The Legality Of Freehold Title And Legal Implications Against Of Land Makers Officers (The Study of Freehold Title Issuance Number 1576 / Nusukan Village, Banjarsari Sub-district, Surakarta City, Central Java)

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Abstract: Land purchased during the marriage period will be classified as shared property. If person is going to release or sell the land, then through the buying and selling process carried out in front of the Land Deed Official in the area where the land is located, and requires approval from the spouse, namely by signing or giving the fingerprint on the sale and purchase deed. Related to this, the release or sale of land with Freehold Title Number 1576 / Nusukan Village, Banjarsari sub-district, Surakarta City carried out by the husband without the wife's consent, so that the land has now been transferred to another party. This legal research uses a type of empirical juridical research. Empirical juridical research that examines the legal provisions that apply and what happens in reality in the community. The parties present were incomplete, namely the wife of the seller was not present in making the sale and purchase deed, even though the land was shared property, so the sale deed did not fulfill the principle of legality in the State Administrative Law. With no material requirements fulfilled, the Sale and Purchase Act 112/Banjarsari/1994 is legally flawed and can therefore be canceled through a lawsuit to the court. The Freehold Title Number 1576/Nusukan does not fulfill the principle of legality because the Deed of sale with number 112/Banjarsari/1994 made by Land Deed Official Tjondro Santoso, Law Bachelor in his comparisons does not mention the seller's wife and the signature of the seller's wife, the deed is legally flawed and can therefore be canceled through a lawsuit to the court. And as a result of Land Deed Official violating Article 38 of Government Regulation Number 24 of 1997, which is subject to administrative actions in the form of a written warning to the dismissal from his position as Land Deed Official by not reducing the possibility of being sued for damages by those who suffer losses due to the sale and purchase agreement.

When the State Administrative Decree in this case the Surakarta City Land Agency Office processes the sale and purchase with a legal sales defect and causes damage to other parties, the Surakarta City Land Agency Office may be subject to administrative sanctions and or claims by the injured party through the State Administrative Court.

Index Terms: Freehold Title, Land Deed Official, Land Agency Office

1. INTRODUCTION

Land registration is a series of activities carried out by the Government continuously, and regularly, includes collecting, processing, bookkeeping, presenting, and maintenance of physical and juridical data, in the form of maps and lists, regarding land parcels and housing units Flats, including the granting of proof of rights for plots of land for which there are rights and ownership rights over the unit of flats and certain rights that burden it. The transfer of land rights is a legal act with the aim of transferring land rights from one party to another which is done legally. There are several legal actions that can transfer land rights including legal actions based on sale and purchase, exchange, grants, income in companies, sharing of joint rights, granting of land use rights, use rights, auctions, granting mortgage rights, and inheritance.

