

LEGALIZE CUSTOM-RELATED LANDOWNERSHIP TRANSACTIONS: THE INDONESIAN EXPERIENCE

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Abstract

The secret sale of land raises changes in certificate ownership dilemma. The absence of seller during creation of the Deed of Sale and Purchase (AJB) poses a severe obstacle, coupled with the buyer's lack of knowledge. Another constraint is buyer's inability to create a deed due to seller's unknown address. This research highlights buyer's efforts to overcome obstacles in transferring land certificates from off-the-record land transactions. This is a normative legal approach through literature analysis. The results show that buyers can overcome obstacles by filing a lawsuit for unlawful actions in the district court where the land is located. This lawsuit is related to unlawful actions by the defendant, such as rejection or hindrance to changing the land certificate's name. Through the trial, the court can issue an order instructing the National Land Agency (Badan Pertanahan Nasional or BPN) to transfer the land certificate in the buyer's name. Even without the Deed of Sale and Purchase (AJB), the court order serves as a legal basis for BPN to execute this process. Upon completion, the buyer obtains legal certainty regarding land ownership, and despite lacking AJB, the renamed land certificate becomes valid proof of the buyer's land ownership.

Keywords: *Legalization; Custom-Related; Landownership*

1. Introduction

Humans are social beings (zoon political) where they need each other. With reciprocal relationships, social phenomena often arise in conflicts due to different interests. With the emergence of conflict, the law plays an essential role in resolving the dispute.¹ Land is a basic need that is very much needed for the life of all humans because the land is one of the main elements for the survival and life of humans throughout the ages, aiming to achieve prosperity for all people who are evenly divided materially and spiritually. The increasing need for land is due to the growing population, so people always try to get and acquire land, including by buying and selling land. However, sometimes, the control and acquisition of land create legal problems or even conflicts or disputes within one's family or against other people, even in the government's control or ownership of land.² The land is closely related to everyday human life; it

¹ Amriani Nurmaningsih, "Alternatif Penyelesaian Sengketa Perdata Di Pengadilan," *Jakarta: PT Raja Grafindo Persada* (2012).

² Abdul Wahid, Elya Kusuma, and Sarip Sarip, "Upaya Hukum Penyelesaian Sengketa Jual Beli Tanah Secara Di Bawah Tangan," *Mahkamah: Jurnal Kajian Hukum Islam* 5, no. 1 (2020): 22–35.

can even be said that humans come into contact with land every time. Everyone needs land not only during his lifetime but also when he dies; he remains in touch with the land when he dies.³

In the community, land acquisition is often done by transferring rights through buying and selling. The words buying and selling in everyday terms can be interpreted as someone voluntarily releasing money to get the desired item. Then, according to Civil Law (BW) Article 1457 it is stated that the sale and purchase of land is an agreement whereby the seller binds himself (meaning promises) to hand over the land concerned to the buyer, who attaches himself to pay the seller the price that has been agreed upon.⁴

Given the importance of legal certainty in any land transfer due to the sale and purchase transaction of land rights, Law Number 5 of 1960 concerning the Basic Principles of Agrarian Regulations is obliged to register the transfer of rights due to the sale and purchase. Legal action done in writing is much better because it is safer and guarantees legal certainty if written down.⁵ The increasing demand for legal certainty encourages the need for services from public officials in making evidence to ensure legal certainty.⁶ In the case of such a legal relationship, a situation often arises where one party does not fulfill its obligations to the other party so that one party feels that their rights have been harmed, to defend their rights and fulfill obligations as regulated in law, the settlement must be based on legal regulations has been established and regulated in law.⁷ To guarantee legal certainty, especially about the strength of proof of a lawful act, apart from being able to be done verbally, it can also be done in writing.⁸

