



VERSTEK DECISION POWER ON UNDER-HANDS SELLING WHICH THE SELLER DOESN'T EXIST

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Abstrak

The transfer of land rights is the transfer of land rights from the old right holder to the new right holder according to the provisions of the applicable laws and regulations. Land law in Indonesia requires the transfer of land rights to be carried out before the Land Deed Official (PPAT), because basically buying and selling land must meet clear and cash requirements. Government Regulation Number 24 of 1997 Concerning Land Registration in Article 37 paragraph (1) states that "Transfers of land rights and ownership rights to apartment units through buying and selling, exchange, grants, entry into the company and other legal actions for transferring rights, except for transfers of rights through auctions, can only be registered if proven by a deed drawn up by the PPAT who is authorized according to the provisions of the applicable laws and regulations." This is what happened in the decision of the Batulicin District Court Number: 68/Pdt.G/2021/PN Btn, where the sale and purchase is carried out underhanded and when registration is desired, the whereabouts of the seller cannot be identified, so the sale and purchase cannot be transferred and registered, because one of the requirements for land registration is there is a deed authentic which proves that it is true that a legal act of sale and purchase has taken place, so that the making of the sale and purchase deed is hampered. The problem that the author raises in this study is how is the verstek decision that has been inkraacht regarding the Registration of Transfer of Land Rights and what is the validity of the making of the Deed of Sale and Purchase (AJB) by PPAT based on the verstek decision? The results in this study are that decisions that have permanent legal force can be enforced, where decisions have binding legal force (binding force), strength of proof (Proving Power) and powerExecutorial (Executorial Force). So the deed can be said to be valid because until now, no party feels that they have been harmed, or that there has been a lawsuit filed against the PPAT concerned regarding the confusion over the existence of the deed.

Kata Kunci: transfer of rights, verstek decision, validity of sale and purchase deed.

INTRODUCTION

Basically, humans often interact with each other to fulfill their needs by carrying out relationships between people, whether they are included in legal actions or not legal actions. Buying and selling is one of the transactions in legal traffic, where all legal actions are based on an applicable statutory regulation, namely the basic agrarian law and its implementing regulations which are attributes for the implementation of this law.

The transfer of land rights can be said to be a legal act carried out intentionally by transferring land ownership rights to a new owner, such as buying and selling, grants and others., and accidental transfer due to legal events such as transfer of inheritance rights.

Transfer of land ownership in Indonesia is regulated by several laws and regulations, one of which is Article 37 Paragraph (1) and (2) of Government Regulation Number 24 of 1997 concerning Land Registration which reads:

(1) Transfer of land rights and ownership rights to apartment units through buying and selling, swaps, grants, entry into the company and other legal actions for the transfer of rights, except for the transfer of rights through auctions, can only be registered, if proven by a deed made by the authorized PPAT according to the provisions of the applicable laws and regulations.

(2) In certain circumstances as determined by the Minister, The Head of the Land Office can register the transfer of rights over a parcel of land with ownership rights, conducted between individual Indonesian citizens as evidenced by a deed not drawn up by

the PPAT but which according to the Head of the Land Office is deemed sufficient to register the transfer of rights in question.

Land sale and purchase agreements with the community also still exist with private land sale and purchase agreements where the private deed is an agreement made by the parties without the intervention of public officials based on Article 37 paragraph (1) of Government Regulation Number 24 of 1997 it is stated that *the transfer of land rights and ownership rights to flats through buying and selling is evidenced by a deed drawn up by the land deed official (PPAT)*². Based on Article 164 HIR, civil procedural law in Indonesia recognizes the existence of a letter as a valid means of proof according to law, where private deeds are still considered as evidence that can be used in court at the time of a dispute. However, the strength of the proof is not as perfect as an authentic deed, because a private deed is free evidence so the judge is free to determine whether the evidence is acceptable or not, but the power of proof is still there as long as the deed is not denied by the parties who made it.

By not making a deed authentic before the PPAT or made privately, then normatively certificate which already belongs to the buyer does not contain evidence of transfer of land rights because the Land Office will refuse because it does not meet the requirements authenticity where there is no deed of sale and purchase (AJB) made before the PPAT.

As was the case in lawsuit number 68/Pdt.G/2021/PN Bln, the Unlawful Act case in the Sinar Bulan Village area, Satui District, Tanah Bumbu Regency, where the Plaintiff (Buyer) felt

² Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning *Land Registry*.

disadvantaged because he could not transfer the name which certificate the right of ownership is still in the name of Defendant II, because Defendant II is the original owner of the inner land certificate and has sold the land to Defendant I (Seller), but the name transfer process has not been carried out, then Defendant I (Seller) resold the land to the Plaintiff (Buyer). The whereabouts of the Defendants as sellers of the land are no longer known, while the sale and purchase of land between the Plaintiff (Buyer) and Defendant I (Seller) has not been included in a Sale and Purchase Deed, then the Plaintiff (Buyer) requests the Panel of Judges to legitimize the sale and purchase.

Based on the argument that the lawsuit filed by the Plaintiff was corroborated by documentary evidence, statements from witnesses and local examinations, as well as facts during the trial, the Panel of Judges decided that the contents of the verdict were as follows:

1. Declare that Defendant I and Defendant II have been legally summoned and should remain absent;
2. Granted the Plaintiff's claim in its entirety with *default*;
3. Declare that the actions of Defendant I and Defendant II who did not complete the process of returning the name of the certificate to the land object of the dispute, constituted a legal act which brought losses to the Plaintiff;
4. Declare the sale and purchase of the disputed object land as contained in Certificate Property Right Number 1758 in the name of Arifin Bin Mahlan which the Plaintiff did with Defendant I is valid according to law;
5. Declare legally valid a plot of land covering an area of 225 M² (two hundred and twenty

five square meters) which was formerly located in Sungai Danau Village, now Sinar Bulan Village, Satui District, Tanah Bumbu Regency, as stated in Certificate Property Right Number 1758 in the name of Arifin Bin Mahlan belongs to the Plaintiff;

6. Declare that this decision can be used for the process of transferring names Certificate Property Right Number 1758 which is still written in the name of Arifin Bin Mahlan becomes in the name of the Plaintiff at the Land Agency Office of Tanah Bumbu Regency;
7. Punish Defendant I and Defendant II jointly and severally to pay all costs incurred in this case in the amount of Rp. 6,020,000.00 (six million twenty thousand rupiah).

