



CREDIT AGREEMENT WITH GUARANTEED CERTIFICATE OF OWNERSHIP OF LAND MADE WITH A FAKE SALE AND PURCHASE DEED

D' Adellia Dinnary Zein.¹ Agus Manfaluthi.^{2*} Trinas Dewi Hariyana.³

Faculty of Law Kadiri Islamic University

Jl. Sersan Suharmaji No. 38, Manisrenggo, Kec. Kota Kediri, Jawa Timur.

Indonesia

Email: agusmanfaluthi@uniska-kediri.ac.id

ABSTRACT

Banks always use a certificate of ownership as collateral that accompanies the credit agreement, especially for mortgage credit agreements. Certificates of ownership that are obtained from the selling and buying process need sale and purchase deeds to make the certificates of ownership. The problem is when a fake sale and purchase deed is used to create a certificate of ownership and the certificate is used as collateral in a credit agreement. So the question is the legal status and implications of credit agreements that use title certificates made with fake sale and purchase deeds. To answer this question, this study uses normative research methods with a legal approach and a case approach. The result of his research is that in making a credit agreement, banks have their own rules and principles that must be followed before agreeing to the credit agreement included in the assessment of collateral. Based on the case related to this matter contained in decision number 65/Pdt. G/2018/PN.Gpr., the panel of judges of the Kediri Regency District Court ruled that credit agreements using title certificates made using fake sale and purchase deeds were valid. The ratio decidendi of the judges is because the bank has carried out procedures according to the law when making credit agreements and the transfer of title certificates is considered non-existent because there is a legal defect in the transition process, namely by the existence of a fake sale and purchase agreement Deed.

Keyword: Credit Agreement. Certificates of Ownership. Sale and Purchase Deeds.

1. Introduction

Land is one of the most vital human needs, because land is a place to live, a place to earn a living, a place where humans are born and reproduce, a place where humans are buried so that there is always a relationship between humans and the land and between society and the land. Human life cannot be separated from land.

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Human dependence is not only on land but also on water, because water is a basic human need that must be fulfilled in everyday life². For this reason, there are concepts of humans, land, and water inseparable from one another. From these three concepts, the term 'homeland' emerged associated with the communal life of the human community as a nation, where the 'homeland' must be defended from anyone, including the last drop of blood.

Land in a country cannot be owned, controlled, and used freely by humans, but is bound by provisions set by the government or state as the authority of general rights regulated by the state in the agrarian law. Therefore, the state has the right to regulate the existence and ownership of land and land management programs.

Land as a gift from God to the Indonesian people is used for the benefit of many people's livelihoods and is controlled by the state. The aim of the state's right to control over the earth, water, and outer space is to achieve the greatest prosperity of the people in the sense of nationality, prosperity, and independence in an independent, sovereign, just, and prosperous Indonesian society and legal state. For this reason, in 1960 the National Agrarian Law was promulgated, namely Law Number 5 of 1960 concerning Basic Agrarian Principles Regulations, which is also known as the Basic Agrarian Law.

Ownership of land rights by a person or legal entity must be proven. Proving ownership of land rights is carried out or aimed at using various types of evidence. However, the strongest proof is through a land certificate which is a strong proof of ownership of land rights.³

As a material right, land rights can be transferred. Transfer of land rights can occur due to buying and selling. Owners of land rights can transfer their land rights through buying and selling. Buying and selling land rights is a legal act in the form of handing over ownership rights (forever) by the seller to the buyer, who at that time also hands over the price to the seller which results in

² J. Andy Hartanto, *Panduan Lengkap Hukum Praktis : Kepemilikan Tanah*, LaksBang Justitia, Surabaya, 2015, page.31.

³ J. Andy Hartanto, page. 58.

the transfer of land ownership rights from the seller to the buyer. within the scope of national land law.⁴ Buying and selling land according to customary law is a legal act intended to transfer land rights from the seller (right holder) to the buyer by payment of a sum of money in cash and done clearly.

Ownership rights can be transferred, one way or another, by legal action in the form of sale and purchase. According to the provisions of Article 37 paragraph (1) of the Regulation Government Number 24 of 1997 concerning Land Registration states that:

“Transfer of land rights and ownership rights to apartment units through sale and purchase, exchanges, grants, income in companies and legal actions Other transfers of rights, except auctions, can only be registered if proven with a deed made by the authorized The Land Deed Official (PPAT) according to regulatory provisions current regulation”.

These regulations require that the process of transferring ownership rights through buying and selling can only be carried out if there is a sale and purchase deed made before the Land Deed Official (PPAT). In practice, Land Deed Official (PPAT) has full authority to take care of the process of making the sale and purchase deed. In carrying out this authority, the Land Deed Official (PPAT) is obliged to be careful when carrying out its duties. There are conditions that must be fulfilled in making a sale and purchase deed as one of the conditions for transferring a certificate of ownership of land. does not rule out the possibility of unlawful acts occurring in the process, for example, falsifying the sale and purchase deed. The falsification carried out was regarding matters contained in the deed of sale and purchase in the deed of sale and purchase The falsified certificate was used as a basis for filing a claim for a certificate of ownership. By issuing a certificate of ownership based on a fake sale and purchase deed Of course, this can be detrimental to other parties. As happened in the case Number 65/Pdt.G/2018/PN Gpr, related to the transition to using fake sale and purchase deeds.

⁴ Boedi Harsono, Menuju Penyempurnaan Hukum Tanah Nasional, Universitas Tri Sakti, Jakarta, 2002, page. 134.

This case chronology is when land and buildings that are legally owned by the plaintiff are located in Tegalan Village, Kandat District, Kediri Regency, covering an area of 1421 m². Who has a Certificate of Ownership Rights number 887 in the name of Muhartati, SH. From the plaintiff's admission, she never sold the land and building. Ownership Rights Certificate Number 887 was used as credit collateral to guarantee the disbursement of funds in the name of Anton Priambodo (Co-Defendant I) at Bank Danamon Savings and Loans Ngadiluwih, Kediri Regency. Then co-defendant I took over at Bank Mega Kediri. After that, Defendant I executed a sale and purchase deeds as if it had been carried out by the legal owner of the land and building. The land sale and purchase deeds is used to disburse funds back at BRI Bank, Kediri Branch Office.

