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## Article Title

### **The Panel of Judges' Rationale for the Annulment of a Land Grant Deed Due to an Unlawful Act by the Inheritor: A Case Study of Decision Number 175/Pdt.G/2023/PN Kpn**

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## ABSTRACT

*Disputes concerning the annulment of land grant deeds between Inheritors constitute a complex issue within civil and agrarian law, requiring an in-depth understanding of the rationale behind court decisions. This research aims to analyze the rationale of the Panel of Judges of the Kepanjen District Court in Decision Number 175/Pdt.G/2023/PN Kpn regarding the annulment of Grant Deed Number 167/KEP-35.10/IX/2020. Employing a normative legal research method with a case study approach, the qualitative analysis focused on the legal considerations (ratio decidendi) within the decision. The analysis results indicate the Panel of Judges' rationale was primarily based on the assessment of evidence corroborating the Plaintiff's pre-grant proper claim derived from an oral transaction, setting aside the formal strength of the authentic deed due to the Defendant's absence of rebuttal evidence. The juridical annulment of the deed was grounded in the direct application of the Nemo dat quod non habet principle, referenced through Article 210 section (2) of the Compilation of Islamic Law because the Grantor was proven to have granted part of the object that was not his right. The qualification of unlawful act against the Defendant was determined as a logical consequence of this finding, albeit without in-depth elaboration of the elements, demonstrating pragmatic reasoning. In conclusion, the judicial rationale, in this case, tends to prioritize substantive justice over formal legal certainty, yet it raises discourse concerning evidentiary standards and potential issues of inheritance law coherence that remain unaddressed.*

**Keywords:** *Dispute; Grant Deed Annulment; Inheritor; Panel of Judges' Rationale; Unlawful Act.*

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## INTRODUCTION

The transfer of land rights is a fundamental legal event within the dynamics of civil and agrarian law in Indonesia, reflecting the ownership relationship between legal subjects and land as an object (Putri & Silviana, 2022). One common mechanism for rights transfer, particularly within familial and social contexts, is through a grant (hibah), a legal act involving a gratuitous transfer from one person (the Grantor) to another (the Grantee) during the Grantor's lifetime, as regulated in Article 1666 of the Civil Code. Despite its noble intention as a form of intergenerational asset transfer or a manifestation of generosity, the execution of land grants in practice often harbors the potential for complex legal disputes (Vicky et al., 2024), especially when intersecting with inheritance distribution expectations among investors or when prior claims exist over the same object (Winandra & Samosir, 2023). This complexity necessitates legal certainty and prudence in its implementation to prevent future loss or injustice (Kaunang & Harlina, 2024).

Indonesian positive law mandates specific formalities that cannot be disregarded to guarantee legal certainty in transferring land rights via grant (Nuraini & Yunanto, 2023). According to Article 19 of Law Number 5 of 1960, jo. Article 37 of Government Regulation Number 24 of 1997, every transfer of land rights due to a grant must be registered and evidenced by a deed executed by a Land Deed Making Official (PPAT). This Grant Deed created by the Land Deed Making Official is an authentic deed possessing perfect evidentiary value (extrinsic, formal, and material) as stipulated in Article 1868 of the Civil Code. It essentially documents the Grantor's free will to

surrender their rights permanently and irrevocably, except in minimal circumstances prescribed by law (vide Article 1688 of the Civil Code) (Piyerda & Yahya, 2020). Adherence to these formalities is crucial not only for the legality of the rights transfer but also as a preventive instrument to mitigate potential disputes in the future (Riyadi & Zumrotun, 2022).

Nevertheless, practice on the ground indicates that the execution of land grants does not always conform to the established legal framework. Deviations can occur in both material and formal aspects (Ardhita & Yunanto, 2023). Materially, critical issues may arise if the Grantor does not possess full rights or sole ownership over the granted land object, for instance, because the land constitutes undivided joint marital property or because third-party claims exist, including those from other Inheritors who might hold rights based on prior acquisition or inheritance law provisions such as *legitime portie* (Article 913 of the Civil Code). Formally, procedural defects in the deed's creation by the Land Deed Making Official or other authorized officials, such as process inconsistencies with regulations governing the Land Deed Making Official's office or inaccuracies in data verification, can also compromise the Grant Deed's validity (Hamzah & Mangarengi, 2023). Actions deviating from legal norms, whether through intent or negligence, that cause loss to another party can be qualified as an unlawful act as regulated in Article 1365 of the Civil Code. It implies that the underlying legal act, including the Grant Deed, may be annulled.

The phenomenon of legal disputes arising from land grants deemed legally flawed and detrimental to the rights of others is manifested in various court decisions. One relevant concrete example for examination is Decision Number 175/Pdt.G/2023/PN Kpn. This case involved a lawsuit for the annulment of Grant Deed Number 167/KEP-35.10/IX/2020, issued by the Head of Lawang Sub-district (acting as Temporary Land Deed Making Official). The claim was filed by a child (an Inheritor) against their step-sibling (the Grantee) because part of the land granted by their father (the late Turiman) belonged to the claimant through a prior oral sale and purchase agreement. Allegations also included procedural defects and infringement of inheritance rights. This decision is compelling because the Panel of Judges ultimately partially granted the claim, declaring the Grant Deed invalid and finding the Defendant to have committed an unlawful act. It was based on the consideration that the Grantor had gifted land that partially did not belong to him, referencing, *inter alia*, the principle in Article 210 section (2) of the Compilation of Islamic Law concerning the requirement of the Grantor's ownership.

