

## Juridical Review of Dispute Settlement Process Cancellation of Purchase of Sale of Land Rights, Joint Property

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### Abstract

The research was conducted aiming to find out how the process of settlement of land sale and purchase disputes. The research was conducted with reference to the applicable laws and regulations. Data analysis using data equations that have been obtained at the time of the study finally obtained the following research results: (1) Based on the decision of the case Number: 62/Pdt.G/2013/PN. Tk is a problem in the implementation of the sale and purchase of joint assets carried out without the consent of one of the parties. The decision of the panel of judges in Decision Number : 62/Pdt.G/2013/PN.Tk which rejected the plaintiff's claim was correct. This is because the disputed land is not a joint property (gono gini) of the Plaintiff and Defendant II. Where based on article 5 of the Sale and Purchase Binding Agreement No. 14 dated May 6, 1988 before Notary JENMERDIN, S.H., Defendant II did not act for himself but only served as a "proxy". The position of Defendant II who only acts as the "power" to sell the disputed land is reasonable because as has been considered above, the ownership rights to the disputed land are still registered in the name of H. Muhammad Nurmawi.

**Keywords:** Land Rights; Properti; Buy and Sell

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### INTRODUCTION

The sale and purchase agreement is a perfect reciprocal agreement, where. The seller's obligations are the rights of the buyer and vice versa are the obligations of the buyer is the right of the seller. In this case, the seller is obliged to handing over an object and entitled to receive payment, meanwhile the buyer is obliged to make payment and is entitled to receive an object. If this is not met, it will not happen buying and selling agreement.

In land buying and selling activities disputes often occur regarding the object of sale buying land, the subject of buying and selling land and regarding the procedures for buying and selling land. The problem regarding the object of sale and purchase is related to the land itself, whether the land is legal land or is still land that is still being dispute. Issues regarding the subject of buying and selling land with respect to the parties parties involved in the process of buying and selling land itself. Regarding selling procedures. Buying land is related to whether the land sale and purchase procedure is legal or not applicable laws and regulations.<sup>1</sup>

Sale and purchase of land in an agreement in which the party owning the land, called the "seller", promises and binds himself to surrender his rights to the land in question to another party, called the "buyer", while the "buyer" promises and binds himself to pay the agreed price.<sup>1</sup> In carrying out the process of buying and selling land transactions must be in accordance with applicable procedures. In addition, there are also requirements that must be met by the seller and buyer before carrying out the sale and purchase transaction process. Buying and selling also adheres to the principle of light and cash, namely buying and selling in the form of surrendering rights forever and at that time the payment is made by the buyer which is received by the seller.<sup>2</sup>

The binding sale and purchase agreement is made to ensure that the agreement is carried out properly while the requirements requested can be taken care of, so usually the party who will carry out the sale and purchase puts the initial agreement in the form of an agreement which is then known as the binding sale and purchase agreement. The binding sale and purchase agreement is an assistance agreement that functions as a preliminary agreement in a free form.<sup>3</sup> The binding sale and purchase is an agreement between the seller and the buyer before the sale and purchase is carried out because there are elements that must be fulfilled for the sale and purchase, including the certificate does not yet exist because it is still in process, the price has not been settled.<sup>4</sup>

Land has a very important role, apart from being a place for humans to live, land is used by humans as a place for humans to earn income meet his life needs. The Constitution of the Republic of Indonesia in 1945, namely Article 33 paragraph (3) it was explained that, "Earth (soil), water and wealth contained therein are controlled by the State and used for a specific purpose that is for the prosperity of the people."

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<sup>1</sup> Boedi Harsono, 2003, *Sejarah Pembentukan Undang-Undang Pokok Agraria: Isi dan Pelaksanaan*. Jakarta: Djambatan, hal 27

<sup>2</sup> R. Subekti, 1998, *Aspek-Aspek Hukum Perikatan Nasional*, Bandung: PT Citra Aditya Bakti, hal. 29.

<sup>3</sup> Herlien Budiono, 2004, "Pengikatan Jual Beli Dan Kuasa Mutlak," *Majalah Renvoi*, tahun I, No: 10, (Maret 2004), hal 57.

<sup>4</sup> R. Subekti, *Op.Cit.*, hal.75.

So, it can be concluded that the power over the land and all its wealth contained is in the control of the State. The state reserves the right to make arrangements and implementation of policies regarding land in Indonesia.

Land control in Indonesia is under the authority of the State. Country has the right to control land which means that the State owns it the authority to regulate the tenure, utilization and use of land, which gave birth to various land rights, one of which is a property right.

Property rights are hereditary, strongest, and fulfilled rights that can be owned people over the land and give the authority to use it for all kinds purposes for an unlimited time, as long as there is no special prohibition for it, which is stated in Article 20 of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA).

