

LEGAL ANALYSIS OF LAND OWNERSHIP TRANSFER THROUGHT RELEASE OF RIGHTS WITH COMPENSATION (PHGR) (Case Study of Decision Number 275/PDT.G/2020/PN Mdn)

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Abstract

Transfer of land rights can be done in various ways, one of which is through Transfer of Land Rights with Compensation (PHGR). Article 1338 paragraph 3 of the Civil Code states that an agreement must be carried out in good faith. Good faith when making an agreement means honesty. One of the legal issues regarding the transfer of land rights with compensation in the Medan District Court Decision Number: 275 / Pdt.G / 2020 / PN Mdn, in conjunction with the Medan High Court Decision Number: 370 / Pdt / 2021 PT MDN, in conjunction with the Supreme Court Decision Number: 4259 K / Pdt / 2022. The issues raised in this decision are: What are the legal consequences of the transfer of land rights based on the release of rights with compensation, how is the legal protection of the parties against the transfer of land rights with compensation that is transferred by borrowing a name and how is the analysis of the considerations of the Medan District Court Judge in Case Number 275 / Pdt.G / 2020 / PN Mdn in conjunction with Decision No. 370/Pdt/2021/PT MDN jo. Decision No. 4259 K/Pdt/2022. The research method used is normative juridical with a descriptive analytical approach. The data used are 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 are known The legal consequences of the transfer of land rights with compensation are valid and transferred so that the recipient can use and take maximum benefits from the land they own, but this must meet the provisions of the elements of Article 1320 of the Civil Code. Legal protection for the parties against the transfer of land rights with compensation that is transferred by borrowing a name consists of 2 (two) forms, namely the first preventive legal protection is by registering the land, the second repressive legal protection through the General Court. Legal protection for holders of land rights that have not been certified in good faith as regulated in Article 24 and Article 32 of PP 24 of 1997 concerning Land Registration, namely being able to file complaints, objections and lawsuits through the court. and the Panel of Judges rejected the cassation application, while the legal consideration of the judge was that the Judex Facti Decision of the Medan High Court did not conflict with the law and/or statutes.

Keywords: *Transfer of Rights, Relinquishment of Rights with Compensation, No Intentions*

1. INTRODUCTION

In the era of globalization like today, it causes human needs to increase rapidly. Given the population growth and development in increasingly advanced development, it will have an impact on increasing human needs in various aspects. One of them is the need for land which is increasingly needed. Philosophically, the basis for agrarian law is contained in Pancasila, especially the 4th Principle which shows that the people have the same rights and powers over land.

Article 1338 of the Civil Code means that every agreement binds both parties and it can be concluded that people are free to make any agreement as long as it does not violate public order and morality. In other words, both parties must have good intentions in making an agreement so as not to harm each other, as explained in Article 1338 of the Civil Code paragraph 3, namely: "An agreement must be carried out in good faith". In society, we still often find parties who do not have good intentions/are dishonest in carrying out a sale and purchase agreement so that the party who becomes the victim of the dishonesty will feel the consequences.

One of the land disputes concerns the release of land rights with compensation as stated in the Medan District Court Decision Number: 275/Pdt.G/2020/PN Mdn, in conjunction with the Medan High Court Decision Number: 370/Pdt/2021 PT MDN, in conjunction with the Supreme Court Decision Number: 4259 K/Pdt/2022.

The case in this case began when the Plaintiff purchased a plot of land including everything standing, planted and built on it, located in Dusun X, Bandar Klippa Village, Percut Sei Tuan District, Deli Serdang Regency, with an area of $\pm 224.75 \text{ M}^2$ (two hundred twenty four point seventy five square meters) based on land rights certificate Number: 590/048/1995, dated February 22, 1995 made by NORMAN, at that time as the Head of Bandar Klippa Village and known to ERWIN PELOS, Bachelor of Arts, at that time as the Head of Percut Sei Tuan District in connection with the Deed of Transfer and Submission with Compensation Number: 26, Dated February 6, 2008 made before MUFIDA NOOR, a Notary Law Graduate in Medan. The compensation value is Rp. 70,000,000.00 (seventy million rupiah) and used to build 2 (two) units of 3-storey shophouses.

