

CHAPTER I

INTRODUCTION

1.1 Background

The role of land is so important, namely in the form of supporting life for all living things on earth, namely humans, animals and plants. Indonesian people also view land as a property with high value, this is because the land has a function as a source of life for the community, so they will maintain ownership rights to the land. Moreover, considering that the number of human populations continues to increase, while the amount of land is fixed, it is certainly a challenge for the community because of the imbalance between the need for land and its availability. In fact, according to data from the National Statistics Agency (hereinafter referred to as the National BPS), in the last 5 years, precisely from 2019 to 2023, there was a rapid population growth of 11.9 million people. The total population in 2019 was 266.9 million people and in 2023 it will be 278.8 million people.¹

Along with the increasing soul growth in Indonesia, of course this goes hand in hand with an increase in the needs of today's society, so that it also has an influence on efforts in land utilization which always develops following the direction of development tailored to the needs of this time. So seeing this urgency, in a development that occurs, of course the parties concerned need land tenure rights in order to carry out development to suit

¹ Monavia Ayu Rizaty, "Indonesia Population Data (2013-2023)", <https://dataindonesia.id/varia/detail/data-jumlah-penduduk-indonesia-20132023>, accessed on December 10, 2024.

their needs. In order to meet the needs that arise in the community, the government also continues to strive to provide legal protection for the entire Indonesian nation and also strives to provide progress in general welfare as stated in the 4th paragraph of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) by forming legal regulations that specifically regulate the needs of the community in terms of land regarding how to manage, own, utilize and realize and implement well the regulations that provide clear arrangements and legal basis.

Of course, the existence of legal regulations formed by the government, namely Law Number 5 of 1960 (hereinafter referred to as UUPA) and the regulatory regulations under it have the aim of laying the regulatory basis for the preparation of national agrarian law, namely uniting and simplifying land, along with rights in land for all Indonesian people, in order to create legal certainty.²

Control of land ownership rights can be pursued in several ways by parties who have an interest in obtaining these rights. Based on the provisions listed in Article 16 paragraph (1) of the UUPA, there are 2 forms of control over land ownership rights, namely juridical and physical control. The definition of juridical land tenure is that the ownership rights owned by the party concerned are legally protected and the party also automatically has physical control of the land. While the definition of physical land tenure is

² Ayu Larasati and Raffles, 'Transfer of Land Rights by Sale and Purchase Agreement According to Indonesian Land Law', *Zaaken Journal of Civil and Business Law*, Vol. 1, No. 1, 2020, pp. 129.

that the party concerned has rights related to the placement, use and management, but the party does not necessarily have the right to ownership of the land by juridical means.³

Talking about the control of land ownership rights by juridical means, there are several forms of transfer of such rights. Based on Article 37 paragraph (1) of Government Regulation No. 24/1997 on Land Registration (hereinafter referred to as the Land Registration Regulation), this can be done through transactions, exchanges, free gifts, acquisition at a place of business and other legal activities, except auctions. Based on the study that has been carried out has a focus that leads to the transfer of land ownership rights by way of transactions, where the procedure must be carried out based on applicable regulations, namely in Article 37 paragraph (1) of the PP on Land Registration. The provision given is that the implementation of the transfer of land rights can only be registered with the National Land Agency (BPN) with proof in the form of a deed issued by a Land Deed Official (PPAT), unless there is a special condition.

However, the fact is that there are still parties who carry out land sales activities based on private deeds, which of course can contribute to the number of cases regarding national agrarian conflicts and lead to lawsuits in the district court due to unlawful acts, such as sellers who cannot be contacted or whose whereabouts are unknown in the process of transferring rights. In

³ Boedi Harsono, Indonesian Agrarian Law: History of the Formation of the Basic Agrarian Law, Its Contents and Implementation, First Printing (Jakarta: Djambatan, 2008).

fact, according to data submitted by the Press Release of the Consortium for Agrarian Reform and the Asia NGO Coalition for Agrarian Reform and Rural Development, Indonesia occupies the top position regarding agrarian conflicts that occur when compared to six other countries in the Asian region, namely India, Cambodia, the Philippines, Bangladesh and Nepal.⁴

The definition of agrarian conflict is based on Article 1 point 4 of Government Regulation Number 62 of 2023 concerning the Acceleration of the Implementation of Agrarian Reform, namely agrarian conflicts can be defined as disputes in agrarian affairs that occur between individuals or groups in society with legal entities and or institutions in the government, where it has major implications for the physical, social environment, politics, economic conditions, defense or culture. The number of cases regarding agrarian conflicts that have taken place in Indonesia during the 5 year period between 2019 and 2023 will be presented in detail in the table below.

Agrarian Conflict Cases in Indonesia		
Year	Number of Cases	Area (Hectares)
2019	279	734.239
2020	241	624.273
2021	207	500.062
2022	212	1.035.613

⁴ 'Agrarian Conflict in Indonesia Highest among Six Asian Countries', <https://www.kpa.or.id/2024/02/27/konflik-agraria-di-indonesia-tertinggi-dari-enam-negara-asia/>, accessed on December 12, 2024.