The practice occurred in March 1981 when Cicih Sumarsih (Seller) sold a plot of land to Hj. Komariah (Buyer) underhand for IDR 1,500,000 (one million five hundred thousand rupiahs), located at Jalan Saputra Gg. Garuda VI No. 31 Tuparev Blok Kertasari/Sipanjenengan RT 005 RW 005 Sutawinangun Village, Kedawung District (formerly West Cirebon District), Cirebon Regency, West Java Province with Freehold Certificate Number 218/Desa

³ Abdul Wahid, Elya Kusuma Dewi, and Sarip Sarip, "Kekuatan Alat Bukti Akta Otentik Terhadap Akta Pejabat Pembuat Akta Tanah (PPAT) Berdasarkan Peraturan Pemerintah Nomor 24 Tahun 2016 Juncto Pasal 1868 KUHPerdara," *Mahkamah: Jurnal Kajian Hukum Islam* 4, no. 2 (2019): 205–219.

⁴ Prancisca Romana et al., "Keabsahan Jual Beli Hak Atas Tanah Dibawah Tangan Di Desa Patihan Kecamatan Sidoharjo Kabupaten Sragen (Tinjauan Beberapa Kasus Terkait Di Pengadilan Negeri Di Surakarta)," *Jurnal Repertorium* II, no. 2 (2015): 117–125.

⁵ Nicola Jackson, "Overreaching in Registered Land Law," *The Modern Law Review* 69, no. 2 (2006): 214–241.

⁶ Barbara Bogusz, "Bringing Land Registration into the Twenty-First Century – The Land Registration Act 2002," *The Modern Law Review* 65, no. 4 (2002): 556–567.

⁷ Slamet Widodo, "A Critical Review of Indonesia's Agrarian Reform Policy," *Journal of Regional and City Planning* 28, no. 3 (December 2017): 204.

⁸ Arsiendy Aulia, "Prinsip Kehati-Hatian PPAT Dalam Proses Pengikatan Jual Beli Tanah Sebagai Perwujudan Kepastian Hukum," *Recital Review* 4, no. 1 (2022): 244–278.

Kertawinangun (now Desa Sutawinangun), Situation Picture Number 486 dated 14- 10-1975 Area of \pm 368 m² recorded under the name Cicih Sumarsih, with the following boundaries: To the north: Jalan Garuda VI; Eastside: Land owned by Muh. Yunus; Southside: Land owned by Ferry Maulana; Westside: Land owned by Iwan. The payment money is IDR 1,500,000 (one million five hundred thousand rupiahs), has been well received by the seller, a receipt signed by the seller evidences this, and since then, the plot of land has been submitted by the seller along with the certificate of rights and owned Number 218/Desa Kertawinangun Figure Situation Number 486 dated 14-10-1975 Area \pm 368 m² recorded under the name Cicih Sumarsih. To complete the receipt in number 3 (three), and because the buyer will build a house on the land, a statement letter from the seller on the seal dated January 19, 1984, is drawn up, which states that the seller claims to have sold the disputed land to the buyer and expresses no objection to the buyer building a house on the land. At first, it did not occur to the buyer to reverse the name on the land certificate, so the certificate for the land was still in the buyer's name; besides that, the seller did not know about the procedure for the transfer of the certificate. Then, now that the seller has realized the importance of legal certainty over the ownership of the land and building, the buyer wants the certificate to be reversed into the buyer's name. Therefore, the buyer comes to the office of the Land Deed Authorization Officer (PPAT) to seek information about the procedure/mechanism for requesting a certificate name transfer so that information and information for the transfer of the certificate name must be proven by a sale and purchase certificate made by the PPAT.⁹ However, when the buyer wants to make/make a sale and purchase deed before PPAT, it cannot be implemented because the seller's address is no longer known in the Republic of Indonesia.

