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A Juridical Review of the Obligations of Heirs in the Transfer of Land Rights

¹ Risnawati, ² Teuku Muttaqin Mansur, ³ Novi Sriwahyuni

¹ Student, Faculty of Law, Universitas Syiah Kuala, Banda Aceh, Indonesia

^{2,3} Lecturers, Faculty of Law, Universitas Syiah Kuala, Banda Aceh, Indonesia

Corresponding Author: **Risnawati**

Abstract

The Civil Code mandates that the seller guarantees the commodities for sale be owned securely and peacefully, free from defects. Furthermore, Article 1320 stipulates that a sale must be founded on legitimate circumstances, namely agreement, capacity, a specific right, and a lawful cause, as prescribed by law. Article 37, paragraph (1) of Government Regulation Number 24 of 1997 regarding Land Registration stipulates that the transfer of land rights by sale and purchase may only be registered if substantiated by a Sale and Purchase Deed (AJB). Article 1365 of the Civil Code stipulates that any unlawful act resulting in harm to another individual mandates the perpetrator to provide compensation for the damages incurred. One unlawful act involves the transfer of land rights without the consent of the heirs. This research utilises a dual methodology, specifically the normative juridical method and the empirical method,

incorporating library materials as secondary data and field investigations as primary data. This research examines the theoretical underpinnings derived from several literary and legal sources, including regulations, judicial rulings, textbooks, legal journals, archives, legal publications, and pertinent legal events in the field. This research aims to elucidate the obligations of heirs concerning the sale of property executed by the decedent. The research findings indicate that the primary responsibility of heirs when selling inherited land is to secure consent from all heirs, jointly execute the Sale and Purchase Deed (AJB) in the presence of the PPAT, or provide a notarial power of attorney if unable to attend, and fulfil any obligations of the deceased prior to property division, thereby ensuring the transaction's validity and mitigating potential legal disputes in the future.

Keywords: Obligations of Heirs, Transfer of Rights, Land Rights

Introduction

Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration states that "the transfer of land rights due to sale and purchase can only be registered if proven by a Sale and Purchase Deed (AJB)." The land office will only process the name transfer if the formal documents are submitted completely, with the requirements being: AJB from PPAT, original Land Certificate, current year's SPPT PBB, proof of tax payment, and a power of attorney if authorized ^[1].

One of the problematic land sale events occurred in Banda Aceh City. The disputed object is a shophouse measuring 374 m² (three hundred seventy-four square meters) located in Rukoh Village, Darussalam District, on ownership certificate Number 49 registered under the name RZ, which is a joint asset with her husband ZY. Both have passed away and have no children, so the heirs are RZ's biological father HI and ZY's sibling MJY. The sale price of the shophouse is Rp.1,500,000,000 (one billion five hundred million rupiah).

However, during the period of the name transfer process, problems arose between both parties, namely the seller was no longer willing to sign the name transfer process. Until finally, QY and HI passed away. After QY's death, his heirs approached MJY, but MJY did not respond to the matter. Therefore, the heirs of QY eventually filed a lawsuit at the Banda Aceh District Court. That act is an unlawful act.

Article 37 of Government Regulation Number 24 of 1997 concerning Land Registration states that "The transfer of land rights and ownership rights to apartment units thru sale, exchange, donation, incorporation into a company, and other legal acts of transfer of rights, except for transfer of rights thru auction, can only be registered if proven by a deed made by the authorized Land Deed Official (hereinafter referred to as PPAT) in accordance with the applicable laws and regulations."

If we look at Law No. 8 of 1999 on Consumer Protection, one of the seller's obligations is to act in good faith in conducting

their business activities, provide compensation, indemnification, and/or replacement for losses due to the use, utilization, and benefit of goods and/or services traded, treat or serve consumers correctly, honestly, and without discrimination. And the buyer's rights under Law No. 8 of 1999 on Consumer Protection include the right to obtain advocacy, protection, and proper resolution efforts for consumer protection disputes, the right to choose goods and/or services and receive those goods and/or services according to the promised exchange value and conditions, and the right to obtain compensation, indemnification, and/or replacement if the goods and/or services received do not match the agreement or are not as they should be.

Research Method

This research uses a normative juridical method, which involves studying library materials as secondary data. The research focuses on discussing the fundamentals of theory obtained from various sources of literature or library materials, such as textbooks, legal journals, archives, or legal publication documents [2]. The research approach used in this study employs the statute approach and case approach [3]. There are 3 (three) types of data used in this research, namely primary legal materials, secondary legal materials, and tertiary legal materials. After the primary and secondary data are collected, the processing and analysis are carried out using qualitative analysis methods in accordance with the applicable regulations.