The foregoing as referred to in Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration. The article states that the transfer of land rights and ownership rights to a unit of flats through the sale and purchase, exchange, grants, income in companies, and other legal acts of transfer of rights, except the transfer of rights through an auction can only be registered if proven by a deed made by the Land Deed Official (hereinafter referred to as PPAT) which is authorized according to the provisions of the applicable laws and regulations. Transfer or transfer of rights is a legal action aimed at transferring rights from one party to another party. It is different with the transfer of a right. The transfer of a right indicates the existence of an intentional legal act carried out by one party with the intention of transferring its ownership rights to another person. Thus, the transfer of ownership is known or desired by the party who made the agreement to transfer the land rights. In the sense of customary law, buying and selling land is a legal act, in which the seller surrenders the land he sells to the buyer forever, when the buyer pays the price of the land to the seller. Thus, land rights have been transferred from the seller to the buyer. It can also be said that since then, the buyer has obtained ownership rights to the land. In a marriage, if there is no marriage agreement made between husband and wife, the assets obtained during the marriage become joint property or Gono Gini assets. In the applicable law in Indonesia, joint property is regulated in Law Number 1 of 1974 concerning Marriage Article 35 "Gono goni assets are joint assets obtained during the marriage", Civil Code Book Article 119 "Since the time of the marriage, then according to the law there is a comprehensive joint property between husband and wife, insofar as it does not stipulate other provisions in the marriage agreement. Joint assets, during the marriage, should not be abolished or changed with an agreement between husband and wife. Joint property in marriage at the time of releasing or selling must also be with the approval of their partners. As mentioned in the Marriage Law Article 36 paragraph 1 “That husband and wife can act on joint property with the agreement of both parties" from this it can be concluded that one of the parties, either husband or wife cannot leave the other party in carrying out legal actions.
relating to these assets, because their position is balanced, namely as the owner of the joint assets. In this case the land purchased during the marriage takes place then the property is classified as joint property. If you are going to release or sell the land, then through the buying and selling process carried out in front of the PPAT in the area the land is located, and requires approval from the spouse, namely by affixing a signature or fingerprint on the sale and purchase deed. However, if the spouse is unable to attend, the spouse who is unable to attend may appear before a notary to make a Wife’s Approval Letter on the sale of the land which has been legalized by a Notary. Related to this is the release or sale of land with Certificate of Ownership Number 1576 / Nusukan Village, Banjarsari District, Surakarta City conducted by the husband without the wife’s consent, so that the land has now been transferred to another party. Therefore the procedure for releasing or selling land has been violated; in the sense of either the husband’s or the negligence of the Land Deed Official (PPAT) overriding the wife’s agreement, and the Surakarta City Land Office also issues or accepts the buying and selling process, then what about legality of certificates issued because something was violated.

2 RESEARCH METHOD
This legal research used a type of empirical juridical research. Empirical juridical research that examines the legal provisions that apply and what happens in reality in the community. Or in other words, that is a study conducted on the actual conditions or real conditions that occur in the community with the intention to find out and find the facts and data needed, after the data needed is collected then leads to the identification of problems that ultimately lead to problem solving. Data collection techniques are the most strategic step in research, because the main purpose of research is to get data. Without knowing data collection techniques, the researcher will not get data that meets the established data standards. In qualitative research, data collection is done by interviews and literature studies.

