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Legal Analysis Of The Procedure For Issuing Building Use Rights Certificates On The Based On A Sale Purchase Deed (Study Of Lubuk Pakam District Court Decision Number 227/Pdt.G/2020/PN LBP)

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ABSTRACT

Building Use Rights (HGB) is one of the land rights in Indonesian land law that is most often used for business purposes, both property development and the provision of cemetery areas. HGB is usually obtained through a sale and purchase set out in a Sale and Purchase Deed (AJB) before a Land Deed Making Official (PPAT). This article departs from the case in the Lubuk Pakam District Court Decision Number 227/Pdt.G/2020/PN Lbp, when 63 (sixty-three) Building Use Rights Certificates (SHGB) were issued simultaneously based on 63 Sale and Purchase Deeds dated December 30, 2015, and then challenged by parties who claimed to have controlled the land for generations based on Land Certificates (SKT). There are two questions answered: first, what stages and legal requirements must be met for the SHGB issued from the AJB to be valid under Indonesian land law; second, how the legal assessment of the issuance of the 63 certificates appears in the considerations of the Lubuk Pakam District Court. Using a normative juridical method through a statutory approach and a case approach, this article shows that the validity of the SHGB is supported by two layers of conditions, namely the validity of the sale and purchase transaction itself (clear, cash, and not in dispute) and hierarchical administrative stages, either through registration of the transfer of rights or an application for new rights preceded by an examination by the Land Inspection Committee. In the case discussed, the Panel of Judges declared the 63 AJB and SHGB valid by adhering to the doctrine of formal truth, because most of the Defendants' statements were made after the lawsuit was registered and were never authenticated by a notary. However, if the description of the legal considerations is examined further, the Panel of Judges' assessment of the Defendants' ten witnesses is not comprehensive: the statements of two Village Heads who consistently indicate inconsistencies in the location of the certificate object are not considered, and the benchmarks usually used to assess written evidence are also applied to witness statements under oath, even though civil procedure law views both as different types of evidence. This article also emphasizes the need for the court to implement SEMA Number 7 of 2012 (State Administrative Chamber Formulation) to separate the civil disputes from the parts that fall under the authority of the State Administrative Court.

Keywords: Building Use Rights; Sale and Purchase Deed; Land Certificate; Unlawful Acts; Lubuk Pakam District Court.

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INTRODUCTION

Land plays a vital role in human life, whether as a place to live, a source of income, or an investment object. To ensure legal certainty, the UUPA regulates Building Use Rights (HGB), namely the right to construct and own buildings on land that does not belong to the rights holder for a certain period (Article 16 paragraph (1) letter c and Article 35 paragraph (1) of Law Number 5 of 1960 concerning Basic Agrarian Regulations). HGB can be obtained on government-owned land, managed land, or privately owned land, and is one of the most commonly used rights for business activities, ranging from the construction of property areas to the provision of modern burial facilities. In national land registration practices, the issuance of land rights in large numbers at once is not an uncommon event, especially for the needs of property investment and commercial areas. Therefore, the accuracy of administrative procedures has a broad impact on the legal certainty of many parties simultaneously.

One way to obtain HGB is through a sale and purchase transaction that needs to be proven by a Sale and Purchase Deed (AJB) drawn up before a Land Deed Making Officer (PPAT) (Article 37 paragraph (1) PP 24/1997 concerning Land Registration.). However, in practice, problems are still encountered if the object of the sale and purchase turns out to originate from land whose ownership history is only supported by non-certificate evidence, such as a Land Certificate (SKT). This situation triggers disputes between certificate holders and holders of unregistered proof of ownership.

The description of the problem is seen in the Lubuk Pakam District Court Decision Number 227/Pdt.G/2020/PN Lbp. Drs. Benny Basri, who acts as Director of PT Nirvana Memorial Nusantara (Plaintiff), claims to be the legal owner of land covering an area of ± 75 hectares in Deli Serdang Regency based on 63 AJB dated December 30, 2015 made by Notary/PPAT Melki Suhery Simamora, and has been changed to 63 SHGB. (Lubuk Pakam District Court Decision Number 227/Pdt.G/2020/PN Lbp (hereinafter “PN Lbp Decision”), pp. 1–2, 159.) Anita Sitepu, Pendi Sembiring, Elieser/Binson Eliezer Sitepu, Nungkun Gurusinga, and Dalan Ukur Br. Sembiring (Defendant IV) rejected the argument by relying on the SKT and other evidence of physical control, while also filing an exception and counterclaim. The Lubuk Pakam District Court granted part of the Plaintiff's lawsuit, declared the 63 AJB/SHGB valid, and considered the Defendants' control over some of the objects as an unlawful act (Lbp District Court Decision, pp. 178–182.); the decision was subsequently upheld by the Medan High Court, and the Supreme Court rejected his cassation application (Medan High Court Decision

Number 500/Pdt/2021/PT Mdn., quoted in Supreme Court Decision Number 4060 K/Pdt/2022, pp. 29, 45–46.), so that the District Court's evidentiary considerations as Judex Facti became the final determinant that deserves critical examination.

