



Determination of The Seller's Absence in The Sale and Purchase Agreement of Land Ownership Rights

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Abstract - This study investigates the legal implications of the seller's absence in a land ownership rights sale and purchase agreement, focusing on a case where the seller's whereabouts were unknown. The research examines Court Ruling Number 52/Pdt.P/2014/PN Mkd, which declared the seller, Nur Rochman, absent and appointed his father, Sarkam, to represent him in the sale of his land. The ruling is analyzed from the perspective of legal certainty, judicial reasoning, and its alignment with the Civil Code. Based on literature and legal regulations, the normative juridical method is used to address legal uncertainties related to the seller's absence. The study highlights the process of transferring land ownership rights under Indonesian law when the seller is declared absent and raises concerns about future claims by the original owner. It concludes with suggestions for improving the legal framework to ensure greater certainty in such transactions.

Keywords: Court Ruling, Indonesian Civil Code, Land Deed Officer (PPAT), Land Ownership Rights, Legal Certainty, Sale and Purchase Agreement, Seller's Absence.

I. INTRODUCTION

Court rulings must include the reasoning that underpins the adjudication, serving as a vital form of judicial accountability to the public, the involved parties, higher courts, and legal scholars. This accountability ensures that rulings are objective and authoritative, rather than based on individual preferences of judges. In cases involving land agreements, the absence of the seller introduces significant uncertainty, which judicial reasoning must address directly. By clearly articulating the basis for decisions in such cases, courts can mitigate the legal ambiguities that arise when one party is absent, thereby providing clearer guidance on how similar cases may be adjudicated in the future. (Mertokusumo, 2002). Sometimes, judges' decisions differ from their legal considerations, resulting in uncertainty in the content of the ruling.

Absence, or *afwezigheid*, is regulated under Book One, Chapter Eighteen of the Indonesian Civil Code (KUHPerdata). This state occurs when a person leaves their residence, and their whereabouts are unknown. The absence of an individual does not terminate their rights and obligations but creates legal uncertainty, which requires regulation. Absence raises questions about the legal status of the individual, affecting other parties such as family and property left behind. Utrecht states that the word "assurance" has two meanings. First, general norms enable individuals to understand what actions are permitted or prohibited. Second, these rules provide legal security against government arbitrariness, as individuals can understand what the state may or may not impose on them (Syahrani, 2008).

The concept of absence under the Civil Code pertains to situations where an individual's whereabouts are unknown, resulting in legal ambiguity regarding their rights and

obligations. In the context of land transactions, absence poses unique challenges, especially concerning the transfer of ownership rights. When the landowner's status is uncertain due to prolonged absence, questions arise regarding who has the authority to make decisions about the sale or purchase of the property. This creates potential legal complications, as parties involved may face difficulties in establishing a clear line of ownership and authorization, potentially leading to disputes. The absence of the rightful owner complicates the process, as it may require court intervention or a legal declaration of presumed death to resolve the transfer, thus delaying or hindering transactions. Defining the implications of absence specifically for land sales is crucial for preventing unauthorized transfers and ensuring that ownership rights are upheld in accordance with the law.

Legal certainty and justice are moral demands and factual characteristics of law. Uncertain and unjust laws are considered bad and incapable of functioning correctly. The implementation of the law that is unaffected by subjective circumstances and is unambiguous, steady, consistent, and predictable is known as legal certainty, (Kansil, 2009). According to the buyer and seller enter accordance with Article 1457 of the Civil Code. The buyer agrees to pay the price, and the seller agrees to give the buyer ownership of the item. Transferring the certificate of title at the local Land Office requires.

In accordance with Article 38 paragraph (1) of Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land Registration, which has been amended by Government Regulation of the Republic of Indonesia Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration, at least two (2) witnesses who fulfill the requirements to testify in the case, as well as the seller. If the seller cannot be present due to unknown whereabouts, a court ruling must declare the seller absent and appoint someone to represent the seller. Land rights grant authority to utilize land, including the portion of the earth, water, and space above it, as long as it is needed for the land's use (Umar 2012). Land rights are rights to control a parcel of land, which can be granted to individuals, groups, or legal entities. One type of land rights regulated in Law Number 5 of 1960 on Basic Agrarian Law (UUPA) is ownership rights.