Research concerning the annulment of grant deeds due to disputes among Inheritors has garnered attention in legal literature. As a comparison, research by Budify et al. (2020), analyzing Decision Number 33/Pdt.G/2019/PN Pms, concluded the decision's alignment with relevant laws regarding the rights and obligations of

parties in a grant based on the Civil Code, utilizing a legal protection theoretical framework. Similarly, Putri (2022) examined the legal protection for Inheritors harmed by an unlawful Grant Deed. However, it focused on the Panel of Judges' denial of material damages claims and potential notary liability from a legal protection theory perspective. Although they share the topic of grant annulment, the analytical focus of those studies differs significantly from that of this research, which emphasizes the aspect of judicial reasoning.

This research offers novelty by focusing its analysis on the rationale of the Panel of Judges in Decision Number 175/Pdt.G/2023/PN Kpn. The study's originality lies in its in-depth examination of the judicial reasoning process in confronting the particular configuration of facts and law in this case: namely, the claim of an oral purchase of part of the inherited property by one Inheritor against an authentic Grant Deed, and how the Panel of Judges constructed the arguments for annulment and the determination of an unlawful act by referencing norms from both the Civil Code and the Compilation of Islamic Law. This analysis is conducted through the theoretical lens of legal certainty and justice, differing from the legal protection theory approach in previous studies, to critically examine the logic, consistency, and implications of the Panel of Judges' legal considerations, including their impact on the legal certainty of land ownership status post-decision.

Examining the rationale of the Panel of Judges in Decision Number 175/Pdt.G/2023/PN Kpn is important because the legal reasoning underpinning a decision, especially in complex cases, often holds layers of analysis interesting for further academic scrutiny. The issue of proving a claim based on an oral sale and purchase against the evidentiary strength of an authentic deed, the application of legal norms from different regimes (the Compilation of Islamic Law within a dispute also subject to the Civil Code and Agrarian Law), and the Panel of Judges' construction of the argument qualifying the Defendant's actions as an unlawful act are crucial aspects shaping the decision's rationale. As may also be highlighted by legal experts, potential debates exist regarding the evidentiary weight of oral versus authentic proof and the application of ownership and inheritance principles in similar situations. This tension between evidentiary aspects, the application of legal principles, and the unlawful act argumentation within the Panel of Judges' considerations constitutes the primary justification for the urgency of this research.

Therefore, this research aims explicitly to examine the rationale of the Panel of Judges of the Kepanjen District Court in Decision Number 175/Pdt.G/2023/PN Kpn, particularly concerning the legal basis and arguments used to declare Grant Deed Number 167/KEP-35.10/IX/2020 invalid and legally non-binding. An in-depth analysis of the legal considerations (*ratio decidendi*) in the decision is expected to reveal the Panel of Judges' reasoning logic in assessing evidence, applying legal norms

(including from the Civil Code, Agrarian Law, and the Compilation of Islamic Law), and constructing the ruling regarding the annulment of the Grant Deed due to an unlawful act by the Inheritor.

## **METHOD**

This research is classified as normative legal research, which fundamentally examines legal issues by relying on the norms, principles, and doctrines of applicable positive law (Qamar & Rezah, 2020). The selection of this research type is based on the study's primary focus: analyzing the Panel of Judges' rationale as articulated in a judicial product, namely a court decision. This analysis is conducted by exploring and interpreting legal texts and official documents. The central approach implemented in this research is the case approach, emphasizing an in-depth and specific examination of Decision Number 175/Pdt.G/2023/PN Kpn as the primary unit of analysis, particularly the legal considerations or *ratio decidendi* underpinning the ruling concerning the annulment of the grant deed.

This research also synergistically adopts the statute and conceptual approaches to support the case analysis comprehensively. The statute approach is employed to examine and understand the regulatory framework relevant to the issue of land grant annulment due to an unlawful act, including provisions in Law Number 5 of 1960, Government Regulation Number 24 of 1997, as well as relevant articles in the Civil Code and the Compilation of Islamic Law referenced or potentially relevant to the Panel of Judges' considerations. Subsequently, the conceptual approach is utilized to provide clarification and precise meaning to key legal terminologies and concepts used in the analysis, such as 'Panel of Judges' rationale,' 'Unlawful Act,' 'deed annulment,' and 'evidentiary value,' ensuring the constructed arguments possess a solid conceptual foundation.