The Plaintiff used the shophouse to open a wholesale grocery business and received a loan from the Plaintiff's business relations, but in running the business, the Plaintiff had a disaster, namely being cheated by the business relations by borrowing a large amount of groceries so that the Plaintiff collapsed or almost went bankrupt and could not pay the debts.

There was concern that the Plaintiff would not be able to pay the debt to his business relations so that the Plaintiff's assets were confiscated as a substitute for payment for the settlement of the debts, one of which was the land that was the object of the lawsuit in this case. That due to these concerns, the Plaintiff then made an agreement with the Plaintiff's relatives, namely Defendant I, Defendant II, and Defendant III.

Furthermore, the Plaintiff transferred the Land by way of compensation in the name of Muhammad Yusan (Defendant I), but the compensation was only limited to borrowing the name of Defendant I as the buyer, in other words, the compensation was not true in terms of the transfer of ownership rights, it was only made to appear as if the land object of the case had been transferred to Defendant I. And it was scheduled at the Percut Sei Tuan sub-district office in front of the Percut Sei Tuan sub-district head (Co-Defendant I) on August 23, 2011 with a letter of Transfer of Control of Land by Way of Compensation Number: 592.2/3103 dated August 23, 2011, with a compensation value of Rp. 10,000,000,- (ten million rupiah), but in fact the compensation did not actually occur and the compensation money was not actually handed over by Defendant I to the Plaintiff.

It has been ± 6 (six) months since the transfer of land was made to the name of Defendant I, then Defendant I could no longer help the Plaintiff run a business on the land object of the case as agreed. Then it was agreed again between the Plaintiff, Defendant I, Defendant II and Defendant III that the land object of the case be transferred again to Defendant III in the same way, namely by borrowing the name of Defendant III as the Buyer. A private transfer was made and legalized at the office of DEVI JULIASTUTI, Bachelor of Law, Notary & PPAT Deli Serdang (Co-Defendant II) in accordance with the Release of Land with Compensation Number: 120/PTTSDBT/II/2012 Dated February 14, 2012 by Muhammad Yusan (Defendant I) and Marlini (Defendant II), to Bazar (Defendant III) with a compensation value of Rp. 50,000,000.00 (fifty million rupiah).

The original legal title to the land and the 3 (three) storey shophouse building consisting of 2 (two) units in the form of a Certificate Number: 590/048/1995, dated 22 February 1995 made by Norman, at that time as the Head of Bandar Klippa Village and known to Erwin Pelos, at that time

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as the Head of Percut Sei Tuan District, related to the Deed of Transfer and Submission with Compensation Number 26, dated 06 February 2008 made before MUFIDA NOOR, Bachelor of Law, Notary in Medan which is the object of the case in this lawsuit is still in the hands of Muhammad Nurdin Abdullah alias Zainal Ghazali (Plaintiff).

That the Plaintiff's grocery wholesale business could no longer be expected, so the Plaintiff opened a business in Malaysia, so that the land object and 2 (two) shophouse units were rented out and the Plaintiff asked for help from Defendant III to control the rent for the land and shophouses of the object of the case. Then the rent for the land and shophouses of the object of the case for the period 2017 to 2019 was not handed over by Defendant III to the Plaintiff. And since then the Defendants have been difficult to contact.

Therefore, the Plaintiff asked Defendant III to vacate the land subject to the case. The Plaintiff also requested that the Defendants sign Compensation for the land object of the Case to become the Plaintiff's name again, but Defendant III instead asked the Plaintiff to divide the land object of the Case into 2 parts. Because the transfer of the disputed land object from Plaintiff I, to Defendant I, Defendant II, and Defendant III was merely borrowing the names of the Defendants, the transfer was legally flawed and had no legal force, so all legal consequences arising from it were in the form of rent- renting or other transfers of rights, whether by way of compensation, gift, or in any other way are invalid.

