


Legal Protection For Heirs Against Inheritance

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Abstract

Introduction: The agreement of all heirs to the transfer of land rights through sale and purchase is an important component that must be a concern for the parties who carry out the sale and purchase, especially inherited land. In this case, the holder of his land rights gets legal protection later, therefore, analyzing and reviewing the issue of legal protection to heirs of inherited property.

Purposes of the Research: This study aims to find out how the validity of buying and selling inheritance without the knowledge of heirs and how legal protection to heirs against buying and selling inheritance property.

Methods of the Research: This research uses normative juridical research methods, legal approaches, case approaches, conceptual approaches used in this research. In addition, to solve legal issues, sources of legal materials are needed, namely primair legal materials, secondary legal materials, and tertiary legal materials.

Results Main Findings of the Research: Shows that the validity of the sale and purchase of inheritance assets of the Supreme Court of the Republic of Indonesia Decision Number 702 PK / PDT / 2020 which does not meet Article 1320 of the Civil Code and Article 1471 of the Civil Code. Furthermore, legal protection to heirs against the sale and purchase of inheritance can make new legal remedies with a deliberative approach to obtain a share of absolute rights or legitime portie in claiming losses that have been suffered by heirs based on the provisions of Article 913 of the Civil Code, if deliberation is unsuccessful, they can file a lawsuit based on Article 834 of the Civil Code and Article 835 of the Civil Code and Article 1365 of the Civil Code which is the basis for The context of legal protection to heirs which is the right and interest of heirs to the sale and purchase of an inheritance object.

Keywords: Heirs; Inheritance; Legal Protection.

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INTRODUCTION

Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia) contains the provision that the Indonesian state is a state of law. Therefore, the law is placed as a benchmark in all aspects of the life of the people and the government in society, nation, and state.¹ The consequence of this is that every act or action of a person, whether individual or group, the people or the government, must be based on the applicable law.

Law basically plays a significant role, namely to regulate human life from the womb to death, including the function of the law is to provide protection for the rights of every citizen. Rights are everything that citizens must get from the state (government).² One of the

¹ Pranoto, E. Asas Keaktifan Hakim (Litis Domini) Dalam Pemeriksaan Sengketa Tata Usaha Negara, *Jurnal Spektrum Hukum* 16, no. 2 (2019): <http://jurnal.untagsmg.ac.id/index.php/SH/article/view/1298/1045>

² M. Umar Djani Martasuta, *Hak dan Kewajiban Warganegara Dan Penduduk, Hubungan Dalam Kontstelasi Kewarganegaraan*, Jurnal Universitas Pendidikan Indonesia (2012): http://file.upi.edu/Direktori/FIP/JUR._PEND._LUAR_BIASA/195202151983011-M_UMAR_DJANI_MARTASUTA/A%20Dikwar/1%20Pendidikan%20Kewarganegaraan/PENGANTAR/HAK%20DAN%20KEWAJIBAN%20WARGANEGARA.pdf

rights that must be protected by the state is the right of inheritance obtained through inheritance.

Inheritance is a transfer of all the rights and obligations of a deceased person to his heirs. The meaning of inheritance law is a law that regulates the transfer of property left behind by a deceased person and the consequences for his heirs. Inheritance law is any legal arrangement that regulates the transfer of inheritance from the heir due to death to the heir or designated person.³ The heirs themselves through the occurrence of legal events of death by the inheritance law are then regulated how to manage and continue their rights and obligations.⁴ According to Article 830 of the Civil Code, inheritance occurs only upon the death of the heir. Inheritance will only occur if three requirements are met, namely the first is that someone dies, the second is that there is a person who is still alive as an heir who will receive an inheritance when the heir dies, and the third is a number of assets left behind by the heir.

The inheritance law in the Civil Code does not distinguish between sons and daughters, between husband and wife. They are entitled to inherit by getting an equal share. The boys' part is the same as the girls' part. The share of a wife or husband is the same as the share of children if from the marriage a child is born. When it is linked to the hereditary system, the Civil Code adheres to the bilateral hereditary system. Each person connects himself to the paternal descendants or from the father if the father dies and has the right to inherit from the mother if the mother dies.⁵

If in the context of inheritance of inheritance to be owned to the heirs in accordance with Article 584 of the Civil Code. It means that inheritance is one of the ways that are limited to obtaining property rights, and because property rights are one of the main elements rather than objects that are the most basic among other objects, the law of inheritance is regulated in the nature of Book II together with the regulation of other objects. In addition, the inheritance rights that arise are in accordance with Article 528 of the Civil Code. The right of the heirs, after the revelation of the inheritance in which the heir is given the right to determine the attitude in receiving in full, which can be done expressly or otherwise in the acceptance is stated in a deed that contains his acceptance as an heir in accordance with the applicable regulations Basically, everything that will later be left by the deceased, then it can be called inheritance. Inheritance is not only in the form of wealth, but also includes debts and receivables owned or left by the deceased during his lifetime. The heir as the owner of the property, has the absolute right to regulate whatever he wants for his property. This is a consequence of inheritance law as a law that regulates.⁶

Inheritance or also known as inheritance boedel which is property that arises as a result of death. Boedel's inheritance includes all assets, both passive and assets in his legacy. All obligations and/or property rights of the heirs are also included in the inheritance boedel which will later be received by the heirs who are willing to receive all their inheritances.⁷ Basically, inheritance has 3 (three) important components as follows: 1) The existence of a person who has a legacy or inheritance who dies (heir); 2) The existence of a person or several persons entitled to receive inheritance or heirs with living conditions at the time of

³ Abdulkadir Muhammad, *Hukum Perdata Indonesia*, (Bandung: Citra Aditya Bakti, 2000) p. 267.

⁴ M. Idris Ramulyo, *Hukum Waris Indonesia dalam Perspektif Islam, Adat dan BW*, (Bandung: Refika Aditama, 2005), p. 3.

⁵ Eman Suparman, *Hukum Waris Indonesia*, (Bandung: Refika Aditama, 2007), h. 197.