The data sources or legal materials used in this normative research consist of primary and secondary legal materials (Sampara & Husen, 2016). Primary legal materials, which are authoritative, include the official copy of Decision Number 175/Pdt.G/2023/PN Kpn, the texts of Law Number 5 of 1960, Government Regulation Number 24 of 1997, relevant provisions within the Civil Code and the Compilation of Islamic Law, and other related regulations referenced in the decision or analysis. Secondary legal materials are also used to supplement and enrich the analytical depth, comprising legal textbooks, scientific articles from reputable law journals, doctrines or opinions of prominent legal scholars, and other academic literature. These secondary sources provide explanation, interpretation, and theoretical context to the primary legal materials. All these legal materials were gathered through library research or documentary study techniques and conducted systematically and meticulously.

All collected primary and secondary legal materials were analyzed using a qualitative analysis method with a descriptive-analytical nature (Irwansyah, 2020). This analysis process accurately describes the relevant legal considerations of the Panel of Judges, followed by a critical analysis of the substance, logical structure, and legal basis employed. Specifically, the applied analytical techniques include legal interpretation to construe the meaning of legal norms applied by the Panel of Judges, analysis of the *ratio decidendi* to identify and dissect the core legal reasons behind the decision, and an assessment of the legal argumentation constructed by the Panel of Judges to test its coherence and validity. Systematically, the analysis proceeds through stages: identifying the relevant legal facts as determined by the Panel of Judges, tracing the legal issues addressed, dissecting the application of norms to the facts, evaluating the Panel of Judges' reasoning and argumentation in constructing its decision regarding the grant deed annulment and the qualification of the unlawful act, and finally, synthesizing the findings to address the research objective concerning the Panel of Judges' rationale in the case *a quo*.

## **RESULTS AND DISCUSSION**

### **A. Case Context and Primary Legal Issues in Decision Number 175/Pdt.G/2023/PN Kpn**

The primary object of study in this research is Decision Number 175/Pdt.G/2023/PN Kpn, which decided a civil dispute concerning the annulment of a land grant deed between investors. The case involved Supriyono (Plaintiff) against his step-sibling, Sugeng Raharjo (Defendant), with the Head of Lawang Sub-district also named as Co-Defendant in his capacity as Temporary Land Deed Making Official. The essence of the dispute is rooted in the issuance of Grant Deed Number 167/KEP-35.10/IX/2020, dated September 4, 2020, wherein the late Turiman (biological father of both the Plaintiff and the Defendant) granted a plot of land approximately 340 m<sup>2</sup> in size, located in Srigading Village, Lawang Sub-district, Malang Regency, to the Defendant. The final judgment in this case partially granted the Plaintiff's claim, with the key ruling declaring that the Defendant had committed an unlawful act, declaring Grant Deed Number 167/KEP-35.10/IX/2020 invalid or having no binding legal force, and ordering the Defendant to return a portion of the land measuring 150 m<sup>2</sup> to the Plaintiff.

Descriptively and analytically, the facts of the case reveal fundamental conflicting rights claims between the Plaintiff and the Defendant over a portion of the same land object. The Plaintiff, in his grounds of claim (*posita*), alleged that prior to the issuance of Grant Deed Number 167/KEP-35.10/IX/2020 in 2020, he had already acquired rights over a 150 m<sup>2</sup> portion of the total object through an



oral sale and purchase transaction with the late Turiman in 2011. According to Plaintiff, this ownership claim was based on paying a particular value (equivalent to three cows and a sum of money). It was supported by physical possession and tax payments on that portion over several years. Furthermore, Plaintiff argued that the issuance of the Grant Deed encompassing his portion was not only materially defective because the object was not entirely owned by the Grantor but was also marred by formal procedural defects and executed based on an unlawful act by Defendant, who allegedly knew of the Plaintiff's prior claim.

Conversely, the Defendant presented an opposed factual narrative in his defense statement. Defendant acknowledged a financial transaction between the late Turiman and Plaintiff in 2011 but classified it merely as an unresolved debt because Plaintiff allegedly refused repayment in cash and demanded land—a demand Defendant claimed was rejected by the late Turiman. Defendant strongly denied any oral sale and purchase of the 150 m<sup>2</sup> portion and considered Plaintiff's physical possession permissive and unauthorized. Regarding Grant Deed Number 167/KEP-35.10/IX/2020, Defendant insisted it was valid both materially and formally, executed based on the pure intention of the late Turiman, who possessed full rights over the object and had followed the correct procedure. However, the signing occurred outside the office of the Temporary Land Deed Making Official, facilitated by the Village Head at the late Turiman's request. The Defendant also rejected the accusation of committing an unlawful act and other claims of inheritance rights infringement.

From an agrarian law perspective, Grant Deed Number 167/KEP-35.10/IX/2020 is positioned as a crucial formal legal instrument. As an authentic deed created by an authorized official (Temporary Land Deed Making Official), this deed theoretically possesses perfect evidentiary value according to Article 1868 of the Civil Code. It serves as the basis for registering the transfer of land rights under Article 37 of Government Regulation Number 24 of 1997. However, the strength of such an authentic deed is not absolute, and its validity can be challenged if defects of will, procedural defects, or material defects—such as the object agreed upon not being entirely owned by the transferring party—are proven (Syam & Muzakir, 2022). The Plaintiff's lawsuit in this case essentially challenges the material and formal validity of the deed, arguing that the principle of *nemo dat quod non habet* (no one can transfer more rights than they possess) was violated by the late Turiman when making the grant. As the Panel of Judges subsequently referenced, this principle is also reflected in Islamic legal norms concerning the requirements for a valid grant.

