



Legal Analysis of the Validity of Certificates of Ownership (SHM) with Legal Defects (Case Study of Decision Number: 252/PK/PDT/2024)

Article	Abstract
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INTRODUCTION

Land, as a basic human need, plays a central role in everyday life. The function of land is not only limited as a place to live or work, but also as a crucial element in supporting the economic development of Indonesian society.¹ Given the limited supply of land or territory in Indonesia, land utilization becomes a necessity that requires prudent action, with its management handed over to the State.² Regulations related to land aspects have been regulated in the Basic Agrarian Law

¹ Mohammad Dwi Febriyanto & Wahyu Prawesthi, "Sengketa Hak Milik Tanah Sawah Akibat Kegiatan Jual Beli yang Tidak Sah" (2024) 10:4 J Ilm Wahana Pendidik 461-473.

² Fathul Hamdani et al, "Constitutional Analysis of the Need for the Tribal Peoples Bill: Initiatives to Establish a Fair Customary Court" in *Pros Pengakuan dan Perlindungan Masy Huk Adat di Tingkat Nas dan Int (Recognition, Respect, Prot Const Rights Indig Peoples a Natl Int Perspect* (Jakarta: Asosiasi Pengajar Hukum Adat (APHA), 2023) 191.

(UUPA) Number 5 of 1960, which outlines important provisions related to land, and signifies efforts to regulate the use of land efficiently and in accordance with the interests of society.

The rights owned by the people and legal entities in Indonesia in relation to land are rights granted by the Basic Agrarian Law (UUPA) to the State. The concept of “land rights” is explained as a right that gives authority to individuals and legal entities to utilize land in accordance with their interests, as long as it is not contrary to the law, as stated in Article 4 paragraph (2) of the Basic Agrarian Law (UUPA). Land rights such as Hak Milik, Hak Pakai Hasil, Hak Guna Bangunan, freedom of lease, and special rights, are examples of the freedoms held in relation to land.

As in Indonesia, the relationship between humans and land has existed since long ago, but because it is stated in writing and not registered but only verbally known to whom the land belongs and its boundaries or at least one plot of land is commonly known to belong to a legal entity and / or a person or a person's inheritance to his heirs,³ Therefore, land registration is carried out in Indonesia, because it is to maintain legal certainty. Hans Kelsen views law as something that should be (*das sollen*), thus detached from social reality (*das seins*).

Article 19 paragraph (1) of the Basic Agrarian Law (UUPA) states that in order to ensure legal certainty, the government shall conduct land registration throughout the territory of the Republic of Indonesia according to the provisions regulated by government regulation. The regulation is also strengthened in Article 3 letter a of Government Regulation Number 24 of 1997 concerning Land Registration (hereinafter referred to as PP Number 24 of 1997), namely, land registration aims to provide legal certainty and legal protection to holders of rights to a parcel of land, apartment units and other registered rights so that they can easily prove themselves as holders of the rights concerned. Legal certainty of land rights can be obtained by land rights holders by registering land.⁴

This land registration as a guarantee of legal certainty in the land sector, first of all requires the availability of complete and clear written legal instruments that are implemented consistently in accordance with the spirit and content of its provisions. Every land right that has been registered will be issued a certificate by the National Land Agency (BPN) in each regency/city. Article 32 paragraph (1) of Government Regulation No. 24/1997 explains that, “a certificate is a proof of right that serves as strong evidence of the physical and juridical data contained therein, provided that the physical and juridical data are in accordance with the data contained in the measurement certificate and land book of the right concerned”. Juridical data includes information regarding the legal status of the land parcel, the right holder, and the rights of other parties.⁵

Everyone is obliged to obey and implement the law as a will of the State.⁶ The law is a rule of order that requires people to obey it as they should. So logically, by registering land, the interests of the owner of the land rights have been protected. For this reason, every person or legal entity is obliged to respect the land rights.⁷ However, not all parties can comply with and implement the law, resulting in land-related problems, especially in the registration of Land Rights Certificates. Therefore, a certificate in order to be said as strong evidence, it is expected that the certificate applicant to provide accurate data so that there is no error such as the issuance of a certificate is not in accordance with the land registration procedure.

The way to obtain accurate juridical physical data on a land parcel must first be measured, which in the measurement process includes determining the boundaries of a land parcel which

³ A P Parlindungan, *Bunga Rampai Hukum Agraria serta Landreform Bagian II* (Bandung: Mandar Maju, 2009).

⁴ Bachtiar Effendie, *Pendaftaran Tanah di Indonesia dan Peraturan-Perturan Pelaksananya* (Bandung: Alumni, 1993).

⁵ Adrian Sutedi, *Sertifikat Hak Atas Tanah* (Jakarta: Sinar Grafika, 2011).

⁶ Ana Fauzia, Deva Gama Rizky Octavia & Fathul Hamdani, “The Conflict of the Norms in the Execution of Secured Objects Which are Enforced by Liability Rights When the Debtor is Bankrupt” (2022) 4:1 Progress Law Rev 1-9.

