

Unilaterally Transferred Joint Property

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Abstract – Decision Case Number 577/PDT/2019/PT.BDG ratifies the existence of an agreement whose object is joint property carried out by one of the parties. An agreement is said to be valid if it has fulfilled the conditions for the validity of the agreement, both subjective and objective conditions, as stated in Article 1320 of the Civil Code. As a result of an agreement that does not meet the objective requirements, the agreement is null and void. As a result of being null and void, the agreement is deemed to have never existed. The transfer of rights to land which is a joint property should be agreed upon by both parties, in this case husband and wife, because from the joint property both parties have partial rights.

Keywords – Joint Assets, Transfer, unilaterally.

I. INTRODUCTION

One example is the case of Decision Number 577/PDT/2019/PT.BDG where in the decision the Bandung High Court ratified the existence of an agreement whose object was joint property carried out by one of the parties. Meanwhile, the consideration of the Depok District Court Judges Council canceled. This High Court Decision Number: 577/PDT/2019/PT.BDG stems from a lawsuit filed by Drs. Fred Sinlae (Plaintiff I/ Appellee I) and Mrs. Syaridar (Plaintiff II/ Appellee II) versus Dedi Supriyadi (Defendant I/ Appellant I), Martinus Aritya (Defendant II/ Appellant II), Notary or PPAT Julius Bital Tadjoeidin, S.H, Mkn (Defendant III/ Appellant III).

In the lawsuit under register No. 289/Pdt.G/2019/PN.Dpk dated 24 August 2019, the plaintiffs essentially stated that the plaintiff strongly objected to the contents of deed No. 02 dated 07 October 2013 regarding sale and purchase agreement and deed No. 3 dated 07 October 2013 concerning power to sell, made by Notary Deed of Julius Bilal Tajoedin, SH.Mkn (Defendant III/Appellant III).

Plaintiff I/Appellee I is strongly have objection for the existence of the deeds because, when these deeds were made the plaintiff II/Appellee II were not accompanied or without presence of the Plaintiff I/Appellee I. When they were made without the presence of Plaintiff I/Appellee I, without any signature of the Plaintiff I/Appellee I and without consent of the Plaintiff I/Appellee I, because Plaintiff II/Appellee II did not intend to sell the Disputed Object. The responses of the Defendants/Appellants reject all of the arguments of the Plaintiffs/Appellee which essentially emphasizes that the legal event that the Defendants/Appellant carried out is legal according to law, namely the sale and purchase agreement whose object is the land belonging to the joint property of the plaintiffs/Appellant.

In this case, it is a sale and purchase agreement in which one of the objectives is not fulfilled, namely with regard to joint assets, where in carrying out a legal relationship there must be the agreement of both parties, here only one party agrees, meaning the object is still in dispute. One of the objective conditions in the validity of the agreement must be halal / a halal cause. Civil law is one of the legal classifications that fall into the division of private law, which regulates the rights and obligations of each

person. Therefore, civil law is a very important part of law in the life of the wider community. With the existence of civil law, individual interests related to civil rights will be protected by law.

Civil law as a fundamental basis in establishing legal relationships between people, especially related to engagements and agreements, although the age of the regulations relating to the agreement is very old, but currently it is still an *Ius Contitutum*, because there is no new civil law regulation to replace it, but with Thus the rules contained in it are still relevant to be used and maintained today, such as engagements and agreements. As technology progresses and develops, it indirectly affects the legal relationship model.

The agreement is important because it relates to the interests of the parties. In making an agreement, it should be made in writing in order to obtain legal certainty, so that the objectives of the law can be realized¹. In article 1313 BW states that: "An agreement is an act by which one or more people bind themselves to one or more other people".

From the formulation of the agreement, it can be concluded that the elements are:

- a. There are parties
- b. There is agreement of the parties
- c. There is a goal to be achieved
- d. There is an achievement to be carried out
- e. There is a form, both oral and written
- f. There are certain conditions.