Based on the presentation of the conflicting factual context and the surrounding legal framework, several primary legal issues can be identified that

became the focus of consideration and required resolution by the Panel of Judges in Decision Number 175/Pdt.G/2023/PN Kpn. *First*, the central problem concerns the proof of the Plaintiff's ownership rights over the 150 m<sup>2</sup> portion claimed to be acquired through an oral sale and purchase agreement, the strength of which must be assessed against the existence of the authentic Grant Deed. *Second*, related to the first issue, is the assessment of the material validity of Grant Deed Number 167/KEP-35.10/IX/2020, specifically whether the late Turiman, as the Grantor, possessed the capacity and full rights to grant the entire 340 m<sup>2</sup> object. *Third*, although perhaps not the primary focus of the final considerations, the Plaintiff also raised the issue concerning the formal validity of the Grant Deed creation procedure. *Fourth* is the qualification of the Defendant's actions as an unlawful act based on Article 1365 of the Civil Code, requiring an analysis of whether its elements were fulfilled when receiving the grant of the disputed object. *Fifth*, as a logical consequence, is determining the legal effect of the deed's annulment on the ownership status of the disputed land.

The resolution of these fundamental legal issues demanded careful and structured judicial reasoning from the Panel of Judges. How the Panel of Judges assessed the strength of oral evidence, applied ownership principles in the context of a grant, constructed the unlawful act argumentation, and balanced the principle of legal certainty inherent in an authentic deed with substantive justice for the parties forms the core of the Panel of Judges' rationale that will be further dissected in the following subsection. This complexity makes Decision Number 175/Pdt.G/2023/PN Kpn relevant for in-depth study from the perspective of judicial rationale.

## **B. The Panel of Judges' Assessment of Pre-Grant Ownership Evidence: Between Oral Claims and Authentic Deeds**

The evidentiary process in Decision Number 175/Pdt.G/2023/PN Kpn posed a fundamental juridical challenge for the Panel of Judges: weighing the evidentiary strength of an ownership claim based on an oral transaction (the sale and purchase between the Plaintiff and the late Turiman concerning the 150 m<sup>2</sup> land) against the existence of Grant Deed Number 167/KEP-35.10/IX/2020, which formally holds the status of an authentic deed. Following the principle of proof in civil procedure law, as regulated in Article 163 of HIR/Article 283 of RBg, the burden of proof (*onus probandi*) for the claim over part of the granted object primarily rests with the Plaintiff. The court was tasked with carefully evaluating the evidence presented to reconstruct the legal facts regarding the ownership status of the 150 m<sup>2</sup> land before the grant occurred in 2020. This assessment became crucial as it would determine the material validity of the disputed Grant Deed.



The Panel of Judges, in its legal considerations, explicitly detailed its evaluation of the evidence submitted by the Plaintiff, which mostly consisted of witness testimonies and written statements. The testimonies from Witness Hadori (Village Head), Witness Lukman Widodo (Village Official/Surveyor), and Witness Sufiah (Village Official/Tax Collector) were deemed consistent and mutually reinforcing the Plaintiff's allegations. Witness Sufiah, for instance, provided key testimony regarding a direct statement made to her by the late Turiman that half the land had been sold to the Plaintiff and the other half granted to the Defendant, along with confirmation regarding the practice of separate tax payments by the Plaintiff and Defendant in 2022. This testimony was corroborated by Witness Hadori, who confirmed a similar understanding at the village level and Defendant's admission during the mediation process, and by Witness Lukman Widodo, who explained the chronology of a measurement error at the location upon Defendant's instruction. Through a descriptive analysis of these witness testimonies, the Panel of Judges found significant narrative consistency regarding the existence of the Plaintiff's rights over the 150 m<sup>2</sup> portion of land.

The Panel of Judges' assessment was not limited to witness testimonies but also covered the documentary evidence submitted by the Plaintiff. Specifically, the legal considerations referred to Exhibit P-5 (Statement of Sugian, the Defendant's father-in-law) and Exhibit P-6 (Statement of Tumi, wife of the late Turiman) as evidence consistent with Witness Sufiah's testimony in supporting the Plaintiff's ownership claim based on the sale and purchase from the late Turiman. The Panel of Judges also gave weight to Exhibits P-2 and P-3 (Written Statements of Witness Hadori), which corroborated Hadori's oral testimony in court regarding the Defendant's admission during mediation and the occurrence of the measurement error. Although a note was made regarding the status of Exhibit P-5 being only a copy of a photocopy, the entire series of documentary evidence, when linked with the consistent witness testimonies, was deemed sufficient by the Panel of Judges to form a conviction regarding the truth of the Plaintiff's allegation concerning the acquisition of rights over the 150 m<sup>2</sup> land before the grant was executed.

