

Juridical Analysis of the Legality of Buying and Selling Inherited Assets without Permission and Approval by Some of the Legal Heirs (Case Study Decision Number: 2511K/Pdt/2020)

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Abstract

In essence, in accordance with statutory provisions, all heirs regardless of gender and birth order are heirs to the inheritance left by the testator. However, it often happens that ownership of inherited assets is transferred, for example through buying and selling land without permission and without the knowledge of all the heirs, the transfer is only carried out by one or several heirs. The problem raised in the research is whether buying and selling inherited assets without the permission and knowledge of all the heirs is legal? Researchers were interested in conducting this research because the decision did not cancel the sale and purchase of inherited assets carried out by some of the heirs. The research method used in this research is a normative juridical legal research method, with a case study approach, namely the Supreme Court Decision with case registration Number: 2511K/Pdt/2020. The data analyzed is secondary data in the form of primary legal materials, secondary legal materials and tertiary legal materials.

Keywords

Legal; buying and selling; inheritance; heirs



I. Introduction

Inheritance is the property left by a person to his heirs or family if he dies. Inheritance can be in the form of movable or immovable assets, such as land and buildings, savings, jewelry, and vehicles. The word inheritance comes from Arabic, namely Al-miirats, the masdar form of the words waritsa-yaritsu-irtsan-miiraatsan, which means the transfer of something from one person to another, or from one people to another. Meanwhile, the meaning of Al-miirats according to the term is the ownership rights of a deceased person to his or her surviving heirs, whether those left behind are assets (money), land, or anything in the form of legal ownership rights according to Sharia.

According to the Civil Code, inheritance law is the law that regulates the transfer of assets left behind by someone who dies and the consequences for the heirs. Warisan is wealth (vermogen) in the form of assets or liabilities or rights and obligations worth money which will be transferred from an heir who has died to male or female heirs. According to Article 852 of the Civil Code, the division of inheritance is one to one for sons or daughters (1:1) so it does not matter if he is the youngest and oldest man or woman. However, according to Article 836 of the Civil Code, to be able to act as an heir, he must be present when the inheritance is opened. In some cases, this article can be excluded as regulated in Article 895 of the Civil Code, where the child is in the womb of a woman or has not yet been born and therefore does not exist at the time the inheritance is opened, then for the sake of the child's wishes, he will be considered to have been born and can receive a share. inheritance for him .

The transfer of rights to inherited assets can take the form of sale and purchase, exchange and gift. In general, the legal action that is often carried out with inherited assets is buying and selling. In the case of buying and selling, this means that the ownership of the goods will be transferred after the goods are bought and sold, so that the ownership rights of the goods will be transferred from the seller to the buyer. Of course, if this ownership right is further detailed, it can cover various methods, such as relating to renting, borrowing and so on. Other cases of ownership can also be through wills, and so on.

The heir is the person who receives the inheritance. Heirs according to civil inheritance law are not differentiated according to gender as in some customary inheritance laws. A person becomes an heir according to civil inheritance law due to marriage and blood relations, whether legal or not. People who are closest blood relatives have the right to inherit.

II. Research Methods

Legal research is a process for determining legal rules, legal principles, and legal doctrines in order to answer the legal issues faced. According to the type, nature and objectives, legal research is divided into 2 (two), namely:

1. normative legal research and
2. sociological or empirical legal research.

Normative legal research is research conducted to collect and analyze secondary data. In normative legal research, only secondary data sources are usually used, namely books, statutory regulations, court decisions, legal theories and the opinions of leading legal scholars. Sociological or empirical legal research is research that includes research on legal identification and research on legal effectiveness. The type of research used in this research is normative legal research, because the data sources are only secondary, namely books, statutory regulations, court decisions, namely Supreme Court Decision Number: 2511K/Pdt/2020.