Results and Discussions

Inheritance is one form of legal event that cannot be avoided in human life. The legal consequences of a legal event for someone include issues such as the management and continuation of the rights and obligations of an heir to the beneficiaries [4]. The resolution of rights and obligations as a result of the death of an heir has been regulated in the provisions of inheritance law. Inheritance law is the provision that regulates the transfer of wealth left by an heir and its consequences for the heirs [5].

Indonesian citizens use customary law, Islamic citizens use Islamic law, and inheritance is regulated by the Civil Code [6]. Inheritance rights will indirectly attach to the heirs. This is a form of the transfer of someone's rights to the property that belongs to them. The transfer of rights does not occur automatically to the heirs, but rather as a result of the death. Moreover, the prevailing societal regulations governing the inheritance system determine an individual's entitlement to inherit. The granting of inheritance rights can be done through an agreement among heirs to relinquish part of their rights to the inherited property [7].

According to civil law, the process of transferring rights and obligations from a deceased person to their heirs is referred to as inheritance [8]. The Civil Code specifically states in Article 830 that inheritance can only be distributed upon the death of a person. Inheritance law in this case is part of a specialized legal system, closely related to the form of society in which the law applies [9].

The distribution of inheritance according to Indonesian civil law states that a person's inheritance not only consists of assets but also includes liabilities. This means it encompasses not only tangible items, property rights, or debts that are claims for the heirs, but also includes all debts that are burdens or obligations for the heirs to settle. This is as mentioned in Article 1100 of the Indonesian Civil Code,

which states: "Heirs who have received an inheritance are obliged, in the case of debt payment, gifts, and other burdens, to bear a burden proportional to what each has received from the inheritance [10]."

The Civil Code requires the seller to ensure that the goods to be sold are owned securely and peacefully without defects, as stated in Article 1320 of the Civil Code, which stipulates that a sale must be based on valid conditions, namely agreement, competence, a specific right, and a lawful cause, as stated in the law. It must not violate or contradict the law, morality, or public order. If the seller knew from the beginning that the item was defective, he is obliged to refund the price of the item in addition to compensating for all losses and interest, according to Article 1508 of the Civil Code [11].

In the Civil Code, with the fulfillment of the provisions in the valid agreement conditions, the transfer of ownership of the object in the sale and purchase agreement is not yet considered to have occurred. The transfer of ownership is only considered to occur if the agreement is followed by levering or delivery. Therefore, in the Civil Code, the concept of levering is regarded as a legal act of transfer of ownership, which can vary in method depending on the type of object whose ownership is being transferred. For immovable property such as land, the transfer must be carried out through a name transfer (*overschrijving*) in the presence of an authorized official. The provisions regarding the transfer of land rights can be concluded from Article 616 and Article 620 of the Civil Code [12].

In the sale and purchase of land, it has been proven that the land belongs to the seller or is owned by the seller. After the sale and purchase contract process is considered complete, the land can also be handed over by the owner (seller) to the buyer because its existence is proven, not something mysterious or unclear. As for unclear items, they cannot be bought and sold. Such matters are explained in the words of the Prophet Muhammad (peace be upon him), which mean "a sale is not valid except concerning owned property [13]."

Meanwhile, in civil law, a sale is an agreement in which the party owning the land promises and binds themselves to transfer their rights over a particular item to another party.

According to Article 1457 of the Indonesian Civil Code regarding the sale and purchase agreement, it is "an agreement between the seller and the buyer where the seller binds himself to transfer ownership of an item to the buyer, and the buyer binds himself to pay for the item. This can be proven by the existence of a sale and purchase deed or a sale and purchase agreement containing the signatures of the parties 'seller-buyer' and at least two witnesses [14]."

PPAT plays an important role in carrying out tasks in the agrarian field or those related to land, as regulated by Government Regulation of the Republic of Indonesia No. 24 of 1997, especially as a public official responsible for carrying out several activities that prove the occurrence of certain legal actions related to land rights. One of PPAT's duties is to create a deed of sale [15].

The sale and purchase deed serves as evidence of the legal act of buying and selling concerning land rights and ownership rights over apartment units. Additionally, it serves as the basis for registering changes in land registration data with the District/City Land Office, whose jurisdiction covers the location of the land in question [16].

The delay in creating the sale and purchase deed by the PPAT due to unmet requirements will certainly cause

uncertainty for the parties involved in the sale and purchase. Therefore, the notary usually offers the parties to create an agreement, so they remain bound to conduct the sale and purchase in front of the PPAT and ensure that the sale and purchase agreement is properly executed while all the requirements are being taken care of. The agreement referred to is a binding sale and purchase agreement. This binding sale and purchase agreement is a legal breakthrough made by the notary to address the complexities of the requirements in the process of creating a sale and purchase deed by the PPAT ^[17].