The execution of the sale and purchase deeds which should have been signed by defendant III was signed by defendant II. Sale and purchase deeds Number 528/Jb/XI/K. Kandat/2012 in the name of the plaintiff as defendant I. What defendant I did was proven at the Surabaya branch of the Forensic Criminalistics Laboratory Number: LAB.2569/DTF/2014 concluding that the plaintiff's signature was the sale and purchase deeds number 528/Jb/XI/K. Candidate on November 28 2012 and one payment receipt. This act is mentioned as a spurious signature or a signature of the authority. There was an error in the procedure for making and signing the sale and purchase deeds Number 528/Jb/XI/K. The candidate cannot be released by Defendant III as the maker of the land deed until the Ownership Certificate (Certificates Of Ownership) Number 887 is issued, which was originally in the name of the plaintiff and became Defendant I to guarantee credit to Defendant IV.

The land deed number 528/Jb/XI/K was made by Land Deed Officials (PPAT) based on false information, without the knowledge and permission of the plaintiff as the legal owner. So the land deed is declared aquo not by the provisions in Government Regulation Number 37 of 1998 in conjunction with Government Regulation Number 24 of 2016 concerning Land Deed Officials (PPAT) position regulations and Government Regulation Number 24 of 1997

concerning land. Thus, the land deed must be declared invalid and null and void and has no legal force from the beginning. As stipulated in article 1335 Jo 1337 of the Civil Code. Based on that case there's the question is the legal status and implications of credit agreements that use title certificates made with fake sale and purchase deeds or sale and purchase deeds.

2. Reseach Method

This research is included in normative research. According to Peter Mahmud Marzuki, normative legal research is a process of finding legal rules, legal principles, and legal doctrines to answer the legal issues faced.⁵ This research uses a legislative approach or statute approach. The legal approach is carried out by reviewing all laws and regulations related to the legal problem being handled.⁶ This research uses Law Act Number 5 of 1960 on the Basic Agrarian Principle and Government Regulation Number 24 of 2007 on Land registration. This study also uses a Case approach that examines cases related to the problem at hand that have become court decisions and have permanent legal force or *inkracht*. In this approach the will examine the case that relate with the problem in the Kediri Regency District Court Decision Number 65/Pdt.G/2018/PN.Gpr.

3. Results and Discussion

3.1. The Position of the Land Deed Officials (PPAT)'s Unlawful Acts Regarding the Making of a Sale and Purchase Deeds Whose Transfer Using A Fake Sale and Purchase Deeds

A legal act related to land is contained in an authentic deed made before the Land Deed Making Officer or Land Deed Officials (PPAT) to provide protection, certainty, and legal order for the parties with an interest in the deed. Bearing in mind that Land Deed Officials (PPAT) is

⁵ Peter Mahmud Marzuki. *Penelitian Hukum*. Jakarta: Kencana Prenada Group, 2007, page.35

⁶ M.Syamsudin, *Operasionalisasi Penelitian Hukum*, Jakarta: Rajawali Pers, 2007. page.58

a public official who has the authority to make authentic deeds relating to land rights or ownership rights to apartment units, as mandated in Government Regulation Number 37 of 1998 concerning Regulations on Officials Making Land Deeds as follows has been amended by Government Regulation Number 24 of 2016.

The implementation of the Land Deed Officials (PPAT) position is required to be guided by statutory regulations and the professional code of ethics related to the position. This is enforced so that the Land Deed Officials (PPAT) does not carry out positions outside its stated authority. Bearing in mind that every deed he makes has perfect evidentiary power.

The selling and buying of land rights is regulated in Article 37 of Government Regulation Number 24 of 1997 concerning Land Registration

- (1). A transfer of a land right or an apartment ownership right resulting from a sale/purchase transaction, from an exchange, from a grant, from incorporation into a company, or from any other legal act effecting such a transfer with the exception of an auction can be registered only if it is evidenced with a deed made by the authorized PPAT in line with the applicable regulations.
- (2). Under certain circumstances as determined by the Minister, the Head of the Land Office can register a transfer of a right on a land parcel with the status of hak milik (right of ownership) between individuals of Indonesian citizenship which is evidenced with a non-PPAT deed, provided that the Head of the Land Office evaluates the deed as having an adequate content of truth to warrant the registration of the said transfer.

Based on that rule the form of transfer of land rights and ownership rights of land through selling and buying can only be registered if proven by deed made by the authorized Land Deed Officials (PPAT) according to the provisions of statutory regulations. Land Deed Officials (PPAT) is given the authority by law to make authentic deeds related to land, one of which is the selling and buying of land and the transfer of names to land

that has been bought and sold. For a land sale and purchase to be valid, it must fulfill material and formal requirements.

The material conditions that really determine the validity of a sale and purchase of land include, among other things, that the buyer has rights when buying the land in question. What this means is that the buyer as the recipient of the rights must fulfill the requirements to own the land he will purchase⁷. These conditions are the requirements for skills and abilities. Permissibility in this case means that the buyer is a person who is allowed to buy land in Indonesia because according to agrarian law, foreigners are not allowed to buy and own land in Indonesia. The seller has the right and authority to sell land rights. The person who has the right to sell is the person whose name is listed on the certificate or other than the certificate. A person has the authority to sell his land if he is legally competent. If the seller is under guardianship, then he is represented by his guardian. If the seller is represented by another person as the power of attorney, then the power of attorney shows a notarized power of attorney.

The formal requirement is that the sale and purchase must be proven by a deed made by the Land Deed Official (PPAT), which is confirmed in Article 37 Paragraph (1) of Government Regulation Number 24 of 1997. The formal requirement for the sale and purchase of land rights is not absolutely that it must be proven by a deed made by the Land Deed Official (PPAT). The head of the district/city land office can register the transfer of rights even though it is not proven by a deed made by the Land Deed Official (PPAT). This is confirmed in Article 37 Paragraph (2) of Government Regulation Number 24 of 1997. Before the sale and purchase deed is made by the Land Deed Official (PPAT), it is required for the parties to submit the necessary documents to the PPAT, namely if the land has been certified, the original land certificate, and a signed proof of payment of the registration fee. If the land has not been certified, a

⁷ A. P. Parlindungan, *Pendaftaran Tanah di Indonesia*, Cetakan II, Mandar Maju, Bandung, 1990, page.77

certificate stating that the land has not been certified, existing land documents that require confirmation by the Village Head and Subdistrict Head, are accompanied by letters proving the identity of the seller and buyer which are needed for land certification after the sale and purchase is completed.