Initially, the buyer did not consider changing the name on the land certificate, so the certificate for the land remained in the buyer's name. Additionally, the seller needed to be informed of the certificate transfer procedure.¹⁰ Later, the seller realized the importance of legal certainty over the land and building ownership, and the buyer wanted the certificate transferred into the buyer's name. Therefore, the buyer went to the Land Deed Authorization Officer (PPAT) office to seek information about the procedure/mechanism for requesting a certificate name transfer. Information and documentation for the certificate name transfer had to be proven with a

⁹ Cici Fajar Novita, "Tinjauan Hukum Terhadap Jual Beli Tanah Tanpa Akta Ppat (Wilayah Kecamatan Tinombo)," *Jurnal Ilmu Hukum Legal Opinion* 2, no. 5 (2014).

¹⁰ Try Widiyono and Md Zubair Kasem Khan, "Legal Certainty in Land Rights Acquisition in Indonesia's National Land Law," *Law Reform: Jurnal Pembaharuan Hukum* 19, no. 1 (2023): 128–147.

sale and purchase certificate made by the PPAT. However, when the buyer wanted to create a sale and purchase deed before the PPAT, it could not be implemented because the seller's address was no longer known in the Republic of Indonesia.

The issues identified in the above narrative involve several aspects that may create obstacles and uncertainties in the land transaction between Cicih Sumarsih as the seller and Hj. Komariah is the buyer. The practice of secretly selling land raises legal dilemmas concerning the transaction's validity, as the purchase was non-transparent—the change in land certificate ownership from Cicih Sumarsih to Hj. Komariah introduces administrative and legal complexities that need to be addressed. The seller's inability to be present during the creation of the Deed of Sale and Purchase (AJB) before the Land Deed Official (Pejabat Pembuat Akta Tanah or PPAT) poses a severe obstacle, complicating the process of validation and transaction verification. Additionally, the buyer's lack of knowledge about certificate transfer procedures and the importance of legal certainty adds complexity to handling this case. The buyer's inability to create a deed of sale in the presence of the PPAT due to the seller's unknown address is also a significant constraint that can impede the legalization process.¹¹

Based on the above description, the research problem formulation is how the buyer can overcome obstacles in transferring a land certificate obtained from an off-the-record land transaction. This study aims to examine and analyze the steps that can be taken to overcome the barriers in the Deed of Sale and Purchase (AJB) creation process and its impact on the certificate transfer process. The benefit is to provide understanding and knowledge related to the National Land Agency (Badan Pertanahan Nasional or BPN) of the Republic of Indonesia in delivering better public services (Good Governance).

2. Method

This research uses a normative legal approach to evaluate legal norms through literature analysis.¹² The primary focus of this research is in the field of law, specifically within the context of agrarian law concerning transactions involving buying and selling land rights previously governed by customary practices in Indonesia. The types of data utilized encompass secondary data, particularly in the form of primary legal materials related to agrarian law

¹¹ Ana Silviana, Khairul Anami, and Handojo Djoko Waloejo, "Memahami Pentingnya Akta Jual Beli (AJB) Dalam Transaksi Pemindahan Hak Atas Tanah Karena Jual Beli Tanah," *Law, Development and Justice Review* 3, no. 2 (2020): 191–195.

¹² Johnny Ibrahim, *Teori Dan Metodologi Penelitian Hukum Normatif* (Malang: Bayumedia, 2006).

regulations in Indonesia, secondary legal materials consisting of books and legal journals on Agrarian Law, and tertiary legal materials in the form of theories relevant to the discussed issues. An additional data collection technique applied in this research is library research, involving the exploration and analysis of secondary data, wherein the study delves into literature and documents associated with the relationship between Agrarian Law and Land Law.¹³

3. Results and Discussion

Based on this chronology, Cicih Sumarsih's irresponsible actions must be declared to have committed unlawful acts. Therefore, with the payment of the total price of the sale and purchase of the land object of the dispute by Plaintiff to Defendant, by following per the receipt in March 1981 and the Statement Letter dated January 19, 1984, the sale and purchase have fulfilled the rules of customary law, where the sale is carried out brightly, sincerely and by following per under Article 1320 of the Civil Code so that the sale and purchase of land and buildings are legal and legally binding.