⁶ Nisitus Amanat, *Membagi Warisan Berdasarkan Pasal-Pasal Hukum Perdata BW*, (Jakarta: Raja Grafindo Persada, 2001), p. 23.

⁷ Evelyn Lay, dkk, *Jurnal Kedudukan Ahli Waris Terhadap Boedel Warisan Hak Guna Bangunan Yang Telah Berakhir*, *Amma Gappa* 29, no. 1 (2021): <https://journal.unhas.ac.id/index.php/agjl/article/view/14493/7008>

the opening of the inheritance and; 3) The existence of inheritance left by the heir who must transfer his control or ownership.

On the basis of inheritance law, the regulation of the heir's property is an absolute right that he has. These provisions arise from the governing law contained in the inheritance law.⁸ The elements of inheritance in the perception of the Civil Code are divided into three points, the first is the heir, the second is the heir, the third is the inheritance, and the third is the inheritance,⁹ In the inheritance system, there are legal characteristics of inheritance, namely individual nature not group, bilateral, and status system,¹⁰ In the context of inheritance, there is no distinction between movable or immovable property. Similarly, it does not matter whether the property comes from the father's or mother's side, not all of a person's wealth falls into the estate or inheritance left by the deceased.¹¹ The inheritance process has the right to regulate whatever is desired for the property,¹² However, it is carried out according to the provisions of the law. This is as stipulated in Article 832 of the Civil Code. In connection with that, the heirs have the right to acquire ownership rights to all goods, all rights and all receivables of the deceased have been regulated in Article 833 of the Civil Code.

As for inheritance by way of substitution or heirs (*bij plaatsvervulling*), it is possible to replace a person's position as heir by a certain person has been regulated based on Article 842 of the Civil Code.¹³ The rights of heirs, if included in inheritance, are 4 (four) categories of groups, namely: 1) Group I, including children in a straight line downwards, children out of wedlock, husbands or wives, children who are recognized as valid, adopted children who are adopted by a court determination and legalized as legal children (Article 852 of the Civil Code); 2) Group II, including fathers and mothers who follow descendants in a straight line upwards as well as brothers and sisters (Article 854 – Article 856 of the Civil Code); 3) Group III, including grandmothers and grandparents descended in a straight line upwards (Article 858 of the Civil Code); 4) Group IV, including relatives of both heirs or Group III and Group IV (Article 861 of the Civil Code).

In relation to inheritance in the form of land that likes to be divided among all heirs. For the inheritance, it is necessary to first assess the land carried out by a competent party in the field, then it can be known and determined the total value that can be divided to the heirs. In the implementation of the sale and purchase of inherited land rights that have not been divided by the heirs, it should be done with the consent of all the heirs first. This is because without the consent of all heirs, the transfer will be invalid and null and void. Therefore, the consent of all heirs to the transfer of land rights through buying and selling is an important component that must be a concern for the parties who carry out the sale, especially inherited land. From this, the holder of the right to the land will get legal protection later.

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⁸ Anisitus Amanat, *Membagi Warisan Berdasarkan Pasal-Pasal Hukum Perdata BW*, (Jakarta: Raja Grafindo Persada, 2003), p. 3.

⁹ Diana Anisya Fitri Suhartono Dkk, Sistem Pewarisan Menurut Hukum Perdata, *Jurnal Hukum, Politik Dan Ilmu Sosial (JHPIS)* 1 no. 3 (2022): <https://ejurnal.politeknikpratama.ac.id/index.php/jhpis/article/view/921/904>

¹⁰ Indah Sari, Pembagian Hak Waris Kepada Ahli Waris Ab Intestato Dan Testamenter Menurut KUHPerdata, *Jurnal Ilmiah Hukum Dirgantara*, 5 no.1 (2014): <https://journal.universitassuryadarma.ac.id/index.php/jihd/article/view/99/96>

¹¹ Jessica Manuela, Barzah Latupono, Agustina Balik, Kedudukan Dan Ahli Waris Terhadap Harta Warisan Menurut KUHPerdata, *Jurnal Ilmu Hukum*, 2 no 12 (2023): <https://fhukum.unpatti.ac.id/jurnal/tatohi/article/view/1458>

¹² Anisitus Amanat, *Loc. Cit* h. 23.

¹³ Oktavia Milyani, Kedudukan Hukum Ahli Waris Yang Mewaris Dengan Cara Mengganti Atau Ahli Waris “Bij Plaatsvervulling Menurut Burgerlijk Wetboek”, *Al’Adl*, 9 no 3 (2017): <https://ojs.uniska-bjm.ac.id/index.php/aldli/article/view/1186/998>

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In addition, in the context of the transfer of ownership in the form of land in inheritance based on Article 20 paragraph (2) of Law Number 5 of 1960 concerning the Basic Agrarian Regulations, the title can be transferred and transferred to other parties. The transfer of property rights from one person to another due to a legal event, namely the holder of property rights from one person to another due to a legal event, namely the owner of property rights who dies. Meanwhile, the transfer of ownership has an impact on the person of rights or obligations through active actions taken between the owner of the property and other people, such as purchases, exchanges, or grants. Several Indonesian legal experts have expressed opinions on the meaning of the transfer of rights through sale and purchase, grants, or exchanges. One of them is in the context of buying and selling, according to Boedi Harsono, the transfer of rights is a legal act that has a cash nature. Buying and selling in land law is carried out by paying the price at the same time in cash.¹⁴

