⁷ Waskito dan Arnowo, *Penyelenggaraan Pendaftaran Tanah di Indonesia*, Prenadamedia Group, Jakarta 2019, hlm. 106.

¹⁸ Nanda Reza Valdino, *Pembuatan Akta Jual Beli Dengan Menggunakan Dokumen Palsu*, Indonesian Notary, 2021

party may cast doubt on the validity of the transaction and may be grounds for invalidating the deed.

Thus, in situations where there is a lack of approval or signature from one of the parties, the PPAT should refuse to make the sale and purchase deed or ask the parties involved to correct the error before the final deed is ratified. By complying with applicable legal procedures and ensuring all requirements are met, PPAT can ensure the validity and enforceability of the sale and purchase deed and protect the interests of all parties involved in the transaction.

There are various factors that cause deviations in the making of land sale and purchase deeds by PPAT so that they do not comply with established procedures. The PPATs are actually also aware and know that there are serious consequences for them if the PPAT deed is drawn up not in accordance with the established procedures, but they still do these things because they believe that if they do not accept or do not want to carry out such actions they will lose clients, because their clients will move and use other PPAT services.¹⁹ The factors that cause the above things include:

a. The greed of the heirs in taking part

The cause of inheritance disputes arising from heirs is due to the greed of one of the heirs. Moreover, if the conflict is also caused because from the start there has been a misunderstanding and there are provocateurs who can cause bigger problems. Disputes that occur due to the greed of one of the heirs by usurping the shares of other heirs can result in rifts in family relationships and sometimes these conflicts are carried over to their children and grandchildren.

The occurrence of conflict in society is caused by the actions of individuals who want to obtain as much inheritance as possible without caring about others heirs who are also entitled to inheritance as per Islamic law. In fact, Islamic inheritance law pays attention to rights and obligations in a proportional manner so that it fulfills the element of benefit. Greed is an act that is prohibited in religion because it has an impact on the destruction of human relationships, especially with one's own family.

b. Domination of the oldest heir

The eldest child's dominance in family matters is very large considering that the eldest child is the hope of his parents to be a role model for his siblings and a good example in life. The eldest child is trained first and gains experience in various matters, especially family matters. It cannot be denied that the management of assets in the family cannot be separated from the large amount of interference from the eldest child. This includes the distribution of inheritance which is mostly regulated by the eldest child, especially if the system is based on deliberation.

However, often the distribution of inheritance determined by the eldest child causes conflict because his sibling, who is also the heir, receives an inappropriate share. The dominance of the oldest heir who tends to want to get more shares will cause

jealousy from the other heirs.²⁰ Meanwhile, Islamic inheritance law does not consider differences in shares between the eldest child and his siblings. Everyone has the same rights in inheritance and these rights must not be ignored or taken away.

c. The identity factor shown to PPAT is one of the conditions for transition

One of the factors that causes the PPAT to issue a sale and purchase deed for inherited land without the consent of all the heirs is the identity factor shown to the PPAT. In some cases, one of the heirs who wants to sell the inherited property may reveal his or her identity and provide other evidence showing a claim to the land. This identity can be in the form of proof of ownership of a portion of the land or other documents that show a relationship with the previous owner.

The PPAT may be tempted to issue a sale and purchase deed based on such evidence without obtaining the consent of the other heirs due to their lack of clarity or knowledge about who actually owns the rights to the land. In circumstances where the identity and claims are not thoroughly questioned, the PPAT may be inclined to facilitate the transaction, regardless of the existence of other rightful heirs.

However, it should be noted that this kind of action can give rise to conflicts and legal problems in the future if the rights of other heirs are not recognized or ignored in the sale process. Therefore, it is important for PPAT to ensure that all entitled heirs have provided the necessary approvals before issuing a sale and purchase deed for inherited land.

d. When carrying out land sale and purchase transactions, PPAT does not make AJBs that do not comply with the specified procedures, including taxes owed such as Land and Building Tax and others. Likewise, the price of land being bought and sold must be paid off when the AJB is made by the PPAT. If the land price has not been paid off, PPAT will not make the AJB.

e. Fellow PPATs have a high sense of trust so that among PPATs there is a sense of understanding and mutual understanding. Therefore, the PPAT will not reveal secrets and will not bring each other down. This is also the case between PPAT and the parties in buying and selling land, so that PPAT in making an AJB for a land rights transaction will not overthrow or reveal the secrets of the parties. In this way, they have created confidence that the actions they have committed will not cause problems in the future which could make things difficult for them. An example of this can be seen when the land sale and purchase construction take place by entrusting the deed to the PPAT. In this case, the PPAT who is entrusting the deed feels complete trust and confidence in his fellow PPAT colleagues, that the PPAT who is entrusting the deed will take action in accordance with applicable procedures and provisions and provide good service to its clients and also to the PPAT who is entrusting the deed. This process applies and runs well among PPATs and their clients and vice versa.