2. LITERATURE REVIEW

Based on the results of a literature search in the Notary Masters and Law Masters programs in Indonesia, no similar titles or main issues were found regarding the title of this study entitled "Legal Analysis of the Transfer of Land Ownership Rights based on Release with Compensation (PHGR) on the Basis of Bad Faith (Study of Decision Number 275/Pdt.G/2020/PN.Mdn)" based on a literature search conducted at several universities in Indonesia, it shows that research under this title has never been conducted. However, several thesis titles were found that are related to the topic in this thesis, including:

1. Salsabhila, 2017 "Legal Analysis of Release of Rights with Compensation (PHGR) using Notarial Deed on Cultivated Land (Study of Supreme Court Decision No. 554PK/PDT/2014)", Thesis, Master of Notary Program, Faculty of Law, University of North Sumatra. The formulation of the problem is as follows:
 - a. What is the validity of the rental deed signed by a party who is not the heir?
 - b. What is the notary's responsibility regarding the lease deed?
 - c. What is the legal analysis of a lease deed signed by a party who is not an heir in Supreme Court Decision Number 798 K/Pdt/2014?
2. Machdum Satria, 2021, "Violation of the Principle of Good Faith in the Transfer of Land Rights Still in the Civil Trial Process (Study of Supreme Court Decision Number. 417/PK/Pdt/2018)", Thesis, Master of Law Study Program, Sriwijaya University. The formulation of the problem is as follows:
 - a. How is the decision of the Supreme Court Judge No. 417 PK/Pdt/2018 after there is a land claim by another person against the land with evidence in the form of SHM?
 - b. What legal factors cause the transfer of land rights and land rights registration to violate the principle of good faith?
 - c. How will land rights that are still in the process of civil dispute be regulated in the future?
3. Widia Lestari, 2019, "Release of Land Rights for Development Through Notarial Deeds in Padang City", Thesis, Master of Notary Study Program, Andalas University. The formulation of the problem is as follows:
 - a. How is the process of making a deed of release of rights for development through the Head of the Padang City Land Office?
 - b. How is the process of making a deed of release of rights for development through a Notary in Padang City?

- c. What is the land registration process based on a deed of release of rights made by a Notary in Padang City?
4. Ferry M. Aritonang, 2018 "Legal Review of the Legal Power of Evidence of a Release of Rights Agreement with Compensation (Study of Decision Number 107/Pdt.G/2015/PN.Lbp)", Thesis, Master of Notary Study Program, Faculty of Law, HKBP Nomensen University. The formulation of the problem is as follows:
 - a. What is the legal force of a letter of agreement to release rights with compensation (Decision Study Number 107/Pdt.G/2015/PN.Lbp)?
 - b. What were the judge's considerations in deciding case Number 107/Pdt.G/2015/PN.Lbp?
5. Al-Halim Marsa Putra, 2023, "The Position of the Land Release Deed made before a Notary for Land Acquisition in Asera Village, Asera District by the Southeast Sulawesi River Region Office", Thesis, Master of Notary Study Program, Sultan Agung University, Semarang. The formulation of the problem is as follows:
 - a. What is the role of a Notary in making a Land Release Deed for the acquisition of land in Asera Village, Asera District by the Southeast Sulawesi River Basin Office?
 - b. What is the legal status of the Land Release Deed for the acquisition of land in Asera sub-district, Asera district by the Southeast Sulawesi river basin office if a dispute occurs?
 - c. What are the obstacles and solutions faced in making a Land Release Deed for the acquisition of land in Asera sub-district, Asera district by the Southeast Sulawesi River Basin Office at the Southeast Sulawesi River Basin Office Agency?

3. IMPLEMENTATION METHOD

Nature and Types of Research

The research in this thesis is descriptive analytical, namely research that aims to provide an overview of the problems to be studied through the data or samples that have been obtained and the results of this research which are then processed and analyzed to draw conclusions so that they can answer the problems in this research. The type of research in this research is normative juridical, namely research that refers to theories, doctrines, norms, principles, legal rules contained in statutory regulations. This normative juridical research prioritizes library research..

