

The Executorial Power Of The Stipulation on The Division of Joint Property Based on a Peace Agreement in a Divorce Case

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Abstract

The purpose of this study is to determine and analyze the executorial power of the verdict regarding the division of joint property on the basis of a peace agreement as outlined in a divorce verdict in the Religious Court, the differences in views between the Judges of the Banjar City Religious Court in West Java and the Head of the Banjar City Land Office in West Java regarding the executorial power in the peace agreement as outlined in divorce verdict number 722/Pdt.G/2020/PA/Bjr, and solutions to the differences in views regarding the executorial power in divorce verdict number 722/Pdt.G/2020/PA/Bjr. This type of research is empirical normative research. Data obtained based on library data research, namely primary, secondary and tertiary legal materials, then continued with primary data. The collected data is analyzed qualitatively and presented descriptively. The results showed that the executorial power in divorce verdict number 722/Pdt.G/2020/PA.Bjr is in the irah-irah which reads “For the Sake of Justice Based on God Almighty”. The



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decision is condemnatory or punishment imposed on the applicant and respondent to implement the peace agreement. The transfer of land rights based on a court decision can be carried out based on the provisions of Article 55 of Government Regulation Number 24 of 1997 or using a grant deed provided that the clause contains a peace agreement resulting from the mediation on November 30, 2020.

KEYWORDS *Executorial Power, Transfer of Land Rights, Peace Agreement.*

I. Introduction

Divorce is a legal act that makes the marital bond between husband and wife end based on a judge's decision on the demand for reasons for divorce in marriage. Determination of divorce through a trial procedure at the Religious Court for couples who marry according to Islamic law. The settlement of divorce cases in the Religious Court must first seek reconciliation as regulated in Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court (hereinafter referred to as PERMA Number 1 of 2016).

If the mediation is partially successful and the main case is not successfully mediated, the marriage will end which results in the joint property during the marriage having to be divided in accordance with the applicable rules as stipulated in Article 37 of Law Number 1 Year 1974 concerning Marriage.¹ The division and management of joint property often causes problems, one of which is related to the process of transferring land rights at the Land Office. The purpose of registering the transfer of

¹ Gempur Mahardhita, "Proses Penyelesaian Perkara Harta Bersama Di Pengadilan Agama," *Jurnal An Nawawi: Jurnal Hukum Dan Ekonomi Islam* 1, no. 2 (2021): 121–44, <https://doi.org/10.55252/annawawi.v1i2.15>.

rights is to ensure legal certainty about the status of the registered rights, certainty of the subject of rights and certainty of the object of land rights.²

One of the cases occurred in Banjar City, West Java Province, where the applicant gave his power of attorney to the Land Deed Official (hereinafter referred to as PPAT) to carry out roya and registration of transfer of rights based on the decision of the Banjar City Religious Court, West Java Number 722/Pdt.G/2020/PA.Bjr. The decision explained about the mediation report dated November 30, 2020 which basically resulted in an agreement regarding the settlement of the case in the form of a desire for divorce between the applicant and the respondent who wanted to divorce. The mediation results explained that they still agreed to continue the divorce (unsuccessfully reconciled), but there was an agreement between them on several matters in the event of a divorce as regulated in Article 31 of PERMA Number 1 Year 2016.

The peace agreement made by the applicant (in this case the husband) and the respondent (in this case the wife) dated November 30, 2020, one of which is related to the division of joint property, namely the applicant gets joint property in the form of a plot of land and buildings located at Perum Az-Zahra, Banjar City, West Java (land certificate in the name of the respondent/wife) while the respondent gets compensation from the object of joint property in the form of money from the applicant in the amount of Rp. 200,000,000,- (two hundred million rupiah).³

The mediator judge has reported the results of the peace agreement on other claims regarding joint property during marriage made by the parties dated November 30, 2020 to the panel of judges examining the case. Article 31 of PERMA Number 1 Year 2016 states that if the parties have reached a peace agreement, it can be stated in the divorce case clause.

² Urip Santoso, *Pendaftaran Dan Peralihan Hak Atas Tanah* (Jakarta: Prenada Media, 2008).