Hence the verdict *default* which has been decided by a judge and has permanent legal force can be used as a basis for filing a process of transferring names. Where the judge's decision in his decision stated that the plaintiff's (buyer) claim was granted in its entirety with *default* in which Defendant I and Defendant II (Seller) had been legally and properly summoned but were not present, stated that the sale and purchase between the Plaintiff (Buyer) and Defendant I (Seller) was legal according to law, stated legally the Certificate of Property Rights on behalf of Defendant II belongs to the plaintiff (buyer) and states that the decision can be used for the transfer of names Certificate The right of ownership from on behalf of Defendant II becomes on behalf of the Plaintiff (Buyer) at the Land Agency Office of Tanah Bumbu Regency. After the

issuance of the decision from the court and declared *in force*, then the Plaintiff carried out the process of registering the transfer of land rights to the Tanah Bumbu Regency Land Agency Office, but in reality to register the transfer of land rights based on the sale and purchase, it must still be stated in the Deed of Sale and Purchase from the PPAT as the basis for the sale and purchase, in addition to the decision court that has permanent legal force, as a condition for registering the right to the land. Even though the court decision clearly states that it can be used for the process of transferring names as a basis for registering the transfer of land rights to the local Land Agency Office, so that from this case it is interesting to analyze whether this court decision has no legal force so that a Deed of Sale and Purchase is made by the PPAT

Based on the description of the case, the authors are interested in conducting further studies of the problem, so the authors raise the issue, where is the existence of a decision *default* as the basis for registration of the transfer of rights is regulated in Article 37 of Government Regulation Number 24 of 1997 concerning Land Registration in paragraph 2 which reads: "The Head of the Land Office can register the transfer of rights over a parcel of land with ownership rights, which is carried out between individual Indonesian citizens as evidenced by a deed not made by the PPAT but which according to the Head of the Land Office is deemed sufficient to register the transfer of the rights in question.

So that there is a problem of obscurity of legal norms that is interesting for the writer to analyze. The author tries to raise the issue of

registration problem transition land rights based on sale and purchase, whereby the decision *default* which has permanent legal force by the Batulicin District Court can be used to transfer land rights to the local Land Agency, but the local Land Agency is still being asked for a Sale and Purchase Deed made by PPAT, which is made based on a decision *default* to be registered with the Agency land local.

RESEARCH OF METHODS

The research method used is normative research. Where is the procedure in legal research to find the truth based on the scientific logic of positive law through literature studies (*bibliography study*) and Analysis of related decisions³. The use of this research method is useful for answering the problems in this research as well as studying and testing the judges' considerations in the District Court Decision Number: 68/Pdt.G/2021/PN Bln against the Laws and Regulations.

The research approach used is the case approach (*Case Approach*), statutory approach (*Statute Approach*) and Conceptual approach (*Conceptual Approach*), research that places more emphasis on the use of secondary data or in the form of written legal norms. The author's research data sources use secondary data consisting of:⁴

- a. The Primary Legal Materials of this research consist of Legislation, Official Records, Treatise on Making Legislation and Judge's Decisions. In this primary legal material used, the Civil Code (Civil Code), Government Regulation Number 24 of 1997 Concerning Land

³ Daughter Listen Hermawan, Mohamad Fajri Mekka Putra, *On. Cit*, p. 417.

⁴ *Ibid*, matter. 416.

Registration, HIR(*Revised native regulations*), RBG (*Law Regulations for the Outer Regions*), Law Number 5 of 1960 concerning Basic Agrarian Regulations, Law Number 48 of 2009 concerning Judicial Powers, Supreme Court Circular Letter (SEMA) Number 7 of 2001 concerning Local Examinations, Supreme Court Regulation (PERMA) No. 1 of 2016 concerning Mediation Procedures in Courts, Supreme Court Circular Number 4 of 2016, and Decision Number: 68/Pdt.G/2021/PN Btn.

- b. Secondary legal materials legal materials which provide an explanation of primary legal materials in the form of legal science books, legal journals, legal reports, and print or electronic media as well as other literature that is relevant to the formulation of the problem to be examined in research.

Analysis of data on legal writing uses a qualitative study approach. The author in writing this law uses data analysis methods in the form of juridical analysis, namely a form of analysis of various aspects and reveals the negative and positive sides of a legal product through a focus on the use of secondary data, namely from primary legal materials, secondary legal materials, and tertiary legal materials. Conclusions are drawn deductively, that is, starting from a general proposition whose existence is known and ending with a more specific conclusion.

RESULTS AND DISCUSSION

Position Case

That Mr. AA as the Plaintiff cannot do the transfer of the name certificate property right number 1758 in the name of Arifin Bin Mahlan, because Mr. AR as Defendant II is the original owner of the land in the certificate has sold the land to Mr. MA as Defendant I but the name transfer process has not yet been carried out, then Mr. MA resold the land to Mr. A A. The whereabouts of the Defendants as sellers of the land are no longer known, while the sale and purchase of land between Mr. AA and Mr. MA has not been stated in a Sale and Purchase Deed, then Mr. AA requested that the Panel of Judges state the actions of Mr. MA and Mr. AR who did not complete the process of returning the name of the certificate to the land object in dispute was an unlawful act which brought losses to Mr. AA and declared the sale and purchase of the land object of the case which Mr. AA do with Mr. Supreme Court is legal according to the law so that the judge's decision can be used as a basis for submitting the process of transferring names.

In this case, the sale and purchase between the Plaintiff and the Defendant only fulfilled the terms of sale and purchase as stipulated in Article 1457 of the Civil Code.⁵ This can be proven from the sale and purchase that was carried out on June 4 2018 which was agreed at a price of Rp. 450,000,000,- (four hundred and fifty million rupiah) was not made before the authorized official, even though it has become a characteristic of Indonesian land law that buying and selling of land must be done in a clear and cash manner.