2023	241	638.188
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Table 1: Data on Agrarian Conflict Cases in Indonesia⁵

Based on the data presentation above, the highest number of cases regarding agrarian conflicts in Indonesia occurred in 2019, namely 279 cases, while the lowest number of cases occurred in 2021, namely 207 cases. Then based on the data above, although the number of cases in 2022 did not occupy the top position, but in that year it had the largest area of agrarian conflict with an area of 1,035,613 hectares. ⁶

The dispute regarding this agrarian conflict was also experienced by the buyer who acted as a plaintiff based on the Decision with Case Number 3/Pdt.G/2024/PN Gsk. The matter that was sued by the plaintiff was regarding actions that were contrary to the law that had been carried out by the defendant as the seller in the form of his unknown whereabouts, so that these actions were considered detrimental to the plaintiff, both time, energy, thoughts and costs. This condition then became the basis for the district court to decide on a decision by *verstek* so that the plaintiff could exercise his rights in the form of transfer of land ownership rights immediately.

This research on the use of the *verstek* decision was conducted because based on the provisions contained in Article 37 paragraph (1) of the Land Registration Regulation, it explains that the transfer of land ownership rights carried out due to legal actions in the form of sale and purchase can be carried

⁵ Adi Ahdiat, "Number of Agrarian Conflict Cases Increases in 2023", <https://databoks.katadata.co.id/ekonomi-makro/statistik/a99ab58a6556e3c/jumlah-kasus-konflik-agraria-meningkat-pada-2023>, accessed on December 12, 2024.

⁶ *Ibid.*

out only by using a deed issued by a PPAT. Meanwhile, in the case study raised in this research, the transfer of land rights was carried out by private sale and purchase agreement. Then, when the buyer wants to make arrangements regarding the transfer of land ownership rights, but the seller's whereabouts are unknown. This resulted in the buyer being unable to carry out the transfer of land ownership rights. Therefore, the court decided to hand down a decision by way of *verstek*, which would then become a legal basis for the buyer to carry out the process of transferring the ownership rights of the purchased land even in the absence of the seller. However, this is certainly contrary to Article 37 paragraph (1) of the Government Regulation on Land Registration which provides confirmation that the transfer of land ownership rights can only be processed in the presence of a deed issued by a PPAT.

So with this, the researcher seeks to provide explanations and solutions that are expected to be the answer to the disputes faced by the community, which relate to the legal position of the parties to the use of *verstek* decisions as a basis for transferring land rights and juridical analysis of the judge's consideration in handing down a decision based on decision number 3/Pdt.G/2024/PN Gsk.⁷

⁷ Teddy Prima Anggriawan, Aldira Mara Ditta Caesar Purwanto, and Shinfani Kartika Wardhani, *Introduction to Civil Law*, First Printing, Scopindo Media Pustaka, Surabaya, 2023, Page. 318.

1.2 Problem Formulation

Referring to the explanation in the background of the problem, there will be a discussion related to the main issues that will be raised in this research study, including:

1. What is the legal standing of the parties in using a verstek decision as the basis for transferring land rights?
2. What is the basis for the judge's consideration in handing down decision number 3/Pdt.G/2024/PN Gsk?

1.3 Research Objectives

After Approved the main problems that will be raised in this research, it will then be explained regarding the objectives to be achieved, namely:

1. To analyze the legal standing of the parties in using a verstek decision as the basis for transferring land rights.
2. To juridically analyze the basis for the judge's consideration in handing down decision number 3/Pdt.G/2024/PN Gsk.

1.4 Research Benefits

The researcher hopes that the results of the analysis in this study can provide benefits for many parties, namely:

1. Theoretical Benefits

There are benefits obtained from the implementation of this research assessment, namely:

- a. The study in the research is expected to contribute a framework of thought and insight into issues related to legal acts in the form of

transfer of land rights using a verstek decision due to private sale and purchase agreement.

- b. The study that has been carried out is able to contribute to solving steps related to the problems contained as the main subject of this research topic.

2. Practical Benefits

There are practical benefits expected by the author through the study in this research, namely:

a. For the Community

The results of the study are expected to add knowledge and broaden the insight of the community so that they can understand the process of transferring land rights based on the provisions in the applicable regulations and can be careful and careful in carrying out these buying and selling activities.

b. For Students

- 1) The study in the research is expected to be used as literature and reference regarding the process of transferring land rights based on verstek decisions due to private sale and purchase agreement for the Faculty of Law UPN "Veteran" Jawa Timur.
- 2) To fulfill the requirements in graduating from the undergraduate education program at the Faculty of Law UPN "Veteran" Jawa Timur.

1.5 Originality of Research

The originality of writing in this research is found in several scientific writings that have similar discussions, which include the following:

No.	Previous Research (Title, Author Name, Thesis or Journal, Year)	Equation	Difference
1	"Analisis Yuridis Peralihan Hak Tanah Ulayat Menjadi Hak Milik yang ada di Indonesia (Engky Indra Crisdana, Skripsi, 2021)."	1. Conduct analysis regarding the transfer of land rights	1. The problem studied is different, namely regarding the transfer of customary land rights into property rights. 2. Did not use the study on the decision.
2	"Kepastian Hukum Peralihan Hak Atas Tanah Sengketa (Studi Kasus SHM/1045 Lontar) (Alviano Boyko Wijaya, Jurnal, 2022)."	1. Analyze the transfer of land rights. 2. Using case studies in its analysis	1. The problem studied is different, namely in the form of disputed land in which there are ownership claims from two legal subjects. 2. The case studies used are different. 3. The articles used are Article 24 paragraphs (1) and (2) of the Government Regulation on Land Registration.
3	"Tinjauan Yuridis Kepemilikan Hak Atas Tanah yang Diperoleh Melalui Pewarisan, (Antonius Ndruru, Jurnal, 2021)."	1. Raises the same legal issue of land rights. 2. They have similarities, namely using court decisions as case studies.	1. The legal object is different, namely in the form of analysis of land rights obtained from legal events in the form of inheritance.

