



## UNLAWFUL ACT IN TRANSFER OF RIGHTS TO INHERITANCE LAND THAT IS DAMAGEOUS TO THE HEIR (STUDY OF SUPREME COURT DECISION NUMBER: 1206 K/PDT/2020 DATED JUNE 3, 2020)

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### Abstract

Article 02 of Law No. 5 of 1960 concerning the Basic Agrarian Law states that ownership rights can be transferred. In the process of transferring ownership, legal disputes are often unavoidable. One such legal issue related to the transfer of ownership is highlighted in the Supreme Court Decision No. 1206 K/Pdt/2020, in conjunction with the Makasar High Court Decision No. : 504/PDT/2018/PT MKS, and the Makasar District Court Decision No. : 4/Pdt.G/2018/PN.Mks. The decisions indicate that the Defendants committed an unlawful act that harmed the Plaintiff, who was the heir. These rulings show discrepancies and conflicts in the court's verdicts. This thesis aims to explore the following issues: the legality of gifts between spouses under the Indonesian Civil Code and the Compilation of Islamic Law, the legal resolution of inheritance land transfers involving unlawful acts, and the judicial considerations in ruling on disputes involving unlawful acts in inheritance land transfers that harm the heirs (Case Study of Supreme Court Decision No. : 1206 K/Pdt/2020 dated June 3, 2020). The research method used in this thesis is normative juridical research, which is descriptive-analytic. It employs a normative juridical approach and secondary data sources, including primary, secondary, and tertiary legal materials. The data collection techniques include literature review and document analysis. The research uses qualitative analysis to examine the legal materials, followed by deductive reasoning to draw conclusions and provide answers to the research problems. The findings of this study reveal that the legitimacy of gifting land between spouses during the marriage is prohibited under Article 1678 of the Civil Code, whereas, under Article 78 of the Compilation of Islamic Law, such gifts are not prohibited. Dispute resolution in land ownership transfers involving unlawful acts can be carried out through mediation or legal proceedings in court. The legal basis for the judge's consideration is Article 283 Rbg/163 HIR, where the Plaintiff successfully proved the claims in the lawsuit through a deed of gift and witness testimony. As a result, the court ruled that the disputed land was an inheritance from the Plaintiff's mother, and it was proven that the Defendants had committed unlawful acts. It is recommended that the parties clarify the legal status of the inheritance land by filing a petition with the Religious Court to prevent future inheritance disputes. Additionally, regional officials, such as the sub-district head, village head, and PPAT (land deed officials), should thoroughly investigate the objects and family history of the gift applicant to ensure legal certainty in future gift transactions.

**Keywords:** *Unlawful Act, Gift, Heirs.*

### 1. INTRODUCTION

Humans are the most perfect creatures of God and humans are social creatures, meaning that humans cannot live alone in their lives, they always need the intervention of other parties outside themselves, be it humans or nature. In their lives, humans are very dependent on nature because nature has an important role in supporting human life, such as land. Humans in their lives really need land because land is a space to move in running life and also as a source of life for humans. For example, humans need a place to live called a house as a shelter and of course to build a house requires land to build a building on it. Therefore, the relationship between humans and land is an eternal relationship, meaning that since humans were born into the world until the end of their lives they always need and are related to land.

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The background of the emergence of disputes in inheritance can come from various factors, namely internal factors and external factors, examples of internal factors such as greed of heirs, lack of understanding of heirs, and so on. while external factors such as the existence of adopted children who are given gifts by their adoptive parents and this then causes conflict. As a result, the conflict becomes prolonged between the disputing parties, even to the point that the heirs also participate in the dispute, to maintain their rights.

One of the disputes regarding inheritance is regarding the transfer of land rights as stated in the Supreme Court Decision Number: 1206 K/Pdt/2020, in conjunction with the Makassar High Court Decision Number: 504/PDT/2018/PT MKS, in conjunction with the Makassar District Court Decision Number: 4/Pdt.G/2018/PN.Mks. In the Supreme Court Decision Number: 1206 K/Pdt/2020, it was stated that there was a dispute over land ownership rights between the Applicant for Cassation (Siti Hatijah) against Atiru, Agustina, Dg. Naga (the Applicants for Cassation) and the PPAT/Camat Mamajang (Co-Applicants for Cassation).

In the Supreme Court Decision Number: 1206 K/Pdt/2020, the Applicant for Cassation (Siti Hatijah) filed a lawsuit against the Applicants for Cassation (Atiru, Agustina, DG. Naga) and the Co-Defendant for Cassation (PPAT/CASATA MAMAJANG) where the Applicant for Cassation asked the Panel of Judges to annul the Makassar High Court Decision Number: 504/PDT/2018/PT MKS dated March 22, 2019 and to uphold the Makassar District Court Decision Number 4/Pdt.G/2018/PN.Mks.

In the Decision of the District Court Number: 4/Pdt.G/2018/PN.Mks it is stated that the Plaintiff and Defendant I are half-siblings where the Plaintiff's Mother (Timang Dg. Ratu) is married to the Father of Defendant I (Paming Dg. Rapi) and the occurrence of the dispute over ownership of land rights began with the disputed land obtained by Timang Dg. Ratu from Paming Dg. Rapi in marriage based on Deed of Grant No.160/KMG/75.

Defendant I controlled the disputed land and sold the land to Defendant II without the Plaintiff's knowledge based on the Deed of Sale and Purchase Number: 594.4/16/KM/VI/2009, dated June 29, 2009, which was made and issued by Defendant IV, namely the PPAT/SUB-DISTRICT HEAD of MAMAJANG, Makassar City.

