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Utilitarian Justice in the Decision of the Land Exchange Agreement: A Case Study of Decision Number 241/Pdt.G/2016/Pn.Smn Reviewed from the Post-Positivism Paradigm

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Abstract

The Sleman District Court Decision Number 241/Pdt.G/2016/PN.Smn, which recognizes the validity of non-formal land exchange agreements, constitutes a significant case for understanding the realization of substantive justice beyond a positivistic legal framework. This study analyzes the decision using Jeremy Bentham's utilitarianism approach within the post-positivist paradigm

developed by Guba and Lincoln. Employing a normative legal research method with a case-based analytical approach, this research demonstrates that the judges did not merely assess the formal legality of the agreement but also took into account social consequences, practical benefits, and empirical realities existing within the community. Utilitarianism is applied to evaluate the extent to which the decision maximizes overall happiness and minimizes suffering for the disputing parties as well as society at large. Furthermore, post-positivism provides an epistemological framework that conceptualizes law as a contextual, non-final, and socially constructed phenomenon open to reinterpretation. The findings suggest that this combined approach yields a more responsive, flexible, and socially meaningful form of justice, while also generating significant methodological implications for research on non-formal agreements, particularly through the use of qualitative methods, data triangulation, and hermeneutical interpretation.

Keywords

Land Swap Agreement; Utilitarianism; Post-Positivism.

I. Introduction

Land exchange agreements under hand are a common phenomenon in Indonesia, especially among people who do not have easy access to notary services or PPAT. Although not formally qualified, this kind of agreement has often been physically fulfilled by the parties. Sleman District Court Decision No. 241/PDT. G/2016/PN.SMN is an interesting example where the judge ruled that the land exchange agreement under hand remains valid and binding, as long as it fulfills the elements of agreement, skill, certain objects, and halal causes regulated in the Civil Code[1]. Every agreement that is made does not always happen as it should, so in reality *(das sein)*. There are often legal problems such as in cases of breach of promise or *default* related to land exchange agreements as in the decision[2].

The *a quo case* began when Endang Haryati (hereinafter referred to as the Plaintiff) sued Wiwin Bonaty (hereinafter referred to as the Defendant) on the basis of the lawsuit that the Defendant had broken his promise or *defaulted* on the land exchange agreement made by the plaintiff with the defendant. In its lawsuit, the Plaintiff stated that on February 5, 2014, the Plaintiff exchanged or exchanged rolls under hand with the Defendant on the condition that the costs incurred in the name change process were borne by each party. Each of these lands is valued at Rp.200,000,000.00 Two hundred million rupiah)[3].

The land exchange agreement was agreed upon by both parties so that the process of handing over the goods was conducted juridically *(yuridisce levering)*[4]. The Plaintiff then demolished the building on the Defendant's land which had become the Plaintiff's property and erected a new building according to his own taste. From the Defendant's side,

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1 Z. A. Istianah et al., "Freedom of Contract and Judicial Intervention: Does the Court Have the Right?," *Revista Opiniao Juridica* 21, no. 36 (2023), https://doi.org/10.12662/2447-6641oj.v21i36.p205-221.2023.

2 Muhamad Baginda Rajoko Harahap Christina Endarwati, Aries Sholeh Efendi, "Putusan Pengadilan Negeri Sleman 241/PDT.G/2016/PN.Smn" (Sleman, 2017).

3 *Ibid*.

4 Ratu Rafles, "Aspek Hukum Perjanjian Tukar Menukar (Barter) Tanah Hak Milik," *Lex Crimen* XI, no. 2 (2022).

it has also occupied and controlled the Plaintiff's land and buildings that have belonged to the Defendant. Seeing that the two parties have controlled the object of the agreement with each other, the act of exchanging or exchanging the rolls has occurred and in order to have legal certainty over the ownership of the two lands, both parties have the obligation to make an administrative record of the name change through the Acting Land Deed Maker or Notary at the Sleman Regency Land Office[5].

When the Defendant was invited by the Plaintiff to carry out the process of changing the name of the land object, the Defendant through his legal representative refused to do so and asked for an additional payment of Rp.150,000,000.00 (one hundred and fifty million rupiah). This was not agreed by the Plaintiff because the additional fee clause was not contained in the pre-agreed agreement. Seeing the situation that the Plaintiff refused to provide the additional fee, the Defendant did not want to conduct the name change process so that the name change process could not be conducted. The Plaintiff verbally and through family means repeatedly inviting the Defendant to conduct the process of changing the name to the PPAT office or Notary. Based on the fact that there was no name change process between the Plaintiff and the Defendant, according to the Plaintiff, the Plaintiff suffered a *capital loss* of profit of Rp.300,000,000.00 (Three hundred million rupiah) and finally filed a lawsuit on the basis of breach of promise or *default* to the Sleman District Court because the object of the dispute was in the form of a fixed object located in the Sleman Regency area.[6]

Responding to this, the Defendant replied to the Plaintiff's lawsuit (convention) in its defense stating that the land exchange agreement was invalid because there was an element of fraud, namely the land owned by the Plaintiff was still under bank guarantee so that it could not be used as the object of a valid agreement. The Defendant also explained that the Plaintiff had made up and did not have *legal standing* in this case because the Plaintiff was unable to show his land

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[5] Christina Endarwati, Aries Sholeh Efendi, "Putusan Pengadilan Negeri Sleman 241/PDT.G/2016/PN.Smn."