⁷ Lili Rasjidi, *Dasar-Dasar Filsafat dan Teori Hukum* (Bandung: Citra Aditya Bakti, 2012).

must be attended by a boundary witness, this then explains that the role of the boundary witness or the owner of the land adjacent to the registered land is very important because the measurement in which there is a process of determining the boundaries of the land is also the first step to obtaining legal ownership of the object of land rights, and if in the process of determining the boundaries of the land then not attended by adjacent landowners or also called boundary witnesses, then related to the Basic Agrarian Law Number 5 of 1960 concerning Basic Agrarian Regulations in article 19 paragraph (2) point (a) then one of the conditions for issuing certificates is not in accordance with the Land Registration procedure.⁸

In connection with the legal responsibility for the issuance of certificates in the determination of the boundary is not attended by witnesses boundary then the National Land Agency must cancel the certificate of Land Rights, because one of the requirements as the basis for the issuance of the certificate is not met, and the procedure for canceling the certificate of Land Rights is regulated in the Regulation of the Minister of Agrarian Affairs / PMA Number 9 of 1999 on Procedures for Granting and Cancellation of Rights to State Land and Management Rights in Articles 106 and 107.⁹ Article 107 of Regulation of the Minister of Agrarian Affairs or Head of the National Land Agency Number 9 of 1999 states: "Administrative legal defects as referred to in Article 106 paragraph 1, namely:

- a. Wrong procedure;
- b. Misapplication of legislation;
- c. Wrong object of right;
- d. Wrong subject of the right;
- e. Wrong type of right;
- f. Wrong in area calculation;
- g. Overlapping land rights;
- h. The juridical or physical data is incorrect;
- i. The existence of other faults of an administrative nature."

The result of an error such as the emergence of an administrative defect certificate, is that the Land Rights Certificate can be declared legally invalid and can be canceled, because the Land Rights Certificate is not a perfect proof, but only strong, so that if there are parties who feel aggrieved over the issuance of Land Rights Certificates, they can file complaints and objections to the National Land Agency, and can make legal efforts through filing a lawsuit in court, either the General Court and / or the State Administrative Court. In this context, court decisions have an important role in upholding justice and providing legal certainty.

In the facts in the field, there are a lot of cases that show that related to Land Rights Certificates can be sued through the Court, one of which is like in the PK (Reconsideration) case between SUKIRAH as the Petitioner for Reconsideration, originally Defendant I / Appellant / Cassation Petitioner against the VILLAGE GOVERNMENT OF KEMBANGAN KECAMATAN SUKOMORO DISTRICT MAGETAN, East Java as the Respondent for Reconsideration, originally Plaintiff / Appellant / Cassation Respondent, as in Decision Number: 252 PK / PDT / 2024. That the disputed object of the Decision is village asset land owned by the Plaintiff, but on the land a Certificate of Ownership has been issued in the name of the Defendant.

That in the First Decision as in Decision Number: 15/Pdt.G /2021/PN.Mgt, the Panel of Judges examining the case was of the opinion that the Certificate of Title Number 1016 in the name of Sumardi (Defendant's heir) located in RT.02/RW.04, Measurement Letter Number

⁸ Dedy Dian Nurcahyo & Nainuri Suhadi, "Kajian Hukum terhadap Pernerbitan Sertifikat yang Diterbitkan Tanpa Dihadiri oleh Saksi Batas" (2017) 5:1 Yuriska J Ilm.

⁹ *Ibid.*

149/Kembangan/2001 dated August 06, 2001 with an area of 659 m² is legally flawed and has no binding legal force and is therefore null and void, as it has been proven that the disputed object land belongs to the Kembangan Village Government or the Plaintiff on the basis that the Sale and Purchase Agreement Number 237/23b/1978 is valid and has legal force so that it becomes the basis for the Plaintiff's right to the disputed object land.

In the Appeal Level, as in Decision Number: 687/PDT/2021/PT. Sby, after the Panel of Judges has read and reviewed and carefully examined the case file a quo along with an official copy of the Magetan District Court decision, as well as other letters related to this case, including the appeal memory submitted by the legal counsel of the Appellant originally the Defendant, where the appeal memory has no new legal facts that can cancel or change the decision a quo, thus the appeal memory must be ruled out and rejected, and the First Level Panel of Judges in its legal considerations has contained and described correctly and correctly all the circumstances and reasons that form the basis of the decision, so that the First Decision must be maintained and strengthened.

At the Cassation Level, as in Decision Number: 1373 K/PDT/2023, the Supreme Court of the Republic of Indonesia stated that the legal considerations of the *Judex Facti* (High Court) decision which upheld the *Judex Facti* (District Court) decision by granting the Plaintiff's claim can be justified, because based on the facts in the case a quo, the *Judex Facti* has provided sufficient legal considerations, where the Plaintiff has been able to prove the right to ownership of the disputed object of land covering an area of 180 m² which is part of a land area of 680 m² recorded in Village Letter C Number 2 Persil 79a Class DI in the name of the original owner Darmowidjojo.

