

## TRANSFER OF LAND RIGHTS BASED ON FRAUDULENT GIFT DEEDS ISSUED BY PPAT (CASE STUDY SUPREME COURT DECISION NUMBER 895 K/PDT/2023 AND NUMBER 2268 K/PDT/2017)

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### Abstract

Land plays an important role in life, both as a place to live, a source of livelihood, and an economic asset. The transfer of land rights is often the subject of legal disputes, one of which is through grants regulated in Article 1666 of the Civil Code, where grants are the transfer of goods free of charge. Although it has been clearly regulated, grants often cause legal problems, especially if there is forgery of the deed of grant by the PPAT. For example, Supreme Court Decision Number 895 K/PDT/2023 and Decision Number 2268 K/PDT/2017 which discuss land disputes due to forgery of deed of grant. The problems raised in this thesis are: the validity of the transfer of land rights through a deed of grant by the PPAT, the process of making a deed of grant by the PPAT, and an analysis of the judge's legal considerations regarding fake deed of grant in several court decisions. The research method used is normative juridical with a descriptive analytical approach. The data used is secondary data, including primary, secondary, and tertiary legal materials. Data collection was carried out through literature studies and interviews. The analysis was carried out qualitatively by drawing deductive conclusions to answer the research problems. The results of this study show that the Deed of Grant Number 400/2006 and Number 34/2003 are fake. As a consequence, the sale and purchase of land that occurred on the basis of the deed is invalid and has no legal force. In Supreme Court Decision Number 895 K / PDT / 2023 it was proven that the Deed of Grant Number 400/2006 was fake. Therefore, the Deed of Sale and Purchase of Land that occurred on the basis of the deed of grant is invalid and has no legal force. Thus, the sale and purchase act is null and void. In Supreme Court Decision Number 2268 K / PDT / 2017 it has been proven that the Deed of Grant Number 24/2003 is fake and that the transfer of rights is invalid, making the deed of sale and purchase of the object of the dispute also invalid and has no binding legal force. In addition, the Supreme Court stated that the resistance of the fugitives was unacceptable because the resistance was filed after the auction of the disputed object was completed. The Supreme Court considered that the legal efforts made by the fugitives were formally flawed, so the cassation was granted and the resistance was considered unacceptable.

**Keywords:** *Transfer of Land Rights, Fake Grant Deed, PPAT*

### INTRODUCTION

Transfer of rights or move of freedoms is defined as transferring land rights to another party (right beneficiary). Transfer of land rights is the exchange or transfer of ownership rights to a plot of land or several plots of land from the previous owner to the new owner because of something or a certain activity that is legally valid. The legal act of transferring rights aims to transfer land rights to another party forever.<sup>3</sup> One example of the transfer of land rights is through a grant. As formulated in Article 1666 of the Civil Code as follows "A grant is an agreement by which the grantor, during his lifetime, free of charge and irrevocably, hands over something for the needs of the grantee who receives the transfer. The law does not recognize other grants other than grants between living people" Based on this article, a grant can occur by handing over goods from the grantor to the grantee without expecting anything in return from the grantee.

The terms and procedures for grants based on the Civil Code are as follows:

- a. The grantor must be an adult, that is, legally competent.
- b. A gift must be made with a notarial deed, the original of which is kept by the notary.
- c. A gift binds the grantor or issues a consequence starting from the grant with express words that are accepted by the recipient of the gift.
- d. A gift to a minor who is under parental authority must be accepted by the person exercising parental authority.

The giving of gifts or grants is carried out as a social function in society, so that land inheritance problems can be resolved through grants, but in reality grants are not the right solution to land problems. Legal problems arise over legally flawed grants because the idea of appreciation as a unilateral agreement understanding. The emergence of disputes in grants can occur if there is a party who feels disadvantaged. The disadvantaged party, for example, is a party who feels that the owner of the rights to the land and feels that he has never made a grant to the recipient of the grant.

A legally defective grant on the grounds of having abused the provisions and regulations of the law, then the result is that the decision must be invalid and void as long as it can be proven very well that it has ignored the law and order. The emergence of disputes in grants can occur if there is a party who feels disadvantaged. The disadvantaged party, for example, is a party who feels that the person owns the object of the grant or a party who will inherit the object of the grant.

The Land Deed Making Officer (PPAT) is responsible for checking the legal requirements for the relevant legal act. The procedures and procedures in making it must be fulfilled and there must be no deviation whatsoever. 4 PPAT is a public official who is authorized to make authentic deeds regarding certain legal acts regarding land rights such as buying and selling and grants. 5 PPAT is tasked with ensuring that all procedural requirements have been fulfilled in accordance with applicable regulations. Deeds made by PPAT have very strong evidentiary power and are valid in the eyes of the law until there is evidence to the contrary. If there is a deviation in making an authentic deed, it will have legal consequences for the evidentiary power of the deed.