[6] *Ibid.*

certificate to the defendant so that the Plaintiff's lawsuit was vague or *obscure libel*.

The Defendant also explained that in the substance of the subject matter that the Defendant did not enjoy it at all because the building on the land that had been exchanged had been rolled down previously, namely the house had many physical cracks on the floor and walls so that the house had to be renovated. The Defendant explained that on June 13, 2016, he had gone to the notary with the Plaintiff to submit the land certificate, but the Plaintiff did not show the land certificate, so this made the Defendant feel that the Plaintiff did not have good faith in this agreement, especially before the Defendant realized that the land exchanged by the Plaintiff was still in the possession of the Bank which was used as the object of debt collateral.

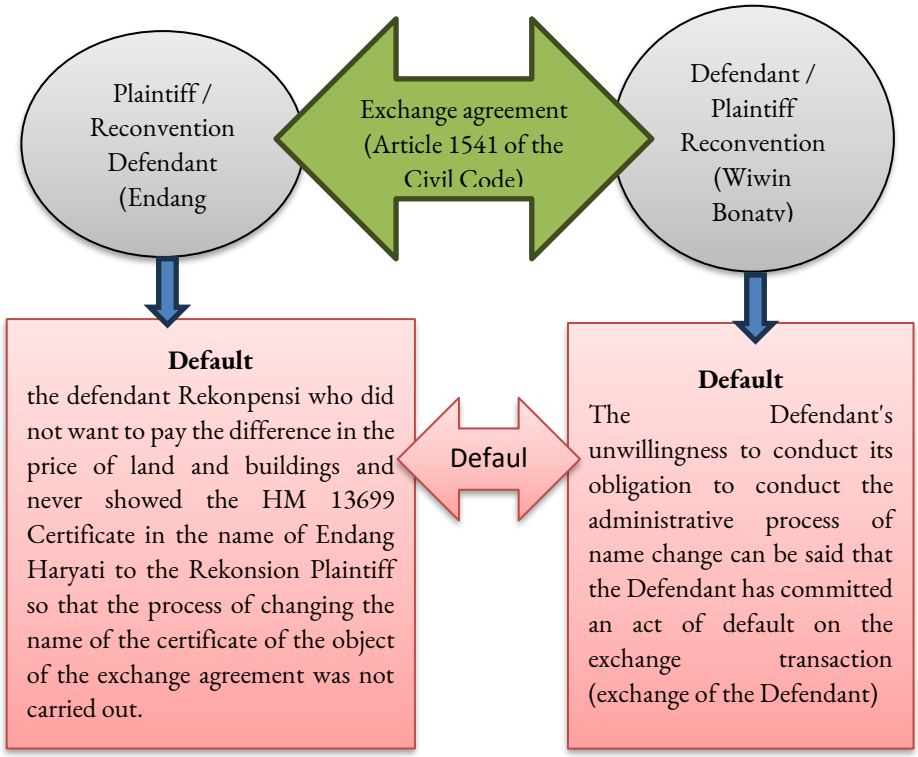
Based on this, the Defendant finally rejected the Plaintiff's invitation to carry out the name change process at PPAT or the local Notary because the Plaintiff had not paid off his debt to pay the difference in price and cost of renovation and purchase of a house in Sewon in 2013. According to the Defendant's statement, the debt began in mid-2013 when the Plaintiff came to the Defendant at his house by offering property in the form of a Shophouse.The Plaintiff who is a property seller, the Plaintiff offered the house to be built within 4 (four) months at a price of Rp.300,000,000 (three hundred million rupiah) to the Defendant and agreed by both parties. The defendant paid an agreement of Rp.8,000,000.00 (eight million rupiah) and paid a second time Rp.192,000,000.00 (one hundred and ninety-two million rupiah) the remaining payment will be paid when the house has been completed.

