

A Dispute Resolution of Land Sale and Purchase Without the Heirs' Consent

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Abstract— This study aims to find out the land sale and purchase without the heirs' consent and resolutions. The dispute began with Mukarromah having sold the heir land located in Moktesareh Village, Kedundung District, Sampang Regency to H. Salehuddin without the consent of the other beneficiaries namely Karimah and Hanah. The problem in this study is how dispute resolution efforts can be made by the beneficiaries who have suffered losses as a result of the sale of the inheritance without their consent. The research method used was an empirical law study with the *Fact Approach*. The research results show that the heirs have never given consent to sell the land they own. The Village Head has issued an heir to the heirs only to the benefit of the other heirs. Efforts to resolve the dispute through mediation were unsuccessful and continued in the prosecution process to Sampang state court. Certificates issued on behalf of H Salehuddin may be revoked if in the process of registration they are against the law and are proven to be detrimental to other heirs.

Keywords: *Dispute, Sale, Land, Heirs*

I. INTRODUCTION

Article 20 paragraph (2) of the law number 5 year 1960 stipulates that ownership rights can be transferred and transferred to other parties. Two forms of transfer of ownership rights to land are: Switching means the transfer of ownership rights to land from the owner to another party due to a legal event. The legal event is the death of the owner of the land so the ownership rights to the land are legally transferred to the heirs as long as the heirs qualify as the subject of ownership rights. Transfer means the transfer of ownership rights to the land from the owner to another party due to legal actions that cause legal consequences such as buying and selling, swapping, grants, income in company capital, auctions. [1]

The transfer of ownership rights to land originating from inheritance must be proven by an inheritance certificate. Inheritance certificate becomes the basis for Land Deed Making Official (PPAT) in making Deed of Sale and Purchase (AJB). PPAT will make AJB signed by the heirs as a sign of approval.

Inheritance information becomes an important document when registering land originating from the distribution of inheritance, therefore the truth of the

information becomes the basis for the drafting of the joint distribution of rights. In contrast to the case in Moktesareh Village, the statement of heirs issued by the village head only stated that Mukarromah was the only heir, whereas there were 2 other heirs namely Karimah and Hanah. The inheritance land dispute in Moktesareh Village, Kedundung District Sampang Regency can be described in the case of the position below:

1. A couple of Pahri and Sumi were blessed with 3 children named Mukarromah, Karimah and Hanah and they died leaving a land area of 300 m2.
2. The heirs namely: Mukarromah, Karimah and Hanah have proof of ownership of inheritance land in the form of letter C.
3. Mukarromah without the agreement of the other heirs, sold the land to H. Salehuddin at a price agreed upon by both parties.
4. In the sale and purchase of inheritance land, heirs must be made statements, but the village head has issued a statement that the only heir is Mukarromah
5. Karimah and Hanah learned that 300 m2 of land had been sold by Mukarromah after a certificate was issued in the name of H. Salehuddin.

Based on the background above, the problems that can be formulated are:

1. Is the basis for buying and selling inheritance land between Mukarromah and H Salehuddin in Moktesareh Village, Kedundung District, Sampang Regency in accordance with Government Regulation Number 24 of 2007?
2. What is the effort to resolve inheritance land disputes that can be submitted by heirs who have been harmed by the sale of inheritance land between Mukarromah and H Salehuddin in Moktesareh Village, Kedundung District, Sampang Regency?

II. RESEARCH METHOD

This type of research used to answer the problems in this study is empirical legal research with the fact approach. The legal facts which form the basis of this study depart from the case of transfer of inheritance rights on the basis of trading without the consent of the heirs. Whereas

the Government Regulation stipulates that every change of ownership must be accompanied by the statement of the parties stated in the sale and purchase deed. This fact is a source of legal data on transitional issues without the consent of the heirs, in-depth interviews are the primary data source of this study and evidence of transitional documents is a secondary data source. The location of the study was carried out in the village of Moktesareh, Kedungdung District, Sampang Regency. Key informants of this study were the heirs, Moktesareh Village apparatus, Sampang District land office employees, and court representatives Sampang state. Analysis of the data used is descriptive qualitative.[2]

III. RESULT AND DISCUSSION

Basis of Buying and Selling Land of Inheritance between Mukarromah and H Salehuddin in Moktesareh Village

Land is very important to human beings to undertake their life in the world. The higher the ownership value over an object, the higher is the appreciation given to the object. In trading transaction, the evidence of land ownership is certificate, but in the certificate publishing process, there is some evidence that can be held onto such as the Document of Right Transfer made unofficially signed and witnessed by Head of Village/Kelurahan, *Pethuk Pajak Bumi/Landrente* and *Verponding Indonesia* before the enactment of UUPA enactment. The certificate published is the evidence of right prevailing as a strong instrument of authenticating physical data and juridical data contained within it. [3]

