

## **THE TRANSFER OF LAND RIGHTS THROUGH ORAL GRANTS: A CASE STUDIES OF COURT DECISION**

*\*Dian Ayu Meika Putri & Ana Silviana*

*Universitas Diponegoro*

*\*Correspondence Email: [dianayu0705@gmail.com](mailto:dianayu0705@gmail.com)*

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**Abstrak.** *This study aims to examine and analyze the cancellation of the transfer of land rights through oral grants. In addition, to understand the legal consequences of Decision No. 30/Pdt.G/2020/PN.Tnr regarding the position of the land object obtained against the law. This study uses a normative juridical research method. The data was collected using literature study techniques on primary, secondary, and tertiary legal materials. The collected legal material is then analyzed using qualitative data analysis methods with a statute approach and a case approach which will then conclude the object of the research. The results show that the transfer of land rights is implemented through oral grants in Decision No. 30/Pdt.G/2020/PN.Tnr is invalid and null by law. In this case, based on Article 617, Article 1320, Article 1335, Article 1365, Article 1682, and Article 1688 point 2 of the Civil Code. In addition, there are rules and prohibitions for transferring land from the distribution of the Transmigration Program. While the legal consequences are defendants, I to VIII and co-defendant V must vacate and get out from the land right of ownership plaintiff in excellent and intact condition. Therefore, it is recommended that each party that implements the grant knows the rules according to the applicable laws and regulations. Meanwhile, the recipient of the distribution of Land from the Transmigration Program must understand the rules and prohibitions as a participant in the program. The government and related agencies must be more intense in socializing with the public about the importance of making a grant deed before the Land Deed Official. This condition aims to minimize the occurrence of land disputes in the future due to oral grants.*

**Keywords:**  
*Land;  
Oral Grants;  
Transfer of Rights;  
Transmigration.*

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### **INTRODUCTION**

The land has a fundamental role in human life: individually and in groups. Land for the people of Indonesia has a multi-dimensional meaning: a place to live and a source of survival. In fact, in certain societies, the land is a mirror and symbol of social status in people's lives. Meanwhile, according to the state, the land is an asset with economic value if it contains natural resources.<sup>1</sup> The land is the primary source of

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<sup>1</sup>Pugung, S. (2021). *Perihal Tanah dan Hukum Jual Belinya serta Tanggung Jawab PPAT terhadap Akta yang Mengandung Cacat Perspektif Negara Hukum*. Yogyakarta: Deepublish, pp. 1-2.

human beings, so the need for land from year to year is increasing. Therefore, the transfer of ownership rights to land has been rife between individuals, companies, and the government.<sup>2</sup> Article 4 section (1) of Law of the Republic of Indonesia Number 5 of 1960 on Basic Agrarian Principles (hereinafter referred to as Law No. 5 of 1960) regulates that:

*“On the basis of the State’s right of control ..., it is necessary to determine the types of rights to the surface of earth, which is called land, that can be granted to, and held by, persons, either individually, jointly with others as well as legal entities.”*

Article 16 section (1) of Law No. 5 of 1960 regulates that the land rights as referred to in section (1) of Article 4 are:

- a. right of ownership,
- b. right to cultivate,
- c. right to build,
- d. right to use,
- e. leasehold rights,
- f. right of land clearing,
- g. right to collect forest products,
- h. rights other than those mentioned above which will be regulated by a Law and rights of provisional nature which are mentioned in Article 53.

The land ownership right can be transferred in two ways: originair and derivative.<sup>3</sup> Article 20 section (2) of Law No. 5 of 1960 regulates that *“a right of ownership can be transferable to other parties.”*

From the above provision, it can be understood that the originair transfer is an event of the transfer of rights of ownership to land caused naturally by a legal event. For example, if the land owner dies, the right of ownership to land will legally become their inheritor’s right. Meanwhile, the derivative transfer is an event of the transfer of rights of ownership to land caused by legal action. For example, sale and purchase, exchanges, grants, auctions, and other agreements. The transfer of ownership rights to land caused by legal action must be carried out before the Land Deed Official.<sup>4</sup>

From the transfer of rights of ownership to land, there are transfers made voluntarily. The legal action is a grants. However, the granting process must be carried out while the grantor is still alive. This condition is the difference between grants and wills.<sup>5</sup>

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<sup>2</sup>Kolopaking, A. D. A. (2021). *Penyelundupan Hukum Kepemilikan Hak Milik atas Tanah di Indonesia*. Bandung: PT. Alumni, pp. 1-2.

<sup>3</sup>Salakokry, R. W. (2018). “Pelaksanaan Pendaftaran Hak Milik atas Tanah karena Hibah Berdasarkan PP 24 Tahun 1997 tentang Pendaftaran Tanah dalam Mewujudkan Kepastian Hukum di Kota Yogyakarta”. *Bachelor Thesis*. Faculty of Law, Universitas Atmajaya Yogyakarta, pp. 23-24.

