Juridical Analysis of Difference in the Supreme Court's Decision About the Validity of the Land Sale and Purchase Under Private Agreement

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Abstract

The research aims to determine the causes of differences in Supreme Court judges' decisions at the cassation and judicial review levels, to identify Supreme Court judges' decisions at the Review level regarding the invalidity of the private land sale and purchase agreement in case number 833/PK/Pdt/2018 from the perspective of contract law as prescribed by the Civil Code. It is a normative or doctrinal juridical legal research using a statute approach, a case approach, and a conceptual approach. The results obtained first, the reason for the difference between the Supreme Court's decisions is from the point of view of the judge's legal considerations. Second, the Supreme Court's Decision Number 833/PK/Pdt/2018, which declares that the Sale and Purchase Agreement is invalid and declared null and void based on the Civil Code, is incorrect. But, as stated in Article 1334 of the Civil Code, the agreement is void because the object of the agreement is an unopened inheritance**.**

Keywords: *Validity of Agreement, Private Agreement, Supreme Court Decision, Judge's Consideration.*

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A. INTRODUCTION

Nowadays, there are still a lot of people who enter into buying and selling agreements, renting a house, borrowing money or debts and so on only with an underhand agreement without involving authorized public officials, some even only use receipts and stamps. and the signatures of the parties only. This is done based on mutual trust between the two parties and not a few people who only have proof of ownership, especially ownership of land that has not been transferred to and is still in the name of the old owner (the seller). An agreement made under the hand is an agreement made by the parties who agreed and without any interference from authorized public employees, and without a certain standard and only adapted to the needs of the parties. The deed under the power of proof is only between the parties. If the parties do not deny and acknowledge the signature in the agreement, then the private deed has perfect power like an authentic deed.

According to Article 1320 of the Civil Code, there are 4 (four) conditions for the validity of an agreement. First, there is an agreement for those who bind themselves; Second, the ability of the parties to enter into an engagement; Third, a certain thing; and Fourth, a lawful cause (causa). These requirements relate to both the subject and object of the agreement. The first and second terms relate to the subject of the agreement or commonly referred to as subjective conditions, while the third and fourth terms relate to the object of the agreement or commonly referred to as objective

conditions. The difference between the two requirements is also related to the issue of null and ab initio (nieteg or null and ab initio) and the cancellation of an agreement (vernietigbaar = voidable).

In an agreement, an agreement is an important condition that must be fulfilled to achieve the validity of an agreement. The agreement itself is marked by an offer and acceptance in writing, verbally, secretly, and certain symbols. Agreements made in writing can be stated in the form of an authentic deed and a private deed. An underhand deed is a deed made by the parties without the intermediary of a public official. Regarding the binding power of the parties, a private deed is the same as an authentic deed. If the agreement is made legally, in the sense that it does not conflict with the law, then based on article 1338 of the Civil Code, the agreement applies as law for those who make it, so that the agreement cannot be withdrawn, unless based on the agreement of both parties or based on reasons -reasons established by law.

In addition to the conditions for the validity of the agreement as referred to in Article 1320 of the Civil Code, other provisions in the agreement also need to be considered, because the law regulates that there are agreements that are indeed allowed only under the hands such as work agreements, leases, and so on. However, there are also agreements made with an authentic deed or letter as determined by law, such as fiduciary, buying and selling land and others in order to fulfill the principles of legality and publicity.

As for the strength of evidence from an underhand deed, based on what Subekti stated, in his book entitled The Principles of Civil Law, a private deed is any deed made without the intermediary of a public official, where the evidence can have power. the same proof as an authentic deed (argumentum per analogy/analogy) if the party who signs the agreement does not deny his signature, which means he does not deny the truth of what is written in the agreement letter. However, if any of the parties making the agreement deny their signature, then the party submitting the agreement is required to prove the truth of the signing or the contents of the deed.

The authentic deed has perfect evidentiary power, because the deed was made by an authorized official. Perfect here means, the deed itself can prove itself as an authentic deed, can prove the truth of what is witnessed by public officials, and the deed applies as correct between the parties and the heirs and the recipients of their rights. An authentic deed if used before a court is sufficient for a judge without having to ask for other evidence.

