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Restoration Mechanisms of Cancelled Authentic Deed

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Abstract. This study aims to analyse the restoration mechanisms of an authentic deed that has been cancelled. The study involves a normative legal analysis that utilises secondary data, including primary, secondary, and tertiary legal sources. The study adopts a methodology employing statute, conceptual, and case approaches.

As a result, the agreement is considered to have a formal defect and the act of creating the agreement is deemed unlawful. An authentic agreement can only be restored by annulling the court's decision through an appeal and a cassation decision, followed by an extraordinary legal remedy called a review to cancel the cassation decision. It is important to note that the restoration of an authentic agreement can only occur within an ongoing trial, and there is no other way to recover a cancelled original agreement outside of this.

Keywords: Authentic Deed; Cancellation; Restoration; Notary; PPAT.

INTRODUCTION

An authentic deed is considered the most potent proof as it does not require additional evidence to support its validity. In other words, it possesses the power of proof outwardly, formally, and materially. This is based on Article 1866 of the Civil Code/Article 164 HIR, which identifies the types of evidence recognised in civil cases, including written evidence, witness evidence, presumptions, confessions, and oaths. Written proof, which includes authentic deeds, holds the highest rank in the hierarchy of evidence. An original act contains factual information that aligns with what the parties involved have reported or agreed upon and is perfect written evidence [1].

Article 1868 of the Civil Law Code serves as the basis for the authenticity and existence of authentic deeds. As such, an original act must be evidence that leaves no room for doubt and binds the parties who created it. However, it is still possible to cancel an authentic deed. When an original act is cancelled, it also results in the cancellation of the agreement the parties had entered into based on the deed.

If an authentic deed is cancelled, it results in the cancellation of the agreement between the parties who were bound by the act. Article 1320 of the Civil Code states that a contract must meet

subjective and objective requirements. Failure to meet personal needs may render the agreement cancellable (*vernietgbaar*), while failure to meet the accurate requirements null and void (*nietig*). This principle can also be applied to an authentic deed if cancelled.

In carrying out its authority, the notary is given protection, namely a right of refusal, which is spelt out in Law No 2 of 2014 concerning amendments to Law No 30 of 2004 concerning the position of a notary, Article 66, which reads:

1. For the judicial process, investigators, public prosecutors, or judges, with the approval of the Honorary Council of Notaries, are authorised to:

a) Take a photocopy of the Minutes of the Deed and/or the letters attached to the Deed or the Notary Protocol in the notary's depository;

b) Summon the notary to attend the examination relating to the Notary's Deed or Protocol in the notary's custody.

2. Taking photocopies of Minutes of Deeds or letters referred to in paragraph 1, letter a, minutes of submission is made.

3. Honorary Council of Notaries shall provide an answer accepting or rejecting the request for approval within 30 working days from receipt of the authorisation request, as referred to in paragraph 1.

4. Suppose the Honorary Council of Notaries does not respond within the period referred to in paragraph 3. In that case, the Honorary Council of Notaries shall be deemed to have accepted the request for approval.

In contrast to a Notary, the Land Deed Making Officer (PPAT) does not have the right of refusal like a notary. When a problem occurs regarding an authentic deed he made and is held accountable for or his statement by an interested party, the PPAT is subject to the general provisions governing this, namely the Law -Law of the Republic of Indonesia No 49 of 2009 concerning the Second Amendment to Law No 2 of 1986 concerning General Courts, there is no reason for the PPAT to refuse a summons to be examined, and the PPAT will fully submit to evidence in court to find the facts.

One way to cancel an authentic deed is for the parties wishing to do so to request that a judicial institution with the authority to adjudicate cancels the act. A general court lawsuit must be filed and remain ongoing until a court decision with permanent legal force is made. Only then will the authentic deed be considered invalid and no longer binding on the parties or any interested parties.

However, after the authentic deed has been declared null and void or cancelled, legal consequences arise that cause the act to no longer be binding on the parties who have entered into an agreement based on the authentic deed. The legal matters arising from the cancellation of the deed can cause losses to parties who feel disadvantaged. Therefore if one party feels disadvantaged, what steps or legal remedies can be taken to restore the authentic act or minimise losses arising from the cancellation of the original deed?

This study's objective is twofold: First, to identify the criteria and factors that judges consider when deciding to cancel authentic deeds that Land Deed Making Officers created. Secondly, to explore the available legal remedies for reinstating original acts that have been cancelled.

Theoretical Basis

Legal Responsibility Theory. According to Hans Kelsen, in his theory of legal responsibility, a person is legally responsible for a specific action or bears legal obligation, as a subject means that

he is accountable for a sanction in the event of a conflicting act. The author [2] states: "Failure to take the precautions required by law is called negligence, and oversight is usually seen as another type of wrong (*culpa*), although less violent than one that is fulfilled by anticipating and willing, with or without malicious intent, a harmful outcome".

Justice Theory. Justice, in a general sense, is justice that applies to everyone. It does not discriminate between one person and another (Justice for all). Justice applies only to certain people (unique) for a particular purpose. Aristotle put forward two concepts of justice, namely according to [3]: a) law; b) equality.

The term unfair is used for people who violate the law and those who receive more than what they are entitled to, namely, people who act dishonestly. Law-abiding people and honest people are both fair. So that what is fair means those who are right according to the law and those who serve in a balanced or natural manner. Those who are unfair mean those who violate the law or act flatly or dishonestly. According to the law, what is right has a broad meaning, and equality has a narrow sense. In addition, Aristotle also divides justice into two types, namely [4]: a) distributive justice; b) corrective justice.

Distributive justice is the fair distribution of a community's honour, wealth, and other divisible assets. Legislators can allocate these resources equally or unequally among community members while adhering to the principle of balance. On the other hand, corrective justice is concerned with providing remedies for injustices in private transactions. Judges are responsible for retributive justice by resolving disputes and imposing penalties on wrongdoers [4].

Legal Protection Theory. In the theory of legal protection, the form of legal protection is divided into two, namely, preventive legal protection and repressive protection. Preventive legal protection is preventive. This protection allows the people to submit objections (*inspraak*) to their opinions before a government decision gets a definitive form, while repressive protection functions to resolve disputes in the event of a dispute. In Indonesia, various bodies currently deal with legal protection for the people, which are grouped into two types: courts within the scope of general justice and government agencies, which are administrative appeal institutions [5].

Legal Remedy. Legal Remedies, as described by [6], consist of Ordinary Remedies consisting of Resistance (*Verzet*); Appeal; Cassation, and Extraordinary Legal Remedies consisting of cassation in the Interest of Law; Review of Court Decisions that have Permanent Legal Force = PK = *Herziening*.

Ordinary Legal Remedies consist of two parts: the first is about examining appeals, and the second is about studying cassation. Furthermore, according to Andi Hamza, Extraordinary Legal Remedies, as regulated in the provisions of Chapter XVIII – Criminal Procedure Code, consist of two parts, namely Cassation Level Examination for the sake of law and Review of Court Decisions which have obtained permanent legal force [6].

Authentic Deed. An authentic deed is a deed made in a form determined by law by or a public official authorised for that at the place where the act is done based on the Civil Code Article 1868.

Notary. A notary, also known as a "van notary" in Dutch, plays a vital role in legal transactions, particularly civil law. As a public official, a notary has the legal authority to prepare authentic deeds and perform other related functions [1]. Philosophically, the existence of a notary as a public official who carries out his profession in providing legal services to the community needs protection and guarantees to achieve legal certainty.

Land Titles Registrar. Land deed-making officials, abbreviated as PPAT in Indonesia, are also known as land deed officials in English and *land title registrars* in Dutch [7]. They hold a crucial position and play a vital role in the nation's prosperity and stability, as the State authorised them to create land transfer deeds and other documents in the Republic of Indonesia [8]. In Government Regulation No 24 of 2016 concerning Amendments to Government Regulation No 37 of 1998 concerning Regulations on the Position of Land Deed Making Officers, it is conceptualised about PPAT as stated in Article 1 Paragraph 1, which reads: "Land deed-making officials, from now on referred to as PPAT, are general officials who are authorised to make authentic deeds regarding certain legal acts regarding land rights or property rights to units of flats".