For the actions of the Defendants, the Plaintiff filed a lawsuit for unlawful acts to the Makassar District Court because the actions of the Defendants harmed the Plaintiff as an heir. And based on the chronology, the panel of judges in deciding the Supreme Court Decision Number: 1206 K / Pdt /, jo. Makassar High Court Decision Number: 504 / PDT / 2018 / PT MKS, jo. Makassar District Court Decision Number: 4 / Pdt.G / 2018 / PN.Mks. There are differences and contradictions in the verdict from the chronology above, which can be seen in the table below, namely as follows:

**Table 1.**  
**DIFFERENCES IN JUDGE'S DECISIONS**

First	Appeal	Cassation
To judge: 1) Granting the Plaintiff's claim in part; 2) Declaring that the disputed land based on the deed of gift No. 160/KMD/75 made by the Land Deed Making Officer of the Head of Mamajang District is owned by Timang Dg Ratu and therefore the Plaintiff has the right to inherit the inheritance of Timang Dg. Ratu.	To judge: 1) Received an appeal request from the original appellant, Defendant II; 2) Canceling the decision of the Makassar District Court Number: 4 / Pdt.G / 2018 / PN Mks, dated August 28, 2018, which was appealed; 3) Ordering the Respondent, the Plaintiff, to pay court costs at both levels of court, which for the appeal level is set at Rp. 150,000.- (one hundred	To judge: 1) Granting the cassation petition from Cassation Petitioner SITI HATIHAH; 2) Canceling the Decision of the Makassar High Court Number: 504/Pdt/ 2018/PT MKS., dated March 22, 2019 which canceled the Decision of the Makassar District Court Number: 4/Pdt.G/



<p>3) Declaring that the actions of the Defendants constitute an unlawful act (onrechmatige daad);</p> <p>4) Declaring that the deed of sale and purchase Number: 594.4/16 /KM /VI / 2009, dated 29 June 2009, made and issued by Defendant IV has no legal force;</p>	<p>and fifty thousand rupiah);</p>	<p>2018/PN Mks., dated August 28, 2018;</p>
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Based on the description of the table above, the researcher is interested in studying and analyzing what is the basis for the judge's legal considerations in deciding the case of Supreme Court Decision Number: 1206 K / Pdt / 2020, jo. Makasar High Court Decision Number: 504 / PDT / 2018 / PT MKS, jo. Makasar District Court Decision Number: 4 / Pdt.G / 2018 / PN.Mks. using 3 theories, namely: the theory of legal certainty, the theory of authority and the theory of justice. The use of theory in writing this thesis is to provide an explanation of the problems in writing this thesis. And therefore, the researcher submitted a research in this thesis entitled: Unlawful Acts in the Transfer of Rights to Inherited Land That Are Detrimental to Heirs (Study of Supreme Court Decision Number 1206 K / Pdt / 2020 Dated June 3, 2020).

## 2. IMPLEMENTATION METHOD

### Types and Nature of Research

The research method used in this study is the normative legal research method, namely a method that refers to legal norms contained in legislation and applicable in community life. This legal research is conducted by examining library materials or secondary data such as books, laws and regulations, court decisions, legal theories and others. as a basis for solving the problems to be discussed. The research in this thesis is descriptive analytical, namely a research that aims to provide an overview of the problems to be studied through data or samples that have been obtained and the results of this research are then processed and analyzed to draw conclusions so that they can answer the problems in this research.

### Research Approach

The problem approach in this research is a statute approach, namely an approach that refers to laws and regulations, books and other documents related to this research.

### Data source

In normative legal research, what is studied is legal materials or can be said as library research. Therefore, normative legal research data sources are only secondary data. Secondary data is a data source obtained through tracing regulations and other literature related to the problems studied.

## 3. RESULTS AND DISCUSSION

Legal analysis of unlawful acts in the transfer of rights to inherited land that are detrimental to heirs Based on the Supreme Court Decision Number: 1206 K / Pdt / 2020, jo. Makasar High Court Decision Number: 504 / PDT / 2018 / PT MKS, jo. Makasar District Court Decision Number: 4 / Pdt.G / 2018 / PN.Mks

### 1. Analysis of Makassar District Court Decision Number: 4/Pdt.G/2018/PN.Mks

A gift is an agreement by which a person who grants a gift gives something for free, without being able to withdraw it, for the benefit of someone who receives the gift. And the Law only recognizes gifts between living people. The validity of a gift is an important thing because validity is a legitimate measure of a legal act that is carried out so that the legal act has perfect

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evidentiary power. In order for a grant to have perfect legal force, it must meet the terms and conditions stipulated in the Indonesian legal system. The terms and conditions of a grant are:

1. The donor must legally own the object being donated.
2. Fulfilling the terms of the agreement in Article 1320 of the Civil Code
3. The grantor is a legally competent person
4. The donor is not forced
5. The object being donated already exists at the time of the contract.
6. A gift must be made by a notarial deed
7. There are grantors and grantees.

Article 1676 of the Civil Code states that everyone may give and receive grants, except those who are declared by law to be incapable of doing so. The ability to give and receive grants is regulated in Article 1676 to Article 1681 of the Civil Code. In principle, everyone can be the subject of a grant, except:

- a. Minors.
- b. Between husband and wife should not be the subject of a grant agreement.

Based on Article 1678 of the Civil Code paragraph (1) a husband and wife are prohibited from making a gift. This prohibition is made to avoid the transfer of the husband's assets to the wife's assets or vice versa, which is prohibited by Article 29 paragraph (4) of Law Number 1 of 1974 concerning Marriage. And when the husband and wife still make the gift, the gift that is made is null and void by law.

In the Compilation of Islamic Law, gifts between husband and wife are not prohibited because since the marriage, the husband and wife still have the right to their respective assets. So the husband and wife have the right to use their assets either to spend or to donate, and the husband has the right to donate his assets to his wife or vice versa. Therefore, gifts between husband and wife in the Compilation of Islamic Law are valid.

In the Decision of the Makasar District Court Number: 4/Pdt.G/2018/PN.Mks, there was a dispute over the transfer of land rights carried out by unlawful acts that were detrimental to the heirs. The object of the disputed land is the inheritance of the Plaintiff's Mother (Timang Dg. Ratu) which was obtained by the Plaintiff's Mother (Timang Dg. Ratu) from the father of Defendant I (Paming Dg. Rapi) where the father of Defendant I (Paming Dg. Rapi) had donated to Timang Dg. Ratu a plot of land located in the Sambung Jawa Environment, Mamajang District, Ujung Pandang City with an area of 12 MX 25 M based on the deed of gift Number: 160/KMD/75 on July 15, 1975 which was made before Sjahrul Atjo, Deed Making Officer, Head of Mamajang District.