Data Source

In normative juridical research, what is studied is legal material or can be said to be library research. Therefore, the source of data for normative juridical research is only secondary data.

4. RESULTS AND DISCUSSION

ANALYSIS OF THE CONSIDERATIONS OF THE MEDAN DISTRICT COURT JUDGES IN CASE NUMBER 275/Pdt.G/2020/PN Mdn JO DECISION NUMBER 370/Pdt/2021/PT MDN JO DECISION NUMBER 4259 K/Pdt/2022

A. Case Position

Plaintiff's Petition in Medan District Court Decision Number 275/Pdt.G/2020/PN Mdn:

1. Granting the Plaintiff's lawsuit in its entirety;
2. Legally stating that the Plaintiff is the owner of a plot of land including everything standing, planted and built on it, located in Dusun X, Bandar Klippa Village, Percut Sei Tuan District, Deli Serdang Regency, with an area of + 224.75 M2 (two hundred twenty four point seventy five square meters) based on land rights certificate Number: 590/048/1995, dated February 22, 1995 made by NORMAN, at that time as the Head of Bandar Klippa Village and Acknowledged by ERWIN PELOS, Bachelor of Arts, at that time as the Sub-district Head of Percut Sei Tuan District, related to the Deed of Transfer and Submission with Compensation Number: 26, Dated February 6, 2008 made before MUFIDA NOOR, Bachelor of Law, Notary in Medan, with the following boundaries;
 - North borders Gambir Tax Land----- ± 7.50 Meters
 - East borders Gambir Tax Land----- ± 29 Meter

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South borders on Gambir Road Land ----- ± 8 Meter

The west borders on the land of M. Nurdin Abdullah ± 29 Meter

3. Declaring that Defendant I and Defendant II are not the owners of the land located in Hamlet X, Bandar Klippa Village, Percut Sei Tuan District, Deli Serdang Regency, with an area of + 224.75 M2 (two hundred twenty four point seventy five square meters);
4. Declaring that Defendant III is not the owner of the land that is the object of the case located in Hamlet X, Bandar Klippa Village, Percut Sei Tuan District, Deli Serdang Regency with an area of + 224.75 M2 (two hundred twenty four point seventy five square meters);
5. Legally declare that all letters made by Defendant I, both the letter of agreement and other letters concerning the land at the heart of the case, without the Plaintiff's consent, are unlawful acts;
6. Punish Defendant I and Defendant II or other people who have rights from them not to carry out legal engagements or the process of issuing other documents regarding the land subject to the case belonging to the Plaintiff;
7. Punish Defendant I, Defendant II, Defendant III or other people who have the right from them to hand over the land object of the case to the Plaintiff properly and free of collateral;
8. Sentencing Co-Defendant I and Co-Defendant II to submit and comply with this decision;
9. Declaring that this case can be implemented first even though there are legal efforts for resistance, appeal or cassation;
10. Sentencing the Defendants to pay the costs of the case.

B. Analysis of Legal Considerations of the Panel of Judges in the Decision of the Medan District Court Number 275/Pdt.G/2020/ PN MDN Jo. No 370/Pdt/2021 PT MDN Jo. No 4259 K.Pdt/2022

The incomplete or onvoldoende gemotiveerd verdict of the panel of judges can be used as a request for legal action because the *judex factie* is proven not to meet the material requirements of Article 50 Jo. Article 53 paragraph 2 of Law Number 48 of 2009 concerning Judicial Power Jo. Article 68 A paragraph 2 of Law Number 49 of 2009 concerning General Courts.

1. Analysis of Medan District Court Decision Number 275/Pdt.G/2020/PN Mdn

In relation to the Medan District Court Decision Number 275/Pdt.G/2020/PN MDN, after transferring the object of the case to Defendant III, the land object of the case was contracted and the Plaintiff asked Defendant III to control the land rent and 2 (two) units of 2 ½ (two and a half) storey shophouses which were considered to still be owned by the Plaintiff. Initially, Defendant III routinely handed over the land and shophouse rent to the Plaintiff, but in the period 2017 to 2018 and 2018 to 2019, the land and shophouse rent was not handed over by Defendant III to the Plaintiff and the Defendants were difficult to contact.