According to Article 20, paragraphs (1) and (2) of the UUPA, ownership rights are hereditary, most vital, and most entire rights that an individual may possess, subject to Article 6. Ownership rights can be transferred or passed to another party. Transfer means the rights can shift from one holder to another through legal events such as inheritance, while conveyance refers to legal acts such as sale, exchange, or donation. Ownership rights can be lost, one way being when the land is abandoned by its owner. In the context of the seller's absence in a sale and purchase agreement for land ownership rights, there is a case involving a sale and purchase between Nur Rochman as the seller and Agus Irianto as the buyer, recorded in Sale and Purchase Deed Number: 123/2014 dated September 25, 2014, made before Sari Wulan Dyah, S.H., M.Kn. The seller was represented by his biological father, Sarkam, based on court ruling Number 52/Pdt.P/2014/PN Mkd dated August 5, 2014, which declared him absent.

The making of a sale and purchase deed must be attended by both the seller and the buyer or by someone authorized to represent them. However, in practice, there are cases where the seller's whereabouts are unknown, requiring a court ruling. Problems arising from such court rulings include the consistency of the ruling's content with the judge's legal reasoning, the use of legal theory by the judge, and the process of transferring land ownership if the original owner returns in the future.

II. METHOD

According to (Hadi, 2000), research is an effort to discover, develop, and test the truth of knowledge using scientific methods. Meanwhile, research is the process of discovering truth through systematic and planned activities based on scientific methods. (Soekanto, 2010) considers legal research a scientific activity using specific methods, systems, and reasoning. This research aims to comprehensively study one or more legal problems by looking at current legal facts and then finding solutions to issues that arise from those symptoms.

This study employs normative juridical research, a legal study that examines library materials or secondary data as primary material (Soekanto, 2018). The research specification used is descriptive-analytical, and the data used is secondary data. This method is particularly suitable for the research at hand as it enables a thorough examination of the legal framework surrounding the topic, ensuring that the analysis is grounded in established legal norms and standards. By relying on normative juridical research, the study can critically assess the implications and applications of relevant laws, providing a well-founded basis for evaluating current legal practices and suggesting potential improvements. These sources include primary legal materials, secondary legal materials, and tertiary legal materials. The data was collected through library studies, archival research, and documentation. The method used for analysing the data in this research is qualitative analysis.

III. RESULT AND DISCUSSION

1. Judges' Legal Considerations in Deciding the Application for the Determination of the Seller's Absence in Court Ruling Number: 52/Pdt.P/2014/PN Mkd dated August 5, 2014.

Judges are defined in Article 1, point 5 of the Judicial Power Law as individuals who serve on the Supreme Court, as well as judges on the general court, religious court, military court, and state administrative court. The idea of judicial independence includes judges' ability to develop legal considerations or reasoning in the cases they manage. The Judicial Power Law states that judicial power is an independent state power that administers justice and upholds law and justice special courts within those jurisdictions. In exercising judicial power, judicial independence has three main principles (Rifai, 2018)

1. Only law and justice can influence a judge's decision;
2. The government cannot influence or control a judge's decision.
3. There are no personal consequences for judges in carrying out their judicial duties.

According to the Judicial Power Law, judges' considerations are their thoughts or opinions in making decisions, considering factors that can mitigate or aggravate the parties involved. Each judge must present a written opinion on the examined case, which is an integral part of the decision. Judges act as representatives of the judiciary in making decisions on a case. In addition to intellectual abilities, judges must have high morals and integrity to reflect a sense of justice, ensure legal certainty, and benefit society. Article 53 of the Judicial Power Law states that judges are responsible for their decisions in examining and deciding cases. Rulings must include the judges' legal reasoning supported by correct and legitimate legal justifications and grounds. This acts as a legal guideline for judges when considering cases, ensuring that the decision is based on numerous factors acceptable to all parties and does not diverge from applicable legal principles.