III. Discussion

According to the Civil Code, inheritance rights are material rights to the assets of a person who dies (Article 528 of the Civil Code). Article 584 of the Civil Code states inheritance rights as one way to obtain property rights. Methods for obtaining property rights are regulated in Book II of the Civil Code, this has caused inheritance law to be placed in Book II of the Civil Code.

Wirjono Prodjodikoro, former Chief Justice of the Supreme Court of the Republic of Indonesia, said that the definition of inheritance according to the Civil Code shows 3 elements, namely:

1. A legacy or (erflater) who on his death leaves behind wealth. This first element raises the issue of how and to what extent the relationship between a person who has an inheritance and his or her wealth is influenced by the nature of the family environment in which the person who has an inheritance is located;
2. A person or several heirs (erfgenaam) who have the right to receive the wealth left behind raises the issue of how and to what extent there should be a kinship between the legacy and the heirs so that the legacy's wealth can be transferred to the heirs;

3. Inheritance (nalatenschap), that is formabandoned wealth; raises the question of how and to what extent the transferred wealth is influenced by the nature of the family environment, where the deceased and the heirs live together.

According to the provisionsArticle 832The Civil Code states: "According to the law, those entitled to be heirs are blood relatives, whether legal according to law or outside marriage, and the husband or wife who lives the longest.Heirs can be grouped into four groups, namely:

1. Class I heirs, namely the children of the heir and their descendants in a straight line downwards and widows/widowers. In class I, it is possible to change places (grandchildren replace children who have died before the testator). Change of place in accordance with the provisions of Article 847 of the Civil Code stipulates that no one can take the place of someone who is still alive, for example a child replaces the inheritance rights of a living mother. If in a situation the mother refuses to accept the inheritance, the child acts as himself, and does not replace his mother.
2. Class II heirs, namely the heir's father, mother and siblings.
3. Class III heirs, namely grandparents from the father's line and grandparents from the mother's line.
4. Class IV heirs, namely relatives from the father and relatives from the mother, up to the sixth degree.

After paying attention to the distribution of inheritance based on groups as above, it is then necessary to look at the distribution of inheritance to children, which according to the Civil Code divides children into three groups, namely:

- 1.A legitimate child is a child born as a result of a valid marriage, where this provision is regulated in Article 42 of Law Number 1 of 1974 and is also regulated in Article 250 of the Civil Code which states that every child who is born and raised throughout the marriage has the husband as his father
2. An illegitimate child is a child born out of wedlock and only has a civil relationship with his mother and is regulated in Article 43 paragraph 1 of Law Number 1 of 1974. The legal position of an illegitimate child according to the Civil Code is seen from the relationship between the illegitimate child and the father. and mother. A legal relationship between an illegitimate child and his parents only exists if the child is legally recognized by his parents. However, the position of illegitimate children is not the same as the position of legitimate children in terms of inheritance. This is because legitimate children can inherit inherited property without needing to care about the existence of ab intestato heirs (heirs who are related by blood and marriage to the testator) in the next group, while recognized illegitimate children can inherit together with ab intestato heirs. next.
3. Adopted child (adopted)

Adoption may only be carried out on male children. However, SEMA Number 6 of 1933 can also be adopted by carrying out a court order and permission from the Minister of Social Affairs.

Buying and selling of inherited assets often occurs without the permission and knowledge of all the legal heirs. Is it because of ignorance or because of greed. Selling inherited assets without the consent of the other heirs will cause disputes between the heirs and perhaps even against third parties who buy the inheritance. The result of a dispute will definitely affect the fraternal relationship between the heirs.

According to Irma Devita Purnamasari, if a sale is to be carried out or for example the land will be used as collateral in a bank, then all the other heirs must be present to give approval. The sale of inherited assets by other heirs without mutual consent clearly violates

the provisions of inheritance law. Inherited assets that have not been divided are jointly owned assets (Boedel, Dutch) and if you trace the legal basis, you will arrive at what is called the concept of Legitieme Portie (absolute parts).