To start and resolve the civil dispute that occurred between Hj. Komariah and Cicih Sumarsih, one of the parties in conflict, must submit a request for examination to the court. The parties who violated their rights in civil cases are called plaintiffs who file a lawsuit to the court and address the infringing party (defendant) by presenting a sitting case (*posita*) accompanied by what the plaintiff claims (*petite*).¹⁴

Based on the chronology,¹⁵ The actions of Cicih Sumarsih, who is not a letter of claim in a broad and abstract sense, have one purpose of guaranteeing the implementation of the rule of law in the field of civil, while in a narrow sense, is an ordinance to obtain legal protection with the help of the Ruler. This ordinance contains a claim by a particular person through legitimate channels, and with a judge's ruling, he obtains what is right or interest that is estimated as his right.¹⁶ The most preferred lawsuit is a lawsuit in written form. This is stated in article 118 paragraph (1) of the HIR which states that:¹⁷

¹³ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, 16th ed. (Jakarta: Rajawali Press, 2014).

¹⁴ Zainal Asikin, *Hukum Acara Perdata Di Indonesia* (Jakarta: Prenada Media, 2019).

¹⁵ Busyro Muqaddas, "Mengkritisi Asas-Asas Hukum Acara Perdata," *Jurnal Hukum Ius Quia Iustum* 20, no. 9 (2002): 18–31.

¹⁶ John Z Loudoe, *Beberapa Aspek Hukum Materil Dan Hukum Acara Dalam Praktek* (Jakarta: Bina Aksara, 1982).

¹⁷ R Soeroso, *Hukum Acara Perdata Lengkap Dan Praktis: HIR, RBg, Dan Yurisprudensi* (Jakarta: Sinar Grafika, 2021).

Civil lawsuits in the first degree authorized by the district court are conducted by the plaintiff or by a person of his/her power appointed by the provisions of Article 147, with a letter of application signed by him or by a power of attorney and submitted to the chairman of the district court who controls the jurisdiction of the defendant residence, or if his residence is unknown in his/her actual residence.

Regarding written claims other than those described in the HIR, it is also R.Bg article 142 paragraph (1) which states that:¹⁸

Civil lawsuits in the first degree authorized by the district court are conducted by the plaintiff or by a person of his/her power appointed by following under the provisions of Article 147, with a letter of application signed by him or by a power of attorney and submitted to the chairman of the district court who controls the jurisdiction of the Defendants residence, or if his residence is unknown in his/her actual residence.

According to both articles above, a civil lawsuit must be entered into the Court with a letter of request signed by the plaintiff or his/her attorney.

In practice in the judiciary, there are no standard guidelines on the technique of drafting a lawsuit, and this is due to the large number of cases and the taste of the plaintiff or the plaintiff's power in preparing the lawsuit letter. Therefore, the Civil Procedure Law adheres to some basic principles in drafting a lawsuit, and this is done because not all conflicts can be brought before the court. The following are some basic principles in preparing a civil lawsuit, namely:¹⁹

1) There Must Be a Legal Basis

Drafting a lawsuit is not just about finding a case. Making a lawsuit against someone must first be known as the legal basis. The judge will reject a lawsuit with no legal basis in a court hearing because it is this legal basis that is the basis of the verdict he took. Also Besides, the legal basis in the lawsuit filed with the court must be settled because it has a very close relationship with the problems in the trial, especially matters related to answering, refuting opponents' answers, and proving.²⁰

Then, in maintaining the evidence of the lawsuit in the trial, not only answer or argue, but all of it must be supported by a strong legal basis in preserving the evidence of the lawsuit, and this is very helpful for the judge in trying to find the law (law-making) in

¹⁸ Dedy Pramono, "Kekuatan Pembuktian Akta Yang Dibuat Oleh Notaris Selaku Pejabat Umum Menurut Hukum Acara Perdata Di Indonesia," *Lex Jurnalica* 12, no. 3 (2015): 147736.