Whereas the sale and purchase between the Plaintiff and the Defendant only fulfilled the cash requirement, where on June 4 2018, the Plaintiff made

⁵ *Code of Civil law, On. Cit*, matter. 363.

a full payment to the Defendant in the amount of Rp. 450,000,000.- (four hundred and fifty million rupiah), as receipt payment as proof of sale and purchase paid by the Plaintiff to the Defendant, the cash requirement has been fulfilled in carrying out the sale and purchase transaction of the land. And at the same time, based on the agreement, the Defendant submitted documents on the land which was the object of sale and purchase, namely the Certificate of Ownership Number : 1758 in the name of Arifin bin Mahlan, which is a legal sale and purchase, so that the land and building are directly under the control of the Plaintiff.

In the case of the position above, it is necessary to have a judge's consideration, where the Plaintiff, namely Mr. AA cannot register land that has been purchased legally according to law, in which the sale and purchase is not carried out before the PPAT. Meanwhile, according to the provisions of Article 37 paragraph (1) Government Regulation Number 24 of 1997 concerning Land Registration, transfer of land rights through buying and selling can only be registered if it is proven by a deed drawn up by the authorized PPAT.

Whereas in this case, the sale and purchase between the Plaintiff and the Defendant was carried out underhanded which should have been done before the PPAT, for later the PPAT made a sale and purchase deed as the basis for a request for a change of name to the Office of the National Land Agency. However, with the whereabouts of the Defendant not being known, the making of the Sale and Purchase Deed was hampered because the making of the Sale and Purchase Deed could not take place without the presence of both parties.

2. Judge's Considerations and Decisions

The judge's consideration in the Decision of the Batulicin District Court

Number 68/Pdt.G/2021/Pn Bln is to consider that the sale and purchase between Mr. AA and Mr. MA has complied with the provisions of Article 1458 of the Civil Code, where the act of buying and selling between Mr. AA and Mr. MA is legal according to law. Considering that buying and selling is a form of agreement as stipulated in Article 1313 of the Civil Code. In this sale and purchase, the parties bind themselves as seller and buyer where each party has obligations, namely the buyer is obliged to pay while the seller is obliged to deliver the goods as referred to in Article 1457 of the Civil Code. Considering that the conditions for the validity of the agreement as stipulated in Article 1320 paragraph 1 of the Civil Code where the sale and purchase between Mr. AA and Mr. MA is carried out on the basis of an agreement, both regarding the price and the goods, namely land, so that the sale and purchase of land according to the Certificate of Ownership Number 1758 in the name of Arifin Bin Mahlan between Mr. AA and Mr. MA is a legal sale and purchase. However, the sale and purchase of land must be followed by registration of the land in accordance with the provisions of Article 37 of Government Regulation Number 24 of 1997, so that the PPAT must draw up a deed of sale and purchase for the sale and purchase of land. Because in this case the sale and purchase agreement has not been drawn up by the PPAT, the transfer of land rights cannot take place, even though the sale and purchase has been carried out legally according to law.

Considering that in petition number 2 (two), there is a causal or causal relationship between the Plaintiff's losses and the mistakes or actions of Defendants I and Defendants II, so that all elements of the unlawful act are fulfilled as regulated in Article 1365 of the Indonesian Criminal Code Civil Law by the Defendants.

Considering that in the petition

number 3 (three), the sale and purchase of object cases is legal according to law.

Considering that in petitum number 4 (four), the object of land dispute is a plot of land covering an area of 225 M² (two hundred and twenty five square meters) located in Sinar Bulan Village, Satui District, Tanah Bumbu Regency which is contained in the Certificate of Property Rights Number 1758 in the name of Arifin bin Mahlan is legally owned.

Considering that in petitum number 5 (five), this decision can be used for the Process of Transferring the Name of Property Rights Certificate Number 1758 in the name of Arifin Bin Mahlan at the Land Office of Tanah Bumbu Regency to ensure certainty of the implementation of the plaintiff's rights.

Therefore, based on the argument for the lawsuit in relation to documentary evidence, witness statements and local examinations, as well as the facts in the trial, the Panel of Judges decided as follows:

1. Declaring Defendant I and Defendant II were duly and properly summoned but did not appear;
2. Granted the Plaintiff's Lawsuit in its entirety with verstek;
3. Declare that the actions of Defendant I and Defendant II who did not complete the process of returning the name of the certificate to the land object of the dispute constituted an unlawful act which brought losses to the Plaintiff;
4. Declare that the sale and purchase of the disputed object of land as contained in the Certificate of Ownership Number 1758 in the name of Arifin bin Mahlan which the Plaintiff conducted with

Defendant I is valid according to law;

5. Declare legally valid a plot of land with an area of 225 M² (Two hundred and twenty five square meters) located in the former Sungai Danau Village, now Sinar Bulan Village, Satui District, Tanah Bumbu Regency, as contained in the Certificate of Ownership No. 1758 in the name of Arifin Bin Mahlan, belongs to the Plaintiff ;
6. Declare this decision caused for the process of transferring the name of the Certificate of Property Rights Number 1758 which is still written in the name of Arifin bin Mahlan to be in the name of the Plaintiff at the Tanah Bumbu District Land Office;
7. Punish Defendant I and Defendant II jointly and severally to pay all costs incurred in this case in the amount of Rp. 6,020,000.00 (six million twenty thousand rupiah).

1. Legal Analysis

a. Verstek Decision Strength that has been inkracht towards transitional registrationrights over land

Based on the elaboration above, where the Court has summoned the Defendant in accordance with the summons dated February 23, 2021, March 16, 2021 and March 24, 2021 but was not present or did not send his legal representative or attorney to attend the trial, so that according to Article 125 paragraph (1) HIR and Article 149 R.Bg paragraph (1). In Article 125 paragraph (1) HIR explains that the Panel of Judges can pass a verstek decision if the defendant is not present or does not also represent his attorney to appear even

though he has been duly summoned.⁶, and Article 149 paragraph (1) RBg explains that if on the appointed day the defendant does not come even though he has been duly summoned, and also does not send his representative, then the lawsuit is granted without his presence (*verstek*) unless it turns out according to the district court that The lawsuit has no legal basis or is unreasonable. The defendant has been summoned three times but the defendant is still absent and has not ordered his legal representative or proxy to attend the trial which is in accordance with Article 126 HIR and so that the judge is not hasty in giving a decision because there is a possibility that the parties do not come because there are certain obstacles. Article 126 HIR reads: In the matter referred to in the two articles above, the District Court, before making a decision, orders that the party who does not appear to be summoned for the second time, appears before another trial day, which is notified by the chairperson, inside conference to the coming party, for whom the notification is effected as a summons.