The making of a deed of gift must be done before an authorized official, namely the Land Deed Making Officer (PPAT), this is based on article 1682 of the Civil Code. The task of the PPAT is to complete several land registration processes by making a deed as evidence of certain activities that are legally valid in relation to land rights. The presence of the PPAT position is legally required, which aims to assist and serve areas that require valid evidence related to land in terms of circumstances, events or legal acts.<sup>6</sup>

A deed of gift is a proof of a letter containing clauses or rules relating to the transfer from the grantor to the grantee, where the grantor transfers the rights to land and/or ownership rights to a condominium unit, free of charge and irrevocably. The subjects in the deed of gift are:

- a. Grantor
- b. Grant recipients

One of the disputes regarding the existence of a fake deed of gift made by a PPAT as stated in the Supreme Court Decision Number 895 K/PDT/2023 Jo High Court Decision Number 14/PDT/2022/PT PLG Jo District Court Decision Number 119/Pdt.G/2021/PN Plg and Supreme Court Decision Number 2268 K/Pdt/2017 Jo High Court Decision Number 76/Pdt/2016/PT SMR Jo District Court Number 172/Pdt.G.Plw/2014/PN.Bpp.

In the Supreme Court Decision Number 895 K/PDT/2023, it was stated that there was a dispute over the transfer of land rights between Benny Gunawan, originally as the Appellant/Defendant I against Plaintiff I (Sindapati), Plaintiff II (Sunarya) and also the co-respondents of the cassation, namely: Defendant III (Rustam SJ), Defendant IV (H. Thamrin Azwari, SH, Notary Public Official of PPAT of Palembang City, Co-defendant (National Land Agency Office of Palembang City) where the Applicant of the Cassation asked the Panel of Judges to Cancel the Decision of the Palembang High Court Number: 14/PDT/2022/PT PLG, dated March 22, 2022.

The Palembang District Court is the first court to try the land rights transfer dispute that occurred in the District Court Decision Number 119/Pdt.G/2021/PN.Plg, it was stated that there had been a Transfer of Land Rights based on a Fake Grant Deed because Defendant II made a Grant Deed Number: 400/2006 Dated June 7, 2006 in the name of Surya Sentiasa, by forging the signatures of 7 (seven) other heirs including the signatures of Plaintiff I and Plaintiff II. Based on the Grant Deed, Defendant II changed the name of the land and made a Sale and Purchase with Defendant I (Benny Gunawan) as per the Sale and Purchase Deed Number: 991 dated December 31, 2007 made before Defendant III. Plaintiff I is the third child and Plaintiff II is the seventh child of the late. Surya Sentiasa so that the Plaintiffs are the heirs who have the right to the land due to the actions of

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Defendant II. The Plaintiffs are people whose rights and interests have been harmed due to the forgery of the deed of gift and the deed of sale and purchase.

The criminal act committed by Defendant II, namely the crime of forgery of documents, has been decided and declared legally and convincingly proven guilty based on the Decision of the Palembang District Court Number 896/Pid.B/2019/PN.Plg. This decision strengthens the evidence in the case of the Supreme Court Decision Number 895 K/PDT/2023. For the actions of Defendant I, the plaintiff filed a lawsuit with the Palembang District Court because according to the Plaintiff, the Defendant committed an Unlawful Act that was detrimental to the Plaintiff as the heir.

Another case is in the Supreme Court Decision Number 2268 K/PDT/2017 which also argued that there was a forgery of a deed of gift. In this case, the case occurred between Hj. Nurjanah Binti H. Makka and other opponents against H. Mahmudin bin H. Makka and other opponents. In this dispute, the deed of gift made before PPAT Hamid Gunawan SH turned out to be fake because the late H. Makka had died before the date of the deed of gift. As a result of the fake deed of gift, there was a transfer of land rights which were then sold and pledged by the opponents to a third party

Based on these facts, it shows that even though the transfer of land rights has been carried out, it does not rule out the possibility of land disputes. If the formal deed has been fulfilled, it does not guarantee that the deed is correct formally and materially.

## LITERATURE REVIEW

### Theory of Legal Certainty

The existence of the theory of legal certainty can be interpreted as a condition where the existing law can be ensured of its existence with the support and strength and concrete evidence related to the law in question. Legal certainty is a form of protection for the justiciable (seeker of justice) against arbitrary actions, which means that a person will and can obtain something that is expected in certain circumstances.

### Legal Protection Theory

In a state of law, the theory of legal protection becomes a universal concept. This theory emerged from the theory of natural law which states that law comes from God who is universal and eternal and that law and morals cannot be separated. The theory of legal protection is a development of the concept of recognition and protection of human rights (HAM) which developed in the 19th century. With this theory, human rights are given protection and protection to the community and guarantee that the rights given to the law to the community can be enjoyed responsibly. Human Rights are closely related to the theory of legal protection, this can be seen from Satjipto Raharjo's opinion regarding legal protection which means providing protection to human rights that are harmed by others and this protection is given to the community so that they can enjoy all the rights granted by law.

### Theory of Justice

Hans Kelsen in his book general theory of law and state, views that law as a social order that can be declared fair if it can regulate human actions in a satisfactory way so that they can find happiness in it. Hans Kelsen's view is a positivist view, individual justice values can be known by legal rules that accommodate general values, but the fulfillment of a sense of justice and happiness is still intended for each individual.

## METHOD

### Types of research

The research to be conducted is normative legal research. Normative legal research can also be called doctrinal legal research. In this research, law is often conceptualized as what is written in laws and regulations (law in book) or law that is conceptualized as a rule or norm that is a benchmark for community behavior towards what is considered appropriate.<sup>38</sup> In this case, this research refers to Public Law Provisions which are basically legal regulations that regulate public interests (algemene belangen) while Private Law provisions regulate personal interests (bijzondere belangen).

