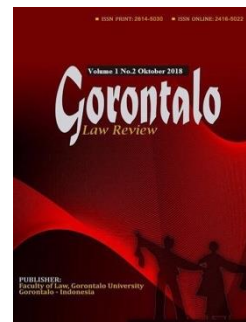

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DECISION OF MA 3180/K / PDT/2019 (LEGAL ANALYSIS OF THE SALE AND PURCHASE OF JOINT PROPERTY PRE- DIVISION BY THE TEMPORARY LAND DEED OFFICER)

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Abstrak

Seorang suami atau istri dapat bertindak atas properti bersama jika mereka telah mendapatkan persetujuan, seperti yang diatur dalam Pasal 36 Undang-Undang No. 1 tahun 1974 tentang perkawinan Bersama. Tujuan dari penelitian ini adalah untuk mengetahui dan memahami pertimbangan Mahkamah Agung dan konsekuensi hukum dari putusan Mahkamah Agung nomor 3180 K/PDT/2019 terkait jual beli properti bersama yang belum dibagi setelah perceraian di hadapan pejabat sementara akta tanah (PPAT). Penelitian ini bersifat normatif dengan pendekatan perundang-undangan, pendekatan konsep, dan pendekatan kasus. Bahan hukum yang digunakan adalah bahan hukum primer dan sekunder. Teknik analisis bahan hukum menggunakan metode preskriptif. Hasil Penelitian menunjukkan bahwa penjualan saham antara M.Uzer dan Deslina dan pembuatan akta jual beli oleh PPAT tanpa

persetujuan dan pengetahuan Herlina dianggap sebagai tindakan melanggar hukum. Dengan objek jual beli yang masih merupakan properti bersama, maka berdasarkan yurisprudensi MA RI No. 701K/PDT/1997, jual beli menjadi tidak sah, mengakibatkan akta jual beli menjadi cacat secara hukum dan Sertifikat Hak Milik atas nama Deslina menjadi tidak dapat ditegakkan.

Kata Kunci : Jual Beli; PPAT; Tanah; Harta Bersama

Abstract

As stated in Article 36 of Law No. 1 of 1974 respecting joint marriage, any spouse may operate on joint property with a permission. Investigating Supreme Court decision number 3180 K/PDT/2019—which deals with the sale and purchase of undivided joint property in the presence of the temporary land deed officer (PPAT)—and its legal implications is the goal of this research. This study uses conceptual, case, and legislative methods, and it is normative in character. Primary and secondary sources of law are consulted. Legal material analysis is an approach that uses a procedure that is prescriptive. In accordance with the results of the investigation, it is illegal for the PPAT to have issued a deed of sale and purchase and for M.Uzer and Deslina to have sold shares without Herlina's knowledge or approval. Given that the property being sold is still jointly owned, the sale and purchase are declared unlawful according to MA RI No. 701K/PDT/1997. As a consequence, the deed of sale and purchase is legally flawed, and the Certificate of Property Rights in Deslina's name is no longer enforceable.

Keywords: Buying and Selling; PPAT; Land; Joint Property

1. INTRODUCTION

The holy union of a man and a woman, established by Law No. 1 of 1974 in Article 1, is to create a stable and everlasting household in obedience to God's will. If neither party explicitly states differently in a written agreement, all assets obtained after the marriage will be deemed joint. The assets of both spouses are automatically merged into one entity upon marriage, according to Article 119 of the Civil Code. The core of the marital partnership cannot be changed or nullified by any agreements between spouses. When it comes to money and possessions, what counts as marital assets are the earnings and gains from the marriage of both partners, including personal property sales, regardless of whether the main property is part of the community pool. (Besse Sugiswati, 2014).

Where the husband and wife have the same status in the family or society, Article 31 paragraph 1 of Law No. 1 of 1974 on marriage gives them rights and power over joint property. According to Article 36 of Law No. 1 of 1974 on joint marriage, the wife or husband must agree to legal acts like purchasing and selling joint property. Article 92 Chi. An object is transferred from one person to another. Someone intentionally transfers property rights to an item to the targeted recipient (Ketut Indriyani & Anak Agung Sri Indrawati, 2021).

