



Legal Protection of Heirs Over The Sale and Purchase of Undivided Inherited Property (Case Study in Ciambar Parungkuda Sub-District)

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Abstract. The results show that in Islamic law, inherited land that has not been distributed is prohibited from being traded because it is still owned by other heirs. If all heirs agree to the sale, then the sale can be done, otherwise it is considered illegal and revoked. The legal protection for the buyer of the undistributed inherited land is that he can file a civil lawsuit against the seller of the land and the notary or PPAT (Official Authorized to Make Deeds) who has made the sale and purchase agreement. Also can file a complaint in a criminal case by reporting fraud as stipulated in article 378 of the Criminal Code "Anyone who with the intention of unlawfully benefiting himself or others by using a false name or false dignity, by deception or a series of toys, moves others to hand over something to him, or to give debts or write off receivables, shall be punished, for fraud, with a maximum imprisonment of four years".

Keywords: Sale and Purchase, Inherited Land, Right of inheritance.

1 Introduction

In today's society, there are many problems that often occur due to various problems that often arise and the occurrence of disharmony in family relationships about the issue of inheritance rights that are not immediately distributed by the heirs so that they are then sold and bought by one of the heirs without the knowledge of the others. Usually family relationships are fractured only because of the issue of inheritance and its distribution which is considered unfair. Buying and selling in everyday use means "exchange" or "exchange".

In Islamic law, the position of buying and selling is very valid because of mutual exchange, and does not harm each other, but not for buying and selling other people's inheritance rights.

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According to Soepomo, inheritance law is the rules that regulate the process of continuing and regulating the process of continuing and passing property goods that do not materialize objects from a human force to its descendants.

Inheritance is all property left by someone who dies in the form of both movable and fixed objects, including goods / borrowed money and also goods that have something to do with the rights of others, for example goods that are mortgaged as collateral for their debts when the testator is still alive. This can be understood because the problem of inheritance will definitely be experienced by everyone. In addition, inheritance law concerns about property if it is not resolved, it will cause disputes between the heirs. Islamic Shari'ah gives rights among people who get the inheritance in an orderly manner according to their proportions, according to the rights of each heir.

According to the scholars and existing legal sources that selling inherited property is allowed. Because the inheritance has become the right of the heirs, donated, donated or sold is fully the right of the heirs.

If one of the heirs wants to sell the undivided inheritance, he must get approval from all the heirs as the party who gets the right to the property due to inheritance, and the agreement is expressed in an agreement letter under the hand legalized by a local notary or an agreement letter is made in the form of a deed. However, if one of the heirs has a bad intention to control and sell the undivided inheritance without the knowledge of the other heirs, then the other heirs can file a lawsuit.

The sale and purchase of inheritance rights is a complex problem in human life, because it can be the subject of a sale and purchase agreement not only in the form of tangible goods. In principle, all inheritance rights can be sold, but some are based on the law and some are based on the nature of the right. In the sale and purchase of inheritance rights, it is usually between other heirs. The goal is to make the estate an inseparable entity. The issue of buying and selling inheritance rights is actually not new.

1.1 Problems Formulation

Based on the background described above, the problems that can be researched and formulated are as follows:

How is legal protection for heirs against undivided inheritance as an object of sale and purchase according to Islamic law?

2 Research Methods

The research method used in this research is empirical legal research, namely research originating from normative blanks of legislation, leading to the blurring of legislation. Normative legal science is a legal science that examines statutory law from various aspects, such as theoretical aspects, history of philosophy. This research method is based on literature study with various journal references, as well as some of the best

and updated articles. With the method of conceptual approach and sociolegal jurisprudent approach.

Empirical juridical research is legal research regarding enactment or implementation of normative legal provisions in action on every specific legal event that occurs in action on each specific legal event that occurs in society. Or in other words, a research conducted society. Or in other words, a research conducted on the actual situation or the real situation that occurs. to the actual situation or the real situation that occurs in the community with the intention of knowing and finding the facts and data needed, after the data facts and data needed, after the required data is collected, then it goes to problem identification which ultimately leads to the identification of problems. then go to problem identification which in the end leading to problem solving.

3 Research Finding and Discussion

LEGAL PROTECTION FOR HEIRS AGAINST UNDIVIDED INHERITANCE AS AN OBJECT OF SALE AND PURCHASE ACCORDING TO ISLAMIC LAW

By declaring the sale and purchase deed of the inherited land null and void by a court decision as a result of the discovery of legal defects in its making, namely the sale and purchase was carried out without the consent of the other heirs. However, buyers who are in good faith in the process of buying and selling land are entitled to legal protection by applicable laws and regulations.

Legal protection consists of two syllables, namely protection which means the thing or act of protecting. Meanwhile, law is a rule to protect the interests of all parties. The opinion regarding legal protection was also expressed by Wirjono Prodjodikoro who stated that legal protection is a protective effort given to legal subjects, about what they can do to defend or protect the interests and rights of these legal subjects.

Legal protection means that in the sale and purchase transaction agreement, the position of the law is obliged to provide legal protection to buyers who are in good faith so as not to be harmed. The law stipulates that agreements must be made in good faith, which is called honesty, and can be divided into two types. The first is good faith at the time of entering into a legal relationship or agreement and the second is good faith in carrying out the rights and obligations arising from a legal relationship or agreement.