Obtaining land rights can be done by buying and selling which has been regulated in Article 1457 of the Civil Code. Buying and selling between parties must also pay attention to the conditions in the agreement that have been regulated by Article 1320 of the Civil Code. Without the fulfillment of the provisions of the legal conditions in the above agreement, and the provisions of the applicable law, the transfer of land should not be possible. In order to be able to carry out the process of buying and selling the land, it is necessary to have proof of ownership of the land rights which can be reviewed by the authorized institution, namely the National Land Agency based on the provisions of Article 37 paragraph (1) and paragraph (2) of Government Regulation Number 24 of 1997 concerning Land Registration. In addition, legal acts of sale and purchase are carried out in front of the Land Deed Making Officer to ensure the integrity and order of law in the sale and purchase of land.¹⁵ The problem in this study is carried out by further investigating the causes of concrete cases related to the transfer of inherited land rights in the form of certificates with a process through buying and selling carried out by one of the heirs to the buyer without the knowledge and consent of all heirs. Upon the transfer, the title certificate has been transferred in the name of the buyer of the inherited land, in this case based on the Ambon District Court Decision Number 92/Pdt.G/2015/PN. Amb juncto the Decision of the Maluku High Court Number 12/PDT/2016/PT AMB juncto the decision of the Supreme Court Number 3261 K/PDT/2016 juncto the decision of the Supreme Court Number 702 PK/PDT/2020, the panel of Judges at the first level, appeal and cassation and Review have strengthened the decision which states the status of the heirs but protects the buyer of the inherited land. The approach of this case is to analyze and examine the validity of the sale and purchase of inheritance and legal protection to the heirs in these legal problems. The approach of this case is related to the issue at hand which has become a court decision that has permanent legal force.

¹⁴ Boedi Harsono, *Hukum Agraria Indonesia*, (Jakarta: Djambatan, 2000), p. 25.

¹⁵ I Komang Luki Nanda, Dkk. "Analisis Yuridis Terhadap Penerbitan Akta Jual Beli Tanah Di Kabupaten Jembrana Pada Kantor Notaris/PPAT I Komang Divo Mahayakti Heriadi,S.H.,M.Kn" *Nusantara Hasana Journal* 3 no 6 (2023): <https://nusantarahasanajournal.com/index.php/nhj/article/view/1009/828>

This is certainly very contrary to the provisions of inheritance law because it causes a violation of rights against surrogate heirs in the category of group II heirs who have the same rights because the inheritance has not been divided with the entitled heirs, so it should be done with the consent of all his heirs first. If the inheritance is without the consent of all entitled heirs, then the transfer will be invalid and null and void. Therefore, the consent of all heirs for the transfer of land rights through buying and selling is an important component that must be of concern to the parties who carry out the sale, especially inheritance land. The existence of this act is an Unlawful Act because it is carried out in violation of the applicable provisions of inheritance law. Based on the description above, the author is interested in being able to study more deeply and analyze these problems.

METHODS OF THE RESEARCH

The legal research method used by the author based on the problems researched in legal research conducted by researching literature materials, can be called normative legal research.¹⁶ The research conducted by this author is aimed at using several approaches, including the statute approach, the conceptual approach, and the case approach. In addition, to solve legal issues, legal sources are needed, namely primary legal materials, secondary legal materials, and tertiary legal materials. Data collection techniques using document studies. The results will be in the form of analytical descriptive.

RESULTS AND DISCUSSION

A. The Validity of Buying and Selling Inheritance Without the Knowledge of the Heirs Based on the Decision of the Supreme Court of the Republic of Indonesia Number 702 PK/PDT/2020

Buying and selling is an agreement that occurs between two parties where one party binds himself to hand over a property, and the other party is obliged to pay an agreed price. A sale and purchase agreement is an agreement that results in an obligation to provide something. This obligation is manifested in the form of a material handover by the seller and a payment of money by the buyer to the seller. Meanwhile, according to the Civil Code, buying and selling is an agreement contained in Book III of the Civil Code regarding engagement. So in the sense of buying and selling, one party binds himself to deliver an item, and the other party to pay the promised price, in accordance with Article 1457 of the Civil Code.

In connection with the above, it can be known that buying and selling is a form of agreement. The conditions for the validity of the agreement have been regulated by Article 1320 of the Civil Code which states: "In order for a valid agreement to occur, four conditions must be met; 1. the agreement of those who bind themselves; 2. the ability to make an alliance; 3. a certain subject matter; 4. A cause that is not forbidden.". Furthermore, on the basis of the agreement due to the agreement made by the parties, it is based on Article 1338 of the Civil Code which states: "All agreements made in accordance with the law shall be valid as law for those who make them. The consent cannot be withdrawn except by the agreement of both parties, or for the reasons prescribed by law. Consent must be executed in good faith".

¹⁶ Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, Edisi. 1, Cet 19, (Jakarta: Raja Grafindo Persada, 2019), p. 13.

The article states that the parties to the contract are free to make agreements, regardless of their content and whatever form they take, in other words all agreements made valid for the law and for those who make them. The existence of an agreement that binds the parties involved, the ability to make an agreement, the existence of a certain object, and the existence of a valid reason are the conditions that must be met in an agreement according to the Civil Code.

Buying and selling inherited land is usually the same as the ordinary buying and selling process, the only difference is the seller and the obligations arising from the sale. If in an ordinary sale, the seller as the owner of the land registered in the certificate must be present to sign the sale and purchase deed, but in the process of buying and selling inheritance, the seller is the heir of the deceased. The heirs are obliged to bear the burden of rights and obligations in the inheritance. This means that all heirs must agree to sell the land. In addition, the determination of heirs must be proven in writing with an explanation of the inheritance, signed by two witnesses and legalized by the village head and confirmed by the local sub-district and/or the determination of the heirs in the Court. If the transfer of land rights by sale and purchase is inherited land, and the land is an inheritance of several heirs, then the transfer of land rights by sale and purchase must be approved and followed by all heirs, since the transfer of land rights contractually must be done by contract. In the presence of the party who committed the legal act, and witnessed by at least two witnesses who are qualified as witnesses to the legal act. If the process of buying and selling inheritance does not involve one of the heirs and there is no agreement of the heirs or partial heirs, then the inheritance cannot be sold because the inheritance is still attached to the inheritance rights of the entitled heirs.

Formally, the legal relationship that occurs in the making of a land rights sale and purchase agreement for certified lands is to sign the Sale and Purchase Deed as an authentic deed carried out in front of the Land Deed Making Official. This is based on the purpose of implementing land registration, one of which is to ensure legal certainty, in order to realize the legal certainty, the function of the land registration is to obtain strong evidence of the validity of legal acts regarding land, but for certain legal acts, registration has another function, namely to fulfill the legality of the legal act, This means that without registration, the legal act does not occur legally according to the law.