### Nature of Research

This research is descriptive analytical in nature, which reveals the laws and regulations related to the legal theories that are the object of the research.<sup>39</sup> Descriptive research is "Research that is intended to provide the most accurate data possible about humans, conditions or other symptoms."<sup>40</sup> In this study, it will be explained as clearly

as possible regarding the dispute over the transfer of land rights based on a fake deed of gift made by the PPAT in the Supreme Court decision Number 895 K / Pdt / 2023 and Number 2268 K / Pdt / 2017.

### Data source

Data sources are where data is obtained. Data sources in normative legal research are only obtained from secondary data sources. Secondary data sources are data obtained from library materials or literature that are related to the research object.

## RESULTS AND DISCUSSION

### ANALYSIS OF THE JUDGE'S LEGAL CONSIDERATIONS BASED ON THE FAKE GRANT DEED MADE BY THE PPAT IN THE SUPREME COURT DECISION NUMBER 895 K/PDT/2023 IN CONJUNCTION WITH THE HIGH COURT DECISION NUMBER 14/PDT/2022/PT PLG IN CONJUNCTION WITH THE DISTRICT COURT NUMBER 119/PDT.G/2021/PN PLG AND THE SUPREME COURT DECISION NUMBER 2268 K/PDT/2017 IN CONJUNCTION WITH THE HIGH COURT DECISION NUMBER 76/PDT/2016/PT SMR IN CONJUNCTION WITH THE DISTRICT COURT NUMBER 172/PDT.G.PLW/2014/PN.BPP

#### A. Caseu

1. Supreme Court Decision Number 895 K/PDT/2023 Jo High Court Decision Number 14/PDT/2022/PT PLG Jo District Court Number 119/PDT.G/2021/PN PLG

The panel of judges at the first instance provided their legal considerations by stating that a legal fact was obtained that Defendant II had committed the crime of forgery of documents as stated in the Criminal Decision of the Palembang District Court Number: 896/Pid.B/2019/PN.Plg, dated August 7, 2019, the ruling of which reads as follows:

1. Declaring that the defendant RUSTAM S, son of SURYA SENTIASA, has been proven legally and convincingly guilty of committing the crime of "Forgery of Documents";
2. Sentencing the Defendant to 8 (eight) months imprisonment;
3. Determine that the period of arrest and detention that the Defendant has served is deducted in full from the sentence imposed;
4. Determine that the Defendant remains in detention;
5. Establishing evidence in the form of:
  - Deed of Sale and Purchase No: 991 dated 31 December 2007 between RUSTAM SJ and BENNY GUNAWAN made at the office of Notary-PPAT H. THAMRIN AZWARI, SH.;
  - Returned to the Palembang City Land Agency office;
  - Deed of Gift Number: 400 dated 7 June 2006 made at the office of Notary-PPAT H. THAMRIN AZWARI, SH.;
  - Seized for destruction;
6. Charge the Defendant with paying court costs amounting to Rp. 2,000.00 (two thousand rupiah);

Referring to the Criminal Decision of the Palembang District Court which has permanent legal force, it can be concluded that the Grant Deed Number: 400 dated June 7, 2006 made by Defendant II (Rustam SJ) before Defendant III (Notary-PPAT H. THAMRIN AZWARI, SH) is fake. Therefore, the legal event of the transfer of ownership rights to the disputed land, the Certificate of Ownership, to the name of Defendant II (Rustam SJ) based on the fake Grant Deed Number: 400 dated June 7, 2006 as considered above, then legally the change of ownership of the disputed land, Certificate of Ownership, Number: 1377/Talang Kelapa dated September 26, 1978, Situation Picture dated April 29, 1978 No.221, with an area of 15,220 M2 made by Defendant II (Rustam SJ) to the Co-Defendant is invalid and has no legal force.

After the Panel of Supreme Court Justices read and carefully examined the case files and all related letters, the Panel of Supreme Court Justices who examined and tried the case then issued a verdict, the full verdict of which is as follows:

1. Rejecting the cassation application from the Cassation Applicant: BENNY GUNAWAN
2. Revising the ruling of the Palembang High Court Number 14/PDT/2022/PT PLG, dated March 22, 2022, which revised the Decision of the Palembang District Court Number 119/Pdt.G/2021/PN Plg, dated December 15, 2021, so that the full ruling is as follows:

In Exception:



- Reject exception Defendant I And Participate Defendant for all;

In Point:

