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Unlawful Acts in Determination of Joint Property and Donations Study of Decision Number 190/Pdt.G/2018/Pn.Kpg

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Abstract

The existence of a lawsuit in decision number 190/Pdt.G/2018/PN.Kpg is vague and unclear regarding the subject of the Defendant, the object of the dispute is also unclear and the basis of the Plaintiff's lawsuit is unclear, so it must be declared imperfect and therefore cannot be accepted. The legal issues raised in this analysis are: How is the analysis of the determination of joint property in Decision Number 190/Pdt.G/2018/PN.Kpg? And how can grants and control over the object of the grant be categorized as unlawful acts in Decision Number 190/Pdt.G/2018/PN.Kpg? The method used in this analysis is the IRAC Method which is a legal reasoning method with

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issue analysis (I), rule of law (R), argument (A), and conclusion (C). The results of the study indicate that in answering several legal issues studied from the decision is to determine the object of the grant in this case land which is joint property. However, the grant was declared contrary to Article 36 paragraph 1 of Law Number 1 of 1974 concerning Marriage, Article 1666 of the Civil Code and Article 584 of the Civil Code. Based on the basis of civil law, a grant made by an unauthorized party must be declared null and void by law as an absolute cancellation with all its legal consequences. Thus, based on the study, the decision of Decision Number 190 / Pdt.G / 2018 / PN.Kpg is correct because the judge's considerations are in accordance with the concrete evidence as submitted by the parties.

KEYWORDS : *Grants, Joint Property, Unlawful Actions*

Introduction

Marriage has an important meaning in human life, which is a cultural pattern for controlling and forming a strong foundation in a household.[1] In this pattern of life, there will be many legal events during the marriage, which have been clearly regulated in civil law. One of these is the management of property related to the rights and obligations between husband and wife. All assets acquired during the marriage, whether through work, business, or investments made by one or both parties, which are not limited to wealth in the form of physical property, such as vehicles, land and buildings, but also financial wealth such as savings, shares, receivables, are joint assets.[2]

[1] Kartika Septiani Amiri, "Perkembangan Dan Problematika Hukum Perkawinan Di Indonesia," *Al-Mujtahid: Journal of Islamic Family Law* 1, no. 1 (2021): 50, https://doi.org/10.30984/jifl.v1i1.1639.
[2] Amanda Lauza Putri, "Sengketa Harta Bersama Pasca Perceraian Ditinjau Dari Hukum Perdata Barat.," *Jurnal Ilmu Hukum, Humaniora Dan Politik (JIHHP)* 4, no. 5 (2024): 1385–94.

Provisions regarding joint property are regulated in Article 35 paragraph (1) of Law No. 1 of 1970 concerning Marriage,[3] which emphasizes that all property acquired during a marriage is joint property. In relation to this, it is not uncommon to encounter various problems regarding joint property. This is as stated in Decision Number 190/Pdt.G/2018/PN.Kpg.

The Plaintiff (Aleta Salomi Derica Kale-Pa) sued 22 (twenty two) Defendants who are the heirs of Yuliana Kale Supolitikno, namely Prof. Dr. Hendrawan Supratikno, Alan Supratikno, DR. IR. Daniel Manongga, Mangi Kota, Johanis Tigor Lay Wie, Drs Herman Kaho, Ali Yudi Serang, Siprianus Reda, Arianto Kaho, Welhelmince lay Lado Hado, Paulina Uly, Marthina Dadi Haga, Baharuddin, Marco Moreira, Matheos NatBais, Yosep Kalelena, Do Minggus Lena , Martinus Paraede, Kardinan Leonard Kalelena, Apriana Lodiana Kalelena, M Moniri, Kasmiana and co-defendant Silvester Joseph Mambaitfeto, SH/ Former notary/PPAT, in the land grant object case. The plaintiff is the legal wife of Benyamin Davidson Kalelena (deceased) who has died and has been blessed with 6 (six) children.