As time went by, it turned out that the construction was not completed, so the Defendant reminded the Plaintiff to complete it according to the agreed tempo, which was 4 months. However, the Plaintiff requested repayment of Rp.70,000,000.00 (seventy million rupiah) and was paid by the Defendant. After being paid off by the Defendant, the house was also not standing, so the Defendant requested the cancellation of the sale and purchase agreement of the house. The Defendant requested a refund of Rp.400,000,000 (four hundred million rupiah) and finally the agreement was canceled but the money has not been returned by the Plaintiff. Until finally the Plaintiff paid

the debt by paying it in four installments. On January 7, 2015 the Plaintiff paid Rp.50,000,000.00 (fifty million rupiah), on March 20, 2015 amounting to Rp.50,000,000.00 (fifty million rupiah), on the stairs; April 20, 2015 amounted to Rp.50,000,000.00 (fifty million rupiah) and mid-2015 amounted to Rp.100,000,000.00 (one hundred million rupiah) so that the plaintiff only paid Rp.250,000,000.00 (two hundred and fifty million rupiah) and left a debt of Rp.150,000,000.00 (one hundred and fifty million rupiah).

Until finally, in 2015 the Plaintiff re-established legal relations with the Defendant by exchanging land rolls. The Defendant who has land in Sidoarum worth Rp.400,000,000 (four hundred million rupiah) which has been renovated for Rp.190,000,000 (one hundred and fifty million rupiah) will be exchanged for land owned by the Defendant in Papiringan which has a building worth Rp.150,000,000.00 (one hundred and fifty million rupiah) with the promise that the defendant will refund the cost of the difference in the house and the defendant's renovation funds. The plaintiff came to borrow the Defendant's certificate to change the name for collateral at the bank for renovation costs.

Scheme 1: Case Illustration



The Plaintiff then reminded that the Plaintiff had not paid off his debt on the house in Sewon in 2013, so he did not want to lend the certificate. The Plaintiff then paid the debt in the amount of Rp. 150,000,000.00 (one hundred and fifty million rupiah) and asked again to borrow the Defendant's certificate to be reversed and finally the Defendant handed it over. However, according to the Defendant's statement, the Plaintiff did not submit his certificate and reported the Defendant to Polda DIY and in the end through the Plaintiff's legal representative, the Defendant was asked to carry out the name change process at the expense borne by the Defendant. The Defendant does not want to do so, has not received payment of the price difference in full

and filed a counterclaim or reclamation based on Unlawful Acts committed by the Plaintiff or the Reclamation Defendant[7].

Judges' decisions in civil law serve to improve social justice in addition to resolving individual disputes. The school of Utilitarianism put forward by Jeremy Bentham is one of the philosophies that can be used to assess justice in judges' decisions. This concept says that legal action is considered fair if it maximizes happiness and minimizes as much suffering (*pain*) as possible for everyone[8]. Sleman District Court Decision Number 241/PDT. G/2016/PN.SMN, which decided the land swap agreement dispute underhand, offers an interesting empirical context to analyze using the framework of utilitarianism. This opinion challenges the positivistic paradigm in the philosophy of science, which emphasizes formal legality and legal objectivity. In contrast, the post-positivism approach allows for socially constructed realities and recognizes that legal truth is contextual and not singular[9]. Based on these facts, this research will focus on how the constructivist paradigm sees the trend of uttilitarianism in verbal exchange agreements. The problem will be discuss ini this article are: (1) how does the judge's reasoning in Decision 241/Pdt.G/2016/PN.Smn fulfill Bentham's utilitarian principles? (2) how is Guba & Lincoln's post-positivism used to interpret substantive justice in the decision?

II. Method

The research method conducted is a normative legal research method with a prescriptive approach, namely research is conducted by analyzing the legal reasons used by lawmakers to make a legal decision. This research is based on the interpretative normative method, where the

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[7] Rahman Amin, *Hukum Pembuktian Dalam Perkara Pidana Dan Perdata*, I (Sleman: Deepublish, 2020).

[8] Barbara Arneil, "Jeremy Bentham: Pauperism, Colonialism, and Imperialism," *American Political Science Review* 115, no. 4 (2021), https://doi.org/10.1017/S0003055421000472.

[9] R. Burke Johnson and Anthony J. Onwuegbuzie, "Mixed Methods Research: A Research Paradigm Whose Time Has Come," *Educational Researcher* 33, no. 7 (2004), https://doi.org/10.3102/0013189X033007014.

approach used combines analysis based on rules/norms (normative) with subjective interpretation or contextual meaning (interpretative), focusing on the system of norms, theories, principles, and legal rules to understand or solve legal problems, while interpreting legal texts in depth to find fair and relevant solutions in real contexts.