Property rights also have a social function which means that property rights are owned subject to rights or holders of rights may not be used solely for their own interests private sector, but there must be a balance between the interests of the government and community. Certificates and land are two things that are interrelated. Certificate got giving a clear status or position over a land because it shows that a person is the owner of a land and the rights held over the land, this is regulated in the Government Regulation of the Republic of Indonesia Number 24 of 1997 Concerning Land Registration in Article 1 point 20.

To be able to obtain a right to land, namely by submitting to State for land registration. Judging from the notion of property rights, in view society that the property rights are absolute, and result in all that if you own land, you want the rights to the land you own, it must have a secure status and strong in legal certainty. The existence of a certificate has advantages for the holder, because with having a certificate means that a person has a strong position on a land, compared to other written evidence.

This position can be strong evidence if in accordance with the physical condition of the land and the issuance process according to the procedure. If there is a discrepancy between the data in the certificate and the location of the land if there is, then the certificate can be canceled by the competent authority. Cancellation Certificates can be made for 2 (two) reasons, namely :

1. Due to Administrative Defects

That is a procedural error that was carried out when making a certificate or this can occur if there are objections from one of the parties or other findings conducted by the Head of the Land Office regarding the status of the land.

2. Decision issued by a court that has legal force permanent.

Based on article 1320 of the Civil Code, there are 4 (four) legal requirements for entering into a land sale and purchase agreement, namely :

- a) Agreed those who bind himself.
- b) Capable of making an agreement.
- c) Regarding a certain matter.
- d) A lawful reason.

The land that is used as the object of the sale and purchase agreement usually has a different status. For example, the status of the land is the result of inheritance, or the land is land from joint property of husband and wife. As it is known that joint property is property acquired by husband and wife during their marriage period. If during the marriage the husband and wife have joint property in the form of land, then in the event of a divorce the land joint property must be divided in half between the husband and wife. how to sell the land first, then the results are divided in half between husband and wife.

Entering into a sale and purchase agreement on joint property land rights, must fulfill all the legal requirements of an agreement. In addition, it must also be carried out in accordance with the correct procedures for buying and selling land, thus the first step that must be taken before buying and selling joint property land, the buyer must seek as complete information as possible from the seller regarding the status of the land, this aims to avoid the occurrence of problems in the land sale and purchase transaction process because it turns out that the land is still in dispute between the ex-husband and ex-wife. If the agreement is not fulfilled or there are legal defects related to the buying and selling procedures, then the sale and purchase agreement for the rights of the joint property becomes null and void/can be cancelled.

The reality is that what is happening in today's society, problems and disputes often occur/arise over the process of buying and selling joint property land. This problem arose because most of the general public did not/did not understand the procedures and legal provisions that apply in relation to buying and selling land. In addition, problems arise because there is one party who deliberately and unlawfully (bad faith) violates the applicable land sale and purchase procedures. For example, it turns out that the joint land was sold by the ex-husband without involving/without the knowledge of the ex-wife. Where should the ex-wife also have the land rights which must also be involved in the buying and selling process. So, do not be surprised if later there are many cases of land sale and purchase disputes, especially joint property land, which are increasingly tapering in the midst of society.<sup>5</sup>

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<sup>5</sup> Wirahadi Prasetyono, 2013, Cara Mudah Mengurus Surat Tanah Dan Rumah, Jogjakarta: FlashBooks, hal 5

If the circumstances described above occur, then canceling the sale and purchase agreement for joint property rights is a form of dispute resolution related to the sale and purchase process which contains legal defects. Either because the legal terms of the sale and purchase agreement are not fulfilled or because there is an element of bad faith/action against the law that was committed during the sale and purchase transaction of joint property land, it can be done by filing a lawsuit to the local district court where the sale and purchase agreement of joint property land was made. It can be submitted by one of the parties, both the seller and the buyer who feels that their interests have been harmed in the sale and purchase agreement of the rights of the joint property.

Based on the description that has been described above, the writer is interested in conducting legal research and writing. As for the title raised in this study, namely Juridical Review of the Dispute Resolution Process for the Cancellation of the Sale and Purchase of Shared Property Land Rights.

## **METHOD**

The type of research used is normative research. In principle, normative research is research that looks at and refers to the applicable laws and regulations. The approach used is the statute approach. The statutory approach related to the law on the Civil and Agrarian Code. The legal materials used in this research are primary and secondary legal materials. Primary legal materials consist of laws, government regulations, jurisprudence, and also case examples. Meanwhile, secondary legal materials are materials that provide an explanation of primary legal materials consisting of books as well as previous research.

