

# Juridical Analysis of Lawsuits Case for Unlawful Acts of the Invalidity of Transfer of Property Rights to Movable Properties

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## ABSTRACT

*This study aims to determine the validity of the transfer of property rights to movable property in the context of assets in marriage and the suitability of the judge's decision in his consideration, which states that the Defendant committed an illegal act in the Supreme Court Decision Number 1081K / PDT / 2018. The research method used is a literature study with a normative juridical approach using secondary data in the form of expert opinion and existing theories. This study's findings indicated that the legal basis regarding the transfer of property rights to movable objects in a sale and purchase agreement is regulated explicitly in Article 1457 of the Civil Code. Besides, it is also necessary to pay attention to Article 1320 of the Civil Code regarding the terms of the validity of the agreement and Article 36 of the Marriage Law No. 1 of 1974 concerning the property in marriage. The application of these rules ensures the transfer of property rights to goods being traded, especially the sale and purchase agreement of joint property common in Indonesia. The regulations stipulated in the Civil Code in book 3 concerning engagement, especially regarding sale and purchase agreements, are useful as a guide for the community in taking legal actions in terms of their assets so that they are not mistaken in applying the law. Unlike previous studies, this study focuses more on buying and selling regulations where the sale and purchase object is the property in marriage.*

**Keywords:** *Sale and Purchase, Actions against the Law, Agreement, Marriage*

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## INTRODUCTION

The rules about property right in marriage is different from property law in material law. A person's property in a marriage will change their status to become joint property. Joint assets are assets obtained while in a marriage where legal action against joint assets must be based on the agreement of both parties, namely husband/wife.

The process of transferring property rights by way of buying and selling, in which the object of sale and purchase is a joint property in marriage, has special conditions. In addition to fulfilling Article 1320 of the Civil Code regarding the legal requirements of the agreement and Chapter V of the Civil Code regarding sale and purchase, it must also comply with Chapter VII regarding the property in marriage as stipulated in the Marriage Law (Djais, 2012).

Problems regarding buying and selling often arise due to the lack of evidence or sale and purchase deed that the buyer has from the seller, which is a sign that the transfer of property rights has occurred by entering into a sale and purchase agreement. It causes disputes between buyers and sellers; although the sale and purchase of movable objects can be done verbally, provided there is an agreement between the two parties to bind themselves (Abdulkadir, 2020)

In Indonesia, there are many cases of illegality in the process of transferring property rights by way of buying and selling the objects of which are joint assets in the marriage. It happened because the buying and selling process is not in accordance with the conditions contained in the Marriage Law regarding the property in marriage.

Based on this background, this Case Study will discuss the Case of Lawsuits against the Law, namely the seizure of property rights in movable objects in the form of 1 unit of the Inova brand car, which was formerly in the name of H. Muhammad Dasuki (deceased) but is now on behalf of Hj. Zubaidah. Hj. Zubaidah, in the Decision Case Number 1081 K / Pdt / 2018, is both the Defendant and the wife of H. Muhammad Dasuki (deceased). Meanwhile, the Plaintiff named Sainah is the legal wife of H. Muhammad Dasuki (deceased). Sainah sued Hj. Zubaidah, because she did not accept that the car should have been her right as a legal wife, had been changed to be in the name of Hj. Zubaidah as the Defendant. In fact, the plaintiff's husband had sold it to Defendant Zubaidah and carried out the process of changing the name of 1 unit of the Inova brand car to being the Defendant Zubaidah.

From the description above, we will further discuss the Legal Considerations of the Supreme Court Decision Number 108 K/PDT/2018 regarding the validity of the sale and purchase carried out by Defendant Zubaidah with the husband of Plaintiff Sainah, namely H. Muhammad Dasuki, as well as how the Legal Considerations of the Supreme Court which declared Defendant Zubaidah had committed an unlawful act because he has reversed the name of the car in dispute into the name of the Defendant Zubaidah in terms of the Civil Code.

## **METHOD**

The research method used is a literature study with a normative juridical approach using secondary data in the form of expert opinion and existing theories. This study uses applicable laws and regulations with legal theory as a specification to determine the problem being studied. The data analysis method used is qualitative normative.

Secondary data collection techniques were obtained from library research. This technique aims to assist authors in grouping and to sort data into materials and types of laws that have been determined. On secondary data, there is a grouping of data that intends to make it easier for researchers to analyze the data. The data in the analysis of this study are the type of qualitative analysis research, namely a comprehensive analysis procedure that has a purpose for generating descriptive data in the form of written sentences or words that are useful later to help the researchers answer problems and make correct conclusions.

## **DISCUSSION**

### ***A. The validity of the Movable Property Sale and Purchase Agreement***

Based on Article 1320 of the Civil Code, a new agreement will bind the parties and become valid if it meets four conditions: agreement, skill requirements, specific objects, and lawful causes.