METHODS

This study employs normative legal research, which focuses on examining the principles and

doctrines of legal science [9]. Sources of normative legal analysis were from secondary data, consisting of primary, secondary, and tertiary legal materials [10]. The statute, conceptual, and case approaches are the research approach used to answer this study's problems.

The source of legal material used in normative legal research was legal material. The legal materials studied and analysed in normative legal analysis consist of the following:

1. The primary legal materials used by the author include:

a) Law of the Republic of Indonesia No 14 of 1985 concerning the Supreme Court.

b) Law No 3 of 2006 concerning Amendments to Law No 7 of 1989 concerning Religious Courts.

c) Law No 2 of 2014 concerning Amendments to Law No 30 of 2004 concerning the Office of a Notary, LNRI No 3, TLN No 5491.

d) Government Regulation No 24 of 2016 concerning Amendments to Government Regulation No 37 of 1998 concerning Regulations for the Position of Officials for Making Land Deeds.

e) Decree of the minister of agricultural and spatial planning/ head of national land affairs No 112/KEP-4,1/IV/2017 concerning Ratification of the Code of Ethics for the Association of Land Deed Making Officials.

f) Regulation of the Head of the National Land Agency of the Republic of Indonesia No 8 of 2012 concerning Amendments to the Minister of Agrarian Affairs/Head of the National Land Agency No 3 of 1997 concerning Provisions for Implementing Government Regulation No 24 1997 concerning Land Registration.

g) Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia No 21 of 2020 concerning Handling and Settlement of Land Cases.

h) Selong District Court Criminal Decision No 25/Pid.B/2019/PN.SEL. Dated May 3 2019, Mataram High Court Decision No 28/PID/2019/PT MTR. Dated July 3 2019, Decision of the Supreme Court of the Republic of Indonesia No 1078 K/Pid/2019, Dated October 31 2019,

i) Selong District Court Decision No 26/Pid.B/2019/PN.SEL. Dated May 3 2019,

Mataram High Court Decision No 29/PID/2019/PT MTR. Dated July 3 2019, Jo Supreme Court Decision of the Republic of Indonesia No 1079 K/Pid/2019, dated October 25 2019.

j) Religious Court Decision No Case: 0981/Pdt.G/2014/PA.Sel Decision of the Mataram Religious High Court No Case: 0044/Pdt.G/2015/PTA.Mtr Dated December 31, 2015, Decision of the Supreme Court of the Republic of Indonesia No 372 K/AG/2017 Dated July 28 2016.

2. Secondary legal material. According to [11], "Secondary legal materials in the form of draft laws, research results, or opinions of legal experts (in the form of books, especially textbooks, scientific journals, etc.)".

3. Tertiary legal materials. According to [11], "tertiary legal materials, namely materials that provide instructions and explanations of primary legal materials and secondary legal materials, such as dictionaries (laws), encyclopedias".

This study's processing of collected legal materials involves several stages: inventory, identification, classification, and systematisation. The systematisation process is essential to ensure no contradictions between the legal materials. The collected and categorised legal materials are then analysed using conceptual, statutory, and comparative approaches to gain insights and answers to the research questions [11]. The research was carried out using descriptive analysis, or for empty norms, it is necessary to find laws using legal interpretation methods in finding directions. Meanwhile, blurred criteria need to be clarified by analogy. And for conflicting norms, it will use a vertical and horizontal hierarchical analysis method. It is analysed descriptively using legal interpretation/interpretation methods to build a legal argument as a conclusion, namely in the form of a prescription (stating what should be as well as a recommendation) [10].

RESULTS AND DISCUSSION

The Judge's Conditions in Canceling Authentic Deeds Made by the Land Deed Officials

Supreme Court Cassation Decision No 372K/Ag/2016 concerning inheritance decided to cancel the sale and purchase deed before the Land Deed Making Official,

invalidating the sale and purchase deed. The chronology underlying the cancellation of the sale and purchase deed is described as follows.

It started in 2002 when (PT HOT PLANET INDONESIA) planned to find a location of land that would be used to create a hotel business and then get ten plots of land located in Lendang Terak, Ekas Buana Village, Jerowaru District, East Lombok Regency, with an overall area of \pm 18 hectares. That of the ten parcels of land belonged to the Amaq Mesir, Mustajab, Amaq Mursam, and (Sahirip Alias Amaq Tenang Bin Amaq Sahni and Haji Suryani Bin Amaq Sahni, Sahirudin Alias Amaq Anto Bin Amaq Sahni), Amaq Sari, H. Lalu Suradan, Amaq Sahar, Serah, Muhdar / Pawang. The land sold by (Sahirudin Alias Amaq Anto Bin Amaq Sahni) is in 2 locations, where the land belongs to (Sahirudin Alias Amaq Anto Bin Amaq Sahni). The one sold has certificates in the names of Amaq Tenang and H. Suriani, namely Title Certificate No 768 in the name of Suriani with an area of 16.960 m² and Title Certificate No 770 in the name of Sahirip with an area of 16.750 m².

After obtaining the ten plots of land, there was a price agreement where (PT HOT PLANET INDONESIA) would pay at a price of around IDR 25.000.000 to IDR 30.000.000 per hectare, which is then made a milestone (Down Payment / Dp) of each piece of land with money of IDR 2.000.000 where the DP payment is made at the Amaq Mesir house, the seller makes the finished sign payment a signed receipt/thumbprint, demi kain also with (Haji Suryani Bin Amaq Sahni) represented (Sahirudin Alias Amaq Anto Bin Amaq Sahni).

Settlement of payments is made at the BCA Praya Branch Office, where each seller gets a BCA Account Book which can be disbursed by them and at the time of the amount of money for the land being sold (Haji Suryani Bin Amaq Sahni) is represented by (Sahirudin Alias Amaq Anto Bin Amaq Sahni). After payment was made in full, deed of sale and purchase was drawn up No 020/2007 dated January 15, 2007, and 021/2007 dated January 15 2007, which was made at Notary/PPAT FANNIYAH, SH domiciled in East Lombok. After the land is paid in full, then the ground with the Certificate of Ownership No 768 in the name of Suriani with an area of 16,960 m² and Freehold Certificate No 770 in the name of Sahirip with an area of 16,750 m², changed to the name of PT HOT PLANET INDONESIA with Building Use Right Certificate No 97 on behalf of

PT HOT PLANET INDONESIA and Building Use Right Certificate No 98 on behalf of PT HOT PLANET INDONESIA. In selling the land (Sahirip Alias Amaq Tenang Bin Amaq Sahni), the brothers received IDR 50.880.000 and IDR 50.250.000 for the sale of 2 plots of land owned by them, so the total money they received was IDR 101.130.000. After the money was received by (Sahirip Alias Amaq Tenang Bin Amaq Sahni), then (Sahirip Alias Amaq Tenang Bin Amaq Sahni) enjoyed the money and gave an unequal distribution to his other brothers, namely (Haji Suryani Bin Amaq Sahni) received IDR 8.000.000. In contrast (Sahirudin Alias Amaq Anto Bin Amaq Sahni) was given IDR 3.000.000, then (Sahirip Alias Amaq Tenang Bin Amaq Sahni) tried to ask for additional money of IDR 300.000.000 from (PT HOT PLANET INDONESIA) because there excess land owned by PT HOT PLANET INDONESIA, but PT HOT PLANET INDONESIA rejected it.

Then in 2014, (Sahirudin Alias Amaq Anto Bin Amaq Sahni) sued the Selong Religious Court with Case No: 0981/Rev.G/2014/PA. Cell Dated February 11, 2015, with the result of NO (*Niet Ontvankelijk verklaard*), and subsequently the Mataram Religious High Court Judgment with Case No: 0044/Rev.G/2015/PTA. Mtr Dated December 31, 2015, with the result of granting the suit (Sahirudin Alias Amaq Anto Bin Amaq Sahni), and then the Supreme Court Decision R.I No 372 K/AG/2017 Dated July 28, 2016, with the result of granting the appeal and after the judgment has permanent legal force. One of the reasons is the cancellation of the sale and purchase deed made at the NOTARY/PPAT.

