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### Dispute over the Transfer of Rights to Land which is the Object of Ruislag: Study of Cassation Decision Number: 2391 K/Pdt/2013

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#### Abstract

The aim of this research is to identify and explain the factors causing the dispute over the transfer of land rights to be used as an object of ruislag (exchange), to analyze and explain the legal considerations by the judge in Decision No.2391/K/Pdt/2013. This case started with the acquisition of land for public purposes using land that already had rights. So compensation must be given to the land owner (Article 36 of Law No. 2 of 2012 concerning Land Acquisition for Development in the Public Interest). If the land does not have rights, it must be land owned by a region

which has the right to transfer land rights (Article 49 paragraph (1) of Law Number 1 of 2004 concerning State Treasury). However, the Banda Aceh Municipality Government carried out a ruislag (exchange) with land belonging to H. Syamsul Kahar which will be used for development at Ujung Jalan Mohd. Hours, for the public interest it turns out that land already has rights but ownership data has not been updated by the land owner, thus causing cases to arise which are used as material in this research.

**Keywords:** Ruislag, Transfer of Land Rights, Acquisition of Public Interest Land

#### Introduction

Indonesia is an agricultural country because it has fertile land and most of its population works in the agricultural sector. Vast agricultural land and abundant natural resources are a blessing for us, the Indonesian people. Humans as social creatures cannot be separated from the name of disputes, especially related to muamalah disputes, muamalah disputes are disputes that occur between two or more parties where the object of the dispute is property transactions, disputes in an economic context are usually caused by non-fulfillment of rights and obligations, this is where dissatisfaction arises between the parties which leads to disputes.

Land is a gift from God Almighty and is a natural resource that humans really need to fulfill their needs, both for shelter/housing, as well as for carrying out businesses such as for trade, industry, education, construction of other facilities and infrastructure. The value of land which is considered one that has high value and is a strategic and special asset encourages everyone to own, guard and care for their land well, if necessary, defend it with all their might until the last drop of blood. Therefore, ownership of land is a basic need in human life, both as a place to live, for other needs and as a source of income to meet life's needs. Ownership of land and state guarantees for it are regulated in the constitution of the Republic of Indonesia (UUD 1945).<sup>1</sup>

A certificate is a proof of title which acts as strong proof of ownership regarding the physical data and juridical data contained in the measurement letter and land title book in question in accordance with Article 19 (2) of Law No. 5 of 1960 concerning Basic Regulations Agrarian Principles (UUPA). In practice in the field, there is a lot of evidence other than land title certificates. Some of them even resulted in decisions that have permanent legal force (incraht van gewijsde) to declare land

<sup>1</sup> Boedi Harsono, *Hukum Agraria Indonesia (Sejarah pembentukan Undang-Undang Pokok Agraria, Isi dan pelaksanaannya)*, jilid 1, *Hukum Tanah Nasional*, Jakarta: Djambatan, 2007, hlm. 22.

title certificates legally invalid even though they have been more than 5 years old, based on the provisions of Article 24 (1) and Article 32 of Government Regulation (PP) No.24 of 1997 concerning Land Registration.<sup>2</sup>

Provisions governing land are further regulated in UUPA. One of the main objectives of UUPA is to lay the foundations for providing legal certainty regarding land rights for the people. The state has the authority to regulate ownership of land rights to individuals or legal entities.<sup>3</sup> The provisions of Article 2 paragraph (1) UUPA which states that "On the basis of the provisions in article 33 (3) of the UUD 1945 and the matters as referred to in Article 1, namely earth, water and space, including the natural wealth contained therein at the highest level controlled by the state as an organization of power for all the people.

Land disputes generally occur due to legality issues regarding the documents owned, in the case of land where Article 9 of the PP No. 24 of 1997 concerning Land Registration states that:

(1) Objects of land registration include:

- a. Plots of land held with property rights, business use rights, building use rights and use rights;
- b. Land management rights;
- c. Waqf land;
- d. Ownership rights to apartment units;
- e. Mortgage right;
- f. State land;

(2) In the case of State land as the object of land registration as intended in paragraph (1) letter f, the registration is carried out by recording the plot of land which is State land in the land register.

The National Land Agency (BPN) is one of the institutions that has authority and policy in the land sector. This time BPN was involved in one of the disputes and became one of the defendants. Starting from the decision of the Banda Aceh District Court No.41/Pdt.G/2011/PN BNA, followed by an appeal at the Banda Aceh High Court No.05/PDT/2013/PT BNA, until there was a decision at the cassation level with case No. 2391 K/Pdt/2013 which upheld the decision at the appeal level and handed down the following decisions: Tjut Suryati, SH, as Plaintiff I, Marzuki as Plaintiff II, Andika Fitriansyah as Plaintiff III, and the Mayor of Banda Aceh as Defendant I, H. Syamsul Kahar as Defendant II, Head of the Banda Aceh City Land Office as Defendant III.

Basically, the land in dispute belongs to Plaintiffs I, II and III, but Defendant I has transferred part of the land belonging to the Plaintiffs covering an area of 231 m<sup>2</sup> and Defendant III has also issued a new certificate covering an area of 186 m<sup>2</sup>, certificate of ownership with No. 2050/2008 which has been built a building with a letter of agreement for the transfer of the premises of the Zikra Shop building with No.7/PJ/2007 which has been made by Defendant I. In this dispute the land is also land controlled by the state and a certificate of ownership has been issued by Defendant III.

