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# Legal Protection for Buyers of Joint Assets Sold Without Wife's Consent

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**ABSTRACT**

*This article aims to provide an objective explanation of the legal protection afforded to buyers who intend to transfer rights to land that is jointly owned without the wife's consent. In 2012, the late Haryanto sold the land to PT. Makmur Persada Indonesia conducted the transaction as recorded in Sale and Purchase Deed No. 53/2012, prepared by Notary/Land Deed Maker Hj. Hasnawati Juweni Shande. In 2017, Sherly initiated legal action asserting that the deed for the land sold by the deceased Haryanto reflected joint ownership resulting from his marriage to Sherly; yet, the relevant sale and purchase transaction occurred without Sherly's involvement despite her rights to the property. Normative research was conducted utilising a statutory, conceptual, and case approach. The research specifically analysed secondary data, comprising primary and secondary legal materials, which was analysed descriptively. In relation to Sherly's lawsuit, the Serang District Court issued decision Number 39/Pdt. Srg, which resulted in the rejection of the plaintiff's application. Subsequently, the plaintiff lodged an appeal against the Serang Court's decision. In 2018, Decision Number 39/Pdt/2018/PT BTN of the Banten High Court upheld the Serang District Court's decision to reject the applicant's claim entirely. The Supreme Court confirmed this judgement in 2019 with Judicial Review Decision Number 227K/Pdt/2019, thus dismissing the plaintiff's lawsuit. Thus, it seems that the verdict of dismissing the plaintiff's application safeguards the buyer.*

***Keywords:*** *Legal Protection; Buyers; Joint Assets; Without Wife's Consent;*

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## INTRODUCTION

In a legal system, it is essential to ensure guarantees, protection, and judicial clarity. In Indonesia, Article 28 D Paragraph (1) of the 1945 Constitution stipulates that "all individuals have the right to recognition, guarantees, protection, and equal treatment before the law, as well as fair legal certainty". The existence of this article is also mandated to be implemented in the land sector (Nuraini & Haryanti, 2021). Arrangements regarding land are specifically governed by Article 33, paragraph (3), in which the state exercises control over the land, water and natural resources to ensure the utmost prosperity of its citizens (Triningsih & Aditya, 2019).

If discussing Kelsen's views, it can be argued that the regulations pertaining to land outlined in the constitution necessitate additional arrangements or derivative regulations, in

keeping with the theory of the hierarchy of laws and regulations (Murphy, 2004). In 1960, regulations governing land arrangements were implemented in Indonesia with the enactment of Law Number 5 of 1960, commonly known as the Basic Agrarian Law (UUPA). The law aimed to provide legal protection, as explained by Satjipto Raharjo, safeguarding against human rights infringements and enabling the community to enjoy the rights bestowed upon them by law (Ari Atu Dewi, 2018). This is also in line with the legal duty to safeguard public welfare, which should be achieved through legal certainty ("Wantu, Fance M," 2012).

The Republic of Indonesia is a state ruled by a constitution where authority is bound by the laws (Diniyanto & Sutrisno, 2022). As a nation committed to upholding the rule of law, all branches and individuals of the government are required to abide by the relevant laws. This clear and comprehensive principle ensures that all individuals, without exception, are subject to legal regulations. Hence, Indonesia is evidently a Rechtsstaat (rule of law country) that adheres to the principles of the rule of law, specifically the crucial principles of certainty, order and legal protection, all founded on the basis of truth and justice (Wilben Rissy, 2022). This explanation, as posited by experts, acknowledges that one of the primary roles of law is to safeguard the community. A commonly-held view is that the law serves as a mechanism to protect individuals, with legal stipulations prescribing appropriate social conduct to safeguard all concerned interests (Usman, 2014). Certainty, order, and legal protection necessitate that legal proceedings involving human life necessitate clear evidence that unmistakably establishes the legal rights and obligations of individuals in society as legal entities (Sinaga, 2019).

As a legal state, Indonesia holds the constitutional responsibility of safeguarding human rights. This is achieved through the provision of legal guarantees and the ensuring of a fair process for enforcement. Additionally, upholding the rule of law offers legal certainty to its citizens and serves as a means of state protection. Thus, respecting and protecting human rights is of crucial significance within the framework of the rule of law. Satjipto Raharjo defines legal protection as an effort to safeguard the human rights of individuals who have been harmed by others. This safeguarding is also extended to the wider community to ensure that they are able to enjoy all the rights granted by law (Kunni Afifah, 2017). One of the aims and traits of law is to safeguard the community by ensuring legal certainty is established. Since its establishment as a value system, the law has introduced legal protection by granting rights and imposing obligations on every legal subject (Aswari, 2020).

Establishing legal protection, including in the realm of land purchasing and selling transactions, is accomplished through the implementation of regulations that outline the procedures and protocols for each involved party. These regulations control traffic and oversee the details of such transactions. It is well established that various laws and regulations govern land transactions in Indonesia. The Basic Agrarian Principles Regulations, outlined in Article 16 paragraph (1) of Law Number 5 of 1960, stipulate that property rights constitute a form of land

ownership. Ownership rights can be transferred according to Article 20(2), and may be passed on to other parties, including transfer of land ownership rights via purchase and sale, as stipulated in Article 26(1).

Article 26(1) of the Law Number 5 of 1960 on Agrarian Principles stipulates that property rights and control, including those for buying and selling, are transferable. To ensure legal certainty, the government has enacted Government Regulation Number 24 of 1997 on Land Registration, wherein land rights acquired through the purchase and sale process can be registered in accordance with Article 37(1). The presence of Article 37(1) correlates with the regulations outlined in Article 19(1) of the Agrarian Principles Act 1960, numbered 5. Any technical terms are initially explained in order to clarify their meaning. Land registration takes place throughout the entire territory of the Indonesian Republic and is regulated by Article 23 of the aforementioned 1960 Agrarian Principles Act. Land registration is obligatory for all transfers, cancellations and encumbrances in order to provide conclusive proof of the cancellation of ownership rights and the validity of any transfers or encumbrances. This process is essential in determining ownership.

Only Article 26 of the Basic Agrarian Law deals with the purchase and sale of property rights to land. Another article refers to it as a 'transfer' rather than a sale and purchase. The term 'transfer' denotes a deliberate legal act that involves transferring land rights to a different party, whether through sale and purchase, gift, exchange, or bequest. Although the article only mentions transfers, it encompasses the legal acquisition and disposal of land rights through buying and selling (Larasati & Rafles, 2020).

On 14th December 2012, PT Makmur Persada Indonesia completed a land transaction with the late Mr. Haryanto, in Tonjong Village/Subdistrict, Kramatwatu District, Serang Regency, Banten Province. The land acquired was 22,251M2 in total area. The transaction occurred between the seller, Alm. Mr. Haryanto, and the buyer, PT. Makmur Persada Indonesia, as identified in Sale and Purchase Deed No. 53/2012. Hj. H. M. Hasnawati Juweni Shande, S. Kn acted as the Notary and PPAT for the Serang Regency region, and drafted and registered the deed accordingly.

On December 14th, 2013, ownership was transferred from the seller to the buyer based on the Sale and Purchase Deed No. 52/2012. Afterwards, Sherly Kumalari Hardjo filed a lawsuit against Notary & PPAT Hasanawati Juweni Shande, PT. Makmur Persada Indonesia, and the Head of the Serang Regency Land Office at the Serang District Court regarding the sales transaction.

In the legal case initiated by Sherly, she is identified as the plaintiff and the lawful wife of the deceased Mr. Haryanto, a fact confirmed by their marriage certificate. As an heir, Sherly maintains that she ought to have been informed about and given consent to all of Mr. Haryanto's decisions regarding their assets. Further, Sherly emphasises that there was no prenuptial

agreement pertaining to the division of assets in their marriage. Therefore, all assets acquired during the marriage are considered joint property under Article 35 of the 1974 Marriage Law.

Sherly Kumalari Hardjo argued that the land being sold was jointly owned property obtained during her marriage to the seller, her husband Haryanto. As a result, she believed she was entitled to the land. This is laid down in Article 119 of the Civil Code, which mandates that all assets possessed by both husband and wife automatically become common property. In contrast, the Marriage Law states that property attained during matrimony is regarded as shared property, while any property acquired before marriage is considered as inheritance for each individual.

Article 35 paragraphs (1) and (2) of the Marriage Law state that any property obtained during marriage becomes joint property. It should be noted that inherited assets and gifts also fall under this provision unless otherwise stated by the parties. Moreover, inherited and gifted assets of either spouse remain under their control, unless mutually agreed otherwise.

In case of a divorce, the assets to be divided equally are half of the joint assets acquired during the marriage. To determine the inherited assets, the inheritance would be half of the joint assets plus any personal assets acquired before the marriage. However, if there's a Marriage Agreement in place, there will be no joint assets (separate property).

Sherly's legal action was filed under Article 834 of the Civil Code, which provides heirs with the right to make a legal claim for inheritance against those possessing bezit, either wholly or partly, with or without rights. Additionally, Sherly claimed in her lawsuit that the land, sold by the late Haryanto, was acquired after marriage, and therefore constitutes joint property. Hence, to transfer land rights by sale or purchase, the Land Deed Official must oversee the procedure with Sherly's consent and signature on the corresponding section of the deed. According to the plaintiff's case, the sale and purchase transaction was deemed non-compliant with legislation, rendering the transfer of land rights illicit and the act null and void.

The claimant emphasised that the sale and purchase transaction in question was not in compliance with Supreme Court Decision Number 1816/Pdt/1989, dated October 22, wherein it is stated that "the buyer cannot be deemed to have acted in good faith if the purchase was made carelessly, without scrutinising the rights at the time of purchase." Hence, the land sellers are not entitled to any protection. The Supreme Court ruling 701 mandates that in cases of joint property, including land, both spouses must give their consent for any sale or purchase. If the husband sells such jointly owned property without the wife's approval, that sale would be illegal and void. Any land certificates related to the sale or purchase without proper authorization would not receive legal recognition.

The lawsuit brought by Sherly as plaintiff against multiple defendants has been concluded at the district court level. The ruling of the Serang District Court, as outlined in Decision No. 39/Pdt. G/2017/PN. Srg on 20th November 2017, has been affirmed by the High Court, per Decision No. 60/PDT/2018/PT BTN on 6th June 2018. The verdict fully rejected the plaintiff's claim.

## METHOD

The article explores issues from an objective viewpoint, relying on essential legal materials such as legislative regulations and prior research results from secondary legal sources. Therefore, this research falls into the category of doctrinal/normative legal research utilising a legislative, conceptual, and case-based approach. Any technical terms used will be clearly explained upon their initial use. The collected information is later evaluated qualitatively and descriptively to produce a thorough and analytical presentation of the topic under examination (Mamonto, 2019).

## ANALYSIS AND DISCUSSION

### Transfer of Land Rights by the Official Making the Land Deed

One way to obtain legal certitude and safeguard landowners' rights is by instituting a land registration system (Apriani & Bur, 2020). Land registration is carried out by PPAT officials who are authorized to do so and must possess the required competencies, including specific abilities and skills in the land field. This is necessary due to potential future legal implications as deeds generated by PPAT officials are considered valid (Wahid & Kusuma Dewi, 2019).

It is widely recognised that a deed serves as documented evidence, which is signed and covers events that lay the groundwork for a contract or legal entitlements that come with specific stipulations. Since its inception, this instrument has had the primary function of being admissible evidence (Palit, 2015). One of the deeds made as legal evidence is the Authentic Deed (Dewi Kusuma, 2016). The confirmation of a deed issued by the PPAT is considered to be an authentic document as per Article 1 of the Regulation of the Head of the National Land Agency Number 1 of 2006. This regulation pertains to the implementation of Government Regulation Number 37 of 1998 which outlines the rules and regulations for officials who are responsible for executing land deeds.

The creation of a genuine document by or in the presence of the PPAT is a lawful procedure that depends not only on legislative regulations but also on the parties' intentions to preserve their rights and responsibilities, ensure order and legal protection for themselves, and the broader community. One of the legal procedures conducted by the Land Registry in the process of land buying and selling with the intention of obtaining property rights is the transfer of ownership. One of the legal procedures conducted by the Land Registry in the process of land buying and selling with the intention of obtaining property rights is the transfer of ownership. This legal procedure aims to transfer rights and is synonymous with buying and selling. It is crucial to conduct the sale and purchase of land rights prior to PPAT as evidence of compliance with the legal regulations. To execute the transaction, PPAT must produce a Sale and Purchase Deed and register it at the ATR/BPN Office located near the land being sold or purchased.

In general, purchasing and selling transactions can be carried out through two methods: orally or in writing. Oral transactions are often preferred by parties when they feel that the sale and purchase is final and no evidence is required. Legally speaking, according to Article 1320 of the Civil Code (KUHPerdata), oral agreements are deemed binding and are just as valid as written agreements (Dewi Kusuma, 2016). Although parties involved in buying and selling transactions often document them in writing to provide evidence, whether or not a dispute arises, some transactions can be carried out without any written documentation, whereas others can be formalised through notarization (Aulad et al., 2020).

Prior to the issuance of land ownership certificates, it is mandatory to publicly declare the intention to issue them according to Article 26(1) of Government Regulation Number 24 of 1997 dealing with Land Registration. The duration of this announcement is for 30 and 60 days for systematic and sporadic land registration, respectively. Such a system facilitates the opportunity for relevant parties to raise objections before the land ownership certificate is released. The certificate of ownership for land has legal and binding force, functioning as a legitimate deed. It holds full and binding evidentiary weight to the parties as to the contents within it and to the judge when presented as evidence (Aldila Rajab et al., 2020).

