

CANCELLATION OF THE SELLING BUYING DEED BY THE STATE COURT ON THE POSITION OF CONFIDENTIAL ASSETS OBTAINED AFTER THE TERMINATION OF MARRIAGE BECAUSE OF DEATH.

(Case Study Number: 290/PDT.G/2013/PN.MDN)

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Abstract: *Transferring a person's land rights to the position of his or her innate assets, legally recognized norms and provisions, based on Law Number 16 of 2019 amendments to Law Number 1 of 1974 concerning Marriage, in particular Article 35 paragraph 2, to whom the right to the land is transferred or sold, it is the absolute right that holds the rights to the land and buildings. but what happened to the decision of the Medan District Court Number: 290/PDT.G/2013/PN.Mdn, the sale of the rights to the land was made before Suriaty Sandery Tania, Bachelor of Law, Land Deed Making Officer, based on the Sale and Purchase Deed Number: 12 dated 10 May 2007 was canceled, with the judge's consideration that the property is joint property of the heirs, because the acquisition was when the parents of the plaintiffs and defendants were still alive, even though the property was obtained when the woman's parents were widows. So from this decision there is an imbalance between das sollen and das sein.*

Key Words: *Cancellation of Deed of Sale and Purchase, Position of Congenital Assets.*

1. INTRODUCTION:

The legal consequences caused by marriage are very important, not only in relation to their kinship, but also in the field of their assets. Especially in terms of transferring inherited assets, sometimes the share of a husband or wife who is not their authority in carrying out legal actions, one of them plays a role, finally with legal certainty, what is the status of the property.

According to the provisions of civil law, since the marriage took place, by law, a unanimous union between the assets of husband and wife applies, namely both movable and immovable assets, both now and in the future, including all debt burdens of husband and wife each must also considered to be a shared responsibility.

2. THEORITICAL FRAMEWORK:

a. Legal Certainty Theory

According to Sudikno Mertokusumo, legal certainty is a guarantee that the law is enforced, that those entitled by law can obtain their rights and that decisions can be enforced.[1]

b. Theory of Legal Protection

According to Fitzgerald, legal protection aims to integrate and coordinate various interests in society because it is in a traffic of interests.[2]

c. Theory of Justice

Justice theory is a theory that examines and analyzes the impartiality, truth or arbitrariness of institutions or individuals against society or other individuals.[3]

3. LITERATURE REVIEW:

According to J.Satrio, "Law on marital property is a legal regulation that regulates the consequences of marriage on the assets of a husband and wife who have married.[4]

If the marital property involves immovable property such as land, then it has become an obligation for the official Land Deed Maker (PPAT) who is authorized to legalize land-related transactions to examine the position and authority of the seller to act.

4. METHOD:

The method used in this study is a normative juridical approach, which is an approach that focuses on reviewing and researching legal material with reference to legal norms contained in legislation, court decisions and legal norms that exist in society.[5]

5. DISCUSSION:

The act called the Sale and Purchase Act (AJB) is useful to guarantee the rights and obligations of the parties and to avoid problems regarding land rights in the future and is used as proof by the parties in the agreement that there has been an alliance in the form of sale and purchase . The signing and making of the Sale and Purchase Act is an essential and mandatory thing to do in the process of buying and selling land because at that time the rights to the land are transferred from one party to another. Acts published PPAT adhere to the documentary basis. What is meant by the documentary basis is that the majority of transactions and proof of land rights are done with written documentation.[6]

6. ANALYSIS:

A. Cancellation of the Deed of Sale and Purchase Based on the Decision of the District Court Number 290/pdt.g/2013/pn/mdn is in accordance with the Legal Provisions.

So legally, the sale and purchase deed canceled by the Court is not in accordance with the provisions of the law. Because the judge decides a case only according to the judge's belief or according to the judge's subjective interpretation and personal taste, regardless of the formal side and the prevailing norms. In the event that it is clear that the status of the property is personal property, because the acquisition is not bound by marriage to anyone, and for that reason, Ms. Hon Chun Meng, has the right to act alone to carry out legal actions in the Sale and Purchase Binding Deed.

B. Judge's Consideration Regarding Cancellation of Sale and Purchase Deed Based on Decision Number 290/pdt.g/2013/pn/mdn

Based on the theory of justice initiated by Jhon Rawls which is the background of case number 290/Pdt.G/2013 if it is associated with the status of the sale and purchase deed which was canceled by the judge, the author is of the view that the purpose of the law itself is not realized, one of which is to achieve justice, Justice in question is justice in terms of legal certainty, because to realize justice, it must refer to legal certainty, legal certainty is what is meant by existing norms.

C. Legal Consequences of Cancellation of Deed of Sale and Purchase of Congenital Assets after Dissolution of Marriage due to Death

A legal protection of human rights, because humans are legal subjects, bearers of rights and obligations. In an effort to obtain legal protection, the principle of legal certainty is applied. Legal certainty is obtained through the evidentiary process, the evidentiary process in this case is in accordance with the existing formal evidence, but the defendant did not get what he was entitled to, as well as the Notary and PPAT as defendant II, felt aggrieved because the deed was canceled by the Medan District Court. As a result, the Defendant I and the Defendant II, felt legally disadvantaged, both materially and immaterially and the judge's decision did not provide legal certainty so that Defendant I and Defendant II did not get legal protection for sure.

7. CONCLUSION :

From the discussion as explained earlier, several conclusions can be drawn, including:

- 1) The cancellation of the sale and purchase deed which was decided by the Medan District Court was not in accordance with legal provisions, because the Sale and Purchase Deed was in accordance with existing norms.
- 2) Whereas after the parents of the Plaintiffs and Defendants–I died, their children had taken care of the heirs and based on the evidence of the Certificate of Heirs Number 22/SKAW/X/2010 dated October 7, 2010 which explained that the Plaintiffs and Defendants– I is the heir of the late. Ho Chun Meng.
- 3) In an effort to obtain legal protection, the principle of legal certainty is applied.

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