In connection with the fact that there are still many people who apply underhand agreements, one of which is a sale and purchase agreement, the authors found a case of a land sale and purchase agreement with an underhand agreement which was requested for cancellation by the sala. h one party who feels he made a mistake signs the agreement. Starting from the filing of a lawsuit by the seller on June 25, 2015 to the Lamongan District Court where in the case it was explained that on April 26, 2015 there had been a land sale and purchase agreement with the signing of an underhand land sale and purchase agreement, with a land object of 2275 m2 which is located on Deandels Street, Kandang Semangkon Village, Paciran District,

Lamongan Regency. It is agreed that the total price is Rp. 1,933,750,000, - (one billion nine hundred thirty three million seven hundred fifty thousand rupiah) with 4 (four) stages of payment. The first payment of the finished bond amounting to Rp. 1.000.000,- (one million rupiah) was paid by the buyer on March 15, 2015 before the agreement letter was signed. Then after the parties sign the agreement, the buyer pays the second signature bond of Rp. 50,000,000, - (fifty million rupiah), so that the total bond that has been paid is in the amount of Rp. 51,000,000, - (fifty one million rupiah). However, after several days of signing the land sale and purchase agreement, the seller felt he made a mistake in signing the agreement and felt that there were irregularities and irregularities in it. the land object to be traded is not clear, that is, it does not mention the certificate number, boundaries, letter of measurement, picture of the situation, and in whose name. Then the payment system which is considered very detrimental to the seller, where there is one stage of payment which will only be paid 1 (one) year after the transfer of rights. There is also one more stage of payment that is paid in the form of a house unit type 54 block A-18, which is also not explained in detail the location and boundaries, as stated in the court decision posita number 25/Pdt.G/2015/PN.Lmg. Therefore, the seller as the plaintiff filed a lawsuit and asked the Court of Examiner to cancel the private sale and purchase agreement dated April 26, 2015 and stated that it contained a legal defect.

The case has been running and ended at the level of judicial review at the Supreme Court with a decision Number 833 PK/Pdt/2018 which has permanent legal force (inkracht). However, here the author encounters irregularities in the examination of the case carried out by the Supreme Court at the level of cassation and review. At the level of cassation, the Supreme Court Judge stated that the sale and purchase agreement of the land under the hand was valid and valid for the parties, because it had fulfilled the legal requirements of an agreement according to Article 1320 of the Civil Code. The decision had permanent legal force which was then submitted for judicial review by the seller with the argument that the judex juris or the judge examining at the cassation level had made a mistake or mistake. Meanwhile, the judge at the review level gave a decision that the sale and purchase agreement was invalid and void, because the transfer of land rights through a sale and purchase must be carried out before a Notary or PPAT or Camat or at least the Village Head and the subject who should have carried out the legal action must be clear in accordance with the provisions of the law. capacity.

Based on the case description above, although the land sale and purchase agreement was only carried out under the hands and did not meet the requirements for the transfer and registration of land which should have been carried out with an official deed as stated in Government Regulation No. 24 of the year, the author is interested in studying more deeply about the validity of the agreement. itself from the side of civil law, in the sense that the judge in determining the validity and invalidity of the sale and purchase agreement of private land is in accordance with the provisions specified in the Civil Code. So that the authors are interested in conducting research with the title "Juridical Analysis of Differences in Supreme Court Decisions

on the Validity of the Sale and Purchase Agreement of Underhanded Land". The purpose of the study was to find out or find the cause of differences in the decisions of the Supreme Court judges on the decision of the cassation level number 707K/PDT/207 with the judicial review decision number 833/Pk/Pdt/2018 in deciding cases related to the validity or invalidity of a land sale and purchase agreement under and to identify the decision of the Supreme Court judge at the level of review regarding the invalidity of the sale and purchase agreement of private land in case number 833/PK/Pdt/2018 from the perspective of agreement law according to the Civil Code. The formulation of the problem in this research is :

1. Why are there differences in the decisions of the Supreme Court Judges regarding the validity or invalidity of the private land sale and purchase agreement in the cassation level decision number 707K/PDT/2017 and the judicial review level decision number 833/Pk/Pdt/2018?
2. How is the decision of the Supreme Court judge at the level of review regarding the invalidity of the sale and purchase agreement of private land in case number 833/PK/Pdt/2018 viewed from the perspective of agreement law according to the Civil Code?

