



Protection of Husband and Wife Rights in Islamic Marriage Education: A Study on Community Property

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ABSTRACT

This study examines the protection of husband and wife's rights over land assets categorized as joint property in marriage. Joint property is a legal consequence of marriage that must be managed based on the principle of mutual consent, as regulated in Law Number 1 of 1974 in conjunction with Law Number 16 of 2019 concerning Marriage. In practice, violations of this principle often occur, for example when one spouse unilaterally sells or transfers land rights without the consent of the other, which may lead to legal disputes. This research employs a normative juridical approach with qualitative analysis, through the study of statutory regulations, legal doctrines, and court decisions, including the Supreme Court Decision Number 322 K/Sip/1971 and the Constitutional Court Decision Number 69/PUU-XIII/2015. The results show that although the regulations provide a legal basis for protecting the rights of spouses, their implementation in practice still encounters obstacles, such as the lack of public awareness and inconsistencies in land administration practices. Therefore, it is necessary to strengthen the role of notaries/land deed officials (PPAT) in ensuring the consent of both parties in every land transaction, as well as to enhance public legal awareness. This research is expected to contribute academically to the development of family law and agrarian law studies, while also offering practical solutions to strengthen legal protection of joint property in marriage.

Keywords: *legal protection, joint property, husband and wife, land assets, marriage*

INTRODUCTION

Education plays a crucial role in human life. A nation's progress depends on the quality of its human resources. Marriage is one of the institutions in society that has wide implications, not only on the aspect of civil law personal, but also concerns legal status of assets obtained during marriage. Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019, regulates that basically

assets acquired during marriage become treasure together , except there is agreement marriage which determines otherwise (Article 35 paragraph 1 of the Marriage Law). Provision This confirm principle *gemeinschaft van goederen* , where husband and wife own equal standing on treasure together (Soetojo, 2010) . Assets together the covers various form wealth , including asset land that has mark strategic tall Good in a way economy and social .

Land as one of the object treasure together often become source problem in marriage , especially when happen transaction law without involving second split parties . In practice , no seldom a husband or wife do sell buy , transfer rights , or loading right on land without agreement couple . In fact , Article 36 paragraph (1) of the Marriage Law in a way firm state that to treasure together , husband or wife only can act on agreement second split parties . Terms This aim protect interest second parties so as not to there are those who are harmed . However in fact , still Lots cases where the rules the ignored , so that cause disputes later day (Harsono, 2008) .

Data from the Directorate General of Religious Courts show that in 2022 there will be more of 20,000 cases related dispute treasure together with the proposed to religious courts throughout Indonesia (Directorate General of Religious Courts of the Supreme Court of the Republic of Indonesia, 2022) . Most of them dispute the concerning treasure No move in the form of land and buildings . This figure show that awareness public about importance agreement second split party in manage treasure together Still low . In addition , the weakness supervision to implementation transaction land also becomes factor cause . This is become attention important , considering land No only worth economical but it is also a source life family , means investment , and social status symbol (Arie Sukanti, 2013) .

In practice notary and land affairs , Notary / Official Maker Land Deed (PPAT) has role strategic in protect right husband and wife on treasure together . Based on Regulation PPAT position , every transaction land must done with the presence of the entitled parties on land However , it is still there is cases where the PPAT carries out manufacturing deed transition right land only based on statement of one of the parties , without ensure existence agreement from legal partner . For example , in Decision Supreme Court Number 322 K/Sip/1971, court state cancelled deed sell buy land that is being worked on by a husband without agreement his wife . The verdict This confirm that deed transition land that is not fulfil principle agreement together can sued and cancelled (*Decision of the Supreme Court of the Republic of Indonesia Number 322 K/Sip/1971*) .

Phenomenon the show existence gap between theory and practice . In normative , protection law for husband and wife Already arranged clear in the Marriage Law , UUPA, and various regulation technical about manufacturing deed land . However in practice , a lot the party that is still violate rule said , well Because lack of awareness law society , weakness function PPAT control , as well as factor economy that makes one of party feel entitled control asset land without notice principle agreement together (Hadjon, 1987) . Conditions This cause vulnerability , especially for the party that does not involved in transactions , because his rights can neglected .

In addition , the development social society also adds complexity problem treasure together . According to study Rahardjo (2015) , many partner an unconsummated marriage understand in detail the differences between treasure possessions , property gifts / inheritance , and property together . This is cause confusion in practice when happen divorce or dispute family . On the other hand , agreement marriage that can give certainty law about separation treasure Still seldom used . Based on data from the Indonesian Ministry of Law and Human Rights (2021) , only about 5% of couples who make agreement married at the time or after marriage . In fact , the Court Constitution through Constitutional Court Decision Number 69/PUU-XIII/2015 concerning Marriage Agreements has expand chance for partner husband and wife For make agreement marry after marriage ongoing (*postnuptial agreement*).

