Legal Protection for Buyers of Joint Assets Sold Without Wife's Consent

Andi Dimah Laila Nurfaiqah, Ω Tjempaka Tjempaka

Megister Kenotariatan, Universitas Tarumanagara

Ω email: dimahlaila@tarumanagara.ac.id

ABSTRACT

This article aims to provide an objective explanation of the legal protection afforded to buyers who intend to transfer rights to land that is jointly owned without the wife’s consent. In 2012, the late Haryanto sold the land to PT. Makmur Persada Indonesia conducted the transaction as recorded in Sale and Purchase Deed No. 53/2012, prepared by Notary/Land Deed Maker Hj. Hasnawati Juweni Shande. In 2017, Sherly initiated legal action asserting that the deed for the land sold by the deceased Haryanto reflected joint ownership resulting from his marriage to Sherly; yet, the relevant sale and purchase transaction occurred without Sherly’s involvement despite her rights to the property. Normative research was conducted utilising a statutory, conceptual, and case approach. The research specifically analysed secondary data, comprising primary and secondary legal materials, which was analysed descriptively. In relation to Sherly’s lawsuit, the Serang District Court issued decision Number 39/Pdt. Srg, which resulted in the rejection of the plaintiff’s application. Subsequently, the plaintiff lodged an appeal against the Serang Court’s decision. In 2018, Decision Number 39/Pdt/2018/PT BTN of the Banten High Court upheld the Serang District Court’s decision to reject the applicant’s claim entirely. The Supreme Court confirmed this judgement in 2019 with Judicial Review Decision Number 227K/Pdt/2019, thus dismissing the plaintiff’s lawsuit. Thus, it seems that the verdict of dismissing the plaintiff’s application safeguards the buyer.

Keywords: Legal Protection; Buyers; Joint Assets; Without Wife’s Consent;

INTRODUCTION

In a legal system, it is essential to ensure guarantees, protection, and judicial clarity. In Indonesia, Article 28 D Paragraph (1) of the 1945 Constitution stipulates that “all individuals have the right to recognition, guarantees, protection, and equal treatment before the law, as well as fair legal certainty”. The existence of this article is also mandated to be implemented in the land sector (Nuraini & Haryanti, 2021). Arrangements regarding land are specifically governed by Article 33, paragraph (3), in which the state exercises control over the land, water and natural resources to ensure the utmost prosperity of its citizens (Triningsih & Aditya, 2019).

If discussing Kelsen’s views, it can be argued that the regulations pertaining to land outlined in the constitution necessitate additional arrangements or derivative regulations, in
keeping with the theory of the hierarchy of laws and regulations (Murphy, 2004). In 1960, regulations governing land arrangements were implemented in Indonesia with the enactment of Law Number 5 of 1960, commonly known as the Basic Agrarian Law (UUPA). The law aimed to provide legal protection, as explained by Satjipto Raharjo, safeguarding against human rights infringements and enabling the community to enjoy the rights bestowed upon them by law (Ari Atu Dewi, 2018). This is also in line with the legal duty to safeguard public welfare, which should be achieved through legal certainty (“Wantu, Fance M,” 2012).

The Republic of Indonesia is a state ruled by a constitution where authority is bound by the laws (Diniyanto & Sutrisno, 2022). As a nation committed to upholding the rule of law, all branches and individuals of the government are required to abide by the relevant laws. This clear and comprehensive principle ensures that all individuals, without exception, are subject to legal regulations. Hence, Indonesia is evidently a Rechtsstaat (rule of law country) that adheres to the principles of the rule of law, specifically the crucial principles of certainty, order and legal protection, all founded on the basis of truth and justice (Wilben Rissy, 2022). This explanation, as posited by experts, acknowledges that one of the primary roles of law is to safeguard the community. A commonly-held view is that the law serves as a mechanism to protect individuals, with legal stipulations prescribing appropriate social conduct to safeguard all concerned interests (Usman, 2014). Certainty, order, and legal protection necessitate that legal proceedings involving human life necessitate clear evidence that unmistakenly establishes the legal rights and obligations of individuals in society as legal entities (Sinaga, 2019).