There are several reasons why this case deserves review. First, the simultaneous issuance of 63 SHGBs for approximately 75 hectares of land is a large-scale administrative process that should have been preceded by a thorough examination of the physical and legal data. Second, the disputed object was previously controlled by the Defendants based on non-certificate evidence, which holds a weaker position in the hierarchy of land evidence. Third, this decision demonstrates how the first instance court weighed the strength of authentic evidence in the presence of the testimony of the Defendants' ten witnesses, including two Village Heads.

The problem formulation that the author will discuss is as follows: First, What are the procedures and legal requirements for issuing a Building Use Rights Certificate (SHGB) based on a Sale and Purchase Deed (AJB) according to land provisions in Indonesia, and second, What is the legal analysis of the issuance of 63 SHGB dated December 30, 2015 as reflected in the legal considerations of the Lubuk Pakam District Court Decision Number 227/Pdt.G/2020/PN Lbp.

Unlike conventional normative studies that focus on formally affirming the validity of a decision, this research also critically examines the quality of legal reasoning behind the assessment of evidence, particularly in cases involving mass-issued certificates and multiple witness statements. This approach is crucial because first-instance decisions (Judex Facti) often determine the final resolution of land disputes after being upheld at the appeal and cassation levels; thorough assessment of evidence at first instance also has a significant impact on the legal certainty of land rights.

From a theoretical perspective, this study is expected to enrich the understanding of agrarian law regarding the relationship between the principle of formal truth in civil legal processes and land evidence mechanisms that rely on certificates. From a practical perspective, the results of this study are expected to be useful for judges in evaluating testimony in complex land cases, for the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency in strengthening procedures for issuing collective land rights, and for communities who have non-certificate proof of ownership to understand the importance of registering their land as soon as possible.

Previous studies on the validity of AJB and the issuance of certificates generally emphasize the fulfillment of the principles of clarity and cash and the role of PPAT in checking the validity of the subject and object before the deed is made, (Deden Muslim & FX Arsin, 2023) the PPAT's responsibility for the legal consequences of the deed he made, (M. Aldi Prasetyo, 2023) and the suitability between the type of right and the legal entity holding it (Sunyoto & Nynda Fatmawati Octama P., 2023). On the other hand, studies on the evidentiary power of certificates conclude that the negative publication system tends to positively provide a strong, but not absolute, position for certificates, (Benny Djaja & Sherly Oktaviani, 2023) and that the legal protection of certificate holders can still be tested if another party is able to prove stronger physical control. (ABB Darnus, Sabri Nawi, & SL Poernomo, 2022) The study of witness testimony as evidence in civil procedural law emphasizes that judges should assess witness testimony based on its credibility and consistency as independent evidence, not only on the completeness of the accompanying documents, (Rahmat Dwi Putra & Hendra Arsyad, 2022), and that witness testimony can be the main determinant when written evidence from both parties contradicts each other. (F Lubis, 2025) These studies generally examine the validity of the AJB/certificate and the strength of witness evidence separately. This study differs because it combines the two in one concrete case study, namely how the doctrine of formal truth is applied simultaneously with the assessment of the testimony of ten witnesses in one decision, so that it can be directly examined whether the two categories of evidence are weighed proportionally and harmoniously.

METHODS

This paper employs a normative legal research method with a statute approach and a case approach. Land regulations and court decisions are read side by side so that applicable provisions can be directly compared with how judges apply them in real-life cases. Lubuk Pakam District Court Decision No. 227/Pdt.G/2020/PN Lbp serves as the starting point for the entire discussion, while land law and civil procedure provisions serve as the framework for the assessment.99

The research materials consist of two layers. The first layer is the legal texts themselves the UUPA, the Civil Code, the Criminal Code, the HIR, PP 24/1997, PP 18/2021, SEMA Number 7 of 2012 (State Administrative Chamber Formulation), along with various implementing regulations in the land sector and relevant court decisions. The second layer is previous academic writings on similar themes, which are used to test and enrich perspectives. All

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materials are read, compared, and then summarized to answer the two questions posed in the introduction.