1. Granting the Plaintiff's lawsuit in its entirety;
  2. Declaring the Deed of Sale and Purchase Number: 991, dated 31 December 2007, Notary PPAT H.Thamrin null and void;
  3. Ordering Defendant I to hand over and return the Land Ownership Certificate Number 2377/Talang Kelapa, dated 26 September 1978, Situation Drawing dated 29 April 1978, Number 221, area 15,220 m<sup>2</sup> to the Plaintiffs;
  4. Ordering the Applicant to pay court costs at the cassation level in the amount of Rp. 500,000.00 (five hundred thousand rupiah).
2. Supreme Court Decision Number 2268 K/Pdt/2017 Jo High Court Decision Number 76/PDT/2016/PT SMR Jo District Court Number 172/Pdt.G.Plw/2014/PN.Bpp  
Based on these considerations, the panel of judges at the first instance in District Court Decision Number 172/Pdt.G.Plw/2014/PN.Bpp issued the following verdict:
1. Declaring that the Opponents are honest/true Opponents
  2. Declare that the Pelawan, Defendant I and Defendant II are the heirs of H. Makka
  3. Stating that Paran Pelawan, Defendant I and Defendant II are the heirs of the assets inherited from the late H. Makka in the form of land and buildings located previously on Jalan S. Parman, now on Jalan Ahmad Yani No. 128, Gunung Sari Illir Village, Balikpapan City with Certificate of Ownership No. 1021/Gunung Sari Illir Subdistrict, area of 105 m<sup>2</sup>
  4. Declaring the validity and value of the Certificate of Ownership No. 1021/Kelurahan Gunung Sari Illir, covering an area of 105 m<sup>2</sup> in the name of H. Makka
  5. Declaring null and void by law and invalid and having no legal force Deed of Grant Number: 34/2003, dated 17 June 2003
  6. Stating the sale and purchase between Defendant II and Defendant III of land and buildings with Certificate of Ownership No. 1021/Gunung Sari Illir Subdistrict, covering an area of 105 m<sup>2</sup> is invalid and null and void and has no binding force
  7. Declare Certificate of Ownership No. 1021/Gunung Sari Illir Subdistrict, covering an area of 105 m<sup>2</sup> which was guaranteed by Defendant III to Defendant IV as collateral for a debt is invalid and null and void and has no legal force
  8. Stating the actions of Defendant I to purchase/redeem land and buildings with Certificate of Ownership No. 1021/Gunung Sari Illir Subdistrict, covering an area of 105 m<sup>2</sup> in Lawyer IV through Participant I, is an action to save the inheritance of the late H. Makka
  9. Declare land and buildings with Certificate of Ownership No. 1021/Gunung Sari Illir Subdistrict, covering an area of 105 m<sup>2</sup> is the inheritance of the late H. Makka which must be distributed to his heirs, namely to the Pelawan, Defendant I and Defendant II
  10. Declare the transfer of rights with Certificate of Ownership No. 1021/Gunung Sari Illir Subdistrict, covering an area of 105 m<sup>2</sup> which was executed by Co-Defendant II to Defendants I, II, III, IV is invalid and null and void and has no legal force, because from the start it was based on an invalid and void Deed of Grant for the sake of law
  11. Declare that the execution will be postponed until there is a Judge's Decision that has permanent legal force (inkract van gewijsde);
  12. Reject the resistance claims of the Pelawan for other than that and the rest;
  13. Sentenced Defendants I, II, III, IV, V as well as Co-Defendant I and Co-Defendant II to pay the costs of this case jointly and severally in the amount of Rp. 3,856,000,- (three million eight hundred and fifty six thousand rupiah)

## B. Legal Reasons in Consideration

1. Against the Supreme Court Decision Number 895 K/PDT/2023 Jo High Court Decision Number 14/Pdt/2022/PT PLG Jo. District Court Decision Number 119/Pdt.G/2021/PN Plg

Based on the description of the main points of the Plaintiff's lawsuit, the essence of the main points of the Plaintiff's lawsuit is regarding the actions of Defendant II (Rustam SJ) who made a Deed of Grant Number: 400/2006 dated June 7, 2006 before Defendant III (Notary PPAT H. Thamrin Azwari, SH), by forging the signatures of 7 (seven) other heirs including the signatures of the Plaintiffs, then based on the Deed of Grant,

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Defendant II (Rustam SJ) changed the name of the Land with a Certificate of Ownership Number: 1377/Talang Kelapa dated September 26, 1978 to the name of Defendant II (Rustam SJ), then Defendant II (Rustam SJ) sold the land to Defendant I (Benny Gunawan), as stated in the Deed of Sale and Purchase Number: 991 dated December 31, 2007 made before Defendant III (Notary PPAT H. Thamrin Azwari, SH) and Defendant I (Benny Gunawan) changed the name of the land certificate of the disputed object to the Co-Defendant to be in the name of Defendant I (Benny Gunawan).

That based on the written evidence submitted by the Plaintiff, the Panel of Judges is of the opinion that the Plaintiff has proven the basis of his lawsuit insofar as it concerns the forgery of the Deed of Gift Number: 400 dated 7 June 2006. Thus, with the proof that the Deed of Grant Number: 400/2006 issued by Notary PPAT H. Thamrin Azwari, SH (Defendant III) is fake, then the Sale and Purchase between Defendant II and Defendant I (Benny Gunawan) of Land Ownership Rights Number: 1377/Talang Kelapa dated September 26, 1978, Situation Drawing dated April 29, 1978 No.221, area 15,220 M2 in the name of Surya Sentiasa as per the Deed of Sale and Purchase Number: 991 dated December 31, 2007 made before Defendant III (Notary PPAT H. Thamrin Azwari, SH), is void by law.

Based on the above considerations, the Plaintiff has succeeded in proving the argument of his lawsuit that Defendant II (Rustam SJ) changed the name of the Certificate for the disputed land based on a Fake Deed of Grant, therefore legally the change of ownership of the disputed land is invalid and has no legal force, thus Defendant II (Rustam SJ) is not the person who has the right to sell the disputed land with the Land Ownership Certificate Number: 1377/Talang Kelapa dated September 26, 1978, Situation Picture dated April 29, 1978 No.221, area 15,220 M2 to Defendant I (Benny Gunawan) and also the Deed of Sale and Purchase between Defendant II (Rustam SJ) and Defendant I (Benny Gunawan) Number: 991/2007 dated December 31, 2007 made before PPAT Haji Thamrin Azwari, SH (Defendant III) as considered above. contains legal defects and the sale and purchase between Defendant I (Benny Gunawan) and Defendant II (Rustam SJ) is not included in the legal event of a sale and purchase in good faith that must be protected, then legally the sale and purchase of the disputed land between Defendant II (Rustam SJ) and Defendant I (Benny Gunawan) is invalid and has no legal force, thus sufficient reason for the Panel of Judges to accept and grant the Petikum of the Plaintiffs' Lawsuit number 2 (two).