¹⁹ Mohammad Kamil Ardiansyah, "Pembaruan Hukum Oleh Mahkamah Agung Dalam Mengisi Kekosongan Hukum Acara Perdata Di Indonesia," *Jurnal Ilmiah Kebijakan Hukum* 14, no. 2 (2020): 361–384.

²⁰ I G A A Mas Candraswati, Dewa Gede Sudika Mangku, and Ni Putu Rai Yuliantini, "Hukum Tanah Sebagai Bagian Dari Hukum Agraria Dalam Pembangunan Nasioal Di Indonesia," *Jurnal Pendidikan Kewarganegaraan Undiksha* 7, no. 3 (2019): 114–120.

deciding the case filed against him. This legal basis can be laws, doctrines, court practices, and customs recognized as law.²¹

2) Legal Interest

The Absolute Requirement to be able to file a lawsuit is the existence of legal interests directly. So, only some people who have an interest can file a lawsuit; the interest is indirect and attached to them. Therefore, before the lawsuit is drafted and pointed to the court, first think and consider whether the plaintiff is the right person to file the lawsuit.²²

If it is not entitled, then there is a possibility that the lawsuit will not be accepted. This was also confirmed by Sudikno Mertokusumo, who stated that a claim of rights must have a sufficient legal interest, which is the main requirement for the court's acceptance of that proper claim to be examined: point interest, point *action*. That does not mean the court must grant the claims of rights with legal interests. It still depends on the proof. The Supreme Court's decision dated July 7, 1971 No.294 K/Sip/1971 requires that a person file a lawsuit with a legal relationship.²³

3) Is a Dispute

The civil understanding is broader than the dispute; in other words, the disagreement is the basis of the case, while the dispute is not necessarily the case. In this sense, the case concluded two circumstances: there is a dispute and no dispute. In a dispute, there is something disputed and disputed and disputed; it cannot resolve the matter on its own, but rather, the completion needs to go through the courts as an authorized institution. While there is no dispute, meaning that there is no dispute, it is not requested by the court but only the determination of the judge so that it gets legal certainty that all parties must respect and recognize. In connection with the above, the lawsuit filed with the court must be disputed, and the dispute has caused harm to the plaintiff, so it needs to be resolved through the court as an authorized and impartial institution.²⁴

²¹ Nila Najikha, Wenny Megawati, and Rochmani Rochmani, "Teknik Pembuatan Gugatan Pada Kasus Sengketa Tanah Dalam Kegiatan Magang," *Abdimas Budaya* 5, no. 1 (2023): 17–25.

²² Socha Tcefortin Indera Sakti and Ambar Budhisulistiyawati, "Perlindungan Hukum Bagi Para Pihak Dalam Perjanjian Jual Beli Tanah Letter C Di Bawah Tangan," *Jurnal Privat Law* 8, no. 1 (2020): 144–150.

²³ Zakki Adlhiyati, "Paradoks Kewajiban Bersaksi Pada Ketentuan Hukum Acara Perdata," *ADHAPER: Jurnal Hukum Acara Perdata* 4, no. 2 (2019): 129–144.

²⁴ Didik Irawansah, "Penggunaan Mediasi Penyelesaian Sengketa Perdata Pertanahan Oleh Pemerintah Desa," *SEWAGATI: Jurnal Pengabdian kepada Masyarakat* 2, no. 2 (2023): 75–89.