<sup>4</sup>Amir, A. (2019). Pengalihan Hak Penguasaan Tanah Menurut UUPA dalam Rangka Pendaftaran Tanah Pertama Kali. *Repertorium: Jurnal Ilmiah Hukum Kenotariatan*, 8(1), pp. 53-54.

<sup>5</sup>Ayudiatry, S. & Cahyono, A. B. (2022). The Legality of Grants by Foreign Citizens on Land Objects in Indonesia: Case Studies of Court Decisions. *SIGn Jurnal Hukum*, 4(1), p. 31.

On the other hand, land grants are a problem that often occurs in the community. One of the reasons is the transfer of land rights through oral grants.<sup>6</sup> This condition causes the number of grant cases in Indonesia to increase. The case of cancelling the transfer of land rights through oral grants in the District Court of Tanjung Redeb is one example of the problems referred to in the description above. In this case, the Decision of the District Court of Tanjung Redeb Number 30/Pdt.G/2020/PN Tnr. (hereinafter referred to as Decision No. 30/Pdt.G/2020/PN.Tnr) contains a case where oral grants resulted in a land dispute. The initial condition for the dispute was that the grantor transferred one of the land rights oral to and for the benefit of the Nurul Muhajirin Islamic Boarding School Foundation, not to and for the owner's personal interest of the Foundation. On the other hand, the grantor cannot read and write, so the grantee scribbles on the grantor's thumb using a pen and hands over a blank sheet of paper to affix his thumbprint. After that, the grantee wrote a few sentences that the grantor did not know. At the time of the transfer of land rights through oral grants, only the two of them and no witnesses were at the scene. The grantor began to realize the problem when three land certificates were issued in the grantee's name, while the object of the land was the land right belonging to the grantor. Therefore, the grantor filed a lawsuit against the grantee's inheritor because the grantee had died and the grantee's inheritor controlled the land object. In addition, the grantor also filed a lawsuit against the other two parties (Defendants VIII and IX).

There have been several previous studies that have a discussion theme similar to this study. Tukly discussed the application of the transfer of rights to indigenous land through oral grants from the perspective of indigenous law.<sup>7</sup> In contrast, this study will discuss the legal consequences of the transfer of land rights through oral grants from the perspective of the Civil Code. Rizal discussed the transfer of land rights through oral grants caused by loan defaults.<sup>8</sup> In contrast, this study will discuss the transfer of land rights through oral grants caused by the defendant's actions against the law. Fahlepy, *et al.*, discussed the legal position of transferring land rights through an underhanded grant deed.<sup>9</sup> In contrast, this study will discuss the status of land rights through oral grants and the status of the certificate of right of ownership to land obtained by the defendant against the law.

Based on the description above, this study aims to examine and analyze the cancellation of the transfer of land rights through oral grants. In addition, to understand the legal consequences of Decision No. 30/Pdt.G/2020/PN.Tnr regarding the position of the land object obtained against the law.

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<sup>6</sup>Budify, A., *et al.* (2020). Pembatalan Akta Hibah di Pengadilan Negeri Pematangsiantar: Kajian Putusan Nomor 33/Pdt.G/2019/PN.Pms. *SIGN Jurnal Hukum*, 2(1), p. 78.

<sup>7</sup>Tukly, H. M. (2021). "Keabsahan dan Akibat Hukum terhadap Peralihan Hak atas Tanah Adat melalui Hibah secara Lisan". *Bachelor Thesis*. Faculty of Law, Universitas Pattimura, pp. 11-12.

<sup>8</sup>Rizal, M. (2019). "Prinsip Kepastian Hukum Pemberian Kuasa dalam Peralihan Hak Milik atas Tanah secara Lisan". *Thesis*. Faculty of Law, Universitas Jember, p. 13.

<sup>9</sup>Fahlepy, R., *et al.* (2021). Status Peralihan Sertifikat Hak atas Tanah Berdasarkan Surat Hibah di Bawah Tangan. *Jurnal de Jure*, 13(1), p. 107.

## **METHOD**

This study uses a normative juridical research method to analyze legal problems by referring to and originating from legal norms.<sup>10</sup> In this case, laws and regulations are positive law and court decisions with permanent legal force. The types of data used are legal materials, including:

1. Primary legal materials include Law No. 5 of 1960, the Civil Code, Decision No. 30/Pdt.G/2020/PN.Tnr, and other laws and regulations;
2. Secondary legal materials that explain primary legal include books, articles, and online materials that discuss grants; and
3. Tertiary legal materials are legal materials that provide instructions and explanations for primary and secondary legal materials. The tertiary legal material used by the author is the Big Indonesian Dictionary and related legal dictionaries.