			2. The main legal basis used is Article 955 of the Civil Code. 3. Using different Decision studies.
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Based on the presentation of the data above related to previous research that has similar legal issues with researchers, namely about land, the researcher seeks to raise the formulation of the problem, of which there is still no research that discusses this matter. In previous studies, there has been no analysis that explains the legal standing of the parties in using *verstek* decision as the basis for transferring land rights and analyzing the basis for the judge's consideration in handing down decision number 3/Pdt.G/2024/PN Gsk. So that these reasons become the basis for the researcher's consideration to conduct research, in order to create renewal in legal research, especially regarding disputes in land .

1.6 Research Methods

1.6.1 Type and Nature of Research

The use of the type of research applied is normative juridical⁸, where this type has a focus on conducting research from an internal perspective with the use of objects in the form of legal norms.⁹ The purpose of using this type of research is to identify various legal frameworks, principles, and doctrines that may be applied to resolve the legal issue at hand.¹⁰

⁸ Teddy Prima Anggriawan, "The Law on Adoption Through an Adoption Deed Drwan Up by a Notary", *Pranata Hukum*, Vol. 3, No. 1, 2021, p. 8.

⁹ I Made Pasek Diantha, *Normative Legal Research Methodology in Justifying Legal Theory*, 2nd Edition, Prenada Media Group, Jakarta, 2016, p. 12. 12.

¹⁰ Peter Mahmud Marzuki, *Legal Research*, 7th Printing, 1st Edition, Prenada Media Group, Jakarta, 2011, p. 35. 35.

The basis for the researcher's consideration of the use of this type of research on legal issues raised with the title "**LEGAL STANDING OF UTILIZING VERSTEK DECISIONS IN THE TRANSFER OF LAND RIGHTS THROUGH PRIVATE SALE AND PURCHASE AGREEMENTS (Study of Decision Number 3/Pdt.G/2024/PN Gsk)**" is that the researcher seeks to conduct research and analysis regarding the legal standing of the parties in using verstek decisions as the basis for transferring land rights. As well as analyzing the basis for the judge's consideration in handing down decision number 3/Pdt.G/2024/PN Gsk. Thus, to be able to provide solutions to these problems, the author needs to conduct in depth studies and research on the UUPA and its complementary regulations and the use of principles and various applicable doctrines to be able to provide maximum solutions.

This research uses the application of descriptive nature, which is in the form of describing various forms of phenomena, either natural or man made. There are several types of this research nature, including case studies, surveys, prediction studies, evaluation studies, comparative studies and correlation studies.¹¹ However, in this research, we will use the descriptive research nature in the form of a case study of Decision Number 3/Pdt.G/2024/PN Gsk. Researchers conducted the case study in order to find out and understand the legal standing of the parties in using

¹¹ "Legal Research is Categorized Based on the Nature and Focus of the Study", <https://idtesis.com/penelitian-hukum-dikelompokkan-berdasar-sifat-dan-fokus-kajian/>, accessed on November 23, 2024.

a verstek decision as a guideline in the transfer of land ownership rights and the juridical analysis of the judge's consideration in handing down decision number 3/Pdt.G/2024/PN Gsk which is based on the UUPA and the complementary rules under it.

1.6.2 Approach

This research adopts three main approaches, namely the statute approach, case approach and conceptual approach. The use of these three types in this research is because it can help researchers to provide answers to resolve legal issues on the topic of this research.

The statutory approach is carried out by analyzing all laws and regulations that have a relationship with the legal issues at hand.¹² The UUPA and the Land Registration Regulation will be used as legal guidelines, as well as other regulations that can support the researcher's analysis. The analysis of laws and legal regulations will use literal interpretation or understanding of the words contained therein.¹³ This is done so that the laws and legal regulations related to the legal issues raised can be understood well and do not have multiple meanings, so that they can provide a good explanation of the legal standing regarding the use of verstek decisions as the basis for transferring land ownership rights and can understand the analysis of the judge's consideration in handing down decision number 3/Pdt.G/2024/PN Gsk.

¹² Peter Mahmud Marzuki, *Op.Cit.*, pp. 93.

¹³ *Ibid*, pp. 108.

The use of a case approach is also needed in the process of studying this research, which is carried out by examining decisions that have permanent and binding legal force from the court,¹⁴ namely in the form of decision Number 3/Pdt.G/2024/PN Gsk. This type has an important role in the assessment of the basis of consideration produced by the panel of judges for the decision.

A conceptual approach is also applied in this research, which originates from various views and various doctrines that live in legal science.¹⁵ So that the use of this type of approach is sought so that researchers can find ideas in the form of principles that can be used to answer and resolve legal issues raised in the research.