The research materials used are primary legal materials, namely materials that are collected and analyzed by laws and regulations and judges' decisions related to the case being analyzed[10]. The primary legal materials include Laws and Regulations related to the legal issues discussed and the Sleman District Court Decision No. 241/PDT.G/2016/PN.SMN. Furthermore, secondary legal materials are legal materials obtained from books, reading books, and research reports as well as legal journal articles that are related to the legal case being studied. Finally, tertiary legal materials are legal materials that complement the nature of providing additional instructions or explanations to primary legal materials and secondary legal materials. This tertiary legal material is contained in research such as legal dictionaries, language dictionaries, mass media articles and so on.[11]

III. The Principle of Utilitarianism as an Analytical Framework for Evaluating the Fairness and Social Benefits of Exchange Agreement Decisions

The exchange agreement is regulated in Article 1541 of the Criminal Code to Paasl 1546 of the Criminal Code. Regarding its meaning, it is stated in writing in Article 1541 of the Criminal Code which states the following: *"An agreement, whereby both parties bind themselves to give each other an item in return in exchange for other goods.* According to

[10] Suteki dan Galang Taufani, "Metodologi Penelitian Hukum," *Metodologi Penelitian Hukum* (Jakarta: Rajawali Pers, 2018).

[11] *Ibid*.

Salim H.S, an exchange agreement is a situation where the parties who promise to give each other objects to each other[12].

In an exchange agreement there are the subject and object of the agreement. The subject in question is a legal subject, namely a natural human being and/or a legal entity that is capable and authoritative, while the object in the exchange agreement is goods, both movable goods and immovable goods, provided that the goods that are the object are not goods that are contrary to the law, harmony and public order[13]. If it is a halal clause, the parties are free to sell anything in the exchange agreement as mentioned in Article 1542 of the Criminal Code which reads *"Everything that can be sold, can also be used as an exchange exchange."*

In the theory of economic law, goods that can be sold are only goods that can be traded as mentioned in Article 1332 of the Criminal Code which states *"Only goods that can be traded can be the subject of an agreement."* This means that an item must have a selling value or economic value, be transferable and cashable. An exchange agreement as a form of obligatory agreement certainly gives rise to rights and obligations for the parties who promise, namely, to hand over and receive goods that are used as objects of exchange[14]. An agreement that is obliatoir can only be said to have been reached when there has been a surrender of the object of the agreement. In the concept of civil law about the delivery of goods *(levering),* there are two forms *of levering*, namely real delivery for movable objects or juridical delivery for immovable objects. For the technical provisions of the handover of the object, there are two positive legal references, namely the Criminal Code

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[12] Salim HS, *Hukum Kontrak Elektronik: E-Contract Law*, I (Mataram: PT. Rajagrafindo Persada, 2021).

[13] Benazir Benazir, "Tukar Menukar Barang Sejenis Menurut Hukum Islam Dan Hukum Positif," *SINTESA: Jurnal Kajian Islam Dan Sosial Keagamaan* 4, no. 1 (2022), https://doi.org/10.22373/sintesa.v4i1.554.

[14] Mariam Darus and Badrulzaman, *Asas-Asas Hukum Perjanjian* (Bandung: PT Citra Aditya Bakti, 2001).

and/or Law Number 5 of 1950 concerning Agrarian Principles (UUPA)[15].

In the agreement, there must be an object of the agreement itself, namely the achievement mentioned in Article 1234 of the Criminal Code per *"Every agreement to give something, to do something, or not to do something."* The parties who promise to conduct the achievements should be a form of good faith. However, there are still many situations where the parties do not comply with the content of the agreement so that the achievement does not run as it should, this is interpreted as a breach of promise or default[16].

Defaults are a translation of the Dutch language, namely *wanprestatie* which means breaking promises. In the concept of civil law, default is a situation where one of the parties does not comply with the clauses that apply in the agreement that has been agreed upon and is as binding as the law is binding for the parties who make the promise. Default is the anti-thesis of the achievement described in Article 1234 of the Criminal Code, namely giving something, to do something, or not doing something. If the reverse analogy of the substance of Article 1234 of the Criminal Code is used, then there are three forms of default in the form of not doing something as it should, doing something not in accordance with what was agreed.[17]

To categorize a person as having committed a default or not, it must be seen whether he has intentionally or negligently violated the agreement and it is necessary to examine whether the agreement is valid and has binding force for the parties because in essence default can only arise from the agreement that is renealed. If it has been proven to have committed a default, then based on Article 1234 of the Criminal Code, the aggrieved party can claim compensation *for "costs, damages and interest, which may be claimed by the creditor, consisting of the losses that he has suffered and the profits that he could have obtained."*. However,

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[15] Made Putri Shinta Dewi Hanaya and I Made Sarjana, "Akibat Hukum Wanprestasi Dalam Peralihan Hak Milik Atas Tanah Melalui Perjanjian Tukar Menukar," *Journal Ilmu Hukum* 7, no. 2 (2019).

[16] Satiah Satiah and Riska Ari Amalia, "Kajian Tentang Wanprestasi Dalam Hubungan Perjanjian," *Jatiswara* 36, no. 2 (2021), https://doi.org/10.29303/jatiswara.v36i2.280.