The data was collected using literature study techniques on primary, secondary, and tertiary legal materials. The collected legal material is then analyzed using qualitative data analysis methods with a statute approach and a case approach will then conclude the object of the research.<sup>11</sup>

## **RESULTS AND DISCUSSION**

Every judge's considerations and decisions must be transparent and accountable to the broader community. Likewise, in Decision No. 30/Pdt.G/2020/PN.Tnr regarding the case where oral grants resulted in a land dispute. The status, subject and object of law that will be discussed based on this decision include:

1. Darsono as oral grantor or plaintiff (hereinafter referred to as plaintiff);
2. Maksum Abdullah (deceased) as oral grantee or an Owner of the Nurul Muhajirin Islamic Boarding School Foundation (hereinafter referred to as oral grantee);
3. Inheritors of Maksum Abdullah as an owner rights to Yard Land or defendants I to VII (hereinafter referred to as defendants I to VII);
4. Saidin as an owner of rights to Business Land Two or defendant VIII (hereinafter referred to as defendant VIII);
5. Lilik Cholidiyah as oral grant witness on three objects of land ownership rights from Darsono to Maksum Abdullah or defendant IX (hereinafter referred to as defendant IX);
6. Laba Sari Cooperative as manager of Business Land Two or co-defendants III (hereinafter referred to as co-defendant III);
7. Sapri as owner rights to some Business Land One or co-defendants V (hereinafter referred to as co-defendant V);

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<sup>10</sup>Diantha, I. M. P. (2017). *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*. Jakarta: Kencana Prenada Media Group, p. 12.

<sup>11</sup>Qamar, N. & Rezah, F. S. (2020). *Metode Penelitian Hukum: Doktrinal dan Non-Doktrinal*. Makassar: CV. Social Politic Genius (SIGn), pp. 47-48.

8. Yard Land area of 2,500 square meters and one residential unit on it (hereinafter referred to as Yard Land);
9. Business Land One area of 10,000 square meters (hereinafter referred to as Business Land I);
10. Business Land Two area of 7,500 square meters (hereinafter referred to as Business Land II).

**A. Analysis of the Considerations of Decision No. 30/Pdt.G/2020/PN.Tnr**

This land dispute originated when Plaintiff transferred yard land through oral grants to grantee circa 1990. Plaintiff transferred yard land through oral grants to grantee circa 1990. Oral grants aim for the benefit of the Nurul Muhajirin Islamic Boarding School Foundation, not for the owner's personal interest in the Foundation. On the other hand, from 1992 to 1993, Plaintiff questioned the status of the certificate of right of ownership to Business Land I and Business Land II to the village head of Labanan Makarti. The village head of Labanan Makarti conveyed to Plaintiff that the certificate was handed over to the oral grantee after being issued at the end of 1991. Until around 2014, Plaintiff got a photocopy of the statement letter made in July 1991. In this case, the letter's main point is that Plaintiff has given absolute power over three objects of land ownership rights to Defendant IX. The Plaintiff considered that a power of attorney was invalid.

Plaintiffs then register lawsuits against defendants I to IX and co-defendants I to V on October 14, 2020. From the examination process and facts of the trial, the Judge decided based on consideration of exceptions and main points of the case. The Judge outlines the following considerations against the exceptions of all the defendants and co-defendant V.

*First*, Plaintiff has no right and authority to sue (*disqualification in persona*), there is no problem based on the securities made by Plaintiff, and Plaintiff's lawsuit is unclear (*obscur libel*) because the land boundary proposed is incorrect and different. In this case, the description is an exception with no legal basis. From the Judge's considerations, the legal facts ensure that Plaintiff is the owner of the three land rights objects, Plaintiff never creates securities, and the land boundaries are evident. In this case, the verification process and evidence have been described in the main points of the case.

*Second*, the plaintiff lawsuit lacks parties (contains the defect of *plarium litis consortium*), which is an exception with the legal defect. From the Judge's considerations, the legal facts ensure that the lawsuit is the right of every Plaintiff to exclude and include certain parties based on their interests. In this case, as described in the Jurisprudence of the Supreme Court of the Republic of Indonesia No. 305/K/Sip/1971.

Furthermore, the Judge outlines the following considerations against the action related to the oral grants in the case's main points. *First*, the purpose of the plaintiff lawsuit is basically about the status of the three objects of land ownership rights that are the object of the dispute. In this case, the land is land rights obtained by the Plaintiff from the Transmigration Program held by the Government in 1984. However, the land is controlled by all the defendants and co-defendants III and V. Plaintiff considers their actions unlawful. From the Judge's considerations, the legal facts ensure that based on the statements of the witnesses and the available evidence, it has confirmed the Plaintiff's status as the legal owner of the three objects of the disputed land.

*Second*, in 1991, witness Mispan was invited by the oral grantee to witness the grants on Yard Land made by Plaintiff to and for the benefit of the Nurul Muhajirin Islamic Boarding School Foundation. Mispan also signed a statement dated July 1991 and a statement dated January 9, 1993. In this case, the statement is granting land from Plaintiff to and for the benefit of the Nurul Muhajirin Islamic Boarding School Foundation.