Based on the chronology, three judgments will be analysed, namely the first judgment, No Case: 0981/Rev.G/2014/PA. Second to conclusion No Case: 0044/Rev.G/2015/PTA. Mtr and the third Judgment of the Supreme Court R.I No 372 K/AG/2017. To find legal reasons for the judge's consideration of invalidating an authentic deed made by the PPAT.

Selong Religious Court with Case No: 0981/Rev.G/2014/PA. Cell February 11, 2015, dismissed NO (*Niet Ontvankelijk verklaard*), for a suit filed by:

1. SAHNI Alias INAQ MARNI Binti AMAQ SAHNI, ± 64 Years old, a muslim and a farmer, residing in Lingkok Buak Hamlet, Saba Village, Janapria District, Central Lombok Regency.

2. SAHRAM Alias AMAQ SABAR Bin AMAQ SAHNI, ± 58 Years old, a muslim and a farmer, residing in Lendang Terak, Dusun Sungkun, Ekas Buana Village, Jerowaru District, East Lombok Regency.

3. SAHIDI Alias AMAQ SUMAINI Bin AMAQ SAHNI, ± 56 Years old, a Muslim and a farmer, residing in Linkok Buak Hamlet, Saba Village, Janapria District, Central Lombok Regency.

4. SAHIRUDIN Alias AMAQ ANTO Bin AMAQ SAHNI, ± 42 Years old, a Muslim and a farmer, residing in Lendang Terak, Dusun Sungkun, Ekas Buana Village, Jerowaru District, East Lombok Regency.

5. SERUNI Alias INAQ SUHAINI Binti AMAQ SAHNI, ± 40 Years old, a muslim and a farmer, residing in Bagek Cendol, Ekas Buana Village, Jerowaru District, East Lombok Regency.

6. NAJAMUDIN Bin AMAQ SAKNAH Bin AMAQ SAHNI, ± 29 Years old, a muslim, residing in Lendang Terak, Sungkun Hamlet, Ekas Buana Village, Jerowaru District, East Lombok Regency.

7. ZAENAL ABIDIN Bin AMAQ SAKNAH Bin AMAQ SAHNI, ± 21 Years old, a muslim, residing in Lingkok Buak Hamlet, Saba Village, Saba Village, Janapria District, Central Lombok Regency.

8. INAQ SAHNI, ± 81 Years old, a muslim and a farmer, lives in Lindang Terak Hamlet, Ekas Buana Village, Jerowaru District, East Lombok Regency As Plaintiff.

Against his brother, who controls the land, namely:

1. SAHIRIP Alias AMAQ TENANG Bin AMAQ SAHNI, ± 54 Years old, a Muslim and a farmer, residing in Lendang Terak, Dusun Sungkun, Ekas Buana Village, Jerowaru District, East Lombok Regency.

2. HAJI SURYANI Bin AMAQ SAHNI, Female, 51 Years old, a Muslim and a farmer, residing in Lendang Terak, Sungkun Hamlet, Ekas Buana Village, Jerowaru District, East Lombok Regency. As a defendant.

The subject matter of the lawsuit is as follows:

1. Granted the Plaintiff's claim in its entirety.
2. Declare the legal and valuable confiscation of collateral that the Selong Religious Court has placed on the object of the dispute.

3. Declare and stipulate the law that the Plaintiffs, Defendants 1 and 2 and Co-Defendant, are the heirs of the late AMAQ SAHNI.

4. Declare the law that the object of the disputed land is the legacy of the late AMAQ SAHNI, which has not been divided into inheritance by its heirs, namely the Plaintiffs, Defendants 1 and Defendants 2 and Co-Defendant.

5. Declare the law that the actions of SAHIRIP AKA AMAQ TENANG (Defendant 1) and HAJI SURYANI (Defendant 2), who controlled the object of the dispute regardless of the rights of the other heirs of the late AMAQ SAHNI, namely the PLAINTIFF and Co-Defendant, constituted an illegal act.

6. Declare and stipulate the law that the actions and actions of SAHIRIP AKA AMAQ TENANG (Defendant 1) and HAJI SURYANI (Defendant 2), who sold the disputed object to PT HOT PLANET INDONESIA, an illegal and unlawful act without the knowledge and consent of the other heirs of the late AMAQ SAHNI, namely the PLAINTIFF and Co-Defendant.

7. Declare and stipulate the law of all forms of letters born from it null and void or cancelled or at least set-aside.

8. Punish Defendant 1, Defendant 2, Co-Defendant and the Plaintiffs to divide the inheritance of all the disputed objects by the provisions of Islamic Law (*Fara'id*).

9. Determine the share of each of the Plaintiffs, Defendants 1 and 2 and Co-Defendant.

10. Punish the Defendants or anyone who obtains the rights thereof to hand over the object of dispute in an empty state to the Plaintiffs by their respective portions.

11. Punish the Defendants to pay court costs incurred in this case.

12. If the Defendants or anyone who obtains rights from him is reluctant or negligent in carrying out the contents of this decision so that it is enforced through the assistance of the State / POLRI apparatus;

13. If the Panel of Judges is of a different opinion to give the fairest decision (*ex aquo et bono*);

On December 24, 2014, the Intervening Plaintiff filed a counterclaim/intervention lawsuit, which in this case, felt aggrieved, so the main arguments for the suit were as follows:

1. Observing all the arguments of the suit of the Plaintiffs in both the posita and petite in its case dated October 13, 2014, claiming the estate and the Heirs of AMAQ SAHNI (the parents of the Plaintiffs, the Defendants and the Co-Defendants) is erroneous and unfounded because the object of dispute in the case a quo is not the relics and AMAQ SAHNI (Heir) but is the property and SAHIRIP alias AMAQ SAHNI (Defendant 1) and SAHRI alias HAJI SURYANI bin AMAQ SAHNI (Defendant 2) which he obtained by encroaching/ opening new land since 1984 by the affidavit dated January 16, 2005, before witnesses and knowing the Head of Pemongkong Village (Lalu Maskan Mawalli) and the Affidavit of Ownership dated January 16, 2006, in the presence of witnesses and knowing the Head of Pemongkong Village (Lalu Maskan Mawalli).

2. That the object in dispute in the quo case between the Plaintiffs and the Defendants is the title and the Intervention Plaintiffs purchased from Defendant 1 and Defendant 2 under Deed of Sale and Purchase No 020/2007 dated January 15, 2007, before Notary Fanniyah, SH an area of 16960 M2 and Deed of Sale and Purchase No 021/2007 dated January 15, 2007, before Notary Fanniyah, SH area 16750 m².

3. That between the deed of sale and purchase of the intervening Plaintiff with Defendant 1 and Defendant 2, a Certificate of Building Use Rights (also known as SHGB) No 97 dated March 4, 2002, covering an area of 16960 M2, Pemongkong Village, Keruak District, now Ekas Buana Village, Jerowaru District, and Building Use Rights Certificate (SHGB) No 98 dated on March 4, 2002, covering an area of 16750 M2, Pemongkong Village, has been issued, Keruak Subdistrict, now Ekas Buana Village, Jerowaru District;

4. Based on the aforesaid posita points 1, 2 and 3, it is clear that the plaintiffs' suit is misaddressed, it should be that the Plaintiffs should file a case with the General Court (Selong District Court) since the Intervention Plaintiffs entirely control the object of the dispute.

Then the core of the Selong District Court judge's considerations, which provide legal reasons for not accepting the arguments of the Plaintiff's lawsuit and the interventionist Plaintiff, include the following:

1. Considering that the Panel of Judges, after reading, examining and examining all the

arguments of the suit filed by the Plaintiffs, then, in fact, this case is not related to the dispute of heirs because the dispute of inheritance is a dispute in which there are disputes and or issues relating to the issue of the Heir, Heirs and the estate left by the heir as implied in article 171 letter a of the Compilation of Islamic Law Which is meant by: The law of inheritance is a law that regulates the transfer of the right of ownership of the heir's estate (*tirkah*), determining who is entitled to be the heir and how much is the share of each.