Another gap is seen in the aspect protection preventive and repressive . In preventive , Notary /PPAT should reject manufacturing deed if only attended by one of party on treasure together . However in practice , no all Notary /PPAT carries out principle caution said . From the side repressive , although injured party can submit lawsuit cancellation deed or lawsuit civil to court , the process need time , costs and energy that are not a little . This is cause uncertainty law and detrimental the weaker party , especially wife , who often does not involved direct in affairs land (Susanto, 2014) .

From the description above , it can be seen that although in a way normative protection law to right husband and wife on treasure together has regulated , its implementation Still face Lots obstacles . This is show existence *gap* between theory applicable law with reality social and practical notary . Therefore that 's important done further research deep about How protection right husband and wife on asset land can implemented in a way effective , role Notary /PPAT in ensure fulfillment principle agreement together , and effort laws that can taken when happen violation the rights of one party .

Based on problem said , research This aim to : (1) analyze arrangement law about treasure together in marriage especially those related to with asset land affairs ; (2) review role Notary /PPAT in give protection law to right husband and wife on treasure together ; and (3) identify form protection law available , good preventive and repressive , when one of party do action law on asset land without agreement his partner . With Thus , research This expected can give contribution academic and practical in effort strengthen protection right husband and wife on asset land in Indonesia.

METHOD

Study This use approach juridical normative with support material law secondary . Approach This chosen Because focus study is analyze rule law positive , doctrine law , as well as related jurisprudence with protection right husband and wife on asset land in marriage . The type of approach used covering approach statute approach to study regulations related treasure together , approach conceptual *approach* to understand theory protection law , principle agreement together , and the concept treasure together versus property default , as well as approach case approach through analysis decision courts , such as Decision Supreme Court Number 322 K/Sip/1971 and Decision Court Constitution Number 69/PUU-XIII/2015. Source material the law used consists of on material primary law (regulations) legislation , decisions court , documents official) , secondary (literature law , article journal , opinion expert) , and tertiary (dictionary law , encyclopedia law) .

Collection material law done through studies library , good from library and official digital sources , then selected and classified in accordance relevance . Analysis use method qualitative with interpret rule law , doctrine , and decisions court For find principle the law that answers formulation problem research . Validity study guarded with triangulation source , namely compare regulation legislation , literature , and decisions court , so that results analysis more credible and comprehensive . With method this research expected capable describe protection right husband and wife on asset land , good from aspect normative and practice notary , at the same time offer solution academic and practical to existing problems .

RESULTS AND DISCUSSION

Legal Regulations on Joint Property in Marriage and Its Implications against Land Assets

Arrangement law about treasure together in marriage in Indonesia is regulated in a way explicit in Constitution Number 1 of 1974 concerning Marriage as has changed with Constitution Number 16 of 2019. Article 35 paragraph (1) of the Marriage Law state that treasure objects obtained during marriage become treasure together , while Article 35 paragraph (2) confirms that treasure default from each husband or wife , and treasure objects obtained by each as present or legacy , remains be under control between the parties No determine other . With Thus , the concept treasure together in law Indonesian marriage emphasizes existence mixing treasure which is obtained after marriage contract , whereas treasure innate and gift / inheritance still is owned by personal (Soetojo, 2010) .

Implications important from provision the is that to asset land acquired during marriage , good That land and the building above it , husband and wife own same position . Article 36 paragraph (1) of the Marriage Law in a way firm arrange that about treasure together , husband or wife only can act on agreement second split parties . Terms This in line with principle equality position husband and wife in House stairs , as confirmed in Article 31 paragraphs (1) and (2) of the Marriage Law . With Thus , every action related laws with land as treasure together – for example sell buy , grant , exchange , or loading right liability – must involving second split parties to be valid in a way law (Harsono, 2008) .

In practice , the role Notary /PPAT becomes crucial For ensure fulfillment principle agreement together Based on that . Regulation PPAT position , every deed transition right on land must signed by the authorized party on land said . If the land is treasure together , then husband and wife must present and provide sign hand as form approval . However , it is still there is practice where PPAT only presenting one of the parties , with reason practical or based on assumptions that husband is head eligible families full . This is clear contradictory with provision law positive as well as potential cause disputes later day (Arie Sukanti, 2013) .