The land and 2 (two) units of 2 ½ (two and a half) storey shophouses above the object of the Plaintiff's case were rented to another party with a rent of Rp. 40,000,000,- (forty million rupiah) x 2 (two) units = Rp. 80,000,000,- (eighty million rupiah). And the rent was not handed over by Defendant III to the Plaintiff, during the 2 (year) rental period with a total of Rp. 160,000,000,- (one hundred and sixty million rupiah). And Defendant III asked the Plaintiff to divide the land object of the case into 2 (two) parts.

According to the researcher, the actions of Defendant III who controlled the land object of the case and took rent for the land and 2 (two) units of shophouses 2 ½ (two and a half) on the land object of the case without the Plaintiff's permission constituted an Unlawful Act (PMH). This fulfills the elements of Article 1365 of the Civil Code, namely the existence of losses to the victim, in the form of material losses.

Next, the parties made a name borrowing agreement. Namely, the Plaintiff's Agreement to borrow the names of Defendant I and Defendant III in terms of land ownership. A name borrowing agreement or nominee agreement is an agreement made between two parties, where one party borrows the name of the other party to be listed as the owner of the land or shares.

According to researchers, the name borrowing agreement made by the Plaintiff to Defendant I and between Defendant I and Defendant III is considered conflicting and invalid, because the name borrowing agreement is seen as legal contravention. The actions carried out by the parties were smuggling land ownership. And the nominee agreement is also deemed not to meet the requirements for being halal which refers to the provisions of Article 1320 of the Civil Code.

Considering that Defendant I and Defendant II have admitted or at least not denied it, then according to the law it must be considered that the lawsuit against Defendant I and Defendant II has been proven, while Defendant III was never present at the trial and is considered to have waived his right to defend his interests at the trial and therefore is also considered not to have denied the Plaintiff's lawsuit.

Based on these considerations, the researcher is of the opinion that the Panel of Judges should have ordered the bailiff to issue a second summons to the Defendant who was not present at the trial and postpone the first trial. In this case, the Panel of Judges did not fulfill the provisions of Article 150 R.Bg./126 HIR namely in the event as in the first trial, if the Plaintiff or Defendant is not present, the Judge can order the absent party to be summoned again to appear on the day specified in the trial.

Considering that the fifth petitum can be granted, namely stating that legally all letters made by the Defendants, both letters of agreement or transfer of rights by way of rent, debt guarantees and compensation and other letters concerning the land object of the case without the Plaintiff's consent are legally flawed and have no legal force.

Regarding these considerations, the researcher is of the opinion that the letter of transfer includes a letter of release and control of land with compensation Number 592.2/3103 dated August 23, 2011 which was made and scheduled at the Percut Sei Tuan Sub-district Office for the transfer from the Plaintiff's name to Defendant III based on the Plaintiff's agreement in accordance with the contents of the Lawsuit in point 7 of decision Number 275/Pdt.G/2020/PN Mdn and the Transfer under hand on February 14, 2012 which was made at the Notary Office of Devi Juliastuti with a Legalization Letter of Release of Rights with Compensation Number: 120/PTTSDBT/II/2012 by Muhammad Yusan Defendant I and Marlini Defendant II to Bazar Defendant III with a compensation value of Rp. 50,000,000.00 (fifty million rupiah) based on the agreement and consent between the Plaintiff, Defendant I, Defendant II and Defendant III in accordance with the contents of the Lawsuit in point 9 of decision Number 275/Pdt.G/2020/PN Mdn.