*Third*, the legal facts ensure that Plaintiff plans to grants on Yard Land to and for the benefit of the Nurul Muhajirin Islamic Boarding School Foundation without being carried out before the Land Deed Official. In addition, Plaintiff does not give absolute power over the rights of three objects of land ownership to Defendant IX. However, in reality, what is contained in a statement is not about granting on Yard Land, but Plaintiff has given absolute power over three objects of land ownership rights to Defendant IX. Therefore, the good intentions of Plaintiff granting on Yard Land to and for the benefit of the Nurul Muhajirin Islamic Boarding School Foundation were not realized.

*Fourth*, witness Moh. Soleh, Mardi Siswoyo, and Mispan explained that the distribution of land from the Transmigration Program is not allowed and is prohibited from being transferred. In addition, the distribution of land is not allowed and prohibited from being traded, exchanged, granted, or other legal actions directly or indirectly aim to transfer the right of ownership. Furthermore, the division of land is also not allowed, and it is forbidden to be partitioned. As long as without special permission from the local Regent, the rules and prohibitions are valid for ten years from registering as a participant receiving the program. The Government conveyed this information during a program briefing to the local community.

From all the Judge's considerations in Decision No. 30/Pdt.G/2020/PN.Tnr, the Judge concluded that the actions related to oral grants were invalid and null by law. In this case, it is against the rules and prohibitions for participants receiving the Transmigration Program.

Furthermore, the Judge outlines the considerations on the status right of ownership to Business Land I and Business Land II in the main points of the case. In this case, the legal facts ensure that Plaintiff is the owner of the land rights based on a photocopy of the Land Book Right of Ownership Number 365 and Land Book Right of Ownership Number 692 Labanan Makarti Village. In addition, the ownership status was strengthened by witness Moh. Soleh, Mardi Siswoyo, Suharsono, Semin, Mispan, and Karto Sutarsono explained that Yard Land, Business Land I, and Business Land II are one package for the distribution of transmigration land. Therefore, Plaintiff is the legal owner of the three land rights objects.

Meanwhile, the Judge's consideration regarding the position of a statement dated July 1991 and a statement dated January 9, 1993, is not legally binding. In this case, the legal facts ensure that the rules and prohibitions are there to transfer the land and are valid for ten years from registering as a participant. In addition, the legal facts ensure that all the defendants have committed unlawful acts as regulated in Article 1365 of the Civil Code.

From all the Judge's considerations in Decision No. 30/Pdt.G/2020/PN.Tnr, Judge adjudicates and decides to reject the exception of all defendants and co-defendant V in its entirety. Furthermore, from all the Judge's considerations in Decision No. 30/Pdt.G/2020/PN.Tnr, Judge adjudicates and decides on the main points of the case, namely:

1. Accept the Plaintiff's suit in part;
2. All the defendants have committed unlawful acts;
3. The provision of oral grants without a grant deed from an authorized official to the Nurul Muhajirin Islamic Boarding School Foundation is invalid;
4. Plaintiff is the legal owner of Yard Land, Business Land I, and Business Land II;
5. A statement dated July 1991 and a statement dated January 9, 1993, are not legally enforceable;
6. Sentencing defendants I to VIII and co-defendant V to vacate and get out from the land right of ownership plaintiff in excellent and intact condition;
7. Order all the co-defendants to submit to and comply with this Decision;
8. Sentencing all the defendants to pay court fees of IDR 7,132,000.00 (seven million one hundred and thirty-two thousand rupiah);
9. Not acceptable Plaintiff's claim other than and the rest.

## **B. Legal Consequences of Decision No. 30/Pdt.G/2020/PN.Tnr**

The Land is an immovable object that must be based on Law No. 5 of 1960 and its implementing regulations.<sup>1213</sup> Article 4 section (2) of Law No. 5 of 1960 regulates that:

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<sup>12</sup>Amir, A. (2019). *Op. Cit.*, p. 29.

<sup>13</sup>Murni, C. S. (2018). Peralihan Hak atas Tanah Tanpa Sertifikat. *Lex Librum: Jurnal Ilmu Hukum*, 4(2), p. 682.