1.6.3 Legal Materials

The use of several types and sources of data in this research is intended to explain the problems in the legal issues raised, including:

A. Primary Legal Materials

The application of the use of primary legal materials in this research is due to its authoritative nature, meaning that it has authority.¹⁶ This also acts as the main legal material used by researchers to be able to answer and resolve legal issues related to the issue of transferring land ownership rights using a *verstek* decision due to an private sale and purchase agreement. This section

¹⁴ *Ibid*, pp. 94.

¹⁵ *Ibid*, pp. 95.

¹⁶ Djulaeka and Devi Rahayu, *Textbook of Legal Research Methods*, Scopindo Media Pustaka, Surabaya, 2020, Page. 36.

includes various laws and court decisions that have permanent legal force as materials for decision studies, including:

1. Constitution of the Republic of Indonesia Year 1945
2. Civil Code
3. Herzien Inlandsch Reglement
4. Law No. 5 of 1960 on the Basic Regulation of Agrarian Principles
5. Government Regulation No. 24 of 1997 on Land Registration
6. Government Regulation No. 18 of 2021 on Management Rights, Land Rights, Flat House Units, and Land Registration
7. Government Regulation No. 62 of 2023 on the Acceleration of Agrarian Reform Implementation
8. Decision Number 3/Pdt.G/2024/PN Gsk

B. Secondary Legal Materials

The use of secondary legal materials in the form of a publication related to the legal issues raised is also necessary. This material is not a document that has an official character and functions as supporting material for the explanation obtained from primary legal materials.¹⁷ Its use in research using literature books, articles, legal journals and previous research on verstek decisions, transfer of land ownership rights and sale and purchase agreements. As well as conducting

¹⁷ *Ibid.*

interviews with judges who have the authority to decide disputes in Decision Number 3/Pdt.G/2024/PN Gsk.

C. Tertiary Legal Materials

The use of tertiary legal materials in the study of this research is also necessary because it serves to complement the material contained in primary and secondary legal materials, in order to accurately identify and analyze facts. This type of legal material can be in the form of legal dictionaries, the Big Indonesian Dictionary (KBBI), the use of social media and the internet that have a relationship with verstek decisions, transfer of land ownership rights and purchase and sale agreements.

1.6.4 Legal Material Collection Procedures

Researchers collect legal materials by applying the use of literature studies. This is in order to be able to answer and solve the problem formulation in the research topic raised, so that researchers do this by reading, understanding and quoting the data sources obtained and of course in accordance with legal issues in the research.

A. Primary Legal Materials

1. Constitution of the Republic of Indonesia Year 1945

This research will use supreme law or the highest law in the State of Indonesia, namely the 1945 Constitution of the Republic of Indonesia. According to Hans Kelsen and Jimly Asshiddiqie, who are jurists, stated that supreme law is the basic rule and the

highest law in a country because the formation of these regulations is not based on the existence of higher norms, but it has been determined earlier by the community and is used as the basis for the norms that exist below because it contains various abstract and general legal principles.¹⁸

The existence of the 1945 Constitution is indispensable in this research because it contains various arrangements and principles regarding the legal guarantees that have been given by the government for the protection of the people, as well as the mission to promote public welfare based on social justice, especially in terms of land management and use in order to provide benefits to the general public and the state. In addition, this regulation is also used as a legal basis for the legal rules and regulations used by researchers because of the abstract arrangements and principles in it.

2. Civil Code

The issues in the research raised are closely related to agreements, namely transaction agreements. So to strengthen the analysis, it is necessary to use the Civil Code (hereinafter referred to as the Civil Code) in this research, which will provide an

¹⁸ Valerie Augustine Budianto, "The Meaning of the 1945 Constitution as Supreme Law", <https://www.hukumonline.com/klinik/a/makna-uud-1945-sebagai-isupreme-law-i-lt62386d81340e8/>, accessed on November 26, 2024.

explanation of the definition of a sale and purchase agreement and the validity of the agreement.

3. Herzien Inlandsch Reglement

This research uses a decision as a case study, in which the decision was decided by *verstek*. So that in order to understand the flow and procedures that occur in court from start to finish, it is necessary to use the Herzien Inlandsch Reglement to produce an appropriate and precise explanation.

4. Law No. 5 of 1960 on the Basic Regulation of Agrarian Principles

The use of regulations whose formation is based on customary law that correlates with land is also needed, but there are provisions that are not allowed to ignore various elements contained in religious law, namely UUPA. This has the aim of achieving the function of utilizing the earth and all its contents, which of course will be adjusted by taking into account the interests of the community in order to ensure certainty in law for all Indonesian people.¹⁹

The connection between the use of UUPA and the legal issues in this research is that it will be used to regulate land ownership, especially in the form of transfer of rights due to private sale and purchase agreement that have been carried out.

¹⁹ Muhammad Hasbi Ashshiddiqi, *et.al.*, “The Dynamics of the Validity of Interfaith Marriage from the Perspective of Civil Law in Indonesia”, Proceedings of the Conference on Law and Social Studies, 2023, p.9.

5. Government Regulation No. 18 of 2021 on Amendments to the Land Registration Regulation

This regulation is a delegated regulation from the UUPA to the government as a means of ensuring the implementation of legal guarantees in the transfer of land ownership rights, in accordance with the legal issues studied.

6. Decision Number 3/Pdt.G/2024/PN Gsk

The use of a case study in the form of a decision that has legally permanent force, namely Decision Number 3/Pdt.G/2024/PN Gsk, is also needed in the study that will be conducted, in order to find out about the conformity between the governing law and the facts in the field that occur.