The research conducted by the author is a type of normative juridical research or which in the legal world is often referred to as doctrinal. The research approach uses a statutory approach (Statute Approach) and a Conceptual Approach (Conceptual Approach). Sources of legal materials consist of primary legal materials and secondary legal materials. The primary legal material for this research is the Civil Code (Burgerlijk Wetboek), Law no. 5 of 1960 concerning Basic Regulations on Agrarian Principles, Government Regulation Number 24 of 1997 concerning Land Registration, District Court Decision Number 25/Pdt.G/2015/PN.Lmg, High Court Decision Number 402/PDT/2016/PT.SB, Supreme Court Decision Number 707K/Pdt/2017, Supreme Court Decision Number 833 PK/Pdt/2018, Law of the Republic of Indonesia Number 3 of 2009 concerning the Second Amendment to Law Number 14 of 1985 concerning the Supreme Court and the Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power. The technique of collecting or processing data used in this research is a library research technique. The analysis technique uses qualitative material analysis techniques.

B. RESULT AND DISCUSSION

1. Differences in the Consideration of the Supreme Court Judges in the Cassation Level Decision Number 707 K/Pdt/2017 and the Judicial Review Level Decision Number 833 PK/Pdt/2018 Regarding the Validity of the Sale and Purchase Agreement Of Private Land

The judge's decision is the end of a series of process of examining a case. Before making a decision, the panel of judges will deliberate to determine the actual legal relationship between the parties and what decision will be handed down. The role of the judge is needed to decide a dispute that occurs between the litigants. The decision made by the judge to decide a case is expected to fulfill a sense of justice to both parties

to the dispute, even though there are parties who feel dissatisfied with the judge's decision, but the judge must still decide based on evidence, testimony and so on to provide a sense of justice.

In Indonesia, the principle of freedom of judges is fully guaranteed in Law Number 48 of 2009 concerning Judicial Power, where it is formulated that judicial power is the power of an independent state to administer justice to uphold law and justice. The principle of freedom of judges includes the freedom for judges to formulate legal considerations, or what is known as legal reasoning, which is carried out by a judge in deciding a case he is trying.

To decide or determine a case, the judge gives legal considerations by combining the provisions of the existing laws and regulations, facts at trial and the law that is still alive in the community. Because judges are the most important element in law enforcement who are able to interpret, strengthen and consider existing regulations in accordance with the development of community needs, in order to create legal certainty in society.

According to the Law on Judicial Power, judges' considerations are the thoughts or opinions of judges in making decisions by looking at things that can relieve or burden the perpetrator. Each judge is obliged to submit written considerations or opinions on the case being examined and become an inseparable part of the decision.

This is the legal basis for a judge in carrying out his duties to decide a case, that it must be based on various considerations that can be accepted by all parties and do not deviate from existing legal rules, which is called legal considerations or legal reasoning.

For judges, in making decisions, it is hoped that mastery of legal theory must appear in the preamble or what in legal theory terms is referred to as "ratio decidendi". The ratio decidendi is a description containing the answer to a question, why did the judge arrive at such a decision? Thus, the ratio decidendi can be interpreted as a reasonable reason for a decision as McLeod called it as a “reason for the decision”.

In the Common Law system, the term Ratio decidendi literally means "the reason for the decision". Ratio decidendi, according to Michael Zander in his book 'The Law Making Process'), can be interpreted as "A proposition of law which decides the case, in the light or in the context of the material facts". from the point of view or from the context of material facts). So, the format of the ratio decidendi in the judge's decision is stated in a legal proposition. The proposition in this context is the premise that contains the judge's considerations. This proposition can be expressed explicitly or implicitly.

In the common law system, the previous judge's decision is an absolute main source of law to be observed when a judge faces a similar case. The word 'similar' here indicates the similarity of the characteristics of the facts that occurred between these cases. The facts here must be the material facts, which are indeed used as a basis by the judge when he builds his considerations towards a conclusion. So, there is a descriptive part of the ratio decidendi that must be seen and then compared between

the previous case and the case being faced now. Whether the judge will see and use the same legal considerations as the previous case or have other reasons or attitudes in considering and deciding the case being faced at this time. This is where the Judge's Ratio decidendi touches his perspective dimension. If the judge decides that the scope of the proposition in the previous case can be maintained, it means that he has concluded that the case he is currently handling is still using the ratio decidendi following the previous case. Do not move from the existing ratio decidendi (stare decisis).