³ Perkara Perceraian, No. 722/Pdt.G/2020/PA.Bjr (Pengadilan Agama Kota Banjar Provinsi Jawa Barat December 10, 2020).

The divorce lawsuit with the Banjar City Religious Court register in West Java Number 722/Pdt.G/2020/PA.Bjr has permanent legal force with the verdict that granted the petitioner's request for divorce, and related to the peace agreement, the judge stated to punish the petitioner and the respondent to obey and implement the peace agreement dated November 30, 2020 between the petitioner and the respondent. This was confirmed by the panel of judges in a condemnatoir decision and in accordance with Article 1858 of the Civil Code stating that peace between parties is as strong as a judge's decision so that the peace agreement becomes valid, final, binding and has executorial force.⁴

On July 24, 2023, a roya process was carried out by the Banjar City Land Office, West Java Province, but the application for transfer of land rights was rejected because the verdict number 4 only stated that it ordered the applicant and respondent to comply with and carry out the peace agreement dated November 30, 2020 between the applicant and respondent. The Head of the Land Office stated that the sound of the verdict as mentioned above does not imply that the judge decided on the transfer of rights or explicit division regarding the status of the executorial power of the object of the joint property agreement in the divorce case.⁵

The applicable provisions at the Land Office for recording changes to land registration data based on a court decision or determination of a judge/chairman of the court need to attach an official copy of the court decision or judgment that has obtained permanent legal force and a copy of the minutes of execution related to the ruling on divorce.⁶ Thus, the application for transfer of land rights cannot be made because the

⁴ Rachmadi Usman, *Mediasi Di Pengadilan Dalam Teori Dan Praktik* (Jakarta: Sinar Grafika, 2012).

⁵ "Surat Pejabat Pembuat Akta Tanah Kota Banjar Jawa Barat Perihal Permohonan Pendapat Hukum Atas Surat Saudara Al Furqan, Jawaban Surat Nomor 388/32/79.UP.02/VIII/2023," August 25, 2023.

⁶ "Pasal 125 Ayat (1) Dan (2) Peraturan Menteri Negara Agraria/Kepala Badan Pertanahan Nasional Nomor 3 Tahun 1997 Tentang Pendaftaran Tanah Sebagaimana Dikuatkan Dengan Surat Kantor Pertanahan Kota Banjar Jawa Barat Nomor 436/32.79.UP.02/IX/2023 Perihal Permohonan Pendapat Hukum Atas Surat Saudara Al Furqan, Jawaban Surat Nomor 388/32/79.UP.02/VIII/2023," September 6, 2023.

applicant cannot complete the minutes of execution with the argument that the land object as mentioned above has been controlled by the applicant. On the other hand, the Land Office still requires formal evidence of the existence of control and transfer of rights to the land.

The Land Office requested legal consultation to the Religious Court to make an official report on the execution of joint property in the divorce verdict of the Banjar City Religious Court, West Java Number 722/Pdt.G/2020/PA.Bjr. The Banjar City Religious Court of West Java responded by issuing a fatwa number 2205/KPA.W10-A25/HK.05/IX/2023 with the opinion that in accordance with the rules of Article 30 paragraph (3) and Article 31 paragraph (3) of PERMA Number 1 of 2016, the agreement between the applicant and the respondent has in fact been included in the legal considerations and the verdict so that it has been considered sufficient to be categorized as a real truth in the process of proof that is bound by law or has executorial power. Thus, the Banjar City Religious Court of West Java cannot issue the minutes of execution as requested by the Banjar City Land Office of West Java.⁷

Nevertheless, the Land Office of Banjar City, West Java could not process the transfer of rights because the divorce verdict did not fulfill the formal evidence of control and transfer of land rights that had been determined for the applicant. Meanwhile, the Banjar City Religious Court of West Java is of the opinion that the agreement between the applicant and the respondent has in fact been included in the legal considerations and the verdict so that it has been deemed sufficient to be categorized as fulfilling material law relating to the rights and obligations of legal subjects in the process of proving that they are bound by law and have executorial power for the parties because the court's decision has permanent legal force