The land is a tangible immovable property owned by the grantor (Paming Dg Rapi) before his marriage to his second wife, Timang Dg Ratu. The grant was made while the marriage between the grantor and the grantee was still ongoing, and with the grant of the disputed land by Paming Dg Rapi to Timang Dg Ratu, the ownership rights of the land were transferred from Paming Dg Rapi to Timang Dg Ratu and according to the law, the grant cannot be withdrawn, except for grants to biological children.

The positions and status of the parties involved in this case are as follows:

1. Siti Hatijah as the Plaintiff is the child of Timang and Ratu's marriage to her first husband who has died.
2. Timang Dg Ratu was the recipient of a grant and the second legitimate wife of Paming Dg Rapi from 1944 until Timang Dg Ratu's death in 1996.
3. Paming Dg Rapi as the grantor of land to his second wife, Timang Dg Ratu, who had died at the time of this case.
4. Atiru as Defendant I who is the son of Paming Dg Rapi and his first wife who has passed away.
5. Agustina as Defendant II who is the purchaser of the disputed land object
6. Dg. Naga as Defendant III who was the person sent by Defendant I to take control of the disputed land.



7. PPAT/Mamajang Sub-district Head as Defendant IV who issued the deed of sale and purchase Number: 594.4/16/KM/VI/2009, dated 29 June 2009

The considerations of the Judge in the Makassar District Court Decision Number 4/Pdt.G/2018/PN.Mks. are as follows:

Regarding the grant, it is true that the grant was made on July 15, 1975 before Sjahrul Atjo, the Deed Making Officer, Head of Mamajang District and this was proven by the Plaintiff with the Deed of Grant Number: 160/KMD/75. and the Deed of Grant Number: 160/KMD/75 is in accordance with the testimony of the Plaintiff's witnesses, namely Muh. Indonesia Segeri and Nasjamuddin SS, who in essence stated that it was true that Paming Dg Rapi during his lifetime had granted a plot of land a qou to Timang Dg Ratu. Based on this, the panel of judges considered that the grant was indeed made and therefore the Plaintiff had proven the argument of the lawsuit. so that the plaintiff is one of the heirs of the late Timang Dg Ratu.

Based on the above information, the panel of judges granted that the deed of gift Number: 160/KMD/75 made by the land deed official of the head of the Mamajang sub-district was valid and belonged to Timang Dg Ratu and therefore the Plaintiff had the right to inherit the inheritance of Timang Dg. Ratu. And based on this, it is true that the Defendants have committed an unlawful act. In which Article 1365 of the Civil Code states that the elements of an unlawful act are:

1. There is an unlawful act
2. There was an error
3. There is a loss
4. There is a causal relationship between the loss and the action.

In doctrine, an act is an unlawful act if it violates written and unwritten laws. Therefore, the act must fulfill one of the following elements:

1. Actions that conflict with the subjective rights of others
2. Acts that are contrary to the legal obligations of the perpetrator
3. Actions that are contrary to morality
4. Actions that are contrary to propriety, accuracy and caution in good social interactions

In this case, the Plaintiff alleges a lawsuit for unlawful acts against the Defendants. The elements of unlawful acts that can be proven in this case are the actions committed by Defendant I which have violated the Plaintiff's subjective rights. What is meant by subjective rights is a person's special authority recognized by law to defend his personal interests and subjective rights are also known as absolute property rights, such as property rights, personal rights and according to civil law teachings on interference, violations of subjective rights can lead to a lawsuit for unlawful acts (PMH).

The Plaintiff's subjective rights that were violated by Defendant I were the object of the land dispute which was the Plaintiff's property, which was controlled by Defendant I in an improper manner and sold the disputed land to Defendant II without the Plaintiff's knowledge, resulting in the transfer of the Plaintiff's ownership rights and causing losses to the Plaintiff. And the actions of Defendant II and Co-Defendant IV fulfill the elements that are contrary to the principles of propriety, accuracy and caution, in which case Defendant II purchased the disputed land object from Defendant I without examining the origin of the land and Co-Defendant IV was not careful in carrying out the deed of sale and purchase of the land, resulting in losses to the Plaintiff.

In Article 1365 of the Civil Code, if the element of error is committed either intentionally or due to negligence, the legal consequences are the same, namely that the perpetrator remains responsible for paying damages for losses suffered by other people, which are caused by unlawful acts committed due to the perpetrator's fault. In this case, the element of the Defendants' fault is clearly present because based on the knowledge, awareness, and skills they have, in this case Defendant I realized that a deed of gift had appeared for the disputed land object. so that Defendant I intentionally carried out the sale and purchase of the land object. Then Defendant II, and Co-Defendant IV should have realized that the legal act of sale and purchase that was carried out should not have been carried out because it caused losses to the Plaintiff. Then Defendant III consciously controlled the disputed object at the behest of Defendant I.

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The elements in Article 1365 of the Civil Code state that an act is said to be an unlawful act if the act causes harm to the victim. In this case, the Defendants caused harm to the Plaintiff, namely the transfer of land rights that belonged to the Plaintiff. So the Defendants must be responsible for replacing the loss and in this case the Defendants are required to hand over the disputed land to the Plaintiff in a state free from any burden. The existence of the element of cause and effect to fulfill Article 1365 of the Civil Code is intended to examine whether there is a causal relationship between the error committed and the loss incurred. Thus, the perpetrator can be held responsible for his actions. If someone commits an unlawful act, then the sanctions in Article 1365 of the Civil Code can only be applied if the loss is caused.

In the case, the actions of Defendant I in controlling and maintaining the disputed object in his power in an improper manner, Defendant II who bought the disputed land from Defendant I and Defendant III who controlled the disputed object at the behest of Defendant I, Defendant IV who made and issued a deed of sale and purchase Number: 594.4/16/KM/VI/2009, dated June 29, 2009 is an unlawful act (onrechmatige daad) which caused losses to the Plaintiff. This proves that the relationship between the losses suffered by the Plaintiff is a result of the actions carried out by the Defendants.