B. Secondary Legal Materials

The use of secondary legal materials in this study is in the form of a publication related to law, which is not a document of an official character and serves as a supporting material for primary legal materials.²⁰ The forms of using this legal material are:

1. Literature books on the transfer of land ownership rights, sale and purchase agreements, verstek decisions by judges and on principles related to the research.

²⁰ *Ibid.*

2. Legal articles and journals that have a relationship with the transfer of land ownership rights, transactions, verstek decisions by judges and about principles related to the research.
3. Previous research or thesis that have a relationship with the transfer of land ownership rights, sale and purchase agreements, verstek decisions by judges and about principles related to research.
4. The results of interviews conducted with judges who have decided Decision Number 3/Pdt.G/2024/PN Gsk.

C. Tertiary Legal Materials

The use of tertiary legal materials in this research is in the form of legal dictionaries, large Indonesian dictionaries, the use of social media and the internet related to the transfer of land ownership rights, sale and purchase agreements, verstek decisions by judges and principles in law related to research.

1.6.5 Analysis of Legal Materials

There are 3 legal materials that have been collected in this study and will then be analyzed descriptively and in detail. In order to be able to solve the problems listed in the formulation of the first problem in this study, the researcher will conduct an analysis by focusing on the use of laws and complementary regulations under them, as well as court decisions that have been final and binding, namely Decision Number 3/Pdt.G/2024/PN Gsk.

This is done so that it can be clearly known about the legal standing of the parties in using a *verstek* decision as the basis for transferring land ownership rights. In addition, researchers will also analyze the judge's consideration in handing down Decision Number 3/Pdt.G/2024/PN Gsk. Then to support ideas in solving this problem, the author will use secondary and tertiary legal materials to support the analysis that has been carried out, namely through literature books, articles, journals and previous research on the transfer of ownership rights land, sale and purchase agreements, *verstek* decisions by judges and various principles in legal science related to research.²¹

1.6.6 Systematization of Writing

The writing of this thesis will be written with the use of a systematic system that will be categorized into 4 chapters and will contain several subchapters. This application is so that readers can understand the systematics that will be explained coherently and clearly in the thesis entitled **"LEGAL STANDING OF UTILIZING VERSTEK DECISIONS IN THE TRANSFER OF LAND RIGHTS THROUGH PRIVATE SALE AND PURCHASE AGREEMENTS (Study of Decision Number 3/Pdt.G/2024/PN Gsk)"**. The systematics of writing in this research will be presented as follows.

²¹ Anajeng Esri Edhi Mahanani et al, "Causality of Legal Awareness and Culture in Shaping Legal Compliance of Covid-19 Countermeasure Policy", *Widya Pranata Hukum*, Vol. 3, No. 2, 2021, Page 72. 72.

The first chapter contains the introduction, which contains the background regarding legal issues and legal facts that occur so that researchers raise this legal issue into research. In this section it has also been explained that the researcher raises two problem formulations and the purpose of conducting research, so that it can be understood regarding the benefits provided theoretically and practically as described. Then in this section it has also been included regarding the originality of the research by comparing it with previous research composed of theses and articles related to the legal issues discussed. This chapter also explains the use of research methods which include type, nature, approach and legal materials. As well as an explanation of the procedures in collecting, and reviewing them.

Chapter two, this section contains a detailed and descriptive explanation to resolve the first problem formulation in the study conducted, namely regarding the legal standing of the parties in using a *verstek* decision as the basis for transferring land rights. This section consists of two subchapters, namely the first subchapter contains the settlement of cases using a *verstek* decision and the second subchapter contains the legal standing of the parties in using a *verstek* decision as the basis for transferring land rights. This explanation will be based on the use of the UUPA and government regulations that have a relationship with the legal issues discussed. The analysis will also be linked to various

legal principles, doctrines and legal principles to support the resolution of these issues.

Chapter three, this section contains analysis to resolve the second problem formulation, namely regarding the analysis of the basis of the judge's consideration in handing down Decision number 3/Pdt.G/2024/PN Gsk. This analysis will be based on the use of Decision number 3/Pdt.G/2024/PN Gsk, as well as the use of the UUPA and its complementary regulations.

The fourth chapter, this section contains a closing that contains conclusions on the discussion carried out in this study, as well as suggestions that researchers will give on legal issues that occur. It is intended that the research conducted can provide many benefits, especially regarding legal issues related to land in Indonesia and to resolve the main problems in this study.

1.7 Literature Review

1.7.1 Overview of Property Rights

1. Definition of Property Rights

Property rights are part of human rights²² and are a basic right that has been explicitly guaranteed in the Indonesian constitution, namely precisely in Article 28H paragraph (4) of the 1945 Constitution of the Republic of Indonesia. The provisions listed in the

²² Alvian Dwiangga Wijaya and Teddy Prima Anggriawan, "Legal Protection of Personal Data in the Use of Smartphone Applications", *Inico Legis Journal*, Vol. 3, No. 1, 2022, p. 64-65.

article state that each individual has absolute rights to his or her person and there should be no arbitrary action to take away these rights.