Legal acts like purchasing and selling convey property rights. Sales and purchases are usually facilitated by a sale and purchase agreement. Buying and selling a land plot requires meeting Article 1320 of the Civil Code's legal agreement standards including cash, light, and genuine. Sellers and purchasers must follow the land-buying process, including asking the seller about the land's status to prevent controversy. A sale and purchase agreement on common property is null and invalid or liable to termination if it fails to fulfil Article 1320 of the Civil Code. Article 37, paragraph 1 of Government Regulation No. 24 of 1997 on Land Registration needs a PPAT document to record a land plot transfer. An example of PPAT is purchasing and selling. An authentic deed of sale and purchase (AJB) governs the

seller-buyer legal relationship, whether civil or contractual (Komang Febrinayanti Dantes & I Gusti Apsari Hadi, 2021).

The deed of sale and purchase, especially for joint property objects, should be made using Appendix 1B of the regulation of the head of the National Land Agency Number 8 of 2012 on amendments to the regulation of the Minister of Agrarian Affairs and Head of the National Land Agency Number 3 of 1997 on the implementation of Government Regulation Number 24 of 1997 on Land Registration (Jane Elizabeth Priscillia Chendra, Nurfaidah Said, 2020).

PPAT often overlooks the conformity between the Certificate of Property Rights with Identity Cards (KTP) and marriage certificates related to the year of acquisition of the object being traded, whether obtained during or before marriage, when making the deed of sale and purchase, which affects its validity. The deed of sale will be affected if it does not fulfil the material and formal conditions for an agreement on the object of common property. A deed of sale and purchase that does not fulfil material and formal standards is legally defective and affects the Land Office's Certificate of Property Rights. A legally defective deed of sale or purchase may be cancelled or nullified if it fails the subjective or objective elements.

This occurred in Supreme Court judgement 3180 K/PDT/2019. Supreme Court Number 3180 K/PDT/2019 dealt with purchasing and selling joint property and constructing a home without the ex-wife's approval. On November 17, 2016, Deslina Harahap and M. Uzer bought and sold one piece of land on Jalan Bukit Semut No. 1 Local Government Complex RT 011 and built a permanent residence there. M. Uzer's property rights (SHM) No. 3239 was certified.

After the sale, M. Uzer and Deslina Harahap made a deed of sale (AJB) in the Sungailiat Sub-District, which doubles as PPATS (temporary land deed officer), and they are changing the name in the Bangka Regency Land Office from 3239 to 00116.

Deslina Harahap cannot inhabit or govern the home after the purchasing and selling procedure since Herlina, M. Uzer's ex-wife, has occupied it without her knowledge. In this instance, Deslina Harahap and Herlina fought over ownership of the land and home, which was sold and bought. Herlina's refusal to follow Deslina Harahap's instructions to leave the residence violated Article 1365 of the Civil Code. However, Herlina said she had lived in the property for sale since 2012.

Herlina and M. Uzer have not agreed or sued in the Sungailiat Religious Court to divide the property and home buildings after the divorce. Deslina Harahap did not meet Herlina or ask about the shared property's division or joint ownership throughout the purchase and selling procedure. The reasons against the legislation in Article 1365 of the Civil Code without the right are not related to Herlina's lawbreaking.

Article 36 paragraph 1 of Law Number 1 of 1974 concerning marriage states that the husband or wife can act upon the agreement of both parties, and Article 92 KHI states that the husband or wife cannot act without the consent of the other party. Therefore, Deslina Harahap and M. Uzer must have consented to the purchase and sale.

However, in Sungailiat District Court decision Number 60/Pdt.G/2018/PN.SGL, the judge ruled that M. Uzer (seller) and Deslina Harahap (buyer) met Article 1320 of the Civil Code and met the elements of cash, light, and real, and that Herlina's actions, who controlled and occupied the land and house buildings without property rights, were unlawful.

Herlina appealed to the Bangka Belitung High Court because the Sungailiat District Court verdict was unfair. The Bangka Belitung High Court Number 4/PDT/2019/PT BBL upheld the sale and purchase between Deslina Harahap (compared) and M. Uzer (also similar) on SHM No. 00116 land. After purchasing and

selling the land, the comparator or plaintiff (Deslina Harahap) gains possession, hence the comparator or defendant (Herlina)'s appeal must be dismissed. The Bangka Belitung High Court affirmed the Sungailiat District Court Number 60/Pdt.G/2018/ PN.Sgl decisions.

However, in Supreme Court decision number 3180 K/PDT/2019, the judge found that the Bangka Belitung High Court wrongly applied the law that the object of the dispute purchased by Deslina Harahap (Cassation respondent/Plaintiff) against M.Uzer (also respondent/co-defendant) is a joint property, as a disbursement property between M.Uzer and Herlina when they were bound husband and wife who have not been divorced.