## **RESULT AND DISCUSSION**

### **1. Settlement of Disputes Cancellation of Sale and Purchase of Shared Property Land Rights**

Settlement of land rights disputes is pursued through two mechanisms, namely litigation and non-litigation dispute resolution. Both litigation and non-litigation dispute resolution each have advantages and disadvantages in terms of their effectiveness. Dispute resolution through litigation guarantees legal certainty to be implemented and obeyed by both parties in the lawsuit. Meanwhile, non-litigation settlements open opportunities for the parties to renege or neglect to carry out these agreements. Vice versa, litigation dispute resolution results in inefficiencies in terms of time, effort and cost of litigation for the parties, especially the plaintiff. While non-litigation settlement provides efficiency for the parties in terms of cost, time and effort in the settlement

process to resolve the case. The legal basis for joint assets can be traced through the following laws and regulations :

- a) Marriage Law No. 1 of 1974 article 35 paragraph (1)
  - b) Civil Code Article 119
  - c) Compilation Of Islamic Law Article 85.
- a) Disputes on the Sale and Purchase of Joint Assets According to Law Number 1 of 1974 concerning Marriage (Example of Case Decision Number 62/Pdt.G/2013/PN)

The following case describes events that occurred in general and the rest of the time the author focuses on issues regarding the implementation of the sale and purchase of joint assets carried out without the consent of one of the parties of the husband and wife according to Law Number 1 of 1974 concerning Marriage. This is because it is based on the discussion in this study which focuses on the problem of the implementation of the sale and purchase of joint assets that are carried out without the consent of one of the parties of the husband and wife according to Law Number 1 of 1974 concerning Marriage. In this case, the Plaintiff (wife) sued the Defendant (husband), because there had been a sale and purchase of joint assets that were carried out without the consent of one of the parties of the husband and wife. The Plaintiff (NY. LIDYAWATI NANGGELE) and Defendant II (ABRAHAM DJAPALU) have a legal husband and wife relationship, this can be seen in the marriage certificate of the Plaintiff and Defendant II Number 82/1968, November 9, 1968. From the marriage between the Plaintiff and Defendant II 4 (four) children have been born. During the marriage between the Plaintiff and Defendant II, joint assets (harta gono gini) were obtained, one of which was a plot of land with plants growing and everything on it, based on the Certificate of Ownership Number 7 dated 28 January 1984 (now a Certificate of Property Rights) Number : 224 in the name of Defendant I), located in Central Java Province, having its address at Kadipiro Village, Banjarsari District, Surakarta City, J. Kalingga I with an area of \u200b\u200b58,410 M2 (fifty eight thousand four hundred and ten square meters), as described in Provisional measuring letter dated April 8, 1983 Number: 681/1983, which was obtained by Defendant II purchasing from H. Muhammad Nurmawi as stated in the Purchase Agreement Agreement Number 14 dated May 6, 1988 before Notary JENMERDIN, S.H.

The plot of land was traded by Defendant II to Defendant I (ALBERTO) before PPAT IMRAN MA'ARUF, S.H. Vide Sale and Purchase Deed Number: 938 / NOT / Year / 1989 without prior notification and written permission from the Plaintiff. Defendant I and Defendant II knew or at least knew that their actions were contrary to applicable law and justice, because Defendant II clearly traded unilaterally the object of the dispute to Defendant I without written approval and permission from the Plaintiff, this was contrary with the provisions of Article 36 paragraph (1) of Law Number 1 of 1974

concerning Marriage which reads: "Regarding joint property, husband or wife can act with the agreement of both parties, so that the actions of Defendant I and Defendant II are clearly against the law and cause harm to the plaintiff. Based on these considerations, the panel of judges decided :

- 1) Accept the Plaintiff's lawsuit in its entirety.
- 2) The disputed land is joint property between the Plaintiff and Defendant II.

## **2. Analysis of the Judge's Considerations in Deciding the Cancellation of Sale and Purchase of Shared Property Land Rights**

According to Abdul Manan it is said that joint property is property acquired during the marriage bond, without questioning whether it is registered in anyone's name,<sup>6</sup> whereas in the Big Indonesian Dictionary it is defined that "assets" are goods (money and so on) that become wealth and can be in the form of valuable tangible and intangible wealth. Joint assets mean assets that are used (utilized) together." Taking into account the provisions contained in Law Number 1 of 1974, joint assets are part of the marital assets, because based on Article 35 paragraph (1) and paragraph (2) it is determined that : (a) assets acquired during marriage become joint property; and (b) assets inherited from each husband and wife and assets obtained respectively as gifts or inheritance, are under the control of each as long as the parties do not determine otherwise.

