

APPLICATION OF THE LIABILITY PRINCIPLE IN THE LAND SALE AS JOINT PROPERTY BEFORE A NOTARY

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Abstract

This study aims to comprehend the legal basis for selling land as joint property before a notary as well as to know and comprehend the application on principle liability as joint property before a notary. An empiric legal research approach was applied for this study. This study uses statutory approach and fact approach. In this study, primary data was sourced from interviews and secondary data came from the civil code, marriage law, literature, journals and the internet. Data processing is done by qualitative descriptive. The findings of this research indicate that a clause that prohibits the sale of land from joint property without the approval of the wife is incorporated in the agreement that governs the sale of land as joint property. In this case, the liability principle is applied in accordance with the agreement made by the husband as the seller of the land with the buyer. The husband was to blame for the agreement since he neglected to involve his wife in the business transaction involving the land seller. Therefore, according to the principle of liability, responsibility must fall on the shoulders of the seller.

Keywords: Joint Property, Land Sale, Liability, Notary

1. INTRODUCTION

Starting from the difference between necessity and the reality experienced in society, where there were legal norms that are violated in making a sale and purchase agreement. The violation of the Marriage Law, specifically Article 36 paragraph (1) (hereinafter abbreviated as the Marriage Law) stated that husband and wife were entitled to joint property with the full consent of both parties. Furthermore, paragraph (2) stipulated that the wife and husband had full rights to their assets. This legal norm clearly stated that there were good actions taken by the wife and husband with their consent. Against the clauses of the article, it can be said that all actions are based on the agreement of both parties. Meanwhile, related to objects brought into a legal marriage become joint property.

The intended property can be in the form of ownership rights of an object. Ownership of the property is obtained from marriage or during the marriage. It was clearly seen in the provisions of the article above which explains that only husband and wife have rights to joint property. All legal actions that are carried out, especially those related to joint property, must obtain the approval of both the approval of the wife and the approval of her husband.

In connection with the sale of land originating from joint assets, if someone does not comply with these provisions, then a sale and purchase transaction cannot be carried out (Indrawan & Munandar, 2022). The transaction cannot be carried out because it does not receive approval from each party. In other words, if the transaction is still carried out, then the transaction will be rejected by an official who has the authority to do so, such as a land deed official. If the person selling the land does not have the right to sell it, the land deed

official will reject the transfer of rights. Seeing its status, it is included in the category of joint property so that it requires the agreement of both in the transaction.

In this case, there was a transaction that did not invite and involve his wife. Where the land being sold was a joint property. Property rights were based on the consent of his wife. Meanwhile, the party who selling property rights was her husband as a seller. Thus, it can be said that the seller intends to sell the ownership rights to the land secretly. It was said secretly because the seller did not want his wife to know about the sale of ownership rights to the land. If the wife knows, then she will not be allowed to sell or not be allowed to sell the ownership rights to the land. The seller assumes that there are factors that the seller does not want when asking permission from his wife. Moreover, if his wife asks for a share of the proceeds from the sale of the land. If his wife asks for a share, then the seller will get very little money or not according to what he wants. On that basis, the seller did not ask for his wife's approval in the sale of land ownership rights that he did. Thus, there was a transfer of joint property objects without the consent of the wife.

Based on this fact, the seller must bear the risk as a result of his actions. The legal action of the seller is to make a transfer of ownership rights through a binding sale and purchase in advance of a Notary. In this binding, the buyer pays for the land sold in installments or is paid several times until it is paid off. The buyer must first provide an advance in accordance with the agreement. Subsequent payments were made in installments. The installments were carried out while waiting for the transition process to be paid in full, then proceed with the transfer of names and proceed to make a deed of sale and purchase. This stage has not yet reached the transfer of rights, but has arrived at the making of an agreement.

The sales transaction has been made in advance and an advance payment has also been made by the buyer. With the down payment, it can be said that the sale of ownership rights to the land is taking place. With the land sale transaction, the sale from the seller, including a legal act. Based on the sale of property rights, the seller can be held liable because the seller committed a legal action that violated the PP on Land Registration, by taking the title "The Application of Liability Principle in the Sale of Land as Joint Assets Before a Notary".