Whereas because the Defendant, even though he had been legally and properly summoned, did not appear and did not order his legal representative or proxy to appear before the trial, the mediation efforts in accordance with Perma No. 1 of 2016 could not be pursued so that the trial was continued. Perma No. 1 of 2016 in Article 4 paragraph (2) confirms that disputes that are exempt from the obligation to settle through mediation as referred to in paragraph (1) include disputes whose examination is carried out without the

presence of the plaintiff or defendant who has been duly summoned.

Whereas from both written evidence and witness evidence, the Panel of Judges concluded that the Plaintiff had been able to prove all of the arguments for his lawsuit, so it was fitting that the Plaintiff's claim be granted in its entirety with *verstek*, in accordance with Article 14 paragraph (2) of Law Number 48 of 2009 concerning Power The judiciary explains that in a deliberative session, each judge is obliged to submit written considerations or opinions on the case being examined and become an integral part of the decision.⁷.

The decision was pronounced in a trial that was open to the public on Thursday, 10 June 2021 in accordance with Article 13 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power. presented in a trial open to the public⁸.

The judge in this case has examined the case and needed evidence, where the results of the evidence were used as material for consideration in deciding the case. Proof is the most important stage for examination during trial. Proof has the aim of obtaining certainty that a fact/event proposed has actually occurred, in order to obtain a fair and correct judge's decision. The judge cannot give a decision if it is not clear in his opinion that the facts/events did occur, that is, the truth is proven on the basis of evidence.

The judge in making decisions in this case has also carried out three stages that must be carried out by the judge in obtaining a correct and good decision, namely, first, the *constatir* stage. Constat legal events submitted by each party to him by seeing, acknowledging or

⁶ M. Yahya Harahap, *Place. how*.

⁸ *Place. Cit.*

⁷ Law Number 48 Tahun 2009 About *Judiciary*, matter. 6.

justifying the occurrence of the events that have been proposed. So, constituting means that the Judge sees, knows, justifies, that a legal event has occurred, the occurrence of a definite obligation and is not an allegation, which is based on means of proof.

Second, the qualification stage.classify legal events submitted by the parties to him. The event is alreadyconstatinized this is a mandatory eventqualified. classify meaning assessing the events that are considered to have actually occurred, including which legal relationship and what legal relationship, it can be said that it is also mandatory to obtain the legal relationship for events that have been constitutive.

Third, Stagemake up. Meng Constitute, namely establishing the law or providing justice to each of the litigants⁹.

Based on the ruling which reads in favor of the Plaintiff's claim in its entirety with verstek, this is based on the petitem of the lawsuit, indeed based on the argument for the lawsuit and the argument for the lawsuit has a rational, strong and objective legal basis, thus the judge can grant the lawsuit in its entirety. The verstek decision on this dispute which grants all lawsuits also fulfills the following conditions:¹⁰

- a. All of the Defendants or Defendants did not come on the day of the appointed hearing.
- b. They or he did not send his/her legal representative to appear
- c. They or they are all duly called
- d. Petitem does not violate rights
- e. The petition is justified.

Based on the evidence both juridically and physically in the form of receipts, Property Rights Certificate Number 1758/Sungai Danau on behalf of Arifin Bin Mahlan, control over land and buildings, as well as the witnesses who were present at the trial and the statements of the witnesses, the Tribunal The judge also provided legal protection by stating that the sale and purchase agreement was privately owned over 225 m2 of land and buildings² (two hundred and twenty five square meters) with Certificate of Ownership Number 1758/Sungai Danau in the name of Arifin Bin Mahlan is legal according to law.

The Panel of Judges in their Decision decided that the sale and purchase carried out under the hand was legal and therefore the buyer was recognized as a buyer with good intentions and could protect his right to register based on a Court Decision to register his land at the Office of the National Land Agency based on the relevant Court Decision.

Therefore, based on the description above, the author concludes that the judge's decision which contains the dictum in favor of the plaintiff's claim is positive, so that what is the object of the dispute remains as before in the hands of the Defendant, so in the acceptance of the lawsuit there is a correction of legal relations in a direction that benefits the Plaintiff. The correction is accompanied by the imposition of legal obligations on the Defendant in the form of a penalty for carrying out the fulfillment of something, which can be in the form of surrendering and emptying, paying a certain amount, dividingsomething or stopsomething actions and so on.

The judge has the authority to grant all of the plaintiff's lawsuit based

⁹ DaughterListen Hermawan, Mohamad Fajri Mekka Putra,*On. Cit*, p. 424.

¹⁰ *Ibid.*, p. 435

on the following criteria:¹¹

1. The argument or position of the lawsuit has a legal basis (*legal basis*) and basic facts (*actual ground*) that is clear and clear, so that the lawsuit concerns something that can be concluded clearly and clearly (*a clear and certain conclusion*) and the lawsuit does not contain any formal defects in any form, does not contain defects *ne bis in idem*, *obscure dragonfly*, premature, expired and so on.
2. All of the arguments for the lawsuit were successfully proven by the Plaintiff with evidence that reached the minimum limit of proof. Nothing has been proven, especially if the argument for the lawsuit is recognized by the Defendant purely and unanimously, then there is sufficient reason for the judge to grant the entire lawsuit.
3. What is demanded in the *petitum* is in line with or in sync with the argument for the lawsuit. There is no controversy or conflict between *posita* and *petitum* lawsuit.
4. Furthermore, what the plaintiff demands in the *petitum* is still within the limits of decency, civilization and humanity or does not conflict with the interests and public order and decency outlined in article 1337 of the Civil Code.