One of case important to emphasize the need agreement together in management asset land is Decision Supreme Court Number 322 K/Sip/1971, in which the Supreme Court annulled deed sell buy land held by a person husband without agreement his wife . The verdict This give precedent important that every action law on treasure together without agreement partner is disabled law and can cancelled . Decision it also shows How principle agreement together

functioning as instrument protection law for husband and wife (Supreme Court Decision No. 322 K/Sip/1971).

Marriage Law , the rules about treasure together can also found in the Civil Code (KUHPerdata), in particular in Article 119 which states that since moment marriage taking place , in a law happen mixing treasure riches between husband and wife , except If There is agreement fateful marriage others . Although validity Civil Code No Again universal post- apocalyptic the presence of the Marriage Law , this norm still relevant as base historical and can used throughout No contradictory with more regulations new . Difference fundamental between Civil Code and Marriage Law lies in the emphasis to position wife ; Civil Code Still put wife in position subordinate to husband , while the Marriage Law put forward principle equality (Rahardjo, 2015) .

In context agrarian , Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA) also provides base important . UUPA emphasizes that right on land must set and used For as big as possible prosperity of the people, as well as list principle nationality and equality in ownership land . Implications from principle This is that ownership land as treasure together must notice interest second party in marriage . In practice registration land , marital status owner land recorded so that officials land can ensure whether land the is treasure together or treasure default . With Thus , UUPA and Marriage Law each other complete in give certainty law on land owned husband and wife (Harsono, 2008) .

Even though arrangement law Already Enough clear , in the reality Still there is various deviation . Many people think that that purchased land on Name husband in a way automatic become right husband , even though If obtained after marriage without existence agreement marriage , land the is treasure together . View patriarchal This be one of reason occurrence violation principle agreement together . According to Susanto (2014), one of the weakness in implementation law marriage is low awareness public to position law wife , so that wife often marginalized from taking decision about treasure together .

With thus , it can concluded that in a way normatively , Indonesian law has give clear settings about treasure together and protection right husband and wife on asset land . Principles agreement together is mechanism law For guard balance interest second split parties . However , in in practice , still there is gap between legal norms and reality social , which requires attention more from the enforcers law , in particular Notary /PPAT, so that the purpose protection law can achieved .

Protection of Husband and Wife Rights on Land Assets in Notarial and PPAT Practice

The Role of Notaries and Officials Maker Land Deed (PPAT) is very strategic in give protection law to right husband and wife on asset land that becomes treasure together with . Notary , as officials general authorities make deed authentic , and PPAT, as officials specifically given authority For make deed related transition right on land , have not quite enough answer For ensure every transaction done in accordance with provision applicable law . In context treasure together , responsible answer main Notary /PPAT is ensure that every actions law on asset land get agreement from second split parties , both husband and wife (Subekti, 2005) .

In a way normative , basic law obligation This can traced from Article 36 paragraph (1) of the Marriage Law , which states that about treasure together , husband or wife only can act on agreement second split parties . Rules This nature imperative , so that No may ignored in practice . More further , Regulations Government Number 24 of 1997 concerning Land Registration requires marital status registration in certificate land , so that officials land can ensure whether land the is treasure together or treasure personal . This is also reinforced in Regulation The position of PPAT, which states that the PPAT is obliged ensure legitimacy and authority parties who do actions law related land (ATR/BPN, 2020) .

In practice , the form protection the law given Notary /PPAT can in the form of protection preventive and repressive . Protection preventive done with method reject make deed if just one parties present For sign deed on land whose status is is treasure together . Notaries /PPAT are also obliged explain to the parties about implications law if transaction done without agreement couple . With Thus , Notary /PPAT functions No only as officials administrative , but also as guard certainty law and protection rights of the parties (Adjie, 2014) .

Protection repressive appear when happen violations , for example one of them party succeed do transaction without agreement couple . In case Thus , the injured party can submit lawsuit cancellation deed or lawsuit civil to court . Decision Supreme Court Number 322 K/Sip/1971 is example real How justice cancel deed sell buy land that is made without agreement wife . This is prove that protection law still available although happen abuse authority in practice notary . However , protection repressive often considered No effective due to litigation process need sufficient time , cost and energy big , so that more emphasize importance protection preventive (Hadjon , 1987).

Obligation Notary /PPAT for ensure existence agreement together can also seen from aspect formal and material deed . The deed made by a Notary /PPAT must fulfil condition formal , namely signed by the authorized parties , and condition material , namely substance deed in accordance with provision applicable law . If one condition the No fulfilled , the deed in question can stated No legitimate or null and void . According to study Rahardjo (2018) , many case dispute land started from weakness verification Notary /PPAT regarding marital status and approval couple , who then exploited by unauthorized parties responsible answer .