3 DISCUSSION
3.1 Principle of Legality of Ownership Certificate of Nusukan Village, Banjarsari District, Surakarta City, Central Java
Before the sale and purchase deed is made, the PPAT must conduct an examination at the Office of the National Land Agency (hereinafter referred to as BPN) of Surakarta City to find out about the suitability of the relevant land title certificate with the list in the Surakarta City BPN Office by showing the original certificate. Furthermore, after checking the certificate of land rights, namely starting the implementation of the sale and purchase deed. Making the sale and purchase deed must be attended by those who carry out legal actions, namely the seller and the buyer. Documents that must be submitted by the seller to PPAT are photocopy of Identity Card (KTP), Photocopy of Family Card (KK), Marriage Certificate, Tax Return Letter of Land and Building Tax (SPPTPB). And documents that must be submitted by buyers to PPAT are photocopies of Identity Card (KTP), Photocopy of Family Card (KK), and Marriage Certificate. The PPAT deed making must be witnessed by at least two witnesses according to the applicable laws and regulations meet the requirements to act as witnesses in a legal act, which testifies among others regarding the presence of the parties, the existence of documents in the making of the deed, and the implementation has been carried out these legal actions by the parties. The PPAT must read the deed of sale to the parties and provide an explanation of the contents and intent of the deed. That in the transition of buying and selling, it must fulfill the legal requirements for buying and selling. There are two legal requirements for the sale and purchase of land rights for the purpose of registering the transfer of rights, namely the material and formal conditions. The material conditions that are entitled to sell are the people whose names are listed on the certificate, if the land rights are joint property, the seller must obtain prior approval from the husband or wife, whereas the formal condition, namely the sale and purchase of land rights, must be proven by a deed drawn up by and before the PPAT. Conditions of sale and purchase must be proven by the deed of PPAT affirmed in Government Regulation Number 24 of 1997 concerning Land Registration Article 37 paragraph (1), namely: “in companies and other legal acts of transfer of rights, except the transfer of rights through an auction can only be registered if proven by a deed made by an authorized PPAT according to the provisions of the applicable laws and regulations”. In the Certificate of Ownership Number 1576 / Kelurahan Nusukan, it has been implemented and is not in accordance with the applicable laws and regulations. Because the buying and selling process does not meet formal requirements, where the legal terms of sale and purchase are the fulfillment of material and formal requirements. Certificate of Ownership Number 1576 / Nusukan Village is obtained at the time of marriage and is joint property / Gono Gini assets. The couple married on August 28, 1973. And the land with the certificate was bought by a husband and wife named Partomo and Aminatus Syahria in 1990. With the Sale and Purchase Deed Number 437 / Banjarsari / 1990 on November 16, 1990, it was made before Ruth Karliena, Bachelor of Law as PPAT Kodya Surakarta. However, land with certificate of ownership number 1576 / Nusukan Village has been sold by Partomo without the knowledge and without the wife’s consent. The land with the certificate was sold by Partomo facing the PPAT Surakarta Municipality Tjondro Santoso, Law Bachelor of Sale and Purchase Deed number 112 / Banjarsari / 1994 dated September 26, 1994. In the comparative sale and purchase agreement the seller or the first party who faces only Mr. Partomo is also called Partomo Aminatus Syahria’s husband, 51 years old, private occupation, resides in Surakarta, Jalan Adi Sumarmo 51, Rukun Tetangga 01, Rukun Warga 10, Nusukan Village, Banjarsari District are called sellers or first parties. In the deed of sale and purchase, only Partomo’s husband Aminatus Syahria (as the seller or first party) was signed, the buyer’s signature as the second party, the signatures of two witnesses and the signature and stamp of PPAT Tjondro Santoso, Bachelor of Law. In the deed of sale and purchase, only Partomo’s husband Aminatus Syahria (as the seller or first party) was signed, the buyer’s signature as the second party, the signatures of two witnesses and the signature and stamp of PPAT Tjondro Santoso, Bachelor of Law. The sale and purchase deed does not have a comparison between the approval of the wife legalized by a notary nor the wife’s agreement directly signing the deed. In the State Administrative Law, the principle of legality can be seen in Article 5 letter of Law Number 30 Year 2014 concerning Government Administration. In the explanation explained that the principle of legality is that the administration
of Government Administration puts forward the legal basis of a Decree and / or Actions made by Government Agencies and / or Officials. An official or state organizer in exercising his authority must be carried out in accordance with applicable laws and regulations. So that the certificate of ownership rights number 1576 / Nusukan Village in its analysis of the sale and purchase deed has been made before the competent authority, in this case the PPAT, making the deed has fulfilled Government Regulation Number 24 of 1997 concerning Land Registration, namely articles 37 and 38 which read “Transfer of rights over land and ownership rights over flats through buying and selling, exchanging, grants, income in companies and other legal acts of transfer of rights, except the transfer of rights through auctions, can only be registered, if proven by the deed made by the authorized PPAT according to the provisions of the regulations current regulation. And the making of the deed as referred to in Article 37 paragraph (1) is attended by the parties who make the legal act in question and witnessed by at least 2 (two) witnesses who meet the requirements to act as witnesses in the legal act.” The parties present were incomplete, namely the wife of the seller was not present in making the sale and purchase deed even though the land was jointly owned, so the sale deed did not fulfill the principle of legality in the State Administrative Law. With no material requirements fulfilled, the Sale and Purchase Act 112 / Banjarsari / 1994 is legally flawed and can therefore be canceled through a lawsuit to the court.H.D. Stout, citing Verhey’s opinion, said that the beginsel van wetmatigheid van bestuur contains three aspects, namely negative aspects (het negatieve aspecten), positive formal aspects (het formeel positieve aspecten), and positive material aspects (het materiaal positieve aspecten). Negative aspects determine that government actions should not be contrary to law. Government action is invalid if it contradicts higher laws. The positive formal aspect determines that the government only has certain authority as long as it is given or based on the law. Positive material aspects determine that the law contains general rules that bind government action. This means that the authority must have a legal basis and also that the content of the authority is determined by law. That after the Deed of sale and purchase was made, it was registered at the Surakarta City BPN Office. The PPAT must submit the PPAT deed and other documents required for the registration of land rights to the Surakarta City BPN Office no later than seven working days after the signing of the sale and purchase deed. 