With the fulfillment of the four elements above, the Defendants are proven to have committed an unlawful act. The decision of the Makasar District Court which stated that the actions of Defendant I in controlling and maintaining the disputed object in his power in an improper manner, Defendant II who bought the disputed land from Defendant I and Defendant III who controlled the disputed object at the behest of Defendant I, Defendant IV who made and issued a deed of sale and purchase Number: 594.4/16/KM/VI/2009, dated June 29, 2009 constituted an unlawful act (onrechmatige daad) is an unlawful act, is correct.

Regarding the Deed of Sale and Purchase made by Defendant I and Defendant II with Number: 594.4/16/KM/VI/2009 dated June 29, 2009, which was made before Defendant IV, namely Drs. H. Andi Kamaruddin Munde, as the Land Deed Making Officer in Mamajang District, it has no legal force. Because in this case Defendant I does not have the legal basis to carry out the legal act. Based on the legal act, Drs. H. Andi Kamaruddin Munde, as the Land Deed Making Officer, should have carefully examined whether or not legal acts had been carried out on the land before issuing the Deed of Sale and Purchase, in order to avoid any disputes in the future.

The sale and purchase of land rights is regulated in Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration that the form of transfer of land rights and ownership rights to apartment units through sale and purchase can only be registered if proven by a deed made by an authorized PPAT according to the provisions of laws and regulations. Based on Government Regulation Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning the Regulations on the Position of Land Deed Making Officials, it is stated that: "PPAT is a public official who is authorized to make authentic deeds regarding certain legal acts regarding land rights or Ownership Rights to Apartment Units.

PPAT is authorized by law to make authentic deeds related to land, one of which is through buying and selling as previously explained. Legal acts carried out by PPAT outside of the authority given to him or acts that violate the law, then PPAT has the potential to commit an unlawful act. Before carrying out his/her duties, PPAT is also required to take an oath or promise according to his/her religion before the Minister of Agrarian Affairs and Spatial Planning/BPN. The contents of the PPAT oath or promise essentially state that the PPAT swears that he/she will obey all land regulations and other regulations related to PPAT and other applicable laws and regulations, and carry out his/her duties honestly, orderly, carefully and with full awareness, responsibly, impartially, and always uphold the honor of the state, government and dignity of PPAT.

In Article 3 letter h of the PPAT Code of Ethics, that PPAT in carrying out his position is obliged to provide legal counseling to the community who need his services so that the community is aware of and internalizes their rights and obligations as citizens and members of society. A Notary and/or PPAT, with the knowledge, skills and experience they have, is required to be able to accommodate and protect the interests of each party when making a Deed. that PPAT must be



careful in making a Deed, so that no party feels disadvantaged which results in a dispute. Against the Deed of Sale and Purchase Number: 594.4/16/KM/VI/2009, dated June 29, 2009 made and issued by Defendant IV, namely PPAT/Camat Mamajang, has no legal force, because the deed of sale and purchase does not fulfill the elements of the requirements for a valid agreement according to Article 1320 of the Civil Code, namely the violation of objective requirements. Objective requirements can be interpreted as requirements which are related to the object or content of the agreement. There are 2 (two) elements in this objective requirement, namely a certain thing and a lawful cause.

The objective requirements that are not met in the Deed of Sale and Purchase Number: 594.4/16/KM/VI/2009, dated June 29, 2009 made and published by Defendant IV (PPAT/Mamajang Sub-district Head) are a lawful cause. A lawful cause is regulated in Article 1335 of the Civil Code which explains "an agreement without a cause or which has been made for a false or prohibited cause has no force." Then Article 1337 of the Civil Code regulates that "a cause is prohibited if it is prohibited by law, or if it is contrary to good morality or legal order. From the article it can be concluded that when an agreement contains a false cause or things prohibited by law, then without the need to request its cancellation to the Court, the agreement at the time it was made has no legal force and is automatically canceled or what is known as null and void. And the failure to fulfill this requirement causes the legal act carried out by the parties to be considered never to have existed or never to have given rise to an agreement.

The unlawful act committed by the PPAT/Camat Mamajang is the creation of a deed containing a false and prohibited cause at the request of the Defendants. Then, there is an element of error committed by the PPAT/Camat Mamajang. The element of error committed by the PPAT/Camat Mamajang is the element of negligence (*culpa*) where in this case the PPAT/Camat Mamajang caused losses to the Plaintiff due to his negligent and/or careless actions in making the deed of sale and purchase. In this regard, it is better for the PPAT/Camat Mamajang to be aware of the risks that will arise when making an agreement/deed that will cause a problem in the future. As stated in Article 3 letter h of the PPAT Code of Ethics, the PPAT must be careful in making a Deed, so that no party feels disadvantaged which results in a dispute.

Based on the above information, the legal consequences of the sale and purchase deed Number: 594.4/16/KM/VI/2009, dated 29 June 2009 made and issued by Defendant IV, namely PPAT/Mamajang Sub-district Head, are that it has no legal force, resulting in the loss of the function of the deed as evidence that a legal act of sale and purchase has been carried out. And for the actions of the PPAT, administrative responsibility can be requested in the form of a warning up to dismissal from his position based on the PPAT Job Regulations and the IPPAT Code of Ethics and other implementing regulations, and in civil law, responsibility can be requested in the form of compensation according to Article 1365 of the Civil Code, and criminal responsibility as regulated in Article 264 paragraph (1) forgery of a letter against an authentic deed with a maximum prison sentence of eight years.