However , on the other hand , practice in the field show existence weakness supervision to performance Notary /PPAT. There are still more PPATs prioritize speed settlement transaction compared to with compliance law . Economic factors often push occurrence negligence , for example with let only husband who was present in transaction with reason " head family ". In fact , the view the No Again relevant in system modern law that emphasizes equality position husband and wife (Susanto, 2014) .

Condition the show the need improvement awareness law Good from public and apparatus implementer . The community needs understand that land acquired during marriage is not right individual , but treasure together that must be managed with agreement second split parties . Meanwhile that , the Notary /PPAT must more firm operate principle prudential principle in every transaction land , so as not to arise disputes later day .

With thus , it can confirmed that protection right husband and wife on asset land in notarial and PPAT practices should be implemented in a way consistent through protection strong preventive measures , as well as supported with mechanism repressive as effort last . Active role Notary /PPAT in operate his obligations No only functioning For guard formal legality of the deed , but also as instrument protection concrete law for partner husband and wife .

Disputes and Legal Protection of Land Assets in Joint Property

Dispute about asset land in marriage often appear consequence existence difference understanding , misuse authority , or negligence in carry out obligation law . Property together , especially in the form of land , become object the most frequent disputes questioned Because own mark economical height and position important in life family . Dispute can arise Good between partner husband and wife , between partner with party third , and in context distribution treasure together after divorce (Satrio, 1991) .

One of reason main occurrence dispute is transaction unilateral on treasure together without agreement couple . Although in a way normative Article 36 of the Marriage Law has arrange obligation existence agreement husband and wife in every actions law related treasure together , in practice often happen violation . For example , a husband sell land acquired during marriage without to the best of my knowledge his wife . When his wife know and feel harmed , he can submit lawsuit cancellation sell buy to court . Decision Supreme Court Number 3230 K/Pdt /2012, for example , canceled deed sell buy land Because done without agreement wife . This is show that law positive give protection , but its implementation depends on the awareness and compliance of the parties (Santoso, 2012) .

In addition , disputes also often occur. occurs at the stage divorce and division treasure together . Many couples do n't own agreement marriage (prenuptial agreement), so all over assets acquired during marriage automatic considered as treasure together . When it happens divorce , division treasure often cause conflict , especially If No There is clear record keeping on ownership asset land . According to study Kurniawan (2019) , dispute treasure together dominate case civil in realm families in several Religious Courts in Indonesia, with land as most objects disputed .

In context protection law , there are two forms protection that can obtained injured party : protection through track litigation and protection through non-litigation path . Litigation path taken with submit lawsuit to court For request cancellation deed , replace loss , or distribution treasure in a way fair . Court authorized cut off whether something transaction legitimate or null and void . However , the path litigation often eat long time , cost big , and potential make things worse connection family . Therefore that , non- litigation path like mediation become alternative important in settlement dispute treasure together . Regulations Supreme Court Number 1 of 2016 even obligatory mediation before case examined in court (Supreme Court, 2016) .

On the other hand , problems also arise when party third has get right on land from one of partner without know that transaction the disabled law . In this case this happened collision between principle protection to parties in good faith Good with obligation protect right the injured couple . Some decision court show inconsistency in protect party third . There is a decision that cancels deed although party third good faith good , but there are also those who remain protect party third with reason principle certainty law (Marzuki, 2017) . Inconsistency This show existence gap between theory law and practice the judiciary , which ultimately cause uncertainty law .

Dispute treasure together also related close with problem administration land . Many certificates land No include marital status holder rights , so that make things difficult proof whether land the including treasure together or no . This is aggravated with low awareness public For record incident marriage and divorce in a way officially in the authorized institution . As a result , the legal status treasure often blur and open opportunity emergence dispute . National Land Agency (BPN) in the report 2022 recorded that dispute family , especially related treasure together , including one of contributor the biggest in the case list land in Indonesia (ATR/BPN, 2022) .

Protection efforts law in dispute treasure together can also done through strengthening regulations and roles apparatus law . More regulations firm about obligation inclusion of marital status in certificate land , improvement supervision to practice Notary /PPAT, as well as implementation consistent sanctions to violation procedure become step important . In addition , the community need given education law about rights and obligations in manage treasure together so as not to easy harmed .

