

Analysis of Judges' Legal Considerations Against the Sale of Joint Assets Without the Wife's Agreement in the Study of Positive Law in Indonesia

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Abstract

The sale and purchase of land rights is usually carried out by means of an agreement or what is known as a land rights sale and purchase agreement. In the case of the transfer of land rights, the formal conditions for the sale and purchase of land rights must be proven by a deed of sale and purchase drawn up by and before an authorized official. Before the sale and purchase agreement is carried out, it is usually done with the initial agreement which the deed is drawn up by a notary. The responsibilities of a notary as a public official include the responsibilities of the notary profession itself which are related to the deed, including, the responsibility of a notary in civil terms for the deed he makes relates to the material truth of the deed. Then regarding joint assets that are sold without the consent of the husband and/or wife, is it possible, and does the notary have any responsibility for that. Then there is a court decision regarding joint assets which legalizes the sale and purchase deed because of the good faith buyer's consideration as stipulated in the Supreme Court Circular Letter No. 7 of 2012. The purpose of this study is to analyze the responsibility of a Notary related to the sale and purchase of joint assets and the legal considerations of judges who decide cases based on a circular letter which is not a general rule but an internal one that is not well known to the public. The research method used is normative, using secondary data obtained from library research including primary, secondary and tertiary legal sources. The responsibility of the notary, namely in making the deed of sale and purchase of joint property, is a civil responsibility, that is, all the regulations regulated in the UUJN only provide sanctions for violations of a formal notary, for example the rules for issuing deed and others. Judges should in deciding a case use general rules that are understood and understood by the community instead of using internal rules from the court itself which are not understood by the community, especially regarding buyers with good intentions.

Keywords: Responsibilities of Notaries; Joint Assets; Circular of the Supreme Court.

Аналіз юридичних міркувань суддів проти продажу спільного майна без згоди дружини в дослідженні позитивного права в Індонезії

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Анотація

Купівля-продаж прав на землю зазвичай оформлюється договором або так званим договором купівлі-продажу прав на землю. У разі передачі прав на землю формальні умови купівлі-продажу прав на землю мають бути підтверджені актом купівлі-продажу, укладеним уповноваженою посадовою особою. Перед укладанням угоди купівлі-продажу зазвичай нотаріусом оформлюється первинна угода. Обов'язки нотаріуса як державної посадової особи включають обов'язки самого нотаріуса, зокрема його цивільно-правову відповідальність за вчинений ним правочин, пов'язаний із матеріальною реальністю правочину. Постає питання щодо спільного майна, яке продається без згоди чоловіка та/або дружини, чи можливо це та чи несе за це відповідальність нотаріус. Потім є рішення суду щодо спільного майна, яким легалізується договір купівлі-продажу та вирішується питання про добросовісність покупця, як це передбачено Циркулярним листом Верховного Суду № 7 від 2012 р. Метою цього дослідження є аналіз відповідальності нотаріуса, пов'язаної з продажем та купівлею спільного майна, а також юридичних міркувань суддів, які вирішують справи на основі циркулярного листа, що є не загальним правилом, а внутрішнім правилом, яке є неправильним і невідоме громадськості. У статті застосовано нормативний метод дослідження з використанням вторинних даних, отриманих у результаті наукових досліджень, включаючи первинні, вторинні та третинні правові джерела. Зауважено, що відповідальність нотаріуса у вчиненні договору купівлі-продажу спільного майна є цивільно-правовою, тобто всі норми, регламентовані в UUJN, передбачають санкції лише за формальні порушення нотаріуса, наприклад, правил видачі акта та ін. Розглядаючи справу, судді мають керуватися загальними правилами, зрозумілими громаді, замість використання внутрішніх правил самого суду, особливо щодо покупців з добрими намірами.

Ключові слова: обов'язки нотаріусів; спільне майно; Циркулярний лист Верховного суду.

Introduction

In this Globalization Era, land is an important thing in the life of the Indonesian people, because Indonesia is an agrarian country (Agricultural Country), therefore the existence of land is a must, besides that land is also a very important need for most of the people. Indonesia to make a place to live. Given the importance of the existence of land, it is not uncommon for land to become the subject of disputes, especially in terms of land ownership. In addition, with the increasing population growth, the need for land or land increases which makes land prices also higher.

People in their daily lives are bound by other parties. It is through this engagement that their needs are relatively easy to fulfill rather than being carried out alone. The interaction between group members is a pattern of human life that is patterned as a zoon politicon. Through interaction as a way of fulfilling life's needs, it is impossible to avoid it, both in the context of obtaining clothing, food or shelter needs, and the matter of regeneration is no exception as a natural demand. Our results indicate that inheritances do not lead to large reduction in the labor supply of men and married women [1].