The Panel of Judges is of the opinion that Defendant I is not considered a good faith buyer because he actively participated in the sale and purchase process, due to Defendant II's gambling debt to Defendant I. The Panel of Judges is of the opinion that Defendant I is not a good faith buyer and does not have legal protection for his actions because the Deed of Grant Number 400/2006, dated June 7, 2006, has been declared false by a criminal decision that has permanent legal force, so the fourth ruling in the High Court Decision Number 14/PDT/2022/PT PLG which states that the Deed of Grant Number 400/2006, dated June 7, 2006, made by PPAT H. Thamrin Azwari, SH, is invalid, must be removed.

2. Against the Supreme Court Decision Number 2268 K/Pdt/2017 Jo High Court Decision Number 76/PDT/2016/PT SMR Jo District Court Number 172/Pdt.G.Plw/2014/PN.Bpp

Table 1. Description of Supreme Court Decision Number 895 K/PDT/2023 and Number 2268 K/PDT/2017

NO	CASE	YEAR	THE PARTIES	LEVEL	DECISION
1	Number 895 K/PDT/2023	2023	Benny Gunawan Fights Back: The Sunarya Syndicate Rustam SJ H. Thamrin Azwari, SH National Land Agency Office, Palembang City	Cassation	Reject
2	Number 2268 K/PDT/2017	2017	Hj. Nurjanah Binti H. Makka Hj. Hasnah Bint H. Makka Herman Bin H. Makka Taufiq Bin H. Makka Jumiati Binti H. Makka Achmad Bin H. Makka Nurdin Bin H. Makka Against: H Mahmudin bin H.Makka PT. Bank UOB Buana Tbk Central Jakarta cq.	Cassation	unacceptable (Niet Ontvankelijke Verklaard).

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NO	CASE	YEAR	THE PARTIES	LEVEL	DECISION
			PT Bank UOB The world Tbk Balikpapan Branch Government of the Republic of Indonesia cq. Ministry of Finance of the Republic of Indonesia cq. Directorate General of State Assets (DJKN) cq. Regional Office XIII Directorate General of State Assets Samarinda cq. State Assets and Auction Service Office (KPKLN) Balikpapan Henry Sunaryo Notary Public Hamid Gunawan, SH GOVERNMENT RI. Cq. MINISTER AGRARIAN /HEAD BODY NATIONAL LAND RI. in JAKARTA Cq. Head of the Regional Office of the National Land Agency of East Kalimantan Province in Samarinda Cq. Head of the Balikpapan City Land Office		

Table 2  
Comparison of Supreme Court Decision Number 895 K/PDT/2023 and Number 2268 K/PDT/2017

THE PARTIES	COURT		
	<i>Judex Facts</i>		<i>Judgment Law</i>
	District Court	High Court (Appeal)	Supreme Court (Cassation)
Benny Gunawan Fights Back: The Sunarya Syndicate Rustam SJ Thamrin Azwari, SH National Land Agency Office, Palembang City	Decision Number 119/Pdt.G/2021/PN Plg. Date 02 December 2021 (Granting the Plaintiff's lawsuit)	Decision Number 14/Pdt/2022/PT Plg (Fix) <i>Palembang District Court Decision Number 119/Pdt.G/2021/PN. Plg)</i>	Decision Number 895 K/Pdt/2023 (Rejecting the Cassation Application) (Benny Gunawan)
Hj. The Beauty Binti H. Makka Hj. Hasnah Binti H. Makka Herman Bin H. Makka Taufiq Bin H. Makka Jumiati Binti H. Makka Achmad Bin H. Makka Nurdin Bin H. Makka Against: H Mahmudin bin H. Makka PT. Bank UOB Buana Tbk Head Office Jakarta cq. PT Bank UOB Buana Tbk Balikpapan Branch Government of the Republic of Indonesia cq. Ministry of Finance of	Decision Number 172/Pdt.G/Plw/2014/PN Bpp) (granting the request of the opponents)	Decision Number 76/Pdt/2016/PT SMR (Cancel) <i>Balikpapan District Court Decision Number 172/Pdt.G/Plw/2014/PN.Bpp)</i>	Decision Number 2268 K/Pdt/2017 (Resistanceunacceptable (Niet Ontvankelijke Verklaard)

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THE PARTIES	COURT		
	<i>Judex Facts</i>		<i>Judgment Law</i>
	District Court	High Court (Appeal)	Supreme Court (Cassation)
the Republic of Indonesia cq. Directorate General of State Assets (DJKN) cq. Regional Office XIII of the Directorate General Riches State of Samarinda cq. ServiceOfficeState Wealth And Auction(KPKLN) Balikpapan Hendri Sunaryo Notary Public Hamid Gunawan, SH GOVERNMENT RI. Cq. MINISTER AGRARIAN			