Regarding the disputed object which at the time of the dispute was controlled by Defendant II, because Defendant II or anyone who obtained it from him was obliged to hand over the disputed land to the Plaintiff. Because the Plaintiff was declared as the legal owner of the land a qou, all letters issued in the name of someone other than the Plaintiff for the land a qou were declared to have no legal force; In the case decided in the Makasar District Court Decision Number: 4/Pdt.G/2018/PN.Mks. the panel of judges granted part of the Plaintiff's lawsuit, the lawsuits granted by the panel of judges were:

- a. Granting the Plaintiff's claim in part;
- b. Declaring the disputed land in the Sambung Jawa Environment, Mamajang District, Ujung Pandang City with an area of 12 MX 25 M with the following boundaries:
  - North : Bordering the yard of R dg Rapi (now Alley);
  - East : Bordered by Jalan Baji Pamai V;
  - South : Bordering Nurdin and Sila's yard (formerly) now mother Maryam's land;
  - West : Bordering the pond (now Daeng Te'ne House);

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Based on the Deed of Grant Number 160/KMD/75 made by the Land Deed Making Officer, the Head of the Sub-district is owned by Timang Dg Ratu and therefore the Plaintiff has the right to inherit the inheritance of Timang Dg. Ratu;

- c. Declaring that the Plaintiff is one of the heirs of Timang Dg. Ratu, and therefore has the right to inherit the inheritance of Timang Dg. Ratu;
- d. Declaring that the actions of Defendant I in controlling and maintaining the disputed object in his power in an improper manner, Defendant II who purchased the disputed land from Defendant I and Defendant III who controlled the disputed object at the behest of Defendant I, Defendant IV who made and issued the deed of sale and purchase Number: 594.4/16/KM/VI/2009, dated 29 June 2009 constituted an unlawful act (onrechmatige daad);
- e. Declaring that the deed of sale and purchase Number: 594.4/16/KM/VI/2009, dated 29 June 2009, made and issued by Defendant IV has no legal force;
- f. Order Defendant II or anyone who has rights from him to hand over the disputed land to the Plaintiff free from any encumbrances;
- g. Sentencing Defendant II to pay a fine of Rp. 1,000,000 (one million rupiah)/day for every day he fails to carry out the Court's decision, starting from when this decision has permanent legal force;
- h. Declare that according to law all letters issued in the name of someone other than the Plaintiff on land a gou are declared to have no legal force;
- i. Ordering the Defendants to submit to and obey this decision;
- j. Ordering Defendant I and Defendant II to pay court costs jointly and severally in the amount of Rp. 1,761,000.00 (one million seven hundred and sixty one thousand rupiah);
- k. Rejecting the Plaintiff's claim for other than and beyond

**Analysis of Makassar High Court Decision Number: 504/Pdt/2018/PT.Mks**

Makassar District Court is a first instance court that adjudicates disputes of unlawful acts that harm heirs in the decision: 4/Pdt.G/2018/PN.Mks, in the decision the panel of judges granted most of the contents of the plaintiff's lawsuit. Where the Makassar District Court stated that the Defendants committed unlawful acts, and ordered the Defendants to hand over the disputed land to the Plaintiff in a state free from any burden. Regarding the decision of the Makassar District Court, Defendant II as the buyer of the disputed land object was not satisfied with the contents of the Makassar District Court decision. So he filed an appeal to the Makassar High Court.

An appeal is one of the ordinary legal remedies that can be requested by one or both parties in a dispute against a District Court decision. The parties file an appeal if they are dissatisfied with the contents of the District Court decision to the High Court through the District Court where the decision was made. . Based on Article 51 of Law Number 2 of 1986 concerning General Courts, the High Court is an appellate court that is tasked and authorized to try criminal and civil cases at the appellate level and the High Court is also tasked and authorized to try at the first and final level disputes over the authority to try between District Courts in its jurisdiction.

The position and status of the parties involved in Decision Number: 504/PDT/2018/PT.Mks are as follows:

1. Agustina as the original Appellant, Defendant II, who was the purchaser of the disputed land object
2. Siti Hatijah as the Respondent, originally the Plaintiff, who was the legitimate owner of the disputed object based on the decision of the Makassar District Court Number: 4/Pdt.G/2018/PN.Mks.
3. Atiru as Co-Appellant was originally Defendant I, who is the son of Paming Dg Rapi, who was the owner of the disputed land object before it was donated.
4. Dg. Naga as a Co-Appellee was the original Defendant III who was the person originally ordered by Defendant I to control the land subject to dispute.





5. PPAT/Camat Mamajang as Co-Appellant was originally Defendant IV who issued the deed of sale and purchase Number: 594.4/16/KM/VI/2009, dated 29 June 2009.

In the case of the Makassar High Court Decision Number: 504/Pdt/2018/PT.Mks. The Judge's Legal Consideration is: the grant between Paming Dg Rapi and Timang Dg Ratu is invalid based on Article 1678 of the Civil Code where grants between husband and wife are prohibited so that they are contrary to legal provisions, the grant is null and void and is considered never to have existed. And because the grant is invalid, the land remains the property of the late Paming Dg Rapi so that Atiru is the legal heir to the land.

Regarding the Judge's Legal Considerations. The researcher in this case is of the opinion that the grant is null and void when referring to the provisions of Article 1678 of the Civil Code which states the prohibition of grants between husband and wife. And the prohibition of grants between husband and wife is made to avoid the transfer of the husband's property to the wife's property or vice versa which is prohibited by Article 29 paragraph (4) of Law Number 1 of 1974 concerning Marriage.

Marriage regulates the issue of gifting property. especially if the property that is gifted is the property brought by the husband or wife that is not included in the joint property obtained during the marriage. With the provision that during the marriage the agreement cannot be changed, unless both parties agree to change it and the change does not harm a third party (Article 29 paragraph (4)), then when in the marriage agreement, the issue of gifting between husband and wife during the marriage has been determined, then the gift can be made.

In Law Number 1 of 1974 concerning Marriage, Article 29 paragraph (1) states that a written agreement can be submitted "at the time" or before the marriage takes place and with mutual agreement a written agreement can be made and in the marriage agreement the contents of the marriage agreement are regulated which permit or allow for gifts between husband and wife during the marriage, this is very possible in conjunction with Article 29 paragraph (1) in conjunction with Article 168 of the Civil Code which regulates "at the time or before the marriage takes place, both parties with mutual agreement can submit a written agreement which is legalized by a marriage registrar, after which the contents also apply to the third party involved" and in the marriage agreement a gift from one person to another, a gift from a husband to his wife or vice versa can be agreed upon.