Defendant III has issued a Certificate of Ownership Number 2050/2008, covering an area of 186 M<sup>2</sup>, in the name of

Defendant II, based on the Zikra Shop Building Land Transfer Agreement letter No. 7 / PJ / 2007 made by Defendant I, which in one of the decisions stated that Defendant III's actions were having issued a certificate of Ownership Rights No.2050/2008 in the name of Defendant II is an unlawful act. The plaintiff filed an appeal on the grounds that the District Court had ignored the actual legal facts. That what the District Court should consider is whether it is true that the land handed over by Defendant I to Defendant II is the land of Plaintiff I, together with his father as Plaintiff II and his grandmother as Plaintiff III which came from a sale and purchase based on Deed of Sale and Purchase No. 03/3/cka/ 1976 dated January 10, 1976.

However, the District Court considered the building and profit sharing agreement No. 2 dated January 5 1998 and considered certificate No. 370 which became one of the pieces of evidence in the trial, namely the certificate in the names of Cut Suryati, and Haji Muhammad Jamil Ahmad and and Hajjah Kustiah which contained the ownership of the land before there was a split of ownership rights with another certificate, and the District Court did not consider the settlement agreement No. 7/PJ/2007 dated 3 September 2007 where Defendant I had handed over to Defendant II land covering an area of 233.45 M<sup>2</sup> located on Jalan Ahmad Dahlan without mentioning boundaries. What is clear is that then Defendant II submitted an application for Building Use Rights to Defendant III Number 2001/2008 dated March 25 2008 and it became Ownership Rights Number 2050/2008 dated August 25 2008, which was issued without any basis of legal rights.

The title deed is a document that explains the legal relationship between the land owner and the plot of land he controls. The basis of rights is a requirement for citizens to apply for land rights, such as sale and purchase, grant, inheritance, or physical control for decades. A basis of legal title is a valid document signed by an authorized official that explains the legal relationship between the land owner and the plot of land under his control.

The Plaintiffs in their lawsuit argued that Plaintiff I and Plaintiff II's father and Plaintiff III's grandmother owned a plot of land measuring 432 M<sup>2</sup>, located in Gampong Merduati, Kutaraja District, formerly Kuta Alam District and Baiturrahman District, Banda Aceh Municipality, Merduati Village, with the boundaries as following:

1. North by ditch
2. East by Jln K.H Ahmad Dahlan
3. South with the Veterans Legion grounds
4. West by passage

Then Defendant I unlawfully transferred part of the land belonging to the Plaintiffs to Defendant II, covering an area of 231 M<sup>2</sup>, with the following boundaries:

1. North with aqueduct.
2. East by Jln K.H Ahmad Dahlan.
3. South with Muara shop land/Ridwan Husen/Jeffri/Boy Irfan Zein Hasymi shop.
4. West with Hallway.

The limits stated in the decision are not the same as those read out by the public prosecutor, therefore research needs to be carried out regarding this decision. Even after this decision was issued, the Plaintiff and Defendant still had disputes regarding the execution of the Zikra Shop building. Based on this, the Defendant considers that the District

<sup>2</sup> Klaudius Ilkam Hulu, "Kekuatan Alat Bukti Sertifikat Hak Milik Atas Tanah dalam Bukti Kepemilikan Hak", *Jurnal Panah Keadilan*, 2021.

<sup>3</sup> Ali Achmad Chomzah, *Hukum Agraria (Pertanahan Nasional) Jilid 1*, Jakarta: Prestasi Pustaka, 2001, hlm. 29.

Court has assessed and considered all the evidence submitted by the parties objectively, properly and correctly, so that the District Court's decision deserves to be confirmed. However, the plaintiff filed an appeal because he did not accept the decision in favor of the defendant.

Even though the defendant had won the case at the Banda Aceh District Court, the reality was that when they appealed to the Banda Aceh High Court, the judge granted the Plaintiff's claim in part and rejected the Defendant's exception. The object of the dispute is land covering an area of 231 M2 located in Gampong Merduati, Baiturrahman District, formerly Kuta Alam District, Banda Aceh City with the following boundaries:

1. North with aqueduct;
2. East by Jln K.H Ahmad Dahlan;
3. South with the Muara/Ridwan Husen/Jeffri/Boy Irfan Zein Hasymi shop land;
4. West with Hallway; It belongs to Plaintiff I (Tjut Suryati, SH.) and also the inheritance of Drs H.M.Jamil Ahmad and the late Hj Atim Kustiah;

The object of the dispute is the inheritance of the late H.M.Jamil Ahmad and the late Hj. Atim Kustiah, who owns the property of Plaintiffs II and III together with Plaintiff I. States that Defendant I's actions in transferring the disputed land according to petitem 2 to Defendant II are unlawful. States that Defendant II's actions in controlling the disputed land without rights are an unlawful act.

The judge stated in his decision that the Zikra Shop Building Transfer Agreement Letter No. 7/PJ/2007 dated September 3 2007, was invalid and worthless and had no legal force and that the actions of Defendant III who had issued the Ownership Certificate No. 2050/2008 in the name of Defendant II were Act against the law. Declare that the Certificate of Ownership No. 2050/2008 in the name of Defendant II has no legal force. Punish Defendants I and II to hand over the disputed land according to petitem 2 above to the Plaintiffs in an empty condition and without any ties with other third parties. Rejected the Plaintiffs' claim for the remainder. Sentenced the Defendants to pay all costs incurred in this case at two levels of justice, which at the appeal level was set at Rp. 150,000,-

Even though the land has not been converted into other rights, those who control the land still have rights to the land and these rights cannot be set aside on the grounds that the regional government has the right to regulate state land. If the regional government wants to make the land into land controlled by the regional government over state land for road construction purposes, the regional government must also submit an application for rights to the state, in this case the BPN, but the one that gets priority remains the one who controls the former western land, namely Plaintiff I, Plaintiff II and Plaintiff III, so that Article 12 of PP No. 8 of 1958 cannot be applied in this case. Thus, Defendant I's action in transferring ownership of the object of dispute to Defendant II is an act without rights, or an act against the law.