Especially in Indonesia, there are many cases of sale and purchase agreements regarding joint assets where the agreement is not based on the husband or wife's consent. Without the agreement of one of the parties, it will impact the validity of the sale and purchase previously agreed upon.

Marriage Law No. 1 of 1974 explains that the legal actions that will be carried out by a husband or wife on joint assets must be based on the agreement of both parties; if not, then the legal act becomes null and void.

As in the Supreme Court Decision Case Number 1081K/PDT/2018, which is a case of a lawsuit filed by Plaintiff Sainah as the party who feels aggrieved to Defendant Zubaidah.

The Supreme Court upheld the Court's Decision at the First Level and the Appeal Level, which in its decision granted part of the lawsuit from Plaintiff Sainah, which stated that the sale and purchase were carried out by Plaintiff Sainah's husband and Defendant Zubaidah was null and void by law.

The decision of the Supreme Court in Case Number 1081K/PDT/2018 stated that the sale and purchase carried out by Plaintiff Sainah's husband and Defendant Zubaidah was null and void, with the following considerations:

1. Whereas the object of the dispute in the form of 1 (one) unit of the Innova Kijang car Police Number KB 1435 YL was proven to be joint property between the Plaintiff and her late husband, M. Dasuki alias H. Muhammad Dasuki;
2. Whereas, as the wife of the late M. Dasuki or H. Muhammad Dasuki, the Plaintiff is the heir entitled to the joint property.

The case of the Supreme Court Decision Number 1081K/PDT/2018 shows that the Plaintiff's husband had tied himself to Defendant Zubaidah in a sale and purchase agreement, namely handing over the four-wheeled vehicle and Defendant Zubaidah to paying the promised price.

Defendant Zubaidah is known that has paid the price of the four-wheeled vehicle, as evidenced by a payment receipt without place and date.

According to Article 1458 of the Civil Code, a sale and purchase are deemed to occur when there has been an agreement between the parties regarding the price and object being traded even though the object has not been submitted and the price has not been paid.

Based on the Supreme Court Decision Number 1081K/PDT/2018, the sale and purchase that occurred between the Plaintiff's husband and Defendant Zubaidah was deemed to have occurred because there was an agreement between the two parties. It

was reinforced by the existence of a price agreement on the receipt for payment of the four-wheeled vehicle even though the agreement was made orally.

The Supreme Court Decision Number 1081K/PDT/2018 shows that Plaintiff's husband has delivered the material in the form of a four-wheeled vehicle to Defendant Zubaidah, and the process of transferring rights from Plaintiff Sainah's husband to Defendant Zubaidah was carried out by Plaintiff Sainah's husband as the owner of the car and the process of transferring the name of the husband Plaintiff Sainah was at the Samsat (One-stop Administration Services Office) office until the issuance of the BPKB on behalf of Defendant Zubaidah.

The process of transferring the object of sale and purchase in the case of the Supreme Court Decision Number 1081K/PDT/2018 between the Plaintiff's husband and Defendant Zubaidah was fulfilled when the Plaintiff's husband handed over the object of sale in the form of a four-wheeled vehicle to Defendant Zubaidah, and the Plaintiff's husband determined the price to be paid.

The case of Supreme Court Decision Number 1081K/PDT/2018 concerning the delivery of goods was carried out by Plaintiff Sainah's husband to Defendant Zubaidah at the time of reverse registration of the BPKB name.

Since the objects being traded are in the form of bodily movable objects, the delivery of these objects must be done in accordance with Article 612 paragraph (1) of the Civil Code. In this article, it is stated that moving objects are actually submitted. It means that moving objects must be submitted in real terms to avoid hidden defects. (Meliala, 2014)

The case of Supreme Court Decision Number 1081K / PDT / 2018 has complied with Article 1459 of the Civil Code and Article 612 of the Civil Code, in which the submission has been made in accordance with the provisions in the law. The surrender was legally valid because Plaintiff's husband Sainah had actually handed over the four-wheeled vehicle to Defendant Zubaidah as the buyer of the four-wheeled vehicle.

It was evidenced by the submission of a four-wheeled vehicle along with a payment receipt to Defendant Zubaidah in Samsat by the Plaintiff's husband, as well as a reverse registration of the car's BPKB name to Zubaidah's name. Therefore, the delivery has occurred legally in accordance with Article 612 of the Civil Code, which

states that a sale and purchase agreement for a bodily movable object requires a real place of delivery and proof of sale, even though the agreement is made orally.

In the description of the Case Decision of the Supreme Court Number 1081K/PDT/2018, which is associated with the sale and purchase provisions in the Civil Code, it can be concluded that the case is in accordance with the terms of sale and purchase regulated in the Civil Code, especially in Article 1457,1458,1459 Civil Code that regulates explicitly the essential elements of buying and selling.