RESULTS AND DISCUSSION

Procedures and Valid Requirements for Issuing SHGB Based on a Deed of Sale and Purchase

Chronology of the Case

1) The parties

The panel of judges at the Lubuk Pakam District Court who examined this case was chaired by Makmur Pakpahan, SH, MH, with members Pinta Uli br Tarigan, SH and Ramauli Hotnaria Purba, SH, MH. As the plaintiff, Drs. Benny Basri appeared as Director of PT Nirvana Memorial Nusantara, a limited liability company domiciled in Medan which was established based on Deed Number 28 dated June 26, 2015 and runs a funeral home and cemetery services business. The defendants consisted of Anita Sitepu (Defendant I), Pendi Sembiring (Defendant II), Elieser Sitepu (Defendant III), Nungkun Gurusinga (Defendant IV), and Dalan Ukur Br. Sembiring (Defendant V), all of whom reside in Rambung Baru Village, Sibolangit District, Deli Serdang Regency. Notary/PPAT Melki Suhery Simamora, who made 63 AJB, was not sued and was only presented as a witness by the plaintiff. (Lbp District Court Decision)

2) Case Sitting and Proceedings of the Trial

The Plaintiff alleges that since 2015 he purchased land measuring approximately 75 hectares in Deli Serdang Regency from previous owners who held 63 Certificate of Ownership (SHM), in cash, based on 63 AJB dated December 30, 2015 made by Notary/PPAT Melki Suhery Simamora, which were then changed to 63 SHGB in the name of the Plaintiff. The Defendants were accused of unlawfully controlling part of the land by installing boundary fences at five locations, thus hampering development plans. The lawsuit was registered on October 12, 2020. The Defendants responded with an exception (they never had a transaction with the Plaintiff so it was suspected that there was manipulation of the AJB, the lawsuit lacked parties, and the lawsuit was unclear/obscuur libel) and a counterclaim. The Plaintiff's provisional claim was rejected through an interim decision dated April 9, 2021; The on-site inspection was conducted on April 30, 2021, and continued on July 23, 2021, while the parties' conclusions were delivered on July 27, 2021. (Lbp District Court Decision)

The verdict was read on September 15, 2021. The judge rejected the exception and granted the lawsuit in part, declaring 63 AJB and 63 SHGB valid, declaring control of nine plots of land as an unlawful act and ordering the Defendants to vacate the plots and not obstruct the Plaintiff's contractor. The panel also rejected the claim for compensation of Rp263,973,100,000.00 and the request for an immediate decision, and rejected all counterclaims. (Lbp District Court Decision) In assessing unlawful acts, the Panel of Judges uses four commonly used elements, namely the existence of an unlawful act, fault, loss, and a causal relationship. (Lbp District Court Decision)

3) Evidence, Witnesses, and Experts

The documentary evidence submitted by the Plaintiff is P-1 to P-128, including SHGB, AJB, sale and purchase agreement, and proof of certificate checking; in addition, the Plaintiff presented one witness, namely Notary/PPAT Melki Suhery Simamora, and one expert, namely Prof. Dr. Budiman Ginting, SH, MH, Dean of the Faculty of Law, UMSU. The witness explained that the sale and purchase agreement was made on December 17, 2015 and the AJB on December 30, 2015, that the SHM was downgraded to HGB because legal entities are only allowed to hold HGB, and that he never met directly with the sellers because the sale and purchase that was bound to him was only based on power of attorney. (Lbp District Court Decision) According to the expert, the AJB and HGB certificate are authentic evidence whose cancellation can only be done through a court decision, while the land certificate (SKT) serves to explain who controls the land and is a document to apply for a legal basis. (Lbp District Court Decision)

The evidence submitted by the Defendants is TI-1 to TV-8, including the 1987 land compensation letter, inheritance transfer letter, Land Certificate, exchange agreement letter dated December 25, 1971, transfer letter of land rights with compensation, Land Tax Payable Notification Letter, as well as a number of statements made in 2021. The Defendants also presented ten witnesses, namely Tuah Ginting, Sempakata Br Gurusinga (Head of Rambung Baru Village), Malem Ginting, Esra Warista (Head of Sembahe Village), Petrus Tarigan, Suriaman Ginting, Kita Suka Tendel, Tenang Br Tarigan, Selamet Tarigan, and Dapet Tarigan (Head of Bingkawan Village). (Lbp District Court Decision)

4) Valid Evidence According to Civil Procedure Law

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The evidence recognized in civil cases includes letters, witnesses, allegations, confessions, and oaths (Article 164 HIR and Article 1866 of the Civil Code). (R. Subekti, 2015) In this case, the evidence considered by the Panel of Judges was in the form of letters and witness statements, plus the results of local examinations (Article 153 HIR) which were also taken into consideration. (Sudikno Mertokusumo, 2006) Expert testimony is not included in the list of evidence in Article 164 HIR; the provisions are separate (Article 154 HIR) and the judge is not bound by it. Authentic deeds (Article 1868 of the Civil Code and Article 165 HIR) have perfect and binding evidentiary power, but are not decisive or compelling, so they can still be paralyzed by opposing evidence. (Harahap 2025) The Panel of Judges considered the SHGB, AJB, and sale and purchase agreement as authentic deeds, while the Defendants' documents were deemed to only bind the signatories because they had not been confirmed by a notary or PPAT, and the PBB evidence was deemed not to be proof of ownership of land rights. (Lbp District Court Decision)