### C. Judge's Decision Analysis

- Against the Supreme Court Decision Number 895 K/PDT/2023 Jo High Court Decision Number 14/PDt/2022/PT PLG Jo. District Court Decision Number 119/Pdt.G/2021/PN Plg

Table 3

Decision of the Panel of Judges of the District Court Number 119/Pdt.G/2021/PN Plg, Decision of the High Court Number 14/PDT/2022/PT PLG, and Decision of the Supreme Court Number 895 K/PDT/2023

District Court Decision Number 119/Pdt.G/2021/PN Plg	High Court Decision Number 14/PDt/2022/PT PLg	Supreme Court Decision Number 895 K/PDT/2023
<ol style="list-style-type: none"> <li>Acceptand grant the Plaintiff's claim in its entirety;</li> <li>Declaring the Deed of Sale and Purchase Number: 991 dated December 31 2007Notary PPAT Mr. Thamrin Azwari, SHNull and void</li> </ol>	<ol style="list-style-type: none"> <li>Receiving Appeal Request from The original appellant, Defendant I;</li> <li>Correcting the District Court decision PalembangNumber 119/Pdt.G/2021/PN Plg dated December 15 2021 which was appealed,</li> </ol>	<ol style="list-style-type: none"> <li>Rejecting the cassation application from the Cassation Applicant: BENNY GUNAWAN</li> <li>RepairPalembang High Court Decision Number 14/PDT/2022/PT PLG, dated March 22, 2022, which revised the District Court Decision</li> </ol>
<ol style="list-style-type: none"> <li>Ordering Benny Gunawan (Defendant I) to hand over and return the Certificate of Ownership Number: 2377/Talang Kelapa dated 26 September 1978, Situation Drawing dated 29 April 1978 No. 221, Area 15,220 M2 to the Plaintiffs</li> <li>Charge the Defendants with court costs which up to this decision have been pronounced amounting to Rp. 3,120,000, - (three million one hundred and twenty thousand rupiah)</li> </ol>	<p>so that the complete details are as follows:</p> <ol style="list-style-type: none"> <li>Granting the Plaintiff's lawsuit in its entirety;</li> <li>Declare that the Deed of Grant Number 400/2006 dated 7 June 2006 made by PPAT H.Thamrin Azwari, SH is invalid;</li> <li>Declaring that the sale and purchase between Defendant II Rustam SJ and Defendant I Benny Gunawan is null and void, so that the name change carried out by Benny Gunawan on SHM Number 1377/Talang Kelapa dated 26 December 1978, is invalid;</li> </ol>	<p>Palembang Number 119/Pdt.G/2021/PN Plg, dated December 15, 2021, so that the full order is as follows:</p> <p>In Exception:</p> <ul style="list-style-type: none"> <li>Reject the exceptions of Defendant I and Co-Defendants in their entirety;</li> </ul> <p>In Point:</p> <ol style="list-style-type: none"> <li>Granting the Plaintiff's lawsuit in its entirety;</li> <li>Declaring the Deed of Sale and Purchase Number: 991, December 31st 2007, Notary PPAT H.Thamrin was legally cancelled;</li> <li>Ordering Defendant I to hand</li> </ol>



	<p>6. Sentencing Benny Gunawan (Defendant I) to hand over and return the Certificate of Ownership Number: 1377/Talang Kelapa tangga; 26 September 1978 to the Plaintiffs;</p> <p>7. Ordering the Appellant, Defendant I, to pay the court costs at both levels of court, which at the appeal level was set at Rp. 150,000.00 (one hundred and fifty thousand rupiah).</p>	<p>over and return the Land Ownership Certificate Number 2377/Talang Kelapa, dated 26 September 1978, Situation Picture on April 29, 1978, Number 221, area 15,220 m2 to the Plaintiffs;</p> <p>4. Order the Applicant to pay court costs at the cassation level in the amount of Rp. 500,000.00 (five hundred thousand rupiah).</p>
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2. Against Supreme Court Decision Number 2268 K/Pdt/2017 Jo High Court Decision Number 76/PDT/2016/PT SMR Jo District Court Number 172/Pdt.G.Plw/2014/PN.Bpp

Table 4

Decision of the Panel of Judges of the Balikpapan District Court Number 172/Pdt.G.Plw/2014/PN.Bpp, Decision of the Semarang High Court Number 76/PDT/2016/PT SMR, and Decision of the Supreme Court Number 2268 K/Pdt/2017