[17] *Ibid*.

there are some circumstances in which the party who pledged the promise can be forgiven and/or justified in his actions so that he is avoided from the obligation to compensate due to forced circumstances *(obermacht/force majeure),* the creditor's own negligence, or the creditor has waived his right to compensation[18].

Judge's consideration is an intellectual process that involves deep thinking and careful judgment made by the judge before he decides on a case. This process is complex and consists of various elements that affect the judge's thinking. Judge's consideration can be defined as the thoughts and judgments made by the judge in deciding a case, which is based on the facts in the case, the applicable law, as well as the principles of justice and legal certainty. In this context, the judge's consideration is not just a random decision, but a deep reflection on various aspects relevant to the case he is facing[19].

One of the particularly essential elements in the judge's consideration is the facts in the case. The judge must have a good understanding of the chronology of events, the evidence presented, and all relevant information related to the case. This analysis of facts is the initial stage in the judge's consideration process because the judge's decision must be based on the material truth in the case. In addition to understanding the facts of the case, the judge must also master the applicable law. It covers legislation, legal precedents, and legal interpretations relevant to the case. In-depth legal knowledge is the main prerequisite for judges to be able to make decisions based on applicable law. The judge's consideration must not conflict with the applicable legal provisions[20].

The judge must ensure that his or her decision will achieve the best possible level of justice in the case at hand. These principles include equality before the law, protected individual rights, and public interest.

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[18] Tim hukumonline, "Pengertian Wanprestasi, Akibat, Dan Cara Menyelesaikannya," hukumonline.com, 2022.

[19] Ery Setyanegara, "The Freedom of Judges to Decide Cases in the Context of Pancasila (Viewed from 'Substantive' Justice)," *Journal of Law & Development* 44, no. 4 (2014), https://doi.org/10.21143/jhp.vol44.no4.31.

[20] Abdul Kholiq, "Kajian Budaya Hukum Progresif Terhadap Hakim Dalam Penegakan Hukum Pada Mafia Peradilan (Judicial Corruption) Di Indonesia," *Justisi Jurnal Ilmu Hukum* 2, no. 1 (2018), https://doi.org/10.36805/jjih.v2i1.401.

The judge's consideration must be in line with these principles to create justice in society. Legal certainty is an important principle in the legal system that requires the law to be applied consistently and predictably. Judges must consider the impact of their decisions on the stability and certainty of the law in society. In this case, the judge's consideration should not result in a verdict that could damage the integrity of the legal system or create uncertainty[21].

In this decision, the judge not only assesses the formal validity of the agreement (such as the terms of Article 1320 of the Civil Code) but also considers the social and economic reality of the exchange transaction. This is in line with utilitarianism, which judges law not by its formality, but by the real consequences it entails. One example is that even though the agreement was made orally and not in the presence of a notary, the judge still considered that the parties handed over the object, conducted renovations, and physically occupied the land. This suggests that social interests (legal certainty and transaction efficiency) take precedence over mere formal compliance.[22]

The judge's consideration in the decision can have a wide social impact, especially in the context of land transactions in Indonesia which are often conducted informally, namely the existence of a deed of agreement under hand. If the judge decides to cancel the agreement simply because it does not meet the administrative requirements, it will reduce public trust in the law, especially the judiciary, hinder business circulation, especially for the parties to the dispute, and encourage legal practices that are rigid and unresponsive to the needs of the community. By ruling that the swap agreement remains valid and binding, the judge is accommodating social realities, creating legal certainty, and

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[21] Ahkam Jayadi, "Beberapa Catatan Tentang Asas Demi Keadilan Berdasarkan Ketuhanan Yang Maha Esa," *Jurisprudentie : Jurusan Ilmu Hukum Fakultas Syariah Dan Hukum* 5, no. 1 (2018), https://doi.org/10.24252/jurisprudentie.v5i2.5397.

[22] Christina Endarwati, Aries Sholeh Efendi, "Sleman District Court Decision 241/PDT.G/2016/PN.Smn."

minimizing future conflicts that are all of which are the goal of the principle of utilitarianism.[23]

Jeremy Bentham, a British philosopher, is widely recognized as the originator of the school of utilitarianism. Its principle of utility, often summarized as the principle of greatest happiness, states that an action is morally right if it promotes the greatest happiness for the greatest number of people.[24] Bentham's concept of utility originally referred to the experience of pleasure and pain. However, modern decision-making research interprets usability as the weight of outcomes in the decision-making process. Bentham's version of experienced *utility* focuses on moment-based assessments of pleasure and pain, which can be measured to evaluate well-being.[25]