Based on this chronology, the discussion of problem formulation (a) below outlines the procedures and legal requirements for issuing a SHGB based on an AJB, then tests them against the facts and the judge's considerations in this case. The overall framework is land registration as a means to achieve legal certainty. (R. Manthovani & I. Istiqomah, 2015)

Procedures and Valid Conditions for Issuing SHGB Based on AJB

The general basis for HGB is contained in Article 16 of the UUPA, which is further detailed in PP No. 18 of 2021. (Articles 36 to 38 of PP 18/2021) HGB can be established on three types of land—state land, land with management rights, or land with ownership rights—and the type of land determines the path of acquisition: on state land, HGB arises from a decision to grant rights by an authorized official, while on land with ownership rights, HGB arises from a grant by the owner of the ownership rights themselves, which is stated in a PPAT deed. What needs to be underlined is the difference between the two paths for acquiring SHGB through AJB: if the land has a certificate, what occurs is a transfer of rights (change of name); if it has not and is only based on evidence of old rights such as a girik or Land Certificate (SKT), what actually occurs is not a transfer of rights, but rather an application for the determination of new rights. (Articles 23, 24, and 39 paragraph (1) of PP 24/1997.)

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1. *Material Requirements*

Article 37 paragraph (1) of Government Regulation No. 24 of 1997 stipulates that the transfer of rights through a new sale and purchase can only be registered if proven by a PPAT deed—a formal manifestation of two customary legal principles that have long accompanied land sales in Indonesia, namely the clear and cash principles. (Boedi Harsono, 2008) Clear means that the transaction is carried out before an authorized official so that it is open and can be monitored; cash means that the right is transferred simultaneously with payment, without a time limit. These two customary legal inheritance principles were absorbed into national land law precisely to prevent the transfer of rights that is carried out secretly or with delayed payment—two habits that can easily give rise to disputes in the future.

In addition, Article 39 of Government Regulation No. 24 of 1997 requires that the Land Deed Official (PPAT) refuse to make a deed if one of the parties is not authorized to act, the object of the sale and purchase is disputed in terms of physical/legal data, or other requirements have not been met. (Article 39 of Government Regulation 24/1997.) It is at this point that the PPAT's true role begins, namely ensuring the history and legal status of the object are clear before the deed is signed. This burden becomes heavier when a single transaction involves dozens of plots of land in a short time, because the greater the number processed, the greater the possibility of the object being lost while still in the possession or disputed by another party.

This material requirement is the core issue in the a quo case, because the Defendant essentially denies ever selling the land they control. It should be noted that the verdict did not determine the land as customary or communal land; the terms that emerged in court were inherited land and hereditary control by the residents of Rambung Baru Village. Nevertheless, the customary legal framework remains relevant as a comparison. Customary land is essentially communal in nature and therefore cannot be transferred unilaterally without mutual consent, and the transfer is only valid if it meets the provisions of customary law and positive law. (Vegi Vineria, Zulkifli Makkawaru & Abdurrifai, 2025) The UUPA recognizes customary rights as long as they actually exist, (Maria SW Sumardjono, 2008) and customary land disputes have indeed been studied from a legal perspective. (A. Meiranda, S. Syamsunasir, A. Sukendro & P. Widodo, 2023)

The facts of the trial show that the land was not purchased from those who physically controlled it. Witness Malem Ginting stated that Defendant II's land was inherited from his parents, not the result of a purchase; the Village Head of Rambung Baru stated that his residents

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had never sold land to PT Nirvana; Tuah Ginting, Suriaman Ginting, and Tenang Br Tarigan denied ever selling land; while the Village Head of Sembahe stated that Dedi Ketaren and Cinta Wati Br Ketaren, whose names were listed as previous owners, had never owned or sold land in Rambung Baru. (Lbp District Court Decision) In their reconvention, the Defendants even asserted that until now there had never been a sale or purchase. (Lbp District Court Decision) The Defendants' written evidence, namely the 1971 exchange agreement, SKT, letter of transfer of compensation rights, and letter of transfer of inheritance, show that their control came from inheritance, exchange, and transfer of rights, not from a sale to the Plaintiff. The transactions that did occur around the location, according to Selamet Tarigan and the Head of Bingkawan Village, were merely underhand compensation without a notarial deed. (Lbp District Court Decision) The weakness is that the Defendants' letters are not evidence of registered rights. A certificate of physical possession can function as evidence as long as its acquisition is in accordance with Article 24 paragraph (2) of PP 24/1997, (Safrin Salam, 2023) and the strength of non-certificate evidence such as the details is greatly influenced by the existence or absence of records in the village administration. (Ahmat Jamil, Andi Tira & Abdurrifai, 2024)

Regarding the principle of clear and cash, the Panel of Judges considered that the requirement had been fulfilled because the entire series of transfers, from the granting of power of attorney to the issuance of the SHGB, were carried out before a notary and PPAT. (Lbp District Court Decision) In fact, the statement from the seller as the entitled party is included in the principle of clear. (Urip Santoso, 2010) The notary/PPAT admitted to never having met the seller directly, while four witnesses whose names were listed as previous owners denied ever having sold. As long as the denial has not been considered, the seller's authority as required by Article 39 of PP 24/1997 cannot be considered convincingly fulfilled.