2. Definition of Land Ownership Rights

The substance contained in the UUPA has clearly outlined the definition of land ownership rights. Article 20 paragraph (1) of the regulation explicitly explains that property rights is a right that can be inherited, the strongest and most perfect to prove that the land is owned by someone. Therefore, every individual who controls the right of ownership in the land can pass it on to their children and grandchildren.²³ However, Article 6 of the UUPA emphasizes that all land ownership rights have a social function. As a result, although property rights has the strongest and most perfect characteristics in full, this does not make the right absolute and cannot be challenged.

3. Subject of Land Ownership Rights

An explicit explanation of the substance in Article 21 of the UUPA, namely regarding legal subjects who have the right to control land in the State of Indonesia with property rights, namely native Indonesian citizens, legal entities determined by government agencies to be able to have property rights and who have fulfilled the applicable requirements. As well as citizens who originate from abroad and reside in Indonesia, who get the acquisition of these rights as a result

²³ Klaudius Ilkam Hulu and Dalinama Telaumbanua, "Ownership of Inherited Land Rights Acquired through Parents' Estate", *Journal of Panah Keadilan*, Vol. 1, No. 2, 2022, Page. 54.

of inheritance without trust or mixing in assets due to marriage with Indonesian citizens.²⁴

4. Types of Land Ownership Rights

Based on the provisions contained in Article 16 in conjunction with Article 53 of the UUPA, it is understood that there are 3 kinds of rights on land, including:

1. A right that is permanent in nature is a statement that a right will apply as long as the UUPA is still in force and there is no revocation of regulations by other laws. The existing categories are ownership rights, rights for business purposes, rights for building purposes, usage rights, rental rights for building purposes, clearing rights on land and collection rights on forest products.²⁵
2. Rights that will be determined by law, is the emergence of rights and then will be given a determination by law. Related to this right, there are still no kinds of rights.²⁶
3. Temporary rights are rights that have a temporary nature and will be abolished due to the content in which there are many things that contradict the principles of the UUPA such as extortion and feudalism.²⁷

²⁴ Bambang Sudiarto, "The Subject of Land Ownership Rights According to the UUPA", *Al-Qisth Law Review*, Vol. 5, No. 1, 2021, pp. 12.

²⁵ Urip Santoso, *Registration and Transfer of Land Rights*, Kencana Prenada Media Group, Jakarta, 2011, p. 51. 51.

²⁶ *Ibid.*

²⁷ *Ibid.*

1.7.2 Overview of Transfer of Land Ownership Rights

Ownership rights owned by a person to land can move from one individual to another, this is as the definition of the transfer of land ownership rights.²⁸ Referring to Article 37 paragraph (1) of the Land Registration Regulation, there are various forms of transfer of land ownership rights, which basically can occur through a process involving several forms of activities, including transactions, exchanges, gifts, company acquisitions and other legal actions, except auctions. The implementation of the process must of course be carried out by following and complying with applicable legal procedures.

1.7.3 Overview of Soil

1. Definition of Land

Soil is a component of the earth's surface that has an important role in human life because by nature that between humans and soil will have a relationship forever. This is because before humans are born in the world, they already have a life dependence on the land.²⁹ According to KBBI, soil has several meanings, namely part of the earth's surface that lies in the uppermost layer of the earth, the condition of the earth in a place, the provision of boundaries on the earth's surface and the earth acts as a material for something.

²⁸ 'Transfer of Land Rights in Indonesian Property Law', <https://siplawfirm.id/hak-atas-tanah/?lang=id>, accessed on December 16, 2024.

²⁹ Nia Kurniati, *Agrarian Law Land Disputes Settlement Through Arbitration in Theory and Practice*, First Printing, PT Refika Aditama, Bandung, 2016, p. 1. 1.

The definition of land is also regulated in Indonesian legal regulations, namely in Article 4 paragraph (1) of the UUPA, which confirms explicitly related to the definition of land which is the surface of the earth. Then Article 4 paragraph (2) of the regulation has also provided a broader understanding of land, where the definition of land is not limited to the surface of the earth, but also includes the body of the earth, water and the space above it.

So that in accordance with the understanding explained above, it can be understood that the juridical definition of land is the surface of the earth and an explanation of the rights on land, which is a certain right to the surface of the earth that has restrictions on it, and has two dimensions in length and width.³⁰

2. Definition of Land Law

Land law is all provisions and arrangements in law, both written and unwritten, in which there is a common object in the arrangement, namely in the form of control of rights to land as a legal institution and the form of a real relationship, whether public or private and has a systematic arrangement, so that this forms a unity in the form of system status. The provisions governing land law in writing have been regulated in the UUPA and its implementing regulations, while the

³⁰ *Ibid*, p. 29.

rules of unwritten land law are regulated in customary law which focuses on land.³¹

3. Purpose of Land Law

Land law has a goal that is in line with the 1945 Constitution of the Republic of Indonesia which is the basis for the formation of the land law itself, which is located in the fourth paragraph in the preamble which explicitly states that the formation of the state government aims to provide protection for the entire nation and the descendants of Indonesian blood, as well as to be able to provide progress for the welfare of many people, educate every generation of the nation and participate in the implementation of world order based on independence in the social field.

So that on the basis of its formation, the UUPA has formulated the main objectives of the formation of these regulations which have been listed in the general explanation section, namely as a basis in national law that can provide arrangements related to the preparation of agrarian law, simplicity and unity in agrarian law, and become the basis for providing legal certainty for all the people. So that the presence of these regulations seeks to realize prosperity in the life of the nation, happiness and justice for all Indonesian people.³²

4. Principles of National Land Law

³¹ H. M. Arba, *Indonesian Agrarian Law*, Sixth Printing, Sinar Grafika, Jakarta, pp. 12-13.