*“The land rights as referred to in section (1) of this article confers authority to use the land in question, as well as the mass of the earth and the water existing under its surface and the space above, it to a point which is essentially required to allow for the fulfillment of the interests that are directly related to the use of the land in question, such a point being within the limits imposed by this Law and by other higher-level legislation.”*

As previously explained regarding the status of the object of land disputes due to the transfer of land rights through oral grants. In this case, the legal facts ensure that Plaintiff is a transmigration resident and a participant receiving Land of the Transmigration Program based on Certificate Number 470/685/LM-TLB/2020. From this status, Plaintiff is the owner of the Yard Land rights based on the Land Book Right of Ownership Number 698. Similarly, Business Land I is based on the Land Book Right of Ownership Number 365, and Business Land II is based on the Land Book Right of Ownership Number 692. In addition, Plaintiff is the owner of Business Land II based on the Decree of the National Land Agency of Berau Regency Number 08/HM-BER/BPN-16/1991. Finally, Plaintiff's status as the owner of the three disputed lands was confirmed by Decision No. 30/Pdt.G/2020/PN.Tnr. As a participant receiving Land of the Transmigration Program, Plaintiff has managed Business Land I and Business Land II based on individual land tenure rights as regulated in Article 4 section (2) of Law No. 5 of 1960. Furthermore, Article 14 section (1) point c of Law No. 5 of 1960 regulates that:

*“In view of the provisions ..., the Government, within the context of Indonesian socialism, devises a general plan concerning the supply, allocation, and use of the land, water, and airspace as well as the natural resources contained therein for the purposes related to the development of public-life centers, socio-cultural centers, and other forms of prosperity.”*

Plaintiff's obligations,<sup>14</sup> are based on Article 15 of Law No. 5 of 1960, which regulates that:

*“It is the duty of every individual, legal entity, or institution which has a legal relationship with land to take care of the land, to improve its fertility, and to prevent it from damage by taking into consideration the interests of the financially incapable party.”*

Article 8 of Government Regulation of the Republic of Indonesia Number 16 of 2004 on Land Stewardship regulates that:

*“The holder of land rights is obliged to use and be able to utilize the Land in accordance with the Spatial Plans, as well as maintain the Land and prevent land damage.”*

From the above provisions, the legal facts ensure that Plaintiff managed the Land of the Transmigration Program from 1984 to 1989. Suharsono and

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<sup>14</sup>Kurniati, N. (2016). *Hukum Agraria Sengketa Pertanahan: Penyelesaian dalam Teori dan Praktik*. Bandung: PT. Refika Aditama, p. 35.



Semin testified in the trial that they had worked on Plaintiff's Land for planting watermelon or rice and were paid IDR 50,000.00/day.

Meanwhile, the main point of the case is that the transfer of land rights through grants must be based on Article 1666 of the Civil Code, which regulates that:

*"Granting is an agreement whereby the grantor delivers assets voluntarily, irrevocably, for the benefit of the grantee who accepts such. The law only recognizes granting between people who are still alive."*

The nature of the grant agreement is a material agreement.<sup>15</sup> Grants for Land and buildings on it are immovable objects that must be carried out before the Land Deed Official.<sup>16</sup> In this case, each party must present a grant deed when registering Land at the National Land Agency. However, the main point of the case of transfer of land rights through grants occurred before the enactment of Government Regulation of the Republic of Indonesia Number 24 of 1997 on Land Registration (hereinafter referred to as Government Regulation No. 24 of 1997). In this case, it regulates the position of the Land Deed Official as a General Official has the authority to ensure the grant deed. Article 37 of Government Regulation No. 24 of 1997 regulates that:

*"The transfer of land rights and rights of ownership to condominium units through sale and purchase, exchange, granting, corporate income, and other legal acts of transfer of rights, except for the transfer of rights through auction, can only be registered if it is proven by a deed made by the Land Deed Official authorized according to the provisions of the applicable laws and regulations."*

On the other hand, the Civil Code is not further regulated regarding restrictions on grants distribution. In principle,<sup>17</sup> grants based on Article 1688 of the Civil Code regulate that a grants cannot be revoked or invalidated other than in the following circumstances:

1. If the granting conditions are not satisfied by the grantee;
2. If the grantee is guilty of or is an accessory to manslaughter or is guilty of another crime committed against the grantor;
3. If the grantor falls into poverty while the grantee refuses to provide for him.

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<sup>15</sup>Rosyadan, M. H. (2016). "Analisis Yuridis atas Harta Bersama Mengenai Pembatalan Hibah di Pengadilan (Studi Kasus Putusan Nomor 440/Pdt.G/2013/PN.Jkt.Pst)". *Bachelor Thesis*. Faculty of Law, Universitas Bhayangkara Jakarta Raya, p. 6.

<sup>16</sup>Budiono, H. (2018). *Demikian Akta Ini: Tanya Jawab Mengenai Pembuatan Akta Notaris di Dalam Praktik*. Bandung: PT. Citra Aditya Bakti, p. 28.

<sup>17</sup>Suisno, S. (2017). Tinjauan Yuridis Normatif Pemberian Hibah dan Akibat Hukum Pembatalan Suatu Hibah Menurut Kompilasi Hukum Islam (KHI) dan Kitab Undang-Undang Hukum Perdata. *Jurnal Independent*, 5(1), p. 16.