In Indonesia, the term ratio decidendi is not quite popularly used. Usually use other terminology that is somewhat similar to that, namely the rule of jurisprudence. If a decision has been claimed or labeled as jurisprudence, then there must be jurisprudence rules that can be withdrawn from the decision. This rule must be formulated as a proposition and will later become the major premise when the judge applies it in making conclusions. It may be that the proposition in question is not actually explicitly stated in the decision, but whatever the way the judge puts it, this proposition can still be raised and reformulated as a premise.

In its decision, the panel of judges must pay attention to the following principles:

a. Must contain the reasons and grounds for the decision in a clear and detailed manner, contain articles and/or unwritten legal sources that are used as the basis for adjudicating;
b. Mandatory to adjudicate all parts of the lawsuit/indictment. As stated in Article 178 paragraph (2) HIR / Article 189 paragraph (2) R.Bg and Article 50 of Law Number 48 of 2009 concerning Judicial Power. Failure to examine and adjudicate all parts of the lawsuit including counterclaims (in Civil Code);
c. Cannot grant more than demands. This principle is outlined in Article 178 paragraph (3) HIR and Article 189 paragraph (3) RBG. This prohibition is called Ultra Petitum Partium. Judging more than what is required is categorized as exceeding the limits of authority or Ultra Vires (Mapiasse, 2015).

In the case of the Supreme Court's decision Number 707 K/Pdt/2017 regarding the validity of the sale and purchase agreement of private land which is the object of research, the author states that the agreement made under the hand is valid, because it has fulfilled the legal requirements of the agreement according to Article 1320 of the Civil Code. In the consideration of the Cassation decision, the Panel of Judges refers to what are the conditions for the validity of the agreement, regardless of the sale and purchase agreement being made privately, because the main issue in this case is the legality of the land sale and purchase agreement which is carried out privately. So that if Article 1320 has been fulfilled, the agreement is binding and applies as law for those who make it. In addition, the judge also considered who should be the plaintiff in the cancellation of the sale and purchase agreement. In that case, the plaintiff is not another heir who does not agree with the plaintiff's actions as heirs who entered into a sale and purchase agreement, but the plaintiff is the perpetrator of the sale and purchase agreement maker who wants to cancel the agreement he made with the

defendant. Then in the lawsuit the plaintiff/seller stated that the agreement violated Government Regulation Number 24 of 1997 concerning Land Registration Article 37 which reads:

"The transfer of land rights and ownership rights to flat units through buying and selling, exchanging, grants, income in the company and other legal acts of transferring rights, except for the transfer of rights through auctions can only be registered if it is proven by a deed made by the authorized PPAT according to the provisions of the applicable laws and regulations."

In the regulation it is explained that the transfer of land rights must be carried out in a clear and cash manner. However, in this case the judge considers that the sale and purchase agreement made between the plaintiff/seller and the defendant/buyer is not yet a land sale and purchase agreement with an official deed but must be obeyed, to be followed up with a sale and purchase deed in accordance with the laws and regulations after the stage of the payment stated in the agreement is settled. So that the judge at the cassation level is of the opinion that there is sufficient reason to grant the cassation request from the cassation applicant/buyer and declares the sale and purchase agreement valid on April 26, 2015 between the Plaintiff/Seller and the Defendant/Buyer.

Meanwhile, the Supreme Court's decision Number 833/PK/Pdt/2018 stated that the Sale and Purchase Agreement dated 26 April 2015 made between the Plaintiff/Seller/Applicant for Judicial Review and the Defendant/Buyer/Respondent for Judicial Review was invalid and declared null and void. In the preamble, the judge considered that the Plaintiff/Seller/Applicant for Judicial Review could prove the argument of the lawsuit, namely that the sale and purchase agreement made under the hand is legally flawed, because the transfer of land rights should have been carried out before a designated official, namely a Notary/PPAT or Camat or at least in front of the local village head.