The evidence of land ownership basically consists of the evidence of ownership on behalf the right holder during the enactment of UUPA and when the right is transferred later, the evidence of right will arrive at the hand of right holder during the booking of right successively. The written evidence intended can be [4]:

1. *Groze Akta hak eigendom* (grose of eigendom right document) published based on *Overschrijvings Ordonantie* (Staatsblad 1834-27), with caption stating that the corresponding eigendom right has been converted into the property;
2. *Groze Akta hak eigendom* (grose of eigendom right document) published based on *Overschrijvings Ordonantie* (Staatsblad 1834-27), since the enactment of UUPA through the land registration implemented according to Government Regulation No.10 of 1961 in the corresponding area;
3. Letter of property evidence published based on the regulation of corresponding *swapraja* (autonomous area);
4. Certificate of Property published based on the Minister of Agrarian Affairs' Regulation No. 9 of 1959;
5. Decree of giving property from the authorized official, either before or after the enactment of UUPA, not accompanied with the obligation to register the right obligatorily mentioned within it;
6. Decree of transferring the right made illegally and signed with the power of Custom Head/Village or Kelurahan Head before the enactment of Government Regulation No.24 of 1997;
7. Document of transferring the right to land made by PPAT (Land Deed Registration Officer) for the land which has not been booked;
8. *Pethuk Pajak Bumi/ Landrente, girik, pipil, kekitir, and Verponding Indonesia* before the enactment of Government Regulation No.01 of 1961;
9. Recommendation of land history ever made by Land and Building Tax Service Office.

Buying and selling inheritance transfer of land rights from one person to another through the sale and purchase, exchange, grants or inheritance is an understanding of the transfer of land rights. Pursuant to Government Regulation No. 24 of 1997 concerning Land Registration, the transfer of land along with the objects thereon are carried out with the PPAT deed. Transfer of land by the owner to the recipient is accompanied by *juridische levering*. Juridical submission is a submission by fulfilling the formality of the Act, including fulfilling the requirements according to procedures stipulated by the law, using documents as written evidence and made by / before PPAT. [5]

The sale and purchase of land on August 5, 2016 conducted by Mukarromah with H. Salehuddin was conducted before the Camat (Provisional PPAT) and witnessed by the Village Chief Moktesareh and witnesses named Sonar and Ahmad. The object of sale and purchase is a land area of 300 m² (Three Hundred Square Meters), Number Block. 1870 Plot Number. 80 Class II d, located on Jalan Moktesareh at a price of Rp. 650,000,000.00 (Six Hundred Fifty Million Rupiah)

The village head of Moktesareh explained that Mukarromah came to the village office and asked for the sole heir's statement. The Village Head reasoned that he did not know that there were actually two other heirs who were entitled to the land. According to the sub district head as PPATS explained if what was listed in the AJB was in the name of Mukarromah only because PPATS saw based on the heir's certificate which was endorsed by the village head.

On February 1, 2017 a certificate was issued in the name of H. Salehuddin on an area of 300 m² that he bought from Mukarromah. According to H. Salehuddin as the buyer was greatly disadvantaged because he did not know that there would be a dispute between the heirs.

The provisions of Article 19 of the Basic Agrarian Law No. 5 of 1960 is regarding land registration, its implementation is based on Government Regulation No. 24 of 1997. The result of land registration is a land certificate which is a strong proof and not an absolute proof. As long as there is no proof from other parties, the information contained in the land certificate has legal force and must be accepted as a true statement. Land registration in Indonesia uses a negative publication system containing positive elements based on Article 32 paragraph (2) PP Number 24 of 1997.

Land registration is a Government policy and is implemented as an effort to align the land registration comprehensively for the community. These ways are regulated in Government Regulation Number 24 of 1997 years about Land Registry, they are: First, A land registration systematically is the first time of activity registration of land conducted simultaneously covering all

objects of land registration that have not been registered in the territory or part of a village / district. Second, sporadic land registration is the first land registration activity concerning one or more objects of land registration within the territory or part of a village / district individually or massively. [6]

In the publishing of certificates of land rights, the government should be able to provide legal certainty. Legal certainty can be achieved if the government's action performed accountable. Transparency in land registration is the most important thing in the case of registration of land in order that the maintenance and services procedures run as expected by the public. The effect of the principle of transparency sustainably, it is expected that the information relating to the publishing of a certificate to be accessible to all parties so that if there is information that is considered wrong to do immediate repair.[7]

In Government Regulation Number 24 of 1997 concerning Land Registration, registration of land rights must be carried out based on the principle of safety, simple principle, principle affordable and cutting-edge principles. Sale and purchase between Mukaromah and H Salehuddin does not meet the principle of safety and is contrary to PP 24 of 1997 which requires the approval of the heirs in making the transfer of title to the inherited land object.