Based on this background, the researcher was interested in studying the Supreme Court judge's legal consideration (*ratio decidendi*) in Supreme Court decision number 3180 K/PDT/2019 regarding the sale and purchase of joint property that had not been divided after the divorce in the presence of the temporary land deed-making officer (PPATS) without the former wife's consent and the legal consequences of the decision.

2. METHOD

This normative juridical study addresses legal conflicts caused by Article 1365 of the Civil Code, which parties interpret differently based on their interests. Disputes over ownership of the house and the building of a house certified by M.Uzer included a conflict because it is not possible if Herlina commits unlawful acts on objects like houses, and house buildings that were initially certified to M.Uzer are joint property acquired since the marriage is still ongoing, so Herlina and M.Uzer own them jointly. M.Uzer and Deslina bought and sold the joint property in front of PPATS without Herlina's knowledge or participation in the deed of sale and purchase. Deslina Harahap claims that Herlina's unlawful behaviour of living in a residence she bought without her knowledge violates Article 1365 of the Civil Code and causes her civil damages.

The legislative approach, conceptual approach, and case approach are used in this study, along with primary legal materials like legislation on joint property sales and purchases and deeds of sale and purchase and secondary legal materials like books and legal journals on joint property sales and purchases. This study uses prescriptive analysis to determine whether the Supreme Court decision number 3180 K/PDT/2019's sale and purchase of shared property that has not been divided before the temporary land deed-making officer is true or false.

3. Discussion

A. The Basis for the Consideration of the Supreme Court Judge (*ratio decidendi*) in the Supreme Court Decision Number 3180K/PDT/2019 Related to the Sale and Purchase of Joint Property that has not been Divided before the Temporary Land Deed Making Officer (PPATS) which was Carried out without the Consent of the Ex-wife

The appeal was made by Herlina against the decision of the Sungailiat District Court which stated that :

1. a contract of sale between the seller and the seller;
2. certify the Certificate of property rights number: 00116 and measurement letter number: 00156/B.Betung / 2016 with an area of 478 M2 and PPATS deed number: 549/019/SGT/2016 dated November 17, 2016 made by KUSYONO ADITAMA, SH is the legitimate property of the plaintiff obtained from the buying and selling process carried out by the defendant to the plaintiff ;

3. stating that the defendant's actions with the intention of controlling and occupying the land and building a house on it without property rights are unlawful;

For the amar verdict, Judge MA has judged itself that:

1. That the object of the dispute is not the property of the defendant himself, but the joint property between the defendant and the defendant who belongs to the defendant and sold the defendant without the defendant's permission;
2. The plaintiff purchased the object of dispute from the co-defendant, which is joint property. This property was acquired during the time when the co-defendant and the defendant were married and undivided. Therefore, the sale and purchase between the plaintiff and the co-defendant without the consent of the defendant is not valid.

Judge Sungailiat District Court in its legal consideration stated :

“the defendant's act of controlling and occupying the object of dispute in the aquo case is an unlawful act that harms the plaintiff's civil interests”

1. Action M.Uzer and Deslina Harahap who have been selling property together

- a) The act is against the law

The husband and wife own marital property equally since it is jointly bonded property (gebonden mede eigendom). Legal repercussions of gebonden mede eigendom—actions with shared property—are only lawful if done by a husband and wife (Yunanto, 2019). Article 92 KHI provides that a husband or wife may act on joint property with both parties' approval, based on Article 36, paragraph 1 of Law No. 1 of 1974 on marriage. Thus, M. Uzer's transaction with Deslina on the object of sale and purchase that is still common property without Herlina's agreement is illegal.

- b) The presence of errors on the part of the perpetrator

M. Uzer's effort with Deslina to acquire and sell land and house structures jointly owned by Herlina has been negligent. Article 36 of Law No. 1 of 1974 on combined marriage specifies this property structure. Article 92 KHI states that with an agreement, the husband and wife may legally act on the joint property, but without an agreement, they cannot sell or transfer it. In truth, M.Uzer sold without Herlina's consent, who is purchasing and selling it. He did not engage Herlina in the deal with Deslina or the sale and purchase transaction. Due to Herlina's ignorance, the sale and purchase do not match the conditions.

However, Deslina Harahap, the legal buyer, overlooked the seller's ability to acquire and sell the common property. Deslina Harahap, the buyer, should thoroughly check the seller's rights and position as the object's owner. However, Deslina continues the transaction until the Certificate of Property Rights is issued on her behalf without researching the seller's status and rights to the object of sale and purchase.