Article 617 of the Civil Code regulates that:

*“All deed of sale and purchase, grant, distribution, encumbrance, and or transfer of immovable object must be made in the authentic form or the threat of cancellation. Each excerpt in the usual form of a roll or a list of the auction office, in order to prove the sale and purchase object held through the intermediary of the office according to existing regulations or to be held, must be considered an authentic deed.”*

From the above provisions, it can be understood that the transfer of rights must be made in the form of an authentic deed and carried out before certain parties who have authority over the role.<sup>18</sup> In addition, the above provisions can also be understood that the transfer of rights must be carried out before the witnesses. This provision is further regulated in Law No. 5 of 1960 and Government Regulation No. 24 of 1997, as long as it concerns the transfer of land rights. Meanwhile, as regulated in Government Regulation 24 of 1997, land registration in Indonesia adopts a negative publication system with positive elements. In this case, the State does not guarantee the truth of the data presented, but rather that legal action must be carried out before the Land Deed Official and is proven by an authentic deed.<sup>19</sup>

Provisions regarding making a grant deed must be carried out before the authorities existed, even before the formation of Government Regulation No. 24 of 1997. This condition applies to legal subjects who are obedient to the Civil Code, Islamic Law, and or Indigenous Law. In this case, the manufacture of an underhanded deed must be carried out before the witnesses.<sup>20</sup>

From the above provisions, the legal facts ensure that the transfer of land rights through oral grants made by Plaintiff to the oral grantee is invalid and null by law. The absence of witnesses further strengthened this decision when the party made oral grants. In addition, the proof of the statement containing Plaintiff's thumbprint is also contrary to Article 1682 of the Civil Code, which regulates that:

*“Any grant, except for those regulated in Article 1687, may only take effect by notarial deed, and the original document of such grant remains with the notary, and if it is not done, then the grant is invalid.”*

The existence of the statement also contains actions based on Article 1688 point 2 of the Civil Code.<sup>21</sup> In this case, the oral grantee takes advantage of Plaintiff's inability to read and write. Grantee wrote a statement that the main point Plaintiff

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<sup>18</sup>Fahlepy, R., et al. (2021). *Loc. Cit.*

<sup>19</sup>Widyani, I. D. A. (2019). Kepastian Hukum Sistem Publikasi dalam Pendaftaran Tanah di Indonesia Menurut UU RI Nomor 5 Tahun 1960 tentang Pokok-Pokok Agraria. *Jurnal Hukum to-ra: Hukum untuk Mengatur dan Melindungi Masyarakat*, 1(3), p. 201.

<sup>20</sup>Usman, U. A., et al. (2020). Keabsahan Sertifikat Pengganti sebagai Dasar Pembuatan Akta Hibah (Studi Kasus Nomor 64/Pdt.G/2018/Pn.Kdi). *Indonesian Notary*, 2(4), p. 658.

<sup>21</sup>Rivania, T. (2020). “Perlindungan Hukum Penerima Hibah Akibat Pembatalan Akta Hibah oleh Pemberi Hibah Dihubungkan dengan Buku III Kitab Undang-Undang Hukum Perdata”. *Bachelor Thesis*. Faculty of Law, Universitas Pasundan, pp. 49-50.

had given absolute power over three objects of land ownership rights to Defendant IX. In contrast, Plaintiff's intention is granting on Yard Land to and for the benefit of the Nurul Muhajirin Islamic Boarding School Foundation.

Meanwhile, the Judge's consideration regarding the position of co-defendant III as manager of Business Land II and co-defendant V as owner rights to some Business Land I is invalid and null by law. Co-defendants III and V should understand the status of the Land before agreeing on the transfer of land rights.<sup>22</sup> Article 1320 of the Civil Code regulates that in order to be valid, an agreement must satisfy the following four conditions:

1. There must be a consent of the individuals who are bound thereby;
2. There must be the capacity to enter into an obligation;
3. There must be a specific subject matter;
4. There must be a legal cause.

Furthermore, Article 1335 of the Civil Code regulates that "*any agreement without a cause, or concluded pursuant to a fraudulent or prohibited cause, is not be enforceable.*"

From the above provisions, the legal facts ensure that there are two conditions for the validity of the agreement that are not fulfilled, namely the agreement of the parties and the reasons that are permitted. *First*, the decision above clearly shows that there is no agreement between Plaintiff and Defendant IX to make a statement dated July 1991 and a statement dated January 9, 1993. Therefore, Defendant IX is not entitled to act as a party to the implementation of the agreement on transferring three objects of the Land ownership rights plaintiff. In addition, Plaintiff is unable to read and write, so it is evident that Plaintiff is not involved in making the statement. *Second*, the decision above clearly shows that the grants statement between Plaintiff and the oral grantee contradicts the legal reasons. Plaintiff does not desire the contents of the letter. In this case, Plaintiff does not give absolute power over the rights of three objects of land ownership to Defendant IX. Meanwhile, the legal facts ensure that the oral grantee and Defendant IX forged letters as regulated in Article 1335 of the Civil Code to control the three objects of Land. Therefore, a statement dated July 1991 and a statement dated January 9, 1993, are invalid and null by law.