4) Carefully Crafted and Bright

The lawsuit in writing must be prepared in a carefully crafted and precise lawsuit; if done in such a way, it will succeed in the court hearing. The letter of claim must be prepared briefly and solidly and cover all disputed issues. The letter of claim should not be obscure libel, meaning it should not be vague about the parties, the object of the dispute, and the legal basis used as the basis of the lawsuit.²⁵

5) Understanding Formal and Material Law

Mastery of formal law is instrumental in drafting a lawsuit because it directly concerns matters related to the court's competence, for example, to the court where the lawsuit is filed, how to file a lawsuit of review, intervention, and so on. Also, this formal law aims to enforce the material law in court hearings. Therefore, material law must also be adequately mastered in drafting a lawsuit because it determines the granting or rejection of a lawsuit. This earthly law concerns not only matters relating to legislation but also doctrines, legal theories, and habits in people's lives that are already considered laws that must be obeyed.²⁶

In the court proceedings, the defendant did not appear or provide any reasons for their absence despite being called several times. Mediation for reconciliation failed. There was no response from the defendant to the plaintiff's lawsuit. On August 31, 2018, the Panel of Judges conducted a local examination, which the plaintiff's attorney attended. The Plaintiff presented conclusions on October 9, 2018, and requested a decision. The lawsuit relates to the purchase of land in March 1981 for Rp 1,500,000.00. Although the land has been handed over to the plaintiff, the defendant cannot be contacted, making the certificate name replacement difficult. In response to the plaintiff's lawsuit, the defendant did not provide an answer, deemed to acknowledge the plaintiff's evidence. The plaintiff presented various pieces of evidence, including receipts, certificates, statements, and other documents. Based on the proven evidence, the plaintiff's lawsuit is essentially accepted. The Panel of Judges decided the case as follows: carrying part of the plaintiff's claim regarding the land and building on Jalan Saputra Gg. Garuda VI No. 31 Tuparev Blok Sipanjenengan, confirming legal ownership of the property in the name of Cicih Sumarsih as the plaintiff, stating that the defendant committed an unlawful act,

²⁵ Syahrul Sitorus, "Surat Kuasa Dan Gugatan (Analisis Konsep Dan Teknik Penulisan)," *Hikmah* 17, no. 2 (2020): 99–114.

²⁶ Gunawan Gunawan, Happy Yulia Anggraeni, and Rani Lailatul Fitri, "Permasalahan Substansi Hukum Acara Perdata Di Peradilan Umum Dan Penyelesaiannya," *Wajah Hukum* 7, no. 2 (2023): 389–395.

determining the valid transfer of rights based on the receipt of March 1981 and the sale and purchase statement on January 19, 1984, instructing the defendant to return the ownership certificate name to the plaintiff, imposing a penalty on the defendant to comply with the decision and pay the court costs amounting to Rp 2,511,000.00, and rejecting the plaintiff's claims other than that.

Based on the researcher's analysis, trade is an agreement in which one party must deliver an event and the other must pay the promised price. From this understanding, buying and selling is a reciprocal agreement, where the seller promises to transfer ownership of an item, and the buyer promises to pay a certain amount of money in return. Ownership of an item initially held by the seller will transfer to the buyer if a judicial submission has been made following the provisions of Article 1459 of the Civil Code.

In the position of the case as voiced above, it is clear that between Cicih Sumarsih (seller) and Hj. Komariah (buyer), a land sale and purchase agreement has been made underhand—finally, Hj. Komariah searched for Cicih Sumarsih according to his address. Still, until now, it has not been successful because its existence is unknown, so the problem, according to PPAT, is that the process of making a deed of sale and purchase cannot be carried out.

A sale and purchase agreement cannot only be made between the seller and buyer. They must be guided by state officials, in this case, PPAT (Land Deed Official). It is regulated in PP No. 37 of 1998. The authority of PPAT based on PP No. 37 of 1998 is to make authentic deeds regarding specific legal actions related to land rights or Property Rights to Flats Units. PPAT cannot be found in all regions. For areas that do not have PPAT, making a trade deed can be assisted by the head of the sub-district, who acts as a temporary PPAT. This is by Article 1 paragraph (2) of the same law.