To answer whether the SHGB was issued in accordance with the provisions, the Panel of Judges took five steps of reasoning. First, PT Nirvana as an Indonesian legal entity has the right to be the holder of the HGB (Article 19 of PP 40/1996). Second, the HGB may be granted on freehold land (Article 21) and is born through a grant by the owner of the freehold through a PPAT deed (Article 24 paragraph (1)). Third, the entire series—granting power of attorney in the sale and purchase agreement (Article 1792 of the Civil Code), the AJB, the reduction of rights from SHM to HGB, until the issuance of the certificate—was carried out before an authorized official, so that the SHGB, AJB, and the sale and purchase agreement are considered

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authentic deeds. Fourth, Article 32 paragraph (1) of PP 24/1997 makes the certificate a strong piece of evidence as long as the physical and legal data are in accordance with the measurement letter and land book, and the Defendants never filed any objections before this lawsuit was filed. Fifth, because the Defendants' letters were drafted in 2021 and not certified by a notary or PPAT, the formal validity sought was deemed unsuccessful, and the 63 SHGBs were declared valid. (Lbp District Court Decision) It should also be noted that the Panel of Judges relied on Government Regulation 40/1996, which was revoked by Government Regulation 18/2021, as discussed in section B.

Based on these considerations, the issuance of 63 SHGB is considered to be in accordance with formal provisions because the subject, object, deed, and chain of transfer are complete. However, there are three notes. First, protection according to Article 32 paragraph (2) of PP 24/1997 only applies to certificates issued legally to holders who act in good faith and actually control the land. (I Nyoman Dirga, 2017) The phrase "legally" can be interpreted as administrative or material validity, (Ni Kadek Febri Dewi Tirani, I Kadek Dony Hartawan & Ni Komang Irma Adi Sukmaningsih, 2026) while actual control over the nine areas is in the hands of the Defendants, and the five-year limit is not understood absolutely in practice. (Bodhi Alivian & Endang Pandamdari, 2020) Second, the Panel of Judges is of the opinion that this case is not related to the certificate issuance procedure by the BPN and refuses to withdraw it as a party, (Lbp District Court Decision) as a result, administrative stages such as measurement, physical and legal data examination, and announcement are not tested. Errors in the subject, object, or physical data, including overlapping certificates, are classified as administrative defects (NMS Gayatri, IPG Seputra & LP Suryani, 2018) whose testing is carried out through the State Administrative Court, with dispute sorting as discussed in section B.3. Third, in a system of negative publication with a positive tendency, a certificate is a strong but not absolute evidence, so it can be canceled if it is proven that the data in it is incorrect. (Maria SW Sumardjono, 2001) Thus, the issuance of SHGB is in accordance with the rules according to the judge's consideration (formal truth), but its material and administrative conformity has not been tested in this case.

2. *Formal Requirements*

For land that has been certified, the PPAT is required to submit the deed to the Land Office within 7 working days to register the transfer. (Article 40 paragraph (1) of PP 24/1997.) This is different if the land has not been certified and is only controlled based on evidence of

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old rights—the path taken is an application for the determination of new rights, which includes: a field inspection of legal data by the Land Inspection Committee; announcement of said data so that interested parties have the opportunity to file objections; issuance of a decision on the granting of rights; and finally, bookkeeping and issuance of a certificate as strong evidence. (Minister of ATR/BPN Regulation Number 18 of 2021) Certificates that are born from a flawed process—including those with incorrect physical data—can still be requested to be cancelled as administrative legal defects. (Minister of Agrarian Affairs/Head of BPN Regulation Number 9 of 1999.)

National land law adheres to a negative publication system with a positive tendency, which places certificates as strong but not absolute evidence: the physical and legal data contained therein are considered correct as long as it is not proven otherwise through a lawsuit in court, and can no longer be challenged after 5 years have passed since it was issued to a holder who acts in good faith and actually controls it. (PP 24/1997.) This protection, as will be explained in section B, basically only applies to certificates whose physical data is correct from the time of issuance, not to certificates whose objects are wrong or overlap with the control of another party.