The concept of utilitarianism has major implications for legal and moral philosophy. Bentham argued that usability should be used to evaluate laws and regulations, not as a direct legal purpose. His theory also provides a framework for moral regulation through various sanctions, including physical, political, popular, moral, religious, sympathetic, and retributive sanctions.[26] Bentham applied his utilitarianist principles to a variety of fields, including penal reform, social policy, and democratic theory. The idea aims to maximize happiness and well-being through a rational and systematic approach.[27]

If the judge's consideration in the judgment regarding the exchange agreement is associated with Jeremy Bentham's *principle of*

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[23] Jeremy Bentham, "Introduction to the Principles of Morals and Legislation," in *Nineteenth-Century Philosophy: Philosophic Classics, Volume IV*, 2023, https://doi.org/10.1093/oseo/instance.00077240.

[24] Philip Schofield, *Bentham: A Guide For The Perplexed*, *Bentham: A Guide for the Perplexed*, 2009.

[25] Daniel Kahneman, "Experienced Utility and Objective Happiness a Moment-Based Approach," in *Choices, Values, and Frames*, 2019, https://doi.org/10.1017/CBO9780511803475.038.

[26] Andrey V. Prokofyev, "Jeremy Bentham's Theory of Moral Sanctions," *RUDN Journal of Philosophy* 27, no. 3 (2023), https://doi.org/10.22363/2313-2302-2023-27-3-757-773.

[27] Bhikhu Parekh, *Jeremy Bentham: Ten Critical Essays*, *Jeremy Bentham: Ten Critical Essays*, 2013, https://doi.org/10.4324/9780203153857.

happiness calculus, to assess the morality of an action.[28] In this context, the author can assess the judge's decision based on seven criteria, including:

Table 1: Analysis of Judge's Decision

Criterion	Analysis
Intensity	The level of satisfaction of the parties who acquire the land as they wish
Duration	Long-term benefits: clear legal ownership, potential development of the land owned for the benefit of the parties
Certainty	This ruling provides legal certainty that the land swap agreement is recognized
Propinquity	The direct benefit is that the parties can immediately resolve land disputes and process the name change
Fecundity	This ruling encourages similar transactions to be safer and more predictable
Purity	No party is unjustly harmed; all get as per the deal
Extent	The benefits are not only felt by the parties, but also by the surrounding community (legal stability, administrative efficiency)

Sources: Authors, 2025

The Panel of Judges' reasoning stated that the oral land exchange agreements in the Sleman Court cases were valid because they met the legal requirements for an agreement. However, oral land exchange agreements must also meet the material and formal requirements for the transfer of land rights under Indonesian Agrarian Law. A verbal land exchange agreement is valid if it meets the requirements for a valid agreement as stipulated in Article 1320 of the Civil Code. However, a

[28] Andrew M. Majot and Roman V. Yampolskiy, "AI Safety Engineering through Introduction of Self-Reference into Felicific Calculus via Artificial Pain and Pleasure," in *2014 IEEE International Symposium on Ethics in Science, Technology and Engineering, ETHICS 2014*, 2014, https://doi.org/10.1109/ETHICS.2014.6893398.

land exchange agreement must also be accompanied by another legal act, namely the transfer of ownership of the land.

Justice is achieved when there is equality, honesty, and the fulfillment of promises between the parties entering into an oral agreement in a land exchange. Oral agreements in land exchanges have the potential to lead to disputes and default due to the absence of a PPAT deed, strong physical evidence, and a clear agreement, thus requiring a judge to verify the veracity of testimony and supporting evidence.

IV. Guba and Lincoln's Post-Positivism Paradigm in Interpreting Substantive Justice in the Sleman District Court Decision Number 241/Pdt.G/2016/Pn.Smn

The paradigm of post-positivism, as described by Guba and Lincoln, is a significant shift from the traditional positivist approach. This paradigm recognizes the limitations of positivism and incorporates a more subtle understanding of reality and knowledge.[29] post-positivism recognizes that reality cannot be fully understood but can be predicted. This approach accepts that all observations are erroneous and influenced by theory. This paradigm recognizes that although objective reality exists, our understanding of it is inherently imperfect and is influenced by our individual viewpoints and contexts.[30]

Knowledge is seen as a revisable conjecture. Post-positivism believes that it can only be obtained through knowledge of probability, not absolute truth. The relationship between knowing and the unknown is interactive, and the researcher is aware of its influence on

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[29] Peter Taylor, "Researchers Know Thyself! Emerging Pedagogies for Participatory Research," in *Teaching Research Methods in the Social Sciences*, 2009.