If the Land Deed Making Official (PPAT) is negligent or not careful in making the sale and purchase deed, it will have very fatal consequences. Legal actions carried out by Land Deed Officials (PPAT) outside the authority given to it or actions that violate the law, then Land Deed Officials (PPAT) has the potential to commit an unlawful act.

Unlawful acts are regulated in Article 1365 of the Civil Code which states that "every unlawful act, which causes loss to another person, requires the person whose fault it was to cause the loss, to compensate for the loss." From this article it can be concluded that the legal consequence for perpetrators who commit civil unlawful acts is to compensate the victim for losses for the actions committed by the perpetrator. To determine whether a person has committed an unlawful act, the act he or she commits must fulfill the elements of an unlawful act as contained in Article 1365 of the Civil Code. The elements of unlawful acts in accordance with the provisions of Article 1365 of the Civil Code are as follows:

- 3.1.1. There is an action;
- 3.1.2. This act is against the law;
- 3.1.3. There is a mistake on the part of the perpetrator;
- 3.1.4. There is loss for the victim;
- 3.1.5. There is a causal relationship between the action and the loss.⁸

⁸ Munir Fuady, *Perbuatan Melawan Hukum Kontemporer*, cet.5, Bandung: Citra Aditya Bakti, 2017, page. 1

In the case of the Kediri Regency District Court decision Number 65/Pdt. G/2018/PN.Gpr. The Panel of Judges decided that Defendant 3 was the perpetrator of an unlawful act. Notary/Land Deed Officials (PPAT) basically, Notary/Land Deed Officials (PPAT) plays a role in making the Deed of Selling and buying Number 528/JB/XI/K.Kandat/2012 which contains a fake transfer deed for the Fake Deed of Selling and buying. The actions of the Notary/Land Deed Officials (PPAT) in making the sale and purchase deeds indicate committing an unlawful act. In order to determine whether the actions of a Notary/Land Deed Officials (PPAT) who made a sale and purchase deeds containing fake or simulated actions at the voluntary request of the parties concerned are against the law or not, it can be answered by fulfilling the elements as above.

The actions referred to in this case are actions that include both active and passive actions. Active actions are actions carried out by the perpetrator, while passive actions are when something is not done or is not done even though the perpetrator has a legal obligation to carry it out in this case, Notary/Land Deed Officials (PPAT) carried out active actions as evidenced by the issuance of fake sale and purchase deeds. Even though the Notary/Land Deed Official (PPAT) makes the sale and purchase deed following his duties as a Land Deed Officials (PPAT) as regulated in Article 2 paragraph (1) and paragraph (2) letter a of Government Regulation Number 37 of 1998 concerning Regulations for Officials Making Land Deeds (PP 37/1998) as amended by Government Regulation Number 24 of 2016 (PP 24/2016) which essentially states that Land Deed Officials (PPAT) is tasked with carrying out some land registration activities by making deeds as proof that certain legal acts have been carried out regarding land rights or ownership rights over apartment units. Which will be used as the basis for registering changes to land registration data resulting from legal acts, where the legal act is buying and selling.

Unlawful acts can be interpreted broadly by being qualified in several types as follows:⁹

- 3.1.1. Actions that violate applicable laws, actions that conflict with the provisions regulated in law.
- 3.1.2. Violating other people's rights guaranteed by law, violating other people's rights or other people's subjective rights in the form of individual rights such as freedom, honor, good name or rights to property, material and other absolute rights.
- 3.1.3. Contrary to the legal obligations of the perpetrator, obligations written in law and unwritten.
- 3.1.4. Contrary to decency or decency, this element violates the unwritten laws that apply in society
- 3.1.5. Contrary to good behavior in society, paying attention to the interests of others by considering one's own interests and the interests of others by following what society considers proper and proper.¹⁰

A Land Deed Officials (PPAT) who makes a sale and purchase deeds containing acts of forgery or simulation with the aim that the act does not give rise to actual legal consequences, can be qualified as a type of unlawful act that violates the applicable law. This is because an act of forgery or simulation is an act that does not fulfill one of the legal requirements for an agreement as regulated in Article 1320 paragraph (4) of the Civil Code regarding a lawful cause. The conditions for the validity of an agreement are absolute requirements for making an agreement and if these conditions are not fulfilled, they will have the consequences of being null and void. In addition, Article 1335 of the Civil

⁹ Rosa Agustina, *Perbuatan Melawan Hukum*, cet. 1, Jakarta: Penerbit: Pasca Sarjana Fakultas Hukum Universitas Indonesia: 2003, page.38 - 40

¹⁰ Rosa Agustina, page.38 - 40

Code states that "*an agreement without cause or which has been made for a falsified or prohibited reason has no force*".

So based on this article, a sale and purchase deeds that contains an act of forgery clearly has no legal force. Thus, the actions of a Notary/Land Deed Officials (PPAT) who make a sale and purchase deeds containing acts of forgery are considered unlawful acts. The elements of error in unlawful acts are as follows:

- 3.1.1. There is an element of intent.
- 3.1.2. There is an element of negligence (*negligence, culpa*), and
- 3.1.3. There are no justification or forgiving reasons (*recht vaardigings grond*) such as *overmacht*, self-defense, insanity, etc.¹¹

The element of fault as explained above is regulated in Article 1366 of the Civil Code which states that

"Every person is responsible not only for losses caused by his actions, but also for losses caused by negligence or carelessness".

Thus, determining the elements of a person's error can be seen from the actions they commit in the form of intentional errors or errors due to negligence, for which each form of error can be held accountable. A Land Deed Officials (PPAT) who makes a deed of selling and buying containing an act of forgery, to determine the elements of guilt committed by his act, must first pay attention to whether, when making a fake deed of selling and buying, the Notary/Land Deed Officials (PPAT) SW was aware and knew that the act of selling and buying was real or just act of forgery. If at the time of making the deed, the Notary/Land Deed Officials (PPAT) SW knows and undertakes to make a sale and purchase deeds which contains an act of forgery then the Land Deed Officials (PPAT) intentionally does so even though it is at the request of the parties and in this case the Notary/Land Deed Officials (PPAT) SW has

¹¹ Munir Fuady. page. 12

violated Article 3 letters a to f of the Code Land Deed Officials (PPAT) Ethics regulates Land Deed Officials (PPAT) obligations as follows¹²:

"In order to carry out the duties of the positions of Land Deed Officials (PPAT)s and Substitute Land Deed Officials (PPAT)s in daily life, each Land Deed Officials (PPAT) is required to:

- a. Have a good personality and uphold the dignity and honor Of Land Deed Officials (PPAT);
- b. Upholding state principles and applicable laws and acting in accordance with the meaning of the oath of office and code of ethics;
- c. Speak Indonesian well and correctly;
- d. Prioritize service to the interests of society and the State;
- e. Have professional behavior and participate in national development, especially in the legal field;
- f. Work with a full sense of responsibility, independently, honestly and impartially;"

A Land Deed Officials (PPAT) is required to have professional behavior, work with a full sense of responsibility, be independent, honest and hopefully impartial. Land Deed Officials (PPAT) certainly knows that the deed made by him is an authentic deed, whose function is according to Article 1 number 4 Government Regulation Number 24/2016

"Land Deed Officials (PPAT) deed is a deed made by Land Deed Officials (PPAT) as proof that certain legal acts have been implemented regarding land rights or ownership rights over condominium units."