As a legal state, Indonesia holds the constitutional responsibility of safeguarding human rights. This is achieved through the provision of legal guarantees and the ensuring of a fair process for enforcement. Additionally, upholding the rule of law offers legal certainty to its citizens and serves as a means of state protection. Thus, respecting and protecting human rights is of crucial significance within the framework of the rule of law. Satjipto Raharjo defines legal protection as an effort to safeguard the human rights of individuals who have been harmed by others. This safeguarding is also extended to the wider community to ensure that they are able to enjoy all the rights granted by law (Kunni Afifah, 2017). One of the aims and traits of law is to safeguard the community by ensuring legal certainty is established. Since its establishment as a value system, the law has introduced legal protection by granting rights and imposing obligations on every legal subject (Aswari, 2020).

Establishing legal protection, including in the realm of land purchasing and selling transactions, is accomplished through the implementation of regulations that outline the procedures and protocols for each involved party. These regulations control traffic and oversee the details of such transactions. It is well established that various laws and regulations govern land transactions in Indonesia. The Basic Agrarian Principles Regulations, outlined in Article 16 paragraph (1) of Law Number 5 of 1960, stipulate that property rights constitute a form of land
ownership. Ownership rights can be transferred according to Article 20(2), and may be passed on to other parties, including transfer of land ownership rights via purchase and sale, as stipulated in Article 26(1).

Article 26(1) of the Law Number 5 of 1960 on Agrarian Principles stipulates that property rights and control, including those for buying and selling, are transferable. To ensure legal certainty, the government has enacted Government Regulation Number 24 of 1997 on Land Registration, wherein land rights acquired through the purchase and sale process can be registered in accordance with Article 37(1). The presence of Article 37(1) correlates with the regulations outlined in Article 19(1) of the Agrarian Principles Act 1960, numbered 5. Any technical terms are initially explained in order to clarify their meaning. Land registration takes place throughout the entire territory of the Indonesian Republic and is regulated by Article 23 of the aforementioned 1960 Agrarian Principles Act. Land registration is obligatory for all transfers, cancellations and encumbrances in order to provide conclusive proof of the cancellation of ownership rights and the validity of any transfers or encumbrances. This process is essential in determining ownership.

Only Article 26 of the Basic Agrarian Law deals with the purchase and sale of property rights to land. Another article refers to it as a ‘transfer’ rather than a sale and purchase. The term ‘transfer’ denotes a deliberate legal act that involves transferring land rights to a different party, whether through sale and purchase, gift, exchange, or bequest. Although the article only mentions transfers, it encompasses the legal acquisition and disposal of land rights through buying and selling (Larasati & Rafles, 2020).

On 14th December 2012, PT Makmur Persada Indonesia completed a land transaction with the late Mr. Haryanto, in Tonjong Village/Subdistrict, Kramatwatu District, Serang Regency, Banten Province. The land acquired was 22,251M² in total area. The transaction occurred between the seller, Alm. Mr. Haryanto, and the buyer, PT. Makmur Persada Indonesia, as identified in Sale and Purchase Deed No. 53/2012. Hj. H. M. Hasnawati Juweni Shande, S. Kn acted as the Notary and PPAT for the Serang Regency region, and drafted and registered the deed accordingly.

On December 14th, 2013, ownership was transferred from the seller to the buyer based on the Sale and Purchase Deed No. 52/2012. Afterwards, Sherly Kumalari Hardjo filed a lawsuit against Notary & PPAT Hasanawati Juweni Shande, PT. Makmur Persada Indonesia, and the Head of the Serang Regency Land Office at the Serang District Court regarding the sales transaction.

In the legal case initiated by Sherly, she is identified as the plaintiff and the lawful wife of the deceased Mr. Haryanto, a fact confirmed by their marriage certificate. As an heir, Sherly maintains that she ought to have been informed about and given consent to all of Mr. Haryanto’s decisions regarding their assets. Further, Sherly emphasises that there was no prenuptial
agreement pertaining to the division of assets in their marriage. Therefore, all assets acquired during the marriage are considered joint property under Article 35 of the 1974 Marriage Law.

Sherly Kumalari Hardjo argued that the land being sold was jointly owned property obtained during her marriage to the seller, her husband Haryanto. As a result, she believed she was entitled to the land. This is laid down in Article 119 of the Civil Code, which mandates that all assets possessed by both husband and wife automatically become common property. In contrast, the Marriage Law states that property attained during matrimony is regarded as shared property, while any property acquired before marriage is considered as inheritance for each individual.