2. Considering that the main point in the aquo case is the objection on the part of Plaintiff to the actions of the Defendants, namely SAHIRIP ALIAS AMAQ TENANG (Defendant 1) and HAJI SURYANI (Defendant 2), who sold all the objects of the dispute to PT HOT PLANET without the consent of the other heirs of the deceased AMAQ SAHNI, i.e. the PLAINTIFFS and Co-Defendants.

3. Considering that the act or act of selling an object of inheritance dispute by one of the heirs without the consent of the heir, which is included in the action or act against the law (*onrechtmatige daad*) in a civil context, is regulated in Article 1365 of the Civil Code or Burgerlijk Wetboek ("BW"), in Book III BW, "Any unlawful act, which causes harm to other people, obliges the person who because of his mistake to issue the loss, compensate for the loss."

4. Considering that based on the considerations described above and because this case is purely a lawsuit against the law, the Religious Court means that the Selong Religious Court does not rule to accept, evaluate and adjudicate the aquo claim.

5. Considering that because the Religious Court, in this case, the Selong Religious Court, has no absolute authority to receive, examine and adjudicate the aquo case, the Plaintiffs' claim must be declared unacceptable (*Niet Onvanklijke Verklaard*).

Based on this elaboration, some things are wrong about the judge's consideration, namely Regarding the Competence of the Religious Courts, which is regulated in Article 49 of Law No 3 of 2006 concerning Religious Courts, which reads The Religious Courts have the duty and authority to examine, decide and resolve cases at the first level between people who are Muslim in the fields of: a) Marriage; b) Inheritance; c) Will;

d) Grant; e) Waqf; f) Zakat; g) Infaq; h) Sadaqah; i) Sharia economics.

Explanation of Article 49 of Law No 3 of 2006 Concerning Religious Courts: "Dispute settlement is limited in Islamic banking and other areas of Islamic economics. What is meant by 'between people who are Muslim' is including people or legal entities who voluntarily submit themselves to Islamic law".

Regarding matters that fall under the authority of the Religious Courts regarding inheritance, there is an explanation of the provisions of Article 49 letter b, namely: "What is meant by 'inheritance' is the determination of who is the heir, the determination regarding the inheritance, the determination of the share of each heir, and carrying out the distribution of the inheritance, as well as the determination of the court at the request of a person regarding the determination of who is the heir, the determination share of each heir".

The Selong Religious Court, at the first level, has been wrong in applying the law because it does not accept lawsuits in its realm or competence. The judge should be more careful and more thorough in formulating legal considerations so that legal mistakes do not occur. Religious courts have the authority to resolve cases of inheritance disputes by what is stated in Article 49 of Law No 3 of 2006: The Religious Courts have the duty and authority to examine, decide and settle cases at the first level between Muslim people [12]. This was also justified in the decision at the appeal level at the Mataram High Court in judgment No Case: 0044/Pdt.G/2015/PTA.Mtr regarding inheritance decided the issue as follows:

1. Granted the Claim of the Plaintiffs/Appellant in part.

2. Determined that Amaq Sahni had died in 1999 in Ekas Buana Village, Jerowaru District, East Lombok Regency and determined that Inaq Sahni had been killed on April 29 2015, in Ekas Buana Village, Jerowaru District, East Lombok Regency.

3. Determine the heirs of the late Amaq Sahni and the late Inaq Sahni as follows:

a) Sahni alias Inaq Marni bint Amaq Sahni (daughter);

b) Sahnann alias Amaq Saknah bin Amaq Sahni (son) passed away in 2007;

- c) Sahram alias Amaq Sabar bin Amaq Sahni (son);
- d) Sahidi alias Amaq Sumaini bin Amaq Sahni (son);
- e) Sahirip alias Amaq Tenang bin Amaq Sahni (son);
- f) Sahri alias Haji Suryani bin Amaq Sahni (son);
- g) Sahirudin alias Amaq Anto bin Amaq Sahni (son);
- h) Seruni alias Inaq Suhaini binti Amaq Sahni (daughter);
- i) Sahnan alias Amaq Saknah bin Amaq Sahni who passed away in 2007, left the following heirs;
- j) Saimah (wife);
- k) Najamudin bin Sahnan (son);
- l) Zaenal Abidin bin Sahnan (son);

4. Determined the inheritance of the late Amaq Sahni and Inaq Sahni as follows: - A 35.423 m² area of agricultural land located in Lendang Terak, Dusun Sungkun, Ekas Buana Village, Jerowaru District, East Lombok Regency, with the following boundaries:

- a) Northside: Lorong/land owned by Mr Kerry Peter Black, previously owned by H. Mursam/Amaq Murdi;
- b) To the south: Amaq Suhar land, Amaq Sahman land and Amaq Sari land;
- c) To the East: Lendang Terak Village;
- d) West side: Beach and stands one villa; the land has been controlled by Mr Kerry Peter Black, which was purchased from Sahirip alias Amaq Tenang bin Amaq Sahni and Haji Suryani bin Amaq Sahni who have not been divided into an inheritance;

5. Determine the selling value of the object of land disputed in dictum point 4 of IDR 185.350.000,00, which must be divided among all the heirs of the late Amaq Sahni;

6. Determine the share of each heir of the late Amaq Sahni as follows:

- a) Sahni alias Inaq Marni (daughter) = $1/14 \times \text{IDR } 185.350.000,00 = \text{IDR } 13.240.000,00$;
- b) Sahnan alias Amaq Saknah (son) = $2/14 \times \text{IDR } 185.350.000,00 = \text{IDR } 26.480.000,00$;

- c) Sahram alias Amaq Sabar (son) = $2/14 \times \text{IDR } 185.350.000,00 = \text{IDR } 26.480.000,00$;
- d) Sahidi alias Amaq Sumaini (son) = $2/14 \times \text{IDR } 185.350.000,00 = \text{IDR } 26.480.000,00$;
- e) Sahirip alias Amaq Tenang (son) = $2/14 \times \text{IDR } 185.350.000,00 = \text{IDR } 26.480.000,00$;
- f) Sahri alias Haji Suryani (son) = $2/14 \times \text{IDR } 185.350.000,00 = \text{IDR } 26.480.000,00$;
- g) Sahirudin alias Amaq Anto (son) = $2/14 \times \text{IDR } 185.350.000,00 = \text{IDR } 26.480.000,00$;
- h) Seruni alias Inaq Suhaini (daughter) = $1/14 \times \text{IDR } 185.350.000,00 = \text{IDR } 13.240.000,00$;

Meanwhile, the share for the late Sahnan alias Amaq Saknah bin Amaq Sahni amounting to IDR 26.480.000,00 goes to his heirs as follows:

- a) Saimah (wife of the late Sahnan) = $1/8 \times \text{IDR } 26.480.000,00 = \text{IDR } 3.310.000,00$
- b) Najamudin bin Sahnan (Son) = Asobah = $7/8 : 2 \times \text{IDR } 26.480.000,00 = \text{IDR } 11.585.000,00$;
- c) Zaenal Abidin bin Sahnan (Son) = Asobah = $7/8 : 2 \times \text{IDR } 26.480.000,00 = \text{IDR } 11.585.000,00$;

7. Punish Sahirip alias Amaq Tenang bin Amaq Sahni and Sahri alias Haji Suryani bin Amaq Sahni (the Defendants/Appeals) jointly handed over the inheritance to the heirs in the form of money in the amount as dictum No 6;

8. Refuse and declare not authorised other than and the rest;

In Intervention:

- a) Granted the Intervening Plaintiff to join in this case;
- b) Declare that this case is the authority of the Religious Courts;
- c) Rejecting the Intervention Plaintiff's lawsuit other than the rest.

The principal considerations of the judges that are the focus of this study are as follows:

1. Considering, whereas the Plaintiffs/Appeals demanded that the Defendants/Appeals be declared an unlawful act, and the sale and purchase made to the Intervening Plaintiff/Co-Appellant were illegal and criminal, and stated that the form of the letter born thereof was cancelled, then The Panel of Judges at the appellate level thinks that this is not the authority to try the Religious Courts. Therefore it must be declared not competent.

2. Considering that based on the evidence submitted by the Intervening Plaintiff/Co-Appellant and linked to the results of the local inspection, it can be found that the Intervening Plaintiff/Co-Appellant has been able to prove the Intervening Plaintiff's claim that the Intervening Plaintiff/Co-Appellant purchased the land object of the dispute over a large area 35.423 M2 from the Defendants/Appeals for IDR 23.600.000,00 in 2002.