Not only that, the amount of land that can be controlled by the Indonesian population is also very limited, while the number of Indonesian people who need land is constantly increasing. In addition to the increasing number of people who need land to be used as residences, economic, social, cultural and technological progress and development require the availability of more land for plantations, livestock, factories, offices, entertainment venues and roads for transportation facilities. To regulate the use of land and land so as not to cause disputes in the community, on September 24, 1960 a law on land was issued, known as Law Number 5 of 1960 concerning Basic Agrarian Regulations or better known as Basic Agrarian Law (UUPA). The development of an increasing population as it is today, in addition to the limited availability of existing land/land, also because the available land has never increased from time to time, the need for land/soil is also getting higher. Obtaining land nowadays is also not an easy thing amidst the high demand for land, especially for urban areas. One way that can be taken to obtain land rights today is by buying and selling land rights.

The sale and purchase of land rights is usually carried out by means of an agreement or what is known as a land rights sale and purchase agreement. Based on customary law, the sale and purchase agreement of land rights is a real agreement, meaning that the delivery of the promised goods is an absolute requirement to be fulfilled for the existence of an agreement. In other words, if something has been agreed upon, but in practice the object of the agreement has not been handed over, then the agreement is deemed not to exist or there

has been no agreement, besides that it also adheres to the principle of light and cash, namely buying and selling in the form of surrendering rights forever and at the time of it is also paid by the buyer received by the seller. The nature of clear and cash is the nature of buying and selling land according to customary law which is recognized under Article 5 of the UUPA which reads "agrarian law that applies to earth, water and space is customary law, as long as it does not conflict with national and state interests".

Buying and selling in the community with the object of buying and selling land rights, is also carried out with a written agreement to provide more legal certainty, because land rights are included in the object of the agreement which are specifically regulated in the applicable laws and regulations. As with the principle of *lex specialis derogat legi generali*, which means that specific laws override general laws. Every legal action concerning land rights is bound and must follow the provisions stipulated in the legislation.

The sale and purchase of land rights is regulated in Government Regulation Number 24 of 1997 concerning Land Registration and Government Regulation Number 24 of 2016 amendments to Government Regulation Number 37 of 1998 concerning Position Regulations for Making Land Deeds (PPAT) which must be carried out before the authorized official Maker of Land Deeds (PPAT). The main duties and authorities of the PPAT have been regulated in Article 2 paragraph (1) of Government Regulation Number 24 of 2016 amendment to Government Regulation Number 37 of 1998 concerning Regulations for the Position of Making Land Deeds (PPAT), namely the PPAT has the main task of carrying out some of the land registration activities by making deed as evidence that certain legal actions have been taken regarding land rights or ownership rights to flats, which will be used as the basis for registering changes to land registration data resulting from said legal actions, and Article 3 paragraphs (1) and (2), namely, Article 3 paragraph (1) "To carry out the main tasks referred to in Article 2, a PPAT has the authority to make authentic deeds regarding all legal actions as referred to in Article 2 paragraph (2) regarding land rights and ownership rights to flats located in in his work area". Article 3 paragraph (2) "The special PPAT is only authorized to make deeds regarding legal actions specifically mentioned in its appointment".

In the case of the transfer of land rights, the formal conditions for the sale and purchase of land rights must be proven by a sale and purchase deed made by and before the Land Deed Making Officer (PPAT), in accordance with Government Regulation Number 24 of 1997 concerning land registration, where the sale and purchase is carried out before the PPAT who will issue the Deed of Sale and Purchase, the deed will be used as a condition for registering land at the

land office. The deed made by the PPAT is an authentic deed, where the form and content have been determined by laws and regulations and have perfect evidentiary power.

Article 35 paragraph 1 of Law Number 1 of 1974 Concerning Marriage states that assets acquired during marriage are joint assets. Article 36 paragraph 1 of Law Number 1 of 1974 also states regarding joint assets. Husband or wife can act with the consent of both parties in the form of an agreement. If the conditions for the validity of the agreement in Article 1320 of the Civil Code are not fulfilled, it will result in the deed of transfer of rights over the land being cancelled or null and void by law. The deed of transfer is null and void if the deed does not meet the objective requirements as in Article 1320 of the Civil Code, namely the requirements regarding a certain matter and a lawful cause.