The strength of the Plaintiff's arguments became increasingly significant when contrasted with the Defendant's position during the trial. As explicitly noted in the legal considerations, Defendant did not submit any evidence to support his denials after submitting a statement of defense denying all of Plaintiff's principal allegations. Furthermore, the Panel of Judges also noted the Defendant's absence from the trial proceedings after the defense submission stage. Based on principles of procedural law, Defendant's failure to prove his denials and absence during the subsequent evidentiary process resulted in the arguments made in his statement of defense being set aside. This absence of rebuttal evidence from Defendant

effectively left the allegations and evidence presented by Plaintiff unchallenged through proven means in court.

Based on the cumulative assessment of the Plaintiff's evidence (Exhibits P-2, P-3, P-5, P-6, and the testimonies of Witnesses Hadori, Lukman Widodo, and Sufiah) and considering the absence of refuting evidence from the Defendant, the Panel of Judges reached a crucial factual conclusion. The legal considerations explicitly state:

*"The Panel of Judges assesses that the Plaintiff has successfully proven the principal allegation of his claim, namely that the Plaintiff's land measuring 150 m<sup>2</sup> [...] existed within Grant Deed Number 167/KEP-35.10/IX/2020 [...]."*

Through this conclusion, the Panel of Judges effectively established as a proven legal fact the existence of the Plaintiff's ownership right over a portion of the land (150 m<sup>2</sup>), which, subsequently, was found to be included within the object of the Grant Deed. This decision demonstrates the exercise of the Panel of Judges' authority in the free evaluation of evidence (*vrij bewijsoordeel*) (Susanto & Samosir, 2023), whereby the Panel of Judges, based on its conviction derived from the available evidence, can conclude legal facts that differ from what is stated in an authentic deed—in this instance, regarding the ownership of the object at the time the deed was made (Solekan & Samosir, 2022). Thus, the factual foundation was laid by the Panel of Judges to assess the validity of the Grant Deed itself subsequently (Seruni et al., 2025).

### **C. Application of the *Nemo Dat Quod Non Habet* Principle in the Annulment of the Grant Deed: Analysis of the Panel of Judges' Considerations**

After the Panel of Judges of the Kepanjen District Court in Decision Number 175/Pdt.G/2023/PN Kpn established the legal fact that the Plaintiff had successfully proven his ownership right over the 150 m<sup>2</sup> portion of land subsequently included in the object of Grant Deed Number 167/KEP-35.10/IX/2020, the next logical step in the judicial reasoning was to test the material validity of the grant deed based on these confirmed facts. The starting point for this examination centers on an essential requirement in every transfer of property rights, including through grants: the authority or right of the transferring party (the Grantor) over the object being transferred. In this context, the Panel of Judges explicitly referred to the relevant fundamental legal principle, universally known by the Latin maxim *nemo dat quod non habet* or *nemo plus iuris ad alium transferre potest quam ipse habet*, meaning that no one can transfer more rights than they possess (Apriani & Bur, 2021).

This fundamental principle of *nemo dat quod non habet* had its specific normative basis identified by the Panel of Judges in the provision of Article 210 section (2) of the Compilation of Islamic Law, which explicitly states that “The property being granted must be the right of the grantor.” Although this case is generally subject to the regimes of the Civil Code and Agrarian Law, the Panel of Judges’ reference to the Compilation of Islamic Law regarding this aspect of the material requirements for a grant is significant and indicates an application, or at least the drawing of an analogy, of Islamic legal norms in its considerations. Referencing this norm, the Panel of Judges constructed its legal argumentation because it was factually proven that part of the granted object (150 m<sup>2</sup>) was not the full ownership right of the late Turiman at the time the grant was made (as the right had already transferred to the Plaintiff based on the prior transaction believed by the Panel of Judges), then the essential material requirement as stipulated in Article 210 section (2) of the Compilation of Islamic Law was not fulfilled.

The direct application of the *nemo dat quod non habet* principle, formulated through Article 210 section (2) of the Compilation of Islamic Law, became the cornerstone for the Panel of Judges to impose legal consequences on Grant Deed Number 167/KEP-35.10/IX/2020. The legal considerations straightforwardly stated:

*“Because the property right of another person/the Plaintiff’s property existed within the Grant Deed [...] or the Grantor had granted a land object that did not belong to him, then guided by the rule that the property being granted must be the right of the grantor (vide Article 210 section (2) of the Compilation of Islamic Law), Grant Deed Number 167/KEP-35.10/IX/2020 [...] must be annulled.”*

This statement demonstrates a precise deductive reasoning flow: (Major Premise) A requirement for a valid grant is that the object must be the right of the grantor (Article 210 section (2) of the Compilation of Islamic Law); (Minor Premise) In this case, part of the granted object was not the right of the grantor (proven fact); (Conclusion) Therefore, the grant (as documented in Grant Deed Number 167/KEP-35.10/IX/2020) is invalid and must be annulled. The consequence of applying this principle was the affirmation by the Panel of Judges in its subsequent considerations granting point 3 of the Plaintiff’s claim for relief, namely declaring Grant Deed Number 167/KEP-35.10/IX/2020 invalid or having no binding legal force. This decision effectively negates the status of the deed as an authentic instrument creating rights for the Defendant over the entire 340 m<sup>2</sup> object. Although an authentic deed fundamentally possesses strong formal and material evidentiary strength (Articles 1868, 1870 of the Civil Code), these considerations by the Panel of Judges demonstrate that such strength can be overcome if a fundamental substantive defect is proven, namely the lack of right on

the part of the transferring party (the Grantor) over part or all of the transferred object. In this case, the proof of the Plaintiff's right over the 150 m<sup>2</sup> was considered a sufficient material defect to nullify the validity of the entire grant deed.