For judges, legal reasoning is essential in making considerations to decide a case. Before issuing a ruling, a judge must carefully consider and ensure that the ruling will not lead to new problems. The decision must address the issues comprehensively and should not cause additional conflicts. A judge's duty is not only to issue decisions but also to ensure the implementation of the ruling. In civil cases, judges must support justice seekers and work hard to overcome all obstacles to deliver justice simply, quickly, and at minimal cost. A ruling is a part of jurisdiction voluntary, meaning it is not an actual legal process because it only involves an application without legal opposition. In this process, the judge does not use the term adjudicate but instead determine. A ruling is a part of jurisdiction voluntary, meaning it is not an actual legal process because it only involves an application without legal opposition. In this process, the judge does not use the word adjudicate but instead uses the word determine (Harahap, 2007).

Based on research conducted on Court Ruling Number: 52/Pdt.P/2014/PN Mkd dated August 5, 2014, it was found that the ruling included factual considerations made by the judge were based on the trial's factual facts and Article 482 of the Civil Code. Because Nur Rochman's whereabouts were unknown, and he had left home for seven (7) years and had not returned by the time the application was filed, the court deemed it reasonable under the law to appoint the applicant as Nur Rochman's biological father, managing his assets and

representing his interests. The judgment further said that if Nur Rochman returned, the petitioner was have to return the assets or their worth to him. However, when it came to Nur Rochman's return, the judge did not take into account the amount of returns or revenue from the sold assets.

2. Judges' Decision in Granting the Request for the Seller's Absence in Court Ruling Number: 52/Pdt.P/2014/PN Mkd Dated August 5, 2014

As decision-makers on a request, judges must possess professional capability, high moral standards, and integrity to ensure that they provide benefits, uphold legal certainty, and reflect a sense of justice. In justifying a decision, judges may consider legal precedents and legal science. This means that judges are not bound or required to follow similar past rulings. Legal science holds authority because its adherents support it and have objective qualities. Therefore, judges must boldly interpret the law through logical, legal, and accountable reasoning.

A good court ruling contains several elements ((Margono, 2019)

1. A reflection of social life processes as part of social control.
2. Embodiment of the applicable law, serving individuals, groups, and the state.
3. A reflection of the balance between legal provisions and realities.
4. A reflection of the ideal awareness between law and social change.
5. Benefits for all parties involved in the dispute.
6. It does not lead to new conflicts for the litigants and society.

In general, absence refers to a situation where a person leaves their residence or is not present at the location. In civil law based on the Civil Code, it is essential to regulate the issue of absence, or *Afwezigheid*, as lawmakers anticipated that such situations could lead to legal uncertainty. Although a person's whereabouts may be unknown, their rights do not automatically disappear.

Absence is regulated in Book One, Chapter Eighteen of the Civil Code. The term absence is derived from Articles 463 and 467 of the Civil Code.

According to these articles, absence refers to a situation where a person is not at their residence or domicile because they have left, either with or without authorization, and their whereabouts are unknown.

The elements of absence include:

1. A person.
2. Not present at their residence.
3. Has left their residence.
4. With or without permission.
5. Their whereabouts are unknown.
6. Over a long period.

If these elements are met, the court can rule based on the provisions of the Civil Code to categorize the situation as absence. The periods related to absence are determined in Articles 467 and 470 of the Civil Code as follows:

1. Five (5) years if the absent person has not appointed an attorney to manage their interests or has not arranged their affairs.
2. Ten (10) years if the absent person left an attorney or arranged their affairs.
3. One (1) year if the absent person is one of the crew or passengers of a ship declared missing or involved in an accident.

Under Article 482 of the Civil Code, if Nur Rochman returns, Sarkam is required to return the proceeds and income from the sold assets under the following conditions:

- 1) Half if he returns within fifteen (15) years after the court ruling.
- 2) A quarter of it if he returns within fifteen (15) to thirty (30) years after the court ruling.
- 3) None if he returns more than thirty (30) years after the court ruling.