⁷ Fatwa Pengadilan Agama Kota Banjar Jawa Barat Nomor 2205/KPA.W10-A25/HK.05/IX/2023 Perihal Jawaban Permohonan Pendapat Hukum atas Saudara Al Furqan, Jawaban Surat Nomor 388/32/79.UP.02/VIII/2023 (Pengadilan Agama Kota Banjar Jawa Barat September 18, 2023).

that must be obeyed and cannot be delayed in its implementation. Based on the description above, there are different views on the executorial power in the divorce verdict related to the peace verdict between the Banjar City Religious Court, West Java Province and the Banjar City Land Office, West Java Province.

This article is compiled based on normative empirical research methods. Empirical normative research is research in which the initial data uses secondary data and real behavior as primary data,⁸ complemented by field research data on religious court procedural law related to peace agreements outlined in divorce decisions and rules for transferring land rights from joint property in divorce cases in the Religious Court.

This research is descriptive in nature, namely describing complete data on the subject and object of the problem in this study.⁹ The explanation is carried out in accordance with statutory regulations linked to legal theory and implementation practices related to the issue of transfer of land rights based on a peace agreement contained in a divorce verdict.

II. Mediated Peace Agreement

When the divorce trial process was held, both parties agreed to mediate first before deciding the case which was held on November 30, 2020. The report from the mediation results explained that the applicant and respondent could no longer carry out the marriage they had entered into, but the applicant and respondent agreed to make a peace agreement regarding iddah and mut'ah maintenance, child custody, joint property, joint debt, division of property and joint debt in the event of a divorce. The matters made in the mediation result peace agreement dated

⁸ Soerjono Soekanto, *Pengantar Penelitian Hukum, Cetakan Ke Tiga* (Jakarta: UI Press, 2014).

⁹ Ronny Hanitijo Soemitro, *Metodologi Penelitian Hukum Dan Jurimetri, Cetakan Ke Empat* (Jakarta: Ghalia Indonesia, 1990).

November 30, 2020 were then outlined in divorce verdict number 722/Pdt.G/2020/PA.Bjr.

One of the contents of the peace agreement is the division of joint property agreed upon by the applicant and the respondent regarding the object of a plot of land located at Perum Az-Zahra, Banjar City, West Java SHM Number XXX which on the land certificate is still in the name of the respondent and but with the peace agreement the plot of land will switch to belong to the applicant with compensation that the respondent will get money in the amount of Rp. 200,000,000, - (two hundred million rupiah) from the applicant.

This peace agreement was made as a means that could be used as evidence showing that the respondent had agreed to transfer his rights to the applicant so that the applicant was the person entitled to the joint property. This is because in the process of transferring land rights, it is necessary to have proof of ownership of the land object which will be submitted to the Land Office.

In the peace agreement that has been made by the applicant and the respondent, there are provisions regarding the validity of the peace agreement and its legal consequences in Article 9 paragraph (1) of the peace agreement dated November 30, 2020, stating that this peace agreement applies if the judge examining the case grants the applicant's request for divorce so that the position of the peace agreement in the court decision can be said to be final and has executorial force.

The peace agreement resulting from the mediation on November 30, 2020, was immediately reported by the mediator judge to the panel of judges. Furthermore, the panel of judges who decided the case poured the peace agreement in the clause of divorce verdict number 722/Pdt.G/2020/PA.Bjr which was determined on December 10, 2020. Against the petitioner's request, the judge of the Banjar City Religious Court in West Java has made a decision, as the verdict reads that the Petitioner and Respondent are required to obey and implement the peace

agreement dated November 30, 2020 between the Petitioner and Respondent.

The decision is a legally binding decision or *inkracht van gewijsde*. The case contained in the decision is related to a divorce verdict in which there is a peace agreement clause made by the litigants during mediation before the case decision. When the divorce case is legally determined by the judge, the peace agreement made by the petitioner and the respondent has executorial force.¹⁰

III. The Executorial Power Of The Mediated Division Of Joint Property Settled In A Divorce Judgment

That in the decision of the Banjar City Religious Court Number 722/Pdt.G/2020/PA.Bjr based on the sitting of the case, there was a partial peace agreement between the applicant and the respondent, including regarding the right to joint property or *gono gini*. The agreement has been considered by the panel of judges in the legal considerations of the decision and also appears in one of the rulings on punishing the applicant and the respondent to obey and implement the agreement between the applicant and the respondent.