District Court Decision Number 172/Pdt.G.Plw/2014/PN.Bpp	High Court Decision Number 76/Pdt/2016/PT SMR	Supreme Court Decision Number 2268 K/Pdt/2017
To judge: In Exception: Rejecting the Opponent's exception IV,	To judge: Accept Application appeal	To judge: -Grantcassation request from
<p>Opponent V and Co-Opponent II; In Point:</p> <ol style="list-style-type: none"> <li>1. Declaring that the Opponents are honest/true opponents;</li> <li>2. Declare that the Pelawan, Defendant I and Defendant II are the heirs of H. Makka;</li> <li>3. Declaring that the Pelawan, Defendant I and Defendant II are the heirs of the assets inherited from the late H. Makka in the form of land and buildings located previously on Jalan S. Parman, now on Jalan Ahmad Yani No. 128, Gunung Sari Ilir Village, Balikpapan City with Certificate of Ownership No. 1021/Gunung Sari Ilir Village, area of 105 M2;</li> <li>4. Declare that the Certificate of Land Ownership No. 1021/Kelurahan Gunung Sari Ilir, measuring 105 M2 in the name of H. Makka is valid and valuable;</li> <li>5. Declaring null and void by law and invalid and having no legal force the Deed of Grant Number: 34/2003, dated 17 June 2003;</li> <li>6. Stating the sale and purchase between</li> </ol>	<p>of Comparator I was originally Opponent I, Comparator II was originally Opponent I, Comparator III was originally Opponent III and Comparator IV was originally Opponent II;</p> <p>In Exception :</p> <ul style="list-style-type: none"> <li>- Strengthening the decision of the Balikpapan District Court dated November 3, 2015 Number : 172/Pdt.G/Plw/2014/PN.Bpp which is being appealedthe;</li> </ul> <p>In Point:</p> <p>Cancel the decision District Court Balikpapan date 03 November 2015 Number : 172/Pdt.G/Plw/2014/PN.Bpp which is being appealedthe;</p> <p>By Judging Yourself</p>	<p>The Applicants for Cassation</p> <ol style="list-style-type: none"> <li>1. Mrs. NURJANAH bint H. MAKKA, 2. Hj. HASNAH bint H. MAKKA, 3. HERMAN bin H. MAKKA, 4. TAUFIQ bin H. MAKKA, 5. JUMIATI bin H. MAKKA, 6. ACHMAD bin H. MAKKA, and 7. NURDIN bin H. MAKKA said;</li> </ol> <ul style="list-style-type: none"> <li>-Cancel Court Decision Tall Samarinda Number76/PDT/2016/PT.SM R July 26, 2016 which annulled the Court Decision Country Balikpapan Number 172/Pdt.G.Plw/2014/P N.Bpp date 3 November 2015 Judging Yourself:</li> </ul> <ol style="list-style-type: none"> <li>1. Declaring resistance from the Opponents is unacceptable(Niet Ontvankelijke Verklaard);</li> <li>2. Punish TheApplicant/O pponent/Appellee to pay cost</li> </ol>

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<p>Defendant II and Defendant III of land and buildings with Certificate of Ownership No. 1021/Gunung Sari Ilir Subdistrict, covering an area of 105 M2 is valid and null and void and has no binding force;</p> <p>7. Declaring Ownership Certificate No. 1021/Gunung Sari Ilir Subdistrict, covering an area of 105 M2 guaranteed by Defendant III to Telawan IV as collateral for a debt, is invalid and null and void and has no legal force;</p> <p>8. Stating the actions of Defendant I to buy/redeem land and</p>	<p>- Declaring the opponents is an untrue contrarian;</p> <p>- Rejecting the resistance of the all-out resistance;</p> <p>- Punishing the rebels to pay all court costs arising at both levels justice</p> <p>Which at level</p>	<p>case in all levels of justice in Level cassation This set at Rp. 500,000.00 (five hundred thousand</p>
<p>building with Certificate of Ownership No. 1021/Gunung Sari Ilir Sub-District, covering an area of 105 M2 in Defendant IV through Co-Defendant I, is an action to save the inheritance of the late H. Makka;</p> <p>9. Declare land and buildings with Certificate of Ownership No. 1021/Gunung Sari Ilir Subdistrict, covering an area of 105 M2 is the inheritance of the late H. Makka which must be distributed to his heirs, namely to the Pelawan, Defendant I and Defendant II;</p> <p>10. Declare the transfer of rights with Certificate of Ownership No. 1021/Gunung Sari Ilir Subdistrict, covering an area of 105 M2 which was executed by Participant Telawan II to Defendants I, II, III, IV is invalid and null and void and has no legal force, because from the start it was based on a Deed of Grant which is invalid and void by law;</p> <p>11. State postpone the execution until there is a Judge's Decision that has permanent legal force (inkract van gewjisde);</p> <p>12. Rejecting the resistance claims of the Opponents for other than that;</p> <p>13. Sentenced Defendants I, II, III, IV, V as well as Co-Defendant I and Co-Defendant II to pay the costs of this case jointly and severally in the amount of Rp. 3,856,000,- (three million eight hundred and fifty six thousand rupiah)</p>	<p>appeal set amount Rp. 150,000.00 (one hundred and fifty thousand rupiah)rupiah);</p>	<p>rupiah);</p>

#### D. Legal Consequences of Grant Deeds Made by PPAT

Article 38 paragraph (1) of PP No. 24 of 1997 concerning Land Registration states that the making of the deed referred to in Article 37 paragraph (1) must be attended by the parties carrying out the legal act and witnessed by at least two witnesses who meet the requirements to be witnesses in this legal act.

In carrying out his duties and office, PPAT makes authentic deeds and has the authority and obligations regulated by law in accordance with the wishes of the parties. One of the obligations of PPAT is to read the deed in front of the parties involved, which is a mandatory task for PPAT.

In making a deed, reading the deed has an important meaning so that all parties who sign and witness the making of the deed truly understand in full the things that are agreed and stated, as well as the legal consequences. The transfer of land rights results in the transfer of rights to an object, be it movable or immovable.

In the process of reading and signing the deed, all parties, witnesses, and the PPAT must be present together, not separately. There must not be a situation where the first party signs today and the other party the next day; everything must be done simultaneously. Not only one party can be present. In this case, it appears that the PPAT was involved in an unlawful act by making a fake deed of gift. The PPAT, as a public official, has the authority to guarantee the validity of all evidence contained in the authentic deed, as long as the making of the deed meets the provisions stipulated in the Law and is carried out before an authorized public official.