Then the judge also considered that it was supposed to make and sign the contract of sale and purchase agreement all the heirs of the deceased listed in the certificate of ownership of the object of the agreement. Whereas in reality the only one who makes and signs the agreement is one of the heirs, namely the Plaintiff/Seller/Applicant for Judicial Review.

The difference between the Supreme Court's decision at the Cassation level Number 707 K/Pdt/2017 and the Supreme Court's decision at the Judicial Review Level Number 833/PK/Pdt/2018 is the judge's legal considerations. Where a judge has the freedom to formulate legal considerations, or what is known as legal reasoning, which is carried out by a judge in deciding a case he is trying. In the Cassation decision, the Judge reviewed the validity of the agreement from the law, namely the fulfillment of Article 1320 of the Civil Code and the facts obtained in the trial. While in the review decision, the judge reviews the validity of the sale and purchase agreement not only from the fulfillment of Article 1320 in general, but by digging deeper into the points contained in the article, because the articles in the Civil Code are interrelated with each other. In this case, the judge also sees from the side of the

subject who is authorized to make and sign the agreement, in which the object of the agreement in the form of land with title certificates is inherited land. So, if the land is inherited land, then the heirs who are entitled to make and sign the agreement should be the heirs, not only one of the heirs.

2. The Invalidity of the Sale and Purchase Agreement of Private Land at the Decision of the Supreme Court at the Review Level Number 833/PK/Pdt/2018 in Terms of the Legal Perspective of the Agreement.

The agreement is the most important resource in an engagement. According to Subekti, an engagement is a legal relationship between two people or two parties, based on which one party has the right to demand something from the other party, and the other party is obliged to fulfill that claim. Engagements can also be born from other sources covered by the name of the law. So, there are engagements born from "agreements" and there are engagements born from "laws". Engagements born from the law can be further divided into engagements born because of the law only and engagements born from the law because of an act of people, as referred to in Article 1352 of the Civil Code which reads: law, arises from the law alone or from the law as a result of people's actions.

Meanwhile, an engagement born from the law due to an act of another person can be further divided into an engagement born from an act obtained and those born from an act that is contrary to the law as stipulated in Article 1353 of the Civil Code.

Regarding the conditions for the validity of an agreement, Article 1320 of the Civil Code stipulates four conditions for the validity of an engagement, namely:

a. The agreement of those who bind themselves the agreement of those who bind themselves implies that the parties who make the agreement have agreed or there is a conformity of will or mutually agree with each other's will, which was born by the parties without coercion, error and fraud. Which consent can be expressed expressly or tacitly.
b. The ability to make an engagement Cakap is a general requirement to be able to carry out legal actions legally, that is, they must be mature, have a sound mind and are not prohibited by a statutory regulation to perform certain actions. Viewed from the point of view of a sense of justice, it is really necessary that the person making the agreement, which will later be bound by the agreement he made, must really have the ability to realize all the responsibilities that will be borne by him because of his actions. Meanwhile, when viewed from the point of view of public order, because the person who made the agreement risked his wealth, so that person should really have the right to act freely on his wealth.
c. A certain thing. A certain thing in an agreement is an item that is the object of an agreement. According to article 1333 of the Civil Code, the goods that are the object of this agreement must be certain, at least the type must be determined, while the amount does not need to be determined, as long as it can then be determined or calculated.

d. A lawful reason. A lawful cause is the fourth condition for the validity of the agreement. Regarding this condition, Article 1335 of the Civil Code states that an agreement without a cause, or which has been made for a false or forbidden cause, has no power. It turns out that the formation of the law envisages 3 kinds of agreements that may occur, namely agreements without a cause, agreements with a false or forbidden cause and agreements with a lawful cause. The main issue in this case is what the meaning of the word cause actually is. From a number of interpretations and explanations of experts, it can be concluded that the meaning of the word cause is as follows:
   1). The word cause as one of the conditions of the agreement is a cause in the sense of legal science which is different from other knowledge.
   2). The word "cause" is also not a motive (the impulse of the soul that encourages someone to do certain actions) because motive is a matter of the heart that is ignored by law.
   3). The word "cause" literally comes from oorzaak (Dutch) or causa (Latin) which according to its history is that what is meant by the word in the agreement is the goal, namely what is meant by both parties by entering into an agreement. In other words, cause means the content of the agreement itself.
   4). The possibility of an agreement without a cause envisaged in Article 1335 of the Civil Code is a possibility that will not happen, because the agreement itself is a content, not a place to be filled (Syahrani, 2006).