Legal Analysis of the Issuance of 63 SHGB in the Lubuk Pakam District Court Decision

1. Facts and Evidence

The Plaintiffs claimed to be the legal owners of approximately 75 hectares of land based on 63 SHMs sold through 63 AJBs dated December 30, 2015 and changed their names to 63 SHGBs, and accused the Defendants of unlawfully controlling part of the land by installing a boundary fence, thus hindering the planned construction of a cemetery project that had already been licensed. In response to the lawsuit, the Defendants filed an exception that the Plaintiffs had never transacted with them, thus alleging manipulation of the deeds, that the lawsuit lacked parties because the Notary/PPAT was not involved in the lawsuit, and that the lawsuit was unclear (obscuur libel). They also filed a counterclaim based on the Land Certificate, Exchange Agreement, and inheritance transfer letter, requesting that all SHGBs and AJBs belonging to the Plaintiffs be declared null and void. (Lbp District Court Decision)

As an illustration, here is some of the data on the Sale and Purchase Deeds and Building Use Rights Certificates for 9 plots of land which were proven to be truly controlled by the

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Defendants out of a total of 63 plots of land subject to the lawsuit, as stated in the case file: (Lbp District Court Decision)

Table 1.AJB and SHGB data for nine plots of land controlled by the defendants

No	AJB Number	SHGB Number	Area (m²)	Deed of Sale and Purchase Date
1	141/2015	1	19,781	12/30/2015
2	122/2015	17	9,946	12/30/2015
3	117/2015	20	9,123	12/30/2015
4	126/2015	28	19,410	12/30/2015
5	129/2015	37	9,882	12/30/2015
6	130/2015	55	9,861	12/30/2015
7	142/2015	7	10,257	12/30/2015
8	133/2015	38	9,861	12/30/2015
9	134/2015	36	3,733	12/30/2015

These nine plots are only a small fraction of the 63 plots subject to the lawsuit, but they are the only group whose physical control was actually tested through on-site inspections. Among the names of the previous owners in the Certificate of Ownership that formed the basis for part of the AJB above are Dedi Ketaren and Cinta Wati Br Ketaren, two names whose legitimacy was later disputed by witness Esra Warista, as described in the Critical Notes section.

In order to prove their argument, the Plaintiff submitted evidence P-1 to P-128, statements from the Notary/PPAT who made the deed, and expert testimony, while the Defendant submitted evidence TI-1 to TV-8 and ten witnesses. Based on the principle of actori incumbit probatio, (Article 163 HIR jo. Article 1865 of the Civil Code.) The Panel of Judges considered the AJB and SHGB as authentic deeds, in line with the expert testimony of Prof. Dr. Budiman Ginting, SH, MH who stated that the AJB and HGB certificates are classified as authentic evidence whose validity cannot be refuted by mere verbal statements, but must be with a decision that cancels them. From this assessment, the Panel of Judges drew the doctrine

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of formal truth: an authentic deed can only be refuted by opposing evidence of equal quality. (Lbp District Court Decision) Because the Defendant's statement was mostly made in 2021 (after the lawsuit was filed) and was not authenticated by a notary, the 63 AJB/SHGB were declared valid, and the Defendant's control over 9 of the 63 plots that were proven to be physically controlled was declared an unlawful act according to Article 1365 of the Civil Code. (Lbp District Court Decision) The claim for compensation of Rp. 263,973,100,000.00 was rejected because it was deemed not clearly detailed, and the request for the decision to be executed first (uitvoerbaar bij voorraad) was also rejected.

2. Implications of Mass Certificate Issuance

Although the verdict declared all 63 AJB and SHGB valid, the consideration of unlawful acts rested solely on the findings of a local inspection of 9 of the 63 plots of land actually controlled by the Defendants. In other words, the formal validity of the 63 certificates was treated as a single piece of evidence, even though the actual ownership dispute that was actually examined only concerned a small portion of them. This pattern aligns with the risks inherent in mass certificate issuances for many plots in a short period of time, which increases the possibility that some plots will overlap with the ownership of other parties that have not yet been registered.

This pattern also shows that the legal validation of a group of certificates issued simultaneously cannot be simply applied to all members of the group simply because a small number of them passed the evidentiary test in court. As many as 54 of the 63 certificates were essentially never tested for their physical control in the a quo case, so their legal status depends solely on the validity of the Deed of Sale and Purchase and the underlying certificate issuance process, not on proof of actual control in the field that has been tested in court.

3. Limits of Civil Court Competence

It is interesting to note that the Panel of Judges themselves refused to include the National Land Agency (BPN) as a party on the grounds that this case did not concern the procedures for issuing certificates by the BPN—an implicit acknowledgment that this decision only compared the strength of civil evidence between the parties, not the validity of the administrative issuance of certificates, which is the absolute competence of the State Administrative Court. (Law Number 5 of 1986 concerning the State Administrative Court.) Therefore, the issue of compliance with the procedures for issuing the 63 certificates remains

open and can only be answered through the PTUN route or a request for cancellation of rights to the Ministry of ATR/BPN. As an additional note, the Panel of Judges also based its considerations on Government Regulation Number 40 of 1996, which was revoked by Government Regulation Number 18 of 2021 before the decision was read, (Compare the Decision of the Lbp District Court, pp. 167, 178, with Government Regulation 18/2021.) which, although not changing the substance, demonstrates the need for extra care in large-volume land cases.