Based on the judge's decision above, the Panel of Judges stated that the

Plaintiff's lawsuit could be accepted and granted in full with *verstek*. Where the presence of the parties in the trial is an important thing and very influential on the agenda of the next trial. The absence of the litigants at trial, even though an official and proper summons has been made, can be considered as a lack of seriousness by the parties to defend their rights. Related to this, both the Defendant and the Plaintiff who did not provide their presence before the trial could have a different impact on the course of the next trial. Summons according to civil procedural law are conveying officially and properly to the parties involved in a case in court, so that they fulfill and carry out the things requested and ordered by the panel of judges or the court. When there is a new lawsuit, the Court Bailiff will summon the parties to come before the Court. After the parties, both the Plaintiff and the Defendant, received the summons, they were required to attend the hearing.

From the considerations and the judge's decision above, the Panel of Judges stated that the Plaintiff's lawsuit could be accepted and granted in full with *verstek*. In civil cases, the decision has been considered *in force* when referring to the provisions in **Explanation Article 195 HER**, which reads:

In civil cases, because the winning party has obtained a judge's decision that punishes the opposing party, he is entitled to use the tools allowed by law to force the opposing party to comply with the judge's decision. This right is appropriate, because if there is no possibility to coerce the convicted person then the trial will be useless.

In this case, there is no other way for the winning party than to use their rights through the mediation of the judge

¹¹ M. Yahya Harahap, *On. Cit*, matter.

to implement the decision, but the decision must actually be carried out, has obtained definite power, meaning that all legal avenues against the decision have been used, or have not been used because the time has expired, unless it is stated that the decision can be implemented immediately, even if there is resistance, appeal or cassation.

When this time is up then the consequences that arise are: Loss of the defendant's right to submit resistance, the defendant is considered to have accepted the *verstek* decision, the *verstek* decision is direct and obtains permanent legal force and against which appeals and cassation efforts are closed which results in a direct decision being attached to an executorial power absolutely¹².

Thus, a court decision can be declared to have obtained permanent legal force, if the court decision is not appealed or cassated after 14 days since the decision was pronounced or notified to the applicant, therefore the decision can be declared legally binding.

So in this case there is sufficient reason for the panel of judges to decide that the sale and purchase under the hands is legal and therefore can protect the Plaintiff's right to transfer rights over his land and land registration to the Office of the National Land Agency based on the Decision of the Batulicin District Court Number 68/Pdt.G/2021/pl month However, in this case the Decision of the Batulicin District Court Number 68/Pdt.G/2021/Pn Bln is only a basis for assessing the degree of truth and cannot directly register the transfer of land rights to the Office of the National Land Agency.

Where based on the provisions

of Article 37 paragraph (2) of Government Regulation Number 24 of 1997 concerning Land Registration, it is stated in that article that under certain circumstances as determined by the Minister of the Head of the Land Office can register the transfer of rights over a parcel of land with ownership rights, which is carried out between individuals Indonesian citizen as evidenced by a deed not drawn up by the PPAT, but which according to the Head of the Land Office is deemed sufficient to register the transfer of rights in question.¹³ Whereas in reality the Land Agency Office does not want to carry out the transfer of rights directly without the existence of a Sale and Purchase Deed from the PPAT as the basis for the transfer of buying and selling rights over the object of the dispute.

This means that the Land Agency continues to refer to Article 37 paragraph (1) Government Regulation Number 24 of 1997 concerning Land Registration, that the transfer of land rights and ownership rights to apartment units through buying and selling, exchange, income grants within the company and legal actions other transfers of rights, except for transfers of rights through auctions, can only be registered, if proven by a deed drawn up by the authorized PPAT according to the provisions of the applicable laws and regulations.¹⁴

Based on the foregoing, it can be concluded that the Court's decision is only as a level of justification, it is not enough to register the transfer of rights directly to the Office of the National Land Agency, a Deed of Sale and Purchase is still requested from the PPAT as an authorized official as written evidence

¹² M. Yahya Harahap, *On. Cit*, matter. 405.

¹³ Government Regulation of the Republic of Indonesia Number 24 of 1997, *Place. Cit.*

¹⁴ *Ibid.*

stating the sale and purchase and transfer of land rights. from the seller to the buyer in this case from the Defendant to the Plaintiff. In addition to the decision, the decision is added with a certificate with permanent legal force which is used as the basis for the transfer and registration of the transfer of rights over the land. This means that the panel of judges should not only focus on statutory regulations but also consider jurisprudence because basically they have to fulfill the sense of justice that lives in society.

One way that can be taken by the Plaintiff is to use the provisions of Article 37 paragraph (2) Government Regulation Number 24 of 1997 concerning Land Registration, it is stated in the article that under certain circumstances as determined by the Minister of the Head of the Land Office can register the transfer of rights over land freehold land, which is carried out between individual Indonesian citizens as evidenced by a deed not drawn up by the PPAT, but which according to the Head of the Land Office is deemed sufficient to register the transfer of the title in question. However, in reality the provisions used are still based on Article 37 paragraph (1) Government Regulation Number 24 of 1997 concerning Land Registration, it is stated in that article that the transfer of land rights and ownership rights to apartment units through buying and selling, exchange, income grants in companies and other legal actions of transferring rights, except for transferring rights through auctions, can only be registered, if proven by a deed drawn up by the authorized PPAT according to the provisions of the applicable laws and regulations.

From the explanation above, it can be concluded that the registration of the transfer of land rights is based on a decision *in person* which has permanent legal force (*in force*) which granted the

Plaintiff's claim entirely in relation to the fact that the whereabouts of the Defendant (the seller of the land) are no longer known has the implication that the transfer of land rights that occurred without a Sale and Purchase Deed along with the registration of the transfer of rights at the Regency/City Land Office is legal and provides legal certainty and protection law for society. This is because it is based on the verdict *versteaksaid*, the sale and purchase process that took place even without the Sale and Purchase Deed was declared valid as a sale and purchase by the Plaintiff/The buyer is declared legally as the owner of the land and can transfer the name/transfer of land rights without a PPAT deed as long as the judge's decision is binding, clear and firm. This is in accordance with Article 55 of Government Regulation Number 24 of 1997 concerning Land Registration which explains that changes to land registration data can be made based on court decisions or orders. However, in reality the local Regency/Municipal Land Office still requests a Sale and Purchase Deed made by the local PPAT, this indicates that the understanding of Government Regulation Number 24 of 1997 concerning Land Registration in article 37 paragraph (2) can become a legal basis and is further emphasized in Article 55 paragraph (1) is still not understood, causing legal confusion.