Therefore, regarding the above provision regarding the prohibition of gifts between husband and wife during the marriage in Article 1678, deviations can be made when there has been an agreement previously. In this case, the prospective husband or wife has the right to enter into a marriage agreement whose contents provide something to the other party. With the condition that the gift does not harm the parties entitled to the legitimate portie and does not violate legal, moral and religious norms. Thus, referring to the explanations above, deviations from the provisions contained in Article 1678 of the Civil Code can be made. Deviations from these provisions can be made through a marriage agreement with the regulation of the marriage agreement both in Articles 168 to 172 of the Civil Code and Law No. 1 of 1974 concerning Marriage, then the deviation is in accordance with the provisions of applicable law so that it can be legally accounted for.

In the Compilation of Islamic Law, gifts between husband and wife are not prohibited because since the marriage, the husband and wife still have the right to their respective assets. So the husband and wife have the right to use their assets either to spend or to donate, and the husband has the right to donate his assets to his wife or vice versa. Therefore, gifts between husband and wife in the Compilation of Islamic Law are valid.

Based on the judge's consideration in the Makassar High Court Decision Number: 504/PDT/2018/PT which states that the grant is null and void, in this case the researcher disagrees because when the grant implemented by Paming Dg Rapi and Timang Dg Ratu is viewed from the Compilation of Islamic Law. then, the grant is valid because the Compilation of Islamic Law does not prohibit grants between husband and wife. And in this case Paming Dg Rapi and Timang Dg Ratu are Muslims so that the grant implemented by Paming Dg Rapi and Timang Dg Ratu is valid and has legal force based on the Compilation of Islamic Law.

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If analyzed more deeply using the provisions contained in the Compilation of Islamic Law related to the provisions regarding the above grants, then the researcher basically refers to Article 86 and Article 87 of the Compilation of Islamic Law which explicitly states that basically there is no mixing between the husband's assets and the wife's assets because of the marriage and the wife's assets remain the wife's rights and are fully controlled by her, likewise the husband's assets remain the husband's rights and are fully controlled by him. Each has full rights to carry out legal acts on their respective assets in the form of grants, sadaqah, infaq and others.

Based on the above information, the Deed of Grant Number: 160/KMD/75 made by the Land Deed Making Officer of the Head of Mamajang District is valid and belongs to Timang Dg. Ratu and therefore the Respondent has the right to inherit the inheritance of Timang Dg. Ratu. And the deed of sale and purchase Number: 594.4/16/KM/VI/2009, dated June 29, 2009 made and issued by Defendant IV has no legal force and in this case it is true that the Defendants have committed an unlawful act.

Regarding the consideration of the panel of judges regarding the sale and purchase made by Atiru and Agustina is valid, because Atiru is the legal owner of the disputed object and the sale and purchase was carried out before the PPAT and has fulfilled the requirements for a valid agreement in Article 1320 of the Civil Code. So that Defendant I sold the disputed land, Defendant II bought the disputed land and Defendant III also controlled the disputed land and Defendant IV as PPAT made the sale and purchase agreement is not an unlawful act. So the panel of High judges is of the opinion that the Plaintiff failed to prove the arguments in his lawsuit, therefore the Plaintiff's lawsuit must be declared rejected in its entirety.

Regarding the consideration of the panel of judges regarding the sale and purchase carried out by Atiru and Agustina was valid, and the actions of the Defendants were not unlawful acts in this case, the researcher is of the opinion that the panel of judges in this case is guided by Article 1678 so that the panel of judges is of the opinion that the gift is valid and the deed of sale and purchase and the actions of the defendants are not unlawful acts.

Regarding the grant, the researcher previously disagreed with the panel of judges because in this case the researcher was guided by the provisions of the grant in the Compilation of Islamic Law so that the researcher was of the opinion that the grant was valid and the deed of sale and purchase with Number: 594.4/16/KM/VI/2009, which was carried out by Atiru and Agustina which was made before the Land Deed Making Officer Drs. H. Andi Kamaruddin Munde on June 29, 2009 did not have legal force so that the actions of the Defendants were unlawful.

Regarding the sale and purchase conducted by the Appellant (Agustina) with Co-Appellant II (Atiru), the researcher questions whether the Appellant is included in the buyers who have good intentions in carrying out the legal act. Sale and purchase are everyday actions that occur in people's lives. Where based on Article 1457 of the Civil Code, the sale and purchase itself has the meaning of an agreement by which the other party pays the promised price. This sale and purchase agreement is a form of reciprocal agreement which means that each party has rights and obligations as a result of the agreement they made.

In the life of society, problems often arise between sellers and buyers of land where buyers often feel disadvantaged and need legal protection. Legal protection is a form of justice, order, certainty, benefit and also peace. In principle, buyers in a sale and purchase will receive legal protection from the Law if the buyer is a buyer in good faith, as in the Makassar High Court Decision Number: 504 / PDT / 2018 / PT.Mks Where the Appellant bought a plot of land that he had just found out that the land was problematic. and at the time of the sale and purchase Atiru (seller) was considered as the person who had the right to sell because he was the legal heir of the owner of the land object. Therefore, it is necessary to examine first whether the Appellant as a buyer had good faith.

A holder or buyer in good faith is an honest person who is not aware of any defects in the goods. This can be found in Article 1977 of the Civil Code. Meanwhile, the good faith referred to in Article 1338 paragraph (3) of the Civil Code contains the understanding that the implementation of the agreement must proceed by observing the norms of propriety and good faith morality. This



principle of good faith has a very important function in an agreement. The limits of good faith are indeed difficult to determine. But in general it is understood that good faith is part of the obligations in the agreement. Good faith is one form of legal obligation that must be adhered to in the entire agreement process. In the Indonesian legal system, this good faith is stated in Article 1338 paragraph (3) of the Civil Code which emphasizes the obligation for the parties to carry out the contract in good faith.