The publication of the AJB by PPAT confirms the completion of the land sale and purchase transaction but also allows for the possibility of cancellation. The parties involved have the right to provide justification for the request of cancellation. Cancellation means the annulment of a legal action or act, based on legitimate demands. Legal studies have established doctrines related to the invalidity of deeds, which include absolute nullity and relative nullity (Rasda et al., 2021).

**Legal Action Against Joint Assets Sold Without Wife's Consent**

Land issues are a complex phenomenon in society. One prevalent issue concerns the transfer of land rights, such as the issuance of land certificates by PPAT officials, which occasionally do not adhere to official regulations. This scenario is made more intricate if one of the parties serving as the seller passes away, and subsequently, the land being sold is subjected to legal actions due to non-compliance with statutory regulations for the sale of land with joint property status.

One of the land rights transfer cases that is being litigated due to non-compliance with laws and regulations involves the sale and purchase of land in Tonjong Village, covering an area of 22,215 m2. The case involves the plaintiff's husband, Haryanto, and the defendant II, PT Makmur Persada Indonesia. The Deed of Sale and Purchase No. 53/2012, documented by Defendant I, Notary & PPAT of Serang Regency, Mrs Hasanawati Juweni Shande, S. H, records the transaction. The marriage between Haryanto and his legal wife, the Plaintiff, was violated by Defendant II, M. Kn, without the Plaintiff's consent or knowledge. The violation occurred in

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accordance with Marriage Deed No. 26/CS./Akte 1982, issued on 14th September 1982. Deed of Sale and Purchase (AJB) No. 63/2000 was executed and granted on 16th August 2000 by the Notary and PPAT Dra. Lily Iswanti Sudjana in the Serang Regency area. It pertained to the transfer of ownership of Title Certificate No. 287, formerly under the name of Ehal Julaeha. The certificate was subsequently renamed Certificate of Title No. 287, under the name of Haryanto, upon completion of the aforementioned sale and purchase transaction. Similarly, AJB No. 53/2012 serves as a continuation of the PPJB deed which was signed by Notary Dra. Lili Iswanti Sudjana, S and acted as the initial agreement for the sale and purchase transaction. The PPJB agreement authorised the purchaser on behalf of the Plaintiff's husband. Consequently, during the transaction, only Haryanto, the seller (the Plaintiff's husband), was present before the notary when signing the PPJB. The purchaser possessed the power of attorney to conduct the sale, therefore solely defendant II acted as the seller or buyer during the legal proceedings that took place at the moment defendant, I signed the AJB. At the time of the sale and purchase, Haryanto declared that he wasn't married, which is supported by his KTP and Family Card papers. Therefore, PPAT's issuance of AJB didn't comply with the regulations regarding legally-bound couples. The transfer of assets during marriage necessitates the participation of the wife to secure legal protection, as described in Marriage Law Number 1 Year 1974. A marriage registered under this law will provide protection for both spouses, which includes their marital assets.

During the sale and purchase transaction, Haryanto stated that he was unmarried, which was confirmed by his identity card and family card documentation. As a result, the issuance of AJB by PPAT is not in compliance with regulatory provisions applicable to parties legally married. The transfer of assets within marriage necessitates the involvement of the wife to ensure legal protection, as outlined by Law Number 1 of 1974 concerning Marriage. Registered marriages under this law are granted protection for both partners, covering their marital assets (Assidik & Gassing, 2020). Under Indonesian law, it is legal to enter into a prenuptial agreement. In contrast to marriages conducted without a prenuptial agreement, assets gained during Sherly and the late Haryanto's marriage are considered joint property under Article 35 of the Marriage Law, irrespective of the spouses' employment status. The origin of the income and whose savings it is do not matter, even if only one spouse has income. Joint assets are governed by the Civil Code, specifically Article 120, and the Marriage Law. This provision clarifies that joint assets comprise of movable objects and items obtained through gift, unless the donor or testator specifies an alternative arrangement. This is applicable irrespective of whether one or both spouses have individual income during the course of marriage.

In the event of marriage, joint property cannot be separated or divided unless there is a death or divorce. The assets will be transferred to the surviving spouse and subsequently, after their death, will be divided equally among the children. In such cases, the assets will be divided equally after burial costs and payment of any shared debts. If the couple has no children, the

assets will still be divided equally. However, if the couple has children, the surviving spouse and their children shall be deemed to be heirs (Zainuddin & Jaya, 2018). It is common knowledge that the assets left behind by a deceased individual, including property and wealth, make up their estate or legacy. As per Jurisprudence Number 301 K/Sip/1961 by the Supreme Court, a widow is entitled to inherit her husband's estate and receive the same share as his biological children. The transition of the rights and duties of the inheritor to the successors, with regards to the inherited assets or objects of a deceased person, is known as an inheritance relationship.

If related to Law Number 39 of 1999 concerning Human Rights, Article 3(2) specifies that individuals possess the right to be acknowledged, guaranteed, protected, given fair legal treatment, provided with legal certainty, and treated equally under the law. Moreover, Article 36(2) prohibits arbitrary and unlawful deprivation of property. Therefore, when engaging in legal transactions, such as the acquisition and disposal of land rights, it is essential to ensure compliance with the relevant provisions. To ensure legal compliance, a sale and purchase agreement, in the form of an AJB, ought to be formulated by the PPAT, an authorized official. Additionally, observance of legal regulations when drafting the deed will grant the deed with legal validity.

**Legal Protection and Certainty for Buyers' Good Faith in Land Sale and Purchase Transactions**

The role of law is essential in establishing a state founded on the principles of popular sovereignty. An important aspect of maintaining the rule of law is safeguarding fundamental rights, including the right to property (Sugiono & M.D. Ahmad Husni, 2016). Certainty, order, and legal protection require unequivocal proof that establishes the rights and duties of individuals as legal entities in society, especially in cases that have an impact on their lives (Sinaga, 2019).

Legal protection safeguards against infringements of human rights by others, according to Satjipto Raharjo. Communities are granted this protection to ensure full enjoyment of their lawful entitlements. The provision of protection is an important objective and characteristic of the law to ensure legal certainty (Sudrajat et al., 2020).

Humans interact to meet their needs by engaging in relationships, which may be lawful or unlawful. One popular way of satisfying needs is through the creation of agreements for purchasing, selling, exchanging or renting. Communities are establishing closer ties with one another, leading to the establishment of agreements. The legal relationship between two legal parties is established by the existence of an agreement (Alwi, 2021).

Article 1313 of the Civil Code provides the following definition of an agreement: "An agreement is an action wherein one or more individuals bind themselves to one or more individuals." According to Article 1320 of the Civil Code, for the validity of a contract or agreement, agreement, competency, specific items, and a lawful cause must be met. Meeting the four

prerequisites needed for an agreement to be deemed valid ensures its legal enforceability and obliges all parties involved to adhere to it (Prawira Buana et al., 2020).

Every contract is subject to contract law, which mandates implementation in good faith as stated in Article 1338 Paragraph (3) of the Civil Code. Good faith implementation can be classified into two categories: subjective elements and objective assessments. In object law, the subjective element pertains to the honesty and integrity of the contract's originator. However, Article 1338 Paragraph (3) of the Civil Code stipulates that good faith must be objectively evaluated by adhering to norms of propriety and decency when implementing the agreement. It is important to exclude subjective evaluations which are not marked as such. The law does not provide a definition of propriety and decency, leading to a lack of provisions regarding these terms. However, propriety pertains to appropriateness and suitability, while decency refers to politeness and civility. These values described as fitting, proper, polite, and civilized are equally desired by the parties making the promise. Upholding these values in promises and contracts is crucial to maintain fairness and respect (Oktaviah & Tjempaka, 2019).

Aser Rutten also stated, "Implementation of an agreement based on good faith necessitates the creditor to exercise their rights and debtor to fulfil their obligations according to the *'Redelijkheid en Billijkheid'* principles, which direct both parties to execute the agreement in a civilised manner" (Pangaribuan, 2019). Good faith in contract performance refers to an objective standard which relies on an objective norm. The provisions of good faith pertain to unwritten norms that have become legal norms and are considered separate source of law. These norms are objective in nature because the behavior in question must conform to general assumptions about good faith, rather than being based on the parties' individual beliefs (Purwiyantiningsih, 2008). Article 1338(3) of the BW mandates that agreements are executed in good faith, entailing objective good faith particularly during the time of agreement implementation. Munir Fuadi contends that good faith is merely implicit in contract implementation and not during its formation (Arifin, 2020).

Based on SEMA No.4 of 2016, which pertains to the enforcement of the outcomes of the 2016 Supreme Court Chamber Plenary Meeting and serves as a guideline for court duties, a good faith buyer is defined in point four of the Civil Chamber Legal Formulation. This definition is established in letter a of the Civil Chamber agreement on October 9, 2014, and serves as the criteria for a good faith buyer deserving protection under Article 1338 paragraph (3) of KHUPerdata.

Carry out the buying and selling of land in compliance with statutory regulations. Processes involved are as follows: (i) obtaining land through public auction; (ii) purchasing land from a Land Deed Officer (as per Government Regulations, number 24 of 1997); or (iii) obtaining customary or unregistered land as defined by customary law. Ensure that all technical terms are explained when first used; (iv) The transaction was carried out in cash in the presence and with

the knowledge of the local Village Head/Lurah; (v) Research was conducted beforehand to confirm land ownership, which verified that the seller was indeed the rightful owner; (vi) The land was purchased at a reasonable price.

Acquire and dispose of land assets in accordance with legal procedures and documentation as mandated by applicable laws and regulations. (i) The seller is an individual who possesses legal entitlement or rights to the land subject to the transaction, proven by proof of ownership; (ii) The land or property being exchanged cannot have been seized; (iii) The land or property being exchanged cannot have been pledged or mortgaged; and (iv) For valid land, the National Land Agency (BPN) has been consulted, and the legal connection between the land and the certificate holder has been documented.

Buying and selling are common activities in society and can pose challenges, especially in land sales that involve properties not owned by the seller or when breaches occur. Article 1243 of the Civil Code outlines the regulatory provisions concerning contract defaults and breaches in detail. It is widely recognised that an event of default is activated by a prior agreement between the parties. This agreement is usually made in the form of a contract, which describes the commercial objectives of the parties and the ways in which they mutually benefit, are protected, or restricted in achieving those objectives (Yuanitasari, 2020).

There are instances in which a land seller surrenders their land entitlements without informing their successors, as illustrated in the examined case. PT Makmur Persada Indonesia, the purchaser, forged a land purchase deal with the deceased Mr Haryanto for a 22,251M2 property situated in Tonjong Village/Sub-district, Kramatwatu District, Serang Regency, Banten Province. Acronyms such as 'PT' will be elucidated upon their initial usage. PT Makmur Persada Indonesia entered a binding agreement to purchase 22,251 sqm of land from the late Mr Haryanto in Desa/Kelurahan Tonjong, Kecamatan Kramatwatu, Kabupaten Serang, Provinsi Banten. The transaction was facilitated by the legal representative of the deceased, as identified in Deed of Sale and Purchase No. 53/2012, which was created and issued by Notary Hj. Hasnawati Juweni, S. H., M. Kn., who is a Notary and PPAT for Serang Regency.

Furthermore, on 14th December 2013, the ownership was transferred from the seller to the buyer in accordance with Deed of Sale and Purchase No.53/2012. Following this, Sherly Kumalari Hardjo initiated legal proceedings against Notary & PPAT Hasanawati Juweni Shande, PT. Makmur Persada Indonesia, and the Head of the Serang District Land Office at the Serang District Court. In the legal case brought by Sherly, who is the plaintiff and was the legal spouse of the late Alm. Haryanto, as evidenced by the marriage certificate, she contends that she has the status of an heir. Thus, Sherly believes that she should have been informed of and granted permission for all of the late Mr. Haryanto's actions related to his assets. Sherly emphasised that her marriage did not establish a prenuptial agreement regarding asset separation. Henceforth, Article 35 of the 1974 Marriage Law dictates that any assets accrued during the duration of a

marriage be regarded as shared property. Sherly Kumalari Hardjo argued that the land being sold was jointly acquired during her marriage with the seller, specifically her husband Haryanto. As a result, she considered herself entitled to the land. Article 119 of the Civil Code outlines that all assets owned by married couples become joint property by default. By contrast, the Marriage Act states that property gained throughout the marriage is considered communal, while any property obtained before the marriage is seen as inherited property for each person.

Buyers acting in good faith are granted legal protection. The person suffering losses in this case must be shielded as they made the purchase in good faith. Article 1338 paragraph (3) outlines and a Court Circular confirms this claim. Moreover, Agung Number (SEMA) No.4 of 2016 supports the implementation of the Supreme Court Chambers' 2016 Plenary Meeting outcomes, providing additional backing for the aforementioned legal protection. Legal protection encompasses actions aimed at ensuring legal entities and individuals are granted safety, ease and legal security. This involves safeguarding interests, protecting assets and providing entitlements, while avoiding subjectivity and maintaining a formal tone throughout. Legal protection pertains to measures taken to ensure the safety, comfort and legal certainty of individuals and legal entities. Its aim is to prevent arbitrary actions.

The aim of economic law's theory of legal protection is to integrate and coordinate various interests. It is crucial to balance all involved parties since protecting one interest may require limiting another. The underlying principle for legal protection is the concept of benefit, which includes consumer safety and security. This case concerns PT. As a purchaser with genuine intentions, Makmur Persada Indonesia seeks equity, while the essence of legal safeguarding must provide certainty in law (Putri & Amalia, 2019).