Besides, having 6 (six) children, during the life of the late Benyamin Davidson Kalelena and the Plaintiff also owned a plot of land located in Kupang City which had a certificate. Without the knowledge and without the permission of the Plaintiff, Benyamin Davidson Kalelena (late) had donated the land object to Yuliana Kale Supratikno (late) based on the Deed of Donation Number: 32/ XI/ KKTENG/ 1993, dated November 26, 1993 which was made before Notary/ Land Deed Making Officer Silvester Bjoseph Mambaitfeto, SH, / Co-Defendant.

Then the Defendants filed an exception stating that the lawsuit was unclear, whether it was a lawsuit for joint property ownership or a lawsuit for inherited land ownership and/or a lawsuit for cancellation of a grant. In

[3] Aris Siswato Makangiras, "PRINSIP-PRINSIP HUKUM HARTA BERSAMA DALAM PERKAWINAN BERDASARKAN UU NOMOR 1 TAHUN 1974," *Lex Privatum* 2, no. 1 (2014): 116–26.

addition, the plaintiff's lawsuit did not describe the origin of the land so that it became joint property, whether it was obtained through a sale, gift, inheritance, so that it was unclear about the origin of the disputed land that the Plaintiff argued as joint property. So that such a lawsuit is vague and unclear regarding the Defendant's subject, the object of the dispute is also unclear and the basis of the Plaintiff's lawsuit is unclear, so it must be declared imperfect and therefore cannot be accepted.

In this case, the Panel of Judges considered that the Defendant's exception was not accepted, which then stated that the Plaintiff's Provisional claim was declared unacceptable. The Panel of Judges then granted the Plaintiff's lawsuit in part. Thus, the judge's decision in civil case No. 190 / Pdt.G / 2018 / PN.Kpg namely to grant the plaintiff's lawsuit in part and declare that the land object donated by the plaintiff's husband is part of the joint property and the form of transfer of rights based on the deed of gift is an unlawful act, invalid and null and void.

Meanwhile, Indonesia is a country of law. In the 1945 Constitution Article 1 paragraph 3 which states that the State of Indonesia is a country of law which contains the understanding that all orders in the life of the nation, society and state are based on applicable laws. As a country based on law, all community life is regulated by laws regarding matters including marriage, divorce, and division of property, including joint property. So it is only right that if a dispute occurs regarding joint property, it must be tried on the basis of proper law and fulfill a sense of justice.[4]

Based on the background above, the formulation of the problem that will be discussed in the analysis of Decision Number 190/Pdt.G/2018/PN.Kpg is how is the analysis of the determination of joint property in Decision Number 190/Pdt.G/2018/PN.Kpg? And how can

[4] Jamal Jamil Syafriani Azzahra Suzaen, Patimah, Muh, "PENYELESAIAN SENGKETA HARTA BERSAMA YANG MELEKAT PADA HARTA BAWAAN (Studi Kasus Pengadilan Agama Polewali Mandar)," *Qadauna Jurnal Ilmiah Mahasiswa Hukum Keluarga Islam* 4, no. 3 (2023): 673–85.

grants and control over the object of the grant be categorized as unlawful acts in Decision Number 190/Pdt.G/2018/PN.Kpg?

Method

The method used in this analysis is the IRAC method, which is a legal reasoning method with issue analysis (I), rule of law (R), argument (A), and conclusion (C). This study uses a case approach and is analyzed descriptively with the primary reference source from Decision Number 190/Pdt.G/2018/PN.Kpg.