If the first two conditions are not met (1 and 2) then the agreement can be canceled (subjective conditions). Meanwhile, if the last two conditions are not met (3 and 4) then this agreement is null and void (objective conditions). An agreement that is null and void is an agreement from the beginning and is not possible to cause legal consequences for both parties. Agreements that are against the law, decency and public order are null and void. While the agreement can be canceled, it means that one of the parties has the right to request that the agreement be cancelled.

A sale and purchase agreement is a reciprocal agreement in which one party (the seller) promises to deliver an item and the other party (the buyer) will pay the promised price (article 1457 of the Civil Code). The sale and purchase agreement alone does not necessarily result in the transfer of ownership rights to the goods from the seller's hand to the buyer's hand prior to leveraging. In essence, the sale and purchase agreement is carried out in two stages, namely the stage of agreement between the two parties regarding the goods and prices marked by an agreement (sale and purchase) and the second, the stage of leasing the object which is the object of the agreement, with the aim of transferring ownership rights. of that thing.

In the context of Indonesian Covenant Law according to the Civil Code, there are several reasons to cancel the agreement. Those reasons can be grouped into five categories as follows:

a. Non-fulfillment of the requirements stipulated by law for the type of formal agreement, which results in the agreement being null and void;

b. Non-fulfillment of the conditions for the validity of the agreement, which results in:
   1). The agreement is null and void, or
   2). Agreement can be canceled;
c. Fulfillment of the void conditions on the type of conditional agreement;
d. Cancellation by a third party on the basis of actio pauliana;
e. Cancellation by a party authorized by law.

If the agreement is declared null and void, it means that from the beginning an agreement was never born, and thus there has never been an engagement. The aim of the parties making such an agreement, namely to create a legal engagement, has failed. So, there is no basis for suing each other in front of a judge.

Based on the object of this research, the decision of the Supreme Court Number 833/PK/Pdt/2018 which states that the Sale and Purchase Agreement dated April 26, 2015 made between the Plaintiff and the defendant is invalid and declared null and void. In the preamble, the judge considers that the plaintiff/seller can prove the argument of his lawsuit, namely the sale and purchase agreement agreement made under the hand is legally flawed, because the transfer of land rights should be before a designated official, namely a Notary/PPAT or Camat or at least before the Head local village.

However, according to the author in the preamble, the decision was deemed inappropriate. The cancellation of the agreement was not because it was not carried out in the presence of a designated official, namely a Notary/PPAT or Camat or at least in front of the local Village Head, but the reason that made the agreement void was that the object of the agreement was an unopened inheritance, as in Article 1334 of the Civil Code which states that "new items that will exist in the future can be the subject of an agreement. But it is not permissible to release an inheritance that has not been disclosed, nor to ask for an agreement on something regarding the inheritance, even if the person who will later leave the inheritance is the subject of the agreement; without prejudice to the provisions of Articles 169, 176, and 178".

An agreement can be declared null and void because it was made by a person who is not authorized to take legal action. A person's inability to take legal action (handelingsonbevoegdheid) must be distinguished from a person's inability to take legal action (handelingsonbekwaamheid). Those who are not authorized to take legal action are people who are prohibited by law from taking certain legal actions. So, someone who is qualified by law as not authorized to carry out certain legal actions, does not mean that he is also incompetent. In other words, a person who according to the law is capable or capable of taking legal action can actually be classified as not having the authority to take certain legal actions according to the law.

An agreement made by a person or party who according to law is declared to be incompetent will result in null and void. This means that the provisions in certain laws which state that certain people or parties are not authorized are legal rules that are coercive in nature so that they cannot be deviated. Such persons or parties are

those who because of their position or work, based on certain laws, are categorized as not having the authority to carry out certain legal actions.