Role according to Poerwadar Minta is "an action taken by a person or group of people in an event". Based on the opinion above, the role is an action carried out by a person or group of people in an event, the role is a set of expected behavior, owned by a person or someone who is domiciled in the community. What is described above, in particular regarding the deed drawn up by a notary, is an integral part of his roles and responsibilities as a public official. The responsibilities of a notary as a public official include the responsibilities of the notary profession itself which are related to the deed, including the civil notary's responsibilities for the deed he makes related to the material correctness of the deed, the notary's responsibilities based on the notary's position regulations and the code of ethics. Meanwhile, the authority of a Notary according to UUJN article 15 outlines is to make authentic deeds regarding all actions, agreements and stipulations required by laws and regulations, legalize signatures and determine date certainty, affix letters under hand and make letterhead and other authorities regulated in laws and regulations. The provisions regarding the authorities and responsibilities of a Notary are important parts in the context of achieving legal certainty, order and legal protection with regard to valid evidence, especially in cases that are being experienced by each party in a court decision regarding joint assets.

Based on the example of the decision case number 60/PDT/2018/PT BTN, this started with a person named Sherly (the plaintiff) who knew that there had been a sale and purchase of land rights that had taken place between Haryanto (the plaintiff's husband) and PT. Makmur Persada Indonesia (defendant 2) on 14 February 2013 as evidenced by the deed of sale and purchase number 53/2012 dated 14 December 2012 drawn up by and before Notary and PPAT Hasanawati Juweni Shande, S.H.,M.Kn. (Defendant 1). The plaintiff married Haryanto in 1982 as evidenced by marriage certificate number 26/CS./Akte1982 dated

14 September 1982, and in 1983 Haryanto and the plaintiff were blessed with a child named Maureen Yoanita Haryanto as evidenced by birth certificate number 282 dated 21 September 1983.

On December 2, 2000, Haryanto purchased a plot of land from Eha Julaeha with title certificate number 287 in the name of Eha Julaeha, with an area of 22,215 m² as stated in the deed of sale and purchase number 63/2000 dated August 16, 2000, drawn up by Notary Dra. Lily Iswanti Sudjana, S.H. The land title has also been reversed to the name Haryanto. However, in February 2017 the Plaintiff knew from a statement issued by the Serang District Land Office that the certificate in the name of Haryanto had changed its ownership to that of PT. Prosperous Persada Indonesia.

It was also completely unknown to the plaintiff that her husband had made a sale and purchase transaction of land rights without her consent, which, judging by this land, is still joint property between Haryanto and the plaintiff because it was obtained after the marriage between the two of them. Haryanto and the plaintiff had previously never entered into a marriage agreement. During the process of buying and selling land rights, Haryanto was ill so Haryanto gave the power of attorney to sell to Dicky Iksan Soetikno as the director of PT. Makmur Persada Indonesia as outlined in the Purchase Agreement (PPJB) number 1 dated October 1, 2012 made by and before Notary Lili Isnawanti Sudjana, S.H.

At the time of making the PPJB, Haryanto admitted that he was not married to anyone and was proven by Haryanto's identity data and a statement that he was not married. In the process of drawing up the Sale and Purchase Deed, Haryanto was never present to carry out the arrangements. Dicky, as the beneficiary of Haryanto's power of attorney, was only able to arrange the sale and purchase of the land that was to be sold by Haryanto. PPAT also stated in his statement that he did not know who Haryanto was at all.

In this case, in one of the judge's considerations in the Judicial Review decision Number 909 PK/Pdt/2020, there is one interesting thing, that is, the Judge decided that one of them was based on the Supreme Court Circular Letter Number 07 of 2012 which stated that the Supreme Court decision or cassation level was cancelled. A Supreme Court Circular is a form of regulation issued by the Supreme Court. The Supreme Court Circular itself was made based on the regulatory function and was first formed in 1951. In 1950 the Supreme Court Circular was made for judicial control. The Supreme Court Circular deals with warnings, admonishing necessary and useful directions to courts under the Supreme Court.

The Supreme Court Circular serves as a policy regulation or policy regulation in the form of a formal function. However, the role of the Supreme Court Circular

Letter in the formation of law in Indonesia is very large. Especially creating laws that are responsive to people's sense of justice. An example is the Supreme Court Circular Number 3 of 1963, from this the Supreme Court Circular Letter reverses several articles in *Wetboek Burgelijk*. Because those regulations are no longer in accordance with the sense of justice of the people in Indonesia. From the explanation comes the question, regarding the function and legal standing of the Circular Supreme Court in the *ius constitutum* of Indonesia.

From the foregoing, is it relevant for a circular letter to be used as the basis for a court decision that has permanent legal force and overrides the positive law in force in Indonesia. Especially regarding joint assets that are regulated in written regulations. Then, what is the role and then the legal responsibility of the notary as a public official regarding the validity of a deed made by a notary, both a sale and purchase deed or a binding sale and purchase agreement which is a form of *obligatoir* prior to carrying out the handover or levering in the form of a certificate of land rights. There is a causal relationship in buying and selling in the civil realm that connects a deed that can be null and void and/or can be canceled if it is not in accordance with the provisions of the existing laws and regulations in Indonesia which the author will describe in the next section of this research.