As for the state of art, comparing this study to several studies that have been conducted. According to previous studies, with the title "Responsibility of a Notary and land deed official Against the Sale and Purchase and Grants of Land Rights as Joint Assets Due to Divorce" by Brifi Engawita, and Farida Perihatini. The problem is what is the position of the deed of "sale and purchase and the deed of transfer of land rights as joint property due to divorce based on the Supreme Court Decision Number 1808 K/Pdt/2017? and What are the responsibilities of the Notary and land deed official for the authentic deed he made so that legal certainty can be maintained based on the Supreme Court Decision Number 1808 K/Pdt/2017? (Enggawita & Prihatini, 2021).

Research by Ida Ayu Putu Kristanty Mahadewi, and Dewa Nyoman Rai Asmara Putra." The research entitled "Legal Consequences and Settlement of Joint Assets Based on Marriage Law". The problem is what are the legal consequences of joint assets in the marriage agreement seen from the Civil Code and the Marriage Law and how is the settlement of joint assets in the marriage agreement based on the Civil Code and the Marriage Law? (Mahadewi & Putra, 2020). Another study entitled "State of Bankruptcy Assets in Religiously Divorced Marriages" by I Gede Krisna, and Marwanto (Krisna & Marwanto, 2021). The problem is whether in a divorce which is carried out according to religion which

has not been decided by the court, the husband/wife gets the distribution of joint assets? and what is the accountability for his mistakes when he gets a divorce or goes bankrupt? The three studies are certainly very different. As a result, the focus of this research is what sets it apart from another research. The first research object is about the Notary's responsibility for buying and selling, while the second research is the object of the Supreme Court's Decision and the third research is on the legal consequences and settlement of joint assets, while the object of current research is the application of the principle of liability in the sale of land as joint property before a Notary. Normative law is also the difference, while this study uses empirical legal research. In addition, the location of the research is also different, where the location of this research is carried out at the Notary's office and land deed official. Despite the fact that there are discrepancies, there are also similarities. The similarity lies in legal studies related to joint property. The difference and equation provide this research originality or by dating this research with previous research, this research is still said to be something that has never been studied.

Departing from these discrepant events, this research was conducted with the aim of understanding the legal basis for the sale of land as joint property before a Notary and aims to identify and understand the application of the principle of liability in the sale of land as joint property before a Notary.

2. RESEARCH METHOD

Types of empirical legal research, synonymous with the doctrinal method (Asikin, 2016). By this type of research, it was essential for the doctrines of legal scholars to analyze legal issues related to the legal basis for the sale of land as joint property before a Notary and the application of the principle of liability in the sale of land as joint property before a Notary. The type of statutory approach as well as the conceptual approach was employed to examine the legal issues. Those two types were chosen because the legislation analyzed the Marriage Law, the Civil Code and the Government regulation (PP) on Land Registration. The fact approach was chosen because an analysis of the practice was carried out in the Notary's office. This fact approach was used as a supporting material for this research. While the concept approach was used because it closely related to the concept of liability. The sources used were interviews with Notaries and land deed official, while secondary data was obtained from legislation, namely the Marriage Law and the Civil Code, literature, internet, and scientific journals related to the legal basis for selling land as joint property before a Notary and the application of the principle of liability in land sales as joint property before a Notary.

3. RESULT AND DISCUSSION

3.1. Land Sale as Joint Property before a Notary

The legal basis for selling land before a Notary, whether as joint property or not joint property, is the same as the legal basis for selling land in general. The sale of land made before a Notary was by making an agreement in advance. As stated above, the sale of land by the husband begins with making an agreement in advance. Land ownership rights were made to bind the relationship between the seller and the buyer (Dewi & Dianti, 2021).

Conceptually, the agreement was an act that binds himself to each other. There was the word “binding” in the formulation of the article, which means there was a desire to bind oneself to another party. The self-binding that desired was represented by the will of each individual. The existence of self-binding applies to another party, and the buyer also binds himself to the seller. The self-binding has occurred, even though the object has not been handed over (Utami & Suyatna, 2019).

Through the terms of the agreement, it was also determined the validity of the agreement that gives the validity of an agreement. The validity was contained in the contents of the agreement itself. There were four conditions to determine whether the agreement was valid or not. The provisions of this article also form the basis for the sale of his land. The ownership of the land that was being sold should be based on a valid agreement.