In this case the author is of the opinion that in the case of the Land Sale and Purchase Agreement which was carried out under the hands of the Supreme Court's decision Number 833/PK/Pdt/2018, that the subject who should be authorized to act as a seller is all the heirs of the deceased who his name is listed in the certificate of object of the agreement, not just one of them. But in reality, the only one who makes and signs the engagement agreement as the seller is the plaintiff/applicant for review. So, the agreement can be cancelled.

Apart from not fulfilling the objective element, the agreement can also be canceled due to the non-fulfillment of the subjective element. The first subjective element for the validity of an agreement is the agreement between the parties who made it. The Civil Code does not explain what is meant by agreeing, but on the contrary, it regulates the conditions that lead to the absence of agreement from the parties who made it. In other words, the Civil Code mentions certain types of conditions or conditions that make the agreement invalid so that it is threatened with cancellation. Among these articles are 1321 and 1322 which read:

> Article 1321: No agreement has any force if it is given by mistake or obtained by coercion or fraud.
>
> Article 1322: An oversight does not result in the cancellation of an agreement, unless the error occurs regarding the nature of the goods that are the subject of the agreement. Mistakes do not result in cancellation, if the mistake only occurs regarding the person with whom someone intends to enter into an agreement, unless the consent is given mainly because of the person concerned.

If the agreement is declared null and void, it means that from the beginning an agreement was never born, and thus there has never been an engagement. The aim of the parties making such an agreement, namely to create a legal engagement, has failed. So, there is no basis for suing each other in front of a judge.

Based on the object of this research, the decision of the Supreme Court Number 833/PK/Pdt/2018 which states that the Sale and Purchase Agreement dated April 26, 2015 made between the Plaintiff and the defendant is invalid and declared null and void. In the preamble, the judge considers that the plaintiff/seller can prove the argument of his lawsuit, namely the sale and purchase agreement agreement made under the hand is legally flawed, because the transfer of land rights should be before a designated official, namely a Notary/PPAT or Camat or at least before the Head local village.

However, according to the author in the preamble, the decision was deemed inappropriate. The cancellation of the agreement was not because it was not carried out in the presence of a designated official, namely a Notary/PPAT or Camat or at least in front of the local Village Head, but the reason that made the agreement void was that the object of the agreement was an unopened inheritance, as in Article 1334 of the Civil Code which states that "new items that will exist in the future can be the subject of an agreement. But it is not permissible to release an inheritance that has not been

disclosed, nor to ask for an agreement on something regarding the inheritance, even if the person who will later leave the inheritance is the subject of the agreement; without prejudice to the provisions of Articles 169, 176, and 178".

An agreement can be declared null and void because it was made by a person who is not authorized to take legal action. A person's inability to take legal action (handelingsonbevoegdheid) must be distinguished from a person's inability to take legal action (handelingsonbekwaamheid). Those who are not authorized to take legal action are people who are prohibited by law from taking certain legal actions. So, someone who is qualified by law as not authorized to carry out certain legal actions, does not mean that he is also incompetent. In other words, a person who according to the law is capable or capable of taking legal action can actually be classified as not having the authority to take certain legal actions according to the law.

An agreement made by a person or party who according to law is declared to be incompetent will result in null and void. This means that the provisions in certain laws which state that certain people or parties are not authorized are legal rules that are coercive in nature so that they cannot be deviated. Such persons or parties are those who because of their position or work, based on certain laws, are categorized as not having the authority to carry out certain legal actions.

In this case the author is of the opinion that in the case of the Land Sale and Purchase Agreement which was carried out under the hands of the Supreme Court's decision Number 833/PK/Pdt/2018, that the subject who should be authorized to act as a seller is all the heirs of the deceased who his name is listed in the certificate of object of the agreement, not just one of them. But in reality, the only one who makes and signs the engagement agreement as the seller is the plaintiff/applicant for review. So the agreement can be cancelled.