Research Problems

Based on the brief description above, the researcher wants to raise a problem formulation as follows. Discussion first, What are the responsibilities of a notary in making a deed of sale and purchase of joint property land. Second, Position of Supreme Court Circular Letter No. 7 of 2012 concerning Legal Formulation of the Results of the Plenary Meeting of the Supreme Court Chambers as a Guideline for the Implementation of Duties for Courts in Law in Indonesia which is used as the basis for judges' legal considerations in deciding cases at the District Court related to joint assets.

Materials and Methods

This research will be structured using normative juridical research. Namely, research focused on examining the application of rules or norms in positive law. The approach method used in this research is a statutory approach (Statute Approach), an analytical approach (Analytical Approach), and a conceptual approach (Conceptual Approach). The data needed to do used in this research is secondary data. Primary legal materials include the Civil Code, Law No. 1 of 1974 concerning Marriage, Civil Code of Indonesia, law No. 12 of 2011 concerning the establishment of laws and regulations and Supreme Court Circular No. 7 of 2012. Then secondary legal materials include libraries in the field of law, research results in law, scientific articles, journals, and the internet.

Researchers use the library data collection method by collecting several books, documents, laws and regulations, scientific works, and other literature. The legal materials obtained will be analyzed qualitatively.

Results and Discussion

Responsibilities of Notaries in making deed of sale and purchase of joint property land

Family wealth is the most important thing and/or is a human right as specified in Article 36 of Law Number 39 of 1999 concerning Human Rights, which says that: "Every person has the right to own property, both individually and collectively. Together with other people for the development of himself, family, nation and society in a way that does not violate the law. Based on this explanation, it can be interpreted that wealth or property is needed in a marriage. The problem of marital property is a problem that has a very big influence on family life, especially for husbands and wives, especially when they are divorced. Therefore, in Chapter VII Article 35 of the Marriage Law, it is regulated about property in marriage. There is a provision that Article 35 of the Marriage Law stipulates that:

Paragraph (1) stipulates: "Assets acquired during marriage become joint property", then paragraph (2) states that, "Inherited assets of each husband and wife and assets each acquired as a gift or inheritance, is under the control of each as long as the parties do not determine other things".

The provisions of Article 35 of the Marriage Law mentioned above have in common with the provisions of Article 36 of Law Number 39 of 1999 concerning Human Rights. Bearing in mind that property rights, both individually and collectively, are human rights, it is necessary to clarify the scope of private property rights and joint property rights in a marriage. Because, real marriage is related to the private property rights of the husband or wife, it is also related to the joint property rights between husband and wife while in marriage. Therefore, paragraph (1) of Article 35 of the Marriage Law regulates joint assets during marriage and paragraph (2) of Article 35 of the Marriage Law regulates the personal assets of each husband or wife. Strictly speaking private property rights as human rights and collective property rights as human rights must be strictly regulated regarding the extent of their scope so that there is no confusion and conflict of property rights between the two.

Article 119 of the Civil Code stipulates that, starting from the time the marriage takes place, by law a unanimous union between the husband and wife's assets applies, just regarding that the marriage agreement is not made with other provisions. The union of assets is as long as the marriage is carried out and may

not be abolished or changed by any agreement between the husband and wife. If you intend to deviate from this provision, the husband and wife must take the path of the marriage agreement stipulated in Articles 139 to 154 of the Civil Code.

Articles 128 to 129 of the Civil Code, stipulate that if the marital ties between the husband and wife are broken, then the joint property is divided in half between the husband and wife regardless of which party the wealth was previously obtained from. Regarding the marriage agreement it is justified by Legislation as long as it does not violate the morals and general order that apply in people's lives.

Property acquired during marriage becomes joint property. Each husband and wife regarding the assets obtained by each as a gift or inheritance are under the control of each as long as the parties do not specify otherwise. Regarding this joint property, the husband or wife can act to do something with the joint property with the agreement of both parties. It is also stated that the husband or wife has the full right to take legal action regarding the joint property if the marriage is broken up due to divorce, then the joint property is regulated according to their respective laws.