The form of responsibility of the PPAT regarding the making of an authentic deed, namely the reading of the deed and the presence of the parties when the deed is formed is the most important component that must be implemented. In addition, it is also accompanied by the presence of the PPAT and also witnesses. The PPAT is obliged and morally responsible to ensure that the parties have truly understood what is stated in the deed related to reading and clearly explaining the deed in front of the parties and witnesses, and the parties can decide to agree or not regarding the contents of the deed to be signed.<sup>126</sup> The responsibility of the PPAT if he has violated the code of ethics when carrying out his duties and obligations and causing losses both materially and immaterially to the parties is civil responsibility where the PPAT is obliged to compensate for all losses caused by the PPAT.

In reality, PPAT deeds still often give rise to legal consequences in the future because the parties in the deed carry out legal acts in bad faith.<sup>127</sup> This occurs because of errors when making the deed, either due to negligence of the parties or negligence of the PPAT, resulting in the deed being defective.

The legal consequences of a deed of gift made by a PPAT that has violated the law are that the object that has been gifted must be returned intact if the gift is canceled, either in a clean condition or with the burden attached. Legal consequences can arise for the recipient if the cancellation of the gift is submitted to the court to obtain a valid decision, where all the assets that have been gifted will return to the property of the grantor in full. Meanwhile, the legal consequences for third parties if the object of the gift is canceled are that anything that has been given to the recipient of the gift must be returned to the heirs in full.<sup>128</sup>

The Civil Code states that a grant that has been given cannot be withdrawn.<sup>129</sup> However, the grantor has the right to file a lawsuit to cancel the grant if the grantee commits a violation as regulated in Article 1688 of the Civil Code.<sup>130</sup> The grantor can file a request to cancel the grant and this can be proven in court.

The consequences of canceling a grant, whether for reasons of being void by law or after a demand for cancellation, are the same, namely that the grant has no legal consequences.<sup>131</sup>

From this case. The Panel is of the opinion that the Plaintiff has succeeded in proving his argument that the Defendant has committed an unlawful act. So that the cancellation of the deed of sale and purchase involving Defendant I and Defendant II is based on a fake deed of gift.

The legal consequence of the creation of this fake Deed of Grant is the cancellation of all transfers of rights to the disputed land, including the sale and purchase carried out by Defendant II (Rustam SJ) with Defendant I (Benny Gunawan). Therefore, Defendant I (Benny Gunawan) is required to submit and return the Certificate of Ownership Number: 2377/Talang Kelapa to the Plaintiffs, considering that the transfer of ownership of the land is based on an invalid deed.

## **CONCLUSION**

Based on the research results and discussions from the previous chapters, this research can provide the following conclusions:

1. The transfer of land rights through a grant made by a Land Deed Official (PPAT) is considered valid if it meets the provisions stipulated by law, in particular Article 1666 of the Civil Code and Article 37 of PP No. 24 of 1997, which require the creation of a deed of grant by the PPAT to provide validity to the transfer of said rights. The deed of grant made by the PPAT is an authentic document with full evidentiary force and is the basis for the process of changing the name of the land rights at the National Land Agency (BPN). Although grants are generally irrevocable, Article 1688 of the Civil Code provides exceptions in certain circumstances. Land grants are also regulated by taxation regulations and other limitations, such as in grants between siblings or between husband and wife without a prenuptial agreement. Thus, the validity of the transfer of land rights through a deed of grant is highly dependent on the fulfillment of the formal requirements stipulated by law and the implementation of the role of the PPAT as an authorized public official.

2. The process of making a deed of gift made by a PPAT for the transfer of land rights aims to provide legal certainty for the grantor and recipient of the gift. The requirements for making a deed of gift are identification of the parties involved, tax compliance, and completeness of land documents. Things listed in a deed of gift are the momentum of ownership of a land, exemption from income, additional agreements, awareness in making the gift, dispute resolution, guarantee of the truth of identity, closing of the deed of gift. If there is a violation in making a deed of gift, either by the PPAT or other parties, it can result in legal consequences, including cancellation of the deed and return of ownership to the grantor. Sanctions are imposed on PPATs who commit violations, ranging from written warnings to dismissal, according to the level of violation committed. Thus, the process of making a deed of gift not only regulates the transfer of rights, but also contains legal and ethical aspects that are important for maintaining justice and legal certainty in society.
3. In Supreme Court Decision Number 895 K/PDT/2023 it was proven that Deed of Grant Number 400/2006 was fake. Therefore, the Deed of Sale and Purchase of Land that occurred based on the deed of grant is invalid and has no legal force. Thus, the sale and purchase act is null and void. In Supreme Court Decision Number 2268 K/PDT/2017 In Supreme Court Decision Number 2268 K/PDT/2017 it was proven that Deed of Grant Number 24/2003 was fake and that the transfer of rights was invalid, making the deed of sale and purchase of the disputed object also invalid and has no binding legal force. In addition, the Supreme Court stated that the objections of the plaintiffs could not be accepted because the objection was filed after the auction of the disputed object was completed. The Supreme Court considered that the legal efforts made by the plaintiffs were formally flawed, so the cassation was granted and the objection was considered unacceptable

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