3. Considering that the Panel of Judges at the appellate level needs to present a comparison of the price of the disputed land in 2002 with the current price, according to the Jurisprudence of the Supreme Court of the Republic of Indonesia. No 416 K/SIP/1968 dated January 4, 1969, legal principles can be taken as follows: "Valuation of money must be made at the price of gold".

4. Considering that the Defendants/Appeals sold the land object of the dispute to the Intervening Plaintiff/Co-Appeal for IDR 23.600.000,00 in 2002, if the money is converted to the present value based on the calculation of the price of gold bullion in 2002, the cost of gold was IDR 70.000,00 per gram while the price of gold is now IDR 550.000,00 per gram (source of gold price indonesia.spot.com), so it can be seen that the current price of the disputed land is = IDR 23.600.000,00: IDR 70.000,00 x 1 gram = 337 grams x IDR 550.000,00 = IDR 185.350.000,00.

There are several problems in the judge's decision at the Mataram high court, namely the division of inheritance from Inaq Sahani's wife from the late Amaq Sahani, the distribution of Inaq Saha's estate was never requested by the Plaintiff so that the decision exceeded what was asked in the lawsuit so that it became *ultra petita*.

Ultra petita provisions are regulated in Article 178 paragraph (3) *Het Herziene Indonesisch Regulation (HIR)* and Article 189 paragraph (3) *Rbg* which prohibits a judge from deciding more than what is required (*petitum*). Based on the provisions of Article 178 paragraph (3) *HIR* and Article 189 paragraph (3) *RBg*, *Ultra petita* is prohibited, so a *judex factie* that violates *ultra petita* is considered an act that exceeds authority because the judge decides not by what is requested (*petitum*). Due to the emergence of legal consequences with the issuance of decisions that are considered to exceed the limits of authority, the Supreme Court has the right at the cassation level to cancel decisions or decisions of courts from all jurisdictions because they are not

authorised or exceed the limits of authority. In Civil Law, the principle of a judge is "passive". The judge "does nothing" in that the scope or subject matter of the dispute submitted to the judge for examination is principally determined by the parties to the case. The judge only considered the issues put forward by the parties and the lawsuits based on them (*iudex non-ultra petita* or *ultra petita non cognoscitur*). The judge only determines whether the things submitted and proven by the parties can justify their lawsuits, so the judge may not add other matters himself or provide more than requested.

The second concerns the competence or authority to cancel an agreement outlined in a sale and purchase deed. The Mataram high court stated that it was not authorised, so it could be interpreted that there was a blurring of norms which made the religious court of first instance and the high court declare their authority. This is based on: Explanation of Article 49 of Law No 3 of 2006 Concerning Religious Courts: "Dispute settlement is limited in Islamic banking and other areas of Islamic economics. What does "between Muslim people " mean, people or legal entities who voluntarily submit themselves to Islamic law?"

It can be assumed that regarding the relationship where the sale and purchase agreement occurs between a person who is Muslim and a non-Muslim person, the court of first instance and appeal considers that the authority to adjudicate in this case is only the determination of the inheritance portion. At the same time, cancellation of the deed cannot be carried out because the land is transferred ownership, so it should be resolved in the realm of the general court, which is competent for that because an act that harms another person based on an unlawful act of competence is the domain of the public court.

Hence, the cassation level court with case No in the judge's consideration and the Supreme Court's Cassation decision No 372 K/Ag/2016 concerning inheritance rejected the cassation, annulled the decision of the Selong Religious Court with No Case: 0981/Pdt.G/2014/PA.Sel and amending the Mataram High Court decision No Case: 0044/Pdt.G/2015/PTA.Mtr so that the cassation decision, which has permanent legal force, reads as follows:

Rejecting the cassation request from the Cassation Petitioners, 1. SAHNI alias INAK

MARNI binti AMAQ SAHNI, 2. SAHRAM alias AMAQ SABAR bin AMAQ SAHNI, 3. SAHIDI alias AMAQ SUMAINI bin AMAQ SAHNI, 4. SAHIRUDIN alias AMAQ ANTO bin AMAQ SAHNI, 5. SERUNI alias INAQ SUHAINI binti AMAQ SAHNI, 6. NAJAMUDIN bin AMAQ SAKNAH bin AMAQ SAHNI, 7. ZAENAL ABIDIN bin AMAQ SAKNAH bin AMAQ SAHNI, 8. INAQ SAHNI

Amendment of the Ruling of the Mataram Religious High Court No 0044/Pdt.G/2015/PTA.Mtr dated December 3 2015, AD to coincide with 19 Rabiul Awal 1437 H., which cancelled the Selong Religious Court Decision No 0981/PdtG/2014/PA.Sel . February 11, 2015 AD coincides with the 21st of Rabiul Akhir 1436 H, so the complete amar is as follows:

1. Accepts appeals against comparators
2. We are cancelling the Selong Religious Court Decision No 0981/PdtG/2014/PA.Sel. February 11, 2015, AD coincides with 21 Rabiul Akhir 1436 H.

In the leading case:

1. Granting the plaintiffs' suit in part.
2. Determine that Amaq Sahni passed away in 1999, leaving behind the following heirs:
 - a) Inaq Sahni (wife);
 - b) Sahni alias Inaq Marni binti Amaq Sahni (daughter);
 - c) Sahnun alias Amaq Saknah bin Amaq Sahni who passed away in 2007, left the following heirs: Saimah (wife); Najamudin bin Sahnun (son); Zaenal Abidin bin Sahnun (son);
 - d) Sahram alias Amaq Sabar bin Amaq Sahni (son);
 - e) Sahidi alias Amaq Sumaini bin Amaq Sahni (son);
 - f) Sahirip alias Amaq Tenang bin Amaq Sahni (son);
 - g) Sahri alias Haji Suryani bin Amaq Sahni (son);
 - h) Sahirudin alias Amaq Anto bin Amaq Sahni (son);
 - i) Seruni alias Inaq Suhaini binti Amaq Sahni (daughter).

3. Determined the inheritance of the late Amaq Sahni and Inaq Sahni as follows: - A 35.423 m² area of agricultural land located in Lendang Terak, Dusun Sungkun, Ekas Buana Village,

Jerowaru District, East Lombok Regency, with the following boundaries:

- a) Northside: Lorong/land owned by Mr Kerry Peter Black, previously owned by H. Mursam/Amaq Murdi;
- b) To the south: Amaq Suhar land, Amaq Sahman land and Amaq Sari land;
- c) To the East: Lendang Terak Village;
- d) West side: Beach and stands one villa.

4. Determine the share of each Amaq sahni heir as follows:

- a) Inaq sahni (wife) = $1/8 \times 100\% = 12,5\%$
- b) sahni alias inaq marni binti amaq sahni (daughter) = $1/14 \times \text{remainder} (87,5\%) = 6,25\%$
- c) Sahnun alias Amaq Saknah bin Amaq Sahni who passed away in 2007, left the following heirs = $2/14 \times 87,5\% = 12,5\%$
- c) Saimah (wife) = $1/8 \times 12,5\% = 1,56\%$
- d) Najamudin bin Sahnun (son) $\frac{1}{2} \times$ the rest of the land (10,94) = 5,47 %
- e) Zaenal Abidin bin Sahnun (son) $\frac{1}{2} \times$ the rest of the land (10,94) = 5,47 %
- f) Sahram alias Amaq Sabar bin Amaq Sahni (son) = $2/14 \times 87,5\% = 12,5 \%$
- g) Sahidi alias Amaq Sumaini bin Amaq Sahni (son) = $2/14 \times 87,5\% = 12,5 \%$
- h) Sahirip alias Amaq Tenang bin Amaq Sahni (son) = $2/14 \times 87,5\% = 12,5 \%$
- i) Sahri alias Haji Suryani bin Amaq Sahni (son) = $2/14 \times 87,5\% = 12,5 \%$
- j) Sahirudin alias Amaq Anto bin Amaq Sahni (son) = $2/14 \times 87,5\% = 12,5 \%$
- k) Seruni alias Inaq Suhaini binti Amaq Sahni (daughter); $1/14 \times (87,5\%) = 6,25\%$

5. Declared that the sale and purchase carried out by the defendants with the intervening Plaintiff over the object of the dispute is invalid; the deed of sale and purchase is declared to have no legal force.