Article 35 paragraphs (1) and (2) of the Marriage Law state that any property obtained during marriage becomes joint property. It should be noted that inherited assets and gifts also fall under this provision unless otherwise stated by the parties. Moreover, inherited and gifted assets of either spouse remain under their control, unless mutually agreed otherwise.

In case of a divorce, the assets to be divided equally are half of the joint assets acquired during the marriage. To determine the inherited assets, the inheritance would be half of the joint assets plus any personal assets acquired before the marriage. However, if there's a Marriage Agreement in place, there will be no joint assets (separate property).

Sherly's legal action was filed under Article 834 of the Civil Code, which provides heirs with the right to make a legal claim for inheritance against those possessing bezit, either wholly or partly, with or without rights. Additionally, Sherly claimed in her lawsuit that the land, sold by the late Haryanto, was acquired after marriage, and therefore constitutes joint property. Hence, to transfer land rights by sale or purchase, the Land Deed Official must oversee the procedure with Sherly's consent and signature on the corresponding section of the deed. According to the plaintiff's case, the sale and purchase transaction was deemed non-compliant with legislation, rendering the transfer of land rights illicit and the act null and void.

The claimant emphasised that the sale and purchase transaction in question was not in compliance with Supreme Court Decision Number 1816/Pdt/1989, dated October 22, wherein it is stated that "the buyer cannot be deemed to have acted in good faith if the purchase was made carelessly, without scrutinising the rights at the time of purchase." Hence, the land sellers are not entitled to any protection. The Supreme Court ruling 701 mandates that in cases of joint property, including land, both spouses must give their consent for any sale or purchase. If the husband sells such jointly owned property without the wife's approval, that sale would be illegal and void. Any land certificates related to the sale or purchase without proper authorization would not receive legal recognition.

The lawsuit brought by Sherly as plaintiff against multiple defendants has been concluded at the district court level. The ruling of the Serang District Court, as outlined in Decision No. 39/Pdt. G/2017/PN. Srg on 20th November 2017, has been affirmed by the High Court, per Decision No. 60/PDT/2018/PT BTN on 6th June 2018. The verdict fully rejected the plaintiff's claim.
METHOD

The article explores issues from an objective viewpoint, relying on essential legal materials such as legislative regulations and prior research results from secondary legal sources. Therefore, this research falls into the category of doctrinal/normative legal research utilizing a legislative, conceptual, and case-based approach. Any technical terms used will be clearly explained upon their initial use. The collected information is later evaluated qualitatively and descriptively to produce a thorough and analytical presentation of the topic under examination (Mamonto, 2019).

ANALYSIS AND DISCUSSION

Transfer of Land Rights by the Official Making the Land Deed

One way to obtain legal certitude and safeguard landowners' rights is by instituting a land registration system (Apriani & Bur, 2020). Land registration is carried out by PPAT officials who are authorized to do so and must possess the required competencies, including specific abilities and skills in the land field. This is necessary due to potential future legal implications as deeds generated by PPAT officials are considered valid (Wahid & Kusuma Dewi, 2019).

It is widely recognised that a deed serves as documented evidence, which is signed and covers events that lay the groundwork for a contract or legal entitlements that come with specific stipulations. Since its inception, this instrument has had the primary function of being admissible evidence (Palit, 2015). One of the deeds made as legal evidence is the Authentic Deed (Dewi Kusuma, 2016). The confirmation of a deed issued by the PPAT is considered to be an authentic document as per Article 1 of the Regulation of the Head of the National Land Agency Number 1 of 2006. This regulation pertains to the implementation of Government Regulation Number 37 of 1998 which outlines the rules and regulations for officials who are responsible for executing land deeds.

The creation of a genuine document by or in the presence of the PPAT is a lawful procedure that depends not only on legislative regulations but also on the parties' intentions to preserve their rights and responsibilities, ensure order and legal protection for themselves, and the broader community. One of the legal procedures conducted by the Land Registry in the process of land buying and selling with the intention of obtaining property rights is the transfer of ownership. One of the legal procedures conducted by the Land Registry in the process of land buying and selling with the intention of obtaining property rights is the transfer of ownership. This legal procedure aims to transfer rights and is synonymous with buying and selling. It is crucial to conduct the sale and purchase of land rights prior to PPAT as evidence of compliance with the legal regulations. To execute the transaction, PPAT must produce a Sale and Purchase Deed and register it at the ATR/BPN Office located near the land being sold or purchased.
In general, purchasing and selling transactions can be carried out through two methods: orally or in writing. Oral transactions are often preferred by parties when they feel that the sale and purchase is final and no evidence is required. Legally speaking, according to Article 1320 of the Civil Code (KUHPedat), oral agreements are deemed binding and are just as valid as written agreements (Dewi Kusuma, 2016). Although parties involved in buying and selling transactions often document them in writing to provide evidence, whether or not a dispute arises, some transactions can be carried out without any written documentation, whereas others can be formalised through notarization (Aulad et al., 2020).