In relation to this joint property, based on Article 36 paragraph (1) of Law Number 1 Year 1974, a husband or wife can act on the agreement of both parties, while based on paragraph (2), then on the respective assets, the husband and the wife has the full right to carry out legal actions regarding her property. The same provision can also be seen in Article 51 paragraph (1) of Law Number 39 of 1999 concerning Human Rights (Law Number 39 of 1999), which stipulates that a wife while in a marriage bond has the same rights and responsibilities as her husband over all matters relating to her married life, the relationship with her children, and the right to own and manage assets. The existence of provisions like this implies (can be interpreted), that those who have the right to manage joint assets in marriage are husband and wife, so that one party cannot leave the other party to carry out legal actions on joint assets in marriage, because their positions are balanced, namely as "co-owner" of "common property".

Based on legal facts in court that the disputed land is joint property (gono gini) of the Plaintiff and Defendant II. This can be seen from the Sale and Purchase Agreement Number 14 dated 6 May 1988 before Notary JENMERDIN, S.H. which is an authentic deed, Defendant II came before Notary JENMERDIN, S.H. to sign an agreement between

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<sup>6</sup> Abdul Manan. *Aneka Masalah Hukum Perdata Islam di Indonesia*. Jakarta : Kencana. 2006, Hlm. 108-109

Defendant II and Defendant I, which was then set forth in "Binding Sale and Purchase Agreement Number 14". In Article 3 of the Sale and Purchase Contract Agreement Number 14, Defendant II has agreed that: "the first party (defendant II) sold a plot of land to the second party (defendant 1) with an area of 58,410 M<sup>2</sup> (fifty eight thousand four hundred and ten square meters)" and it can be seen that the sale and purchase of land carried out in front of the Land Deed Making Officer is valid before the law.

Furthermore, according to the law "since the deed of sale and purchase was signed in front of the Land Deed Making Officer, the ownership rights to the land being sold were transferred to the buyer", so even though Defendant II had agreed to carry out a sale and purchase of the disputed land as stated in the "Binding Agreement of Sale and Purchase" made before a "notary", and followed up with an agreement set forth in the form of a "sale and purchase deed" before the "Land Deed Making Official", then legally it must be presumed that the ownership rights to the disputed land have been transferred to the buyer (Defendant I); Considering, that further in Article 3 of the Binding Sale and Purchase Agreement Number 14, Defendant II has agreed that: "the first party has sold a plot of land to the second party Based on this Article 3, Defendant II has legally sold the plot of land.

Therefore the decision of the panel of judges in this decision accepts the Plaintiff's claim. This is because the disputed land is joint property (gono gini) of the Plaintiff and Defendant II and because of that, the sale and purchase transaction carried out by Defendant II and Defendant I is legally flawed and null and void. So that the status of land ownership is returned to how it originally belonged to the Plaintiff and Defendant II and all payments for the purchase of land made by Defendant I must be returned in full by Plaintiff II.

## **CONCLUSION**

Based on the entire description above, a conclusion can be drawn based on Position 62/Pdt.G/2013/PN is the problem of the implementation of the sale and purchase of joint assets carried out without the consent of one of the parties of the husband and wife according to Law Number I of 1974 concerning Marriage. In this case, the plaintiff (wife) sued the defendant (husband), because there had been a sale and purchase of joint assets that were carried out without the consent of one of the parties of the husband and wife. The decision of the panel of judges in Decision Number: 62/Pdt.G/2013/PN which accepted the plaintiff's claim was correct. This is because the disputed land is joint property (gono gini) between the Plaintiff and Defendant II. Where based on Article 3 of the Binding Sale and Purchase Agreement Number 14 dated 6 May 1988 before Notary JENMERDIN, S.H., Defendant II acting



as a seller for himself is legally disabled and null and void. In the judge's consideration the position of the land was returned to its original state because the plot of land was joint property (gono gini) so that the sale and purchase transaction between Defendant II and Defendant I was null and void because there was no agreement from the Plaintiff to sell the land. It is better for the community to carry out the process of buying and selling rights on the land is carried out before a notary/PPAT so that it fulfills the elements of light and have the force of law and avoid problems in the future.

It is better for the Judge to examine and adjudicate cases Land dispute claims must be careful and thorough in examining the case. So that in the process of proof at trial the Panel of Judges can see whether the Plaintiff can prove his claim or not. If it is the plaintiff could not prove the argument for his lawsuit, so the Panel of Judges did not will grant or will not accept the lawsuit filed by the Plaintiff. For the bank should be more careful before giving credit to someone, there needs to be an in-depth analysis of the intentions and the ability and ability of the customer/debtor to repay the debt or return the money borrowed in accordance with the specified period agreed, so that the process of implementing the credit agreement can run smoothly in accordance with what was promised by both parties and did not experience problem.

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