Based on the decision of the Supreme Court of the Republic of Indonesia as in the Judgment of Judicial Review Case Number 252 PK/PDT/2024, the Supreme Court examining the case stated that the reasoning of the Applicant for Reconsideration could not be justified, because after carefully examining the reasoning of the Applicant in the Memorandum of Reconsideration and the Reply in the Counter Memorandum of Reconsideration connected with the considerations of the *Judex Juris* which upheld the Decision of the Surabaya High Court, the Supreme Court was of the opinion that the *Judex Juris* in the case a quo did not contain errors or mistakes, with the following considerations:

- a. That the disputed object covering an area of 180 m² has been an asset of the Kembangan Village Government since 1968 which has been used for a rice/polynesian farming cooperative "*Warga Tani*" with Legal Entity Number: 994/BH/II/12-67, dated December 17, 1968.
- b. *That the disputed object used to be part of a land area of 680 m² recorded in Village Letter C No. 2 Persil 79a Village Class DI under the name of Darmowidjojo.*

So the Supreme Court of the Republic of Indonesia based on the above considerations, the request for reconsideration submitted by the SUKIRAH Reconsideration Applicant must be rejected, so that Certificate Number 1016 in the name of Sumardi (Sukirah's heir) located in RT.02 / RW.04, Measurement Letter Number 149 / Kembangan 2001 dated August 06, 2001 with an area of 659 m² has no legal force (in accordance with the First Court Decision). Based on the background explanation above, the author is interested in conducting research entitled "Legal Analysis of the Validity of Certificates of Ownership (SHM) with Legal Defects (Case Study of Decision Number: 252/PK/PDT/2024)".

RESEARCH METHODS

This research uses normative research, normative research methods are research methods that refer to legal norms contained in legislation. Normative research is also referred to as doctrinal

research,¹⁰ which is a study that analyzes the law both written in books, as well as laws decided by judges through court proceedings. Based on this method, researchers must logically study the legal provisions that can be considered relevant to the judge's ratio decidendi and the legal consequences of the decision stating that the validity of the Certificate of Ownership (SHM) is declared legally defective. Through this research, it is hoped that legal solutions or recommendations can be found that are in accordance with legal protection, legal certainty and legal justice.

ANALYSIS AND DISCUSSION

Ratio Decidendi of the Judge in Deciding the Case Against the Validity of a Legally Defective Certificate of Ownership (SHM), as in the Decision Number: 252 PK/PDT/2024

The Supreme Court of the Republic of Indonesia is the examiner of Judicial Review Case Number: 252 PK/PDT/2024, on the Object of dispute in the form of land with an area of 180 m² located in Kembangan Village, Sukomoro Subdistrict, Magetan Regency, between SUKIRAH as the Petitioner for Judicial Review, originally Defendant I / Appellant / Cassation Petitioner against PEMERINTAH VILLAGE KEMBANGAN as the Respondent for Judicial Review, originally Plaintiff / Appellant / Cassation Respondent.

That a Certificate of Title No. 1016 has been issued on the village asset land. 1016 in the name of SUMARDI (husband of the Applicant for Judicial Review, originally Defendant I/Appellant/Case Petitioner) with an area of 659 m², whereas if we take into account Sale and Purchase Agreement No. 237/23b/1978 dated November 06, 1978, SUMARDI purchased land from DARMOWIDJOJO with an area of only 500 m², and the remaining 180 m² of land was handed over by DARMOWIDJOJO to Kembangan Village, Sukomoro Subdistrict, Magetan Regency to be used as a cooperative barn for Kembangan farmers (Respondent for Judicial Review, originally Plaintiff/Respondent/Case Respondent).

SUKIRAH as the Petitioner for Review, originally Defendant I / Appellant / Cassation Petitioner filed a Judicial Review on the basis that the previous Decision contained a real mistake or error of the judge, and there is a Novum or new evidence which is believed to be the basis for accepting and granting the Petition for Review filed by the Petitioner for Review in order to declare the Certificate of Title No. 1016 / Kembangan Village in the name of SUMARDI, Measurement Letter dated August 06, 2001 No. 149 / Kembangan / 2001, Area : 659 m² is valid and legally enforceable.

The points that form the basis of the request for reconsideration by the Applicant for Reconsideration in Decision Number 252 PK/PDT/2024, among others:

- a. The Applicant for Reconsideration believes that the Panel of Judges in handing down Cassation Decision Number 1373 K/PDT/2023, dated July 13, 2023, contained clear errors and mistakes of the Judges in giving the decision.;
- b. There is a novum or new evidence that is believed to be the basis for the request for reconsideration, namely:
 - Sale and Purchase Declaration Letter Number 237/23b/1978, dated November 06, 1978;
 - Deed of Establishment of Rice Farming Cooperative Association/Polowijo Warga Tani Number: 994/B.H/II jo. Deed of Adjustment Number: 994/BH/II/12.67 jo. Deed of Amendment of Cooperative Articles of Association Number: 990/PAD/KWK.13/III/97.

¹⁰ Amiruddin & H Zainal Asikin, *Pengantar Metode Penelitian Hukum* (Jakarta: PT. Raja Grafindo Persada, 2006).