Departing from the validity of the sale and purchase of inheritance without the knowledge of the heirs based on the Supreme Court Decision Number 702 PK/PDT/2020 dated December 4, 2020 in this case is a civil case that has permanent legal force (*inkracht van gewijsde*) which strengthens the decision at the Cassation level, namely Case Decision Number 3261 K/PDT/2016 dated January 30, 2017 which strengthens the decision at the Appeal level, namely Case Decision Number 12/PDT/2016/PT AMB, dated June 13, 2016 which upheld the decision at the first level, namely Case Decision Number 92/Pdt.G/2015/PN Amb, dated December 21, 2015. It can be known that the legal construction of legal reasoning *Judex Factie* The judge of the first instance who examined and adjudicated the verdict was to adjudicate in the execution, reject the exclusion of Defendant I and in the main case granted the first Plaintiff's lawsuit in part, the second stated that the Plaintiff (Everosina Betty Adu Kadji) and other heirs, namely Margaretha Agustin Adu Kadji, Ngara Adrian Adu Kadji (deceased), Ariana Florence Adu Kadji, Efrosina Cornelia Mahupale, Josinus Jefta Paulus Mahupale, Marla Ardiance Mahupale, Carel Francis Tanasale (deceased) are the heirs of the late Marcus Tanasale, and the third dismisses the Plaintiff's suit for other and the remainder and the fourth sentences the

Plaintiff to pay the entire costs of the matter arising in this case. Furthermore, the legal reasoning of the *Judex Factie* Judge at the appellate level and the *Judex Juris* Judge at the Cassation level and the *Judex Juris* Judge at the Review level corroborated the decision.

Looking at the legal considerations in this case, it is the issue of the validity of buying and selling inheritance without the knowledge of the heirs caustically in the decision where Chairul Sukur (Defendant I) has been declared as a buyer in good faith and has not committed an unlawful act because the inheritance (object of dispute) has been certified in the name of the seller, namely Carel Francis Tanasale and the validity of the sale and purchase has been carried out legally, namely in the presence of Grace Gunawan, S.H (Defendant II) as the Official Land Deed Maker, it was concluded based on the legal reasoning of the Judge in the decision basically stating that Chairul Sukur (Defendant I) was a buyer in good faith and did not commit unlawful acts and it has been proven that Carel Francis Tanasale who committed an unlawful act submitted Determination Number: 58/Pdt.P/2003/PN. AB dated November 22, 2003 is invalid because Carel Francis Tanasale has passed away, so as a result of the law if it has given rise to rights in the form of assets, receivables or debts in accordance with the provisions of Article 833 of the Civil Code, that rights in the form of assets, receivables and debts of Carel Francis Tanasale are the rights of his heirs (Margaretha Agustin Adu Kadji, Everosina Betty Adu Kadji (Plaintiff), Ariana Florence Adu Kadji, Eforsina Cornelia Mahupale, Josinus Jefta Paulus Mahupale, and Marla Adriance Mahupale) in the case *in casu*.

Regarding this, the problem studied is to analyze and discuss the validity of buying and selling inheritance without the knowledge of the heirs. According to the author, he disagrees with the legal considerations based on the Judge's legal reasoning in the decision. At first glance, the legality of the sale and purchase of inheritance (object of dispute) is in accordance with the applicable regulations, but when viewed carefully and carefully in the legality of the sale and purchase of inheritance property (object of dispute) carried out by Carel Francis Tanasale with Chairul Sukur (Defendant I) is not in accordance with the applicable legal regulations. Considering that it is associated with the legal conditions of an agreement regulated in Article 1320 of the Civil Code. The relationship between Carel Francis Tanasale and Chairul Sukur (Defendant I) must meet 4 (four) conditions that can be classified as agreeable to those who bind themselves, capable of making an agreement, regarding a certain matter and a halal cause. The new agreement is binding and has legal consequences if it meets the conditions that have been determined based on Article 1320 of the Civil Code, then it can be classified as follows: 1) The first condition is that they agree to bind themselves, namely Carel Francis Tanasale with Chairul Sukur (Defendant I) has agreed to enter into an agreement to buy and sell the inheritance (object of dispute); 2) The second condition is the ability to make an agreement, namely Carel Francis Tanasale with Chairul Sukur (Defendant I) is capable in making the agreement; 3) The third condition is a subject or certain thing, namely the object of inheritance (object of dispute) in the agreement; 4) The fourth condition is a halal cause, namely the inheritance agreement (object of dispute) must be made based on a purpose that does not conflict with the applicable law.

Based on the explanation above, which is associated with this case, the terms of the agreement between Carel Francis Tanasale and Chairul Sukur (Defendant I) in terms of number 1 (one) to condition number 4 (four) are not fulfilled because the inheritance agreement (object of dispute) is contrary to the applicable law because when it is associated with the case *in casu*, the first condition is the beginning of the formation of an agreement to buy and sell inheritance (object of dispute), namely an agreement between the parties

about the content of the agreement that they will implement. Therefore, the occurrence of an agreement must not be caused by 3 (three) elements, namely there are elements of coercion, fraud, and error, then the agreement can be canceled, in this case the emergence of an agreement made by Carel Francis Tanasale on the validity of the sale and purchase of inheritance (object of dispute) has caused legal consequences where elements of fraud and error arise. The second condition is capable of making an agreement, but Carel Francis Tanasale is not capable of making an agreement to buy and sell inheritance (object of dispute) because there are still other heirs who are still attached to the right of inheritance (object of dispute).

The third condition regarding certain matters juridically an agreement must recognize certain things that have been agreed upon that are clear and firm, so that the agreement to buy and sell inheritance (object of dispute) must be clear but unilaterally Carel Francis Tanasale carries out the sale and purchase of inheritance (object of dispute) without the knowledge and consent of the heirs who are entitled to the inheritance (object of dispute). The fourth condition is that a halal cause in every agreement made by the parties must not be contrary to the law, public order and morality but Carel Francis Tasale carries out the sale and purchase of inheritance (object of dispute) contrary to the law.