The Legal Efforts of Heirs Due Land Sale and Purchase Without Consent

Disputes can be divided into two types based on their nature, namely civil disputes and state administrative disputes. Civil disputes are disputes arising from broken promises and breaches of the law. Whereas a state administration dispute is a dispute caused by the issuance of a State Administration Decree by the State Administration Officer.

In dispute resolution, it can be done by resolving disputes in court (*Litigation*) and resolving disputes outside the court (*non litigation*). If the nature of the dispute is a state administrative dispute, then the settlement is carried out in the State Administrative Court. Meanwhile, if the dispute nature is civil, it can be submitted to the District Court. Dispute resolution outside the court can be chosen if the parties agree to settle the dispute through deliberation to reach an agreement.

How to settle land disputes in national law include:

Settlement of disputes based on the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of National Land Agency Number 11 of 2016 concerning Settlement of Land Cases.

Settlement of disputes and conflicts in land is regulated in Article 4 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency Number 11 of 2016 concerning Settlement of Land Cases, namely:

"Settlement of disputes and conflicts is carried out based on ministry initiatives or public complaints."

The series of resolutions of conflicts and disputes based on the Ministry Initiative is regulated in Article 5:

"To find out disputes and conflicts in an area, the Ministry conducts monitoring.

Monitoring is carried out routinely by the Head of the Land Office, Head of the Land Office or the Director General of complaints or reports in newspapers related to disputes and conflicts. Monitoring results are reported every 4 (four) months and copied to the Minister. If monitoring needs to be followed up, the Minister or the Head of the Regional Office of the BPN instructs the Head of the Land Office to conduct dispute and conflict resolution activities. "

Peace Efforts at the Village Level

Article 26 paragraph (1) of Law Number 6 of 2014 concerning Villages, regulates the duties of the Village Head including organizing Village Government, carrying out village development, fostering village community and empowering village communities. While the authority of the Village Head based on Article 26 paragraph (2) letters f, g and n regulates that [4] in carrying out their duties, the Village Head is authorized to foster the life of the Village community, foster peace and order of the Village community, and represent the Village inside and outside court or appoint a legal representative to represent it in accordance with statutory provisions. And it becomes the authority and obligation of the Village Head based on Article 26 paragraph (4) letter k of the Village Law to resolve community disputes in the Village, including when land disputes occur. Alternative dispute resolution in the community can be done with an adat / informal approach. The purpose of customary / informal dispute resolution is to resolve cases, end disputes without regard to right or wrong, lose or win and have the ultimate goal of peace.

Dispute resolution through court (*litigation*)

If mediation / peace is not successful, the parties can submit legal remedies to the Court in accordance with the nature of the dispute or better known as settlement of dispute *litigation*. Settlement of disputes in court is based on civil procedural law in Indonesia.

Litigation is a process of resolving disputes in court, where all parties to a dispute are facing each other to defend their rights before the court, the final result of a dispute resolution through the court is a decision. Dispute resolution procedures carried out in court (litigation) are also commonly known as civil litigation proceedings as determined based on civil procedural law which, simply, the final stage of litigation dispute resolution is in the form of a judge's decision.

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Legal efforts that can be carried out by heirs in Moktesareh Village, Kedungdung District, Sampang Regency can be resolved through non-litigation or litigation mechanisms. The village head of Moktesareh explained that mediation / peace efforts had been made by presenting the parties namely Mukarromah, Karimah, but the results of the non-litigation process did not reach an agreement. The absence of peace in the mediation process at the village level prompted the heirs to file a lawsuit with the Sampang District Court. The mediation stage at the Sampang District Court also did not produce results, the litigation process continues to get justice and truth for the parties who have been harmed. If in the facts of the trial it can be proven that the sale and purchase of land between the heirs of Mukarromah and H Salehudin does not meet the requirements in PP 24 of 1997 then in accordance with the principle of negative publicity positive in Indonesian land law the judge is worthy to decide to restore the rights of other heirs who have at a disadvantage.

IV. CONCLUSION

Buying and selling land without the consent of the heirs in Moktesareh Village, Kedungdung District, Sampang Regency occurred because Mukarromah made a certificate as the only inheritance issued by the village head. This certificate of inheritance became the basis for the issuance of the sale and purchase deed between Mukarromah and H. Salehuddin, subsequently a land certificate was issued. Peace efforts at the village level were unsuccessful, after

which the parties continued the settlement process to the Sampang District Court.

An orderly administration of land administration in the village is needed so that changes in land tenure can be recorded properly.

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