Therefore, based on the decisions of the Serang District Court No. 39/Pdt. G/2017/PN. Srg on 20th November 2017 and the High Court Decision No. 60/PDT/2018/PT BTN on 6th June 2018, which unanimously rejected the applicant's claim, it can be argued that the buyer has been afforded legal protection. However, the Cassation Decision of the Supreme Court of the Republic of Indonesia, as stated by the panel, accepted the cassation petition submitted by Sherly Kumalawati Hardjo, who was formerly the plaintiff. The ruling of the Banten High Court, case number 60/PDT/2018/PT. BTN. dated June 6th, 2018, which affirmed the verdict of the Serang District Court case number 39/Pdt. G/2017/PN Srg. dated November 20th, 2017, was subsequently annulled. The Panel granted PT Makmur Persada Indonesia's request for reconsideration in the Judicial Review decision and nullified the Supreme Court Decision Number 227 K/Pdt/2019 issued on 12th February 2019, which nullified the Banten High Court Decision Number 60/PDT/2018/PT. BTN. of 6th June 2018, together with Serang District Court Decision Number 39/Pdt. G/2017/PN. Srg.

The Supreme Court's Judicial Review decision, which has the force of res judicata, confirms that PT. Makmur Persada Indonesia acted in good faith in the land sale and purchase

transactions with the seller of the late Haryanto. This is evidenced by the proper completion of all transaction stages with the involvement of authorised personnel, namely notaries/land deed drafters. The Supreme Court's decision to reject the plaintiff's claim underscores the legal protection afforded to the buyer, in particular PT. Makmur Persada Indonesia.

## CONCLUSION

With regard to Sherly's claim that the property sold by the deceased Haryanto to PT. Makmur Persada Indonesia is joint property, it should be noted that the purchase transaction was conducted in good faith and involved an authorised Notary/Land Deed Drafting Official. The transaction will be conducted by the Notary/Land Deed Official in accordance with the law. This includes the provision of formal and material evidence to confirm that the land belonged to the deceased and that they were unmarried. All stages of the process are designed to prove this fact, thereby removing the need for the consent of any other party, including Sherly. The Judicial Review decision of the Supreme Court, which dismissed the claimant's application, provides protection for purchasers acting in good faith. Nevertheless, this case should serve as a reminder for future improvements. One solution could be to address the legal gap by giving notaries greater powers of identification in land transactions.

## REFERENCE

Aldila Rajab, R., Eko Turisno, B., & Doramia Lumbanraja, A. (2020). Sertifikat Hak Atas Tanah Dalam Kepastian Hukum Pendaftaran Tanah. *NOTARIUS*, *13*(2), 642–654. https://doi.org/10.14710/nts.v13i2.31085

Alwi, I. F. (2021). Perlindungan Hukum Terhadap Pembeli Yang Beritikad Baik Dalam Kaitannya Dengan Akta Jual Beli Yang Dibatalkan. *Pararuyuang Law Journal*, *4*(2), 209–228. https://doi.org/10.31869/plj.v4i2.2468

Apriani, D., & Bur, A. (2020). Kepastian Hukum Dan Perlindungan Hukum Dalam Sistem Publikasi Pendaftaran Tanah Di Indonesia. *Jurnal Bina Mulia Hukum*, *5*(2), 220–239. https://doi.org/10.23920/jbmh.v5i2.11

Ari Atu Dewi, A. A. I. (2018). Aspek Yuridis Perlindungan Hukum dan Pemenuhan Hak Penyandang Disabilitas. *Pandecta: Research Law Journal*, *13*(1), 50–62. https://doi.org/10.15294/pandecta.v13i1.13933

Arifin, M. (2020). Membangun Konsep Ideal Penerapan Asas Iktikad Baik Dalam Hukum Perjanjian. *Jurnal Ius Constituendum* |, *5*, 2580–8842. https://doi.org/10.26623/jic.v5i1.2119

Assidik, A., & Gassing, A. Q. (2020). Tinjauan Hukum Islam dan Hukum Positif Terhadap Prernuptial Agreement atau Perjanjian Pranikah. *QadauNa*, *1*(1), 1–16. https://doi.org/10.24252/qadauna.v1i1.11424

Aswari, A. (2020). Perlindungan Hukum Tanpa Penegakan Hukum Dalam Sengketa Transaksi Elektronik. *Kertha Patrika*, *42*(2), 163. https://doi.org/10.24843/kp.2020.v42.i02.p05

Aulad, M. I., Midu, A., & Burhamzah, O. D. (2020). Penyelundupan Hukum melalui Perjanjian Pengikatan Jual Beli dengan Kuasa Jual di Hadapan Notaris. *Amanna Gappa*, *28*(2), 117–131. https://doi.org/10.20956/ag.v28i2.12713

Dewi Kusuma, M. N. (2016). Kedudukan Hukum Akta Risalah Rapat Umum Pemegang Saham (RUPS) Melalui Media Elektronik. *Arena Hukum*, *9*(1), 112–131. https://doi.org/10.21776/ub.arenahukum.2016.00901.7

Diniyanto, A., & Sutrisno, W. (2022). Pengawasan Pemilihan Umum di Era Post-Truth: Problem, Tantangan, dan Strategi. *Jurnal Adhyasta Pemilu*, *5*(1), 44–58. https://doi.org/10.55108/jap.v5i1.79

Larasati, A., & Rafles, R. (2020). Peralihan Hak Atas Tanah Dengan Perjanjian Jual Beli Menurut Hukum Pertanahan Indonesia. *Zaaken*, *1*(1), 127–144. https://doi.org/10.22437/zaaken.v1i1.8288

Mamonto, M. A. W. W. (2019). Legal Politics of Simplifying Political Parties in Indonesia (Case Study of 2004-2014 Election). *Substantive Justice Journal of Law*, *2*(1), 1–20. https://doi.org/10.33096/substantivejustice.v2i1.25

Murphy, T. (2004). Hans Kelsen'S Pure Theory of Law. *Western Jurisprudence*, 251–268. http://ssrn.com/abstract=2616604

Nuraini, L., & Haryanti, D. (2021). Perlindungan Hukum Masyarakat Terhadap Hak Atas Tanah Ber-Status Quo Di Pulau Galang. *Jurnal Hukum Ius Quia Iustum*, *28*(2). https://doi.org/10.20885/iustum.vol28.iss2.art4

Oktaviah, O., & Tjempaka, T. (2019). Perlindungan Hukum Terhadap Pembeli Yang Beritikad Baik Dalam Perjanjian Pengikatan Jual Beli (PPJB) (Studi Putusan Peninjauan Kembali Nomor: 534PK/Pdt/2017). *Jurnal Hukum Adigama*, *2*(2), 1–21. https://doi.org/10.24912/adigama.v2i2.6685

Palit, R. S. (2015). Kekuatan Akta Di Bawah Tangan Sebagai Alat Bukti Di Pengadilan. *Lex Privatum*, *3*(2), 137–145. https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/7842

Pangaribuan, T. (2019). Permasalahan Penerapan Klausula Pembatasan Pertanggungjawaban Dalam Perjanjian Terkait Hak Menuntut Ganti Kerugian Akibat Wanprestasi. *Jurnal Hukum & Pembangunan*, *49*(2), 443. https://doi.org/10.21143/jhp.vol49.no2.2012

Prawira Buana, A., Hasbi, H., Kamal, M., & Aswari, A. (2020). Implikasi Pelaksanaan Perjanjian Jual Beli Telepon Seluler Ilegal (Black Market). *Jurnal Cendekia*, *6*(1), 124–133. https://doi.org/10.3376/jch.v6i1.287

Purwiyantiningsih, E. (2008). Prinsip Itikad Baik Berdasarkan Pasal 251 KUHD Dalam Asuransi Kerugian. *Jurnal Dinamika Hukum*, *8*(3), 241–248. https://doi.org/10.20884/1.jdh.2008.8.3.81

Putri, H. S., & Amalia, D. (2019). Perlindungan Hukum Terhadap Keselamatan Dan Keamanan Pengemudi Ojek Online Untuk Kepentingan Masyarakat. *Pembangunan Hukum Indonesia*, *1*(3), 392–403. https://doi.org/10.14710/jphi.v1i3.392-403

Rasda, D., Rahman, M. S., Tijjang, B., Dan, A., Ruang, T., Badan, /, Nasional, P., & Parepare, K. (2021). Tanggung Jawab Pejabat Pembuat Akta Tanah (PPAT) Dalam Pendaftaran Peralihan Hak Milik Atas Tanah. *Jurnal Litigasi Amsir*, *9*(1), 34–40. http://journalstih.amsir.ac.id/index.php/julia/article/view/55/47

Sinaga, N. A. (2019). Implementasi Hak Dan Kewajiban Para Pihak Dalam Hukum Perjanjian. *Jurnal Ilmiah Hukum Dirgantara*, *10*(1), 1–20. file:///Users/admin/Downloads/400-1333-2-PB%20(1).pdf

Sudrajat, T., Kunarti, S., & Nasihuddin, A. A. (2020). Perlindungan Hukum dan Pemenuhan Hak Pekerja pada Program Jaminan Kesehatan Nasional. *Pandecta Research Law Journal*, *15*(1), 83–92. https://doi.org/10.15294/pandecta.v15i1.23647

Sugiono, B., & M.D. Ahmad Husni. (2016). Supremasi Hukum dan Demokrasi. *Ius Quia Iustum*, *7*(14), 71–82. https://doi.org/10.20885/iustum.vol7.iss14.art5

Triningsih, A., & Aditya, Z. F. (2019). Pembaharuan Penguasaan Hak Atas Tanah Dalam Perspektif Konstitusi (Renewing of Land Rights in Indonesia's Constitutional Perspective). *RechtsVinding*, *3*(8), 329–349. https://doi.org/10.33331/rechtsvinding.v8i3.355

Usman, A. H. (2014). Kesadaran Hukum Masyarakat Dan Pemerintah Sebagai Faktor Tegaknya Negara Hukum Di Indonesia. *Wawasan Yuridika*, *30*(1), 26–53. https://doi.org/10.25072/jwy.v30i1.74

Wahid, A., & Kusuma Dewi, E. (2019). Kekuatan Alat Bukti Akta Otentik Terhadap Akta Pejabat Pembuat Akta Tanah (PPAT) Berdasarkan Peraturan Pemerintah Nomor 24 Tahun 2016 Juncto Pasal 1868 KUHPerdata. *Jurnal Kajian Hukum Islam*, *4*(2), 205–219. https://doi.org/10.24235/mahkamah.v4i2.5372

Wantu, Fance M. (2012). *Dinamika Hukum*, *12*(3), 479–489. https://doi.org/10.20884/1.jdh.2012.12.3.121

Wilben Rissy, Y. Y. (2022). Pendekatan Negara Hukum Krisis Ekonomi: Sebuah Jalan Tengah. *Masalah-Masalah Hukum*, *51*(1), 10–20. https://doi.org/10.14710/mmh.51.1.2022.10-19

Yuanitasari, D. (2020). Pengembangan Hukum Perjanjian Dalam Pelaksanaan Asas Itikad Baik Pada Tahap Pra Kontraktual. *Acta Diurnal*, *3*(2), 292–304. http://jurnal.fh.unpad.ac.id/index.php/acta/article/view/228/168

Zainuddin, Z., & Jaya, N. (2018). Jaminan Kepastian Hukum Dalam Perkawinan Melalui Itsbat Nikah (Studi Di Pengadilan Agama Makassar Kelas IA). *Riau Law Journal*, *2*(2), 187. https://doi.org/10.30652/rlj.v2i2.6086

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# LEGAL REVIEW OF WILLS BASED ON CIVIL LAW

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## ABSTRACT

Creating a will, also known as a testament, is a crucial legal process through which an individual shapes the destiny of their assets posthumously. Inheritances frequently give rise to a multitude of legal and social complications, necessitating the implementation of clear-cut regulations in accordance with prevailing legal norms. Wills serve as a vital instrument in averting conflicts among heirs, enabling the fulfillment of the deceased's final wishes. This process allows for a structured distribution of assets, thereby minimizing disputes and familial discord. However, the formulation of a will is subject to specific limitations and constraints, mandating adherence to relevant statutory provisions. These constraints may include requirements for witnesses, mental capacity assessments, and the legal age at which one can create a will. Discrepancies between legal statutes and societal customs regarding wills cast doubt on the continued suitability of existing regulations within the evolving legal landscape. Therefore, delving into the regulation of wills as stipulated in the Civil Code (Kitab Undang-Undang Hukum Perdata) is imperative to gain insight into the contemporary legal framework governing this matter in Indonesia. Thorough research into these legal provisions will shed light on their applicability and efficacy, aiding in the development of a more relevant and coherent legal framework for wills in Indonesian society. Such an updated framework would serve to better protect the rights and interests of individuals, ensuring that their final wishes are carried out smoothly and justly, while also reducing the potential for legal disputes and societal conflicts.

***Keywords:*** *inheritance, civil law, heirs*



## INTRODUCTION

A will is an important legal instrument in the civil law system. This will allows someone to arrange the distribution of their property or assets after death according to personal wishes. Wills reflect the principle of autonomy of will in civil law, where individuals are given the freedom to determine the fate of their property after death. Wills are generally made with the aim of maintaining confidentiality and the heir's policies regarding the distribution of inherited assets. The heirs want the contents of the will to remain confidential until it is read, so that the heirs cannot know for sure what will happen to their inheritance. This often creates conflict between the heirs and other parties who may receive the inheritance based on the contents of the will(Boyoh, 2021).

In many cases, conflicts arise because some parties feel disadvantaged or doubt the truth of the contents of the will made by the testator. They may feel that the contents of the will are not in accordance with the testator's intentions or that there may be an element of abuse or pressure that influenced the making of the will (Lukmanto & Chalim, 2017). Civil law is an integral part of the legal system that regulates relationships between individuals in society, including regulations relating to ownership, contracts, inheritance, and so on. In this context, a will becomes a relevant tool to regulate the transfer of property ownership after the death of the owner (Kurniawan et al., 2022).