### Research Methods

Legal research can be divided into normative legal research and sociological legal research. This research uses normative juridical research. The research approach used in this legal research is the Statute Approach, namely by examining statutory regulations relevant to the problem being discussed and the Case Approach, which examines the

application of legal norms or rules in legal practice. in the issue discussed.

There are two types or typologies of legal research, namely normative and empirical. This is as stated by Ronny Hanitijo Soemtro in Mukti Fajar ND and Yulianto Achmad that: Legal research is divided into normative legal research or doctrinal legal research, namely legal research that uses secondary data sources or data obtained through library materials, and legal research empirical or sociological legal research, namely legal research that obtains its data from primary data or data obtained directly from the community.<sup>4</sup> Based on the division of legal research above, what is used in this research is normative legal research, namely research that examines documents from various primary data such as statutory regulations, court decisions, and opinions of legal experts. The normative juridical research method is doctrinal legal research using secondary data,<sup>5</sup> working analytically inductively starting from premises in the form of known positive legal norms leading to the discovery of legal principles or doctrine.<sup>6</sup> This legal research is also related to the activity of analyzing judges' decisions based on legal principles, to find a doctrine of positive law that applies.<sup>7</sup>

Primary legal materials, in the form of statutory regulations issued to implement these provisions. Data processing is essentially an activity to systematize written legal materials to facilitate analysis and construction work.<sup>8</sup> Data analysis is an important and decisive advanced stage in any research. In this stage the author must select the data that has been obtained. The author conducted normative research on legal systematics. The data analysis used here is data analysis by analyzing articles whose contents are legal norms. The data obtained, both primary, secondary and tertiary data, were analyzed using qualitative techniques and then presented in a descriptive normative manner, namely by explaining, describing and describing in accordance with this research.

### Results and Discussion

#### 1. Causes of Disputes in Cassation Decision Number: 2391 K/PDT/2013

Firstly, looking at Defendant II as the owner of the New Zikra Bookstore in his interview on Serambi News, he explained the chronology of the beginning of this case as follows:<sup>9</sup> During the earthquake and tsunami disaster in 2004, the New Zikra Bookstore (owned by Serambi

<sup>4</sup> Mukti Fajar ND dan Yulianto Achmad, *Dualisme Penelitian Hukum*. Fakultas Hukum Universitas Muhammadiyah, Yogyakarta, 2007, hlm. 109.

<sup>5</sup> Sujono dan Abdurrahman, *Metode Penelitian Hukum*. Rineka Cipta, Jakarta, 2003, hlm. 56.

<sup>6</sup> Bambang Sunggono, *Metode Penelitian Hukum*. RajaGrafindo Persada, Jakarta, 2011, hlm. 86.

<sup>7</sup> Peter Mahmud M arzuki, *Penelitian Hukum*, Kencana, Jakarta, 2014, hlm. 77.

<sup>8</sup> Soerjono Soekanto, *Pengantar Penelitian Hukum*, Jakarta, UI Press, 2008, hlm. 251-252.

<sup>9</sup> Masrizal Bin Zairi "Toko Buku New Zikra Dibongkar, Imbas dari Sengketa Lahan antara Tjut Suryati SH dkk dengan Walikota", (2022), <<https://aceh.tribunnews.com/2022/11/15/toko-buku-new-zikra-dibongkar-imbasm-dari-sengketa-lahan-antara-tjut-suryati-sh-dkk-dengan-walikota?page=3>> [diakses 25/04/2024].

Indonesia Daily) was located on Jalan Mohd. Jam Ujung, Banda Aceh, has two shop doors with a land area of approximately 200 meters. After the natural disaster occurred, the New Zikra Bookstore and the shops around the location were destroyed.

In 2006, according to Mohd Din as Mayor of Banda Aceh, he represented the Municipality Government to build a through road to Jalan Mohd. Jam by taking over the former two-door New Zikra Bookstore, with a commitment to compensate for the loss of the land because it was used for public purposes. H. Syamsul Kahar (Serambi Indonesia Daily) released the hermitage land by asking for an exchange. Then, the Banda Aceh Municipality Government provided a passage on the edge of the ditch on Jalan K.H. Ahmad Dahlan which covers an area of approximately 180 meters.

This alley has been used as a road for decades by people living in the area. H. Syamsul Kahar (Serambi Indonesia Daily) accepted the exchange due to considerations of public interest and because the land area was limited, they bought more land approximately 100 meters next to the through road. After making an agreement with the Banda Aceh Municipality Government, the New Zikra Bookstore processed the construction. At that time, there was a lot of public demand for a representative bookstore in Banda Aceh. Moreover, after the tsunami, bookstores in Banda Aceh were limited and not yet representative.

The New Zikra Bookstore officially processed the legalities of store construction such as land certificates, building permits, etc. and then planned to build four stores with three floors. This implementation is in accordance with land procurement for public purposes in the form of:

1. Determining location,
2. Formation of a committee,
3. Implementation of outreach,
4. Implementation of inventory,
5. Formation of a land appraisal team,
6. Receipt of land value assessment results from land appraisal institutions/teams,
7. Implementation of deliberations,
8. Determination of the form and amount of compensation,
9. Implementation of the provision of compensation,
10. Settlement of disputes regarding the form and amount of compensation,
11. Implementation of the release of rights and handover of land before the head of the Municipality district land office.<sup>10</sup>

Then, after the construction process, Tjut Suryati SH, *et al*, sued the Banda Aceh Municipality Government for the transfer of the land plot and the New Zikra Bookstore, represented by H. Syamsul Kahar as Defendant II, and the National Land Agency as Defendant III. In the first instance lawsuit, the Banda Aceh Government won, but the plaintiff filed an appeal and the results were that the Banda Aceh High Court and the Supreme Court ruled in favor of the Plaintiffs. Meanwhile, the Banda Aceh government, led by Mayor Mawardy Nurdin (deceased) to Aminullah Usman, has been trying to find a way out.