Therefore, the validity of the sale and purchase of inheritance (object of dispute) is based on the basis of Determination Number 58/Pdt.P/2003/PN. AB dated November 22, 2003 where the determination had been canceled based on the Judge's legal reasoning in a decision that was considered legal which basically stated that the application for Determination No. 58/Pdt.P/2003/PN. AB dated November 22, 2003 is invalid because it contradicts the applicable regulations with the guidance of the technical guidebook for the administration and technical of general and special civil civil courts book II edition of 2007 issued by the Supreme Court of the Republic of Indonesia in 2009 which stipulates that "an application to determine the status of a person's inheritance expertise is prohibited, and the status of inheritance expertise is determined in a lawsuit", so that it has been proven that there is an unlawful act committed by Carel Francis If the damage is detrimental to the heirs, then the legal consequence is that the terms of the agreement for the sale and purchase of inheritance (object of dispute) should not be fulfilled in accordance with Article 1320 of the Civil Code, therefore the validity of the sale and purchase of inheritance without the knowledge of the heirs results in invalidity and nullity for the sake of the law.

In addition, the validity of the sale and purchase of the inheritance without the knowledge of the other heirs in the decision should be Everosina Betty Adu Kadji (Plaintiff) and other heirs, namely Margaretha Agustin Adu Kadji, Ngara Adrian Adu Kadji (deceased), Ariana Florence Adu Kadji, Efrosina Cornelia Mahupale, Josinus Jefta Paulus Mahupale, Marla Ardiance Mahupale should be legally protected in this case because the issue of concern is the heirs who do not get part of the inheritance rights to the inheritance (object of dispute) that came from their grandfather, namely Marcus Tanasale and it should be noted that the inheritance (object of dispute) has not been divided in the estate where Carel Francis Tanasale has transferred the inheritance (object of dispute) to Chairul Sukur (Defendant I) without the knowledge and consent of Margaretha Agustin Adu Kadji, Everosina Betty Adu Kadji (Plaintiff), Ariana Florence Adu Kadji, Eforsina Cornelia Mahupale, Josinus Jefta Paulus Mahupale, and Marla Adriance Mahupale who are the successor heirs of category II from the heir lineage. So that with the evidence that there is an unlawful act committed by Carel Francis Tanasale that harms the heirs to the validity of the sale and purchase of inheritance based on the Deed of Sale and Purchase Number 560/IX

/ Ambon City / 2005 dated September 19, 2005, then the legal consequences in terms of the legality of the sale and purchase of inheritance (object of dispute) without the knowledge of other heirs due to the law should be invalid and null and void considering Article 1471 of the Civil Code.

The cancellation in question is a transaction that is considered to have never occurred. Each party reverts to the previous state before the sale, where the heirs retain the right to the inheritance (the object of dispute). Therefore, it can be concluded from this case that the validity of the sale and purchase of inheritance (object of dispute) is considered non-existent, so that the sale and purchase is null and void and the situation is the same as before the transaction occurred because the property of another person is null and void, where the ownership of the land remains with the entitled heirs. So it can be concluded that the sale and purchase is considered non-existent, so that the validity of the sale and purchase is void, and becomes invalid, and the situation returns to the same as before the transaction occurred.

The Judge should be able to declare to nullify the validity of the sale and purchase of inheritance (object of dispute) carried out by Carel Francis Tanasale with Chairul Sukur (Defendant I), as well as place an assessment and/or consideration on the position and interests of Everosina Betty Adu Kadji (Plaintiff) as the heir in the case in casu so that it should be legally protected to obtain the inheritance (object of dispute) in accordance with the law (*ab intestato*) in obtaining his inheritance. This can be known by the Judge in the case of a *qou* because the validity of the sale and purchase of inheritance (object of dispute) carried out by Carel Francis Tanasale with Chairul Sukur (Defendant I) has caused unlawful legal consequences with the existence of the unlawful act.

The heirs in this case cannot be held liable due to the unlawful acts committed by Carel Francis Tanasale in accordance with Article 833 of the Civil Code which is based on the legal reasoning of the Judge in the case of a *qou* due to different legal events, namely the inheritance property (object of dispute) which is the right of the heirs that is still inherent that has not been divided in the inheritance and as a result of the unlawful acts of Carel Francis Tanasale which causes losses to the heirs who are entitled to the inheritance property (object of dispute). Heirs who feel that their inheritance rights have been neglected have legal protection through repressive measures such as *saisine* rights. This right allows the heirs to automatically acquire ownership rights over the inheritance without the need for special action. In addition, the right of hereditary *petitio* is also granted, which allows the heirs to file a lawsuit to defend the inheritance rights through a claim for the assets they own considering the provisions that have been affirmed by Article 834 of the Civil Code and Article 835 of the Civil Code.

Departing from the conception of inheritance rights inherent in Everosina Betty Adu Kadji (Plaintiff) and other heirs in this case as described above, if taken from the theoretical aspect of legal protection it is related to the view expressed by According to Setiono,¹⁷ Legal protection is an act or effort to protect the community from arbitrary acts by authorities that are not in accordance with the rule of law. Furthermore, the function of legal protection, according to Setiono, is to realize order and peace so that it allows human beings to enjoy their dignity as human beings so that the Supreme Court of the Republic of Indonesia as one of the state institutions that has the authority to adjudicate a dispute in a case in casu at

¹⁷ Hukumononline.com, "Teori Perlindungan Hukum Menurut Para Ahli" Tim Hukumononline, 2022, <https://www.hukumononline.com/berita/a/teori-perlindungan-hukum-menurut-para-ahli-lt63366cd94dcbc/?page=all>

all levels, both from the first level, appeal, cassation and Review, is obliged to provide legal protection and/or realize justice for legal subjects who are attached to his inheritance rights. This is in line with the view put forward by C.S.T. Kansil, who argues that legal protection is a variety of legal remedies that must be provided by law enforcement officials to provide a sense of security, both mentally and physically from disturbances and various threats from any party.¹⁸