6. Punish the defendants to divide the objects of dispute among the heirs according to their respective shares. If they cannot be separated in kind, they are sold by auction in public, and the proceeds are divided according to their claims.

7. Refuse the lawsuit other than the rest.

In intervention: 1) Granted the interventionist Plaintiff's lawsuit to join this case; 2) Rejecting the Plaintiff's lawsuit other than the rest.

The judge's considerations to be analysed are as follows:

1. Whereas, as far as inheritance is concerned for Muslims, the case falls under the authority of the religious court to adjudicate it.
2. Whereas the *judex facti* of the Mataram religious high court was not wrong in its considerations regarding the heirs and the amount of inheritance for the heirs.

Considering whereas however, in the opinion of the Supreme Court, the decision of the Mataram High Court, which annulled the conclusion of the Selong Religious Court in the quo case, must be amended insofar as it concerns the order of the heirs, the portion of the inheritance and the object of the dispute with the following considerations:

1. Whereas the ruling that annulled the decision of the Selong Religious Court and tried it himself must be included in the verdict of the final decision, not in the order of the interlocutory judgment.
2. That *judex facti* is not justified in dividing Inaq Sahni's inheritance even though in the process of examining the case, a quo inaq sahani (plaintiff 8) died on April 29 2015, because this will result in a decision exceeding the petitum of the ultra petita plaintiff's claim), the distribution of assets inheritance from the inaq sahani portion is left to the heirs to divide according to their respective portions outside of this ruling. Therefore the *judex facti* ruling must be amended.
3. That the actions of the defendants who sold the object of the dispute to the intervening Plaintiff in the form of a plot of agricultural land with an area of 35.423 m² located in Lendang Terak, Dusun Sungkun, Ekas Buana Village, Jerowaru District, East Lombok Regency, which has not been inherited are an unlawful act, the sale and purchase must be declared invalid so that the sale and purchase deed is said to have no legal force.
4. That the *judex facti* of the Mataram religious high court was wrong in applying the law to the object of dispute, which became the inheritance of the late Amaq sahani, which the defendants sold by determining the selling price converted to the

cost of gold because the object in dispute was sold not by the law

5. Whereas the defendants control the object of the dispute, they are punished by dividing and handing over the thing to the heirs according to their share.

One of the principles of inheritance, namely *ijbari*, the word "*ijbari*" etymologically means coercion, meaning that doing something outside one's own will in terms of inheritance law means that there is a transfer of the property of someone who has died to someone who is still living by themselves. In other words, the property automatically passes to the heir with the heir's death. Those entitled to the inheritance have been determined with certainty, so no human power can change it by entering other people or removing other people who are qualified [13]. This means that the inheritance must be divided according to the share of the heirs, and the property cannot be transferred or transferred to a third party without separating the heirs first or with the approval of all the heirs. What happened in the case described above, the judge decided to cancel the deed of sale and purchase made before a notary/PPAT because the land had not been divided into inheritance. Hence, the deed is considered to have a formal defect. Namely, the making of the deed is regarded as an unlawful act (*onrechtmatige daad*). Thus the sale and purchase deed does not meet the requirements as an authentic deed which makes the deed null and void (*nietigheid van rechtswege*) because it does not meet the objective elements of the conditions for the validity of the agreement are apparent objects and lawful causes contained in article 1320 of the Civil Code.

With the cancellation of the deed based on the reason of an unlawful act (*onrechtmatige daad*), the maker of the deed, namely the PPAT, must be held responsible because his negligence in making the deed of sale and purchase is detrimental to the buying party. Suppose the PPAT in question is proven to have intentionally and planned either alone or jointly with one or the parties to do a deed made as a means of committing a crime. In that case, the PPAT in question may be subject to criminal sanctions by applicable legal regulations. Or the PPAT can be held accountable by reimbursement of costs, compensation and interest [14]. This is by the mandate of Article 1365 of the Civil Code. Every

person who commits an unlawful act must compensate for losses from their mistakes.

So, the cancellation of the sale and purchase deed made by the PPAT was based on undivided inheritance, which resulted in the panel of judges thinking that the making of the deed was an illegal act which then made the deed formally flawed so that the requirements to become an authentic deed were no longer valid. The deed was declared not good, so the act can be said to be a deed which is declared null and void (*nietigheid van rechtswege*). The judge's opinion in this case is quite interesting. They have stated that if an heir initiates an unlawful act, it will first be considered a basis for the authority to impose a criminal act. This means that an action that the general court should have handled will now become the domain of the religious court. As a result, the cancellation of such an act will follow a particular concept of thinking. During the case, if the idea of inheritance is based on a specific principle, not adhering to that principle will result in the consequences falling under the jurisdiction of the religious court, even if the unlawful act should be the domain of the general court.

Legal Restoration of Authentic Deeds which Have Been Canceled

Based on the lawsuit above, the lawsuit filed by the parties was initially a contentious lawsuit which was then followed by an intervention lawsuit by a third party who felt aggrieved in 2014 (SAHIRUDIN Alias AMAQ ANTO Bin AMAQ SAHNI) CS as the heir filed a case with the Religious Court Selong with suing his brother, namely (SAHIRIP Alias AMAQ TENANG Bin AMAQ SAHNI) and (HAJI SURYANI Bin AMAQ SAHNI) with No Case: 0981/Pdt.G/2014/PA.Sel on February 11, 2015, with the result NO (Niet Ontvankelijk verklaard), by participating in the lawsuit for the intervention of the owner of PT HOT PLANET because they felt the lawsuit harmed them and subsequently, the Mataram Religious High Court Decision No Case: 0044/Pdt.G/2015/PTA.Mtr December 31, 2015, with the result that the lawsuit was granted (SAHIRUDIN Alias AMAQ ANTO Bin AMAQ SAHNI), and then the Supreme Court R.I Decision No 372 K/AG/2017 dated July 28 2016, with the result of rejecting the cassation request and amending the appeal decision, after the decision has permanent legal force. One of the

instructions was the cancellation of the sale and purchase deed made at the NOTARY/PPAT, the reason (SAHIRUDIN Alias AMAQ ANTO Bin AMAQ SAHNI) Cs did not know that the land had been sold to PT HOT PLANET INDONESIA (SAHIRUDIN Alias AMAQ ANTO Bin AMAQ SAHNI) pretended not to know that in the lawsuit, there were objections between the parties by providing material and formal evidence, which then finally the case reached the appeal level and then went to the cassation level by winning the Plaintiff or the interventionist defendant, namely Amaq Sahnin heirs with the judge's consideration, that the actions of the defendants have sold the disputed object to the interventionist Plaintiff in the form of a 35,423 m² plot of land located in Lending Terak, Sungkun Hamlet, Ekas Buana Village, Jerowaru District, East Lombok Regency, which has not been inherited is an illegal act, the sale and purchase must be declared invalid, so the deed of sale and purchase is said to have no legal force. Buying and selling is an act against the law of Article 1365, and based on the direction of inheritance, the inheritance should be divided first. Then it can be traded so that the sale and purchase deed made before a notary or PPAT becomes null and void because it violates the objective requirements of Article 1320. The intervening defendant failed to convince the judge that the sale and purchase were legitimate and carried out with the correct procedure and in good faith.

In the judicial process, allegations arose that the intervening defendants allegedly pretended not to know about the sale of the disputed object, which the intervening Plaintiff assumed with the reality that he experienced when he made a sale and purchase transaction before this case entered the court process. The Plaintiff cannot state and justify this because it collides with the principle of the presumption of innocence, which means that a person cannot be deemed guilty before the court declares his guilt, which requires the defendant to intervene to find out the truth by making legal efforts to report a crime and bring the case to a court of law authorised for that.