<sup>10</sup> Umar Ma'ruf, *Politik Hukum Di Bidang Pertanahan*, Cetakan Pertama, Semarang: Universitas Diponegoro, 2010, hlm. 74-75.

Several arguments were held at the Banda Aceh District Court, but Tjut Suryati S.H., *et al*, the Banda Aceh Municipality Government, and the New Zikra Bookstore did not reach an agreement. The Banda Aceh Municipality Government is in principle willing to provide compensation at a price that does not give rise to legal problems and the New Zikra Bookstore also encourages settlement in a reasonable manner, but the Plaintiffs do not agree to this agreement.

This is because the price offered by the Plaintiffs cannot possibly be included in the calculations of the New Zikra Bookstore and the Banda Aceh Municipality Government. In fact, if the Plaintiff's offer is approved, it could give rise to new legal problems for the Banda Aceh Municipality Government. The New Zikra Bookstore hopes that the execution will not damage the building next to it which could give rise to new legal disputes. The implementation of this decision resulted in part of the building (less than two doors) of the New Zikra Bookstore being demolished by the Banda Aceh District Court which was following up on the Supreme Court's decision.

Second, if you look at the chronology of the case through the Banda Aceh High Court Decision No. 05/PDT/2013/PT BNA which begins with the Banda Aceh District Court Decision No.41/Pdt.G/2011/PN BNA, and ends with the Supreme Court Cassation Decision No.2391 K/Pdt/2013, the flow of the case is summarized as follows:

- a. The parties who filed the lawsuit at the District Court were Tjut Suryati, S.H. (Plaintiff I aged 68 years), Marzuki (Plaintiff II aged 33 years), and Andika Fitriansyah (Plaintiff III aged 24 years), hereinafter referred to as the Defendants.
- b. The parties affected by the lawsuit are the Banda Aceh Municipality Government (Defendant I), H. Syamsul Kahar (Defendant II), the Banda Aceh City National Land Agency Office (Defendant III), hereinafter referred to as the Defendants.
- c. Plaintiff II is the only heir or child of the late. Drs. H. M. Jamil Ahmad who died on April 4 2008. Plaintiff III is the only heir of the late. Hj. Atim Kustiah, who died on June 24 2009, is the grandson of the son who died on December 10 2006. So, Plaintiff II and Plaintiff III are the heirs of the land which is the object of the dispute.
- d. Plaintiff I, Plaintiff II's father, and Plaintiff III's grandmother (land owner) own a plot of land measuring 432 m2, which is located in Banda Aceh Municipality, Kutaraja District, formerly Kuta Alam and Baiturrahman District, Merduati Village. The land was obtained by purchasing it from Daulat Hutagalung based on Deed of Sale and Purchase No. 03/3/cka/1976 and has been in possession since January 10, 1976. After the purchase was made, the land owner made a Building and Profit-Sharing Agreement, Number 2, dated January 5, 1998 with H. Ibrahim Yusuf to build a 5-door shop. The land owner gets 3 doors, and H. Ibrahim Yusuf gets 2 doors. The construction of the 5 shophouse doors with dimensions of 4x8 meters, and the total land area used is 160 m2, and Certificate of Ownership Number: 370 was issued by the National Land Agency Office, on May 16 1998, in the name of Tjut Suryati, S.H., Drs. H. M. Jamil Akhmad, and Hj. Atim Kustiah.
- e. The results of the split of the remaining 272 m2 of land have not yet been processed/registered with the

Certificate of Ownership. Then the land owner sold the remaining 41 m<sup>2</sup> of land to H. Ibrahim Yusuf and a Certificate of Ownership Number 451 was issued, dated 21 February 2000 in the name of H. Ibrahim Yusuf, and sold it again to another party, namely Jefri. So, the remaining land owned is 231 m<sup>2</sup> and ownership has not yet been registered.

## 2. Chronology of the Dispute over the Transfer of Land Rights which is the Object of Ruislag

The case began when the land belonging to the Plaintiffs was used by the Banda Aceh Municipality Government (Defendant I) to exchange objects with land belonging to H. Syamsul Kahar (Defendant II) which would be used by the Banda Aceh Municipality Government (Defendant I) for widening Jalan Muhammad Jam. The exchange was stated in the Zikra Shop Building Transfer Agreement No.7/PJ/2007, on September 3 2007, which is located on Jalan KH Ahmad Dahlan and has been processed and registered with the Certificate of Ownership No. 2050/2008 covering an area of 186 m<sup>2</sup> in the name of H. Syamsul Kahar (Defendant II) issued by the Banda Aceh Municipality Land Agency (Plaintiff III).

The handover or transfer of land to H. Syamsul Kahar (Defendant II) was not land that was directly controlled by the State, but land that had been granted rights. The transfer was also carried out without notice and without the knowledge of the land owner, namely Plaintiff I, Plaintiff II's father and Plaintiff III's grandmother. The Banda Aceh Municipality Government (Defendant I) transferred land that it did not control and gave it to H. Syamsul Kahar (Defendant II). When the land object of dispute was fenced off by H. Syamsul Kahar (Defendant II), the land owner was questioned with the answer that there had been a land exchange as a result of H. Syamsul Kahar's (Defendant II) land being used by the Banda Aceh Municipality Government (Defendant I) for widening Jalan Muhammad Jam.