The legal responsibilities of a notary in the deed he made are listed in the Notary Position Regulations No. 2 of 2014. The birth of a notary's responsibilities is inseparable from the obligations and authorities for those who are carried. A Notary is charged with responsibility for the formal, material correctness of the deed he made if the Notary is indeed proven in court that the Notary committed carelessness or was intentional to the detriment of the parties [2]. In other words, an authentic deed legalized before a notary can be said to be null and void in a court decision so that the holder of the deed will feel that they have been harmed by the deed, so the notary needs to be responsible for his mistakes. In terms of accountability for the deeds he made while in office, the Notary remains responsible for all the deeds until the Notary retires. Accountability deed is divided into four, namely:

1. Civil Notary Responsibilities

All regulations stipulated in the UUJN only provide sanctions against notary violations of a formal nature, for example the rules for issuing deed and others. However, the notary also has responsibility for the material in the deed he publishes. On the notary's authority in providing legal advice to appearers (Article 15 letter e UUJN). If the Notary makes a mistake in giving legal counseling to the appearers having a relationship with the deed he published, the Notary has responsibility from a civil perspective in the material truth in the deed he issued.

2. Notary Criminal Responsibilities

A criminal act is an act that is not permitted by a legal regulation, the prohibition is followed by a threat, namely a sanction that has a certain criminal form for anyone who commits the violation. A criminal act is said to be an act that is not permitted by law, and if there is a violation related to this prohibition, it will be accompanied by sanctions, in the form of certain crimes. In carrying out his position as a Notary, the crime in question is a crime carried out by a Notary as a public official who has the authority to issue authentic deeds regulated in UUJN.

3. Notary Responsibilities based on UUJN

Article 65 of the UUJN states that a Notary has responsibility for the deed issued even though the Notary's protocol has been handed over to the recipient of the protocol. In this article, it is explained that the Notary bears an accountability for the deed based on UUJN.

4. Notary Responsibilities based on the Code of Ethics

As a public official, a notary in carrying out his duties cannot be separated from ethics. The ethics referred to here are the code of ethics for the Notary profession that exists and aims to ensure that notaries truly carry out their duties professionally, morally and skillfully in rational argumentation [3].

Notaries must still adhere to existing regulations and the professional code of ethics when carrying out their duties and authorities. Related to this, the aim is to maintain the dignity and worth of a notary because the position occupied by a notary is a position of direct trust sent by the State. In this regard, notaries are also expected to be able to comply with every regulation that exists in society, not only comply with the regulations governing their position. This is certainly intended so that the public and all parties can understand that the Notary profession is a very noble and dignified profession [4].

In social life, a notary is highly trusted as an expert in the civil field, especially in the notary field, so in carrying out his profession, a notary must be responsible for every deed he makes, besides that, a notary in carrying out his position must be based on special characteristics, namely:

1. Honest to himself.
2. Good and true.
3. Professional [5].

In terms of the responsibility of a notary in making a deed of sale and purchase of joint assets is a civil responsibility, that is, all the regulations regulated in the notary office law only provide sanctions against notary violations of a formal nature, for example the rules for issuing deed and others. However, the notary also has responsibility for the material in the deed he publishes. On the

notary's authority in providing legal advice to appearers (Article 15 letter e notary office law). If the Notary makes a mistake in giving legal counseling to the appearers having a relationship with the deed he published, the Notary has responsibility from a civil perspective in the material truth in the deed he issued. This can result in a deed being null and void because the sale was made without a marriage agreement. The sale of joint assets must obtain the approval of the husband and/or wife, this is in accordance with Article 36 paragraph (1) of Law Number 1 of 1974 concerning Marriage which states, regarding joint property, the husband or wife can act with the consent of both parties.

The position of the Supreme Court Circular Letter No. 7 of 2012 which is used as the basis for the legal considerations of judges in deciding cases at the District Court regarding joint assets

In Decision Number 909 PK/Pdt/2020 of the Supreme Court at the review level, the judge in one of his legal considerations, one of which was to make a circular letter to decide on a civil case. The sound of legal considerations is as follows:

1. That Judex Juris decisions and considerations are incorrect and wrong because they do not pay attention to or guide the Supreme Court Circular Letter (SEMA) Number 7 of 2012 concerning the Agreement on the Plenary Meeting of the Civil Chamber, so that Judex Juris decisions have resulted in the non-realization of unity in application of the law or consistency of decisions the decision of the Supreme Court of the Republic of Indonesia which ultimately creates injustice.

2. Whereas the Supreme Court Circular Letter (SEMA) Number 7 of 2012 basically states that: A land buyer with good intentions has the right to obtain legal protection and the original owner who has the right can only claim compensation from the seller who is not entitled. The concept of a land buyer with good intentions was then strengthened and clarified by the Supreme Court Circular Letter (SEMA) Number 4 of 2016 concerning the Agreement of the Plenary Chamber Meeting which in essence is that a buyer with "good faith" buys land from the seller as the owner of the land as evidenced by proof of ownership. legally, the sale and purchase is carried out in front of the PPAT, at the time of sale and purchase of land the object of sale and purchase is not being confiscated or in a case.