Result & Discussions

Analysis of the Determination of Joint Property in Decision Number 190/Pdt.G/2018/PN.Kpg

In principle, joint property are assets originally acquired during the marriage, as regulated in Article 35 of Law Number 1 of 1974 concerning Marriage, paragraph (1). Yahya Harahap stated that the scope of joint property can be divided as follows:[5]

1) All assets that can be proven to have been acquired during the marriage, even if the assets or goods are registered in the name of one of the husband or wife, then the assets in the name of the husband and wife are considered joint assets.
2) If the property is maintained or managed and transferred to the name of the husband's younger sibling, if it can be proven that the property was obtained during the marriage, then the property must be considered joint property of the husband and wife;

[5] Adris Rafi Adji, Program Studi Magister Kenotariatan, and Daly Erni, "Pengaturan Hukum Harta Bersama Dalam Putusan Perceraian," *Jurnal Kertha Semaya* 9, no. 12 (2021): 2292–2305, https://doi.org/10.24843/KS.2021.v09.i12.p04.

3) Also in the same decision, a rule has been formulated that the existence of joint property between husband and wife does not require proof that the wife must actively help realize the joint assets. The principle is that the assets are proven to have been obtained during the marriage;
4) Property purchased by either husband or wife in a place far from where they live is joint property of husband and wife if the purchase was made during the marriage;
5) Items included in the joint property of husband and wife are:
    a) ll income from property obtained during the marriage, including income from goods brought in or goods produced by the joint property itself;
    b) Likewise, all personal income of the husband and wife, whether from profits obtained from their respective trades or the results of each individual's earnings as an employee.

From the description of the previous background, it can be seen that the main issue in Decision Number 190/Pdt.G/2018/PN.Kpg is that the object that was donated is joint property. However, the donation was not approved by one of the parties, in this case the Plaintiff as the wife of the donor as the owner of the joint property. Before the judge determines that the donation and control of the object of the donation are unlawful acts, the judge must first prove that the object of the donation is joint property.

To determine the object of the grant, in this case land, is joint property, the judge's first step is to prove that the plaintiff and the landowner are husband and wife. This proof is needed because the Defendants stated that the marriage between the Plaintiff and the landowner was invalid. In this regard, the Plaintiff proved it with a Marriage Certificate from GPIB Maranatha-Surabaja No. 07/72, in the name of Benjamin Davidson Kalelena and Aletha Salomi Pa dated April 27, 1972. Then other evidence in the form of a Marriage Blessing Certificate Number 0163/MJ-Mar/17-20/IX/2018 dated September 18, 2018. So that the fact is revealed that it is true that the Plaintiff and Benyamin Davidson Kalelena

(the owner of the land object of the grant) have married according to the Protestant Christian religion on April 27, 1972 at GPIB Maranatha-Surabaya.

Then based on evidence P-3 in the form of a Marriage Certificate Confirmation Letter from the Population and Civil Registration Service of the Surabaya City Government Number 474.2 / 10219 / 436.7.13 / 2018 dated October 1, 2018, it was revealed that the marriage had been recorded in the Marriage Certificate Register Number: 120/1972 dated April 27, 1972 at the Surabaya City Population and Civil Registration Service. In addition, other evidence in the form of Family Card/KK No. 245001/00/00047 with Head of Family: Benyamin Davidson Kalelena, it was revealed that Benyamin Davidson Kalelena and the Plaintiff lived together in Kelapa Lima Village RT 014 RW 005 with the status of Head of Family (husband, wife, along with two children.

The next proof is proof related to the determination of joint property. The judge's considerations related to the determination of joint property in this case are land objects according to the Certificate of Ownership, Situation Drawings based on evidence in the form of a photocopy of the Statement of Relinquishment of Rights, a photocopy of the Decree of the Head of the Regional Office of the National Land Agency of East Nusa Tenggara Province, a photocopy of the Land Ownership Book Number 332/Lasiana Village. Based on the evidence, it was later revealed that in 1990 Benyamin Davidson Kalelena had been proven to have had a legal marriage with the Plaintiff since 1972, had purchased a plot of land measuring approximately 20,000 M2 from Mrs. Angke Ndun Rassa and the purchase had been followed up with an application for ownership rights, until finally a Certificate of Ownership Rights Number: 332/Desa Lasiana was issued dated July 27, 1991, Situation Picture Number: 2033/1990, dated 2 - 10 - 1990, covering an area of 19,560 M2 (nineteen thousand five hundred and sixty square meters) in the name of Benyamin Davidson Kalelena.