The transfer of land rights which are joint assets should be approved by the both parties in this case husband and wife, because of the joint property both parties have half rights. This is because marriage has three legal consequences, namely the existence of a legal relationship, the existence of joint property and the obligation to the children who will be born. In marriage, of course, the problem of property is a very important factor in the form of money, houses, land and others. The number of assets in marriage shows the main factor after undergoing marriage. Not a few people scatter because of economic factors²

Sale and Purchase Binding Agreement (PPJB) is an agreement from the seller himself to sell the land or house to the buyer accompanied by a completed sign, usually in the form of a down payment based on the agreement. The existence of problems regarding the implementation of PPJB, especially those made before a Notary / PPAT can cause problems or conflicts if the agreement does not contain the rights and obligations of the parties, which will later refer to the Sale and Purchase Deed (AJB) as proof of the transfer of rights.

II. PROBLEMS

Based on the description of the case that the author has described in the introduction, the author raises the issue of how the legal consequences of joint property being transferred unilaterally are and how is the validity of joint property being transferred unilaterally.

III. RESEARCH METHODS

The research used is normative law type, which is based on a study of theoretical secondary data to examine primary materials, secondary materials and primary materials, normative type research can also be interpreted as research used to examine the rules, principles existing laws, doctrines and legal systems.³

¹ Subekti, *Contract Law*, Intermedia, Jakarta, 2002, page. 1

² Djuniarti Evi, Evi Djuniarti. (2017, December). *Joint Property Law from the Perspective of the Marriage Law and the Civil Code*. Vol. 17 No. 4. 445-461. *Jurnal Penelitian Hukum DE JURE*, ISSN 1410-5632. . <https://ejournal.balitbangham.go.id>

³ Soekanto Soerjono, *Normative Legal Research*, Raja Grafindo Persada, Jakarta, 2006, page. 16

IV. DISCUSSION

Legal Consequences of the Transfer of Joint Assets Performed unilaterally.

This High Court Decision Number: 577/PDT/2019/PT.BDG started from a lawsuit filed by Drs. Fred Sinlae (Plaintiff I/ Appellee I) and Mrs. Syaridar (Plaintiff II/ Appellee II) versus Dedi Supriyadi (Defendant I/ Appellant I), Martinus Aritya (Defendant II/ Appellant II), Notary or PPAT Julius Bilal Tajoedin, S.H, Mkn (Defendant III/ Appellant III). In the lawsuit under register No. 289/Pdt.G/2019/PN.Dpk dated 24 August 2019, the plaintiffs essentially stated that the plaintiff strongly objected to the contents of deed No. 02 dated 07 October 2013 regarding sale and purchase agreement and deed No. 3 dated 07 October 2013 concerning power to sell, made by Notary Deed of Julius Bilal Tajoedin, SH.Mkn (Defendant III/Appellant III)..

Regarding the lawsuit filed by the Plaintiffs/Appellee, at first Plaintiff II/Appellee II borrowed money from Martinus Aditya (Defendant II/Appellant II) Four Billion Five hundred Million Rupiah. Collateral 4 land certificates owned by Mrs. Syaridar (Plaintiff II/Appellee II), this legal event without the husband's approval. Because Plaintiff II/Appellee II couldn't pay the debt, apparently Defendant II/Appellant II. Without the knowledge of Plaintiff II/Appellee II, it seems that Appellant II/Appellant II took legal action by making deeds, namely the Deed of Sale and Purchase Agreement and the Deed of Power of Attorney to sell with Defendant I/Appellant I. So here it is as if Plaintiff II has made an agreement buying and selling with Defendant I/Appellant I, when in fact the legal event was with Defendant II/Appellant II.

From the legal events above, it is clear that there is no honesty in carrying out legal actions, and that is the basis that the agreement is null and void because there is no approval from Drs. Fred Sinlae Plaintiff I/Appellee I. Deed of Sale and Purchase Agreement and Deed of Authorization to Sell made by PPAT Julius Bilal Tajoedin, SH.Mkn (Defendant III/Appellant III), which should be Defendant III/Appellant III before issuing the Deed must first check the contents From the agreement, whether the object in the dispute has already been approved by Plaintiff I/Appellant I or not, don't just issue it. In this case, according to the author, Defendant III/Appellant has violated Law No. 2 of 2014 concerning the Position of a Notary. Those who should provide explanations or directions to the parties who will make the Deed, not just agree.