Considering the Panel of Judges, it was explained that based on the evidence, it was proven that the Plaintiff, in March 1981, had purchased land located on Jalan Saputra Gg. Garuda VI No. 31 Tuparev Blok Kertasari/Sipanjenengan RT. 005 RW. 005 Village Sutawinangun District Kedawung (formerly West Cirebon District) Cirebon Regency West Java Province with Sertipikat Hak Milik No. 218/Village Kertawinangun (now Sutawinangun Village), Picture Situation Number 486 dated 14-10-1975 Area \pm 368 m² from Defendants at a price Rp 1.500.000,00 (one million five hundred thousand rupiahs) so that the Plaintiff is the rightful owner of the land and house of the object of dispute, therefore, the Plaintiff has the right to reverse the name of the landowner of the disputed object from the defendant's name to the name

of the Plaintiff in the Certificate of Property No. 218/Village Kertawinangun (now Sutawinangun Village).

This is because, factually, it occupies the land traded and can maintain its position by proving the right to the land purchased. This works when in an innocent position. This kind of proof is stipulated in Article 163 HIR (Het Herzien Inlandsch Reglement), which reads:²⁷

"Whoever says he has the right or mentions an event to confirm his right, or to dispute the rights of others, then that person must prove that right or the existence of it."

The proof of land ownership is also regulated in the article after that, which consists of: 1) Proof of writing/letter; 2) Witness evidence; 3) Conjection; 4) Recognition; and, 5) Swear. In addition to the evidentiary tools, the Land Deed or Trade Deed (AJB) can corroborate court evidence. You can present witnesses during land sale and purchase transactions to strengthen the evidence. According to the author, creating a Land Deed by the Land Deed Official (PPAT) requires the direct presence of all parties involved, including the Seller. However, referring to the court decision from the District Court of Sumber Number: 21/Pdt.G/2018/PN Sbr, in situations where the Seller's address is unknown and difficult to contact, and there is a court decision supporting a change in land ownership status, the PPAT may be granted permission to create a Land Deed without the Seller's direct presence.

The Court Decision is considered a sufficient legal basis to create a Land Deed, especially if the decision orders a change in land ownership and authorizes the PPAT to carry out such actions. In this context, the National Land Agency of the Republic of Indonesia (BPN RI) can process the transfer of land certificate ownership based on the court decision, even without the usual involvement of the Land Deed Official (PPAT). The emphasis on permission to create a Land Deed without the Seller's direct presence indicates flexibility in situations where the Seller is difficult to reach. However, it can still be processed based on the authority granted by the Court Decision.

4. Conclusion

Efforts by the buyer to overcome obstacles in transferring the land certificate acquired through an off-the-record land purchase involve taking legal steps by filing a lawsuit for an unlawful act in the district court where the land is located. This lawsuit is based on the unlawful acts committed by the defendant, such as refusal or hindrance to transferring the land certificate.

²⁷ Nolfi Papendang, "Kekuatan Alat Bukti E-Mail Dalam Persidangan Kasus Perdata," *Lex et societatis* 5, no. 1 (2017).

The district court serves as a legal forum that allows the buyer to uphold their rights related to land ownership. During the trial, evidence supporting the buyer's claim, such as payment receipts, statements, and other relevant documents, will be presented to substantiate the validity of the land purchase transaction.

Through the trial process, the court will issue a judgment order deciding on the case. If the buyer's lawsuit is accepted, the court may issue an order instructing the National Land Agency (Badan Pertanahan Nasional or BPN) of the Republic of Indonesia to transfer the land certificate to the buyer's name. After obtaining the court order, the BPN will change the name on the land certificate to the buyer's name. Despite the off-the-record nature of the land transaction and the absence of a Deed of Sale and Purchase (Akta Jual Beli or AJB), the court order serves as the legal basis for the BPN to execute this process. Upon completion of the name change process, the buyer can obtain legal certainty regarding land ownership. Even without an AJB, the land certificate with the updated name will be valid evidence of the buyer's ownership of the land.

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