However, the implementation of a will does not always go smoothly, and legal issues often arise related to the interpretation, implementation, or validity of a will. Therefore, in this legal

review, various aspects related to wills based on civil law will be discussed, including the process of making a will, its legal requirements, the rights and obligations of the parties involved, as well as legal remedies that can be taken in cases of dispute (Fhadel Usman, 2018).

This review will examine the various legal regulations governing wills in civil law, as well as identifying current legal developments and legal practices that are relevant in the context of wills. Apart from that, comparisons with civil law in other countries will also be an important part of this discussion (Istiawati, 2021). The existence of a will can indeed help avoid conflicts between heirs in dividing inheritance. This is because heirs tend to respect the testator's last wishes, which have been expressed through a will. However, to carry out the distribution of inheritance in a practical and fair manner, the law regulates restrictions related to making a will. These limitations may not conflict with applicable law (Paendong & Perdata, 2021).

Regarding the differences between applicable legal provisions and legal practice in society, this can raise questions about the relevance and adequacy of existing legal provisions in dealing with developments in society and the law. Because civil law regulates various aspects of making wills and distribution of inherited assets, it is important to consider whether existing legal provisions are still in line with societal developments and whether there needs to be any changes or improvements to these regulations.

The aim of this research is to analyze the legal construction of wills in the Civil Code and the legal requirements that must be met for a will to be considered valid under civil law, and how this is implemented in practice.

## METHOD

This research is normative research. This research will focus on the analysis of legal documents, such as statutory regulations and relevant legal literature. The aim is to understand the legal framework governing wills in civil law and analyze the related legal aspects. This research will access and analyze various relevant legal documents, such as laws, government regulations and utilize legal literature related to wills in the context of civil law. Additional data sources will involve access to library materials in libraries or legal databases, as well as utilization of online sources such as legal databases and legal repositories. In addition, where possible, interviews with legal experts who have specialized knowledge of civil law and wills will also be used. With this data collection technique, this research aims to provide an in-depth understanding of the legal aspects related to wills in civil law and analyze them comprehensively to support a better understanding of this topic in the context of civil law.

## RESULTS AND DISCUSSION

### Legal Construction of Wills in the Civil Code

A will or testament is a statement that expresses a person's wishes about what should happen after he or she dies. This is essentially a one-way statement (eenzijdig) that can be revoked by the maker at any time (Al mulia et al., 2022). Therefore, it needs to be understood that not everything someone wants in a will can always be permitted or carried out. Article 872 of the Civil Code states that a will or testament must not violate the law. In a testament, there is what is called an "erfslling," who will receive part or all of the inheritance. The person appointed to receive this inheritance is called "testamentaire erfgenaam," that is, the recipient of the

inheritance in accordance with the will, and has the same rights and obligations as heirs under the law, known as "onder algemene titel."

Wills in the Civil Code are regulated from Article 874 of the Civil Code to Article 1002 of the Civil Code. These articles have various provisions which can be summarized as follows:

General Provisions (Article 874 of the Civil Code to Article 894 of the Civil Code): This section regulates the basic principles regarding the inheritance of someone who dies. In essence, inheritance belongs to the heirs, as explained in Article 874 of the Civil Code. A will or testament is a document that contains a person's statement about what they want to happen after death, and this document can be revoked by the maker in accordance with Article 875 of the Civil Code (Indradewi, 2022). Further provisions regarding wills and their arrangements can be found in the following articles in the Civil Code. Property can be regulated in various ways in the Civil Code, either in general, on the basis of general rights, or on the basis of special rights, in accordance with the provisions of Article 876 of the Civil Code (Lukmandan et al., 2019).

In addition, Article 877 of the Civil Code regulates that provisions contained in a will can be made for the benefit of the closest blood relatives or heirs according to law. This means that a will can be used to benefit heirs who are more closely related to the testator in accordance with legal provisions.

Article 878 of the Civil Code regarding provisions in a will for the benefit of poor people indicates that a will can be used for charitable purposes without the need for further explanation. This means that wills can be made for the benefit of all people regardless of their religion.

A person's ability to make or take advantage of a will is regulated in Article 876 of the Civil Code to Article 906 of the Civil Code with various provisions, which can be summarized as follows: The person who wants to make or revoke a will must have reasoning ability. This means that they must have sufficient mental capacity to make these decisions. In general, everyone can make a will and benefit from a will, except those who are declared incompetent to do so in accordance with existing provisions (Rivayanti, 2018).

Minors who have not reached the full age of eighteen are not permitted to make a will. The heir's competence is assessed based on his condition when the will was made. These provisions do not apply to persons who have the right to benefit from foundations. A husband or wife cannot benefit from their partner's will if their marriage was consummated without valid permission. A husband or wife who has children or descendants from a previous marriage and then remarries may not make a will to their partner. A husband or wife may only donate or bequeath items from the joint assets, but the recipient of the will cannot claim the items unless the testator has given them to the heirs in accordance with their respective shares in the joint assets (Mahmurodhi, 2021).

Minors may not gift or bequeath anything for the benefit of their guardian, except after their guardian has closed their trust accounts. Some exceptions apply, such as blood relatives of minor children in the immediate upward line who are still their guardians (Hamdani et al., 2022). Minors may also not make gifts for the benefit of their teachers or guardians, except in cases where the gift is made in return for services received. These articles explain in detail the provisions relating to a person's ability to make or take advantage of a will in the Civil Code. These provisions cover aspects such as age, mental capacity, marriage consent, types of

benefits that can be bequeathed, and various exceptions that apply in certain cases. All of these regulations aim to maintain justice and protect the rights of heirs and prevent misuse of wills in civil law (M. WIJAYA. SM. WIJAYA. S, 2014).

The Legitime Portie or Part of the Inheritance According to the Act and the Grant Deductions that Reduce the Legitime Portie are regulated as follows:

1. Article 913 of the Civil Code explains that the Legitime Portie or inheritance portion in accordance with the law is a portion of the assets that must be given to the heirs in a straight line according to law. The person who dies is not permitted to determine anything regarding this section, either through a gift during life or a will.
2. Article 915 of the Civil Code confirms that provisions in a will for the benefit of the closest blood family or closest blood and heirs are deemed to have been made for the benefit of the heirs in accordance with the law.
3. Article 916 of the Civil Code states that in the line of descent and above, Legitime Portie is always equal to half of what is regulated by law for each blood relative in that line in the distribution of inheritance due to death.
4. Article 916a of the Civil Code confirms that children born outside of marriage but who have been recognized as legitimate receive half the share as regulated by law.
5. Article 917 of the Civil Code regulates that to calculate Legitime Portie, it is necessary to pay attention to who is the heir in the line of descent.
6. Article 918 of the Civil Code states that if there are no blood relatives in the upper or lower lineage and there are no illegitimate children who are recognized as legitimate, then the inheritance must be gifted.
7. Article 919 of the Civil Code explains that if a determination by deed or will grants usufructuary rights that are detrimental to Legitime Portie, the heirs who are entitled to receive a share of the inheritance can choose to carry out the determination.

Inherited assets may be gifted, in whole or in part, either by deed between the living or by will. The gift can be given to people who are not heirs, the heir's children, or to other individuals who have rights to the inheritance. However, this does not reduce the obligation to take into account certain conditions that must be considered in accordance with Article 920 of the Civil Code. Gifts to living heirs that are detrimental to the Legitime Portie's share can be reduced (Article of the Civil Code). To determine the amount of Legitime Portie, the first step is to add up all the assets that existed when the testator died (Article 922 of the Civil Code)(Hariyanto, 2021).

The transfer of an item with interest is considered a gift (Article 923 of the Civil Code). If the donated item is lost without the heir's fault before the heir dies, then the loss of the item will be included in the Legitime Portie calculation (Article 924 of the Civil Code). Gifts given during life may not be reduced, unless it is proven that all the assets that have been willed are not sufficient to guarantee Legitime Portie (Article 925 of the Civil Code).

Return of goods in their original condition is mandatory (Article 926 of the Civil Code). Deductions from what is bequeathed must be done without distinguishing between one heir and another (Article 927 of the Civil Code). Grant recipients who use the donated goods must return the proceeds from that use (Article 928 of the Civil Code). Items in their original condition must be returned to the inheritance (Article 929 of the Civil Code).

**Legal claims for reduction or return can be filed by the heirs against third parties who control the goods.**

In these articles, it is explained in detail the forms permitted in making a will and the related procedures. Article 930 of the Civil Code confirms that one deed cannot be used by two or more people to make a will. Then, Article 932 of the Civil Code gives the heir the option to make a will in various forms, namely a graphic deed (written in his own hand), a public deed (made before a Notary or authorized official), or a secret deed or deed closed.

Furthermore, Article 933 of the Civil Code explains that a written will must be completely handwritten by the testator and signed by him. Article 934 of the Civil Code regulates that a graphic will that has been kept by a Notary has equal legal force to a will made by public deed.

Article 935 of the Civil Code gives the testator the right to request the return of his or her written will at any time, as long as the purpose is for the accountability of the Notary. Article 936 of the Civil Code explains that a letter written in the testator's own hand in full can be considered a will.

Finally, Article 937 of the Civil Code regulates the procedure for discovering a will after the death of the testator. If a will is found after death, the letter must be submitted to the Probate Court in the jurisdiction where the inheritance was made.

These provisions provide a clear legal framework regarding the form of wills and their management, thus regulating the process of making, finding and monitoring wills appropriately (Monica Sriastuti Agustina, 2020).

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Legal Requirements That Must Be Fulfilled in Order for a Will to be Considered Valid Based on Civil Law, and How They Are Implemented in Practice

For a will to be considered valid under civil law, several conditions must be met. The following are the legal requirements for a will and how they are implemented in practice:

1. Valid Form
    a. Olographic Deed: A will must be written in the testator's own hand and signed by him (Article 933 of the Civil Code). The implementation is that the testator must

personally write the entire will and sign it with his own hand. In practice, this means that there is no interference from other parties in making a will.

b. General Deed: A will made before a Notary or authorized official (Article 932 of the Civil Code). The implementation is that the heir must go to a Notary or authorized official to make a will. The notary will ensure the validity of the will and record it in a public deed.
c. Secret Deed or Closed Deed: A will can be made in the form of a secret deed or closed deed (Article 932 of the Civil Code). This means that a will can be kept secret and will only be opened at a specified time or after the testator's death.

2. No Joint Will Making

It is not permitted for two or more people to make wills in the same deed (Article 930 of the Civil Code). This means that each heir must make their own will, there can be no collaboration or joint will making.

3. Proper Storage

An olographic will after being deposited by a Notary has the same power as a will made by public deed (Article 934 of the Civil Code). This means that the Notary has an obligation to store the olographic will safely and appropriately.

4. Return of the Will by the Testator

The testator has the right to request the return of his or her written will at any time for the purposes of Notary accountability (Article 935 of the Civil Code). This gives the testator flexibility to manage his or her will.

5. Reporting Wills Found After Death

If a will is found after the testator's death, the letter must be submitted to the Inheritance Hall in the jurisdiction where the inheritance was made (Article 937 of the Civil Code). The implementation is that the party who finds an unknown will must report it to the competent authority.

## CONCLUSION

In the context of civil law in Indonesia, a will is an instrument regulated by the Civil Code. A will, or what is often referred to as a testament, is a written statement used by someone to regulate the fate of their assets after they die. The main function of this will is to provide clarity regarding how a person's inheritance will be distributed to the desired beneficiaries after the testator's death. In the Civil Code, the rules regarding wills are regulated starting from Article 874 of the Civil Code to Article 1002 of the Civil Code. These articles outline the basic principles related to the inheritance of someone who has died. The main principle is that inheritance belongs to the heirs. A will is a legal instrument that allows the testator to express his wishes regarding how the inherited property will be divided.

In the context of making a will, the Civil Code recognizes several valid forms. First, there is an olographic will which must be completely handwritten by the testator and signed by him, in accordance with Article 933 of the Civil Code. Furthermore, a will can be made in the form of a general deed, namely made before a Notary or authorized official (Article 932 of the Civil Code). Finally, there is a form of secret deed or closed deed which allows the testator to keep the will confidential and will only be opened at a specified time or after the testator's death. Where in making a Deed or storing a Will, a Notary must be involved.

Apart from the form provisions, there are also provisions that regulate who has the right to make or receive benefits from a will. Article 876 of the Civil Code to Article 906 of the Civil Code regulates this matter in detail. One of the principles underlying this provision is that the testator must have sufficient mental capacity to make decisions regarding the will. This involves considering age, marriage consent, types of benefits that can be bequeathed, and so on.

In the case of gifts, the Civil Code regulates that inherited assets can be gifted during life or through a will. However, there are provisions that must be taken into account regarding gift deductions which can reduce the legal share for heirs under the law. All of these provisions are designed to maintain a balance between the heir's rights to manage his inheritance and the rights of heirs and to prevent misuse of wills in civil law.

## REFERENCES

Al mulia, M., Borahima, A., & Sitorus, W. (2022). Akibat Hukum Akta Wasiat Yang Tidak Dilaporkan Kepada Daftar Pusat Wasiat Oleh Notaris. *JUSTISI*, *8*(1). https://doi.org/10.33506/js.v8i1.1481

Boyoh, N. (2021). Kekuatan Hukum Surat Wasiat Sebagai Bukti Kepemilikan Tanah Warisan Yang Sah Menurut Kitab Undang-Undang Hukum Perdata. *Artikel Skripsi Mahasiswa Pada Fakultas Hukum Unsrat*, *VIII*(4).