In the Law on Notary Positions, it is explained that before making a deed, there is an obligation to provide an explanation first as a step to avoid parties being harmed both as the seller and as the buyer and lastly for legal protection as a notary official, not until after the deed is made. it turns out that the object is still in dispute. In this case Defendant III/Appellant III actually issued the deeds, while the application of the deed always contained the words of the agreeing parties along with their signatures, but in fact in this case the Plaintiff I/Appellant I never agreed and signed, Defendant III/Appellant III must not issue the two deeds even though the akata is still PPJB.

Plaintiff I/Appellant I strongly objected to the existence of these Deeds because when they were made, Plaintiff II/Appellant II was not accompanied by or without the presence of Plaintiff I/Appellant I, without the signature of Plaintiff I/Appellant I, and without the approval of Plaintiff I/Appellee I, because Plaintiff II/Appellant II did not intend to sell the land object.

There are two principles regarding the ownership of property rights, in this case the ownership of joint property, namely:⁴ :

1. The principle of "Nemo plus juris transfere potest quam ipse habet". That a person cannot transfer the goods, in this case joint property, without the consent of both parties, because they do not belong to either party.
2. The principle of "Nemo sibi ipse causam possessionis mutare potest". That a person cannot take legal action against the joint property for himself.

In carrying out legal actions on joint property as an example of the case in case no. 577/PDT/2019/PT.BDG then there must be an agreement from both parties, because the consequences of legal action whose object is joint property will be borne by

⁴Adeliana Kartika Putri. (2018, Februari). *Derden Verzet Against Mortgage Execution By Legal Wife*. DiH :Law Science Journal. Vol.14. Nomor 27. DOI: <https://doi.org/10.30996/dih.v0i0>

both parties as stated that: Legal action on joint property can be categorized as a result of joint legal action if it has fulfilled some things are⁵ :

- a. The legal action is carried out while the marriage is still in progress;
- b. The legal action is carried out for the benefit of the family in the sense of mutual interest in the family and
- c. The legal action has been agreed by both parties

As a result of the legal event of an agreement, the parties must pay attention to the basic rules as regulated in the Civil Code regarding the legal consequences of an agreement where the parties must agree in advance, because there is no agreement agreement does not exist or does not exist. will be born, there is no coercion because the agreement is open/free, everyone can implement the agreement. After the approval of both parties, the agreement must be obeyed or implemented because it is binding on both parties, where each party has rights and obligations. In carrying it out, it must be carried out properly in the sense that it is in accordance with the contents of the agreement. Then the agreement can be considered to exist if the parties have no problems and the object of the agreement also has no problems.⁶

Joint assets if there are legal issues that are brought to the Court, then the panel of judges decides that there is a confiscation of collateral against the object in dispute, namely the object of joint property, then the confiscation of collateral is referred to as Marital confiscation. In this case, the parties can maintain the joint property which is being guaranteed as a result of legal actions taken by one of the parties⁷ In Article 1320 there is an objective condition that is violated, namely a certain thing. A certain thing is in the form of a certain object (Clear and Definite) or a certain thing that is agreed upon, achievement is the subject/object of the agreement as stated in Article 1234 of the Civil Code: Every engagement is to give something, to do something, or not to do something. Where in every agreement, all the conditions that make the agreement valid must be fulfilled. Here a certain thing, namely the object is still problematic, namely there is no approval from the Plaintiff I / Appellant I.

If in an agreement one of the objective conditions is not met, then the agreement is null and void. In this case the Sale and Purchase Binding Agreement where the object is land which is a joint property, and is carried out unilaterally, then the PPJB agreement should be null and void which means there is no transfer of land ownership rights to the buyer. However, in this case, the Majelis Judges of the High Court are considered valid, the considerations of the Majelis Hakim are only based on the principle of freedom of contract, regardless of the objective requirements that are not met

The Legality of the Transfer of Joint Assets Performed Unilaterally.