Prior to the issuance of land ownership certificates, it is mandatory to publicly declare the intention to issue them according to Article 26(1) of Government Regulation Number 24 of 1997 dealing with Land Registration. The duration of this announcement is for 30 and 60 days for systematic and sporadic land registration, respectively. Such a system facilitates the opportunity for relevant parties to raise objections before the land ownership certificate is released. The certificate of ownership for land has legal and binding force, functioning as a legitimate deed. It holds full and binding evidentiary weight to the parties as to the contents within it and to the judge when presented as evidence (Aldila Rajab et al., 2020).

The publication of the AJB by PPAT confirms the completion of the land sale and purchase transaction but also allows for the possibility of cancellation. The parties involved have the right to provide justification for the request of cancellation. Cancellation means the annulment of a legal action or act, based on legitimate demands. Legal studies have established doctrines related to the invalidity of deeds, which include absolute nullity and relative nullity (Rasda et al., 2021).

**Legal Action Against Joint Assets Sold Without Wife's Consent**

Land issues are a complex phenomenon in society. One prevalent issue concerns the transfer of land rights, such as the issuance of land certificates by PPAT officials, which occasionally do not adhere to official regulations. This scenario is made more intricate if one of the parties serving as the seller passes away, and subsequently, the land being sold is subjected to legal actions due to non-compliance with statutory regulations for the sale of land with joint property status.

One of the land rights transfer cases that is being litigated due to non-compliance with laws and regulations involves the sale and purchase of land in Tonjong Village, covering an area of 22,215 m2. The case involves the plaintiff's husband, Haryanto, and the defendant II, PT Makmur Persada Indonesia. The Deed of Sale and Purchase No. 53/2012, documented by Defendant I, Notary & PPAT of Serang Regency, Mrs Hasanawati Juweni Shande, S. H, records the transaction. The marriage between Haryanto and his legal wife, the Plaintiff, was violated by Defendant II, M. Kn, without the Plaintiff's consent or knowledge. The violation occurred in
accordance with Marriage Deed No. 26/CS./Akte 1982, issued on 14th September 1982. Deed of Sale and Purchase (AJB) No. 63/2000 was executed and granted on 16th August 2000 by the Notary and PPAT Dra. Lily Iswanti Sudjana in the Serang Regency area. It pertained to the transfer of ownership of Title Certificate No. 287, formerly under the name of Ehal Julaeha. The certificate was subsequently renamed Certificate of Title No. 287, under the name of Haryanto, upon completion of the aforementioned sale and purchase transaction. Similarly, AJB No. 53/2012 serves as a continuation of the PPJB deed which was signed by Notary Dra. Lili Iswanti Sudjana, S and acted as the initial agreement for the sale and purchase transaction. The PPJB agreement authorised the purchaser on behalf of the Plaintiff's husband. Consequently, during the transaction, only Haryanto, the seller (the Plaintiff's husband), was present before the notary when signing the PPJB. The purchaser possessed the power of attorney to conduct the sale, therefore solely defendant II acted as the seller or buyer during the legal proceedings that took place at the moment defendant, I signed the AJB. At the time of the sale and purchase, Haryanto declared that he wasn't married, which is supported by his KTP and Family Card papers. Therefore, PPAT's issuance of AJB didn't comply with the regulations regarding legally-bound couples. The transfer of assets during marriage necessitates the participation of the wife to secure legal protection, as described in Marriage Law Number 1 Year 1974. A marriage registered under this law will provide protection for both spouses, which includes their marital assets.