- c) The presence of harm to the victim

Herlina lost money when M.Uzer and Deslina Harahap sold joint property without her approval. For sale by owner M.Uzer without his consent has caused losses, namely without his knowledge that Herlina's actions that control the house, which is joint property since 2012, are illegal acts because Herlina is not involved in buying and selling with Deslina. Deslina's complaint against the legislation in the Sungailiat District Court has damaged Herlina's self-esteem as an instructor and raised the community's moral weight to Rp 1,000,000,000 (1 billion rupiah).

Causal link between acts and losses Action M.Uzer, who traded with Deslina Harahap to buy and sell land and build a house on it, which was originally

certified property rights in his name and is a common property that has not been divided, committed negligence without Herlina's consent and without her knowledge. Thus, Herlina has suffered.

2. Act Camat Sungailiat as PPATS in making the act of buying and selling

a) The existence of such acts against the law

Act According to the researcher, Camat Sungailiat's publication of the act of sale and purchase No. 594/019/SGT/2016 without Herlina's approval violates Article 39 of Government Regulation Number 24 of 1997 on Land Registration and Article 101, paragraph 1, of the Minister of Agrarian Affairs and Head of the National Land Agency Number 3 of 1997 on the implementation of Government Regulation 24. Act of sale terms and conditions: Formal requirements :

- 1) understand and run Article 97 paragraph 1 Perkaban No. 3 of 1997.
- 2) The Deed is made in accordance with the form of the deed specified in the regulations and procedures for filling in accordance with Article 96 Perkaban number 8 of 2012.
- 3) before the act of transfer or encumbrance of Rights is drawn up. Permission to transfer rights must be obtained as in Article 98 paragraph 2 Perkaban No. 3 of 1997.
- 4) the parties concerned or authorized by a written letter must be present in the making of the deed, and witnessed by 2 witnesses who then hrus deed read by PPAT, and PPAT will explain the contents and intent of the deed to the party concerned and explain the subsequent registration procedure as in Article 101 Perkaban No. 3 of 1997.
- 5) PPAT may not make a deed, for PPAT himself, his husband or wife, his family by blood or marriage, in a straight line without degree restrictions and in a sideways line to the second degree, either acting alone or through a power of attorney, or being the power of another party as in Article 23 paragraph 1 of government regulation number 24 of 1997.
- 6) The Deed that has been made by PPAT must be submitted to the Land Office for a maximum of 7 working days, Article 40 paragraph 1 of government regulation number 24 of 1997.
- 7) after taxpayers submit proof of tax payment, PPAT will sign the deed of transfer of land rights as in Article 91 paragraph 1 of Law Number 28 of 2009.

While the material requirements in making the deed of sale namely :

- 1) is the seller authorized to sell the title to the land ;
- 2) is the buyer allowed to buy the land object in question ;
- 3) whether the parties are acting as powers or themselves ;
- 4) whether the object of sale and purchase (land) is allowed to be sold and not disputed (Purna Noor Aditama, 2018).

PPAT, before making a deed of sale and purchase, will examine the completeness of the document as a formal requirement, including :

- a) Identity card, after seeing the status and citizenship that need to be considered :
 1. Property rights on land owned by husband and wife, done by showing the consent of the husband / wife legalized by a notary.
 2. For non-Chinese nationals, a letter of heirs from the sub-district, village, or keuchik village where the heir lived when they died may show property rights from inheritance. Submit a notary or court-issued inheritance certificate for Indonesians of Chinese heritage (Article 111-112 Regulation

of the Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997).

- b) Marriage certificate, which must be considered :
PPAT must challenge the marriage agreement; if not, post-marriage property becomes joint property. Legal activities involving joint property need husband or wife approval (Article 119 of the Civil Code). Divorcees must show their certificate.
- c) Provide documentation of the latest payment and KPP (Tax Office) confirmation of no UN arrears. PPAT utilises UN payment evidence to calculate transfer income tax (PP RI No. 71 of 2008) and BPHTB buyer tax. (Muhammad Rizky, Muzakkir Abubakar, 2020).

Without Herlina's consent, the Sub-District Sungailiat's deed of sale and purchase did not fulfil formal and material criteria. Herlina is the legal owner of the land and residence. Article 58 paragraph (2) letter B of the regulation of the head of the National Land Agency of the Republic of Indonesia No. 1 of 2006 on the implementation of Government Regulation No. 37 of 1998 on the regulation of the position of the land deed officer states that the husband or wife's consent is required to support the deed. Additionally, the regulation of the head of the National Land Agency No. 8 of 2012 on amendments to the regulation of the Minister of Agrarian Affairs/Head of the National Land Agency No. 3 of 1997 on the implementation of Government Regulation No. 24 of 1997 on Land Registration contains the procedure for filling out the deed of sale and purchase in Appendix 1b (Jane Elizabeth Priscillia Chendra, Nurfaidah Said, 2020).