Before making a transfer, of course, there must be an agreement made in advance, in which the agreement must meet the legal requirements of the agreement as described in Article 1320 BW/KUHPdata, namely::

- a. There is an agreement between the two parties. In this case the parties enter into an agreement, and it has been agreed on the contents of the agreement. Here the agreement must not contain elements of coercion, fraud and oversight.
- b. The ability to make agreements. In this case, both parties must be legally competent.
- c. There is a certain thing. The purpose of a certain matter is that the object of the agreement must be clear and can be determined, as stated in Article 1333 of the Civil Code that an agreement must have as a subject an item of at least a specified type. Here it is clear that the object of the agreement is clear in the sense that it is clearly land, but the land is not in trouble, in this case the land that is used as the object of the agreement is land whose ownership is joint property, where in carrying out legal actions there must be the consent of both parties, because each party has the right, namely half.

⁵ Albert Kritanto, Liliana Tedjosaputro. *Legal Protection Against Mutual Property Guaranteed Without Husband/Wife's Consent*. (2020,April) Volume 01 Nomor 01. 116-135. E-ISSN 2721 – 6098. <http://jurnal.untagsmg.ac.id/index.php/JRS/issue/view/208>

⁶ Nur Sa'adah. (2018, November). *Journal of Legal Consequences of Proof of Unwritten Agreement (Analysis of Decision Number:373/Pdt.G/2016/PN Mdn)* Volume 1 Issue 2. Page. 37-50. P A L R E V | J O U R N A L O F L A W I S S N : 2 6 2 2 - 8 4 0 8 – E - I S S N 2 6 2 2 - 8 6 1 6 . [10.32493/palrev.v1i2.5325](https://doi.org/10.32493/palrev.v1i2.5325). <http://openjournal.unpam.ac.id/index.php/palrev/issue/view/481>

⁷ Ahmad Jamal Sebayang. Universitas Islam Sumatera Utara Indonesia. *Unlawful Acts in the Transfer of Joint Assets in Marriage*. (2018, Mei) Vol 17, No 3. 129-141 – *Articles*. ISSN: 2613-9340. DOI: <https://doi.org/10.30743/jhk.v17i3>

d. There is a legitimate reason. A lawful cause concerns the contents of the agreement that do not conflict with public order, morality, and the law. Thus the law does not care about what is the reason people enter into an agreement that describes the goals to be achieved.

The Land/Building Sale and Purchase Agreement is proof of the existence of a legally valid sale and purchase transaction of land/building as long as there is an agreement by both parties and has fulfilled the legal requirements of the agreement as stipulated in the Civil Code. In this case, the object of the agreement is joint property land but in carrying out legal actions the Land Purchase Agreement is carried out unilaterally. In Article 1320 there is an objective condition that is violated, namely a certain thing. A certain thing is in the form of a certain object (Clear and Definite) or a certain thing that is agreed upon, achievement is the subject/object of the agreement as stated in Article 1234 of the Civil Code: Every engagement is to give something, to do something, or not to do something. Where in every agreement, all the conditions that make the agreement valid must be fulfilled

The issuance of a Sale and Purchase Agreement or a Sale and Purchase Binding Agreement (PPJB), due to a submission made by the buyer in this case the purchase of land or houses as a process of transferring rights to land or houses. Although PPJB can be made under the hand. PPJB is regulated based on the Decree of the State Minister of Public Housing Number 9 of 1995. This agreement is one of the legal powers as well as legal guarantees when buying a house. Broadly speaking, PPJB contains 10 important factors, namely:

- a. The party making the agreement;
- b. Liability for the seller;
- c. Description of the object of the sale and purchase binding;
- d. Seller guarantee;
- e. Building handover time;
- f. Building maintenance;
- g. Building use;
- h. Transfer of rights;
- i. Cancellation of binding; j. Dispute resolution.

The Sale and Purchase Binding Agreement (PPJB) made before a notary is an authentic deed (vide: Article 1868 of the Civil Code). In relation to the authentic deed, Article 1870 of the Civil Code has affirmed that the deed made before a notary has perfect evidentiary power. Based on article 15 paragraph (2) letter E and Article 16 paragraph (1) a, Act No. 2 of 2014, a Notary has the authority to provide legal counseling to the parties regarding the deed he made. As well as providing legal protection to the buyer as the aggrieved party by first checking the existence of proof of ownership of the land or building rights that are the object of the agreement, as well as providing repressive and preventive legal protection to the buyer. Notaries as public officials must adhere to the code of ethics for the position of a notary.