During the sale and purchase transaction, Haryanto stated that he was unmarried, which was confirmed by his identity card and family card documentation. As a result, the issuance of AJB by PPAT is not in compliance with regulatory provisions applicable to parties legally married. The transfer of assets within marriage necessitates the involvement of the wife to ensure legal protection, as outlined by Law Number 1 of 1974 concerning Marriage. Registered marriages under this law are granted protection for both partners, covering their marital assets (Assidik & Gassing, 2020). Under Indonesian law, it is legal to enter into a prenuptial agreement. In contrast to marriages conducted without a prenuptial agreement, assets gained during Sherly and the late Haryanto's marriage are considered joint property under Article 35 of the Marriage Law, irrespective of the spouses' employment status. The origin of the income and whose savings it is do not matter, even if only one spouse has income. Joint assets are governed by the Civil Code, specifically Article 120, and the Marriage Law. This provision clarifies that joint assets comprise of movable objects and items obtained through gift, unless the donor or testator specifies an alternative arrangement. This is applicable irrespective of whether one or both spouses have individual income during the course of marriage.

In the event of marriage, joint property cannot be separated or divided unless there is a death or divorce. The assets will be transferred to the surviving spouse and subsequently, after their death, will be divided equally among the children. In such cases, the assets will be divided equally after burial costs and payment of any shared debts. If the couple has no children, the
assets will still be divided equally. However, if the couple has children, the surviving spouse and their children shall be deemed to be heirs (Zainuddin & Jaya, 2018). It is common knowledge that the assets left behind by a deceased individual, including property and wealth, make up their estate or legacy. As per Jurisprudence Number 301 K/Sip/1961 by the Supreme Court, a widow is entitled to inherit her husband's estate and receive the same share as his biological children. The transition of the rights and duties of the inheritor to the successors, with regards to the inherited assets or objects of a deceased person, is known as an inheritance relationship.

If related to Law Number 39 of 1999 concerning Human Rights, Article 3(2) specifies that individuals possess the right to be acknowledged, guaranteed, protected, given fair legal treatment, provided with legal certainty, and treated equally under the law. Moreover, Article 36(2) prohibits arbitrary and unlawful deprivation of property. Therefore, when engaging in legal transactions, such as the acquisition and disposal of land rights, it is essential to ensure compliance with the relevant provisions. To ensure legal compliance, a sale and purchase agreement, in the form of an AJB, ought to be formulated by the PPAT, an authorized official. Additionally, observance of legal regulations when drafting the deed will grant the deed with legal validity.

**Legal Protection and Certainty for Buyers’ Good Faith in Land Sale and Purchase Transactions**

The role of law is essential in establishing a state founded on the principles of popular sovereignty. An important aspect of maintaining the rule of law is safeguarding fundamental rights, including the right to property (Sugiono & M.D. Ahmad Husni, 2016). Certainty, order, and legal protection require unequivocal proof that establishes the rights and duties of individuals as legal entities in society, especially in cases that have an impact on their lives (Sinaga, 2019).

Legal protection safeguards against infringements of human rights by others, according to Satjipto Raharjo. Communities are granted this protection to ensure full enjoyment of their lawful entitlements. The provision of protection is an important objective and characteristic of the law to ensure legal certainty (Sudrajat et al., 2020).

Humans interact to meet their needs by engaging in relationships, which may be lawful or unlawful. One popular way of satisfying needs is through the creation of agreements for purchasing, selling, exchanging or renting. Communities are establishing closer ties with one another, leading to the establishment of agreements. The legal relationship between two legal parties is established by the existence of an agreement (Alwi, 2021).

Article 1313 of the Civil Code provides the following definition of an agreement: "An agreement is an action wherein one or more individuals bind themselves to one or more individuals." According to Article 1320 of the Civil Code, for the validity of a contract or agreement, agreement, competency, specific items, and a lawful cause must be met. Meeting the four
prerequisites needed for an agreement to be deemed valid ensures its legal enforceability and obliges all parties involved to adhere to it (Prawira Buana et al., 2020).

Every contract is subject to contract law, which mandates implementation in good faith as stated in Article 1338 Paragraph (3) of the Civil Code. Good faith implementation can be classified into two categories: subjective elements and objective assessments. In object law, the subjective element pertains to the honesty and integrity of the contract's originator. However, Article 1338 Paragraph (3) of the Civil Code stipulates that good faith must be objectively evaluated by adhering to norms of propriety and decency when implementing the agreement. It is important to exclude subjective evaluations which are not marked as such. The law does not provide a definition of propriety and decency, leading to a lack of provisions regarding these terms. However, propriety pertains to appropriateness and suitability, while decency refers to politeness and civility. These values described as fitting, proper, polite, and civilized are equally desired by the parties making the promise. Upholding these values in promises and contracts is crucial to maintain fairness and respect (Oktaviah & Tjempaka, 2019).