3. Whereas in the a quo case Defendant II clearly met the criteria referred to in the Supreme Court Circular Letter (SEMA) Number 4 of 2016, namely buying from Haryanto whose name was listed in the Certificate of Ownership (SHM) Number 287/Tonjong, the sale and purchase was carried out on the basis Deed of Sale and Purchase (AJB) Number 53 of 2012, dated December 4, 2012 before

Notary/PPAT Hasnawati Juweni Shande, S.H., M.Kn., the land for sale and purchase is not in confiscation or litigation status. Before the Sale and Purchase Deed was carried out, Haryanto had entered into a Sale and Purchase Agreement (PPJB) Number 01, October 1, 2012 with Defendant II as a prospective buyer before Notary/PPAT Lily Isnawati Sudjono and the seller had explained his status was not married, then based on PPJB Number 01 This was followed up on October 1, 2012 with the Sale and Purchase Deed Number 53 of 2012, December 4, 2012. The object of the case was only identified as joint property after the Sale and Purchase Deed was executed.

Another interesting point besides the judge making a circular letter as a legal basis in deciding a case is that on point 2 the judge's consideration is that the buyer is in good faith. Before the writer discusses about good faith buyers, the writer will discuss the legal rules used in Indonesia in general. There is a principle in the world of law namely, the principle of *lex superior de rogat lex inferior*, higher regulations will override lower regulations if they regulate the same and contradictory substances. Then the principle of *lex specialist derogat lex generalis*, more specific regulations will override general regulations if they regulate the same and contradictory substances. According to Padmo Wahjono, laws and regulations are arranged in a multilevel arrangement like a pyramid which is the cornerstone of the national legal system [6].

Juridically, in the elucidation of Article 7 paragraph (2) of Law No. 12 of 2011 it is stated that what is meant by hierarchy is the hierarchy of each type of statutory regulation based on the principle that lower statutory regulations may not conflict with other statutory regulations. higher legislation. Thus, in every formation of laws and regulations must pay attention to the hierarchical system of laws and regulations, so as to create harmony between laws and regulations. invitations formed by various higher and equivalent statutory regulations. In this case, regional regulations as statutory regulations whose hierarchy are at the lowest level, in their formation must be guided by statutory regulations with a higher hierarchy [7].

In Indonesia, this chain of legal norms is actualized into a hierarchy of laws and regulations as stipulated in Law No. 12 of 2011 concerning the Establishment of Legislation (UU No. 12 of 2011). Article 7 paragraph (1) Law No. 12 of 2011 mentions the types and hierarchies of laws and regulations in Indonesia, name:

1. The 1945 Constitution of the Republic of Indonesia.
2. Decree of the People's Consultative Assembly.
3. Laws/Government Regulations in Lieu of Laws.
4. Government Regulations.
5. Presidential Regulation.

6. Provincial Regulations.

7. Regency/City Regional Regulations.

In view of the foregoing, it is not stated that a circular letter qualifies as a statutory regulation both in terms of its composition in accordance with the regulations mentioned above or in Indonesian positive law. Meanwhile, if we look at a decision of the Supreme Court which has legal force as jurisprudence for the development of law in Indonesia. Jurisprudence in Indonesia has an important position in forming new laws that are generally applicable based on the parameters of justice, legal certainty and expediency [8].

Then what if a court decision uses the Circular Letter's consideration basis in making a decision, whether it is relevant or not. If we look at the subject, its users can be classified into policy rules (*bleidsregel*), because the circulars themselves are usually shown to judges, clerks and other positions in court. The existence of *bleidregels* itself is a consequence of the enactment of the rule of law concept. Policy regulations are free policy products set by state administration officials in the context of carrying out government tasks [9].

But regulations formed by the Supreme Court certainly cannot be equated with regulations formed by the legislature. The Supreme Court can only form regulations if the law is unclear or does not regulate. But this is not absolutely implemented by the Supreme Court. We certainly still remember Circular letter No. 3 of 1963, where the Circular letter canceled several articles in the *Burgelijk Wetboek (BW)*. In the Circular letter, the Supreme Court explained that the Articles that were canceled did not fulfill the Indonesian people's sense of justice. We can understand this, because *BW* is a product of Dutch law which has been changed from the original for the benefit of colonizing the Indonesian people. Circular letter itself is a policy regulation with the first several reasons, seen from the shape of the Supreme Court Circular Letter which does not have a formal form similar to statutory regulations in general. In general, laws and regulations have forming parts such as naming, preamble, body, and closing. We find these parts incomplete in the Supreme Court Circular Letter so that from a formal perspective we can assume that Circular letter is not a Statutory Regulation.