Regarding the sale and purchase process, it is also supported by the testimony of witness Yance Thobias Messakh who in essence explained that the witness knew directly about the sale and purchase of land between Angke Ndun Rassa and Benyamin Davidson Kalelena who at that time was with the Plaintiff as his wife, because the witness saw when the payment was made and the witness saw when the payment money for the land was received which was sometimes made by the Plaintiff.

Based on considerations based on an assessment of the strength of the evidence of the parties, the Plaintiff has been able to prove the argument of his lawsuit that the land according to the Certificate of Ownership is the Joint Property of the Plaintiff with Benyamin Davidson Kalelena (deceased), while the Defendants do not have sufficient evidence to prove their objection that the land is not the Plaintiff's joint property. The evidence owned by the Defendants is considered not to support each other and contradicts / does not comply with the relevant laws and regulations, so it is not sufficient to prove their objection.

Proof according to the general principles of proof adopted in civil procedure, the truth sought and realized is sufficient formal truth (formeel waarheid). So it is different from the system of proof in criminal procedure law which is based on the minimum limit of evidence and is based on the judge's conviction, where in civil procedure the judge's conviction is not required. In civil procedure law, the judge is not allowed to make a decision without proof. All evidence submitted in court must be based on facts that can be clearly proven by each party arguing. This is in line with article 1865 of the Civil Code which has emphasized that anyone who claims to have a right, points to an event to strengthen the right, or denies the rights of another person, is obliged to prove the thing that has been stated.

If we refer back to the case, then the Plaintiff who has argued that the donated land is joint property with her husband as the landowner, is obliged to prove this with sufficient evidence in accordance with the provisions of

Article 1865 of the Civil Code. In this case, the plaintiff has succeeded in proving what she has argued, so that the plaintiff's argument that the donated land is joint property can be accepted. Likewise, the defendant who has denied the argument put forward by the plaintiff, is obliged to prove the rebuttal. However, in the facts at the trial, the defendant was unable to show sufficient evidence, so the defendant's objection that the land is not joint property belonging to the Plaintiff and her husband cannot be accepted.

In the Common Law system, the burden of proof is given to all parties who provide information. He who asserts must prove (Whoever asserts, must prove). This guideline is the standard burden of proof that applies as a General Rule. This principle is applied in Article 1865 of the Civil Code which requires all parties in a civil case to prove the arguments submitted, both from the plaintiff and the defendant.[6] Decision Number 190/Pdt.G/2018/PN.Kpg has applied the burden of proof firmly, which in essence can be concluded that:

1) The plaintiff is burdened with proving a legal marriage with the landowner and proving that the land was owned after the marriage between the plaintiff and the landowner.
2) The plaintiff can prove the arguments of the lawsuit so that it is clear that the gift land is joint property between the plaintiff and the landowner.
3) The defendant is burdened with proving that the marriage between the plaintiff and the landowner is invalid.
4) The defendant cannot defend the argument that the marriage between the plaintiff and the landowner is invalid.

Thus, the evidence conducted by the judge has been based on the principles of joint property. In determining joint property, what must be

[6] Abul Hasan Seknun, "Sistem Pembuktian Perkara Perdata Di Pengadilan," *Justisia - Jurnal Ilmu Hukum* 8, no. 15 (2021): 1183–1202, https://www.jurnal.ummu.ac.id/index.php/justisia/article/view/1290.

proven is that the property was obtained during the marriage. So that evidence related to the marriage itself is also needed. This evidence has also been applied by the judge in decision number 190/Pdt.G/2018/PN.Kpg.