The application of the provisions in the Marriage Law means that land sales agreements were not allowed to be made privately (Satrianingsih, Ni Nyoman Putri, 2019). Hence, it must be authentic. If the transfer of ownership rights to land was made by means of an agreement, it became imperfect (Satrianingsih, Ni Nyoman Putri, 2019). An agreement made privately would remain an agreement that binds both parties or only has binding legal force, while its validity does not get guaranteed legal protection, which led the legal force it carries was limited. Legal protection was needed as proof of certificate ownership. The certificate could be entrusted to the land deed official with the aim of facilitating the parties in storing the certificate and preventing certificate loss (Natalia & Marlyna, 2021).

In connection with the promise made, the ownership rights refer to the validity of the agreement. The condition in determining the validity of an agreement to purchase property rights on land was the validity of the agreement. As determined and explained above, the conditions for the validity of the agreement include these four conditions. These four conditions serve as a standard conditions in an agreement. These conditions were also used in making the sale and purchase of mandatory land based on the legal terms of the agreement made before a notary (Wirayang & Suparjo, 2021).

3.2. Application of the Liability Principle in the Sale of Land as Joint Property before a Notary

The principle of liability, basically stated in the principle of liability, which defined as an responsibility for losses suffered by the buyer (Sukmawati & Purwanto, 2019). The loss was in the goods or services sold by the seller. The goods being sold were property rights to land as joint property, while the services being sold are agreements.

Meanwhile, the development of law in Indonesia has defined liability as a responsibility (Miru, 2011). Several types of responsibility were contained in the principle of liability, namely responsibility based on mistakes (Mahardika, 2022). Errors in the legal sense here include laws, ethics, decency and decency as living rules in society.

Based on the principle of liability, consumers should receive protection from the law (Ariawan & Griadhi, 2013). In relation to the sale of land, the buyer of the land was obliged to get legal protection because the buyer of the land was a consumer. Legal protection was given to the buyer because the buyer feels aggrieved by the seller. In this case, the buyer was afraid because the land being sold was a land from joint property that does not get the approval of the seller's wife. Therefore, the buyer feels aggrieved by the seller. If one day, the seller's wife knew about the sale and purchase of the land, the agreement that was

previously made would be sued. Hence, the transaction resulting in legal defects or legal cancellation. Thus, the application of the principle of liability was very important to protect the consumer (buyer) in order to get clarity from the transactions he made. The seller can be notified of negligence in the sale of the land, where the seller does not include his wife to approve the transaction. Likewise, negligence would have a bad impact on buyers in the future.

Negligence in carrying out such an act, apart from the person being responsible for the loss he incurs, he was also responsible for the person under his care (Asvatham & Purwani, 2020). On this basis, a person has responsibility for the losses he causes and the people in his care. In that responsibility, an action that must be carried out by the seller was charged. The compensation that should be provided is in exchange for the load that must be borne. Compensation from the seller should be carried out to carry out the liability of the seller.

In connection with legal events, in the form of selling property rights by the seller was included in the act against the law. In this case, the existence of an unlawful act was due to an element of resistance to the act. It was clear that the husband and wife have rights that were obtained during the marriage (Indriyani, Ketut, 2021). If the husband wanted to sell the ownership rights to the land, he should obtain the consent of the wife, or the wife should know about the sale of the ownership rights to the land. The existence of an obligation to notify the wife was on the basis that the wife has the right to joint property. Legal resistance from this seller was no longer justified. In addition, there was an element of error committed by the husband in the sale of land ownership rights. The error was made in that he did not inform his wife about the sale. In this case, the sale was made without the consent of his wife.

Based on the principle of liability, upon the fulfillment of the element of error, the seller should be responsible for the mistakes he made. The application of the principle of liability was a personal responsibility to the buyer (Putra, I., Wayan Dedi, 2021). As such, the liability in this case, should be borne by the seller. The loss suffered by the buyer should be borne by the seller. The seller was liable for the mistake he made. In addition, the seller was also responsible for the person who was under his responsibility. The person who was in charge of it is his own wife, where the wife is in a position under the responsibility of her husband and her rights to joint property were not obtained.

In other words, the application of the principle of liability should be carried out on agreements made by the husband as a land seller with the buyer. The agreement was a mistake on the part of the husband who did not include the wife in the land seller transaction. Thus, the seller should be responsible based on the principle of liability.

4. CONCLUSION

The legal basis for the sale of land is the basis for prohibiting the sale of land from joint assets without the consent of the wife. The application of the principle of liability is carried out personally to agreements made by the husband as the land seller with the buyer. The husband made a mistake by signing the agreement without including his wife in the transaction with the land seller. Thus, the seller must be responsible based on the liability principle.

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