³² *Ibid*, p. 19.

The UUPA also regulates the principles that are directly related to land law, including:

A. Nationality Principle

This principle is reflected in Article 1 paragraphs (1), (2), and (3) of the UUPA, which explicitly states that the earth and everything contained therein is a gift from the Indonesian nation, which is a form of gift from God Almighty and has a correlated relationship with humans, which has an eternal nature and is intended for national prosperity, happiness and welfare.

B. Principles of State Power

Its application is reflected in Article 2 paragraph (1) of the UUPA and Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, where these provisions explain that the earth and all components contained therein are under the control of the state, which acts as a community managing the power of the people. Therefore, based on Article 2 paragraph (2) of the UUPA, the Indonesian State has several authorities over the right of control, including:

1. To regulate and organize in order to preserve and maintain the earth.

2. Providing wise determination and regulation regarding the correlation between the laws that occur in individuals and the earth and all its components.
3. Determining and regulating the legal correlation between individuals and their actions on the earth and all parts related to it.

C. Principle of Recognition of Customary Rights

Its application is reflected in Article 3 of the UUPA which provides confirmation that the implementation of all rights related to ulayat and other allied rights is still being implemented and can be subject to this regulation, as long as it still exists in reality and does not conflict with the provisions contained in this regulation, as well as other laws and regulations that have a legally superior position.

D. The principle that all land rights have a social function

This provision is reflected in Article 6 of the UUPA, which states that all land rights have a social function. So that even though a land tenure has been owned by someone juridically, each person cannot use the land arbitrarily for their personal interests, which has the potential to cause a lot of harm to the people around them. This is because in fact, all land rights must be intended and beneficial for many people.

E. Nationality Principle

This principle is reflected in the existence of Article 9 in conjunction with Article 21 paragraph (1) of the UUPA which emphasizes that land ownership rights can only be controlled by those who are indigenous Indonesian citizens. Meanwhile, foreign nationals only have the right to use as stipulated in Article 42 of this regulation. This also applies to every legal entity, only legal entities that have been appointed by the government can have land ownership rights.³³

F. Equal Rights Principle

This principle is reflected in the existence of Article 9 paragraph (2) of the UUPA which explains that the control of land rights does not distinguish between men and women. So that both men and women have the same rights and there is no distinction to obtain and utilize these rights.

G. Principle of Protection for Weak Citizen Groups

This principle is reflected in the existence of Article 11 paragraphs (1) and (3) jo Article 13 of the UUPA, which provides confirmation that the legal correlation between individuals or legal entities and the earth and everything

³³ *Ibid*, pp. 21.

related to it must have definite restrictions. This is intended to implement the provision of legal protection for citizens who have a weak position. Article 13 of the UUPA also explains that any business conducted by way of monopoly can only be carried out by the government based on the law.

H. The principle that agricultural land should be cultivated and managed by its own owners

This principle is reflected in the existence of Article 13 in conjunction with Article 17 of the UUPA, which explains that there is a minimum and maximum period of tenure of rights to land that is used as agricultural land.

I. Planning Principles

This principle is reflected in the existence of Article 14 of the UUPA, which emphasizes that the earth and everything in it is intended, used and utilized for the benefit of the people and the state, so that a planning arrangement must be formed that is adjusted to the achievement of the objectives to be achieved.

1.7.4 Overview of the Agreement

1. Definition of Agreement

The definition of an agreement when referring to the KBBI is an agreement, either written or oral, where it is formed by 2 or more parties and they have decided to mutually agree to obey the various

things mentioned in the agreement. This is also regulated in Article 1313 of the Civil Code, which explicitly explains that an agreement is an act in which 1 or more people have agreed to bind themselves to 1 or more other people.

2. Definition of Sale and Purchase Agreement

The definition of a transaction agreement already has an existence in Article 1457 of the Civil Code, where this provision provides an explanation if the transaction is a form of agreement, namely there are several parties who mutually agree to bind themselves and agree that one party delivers goods and the other party makes payments according to the agreed value.

Based on Article 1458 of the Civil Code, a transaction will be considered to have been carried out if there has been an agreement regarding a certain item and the currency value of the item, even though the item has not been given and the price of the item has not been paid.

3. Legal Terms of Agreement

In order for an agreement to be recognized as valid in law, there are requirements that must be implemented as contained in Article 1320 of the Civil Code, which include:

1. The agreement of the parties, is a form of agreement for the parties who have bound themselves, in which there has been an adjustment regarding the will of each party. This

requirement must be carried out voluntarily, that is, there is no element of mistake, coercion and fraud.

2. Proficiency in making agreements, is a requirement that must be achieved by every person, namely that they are capable of making an agreement.
3. A certain thing, is a condition that emphasizes in carrying out the agreement can only be done on tradable goods.
4. Halal cause, this relates to the objectives to be achieved in this agreement, namely that the substance contained in the agreement must be in harmony with the provisions of the law, decency and generally accepted order.

Based on the explanation of the legal requirements in the agreement above, it can be understood that these requirements can be divided into 2 (two) types. First, subjective conditions that contain the agreement and capacity of the parties. Second, objective conditions that contain a certain subject matter and cause. If the subjective requirements are not achieved, it will have the effect that the agreement can be canceled. Meanwhile, if the objective requirements cannot be achieved by the parties, the agreement will be null and void.