Proof must be based on the strength of the evidence and facts presented by each party.[7] This is also in line with the legal principle in the jurisprudence of the Supreme Court of the Republic of Indonesia Decision No. 1822 K/Pdt/1984 which in essence has the legal principle that "starting from a balanced burden, the Judge should assess which party's evidence is the most perfect and strongest".

Grants and Control of Grant Objects are Categorized as Unlawful Acts in Decision Number 190/Pdt.G/2018/PN.Kpg

There are various forms of unlawful acts related to joint property, such as embezzlement of joint property. Article 40 paragraph (1) and paragraph (2) of the Banking Law has given room to one party, either the husband or wife whose name is registered as a bank customer, to control and/or transfer part and/or all of the joint assets acquired during the marriage without the other party knowing.[8]

Regarding property in marriage, it often brings legal problems in the form of cases in court trials, such as regarding joint property in the event of a divorce. These problems include transferring most of the joint property to a third party with the intention that when the divorce has occurred. The transfer of joint property according to Article 35 paragraph (1) of Law No. 1 of 1974, the husband or wife can act with the agreement of both parties. Therefore, if one party grants joint property, it must be with the consent/permission of his wife first. The transfer of joint property is

[7] Ahmad Mathar, "Penilaian Hakim Dalam Memutus Perkara Di Pengadilan Agama," *Hukum Keluarga Islam* 2, no. 1 (2022): 1–19.
[8] Winda Wijayanti, "Kedudukan Istri Dalam Pembagian Harta Bersama Akibat Putusnya Perkawinan Karena Perceraian Terkait Kerahasiaan Bank," *Jurnal Konstitusi* 10, no. 4 (2016): 709, https://doi.org/10.31078/jk1047.

included in the category of unlawful acts if the act is carried out without the consent of his wife, then the act does not meet the subjective requirements, because the grant is void and unlawful act.[9]

As mentioned in the previous section regarding grants in the context of civil law, a grant is a legal event regulated in the Civil Code which is a unilateral legal act. A grant is a unilateral agreement which means that it only has legal consequences for one party, namely the grantor. Therefore, the agreement process must also meet the valid requirements of the agreement. Article 1320 of the Civil Code explains the valid requirements of an agreement, namely "the agreement of those who bind themselves, the capacity of those who make the contract, a certain thing that is agreed upon, the existence of a lawful cause".

In fact, the grant of land which is joint property belonging to the plaintiff and the landowner was made without the consent of the landowner. The object of the grant in Decision Number 190/Pdt.G/2018/PN.Kpg is a plot of land located in Lasiana Village, Kelapa Lima District, Kupang City, formerly Kupang Regency, East Nusa Tenggara Province. Then the land was granted to the Defendant Yuliana Kale Supraktikno, without the knowledge of the Plaintiff as the wife of the landowner. Thus, the grant was declared contrary to Article 36 paragraph 1 of Law Number 1 of 1974 concerning Marriage, which states that "regarding joint property, a husband or wife can act with the consent of both parties".

Therefore, a gift of joint property made without the consent of one of the husband or wife has clearly violated Article 1320 of the Civil Code, namely the requirement for a lawful cause. Article 1337 of the Civil Code explains that a prohibited cause is, if it is prohibited by law, contrary to good morality or public order. The legal consequences of an agreement that is

[9] Ahmad Jamal Sebayang, "Perbuatan Melawan Hukum Dalam Pengalihan Harta Bersama Dalam Perkawinan," *JURNAL HUKUM KAIDAH Media Komunikasi Dan Informasi Hukum Dan Masyarakat* 17, no. 3 (2023): 129–40.

contrary to a lawful cause are null and void, meaning that the agreement is considered never to have occurred. This has been confirmed in Decision Number 190 / Pdt.G / 2018 / PN.Kpg which states that the Deed of Grant Number: 32 / XI / KKTENG / 1993, dated November 26, 1993 made before a Notary / Land Deed Making Officer: Silvester J. Mambaitfeto, SH., (Co-Defendant) is invalid and Null and Void with all its legal consequences and has no binding legal force. Therefore, any transfer of land rights as a result of the gift must be returned to its original condition as joint property belonging to the plaintiff and her husband, namely Benjamin Davidson Kalelena (deceased).