As for the points that form the basis of the petition for review by the Petitioner for Review, the Respondent for Review has submitted a Counter-Memorial for Review which essentially rejects the Petition for Review of the Petitioner for Review. The consideration of the Supreme Court in Case No. 252 PK/PDT/2024 in deciding the case of Judicial Review, is that the reasoning of the Petitioner for Judicial Review cannot be justified, because after carefully examining that the Petitioner's reasoning in the memory of Judicial Review is connected with the *Judex Juris*' consideration which upholds the Decision of the Surabaya High Court, the Supreme Court is of the opinion that the *Judex Juris*' Decision in the case a quo does not contain error or mistake, with the following considerations:

- That the disputed object covering an area of 180 m2 is an asset of the Kembangan Village Government since 1968 which has been used for the rice/polyo-juice farming cooperative "Warga Tani" with Legal Entity Number 994/BH/II/12-67 dated December 17, 1968;
- That the disputed object used to be part of a land area of 680 m2 recorded in Village Letter C Number 2 Parcel 79a Village Class DI under the name of DARMOWIDJOJO.;
- - That on November 6, 1978, DARMOWIDJOJO sold 500 m2 of the land to SUMARDI and the remaining 180 m2 was handed over by DARMOWIDJOJO to Kembangan Village to be used as the Kembangan Farmers Cooperative Barn (village asset);
- That thus the action of the Applicant for Reconsideration to control the disputed object land as his own is an act against the law;
- That the novum is not decisive as referred to in Article 67 letter b of Law Number 14 of 1985 which has been amended by Law Number 5 of 2004 and the second amendment by Law Number 3 of 2009 because the evidence in the form of a Sale and Purchase Statement Letter Number 237/23b/1978, dated November 6, 1978 actually shows that the disputed object land covering an area of 180 m2 is intended for the Kembangan Village Farmers' Cooperative Barn and evidence of the Deed of Establishment of the Rice/Polowijo Farmers' Cooperative Association Number: 994/B.H/II jo. Deed of Adjustment Number: 994/BH/II/12.67 jo. Deed of Amendment to the Articles of Association of the Cooperative Number: 990/PAD/KWK.13/III/97 also shows that in Kembangan Village there is a Rice/Polowijo Farming Cooperative of Warga Tani.

That based on the above considerations, the Petition for Judicial Review filed by the Petitioner for Judicial Review SUKIRAH must be rejected, and the Petitioner for Judicial Review is ordered to pay court costs in this Judicial Review examination. The verdict of Judicial Review Case Number: 252 PK/PDT/2024 reads as follows:

- Reject the Petition for Review of the Petitioner for Review: SUKIRAH;
- Menghukum Pemohon Peninjauan Kembali untuk membayar biaya perkara dalam semua
 - Punish the Applicant for Judicial Review to pay court costs in all levels of court, which in the examination of Judicial Review amounted to Rp. 2,500,000, - (two million five hundred thousand rupiah).

According to the Researcher, the reasons of the Applicant for Reconsideration cannot be justified, and the Decision of the Supreme Court in the case of Reconsideration is appropriate, which states that the *Judex Juris* Decision in the case a quo does not contain error or error, and the Novum submitted by the Applicant for Reconsideration does not strengthen the arguments in the Petition for Reconsideration.

The Supreme Court's rationale is contained in Article 67 letter b of Law Number 14 of 1985 as amended by Law Number 5 of 2004 and the second amendment by Law Number 3 of 2009, which states "If after the case is decided, decisive evidence is found which at the time the case is

examined cannot be found”. The definition of evidence in this article, when linked to Supreme Court Regulation of the Republic of Indonesia Number 1 of 1982 concerning Supreme Court Regulation Number 1 of 1980, which is refined, states “If after the case is decided, decisive evidence is found, which at the time the case is examined cannot be found”.

Novum or new evidence submitted by the Reconsideration Applicant, namely:

- Sale and Purchase Declaration Letter Number 237/23b/1978, dated November 06, 1978;
- Deed of Establishment of Rice Farming Cooperative Association/Polowijo Warga Tani Number: 994/B.H/II jo. Deed of Adjustment Number: 994/BH/II/12.67 jo. Deed of Amendment of Cooperative Articles of Association Number: 990/PAD/KWK.13/III/97.

According to the Researcher, the *Novum-novum* that has been submitted by the Review Petitioner is not decisive, because it does not fulfill the element of New Evidence which at the time of examination of previous cases could not be found. That the *novum* has been used by the Respondent as evidence in the First Trial at the Magetan District Court, namely Exhibit P-5 in the form of Agreement “Sale and Purchase and Submission of Land to the Village” No. 237/23b/1978 by DARMOWIDJOJO which explains that DARMOWIDJOJO owns 680 m² of land and then sold 500 m² to SUMARDI and 180 m² of land was submitted for the construction of the Kembangan Village Farmers' Cooperative Farmers' Barn, and Exhibit P.3. in the form of a Deed of Amendment to the Articles of Association of the Cooperative which explains that the Pure Lumbung Cooperative or the Farmers' Cooperative is in Kembangan Village.

The new evidence or *Novum* submitted by the Review Petitioner can be said to corroborate the *Judec Juris* in the Cassation Decision, because the Sale and Purchase Declaration Letter Number 237/23b/1978, dated November 6, 1978 actually shows that the disputed object land covering an area of 180 m² is intended and/or used for the Kembangan Village Farmers' Cooperative Barn and the Deed of Establishment of the Rice/Polowijo Farmers' Cooperative Association Number: 994/B.H/II jo. Deed of Adjustment Number: 994/BH/II/12.67 jo. Deed of Amendment to the Articles of Association of the Cooperative Number: 990/PAD/KWK.13/III/97 also corroborate the *Judex Juris* that in Kembangan Village there is a Rice Farming Cooperative/Polowijo Warga Tani.