Documents submitted by PPAT in the context of registration of land rights to the Surakarta City BPN Office are a letter of application for registration of rights signed by the buyer. Deed of sale under number 112 / Banjarsari / 1994 made by PPAT Tjondro Santoso, Bachelor of Law, Photocopy of Seller identity and Buyer (Resident Identity Card, Family Card), Certificate of Ownership Number 1576 / Nusukan, Photocopy of Tax Return on Land and Building Tax (SPPT PBB), Proof of Fees for Acquisition of Land and Building (BPHTB) and Proof of Income Tax (PPN). After the document is received by the ticket window clerk, the ticket clerk gives the PPAT receipt. Furthermore, payment is made for Non-Tax State Revenues (PNBP) for certificates of land rights that are processed for sale and purchase. The record of the transfer of rights in the land book, certificate, and other list, namely the name of the old right-holder (seller) in the land book was crossed out in black ink and affixed with the initial of the Head of the Surakarta City Land Office, the name of the new right-holder was written on the pages and columns in the land book with date and registration number on 208 is the list of completion of the land registration work and in 307 which is the list of state income, then signed by the head of Surakarta City BPN. Subsequently, the certificate is handed over to the product delivery counter and then taken by the PPAT to be submitted to the relevant person. That the registration procedure for the transfer of sale and purchase rights is in accordance with applicable regulations, namely Government Regulation Number 24 of 1997 concerning Land Registration and Regulation of the Minister of Agrarian Affairs / Head of National Land Agency Number 3 of 1997 concerning Provisions for Implementing Government Regulation Number 24 of 1997 Concerning Land Registration amendment to Government Regulation Number 10 of 1961 concerning Land Registration. However, the certificate of ownership rights number 1576 / Nusukan does not fulfill the principle of legality because the Deed of sale with number 112 / Banjarsari / 1994 made by PPAT Tjondro Santoso, the Bachelor of Law in his comparison does not mention the seller’s wife and the signature of the seller’s wife, the deed is deformed the law and therefore can be canceled through a lawsuit to the court.

3.2 The legal consequences of the Land Deed Making Official (PPAT) that has made the Sale and Purchase Deed, and the Surakarta City Land Office which has processed the transfer of land rights