The consequences of the grant have clearly harmed the plaintiff who legally owns the joint property. Every act that has harmed another party is basically an unlawful act as explained in Article 1365 of the Civil Code, namely "Every act that violates the law and causes loss to another person, requires the person who caused the loss due to his mistake to replace the loss. The unlawful act must be based on the fulfillment of its elements, namely: The existence of an act, the existence of an unlawful nature, the existence of a mistake, the existence of a loss, the existence of causality between the act and the loss.[10] The five elements above are cumulative, so that when one of the elements is not fulfilled, this will result in a person not being considered to have committed an unlawful act.

Article 584 of the Civil Code states that ownership rights over an item cannot be obtained in any other way than by taking or recognizing it as owned, because of attachment, because of lapse of time or expiration, because of inheritance, either in accordance with the law or by will, and also by handing over the item (leveraging) based on a civil event in the transfer

[10] Muhammad Alifian, Geraldi Fauzi, and Anna Erliyana, "Kompetensi Mengadili Peradilan Tata Usaha Negara Terhadap Gugatan Perbuatan Melanggar Hukum Oleh Badan Dan/Atau Pejabat Pemerintahan (Onrechtmatige Overheidsdaad)," *UNES Law Review* 6, no. 2 (2023): 4357–71, https://review-unes.com/index.php/law/article/view/1273.

of ownership rights and carried out by a person who has the right to act on the item.[11] Regarding the limiting nature of Article 584 of the Civil Code, legal experts in Indonesia have put forward several opinions. Several Indonesian legal experts are of the opinion that there are other ways of acquiring ownership rights, namely through mixing assets, creating new objects or merging various objects to create a new object. [12]

Therefore, based on the civil law basis, the grant made by an unauthorized party must be declared null and void as an absolute nullity with all its legal consequences. By stipulating that the grant in Decision Number 190/Pdt.G/2018/PN.Kpg is null and void, the grant event is considered to have not existed from the beginning (null and void) and is returned to its original state (Ex Tunc). So the legal consequence is that mutatis mutandis all forms of transfer of rights along with the rights arising from a civil event that is declared Null and Void.

The control of the land object by all defendants or anyone who has rights from it, either directly or indirectly, without the consent of the Plaintiff is an unlawful act because it is without a legitimate right and is an unlawful act and is detrimental to the Plaintiff. The process of granting and controlling the land carried out by the defendant in Decision Number 190/Pdt.G/2018/PN.Kpg has been declared an unlawful act. Based on this decision, the grant can be declared an unlawful act because the object of the grant is categorized as joint property. Based on this case, the fulfillment of the elements of an unlawful act can be explained as follows:

1) The Existence of Action

[11] Ghifara Ayudia Ramadhanty, "Peralihan Hak Milik Atas Barang Melalui Jual Beli Online Dengan Sistem Cash On Delivery," *Jurnal Ilmu Hukum* 10, no. 2 (2021): 361, https://doi.org/https://doi.org/10.30652/jih.v10i2.8060.

[12] Billa Ratuwibawa Nyimasmukti, Mustika Setianingrum Wijayanti, and Dewi Bella Juniarti, "An Essential Elements in Virtual Land Buying Transactions as Digital Asets in Metaverse Based Onn Indonesian Positive Law," *Ikatan Penulis Mahasiswa Hukum Indonesia Law Journal* 3, no. 1 (2023): 40–59, https://doi.org/10.15294/ipmhi.v3i1.57585.