Article 913 of the Civil Code states "Absolute share or legitieme portie is a part of inherited assets that must be given to the heirs in a straight line according to law. The legal basis for these parts of the absolute rights of the heirs prohibits the heir from doing arbitrarily with the inheritance, for example giving a plot of land to another heir without the mutual consent of the heirs.

As mentioned above, one way of transferring inheritance ownership is through buying and selling by some of the heirs. According to Article 1457 of the Civil Code: "Sales and purchases are an agreement, whereby one party binds himself to hand over an object, and the other party to pay the price that has been promised." A sale and purchase agreement as a form of agreement is closely related to the validity and legal conditions of an agreement. Article 1320 of the Civil Code determines the general conditions that apply to all agreements consisting of

- a. There is an agreement between the parties to the agreement.
- b. There is the ability to act on the part of the parties.
- c. There are certain things.
- d. The existence of power is permitted.

In accordance with the provisions of Article 1365 of the Civil Code, it reads: Every act that violates the law and brings loss to another person requires the person who caused the loss through his fault to compensate for the loss. The elements of unlawful acts in Article 1365 of the Civil Code are as follows:

- a. There must be action;
- b. The act must be against the law;
- c. There are downsides;
- d. There is a causal relationship between the unlawful act and the loss;
- e. There is a mistake

This is further strengthened by Article 834 of the Civil Code, which gives the heirs the right to bring forward a lawsuit to fight for their inheritance rights against people who control all or part of the inheritance, whether the person controls it on the basis of equal rights or without any rights at all. the inheritance. This is called petitio hereditatis. For parties who comply and follow the provisions of the western civil law system, submit a lawsuit to the District Court. A lawsuit contains the claims of a person or several people as plaintiffs relating to a civil matter containing a dispute between two or more parties which is submitted to the head of the district court where one party is the plaintiff to sue the other party as the defendant. If the inheritance sale is carried out by some of the heirs of the inheritance which has not been divided, and the sale has already taken place, then the heirs submit an objection to the sale and purchase of the inheritance, on the grounds that it is jointly owned inheritance which has not been divided.

The Supreme Court's decision with case register Number: 2511K/Pdt/2020 attracted the writer's attention for research or analysis. The author's interest is because the decision does not fulfill the objectives of the law itself, namely legal uncertainty, and justice and legal benefits. The object of the case in Decision No. 2511K/Pdt/2020 is a plot of land and the building on it which is a heritage. The heirs are 12 biological children. Without the knowledge of some of the heirs (Plaintiffs I - VII), other heirs (Defendants I and II) secretly transferred the inherited assets by buying and selling. Defendant I stated that he had handed over a sum of money to Defendant II as payment for the inherited land. Defendant I also stated that the inherited land had been sold by the Plaintiff's mother and

the Defendant during their lifetime, by submitting a private handover letter as proof. After the sale and purchase, Defendant I submitted an Ownership Certificate in the name of Defendant I (previously there was no proof of land ownership) which was then issued by the National Land Agency. After the ownership certificate was issued, Defendant I used the certificate as fiduciary collateral at one of the banks. At the court of first instance, namely the Simalungun District Court, which examined and decided this case with case registration No. 77/Pdt.G/2017/PN-SIM, the Plaintiffs' lawsuit was granted in part by stating that the Plaintiff was the legal heir, the land object of the case was inherited land that had not been divided, canceling the letter of surrender, declaring the Certificate of Ownership in the name of the Defendant I has no legal force and states that Defendant I's credit agreement with the Bank is an unlawful act and has no legal force. Likewise with the Medan High Court Decision with case register No. 75/Pdt/2019/PT.MDN which basically strengthens the Simalungun District Court decision.