Aser Rutten also stated, "Implementation of an agreement based on good faith necessitates the creditor to exercise their rights and debtor to fulfil their obligations according to the 'Redelijkheid en Billijkheid' principles, which direct both parties to execute the agreement in a civilised manner" (Pangaribuan, 2019). Good faith in contract performance refers to an objective standard which relies on an objective norm. The provisions of good faith pertain to unwritten norms that have become legal norms and are considered separate source of law. These norms are objective in nature because the behavior in question must conform to general assumptions about good faith, rather than being based on the parties' individual beliefs (Purwiyantiningsih, 2008). Article 1338(3) of the BW mandates that agreements are executed in good faith, entailing objective good faith particularly during the time of agreement implementation. Munir Fuadi contends that good faith is merely implicit in contract implementation and not during its formation (Arifin, 2020).

Based on SEMA No.4 of 2016, which pertains to the enforcement of the outcomes of the 2016 Supreme Court Chamber Plenary Meeting and serves as a guideline for court duties, a good faith buyer is defined in point four of the Civil Chamber Legal Formulation. This definition is established in letter a of the Civil Chamber agreement on October 9, 2014, and serves as the criteria for a good faith buyer deserving protection under Article 1338 paragraph (3) of KHUPerdata.

Carry out the buying and selling of land in compliance with statutory regulations. Processes involved are as follows: (i) obtaining land through public auction; (ii) purchasing land from a Land Deed Officer (as per Government Regulations, number 24 of 1997); or (iii) obtaining customary or unregistered land as defined by customary law. Ensure that all technical terms are explained when first used; (iv) The transaction was carried out in cash in the presence and with
the knowledge of the local Village Head/Lurah; (v) Research was conducted beforehand to confirm land ownership, which verified that the seller was indeed the rightful owner; (vi) The land was purchased at a reasonable price.

Acquire and dispose of land assets in accordance with legal procedures and documentation as mandated by applicable laws and regulations. (i) The seller is an individual who possesses legal entitlement or rights to the land subject to the transaction, proven by proof of ownership; (ii) The land or property being exchanged cannot have been seized; (iii) The land or property being exchanged cannot have been pledged or mortgaged; and (iv) For valid land, the National Land Agency (BPN) has been consulted, and the legal connection between the land and the certificate holder has been documented.

Buying and selling are common activities in society and can pose challenges, especially in land sales that involve properties not owned by the seller or when breaches occur. Article 1243 of the Civil Code outlines the regulatory provisions concerning contract defaults and breaches in detail. It is widely recognised that an event of default is activated by a prior agreement between the parties. This agreement is usually made in the form of a contract, which describes the commercial objectives of the parties and the ways in which they mutually benefit, are protected, or restricted in achieving those objectives (Yuanitasari, 2020).

There are instances in which a land seller surrenders their land entitlements without informing their successors, as illustrated in the examined case. PT Makmur Persada Indonesia, the purchaser, forged a land purchase deal with the deceased Mr Haryanto for a 22,251M2 property situated in Tonjong Village/Sub-district, Kramatwatu District, Serang Regency, Banten Province. Acronyms such as ‘PT’ will be elucidated upon their initial usage. PT Makmur Persada Indonesia entered a binding agreement to purchase 22,251 sqm of land from the late Mr Haryanto in Desa/Kelurahan Tonjong, Kecamatan Kramatwatu, Kabupaten Serang, Provinsi Banten. The transaction was facilitated by the legal representative of the deceased, as identified in Deed of Sale and Purchase No. 53/2012, which was created and issued by Notary Hj. Hasnawati Juweni, S. H., M. Kn., who is a Notary and PPAT for Serang Regency.