Legal consequences on Land Deed Official (PPAT) The Official for Making Land Deed, hereinafter referred to as PPAT, is a general official who given the authority to make authentic deeds regarding certain legal acts regarding land rights. The PPAT has the main task of carrying out some of the land registration activities by making a deed as evidence of certain legal actions regarding land rights, which will be the basis for registering changes in land registration data resulting from legal actions, one of which is the deed of sale and purchase. In making the deed, the parties must either be attended by the seller or the buyer. If the assets obtained by the seller are joint assets, the husband and wife must be present before the PPAT for the deed of sale and purchase. In the decision Number: 48 / Pdt.G / 2002 / PN.Ska that the wife sued her husband because the wife did not know and did not approve and did not attend before the PPAT on land sales with Certificate of Ownership Number 1576 / Nusukan. Though the land with the certificate was obtained during the marriage so that it becomes a joint asset. And the name in the certificate also mentions the name of his wife, the certificate is in the name of Partomo husband Aminatus Syahria. By looking at the certificate it is certain that the property is obtained during the marriage because it says the full name of the husband and wife. While the court’s ruling also mentioned that the marriage of Partomo and Aminatus Syahria took place on August 28, 1973 at Pasar Kliwon, Surakarta. And the purchase of land with the certificate took place on November 16, 1990 with the 437 / Banjarsari / 1990 sale and purchase deed made before Ruth Karilena, Bachelor of Law, as PPAT Kodya Surakarta. The husband and wife divorced based on the Decision of the Surakarta Religious Court on December 5, 1994 with the Divorce Deed on February 26, 1996. With this incident, it was very certain that the assets in the form of land with Certificate of Ownership Number 1576 / Nusukan were joint assets or Gono Gini assets. The land with the certificate was sold by the husband without the wife’s agreement with the Sale and
Purchasing Deed Number 112 / Banjarsari / 1994 made by Tjondro Santoso, Bachelor of Law, PPAT Surakarta. PPAT Tjondro Santoso, Law Scholar should refuse the sale and purchase deed because there are parties who are not present in the legal act. However, the PPAT still made a deed of sale and purchase so that there was a legal act of buying and selling land without the consent of the seller's wife. This has violated Government Regulation Number 24 of 1997 concerning Land Registration Article 38 which in that article states "the making of a deed is attended by parties who carry out legal actions". And it also violates Article 1320 of the Civil Code which states that "in order for a legal agreement to occur, it must fulfill four conditions, namely their binding agreement, the ability to make a binding agreement, a specific issue and unauthorized cause". Subjective legal terms in the agreement were not fulfilled because there were parties who were not present in the agreement so they did not agree to enter into the sale and purchase agreement, those who did not attend and did not agree in the sale and purchase agreement were the seller's wife. So that the subjective conditions are not fulfilled then the deed is legally flawed and the deed can be canceled through a lawsuit to the court. And as a result of PPAT violating Article 38 of Government Regulation Number 24 of 1997, which is subject to administrative actions in the form of a written warning to the dismissal from his position as PPAT by not reducing the possibility of being sued for damages by those who suffer losses due to the sale and purchase agreement.

3.3 Legal Impacts on the Office of the Surakarta City National Land Agency

One of the principles of the rule of law is the principle of legality, which implies that every legal action by the government must be based on the prevailing laws or regulations or every government legal action must be based on the authority granted by the legislation. By relying on the principle of legality, the government takes various legal actions. Because every legal action means the use of authority. Where the Office of the Surakarta City National Land Agency has received the transfer of land rights with Certificate of Ownership Number 1576 / Nusukan. In the Deed of Purchase there is a legal flaw that is the absence of the seller's wife when the Deed of Sale is made before the PPAT. So that the Office of the Surakarta City National Land Agency has violated the general principles of good governance namely the principle of acting carefully. Because in processing the transfer of land rights did not carefully correct the sale and purchase deed number 112 / Banjarsari / 1994 made by Tjondro Santoso, Bachelor of Law PPAT Surakarta. Even though there are still parties who have not been present and have not yet agreed to the buying and selling process. The Surakarta City National Land Agency Office should act carefully in carrying out the administration of government duties, so that it does not cause harm to citizens. So that the injured party can file a lawsuit with the State Administrative Court based on Law Number 9 of 2004 concerning Amendment to Law Number 5 of 1986 concerning State Administrative Law. With no material requirements fulfilled, the Sale and Purchase Act 112 / Banjarsari / 1994 is legally flawed and can therefore be canceled through a lawsuit to the court. The Certificate of Ownership Number 1576 / Nusukan does not fulfill the principle of legality because the deed of sale with number 112 / Banjarsari / 1994 made by PPAT Tjondro Santoso, Law Bachelor in his comparisons does not mention the seller's wife and the signature of the seller's wife, the deed is legally flawed and can therefore be canceled through a lawsuit to the court. The land with the certificate was sold by the husband without the wife's agreement with the Sale and Purchase Deed Number 112 / Banjarsari / 1994 made by Tjondro Santoso, Bachelor of Law, PPAT Surakarta. PPAT Tjondro Santoso, Law Scholar should refuse the sale and purchase deed because there are parties who are not present in the legal act. However, the PPAT still made a deed of sale and purchase so that there was a legal act of buying and selling land without the consent of the seller's wife. This
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