At the Cassation level, with case register No. 2511K/Pdt/2020 The decision was cancelled. The Panel of Cassation Judges who examined and decided on the case stated in its decision that the plaintiffs were the legal heirs, and rejected the remaining claims. With this ruling, it seems as if the essence of the Plaintiffs' lawsuit is a dispute over their position as legal heirs, not the sale and purchase of inherited land. In their lawsuit, the plaintiffs have clearly and emphatically stated that the object of their lawsuit is the sale and purchase of inherited assets by some of the heirs. By rejecting the petitum which stated that the land object of the case was inherited land that had not been divided, this implicitly meant that the sale and purchase carried out by the Defendant was valid by law even though the sale and purchase was only carried out by some of the heirs. This is of course contrary to the provisions of Article 1471 of the Civil Code. In the case of inherited assets, those who have the right to sell inherited assets are all the legal heirs. Buying and selling of inherited assets carried out by other than the owner is void.

If the sale and purchase has taken place without the signature of all the heirs as owners as a sign of approval, then the inheritance is sold by someone who does not have the right to sell it. Therefore the sale and purchase is void. With the cancellation of the sale and purchase, the sale and purchase is deemed to have never existed, and each party is returned to its original state before the "sale and purchase" event occurred, where the ownership rights to the land remain with the heirs.

If the decision is analyzed using legal theory, then one theory that can be used is Gustav Radbruch's theory of legal objectives. By Gustav Radbruch there are three objectives of law, namely: 1). justice (philosophical), 2). legal certainty (juridical), and 3). benefit to society (sociological) Legal certainty means that certainty is a legal requirement, meaning that positive law applies with certainty. The law must be obeyed. This means that legal certainty is aimed at protecting the interests of each individual so that they know what actions are permitted and conversely which actions are prohibited so that they are protected from arbitrary actions by the government. Supreme Court Decision No. 2511K/Pdt/2020 which does not grant the petitum of the lawsuit to cancel the sale and purchase of inherited assets carried out by some of the heirs contrary to the provisions of Article 1471 of the Civil Code and Article 913 of the Civil Code and Article 834 of the Civil Code. In positive law, it is stipulated that part of the inheritance must be given to the heirs. So in this case legal certainty is no longer achieved.

Utility is defined as a legal objective that must be aimed at something that is useful or has benefits. Law essentially aims to produce pleasure or happiness for many people. Supreme Court Decision No. 2511K/Pdt/2020 which does not grant the petitum of the lawsuit to cancel the sale and purchase of inherited assets carried out by some of the heirs

no longer provides benefits to many people and those who are entitled to it. This is because there are some heirs who do not benefit from the decision. Benefits are only obtained by a small number of heirs.

Justice is a condition where all are treated equally and receive the same rights. Justice is closely related to conscience. Justice is not about a formal definition because it is closely related to everyday human life. This conscience has a very high position because it is related to the deepest feelings and inner thoughts. Regarding justice, Radbruch stated: "Summum ius summa iniuria" which means that the highest justice is conscience. Radbruch emphasized and corrected his own view, that the ideal of law is nothing other than justice. Supreme Court Decision No. 2511K/Pdt/2020 which does not grant the petition of the lawsuit to cancel the sale and purchase of inherited assets carried out by some of the heirs no longer provides justice for some of the heirs. Both the Plaintiffs and Defendants I and II are of the same position as heirs. The object of the case is inheritance from their parents. However, ironically there are a large number of heirs who are not entitled to the inheritance, according to the applicable positive legal regulations that all heirs receive the same inheritance regardless of gender and birth order. So injustice occurs.

IV. Conclusion

At least one of the three legal objectives in each court decision is fulfilled. However, ironically, Supreme Court Decision No. 2511K/Pdt/2020 which does not grant the petition of the lawsuit to cancel the sale and purchase of inherited assets carried out by some of the heirs, if analyzed using the theory of legal objectives, no longer meets legal certainty, justice and legal benefit. Until now, there have been no consequences that the judge will receive if the judge does not carry out his rights and obligations in accordance with the applicable provisions. On the one hand, the judge will punish people who do not implement the applicable provisions.

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