

# Iktikad Baik Pembeli dalam Pembelian Tanah dari Harta Bersama tanpa Persetujuan Pasangan (Studi Kasus Putusan Mahkamah Agung Nomor 3325/K/PDT/2020) = The Good Faith in Purchasing Land of Joint Property without Spousal Consent (Analysis Of Supreme Court Decision Number 3325/K/PDT/2020)

Tifauni Anne Guntari, author

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## Abstrak

Penelitian ini membahas mengenai iktikad baik Pembeli dalam jual beli yang mengalihkan hak milik atas tanah yang merupakan harta bersama tanpa persetujuan pasangan berdasarkan Putusan Mahkamah Agung Nomor 3325/K/PDT/2020. Ada 3 (tiga) permasalahan hukum yang muncul dari kasus ini, yaitu pertama, pemenuhan syarat materiil dan formil berdasarkan kasus Putusan Mahkamah Agung Nomor 3325/K/PDT/2020. Kedua, iktikad Pembeli dalam jual beli tanah berdasarkan kasus Putusan Mahkamah Agung Nomor 3325/K/PDT/2020. Ketiga, permasalahan hukum iktikad baik Pembeli berdasarkan kasus Putusan Mahkamah Agung Nomor 3325/K/PDT/2020. Penelitian ini dilakukan dengan bentuk penelitian doktrinal yang menggunakan data-data sekunder dengan mencakup bahan hukum primer yang berupa peraturan perundang undangan yang dan sekunder yang berupa buku-buku, jurnal, dan hasil riset lain. Data-data tersebut dikumpulkan melalui studi dokumen literatur. Hasil penelitian dapat disimpulkan bahwa pertama, jual beli tanah yang dilakukan oleh Tergugat III dengan almarhumah istri Penggugat memenuhi syarat materiil penjual yang berhak, namun harus dengan persetujuan Penggugat karena tersebut merupakan harta bersama. Sementara dalam jual beli antara Tergugat III dengan Tergugat V, memenuhi syarat materiil penjual yang berhak karena sistem publikasi di Indonesia yaitu sistem publikasi negatif bertendensi positif yang mengharuskan agar data dalam sertifikat dianggap benar, selama belum dibuktikan sebaliknya. Kedua, Tergugat III dan Tergugat V dinyatakan sebagai Pembeli yang tidak beritikad baik karena telah mengetahui adanya cacat hukum dalam proses jual beli tanah tersebut. Ketiga, Tergugat III sebagai Penjual telah beritikad baik untuk menjelaskan kepada Tergugat V bahwa objek jual beli sudah tidak bermasalah, walaupun pada akhirnya pengalihan hak milik dalam objek jual beli tersebut digugat dan menyebabkan Tergugat V dinyatakan tidak beritikad baik.

.....This research discusses the good faith of the Purchaser on Purchase and Sale in the terms of transferring the right of the land which is a joint property without spousal consent based on Supreme Court Decision Number 3325/K/PDT/2020. Three legal problems emerged from this case, first fulfillment of material and formal requirements in transferring land based on the case of Supreme Court Decision Number 3325/K/PDT/2020. Second, the implementation of good faith by the Purchaser in Purchase and Sale based on the case Supreme Court Decision Number 3325/K/PDT/2020. Third, the legal issue of the good faith of Purchaser based on Supreme Court Decision Number 3325/K/PDT/2020. The method of the research encompasses doctrinal research using secondary data which consists of two legal materials. There are primary legal materials which are current regulations and secondary legal materials in the form of books, journals, and other research results. Based on the research, it can be concluded that first, the sale and purchase of land conducted by The Third Defendant with Plaintiff's late wife would fulfill the material requirements of a seller who is entitled, if there was Plaintiff's approval because the object is a joint

property. The sale and purchase between The Third Defendant and The Fifth Defendant can fulfill the material requirements of a seller who is entitled because the publication system in Indonesia is a negative publication system with a positive tendency which stipulates that the data in the certificate be considered correct, as long as it has not been proven otherwise. Second, The Third Defendant and The Fifth Defendant were declared as the purchasers who did not act in good faith because they were aware of the legal defects in the land sale and purchase process. Third, The Third Defendant as the Seller already explained to The Fifth Defendant that the object of the sale and purchase was not in dispute. However, in the end, the Plaintiff sued the process of transferring ownership of the land causing The Fifth Defendant to be declared not to have acted in good faith.