Therefore, the interventionist Plaintiff did not win this case because the panel of judges focused on two clear legal principles, namely the principle of inheritance law, in Article 171 letter a Compilation of Islamic Law What is meant by: Inheritance law is the law governing the transfer

of ownership rights to an inheritance (*tirkah*) heir, determines who is entitled to become the heir and how much is each share and an unlawful act which because of its action harms other heirs, because the inheritance has not been divided according to their respective portions, the act of buying and selling is an unlawful act cause loss to the heirs.

The decision, in this case, has a permanent legal force which has bound the parties and made the parties submit to the contents of the decision, therefore with the inkraah of this decision, the sale and purchase deed that was cancelled is challenging to recover because the restoration of an authentic act can only be done in the court process, repair of original deeds can be done by balancing the decision of the court of first instance with an appeal decision and an appeal decision with a cassation decision, and finally the extraordinary legal remedy, namely judicial review to cancel the cassation decision, the restoration of an authentic deed with this procedure must fulfil several conditions, namely:

1. If an authentic deed is cancelled at the first court level, an original act can be restored by balancing the first-level decision with an appeal-level decision.
2. Suppose the cancellation of the authentic deed is decided at the appeal level. In that case, the recovery can be carried out by cancelling the decision at the appeal level with a decision at the cassation level, which balances the appeal decision.
3. Suppose the decision at the cassation level cancels the authentic deed. In that case, the last step that can be taken is to review by presenting Novum or new evidence that has never existed in the trial process at the first level up to the cassation level.

Judicial review is based on *Novum*, namely new evidence found in the principal case that has never been disclosed during the trial process from the trial first level, appellate level and cassation level. In the regulations of the Law of the Republic of Indonesia, No 14 of 1985 concerning the Supreme Court, Article 67 reads:

An application for review of a civil case decision that has obtained permanent legal force can be filed only based on the following reasons:

1. If the decision is based on a lie or deception by the opposing party, which is known after the case

has been decided or based on evidence that the criminal judge later declares false.

2. If, after the case has been decided, decisive evidence is found which could not be seen when the case was examined.
3. If a thing has been granted, that is not demanded or more than what is required.
4. If a part of the claim has not been decided without considering the reasons.
5. If between the same parties regarding the same matter, on the same basis by the same court or at the same level, a decision has been given that is contrary to one another.
6. If there is an oversight by the judge or an honest mistake in a decision.

In the provisions of Article 67, letter a, it reads: if the decision is based on a lie or deception by the opposing party, which is known after the case has been decided or based on evidence later declared false by the criminal judge.

It is clearly explained that criminal evidence can be used as evidence to be used as a novum and can be a solid reason to cancel the cassation decision regarding the cancellation of the authentic deed in this case because the alleged criminal act that the intervening Plaintiff assumed proved that there was a crime scenario that was established by the emergence of Selong District Court Criminal Decision No 25/Pid.B/2019/PN.SEL. Dated May 3 2019, with the Mataram High Court Decision No 28/PID/2019/PT MTR. Dated July 3 2019, in conjunction with the Decision of the Supreme Court of the Republic of Indonesia No 1078 K/Pid/2019, Dated October 31 2019, which stated that the Defendant SAHIRUDDIN alias AMAQ ANTO bin AMAQ SAHNI had been proven legally and convincingly guilty of committing a crime "as a person who participated in committing fraud", as in the 1st alternative indictment namely Article 378 of the Criminal Code in conjunction with Article 55 Paragraph 1 of the Criminal Code and Selong District Court Decision No 26/Pid.B/2019/PN.SEL. Dated May 3 2019, with the Mataram High Court Decision No 29/PID/2019/PT MTR. Dated July 3 2019, in conjunction with the Decision of the Supreme Court of the Republic of Indonesia No 1079 K/Pid/2019, Dated October 25 2019. Declaring the Defendant SAHIRIP alias AMAQ TENANG Bin AMAQ SAHNI and AMAQ H. SURIANI alias SAHRI

Bin AMAQ SAHNI has been proven legally and convincingly guilty of committing a crime "as a person who participated in committing fraud", as in the 1st alternative charge, namely Article 378 of the Criminal Code in conjunction with Article 55 Paragraph 1 of the Criminal Code.

Then, in the consideration of the judges in the cassation decision of the Supreme Court of the Republic of Indonesia No 1078 K/Pid/2019, and Indonesian Supreme Court Decision No 1079 K/Pid/2019 there is a sentence that reads: Whereas according to the statements of the witnesses and the reports of the Defendants themselves connected with evidence which mutually support one another, it was found that the actions of the Defendants were included in the scope of "participating in committing fraud" because the actions of Amaq Anto together with Amaq Tenang (Defendant I) and H. Suriani (Defendant II) who made a scenario by suing the heirs of SAHIRIP alias AMAQ TENANG bin AMAQ SAHNI (Defendant I) and AMAQ H. SURIANI alias SAHRI bin AMAQ SAHNI (Defendant II), with one of the reasons for the lawsuit being that the defendant and his other five siblings did not know about the sale of the land and did not know that the land was being sold, even though in fact they explained that since 2001 Amaq Anto was together with Amaq Tenang (the Defendant I) and H. Suriani (Defendant II) were aware of the plan to sell land which they said was their inherited land. It was clearly stated in consideration of the judges that the inheritance claim they carried out was a scenario that had been arranged in the best way possible to win back the object of the disputed land to make the status of the land return to them so that this decision deserves to be used as a novum to cancel the cassation decision that the Supreme Court has issued.

This is also reinforced by the Law of the Republic of Indonesia No 14 of 1985 concerning the Supreme Court, article 69, which reads:

1. The grace period for submitting an application for review based on the reasons referred to in Article 67 is 180 days for:

a) Directed to in letter a since the discovery of deceit or deception or since the decision of the criminal judge has obtained permanent legal force and has been notified to the parties to the case;

b) Referred to in letter b since the found documents of evidence, the day and date of discovery must be stated under oath and legalised by the competent authority;

c) Referred to in letters c, d, and f since the decision has obtained permanent legal force and has been notified to the parties to the case;

d) As referred to in letter e since the last and conflicting decision has obtained permanent legal force and has been notified to the litigants.

Point A in this article emphasises that if a ruse or lie has been proven and decided by a judge and has permanent legal force declaring someone's guilt, it can be used as valid evidence to conduct a judicial review.

Then regarding the review period, which is one of the reasons for accepting or not a review contained in article 69, which requires that a study be carried out 180 after finding new evidence. The problem is that the evidence is used from when it is found or after an oath has been taken to find proof by an authorised official. The crux of the matter is that if a criminal decision was made in 2019 and a review was carried out in 2021, the question arises as to whether the evidence collected during the investigation can still be used in court. In practice, there are situations where a decision has been made. Still, it cannot be executed for various reasons, resulting in the exceeded 180-day time limit for using the evidence. As such, it is essential to consider whether the evidence is still admissible in court and whether any exceptions or provisions apply.

Furthermore, the failure of this effort is the loss of the strength of the authentic deed that a notary or PPAT has made. The next step that can be taken if there are two conflicting decisions is to attempt to block the disputed land submitted to the national land agency in authority where the land is located.

Land blocking can be found in the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia No 13 of 2017 concerning Blocking and Confiscation Procedures, article 3 of the regulation reads:

1. Blocking is recorded on land rights due to legal actions, events, or land disputes or conflicts.

2. Blocking records, as referred to in paragraph 1, are submitted: a) In the context of the legal

protection of interests in the land being requested to be stopped; b) At most, once by one applicant on the object of the same ground.

3. Land rights in which the land book contains a record of blocking cannot be carried out with the maintenance of land registration data.

Data maintenance and land registration cannot be done on the ground by blocking the disputed land. In other words, the land will become a status quo (a permanent state as it is now). Cancelling the sale and purchase deed does not directly cancel the certificate that has been issued. This blocking is intended to prevent the execution of the certificate issued before the cancellation of the sale and purchase deed is carried out so that an effort can be submitted to settle land disputes at the national land agency.

The cancellation of the certificate is contained in the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia No 21 of 2020 concerning the Handling and Settlement of Land Cases contained in article 29, which reads:

1. Authorised Officials cancel Legal Products because of a) Administrative defects and/or juridical defects; b) Implementation of court decisions that have permanent legal force.