And a notary in carrying out his duties must act in a trustworthy, honest, independent manner, impartially, and safeguard the interests of the parties involved in legal actions. But in this case, the notary officer actually made a Sale and Purchase Binding Agreement whose object was joint property but there was no agreement from the two parties. The notary should not make a PPJB deed. In the Regulation of the Minister of Public Works and Public Housing (Permen PUPR) RI No. 11/PRT/M/2019 concerning the Preliminary Agreement System for the Sale and Purchase of Houses article 11 paragraph 2 regulates the contents or contents listed in the PPJB deed. The paragraph explains that PPJB at least contains:8:

⁸ Triyasa Propertindo, *Deed of Preliminary Sale and Purchase Agreement (PPJB)*, <https://triyasa.co.id/berita-terkini/contoh-akta-ppjb.html>, 16 Oktober 2021.

1. Head of Deed

The head of the deed is the initial part of the PPJB deed. The contents of the head of the deed are the title of the deed, the number of the deed, the hour, day, date, month, year, full name and position of the notary. Don't forget to fill it out correctly and completely.

2. Identity of the Parties

The PPJB deed example also contains the complete identity of the seller and buyer. The contents include full name, place and date of birth, nationality, occupation, position, position, and residential address.

PPJB Object Description

1. House Prices and Payment Methods

This section contains the selling price, procedure and time, costs arising from the agreement. The seller must not withdraw more than 80% of the funds to the buyer before fulfilling the PPJB requirements.

2. Development Actors Guarantee

Meanwhile, the guarantee section for development actors contains guarantees that land and houses are not in a disputed status. In addition, it also includes home ownership guarantees in the form of HGB, use rights and property rights

3. Rights and Obligations of the Parties

he seller/developer or builder has the right to receive payment and is obliged to carry out development according to plans and permits, complete it on time, inform progress, and provide information about PPJB.

Meanwhile, the buyer has the right in the form of obtaining correct, honest and accurate information, knowing the terms and conditions in buying and selling before payment, submitting a repair claim, and other rights. Obligations for buyers include making payments according to the amount and schedule, complying with environmental regulations and other regulated obligations.

4. Building Handover Time

At the time of handing over the building, the builder performs the handover which is accompanied by an official document, key and deed of sale and purchase or certificate of title/HGB or other rights.

5. Building maintenance

The sample PPJB deed states that the seller/developer is obliged to maintain the house for a minimum of 3 months after the signing of the handover report. This obligation must be carried out in accordance with the agreed PPJB

6. Building Use

The use of the building or house must be in accordance with its designation and pay for the facilities used by the buyer. This is done so that the building remains well maintained and no facilities are damaged.

7. Transfer of Rights

Buyers are prohibited from transferring rights before signing the deed of sale and purchase and must be in the presence of a notary ppjb deed sample. The transfer of rights prior to signing the deed of sale and purchase must obtain approval from the seller/developer/development actor.

The term joint property according to etymology is two words, property and joint, while according to the Big Indonesian Dictionary, it is goods both tangible and intangible that have economic value. According to Yahya Harahap that: "This means that the formation of joint property in marriage is from the date of the marriage until the marriage bond is broken. Whatever assets are

obtained from the time the marriage contract is held until the time the marriage breaks up, either because one of the parties dies or due to divorce, then all of these assets will automatically become joint assets according to law.”⁹

Joint Assets According to Marriage Law No. 1 of 1974 which has been changed to Law No. 16 of 2019 explains that, Joint assets in marriage are assets obtained by husband and wife during the marriage bond. This is regulated in Article 35 of Law no. 16 of 2019 concerning marriage, which are as follows:

- a. Property acquired during the marriage becomes joint property.
- b. The innate property of each husband and wife and the property obtained by each as a gift or inheritance are under the control of each as long as the parties do not specify otherwise.