¹⁹ Ferry Susanto, Limbong Penyebab Terjadinya Perjanjian Jual Beli Tanah Yang Tidak Sesuai Dengan Kuhp Dan Undang-Undang Pokok agrarian, *Jurnal hukum*, Universitas Muslim Nusantara Al-Washliyah,

²⁰ Miftahul Jannah And Emizal Amri, Konflik Perebutan Harta Warisan Dalam Keluarga Pada Masyarakat Pulau Temiang, *Journal Of Anthropological Research*, Universitas Negeri Padang 2019.

- f. There is no time between the parties who create AJB. If such a situation occurs, the PPAT will adjust the time with the parties in the process of making the AJB in question, because the legal act or sale and purchase agreement must be carried out in front of the PPAT. This kind of situation is seen in the construction of a sale and purchase in cases where the sale and purchase deed is not signed in the presence of the parties who made the agreement deed and the signing is not carried out simultaneously. In this case, the AJB is sometimes signed by one of the parties first, then signed by the other party when the other party has time to sign the AJB.
- g. Time efficiency is one of the reasons for the parties in making AJB by PPAT, because to inspect or check the certificate at the district/municipality land office it is not certain how long it will take. Thus, sometimes the PPAT continues to make the AJB and the signing of the AJB is carried out earlier, even though the checking or examination of the certificate at the land office has not been completed and the results are not yet known. The value factor of the sale and purchase transaction that occurred between the parties carrying out the sale and purchase deed. This makes PPAT willing to follow the wishes of the parties. It cannot be denied that opportunities to obtain transactions in large amounts rarely occur, so if there is an opportunity, PPAT will try to get it wherever possible. Situations like this can be seen in buying and selling construction that occurs outside the PPAT work area, even abroad in order to obtain large transaction opportunities.
- h. The value factor of the sale and purchase transaction that occurred between the parties carrying out the sale and purchase and making the AJB. This is what prompted PPAT to be willing to create AJB in order to fulfill or follow the wishes of the parties. It cannot be denied that opportunities to obtain transactions in large amounts rarely occur, so if there is an opportunity, PPAT will try to get it wherever possible. Situations like this can be seen in the construction of sales and purchases that occur outside the PPAT work area, even abroad in order to obtain large transaction opportunities.
- i. The factor of good relations and friendship with relations is also one of the causes of PPAT in making AJB that is not in accordance with the procedures set by PPAT. This is done by PPAT in order to maintain good relations with their relations or friends, because if the wishes of their relations or friends are not fulfilled by the PPAT and they are treated the same as other clients, it could result in their relationship no longer being harmonious. This happened because the friend was not treated as a privileged and prioritized client. Conditions like this sometimes occur when making an AJB where the PPAT itself comes to the client's place who is a friend to sign the AJB. Even though there is no valid and justifiable reason for PPAT to come to his client's place, unless the client is seriously ill and it is impossible for him to come to PPAT's place.
- j. Demand factors from the parties. There is a desire from the parties requesting PPAT to make a sale and purchase deed, resulting in state losses in terms of tax revenue. Incidents like this are seen in the construction of sales and purchases in cases where the transaction

value in the sale and purchase deed agreement is lower than the actual transaction value.²¹

From the various factors and reasons as mentioned above, it is possible that there is a combination of several factors and reasons in the case of making a sale and purchase deed that does not comply with the procedures for making a PPAT deed. So there is a possibility that in a sale and purchase transaction, the deed is made in one or more ways that are not carried out in accordance with the procedures for making a PPAT deed.²²

In practice, there are fake documents in making sale and purchase deeds for inherited land that has not been divided or that has been divided. Due to the negligence and carelessness of the Land Deed Making Official (PPAT) in checking the truth and authenticity of the document as a condition for making the deed and this causes the deed made based on the fake document to be valid according to the law and cause losses to other heirs outside the deed. We need to know that authentic deeds made by Notaries and PPATs have the most perfect evidentiary characteristics as written evidence, where written evidence in this case is the authentic deed and is the strongest and most fulfilled, so that what is stated in the authentic deed must be accepted, unless the interested party can prove otherwise satisfactorily before a court hearing.²³