All letters were made based on the Plaintiff's agreement. Therefore, the letter of release of rights with compensation and legalization that occurred 2 (two) times, made on 23 August 2011 and 14 February 2012, must be considered to have legal force and not be legally flawed. Based on the Decision of the Medan District Court Number 275/Pdt.G/2020/PN MDN according to the researcher, the Panel of Judges was right to decide that the Owner of a plot of land located in Dusun X, Bandar Klippa Village, Percut Sei Tuan District, Deli Serdang Regency with an area of ± 224.75 M2 (two hundred twenty four five seventy five square meters) with the following boundaries: North bordered by Gambir Tax Land ± 7.50 Meters, East bordered by Gambir Tax Land ± 29 Meters, South bordered by Jalan Gambir Land ± 8 Meters, and West bordered by M. Nurdin Abdullah Land ± 29 Meters is Muhammad Nurdin Abdullah alias Zainal Ghazali (Plaintiff), because the act of changing the name by buying and selling without being followed by valid payment and carried out in a way to avoid debts is clearly an act that is contrary to the principle of good faith, namely fraud (bedrog) and violates the provisions of Article 1320 of the Civil Code, namely on the cause that halal so it does not meet the objective requirements of the agreement. The consequence of not fulfilling the objective conditions of the agreement is that it is null and void, so the agreement made by the parties is deemed to have never existed. The Plaintiff's actions were in bad faith, while Defendant III in this case committed an Unlawful Act. However, in this case the Plaintiff's actions in bad faith were not explored in the judge's consideration by the Panel of Judges at the Medan District Court.

2. Analysis of Medan High Court Decision Number 370/Pdt/2021/PT MDN

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In the event that there is a written choice of domicile in the deed, if the Plaintiff wishes, at the chosen domicile. If the defendant on the first trial day does not file a rebuttal (exception) regarding the authority to try this relative, the District Court may not declare itself incompetent. This is in accordance with the provisions of Article 133 HIR, which states that exceptions regarding relative authority must be filed at the beginning of the trial, if filed late, the Judge is prohibited from considering the exception. According to the researcher, this is inconsistent because in the a quo case, the Appellant, Defendant III, was never present at the First Instance Court hearing and did not file an exception to the relative authority so that the Medan District Court Judge remains authorized to examine and decide case Number 275/Pdt.G/2020 PN Mdn so that the Appellant, Defendant III, cannot defend his rights at the Trial.

The Panel of Judges at the Appellate Level considered that the Respondents II and III, originally Defendants I and II, in their response to the sale and purchase between them and the Appellant, originally the Plaintiff, for the land object of the Case for Rp. 10,000,000 (ten million rupiah), were only pretended to avoid collecting the debts of the Respondent, originally the Plaintiff, because their business had collapsed or was at a loss, so that the land was not called as a debtor. The Panel of Judges at the Appellate Level also considered that the Appellant, originally Defendant III, in his appeal memorandum did not attach or show a Letter of Evidence of his denial, especially regarding the sale and purchase between Appellant II, III, originally Defendant I, II, and the Appellant, originally Defendant III, for the object of the case for Rp. 50,000,000,- (fifty million rupiah).

According to the researcher, if the Appellant, originally Defendant III, wanted to maintain that the land object of the case was divided into 2 (two) with the Respondent, originally the Plaintiff, then he must include evidence of his ownership certificate as supporting evidence for his objections in this case, but this also could not be done by the Appellant, originally Defendant III, because he was never summoned to the First Instance Court to defend his rights. The Panel of Judges at the Appellate Level considered that the formulation of the Considerations regarding the main issues in the main lawsuit that had been ongoing up to the proof, assessment of the evidence, conclusions, considerations regarding the application of the law and all considerations according to the Exceptions in the main case had been explained in accordance with the principles and provisions of the applicable law by the Panel of Judges at the First Level in its decision and with the circumstances and facts obtained at the trial, therefore the Appeal Memorandum and Additional Appeal Memorandum from the original appellant, Defendant III, did not have sufficient legal grounds.