In this case, the Sungailiat Sub-District Head as PPATS has made a deed of sale and purchase without meeting the material and formal requirements for Herlina's approval for a joint property controlled by Herlina, not M.Uzer. Article 38 paragraph 1 of Government Regulation Number 24 of 1997 and Article 101 paragraph 1 of the Minister of Agrarian Affairs/Head of the National Land Agency Regulation Number 3 of 1997 restrict the authorities' participation in PPAT deeds. Government Regulation 24 of 1997, Article 38 paragraph 1:

"According to Article 37, paragraph 1, the persons who conduct the legal act are present and at least two competent witnesses observe the deed."

Article 101, paragraph 1 of the regulation of the Minister of Agrarian Affairs and Head of the National Land Agency Number 3 of 1997 states: "The parties who perform the legal act in question or the person authorised by it with a written power of attorney in accordance with applicable laws and regulations must attend the PPAT deed." Article 39, paragraph 1, letter C of Government Regulation No. 24 of 1997 on Land Registration states that PPAT will not execute a deed if the parties or witnesses involved are not authorised or permitted to do so.

Article 38 and 39 of Government Regulation No. 24 of 1997 and Article 101 of the Minister of Agrarian Affairs/Head of the National Land Agency No. 3 of 1997 require M. Uzer to obtain Herlina's approval before selling and buying joint property land and house buildings. PPATS should refuse to sell and buy. Since the object of sale and purchase is common property, both parties must agree to do legal activities as outlined in Article 36 of Law Number 1 of 1974 and Article 92 KHI. Thus, M., M. Uzer, and Herlina sell and buy authorised products. According to the Supreme Court of Indonesia's jurisprudence no. 701 K / Pdt / 1997, "the sale and purchase of land that is joint property must be approved by the wife or husband, joint property..." In this instance, the Sungailiat Sub-District, as PPATS, made the sale and purchase without Herlina's consent, which is illegal.

1) The existence of losses incurred

Herlina lost money when Camat Sungailiat as PPATS published the deed of sale No. 594/019/SGT/2016 in M. Uzer's buying and selling with Deslina Harahap without Herlina's approval, which was used to turn the name in the Bangka Belitung Land Office. Loss due to M. Uzer's certificate being transferred to Deslina Harahap, preventing Herlina, the rightful owner, from occupying the residence.

2) Presence of errors

Sungailiat Sub-District's act of purchasing and selling No. 594/019/SGT/2016 is negligent because Camat Sungailiat, as PPATS, fails to examine the object of sale and purchase for common property. Thus, without getting Herlina's approval, a legal owner, is illegal.

3) The relationship between losses and errors

Camat Sungailiat as PPATS committed errors and unlawful acts in making the deed of sale and purchase No. 594/019/SGT/2016, namely the lack of prudence and accuracy in checking the marriage certificate, divorce certificate, and Certificate of Property Rights to determine whether the object of sale and purchase is still a joint property. The Sungailiat Sub-District also ignores whether the person operating for the parties in the purchasing and selling procedure has complete power or needs the spouse's approval to transfer ownership. Thus, the Sungailiat Sub-District Head's deed of sale and purchase without Herlina's consent affects Herlina as the lawful owner of the land and home building, a traded common property.

a. The Judgement of the Judges of Supreme Court on the Sale and Purchase Carried Out by M.Uzer with Desline Harahap

Judge MA stated in his legal judgment that :

"The object of the dispute purchased by the plaintiff from the co-defendant is joint property, as a disbursement property between the co-defendant and the defendant at the time they are bound husband and wife who have not been divided, so the sale and purchase between the plaintiff and the co-defendant without the consent of the defendant is invalid.."

