

**Dispute on Inherited Land for Sale**  
**(Analysis of Supreme Court Decision No. 102/Pdt.G/2018/Pn.Mdn)**

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**Abstract**

*This research aims to determine the resolution of disputes on the issue of transfer of rights to land charged with dependent rights on the basis of the review analysis of Supreme Court Decision No. 102 / PDT. G/2018/PN MDN. This research uses descriptive qualitative research methods and normative types of legal research based on Supreme Court Decision No. 102 / PDT. G/2018/PN MDN which uses a review of the Civil Code, the applicable laws and regulations include the Basic Agrarian Regulation (Law No. 5 of 1960), Dependent Rights (Law No. 4 of 1996), Land Registration (PP No. 24 of 1997). The transfer of rights to land which is the object of dependent rights in the disputed inheritance provides an explanation of the procedure for transferring rights to land by sale and purchase and inheritance and the protection of parties makes clear the ownership of rights to disputed land. The results of the study show that, 1) Transfer based on the transfer of inheritance can be made if a deceased person shows a person as an expert heir and regarding the transfer through sale and purchase it can be legally proved that the land and building have passed to a new subject in the presence of a certificate / deed of sale and purchase that has been registered. 2) The Right of Guarantee imposed on the land is referred to as the Right of Dependents for a repayment of debts that prioritize the position of the creditor. 3) The object of the land transitioned through inheritance can be sold if it is qualified to obtain the consent of the heirs, while the party entitled to charge the object of land in the guarantee of Dependent Rights is the owner who owns the land concerned, and the right follows in the hands of whoever the object of the land is located.*

**Keywords:** *Transfer of Land Rights, Dependent Rights, Buying and Selling, Inheritance*

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**INTRODUCTION**

Land rights are defined as rights that give authority to the party who owns it to be able to take or use the benefits of the land that belongs to him. Soekdino Mertokusumo, (1998:99) One of the various characteristics of this land right is that it can be transferred and transferred to another party. There are two forms, including: 1) Transfer, defined by the transfer of rights to land originating from one party to another, which is due to a legal event, for example a person who dies. Thus, in a juridical manner, land rights will be transferred to the heirs, if the heir fulfills all the requirements as a subject of rights to certain objects as land rights that are inherited to him. 2) Transferred, defined by the displacement due to the occurrence of a legal action, in this case as for example an auction, company capital entry (*inbreng*), exchange, grants, and buying and selling.

The transfer of rights to land occurs due to legal actions, including through the process of grants, exchanges, buying and selling and inheritance as stipulated in the Basic Agrarian Regulation Law no. 5 of 1960 article 26 point (1) (Ganari Article 26 paragraph (1) UUPA 019) Land rights in this transition took place due to legal actions or legal events registered with the Land Office.

This land right can be valued with a monetary standard or has an economic value; thus, this can later be used as debt security by being given an encumbrance for Mortgage Rights (Article 16 of the UUPA). The objects of the Mortgage Rights are HGU, HGB, Ownership Rights, and Use Rights, based on the provisions, registration must be carried out and based on their nature, transfers can be made.

This property right is basically defined by material rights, which is that one of the various characteristics of this property right is that this right follows the object or "*droit de suite*". This is as a form of guarantee of legal certainty and as a form protection for buyers who have paid in full the price that has been paid in full but has not been able to carry out the making of AJB and registration behind its name because for one reason or another there are conditions that have not been fulfilled Letezia Tobing (2013). :90)

According to the explanation above, the author is interested in raising the title The transfer of land rights in Indonesia still often causes many conflicts. In Supreme Court Decision No. 102/PDT.G/2018/PN Mdn with the main problem of land and building objects that have been given the burden as credit guarantees are inherited assets that have been bought and sold.

