

## 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 M<sup>2</sup> (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

Indonesia has had a national law that regulates land, namely the Basic Agrarian Law for more than 60 years where in Article 4 paragraph (4) and 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 (Winarnno, 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 leveraging.

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<sup>2</sup> (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) Peraturan 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

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