Based on the consideration of the judge, the researcher agrees with the legal consideration given so that the consideration of the judge will be expanded by the author as follows:

a. Analysis of the relationship between M. Uzer and Deslina Harahap based on elements of cash, light, and real

The monetary element is the seller's transfer of land rights to the buyer and the buyer's complete payment at the agreed price. Bright aspect implies purchasing and selling land is obvious (Desvia Winandra, 2020). The true sale and purchase must be done with two witnesses and PPAT. They only meet monetary and genuine principles when sold by M. Uzer and Deslina Harahap. The seller does not involve his ex-wife, Herlina, in the buying and selling process with Deslina Harahap, whose object of sale and purchase is joint property that has not been divided after the divorce, so Herlina is unaware of the sale and purchase. Despite M. Uzer's joint ownership of the land and house building, Herlina is not involved in the buying and selling process between M. Uzer and Deslina Harahap in front of the Sungailiat Sub-District as the PPATS, especially in making the deed of sale and purchase. The Sungailiat Sub-District as the PPATS saw Deslina Harahap's complete payment of Rp 120,000,000 for purchasing and selling. Analysis of the relationship between M. Uzer and Deslina Harahap under Article 1320 of the Civil Code

1. Agreed those who bind themselves

The husband and wife own the sale and buy item jointly. Any legal action, including the transfer of rights to joint property, needs the approval of both husband and wife, as stated in Article 36 of Law Number 1 of 1974 governing marriage and Article 92 KHI. Although the certificate of ownership is on behalf of the husband, the wife, as the landowner, must approve and sign the PPATS deed of sale and purchase. The trial revealed that the sale and purchase included land and a home construction recognised by property rights number 3239 in M. Uzer's name and obtained during the marriage with Herlina. The sale and purchase will transfer ownership to Deslina Harahap, which Herlina must approve. On the requirement for an agreement in the sale and purchase of common property, the Supreme Court has ruled:

According to Supreme Court jurisprudence 263 K / Sip / 1976, "Because the disputed land is the joint property of defendants I and II, defendant I must obtain the consent of his wife to sell the land."

- a. Jurisprudence of the Supreme Court no. 701 K / Pdt / 1997 that "The sale and purchase of land that is joint property must be approved by the wife or husband; joint property in the form of land sold by the husband without the consent of the wife is invalid, null, and void. Land certificates made on unauthorized sales and purchases have no legal force."
- b. Supreme Court Decision No. 2691 PK / Pdt / 1996 dated September 18, 1998 that "The action against the joint property by the husband or wife must be approved by the husband and wife; the oral agreement to sell the land of the joint property made by the husband and not approved by the wife is not valid according to law."

M. Uzer has bought and sold with Deslina Harahap without Herlina's consent, in front of the Sungailiat Sub-District as PPATS. Herlina was unaware of the purchasing and selling, and the PPATS party issued a deed of sale without her authorization. This shows that M. Uzer and Deslina Harahap's purchasing and selling agreement was not satisfied.

2. The ability to make an alliance

The capacity to follow the law. Acting authority uses *nemo plus*. The *nemo plus* concept states that a person may only do lawful activities within his rights and powers. On joint property held by a couple and wife, the seller must be both of them (Yunanto, 2019).

M. Uzer, the seller, and Deslina Harahap, the buyer, represent legally competent and mentally healthy people in the trial. Thus, proficiency is reached. However, the authority to act violated the principle of *nemo plus* in the process of buying and selling by M. Uzer and Deslina Harahap with the goal of buying and selling joint property after the divorce with Herlina by the husband alone without her knowledge.

3. A certain thing

M. Uzer and Deslina Harahap bought and sold land and a permanent residential building on it, using Certificate of Ownership No. 3239 on Jalan Bukit Semut No. 1 Regional Government Complex RT.011, Paritpadang Village, Sungailiat District, Bangka-Babel Regency, which was later renamed 00116 in Deslina Harahap's name. Thus, this example meets all requirements.

4. There is a good reason

This agreement employs the word *causa*, which means the substance and goal of the agreement, not something that leads someone to create an agreement. In a sale-and-purchase deal, one side wants to own an item and the other wants money. Lawful reasons in the agreement include:

- a. A lawful clause means that the content of the agreement does not conflict with public order, decency, and the law;
- b. Because it is said to be false if it is held to cover up the true cause.
- c. Because it is said to be forbidden if it is contrary to the law, morality, and public order (Tri Wahyu Surya Lestari, 2017).

Based on the description of the banned reasons and Article 36, paragraph 1, of Law Number 1 of 1974 on marriage, and Article 92 KHI, which specifies that both couples must consent to a legal act on joint property, M. Uzer bought and sold with Deslina Harahap without Herlina's approval. The sale and purchase made by M. Uzer with Deslina Harahap in accordance with the decision of the Supreme Court of the Republic of Indonesia number 701K/PDT/1997 becomes invalid, null, and void with the non-fulfillment of the objective element, a lawful cause, so that the Supreme Court Judge number 3180 K/PDT/2019 considers the sale and purchase between Deslina Harahap and M.

b. Judge of Supreme Court's Consideration of Deslina Harahap as a Buyer who is not in Good Faith

Judge MA in his legal judgment stated that:

"...The plaintiff in buying the object of dispute is not thorough because the object of dispute is not controlled by the defendant but by the defendant, so it cannot be categorized as a buyer in good faith."