## RESEARCH METHODS

This study uses qualitative research with a juridical review of the transfer of rights to land as an object of mortgage is research using descriptive analytical research and this type of normative legal research is dogmatic law and or normative legal science whose function is to conduct legal studies which have a position as a norm (*das sollen*). The system of norms described in it include doctrines (teachings), agreements, court decisions, and laws and regulations (Ganari and Ismunarno 2019). The legal materials used include: 1) Primary Data which consists of Decision Number 102/PDT.G/2018/PN MDN. 2) This secondary legal material consists of research discourses that have a relationship with the problem being researched and various books that discuss law. In a study there is always a process of data collection. The data collection process can be done by certain methods.

Type the method chosen and used in the data collection process depends on the nature and characteristics of the research being conducted. So that the data collected meets the requirements or can be justified naturally. This research was carried out through libraryresearch, namely through 1) Documentation studies. Documentation comes from the word document, which means written items. The documentation method in this case means how to collect data by recording data that already exists in the documentation or archives of Shidiq and Choiri (2019:9). Documentation is to look for data in the form of notes, transcripts, books, newspapers, magazines, parasati, meeting minutes, agendas and so on. After all the data has been collected, then documentation is carried out to complete the research. Various documentation obtained about. 2) Literature Study. Literature study is a data collection technique by conducting a study of books, literatures, notes, and reports that have a relationship with the problem to be solved. This technique is used to obtain the basics and opinions in writing which is done by studying various literatures related to the problem under study. So, the literature study in this research is to conduct a review of Decision Number 102/PDT.G/2018/PN MDN, regarding transfer of rights to land which is the object of

mortgage rights in inheritance disputes that are traded. The author obtains data in the form of information and information as well as facts from respondents both verbally and in writing collected, then arranged in a systematic, logical, and juridical manner, in this analysis the author uses qualitative analysis methods. In this qualitative analysis method, it is done by collecting the data obtained and connected to the existing literature or theories related to the problem under study. In analyzing the existing data and then looking for a solution which in the end will be found conclusions to determine the result of the research. (M.Prawiro,2019:3)

## **RESULT AND DISCUSSION**

### **General Provisions on Land Rights and Arrangements for the Transfer of Rights to Land Through Sale and Purchase**

Land rights are defined by the right to control over land, which includes a series of obligations, authorities and prohibitions for parties who holding that right to do something about the land to which they are entitled. What is prohibited, obligatory or allowed to do this is as the contents of the right of control, which is a differentiating criterion or criterion contained in the regulation on land rights Boedi Harsono (2007: 283)

The transfer of land rights through a sale and purchase agreement which is contained in the Civil Code Article 1458, Article 1457, and 1459 states that the sale and purchase of land is defined by a certain agreement, in which one party binds himself to surrender or give the land, while the other party pays the price with previously set. When the two parties have complied with the terms of the agreement, then the sale and purchase is declared to have taken place, even though the land has not yet been handed over and the agreed price has not been paid. However, this sale and purchase contract has been declared to have taken place, but the rights to the land have not yet been changed to the party who bought the land. So that the rights to the land have been transferred, from the selling party to the buying party, but another legal agreement is still needed, namely in the form of a juridical transfer / transfer of name which aims to be able to confirm the rights of the buying party who is the owner. the new land.

This sale and purchase of land rights has various requirements for registration purposes for the transfer of land rights, among which are as follows:

#### **1. Material Requirements**

According to the UUPA, the material terms of a sale and purchase are declared valid if:

- a) The buyer has the right to buy the land in question, in this case it means that those who can have ownership rights to this land are legal entities established by the government and a single Indonesian citizen (Article 21 UUPA)
- b) The seller has the legal right either alone or by more than one person with a joint agreement to act as a seller.
- c) Land objects can be traded and are not in dispute, which means that land that is allowed to be transferred by sale and purchase has been determined based on the UUPA, namely in the form of use rights, article 41 "right of use", article 35 "HGB", article 28 "HGU", and Article 20 "property rights" Adrian Sutedi, (2007: 77-78).

## 2. Formal requirements The

qualification of this sale and purchase must be proven by using a deed registered with the PPAT as stated in Article 37 Number (1) PP No. 24 of 1997. PPAT has the authority to make deed of Ownership of Flat Units and the sale and purchase of rights to this land are as follows:

- a) "PPAT officials according to PP No. 37 of 1998".
- b) "PPAT while deed makers in areas with minimal PPAT have PPAT. (According to article 1 point (2) PP No. 37 of 1998)".