Based on the provisions of this paragraph, the Plaintiff must appear before the PPAT with the Decision of the Batulicin District Court Number 68/Pdt.G/2021/Pn Bln as a basis stating that the sale and purchase and ownership of land is legally owned by the Plaintiff and as the attorney in signing the Sale and Purchase Deed in PPAT. Thus, the Plaintiff here still gets legal protection while still obtaining legal certainty over the ownership of his land rights.

b. The legality of making the Deed of Sale and Purchase (AJB) by the PPAT is based on the verstek decision

Since the enactment of PP No. 10 of 1961 regarding Land Registration, the sale and purchase of land is carried out by the parties in front of PPAT who are in charge of making the deed.¹⁵

The deed of sale and purchase made and signed before the Land Deed Making Officer (PPAT) proves that a legal action has been taken to transfer rights over a land accompanied by payment of a price, and proves that the recipient of the rights or the buyer has become the new right holder by having evidence from ownership of the land.

There are two conditions for buying and selling land, namely:

1. Material requirements, which will determine the validity of the sale and purchase of land, include:

1) The buyer has the right to buy the land in question.

The point is that the buyer as the recipient of the right must meet the requirements to own the land he is going to buy. To determine whether or not the buyer has the right to the land he bought depends on what rights exist in the land, whether ownership rights, usufructuary rights, building use rights, or usufructuary rights. Based on Article 21 of the UUPA, only single Indonesian citizens and legal entities stipulated by the government can own land.

2) The seller has the right to sell the land in question.

The one who has the right to sell a piece of land is of course the legal holder of the right to the land, who is called the owner. If the owner of a plot of land is only one person, then he has the right to sell the land himself. However, if the owner of the land is two people, then the right to sell the land is the two people together. Can't be just one person acting as a seller.¹⁶

3) The land title in question may be traded and is not in dispute.

Regarding what lands that can be traded have been determined in the BAL, namely:

a) Property Rights (Article 20)

b) Cultivation Rights (Article 28)

c) Building use rights (Article 35)

d) Right of Use (Article 41)

If one of these material conditions is not met, it means that the seller is not a person entitled to the land he is selling or the buyer does not meet the requirements to become the owner of the land rights, or the land being traded is in dispute or is land that cannot be traded. , then the sale and purchase of land is invalid. Sale and purchase of land carried out by unauthorized persons is null and void. This means that from the beginning the law considered that there had never been a sale or purchase.

¹⁵ Adrian Sutedi. 2007. *Transfer of Land Rights and its Registration*, Jakarta : Sinar Graphics, p., 77

¹⁶ Effendi Warin. 1994. *Land Sale and Purchase Practices*, Jakarta : Raja Grafindo Persada, p.2

2. formal terms

After all the material requirements have been met, the formal requirements are the making of a sale and purchase deed of land drawn up by the PPAT and signed by the parties before the PPAT.

Based on the description above, it can be understood that the land sale and purchase agreement is an agreement in which the parties bind themselves to carry out legal acts of sale and purchase where the land becomes the object, the land sale and purchase agreement must meet the material requirements as well as the formal requirements, where the material conditions determine the validity of a land sale and purchase agreement, after the material requirements are met, the sale and purchase of the land is carried out by making a Sale and Purchase Deed of land made and signed before the PPAT who it is also a formal requirement.

Authorities of Officials Making Land Deeds Authority is a power, authority is a power possessed by one or several parties whose existence is recognized by the applicable laws and regulations.

The main duties and authorities of the PPAT are based on Article 2 PP No. 37 of 1998 concerning Regulations for the Position of Officials Making Land Deeds (PPAT), as follows:

(1) The main task of the PPAT is to carry out part of the land registration activities by drawing up deeds as evidence that certain legal actions have been taken regarding land rights or ownership rights to flats, which will be used as the basis for the registration of changes to land registration data resulting from said legal action.

(2) The legal actions referred to in paragraph (1) are as follows:

- a. buy and sell
- b. exchange
- c. grant
- d. income in the company (inbrengr)
- e. division of joint property
- f. the granting of building use rights or usufructuary rights over land with ownership rights
- g. granting Mortgage Right
- h. granting authority to burden Dependent Rights.

Based on the explanation of the Article above, in carrying out its main tasks, a PPAT has the authority to make authentic deeds regarding all legal actions as referred to in Article 2 paragraph (2) regarding land rights. In accordance with the PPAT's position as a public official, the deed he makes is given the position of an authentic deed.

Article 4 of PP No. 37 of 1998 regarding the Regulations of the Land Deed Making Office Department (PPAT):

- (1) PPAT is only authorized to make deeds regarding land rights or ownership rights to flats located within their working area.
- (2) Deeds of exchange, deed of entry into the company, and deed of distribution of joint rights regarding several land rights and ownership rights to flats, not all of which are located within the working area of a PPAT, can be drawn up by a PPAT whose working area covers one plot of land or apartment units whose rights are the object of legal action in the deed.

The authority of the Land Deed Making Officer (PPAT) in the process of buying and selling land is known that the Land Deed Making Officer (PPAT) has the main task of carrying out some of the land registration activities by making deeds as evidence that certain legal actions have been carried out regarding land rights or ownership rights over Flat Units, which will be used as the basis for the registration of changes in land registration data resulting from the said legal action.

Whereas in a land sale and purchase agreement the role of the PPAT is to participate in the land sale and purchase agreement as an intermediary as well as a witness to the sale and purchase agreement carried out by the parties who then prove it by making a Sale and Purchase Deed (AJB), before making a Sale and Purchase Deed (AJB) first PPAT examines certificates of land rights by submitting an application, received at the counter at the Office of the National Land Agency (BPN), conducts inspection of land certificates, then provides proof of inspection and takes the results of the inspection at the office of the National Land Agency (BPN), besides that the authority The PPAT in the process of buying and selling land is carrying out the main task, namely that a PPAT has the authority to make a deedauthentic regarding all legal actions regarding land rights and property rights over flats located within their working area.