Based on the Judge's Decision regarding ordering all the co-defendants to submit to and comply with this Decision, because the land tenure is based on Article 1365 of the Civil Code, which regulates that "*every unlawful act that causes damage onto another person obliges the wrongdoer to compensate such damage.*"

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<sup>22</sup>Melati, P. & Suryandono, W. (2019). Perlindungan Hukum terhadap Ahli Waris Pemilik Sertifikat Hak Milik Nomor 1165/R/17/ILIR (Studi Kasus Putusan Mahkamah Agung Nomor 1729 K/PDT/2016). *Indonesian Notary*, 1(2), p. 7.

That land tenure meets the elements in Article 1365 of the Civil Code, including:<sup>23</sup>

1. The existence of an action;
2. The existence of unlawful acts;
3. There is wrongdoer;
4. There is damage onto another person;
5. There is a causal relationship between action to damage.

From all the descriptions above, the legal facts ensure that All Defendants are actually and proven to have committed acts against the law. All Defendant deliberately controls of the three objects land rights plaintiff. All Defendant's actions also inflict damage, where Plaintiff does not benefit from the three objects.

### **CONCLUSIONS AND SUGGESTIONS**

Based on the results and discussion above, it can be concluded that the transfer of land rights is implemented through oral grants in Decision No. 30/Pdt.G/2020/PN.Tnr is invalid and null by law. In this case, based on Article 617, Article 1320, Article 1335, Article 1365, Article 1682, and Article 1688 point 2 of the Civil Code. In addition, the legal facts ensure that the rules and prohibitions are there to transfer the Land from the distribution of the Transmigration Program and are valid for ten years from Plaintiff registering as a participant recipient of the program. While the legal consequences of Decision No. 30/Pdt.G/2020/PN.Tnr, namely sentencing defendants I to VIII and co-defendant V to vacate and get out from the land right of ownership plaintiff in excellent and intact condition. Based on the description of these conclusions, it is recommended that each party that implements the grant knows the rules according to the applicable laws and regulations. In addition, the parties who will transfer land rights through grants must be carried out before the Land Deed Official. Meanwhile, the recipient of the distribution of Land from the Transmigration Program must understand the rules and prohibitions as a participant in the program. The government and related agencies must be more intense in socializing with the public about the importance of making a grant deed before the Land Deed Official. In this case, each party must present a grant deed when registering Land at the National Land Agency. This condition aims to minimize the occurrence of land disputes in the future due to oral grants.

### **REFERENCES**

- Amir, A. (2019). Pengalihan Hak Penguasaan Tanah Menurut UUPA dalam Rangka Pendaftaran Tanah Pertama Kali. *Repertorium: Jurnal Ilmiah Hukum Kenotariatan*, 8(1), 51-65.
- Ayudiatrini, S. & Cahyono, A. B. (2022). The Legality of Grants by Foreign Citizens on Land Objects in Indonesia: Case Studies of Court Decisions. *SIGn Jurnal Hukum*, 4(1), 30-45. doi: <https://doi.org/10.37276/sjh.v4i1.131>

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<sup>23</sup>Wiguna, I. S. (2014). "Analisis Mengenai Pemberian Hibah yang Dibatalkan karena Merupakan Perbuatan Melawan Hukum Berdasarkan Putusan No.378/Pdt.G/2010/Pn.Jkt.Pst". *Bachelor Thesis*. Faculty of Law, Universitas Tarumanegara, p. 1.