Often the practice of buying and selling land uses the procedure for transferring rights to land based on the Sale-Buy Binding Agreement/PPJB, which switches to a new buyer even though the object has not been certified. Based on SEMA 4/2016 article (7), "*The transfer of land rights based on the Sale and Purchase Binding Agreement (PPJB) legally occurs if the buyer has paid the land price in full and has mastered the object of sale and purchase and is carried out in good faith.* Doni Budiono,( 2022:98)

Agreement Binding (PPJB) made before a notary is a deed authenticIn relation to the authentic deed, Article 1870 of the Civil Code has affirmed that the deed made before a notary has perfect evidentiary power. Meanwhile, the quote is as follows, Article 1870 of the Civil Code or authentic deed provides between the parties and their heirs or those who have rights from them, a perfect proof of what is contained therein. "A deed provides between the parties and their heirs or the people who have rights from them, a perfect proof of what is contained in it." Usually, PPJB will be made by the parties because of the conditions or circumstances- conditions that must be carried out first by the Parties before conducting AJB before the PPAT. Thus, PPJB not be equated with AJB which is evidence of the transfer of rights to the land/building from the seller to the buyer. Johannes Ibrahim (2004:72)

Registration of the transfer of rights to the inheritance of land is assured through a document stating the death of the heir and a letter of proof as an heir. The transfer of rights to land by sale and purchase in the form of inheritance objects must involve all legal heirs to the inheritance of the heirs where all heirs must be present to sign the Sale and Purchase Deed (AJB), and the heirs who are unable to attend can give written authorization to the experts. other inheritance in the form of a notarial deed or an underhand power of attorney that is equipped with a stamp duty and legalized by a notary. If the rights of one of the heirs feel aggrieved because the ownership rights to the land sold do not meet the agreement, the heir can file a civil lawsuit (according to Article 1365 of the Criminal Code).

Transfer of rights to land by way of inheritance, namely the act of transferring ownership of someone's property that has died to a person appointed either by himself or by the court as heir. The requirement to register the transfer of ownership rights to land due to inheritance is contained in Article 36 PP No. 24 of 1997, which contains the recording of transitions that undergo physical and juridical changes to land objects to the Land Office. In the concept of land sale and purchase transactions, namely clear and cash. Light means that it is carried out openly, clearly the object and subject of the owner, complete with documents and proof of ownership. Cash means paid instantly and all at once. The taxes are paid, signed the Sale and Purchase Deed, and then processed behind the name of the certificate. In addition, the Sale, and Purchase Binding Deed (PJB) serves as a binder as a sign of buying

and selling transactions while waiting for it to be paid off. If the PJB is not paid off, then there is no power in it except for the terms of fulfilling an obligation if the payment has been paid off and PJB is paid off, then it is accompanied by a power of attorney to sell from the seller to the buyer. Then the Notary or PPAT immediately makes a Deed of Sale and Purchase to then process the name of the certificate Hasbullah, Fieda Husni, (2015:5)

The lawsuit after 10 (ten) years the PPJB was made. This can be done by the party if there is indeed a dispute between the parties in an agreement or with other parties who have rights from the PPJB. Thus, if there are other parties outside the parties in the PPJB, who are being sued in the case, the claiming party must be able to prove the existence of a legal relationship between the plaintiff and parties outside the PPJB. This is in line with the Permanent Jurisprudence of the Supreme Court through Supreme Court Decision No. 4 K/Rup/1958 dated December 13, 1958, which has legal rules: "To be able to sue someone before a court is an absolute requirement that there must be a legal dispute between the two litigants (Government Regulation No. 24/1997).