So, it is hoped that the deed will be made perfectly in accordance with what is stipulated in the law so that there are no legal defects, whether caused by the deliberate actions of the SW Notary/Land Deed Officials (PPAT) or due to negligence.

¹² Kongres Ikatan Pejabat Pembuat Akta Tanah, Kode Etik Ikatan Pejabat Pembuat Akta Tanah, Pasal. 3

A sale and purchase deed that contains acts of forgery is certainly a deed that is legally flawed. This is because the deed does not fulfill the legal requirements for an agreement as regulated in Article 1320 of the Civil Code, especially paragraph 4 regarding a lawful cause. Thus, the element of Land Deed Officials (PPAT)'s error in this case is that intentionally or through negligence he made the sale and purchase deeds containing an act of forgery.

The element of loss in unlawful acts is only regulated in Article 1365 of the Civil Code. But in general, the concept of compensation in the Civil Code is regulated in Articles 1243 to 1252 of the Civil Code regarding costs, losses and interest. Regarding this element, the actions of the SW Notary/Land Deed Officials (PPAT) who make a fake sale and purchase deeds must cause losses to the victim due to the fake sale and purchase deeds made by the Land Deed Officials (PPAT). Regarding the amount of compensation, it will be carried out according to the capabilities of the SW Notary/Land Deed Officials (PPAT). This is regulated in Article 1371 paragraph (1) of the Civil Code which regulates that compensation for losses is carried out according to the position and abilities of both parties, and according to the circumstances. Apart from that, the assessment depends on the judge's discretion in assessing the losses suffered by the victim due to a fake sale and purchase deeds. Article 1372 paragraph (2) of the Civil Code states that "*In assessing one thing or another, the Judge must pay attention to the severity of the insult, as well as the rank, position and abilities of both parties, and the circumstances.*" The victim only needs to prove that the actions of the SW Notary/Land Deed Officials (PPAT) in making a forged sale and purchase deeds caused losses to him.

In this case, the victim or party who feels disadvantaged is the Plaintiff who is one of the legal certificate owners. Can a SW Notary/Land Deed Officials (PPAT) still be asked for compensation? The author is of the opinion that the Notary/Land Deed Officials (PPAT) SW

may be asked for compensation because they have made a fake sale and purchase deeds made at the request of the parties, but whether or not the request for compensation is granted still depends on the Judge who will determine the value of the mistake made by the Land Deed Officials (PPAT). Bearing in mind that the counterfeit sale and purchase deeds was made with the victim's child as co-defendant, the parties should be able to estimate the risks and losses of making the counterfeit sale and purchase deeds and the act of counterfeit selling and buying is an act that violates the contract law regulated in the Civil Code. Wirjono Prodjodikoro's opinion that only by pointing out a mistake on the part of the perpetrator of the unlawful act, can the perpetrator be held accountable.¹³ The victim or party who feels disadvantaged is obliged to prove that the loss they suffered arose as a result of the actions of the Notary/Land Deed Officials (PPAT) who made a fake sale and purchase deeds, so that these actions can be accounted for. So, if there is a loss, you need to pay attention first, whether the loss arises as a result of Land Deed Officials (PPAT)'s actions? If so, not only compensation, the victim can request anything through legal action for compensation for costs, losses and interest.

3.2. Legal Status of Credit Agreements with Certificates Of Ownership whose Transfer Using a Fake Sale and Purchase Of Deeds As Credit Collateral

Credit is one of the activities of banking institutions. In disbursing credit, the bank carries out several stages called the 5 C's, namely character, capacity, capital, collateral and condition of economic prospective customers. The identification process is carried out by determining the Bank's Credit portfolio. In determining portfolio allocations and interest rates, banks should also consider provisions

¹³ Wirjono Prodjodikoro, *Perbuatan Melanggar Hukum, Dipandang Dari Sudut Hukum Perdata*, Edisi Revisi, Bandung: Mandar Maju, 2018, page. 27.

related to the precautionary principle. Banks as lenders have high risks, that's why banks must also carry out risk management, one of which is by applying the 5'C principle as an effort to apply the precautionary principle.

Verification process by the bank's first-line operations in the credit sector. Verification is carried out by the branch. The branch, through witnesses, verifies each credit applicant

Submitted by a prospective customer. The verification stage begins with examining financial, and legal documents, business projections, and collateral. In the verification process, accuracy is required from the credit officers at the branch to ensure the authenticity and correctness of the documents and the information contained in each document. Failure in the verification process will result in bank losses. To verify the collateral, an investigation is carried out regarding the origin of the goods to be used as collateral. In the case of land collateral, the bank checks with the National Land Agency (BPN). Credit analysis is carried out by credit analysts who have adequate credit knowledge. Credit analysts conduct credit discussions that refer to the principle of prudence in granting credit. The general principle applied by banks is to carry out analysis by paying attention to character, capacity, capital, collateral and economic conditions. After a credit analysis is carried out, the credit termination process is carried out by an official who has the authority to terminate credit. The bank conveys to customers the credit approval accompanied by information regarding the credit facilities provided, credit limits, interest rates, time periods and requirements that must be met by prospective debtors. The elements that contained in credit is:

- 3.2.1. Trust. Trust is the belief of the party providing credit that recipients of credit, whether in the form of money, goods, or services, will fully return it within the time period specified in future.¹⁴
- 3.2.2. Grace Period. The grace period is the period that separates the granting of something value or achievement with rewards that will be received in the future. In the context of this time, the concept of money premium is contained, namely understanding that the value of money today is higher than the value of money in the future accepted in the future.
- 3.2.3. Level of risk/risk. The degree of risk is the level of uncertainty that the consequences may face there is a period of time that separates the awarding of grades or achievements from returns to be accepted in the future. The longer the credit period provided, the greater the risk because humans have limitations in predicting the future, which results in unavoidable uncertainty. This is what creates an element of risk, which in turn gives rise to the need for collateral in credit-granting transactions.
- 3.2.4. Achievements. Achievements or credit objects can be in the form of money, goods, or services. However, in the context of a modern economy based on money, Credit transactions involving money are the most common in credit-granting practices.¹⁵

¹⁴ Thomas Suyatno, et. al., *Dasar-Dasar Perkreditan*, Cetakan ke-11, Jakarta: PT. Gramedia Pustaka Utama, 2007, Page. 14.