The Plaintiffs have also submitted an objection to the Banda Aceh Municipality Land Agency (Defendant III) not to issue a Certificate of Ownership in the name of H. Syamsul Kahar (Defendant II) because the land for which the certificate will be issued is land owned by the Plaintiffs, but the objection submitted was not responded so that the certificate was still issued by the Banda Aceh Municipality Land Agency (Defendant III). Apart from that, the contents of the Zikra Shop Building Land Transfer Agreement No. 7/PJ/2007 do not state clear boundaries to be used as an exchange object and this causes H. Syamsul Kahar (Defendant II) to control the land owned by the Plaintiffs.

On this basis, the Plaintiffs felt disadvantaged and submitted this dispute to the Banda Aceh District Court, No:41/Pdt.G/2011/PN BNA. The Plaintiffs feel that the actions of the Banda Aceh Municipality Government (Defendant I) are unlawful because they transferred the land they already owned and eliminated the Plaintiffs' rights as owners of the land subject to dispute. This case has reached the stage of judicial review by the Supreme Court No: 227 PK/Pdt/2016.

### a. Legal Considerations by the Judge in Cassation Decision Number: 2391 K/PDT/2013

Legal considerations are a method or method used by judges in making decisions based on judicial power. Decision making is the most important process for judges regarding a

dispute they are examining and adjudicating.<sup>11</sup> Judges must be careful and very careful in processing and processing data obtained during the trial process, whether from documentary evidence, witnesses, allegations, confessions or oaths revealed in the trial. This is in accordance with the provisions of Article 164 HIR.<sup>12</sup>

This dispute began when H. Syamsul Kahar (Defendant II) asked the Banda Aceh Municipality Government to exchange land for another land because the land would be used as a road for public purposes. The Banda Aceh Municipality Government agreed to the request and then handed over land located on Jalan KH Ahmad Dahlan covering an area of 186 m<sup>2</sup>. The handover of the land was accompanied by a letter of Agreement for the Transfer of the Zikra Shop Building Site No.7/PJ/2007, on 03 September 2007.

The Plaintiffs felt that they had been disadvantaged and had lost their property rights which should have been fully controlled, so the Plaintiffs filed a lawsuit against the law at the Banda Aceh District Court because they had transferred the land belonging to Plaintiff I, and Plaintiff II's father, and Plaintiff III's grandmother, not land controlled by the Banda Aceh Municipality Government (Regional Property) which was given to H. Syamsul Kahar (Defendant II).

The Plaintiffs consider that the issuance of the Certificate of Ownership No.2050/2008 covering an area of 186 m<sup>2</sup> in the name of H. Syamsul Kahar (Defendant II) based on the Letter of Agreement for the Transfer of the Zikra Shop Building Site No. 7/PJ/2007, on September 3 2007, the two deeds became the deed is invalid, worthless and has no permanent legal force because the Banda Aceh Municipality Government is considered to have committed an unlawful act by transferring land that has been entitled to it.

The Plaintiffs felt that the actions of the Banda Aceh Municipality Government (Defendant I), H. Syamsul Kahar (Defendant II), the Banda Aceh Municipality Land Agency (Defendant III) were unlawful because they had transferred without rights the land belonging to Plaintiff I, and the Plaintiff's father. II, as well as Plaintiff III's grandmother, to H. Syamsul Kahar (Defendant II). The consequences of the actions of the Defendants in this case start from the first level at the Banda Aceh District Court No: 41/Pdt.G/2011/PN BNA, the appeal level at the Aceh High Court No: 05/PDT/2013/PT BNA, the cassation level at Supreme Court No: 2391 K/Pdt/2013, and finally at the judicial review level at the Supreme Court No:227 PK/Pdt/2016.

### 1) Banda Aceh District Court Judge's Considerations Number: 41/Pdt.G/2011/PN BNA

At the first instance at the Banda Aceh District Court No: 41/Pdt.G/2011/PN BNA, the Defendants won with the judge's consideration that the transfer of land rights carried out by Daulat Hutagalung and Tjut Suryati, S.H. (Plaintiff I), late. Drs. H. M. Jamil Ahmad (father of Plaintiff II), and the late. Hj. Atim Kustiah (Plaintiff III's grandmother) was an illegal act based on the Sale and Purchase Deed No. 03/3/cka/1976 dated 10 January 1976.

<sup>11</sup> Moelyatno, *Asas-Asas Hukum Pidana*, Jakarta: Rineka Cipta, 1993, hlm. 23

<sup>12</sup> Nur Iftitah Isnantiana, "Legal Reasoning Hakim dalam Pengambilan Putusan Perkara di Pengadilan", *Jurnal Pemikiran Islam*, Volume XVIII, Nomor 2, (2017), hlm. 44.

Based on these considerations, the Judge stated that the Deed of Sale and Purchase was invalid, so the land object of the dispute was also deemed not to be owned or owned by anyone. The absence of an owner of land means that the Banda Aceh Municipality Government has the right to exchange land on the basis of public interest. As in Article 1 paragraph (2) of PP No.28 of 2020 concerning Amendments to PP No.27 of 2014 concerning Management of State/Regional Property, it is stated that Regional Property is all goods purchased or obtained at the expense of the Revenue and Expenditure Budget. Regional (APBD), or comes from other legitimate acquisitions.