Fhadel Usman, M. (2018). Pembuatan Surat Wasiat Dalam Perencanaan Waris Menurut Kitab Undang-Undang Hukum Perdata. *Lex Privatum*, *Vol 6*(5).

Hamdani, H., Mansar, A., & Erwinsyahbana, T. (2022). Hibah Wasiat Bagi Anak Yang Lahir Dari Perkawinan Tidak Tercatat. *Legalitas: Jurnal Hukum*, *14*(1). https://doi.org/10.33087/legalitas.v14i1.324

Hariyanto, B. (2021). Tinjauan Yuridis Terhadap Pembagian Harta Waris Beda Agama Menurut Kitab Undang Undang Hukum Perdata (Kuh Perdata) Dan Kompilasi Hukum Islam (KHI). *IUS*, *8*(2). https://doi.org/10.51747/ius.v8i2.688

Indradewi, A. A. (2022). Akibat Hukum Terhadap Ahli Waris Berkewarganegaraan Asing Atas Pembuatan Wasiat Oleh Pewaris Warga Negara Indonesia Di Luar Negeri. *Jurnal Privat Law*, *10*(1).

Istiawati, S. (2021). Kedudukan Perjanjian Dalam Kitab Undang-Undang Hukum Perdata Dalam Sengketa Konsumen. *Juripol*, *4*(1). https://doi.org/10.33395/juripol.v4i1.11034

Kurniawan, Hafidz Ma'ruf, & Busthami Dachran S. (2022). Pembagian Harta Warisan Pasangan Suami Istri Yang Berbeda Agama Perspektif Hukum Islam Dan KUHPerdata. *Journal of Lex Generalis (JLS)*, *3*(10).

Lukmandan, A., Studi, P., Kenotariatan, M., Hukum, F., & Diponegoro, U. (2019). Implementasi Hak-Hak Ahli Waris Erfstelling Terhadap Harta Warisan. *Notarius*, *12*(1).

Lukmanto, A., & Chalim, M. A. (2017). Tinjauan Hukum Dan Akibatnya Terhadap Wasiat Tanpa Akta Notaris Ditinjau Dari Kompilasi Hukum Islam Dan Kitab Undang-Undang Hukum Perdata. *Jurnal Akta*, *4*(1). https://doi.org/10.30659/akta.v4i1.1550

M. WIJAYA. SM. WIJAYA. S. (2014). Tinjauan Hukum Surat Wasiat Menurut Hukum Perdata. *Ilmu Hukum Legal Opinion*, *2*.

Mahmurodhi, M. (2021). Kedudukan Hukum Anak Angkat Menurut Hukum Perdata Dan Kompilasi Hukum Islam Dalam Kewarisan. *Jurnal Ilmiah Hukum Dan Keadilan*, *8*(2). https://doi.org/10.59635/jihk.v8i2.156

Monica Sriastuti Agustina. (2020). Tinjauan Hukum Surat Wasiat Dalam Penyerahannya oleh Orang Lain ke Notaris. *Jurnal Fakultas Hukum Universitas Tulungagung*, *6*(1).

Paendong, H. K. V, & Perdata, K. U. H. (2021). Hak Ahli Waris Atas Harta Warisan Berdasarkan Testamen (Surat Wasiat) Menurut Kitab Undang-Undang Hukum Perdata. *Lex Privatum*, *9*(1).

Rivayanti, M. K. (2018). Pelaksanaan Surat Wasiat Berdasarkan Kitab Undang-Undang Hukum Perdata Dalam Praktek Kenotariatan. *Jurnal Hukum Lex Privatum*, *6*(1).

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# POSITION OF THE DEED OF GRANT WHOSE OBJECT VIOLATES THE ABSOLUTE RIGHTS (LEGITIEME PORTIE) OF THE HEIRS

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## ABSTRACT

A living person may give away their property by grant or gift instead of distributing it to their heirs through inheritance. When both the grantor and grantee are still alive, a grant is a legal action that aims to transfer ownership rights that are knowingly transferred to another party. Grants may be made to whoever the grantor chooses, but it must be stated that the grant's terms cannot be harmful to other people. The Burgerlijk Wetboek, or Civil Code, governs these issues. By being careful not to violate the legitimate component (absolute part). Problems with legal protection and legal repercussions for heirs about grants that hurt the absolute portion (Legitieme Portie) of the heirs will occur if they breach the law's restrictions. By looking into secondary data or library resources, the normative juridical research methodology was applied to create this paper. As a result of identifying the absolute portion (Legitieme Portie), as specified in Article 913 of the Civil Code, various provisions in the Civil Code (Burgerlijk Wetboek) have given the heirs legal protection. Then, if the heirs feel wronged by the grant or grant or based on a will or who has passed away, the legal implications of a grant deed that breaches Legitieme Portie be revoked.

***Keywords:*** *grant deed, inheritance law, Legitime Portie*



## INTRODUCTION

Indonesia is a country of law, this is in accordance with the provisions contained in Article 1 paragraph (3) of the 1945 Constitution. This provision emphasizes that all aspects and activities in society, government and the state must be based on law. Law is a reflection of the values that exist in society. In general, there is an opinion that good law, as envisioned by social society, requires rules (law) as a tool. In every social life there will be a difference between behavior and things required by legal rules. There is a situation that cannot be avoided, so that tension arises because there are differences in interests (Soekanto, 2007).

These differences can cause disputes or tension with each other. Disputes or tensions can even occur within a family. Problems that often arise in a family are related to assets, especially in terms of inheritance. Inheritance is a process in which the property or wealth (rights and obligations) of a person who has died transfers ownership rights to the heirs of the person who has died. Provisions for civil inheritance law are regulated in the Civil Code. Inheritance issues arise when someone dies, without someone passing away there will be no discussion of inheritance issues as explained in Article 830 of the Civil Code (Burgerlijk Wetboek).

The principle of inheritance according to the Civil Code (Burgerlijk Wetboek) is through blood relations, this can be seen in the provisions of Article 832 of the Civil Code (Burgerlijk Wetboek) which explains that those entitled to be heirs are blood relatives, either those who are valid according to law or outside of marriage, and the husband or wife who has lived the longest. According to Article 874 of the Civil Code (Burgerlijk Wetboek), all assets inherited from an heir who dies belong to his heirs, unless the heir has legally determined this in a will (testament). What is meant by a will (testament), based on Article 875 of the Civil Code

(Burgerlijk Wetboek) is a deed containing a person's statement about what will happen after death, and which can be withdrawn.

A living person may not distribute his assets to heirs (children, husband/wife, parents) based on inheritance because such a gift can be said to be a gift or gif. The grants themselves have various types, namely as follows (Utami, 2016):

1. Formal grants, namely grants that must be in the form of a Notarial deed regarding immovable goods (except land which must be in the form of a PPAT deed based on the Basic Agrarian Law Number 5 of 1960).
2. Material gifts, namely all gifts based on generosity that benefit the recipient of the gift, and the form is not tied to a particular form.
3. Will grant (legaat), namely a grant regarding items whose ownership rights only transfer to the grantee after the grantor dies.

Based on Article 1666 of the Civil Code (Burgerlijk Wetboek), a gift is an agreement whereby the grantor, during his lifetime, free of charge and irrevocably, hands over an object for the needs of the grantee who accepts the gift. The gift must be made while the donor is still alive and must be done with a Notarial Deed as regulated in Article 1682 of the Civil Code (Burgerlijk Wetboek).

Grant agreements include formal agreements that require a notarial deed or authentic deed. The conditions for the validity of an agreement itself are regulated in Article 1320 of the Civil Code (Burgerlijk Wetboek). A will or gift deed that violates the legitieme portie means that it does not meet certain object requirements or has no cause or cause is not permitted and is considered null and void by law. However, in practice, the Supreme Court created a new rule that a will/testament deed is valid even if it contains a violation of the legitieme portie of the heir, as long as it has not been canceled by the injured heir so that it nature becomes revocable. As happened in Supreme Court Decision Number 1261 K/Pdt/2013. In its considerations, the Panel of Judges thought that the gift/gift of the object of the dispute by Defendant I to Defendant VI which was a legacy was contrary to the legitimacy of Plaintiff's portie, therefore Plaintiff must receive a share of the legacy.

Grants can be given to anyone by the Grantor, but it is important to note that the terms of the grant must not be detrimental to other parties. The heirs of the grantor have the right to obtain legal protection for any assets owned by the grantor. In civil inheritance law, there are provisions on absolute rights for certain heirs to a certain amount of inherited assets or provisions that prohibit this. The absolute right of the heir is called Legitieme Portie.

According to Prof. Subekti, S.H., Legitieme Portie is part of the inheritance which has been determined to be the right of the heirs in line and cannot be erased by the person who left the inheritance (Subekti, 1985). Based on Article 913 of the Civil Code (Burgerlijk Wetboek), Legitieme portie or inheritance part according to law is the part and property that must be given to the heirs in a straight line according to law, in respect of which the person who dies does not may stipulate something, either as a gift between living people or as a will.

The conditions for someone to be able to claim their absolute share (legitime portie) are that they must fulfill the following conditions/criteria (Mauliana & Khisni, 2017):

1. The person must be blood relatives in a straight line up and down. These are what are called Legitimaris. So, in this case, the position of the husband/wife is different from that of the children and parents of the heir. Even though after 1923 Article 852a of the

Civil Code (Burgerlijk Wetboek) equalized the position of husband/wife with children (so that the husband/wife received the same share as the children), the husband/wife was not Legitimate. Likewise, the heir's siblings are not Legitimate. Therefore, wives/husbands and siblings do not have legitimate shares or are called non-legitimate (do not have absolute shares).

2. The person must be an heir according to the law (ab intestato). Seeing these conditions, not all blood relatives in a straight line have the right to an absolute share. Those who own it are only those who are also heirs according to the law (ab intestate).
3. These people, even without considering the testator's will, are heirs by law (ab intestato).
4. Based on these provisions, it can be understood that even though the Grantor/Heir has the freedom to make a gift deed to anyone, the Grantor/Heir still has to pay attention to the absolute rights (legitieme portie) of his heirs. Thus, giving a gift is closely related to inheritance.

It still often happens in society that gifts are made in violation of the heir's absolute share (legitime portie) of their inheritance so that the heir does not get a share of their rights, which ultimately gives rise to demands from other heirs. Public understanding of gifts and inheritance often causes problems. The incompatibility between grant-giving that occurs in the community and the provisions of Legitieme Portie causes legal problems to arise.

Heirs who suffer losses can claim their rights according to the procedures regulated by law. So, from the background above, the author is interested in creating this journal with the title "The Position of Grant Deeds whose Object Violates the Absolute Rights of Heirs (Legitieme Portie)".

## METHOD

The type of research used in this writing is normative juridical, which means that this research refers to the analysis of legal norms to find the truth based on scientific logic from the normative side, where research is carried out by examining library materials or secondary data. This research is also called library legal research, namely by studying books, statutory regulations, and other documents related to this research.

The primary legal material used in this research is the Civil Code (Burgerlijk Wetboek). Meanwhile, secondary legal materials are based on theories, concepts, literature, and legal journals related to the legal issues discussed in this research.

The research approach used in this research uses 3 (three) types of approaches, namely:

1. Legislative regulation approach (statute approach),
2. Conceptual approach, and
3. Analytical approach (analytical approach).

## RESULTS AND DISCUSSION

### Legal protection for heirs regarding grants that harm the absolute rights of heirs (Legitieme Portie)

Legal protection refers to rights recognized and protected by the legal system of a country or jurisdiction. The purpose of legal protection is to ensure that an individual's basic rights and interests are protected from actions that may harm or violate those rights. With legal protection, every individual has the right to obtain justice and legal certainty. According to Setiono, legal

protection is an action or effort to protect society from arbitrary actions by authorities that are not by the rules of law, to create order and tranquility to enable humans to enjoy their dignity as human beings (Rabbani Deden Rafi, 2021).

According to the Big Indonesian Dictionary (KBBI), legal protection is a place of refuge, actions (things and so on) to protect. The linguistic meaning of the word protection has similar elements, namely elements of protective action, and elements of ways of protecting. Thus, the word protects against certain parties by using certain methods.

According to Philipus M. Hadjon, legal protection is the protection of honor and dignity, as well as the recognition of human rights possessed by legal subjects based on legal provisions against arbitrariness. Furthermore, Hadjon classifies two forms of legal protection for the people based on the means, namely (DOKTER & ANWAR, 2022):

a. Preventive protection, namely the people are allowed to submit their opinions before the government's decision takes a definitive form to prevent disputes from occurring.
b. repressive protection aims to resolve disputes. Legal protection is a guarantee provided by the state to all parties to be able to exercise their legal rights and interests in their capacity as legal subjects.

From the understanding of legal protection described above, it is very important to know the form of protection provided by law in matters of inheritance, so that heirs receive justice and legal certainty when an inheritance dispute occurs. In the Civil Code (Burgerlijk Wetboek), inheritance law is regulated in Book II concerning Objects. According to the Civil Code (Burgerlijk Wetboek), the right to inherit is the material right to the assets of a person who dies as regulated in Article 582.

The inheritance system adopted by the Civil Code (Burgerlijk Wetboek) is individual-bilateral, meaning that each heir has the right to demand the distribution of inheritance and obtain the share that is his right, both inheritance from his father and inheritance from his mother. The existence of the right for heirs to claim their share of inheritance shows that the nature of inheritance regulated in the Civil Code (Burgerlijk Wetboek) is individual. However, an agreement can be made not to carry out the separation (division) of the inherited assets for 5 (five) years, and each time that period is exceeded it can be renewed (Article 1066 paragraph (3) and paragraph (4) of the Civil Code ( Burgerlijk Wetboek)) (Djaja S. Meliala, 2007).