An unlawful act is initiated by a specific intention to be carried out actively (acting in real terms) or passively (not doing something). In this case, the plaintiff's husband has clearly donated land that is legally joint property without the plaintiff's consent. In fact, Article 36 paragraph (1) of Law No. 1 of 1974 clearly states that a husband or wife can act regarding joint property with the consent of both parties. This means that joint property can be managed together by the husband and wife, but in every legal act concerning joint property there must be the consent of both parties. In addition, the Plaintiff as one of the owners of the object of the gift was not involved in the management of the property donated to the Defendant.

2) The Action was Unlawful Act

The unlawful element in a broad sense includes things that violate the rights of others, violate the law, are contrary to legal obligations, contrary to morality, or contrary to attitudes that prioritize the interests of society. In this case, the plaintiff's rights that have been violated by the plaintiff's husband for the act of gift and the control of the land carried out by the defendants by ignoring the plaintiff's personal rights in the realm of property, namely the land which is joint property.

The grant of land to the Defendant which has clearly been done by Benyamin Davidson Kalelena (deceased) without the consent of the Plaintiff as his legal wife. While it has been proven that the land is joint property obtained in the marriage of the Plaintiff with Benyamin Davidson Kalelena (deceased) so that there is a collective right of joint ownership. This collective right requires the owners of this right to do with mutual consent to carry out legal acts on the joint property. So that the actions of Benyamin Davidson Kalelena (deceased) have clearly violated the rights of the plaintiff who is also the owner of the land as joint property.

3) There was an error from the perpetrator

An unlawful act requires an element of error (schuld) so that it is intended to be legally accountable if it meets the element of error, either intentional or negligent. Between the perpetrator's actions and the losses must be blameworthy, so that responsibility can be delegated to him. Thus the element of error is used to state that the perpetrator of an unlawful act is only responsible for the losses caused by his mistake.

Regarding the grant as regulated in Article 1666 of the Civil Code, it states that the grant process is an agreement by which a grantor hands over an item free of charge, without being able to withdraw it, for the benefit of a person who receives the transfer of the item. In granting a grant, as long as the property being donated is his own property, then the grant is legally valid.[13] Based on Article 1666 of the Civil Code, the gift is immediately binding and cannot be revoked at will according to the will of one party as an agreement. So it has a different nature from a will grant or a gift in an inheritance that has just obtained absolute power.[14] Then related to Decision Number 190/Pdt.G/2018/PN.Kpg, the object of the grant is not owned by the wife herself but joint property that must be managed by the husband and wife.

So with the grant without the consent of the wife, in this case the plaintiff, this is an error made by the plaintiff's husband. This error is the responsibility that should be borne by the plaintiff's husband, which must be interpreted as an objective error, that the act should not have been carried out by the plaintiff's husband, with the aim of preventing any consequences that could harm the defendant. In this

[13] Apri Rotin Djusfi and Jumadi Winata, "Penyelesaian Sengketa Hibah Menurut Kitab Undang-Undang Hukum Perdata," *Jurnal Ius Civile* 2, no. 2 (2018): 109–21.
[14] Reza Fahlepy and Et Al, "Status Peralihan Sertifikat Hak Atas Tanah Berdasarkan Surat Hibah Di Bawah Tangan," *Jurnal de Jure* 13, no. April (2021): 107.

case, the plaintiff's husband's actions are categorized as having fulfilled the elements of an error in an unlawful act.[15]

4) Losses

Losses are also a requirement that must be met in unlawful acts. Unlike losses in breach of contract which only recognize material losses, losses in unlawful acts also include immaterial losses which are equated in value with money. This gives the perpetrator an obligation to compensate for the losses for the unlawful act. One form of compensation in unlawful acts is punitive damages imposed on the perpetrator with the aim of giving him the law, by paying more than the losses suffered by the victim.[16]

The plaintiff in this case is also the legal owner of the land whose status is joint property with the landowner An. Benyamin Davidson Kalelena (deceased). The losses suffered by the plaintiff in this case basically consist of material losses amounting to the value of the land that was donated, although the decision does not explain the nominal value of the land. In addition, the plaintiff also has the right to claim punitive damages because of the element of deliberate unlawful acts committed by the plaintiff's husband in this case.