Boedi Harsono also said the same explanation, if the State as the organizer needs land to carry out its duties, the land in question will be given to it by the State as the Ruling Body through the authorized Government Institution. The land is given to the institution with a right to the land to be physically controlled and used, not as a Ruling Body which has Controlling Rights as mentioned in Article 2 UUPA, but as a legal entity such as individuals and civil legal entities who are given and become holders land rights.<sup>13</sup>

Continuing in Article 5 (1) and (2) letter b, PP No. 27 of 2014 concerning Management of State/Regional Property, that the authority to manage Regional Property is the Governor/Regent/Mayor who has the authority and responsibility in determining the use, utilization or transfer of Regional Property in the form of land and/or buildings. However, it is also important to know that land owned by a region must have its land registered, according to Law No. 1 of 2004 concerning State Treasury in Article 49 (1) which states: "all State/Regional Property in the form of land controlled by the Central Government/ The region must be certified in the name of the Government of the Republic of Indonesia/Regional Government concerned.

Expert witness Dr. Suhaimi, S.H., M. Hum., also stated the same thing in accordance with these regulations, that land controlled by the State, its control must also be registered at the National Land Agency Office. In this case, the Defendants could not prove that the land which was the object of the dispute was land controlled by the Banda Aceh Government or land owned under the name Banda Aceh Regional Property, but immediately transferred the rights to H. Syamsul Kahar (Defendant II) with a rollover or land exchange agreement. Thus, the Banda Aceh Municipality District Court in deciding the case has ignored legal facts that should have been considered.

Apart from that, the Banda Aceh District Court Judge also considered that the initial land owner, namely Handziris, was a foreign citizen and not an Indonesian citizen, even though the Defendants did not provide evidence regarding this citizenship and did not cancel the Sale and Purchase Deed No.03/3/cka/1976. The judge's actions in giving considerations for which no evidence was attached by the Defendants are included in presumptive evidence that is not based on the Law (Judge's Allegations) regulated by Article 1922 of the KUHPperdata, which reads:

"Allegations that are not based on the law itself are left to the judge's consideration and vigilance, who in this case must not pay attention to other allegations." Such allegations may only be taken into account if the law permits proof by

witnesses, as well as if an action or a deed is presented with an objection on the grounds of bad faith or fraud."

Based on Article 1866 of the KUHPperdata, there are 5 pieces of evidence used in civil trials, namely written evidence, witness evidence, allegations, confessions and oaths. It should be in accordance with the principle of Actor in Cumbit Probatio, meaning whoever sues is the one who is obliged to prove it. In civil procedural law, this principle is also regulated in Article 163 HIR/283 RBg, and also in Article 1865 of the Civil Code which reads:

"Every person who claims to have a right, or points to an event to confirm his or her right or to dispute another person's right, is obliged to prove the existence of that right or the event stated.

The judge also considered that the act of transferring land rights carried out by Daulat Hutagalung with Tjut Suryati, S.H., Drs. H. M. Jamil Akhmad, and Hj. Atim Kustiah is an illegal act. Daulat Hutagalung could carry out buying and selling based on a power of attorney from Handziris which was given to him to carry out land sales. This action is in accordance with Article 1792 of the KUHPperdata, which states that granting power of attorney is an agreement by which one person gives power to another person who receives it, for and on behalf of him to carry out an affair.

## **2) Aceh High Court Judge's Considerations Number: 05/PDT/2013/PT BNA**

The above matter caused the Aceh High Court No.05/PDT/2013/PT BNA, to grant the appeal request from the Plaintiffs and cancel the Decision of the Banda Aceh District Court No.41/Pdt.G/2011/PN BNA, and to try this case itself by considering that the land object of dispute belongs to Tjut Suryati, S.H. (Plaintiff I) and is the inheritance of the late. Drs. H. M. Jamil Ahmad (father of Plaintiff II), and the late. Hj. Atim Kustiah (Plaintiff III's grandmother) with a land area of 231 m2.

Thus, the High Court Judge indirectly stated that the transfer of rights was based on the Sale and Purchase Deed No.03/3/cka/1976 dated 10 January 1976 with a land area of 432 M2, and the Building and Production Sharing Agreement No.2 dated 05 January 1998 which used land area of 160 m2 is a valid deed and agreement and has binding legal force. In accordance with the 1976 Deed of Sale and Purchase, the rule used to consider it is Article 19 of PP No.10 of 1961 concerning Land Registration, which states that:

"Every agreement that intends to transfer land rights, grant new rights to land, mortgage land, or borrow money with land rights as collateral, must be proven by a deed made by and before an official appointed by the Minister of Agrarian Affairs, and the deed the form is determined by the Minister of Agrarian Affairs."

Furthermore, regulated in Article 28 paragraph (1) letter a PP No. 10 of 1961 concerning Land Registration, it is stated:

"The Head of the Land Registration Office refuses to register the transfer of a right to land, if the deed referred to in Article 19 is submitted without a certificate or statement or statement and other documents."

It turned out that the land owner had registered the disputed land object in 1998 as evidenced by the issuance of Certificate Number 370, dated 08 May 1998, in the name of Tjut Suryati, S.H., Drs. H. M. Jamil Ahmad (father of Plaintiff II), and Hj. Atim Kustiah (Plaintiff III's grandmother), based on the Decree of the Regional Head of

<sup>13</sup> Boedi Harsono, *Hukum Agraria Indonesia; Sejarah.....* Op.cit., hlm. 25.

the Aceh Province National Land Agency dated 08-05-1998 No. 31/HM/BPN/1998-1999. Then the certificate split was carried out on August 3 1998 with Certificate Numbers 373, 374 and 375.

This registration was carried out when PP No.10 of 1961 concerning Land Registration, as an implementation of UUPA was no longer valid. So, no one can confirm whether the Sale and Purchase Deed is valid or not because the land registration was carried out in 1998 and was not registered directly by Tjut Suryati, S.H. (Plaintiff I), late. Drs. H. M. Jamil Ahmad (father of Plaintiff II), and the late. Hj. Atim Kustiah (Plaintiff III's grandmother) after the sale and purchase of the disputed land object in 1976.