The Supreme Court in examining the Review Case, has given its legal considerations to decide that rejecting the Request for Reconsideration with the main reason, namely the *Judex Juris* Decision in the case *a quo* does not contain errors or mistakes. This is when connected with the *Judex Juris* consideration which upholds the Surabaya High Court Decision, that based on the facts where the Kembangan Village Government has been able to prove the origin of the ownership rights of the disputed object land covering an area of 180 m² which is part of the 680 m² land recorded in Village Letter C Number 2 Persil 79a Class DI in the name of the original owner DARMOWIDJOJO.

The object of the dispute between the two parties is the ownership of the disputed land object of 180 m², which is part of the land certificate of ownership No. 1016, in the name of SUMARDI with an area of 659 m² located in RT.02 / RW.04 Kembangan Village, Sukomoro District, Magetan Regency, East Java with the following boundaries:

- North : Village Road
- South Side : Musholla (UMAR SAID)
- West : Regency Road
- East : SUMARDI (SUKIRAH)

The Legal Power of Land Rights Certificates is a guarantee of Legal Certainty. Certificates as strong evidence must be interpreted that as long as it cannot be proven otherwise the information

contained in the copy of the land book and measurement letter which is the certificate of right must be accepted as true information, both in dispute and outside the dispute,¹¹ because the land registration system in Indonesia adheres to the Negative Stele system. Based on the Jurisprudence of the Supreme Court Decision dated September 18, 1975 No. 459 K / Sip / 1975, it states “considering the negative stelsel about the register / land registration that applies in Indonesia, the registration of a person's name in the register does not mean that he is the absolute owner of the land if his invalidity can be proven by another party.”

Related to the above Jurisprudence, Certificate of Ownership No. 1016, in the name of SUMARDI with an area of 659 m² located in RT.02 / RW.04 Kembangan Village, Sukomoro Subdistrict, Magetan Regency, East Java should be considered invalid, and not strong and absolute ownership of SUMARDI, because its invalidity can be proven by the Kembangan Village Government related to the origin of the right of ownership of the disputed object land is part of the 680 m² land recorded in Village Letter C Number 2 Persil 79a Class DI in the name of the original owner DARMOWIDJOJO, in Exhibit P-5 in the form of an Agreement “Sale and Purchase and Surrender of Land to the Village” Number 237/23b/1978 by DARMOWIDJOJO which explains that DARMOWIDJOJO owned 680 m² of land and then sold 500 m² to SUMARDI and 180 m² of land was submitted for the Construction of the Kembangan Village Farmers' Cooperative Farmers' Barn, and in Exhibit P-8 in the form of Inventory Book Model INV. I which explains that the land and building of the Pure Barn have been recorded in this Inventory Book at serial number 8 (eight) and this Inventory Book was signed by SUDARNO (formerly Defendant II), and corroborated by the testimony of Witness Winarti, Witness Darminto, Witness Suwaji who stated that since approximately the 1970s, the place of the disputed object was a Village Barn and then used by the Cooperative.

In the Judgment of Reconsideration, the Supreme Court rejected the Petition for Reconsideration filed by the Petitioner for Reconsideration, which has the legal effect that the Certificate of Title No. 1016, in the name of SUMARDI with an area of 659 m² located in RT.02 / RW.04 Kembangan Village, Sukomoro District, Magetan Regency is declared legally defective so that it does not have binding legal force.

The causes of Legal Defects in Certificates of Ownership are regulated in Article 107 of Regulation of the Minister of Agrarian Affairs Number 9 of 1999 concerning Procedures for Granting and Canceling State Land Rights and Management Rights, that the administrative legal defects referred to in article 106 paragraph (1) are:

- a. Procedure error;
- b. Misapplication of laws and regulations;
- c. Error in the subject of rights;
- d. Error in the object of the right;
- e. Error in the type of right;
- f. Error in calculation of area;
- g. There are overlapping land rights;
- h. The juridical data or physical data is incorrect.¹²

Certificate of Title No. 1016 in the name of SUMARDI with an area of 659 m² located in RT.02/RW.04 Kembangan Village, Sukomoro Subdistrict, Magetan Regency, there was a procedural error in land administration which should have been an asset of the Kembangan Village Government, to be used as a cooperative for farmers. This land should not have been transferred

¹¹ Effendie, *supra* note 4.

¹² Ni Made Silvia Gayatri, I Putu Gede Seputra & Luh Putu Suryani, “Pembatalan Sertifikat Hak Milik Atas Tanah Akibat Cacat Administrasi” (2021) 3:1 J Analog Huk 79–83.

to SUMARDI, because the status of the land is part of the village assets that have been handed over by DARMOWIDJOJO for the benefit of the village community, which means that there is an Error in the Subject of Rights, and there is an Error in the Area Calculation, where the actual area purchased by SUMARDI in 1978 was 500 m² based on the “Agreement ‘Sale and Purchase and Surrender of Land to the Village’ Number 237/23b/1978 by DARMOWIDJOJO which explains that DARMOWIDJOJO owned 680 m² of land and then sold 500 m² to SUMARDI”. According to the researchers, this deviation can be considered as an administrative law defect.