Using a legal protection theory approach whose essence refers to the legal system's efforts to protect the rights and interests of heirs in the inheritance process to get a share of the inheritance. It involves a number of legal principles and mechanisms aimed at ensuring that the heir receives a fair and appropriate share of the inheritance of the heir. Because such a legal system requires that the Judge can solve all legal problems in the form of in this case, because *de facto* and *de jure* which has been proven by Everosina Betty Adu Kadji (Plaintiff), the role of the judge in the court is very important to create legal certainty and provide a sense of fairness for the parties to the litigation and the Court is the determinant of who is the real owner of the land that is litigated in accordance with the Karl Llewellyn's opinion says,¹⁹ What Officiallls Do About Disputes is the Law it Self because in essence the judge can see whether the issue in the dispute is contrary to the application of the law in considering all the facts in the relevant trial, so that the decision does not harm one party to the case. This is also confirmed by Roscoe Pond stating that,²⁰ A judge when trying a case in court must take several steps, namely finding the law, interpreting the law and applying the law.

Laws that apply fairly, consistently, and transparently to all individuals and entities within a country. The concept of the state of law emphasizes that nothing is above the law and that all must be subject to the same rules, so it is theoretically linked in line with the theory of the state of law as stated by Albert Van Dicey, a famous British thinker, who wrote a book entitled "Introduction to Study of The Law of The Constitution", stating that there are 3 (three) main elements of the Rule of Law: 1) Supremacy of law; The highest power in a country is the law (rule of law); 2) Equality before the law; equality before the law for all citizens, both as individuals and as state officials; 3) Constitution based on individual right; The Constitution is not the source of human rights and if human rights are enshrined in the Constitution, then it is only an affirmation that human rights must be protected.

Regarding this theory of the state of law, it is more concretely explained by Prof. Dr. Jimly Asshiddiqie who said ²¹,we can reformulate the existence of the thirteen fundamental principles of the Rule of Law (Rechtsstaat) that apply today. There are thirteen main principles that are the main pillars that support the standing of a modern state so that it can be called the State of Law (The Rule of Law, or Rechtsstaat) in the true sense that the author quotes only 3 (three) in this writing, namely: 1) Supremacy of Law in this principle, not only requires normative recognition, but also empirical. Normative recognition is manifested in the formation of legal norms in a hierarchical manner that culminates in the supremacy of the constitution. Meanwhile, empirical recognition is manifested in the behavior of governments and societies that are based on the rule of law; 2) Equality before the law, in this principle, contains the understanding that not only does everyone have an equal position in law and government but also that every discriminatory attitude and action is a

¹⁸ C.S.T. Kansil, *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*, (Jakarta: Balai Pustaka, 1989), h.102.

¹⁹ Karl Llewellyn, dalam Achmad Ali, Wiwie Heryani, *Menjelajahi Kajian Empiris terhadap Hukum*, (Jakarta: Kencana, 2012), h. 104.

²⁰ Ahmad Rifai, *Penemuan Hukum Oleh Hakim, Cetakan Ke-3*, (Jakarta: Sinar Grafika, 2014), h. 8.

²¹ Jimly Asshiddiqie, *Pokok-pokok Hukum Tata Negara Indonesia Pasca Reformasi*, (Jakarta: Bhuana Ilmu Populer, 2008), h. 20-22.

prohibited attitude and action, except for special and temporary actions to accelerate the development of a certain group (affirmative action); 3) The principle of legality (due process of law), in this principle, all government actions must be based on valid and written laws and regulations. The legislation must exist and be acknowledged first or prior to the act committed. This means that every administrative act must be based on rules and procedures. In order for this not to make the bureaucracy too rigid, it is also recognized that the principle of *friesermessen* allows State administrative officials to develop and set their own *beleid-regels* or policy rules that apply internally in order to carry out the duties imposed by legitimate regulations.

The view of this case on the validity of the sale and purchase of inheritance (object of dispute) which was carried out without the knowledge of other heirs, in this case Everosina Betty Adu Kadji (Plaintiff) who has been harmed to the inheritance (object of dispute) that deserves justice, legal certainty and legal protection in this case, has been far from the ideals of the state of law in its basic principles. Therefore, the principles of the rule of law theory play an important role because the principles of the rule of law theory place justice, legal certainty, and the protection of individual rights as the main foothold in the legal system. So that in the application of the theory of the state of law, first, the principle of justice emphasizes the importance of fair treatment for all parties involved in the transaction of buying and selling inherited property. So justice will require the protection of the rights of the legal heirs of the inheritance. If the property is sold without their consent or knowledge, this can be considered a violation of their rights, secondly, placing legal certainty emphasizes the need for legal certainty, which means that the legal rules and procedures must be clear and understandable by all parties involved, in the case of the procedure of buying and selling inherited property, legal certainty requires that the transaction must be carried out in accordance with the applicable law and with the consent of all parties. The interest, thirdly, the protection of individual rights, in the rights of the heirs to the inheritance property must be protected from acts that infringe or harm them, including the sale of the inheritance without their consent or knowledge, in practice, in the event of a sale and purchase of the inheritance without the knowledge or consent of the entitled heirs, the relevant legal procedures must be followed. This may involve filing a claim in a court or legal institution authorized to cancel the transaction and return the legitimate rights to the rightful heirs. These measures will ensure that the theoretical principles of the rule of law are fulfilled and justice is achieved for all parties involved.

Civil disputes arise because one party feels that their legal rights and interests are violated by the other party, so that to protect the rights and interests of the law, the party who feels aggrieved will take legal measures to obtain legal certainty fairly. In line with this, theoretically, it becomes relevant to be approached with a theory of justice that substantially emphasizes the existence of an action that is not arbitrary, impartial, and unbiased. Fair mainly means that a decision and action is based on objective norms.