Based on the research findings regarding Court Ruling Number 52/Pdt.P/2014/PN Mkd dated August 5, 2014, it was found that this ruling fulfils the characteristics of a voluntary petition, as follows:

1. The issue raised is solely of unilateral interest, namely Sarkam's interest as the petitioner.
2. The issue does not contain a dispute.
3. No other party is brought in as the opponent.
4. The party involved is referred to as the Petitioner.

Once the case examination is complete, the judges deliberate to reach a ruling under Articles 178 HIR and 189 RBG. In deciding a case, a judge's primary duty is to draw legal conclusions. Judges must study, follow, and understand the principles of law and the sense of justice in society. Judges may utilize various legal sources in decision-making, such as legislation and its implementation, jurisprudence, legal science, customary law, and expert opinions. Based on the research findings concerning Court Ruling Number 52/Pdt.P/2014/PN Mkd dated August 5, 2014, the decision was as follows:

- 1) Grant the petitioner's request.
- 2) Declare that Nur Rochman, the biological son of the petitioner, is absent and that his absence cannot be determined with certainty, and appoint the petitioner (Sarkam) as his biological father to represent his interests.
- 3) Declare that this ruling will be used for selling and transferring the title to the land and house covered by Certificate of Ownership No. 02768, measuring approximately 206 m², in Banyurojo Village, Mertoyudan District, Magelang Regency.
- 4) Impose a case fee of IDR 181,000 (one hundred and eighty-one thousand rupiah) on the petitioner.

This court ruling provides legal certainty for the petitioner to fulfil his rights and obligations in managing the absent person's property. Using this ruling, Sarkam can sell Nur Rochman's property to Agus Irianto as the buyer and sign the Sale and Purchase Deed before the Land Deed Officer. Execution of the Sale and Purchase of Land Rights Based on the Court's Declaration of the Seller's Absence in Sale and Purchase Deed Number: 123/2014 Dated September 25, 2014, Made Before Sari Wulan Dyah, S.H., M.Kn., as Land Deed Officer in Magelang Regency

According to Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land Registration, which has been amended by Government Regulation of the Republic of Indonesia Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration, the registration of a sale and purchase can only be done with a deed made by a Land Deed Officer (PPAT) as proof. According to the relevant laws and regulations, a PPAT can be defined as follows:

1. According to Law Number 4 of 1996, PPAT is a public authority who can transfer land rights and impose mortgage rights in accordance with applicable legislation (Article 1, paragraph 4).
2. Article 1, paragraph 5 of PPAT is defined as a public officer who is allowed to make certain land deeds under Governmental Rules Number 40 of 1996..
3. According to Article 1, paragraph 24 of Government Regulation Number 24 of 1997 on Land Registration, PPATs are entitled to create special land deeds.
4. According to Article 1 paragraph 1 of Government Regulation Number 24 of 2016, PPAT is a public official authorized to issue authentic deeds for land rights or apartment unit ownership.
5. According to Article 1, paragraph Under to the the head of the National Land Agency Regulation Number 1 of 2006, PPAT is a public officer who can issue legitimate deeds for land or apartment building ownership.

A PPAT deed is a document made before a PPAT that contains clauses or rules concerning the party's rights and obligations. The first party must transfer the land rights and apartment unit ownership, while the second party must pay and receive the land rights and apartment unit ownership. Thus, there are five essential elements in a PPAT deed: the proof document, the role of the PPAT, the legal subjects, the legal object, and the clauses or legal provisions relevant to the parties (HS 2016). The working area of a PPAT is the jurisdiction of a District/City Land Office. PPATs, according to Article 1 of Government Regulation Number 24 of 2016, are divided into three (3) categories:

- 1) PPAT: A public official authorized to make authentic deeds regarding specific legal acts related to land rights or ownership rights to apartment units.
- 2) Temporary PPAT: A government official appointed due to their position to perform the duties of a PPAT in areas where there are not enough PPATs.
- 3) Special PPAT: A National Land Agency official appointed due to their position to perform the duties of a PPAT, making specific PPAT deeds as part of government programs or tasks.