- Budify, A., *et al.* (2020). Pembatalan Akta Hibah di Pengadilan Negeri Pematangsiantar: Kajian Putusan Nomor 33/Pdt.G/2019/PN.Pms. *SIGN Jurnal Hukum*, 2(1), 72-85. doi: <https://doi.org/10.37276/sjh.v2i1.77>
- Budiono, H. (2018). *Demikian Akta Ini: Tanya Jawab Mengenai Pembuatan Akta Notaris di Dalam Praktik*. Bandung: PT. Citra Aditya Bakti.
- Colonial Regulations, *Staatsblad* Number 23 of 1847 on the *Burgerlijk Wetboek voor Indonesie*/the Civil Code.
- Decision of the District Court of Tanjung Redeb Number 30/Pdt.G/2020/PN Tnr.
- Diantha, I. M. P. (2017). *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*. Jakarta: Kencana Prenada Media Group.
- Fahlepy, R., *et al.* (2021). Status Peralihan Sertifikat Hak Atas Tanah Berdasarkan Surat Hibah di Bawah Tangan. *Jurnal de Jure*, 13(1), 97-113.
- Government Regulation of the Republic of Indonesia Number 24 of 1997 on Land Registration (State Gazette of the Republic of Indonesia of 1997 Number 59, Supplement to State Gazette of the Republic of Indonesia Number 3696).
- Government Regulation of the Republic of Indonesia Number 16 of 2004 on Land Stewardship (State Gazette of the Republic of Indonesia of 2004 Number 45, Supplement to State Gazette of the Republic of Indonesia Number 4385).
- Kolopaking, A. D. A. (2021). *Penyelundupan Hukum Kepemilikan Hak Milik atas Tanah di Indonesia*. Bandung: PT. Alumni.
- Kurniati, N. (2016). *Hukum Agraria Sengketa Pertanahan: Penyelesaian dalam Teori dan Praktik*. Bandung: PT. Refika Aditama.
- Law of the Republic of Indonesia Number 5 of 1960 on Basic Agrarian Principles (State Gazette of the Republic of Indonesia of 1960 Number 104, Supplement to State Gazette of the Republic of Indonesia Number 2043).
- Melati, P. & Suryandono, W. (2019). Perlindungan Hukum terhadap Ahli Waris Pemilik Sertifikat Hak Milik Nomor 1165/R/17/ILIR (Studi Kasus Putusan Mahkamah Agung Nomor 1729 K/PDT/2016). *Indonesian Notary*, 1(2), 1-21.
- Murni, C. S. (2018). Peralihan Hak atas Tanah Tanpa Sertifikat. *Lex Librum: Jurnal Ilmu Hukum*, 4(2), 680-692.
- Pugung, S. (2021). *Perihal Tanah dan Hukum Jual Belinya serta Tanggung Jawab PPAT terhadap Akta yang Mengandung Cacat Perspektif Negara Hukum*. Yogyakarta: Deepublish.
- Qamar, N. & Rezah, F. S. (2020). *Metode Penelitian Hukum: Doktrinal dan Non-Doktrinal*. Makassar: CV. Social Politic Genius (SIGN).
- Rivania, T. (2020). "Perlindungan Hukum Penerima Hibah Akibat Pembatalan Akta Hibah oleh Pemberi Hibah Dihubungkan dengan Buku III Kitab Undang-Undang Hukum Perdata". *Bachelor Thesis*. Faculty of Law, Universitas Pasundan.
- Rizal, M. (2019). "Prinsip Kepastian Hukum Pemberian Kuasa dalam Peralihan Hak Milik Atas Tanah secara Lisan". *Thesis*. Faculty of Law, Universitas Jember.

- Rosyadan, M. H. (2016). "Analisis Yuridis atas Harta Bersama Mengenai Pembatalan Hibah di Pengadilan (Studi Kasus Putusan Nomor 440/Pdt.G/2013/PN.Jkt.Pst)". *Bachelor Thesis*. Faculty of Law, Universitas Bhayangkara Jakarta Raya.
- Salakokry, R. W. (2018). "Pelaksanaan Pendaftaran Hak Milik atas Tanah karena Hibah Berdasarkan PP 24 Tahun 1997 tentang Pendaftaran Tanah dalam Mewujudkan Kepastian Hukum di Kota Yogyakarta". *Bachelor Thesis*. Faculty of Law, Universitas Atmajaya Yogyakarta.
- Suisno, S. (2017). Tinjauan Yuridis Normatif Pemberian Hibah dan Akibat Hukum Pembatalan Suatu Hibah Menurut Kompilasi Hukum Islam (KHI) dan Kitab Undang-Undang Hukum Perdata. *Jurnal Independent*, 5(1), 16-22. doi: <https://doi.org/10.30736/ji.v5i1.66>
- Tukly, H. M. (2021). "Keabsahan dan Akibat Hukum terhadap Peralihan Hak Atas Tanah Adat melalui Hibah secara Lisan". *Bachelor Thesis*. Faculty of Law, Universitas Pattimura.
- Usman, U. A., *et al.* (2020). Keabsahan Sertifikat Pengganti sebagai Dasar Pembuatan Akta Hibah (Studi Kasus Nomor 64/Pdt.G/2018/Pn.Kdi). *Indonesian Notary*, 2(4), 649-671.
- Widyani, I. D. A. (2019). Kepastian Hukum Sistem Publikasi dalam Pendaftaran Tanah di Indonesia Menurut UU RI Nomor 5 Tahun 1960 tentang Pokok-Pokok Agraria. *Jurnal Hukum to-ra: Hukum untuk Mengatur dan Melindungi Masyarakat*, 1(3), 201-206. doi: <https://doi.org/10.33541/tora.v1i3.1147>
- Wiguna, I. S. (2014). "Analisis Mengenai Pemberian Hibah yang Dibatalkan karena Merupakan Perbuatan Melawan Hukum Berdasarkan Putusan No.378/Pdt.G/2010/Pn.Jkt.Pst". *Bachelor Thesis*. Faculty of Law, Universitas Tarumanegara.

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Putri, D. A. M. & Silviana, A. (2022). The Transfer of Land Rights through Oral Grants: A Case Studies of Court Decision. *SIGn Jurnal Hukum*, 4(1), 99-112. doi: <https://doi.org/10.37276/sjh.v4i1.176>