¹⁵ Thomas Suyatno, et. al. Page. 14.

Based on the definition of credit according to Article 1 number 11 of Law Number 10 of 1998 concerning Amendments to the Law Number 7 of 1992 concerning Banking as mentioned above, a borrowing money or lending will be classified as banking credit throughout fulfills the following elements:

- 3.2.1. There is an allocation of funds or documents that can be used as a substitute for the allocation Funding is a practice carried out by banking institutions. Bank act as a fund provider by approving the allocation of a certain amount of funds which is referred to as the credit amount or credit limit. Example of a document can be considered equivalent to fund allocation in the banking context issuance of bank guarantees and provision of funding facilities to open letters of credit (L/C).
- 3.2.2. The basis for the allocation of funds or documents replacing the allocation of funds is agreement or loan agreement between the bank and another party. This agreement is the basis for the allocation of funds or documents replace funding allocations. The loan agreement is agreed between the bank and the debtor in the form of a credit agreement.
- 3.2.3. Providing credit by banks is a form of debt for credit recipients. By Therefore, the debtor is obliged to pay off the debt in accordance with agreed terms. Providing credit by banks is a form borrow money, and the debtor must pay it back according to a schedule agreed payments, which are usually stated in the agreement credit. Thus, banking credit is not financial assistance given by the bank free of charge, but is a debt must be paid by the debtor.
- 3.2.4. Providing credit involves a certain time period. This time duration is set in the credit agreement made by the bank

and the debtor. Time duration It indicates the time limit when the bank is obliged to provides loans and indicates credit repayment time.¹⁶

3.2.5. In the context of borrowing money, giving interest on credit is a practice generally. Banks set interest rates on the loans they make give. This interest rate reflects the cost of using that money borrowed and agreed upon by the debtor. Although this credit interest rate is often referred to as a fee for the use of bank money by the debtor, provided the debtor pays according to the agreement in the credit agreement, it has become one of the main sources of income for banks .

Apart from these provisions, the relationship between creditors and debtors is built on the basis of a contract or agreement. The agreement must meet the requirements for the validity of the agreement as regulated in Article 1320 of the Civil Code, namely or which includes the following elements:

a. Agree In order for the agreement to be valid, the parties must agree to everything contained in the agreement and give their consent or agreement if they really want what has been agreed. In the preamble to the agreement (before going into the articles), it is customary to write the following "Based on what is stated above, the Parties agree and agree on the following matters:" The inclusion of the words agreed and agreed is very important in an agreement. Without these words (or other words that mean to provide a bond or just agree or agree), then the agreement has no binding effect on those who make it. Agreeing and agreeing is done with full awareness between the people who make it, which can be given verbally and written.

¹⁶ M. Bahsan, *Hukum Jaminan dan Jaminan Kredit Perbankan Indonesia*, Edisi 1, Cetakan ke-2, Jakarta: PT. Raja Grafindo Persada, 2008, page. 76

- b. Cakap Article 1329 of the Civil Code states that every person is competent to make an agreement, unless according to law he is declared incompetent. Then in the Article 1330 of civil code there are several people are not competent to make agreements, namely:
 - (1). Minors (under 21 years of age, unless otherwise specified)
 - (2). Those who are placed under guardianship (curatele or conservatorship);
 - (3). Married woman
- c. The certain things: An agreement must have as its subject an object (*zaak*) whose type can at least be determined. An agreement must have a certain object and an agreement must be about a certain thing (certainty of terms), meaning that what is agreed is the rights and obligations of both parties. The type of goods referred to in the agreement can at least be determined (determinable).
- d. Halal cause. The fourth condition for the validity of an agreement is that there is a halal legal cause. If the object of the agreement is illegal, or contrary to morality or
- e. public order, then the agreement is void. For example, an agreement to kill someone has an illegal objective, then this contract is invalid. The validity of the agreement must also not violate decency, law, and public order following Article 1337 of the Civil Code. According to Law Number 10 of 1998 concerning amendments to Law Number 7 of 1992 concerning banking, it is stated that in credit agreements it is mandatory to use collateral so that the agreement is not risky.

The legal status of the credit agreement is valid in the eyes of the law because the bank has carried out the credit policy procedures contained in the general credit guidelines and is based on Government Regulation Number 24 of 2007 concerning Land Registration. When

borrowing money from a bank, the bank will still carry out surveys and also BI Checking, which stands for Bank Indonesia Checking, is a system used by Bank Indonesia to track and manage customer credit data. This system is important in credit assessment and monitoring the financial behavior of individuals and companies. BI Checking collects information on loans, credit cards, and other financial transactions to decide the eligibility of borrowers., even though the land certificate has become collateral. In addition to surveys and BI Checking, banks must also check certificates at the National Land Agency (BPN) to ensure the status of certificates of ownership that are to be used as credit collateral. Based on case number 65/Pdt.G/2018/PN.Gpr, the judge stated that the credit agreement using a title certificate which in the alimony process only used a fake sale and purchase deed was declared legally valid, it was because the bank had carried out procedural and analysis in accordance with the rules of law. So in this case the bank cannot be found guilty.

3.2.1. Ratio Decidendi from the Decision of the Kediri Regency District Court Number 65/Pdt. G/2018/PN.Gpr

In the chronology of the civil case with case number Number 65/Pdt.G/2018/PN Gpr which occurred in the jurisdiction of the Kediri Regency District Court, there was a case related to Debts and Receivables where Plaintiff Muhartati filed a lawsuit against 7 parties, including individuals and agency bodies, namely Defendant I Ramelan, Defendant II Cacik Satwrini, Defendant III Soewito Widagdo, Defendant IV PT. Bank Rakyat Indonesia Persero, TBK, Defendant V Ministry of Agrarian Affairs and Spatial Planning National Land Agency cq. EastJava Province Regional Office, Kediri Regency, Co-Defendant I Anton Priyambodo, Co- Defendant II Soebekti Ngadiman.