The limits of competence actually already have written guidelines, namely the State Administrative Chamber Formulation in SEMA Number 7 of 2012. (Supreme Court Circular Letter Number 7 of 2012) The formulation contains the criteria to distinguish state administrative disputes from civil disputes (ownership): (i) if the dispute is the validity of a state administrative decision (KTUN), the dispute is a TUN dispute; (ii) if the posita of the lawsuit questions the authority or validity of the procedure for issuing a KTUN, the dispute is also classified as a TUN dispute; (iii) if the only thing that determines whether the judge can test the validity of a KTUN is the substance of the right, the resolution becomes the authority of the civil court; and (iv) if the dispute can be resolved by TUN legal norms (public law), the dispute can be classified as a TUN dispute.

If these criteria are applied to the a quo case, the proper distinction is clear. The dispute over ownership of nine plots of land, as well as the conflict between the ownership claims based on the Deed of Sale and Purchase (AJB) and the evidence of ownership based on the SKT, are issues of substantive rights, and therefore fall within the jurisdiction of civil courts (criterion iii). Conversely, the discrepancy between the location of the certificated objects as explained by the two Village Heads, along with the Defendants' arguments in the counterclaim to have all SHGB and AJBs annulled, affect the validity of the KTUN (State Land Decree) and its issuance procedures, which, according to criteria (i), (ii), and (iv), fall within the jurisdiction of the PTUN. From the considerations outlined in this review, it is not clear that the Panel of Judges applied these criteria explicitly: the case was declared not to involve the certificate issuance procedure by the National Land Agency (BPN), but at the same time, all 63 SHGBs were declared valid. This declaration of validity should be read as a limited assessment of the strength of the civil evidence between the parties, not as a test of the administrative validity of the certificate issuance. Thus, what needs to be improved at the court level is the strict implementation of SEMA Number 7 of 2012, namely by detailing the considerations of the

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part of the dispute that is civil in nature and the part that is the authority of the PTUN, and not stating the validity of the certificate beyond what has been tested.

4. Critical Note: Discrepancies in the Assessment of Witness Testimony

Although the a quo decision consistently applies the doctrine of formal truth, a careful examination of its legal reasoning reveals discrepancies in the way the Panel of Judges assessed the testimony of the Defendants' ten witnesses. These discrepancies encompass three issues: the discrepancy between the location of the certificate's subject matter, the alleged flaw in the legal subject matter in the Deed of Sale and Purchase, and the suitability of the type of land rights to the object's function as a cemetery.

First, the discrepancy in the location of the object. Two Village Heads gave statements under oath that corroborated each other: Sempakata Br Gurusinga (Village Head of Rambung Baru) stated that PT Nirvana was located in Rambung Baru, but "this certificate is explained as being located in Bingkawan Village, not Rambung Baru," (Lbp District Court Decision) and Dapet Tarigan (Village Head of Bingkawan)—the village where the object was actually listed on the certificate—confirmed that the location was "indeed in Rambung Baru Village, not Bingkawan Village," (Lbp District Court Decision) plus the statement of Kita Suka Tendel who had seen the PT Nirvana certificate with an address in Bingkawan and described the pattern of "community land being bulldozed (destroyed) and then purchased." Thus, two village government officials from the two areas involved independently explained the discrepancy between the physical data of the certificate and the actual location—an indication of an administrative legal flaw related to the evidentiary power of the certificate. A matter that deserves critical scrutiny: the Panel of Judges' consideration paragraph that explicitly assesses the credibility of the Defendant's witnesses—by mentioning the names Tuah Ginting, Malem Ginting, Esra Warista, Petrus Tarigan, Suriaman Ginting, Tenang Br Tarigan, and Selamet Tarigan—does not at all mention or consider the statements of Sempakata Br Gurusinga, Dapet Tarigan, and Kita Suka Tendel, even though these three are the witnesses whose statements most directly concern the issue of the location of the certificate object, not merely the individual ownership that is the focus of the Panel of Judges' assessment. The absence of an assessment of these three key witnesses is a significant gap in the legal reasoning of the a quo decision. (Lbp District Court Decision)

Second, the alleged flaw in the legal subject. Witness Tuah Ginting stated that he owned land in that location but never sold it, and his statement was actually made at the request of