Furthermore, on 14th December 2013, the ownership was transferred from the seller to the buyer in accordance with Deed of Sale and Purchase No.53/2012. Following this, Sherly Kumalari Hardjo initiated legal proceedings against Notary & PPAT Hasanawati Juweni Shande, PT. Makmur Persada Indonesia, and the Head of the Serang District Land Office at the Serang District Court. In the legal case brought by Sherly, who is the plaintiff and was the legal spouse of the late Alm. Haryanto, as evidenced by the marriage certificate, she contends that she has the status of an heir. Thus, Sherly believes that she should have been informed of and granted permission for all of the late Mr Haryanto's actions related to his assets. Sherly emphasised that her marriage did not establish a prenuptial agreement regarding asset separation. Henceforth, Article 35 of the 1974 Marriage Law dictates that any assets accrued during the duration of a
mariage be regarded as shared property. Sherly Kumalari Hardjo argued that the land being sold was jointly acquired during her marriage with the seller, specifically her husband Haryanto. As a result, she considered herself entitled to the land. Article 119 of the Civil Code outlines that all assets owned by married couples become joint property by default. By contrast, the Marriage Act states that property gained throughout the marriage is considered communal, while any property obtained before the marriage is seen as inherited property for each person.

Buyers acting in good faith are granted legal protection. The person suffering losses in this case must be shielded as they made the purchase in good faith. Article 1338 paragraph (3) outlines and a Court Circular confirms this claim. Moreover, Agung Number (SEMA) No.4 of 2016 supports the implementation of the Supreme Court Chambers' 2016 Plenary Meeting outcomes, providing additional backing for the aforementioned legal protection. Legal protection encompasses actions aimed at ensuring legal entities and individuals are granted safety, ease and legal security. This involves safeguarding interests, protecting assets and providing entitlements, while avoiding subjectivity and maintaining a formal tone throughout. Legal protection pertains to measures taken to ensure the safety, comfort and legal certainty of individuals and legal entities. Its aim is to prevent arbitrary actions.

The aim of economic law’s theory of legal protection is to integrate and coordinate various interests. It is crucial to balance all involved parties since protecting one interest may require limiting another. The underlying principle for legal protection is the concept of benefit, which includes consumer safety and security. This case concerns PT. As a purchaser with genuine intentions, Makmur Persada Indonesia seeks equity, while the essence of legal safeguarding must provide certainty in law (Putri & Amalia, 2019).

Therefore, based on the decisions of the Serang District Court No. 39/Pdt. G/2017/PN. Srg on 20th November 2017 and the High Court Decision No. 60/PDT/2018/PT BTN on 6th June 2018, which unanimously rejected the applicant's claim, it can be argued that the buyer has been afforded legal protection. However, the Cassation Decision of the Supreme Court of the Republic of Indonesia, as stated by the panel, accepted the cassation petition submitted by Sherly Kumalawati Hardjo, who was formerly the plaintiff. The ruling of the Banten High Court, case number 60/PDT/2018/PT. BTN. dated June 6th, 2018, which affirmed the verdict of the Serang District Court case number 39/Pdt. G/2017/PN. Srg. dated November 20th, 2017, was subsequently annulled. The Panel granted PT Makmur Persada Indonesia's request for reconsideration in the Judicial Review decision and nullified the Supreme Court Decision Number 227 K/Pdt/2019 issued on 12th February 2019, which nullified the Banten High Court Decision Number 60/PDT/2018/PT. BTN. of 6th June 2018, together with Serang District Court Decision Number 39/Pdt. G/2017/PN. Srg.

The Supreme Court's Judicial Review decision, which has the force of res judicata, confirms that PT. Makmur Persada Indonesia acted in good faith in the land sale and purchase.
transactions with the seller of the late Haryanto. This is evidenced by the proper completion of all transaction stages with the involvement of authorised personnel, namely notaries/land deed drafters. The Supreme Court's decision to reject the plaintiff's claim underscores the legal protection afforded to the buyer, in particular PT. Makmur Persada Indonesia.

CONCLUSION

With regard to Sherly's claim that the property sold by the deceased Haryanto to PT. Makmur Persada Indonesia is joint property, it should be noted that the purchase transaction was conducted in good faith and involved an authorised Notary/Land Deed Drafting Official. The transaction will be conducted by the Notary/Land Deed Official in accordance with the law. This includes the provision of formal and material evidence to confirm that the land belonged to the deceased and that they were unmarried. All stages of the process are designed to prove this fact, thereby removing the need for the consent of any other party, including Sherly. The Judicial Review decision of the Supreme Court, which dismissed the claimant's application, provides protection for purchasers acting in good faith. Nevertheless, this case should serve as a reminder for future improvements. One solution could be to address the legal gap by giving notaries greater powers of identification in land transactions.

REFERENCE