5) There is causality between the perpetrator's actions and the loss

Causal relationship is a factor that links a person's loss with the actions of the perpetrator. This is a matter to understand how far we understand how there is a relationship between the fact of loss and the act committed. In the theory of factual causality (causation in fact) which is often referred to as the Sine Qua Non Theory by Von Buri which states that in an unlawful act, the loss arises

[15] Bing Waluyo, "Kajian Terhadap Perbuatan Melawan Hukum Berdasarkan Pada Pasal 1365 Kitab Undang-Undang Hukum Perdata," *Cakrawala Hukum: Majalah Ilmiah Fakultas Hukum Universitas Wijayakusuma* 24, no. 1 (2022): 14–22, https://doi.org/https://doi.org/10.51921/chk.v24i1.186.

[16] Munir Fuady, *Perbuatan Melawan Hukum (Pendekatan Kontemporer)* (Bandung: Mandar Maju, 2005).

factually clearly from the act committed. The grant made by the plaintiff's husband without the plaintiff's permission resulted in the control of the land by the defendants who denied that the land was joint property legally owned by the plaintiff and the plaintiff's husband. As a result of this act, the plaintiff has suffered losses who feel that their rights have been taken by the defendants.

Due to the fulfillment of all elements of an unlawful act against the land grant, all forms of transfer of rights and rights arising from a condition that is null and void and according to law are considered invalid and null and void and have no binding legal force. Therefore, the legal consequence is that the Defendants or anyone who receives land rights from the disputed object must return the land to its original condition (ex tunc), namely as joint property belonging to the Plaintiff with Benyamin Davidson Kalelena (deceased) which has not been divided. Furthermore, the interested parties can negotiate with the Plaintiff as the party entitled and authorized to the ownership of the disputed land or file other separate legal remedies against the unauthorized grantor if they feel aggrieved.

Conclusion

The Decision of the Kupang District Court on Behalf of H. Aleta Salomi Derica Kale-Pa Number 190/Pdt.G/2018/PN.Kpg has firmly explained that the land is joint property. To determine the object of the grant, in this case land, is joint property, the judge's initial step is to prove that the plaintiff and the landowner are husband and wife as evidenced by the Marriage Certificate. Then the next proof is related to the determination of joint property as evidenced by the land sale and purchase document. Regarding the sale and purchase process, it is also supported by the witness's statement which basically states that the witness directly knew about the sale and purchase of the land. The grant in Decision Number 190/Pdt.G/2018/PN.Kpg has been declared an unlawful act because the object of the grant has been proven to be joint property.

Then the object of the grant that was granted to the Defendant Yuliana Kale Supraktikno, without the permission of the Plaintiff as the wife of the land owner is contrary to Article 36 paragraph 1 of Law Number 1 of 1974 concerning Marriage, Article 1666 of the Civil Code and Article 584 of the Civil Code. So based on the civil law basis, the grant made by an unauthorized party must be declared null and void as an absolute nullity with all its legal consequences. In addition, all elements of an unlawful act have been fulfilled in terms of the grant and control of the land. Thus, according to the research, the verdict of Decision Number 190/Pdt.G/2018/PN.Kpg is correct because the judge's considerations are in accordance with the concrete evidence as submitted by the parties.

The implication of the findings of this study is that for law enforcers, especially judges, in deciding joint property cases, they must base it on the principle of joint property. This is as done by the judge who tried in Decision Number 190/Pdt.G/2018/PN.Kpg. Then, in facing potential legal disputes, the judge should return the evidence process based on the basic rules and principles of law.

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