2. Before cancellation, as referred to in paragraph 1 letter a, the Ministry or Regional Office, by their authority, shall notify the holders of Land Rights and Mortgage Rights if the Legal Product to be cancelled is in the form of land rights or land certificates burdened with mortgage rights.

It can be observed in Article 29, paragraphs one a and b that to cancel a certificate issued. A legal defect must be found or by following a court decision so that, based on the theory of repressive legal protection, the cancellation of a sale and purchase deed does not immediately cancel a certificate issued before its execution. Cancellation of the act of sale and purchase because it must be proven in advance that the reasons for cancelling the certificate are fulfilled or not.

Settlement of land disputes can be found in the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia No 21 of 2020 Concerning the Handling and Settlement of Land Cases, in articles 5, 6 and 17 it reads:

Article 5. Cases constituting Disputes and Conflicts are classified into three classifications:

1. Severe Cases are Cases that involve many parties, have complex legal dimensions, and/or have the potential to cause social, economic, political and security upheavals.

2. Moderate Cases are cases between parties whose legal and/or administrative dimensions are pretty straightforward. If the settlement is determined through a legal and organisational approach, they will not cause social, economic, political and security upheavals;

3. Minor Cases are Complaint Cases or requests for technically administrative instructions. Their settlement is sufficient with a letter of Settlement instructions to the complainant or applicant.

Article 6.

1. Dispute and Conflict Handling is carried out through the following stages: a) Case review; b) Initial degree; c) Research; d) Exposure to Research results; e) Coordination meetings; f) Final degree; g) Case Resolution.

2. Dispute and Conflict Handling is carried out in sequential Handling stages.

3. Disputes and Conflicts classified as Moderate Cases or Mild Cases, the handling can be carried out without going through all the stages referred to in paragraph 1.

4. Documents resulting from Dispute and Conflict Handling, as referred to in paragraph 1, which are still in process, are confidential.

Article 17. Case handling is declared complete with the following criteria:

1. Criterion One (K1) if the settlement is final, in the form of a) Cancellation decision; b) Peace; c) The letter of refusal cannot be granted for the application.

2. Criterion Two (K2) in the form of a) Instruction letter for Settlement of a Case or letter of determination of the party entitled but has not been able to follow up on a decision on the settlement because there are conditions that must be met, which are the authority of other agencies; b) Letter of recommendation for Settlement of Cases from the Ministry to Regional Offices or Land Offices by their authority and Regional Offices to Land Offices or proposals for Settlement from Land Offices to Regional Offices and Regional Offices to the Minister.

3. Criterion Three (K3) in the form of a notification letter is not the authority of the Ministry.

Arrangements regarding dispute resolution at the national land agency have a function to test and find out the truth of the dispute so that it is expected to provide a solution. This effort can be made by both parties who wish to resolve their dispute at the national land agency. The applicant can make an application letter determined by the regulations and complete several conditions so the federal land agency can be authorised to carry out the process in Articles 5 and 6 above. So that the national land agency can help resolve the dispute by issuing a decision based on Article 17.

CONCLUSIONS

1. The principle of inheritance, namely *ijbari*, the word *ijbari* etymologically means coercion, which means doing something out of one's own will. In terms of inheritance law, there is a transfer of the property of someone who has died to someone still living alone. In other words, the property automatically passes to the heir with the heir's death. Those entitled to the inheritance have been determined with certainty, so no human power can change it by entering other people or removing qualified ones. This means that the estate must be divided according to the share of the heirs, and the property cannot be transferred or transferred to a third party without splitting the heirs first or with the approval of all the heirs. What happened in the case described above, the judge decided to cancel the deed of sale and purchase made before a notary/PPAT because the land had not been divided into inheritance. Thus, the deed is considered to have a formal defect, namely the making of the deed is regarded as an unlawful act (*onrechtmatige daad*) so that the sale and purchase deed does not qualify as an authentic deed that makes the deed null and void (*nietigheid van rechtswege*) because it does not meet the objective element of the validity of the

agreement, namely a transparent object and lawful causation contained in article 1320 of the Civil Code.

2. Authentic deed restoration can be carried out by annulling the first-level court decision with an appeal decision, an appeal decision with a cassation decision, and finally, the extraordinary legal remedy, namely judicial review to cancel the cassation decision. Authentic deed restoration with this procedure must fulfil several conditions, namely:

a) If an authentic deed is cancelled at the first court level, an original act can be restored by balancing the first-level decision with an appeal-level decision.

b) Suppose the cancellation of the authentic deed is decided at the appeal level. In that case, the recovery can be carried out by cancelling the decision at the appeal level with a decision at the cassation level, which balances the appeal decision.

c) Suppose the decision at the cassation level cancels the authentic deed. In that case, the last step that can be taken is to review by presenting *Novum* or new evidence that has never existed in the trial process at the first level up to the cassation level.

3. Restoring an authentic deed that has been cancelled can only be carried out within the scope of an ongoing trial. Apart from that, there is no other way to restore an authentic deed that has been cancelled.

4. In practice, the official making the land deed cannot refuse an inspection by the authorised institution because the official making the land transfer is not given repressive legal protection, such as the notary's right of refusal. Therefore it is hoped that the official association for making the land deed will provide input through coordination with the government to give the same freedom of denial to officials making land deeds to get the same legal protection rights as a notary.

REFERENCES

1. Adjie, H. (2011). *Kebatalan dan Pembatalan Akta Notaris* [Cancellation and invalidation of notarial deeds]. Bandung: Refika Aditama (in Indonesian).
2. Kelsen, H. (2005). *General Theory of Law and State*. New York: Routledge.

3. Aristoteles. (1997). *Teori Keadilan Dalam Perspektif Hukum* [Theories of Justice in Legal Perspective]. Jakarta: Sinar Grafika (in Indonesian).
4. Kelsen, H. (2008). *Dasar-Dasar Hukum Normatif* [Foundations of Normative Law]. Bandung: Nusa Media (in Indonesian).
5. Salim, H. S., & Nurbani, E. S. (2013). *Penerapan Teori Hukum pada Penelitian Tesis dan Disertasi* [Application of legal theory to thesis and dissertation research]. Jakarta: Raja Grafindo Persada (in Indonesian).
6. Purwoleksono, D. E. (2016). *Hukum Acara Pidana* [Criminal Procedure Law]. Jakarta: Airlangga University Press (in Indonesian).
7. Nuzul Indrawan, L., Arba, & Munandar, A. (2021). Juridicial Review Implementation Of Land Registration According To Government Regulation No. 18 Of 2021 Concerning Management Rights, Land Rights, Flat Units And Land Registration. *Policy, Law, Notary And Regulatory Issues*, 1(1), 39–56. doi: [10.55047/polri.v1i1.27](https://doi.org/10.55047/polri.v1i1.27)
8. Salim, H. S. (2016). *Teknik Pembuatan Akta Pejabat Pembuat Akta Tanah* [Deed Making Techniques of Land Deed Officials]. Jakarta: Rajawali Pers (in Indonesian).
9. Ali, Z. (2021). *Metode penelitian hukum* [Legal research methods]. Jakarta: Sinar Grafika (in Indonesian).
10. Asikin, Z. (2016). *Pengantar metode penelitian hukum* [Introduction to legal research methods]. Jakarta: Rajawali press (in Indonesian).
11. Muhaimin. (2009). *Metode Penelitian Hukum* [Legal Research Methods]. Mataram: Mataram Press (in Indonesian).
12. Rahmatullah, R. (2016). [Kewenangan Pengadilan Agama Dalam Menyelesaikan Sengketa Perkara](#) [Authority of Religious Courts in Resolving Case Disputes]. *Jurisprudentie*, 3(1), 126–133 (in Indonesian).
13. Suparman, E. (2018). *Hukum Waris Indonesia* [Indonesian Inheritance Law]. Bandung: Refika Aditama (in Indonesian).
14. Prawira, Y. G. (2016). [Tanggung Jawab PPAT terhadap Akta Jual Beli Tanah](#) [Responsibility Of The Conveyancer Against Selling Land Deed]. *Jurnal Ius*, 4(1), 69–79 (in Indonesian).