There is also no way to ensure that when the deed was made by the parties, it previously met the elements of a deed that was accepted for land registration at the Land Office or that it was not accepted because the deed did not include a certificate or certificate or statement (which stated that the right to the land was not yet have a certificate or temporary certificate), or other document.

According to the Judge, the land which is the object of the dispute which has been transferred to H. Syamsul Kahar (Defendant II) based on the Zikra Shop Building Land Transfer Agreement No.7/PJ/2007 and the Ownership Certificate No. 2050/2008 with an area of 186 m<sup>2</sup> has been issued, is land which is still under the control of the land owner, namely Plaintiff I, and Plaintiff II's father, and Plaintiff III's grandmother based on rights issued by the State, namely the National Land Agency. The action of the Banda Aceh Municipality Government in transferring the Plaintiffs' property rights is an unlawful act.

Even though the disputed land wants to be controlled by the State, this does not mean that the previous person who had the right to the former verponding eigendom land immediately lost their rights because they did not re-register the land. People who control land that was formerly eigendom verponding still have priority rights to obtain rights to that land (Article 24 of PP No.24 of 1997 concerning Land Registration), and cannot be overridden on the grounds that the government has the right to regulate state land.

The State can only control land that has not been owned by anyone, and the State cannot own or lose land belonging to individuals or legal entities. If you wish to make the land a regional property for road construction purposes, the Banda Aceh City Government must submit a request for rights to the State, in this case the Banda Aceh Land Agency, but the priority is still the previous rights holder (Article 49 paragraph (1) Law No. 1 of 2004 concerning State Treasury).

As a result, the Banda Aceh Government (Defendant I) in carrying out the transfer to H. Syamsul Kahar (Defendant II) was not based on land controlled by the State or not Regionally Owned Property/Regionally Owned Business Property or without a clear basis of rights, the Judge annulled Agreement on the Transfer of the Zikra Store Building Site No.7/PJ/2007, on 03 September 2007, located on Jalan KH Ahmad Dahlan and Certificate of Ownership No.2050/2008 covering an area of 186 m<sup>2</sup> in the name of H. Syamsul Kahar (Defendant II), is also stated as an invalid ownership document, worthless and having no binding legal force.

The actions of the Banda Aceh Government (Defendant I) in saving the rights of other parties constitute an unlawful act

because they cause harm to other parties<sup>14</sup> (in this case harm to the Plaintiff). The actions of H. Syamsul Kahar (Defendant II) in controlling the Plaintiffs' property rights or controlling them without proper legal grounds are also declared as unlawful acts. The actions of the Banda Aceh Land Agency (Defendant III) which has issued a Certificate of Ownership that has been entrusted is contrary to National Land Law and therefore constitutes an unlawful act.

The issuance of certificates by the Banda Aceh Land Agency (Defendant III) was still issued, perhaps because a natural disaster occurred, namely the tsunami in Banda Aceh in 2004, which resulted in many residents' houses being destroyed and land data at the Banda Aceh Land Office also disappearing. As a result, the land belonging to the Plaintiffs was not registered, and the Plaintiffs also did not re-register the land that was the object of the dispute.

This decision punishes the Defendants to pay all court costs amounting to 150,000.- and punishes the Defendants to return the disputed land whose certificate has been transferred and registered, returned to the Plaintiffs in an empty condition and without any ties with other third parties.

### **3). Consideration of Supreme Court Judges Number: 2391 K/Pdt/2013**

The reason put forward by the Defendants for filing a petition at the cassation level at the Supreme Court was because they did not accept the contents of the Aceh High Court decision No: 05/PDT/2013/PT BNA, and did not accept all of the statements made in the decision. According to the Defendants, the judge in deciding the case made a mistake in applying the law because it did not fulfill the elements of justice in the decision. However, the Judge considered that the cassation petition could not be justified or rejected, because the High Court Judge was correct and correct in applying the law and canceled the District Court Decision, by paying a court fee of Rp. 500,000.-

According to the Defendants, the Aceh High Court's Judex Facti error occurred in a legal event that occurred on the land object of dispute when Plaintiff I, Plaintiff II's father, and Plaintiff III's grandmother carried out a sale and purchase in 1976 with Daulat Hutagalung who was a person authorized by Handziris as the owner of the disputed land is an American citizen who lives in California and temporarily resides in Medan. The land object of the dispute was previously Eigendom Verponding land No. 303 in the name of Frangoulis Hatziris (Handziris).

In accordance with Article 21 of the UUPA, the land that Handziris received as heir to the legacy of the late. Bosilioe Fargoulis Handziris died in 1961 one year after the UUPA came into effect. This article states that within one year, if the Verponding Eigendom right is not transferred after the UUPA comes into force, it must be converted, otherwise the right must be released and abolished by law. Thus, the land falls into state land and the property rights are released and extinguished provided that other parties who burden it continue. This agreement was also carried out after 16 years of the UUPA's enactment.

<sup>14</sup> Kamaluddamairi Usman, Suhaimi, Muhammad Ya'kub Aiyub Kadir, Refusal of Extension of Building Use Rights Over Management Rights on Land (Study of Supreme Court Decision Number 1343/K/Pdt/2021), *International Journal of Multicultural and Multireligious Understanding*, Volume 10, Issue 8, 2023, pp.197-208.