Article 35 paragraph (1) of Law no. 16 of 2019 concerning Marriage states that property acquired during a marriage becomes joint property. Furthermore, paragraph (2) explains that wealth obtained by way of inheritance or gifts cannot be categorized as joint property. Joint assets are assets obtained during the marriage apart from gifts or inheritance, meaning assets obtained from the efforts of husband and wife during the marriage bond period.¹⁰ In the marriage law, it is explained that joint property is property obtained during a marriage between husband and wife. In the law it is not explained about the joint assets obtained through whose efforts, those who have assets obtained during the marriage do not see or take into account who gets them.¹¹

The sentence above shows that in the household during the marriage the assets or assets in it become joint property, the property is obtained whether from a working husband or a working wife, regardless of who is working, if during the marriage they suddenly get divorced. then the wife gets the joint property or property gono gini equal to 50% of the existing. According to Abdul Manan that: “The Compilation of Islamic Law Article 91 states that the forms of joint property include: first, joint assets as referred to in Article 85 can be in the form of tangible or intangible objects; second, tangible joint assets may include movable, immovable and other securities; third, Intangible joint assets can be in the form of rights or obligations; Fourth, joint assets can be used as collateral by one party with the approval of the other party”.¹²

Arifah S. Masspeke explained that: “husband and wife have joint responsibilities in terms of maintaining joint property. This is solely intended as a manifestation of upholding family life towards a happy and prosperous life. The responsibility of husband and wife to third parties is related to the use of marital property. In the use of marital property, it is possible to have debt, both joint debt and personal debt”¹³.

According to Nurhidayah, it means that "In joint property there are two kinds of rights, namely property rights and usufructuary rights. The husband and wife's assets have become joint property, but don't forget that there is also a usufructuary right, meaning that the parties have the right to use the property on condition that they have to get the approval of their partner, then he must get the approval of his partner, so he must first get permission from the other side”.¹⁴

V. CONCLUSION

1. An agreement is said to be valid if it has fulfilled the conditions of the agreement as stipulated in the Civil Code. If any of the objective conditions are not met, then the agreement is invalid. Such is the case in the case of the High Court Decision Number: 577/PDT/2019/PT.BDG.
2. As a result of an agreement that does not meet the objective requirements, the agreement is null and void. As a result of being null and void, the agreement is deemed to have never existed. As in the case of the High Court Decision Number: 577/PDT/2019/PT.BDG. There should be no transfer of land ownership rights to the buyer

⁹ M. Yahya Harahap, *Various Views on the Compilation of Islamic Law*, Ditbinbapera and Al-Hikmah Foundation, Jakarta, 1993, page.299

¹⁰ Muhammad Tigas Pradoto. (2014, September). *Juridical Aspects of Sharing Shared Assets in Marriage (Review of Islamic Law and Civil Law)*. *Journal 3 Jurisprudence*, Vol. 4 No. 2. 85-91. DOI: <https://doi.org/10.23917/jurisprudence.v4i2.4208>

¹¹ Abdurrahman and Riduan Syahrani, *Marriage Law Problems in Indonesia*, Alumni, Bandung, 1978, p.9

¹² Abdul Manan and M. Fauzan. *Principles of Civil Law The Authority of the Religious Courts*, Raja Grafindo Persada, Jakarta, 2001, page. 75

¹³ Arifah S. Maspeke and Akhmad Khisni. (2017, June). *The Position of Joint Assets in Marriage*. *Law Journal Khaira Ummah*. Vol. 12. No. 2. 173 – 184. <https://jurnal.unissula.ac.id>

¹⁴ Nurhidayah, “*Joint Property Grants to Children after Divorce*”, Skripsi Sarjana Hukum Fakultas Hukum, Universitas Hasanudin Makasar, 2011, page.5

VI. SUGGESTION

1. To the judiciary, in giving a decision, it must reflect the existence of legal certainty, a sense of justice and the existence of benefits, as stated in the legal objectives, because the results of a court decision will later become reference material or jurisprudence.
2. To the notary, if he is going to make a PPJB deed, it should first be checked whether the object is problematic or not and provide counseling to the party who will apply for the PPJB.

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