Based on the Circular Letter of the Supreme Court Number 4 of 2016 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2016 as a Guideline for the Implementation of Duties for the Court, the criteria for buyers in good faith who need to be protected are as follows:

- a. Carry out the sale and purchase of the land object with the legal procedures and documents as determined by statutory regulations, namely:
  1. Purchase of land through public auction;
  2. Purchase of land before a Land Deed Making Officer (in accordance with the provisions of PP Number 24 of 1997);
  3. Purchase of customary/unregistered land carried out according to customary law provisions, namely:
    - Done in cash and openly (in the presence/knowledge of the local Village Head/Lurah);
    - This is preceded by research on the status of the land object of the sale and purchase and based on this research it is shown that the land object of the sale and purchase belongs to the seller.
  4. The purchase was made at a decent price.
- b. Exercise caution by examining matters relating to the promised land object, including:
  1. The seller is the person who has the right/has the rights to the land that is the object of the sale and purchase and in accordance with the proof of ownership;
  2. The land/object being traded is not in confiscated status;
  3. The land object being traded is not under collateral/mortgage status;
  4. For certified land, information has been obtained from the National Land Agency and the history of the legal relationship between the land and the certificate holder.

With this, the researcher concludes that a person can be said to be a good faith buyer if he/she buys land in accordance with the applicable procedures or laws and has previously carefully checked the material facts (physical data) and the validity of the transfer (legal data) of the land he/she bought, before and during the process of transferring land rights. If the criteria for a good faith buyer have been met, even if it is later discovered that the land was purchased from an unauthorized person, then the land that has been purchased by a good faith buyer cannot be disputed by anyone.

The Appellant stated that before buying, he knew that the land object belonged to the seller who was the legal heir of Paming Dg Rapi. and the Appellant did not know about the family affairs of the Seller with Respondent I. So the researcher is of the opinion that from the beginning the Appellant did not have any suspicions of irregularities in the ownership of the land by the seller. plus the Appellant knew that the seller was the legal heir. and from the entire Appellant's statement, the researcher did not find any statement that the Appellant had seen the land owned by the seller directly before the sale and purchase agreement was made in the court decision. so the researcher is of the opinion that the judge should have examined more deeply the Appellant as a buyer whether he had really researched when buying and selling the land. Because a buyer in good faith will be protected by law if he first researches the validity of the ownership of the land before buying the land.

If after examining the validity of the ownership of the land, it turns out that there are irregularities that create suspicion or doubt to continue the sale and purchase. and the buyer continues the sale and purchase, and it turns out that the land is not the legal property of the seller, then the buyer is not protected by law. The seller is also obliged to provide information regarding the land that is the object of the sale and purchase. If the buyer has investigated, but the seller does

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not explain all the material facts regarding the land, the buyer is still protected by law. So, proof of good faith is proven by honesty, no elements of deception and not taking advantage by harming others. this can be measured through the fulfillment of the principle of caution by both parties, where the seller must explain the material facts and the Buyer must conduct research on the land that is the object of the sale and purchase transaction.

Based on the above, the researcher is of the opinion that the Appellant as the buyer of the land case object is not a person with good intentions. And regarding the consideration of the High Court panel of judges who said that the First Level panel of judges was wrong in applying the law and violated the provisions of Article 1678 of the Civil Code. Regarding these considerations, the researcher is of the opinion that regarding the application of the law by the First Level panel of judges, it is correct and does not violate the provisions of Article 1678.

In the case decided in the Makassar High Court Decision Number: 504/Pdt/2018/PT.Mks. The panel of judges accepted the request from the Appellant. The Appellant's lawsuit that was granted by the panel of judges, namely:

- a. Received an appeal request from the original appellant, Defendant II;
- b. Canceling the decision of the Makassar District Court Number: 4 / Pdt.G / 2018 / PN Mks, dated August 28, 2018, which was appealed;

**Legal Analysis of Supreme Court Decision Number: 1206 K/Pdt/2020**

Legal remedies are remedies granted by law to a person or legal entity to in certain cases oppose a judge's decision. In practice there are 2 types of legal remedies, namely ordinary legal remedies consisting of resistance (verzet), appeal, cassation and extraordinary legal remedies consisting of judicial review.

Siti Hatijah in the Supreme Court Decision Number: 1206 K/Pdt/2020 filed a cassation appeal to the Supreme Court because the Makasar High Court Decision Number: 504/Pdt/2018/PT.Mks overturned the Makasar District Court Decision Number: 4/Pdt.G/2018/PN.Mks so that Siti Hatijah as the party who lost in the high court decision filed a cassation appeal.

The cassation effort is a right given to the Defendant or Plaintiff if they object to accepting the decision handed down by either the panel of judges at the First Instance Court (Judex Facti) or the Appellate Court (Judex Facti). Siti Hatijah in the Supreme Court Decision Number: 1206 K / Pdt / 2020 requested that the panel of judges annul the Makasar High Court Decision Number: 504 / Pdt / 2018 / PT.MKS., dated March 22, 2019 which annulled the Makasar District Court Decision Number: 4 / Pdt.G / 2018 / PN Mks., dated August 28, 2018; and the position and status of the parties involved in Decision Number: 1206K / Pdt / 2020 are as follows:

- a. Siti Hatijah as the original cassation applicant and the original plaintiff
- b. Atiru as the Respondent in the Cassation Case was originally Co-Appellant originally Defendant I
- c. Agustina as the Respondent in the Cassation, originally the Appellant, originally the Defendant I
- d. Dg. Naga as the Respondent in the Cassation Case, originally Co-Appellant, originally Defendant III.
- e. PPAT/Mamajang Sub-district Head as Co-Defendant in the original cassation Co-Appellant in the original Defendant IV.