Thus, it can be concluded that the identification and application of the *nemo dat quod non habet* principle, normatively referenced through Article 210 section (2) of the Compilation of Islamic Law, constitutes the *ratio decidendi* or the primary legal reason underpinning the Panel of Judges' decision to annul Grant Deed Number 167/KEP-35.10/IX/2020. The Panel of Judges' focus on the aspect of the Grantor's ownership appears more dominant compared to other arguments potentially raised by the Plaintiff regarding formal procedural defects in the deed's creation or the issue of *legitime portie* violation (Andriyani et al., 2021), which did not become the primary basis for consideration in the justification for the deed's annulment itself, based on the available text of the legal considerations. This reasoning aligns with the basic principle of property law that ownership is the most complete right (Article 570 of the Civil Code, although now subject to Law Number 5 of 1960), and only the owner possesses the full authority to transfer it to another party.

#### **D. Construction of the Grantee's Unlawful Act in the Judicial Considerations**

In addition to the primary claim for the annulment of Grant Deed Number 167/KEP-35.10/IX/2020, the Plaintiff's lawsuit in Decision Number 175/Pdt.G/2023/PN Kpn explicitly also sought a declaration that the Defendant had committed an unlawful act, or *onrechtmatige daad*, as regulated in Article 1365 of the Civil Code. This request (point 2 of the claim for relief/petitum) was ultimately granted by the Panel of Judges, as is evident in the operative part of the decision. This subsection will analyze in-depth how the Panel of Judges constructed the qualification of the unlawful act in its legal considerations, examining the basis of argumentation and the completeness of the analysis regarding the elements required by doctrine and jurisprudence.

Referring directly to the text of the decision's legal considerations concerning point 2 of the claim for relief, it is found that the Panel of Judges' justification for declaring the Defendant had committed an unlawful act was constructed in a very closely related manner and constituted a direct consequence of the preceding factual and legal conclusions. The Panel of Judges stated:

*"As considered in the aforementioned juridical question, Plaintiff has successfully proven the principal allegation of his claim that the Plaintiff's land measuring 150 m<sup>2</sup> [...] existed within Grant Deed Number 167 [...]; therefore the Defendant must be declared to have committed an unlawful act, thus point two of the Plaintiff's claim is legally grounded to be granted."*

This reasoning indicates a direct and almost automatic causal link between the proven fact that Plaintiff's right was included within the grant deed received by Defendant and Defendant's qualification as an unlawful act. When examined further using the analytical framework of the elements of an unlawful act based on Article 1365 of the Civil Code—which classically comprises the existence of an unlawful act (*onrechtmatigheid*), fault (*schuld*), damage (*schade*), and a causal relationship (*causaal verband*) between the act and the damage—the construction built by the Panel of Judges in its explicit considerations appears relatively concise. The Panel of Judges did not explicitly elaborate on the fulfillment of each of these elements one by one in its justification for granting point 2 of the claim for relief. It contrasts with the argumentation constructed by the Plaintiff in his grounds of the claim (*posita*, specifically points 23-25), which attempted to detail the fulfillment of the unlawful act elements more thoroughly, including aspects of the fault and the unlawful nature of the actions of the Defendant and Co-Defendant.

Although not explicitly articulated in the section considering the unlawful act claim, several elements can be implicitly interpreted as fulfilled based on the preceding sections' Panel of Judges findings. The unlawful act (*onrechtmatigheid*) can be assumed to be fulfilled because the Defendant's act of receiving and possessing the land based on the grant deed, which was later declared invalid, objectively violated the Plaintiff's subjective right over the 150 m<sup>2</sup> land. Regarding the element of fault (*schuld*), the Panel of Judges' earlier considerations accepting the testimonies of Hadori and Lukman Widodo (concerning the Defendant's admission during mediation and the instruction for measuring the entire land) may indicate an assessment by the Panel of Judges that the Defendant at least knew or ought to have known (*behoren te weten*) of the Plaintiff's claim of right. Therefore, receiving the grant over the entire object could contain an element of negligence (*culpa*) or even intent (*dolus*), fulfilling the criteria for fault.

Furthermore, the damage (*schade*) for Plaintiff was manifested in the loss of possession and potential utilization of his 150 m<sup>2</sup> land due to Defendant's actions in basing his possession on the flawed grant deed. The causal relationship (*causaal verband*) between Defendant's act (receiving the grant and possessing the object) and Plaintiff's loss also appears clear from the sequence of facts established by the Panel of Judges. Nevertheless, it should be noted that although the factual loss (loss of land possession) was acknowledged as the basis for the unlawful act, the Panel of Judges separately rejected the claim for monetary compensation (point 7 of the claim for relief) because the Plaintiff failed to prove the specific amount of material or immaterial loss claimed.