In the explanation of the article, the Supreme Court Decision Case No. 1081/K/PDT/2018 contradicts Article 36 paragraph (1) of the Marriage Law No. 1 of 1974 because it was discovered by the Plaintiff's husband that the sale and purchase agreement with Defendant Zubaidah was not based on the permission of the wife/Plaintiff Sainah. Therefore, the agreement is contrary to Marriage Law No. 1 of 1974.

The fulfillment of the special article that regulates the sale and purchase agreement does not eliminate Article 1320 of the Civil Code concerning the agreement's validity, namely that it must comply with Article 1320 of the Civil Code (Suryodiningrat, 1995). Furthermore, the researchers will analyze the validity of the sale and purchase between Plaintiff Sainah's husband and Defendant Zubaidah in terms of the validity of the agreement in Article 1320 of the Civil Code, which stipulates 4 (four) conditions, namely:

a. Deal

In the Case of the Supreme Court Decision No. 1081K/PDT/2018, the parties who entered into the sale and purchase agreement were the husband of Plaintiff H. Muhammad Dasuki and Defendant Zubaidah. The sale and purchase agreement has fulfilled the agreed elements. The sale and purchase receipt made by the Plaintiff's husband and Defendant Zubaidah proves that there was an agreement regarding the price and goods in the sale and purchase agreement.

The terms of the agreement were fulfilled by the existence of a sale and purchase agreement made by the Plaintiff's husband with Defendant Zubaidah.

b. Competent (*Bekwaan*) and Authorized (*Bevoegd*)

In the Case of the Supreme Court Decision No.1081/K/PDT/2018, if viewed from a person's ability to enter into an agreement, the plaintiff's husband

was competent in entering into an agreement seen from the age of the Plaintiff's husband who was more than 21 years old, and his married status with the Plaintiff Sainah strengthened that The Plaintiff's husband was competent to commit a legal act. Besides, the Plaintiff's husband is not under interdiction.

From the Case of the Supreme Court Decision No.1081/K/PDT/2018, it is known that the Plaintiff's husband was not authorized to enter into a sale and purchase agreement with Defendant Zubaidah because he did not get Sainah's approval as his legal wife to enter into a sale and purchase agreement with Defendant Zubaidah.

It violates Article 36 paragraph (1) of the Marriage Law No. 1 of 1974, which states that legal action in terms of joint assets must be based on the agreement of both parties.

The Plaintiff's husband is someone who is capable but not authorized to commit legal actions, so the competent (*Bekwaan*) and authorized (*Bevoegd*) requirements are not fulfilled.

c. Objek (*Ibid*.p. 342)

The type of the agreed object has been determined to provide certainty regarding the object being promised.

In the Case of the Supreme Court Decision No. 1081/K/PDT/2018, the types of objects in the agreement have been determined, namely in the form of a four-wheeled vehicle with the Inova brand.

Object conditions have been fulfilled, or there are objects disputed in the Case of the Supreme Court Decision No. 1081/K/PDT/2018 in the form of four-wheeled vehicles.

d. A Halal Cause.

In that case, the Plaintiff's husband entered into a sale and purchase agreement with Defendant Zubaidah not based on the permission of the wife / Plaintiff Sainah. Therefore, the agreement is contrary to Marriage Law No. 1 of 1974.

The conditions for a lawful cause are not fulfilled because they have violated Article 36 paragraph (1) of the Marriage Law No. 1 of 1974 concerning the property in marriage.

From the explanation regarding the validity conditions of the agreement contained in Article 1320 of the Civil Code, it is divided into 2 (two) groups, namely (Ibid, p. 343):

- 1) Subjective Requirements
- 2) Objective Requirements

In the Case of the Supreme Court Decision No. 1081K / PDT / 2018 and judging from the results of the analysis of Article 1320 of the Civil Code regarding the terms of the validity of the agreement, it can be concluded that the Case has violated subjective and objective requirements because it does not fulfill the competent and authorized requirements or a lawful cause in the agreement. Because the sale and purchase object was against the law, the sale and purchase agreement between the Plaintiff's husband and Defendant Zubaidah became null and void.

#### **B. *Elements of Unlawful Actions in the Case of the Supreme Court Decision No. 1081K / PDT / 2018***

An act cannot be categorized as against the law if the elements are not fulfilled.

The elements of an illegal act are as follows:

1. It must be against the law (*onrechtmatig*) (R. Wirjono Prodjodikoro, 2003), for example, violating the Rights of Others;

This explanation is in the Case of the Supreme Court Decision Number 1081K / PDT / 2018 regarding the condition that a person is categorized as having committed an illegal act, namely that the person has violated the rights of others, violated the legal obligations of the maker, violated norms in society, and violated the norms of decency.