[30] Olga E. Stoliarova, "History and Philosophy of Science versus Science and Technology Studies," *Voprosy Filosofii*, no. 7 (2015).

the research process.[31] post-positivism uses a rigorous scientific method, but with a critical attitude towards the certainty of findings. This approach often combines quantitative and qualitative methods to triangulate data and strengthen the validity of conclusions. This paradigm emphasizes the importance of *critical multiplism*, which is the use of various methods, theories, and viewpoints to understand a phenomenon.[32]

The paradigm of post-positivism of Guba and Lincoln offers a balanced approach to bridging the gap between the rigid objectivity of positivism and the subjective interpretation of constructivism. This framework recognizes the complexity of reality and the limitations of our knowledge, thus encouraging a more nuanced and reflective scientific approach.

The paradigm of post-positivism Guba and Lincoln offers an interpretive lens that allows observers to understand the decision of the Sleman District Court No. 241/PDT. G/2016/PN.SMN is not a closed legal product, but as an interpretive process that is open to the layers of social reality that surround it. In this tradition, substantive justice is not positioned as an objective truth waiting to be discovered, but rather as a construction born from the transaction between legal norms, empirical facts, and values that live in the communities of the parties.[33]

When the judge ruled that the oral land exchange agreement was still valid, the judge did not just apply Article 1320 of the Civil Code mechanically. He moves in the hermeneutical space by interpreting several existing evidence such as renovated buildings, payment receipts, testimony from neighbors, and even passive actions of the Defendant who does not deny the existence of the land exchange process. This reality confirms the legal language. Post-positivism allows for such an

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[31] Taylor, "Researcher Know Thyself! Emerging Pedagogies for Participatory Research."

[32] Peter Holtz and Özen Odağ, "Popper Was Not a Positivist: Why Critical Rationalism Could Be an Epistemology for Qualitative as Well as Quantitative Social Scientific Research," *Qualitative Research in Psychology* 17, no. 4 (2020), https://doi.org/10.1080/14780887.2018.1447622.

[33] Jacob S. Bower-Bir, "Desert and Redistribution: Justice as a Remedy for, and Cause of, Economic Inequality," *Policy Studies Journal* 50, no. 4 (2022), https://doi.org/10.1111/psj.12439.

interpretation.[34] The judge recognizes and positions the legal text (a written agreement, both a deed under the hand and an authentic one) only becomes meaningful when it meets the context of life. Without that context, the words "agreement" or "delivery" made by the plaintiffs and the defendants remain empty or meaningless. It is in that context that the judge seeks to fulfill a meaning that is soothing and considered fair to both parties.

Within this framework, substantive justice arises not because judges invent mathematical formulas to calculate the highest levels of happiness, rather, it arises because judges read the social dynamics that exist behind simple documents and evidentiary processes.[35] The judge realized that acknowledging the validity of the agreement would cause less suffering than invalidating an agreement that had been physically fulfilled by both parties. He does not avoid reality in dispute, the judge instead sits in it, talks to it, and lets that reality speak through thought and intuition. It is this transaction that is recognized by post-positivism, namely that legal knowledge arises because of the involvement of judges, not because it relies on mere facts.[36]

Therefore, the paradigm of post-positivism interprets substantive justice as the result of a hermeneutical process that balances between the context of life and the legal text. It is not a final or universal justice, but a justice that is contextual, temporal, and open to be continuously reinterpreted according to changes in values and the social dynamics that surround it.[37]

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[34] Phil Ryan, "Positivism: Paradigm or Culture?," *Policy Studies* 36, no. 4 (2015), https://doi.org/10.1080/01442872.2015.1073246.

[35] Archie Zariski, "Mansfield, Atkin, Weinstein: Three Responsive Judges at the Nexus of Law, Politics, and Economy," in *Ius Gentium*, vol. 67, 2018, https://doi.org/10.1007/978-981-13-1023-2_12.

[36] Kiwongui Bizawu, Marcos Alves da Silva, and Fernando Virmond Portela Giovannetti, "From Natural Law to Post-Positivism: A Brief Historical Report," *International Relations and the Current World* 3, no. 24 (2019), https://doi.org/10.21902/Revrima.v3i27.3921.

[37] Cesare Cavallini and Stefania Cirillo, "Does Ginsburg's Judicial Voice Get the International Level?," *Global Jurist* 22, no. 1 (2022), https://doi.org/10.1515/gj-2021-0030; Isti Hanifah, James F. Mendrofa, and Fristian Hadinata, "Freedom of Judgment: The Relationship between Court Decisions and Legal Realism," in *Philosophy and the Everyday Lives*, 2021.

The justice intended in this decision is that the judge has courageously set aside the PPAT deed in order to achieve benefit and justice for the injured party. Furthermore, this decision reflects progressive and adaptive law, where the judge functions as a moral balancer, not merely a matter of legal certainty.