Thus, the Appeal Memorandum and Additional Appeal Memorandum from the Appellant, originally Defendant III, were set aside, while the Respondent, originally the Plaintiff, in the counter appeal memorandum basically agreed with the legal considerations of the Panel of Judges of the First Instance, therefore the Panel of Judges of the Appellate Court was of the opinion that *mutatis mutandis* the Counter Appeal Memorandum from the Respondent, originally the Plaintiff, had been considered, and therefore the decision of the First Instance Court must be upheld. According to the researcher, the Panel of Judges was right to uphold the Medan District Court Decision Number 275/Pdt.G/2020/PN Mdn because the original Appellant, Defendant III, could not prove the arguments of his Exception and did not provide evidence of his denial. However, this is not in accordance with the provisions of Article 126 HR/150 RBG and Article 130 paragraph (2) HIR in Civil Procedure Law because the original Appellant, Defendant III, was only summoned once and was declared valid by the Panel of Judges at the Appellate Level.

Regarding the legal owner of the Object of the case, the owner of a plot of land located in Dusun X, Bandar Klippa Village, Percut Sei Tuan District, Deli Serdang Regency, with an area of ± 224.75 M2 (two hundred twenty four five seventy five square meters) is Muhammad Nurdin Abdullah alias Zainal Ghazali, the Respondent, originally the Plaintiff and does not belong to the Appellant Bazaar, originally the Defendant III.

3. Analysis of Supreme Court Decision Number 4259 K/Pdt/2022

Legal remedies are remedies granted by law to a person or legal entity to in certain cases oppose a judge's decision. In practice there are 2 (two) types of legal remedies, namely ordinary legal remedies consisting of resistance (*verzet*), appeal, cassation and extraordinary legal remedies consisting of judicial review. Bazar in the Supreme Court Decision Number 4259 K/Pdt/2022 filed a cassation appeal to the Supreme Court because he objected to the Medan High Court Decision Number 370/Pdt/2021/PT MDN. The cassation appeal is a right given to the Defendant or Plaintiff if they object to accepting the decision handed down by either the panel of judges at the First Instance Court (*Judex Facti*) or the Appellate Court (*Judex Facti*).

The *Judex Facti* in the Indonesian judicial system has the authority to examine the facts and evidence of a case and determine the facts of the case, where in this case the *Judex Facti* includes the First Instance Court and the Appellate Court. On the other hand, *Judex Jurist* in the Indonesian judicial system is only authorized to examine and correct the application of law in a case that has been decided by a previous court and does not examine the facts of the case, in this case the Cassation Court, namely the Supreme Court. To file an examination of the application of law, the objecting party can file a cassation application to the Panel of Supreme Court Justices at the Supreme Court.

In the Supreme Court decision Number 4259 K/Pdt/2022 Bazar as the Applicant for the Cassation, Muhammad Nurdin Abdullah alias Zainal Ghazali as the Respondent for the Cassation, Muhammad Yusan, Marlina, Head of Percut Sei Tuan District, Deli Serdang Regency and Notary/PPAT Devi Juliastuturi as Co-Defendant for the Cassation. The considerations of the Panel of Supreme Court Justices in the *a quo* case are:

The Supreme Court panel of judges is of the opinion that the reasons for the cassation cannot be justified, because after carefully examining the cassation memorandum received on December 2, 2021 and the Counter-Cassation Memorandum received on December 15, 2021 and December 21, 2021 in connection with the *Judex Facti* considerations, there was no error in applying the law.

The Supreme Court is of the opinion that the *a quo* cassation application along with its reasons have been carefully notified to the opposing party, submitted according to the time limit regulated by law and in accordance with the established procedures. Therefore, the cassation application can be formally accepted. In this case, the cassation applicant requests the Panel of Judges to essentially request:

1. Accepting the cassation application from the former cassation applicant, Defendant III
2. Canceling the Judge's Decision of the Medan District Court Decision Register Case Number 275/Pdt.G/2020/PN Mdn in conjunction with the Medan High Court Decision Register Case Number 370/PDT/2021/PT MDN.