Inheritance law is a provision that regulates the transfer of assets (rights and obligations) from someone who dies to one or more people. Another definition, Inheritance Law is all legal regulations that regulate the assets of someone who dies, namely regarding the transfer of these assets, and the consequences for those who acquire them, both in relationships between them and with third parties. From this definition, several terms can be recognized, namely (Djaja S. Meliala, 2007):

a. Heir: a person who dies and leaves assets to another person.
b. Heirs: people who are entitled to inherited assets.
c. Inherited assets: wealth left behind in the form of assets and liabilities (boedel).
d. Inheritance: the process of transferring a person's assets (rights and obligations) to his heirs.

From the above definition, one of the elements in which inheritance occurs is the existence of an heir, namely a person who dies. Based on this, a person who is still alive cannot distribute

his assets to his heirs based on inheritance, because gifts made while he is still alive can be said to be gifts.

A gift is a gift of an object voluntarily and without compensation from someone to another person who is still alive to own. Article 1666 of the Civil Code (Burgerlijk Wetboek) explains that (Anshori, 2018):

"Gift is an agreement in which a donor hands over an item free of charge, without being able to withdraw it, for the benefit of the person who receives the gift. The law only recognizes gifts between living people."

According to civil law, gifts consist of two, namely gifts and testamentary gifts. Both grants provide an asset from the Grantor to the Grantee. The Civil Code (Burgerlijk Wetboek) regulates testamentary gifts as stated in Article 957 of the Civil Code (Burgerlijk Wetboek) which explains that:

"A testamentary gift is a special assignment, where the testator gives to one or several people certain items, or all items and certain types; for example, all movable or fixed assets, or usufructuary rights over some or all of the goods."

Based on Article 957 of the Civil Code (Burgerlijk Wetboek), one of the heir's rights can arise before the inheritance is opened, so that before he dies the heir has the right to state his will in a will (testament). The definition of a will is the gift of an object from the testator to another person or institution which will take effect after the testator dies (Notaria et al., 2020).

When giving a gift, it must be done with a Notarial Deed as regulated in Article 1682 of the Civil Code (Burgerlijk Wetboek) which states that no gift except as intended in Article 1687 can be done without a Notarial Deed, the minut (original document) must be kept at Notary and if this is not done then the gift is invalid. Article 1688 of the Civil Code (Burgerlijk Wetboek) states that a gift cannot be revoked and therefore cannot be canceled, except in the following cases:

a. if the conditions of the gift are not fulfilled by the recipient of the gift;
b. if the person given the gift is guilty of committing or participating in the commission of an attempted murder or other crime against the person of the donor;
c. if the donor falls into poverty and the donor refuses to provide for him.

Article 1688 states that a gift cannot be revoked or canceled, then, Article 1676 explains that everyone can give and receive gifts except those who are declared by law to be incapable of doing so. Based on Article 1676, the grantor has freedom in terms of making a gift deed and to whom the gift is given, however, the Civil Code (Burgerlijk Wetboek) has regulated the absolute share (Legitieme Portie) of heirs as legal protection for their inheritance rights so that they do not disadvantaged.

The heir, as the owner of the property, has the absolute right to arrange whatever he wishes regarding his property. Heirs who have absolute rights to an unavailable part of the inheritance are called legitimate heirs. Meanwhile, the part that is not available from the inheritance which is the right of the legitimate heirs is called Legitieme Portie.

Legitieme portie or part of inheritance according to law is part and property that must be given to the heirs in a straight line according to law, in respect of which the person who dies may not assign anything, either as a gift between living people as a will as regulated in Article 913 of the Civil Code (Burgerlijk Wetboek). Based on Article 913, the heir has an absolute

share that must be fulfilled and the heir cannot determine anything that could harm the heir's absolute share, including in the form of a gift.

Heirs are family members of a deceased person who replace the position of heir in the field of wealth law due to the death of the testator (WATI, 2021). According to the Civil Code (Burgerlijk Wetboek) the classification of heirs is divided into the following:

a. The first group, namely children and their descendants in a straight line downwards. Starting in 1935, the inheritance rights of the longest surviving husband or wife were equated with those of a legitimate child (Article 852a of the Civil Code (Burgerlijk Wetboek)).
b. The second group is, parents and siblings of the heir; In principle, the parent's share is equal to the share of the heir's siblings, but there is a guarantee that the parent's share cannot be less than a quarter of the inheritance.
c. The third group, Article 853 and Article 854 of the Civil Code (Burgerlijk Wetboek), if there is no goal. First and goal. Second, the inheritance must be divided into two (kloving), half for the paternal grandparents, and the other half for the maternal grandparents.
d. Fourth group, the heir's relatives in the line diverge to the sixth degree.

Based on Article 913, it can be interpreted that to have the right to Legitieme Portie, the heir must be a blood relative in a straight line. In this case, the position of husband/wife is different from children, husband/wife are not in a straight line downwards, they are in a line to the side. Therefore, the wife/husband does not have a legitimate portie. Provisions regarding Legitieme Portie are regulated in Article 914 of the Civil Code (Burgerlijk Wetboek) as follows:

"In a straight line downwards, if the inheritor only leaves behind the only legitimate child, then the absolute share consists of half of the inheritance, which the child in the inheritance should have received. If he leaves behind two children, then each of them has an absolute share in the inheritance. If three or more children are left behind, then three-quarters is the absolute share of what each of them should inherit in inheritance. In the term child, this also includes all of his descendants, in whatever degree, however, these latter are only counted as replacements for the child whom they represent in the inheritance of the person who inherits it."

Based on this article, it can be described as follows:

a. If there is only one legitimate child, then the legitieme portie amount is ½ of the actual share that will be obtained as an heir according to law.
b. If there are two legitimate children, then the amount of legitieme portie is 2/3 of the portion that can be obtained as heirs according to the provisions of the law.
c. If there are three or more legitimate children, then the amount of legitieme portie is ¾ of the portion that will be obtained by the heir according to the provisions of the law.

From the explanation of this article, it can be seen the absolute parts of the heirs. then the Civil Code (Burgerlijk Wetboek) regulates the absolute size of the heir's share which cannot be reduced and regarding the heir's obligations. The heir's obligations in question are restrictions on his rights as determined by law. The heir must pay attention to the existence of a legitieme portie, namely a certain part of the inheritance that cannot be written off by the person leaving the inheritance (Marthianus, 2019).

Therefore, a person who gives a gift may make a gift to anyone voluntarily while taking into account that the amount of property to be given must not harm the absolute share (legitimate portion) of the heir, this is also by the provisions of Article 881 paragraph (2) The Civil Code (Burgerlijk Wetboek) states that by appointing an heir or providing such a gift, the heir may not harm his heirs who are entitled to an absolute share. The purpose of the law in regulating the provisions of legitiemie portie is to prevent and provide legal protection for heirs from the heir's actions that benefit other people.

**Legal Consequences of a Grant Deed that Affects the Absolute Rights of the Heirs (Legitieme Portie)**

According to Soeroso, a legal consequence is an event that arises from a cause, namely an action carried out by a legal subject, whether an action that is by the law or an action that is not by the law. In other words, a legal consequence is the result of a legal act and a legal act is every action of a legal subject whose consequences are regulated by law. These consequences can be considered to be the will of the person carrying out the act. So that a consequence is caused by law for actions carried out by legal subjects (Marzuki & Sh, 2021; Soeroso, 2017).

It is clearer that legal consequences are all the consequences that occur from all legal actions carried out by legal subjects against legal objects or other consequences caused by certain events that the law in question has determined or considered as legal consequences (Is & S HI, 2017; Tutik, 2006).

Based on the definition above, legal consequences are a term used to refer to the consequences or results of actions or events involving legal actions. The act of gift is a legal act that is realized by the existence of a deed or gift agreement. Grant agreements include formal agreements that require a notarial deed or authentic deed so that it can be said that this notarial deed or authentic deed is an absolute requirement for the existence of a deed or grant agreement. The conditions for the validity of an agreement are regulated in Article 1320 of the Civil Code (Burgerlijk Wetboek), namely:

a. the agreement that binds them;
b. the ability to create an agreement;
c. a particular subject matter;
d. a reason that is not forbidden.

The function of a gift deed is apart from being a condition for stating the existence of a legal act, it is also a means of proving that an agreement has been entered into. The requirement to make a gift deed (authentically) is strengthened by the provisions of Article 1682 of the Civil Code (Burgerlijk Wetboek).

Referring to Article 1666, a gift is a voluntary gift of an object. In this case, it means that the existence of a gift agreement creates an agreement as intended in Article 1234 of the Civil Code (Burgerlijk Wetboek), that the agreement is intended to give something, to do something, or not to do something.

If the deed of gift violates the legitime portie or absolute part, it will give rise to legal consequences but it depends on the legitimary's attitude, namely if the legitimary can simply accept the facts without suing the court or filing a lawsuit in court regarding his absolute part. A testamentary gift deed functions as a person's last wish to another person regarding their inheritance. In this way, disputes between heirs can be avoided.

A gift deed is a form of agreement as intended in Article 1320 of the Civil Code (Burgerlijk Wetboek). An agreement that does not meet the legal requirements as regulated in Article 1320 of the Civil Code (Burgerlijk Wetboek), both subjective and objective requirements will have the following consequences (Suryono, 2014):

a. Non-existence if there is no agreement then no agreement arises
b. Vernietigbaar or can be cancelled, if the agreement was born because of a defect of will (wilsgebreke) or because of incompetence (onbekwaamheid). Article 1320 conditions 1 and 2, means that this is related to subjective conditions so that the contract can be canceled.
c. Nietig or null and void by law, if there is an agreement that does not fulfill certain object requirements or does not have a cause or the cause is not permitted (Article 1320 paragraphs 2 and 4), this means that this is related to the objective elements, so the result is that the agreement is null and void by law.

In written law, referring to the explanation and provisions in Article 1320 of the Civil Code (Burgerlijk Wetboek), a will or gift deed that violates the legitieme portie is considered "null and void" by itself and is deemed to have no binding force from the start. However, in practice, the Supreme Court created a new rule that a deed of will/testament gift is valid even if it contains a violation of the legitieme portie of the heir, as long as it has not been canceled by the injured heir so that its nature is no longer "null and void" but becomes "cancelable" In this way, the deed remains valid as long as it is not disputed by the heirs. And every provision taken by the heirs regarding the legitieme portie is subject to the provisions of Article 920 of the Civil Code (Burgerlijk Wetboek) (Mauliana & Khisni, 2017), and therefore remains valid until the legitimaris challenges it. However, Article 920 of the Civil Code (Burgerlijk Wetboek) regulates that:

"Gifts or bequests, whether between living persons or by will, which are detrimental to the legitime portion of the inheritance, may be reduced at the time the inheritance is opened, but only at the request of the legitimaries and their heirs or their successors. However, the legitimaries shall not enjoy any deduction for their losses owed to the testator."

Referring to the formulation of Article 920 of the Civil Code (Burgerlijk Wetboek), if the gift is made to the heirs but it turns out to violate the provisions of the existing absolute section, then the heirs who receive the gift will be subject to withholding of the testamentary gift or incorruption if it is proven to have violated the provisions absolute part. However, if the gift is given to other than the heirs, then it is natural that the assets given must be returned to the heirs without any interruption.

As for how to calculate the size of the absolute share, you must pay attention to the provisions of Article 916 a of the Civil Code (Burgerlijk Wetboek). According to the provisions of this article, if there are absolute heirs and non-absolute heirs, the gift must not violate the absolute provisions specified. Determining the absolute share without taking into account the existence of heirs is not absolute. If the gift exceeds the absolute portion determined without taking into account non-absolute heirs, the excess can be claimed back by the absolute heirs (Mauliana & Khisni, 2017).

The provisions resulting from the cancellation of an agreement are regulated in Article 1451 of the Civil Code (Burgerlijk Wetboek), namely regarding returning to the original position as it was before the agreement occurred. Based on Article 921 of the Civil Code (Burgerlijk

Wetboek), the amount of the absolute or legitimate portion is calculated as follows (Paendong & Perdata, 2021; Sanafiah, 2022):

a. Calculating all grants that have been given by the testator during his lifetime, including grants given to one or other absolute or legitimate heirs;
b. This amount is added to existing inherited assets;
c. Then, deduct the heir's debts;
d. From the results of the addition and subtraction above, the absolute or legitimate share of the absolute heir or legitimacy who claims his share is then calculated.

Basically, in implementing the gift itself, when there is a division of inheritance, the thing that needs to be done is to carry out the gift itself by Article 958 of the Civil Code (Burgerlijk Wetboek). Then, a new calculation is carried out on the legitieme portie of the legetimaris heirs, if there is a violation/shortcoming of the legitieme portie of the legetimaris heirs then, it is necessary to incort/withhold the non-legitimate heirs and then if there are still deficiencies then incorting is carried out again / deductions from third parties as grant recipients

## CONCLUSION

Based on the results and discussion described above, it can be concluded that the Deed of Grant is a form of something as intended in Article 1320 of the Civil Code (Burgerlijk Wetboek). The position of a Deed of Grant whose object violates the absolute rights of the Heirs (Legitieme Portie) is null and void (Nietig) if it refers to the written legal provisions in Article 1320 of the Civil Code (Burgerlijk Wetboek). However, in practice, the Supreme Court created a new rule whereby a gift deed can be canceled (Vernietigbaar). The Civil Code (Burgerlijk Wetboek) has provided legal protection to heirs, by stipulating that the absolute share of heirs must be given to the heirs in a straight line according to the law as regulated in Article 913 of the Civil Code (Burgerlijk Wetboek), where the heir may not designate something, either as a gift between living people or as a will. This is in line with the provisions of Article 881 paragraph (2) of the Civil Code (Burgerlijk Wetboek) that by appointing an heir or providing a gift, the heir may not harm the heirs who are entitled to an absolute share. Then the legal consequences of the gift deed which are detrimental to Legitieme Portie's heirs depend on the heirs' attitude towards this matter. As long as the heirs do not dispute this, the gift deed will remain valid. However, referring to Article 920 of the Civil Code (Burgerlijk Wetboek), if the heirs feel that they have been disadvantaged by a gift or bequest, whether between those who are still alive or by a will, then the heirs can file a claim for cancellation of the gift to the court.