### **Position of Land that Has Mortgage Rights as Collateral (*Collecteral Credit*) in the Transfer of Rights to Land**

Position of rights that are burdened with collateral for land as debt repayment by giving a position that prioritizes creditors. If the debtor fails / defaults, the creditor can sell it through a public auction according to the provisions of the relevant law. In Article 8 UUHT, it is explained that the registration of Mortgage Rights is explained by the party who can provide collateral, namely individuals/legal entities who have the authority to carry out actions against objects that are burdened with Mortgage guarantees as the concerned giver. According to Article 9 UUHT is an individual or legal entity domiciled as the party who owes the correct and prudent procedures for selling land. Formally, the relationship that occurs in the making of a sale-purchase agreement on land rights is to sign a Sale-Purchase Deed (AJB) as an authentic deed which is carried out in the presence of the Land Deed Making Officer (PPAT). This is based on the purpose of carrying out land registration, one of which is to guarantee legal certainty. Since the enactment of PP No. 10 of 1961 concerning the registration of buying and selling land is carried out by the parties before the PPAT who oversees making the deed. By carrying out a sale and purchase before the PPAT, the Deed of Sale and Purchase signed by the parties proves that there has been a transfer of rights from the seller to the buyer accompanied by payment of the price, has fulfilled the cash requirements and shows that the real and real legal act of buying and selling has been carried out. Andrian Sutedi, (2017:9)

The emergence of land disputes can occur because of a lawsuit from a person or legal entity containing lawsuits due to legal actions that have harmed the land rights of the plaintiff. The material for the lawsuit can be in the form of demands for legal certainty regarding who has the right to the land, land status, evidence that forms the basis for granting rights, and so on. To maintain their rights and obligations, people must act according to the legal regulations that have been set. Settlement of land disputes which incidentally is inheritance refers to the rules of inheritance law that exist in Indonesia, not referring to ordinary civil dispute resolution, considering that inheritance law has its own rules, both in western civil law, Islamic law, and customs. 127)

The transfer of land rights through buying and selling implies the legal act of transferring rights forever from the seller to the buyer and payment of the price either in whole or in part from the buyer with cash terms. clear conditions mean that the sale and purchase agreement is brought before the official authorized to make the deed of sale, namely the Land Deed Maker Official (PPAT) and witnessed by two witnesses, the cash requirement means that there are two actions carried out simultaneously, namely the transfer of rights from the seller to the owner. buyers and payment of prices either partially or wholly from buyer to seller (Samsu 2017) Since the enactment of PP No. 10 of 1961 concerning Land Registration for buying and selling is carried out by the parties before the PPAT who oversees making the deed. By doing buying and selling before the PPAT, the conditions are bright (not a dark legal act, which is carried out secretly). The deed of sale and purchase signed by the parties proves that there has been a transfer of rights from the seller to the buyer accompanied by payment of the price, has fulfilled the cash requirements and shows that the actual legal act of buying and selling has been carried out. Land rights are rights that give authority to a person. who has the right to use or take advantage of the land? Land rights are different from the use of land rights. The hallmark of land rights is someone who has land rights who are authorized to use or take advantage of the land that is their right. The transfer of land rights occurs due to the inheritance of wills and legal regulations on the transfer of rights. According to civil law, if the holder of a land right dies, the right is transferred by law to his heirs. The transfer is to the heirs. Land law provides provisions regarding the control of land originating from inheritance and regarding matters concerning the granting of proof of ownership by the heirs according to article 20 of Regulation 10 of 1961 concerning land registration.

Land rights are one of the individual rights to land. Individual rights to land are rights that authorize the holders of their rights (individuals, groups of people together, legal entities) to use in the sense of controlling, using, and or taking benefits from certain lands. Individual rights to land in the form of land rights, land waqf property rights, mortgage rights, property rights to flat units. Land rights are rights that authorize the holder of the right to use the land and/or take advantage of the land he is entitled to.

The basis for granting land rights to individuals or legal entities is contained in Article 4 paragraph (1) of the UUPA, namely based on the right of control from the state as referred to in Article 2, it is determined that there are various types of rights to the earth's surface, which are called land that can be given to land rights. and owned by people, either alone or jointly with other people and legal entities.