In the peace agreement made by the applicant and the respondent, there are provisions regarding the validity of the peace agreement and its legal consequences in Article 9 paragraph (1) of the peace agreement dated November 30, 2020, stating that this peace agreement applies if the judge examining the case grants the applicant's request for divorce so that the position of the peace agreement in the court decision can be said to be final and has executorial power.

¹⁰ Sarwono, *Hukum Acara Perdata Teori Dan Praktik* (Jakarta: Sinar Grafika, 2012).

The executorial power in divorce verdict number 722/Pdt.G/2020/PA.Bjr is contained in the *condemnatoir* ruling which states that the applicant and respondent are obliged to obey and implement the peace agreement in accordance with the agreement made on November 30, 2020. This executorial power is also strengthened at the head of the decision which opens with an *irah-irah* which reads “For the Sake of Justice Based on God Almighty”. The *irah-irah* is a sign that means that the divorce verdict has executorial force that can force the applicant and respondent to carry out the court's decision which has executorial force.

In accordance with Article 30 paragraph (3) and Article 31 paragraph (3) of PERMA Number 1 of 2016, the agreement between the applicant and the respondent has in fact been included in the legal considerations and the ruling so that it has been deemed sufficient to be categorized as material that is bound by law or has legal force and executorial value for the parties who made the agreement, namely between the applicant and the respondent, so that the obligations and responsibilities of each party must be fulfilled either voluntarily or with the help of other legal procedures.

The decision of the Banjar City Religious Court in West Java Number 722/Pdt.G/2020/PA.Bjr is in accordance with the systematic formulation of the lawsuit. The order of the formulation of the main lawsuit is first filed and then continued with an assessor lawsuit or additional lawsuit. In this case, the main lawsuit is a divorce case that has been decided, which means that the marriage between the applicant and the respondent has been terminated. Then the assessor lawsuit is the mediation result in the form of a peace agreement between the applicant and the respondent made on November 30, 2020.

The assessor lawsuit which is a peace agreement is *contentiosa*, which aims to determine the position and rights to an item between the parties and at the same time to make the person being sued carry out what

is punished to him. In the ruling of a contentiosa verdict, a condemnatoir verdict can be requested, namely that in the petitum the person being sued carries out the sentence.

The nature of divorce verdict number 722/Pdt.G/2020/PA.Bjr is a constitutief verdict, namely breaking the legal relationship of marriage and creating a new law for the petitioner and respondent to become widowers and widows and the verdict on the peace agreement is condemnatoir, namely the ruling punishes the petitioner and respondent to carry out the agreed peace agreement.

The peace agreement resulting from mediation in court between the applicant and the respondent which is made in writing and has been approved by the mediator judge is written evidence of the settlement of the dispute between the applicant and the respondent. The judge of the Banjar City Religious Court in West Java in giving his decision is in accordance with the provisions contained in PERMA Number 1 of 2016, the peace agreement dated November 30, 2020 can be stated in divorce verdict number 722/Pdt.G/2020/PA.Bjr.

After the verdict is pronounced by the judge, the peace agreement becomes a law that has binding force for the applicant and the respondent to carry out the contents of the agreement as stipulated in Article 1338 of the Civil Code. A person who has stated something in a legal relationship then becomes law for them (*cum nexum feciet mencipiumque, uti lingua mancuoassil ita jus esto*) which the applicant and respondent have a legal obligation to obey its implementation.¹¹ Thus, neither party will be able to deny the contents of the agreement they have made. This also applies to third parties or other parties who must respect what has been agreed by the litigants.