According to Article 1338 paragraph 3 of the Civil Code (KUHPer) states that all agreements must be carried out in good faith, meaning that in the making and execution of agreements, the substance of the agreement or contract must be considered based on trust or firm belief or good faith of the parties.

If one of the parties is later found to have bad faith to make an agreement when making an agreement and implementing it. Then the party in good faith will be protected by law. If the buyer is in good faith, then he is protected by the Civil Code Section 1491 protects this article in the form of coverage the article states: "The responsibility

of the seller towards the buyer is to guarantee two things, namely: first, the safe and secure po.

In the existence of this coverage, even though it is not promised, it still applies to bind the seller as mentioned in Article 1492, namely: coverage, but the seller is by law obliged to bear the buyer against a judgment to deliver all or part of the object sold to a third party, or against burdens that according to the information of a third party owns it and was not notified when the purchase was made.

If the seller does not want to bear all the losses suffered by the good faith buyer caused by the cancellation of the sale and purchase then, the good faith buyer can file a civil lawsuit against the seller, as well as notaries and PPATs who are public officials involved in the process of making the sale and purchase deed of the inherited land.

The legal reason that can be used as the basis for filing the lawsuit is that the buyer has suffered losses due to the actions of the seller and for this reason the buyer has the right to request or demand the return of the purchase price of the inherited land to the seller. In addition to the buyer being able to file a civil lawsuit, the buyer can also file a criminal lawsuit, namely the buyer can report the alleged criminal act of fraud committed by the seller of the inherited land to the Police investigator based on the provisions of article 378 of the Criminal Code (KUHP). Where the basis and reason for filing a report is that the buyer intends to seek profit for himself by committing fraud against the buyer so that he wants to buy land that is still inherited land and hand over money for the price of the purchase of the inherited land.

3.1 Procedures for Buying and Selling Undivided Inheritance Rights

The procedure for buying and selling undivided inheritance rights is at least an adult child who is 21 years old or not yet 21 years old but already married, is considered an adult for the State regulated in article 330 of the Civil Code. In order to be able to sell and buy inheritance rights, what needs to be considered is that the heirs, both those who sell or buy, have agreed by making a genealogy of inheritance legalized by an authorized official, to become legal certainty about the agreement of the heirs must be made by a notarial deed.¹

3.2 Legal Basis for Buying and Selling

Selling and buying is a permissible contract, this is based on the arguments contained in the A-Quran As-Sunnah or scholarly consensus. The Quranic verse that allows buying and selling practices is as stated by Allah SWT in Q.S An-Nisa (4) verse 29:

أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُم بَيْنَكُم بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

Meaning: "O you who believe, do not eat your neighbor's wealth by false means, except in the form of trade on a consensual basis between you. Do not kill yourselves. Indeed Allah is Most Merciful to you.

2.1. The Pillars and Conditions Of Buying and Selling

¹ R. Subekti, 1978, Law of Agreement, Publisher of PT. Intermedia, Jakarta, p.13

In life, Islam has provided a clear line of economic policy. Business transactions are very concerned and honored by Islam. Honest trade is highly favored by Allah and Allah gives His Mercy to those who do so. Trading can be done by individuals or companies and certain similar institutions. There are four (4) pillars of buying and selling in Islam, namely:

1. The existence of a seller
2. The existence of a buyer
3. The existence of goods
4. The existence of shighah or ijab kabul

The benchmark for the pillars of buying and selling is stated in Surah Al-Baqarah verse 275 which means "Allah has legalized buying and selling and forbidden usury". The requirements concerning that the seller and buyer as the legal subject of the sale and purchase agreement must meet the requirements, namely being of sound mind, with their own will (not forced), both are not wasteful and the last is that they are baligh or mature.

3.3 Description of Research Activities

Educational research methods can be interpreted as a scientific way to obtain valid data with the aim of discovering, developing, and proving certain knowledge so that in turn it can be used to understand, solve, and anticipate problems in the field of education (Sugiyono, 2008: 6).

From the explanation mentioned above, the research method that will be used is the empirical research method. Sugiyono (2013) explains the empirical research method,

The definition of empirical based on Sugiyono is a method of observation carried out using human senses. So that the results, the methods used can also be known and observed by other people who want to do it.

Because this research aims to describe and explore further the root causes of a case above, not to compare (comparison) or look for relationships (correlation) with other variables, this research is not an experimental study so it does not require a hypothesis because it only provides information about the object under study.

The research implementation schedule is within months, starting from March to July 2023.

Table 1. Schedule

	Activities	Month / Years				
		March	April	May	June	July
1.	Research Submission					
	Conducting Research					
	Research Writing					
	Research Testing					

4 Author Contribution

The tasks of each author are, author 1 looking for data and analysis, author 2 as a data processor, author 3 helping the tasks of authors 1 and 2, and author 4 as a supervisor.

The results of this study contribute to the author's knowledge and for parties related to the problem of inheritance distribution.

For science, the results of the research play a role in enriching and expanding knowledge. This research also provides benefits for people who will later face the division of inheritance. It is hoped that in the future there will be no more inheritance problems that might make other communities furious about the behavior carried out.

Science has a close relationship with science can advance and develop because of research, while research methods can develop because of developments in science and can explore this case with more concrete stages. In addition, it can also be used as a reference to study changes on the basis of this case to make it more varied.

This research will be useful in formulating education system policies for law students with Law Science study programs. In addition, it can also be used as a reference to examine changes in the cultural environment of law student studies in order to bring progress to the law student education system that has been running.

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