In the Supreme Court Decision Number: 1206 K/Pdt/2020, the judge's legal considerations are:

The panel of Supreme Court judges is of the opinion that the Makasar District Court was right and correct in trying the dispute, where the main dispute in this case was regarding the unlawful act of the Respondent in Cassation I selling the disputed object to the Respondent in Cassation II and it was proven that the disputed object was an inheritance from the Applicant's Mother. Therefore, the Makasar High Court which canceled the grant of the disputed object from



the late Paming Dg Rapi to the Applicant's Mother was invalid and the Makassar High Court in this case was inappropriate because it did not have the authority to examine and try the grant dispute, so that the act of the Respondent in Cassation I selling the disputed object to the Respondent in Cassation II without the consent of the Applicant as the heir was an unlawful act.

Regarding the considerations of the Supreme Court panel of judges, the researcher is of the opinion that from the beginning the Applicant for Cassation filed a lawsuit regarding the unlawful acts committed by the Respondents for Cassation so that the Applicant for Cassation was right in filing a lawsuit for the unlawful acts to the Makassar District Court. In general courts, the District Court is a first-level court that has the duty and authority to examine, decide, and resolve criminal and civil cases at the first level based on Article 50 of Law Number 2 of 1986 concerning General Courts and the District Court is domiciled in the Regency/City. Its legal area covers the Regency/City area.

The types of civil lawsuits that are within the authority of the district court are related to the denial or termination of an agreement (breach of contract), unlawful acts (onrechtmatige daad), property rights disputes (property rights), buying and selling, renting, divorce, bankruptcy, abuse of authority by the authorities that is detrimental to certain parties, and so on. When a dispute occurs, a party (person or legal entity) files a lawsuit containing objections and demands against a right or other things. So that in the unlawful act dispute filed by the Plaintiff against the Defendant in the Makassar District Court decision Number: 4/Pdt.G/2018/PN.Mks, the researcher is of the opinion that based on Article 50 of Law Number 2 of 1986 concerning General Courts, unlawful acts are the authority of the district court.

So in this case, the Makassar District Court has the authority to handle cases regarding the unlawful acts, where in the dispute the plaintiff's claim is regarding the unlawful acts committed by the Defendants, so that it is the first instance court that has the duty and authority to examine, decide, and settle civil cases at the first instance. The cancellation of the grant by the Makassar High Court was an error because the grant was not the authority of the Makassar High Court but rather the authority of the religious court. As stated in Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts which has now been amended to Law Number 50 of 2009, that the absolute competence of the Religious Court as stated in Article 49 paragraph (1) is to examine, decide, and decide, and resolve cases in the fields of: Marriage, Inheritance (including wills, grants); Waqf, zakat; infaq and shadaqah; and sharia economics consisting of sharia banks; sharia microfinance institutions; sharia insurance; sharia reinsurance; sharia mutual funds; sharia bonds; and sharia medium-term securities; sharia financial institution pension funds and sharia business.

Based on the provisions above, it can be seen that the grant is the authority of the religious court so that in this case the Makassar High Court does not have the authority to adjudicate whether or not the grant is valid. And the Makassar High Court should have rejected the appeal filed by Agustina as the appellant because in her exception the appellant argued that the dispute was a grant dispute so that the appellant should have submitted the dispute to the religious court, because the high court is a general court that has the authority to adjudicate criminal and civil disputes at the appellate level based on Article 51 of Law Number 2 of 1986 concerning General Courts.

Due to the error in the application of the legal basis in the Makassar High Court decision Number: 504/Pdt/2018/PT.Mks, it is true that the actions of the Respondents in cassation constitute unlawful acts. Therefore, the panel of Supreme Court judges granted the Cassation Applicant's lawsuit by canceling the Makassar High Court Decision Number: 504/Pdt/2018/PT MKS., dated March 22, 2019 which canceled the Makassar District Court decision Number: 4/Pdt.G/2018/PN Mks., dated August 28, 2018.

## CONCLUSION

Based on the research results and discussion, the following conclusions can be drawn:

1. The validity of land grants between husband and wife during the marriage has been determined to be permissible or legal, in the Civil Code, grants between husband and wife are prohibited based on Article 1678, however, deviations can be made from this

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- prohibition if before the marriage the husband and wife have made a marriage agreement in advance, the contents of which promise the land grant in the future, with provisions in accordance with the provisions of Article 139, Articles 168 to 172 of the Civil Code. However, if it is not done with a marriage agreement or the contents of the marriage agreement do not regulate the land grant, then the land grant is declared prohibited and not legally valid, while in the compilation of Islamic law when a land grant is made between husband and wife, the grant is valid as regulated in Article 87 of the KHI that husband and wife in marriage are free to carry out legal acts against each other's property. So if the husband and wife make a grant, the grant is valid and does not conflict with the law
2. Settlement of disputes in the transfer of land rights through unlawful acts is carried out in 2 ways, namely through mediation and through legal channels in court. The settlement of the dispute is submitted to the district court as the first general court that has the right to try civil disputes. In resolving the dispute, mediation will be carried out and when mediation is not achieved, the trial will continue with the reading of the lawsuit until the reading of the verdict. And when one party does not accept the judge's decision, they can file a legal action. Legal efforts consist of 2, namely the first, ordinary legal efforts consisting of objection, appeal and cassation. And the second is extraordinary legal efforts consisting of judicial review.
  3. In the Supreme Court Decision Number: 1206 K/Pdt/2020, jo. Makasar High Court Decision Number: 504/PDT/2018/PT MKS, jo. Makasar District Court Decision Number: 4/Pdt.G/2018/PN.Mks. the panel of judges granted the Cassation Applicant's application. The judge's legal considerations were Article 283 Rbg/163 HIR where the Cassation Applicant, originally the Plaintiff, had proven the argument in his lawsuit in the form of a deed of gift in accordance with the witness's statement so that the panel of judges decided that the disputed land was the inheritance of the Cassation Applicant's mother and the Cassation Applicant had the right to inherit his mother's inheritance. and it was proven that the Cassation Respondents had committed an unlawful act because they carried out a legal act in the form of a sale and purchase of the disputed object. based on this, the panel of supreme judges overturned the Makasar High Court Decision Number: 504/Pdt/2018/PT. MKS., dated March 22, 2019 which annulled the decision of the Makassar District Court Number: 4/Pdt.G/ 2018/PN Mks., dated August 28, 2018.

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