Apart from not fulfilling the objective element, the agreement can also be canceled due to the non-fulfillment of the subjective element. The first subjective element for the validity of an agreement is the agreement between the parties who made it. The Civil Code does not explain what is meant by agreeing, but on the contrary, it regulates the conditions that lead to the absence of agreement from the parties who made it. In other words, the Civil Code mentions certain types of conditions or conditions that make the agreement invalid so that it is threatened with cancellation. Among these articles are 1321 and 1322 which read:

> Article 1321: No agreement has any force if it is given by mistake or obtained by coercion or fraud.
>
> Article 1322: An oversight does not result in the cancellation of an agreement, unless the error occurs regarding the nature of the goods that are the subject of the agreement. Mistakes do not result in cancellation, if the mistake only occurs regarding the person with whom someone intends to enter into an agreement, unless the consent is given mainly because of the person concerned.

C. CONCLUSION

The conclusion of the study is that the cause of the difference between the Supreme Court's decision at the cassation level Number 707 K/Pdt/2017 and the Supreme Court's decision at the Judicial Review level Number 833/PK/Pdt/2018 is from the point of view of the judge's legal considerations. In the cassation decision, the judge reviewed the validity of the agreement from the law, namely the fulfillment of Article 1320 of the Civil Code and the facts obtained in the trial. While in the review decision, the judge reviews the validity of the sale and purchase agreement not only from the fulfillment of Article 1320 in general, but by digging deeper into the points contained in the article, because the articles in the Civil Code are interrelated with each other. In this case, the judge also sees from the side of the subject who is authorized to make and sign the agreement, in which the object of the agreement in the form of land with title certificates is inherited land. So that if the land is inherited land, then the heirs who are entitled to make and sign the agreement should be the heirs, not just one of the heirs.

The Supreme Court's decision Number 833/PK/Pdt/2018 which states that the Sale and Purchase Agreement dated April 26, 2015 made between the Plaintiff and the defendant is invalid and declared void, based on the Civil Code is incorrect. The cancellation of the agreement was not because it was not carried out in the presence of a designated official, namely a Notary/PPAT or Camat or at least before the local Village Head, because the agreement was only a binding agreement whose transaction value had not been paid in full, so it was not carried out in the presence of any official/PPAT. does not invalidate the agreement. But the reason that makes the agreement void is that the object of the agreement is an unopened inheritance, as stated in Article 1334 of the Civil Code. In addition, the subject who should be authorized to act as a seller is all the heirs of the deceased whose names are listed in the certificate of object of the agreement, not just one of them. But in reality, the only one who makes and signs the engagement agreement as the seller is the plaintiff/applicant for review. So that the agreement can be canceled.

REFERENCES

1. Artadi, I. K., & Putra, I. D. N. R. A. (2010). *Hukum Perjanjian Kedalam Perancangan Kontrak*. Denpasar: Udayana University Press.
2. Asnawi, N. (2020). *Hermeneutika Putusan Hakim, Pendekatan Multidisipliner Dalam Memahami Putusan Peradilan Perdata*. Yogyakarta: UII Press.
3. Badrulzaman, M. D. (1996). *KUHPerdata Buku III Hukum Perikatan Dengan Penjelasan*. Bandung: Alumni.
4. Diantha, I. M. P. (2017). *Metode Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum*. Jakarta: Prenada Media Group.
5. Ichsan, A. (1967). *Hukum Perdata IA*. Jakarta: Pembimbing Masa.
6. Mapiasse, S. (2015). *Logika Hukum Putusan Hakim*. Jakarta: Prenadamedia Group.
7. Salim, H. S. (1011). *Perancangan Kontrak & Memorandum of Understanding*. Jakarta: Sinar Grafika.

8. Simanjuntak, P. N. H. (2007). *Pokok-Pokok Hukum Perdata Indonesia*. Jakarta: Djambatan.
9. Subekti, R. (1978). *Hukum Perjanjian, Cetakan V*. Jakarta: Intermasa.
10. Subekti, R. (1984). *Pokok-Pokok Hukum Perdata*. Jakarta: Intermasa.
11. Subekti, R. (2005). *Hukum Pembuktian*. Jakarta: Pradnya Paramitha.
12. Subekti, T. (2004). *Hukum Pembuktian Dalam Acara Perdata*. Bandung: Alumni.
13. Syahrani, R. (2006). *Seluk Beluk Dan Asas-Asas Hukum Perdata*. Bandung: Alumni.
14. Zander, M. (2004). *The Law Making Process*. Cambridge: Cambridge University Press.