The case started with Co-Defendant I, who is the son of the Plaintiff, who had a loan from a private bank in Kediri, namely Bank Danamon, which would be used as business capital for Co-Defendant

I. Then he used Certificate of Ownership Number: 887, namely a plot of land and a house building, which stands above it, which is located in Tegalan Village, Kandat District, Kediri Regency, becomes collateral for the credit debt of Co-Defendant I which is known to the Plaintiff. However, in the tenth installment, Co-Defendant I was unable to pay his debt to Bank Danamon in installments of Rp. 6,300,000 (six million three hundred thousand rupiah).

Because he felt unable to pay the installments, Co-Defendant I also asked Defendant I to help him find funds from another bank so that he could take over the outstanding credit of Co-Defendant I at Bank Danamon to Bank Mega. However, instead of helping Defendant I to find funding to take over the arrears of Bank Danamon installments, Defendant I actually paid off the remaining loan at Bank Danamon himself amounting to Rp. 120,000,000 (one hundred and twenty million) with the aim and objective of being able to control or have an Ownership Certificate. Number: 887 owned by the Plaintiff. Then, Defendant I instead made a Deed of Selling and buying as if the Plaintiff sold the Certificate of Ownership Number: 887 to Defendant I in front of the Land Deed Officials (PPAT) (Land Deed Maker Official), namely Defendant III in Deed of Selling and buying Number: 528/JB/XI/K. Kandat/2012 on November 28 2012 whose working area is in Kediri Regency. Where, the signing of the Deed of Selling and buying was not carried out at the office of Defendant III but at the office of Defendant II whose work is in Kediri City, where the selling and buying process was carried out before the LAND DEED OFFICIALS (PPAT) without the knowledge and permission of the plaintiff, and without the presence and witness of the Plaintiff and her husband, of course, the signature stated in the Sale and purchase deeds Number: 528/JB/XI/K. Kandat/2012 and 1 (one) payment receipt worth IDR 471,000,000 (four hundred and seventy-

one million) which is signed by the Plaintiff is a fake signature or fabrication.

Defendant I's aim in doing this was to be able to process the loan application requirements to Bank Rakyat Indonesia or Defendant IV. Therefore, the Land Deed Officials (PPAT) which carried out the process of making the Deed of Selling and buying has committed an illegal act by making false statements without the knowledge of the Plaintiff and the Deed of Selling and buying is of course declared invalid and null and void. Apart from that, there were also actions by the Kediri Regency National Land Agency which issued the invalid certificate in the name of Defendant I, which then in this civil case, the Kediri Regency National Land Agency was declared as Defendant V.

The plaintiff in his lawsuit letter has requested a provisional decision so that the Court orders PT. Bank Rakyat Indonesia Kediri Branch Office (Defendant IV) and/or its proxies or parties receiving rights and from them not to take any legal action, against anyone and in any way, including assigning or transferring collateral for land and buildings which located in Tegalan Village, Kandat District, Kediri Regency, East Java Province, covering an area of 1,421 M², based on Measurement Letter dated 10 October 2003 Number 13/Tegalan/2003 as stated in the Certificate of Ownership Rights Number: 887. Judges need to make decisions regarding the disputes they are examining and adjudicating. Judges must be able to process and process data obtained during the trial process, whether from documentary evidence, witnesses, allegations, confessions, or oaths revealed in the trial. This is in accordance with article 164 Herzien Inlands Reglement (HIR) and article 284 Reglement op de Buitengewesten (RBg) which regulates evidence in civil procedural law in Indonesia consisting of documentary evidence, witness evidence, confession evidence, oath evidence, presumptive evidence.

In addition, there is also evidence outside the article, namely in Articles 153 HIR and 180 Rbg namely local examinations, and Articles 154 HIR and 181 Rbg namely expert witnesses..

So that the decision to be made can be based on a sense of responsibility, justice, wisdom, professionalism, and objectivity. In Article 5 of Law Number 48 of 2009 concerning Judicial Power, in deciding cases the most important thing is the legal conclusion of the facts revealed in court. For this reason, judges must explore values, and follow and understand legal values and the sense of justice that lives in society.

Sources of law that can be applied by judges can be in the form of statutory regulations and their implementing regulations, unwritten law (customary law), village decisions, jurisprudence, science or doctrine/teachings of experts. Judges in deciding a case must be based on various considerations that can be accepted by all parties and does not deviate from existing legal rules.¹⁷

Before handing down a decision, a judge must pay attention and do everything possible so that the decision that will be handed down later allows new cases to arise. The decision must be complete and not give rise to new cases. The judge's task does not stop with just passing a decision, but also completes its implementation. In civil cases, judges must help those seeking justice and try as hard as possible to overcome all obstacles and obstacles to achieve simple, fast and low-cost justice.

Basically, law enforcement can begin by paying attention to the role of law enforcers. The main key in understanding good law enforcement is understanding the principles in it. Likewise with judges in realizing law enforcement that is characterized by justice, legal certainty and expediency through the judiciary.

¹⁷ R. Soeparmono, *Hukum Acara Perdata dan Yurisprudensi*. Bandung: Mandar Maju, 2005. Page 146

Judicial power is independent power to administer justice to uphold law and justice. This confirmation is also contained in the Judicial Power Law which regulates that judicial power is the power of an independent state to administer justice to uphold law and justice based on Pancasila for the sake of the implementation of the rule of law of the Republic of Indonesia. Legal facts generally show that there is public distrust in judicial power, because one of the main factors is that the judge's decision does not reflect the values of legal certainty, justice and benefits that are desired by justice seekers.

In this decision the plaintiff, in this case the lawsuit letter, has requested a decision regarding the provision so that the Court orders PT. Bank Rakyat Indonesia Kediri Branch Office and its proxies or parties receiving rights and from them are not to take any legal action, against anyone and in any way, including assigning or transferring collateral/collateral for the disputed land.

Regarding the legal issues addressed in the exception, in the opinion of the Tribunal, it certainly requires or requires proof of the existence of the Plaintiff's rights to the object of the dispute first, because if the Plaintiff can prove his rights to the object of the dispute, of course the Plaintiff has the right to file a lawsuit against anyone who violates his subjective rights.