## REFERENCES

Anshori, A. G. (2018). Filsafat Hukum Hibah dan Wasiat di Indonesia. In *Gadjah Mada University*.

Djaja S. Meliala. (2007). Perkembangan hukum perdata tentang orang dan hukum keluarga. In *book*.

Dokter, T., & ANWAR, Y. (2022). Perlindungan Hukum Pidana Terhadap Korban. *Core. Ac.Uk*, *6*(2).

Is, M. S., & S HI, M. H. (2017). *Pengantar ilmu hukum*. Kencana.

Marthianus, W. S. (2019). Kedudukan Legitieme Portie dalam Hal Pemberian Hibah Wasiat Berdasarkan Hukum Waris Burgerlijk Wetboek. *Notaire*, *2*(2). https://doi.org/10.20473/ntr.v2i2.13438

Marzuki, P. M., & Sh, M. S. (2021). *Pengantar ilmu hukum*. Prenada Media.

Mauliana, & Khisni, A. (2017). Akibat Hukum Akta Hibah Wasiat Yang Melanggar Hak Mutlak Ahli Waris (Legitime Portie). *Jurnal Akta*, *4*(4).

Notaria, I., Priandhini, L., & Dewi, R. I. (2020). Akibat Hukum pembatalan Akta Hibah Yang Objeknya Harta Warisan Yang Belum Dibagi Kepada Ahli Waris Dan Melebihi Legitieme Portie Berdasarkan Putusan Mahkamah Agung Nomor 2954 K/PDT/2017. *Notaria*, *2*(3).

Paendong, H. K. V, & Perdata, K. U. H. (2021). Hak Ahli Waris Atas Harta Warisan Berdasarkan Testamen (Surat Wasiat) Menurut Kitab Undang-Undang Hukum Perdata. *Lex Privatum*, *9*(1).

Rabbani Deden Rafi (Universitas Padjadjaran). (2021). Supremasi Hukum. *Jurnal Supremasi Hukum*, *11*(1).

Sanafiah, F. (2022). Studi Komparatif tentang Warisan Ahli Waris dalam Kandungan Menurut Hukum Islam dan Kitab Undang-Undang Hukum Perdata (KUH Perdata). *JIIP - Jurnal Ilmiah Ilmu Pendidikan*, *5*(9). https://doi.org/10.54371/jiip.v5i9.980

Soekanto, S. (2007). *Penelitian hukum normatif: Suatu tinjauan singkat*. Raja Grafindo Persada.

Soeroso, R. (2017). Pengantar Ilmu Hukum, Cet. *Kedelapan Belas, Jakarta: Sinar Grafika*.

Subekti, R. (1985). Aneka perjanjian. *(No Title)*.

Suryono, L. J. (2014). Pokok-pokok Hukum Perjanjian Indonesia. *Ibnu Teguh Yogyakart,*.

Tutik, T. T. (2006). *Pengantar ilmu hukum*.

Utami, D. S. (2016). Akibat Hukum Pemberian Hibah Yang Melebihi Batas Legitime Portie (Analisis Kasus Putusan Pengadilan Negeri Nomor 109/PDT.G/2009/PN.MTR. Mengenai Hibah). *Kajian Hukum Dan Keadilan IUS*, *4*(2).

Wati, A. N. (2021). Kajian Hukum Mengenai Ahli Waris Pengganti Dalam Hukum Waris Islam Dan Hukum Kewarisan Perdata. *Juristic*, *1 No. 1*(1).

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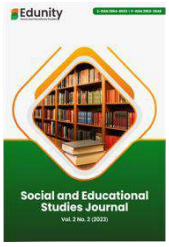


# CASE STUDY OF BENGKULU DISTRICT COURT DECISION NUMBER 14/Pdt.G/2023/PN Bgl DATED SEPTEMBER 27, 2023

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## ABSTRACT

Ownership of land for houses is generally freehold. Mastery over. The property rights are proven by the Certificate of Property Rights issued by the National Land Agency (BPN). In ancient times, some people did not understand the legalization of ownership of land rights. The transfer of ownership rights to land can be done in various ways, one of which is buying and selling. Buying and selling transactions are one of the transactions that are very well known in traditional and modern society. Not everyone understands and realizes the need when carrying out sales and purchase transactions on land must be legalized by the authorities so that the transactions that occur are carried out under the hands. Bengkulu District Court Decision Number 14/Pdt.G/2023/PN Bgl dated September 27, 2023, namely land transactions that occur by the Buyer buying from the Seller for Rp. 2,000,000 (two million rupiah) based on the Certificate of Rights Disclosure dated December 11, 1989, at the time of the certificate transaction not yet in the name of the Seller, this can be seen from the certificate issued in 1994 while the transaction has been carried out in 1989. After the sale and purchase transaction was carried out, the Buyer had controlled land with an area of approximately 660 M2 (six hundred and sixty square meters) located in Bengkulu City. Due to the Buyer's ignorance and/or negligence towards the sale and purchase of the land, a Deed of Sale and Purchase has not been made, while at this time the Buyer wants to process the change in the Seller's certificate, its existence is not found. So because there is no legal legitimacy, the validity of the owner of the land needs to get a decision from the Court

**Keyword:** Property Rights; Buying and Selling; Transfer of Rights

## Introduction

Indonesiahas had a national law that regulates land, namely the Basic Agrarian Law for more than 60 years where in Article 4 paragraph (4) junto Article 4 paragraph (1), states the definition of the earth (called land), is the surface of the earth and the body of the earth below and under water. Understanding land includes the surface of the earth on land and the surface of the earth that is under water including sea water. Furthermore, based on the Government Regulation of the Republic of Indonesia Number 18 of 2021 concerning Management Rights, Land Rights, Flats and Land Registration Article 1 paragraph (1) Land is the surface of the earth both in the form of land and covered with water, including space above and within the body of the earth, within certain limits whose use and utilization are directly or indirectly related to the use and utilization of the earth's surface

Basically, land is a human dwelling where shelter is one of the basic human needs consisting of clothing, food and shelter (the need for shelter). Ownership of land is important because ownership regulates the right to control the land. In addition, the function and existence of land is also to meet needs in order to realize welfare for all Indonesian people who are united in the Indonesian Nation (Peturun, 2023). As long as the wealth contained therein, namely the earth (including the understanding of land), water and space fully belongs to the Indonesian nation, then there is an obligation to be utilized as much as possible for the sake of justice, interests and welfare of the Indonesian people without exception as referred to in the 5th (five) Pancasila sila (Foskstt, n.d.). Provisions related to ownership of land rights have been regulated in Article 16 Paragraph (1) of the UUPA which states that:

Land rights as referred to in article 16 paragraph (1) are:
a. Proprietary;
b. Right to Use;
c. Right to Build;
d. Right of Use;
e. Leasehold;
f. the right to open land;
g. the right to collect forest products;
h. other rights not included in the above rights to be established by law as well as temporary rights as mentioned in article 53.

Based on the understanding of the UUPA above that property rights are part of land rights. Property rights in English are called right *of ownership* while in Dutch *eigendomstrecht* is the right to own land (Toruan, 2022). The definition of property rights is listed in various laws and regulations as follows:

1. Article 570 of the Civil Code, Property Rights are:
   The right to enjoy the usefulness of an existence freely and to act freely on that property with full sovereignty, provided that it does not contradict the laws of public order and does not interfere with the rights of others.

2. Article 20 of the Law, Property Rights are:
   The hereditary, strongest and fullest right that a person can have over land, keeping in mind the provisions contained in Article 6 of the UUPA.

There are four elements listed in this definition, namely (Stricture, n.d.):
a. position of property;
b. the subject and;
c. its restrictions

The position of property rights, namely:
a. hereditary;
b. Strongest; and
c. fullest

Hereditary, which is in English, is called from generation to *generation*, while in Dutch, it is called *hereditaire* meaning that property owned by a person can be transferred from his parents to his children and his children to his grandchildren. The strongest in English, called *strongest*, while in Dutch, called *sterkste* means that the owner of land rights has high power to manage or utilize or transfer his own land.
The fullest in English, called the *fullest*, while in Dutch it is called *volle teugen* meaning that the owner of the freehold land, owns the land completely. Property rights contain the right to do or use the land parcel concerned for any purpose. The relationship is not only ownership, but psychological-emotional (Suartining & Djaja, 2023). Property rights are only intended for sole citizenship, namely Indonesia Ownership of land for houses in general is freehold. The control of property rights is proven by the Certificate of Property Rights issued by the National Land Agency (BPN). In ancient times, some people did not understand the legalization of ownership of land rights (Winanrno, 2008).

The transfer of ownership rights to land can be done in various ways, one of which is buying and selling. Buying and selling transactions are one of the transactions that are very well known in traditional and modern society. The definition of buying and selling can be analyzed from the understanding contained in the law, doctrine and listed in the legal dictionary. The understanding is presented as follows (Al-Salem et al., 2022):

1. Article 7.1 Dutch Code, sale or sale is:
*The agreement under which one of the parties engage himself to deliver a thing and the other party to pay a price in money in return.*

Buying and selling in this definition is constructed as an agreement. An agreement is made between two parties, namely:
a. Seller; and
b. Buyer.
The seller hands something over to the buyer. Something is conceptualized as a good or thing. While the buyer is obliged to hand over money as the price of the goods handed over.

2. Article 1457 of the Civil Code of Sale and Purchase is:
An agreement, by which one party binds himself to deliver an object from the other party to pay the promised price.

There are four elements listed in this definition including:
a. the presence of consent;
b. the presence of legal subjects;
c. the existence of legal objects; and
d. the presence of levering.

Agreement is conceptualized as an agreement of the parties. The legal subjects in buying and selling are:
a. seller;
b. buyer.

The seller is the person or legal subject who delivers the object and receives money from the buyer, while the buyer is the person or legal subject who is obliged to hand over the money and receive the goods. The objects in buying and selling are:
a. thing; and
b. price.

3. Salim HS's view, buying and selling is (Kusbari, 2025):
An agreement made between the seller and the buyer, where the seller is obliged to deliver the object of sale and purchase to the buyer and is entitled to receive the price and the buyer is obliged to pay the price and is entitled to receive the object (Maulana & Hamidi, 2020).

There are three elements listed in the three definitions mentioned above which include (Holgate, 1984):
a. the existence of legal subjects , namely sellers and buyers;
b. the existence of an agreement between the seller and the buyer on the goods and price; and
c. There are rights and obligations arising back between the seller and the buyer.

In accordance with the description above that the seller and buyer are legal subjects of the sale and purchase transaction. These parties must be present at the time of the sale and purchase transaction. Transactions made on the sale and purchase can be carried out by deed under hand and / or authentic deed. In general, after a sale and purchase transaction is carried out, the Parties must legalize the transaction, namely by making a sale and purchase deed before a Notary / PPAT which is then processed to the BPN office to reverse the name of the certificate of ownership of the land (Wahyuni, 2021).

Not everyone understands and realizes about the necessity when Buying and selling transactions on land must be legalized by the authorities so that transactions that occur are not carried out under hands. In this thesis, the author will analyze related to the occurrence of land sale and purchase transactions, but the implementation of changes in legal acts is carried out under the hands of the analysis based on the decision of the Bengkulu District Court Number 14 / Pdt.G / 2023 / PN Bgl dated September 27, 2023, namely land transactions that occur by way of the Buyer (Maryono) buying from the Seller (Indra) for Rp. 2.000.000,- (two million rupiah) based on the Certificate of Rights Opposition dated December 11, 1989, at the time of the certificate transaction not yet in the name of the Seller (Indra), this can be seen from the certificate issued in 1994 while the transaction has been carried out in 1989. After the sale and purchase transaction was carried out, the Buyer (Maryono) had controlled land with an area of approximately 660 $M^2$ (six hundred and sixty square meters) located in Bengkulu City. Due to ignorance and/or negligence of the Buyer (Maryono) towards the sale and purchase of the land, a Sale and Purchase Deed has not been made, while at this time the Buyer (Maryono) wants to process the change in the Seller's certificate (Indra) is not found. So because there is no legal legitimacy, the validity of the owner of the land needs to get a decision from the Court. The constitutional system in Indonesia provides legitimacy for the judiciary to decide cases (disputes) independently without intervention from any party and the *output*

of the judicial process in the form of court decisions that have legal force should still be respected and implemented by all Indonesian people, including the government as the organizer of executive power (Roza et al., 2021).

## Research Method

Related to the theme taken by the author, the method used is the Normative Legal Research Method, namely research using secondary data (Ibrahim, 2008). The research was conducted on the Bengkulu District Court Decision Number 14/Pdt.G/2023/PN Bgl dated September 27, 2023 (Soekanto, 2017).