Land Deed Making Officer (PPAT) who is a partner of BPN in the land sector. The legal consequences of buying and selling land carried out before the Land Deed Official (PPAT) Certainty, order, and legal protection require that the flow of law in people's lives requires evidence that clearly determines the obligations and rights of a person as a legal subject in society, as well as in the case of a land sale and purchase agreement must be entered

into.in front the authorized official, in this case the PPAT, because the Land Deed Making Officer (PPAT) has the authority to make an authentic deed in the land sector.

The PPAT deed as strong authentic evidence is required to comply with the procedures regulated in the applicable laws and regulations. A deed can be said to be a deedauthentic, when the following factors are met:

- a. The form of the deed is in accordance with the provisions of the law;
- b. The Act was made by or before a public officer;
- c. The deed was made within the jurisdiction of the public official who made the deedauthentic That.

PPAT Act as an actauthentic has the following functions:

- a. formal function (*causal formality*), which means that in order to be complete or perfect (not for legality) a legal action, a deed must be made, here the deed is a formal requirement for the existence of a legal action;
- b. Evidence function (*probations cause*), that the deed was made intentionally from the beginning for proofin later day, the written nature of an agreement in the form of a deed does not make the agreement valid, but only so that it can be used as evidencein later day. A deed basically has a variety of functions in relation to legal actions, among others, the function of determining the validity or conditions of formation and function as evidence.

The PPAT deed should be drawn up in accordance with the correct incident, status and data and supported by documents in accordance with statutory regulations.

Deviations from the procedure for making a PPAT deed, both regarding material requirements and formal requirements can result in the deed becoming legally flawed. Deviations from material requirements relate to subjects entitled to buy and sell (Buyers and Sellers) and objects that are traded not in dispute. The buyer as the recipient of the right must meet the requirements to own the land he purchased or qualify as the subject of property rights. The party entitled to sell the land in question is of course the legal right holder over the land called the owner.

The PPAT's responsibility for deed containing legal defects, can be described as follows:

- First, the accountability of the PPAT administratively.
 - a. Administrative errors or maladministration committed by the PPAT in making authentic deeds will certainly lead to certain legal consequences, namely the PPAT can be held accountable both legally (administratively) and morally.
 - b. Administrative responsibility by the PPAT related to intention, negligence and/or negligence in carrying out its authority, namely making authentic deeds, is subject to administrative sanctions.
 - c. The imposition of administrative sanctions is adjusted to the quantity and quality of violations

committed by these members.

- d. Basically, administrative sanctions that can be imposed on a PPAT who violate the PPAT Position Regulations or other laws and regulations are reprimands, warnings, temporary dismissals, honorable discharges, and dishonorable discharges. PPAT can be dismissed with no respect.
- e. Furthermore, the relevant PPAT may also be subject to administrative sanctions for violating the PPAT code of ethics (Article 6 paragraph (1) of the PPAT Code of Ethics), namely:
 - 1. Warning;
 - 2. Warning;
 - 3. Schorsing (temporary dismissal) from membership of the IPPAT association;
 - 4. Onzetting (dismissal) from membership of the IPPAT association; And
 - 5. Disrespectful termination of membership of the IPPAT association.
- f. The administrative responsibility of the PPAT is by imposing administrative sanctions in the form of a warning and/or temporary dismissal for committing a minor violation of the prohibition or obligation as a PPAT (Article 10 paragraph (4) letter c PP No.24/2016).
 - Second, PPAT's accountability in civil terms.
 - a. PPAT's responsibility related to intention,

negligence and/or negligence in making a sale and purchase deed that deviates from the formal requirements and material requirements for the procedure for making a PPAT deed, can not only be subject to administrative sanctions, but also civil.

- b. Civil liability applies if there is a civil claim from a party related to the deed of sale and purchase made by the PPAT, and the party feels disadvantaged by the presence of the deed of sale and purchase.¹⁷

If the whereabouts of the seller in the private sale and purchase agreement are unknown, then in order to transfer land rights it is necessary to file a lawsuit through the District Court, this is in accordance with Article 37 paragraph 2 of Government Regulation (PP) Number 24 of 1997 which does not explicitly state that the decision court can be used as a basis for filing a transfer of name certificate, but it can be interpreted that the name of the certificate can be reversed by letter authentic made by a non-PPAT, because the court decision includes an authentic letter or deed, so the transfer of the name of the certificate is carried out after the decision already has permanent law.

Government Regulation no. 24 of 1997, which is an implementing regulation instead of Law No. 5 of 1960. Article 37 paragraph (1) PP No. 24 of 1997 emphasized that the transfer of land rights and ownership rights to flats units through buying and selling is

proven through the making of a deed by the Land Deed Making Officer (PPAT).

If there is a transfer of land rights, it is mandatory to make a deed by PPAT (Land Deed Maker Office) as per the policy in Article 37 paragraph (1) of the Government Regulation of Land Registration.

However, the policy of Article 37 paragraph (2) of the Government Regulation on Land Registration also states that under certain conditions as stipulated by the Minister of Agrarian Affairs and Spatial Planning, the Head of the Land Office can register the transfer of rights over a parcel of land with ownership rights carried out between individual Indonesian citizen as evidenced through a deed that was not drawn up by the Official for Making Land Deeds, but based on the Head of the Land Office, the level of truth is considered sufficient to register the transfer of related rights.

The category of level of truth that is considered sufficient as is the case with the provisions of Article 37 paragraph (2) Government Regulations on Land Registration is not explained in depth in the Explanatory Article, thus determining the level of truth. is Head of the Land Office.

The validity of the sale and purchase deed is very important considering that if there is a lawsuit or rejection from one party, the sale and purchase deed is proof that there has been a transition. The PPAT who makes the Sale and Purchase Deed has a very important position because the PPAT is the official who makes and authorizes the sale and purchase or other transfer of land.