Overall, the construction of the Grantee's unlawful act in the judicial considerations of Decision Number 175/Pdt.G/2023/PN Kpn is primarily based



on the logical consequence of the Grant Deed's annulment. The Panel of Judges considered the fact that the Defendant received and possessed property based on a flawed legal instrument because it violated a third party's right (the Plaintiff's) to be sufficient to qualify the act as an unlawful act without feeling the need to explicitly articulate an in-depth analysis of each element of Article 1365 of the Civil Code within the section considering the unlawful act claim. Although the conclusion may be justifiable based on the facts and law, this relatively concise reasoning approach in justifying the unlawful act finding becomes one aspect of the Panel of Judges' rationale that warrants further critical discussion.

### **E. Critical Review of Judicial Rationale: Aspects of Evidence, Legal Coherence, and Justice Implications**

The analysis of the Panel of Judges' legal considerations (*ratio decidendi*) in Decision Number 175/Pdt.G/2023/PN Kpn, as elaborated in the preceding subsections, reveals a construction of reasoning that, despite resulting in a verdict granting most of the Plaintiff's primary claims, still invites critical review from various aspects of judicial rationale. This evaluation will focus on three main pillars: the Panel of Judges' assessment of evidence (an aspect of proof) (Sari, 2024), the consistency and meticulousness in applying legal norms (an aspect of legal coherence) (Nasrulloh, 2024), and the implications of the decision for achieving the aims of the law, particularly justice (*gerechtigheid*) and legal certainty (*rechtssicherheit*) (Jakfar et al., 2022). This review is enriched by theoretical perspectives, relevant legal doctrines, and the views of legal experts discussed previously.

From the aspect of proof, the Panel of Judges' decision to accept the Plaintiff's ownership claim over the 150 m<sup>2</sup> land based on a pre-grant oral transaction, relying on witness testimonies (Hadori, Lukman Widodo, Sufiah) and written statements (Exhibits P-2 to P-6), demonstrates the application of the principle of free evaluation of evidence (*vrij bewijsoordeel*). The Panel of Judges meticulously identified consistency and mutual corroboration among the evidence submitted by the Plaintiff while affirming the Defendant's weak position due to the absence of rebuttal evidence. Nevertheless, the decision to set aside the formal and material evidentiary strength theoretically inherent in Grant Deed Number 167/KEP-35.10/IX/2020 as an authentic deed (vide Articles 1868 and 1870 of the Civil Code) based solely on oral proof and private written statements, although mutually consistent, warrants critical examination. As highlighted by Syam'ani and Setiawan (2025), proving land rights transfer through a sale relying only on witness testimony without support from authentic written evidence like a Deed of Sale and Purchase or, at minimum, a receipt, is doctrinally considered to have relatively weak evidentiary strength in land disputes. Although the Panel of



Judges is authorized to evaluate evidence based on its conviction, the preference for testimonial evidence over authentic evidence raises questions regarding the evidentiary standard applied in the context of disputes involving deeds issued by a Land Deed Making Official.

Furthermore, from the aspect of legal coherence, the Panel of Judges' reasoning demonstrates a sharp focus on applying the *nemo dat quod non habet* principle through reference to Article 210 section (2) of the Compilation of Islamic Law as the primary basis for annulling the grant deed. Although the use of the Compilation of Islamic Law in the context of a general civil case is debatable, this choice by the Panel of Judges substantively aligns with the universal legal principle regarding the ownership requirement in rights transfers. This reasoning is also coherent with the *das sollen* versus *das sein* analysis expressed by [Heryawan et al. \(2023\)](#), where ideally (*das sollen*), property suspected to originate from the late Turiman's first marriage should not have been freely granted to heirs from the second marriage without regard to the rights of the first marriage heirs. However, a potential coherence issue not fully addressed in the Panel of Judges' considerations arises regarding the legal status of the oral sale between the late Turiman and the Plaintiff. If the land object were part of an undivided inheritance estate or joint property from the first marriage (*boedel*), then according to civil inheritance law principles, its transfer by the late Turiman (even as a parent to a child) would ideally require the consent of all other Inheritors (Article 833 jo. Article 1066 of the Civil Code)—an aspect seemingly not considered in-depth by the Panel of Judges, who focused more on the proven fact of the transaction as the basis for annulling the grant. Additionally, the unlawful act construction built by the Panel of Judges, while granting the Plaintiff's petitum, feels concise and lacks elaboration on the fulfillment of the 'fault' (*schuld*) element explicitly according to the doctrine of Article 1365 of the Civil Code.