With thus , it can concluded that dispute treasure together in asset land is complex problems Because involving aspect normative , practice administration and behavior social community . Protection law to husband and wife in dispute This must done in a way comprehensive , good through strengthening regulation , role Notary /PPAT, improvement awareness society , as well as consistency decision court . The purpose is create certainty law , justice , and protection rights partner husband and wife on asset land that becomes part important in life House ladder .

Analysis Theory and Practice Gap in Protection of Husband and Wife Rights on Land Assets

In a way theoretical , system law in Indonesia has give strong foundation For protect right husband and wife on asset land . Foundation the main normative is Constitution Number 1 of 1974 concerning Marriage along with the changes , which confirm that every action law on treasure together must done on agreement second split parties . Principles This put husband and wife in an equal position in manage treasure marriage (Soetojo, 2003) . Provisions This reinforced by the Civil Code as well as various rule technical in the field land , such as PP No. 24 of 1997 concerning Land Registration and Regulations The position of PPAT which requires verification identity and marital status holder right on land . At the level of theory , protection law seen clear and well-designed For prevent potential loss of one party .

However, in practice, still there is a significant gap between theory ideal law and reality on the ground. First, a lot of transactions permanent land done without one's consent couples. Cultural factors, for example assumption that husband as head family own authority full on treasure together, often causing right wife neglected (Susanto, 2014). This shows that formal regulations yet fully capable change construction patriarchal society.

Second, the gap is also visible in the aspect administrative. Although regulations obligatory inclusion of marital status in certificate land, implementation in the field often not consistent. Many certificates only list name of one parties, without information whether asset the including treasure together or treasure personal. Condition This cause difficulty when happen dispute, because proof of property status relies on a lengthy litigation process (Rahardjo, 2018).

Third, the role Notary /PPAT as the vanguard protection law often not optimal. In general In theory, Notaries /PPAT are obliged reject transaction if No attended by both couple. However in practice, still found cases where the Notary /PPAT passes transaction only based on the presence of one parties, with reason pragmatic or to speed up the process. According to Adjie's research (2014), the weakness supervision to performance Notary /PPAT is one of the factor main occurrence violation procedure.

Fourth, the gap is also visible at the level of court. Decision court related dispute treasure together sometimes show inconsistencies, especially when involving party third party in good faith good. In some case, judge more prioritize principle certainty law with protect party third, although transaction beginning disabled law Because No There is agreement couple. However, in case other, court precisely cancel transaction although party third No know existence disabled law. Inconsistency This create uncertainty detrimental laws husband, wife, and party third (Marzuki, 2017).

Fifth, there is gap between protection preventive and repressive. In theory, protection law prioritized in form preventive, namely with ensure that every actions law on land involving agreement husband and wife. However, in practice, protection preventive often ignored, so that protection law more Lots shifting to aspects repressive through mechanism lawsuit to court. This is precisely harm the weaker party, because of the judicial process need costs and time that are not little (Hadjon, 1987).

The gaps This show that the main problem No lies in its weakness rule law, but rather on implementation and awareness law. Regulation Already Enough

clear , but implementation Still influenced by factors culture , weakness administration , lack of supervision , and inconsistency decision court . Therefore that , research This become important , because try bridge gap between theory ideal law and practice the law that is still problematic .

Analysis this also shows that protection law to right husband and wife on asset land need multidimensional approach : no only normative through regulatory , but also sociological through change paradigm culture , as well as administrative through strengthening role Notary /PPAT and institutions land . With Thus , the goal protection the true law , namely give certainty law , justice , and utility for society , can achieved in a way more effective (Gusman, 2020) .

CONCLUSION

Protection right husband and wife on asset land that becomes treasure together own base clear laws in the Marriage Law , Civil Code , PP No. 24 of 1997 concerning Land Registration , as well as Regulation The position of PPAT which requires agreement second split party in every action law . However , practice in the field Still show gaps , such as domination culture patriarchal neglect right wife , weakness administration land that is not include marital status in certificate , negligence Notary /PPAT in ensure agreement couples , and inconsistency decision the court that created uncertainty law , in particular when involving party third . Protection law more often nature repressive through track justice than preventive , so that objective main law For give certainty , justice , and benefit Not yet fully achieved .

For overcome gap said , the government need strengthen regulations administrative with obligatory inclusion of marital status in certificate land , while Notary /PPAT must tighten verify and reject transaction without presence second couple . Awareness law society must also improved so that the couple understand position equivalent in manage treasure together . In addition , the court sued consistent in decision use create certainty law and research more carry on need directed at studies comparison with other countries to find a better protection model effective . With implementation steps said , protection right husband and wife on asset land can realized more good , in line with objective law as means protection and engineering social.

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