The Case of the Supreme Court Decision Number 1081K / PDT / 2018 has fulfilled the element of an unlawful act because the sale and purchase agreement made by the Plaintiff's husband with Defendant Zubaidah violated the rights of Plaintiff Sainah, who is the legal wife of the Plaintiff's husband.

2. There are losses

In the Case of the Supreme Court Decision Number 1081K/PDT/2018, Defendant Zubaidah violated the material rights of Plaintiff Sainah, because he



had reversed the name of the BPKB car to become the name of the Defendant without the permission of Plaintiff Sainah.

Automatically the Defendant Zubaidah violated the rights of others in this case and caused losses to Plaintiff. The losses in question are in the form of material losses in the form of 1 unit of the Inova brand four-wheeled vehicle. Thus, the element of loss is fulfilled.

### 3. Errors/Omissions

#### a. There is a deliberate element

Deliberately in the meaning of this word means that the action is done because the maker knows and wants the action.

The Case of Supreme Court Decision Number 1081K/PDT/2018 The Defendant did not fulfill the element of deliberation because in reversing the name of the BPKB car to become in his name, Defendant did not know that the car was actually joint property between Plaintiff's husband and the Plaintiff Sainah.

Legal action against joint property alone must have the wife's permission; otherwise, the sale and purchase agreement will be null and void. Meanwhile, the Defendant did not know that the sale and purchase agreement that he made with the Plaintiff's husband was null and void by law.

#### b. There is an element of neglect (*negligence, culpa*)

On the element of negligence, the maker should be able to suppose that the act he is doing can cause a risk that will affect him, but in this case, the maker still does the action he should have avoided (M. Yahya Harahap, 2002).

In the case of the Supreme Court Decision Number 1081K/PDT/2018, Defendant Zubaidah did not know that the car he bought was joint property between the Plaintiff's husband and the Plaintiff Sainah. It is because, during the sale and purchase, Plaintiff's husband did not bring up the joint property between Plaintiff Sainah and her husband.

The Defendant had a good intention to inquire about the car's legality by handing it over directly to avoid hidden defects in the car she purchased.

The car's delivery was carried out at the Samsat office as well as the signing of a sale and purchase receipt by the Plaintiff's husband, with a price to be paid by Defendant (Yudahian, 2012).

Besides, when the transfer of ownership was carried out at the Samsat office, Defendant had checked the BPKB of the car and checked the legality of the car until the Defendant registered the BPKB of the car to be in her name. The transfer of rights itself occurred when the car was under the control of Defendant, that is, when the Plaintiff's husband handed over the car at the Samsat office. Therefore, in this case, the Defendant did not neglect.

4. There is a causal relationship between actions and losses (R. Setiawan., 2000).

Based on Von Buri's *Conditio sin qua non theory*, in the Case of the Supreme Court Decision Number 1081K/PDT/2018, the one who should be blamed is the husband of the Plaintiff. Plaintiff will not suffer losses and lose the right to his car if the Defendant does not sell and buy with Plaintiff's husband and register the car's BPKB in Defendant's name. The car's BPKB registration was carried out because there was already a sale and purchase agreement between Defendant and the Plaintiff's husband, which was the Plaintiff's husband who sold the car to Defendant. Thus, according to this theory, the one who should be blamed is the Plaintiff's husband.

In the Case of the Supreme Court Decision No. 1081K/PDT/2018, the judge had wrongly applied the law. The defendant did not fulfill the element of error in the elements of unlawful acts because the Defendant, in reversing the name of the BPKB car to become in her name, did not know that the car she had changed was a joint property between the Plaintiff's husband and the Plaintiff Sainah. It means that the Defendant's action was not an act against the law.

Besides, Defendant was careful and had good intentions in entering into the sale and purchase agreement by asking about the legality of the car and thinking that the Plaintiff's husband had been honest in providing information.

## CONCLUSION

The validity of the buying and selling process of Plaintiff Sainah's husband with Defendant Zubaidah in the Supreme Court decision Number 1081K/PDT/2018 against the car in dispute is linked to a special article regarding the terms of sale and purchase and Article 1320 of the Civil Code regarding the validity of the agreement was invalid and null and void. It was because the husband, the plaintiff, violated the proficiency requirements and violated the lawful causal requirements contained in Article 1320 of the Civil Code and Article 36 paragraph (2) of the Marriage Law No. 1 of 1974.

The Judge's Decision in the Case of the Supreme Court Decision Number 1081K/PDT/2018 stated that the Defendant committed an illegal act that could not be justified because the Defendant did not fulfill one of the elements of an illegal act, namely the element of error. Therefore, in this case, the Defendant did not act against the law, and the Defendant, as a buyer with good intentions, should be protected by law.

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