Various types of land rights are contained in Article 16 of the LoGA, Article 53 of the LoGA, and in Government Regulation No. 40 of 1996 concerning Cultivation Rights, Building Use Rights, and Land Use Rights, State Gazette of the Republic of Indonesia (LNRI) of 1996 No. 58 – Regarding the State Gazette of the Republic of Indonesia (TLNRI) No. 3643. 2

Objects that can be encumbered with credit guarantees are land rights regulated in the Loan/debt that must meet the following criteria:

1. Have credibility as an object that can be assessed economically.
2. Having publicity requirements as a promotion strategy in sales.

3. Follow the “*droit de suite*” nature as supervision if the debtor commits a breach of contract/default.
4. Requires legal proof according to the law.

The birth of the encumbrance of Mortgage with registration at the Land Office. The end of the encumbrance of Mortgage under articles 18 and 19 of the UUHT, namely the settlement of the debtor, the clearing of the mortgage through a public auction and the abolition of land rights. and the stage of registration of the encumbrance rights.

Buying and selling whose objects are Property Rights, Cultivation Rights, Building Use Rights and Use Rights on State Land which must be carried out by PPAT, and carried out underhand deeds and carried out before PPAT as regulated in Law no. 19, Government Regulation No. 10 of 1961 it is explained that any agreement that intends to transfer land rights must be proven by a deed of the Land Deed Maker (PPAT). So, the sale and purchase of land is carried out before the PPAT, which is evidence that there has been a sale and purchase of land rights.

In its implementation, the binding of credit guarantees that impose legal objects with Mortgage Rights often occurs, one of which is if the object used as Credit Guarantee has a different owner, where in this case, the Bank must be vigilant in approving the object to be pledged as collateral, which can be observed through the correlation between the credit applicant and the object to be encumbered by collateral so that there is no dispute.

In the event of a breach of contract/default where the debtor is deemed to have failed to pay the creditor, the creditor is allowed to file a claim requesting the execution of the mortgage right.

### **Settlement of Disputes on the Problem of Transfer of Rights to Land Charged with Mortgage based on Review Analysis of Supreme Court Decision NO. 102/PDT.G/2018/PN MDN**

Decision case based on a lawsuit filed by the plaintiffs stating the act of buying and selling, changing names, granting mortgage rights and conducting auctions that have been legally proven without the knowledge and permission of the Plaintiffs is a series of unlawful and unlawful acts and aims to eliminate the civil rights of the Plaintiffs as Owners/Heirs entitled to a plot of land and building located at Jalan Sidomulyo LK XI N.29, kel. Pulo Brayan Darat II, Kec. Medan Struggle d/h Kec. East Medan, Medan City which is the object of inheritance.

In the context of accelerating the handling and resolution of land disputes in accordance with the distribution map of disputes, conflicts, and land cases, good and measurable performance is needed in handling disputes, conflicts and land cases systematically both in thinking and acting so that they are not only informative but also presents data on land disputes, conflicts, and cases, root causes, typology of problems, handling steps and solutions for their solutions as stipulated in the Decree of the Head of the National Land Agency Number 34 of 2007 concerning Technical Guidelines for Handling and Settlement of Land Problems.

The Plaintiffs in Decision Number 102/PDT.G/2018/PN MDN are described as follows:

1. "In accordance with evidence P-4, namely, Photocopy of Certificate of Heirs No: 28/SKAW/VIII/2009, it can be stated that the object of the case is a legacy boedel and the Pen The lawsuit together with the Defendants (I to V) as heirs become joint owners of the abandoned land. In accordance with the evidence of Photocopy of Case Revocation Letter, Submission Letter, Peace Letter, Declaration Letter of Alm.M.Nurkamil's biological son, it was agreed to be certified on behalf of Kasih (Defendant-I) and prior to certification, in accordance with the evidence of Photocopy of Approval Letter where it was agreed that it had been agreed that The object of the case will be divided into 8 (eight) parts of the inheritance. So, in accordance with Article 832 paragraph (1) and 833 paragraph (1) the plaintiff is the legal heir".
2. "That the binding sale and purchase was carried out, according to evidence of the approval of the heirs supported by the statement of the late heirs. M.Nur Kamil, so that the formal sale and purchase transaction of the object of the case has been carried out according to and in accordance with legal provisions so that it cannot be said that the act is against the law. With the photocopy of the Sale and Purchase Deed No. 118/2016 thus stating that Defendant VI as a buyer must be protected as a buyer with good intentions".
3. "According to the evidence of the Mortgage Certificate that the collateral land that has been registered at the Medan City Land Agency Office, with the Mortgage Certificate No. 06552/2016 Defendant VI as the new owner of the land object has given power of attorney and agreed, the object charged with the guarantee is sold by the Mortgage Recipient on his own power and continued as debt repayment".
4. "According to the procedure due to the debtor's default, PT. Bank OCBC NISP Tbk with its letter Number 626NVKN.02/KNL.01/2018 dated 23 March 2018, made the Determination of the Auction Schedule, the First Announcement of the Mortgage Execution Auction dated 26 March 2018, and the Second Announcement of the Mortgage Execution Auction through the Tribun Medan Daily Newspaper dated April 10, 2018 made the auction implementation procedure adopted by Defendant IX in accordance with and according to the provisions of the Act and PMK No. 93 of 2010 article (3) concerning the Auction System which has been carried out in accordance with the valid provisions cannot be canceled".

Based on the background and consideration of the case analysis above, the results of the research analysis are that the transfer of rights to the land that has been carried out by the defendants is correct according to the valid sale and purchase binding regulations and the auction provides protection for the bank as a creditor who obtains the right as a creditor. due to breach of contract from the debtor's side as the subject of the new law of ownership of rights to the land object of the dispute.

To defend their rights and obligations, each person acts according to and based on the established regulations. If the party concerned is unable to settle his/her own demands peacefully, then the party who feels aggrieved can take the dispute to court for dispute resolution. The process of resolving disputes through the courts aims to restore the rights of someone who has been harmed or disturbed, to restore the atmosphere to its original state that everyone must comply with legal regulations so that the law runs as it should. Settlement of

disputes through mechanisms outside the court that are carried out peacefully has long been known and practiced in people's lives. Indonesia. The Indonesian people feel that peaceful dispute resolution has led them to a harmonious, fair, balanced life and the preservation of the values of togetherness (community) in society. The community seeks to resolve disputes quickly and accurately while upholding the values of togetherness and not depriving or suppressing individual freedom. Dispute resolution in the community refers to the principle of "freedom" which benefits both parties to the dispute. The disputing parties can offer dispute resolution options by involving neutral parties or community leaders. The parties are not fixated on trying to prove right or wrong in their dispute, but they tend to think about resolving disputes for the future, by accommodating their interests in a balanced manner. Dispute resolution by means of deliberation and consensus is expected to be able to satisfy the disputing parties, even though it is not one hundred percent.

## CONCLUSION

From the results of the above discussion, it can be concluded that: 1) Transfer based on inheritance can be carried out if someone who has died shows someone as an heir as regulated in PP 24/1997 and regarding transfer through buying and selling it can be legally proven that land and buildings have been transferred to new subjects with a certificate / deed of sale and purchase that has been registered based on article 37 PP No. 24 of 1997. 2) Collateral rights imposed on land are referred to as Mortgage Rights for a debt settlement that prioritizes the position of the creditor. 3) The object of transfer of land through inheritance can be sold if it fulfills the requirements of Articles 832 and 833 of the Civil Code to obtain approval from the heirs, while the party entitled to charge the object of land under Mortgage Guarantee is the owner who owns the land in question, and the right follows in the hands whoever the land object is (UU Mortgage No. 6 of 1996 article (7)).

Suggestions that can be given are: 1) To the community to understand the importance of managing the transfer of rights to land according to the procedure for obtaining a land ownership certificate to clarify the status of ownership of the land. 2) In accordance with Law Number 4 of 1996 to provide an understanding of the importance of the position of the rights of the parties in the binding of the credit agreement on the object of the land that is burdened as collateral for the Mortgage Rights. 3) It is hoped that the government will maximize regulations on the rights of the parties to be given legal protection in cases of credit agreement disputes that are charged with Mortgage guarantees.

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