V. Methodological Implications of the Post-Positivism Approach in Non-Formal Agreements Based on the Decision of the Sleman District Court Number 241/Pdt.G/2016/Pn.Smn

Referring to the ruling, the post-positivism approach brings a breath of fresh air to the legal research of non-formal agreements, especially oral and underhand agreements. This approach requires judges to step out of the theoretical framework and blend in with real reality. He opposes the idea that law can only be understood through the rigid and rigid examination of documents as well as evidence. rather, it allows for techniques that can identify the feelings of the people behind the words of the covenant that have already been made.[38]

In this tradition, judges are no longer placed as neutral observers who are at a distance, but as participants who help shape the meaning of the law through interaction with parties, witnesses, and even the physical environment in which the agreement is executed.[39] The judges acted concretely, such as conducting a local inspection of the disputed land object. By looking at the actual facts, it is possible to ascertain the

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[38] John M. Budd, Heather Hill, and Brooke Shannon, "Inquiring into the Real: A Realist Phenomenological Approach," *Library Quarterly* 80, no. 3 (2010), https://doi.org/10.1086/652876; Bizawu, da Silva, and Giovannetti, "From Natural Law to Post-Positivism: A Brief Historical Report."

[39] Amer Zghair Mohaisen and Worood Lafta Muttair, "The Administrative Judge's Role in Filling the Legislative Gaps," *International Journal of Innovation, Creativity and Change* 9, no. 2 (2019).

physical condition that is the object of the dispute as well as discuss with the parties to the dispute and listen to the testimony of witnesses related to the historical aspects of the object in dispute. Evidence as well as legal material is no longer just deeds, receipts, or power of attorney, but also stories that are implied from the reality of the condition of the land object being exchanged.

The methodology demands triangulation that combines document analysis, field observations, in-depth interviews, and even photographic documentation.[40] The judge is required to read the body language of the disputing parties as the owner of the house when telling the process of handing over the exchange of the rolls, find critical indications when asked about the price disparity polemic, and interpret every statement during the agreement process which is carried out orally. He must be willing to come back many times to understand the ever-multiplying layers of meaning, not just verify the facts.[41]

In addition, this method requires hermeneutical sensitivity i.e. the judge must be able to understand that when a witness says the condition of the land and buildings, it may mean not only assessing the condition of the object, but also saying that they approve of the exchange that was carried out. The judge must be able to write arguments both from the aspects of written and unwritten legal evidence, see what is not seen, and hear what is not spoken. He must note that the Defendant's silence when asked to show his certificate was not just administrative evidence, but also an expression of distrust that had crystallized due to experience that gave rise to the dispute.

Thus, the use of the post-positivism approach in the Sleman District Court decision Number 241/PDT.G/2016/PN.SMN resulted in significant methodological changes in the way of collecting, observing, and writing legal materials that became the basis for judges' considerations. It requires judges to be legal anthropologists who can investigate the meaning behind simple practices, and to rewrite the law

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[40] Khadijah Mohamed, "Combining Methods in Legal Research," *Social Sciences (Pakistan)* 11, no. 21 (2016), https://doi.org/10.3923/sscience.2016.5191.5198.

[41] Aaron Rodgers, *The Judge in a Democracy*, *The Judge in a Democracy*, 2009, https://doi.org/10.5860/choice.44-2338.

as a language that lives, breathes, and is always open to reinterpretation according to the pulse of life.[42]

VI. Conclusion

Sleman District Court Decision Number 241/PDT. G/2016/PN.SMN illustrates that the law does not only operate as a set of rigid rules, but also as a medium for enforcing justice that is responsive to social realities. Through a utilitarianist approach, the judge maximizes happiness and benefits for the parties while still recognizing the land exchange agreement that is conducted in an informal manner, if its substantial fulfillment is proven. This shows that law can be a flexible social instrument without compromising the principle of legal certainty. Viewed from the paradigm of Guba and Lincoln's post-positivism, this ruling affirms that substantive justice is not always universal or final but is constructed through an open interpretation of local contexts, values, and dynamics. Judges not only interpret the legal text formally but also understand the social significance of the parties' actions, making the law a living and adaptive language. Methodologically, the post-positivism approach opens space for qualitative techniques such as field observations, in-depth interviews, and data triangulation that allow for a thorough understanding of non-formal legal practice. This requires judges to be legal anthropologists, who are sensitive to the narratives, symbols, and practices implied behind simple agreements. Thus, this study shows that by elaborating the school of utilitarianism with the paradigm of post-positivism, the law can become a tool of justice that not only enforces the rules, but also strengthens social legitimacy, public trust, and stability in daily legal practice.

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[42] Liz Sharp et al., "Positivism, Post-Positivism and Domestic Water Demand: Interrelating Science across the Paradigmatic Divide," *Transactions of the Institute of British Geographers* 36, no. 4 (2011), https://doi.org/10.1111/j.1475-5661.2011.00435.x.

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