4. Principles of Agreement

There are 5 principles of agreement that have an existence in the Civil Code, including:

A. The principle of freedom of contract, this is confirmed in the provisions of Article 1338 of the Civil Code, namely all agreements made in accordance with the law, can also be enforced as laws for the parties who issue them. Then it cannot be withdrawn except by agreement of both parties. The implementation of this agreement must also be in good faith.

B. The principle of consensualism, is the principle that contains the meaning if the agreement made by the parties must contain mutual agreement on the points of the agreement.³⁴ This is reflected in the existence of Article 1320 of the Civil Code relating to the four legal requirements that must be met, namely an agreement agreed by the parties, having the capacity to enter into an agreement, a certain subject matter, a matter that is in harmony with the law.

C. The principle of Pacta sunt servanda, when translated from Latin, has the meaning of a promise that must be carried out. This principle has a close relationship with the agreement that has been made by the parties, where this principle includes the meaning that the agreement is a law for the makers, so that the form of breaking the agreement is a

³⁴ '5 Principles of Civil Law related to Agreement', <https://www.hukumonline.com/berita/a/asas-asas-hukum-perdata-lt62826cf84ccbf/>, accessed on December 20, 2024.

default. The existence of this principle is stated in Article 1338 of the Civil Code which provides confirmation that the agreement whose making is harmonized with the law, it will also be enforced like a law for the makers and cannot be withdrawn without consent and its application must be in good faith.

D. The principle of good faith, is a principle that means that the implementation of the provisions in the agreement must be carried out with good intentions.³⁵ The existence of this principle can be seen in Article 1338 of the Civil Code, which regulates the obligation of good faith in the implementation of the agreement.

E. The principle of personality, is a principle that means if a person will make and carry out an agreement because there are important matters concerning his person.³⁶ As for its existence lies in Article 1315 of the Civil Code which emphasizes that a person cannot create an agreement, unless it is intended for himself.

1.7.5 Overview of the Verstek Decision

1. Definition of Verstek Decision

³⁵ *Ibid.*

³⁶ *Ibid.*

A verstek decision is a decision stating that the defendant did not attend the trial or did not send a representative to the court, even though they had been legally summoned. The purpose of the summons is so that the defendant can comply with requests and orders coming from the panel of judges or the court to attend the trial.³⁷

2. Definition of Verzet

Verzet is an effort in law that can be filed by the defendant as a form of opposition to the verstek decision. Its existence is listed in Article 125 paragraph (3) and Article 129 Herzien Inlandsch Reglement.

3. Verzet Filing Procedure

Based on Article 129 Herzien Inlandsch Reglement, it has been explained about the procedure to be able to file a verzet, namely:

1. If the court's decision has been notified directly to the defendant, the time for filing the verzet is 14 days after the notification.
2. If the decision is not informed to the defendant, then the time period given to the defendant to file a verzet is 8 days from the notification of the warning by the Chairman of the

³⁷ Annisa, "Definition of Verstek Decision, Terms and Forms", <https://fahum.umsu.ac.id/pengertian-putusan-verstek-syarat-dan-bentuknya/>, accessed on December 20, 2024.

District Court. The existence of this rule is stated in Article 196 Herzien Inlandsch Reglement.

3. If after the notification of the warning letter the defendant does not appear properly, then based on Article 197 Herzien Inlandsch Reglement, the time limit for filing a verzet is 8 (Eight) days after an order from the President of the District Court to carry out confiscation of goods owned by the defendant.

4. Legal Basis for a Verstek Decision

The verstek decision is based on the existence of Article 125 paragraph (1) Herzien Inlandsch Reglement, which states that if the defendant does not attend the trial even though a summons has been made in a legal manner, and does not Agree by another person to attend on his behalf, then the lawsuit filed by the plaintiff will be accepted as a decision in the absence of the defendant or verstek. This is excluded if the substance in the lawsuit is against rights or does not have strong reasons.

5. Conditions for a Verstek Decision to be Obtained

Referring to Article 125 paragraph (1) HIR, it can be understood that there are conditions for the imposition of a verstek decision, including:

- a. The defendant did not appear at the hearing and did not send a response.

- b. The defendant did not send anyone to represent him nor did he send a response.
- c. The defendant has been summoned in a legal and proper manner.
- d. The lawsuit has a strong reason and legal basis.

The requirements mentioned above must be examined carefully, so that if all of the above conditions are met then a verstek decision can be issued with the granting of the claim.³⁸

6. Form of Verstek Decision

There are 4 (four) types of verstek decisions that can be imposed by the panel of judges, including the following³⁹ :

- 1. Granting the entire substance of the claim filed by the plaintiff.
- 2. The partial granting of the plaintiff's claim, which is based on supporting evidence.
- 3. Declare the lawsuit inadmissible because the court believes that the evidence or legal basis for the filing of the lawsuit does not meet the legal requirements that have been determined.
- 4. The court rejected the plaintiff's claim in its entirety because it found that there was no legal basis for the claim.

³⁸ Maswandi, "Verstek Decisions in Civil Procedure Law", Mercatoria Journal, Vol. 10, 2017, p. 161. 161.

³⁹ *Ibid.*