A PPAT's principal responsibility is to carry out part of the land registration activities by creating deeds as proof that a specific legal act involving land rights or ownership rights to an apartment unit has occurred. According to the legal act, the deed shall be utilized as the foundation for registering changes in land registration data. The PPAT's task is to record legal transactions (recording of deed conveyance), which include rights mutation, security interests with land rights as collateral (mortgage rights), establishing new rights over land (such as building or use rights on ownership land), and drafting a power of attorney for imposing mortgage rights (Parlindungan, 2009). Based on research on Sale and Purchase Deed Number 123/2014, dated September 25, 2014, made before Sari Wulan Dyah, S.H., M.Kn., as Land Deed Officer in Magelang Regency, the following facts were discovered:

1. A sale and purchase of land rights occurred between Nur Rochman (represented by Sarkam based on the court ruling declaring him absent) as the seller and Agus Irianto as the buyer.
2. The object of the sale and purchase was a plot of land and a building described in Ownership Certificate Number 02768/Banyurojo, covering an area of 206 m², located in Banyurojo Village, Mertoyudan District, Magelang Regency.
3. The sale and purchase transaction was executed for an agreed price of IDR 40,000,000.
4. The sale and purchase deed was made in the presence of two witnesses: Beny Pudjihastuti and Maria Ulfah.
5. The sale and purchase deed was registered at the Magelang Regency Land Office to transfer the certificate to Agus Irianto's name as the buyer.

Sale and Purchase Deed Number: 123/2014 dated September 25, 2014, made before Sari Wulan Dyah, S.H., M.Kn., serves the following functions:

- 1) This is proof that a legal sale and purchase transaction occurred between Nur Rochman (as represented by Sarkam) and Agus Irianto.
- 2) As evidence of the transfer of land rights from Nur Rochman to the recipient, Agus Irianto.
- 3) As proof in future disputes between the parties to the agreement.

One potential dispute that may arise from this sale is if, in the future, Nur Rochman, declared absent by the court, returns and challenges the sale. If Nur Rochman returns and demands the return of rights to the proceeds and income, Article 482 of the Civil Code applies, which stipulates the following:

- a) Half of the proceeds must be returned if he returns within fifteen (15) years after the court ruling.
- b) A quarter must be returned if he returns within fifteen (15) to thirty (30) years after the court ruling.
- c) No returns are required if he returns more than thirty (30) years after the court ruling.

IV. CONCLUSION

The legal considerations of the judge in deciding the application for the determination of the seller's absence in Court Ruling Number: 52/Pdt.P/2014/PN Mkd dated August 5, 2014, were based on the legal facts presented at trial and Article 482 of the Civil Code. Since the whereabouts of Nur Rochman were unknown. He had been absent for seven years without returning by the time the application was filed; the court found it reasonable to appoint the petitioner (Sarkam) as his biological father to manage his assets and represent his interests, with the obligation to return the assets or their value if Nur Rochman returns. The judge's ruling in Court Ruling Number 52/Pdt.P/2014/PN Mkd dated August 5, 2014, declared that Nur

Rochman was absent, and his whereabouts could not be determined. It appointed the petitioner (Sarkam) as his biological father to represent his interests in selling and transferring the title to the land and house covered by Ownership Certificate Number 02768 in Banyurojo Village, Mertoyudan District, Magelang Regency. The execution of the sale and purchase of land rights, based on the court's declaration of the seller's absence, was documented in Sale and Purchase Deed Number 123/2014, dated September 25, 2014, made before Sari Wulan Dyah, S.H., M.Kn., as the Land Deed Officer in Magelang Regency. This deed serves as authentic evidence of the legal transfer of ownership and the basis for the buyer to register the transfer of the title at the Magelang Regency Land Office.

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