The Supreme Court is of the opinion that the action taken by the Review Petitioner (SUKIRAH) who took possession of the disputed land object as his own is an unlawful act. Unlawful act in the context of civil law is when a party without permission or a valid legal basis takes over or utilizes land that is in fact legally owned by the plaintiff. Such actions result in material loss to the plaintiff, such as loss of ownership rights, income that should have been obtained from the land, or legal costs that must be incurred to resolve the dispute. The plaintiff has a legal basis to file a lawsuit against the party who committed the unlawful act.¹³

Unlawful acts (*onrechtmatige daad*) in civil law are further regulated in Article 1365 of the Civil Code or *Burgerlijk Wetboek (BW)*. Where the wording of the Article is “Every unlawful act that brings harm to another person, obliges the person who through his fault causes the loss, to compensate for the loss”. The actions committed by the Applicant for Reconsideration, according to the researcher, have fulfilled the Elements of Unlawful Acts, as follows:

a. The Existence of Unlawful Act

The actions taken by the Review Applicant are contrary to Article 584 of the Civil Code, which states “Property rights to an object cannot be obtained in any other way, but by ownership, by attachment, by expiration, by inheritance, either according to law or according to a will and by appointment or delivery based on a civil event to transfer property rights, “Village assets are village property originating from the village's original wealth, purchased or obtained at the expense of the village's revenue and expenditure budget or other legitimate acquisition”. That the Applicant for Reconsideration controls and owns objects that do not belong to him and demolishes the building of the Kembangan Village Pure Lumbung Cooperative, the Cooperative building comes from village assets as evidenced by the List of Lands used for Government Development Projects which explains that on May 4, 1993 the land and building of the Pure Lumbung Cooperative were recorded in the government development project written in line 8 (eight) and signed by SOSRONGULOMO as the Village Head, and Inventory Book Model A-2. 1 which explains that the land and building of the Lumbung Murni Cooperative are written in the Village Wealth and Inventory book at line number 26 (twenty-six) and signed by the Village Head.

That in accordance with Article 584 of the Civil Code, the land of the Lumbung Murni Cooperative was obtained on the basis of a transfer of a civil event to transfer property rights, carried out by a person who has the right to act freely on the property, Whereas the surrender was made by DARMOWIDJOJO as evidenced by the Agreement “Sale and Purchase and Surrender of Land to the Village” Number 237/23b/1978 by DARMOWIDJOJO which explains that DARMOWIDJOJO owned 680 m² of land and then sold 500 m² to SUMARDI and 180 m² of land was surrendered for the Construction of the Kembangan Village Farmers' Cooperative Barn, and the acquisition obtained by the Review Respondent is valid when referring to Article 1 number 11 of Law Number 6 of 2014 concerning Villages.

¹³ R Juli Moertiono, “Perbuatan Melawan Hukum Akibat Penguasaan Tanah Tanpa Hak (Studi Kasus Putusan Mahkamah Agung No. 1319 K/Pdt/2011)” (2020) 2:1 J Ilm METADATA 1-21.

b. Error

The element of fault that exists in this act is a form of willfulness. That is, deliberately taking action knowing the risks and consequences of harming others.¹⁴ In this case the Review Petitioner controlled and possessed the disputed object, tore down the building of the Lumbung Tani Cooperative and built a fence on the disputed object. Even though they have been reminded and the Review Respondent has invited for deliberation many times, the Review Petitioner has never attended.

c. Existence of Losses

The Respondent has suffered actual material loss in the form of the loss of the building of the Kembangan Village Lumbung Tani Cooperative and immaterial loss.

d. Causality Relationship

With the control and ownership exercised by the Review Petitioner over the Kembangan Village Government Asset (the Review Respondent), the deliberate demolition of the Farmers' Barn Cooperative building and the building of a fence on the disputed object, caused actual material loss in the form of the loss of the Kembangan Village Farmers' Barn Cooperative building and immaterial loss incurred by the Review Petitioner.

The researcher agrees with the Consideration of the Supreme Court of Judicial Review as in Decision Number: 252 PK/PDT/2024, that based on general knowledge and customs that live in the Village Community (Norms that apply in the Community), that grants or gifts of Villagers in the form of land based on customs and habits are given to the Village for the benefit of the Public or the interests of the Village, so that if the land is no longer used for Cooperatives, it must return to the Village Government as a Village asset to be used for Village Interests.

Legal Effects on the Validity of Certificates of Ownership (SHM) with Legal Defects, as in Decision Number: 252 PK/PDT/2024

In Supreme Court Decision Number 252 PK/PDT/2024 with the verdict stating rejecting the request for reconsideration from the reconsideration applicant: SUKIRAH, which has the legal effect that Certificate No. 1016, in the name of SUMARDI (husband of the Review Petitioner), located in RT 02/RW 04, Measurement Letter No. 149/Kembangan/2001 dated August 06, 2001, with an area of 659 m² is legally defective, so that it has no binding legal force. Against the Judgment of Judicial Review, the Respondent of Judicial Review is a party that can be said to be the winner in the case, and is entitled to submit a request to the National Land Agency so that the related Certificate of Land Title is declared legally invalid and/or canceled and issue a new Certificate of Land Title to the object of dispute, which in this case belongs to the Kembangan Village Government (Respondent of Judicial Review).