Anita Sitepu (Defendant I) who was accused of selling the land. Witness Esra Warista, as the Head of Sembahe Village, stated that Dedi Ketaren and Cinta Wati Br Ketaren, the two names recorded as previous owners in the SHM/AJB table of the disputed object, were residents of Sembahe Village who never owned or sold land in Rambung Baru, information that was linked to the Resident Identity Cards and Death Certificates in their names that were examined in court. The same statement was given by Suriaman Ginting, who confirmed that he had never sold land in Rambung Baru or Bingkawan even though his name was listed in the AJB, and by Tenang Br Tarigan, who was present specifically to state that he had never sold land in the name of Nungkun Gurusinga (Defendant IV). The statements of these four witnesses revealed significant similarities: all of them were residents of Sembahe Village, not Rambung Baru or Bingkawan, where the object is located, whose names were used as sellers without their knowledge. (Lbp District Court Decision)

Legally, such misappropriation of names affects the validity of the deed on two levels. At the civil level, the sale and purchase of an object that does not belong to the seller is contrary to Article 1471 of the Civil Code, in line with the principle of nemo plus juris ad alium transferre potest quam ipse habet, and is related to the objective requirements for the validity of an agreement. At the criminal level, the inclusion of a name without the owner's consent can fulfill the elements of document forgery. However, the Panel of Judges did not place these statements within the framework of alleged forgery, but only assessed them as documentary evidence that "does not correlate with each other" and "has not been confirmed by a notary or land deed official." Herein lies a methodological issue worthy of criticism: the assessment equates the standard of proof for documentary evidence (which does require authentication to be binding on third parties) with the standard of proof for witness testimony under oath, even though witnesses are separate pieces of evidence whose evidentiary strength is weighed based on the judge's conviction, not based on notarial authentication of the accompanying document. Sworn testimony, including the statements of two village heads regarding the location, should be judged on its own credibility and consistency, not in light of the weaknesses of the accompanying documentary evidence. (Lbp District Court Decision)

Third, the suitability of the HGB with the function of the object as a burial area. There is no provision that expressly prohibits the issuance of HGB for burial land, but by definition HGB is the right to construct and own a building, while burial plots are essentially not buildings in the technical-juridical sense—only supporting facilities such as funeral homes or

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management offices are considered buildings—so that the Right to Use is perhaps more suitable as a legal umbrella for the entire area. In addition, the management of private cemeteries requires a location allocation permit from the regional head and ideally is run by a social body, not just a profit-oriented Limited Liability Company. These two requirements were not tested in the a quo decision because they are outside the main case being examined, and their assessment requires additional evidence in the form of local spatial planning documents that are outside the scope of the decision that is the object of this research.

CONCLUSION

The discussion above yields two conclusions that answer the two research questions. First, a SHGB issued based on an AJB is only valid if two layers of conditions are cumulatively met. The material layer requires a transparent sale and purchase (conducted before a PPAT as an authorized official) and cash (rights are transferred with payment), in accordance with Articles 37 and 39 of PP 24/1997; the latter article also requires the PPAT to refuse to issue a deed for an object whose physical/legal data is being disputed. The formal layer adjusts to the object's status: if the land has a certificate, the transfer of rights (change of name) must be registered with the Land Office within 7 working days; if the land is only supported by evidence of old rights such as a SKT, a request for new rights determination is made through an inspection by the Land Inspection Committee and the announcement of physical/legal data. Certificates resulting from a flawed process can still be revoked as administratively flawed, and strong, but not absolute, legal protection from a negative publication system with a positive tendency is enjoyed only by certificates whose physical data is correct from the time of issuance.

Second, the Lubuk Pakam District Court declared the 63 AJB/SHGB valid by adhering to the doctrine of formal truth, because most of the Defendants' statements were only made after the lawsuit was registered and were not authenticated by a notary, thus being deemed to have failed to refute the Plaintiff's authentic evidence. In fact, the consideration of unlawful acts actually only rested on the on-site inspection of 9 of the 63 plots, while the physical possession of the other 54 plots was never tested; this decision itself, through its refusal to withdraw the BPN as a party, confirms that the administrative validity of the issuance of certificates remains the absolute competence of the PTUN. This distinction should be made based on the Formulation of the State Administrative Chamber in SEMA Number 7 of 2012, which places disputes over the validity of KTUN and its issuance procedures within the domain

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of the PTUN, while disputes that depend solely on the substance of rights fall under the authority of civil courts. These criteria have not been explicitly applied in the a quo decision, and that is where things need to be addressed at the court level. The Panel of Judges' way of considering the Defendant's ten witnesses also left gaps: the testimony of two Village Heads who mutually corroborated the discrepancy between the certificate locations was not mentioned at all, and the notarial authentication benchmark that should apply to documentary evidence was also used to assess the testimony of witnesses under oath, even though Article 164 HIR places both as different categories of evidence. Such gaps do not invalidate the already legally binding decision, but open the opportunity for a judicial review if new evidence is later discovered.

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