In the book *Regarding Law* by Prof. jimmy Asshidiqie Circular Letters are classified in policy rules or quasi legislation. Therefore, if we look at it in terms of naming by ignoring the legal basis for the effectiveness of each circular letter. So it can be assumed that the Supreme Court Circular is a policy regulation [10].

The law gives the Supreme Court the authority to form laws or rule making power. This authority is given so that the Supreme Court can resolve issues that are not regulated in detail in statutory regulations. However, not all circular

letters can be categorized as carrying out the function of rule making power. Only a circular letter from the Supreme Court regulates procedural law and fills in the legal void. With reference to the provisions of Article 8 of Law No.12 of 2011 regarding the formation of laws and regulations, the Supreme Court circular which is based on the provisions of article 79 of Law No. 14 of 1985 concerning the Supreme Court has binding legal force and can be classified as statutory regulations.

But as long as there are regulations that have a higher position and are not in a regulatory vacuum, a circular letter should not be used as a basic rule in a judge's consideration in deciding a case. In this case, there is still positive law in Indonesia, in this case the Civil Law, which is very relevant, especially in deciding the cases described above, namely regarding good faith.

In good faith there are no rules that clearly explain the meaning. But only a few opinions from legal experts explain the meaning of good faith. Good faith according to Prof. Dr. Rahmadi's destiny means the buyer's ignorance of the defect in the transfer of rights to the land he has acquired and this ignorance is not the fault or carelessness of the buyer [11]. Meanwhile, according to Subekti, a Buyer with Good Intentions is defined as a buyer who does not know at all that he is dealing with a person who is not actually an Owner [12].

The meaning of good faith in the literature is further divided into two categories, namely subjective good faith and objective good faith, although in the case of good faith buyers the literature in Indonesia only refers to the subjective meaning. Subjective good faith is defined as the honesty of the buyer who is not aware of any defects in the transfer of rights; Meanwhile, objective good faith is defined as decency, in which the actions of a person (eg a Buyer) must also be in accordance with the general view of society. According to the Civil Code, however, the element of knowing whether the acquired property is legal or not is mentioned as the main element that distinguishes between a bezit (position of power) with good intentions and a bezit (position of power) with bad intentions.

Meanwhile, a somewhat 'formalistic' notion was put forward by Muhammad Faisal, 47 that a person is said to have good faith, when his position when obtaining said property is in accordance with the applicable laws and regulations and he is not aware of any legal defects in obtaining said property [13].

Article 531 of the Civil Code states: "Acquisition in good faith occurs when the possessor obtains the object by obtaining ownership without knowing that there is a defect in it". While Article 532 of the Civil Code states: "A possession in bad faith occurs when the holder knows that the item he is holding is not his property. If Bemegang Besit is sued before a judge and in this case is defeated, then he is considered to have bad faith since the case was filed".

The concept of a Good Faith Buyer in the regulations is very vague, and does not explain at all what is considered good faith itself. It is possible that the meaning of 'good faith' itself has shifted from its original context, as can be found in the Court's decisions which will be discussed below. The buyer can be considered in good faith if he has carefully examined the material facts (physical data) and the validity of the transfer of rights (juridical data) over the land he purchased before and during the process of transferring land rights. If the buyer knows or can be considered to have known the flaws in the process of transferring land rights (for example, the seller's lack of authority), but he continues to buy and sell, then the buyer cannot be considered as having good faith.

The potential for disputes to arise is also due to the fact that the legal sources of land sale and purchase agreements are still diverse. In relation to the issue of the diversity of legal norms used as a reference in the practice of land sale and purchase agreements in Indonesia, we will at least find three types of regulations that are different from one another, namely the UUPA and its implementing regulations, Civil Law, and the Civil Code. Even though in the context of the land sale and purchase agreement the Civil Code is declared no longer valid, as a form of agreement, the land sale and purchase agreement also cannot be ignored by the existence of the Civil Code which does regulate the issue of agreements in more detail [14].

The basis for the judge's decision was based on a circular letter which said "By using circular letter No. 7 of 2012 point IX, it reads:

- "Protection must be given to a Good Faith Buyer even if it is later found out that the seller is an unauthorized person (object of buying and selling land)".
- "The Originator can only file a claim for damages against the Seller who is not entitled".

Meanwhile, regarding the notion of good faith, as also explained earlier, in principle it means that the buyer does not know any defects related to the legitimacy of the goods he has obtained. Thus, in the context of Dutch law there are three things that the buyer may not know, namely (1) whether the transfer is valid or not, (2) whether the title is valid or not, and/or (3) whether the transferor is authorized or not.

According to the provisions of PP No. 24 of 1997 and some related literature, the validity of buying and selling land is assumed to be fulfilled by buying and selling through PPAT and land registration mechanisms that have been required by the regulation. However, in practice there is also the possibility that the judge will assess the accuracy of the buyer himself, if the good faith of the buyer is questioned by the opposing party. The buyer is not considered to have good faith if he does not find out the things he should know about the land he is buying.