The importance of the PPAT's position in issuing the Sale and Purchase

¹⁷ ACTA DIURNAL Journal of Notary Law
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Deed requires legal responsibility for the deed made. That is why the PPAT must follow the procedures stipulated by law and various government regulations related to the transfer of ownership of land and land registration. All of these procedures must be followed so that the deed of transfer of rights made by the PPAT is legal.

Making a deed that is not in accordance with the procedures for making a PPAT deed can pose a risk to the certainty of land rights that arise or are recorded on the basis of the deed.

As emphasized in Article 6 paragraph (2) PP No. 24 of 1997 namely: "In carrying out land registration, the Head of the Land Office is assisted by a Land Deed Official (PPAT) and other officials assigned to carry out certain activities according to this government regulation and the relevant laws and regulations." The word "assisted" in Article 6 Paragraph (2) of Government Regulation No. 24 of 1997 here does not mean that the Official for Making Land Deeds is a subordinate of the Regency/City Land Office who can be ordered by him, but the Official for Making Land Deeds has independence in carrying out his duties and authority.

Duties and Authorities of PPAT Land Deed Officials in carrying out their duties must be independent and impartial to one of the parties. Whereas the position of PPAT is an independent profession, namely having the function of being a general official who, based on statutory regulations, has authority from the government through the State Minister for Agrarian Affairs/Head of the National Land Agency to make deed of transfer of rights and imposition of Mortgage on land which is evidence that authentic, has duties as *recording of deed conveyance* (recording of actions) so that it is obligatory to confirm the will of the parties who have reached an agreement between them, and is also tasked with validating legal actions

between the parties with the substance of ratifying the signatures of the parties carrying out legal actions and guaranteeing the certainty of the date of signing the deed.

Where is the problem that the author raises, that it is clear that the court's decision states that "this decision can be used for the process of transferring names certificate ownership right number 1758 which is still written in the name of Arifin Bin Mahlan becomes in the name of the Plaintiff at the Land Agency office of Tanah Bumbu Regency. But onin fact from the office of the local land agency, they are still asking for a Sale and Purchase Deed to be made by the PPAT. In which the Buyer (Plaintiff) Acts in Two Positions acting for and on behalf of the Defendants as the Seller as well as the Plaintiff acting for and on his own behalf as the buyer to sign the Sale and Purchase Deed before the Land Deed Making Officer in Batulicin for the transfer of rights over a plot of land and a house building on it which is located on RTR Provincial Road. 003RW. I Sinar Bulan Village, Satui District, Tanah Bumbu Regency, South Kalimantan Province "The legal settlement that can be carried out so that a sale and purchase that has been carried out without a PPAT sale and purchase deed can be registered at the Land Office is to make a Sale and Purchase Deed before the authorized PPAT, and with the deed of sale and purchase made before/by the PPAT, the deed of sale and purchase can be registered at the Land Office, and since the deed of sale and purchase is registered, the buyer has a definite position before the law as the legal owner of the land and building both legally and physically and legally.

Then later what appears in the deed is the name of the Buyer for both, the First Party, namely the buyer with (QQ) the name of the Seller, and the Second Party is the name of the Buyer as himself.

Regarding the validity of the Sale and Purchase Deed, it is still authentic, because in terms of making it, it still refers to Article 1868 of the Civil Code, the conditions **First** that must be fulfilled is that deed authentic must be made in the form determined by the Law, **second**; regarding the necessity of making it before or by a public official, and third; that the official must be authorized for this purpose at the place where the deed was made, has been fully complied with, so that the deed made is authentic and valid.

From case on glance can be seen that the PPAT's actions cannot be said to have violated the law, because the orders and conditions requested from the Land Agency Office to draw up a Sale and Purchase Deed, which should be based on a court decision, are sufficient as a basis for the transition because a court decision is the same as an authentic deed. Indirectly, this decision has been sidelined by the Land Office, so it does not carry out what was ordered in court.

So the deed can be said to be valid because until now, no party feels that they have been harmed, or that there has been a lawsuit filed against the PPAT concerned regarding the confusion over the existence of the deed.

The importance of knowing what is right and what is important is that it can be used as a preventive measure before unwanted things occur which can result in a case being brought to court.

CONCLUSION

Based on the author's explanation and analysis above, the following conclusions can be drawn: That the judge's decision in case Number: 68/Pdt/G/2021/PN.Moon has three basic legal values, namely justice, benefit and legal certainty. Justice where the Plaintiff feels there is justice with the judge's decision granting the entire lawsuit, in which the sale and purchase carried out under the hand is legalized by

the Court. So that it has a beneficial value for the Plaintiff to be able to process the transfer of rights which so far cannot be done for private buying and selling. And with this court decision for the Plaintiff there is a value of legal certainty as the basis for the transfer of rights where the decision has permanent legal force (*In force Bywise*). Many people still carry out land sale and purchase transactions under the hands, such as in Tanah Bumbu Regency, due to the lack of understanding of Notaries/PPATs. Buying and selling transactions under the hands are still carried out by traditional people who have minimal education, by carrying out the buying and selling process through short roads with instant cash. And the community feels that the costs incurred are not comparable to the buying and selling, so they are not in accordance with the costs incurred, such as the seller's and buyer's taxes that must be paid, and other unexpected costs, as well as the complexity of the process of transferring rights and requiring an inordinate amount of time. short. That the registration of the transfer of land rights is based on a decision *veronly* which has permanent legal force (*in force*) which granted the Plaintiff's claim entirely in relation to the fact that the whereabouts of the Defendant (the seller of the land) are no longer known has the implication that the transfer of land rights that occurred without a Sale and Purchase Deed along with the registration of the transfer of rights at the Regency/City Land Office is legal and provides legal certainty and protection law for society. This is because it is based on the verdict *versteaksaid*, the sale and purchase process that took place even without the Sale and Purchase Deed was declared valid as a sale and purchase by the Plaintiff/The buyer is declared legally as the owner of the land and can transfer the name/transfer of land rights without a PPAT deed as long as the

judge's decision is binding, clear and firm. This is in accordance with Article 55 of Government Regulation Number 24 of the Year 1997 about Land Registration which explains that changes to land registration data can be made based on a decision or court order

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