Supreme Court Circular Letter No. 10 of 2020, Regarding the Implementation of the Formulation of the Results of the 2020 Chamber Plenary Meeting as Guidelines for the Implementation of Tasks for the Court, reads "Civil judges do not have the authority to cancel certificates, but only have the authority to declare certificates have no legal force, on the basis of not having a valid basis for rights. Certificate cancellation is an administrative action which is the authority of the state administrative court". The difference in principle lies in the authority and legal effect. A declaration that a certificate has no legal force is within the jurisdiction of the court, while canceling a certificate is within the jurisdiction of the National Land Agency.¹⁵

¹⁴ I Gede Widhiana Suarda, *Hukum Pidana (Materi Penghapus, Peringan, dan Pemberat Pidana)* (Malang: Bayumedia Publishing, 2011).

¹⁵ Ilyas Ismail, "Sertipikat sebagai Alat Bukti Hak Atas Tanah dalam Proses Peradilan" (2011) 13:1 J Ilmu Huk 23-34.

In the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 11 of 2016 concerning Settlement of Land Cases as amended by the regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 21 of 2020 concerning Handling and Settlement of Land Cases Article 57 paragraph (1), which stipulates that the implementation of court decisions that have obtained legal force must be implemented, unless there are valid reasons not to implement. The decision to cancel land rights due to the implementation of a court decision that has obtained permanent legal force is issued at the request of an interested party. So in this case, the parties who have an interest can apply for annulment.

The ruling of a court decision that has obtained permanent legal force includes that it is declared void or has no legal force or essentially the same thing. An application for cancellation of a land right due to the execution of a court decision may be submitted directly to the Minister or to the Head of the Regional Office or through the Head of the Land Office. The application for cancellation of land rights must contain information about the applicant, information about the land, reasons for the cancellation application and other supporting evidence. In Article 41 paragraph (1) of the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 11 of 2016 concerning Settlement of Land Cases as amended by the regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 21 of 2020 concerning Handling and Settlement of Land Cases, it is also stated that the application for cancellation must attach: photocopy of identity, photocopy of decision letter/certificate, photocopy of deed of establishment of legal entity, photocopy of court decision and the first level up to the last decision, minutes of execution or other letters related to the cancellation application. Furthermore, the application is submitted through the Head of the Land Office who will examine and scrutinize the completeness of the juridical and physical data, record it in the form, provide a receipt for the annulment application file and notify the applicant to complete the juridical and physical data if still needed. Furthermore, the Head of the Land Office will submit the application file to the Minister.¹⁶

In connection with the implementation of court decisions that have permanent legal force, the Regulation of the Minister of Agrarian and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 21 of 2020 emphasizes that:

1. Implementation of court decisions is a follow-up to judicial decisions that have permanent legal force. Court decisions that have permanent legal force relating to the issuance, transfer, cancellation of land rights and/or cancellation of the determination of abandoned land, as follows:
 - a. An order to cancel the land title;
 - b. Declare void / invalid / has no legal force of land rights;
 - c. Stating that the evidence of rights is invalid / has no legal force;
 - d. Ordering the recording or crossing out in the Land Book;
 - e. Order for the issuance of land rights;
 - f. An order to cancel the determination of abandoned land; and
 - g. A ruling that has the legal effect of the issuance of a transfer of rights or the cancellation of a transfer of rights.
2. Court decisions that have permanent legal force, relating to the issuance, transfer, cancellation of land rights and/or cancellation of the determination of abandoned land are implemented based on the request of interested parties through the local Land Office. Interested parties are litigants or other parties involved in the case. The application letter must be completed with:

¹⁶ Maya Sartika, "Kedudukan Putusan Pengadilan yang Sudah Berkekuatan Hukum Tetap dalam Pembatalan Sertifikat Hak Atas Tanah" (2019) 2:1 J Sos Hum 71-78.

- a. Photocopy of the applicant's identity or photocopy of the proxy's identity and power of attorney if authorized;
 - b. Official copy of the Court Decision that has permanent legal force, which has been legalized by the authorized official;
 - c. A certificate from an authorized official in the court environment explaining that the decision in question has permanent legal force;
 - d. Minutes of Execution, in the case of a case decision that requires execution; and/or
 - e. Other letters related to the request for annulment, if necessary, may be required by the Head or Director in charge of handling cases at the Director General of the Republic of Indonesia.
3. Minutes of Execution of possession / vacating / surrendering of land are not required in the relevant application:
 - a. To execute the decision of the Administrative Court;
 - b. The land has been controlled by the applicant as evidenced by a statement letter from the applicant known to the Head of the local RT/RW/Lurah/Village Head, or Field Research Report from the local Land Office.
 4. After the application is received, the official in charge of handling Disputes, Conflicts and Cases shall examine the application file. If the application file meets the requirements, the official responsible for handling Disputes, Conflicts and Cases shall continue the process of handling the application. In the event that the application dossier does not meet the requirements, the official returns the application dossier to the applicant by informing him/her of the deficiencies in the completeness of the application dossier in writing;
 5. Based on the results of the file research, the court decision is analyzed. In the event that there is a lack of data, the official responsible for handling Disputes, Conflicts and Cases shall collect data.
 6. The Head of the Land Office submits the results of the analysis of the court decision along with supporting data, to:
 - a. Head of the BPN Regional Office, in the case of decisions on granting rights, conversion/affirmation/recognition, cancellation of land rights issued by the Head of the Land Office; or,
 - b. The Minister, in the case of a decision on granting rights, conversion/affirmation/recognition, cancellation of land rights, or determination of abandoned land issued by the Head of the BPN Regional Office or the Minister. The results of the analysis of the court decision are submitted to the Minister through the Head of the BPN Regional Office accompanied by related data.
 7. After receiving the results of the court decision analysis, the Head of the BPN Regional Office or the Minister instructs the official responsible for handling Disputes, Conflicts and Cases to carry out:
 - a. Conduct field assessments and inspections;
 - b. Conducting exposure, if required; and
 - c. Compile and submit a Case Settlement Report.
 8. The activities of data collection, analysis, assessment and field examination, presentation, report preparation, issuance of settlement decisions, and implementation of decisions in the context of Dispute and Conflict resolution, apply mutatis mutandis to data collection, analysis and submission, assessment and field examination, presentation, report preparation, issuance of settlement decisions, and implementation of decisions in the context of implementing court decisions;
 9. The implementation of a court decision is carried out in accordance with the authority to annul. The annulment authority includes, among others:

- a. Head of the Land Office, in the case of decisions on conversion/affirmation/recognition, granting of rights, cancellation of rights issued by the Head of the Land Office;
 - b. Head of the BPN Regional Office, in the case of conversion/affirmation/recognition, granting of rights, cancellation of rights issued by the Head of the BPN Regional Office;
 - c. The Minister in the case of a decision on granting rights, decision on canceling rights, decision on determining abandoned land issued by the Minister. The issuance of the cancellation decision by the Head of the Land Office and the Head of the BPN Regional Office is carried out on behalf of the Minister and reported to the Minister within 7 (seven) working days since the cancellation decision is issued.
10. In the event that the land object of the court decision is an asset of State/Region Property and/or an asset of State/Region-Owned Enterprises, the implementation of the cancellation of the land rights is carried out without waiting for the process of deletion of assets/fixed assets from the agency concerned. After the cancellation is carried out, the Head of the Land Office notifies the asset holder whose land rights are canceled so that the asset / fixed asset deletion is carried out. The granting of land rights is carried out after the elimination of assets / fixed assets from the agency concerned;
11. The implementation of court decisions that have permanent legal force must be carried out, unless there is a valid reason not to carry them out. The legitimate reasons referred to, among others:
- a. Against the object of the decision there is another conflicting decision;
 - b. The object of the decision is being blocked or confiscated by the police, prosecutor's office, court and/or other law enforcement agencies;
 - c. Other reasons stipulated in the provisions of laws and regulations. Such reasons shall be reported by the Head of Land Office to the Head of BPN Regional Office or the Minister within 7 (seven) working days at the latest since the receipt of the Decision.

The legal consequences of the Supreme Court Decision Number 252 PK/PDT/2024, which in this case the verdict states that rejecting the request for reconsideration from the reconsideration applicant: **SUKIRAH**, then the Decision strengthens the previous Decision which states that Certificate Number 1016, in the name of **SUMARDI** (Husband of the Petitioner for Review) land location RT 02 / RW 04, Measurement Letter No. 149 / Kembangan / 2001 dated August 06, 2001, an area of 659 m² is legally defective, so it does not have binding legal force. Based on the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 11 of 2016 as amended by the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 21 of 2020 concerning Handling and Settlement of Land Cases, the Respondent of the Reconsideration (Kembangan Village Government) is entitled to submit an application for cancellation to the Head of the National Land Agency of Magetan Regency to cancel land rights in the form of Certificate Number 1016, in the name of **SUMARDI** (husband of the Petitioner of the Reconsideration), located in RT 02/RW 04, Measurement Letter No. 149/Kembangan/2001 dated August 06, 2001. 149/Kembangan/2001 dated August 06, 2001, area of 659 m².

CONCLUSION

The Ratio Decidendi of the Panel of Judges in the Review Case Number 252 PK/PDT/2024 is correct and correct. According to the researcher, the reasons of the Petitioner for Reconsideration cannot be justified, and the Decision of the Supreme Court in the case of Reconsideration is appropriate, which states that the Judex Juris Decision in the case a quo does not contain error or

error, and the Novum submitted by the Petitioner for Reconsideration does not strengthen the arguments in the Petition for Reconsideration. The novum that has been submitted by the Applicant for Review is not decisive, because it does not fulfill the element of new evidence which at the time of examination of previous cases could not be found.

The legal effect of the Supreme Court Decision on Judicial Review Case Number 252 PK/PDT/2024 is that the Certificate of Ownership which is the object of the dispute is declared legally defective, so that it does not have binding legal force. Based on the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 11 of 2016 as amended by the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 21 of 2020 concerning Handling and Settlement of Land Cases is that the Respondent of the Reconsideration is entitled to submit an application for Cancellation of Title Certificate to the Head of Land Office of Magetan Regency. This is in accordance with the land registration system adopted in Indonesia in Article 38 paragraph (2) of the UUPA that the certificate is a strong proof of rights and not a proof of absolute rights so that it can be sued if there are parties who feel entitled to the land, then the legal certainty of the land certificate holder is still guaranteed as long as no one proves otherwise.

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