The principle of precision or prudence has not been widely discussed in the literature. However, the judges' decisions have indicated several situations where the buyer should have been more careful in making purchases, namely by examining the authority of the party selling the land (including the possibility of needing approval from other parties), the status of the land (not being confiscated or in dispute), there is no conflicting information in the sale and purchase document, it is not currently under the control of another party, or there may be a warning from the competent authority regarding the status of the land. If these things are not examined carefully by the Buyer, he is considered not having good faith.

The legal basis for judges in deciding cases should use general rules that already exist in Indonesia and society, instead of using a circular letter that only applies to internal courts that are not known by the public. There are many regulations that should be used as a basis for judges' considerations to use as a basis in deciding civil disputes on the sale and purchase of land and buyers in good faith, including the 1945 Constitution of the Republic of Indonesia, the Indonesian National Civil Code, Government Regulation No. 24 of 1997 concerning Land Registration.

Meanwhile, the judge's decisions tend to only test the fulfillment of formal requirements, namely the sale and purchase is carried out before a notary and the registration is carried out at the land office. Determining whether or not good faith exists is no longer carried out by first examining the legitimacy of the sale and purchase of the land in question (which, if the legal defects are found to be unknown to the buyer, can keep him protected), but the assessment of whether or not good faith exists is what is used to determine whether it is legal or not. transfer of rights through buying and selling.

Conclusion

1. In terms of accountability for the deeds he made while in office, the Notary remains responsible for all the deeds until the Notary retires. Accountability deed is divided into four, namely:

a) Civil Notary Responsibilities

All regulations stipulated in the UUJN only provide sanctions against notary violations of a formal nature, for example the rules for issuing deed and others. However, the notary also has responsibility for the material in the deed he publishes. On the notary's authority in providing legal advice to appearers (Article 15 letter e UUJN). If the Notary makes a mistake in giving legal counseling to the appearers having a relationship with the deed he published, the Notary has responsibility from a civil perspective in the material truth in the deed he issued.

b) Notary Criminal Responsibilities

A criminal act is an act that is not permitted by a legal regulation, the prohibition is followed by a threat, namely a sanction that has a certain criminal form for anyone who commits the violation. A criminal act is said to be an act that is not permitted by law, and if there is a violation related to this prohibition, it will be accompanied by sanctions, in the form of certain crimes. In carrying out his position as a Notary, the crime in question is a crime carried out by a Notary as a public official who has the authority to issue authentic deeds regulated in UUJN.

c) Notary Responsibilities based on UUJN

Article 65 of the UUJN states that a Notary has responsibility for the deed issued even though the Notary's protocol has been handed over to the recipient of the protocol. In this article, it is explained that the Notary bears an accountability for the deed based on UUJN.

d) Notary Responsibilities based on the Code of Ethics

As a public official, a notary in carrying out his duties cannot be separated from ethics. The ethics referred to here are the code of ethics for the Notary profession that exists and aims to ensure that notaries truly carry out their duties in a professional, moral and skilled manner in rational argumentation.

2. Juridically, in the elucidation of Article 7 paragraph (2) of Law No. 12 of 2011 it is stated that what is meant by hierarchy is the hierarchy of each type of legislation based on the principle that lower laws and regulations may not contradict with higher laws and regulations. Circular Letter is not a general regulation, but an internal one from the court itself. Regarding the judge's opinion, the buyer in good faith in principle means that the buyer does not know any defects related to the legitimacy of the goods he has obtained. Meanwhile, the judge's decisions tend to only test the fulfillment of formal requirements, namely the sale and purchase is carried out before a notary and the registration is carried out at the land office. Determining whether or not there is good faith is no longer done by first examining the validity of the sale and purchase of the land concerned.

Recommendations

1. Notaries must be shrewd and careful before making a deed of sale and purchase of land and other agreements. Must be careful in exploring the identity of the appearers. In particular, regarding whether the information submitted by the plaintiff and the appearer's documents is correct or not, because the sale of joint property must obtain the approval of each party, namely the husband and/or wife, do not let the notary become co-defendant and become a problem in court because the deed he made.

2. The legal basis for judges in deciding cases should use general rules that already exist in Indonesia and society, instead of using a circular letter that only applies to internal courts that are not known to the public. There are many regulations that should be used as a basis for judges' considerations to use as a basis in deciding civil disputes on the sale and purchase of land and buyers in good faith, including the 1945 Constitution of the Republic of Indonesia, the Indonesian National Civil Code, Government Regulation Number 24 of 1997 concerning Land Registration.

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