From this article it should be that the former Eigendom Verponding land No: 303, after year 1 if it is not transferred, will become land whose ownership rights are relinquished and will be abolished by law. So that land that is not owned by anyone will be included in land controlled by the State (state land). As regulated in Article 1 point 5 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the BPN No.16 of 2022 concerning Delegation of Authority for Determining Land Rights and Land Registration Activities, that State land or land controlled directly by the State is land that is not attached with a right to land, not waqf land, not ulayat land and/or not an asset of State Property/Regional Property. The judge did not take these rules and articles into consideration, the judge only considered that the Plaintiffs could prove their control over the land subject to dispute with Certificate of Ownership No. 370, in the name of Tjut Suryati, S.H., Drs. H. M. Jamil Ahmad (father of Plaintiff II), and Hj. Atim Kustiah (Plaintiff III's grandmother), and based on the Decree of the Regional Head of the Aceh Province National Land Agency dated 05-08-1998 No. 31/HM/BPN/1998-1999. Sale and Purchase Deed No. 03/3/cka/1976, dated 10 January 1976, is considered valid and valid because this deed can produce a Certificate of Ownership even if it is carried with photocopy evidence. This is because the assessment of evidence cannot be considered at the cassation level examination. At the cassation level, only examinations are carried out regarding non-implementation of errors in the application of the law, violations of applicable law, negligence in fulfilling the requirements required by statutory regulations, which because of this negligence can cause the decision in question to be annulled or if the court does not authority or exceeds the limits of its authority (Article 30 of Law No. 14 of 1985 and its amendment Law No. 5 of 2004, and further amended by Law No. 3 of 2009 concerning the Supreme Court). According to the Defendants, the Plaintiffs only brought a certificate of heirship signed by the Village Head, not a determination of heirs from the Religious Court/Shar'iyah Court. The evidence brought by the Plaintiffs is in accordance with the rules based on Article 111 (1) letter c Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the BPN No. 16 of 2021 concerning Land Registration, it is explained that proof of being an heir can be in the form of six things, namely:

- a. Will of the testator;
- b. Court ruling;
- c. Determination of the judge/head of the court;
- d. A statement of heirs issued by the heirs, witnessed by two witnesses and acknowledged by the head of the village/subdistrict and subdistrict head where the testator lived at the time of death;
- e. Certificate of inheritance rights from a notary domiciled at the testator's residence at the time of death; or
- f. Inheritance certificate from the Heritage Center (BHP).

According to the Defendants, the Plaintiffs never again registered the 231 m2 disputed land object. Please note that not updating land data does not mean losing someone's ownership rights, let alone categorizing it as land that is no longer owned. Strengthened by Article 20 (1) and (2) UUPA states that property rights are rights that can be owned by

people which are hereditary, strongest and fullest and of course keep in mind the provisions in Article 6 that property rights can be transferred and transferred to other parties.

#### **4). Judicial Review Judge's Considerations No.227 PK/Pdt/2016**

The reason for the review by the Defendants cannot be justified or rejected because after examining the entire petition and connecting it with Judex Facti, in this case the Supreme Court Decision No. 2391 K/Pdt/2013, it turns out that there was no error by the Judge or any real error in the case considering that:

Control over the land which is the object of dispute in the a quo case originates from the former verponding eigendom land in the name of Handziris which was later recognized by the State by providing Certificate of Ownership Number: 370, in the name of Tjut Suryati, S.H., Drs. H. M. Jamil Ahmad (father of Plaintiff II), and Hj. Atim Kustiah (Plaintiff III's grandmother), and based on the Decree of the Regional Head of the Aceh Province National Land Agency dated 05-08-1998 No. 31/HM/BPN/1998-1999, a new Certificate of Ownership has been issued with the No. 373, 374 and 375.

Even though the Regional Government has the authority to regulate land use, it cannot issue new land rights to land that already has rights, so the action of the Banda Aceh Municipality Government (Defendant I) is to grant rights to H. Syamsul Kahar (Defendant II) as a replacement for his existing land. Evicted because widening the road in the public interest was an unlawful act and the issuance of Certificate of Ownership No. 2050/2008 in the name of H. Syamsul Kahar (Defendant II) was invalid. The defendants were sentenced to pay court costs of Rp. 2,500,000.-

Transferring state land into ownership is something that is permitted, but with the condition that the land is land controlled by the Banda Aceh Government (Regional Property) and not land owned by someone else who has not been registered and then registering a new title on the same land. (Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the BPN No.18 of 2021 concerning Procedures for Determining Management Rights and Land Rights, PP No. 27 of 2014 and Amendments to PP No.28 of 2020 concerning Amendments to PP No.27 of 2014 Concerning Management of State/Regional Property).

#### **Conclusion**

The Court Judge at the appeal and review levels gave the legal consideration that the Plaintiffs could prove that the land object of dispute was the land they controlled by Sale and Purchase Deed No. 03/3/cka/1976, which could issue Certificate of Ownership No.370, in the name of Tjut Suryati, S.H., late. Drs. H. M. Jamil Ahmad (father of Plaintiff II), and the late. Hj. Atim Kustiah (Plaintiff III's grandmother), based on the Decree of the Regional Head of the Aceh Province National Land Agency dated 08-05-1998 No. 31/HM/BPN/1998-1999. Then the certificate split was carried out on August 3 1998 with Certificate No.373, 374 and 375. Meanwhile, the Banda Aceh Municipality Government could not prove that the land used as a ruislag object was land controlled by the State or land that had become regional property. Banda Aceh Municipality which can be used and transferred to carry out its duties in meeting public interest needs.



### Suggestions

The Banda Aceh Municipality Government before carrying out ruislag must pay more attention to whether the land that will be used for ruislag or exchange is land that is not encumbered with any rights on it, so that this can minimize losses to the parties involved. Apart from that, people who already have freehold land should register their land, either as newly registered land or as land that has already been registered but there has been a change in ownership or other changes to the land in question. This is necessary for maintaining data at the BPN so that it is known that the land has been entitled to ownership by the owner, and the rights cannot be given to other people. Land registration is needed to provide legal certainty and protection to all parties or the entire community.

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