In accordance with the type of research in this study which focuses on normative legal research, the type of data used is secondary data. However, it does not leave the use of primary data as a support in the context of research development. The secondary data in the field of law can be divided into 3 (three) types of materials, namely:
The secondary data in question is **Primary legal materials**, namely binding legal materials used at the time of preparation of this thesis. The following are the primary legal materials used:

1) Court Decisions, namely:
   Bengkulu District Court Decision Number 14/Pdt.G/2023/PN Bgl dated September 27, 2023.
2) Laws and Regulations, namely:
   a) Criminal Code;
   b) Law Number 5 of 1960 concerning Basic Regulations of Agrarian Principles;
   c) Law Number 4 of 1996 concerning Rights of Dependents (Undang-Undang (UU) Nomor 4 Tahun 1996 Tentang Hak Tanggungan Atas Tanah Beserta Benda-Benda Yang Berkaitan Dengan Tanah, 1996);
   d) Law of the Republic of Indonesia Number 48 of 2009 concerning the Power of the Judiciary.
3) Government Regulations and/or Ministerial Decrees.
   a) Government Regulation Number 40 of 1996 concerning Business Use Rights, Building Use Rights and Land Use Rights;
   b) Government Regulation Number 24 of 1997 concerning Land Registration;
   c) Government Regulation Number 37 of 1998 concerning the Regulation of the Position of Land Deed Making Officers(Peraturan Pemerintah (PP) Nomor 37 Tahun 1998 Tentang Peraturan Jabatan Pejabat Pembuat Akta Tanah, 1998).
   d) Perkaban Number 1 of 2006 concerning Provisions for the Implementation of PP Number 37 of 1998 concerning PPAT Position Regulations .
   e) Presidential Regulation of the Republic of Indonesia Number 48 of 2020 concerning the National Land Agency
   f) Presidential Regulation of the Republic of Indonesia Number 48 of 2020 concerning the National Land Agency

Government Regulation of the Republic of Indonesia Number 18 of 2021 concerning Management Rights, Land Rights, Flats and Land Leveling

## Result and Discussion

**The process of managing the issuance of certificates and name reversals by the Buyer after a court decision that has permanent legal force.**

The legal basis for registration based on a court decision has been regulated and contained in Article 55 of Government Regulation Number 24 of 1997 concerning Land Registration, namely:

(1) The Registrar of the Court shall notify the Head of the Land Office of the contents of all decisions of the Court that have acquired permanent legal force and the determination of the Chief Justice which results in changes to the data regarding land parcels that have been registered or units of flats to be recorded in the relevant land book and as far as possible in the certificate and other registers.
(2) The recording referred to in paragraph (1) may also be carried out at the request of the interested party, based on a certified copy of the decision of the Court that has obtained permanent legal force or a copy of the determination of the Chief Justice concerned submitted by him to the Head of the Land Office. (3) The recording of the abolition of land rights, management rights and property rights over apartment units based on the decision of the Court shall be carried out after obtaining a decree regarding the removal of the rights concerned from the Minister or his appointed official as referred to in Article 52 paragraph (1).

In addition, the mechanism related to the implementation of the decision is regulated in Article 54 of the Regulation of the Head of the National Land Agency of Reublik Indonesia Number 3 of 2011 concerning Management, Assessment and Handling of Land Cases which stipulates that (Rohima et al., 2023):

(1) BPN RI is obliged to implement court decisions that have obtained permanent legal force, unless there is a valid reason not to carry them out.
(2) The valid reasons as referred to in paragraph (1) include:
    a. To the object of the judgment there are other decisions to the contrary;
    b. against the object of the judgment is being placed bail;
    c. against the object of the judgment is being the object of a lawsuit in another case;
    d. Other reasons stipulated in laws and regulations.

Court decisions in this case that already have permanent legal force (*Inkracht Van Gewijsde)* are expected to be implemented voluntarily by the parties convicted to implement the verdict. Based on the constitutional point of view, there should be no need for doubts and reluctance for authorized officials in BPN to implement the contents of court decisions that have permanent legal force, because legally against the implementation of court decisions in this case the registration of land rights based on court decisions is part of the implementation of executive functions based on and coordinated with the product of judicial power (court decisions) so that action It can be held accountable and is a form of implementation of the rule of law and can be categorized as a constitutional act (Kurniaji, 2016).

**The Court's decision granted the lawsuit of the Buyer whose whereabouts the Seller is unknown one day can be sued again by the Seller**

A court decision declared to have permanent legal force is when the decision is not appealed or cassation after 14 (fourteen) days since the decision is pronounced or notified to the applicant, then the decision is declared to have permanent legal force. The exception to this is if the defendant submits a Review (PK) to the Supreme Court (MA). An application for judicial review is filed not only on dissatisfaction with the cassation decision, but against any court decision that has obtained permanent legal force, in the sense that against a district court decision that is not appealed can be filed for review, against a high court decision that is not filed for cassation can be requested for review (Butarbutar, 2022).

Based on Article 67 of Law Number 5 of 1985 concerning the Supreme Court of the Republic of Indonesia, an application for review of civil case decisions that have obtained legal force can still be filed only based on the following reasons (Pratiwi & Affianto, 2016):

**If the verdict is based on a lie or deception of the opposing party that is known after the case is decided or is based on evidence that is later declared false by the criminal judge.**

The decision requested by PK is based on a lie or deception of the opposing party, in other words, the decision requested by PK is a court product that contains lies or deceptions. The lie or deception was only discovered after the case was decided. During the examination process starting from the first instance, the appeal and cassation, the deception or deception is unknown, and only known after the verdict has the force of law.

The grace period for filing a review application based on the reasons referred to above is 180 (one hundred and eighty) days since it is known to be a lie or deception or since the decision of the criminal judge has obtained permanent legal force, and has been notified to the litigants.

**If after the case is decided, decisive evidence is found which at the time the case is examined cannot be found**

Letters as written evidence are divided into two, namely letters that are deeds and other letters that are not deeds, while the deeds themselves are further divided into authentic deeds and deeds under hand. A deed is a letter as evidence that is signed, which contains events that form the basis of a right or agreement.

The grace period for filing a review application based on the reasons referred to above is 180 (one hundred and eighty) days from the discovery of the evidence letters, which day and date of discovery must be stated under oath and certified by the authorized official;

**If a thing has been granted that is not demanded or more than what is required**

These reasons can be classified as follows:

1. The judgment granted a thing, whereas there was absolutely no request for the plaintiff in the suit.
2. The verdict exceeded what was demanded. Judges are prohibited from granting or granting more than what is demanded. This provision violates the principle of *ultra*

*petitum partium* or *ultra petita*. The judge may not grant more than what is required in the petitum of the suit.

The grace period for filing a review application based on the reasons referred to above is 180 (one hundred and eighty) days after the decision has obtained permanent legal force and has been notified to the litigants.

**If a part of the claim has not been decided without consideration of the causes.**
In a judgment the judge is ordered to try or decide on all parts of the lawsuit. For example, it is not decided whether a lawsuit for provision is rejected or granted, a request for confiscation or a request for judgment immediately without consideration of the causes. Such negligence and negligence can be the reason for the plaintiff's PK application, because it harms its interests.

In practice, such cases are rare. In the event of such negligence by the court of first instance, it will generally be corrected and rectified by the court of appeal. If the appellate level then decides all parts of the case, it will be corrected and straightened out by the Supreme Court at the cassation level. In general, through the function and authority of correction possessed by the appellate and cassation levels based on international mechanisms, it is rare to find a decision with the force of permanent law that fails to decide all parts of the claim.

The grace period for filing a review application based on the reasons referred to above is 180 (one hundred and eighty) days after the decision has obtained permanent legal force and has been notified to the litigants.

**If between the same parties on the same question, on the same basis by the same or the same level of Court a decision has been rendered contrary to each other;**
In order for this reason to have validity, the following conditions must be met:

1. There are two or more conflicting rulings. This is an absolute condition for the birth of conflicting rulings between one another. There must be at least two verdicts. Only then can there be conflicts between one ruling and another.
2. The parties involved in the decision of the conflicting case are the same.
3. Regarding the same problem or basis. The two conflicting rulings contained the same question or the same basis. If the question or basis of the problem is different, even if the parties are the same, it does not meet the grounds for Judicial Review.
4. By the same or the same level of Court.
5. The final and conflicting judgment has the force of law, and the judgment has been notified to the litigants. So, in order to meet these conditions, they must face two or more decisions that are both Permanent Legal Force.

The grace period for filing a review application based on the reasons referred to above is 180 (one hundred and eighty) days since the decision has obtained permanent legal force and has been notified to the litigants;

**If in a decision there is an error of the Judge or a manifest error.**

The most frequent and most frequent reason for PK in practice is an obvious error or error. This reason is considered very far-reaching. Any considerations and opinions contained in the judgment, can be constructed and fabricated as errors or real errors without limits.

The grace period for filing a review application based on the reasons referred to above is 180 (one hundred and eighty) days from the last and conflicting decision that has obtained permanent legal force and has been notified to the litigant.

The application for judicial review must be filed by the litigants themselves, or their heirs or a representative specially authorized to do so and if during the review process the applicant dies, the application may be continued by his heirs (Muslih, 2017).

## Conclusion

Based on the description above, it can be concluded that: After a permanent court decision, execution can be immediately carried out for the certificate issuance process at the National Land Agency (BPN) office, the defendant can apply for a judicial review (PK) of the decision of the local District Court as long as it meets the conditions for filing a PK

## Bibliography

Al-Salem, S. M., Leeke, G. A., El-Eskandarany, M. S., Van Haute, M., Constantinou, A., Dewil, R., & Baeyens, J. (2022). On the implementation of the circular economy route for E-waste management: A critical review and an analysis for the case of the state of Kuwait. *Journal of Environmental Management*, *323*, 116181.

Butarbutar, R. (2022). Legal Formulation to Overcome Base-Erosion and Profit-Shifting Practices of Digital-Economy Multinational Enterprise in Indonesia. *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)*, *9*(3), 323–342. https://doi.org/10.22304/pjih.v9n3.a2

Foskstt, J. M. (n.d.). *1 P. vii. 2 Ibid. 3 P. viii.* HeinOnline.

Holgate, N. (1984). IMA (1978) Ibid. 42, 533-63 (compiled by BE Leake). MacPherson, HG (1983) Ibid. 47, 247-57. Rock, NMS, and Leake, BE (1983) A FORTRAN program for the classification of amphiboles according to. *Mineral. Mag*, *48*, 211–227.

Ibrahim, J. (2008). *Teori & Metodologi Penelitian Hukum Normatif, Malang*. Bayumedia Publishing, cet. Keempat.

Kurniaji, D. F. (2016). *PENDAFTARAN HAK ATAS TANAH BERDASARKAN PUTUSAN PENGADILAN*. http://digilib.unila.ac.id/id/eprint/22904

Kusbari, G. (2025). *Akibat Hukum Pejabat Pembuat Akta Tanah (PPAT) dalam Putusan Perkara Pemalsuan Akta Jual Beli di Pengadilan Negeri Jakarta Barat Nomor 248/Pid. B/2022/PN. Jkt. Brt*. Universitas Jenderal Soedirman.

Maulana, H. A., & Hamidi, M. (2020). Persepsi mahasiswa terhadap pembelajaran daring pada mata kuliah praktik di pendidikan vokasi. *Equilibrium: Jurnal Pendidikan*, *8*(2), 224–231.

Muslih, M. (2017). Negara Hukum Indonesia Dalam Perspektif Teori Hukum Gustav Radbruch (Tiga Nilai Dasar Hukum). *Legalitas: Jurnal Hukum*, *4*(1), 130–152.

Undang-Undang (UU) Nomor 4 Tahun 1996 Tentang Hak Tanggungan atas Tanah Beserta Benda-Benda yang Berkaitan dengan Tanah, (1996).

Peraturan Pemerintah (PP) Nomor 37 Tahun 1998 Tentang Peraturan Jabatan Pejabat Pembuat Akta Tanah, 23 (1998).

Peturun, P. (2023). Land Management Rights Before and After the Government Regulation in Lieu of Job Creation Law. *Administrative and Environmental Law Review*, *4*(1), 75–88.

Pratiwi, Y. R., & Affianto, A. (2016). *Penaksiran Nilai Ekonomi Sumberdaya Hutan Mangrove Di Desa Wonorejo Kecamatan Rungkut Kota Surabaya Provinsi Jawa Timur*.

Rohima, W., Sucahyo, I., & Busthomi, A. N. (2023). Implementasi Peraturan Kepala Badan Pertanahan Nasional Nomor 3 Tahun 2011 Tentang Pengelolaan, Pengkajian, Penanganan Kasus Pertanahan Di Kota Probolinggo. *Public Service and Governance Journal*, *4*(2), 61–75.

Roza, H., Warman, K., & Hasbi, M. (2021). Returning the Name of Certificate of Property Right based on Judge Decision in the Regency Indragiri Hulu, Riau Province. *International Journal of Multicultural and Multireligious Understanding*, *8*(8), 263–268.

Soekanto, S. (2017). *Penelitian hukum normatif: Suatu tinjauan singkat*.

Stricture, C. U. (n.d.). *No. 28, p. 81, 1913), the other by Frank (ibid, p. 82). Riedel Pointed out that whilst in the hospitals of large cities congenital*.

Suartining, N. K., & Djaja, B. (2023). Land Rights in the Land Law System in Indonesia According to the Basic Agrarian Law Number 5 of 1960. *Journal of Social Research*, *2*(6), 1775–1785. https://doi.org/10.55324/josr.v2i6.903

Toruan, H. D. L. (2022). The Importance of Using Electronic Deeds to Facilitate The Service and Storage of Notary Archives. *Jurnal Penelitian Hukum De Jure*, *22*(4), 483–498.

Wahyuni, S. (2021). *Analisis Wewenang Notaris Dalam Pembuatan Akta Perjanjian Pengikatan Jual Beli Hak Milik Atas Tanah Di Kota Makassar*. Universitas Bosowa.

Winanrno, N. B. (2008). *Penyalahgunaan Wewenang dan Tindak Pidana Korupsi, laksbang mediatama*. Yogyakarta.