Based on Article 32 paragraph (2) Government Regulation Number 24 of 1997 concerning Land Registration which is the Implementing Regulation of Law Number 5 of 1960 concerning the Basic Agrarian Law explains that the plaintiff feels that he has the right to the land and no longer has the disputed portion. In this case, the claimant will exercise this right if, within 5 (five) years of the issuance of the certificate, he has not submitted a written objection to the certificate holder and the Head of the Land Office concerned or has not submitted a lawsuit to the Court regarding control of the land or the issuance of the certificate.

At the core of the Plaintiff's lawsuit is that the Plaintiff is the legal owner of a plot of land and a house building on it located in Tegalan Village, Kandat District, Kediri Regency, East Java Province, covering an area of 1,421 M2, based on Letter of Measurement dated 10 October 2003 Number 13/Tegalan/2003 as stated in the Certificate of Ownership Number: 887 registered in the name of Muhartati, SH.

The Assembly provided its response as intended in the provisions of Article 32 paragraph (2) Government Regulation Number 24 of 1997, namely the passage of time as a legal basis for the loss of a right to land. If someone leaves the land unmanaged or abandoned after a certain period of time, then the person who abandons it loses their right to claim ownership of the land.

The Certificate of Ownership was once used as collateral by Co-Defendant I at Bank Danamon Savings and Loans Ngadiluwih, Kediri Regency, that it turned out that Co-Defendant I's debt was in default and Co-Defendant I asked Defendant I for help to find funding from another bank to take over the credit, that Then Defendant I did not help find funding to take over Co-Defendant I's credit at Bank Danamon Savings and Loans Ngadiluwih, Kediri Regency, but Defendant I paid off the remaining Co-Defendant I credit amounting to Rp. 120,000,000.

The actions of Defendant I, Defendant II, Defendant III and Defendant IV who have committed unlawful acts against the Plaintiff will be considered as below. In the main point of this dispute is the existence of an unlawful act which is argued by the Plaintiff to have been committed by the Defendant, so it is important to pay attention to the provisions of Article 1365 of the Civil Code which determines that every unlawful act that causes loss to another person requires the person whose fault it was to cause the loss to compensate for the loss. Thus, there are 4 (four) elements in an unlawful act, namely the

element of an unlawful act, loss, error and a causal relationship between the act and the loss.

Meanwhile, regarding what is meant by an unlawful act itself, according to permanent jurisprudence in Indonesia it is an act (not doing) that meets the following criteria:

- a. Contrary to the perpetrator's legal obligations, or
- b. Violates other people's subjective rights, or
- c. Violates the rules of the Code of Ethics, or
- d. Contrary to the principles of propriety, accuracy and caution that a person should have in interacting with fellow citizens or with other people's property.

The four criteria use the word "or" so that the existence of an unlawful act does not imply the existence of the four criteria cumulatively, but by fulfilling one of the criteria alternatively the conditions for an unlawful act have also been fulfilled.

In this case, the panel of judges considered the Plaintiff's demands as contained in the *petitum* part of the Plaintiff's lawsuit. Regarding Plaintiff's second *petitum*, because Plaintiff can prove some of the arguments of his lawsuit, Plaintiff's second demand must be granted in part, namely stating that Defendant I and Defendant II have committed an unlawful act that is detrimental to Plaintiff.

Defendant I and Defendant II are the losing parties, so they should be sentenced to pay the costs of this case, the amount of which will be determined in this decision. Whereas based on the considerations mentioned above, it turns out that Plaintiff can prove some of the arguments in his lawsuit, while Defendant III and Defendant IV can prove some of the arguments in his denial.

Remembering Law Number 48 of 2009 concerning Judicial Power, Law Number 2 of 1986 concerning General Courts as amended by Law Number 8 of 2004, and the Second Amendment to

Law Number 49 of 2009, as well as other statutory regulations relating to this case.

The implication of the borrowing and borrowing carried out by defendant one and defendant two is an unlawful act, so it is important to pay attention to the provisions of article 1365 of the Civil Code which stipulates: that every unlawful act that brings loss to another person, requires the person whose fault it was to cause the loss, to compensate the loss. the.

Thus, there are 4 elements in an unlawful act, namely the element of an unlawful act, loss, error, and a causal relationship between the act and the loss. Meanwhile, according to legal jurisprudence in Indonesia, the unlawful act itself is an act that fulfills the criteria.

From this result, the judge granted the Plaintiff's lawsuit for only part of the lawsuit submitted, then when it was granted by the Panel of Judges, not all of his lawsuit was granted, but part of his lawsuit was granted. The judge also stated that Defendant I and Defendant II had committed unlawful acts that were detrimental to Plaintiff.

The judge also decided and declared the Plaintiff as the legal owner of a plot of land and a house on it located in Tegalan Village, Kandat District, Kediri Regency, East Java Province, covering an area of 1,421 M2, measuring letter dated October 10 2003 Number 13/Tegalan/2003 as stated in the Certificate of Ownership Number: 887, registered in the name of Muhartati, SH.

Accompanied by the evidence presented by the plaintiff before the trial and accompanied by witnesses who stated that the land and building of the house were in the name of Muhartati SH. The witness is the plaintiff's neighbor. In the end, the Panel of Judges declared the Plaintiff as the legal owner and declared the Sale and purchase deeds Number 528/JB//XI/K.Kandat/2012 dated 28 (twenty eight)

November 2012 (two thousand and twelve) made before Soewito Widagdo, Bachelor of Laws, Notary/Land Deed Officials (PPAT) in Kediri Regency

Based on the description above, the Panel of Judges declared invalid the Sale and purchase deeds Number 528/JB//XI/K.Kandat/2012 because the plaintiff as the legal owner did not witness the selling and buying and never signed the selling and buying Certificates Of Ownership Number 887 to Defendant I and rejected the Plaintiff's claim for the remainder of the case.

The plaintiff's lawsuit against the 8 defendants was related to Certificates Of Ownership number 887 and the land sale and purchase deeds which was granted by the Panel of Judges. Furthermore, the lawsuit against Defendant IV was not granted because Defendant IV's loan was not illegal and Defendant IV had already checked Certificates Of Ownership Number 887 and there were no irregularities at all so the panel of judges did not grant the lawsuit to return the certificate to the plaintiff. However, when Defendant I's mortgage rights had been paid off to Defendant IV, Certificate Number 887 will be returned to the Plaintiff.