It is associated with the view of justice theory according to John Rawls in his books such as *A Theory of justice*, *Political Liberalism*, and *The Law of Peoples*, which exerts a considerable influence on the discourse of justice values. Specifically, John Rawls developed the idea of the principles of justice using his created concepts of "original position" and "veil of ignorance", which is the existence of an equal and equal situation between each individual

in society without distinction.²² This opinion can be interpreted as an original situation in which each individual is created equal so that justice must be felt equally regardless of external factors that arise such as position or position as well as the power and honor inherent in the individual.

B. Legal Protection for Heirs Against the Sale and Purchase of Inheritance Based on the Decision of the Supreme Court of the Republic of Indonesia Number 702 PK/PDT/2020

Inheritance property to be owned by the heirs in accordance with Article 584 of the Civil Code contains the meaning that inheritance is one of the restrictively determined ways to obtain property rights, and because property rights are one of the main elements of the object which is the most basic object among other objects, the law of inheritance is regulated in Book II together with the regulation of other objects. In addition, the right of inheritance arises in accordance with Article 528 of the Civil Code, where the right of the heir, after the inheritance is opened, gives the heir the right to determine the attitude in receiving in full, which can be done expressly or otherwise, and the acceptance is stated in a deed that contains his acceptance as an heir in accordance with the applicable regulations.

The context of inheritance property in the form of ownership of land related to the inheritance process is very close to inheritance law. There are three key elements in inheritance, namely heirs, inheritances, and heirs. An heir refers to an individual who has died and left property to someone else. An heir is an individual who takes the position of heir in terms of inheritance, either in whole or in part. An inheritance, otherwise known as an inheritance, includes all the wealth left by a person who has died, including all property after deducting all existing debts.²³

Departing from the legal protection for the heirs against the sale and purchase of inheritance based on the Decision of the Supreme Court of the Republic of Indonesia Number 702 PK/PDT/2020 which has permanent legal force (*inkracht van gewijsde*), it can be known that *de facto* is Chairul Sukur (Defendant I) in this case who gets legal protection as a buyer in good faith but the legal subjective status of Everosina Betty Adu Kadji (Plaintiff) and other heirs, namely Margaretha Agustin Adu Kadji, Ngara Adrian Adu Kadji (deceased), Ariana Florence Adu Kadji, Efrosina Cornelia Mahupale, Josinus Jefta Paulus Mahupale, Marla Ardiance Mahupale, Carel Francis Tanasale (deceased) are the heirs of the deceased Marcus Tanasale who are the heirs of the heirs, so it can be concluded that the heirs have received legal protection because the ownership of the inheritance (object of dispute) is still attached in this case.

According to the author, to obtain legal protection for the heirs of the inheritance share (object of dispute), where Margaretha Agustin Adu Kadji, Everosina Betty Adu Kadji (Plaintiff), Ariana Florence Adu Kadji, Efrosina Cornelia Mahupale, Josinus Jefta Paulus Mahupale, and Marla Adriance Mahupale who are the heirs of the heir to the heir category II of the heir's lineage to obtain a share of the absolute rights of the inheritance (object of dispute) which has clearly been protected and/or is regulated in inheritance law based on the Civil Code. Considering the certainty of the legal rights or status of the heirs in this case in order to prioritize substantive justice to get an absolute share for legal protection against them, considering that Article 1 paragraph (3) of the 1945 Constitution of the Republic of

²² John Rawls, *A Theory of Justice*, Oxford University press, London, yang sudah diterjemahkan dalam bahasa indonesia oleh Uzair Fauzan dan Heru Prasetyo, *Teori Keadilan*, (Yogyakarta: Pustaka Pelajar, 2006), h. 90.

²³ Setio Prabowo Dkk, *Perlindungan Hukum Bagi Ahli Waris Terhadap Harta Warisan Yang Beralih Tanpa Persetujuan Ahli Waris*, *Jurnal Kajian Ilmu Hukum Dan Politik* 1, no. 3 (2023).

Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia) contains provisions that the Indonesian state is a state of law.

The law expressly states that the absolute part of the heir is part of an inheritance whose absolute part is violated by other heirs, thus violating constitutional rights where the rights are affirmed in Article 28H paragraph (4) of the Constitution of the Republic of Indonesia in 1945 which states that "everyone has the right to have personal property rights and such property rights must not be arbitrarily taken by anyone" and in the constitutional right of Article 28D paragraph (1) of the Constitution The State of the Republic of Indonesia in 1945 states that "everyone is entitled to fair legal recognition, guarantee, protection, and certainty and equal treatment before the law". One of the rights that must be protected by the state is the right of inheritance obtained through inheritance. Therefore, no one can harm the legal heirs, where he, as a citizen of the Unitary State of the Republic of Indonesia, has a legal obligation and responsibility to respect, protect, enforce the law and obey the applicable laws and regulations.

The obligation and responsibility in this regard is not only in the law but even is a constitutional mandate, where the constitution is affirmed in Article 28I paragraph (5) of the Constitution of the Republic of Indonesia of 1945 (hereinafter referred to as the Constitution of the Republic of Indonesia of 1945) which states that "to uphold and protect human rights in accordance with the principles of a democratic state of law, Therefore, the implementation of human rights is guaranteed, regulated, and outlined in laws and regulations".

Therefore, the heirs can carry out new legal remedies with a deliberative approach with Chairul Sukur (Defendant I) based on the absolute rights (*legitime portie*) of the heirs in accordance with Article 913 of the Civil Code which is not allowed to reduce or store the inheritance. If there is an heir and/or heir who violates the law against the inheritance system. So in the concept of *legitime portie* or inheritance share according to law (*ab intestato*) obtaining legal protection where there is an element of coercion about giving absolute rights (*legitime portie*) to certain heirs of a number of inheritances because it is important to provide legal protection to heirs who do not get inheritance rights, they have the right to obtain a share of the inheritance of the land in the presence of a situation where there is a violation of the law and/or act Against the law that controls the inheritance, it can be considered a violation of the absolute rights to the heirs.