That the reasons for the cassation are a repetition of arguments and assessments of the results of the evidence which are of an appreciative nature regarding a fact, which cannot be considered in the examination at the cassation level, because the examination at the cassation level only concerns the existence of errors in the application of applicable law, the existence of negligence in fulfilling the requirements required by statutory regulations which threatens the negligence with the cancellation of the relevant decision or if the court is not authorized or exceeds the limits of its authority as referred to in the provisions of Article 30 of Law Number 14 of 1985 concerning the Supreme Court as amended by Law Number 5 of 2004 and the second amendment to Law Number 3 of 2009.

The *Judex Factie* Decision of the Medan High Court in this case does not conflict with the law and/or statutes, thus there is sufficient reason for Bazar's cassation application as the cassation applicant to be rejected. Regarding the consideration of the Supreme Court Panel of Justices, the researcher is of the opinion that Bazar as the cassation applicant must submit to and accept the rejected cassation application.

Based on the description in this chapter, it can be concluded that the Release of Rights with Compensation that was transferred between the Plaintiff, Defendant I, Defendant II, and Defendant III was based on bad faith because it avoided debts, the sale and purchase that was carried out was

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invalid because it did not submit compensation money as compensation for the transfer of land rights. The name loan agreement made in the transfer of ownership of rights with Compensation resulted in being considered legally flawed and had no permanent legal force. So that the ownership of the land is with Muhammad Nurdin Abdullah alias Zainal Ghazali as the Respondent, originally the Plaintiff.

5. CONCLUSION

Based on the research results and wetting that have been described in the previous chapter, the following conclusions can be drawn:

1. The legal consequences of transferring land rights with compensation are valid and transferred so that the recipient can use and take maximum benefits from the land he owns, but this must meet the provisions of the elements of Article 1320 of the Civil Code. Transfer of land rights can be done in various ways, one of which is by Release of Rights with Compensation. Transfers that are carried out by pretending not to embody good faith and public order, and the failure to submit compensation money by the parties is declared an unlawful act because it is based on fraud to avoid debts so that assets are not confiscated so that it does not meet the provisions of a lawful cause in the validity of rights with compensation.
2. Legal protection of the parties against the transfer of land rights with compensation that is transferred by borrowing a name consists of 2 (two) forms, namely the first preventive legal protection is legal protection that is more directed at preventing disputes. Preventive legal protection for holders of land rights that have not been certified is by registering the land. With the certificate, a person can prove himself as the legitimate holder of land rights and can provide legal certainty and legal protection for the holder of rights and his land as intended by the purpose of land registration regulated in Article 3 PP 24 of 1997. Second, repressive legal protection, namely a form of legal protection that has occurred in the form of sanctions aimed at resolving disputes handled by the General and Administrative Courts in Indonesia. Regarding land rights that have not been certified, they still get legal protection if they obtain the land in good faith. Legal protection for holders of land rights that have not been certified in good faith as regulated in Article 24 and Article 32 PP 24 of 1997 concerning Land Registration, namely being able to file complaints, objections and lawsuits through the courts to seek the truth regarding the legitimate ownership of land rights.
3. Analysis of the considerations of the Medan District Court Judge in Case Number 275/Pdt.G/2020/PN Mdn jo Decision No. 370/Pdt/2021/PT MDN jo Decision 4259 K/Pdt/2022 The Panel of Judges rejected the cassation application, while the legal considerations of the judge were that the Medan High Court Judex Facti Decision did not conflict with the law and/or statutes. Where the Medan High Court Decision confirmed the Medan District Court Decision, namely stating that the Plaintiff on behalf of Muhammad Nurdin Abdullah alias Zainal Ghazali was the legitimate owner of the land because he could prove the original title and documents and it was proven that Defendant III had committed an Unlawful Act because he did not hand over the rent for the land object of the case and asked to divide 2 (two) parts of the land object of the case owned by the Plaintiff.

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LEGAL ANALYSIS OF TRANSFER OF OWNERSHIP RIGHTS TO LAND BASED ON RELEASE OF RIGHTS WITH COMPENSATION (PHGR) (Study Decision Number 275/PDT.G/2020/PN Mdn)

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