The implications of the judicial rationale in this decision for the aims of the law, particularly justice (*gerechtigheid*) and legal certainty (*rechtssicherheit*), indicate an inevitable trade-off. On the one hand, the decision appears to prioritize substantive justice for the Plaintiff by restoring the right to the land that the Panel of Judges believed indeed belonged to him based on the prior transaction, even though its formal proof (oral sale) was weak. The ruling annulling the grant deed and ordering the return of the land directly addresses the Plaintiff's sense of justice, whose rights were violated. On the other hand, this approach potentially erodes the legal certainty that should be guaranteed by the existence of authentic deeds created by authorized officials (Temporary Land Deed Making Official). If authentic deeds can be relatively easily annulled based on oral proof, whose strength is theoretically lower, this could create a troubling precedent for the

security of land transactions that rely on the formality of Land Deed Making Official deeds. The Panel of Judges' rejection of the Plaintiff's claim for material damages, despite the Defendant's unlawful act being declared proven, on the grounds of insufficient proof of the amount of loss, also raises further questions regarding the extent to which restorative justice was truly achieved for the injured party—an issue also focused on in Putri (2022) research in a different context.

In synthesis, the Panel of Judges' rationale in Decision Number 175/Pdt.G/2023/PN Kpn can be characterized as pragmatic reasoning oriented towards substantive justice, based on conviction regarding the facts revealed in court, primarily supported by the consistency of the Plaintiff's evidence and the absence of the Defendant's rebuttal evidence. The primary strength of this rationale lies in the precise application of the *nemo dat quod non habet* principle (via Article 210 section (2) of the Compilation of Islamic Law) as the basis for the deed's annulment. Nevertheless, the critical review indicates potential weaknesses regarding the standard of proof applied to an oral claim overcoming an authentic deed, the lack of explicit elaboration in the analysis of the unlawful act elements, and potential inconsistency with inheritance law principles concerning the consent of heirs in the transfer of estate (*boedel*) property. This choice by the Panel of Judges reflects a classic dilemma in adjudication: balancing the demands of formal certainty presented by authentic deeds with the search for material justice based on the particular facts revealed during the trial.

## **CONCLUSIONS AND SUGGESTIONS**

Based on the results and discussion, it can be concluded that the rationale of the Panel of Judges of the Kepanjen District Court in Decision Number 175/Pdt.G/2023/PN Kpn, particularly concerning the annulment of Grant Deed Number 167/KEP-35.10/IX/2020, is fundamentally built upon two main pillars. *First* is the Panel of Judges' conviction regarding the legal fact of the existence of the Plaintiff's pre-grant ownership right over a 150 m<sup>2</sup> portion of the land object, based on the assessment of testimonial and documentary evidence submitted by the Plaintiff and reinforced by the absence of rebuttal evidence from the Defendant. *Second* is the direct application of the legal principle *nemo dat quod non habet*—that the grantor cannot grant what is not his right—normatively referenced through Article 210 section (2) of the Compilation of Islamic Law, as the primary legal basis for declaring the Grant Deed invalid and void by law. As for the qualification of unlawful act by the Defendant, it was determined as a logical consequence of receiving the grant over an object containing the right of another party, although in-depth elaboration regarding the fulfillment of the elements of Article 1365 of the Civil Code was not explicitly articulated in its legal considerations.

Although the Panel of Judges' reasoning led to a decision that visibly restores the Plaintiff's rights, critical review indicates several aspects of judicial rationale requiring attention. Accepting the claim of right based on an oral transaction supported by testimonial and private written evidence as sufficiently strong to set aside the formal strength of an authentic deed raises discourse concerning evidentiary standards in land disputes, as highlighted in expert views. Furthermore, the focus on the *nemo dat quod non habet* principle through the Compilation of Islamic Law, although effective for annulling the deed, potentially overlooks other legal complexities surrounding this case, such as the issue of the validity of the initial transaction between the father and son if it concerned undivided joint inheritance property (*boedel*), which ideally requires a more comprehensive legal coherence study.

Overall, the constructed judicial rationale in Decision Number 175/Pdt.G/2023/PN Kpn reflects a pragmatic approach and prioritizes achieving substantive justice based on the facts revealed and believed to be true in court. However, this approach inherently carries implications for the principle of legal certainty, especially concerning guaranteeing the strength of authentic deeds as products of authorized public officials. The dynamic of this trade-off between formal legal certainty and substantive justice becomes one of the important lessons from this case analysis, demonstrating the complexity of adjudication in land disputes involving familial relationships and histories of ownership that are not perfectly documented.

Stemming from these conclusions and critical review, several proposed suggestions are expected to contribute. First, for judicial practice, it is suggested that Panels of Judges deciding similar cases provide more explicit and in-depth elaboration in their legal considerations, particularly when analyzing the fulfillment of formal and material legal elements (such as unlawful act) and when assessing the strength of conflicting evidence, especially between oral/private written evidence and authentic deeds, in order to strengthen the accountability and predictability of decisions. Second, for parties conducting land transactions, including grants within the family scope, it is highly recommended to always formalize them in the form of an authentic deed before an authorized official (Land Deed Making Official) and to ensure the ownership status of the object is truly clear and not entangled with third-party rights, in order to avoid potential future disputes. Third, for the development of legal studies, further research concerning patterns of Panel of Judges' rationale in cases involving the annulment of deeds created by Land Deed Making Officials with complex factual and legal configurations, as well as in-depth studies regarding the harmonization of the application of the Civil Code, Agrarian Law, and the Compilation of Islamic Law in inheritance and grant disputes, deserve to be continuously developed.

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