Then the judge also sentenced Defendant I and Defendant II to pay court fees of Rp. 2,904,000.00 (two million nine hundred and four thousand rupiah) and the right to pay the case amount of Rp. 2,904,000.00 (two million nine hundred and four thousand rupiah). given to Defendant I and Defendant II because Defendant I and Defendant II were proven wrong and committed unlawful acts that harmed the plaintiff.

All State courts, in general, must apply the concept of justice as implemented by the provisions of Article 5 paragraph 1 of Law Number 48 of 2009 concerning judicial power which states: "Judges and constitutional judges are obliged to explore, follow and understand the legal values and sense of justice that exist in society."

The concepts adopted by each judiciary are different. Like the concept of justice in civil procedural law which wants every seeker of justice to receive the same treatment and both parties must be equally listened to or not take sides with one party.

In handing down a decision, the judge is not required to provide equal treatment to the parties, but the judge must provide justice in accordance with what the parties have provided during the trial process. If the plaintiff can prove his claim, then the judge will grant his claim, but on the other hand, if the plaintiff cannot prove his claim and the defendant can prove his denial of the plaintiff's claim, then the claim filed by the plaintiff will be rejected by the judge. Basically, the form of justice that must be given by the judge when handing down a decision is justice that is proportional or in accordance with what the parties have given during the trial process. This kind of justice can be seen in the sound of one of the rulings where the judge always punishes the losing party in the trial to pay all court costs and losses experienced by the injured party.

3.2.2. Ratio Decidendi Case Number 65/Pdt.G/2018/PN .Gpr.

Ratio Decidendi or reasons for reasoning decisions which are the subject of a Kediri District Court Decision Number 65/Pdt. G/2018/PN.Gpr namely:

- a. Comparing the documentary evidence submitted by the plaintiff, the judge decided or was of the opinion that Defendant III and Defendant IV stated that the transfer of land rights to Ownership Certificate Number 887/Tegalan Village, Kandat District, Kediri District from the plaintiff to Defendant I did not fulfill the terms of the validity of the agreement. (Article 1320 of the Civil Code in conjunction with Article 1328 of the Civil Code), so that the Sale and

purchase deeds Number 528/JB/XI/K.Kandat/2012 dated 28 November 2012 at a price of Rp. 471,000,000 made by Defendant III is Invalid.

- b. The imposition of mortgage rights carried out by Defendant I, Defendant IV, Defendant V and Co-Defendant II as in Exhibit T.4-1, Exhibit T.4-2 and Exhibit T.4-5, the judge considers to be in accordance with Government Regulations Number 24 of 1997 concerning Land Registration, therefore the Judge is of the opinion that Defendant IV as the holder of the Mortgage Rights is seen as the holder of the Mortgage Rights who has good intentions.
- c. The opinion of the Panel of Judges is that Defendant I and Defendant II, apart from committing acts that are contrary to their legal obligations, have also violated the plaintiff's subjective rights, which resulted in the Plaintiff losing ownership of the land, Certificate of Ownership Number 887/Tegalan Village, Kandat District, Kediri District. Therefore, the actions of Defendant I and Defendant II must be declared as unlawful acts that harm the Plaintiff.

Judging from Article 53 of Law Number 48 of 2009 concerning judicial power, there are several important points in it, namely:

- a. In carrying out their duties and functions, judges and constitutional justices are obliged to maintain the independence of the judiciary.
- b. All interference in judicial affairs by other parties outside the Judicial Power is prohibited, except in cases as intended in the 1945 Constitution of the Republic of Indonesia.

Theory of Justice According to Philosophers, philosophers have formulated their views on justice. These views originate from his opinions or thoughts. The following are several theories of justice formulated by philosophers.

a. Theory of Justice according to Aristoteles

Aristoteles explains justice more clearly. According to him, justice is interpreted as balance. The measures of balance according to Aristotle are numerical equality and proportionalequality.¹⁸

- 1) Numerical equality means that every human being is equalized in one unit. For example, everyone is equal before the law.
- 2) Proportional equality is giving everyone what is their right, according to their abilities and achievements.

Aristotle divided justice into two, namely :

- 1) Distributive justice is justice that applies in the realm of public law, namely focusing on the distribution of wealth and other goods obtained by society.
- 2) Corrective justice relating to correcting or justifying something is wrong, provide compensation for the injured party or provide appropriate punishment for criminals.

b. Theory of Justice According to John Rawls

John Rawls is famous for the idea of substantive justice theory and divides the principles of justice into two, namely:

¹⁸ Hyronimus Rhiti, *Filsafat Hukum*, Yogyakarta: Atma Jaya University Yogyakarta, 2011, p. 241

- 1) The principle of equal freedom, that every individual has equal rights to basic freedoms whose system is the same as freedom for all (liberty for all).¹⁹
- 2) The principle of difference concerns socio-economics, namely the principle of social and economic inequality which is designed to provide the greatest benefit to disadvantaged parties.²⁰

Based on these two principles, John Rawls formulated justice in the general concept that social values are distributed equally unless the unequal distribution brings benefits to everyone. This means that everyone should benefit from any social inequality.

c. Theory of Justice According to Plato

According to Plato, justice is the emancipation and participation of police/state citizens in providing ideas about the good for the state. This is then used as a philosophical consideration for a law.

Based on three theories of justice, the judge's consideration was following article 53 paragraph 2 of Law Number 48 of 2009 concerning Judicial Power, and had fulfilled the requirements or criteria of the Ratio Decidendi based on Chapter IX of the Court Decision, Article 50 of Law Number 48 of 2009 concerning Judicial Power. Ratio Decidendi or the Kediri District Court judge's argument in decision Number 65/Pdt. G/2018/PN.Gpr based on the purpose of the law based on the theory of justice, the ratio decidendi used by judges in handing down their decisions already reflects justice for the parties and reflects legal certainty.

¹⁹ Karen Leback, Penerjemah Yudi Santoso, *Teori-Teori Keadilan*, Cetakan ke-6, Bandung: Nusa Media, 2018, page. 53

²⁰ Karen Leback. page 57

4. Conclusion

The term "International" in international arbitral awards should not solely imply a territorial in nature because there are still many known differentiating points of contact in international private law, such as choice of law, choice of forum and choice of jurisdiction. Therefore, the definition of an international arbitral award should be "a decision handed down by the arbitral tribunal or individual arbitrators containing foreign elements, whether handed down within or outside the jurisdiction of the Republic of Indonesia".

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