In line with Pitlo's view, the part guaranteed by the law *legitime portie/wettlijk erfdeel*: "It is the right of he/she who has a primary/privileged position in the inheritance, only relatives in a straight line (*bloedverwanten in de rechtlijn*) and are the heirs *ab intestato* alone are entitled to the part in question".²⁴ Basically, a person has the freedom to manage the fate of his wealth after death. An heir has the freedom to deprive his heirs of inheritance. Although there are provisions in the law that determine who will inherit his inheritance and how much of each, the provisions on the division are of a governing law and not a coercive law, in order to prevent people from easily disregarding the heirs *ab intestato*, the law prohibits a person during his lifetime from bequeathing or bequeathing his property to another person who may violate his rights the heirs of *Ab Intestato*. The heirs who have the right to the part protected by law are called "*legitimar*", while the protected part is called

²⁴ Komar Andhasasmitha, Notaris III, *Hukum Harta Perkawinan dan Waris Menurut KUHPerdara*, (Jawa Barat: Ikatan Notaris Indonesia, 1987), p. 143.

the "legitime portie". So the inheritance in which there is an heir ab intestato is divided into two, namely "legitime portie" (absolute share) and "available" (available share).

If the deliberation cannot be fulfilled, it can take repersive action in the form of hereditary rights, a petition is given to the heirs to file a lawsuit in the form of demands to fulfill the absolute rights (legitime portie) that have been clearly protected by law in order to protect the rights of the inheritance through the claim of the inherited object owned based on Article 834 of the Civil Code and the demand for the rights of the heirs, there is a time limit when the inheritance is open for three ten years from and the day of the opening of the inheritance as stipulated in Article 835 of the Civil Code, by going through a litigation process in court in order to be able to resolve the problem of inheritance (object of dispute) where the heirs who are entitled to obtain all or part of the absolute right in this case the step is to ensure the creation of a sense of justice for the parties who suffer losses due to the control of the inheritance object from another party.

Regarding this, legal protection for heirs of inheritance to claim their rights with losses that have been suffered by heirs who have rights is based on Article 1365 of the Civil Code. The heirs can basically file the lawsuit for the entire inheritance if he is the sole heir or only for a part if there are other heirs. The lawsuit seeks to demand that whatever is on the basis of any rights in the inheritance, along with all income, income and damages be handed over.

Legal protection to heirs against the sale and purchase of inheritance in this case, if portrayed from the theoretical aspect of legal protection, is related to the view put forward in relation to the issue of legal protection by Satjipto Rahardjo, who argues that legal protection is to provide protection for human rights that are harmed by others and that protection is given to the community so that they can enjoy all the rights granted by the law.²⁵ In addition, legal protection according to Soekanto,²⁶ It is basically a protection provided to legal subjects in the form of legal devices. Furthermore, Soekanto explained that in addition to the role of law enforcement, there are five that affect the law enforcement process and its protection as follows: 1) Legal factors, namely written regulations that are generally applicable and made by legitimate authorities; 2) Law enforcement factors, namely parties involved in law enforcement, both directly and indirectly; 3) Factors of facilities or facilities that support law enforcement, such as skilled human resources or adequate tools; 4) Community factors, namely the environment in which the law applies and applies. Acceptance in society of the applicable law is believed to be the key to peace; 5) Cultural factors, namely as the result of works, creations, and tastes based on human karsa in life relationships. Using a legal protection theory approach serves as a special safeguard to protect the heirs of inheritance is important to ensure that their rights are recognized and protected in accordance with applicable law. This helps prevent abuse, discrimination, or neglect of the rights of legitimate heirs, namely the existence of legal certainty, legal usefulness and legal justice.

Legal protection for the heirs in this case deserves justice because the heirs still have the right to the inheritance. Therefore, the heirs should get a share in accordance with the law (ab intestato) in the concept of inheritance that has been regulated according to the Civil Code. In line with the theory of justice according to Hans Kelsen in his book *General Theory Of Law And State*, he views that law as a social order that can be declared just if it can

²⁵ Satjipto Rahardjo, *Ilmu Hukum*, (Bandung: Citra Aditya Bakti, 2000), p. 54.

²⁶ <https://www.hukumonline.com/berita/a/teori-perlindungan-hukum-menurut-para-ahli-lt63366cd94dcbc/?page=all>, diakses pada 29 April 2024.

regulate human actions in a satisfactory way so that it can find happiness in it. This view is positivism, the values of individual justice can be known by legal rules that accommodate general values, but still the fulfillment of the sense of justice and happiness is allocated to each individual.²⁷

Using a theory of justice approach emphasizing the importance of fair and effective law enforcement to maintain the integrity of the law, in the view of legal positivism, the values of justice are not always absolute or universal. These values can be identified through the legal rules that have been set. Therefore, in this perspective, the focus is not on seeking absolute truth or justice, but rather on the application of the rules that apply objectively.

CONCLUSION

The validity of the sale and purchase of inheritance without the knowledge of the heirs in this case due to the fact that the law is null and void because it does not comply with the provisions of Article 1320 of the Civil Code and Article 1471 of the Civil Code, with the sale and purchase of inheritance considered non-existent, the sale and purchase is void, and becomes invalid, and the situation returns to the same as before the transaction occurred. Legal protection for heirs against the sale and purchase of inheritance in this case can propose a new legal remedy with a deliberative approach with the buyer considering the certainty of the heir's rights or legal status in order to prioritize substantive justice in terms of obtaining an absolute share based on Article 913 of the Civil Code. If the deliberation cannot be fulfilled, it can take a reperemptive action in the form of hereditary rights, a petition is given to the heirs to file a lawsuit in the form of a demand to fulfill the absolute right (*legitime portie*) that has been clearly protected by law in order to be able to defend the right of inheritance through a claim for assets owned in the Court based on Article 834 of the Civil Code and Article 835 of the Civil Code and Article 1365 of the Civil Code Civil Law. This step aims to ensure the creation of a sense of justice for the parties who suffer losses.

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