Situations where there is a sale and purchase deed agreement that is not in accordance with KUHPerdara or UUPA can be caused by various factors, including unprofessionalism, feelings of embarrassment on the part of the parties, and high levels of competition between fellow PPAT in making a deed.²⁴

In addition, feelings of embarrassment on the part of the parties or the desire to fulfill the expectations of the parties can sometimes lead PPAT to take actions that are not in accordance with the law. PPAT must uphold their independence and integrity as officials responsible for protecting the legal interests of all parties involved in land buying and selling transactions.

The high level of competition between PPATs can also trigger detrimental practices, such as competition to get clients or get bigger profits. This can lead to a reduction in the standards of professionalism and quality of services offered by PPAT, as well as increasing the risk of errors or violations of the law.

The result of these problems is the submission of false documents, which is a serious act and violates the law. PPAT has the obligation to verify the validity and authenticity of the documents provided to them, as well as to ensure that all steps taken in making the sale and purchase deed comply with applicable legal provisions. Because PPAT have an obligation to check the authenticity of the

²¹ Adrian Sutedi, *Peralihan Hak Atas Tanah dan Pendaftarannya*. Sinar Grafika. (2010).

²² M. P, Siahaan, *Bea Perolehan Hak Atas Tanah dan Bangunan*. PT Raja Grafindo Persada. (2003).

²³ Valdino, Nanda Reza, *Pembuatan Akta Jual Beli Dengan Menggunakan Dokumen Palsu Berdasarkan Putusan Mahkamah Agung Nomor 3435 K/PDT/ 2017 (Analisis Putusan)*, *Jurnal Notariat*, 2021.

²⁴ Herlien Budiono, *Kumpulan Tulisan Hukum Perdata di Bidang Kenotariatan Buku Kedua*, (Bandung: Citra Aditya Bakti, 2018), hlm. 162.

documents submitted to them. Checking the authenticity of this document is very important to ensure that all transactions carried out by PPAT are based on accurate information and valid documents.

If the PPAT does not carefully check the authenticity of the documents and only relies on the information provided by the parties without adequate verification, then the deed made by the PPAT can be degraded into a fraudulent deed. A private deed is a deed that does not meet formal standards and does not have the same legal validity as an official deed made by PPAT.

In the context of transaction cancellation, if there is a cancellation of an inherited land sale and purchase transaction because the documents used are fake or invalid, the deed made by the PPAT can be canceled by law. This could cause serious legal consequences for the PPAT, including disciplinary sanctions and financial losses, as well as damage the PPAT's professional reputation.

Conclusion

The reason why PPAT issues sale and purchase deeds for inherited land that is sold without the consent of other heirs is that in practice there are fake documents in making sale and purchase deeds for inherited land that has not been divided or that has been divided. Due to the negligence and carelessness of the PPAT in checking the truth and authenticity of the document as a condition for making the deed and this causes the deed made based on the fake document to be valid according to the law and cause losses to other heirs outside the deed.

In the process of making a sale and purchase deed, PPAT has an obligation to ensure that all legal requirements are met, including approval or signatures from all parties involved. Failure to obtain the consent or signature of either party may cast doubt on the validity of the transaction and may be grounds for invalidating the deed. The process of making a sale and purchase deed by the PPAT for inherited land which is sold without the consent of the other heirs without clear grounds for their rights. In situations where there is a lack of approval or signature from one of the parties, the PPAT should refuse to make the sale and purchase deed or ask the party who involved to correct these errors before the final deed is ratified. By complying with applicable legal procedures and ensuring all requirements are met, PPAT can ensure the validity and enforceability of the sale and purchase deed and protect the interests of all parties involved in the transaction.

Suggestions

Selling inherited land without the consent of the other heirs is an act that is not permitted by law, because each heir has the right to receive their own share of the assets left behind, therefore it is better when the inherited assets to be traded are discussed first with the other heirs to avoid disputes that will occur in the future. The PPAT as an official who has the authority to transfer the sale and purchase of land and its product, namely the sale and purchase deed, must re-examine the documents that have been provided by the applicants, as in the regulations for the position of PPAT, one of The PPAT's obligation is to apply the precautionary principle so that the PPAT avoids disputes that will occur regarding the deed made by the PPAT.

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