Researchers concur with the court that Deslina Harahap was a badbuyer while purchasing and selling with M.Uzer. The researcher will expound on the judge's consideration: Ridwan Khairandy defines a good-faith buyer as someone who thinks the vendor owns the items (Ridwan Khairandy, 2004). In civil law, every bezitter is regarded to be honest or good faith; dishonesty or ill faith must be demonstrated. Those who accuse a bezitter of getting bezit in ill faith must prove it. Unless bad faith can be established, the bezitter received the bezit in good faith. The relevant legislation considers honesty in everyone, but dishonesty must be shown, thus to determine whether a buyer is in good faith, the case must be filed with the court and a legal result acquired (Rachmadi Usman, 2013).

Deslina Harahap did not examine M.Uzer's rights and standing as the vendor who owned the item for sale and buy. M.Uzer only displays a certificate of ownership and a divorce document to Deslina Harahap while buying and selling with her. Before buying, Deslina evaluates the item. When Deslina surveyed the disputed residence and found the fence padlocked, she instructed M.Uzer to unlock it to inspect the interior and contents. M. Uzer merely stated the home was empty, therefore Deslina believed him. Uzer. According to Ridwan Khairandy, a good-faith buyer is prudent in deals and discussions (Ridwan Khairandy, 2014). Deslina, who believed M.Uzer's explanation without further research, is not a good buyer because MARI Decision No. 1816 K/Pdt. 1989 and MARI verdict No. 4340 K/Pdt. 1986 state that a buyer cannot be in good faith if they do not scrutinise and investigate the seller's rights and status on the land at the time of purchase. These verdicts emphasise that buyers should not only trust the seller's explanation but also investigate and find out before purchasing and selling land. Buyers should verify numerous items, including:

The presence of a certificate of title to land (verdict MARINo. 765 PP / Pdt/2009);

1. The authority of the transferring party, for example, whether or not a power of attorney is valid (MARI Decision No. 4340 K / Pdt/1986);

2. The party that actually controls the object (MARI Decision No. 1847 K / Pdt/2006; No. 1923 K / Pdt / 2013);
3. If it is related to inheritance land, it is necessary to ensure the approval of (all) heirs (MARI Decision No. 4340 K / Pdt/1986; No. 1816 K / Pdt/1989; West Kutai PN Decision No. 22 / Rev.G / 2013 / PN.KUBAR);
4. If it is related to land that is a joint property (Gono gini property), it is necessary to ensure the agreement of the spouses (MARI Decision No. 114 K / Pdt / 2013);
5. Ongoing dispute cases or court decisions related to land sale and purchase objects (MARI Decision No. 1861 K / Pdt/2005; No. 114 K / Pdt / 2013);
6. Land Status, namely that land that has the status of state land cannot be sold and bought (Supreme Court Decision No. 429 K / Pdt / 2003).

If the buyer does not examine thoroughly and continue the transaction, he is not a good-faith buyer and is not protected legally (Widodo Dwi Putro, Ahmad Zuhairi, Syukron Salam, 2016). According to MA RI No. 1816 K/Pdt/1989 and No. 4340 K/Pdt/1986, the Deslina attitude that believes the word user directly by not acting responsively (responsibly) and not finding out and researching in advance before buying and selling land can be justified as being a buyer who is not in good faith.

The Supreme Court judge ruled in Supreme Court decision 3180 K/PDT/2019 that M.Uzer and Deslina Harahap bought and sold joint property without Herlina's consent:

1. Grant the appeal of the petitioner Cassation HERLINA;
2. Canceling the decision of the Bangka Belitung High Court Number 4/PDT/2019/PT BBL dated May 14, 2019 which upheld the decision of the Sungailiat District Court Number 60 / Pdt.G/2018 / PN Sgl dated February 20, 2019;

The researcher says the decision cancellation affects Kusyono Aditama S.H.'s deed of sale and purchase, Deslina Harahap's property rights certificate number 00116, and M.Uzer and Harahap's purchasing and selling. The property purchase agreement related to the PPAT deed of sale was cancelled for many reasons:

1. invalidation of the agreement due to non-fulfillment of the subjective conditions of the validity of the agreement, that is, the agreement of the parties as provided for in Article 1320 of the Civil Code ;
2. invalidation of the agreement due to non-fulfillment of the objective conditions of the validity of the agreement, namely certain matters as provided for in Article 1320 of the Civil Code ;
3. invalidation of the agreement due to non-fulfillment of the objective conditions of the validity of the agreement, namely lawful causes as stipulated in Article 1320 of the Civil Code ;
4. cancellation due to the right to repurchase the object in the sale and purchase agreement;
5. invalidation of the agreement due to the use of absolute power of attorney ;
6. invalidity in the case of sale and purchase of joint property ;
7. cancellation of the sale and purchase agreement ;
8. cancellation in case of emergency (noodtoestand) ;
9. invalidation of agreements on land rights (Rafiq Adi Wardana, 2016) .

The Supreme Court's ruling number 3180 K/PDT/2019 found that M.Uzer and Deslina Harahap's purchase and sale of joint property without Herlina's permission violated the seller's material criteria. Insufficient authorization exists for M.Uzer to sell the land and dwelling. The land and home being bought and sold are joint property held by Herlina and M. Uzer. M.Uzer and Deslina Harahap's

purchasing and selling may be annulled because they do not fulfil the objective criteria of the agreement, authorised reasons in Article 1320 of the Civil Code. A selling also nullifies a buy. Thus, the Sungailiat Sub-District Head's deed of sale, which fails to fulfil formal and material standards, becomes legally defective and null and invalid. If the law is violated, the legitimate deed is null and void:

1. Article 1869 of the Civil Code says that a deed that, because of the powerlessness or incompetence of the employee referred to above or because of a defect in its form, cannot be enforced as an authentic deed but nevertheless has the force of a deed under hand if signed by the parties. This article contains provisions and has the power under hand in terms of:
 - a. Public officials are not authorized to make the deed ;
 - b. Public officials are not able (not able) to make the act ;
 - c. Defects in its shape.
2. Article 1320 of the Civil Code, which argues for the validity of an agreement must meet the conditions, namely :
 - a. Those who have committed themselves ;
 - b. Ability to make an agreement ;
 - c. A certain thing and
 - d. Lawful power.

Terms A and b are subjective conditions because they are about the person or subject who entered into the agreement, and if violations occur, the act can be cancelled. Terms c and d are objective conditions because they are about the agreement's contents, and if violations occur, the act is null and void. (Soraya Rafika Putri, Siti Hajati Hoesin 2019). M.Uzer's sale and purchase with Deslina Harahap without Herlina's consent in front of PPATS violated Article 36 of Law No. 1 of 1974 on marriage and Article 92 KHI, making deed of sale No. 594/019/SGT/2016 null and void. The sale and purchase deed that became invalid also affected Deslina Harahap's reversed certificate of property rights, which became unenforceable. According to Supreme Court jurisprudence no. 701 K / Pdt / 1997 dated March 24, 1999, "Joint property must be approved by the wife or husband; land sold by the husband without the wife's consent is invalid, null, and void. Land certificates from unauthorised sales and acquisitions are void." The sale and purchase become void when the deed is cancelled, and an unenforceable certificate of ownership has direct and indirect repercussions.

Direct effects (1) The sale and purchase, which became null and void, resulted in the return of land and a house building to Herlina and M.Uzer as joint property and (2) M.Uzer does not control the object, despite Decline's payment to M.Uzer, which is legal. Maka M. Uzer must refund Decline Harahap's purchasing price.

Indirect effects : (1) After receiving the object of sale and purchase, Herlina might split the joint property in half with M.Uzer by an agreement or a lawsuit to the Religious Court, (2) Deslina may sue and seek reimbursement from PPATS for the sale and purchase that caused losses, and (3) If the Certificate of Property Rights becomes unenforceable, Deslina must return the land to Herlina, in order to maintain joint ownership with M.Uzer.

3. CONCLUSION

Judgement number 31,80 K/PDT/2019 of the Supreme Court was based on a number of laws, including the Marriage Law, KHI, and the Civil Code, with a broader interpretation provided by regulations pertaining to land registration and jurisprudence. This decision confirms that a sale or purchase of joint property that has not been divided post-divorce without the ex-wife's consent is null and void, cancelling the Certificate of property rights and restoring the property's status as joint property. To avoid legal conflicts, the proposed suggestions stress that both parties

must be involved and give their consent in the post-divorce purchase and sale of joint property by PPATS. Buyers should do their research to make sure the transaction is legal and that the seller has the right to the item being sold or purchased. Married couples should think about what their options are.

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