The sale and purchase binding agreement (PPJB), particularly regarding land rights, as an agreement, is subject to the general provisions regulated in Book III of the Civil Code, one of which is its validity regulated in Article 1320 of the Civil Code. The achievement of an agreement by the parties in the Sale and Purchase Binding Agreement (PPJB) means that the parties are bound to conduct the sale and purchase and have the rights and obligations to fulfill the performance and counter-performance according to the agreement they have reached in the PPJB.

The complexity of discussions in inheritance land sale disputes that often occur in community life. With all the heirs having authority over the inherited land, each heir bears responsibility for the consequences that may arise in the future, and the inherited land to be bought and sold is owned by all the heirs in the form of rights to it. Therefore, an agreement and consent at the time the inherited land is to be sold between the buyer and the owner of the land rights are very important. In Article 1458 of the Civil Code, it is explained that the occurrence of a sale and purchase between two parties, even if the item has not yet been delivered to the buyer, is legally valid because an agreement has been reached between both parties, and thus it is considered a sale and purchase ^[18].

According to Ria Fitri, a lecturer in the Notary Master's program at Syiah Kuala University, it is advisable for the heirs to promptly transfer the inheritance while all family members are still gathered at the mourning event, in order to prevent conflicts or issues in the future. To prevent problems, it is advisable to create a power of attorney from the heirs to one of the heirs. If there are any objections, it is best to hold a deliberation with the local customary leader, such as the Imam Kampong, Tuha Peut, Keuchik, and so on. Because a power of attorney can simplify the process. The creation of a power of attorney can be done by a Notary or thru a court decree ^[19]. The main obligation of heirs when selling inherited land is to obtain approval from all heirs, sign the Sale and Purchase Deed (AJB) together in the presence of a PPAT, or grant a notarial power of attorney if unable to attend, as well as settle the decedent's obligations (if any) before the property is divided, to ensure the validity of the transaction and prevent legal disputes in the future ^[20]. In the Civil Code, the transfer of land rights is categorized as the transfer of immovable property rights. The transfer of land rights can occur due to an agreement, which is an event where one person promises another or where two people promise each other to carry out something ^[21]. However, if the parties enter into a sale and purchase agreement for land ownership and they have fulfilled the valid conditions of the sale and purchase agreement mentioned above, the seller is not yet considered to have transferred the land rights, and the buyer cannot yet be classified as the legitimate owner of the land rights. The parties are considered to have only

entered into an obligatory agreement, which is an agreement that creates obligations for the parties or an agreement that only imposes rights and duties on the parties. The rights and obligations of the parties in such an obligatory agreement can include the buyer being obligated to transfer ownership of the land, while also granting the buyer the right to demand the transfer of ownership of the land. On the other hand, the buyer is obligated to make the agreed payment while also granting the seller the right to demand payment ^[22].

If there is a transfer of rights in the context of signing a sale and purchase deed, and one party passes away while the certificate is in their personal name, there must be an inheritance process, and the signing of the sale and purchase deed must be carried out by the heirs. The responsibility in the settlement is to process the certificate as quickly as possible and sign the sale and purchase deed for the name transfer process to the buyer. If the seller passes away, the notary will contact the heirs to carry out the inheritance process, and all heirs must sign the sale and purchase deed for the name transfer process to the buyer ^[23]. The heirs have the obligation to continue the agreement, because the heirs inherit the obligations from the deceased in a general title, meaning that the assets and liabilities of the deceased become the responsibility of the heirs.

Based on the explanation above, the main obligation of the heirs when selling inherited land is to obtain the approval of all heirs, sign the Sale and Purchase Deed (known as AJB) together in the presence of a PPAT, or grant a notarial power of attorney if unable to attend, and settle the decedent's obligations (if any) before the property is divided, to ensure the validity of the transaction and prevent legal disputes in the future. If there is a transfer of rights in the context of signing the sale and purchase deed, and one party passes away while the certificate is in their personal name, there must be an inheritance process, and the sale and purchase deed must be signed by the heirs. The responsibility in the resolution is to process the certificate as quickly as possible and sign the sale and purchase deed for the name transfer to the buyer.

Conclusion

To sum up, heirs selling inherited land must secure consent from all heirs, collectively sign the Sale and Purchase Deed in the presence of a PPAT, or provide a notarial power of attorney if unable to attend, and fulfil the decedent's obligations (if any) before property division, to ensure transaction validity and avert future legal disputes. If there is a transfer of rights during the signing of the sale and purchase agreement, and one party dies while the certificate is in their name, there must be an inheritance process, and the signing of the sale and purchase agreement must be carried out by the heirs. The obligation in the settlement is to expedite the processing of the certificate and execute the sale and purchase deed for the transfer of ownership to the buyer.

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