Article 1858 paragraph (1) of the Civil Code states that a peace decision between the parties is as strong as a judge's decision at the final

¹¹ Ridwan Khairandy, "Landasan Filosofis Kekuatan Mengikatnya Kontrak," *Jurnal Hukum*, Edisi Khusus, 18 (2011): 36–55, <https://journal.uin.ac.id/IUSTUM/article/view/7232>.

level and immediately has the inherent executorial power.¹² This is also emphasized in the last sentence of Article 130 paragraph (2) HIR, namely as a judge's decision that has obtained executorial force.¹³ All agreements that have been made by the parties cannot be withdrawn other than by agreement of those concerned or for reasons contrary to the Law. Based on this provision, the peace agreement cannot be invalidated by reason of a mistake of law or reasons that are sufficient by law to do so.

Executorial power or better known as execution is an action to carry out or execute a court decision. Execution can also be interpreted as the implementation of court decisions that have permanent legal force. The reasons for the judge's consideration in making a decision are an accountability to the community so that it has an objective value to the decision made.¹⁴

The peace agreement, as set out in the deed of settlement and affirmed by a court ruling, has the effect of bringing the dispute between the parties to an end. Subsequently, after the issuance of the Deed of Settlement Decision by the Religious Court, a new dispute arose between the same parties concerning the same type of claim object (joint property), thereby invoking the principle of *nebis in idem*.¹⁵ Furthermore, considering that a peace agreement constitutes a contract, it is bound by the principle of *pacta sunt servanda*, meaning "agreements have the force of law and are binding upon the parties."¹⁶ Moreover, the peace agreement that has been affirmed by the Religious Court's decision is binding not

¹² Mahkamah Agung RI, "Pedoman Pelaksanaan Tugas Dan Administrasi Pengadilan," Buku II (1994).

¹³ Yahya Harahap, *Ruang Lingkup Permasalahan Eksekusi Bidang Perdata* (Jakarta: Sinar Grafika, 2014).

¹⁴ Bambang Sugeng A.S. and Sujayadi, *Hukum Acara Perdata Dan Dokumen Litigasi Perkara Perdata* (Jakarta: Kencana, 2011).

¹⁵ Aldi Rizki Khoiruddin and Muhammad Rustamaji, "Mengadili Perkara Ne Bis In Idem Kajian Putusan Nomor 957 K/PID.SUS/2018," *Jurnal Yudisial* 16, no. 1 (2023), <https://doi:10.29123/jy/v16i1.570>.

¹⁶ Salim H.S., *Contract Law: Theory and Techniques of Contract Drafting* (Jakarta: Sinar Grafika, 2008).

only upon the parties themselves but also upon their family members or descendants, as well as upon the Land Office (Badan Pertanahan) at the Regency level, the Samsat office, relevant government institutions, and other related private parties.

However, in practice, it cannot be denied that differences in the interpretation of certain provisions still occur among various institutions, particularly the National Land Office, when an application for the transfer of land rights is submitted based on a peace agreement affirmed by a court decision. In terms of regulation, there is a significant difference between the Land Office and the Religious Court regarding the determination of land objects that may be subject to a transfer of rights based on a court ruling. The Land Office is obliged to implement a transfer of rights based on a court decision that has obtained executory force. However, on the other hand, the wording of the court's decision has given rise to various interpretations, causing the Head of the Banjar City Land Office in West Java to hesitate in following up on the court ruling by making changes to the data in the process of transferring land rights.

IV. Transfer Of Land Rights Against Joint Assets Divided Based On A Peace Agreement

Maintenance of land registration data is an activity carried out if there is a change in the physical data and juridical data of the land object that has been registered so that the relevant right holder is obliged to register the change in juridical data and physical data to the local Land Office.¹⁷ Maintenance of land registration data and encumbrance of rights is regulated in Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration, Transfer of land rights and

¹⁷ “Pasal 36 Ayat (1) dan (2) Peraturan Pemerintah Nomor 24 Tahun 1997 Tentang Pendaftaran Tanah”.

ownership rights over apartment units through sale and purchase, exchange, grants, inclusion in companies and other legal acts of transfer of rights, except transfer of rights through auctions can only be registered if proven by a deed made by an authorized PPAT according to the provisions of the applicable laws and regulations.

The transfer of land rights is the process of transferring or transferring land rights from one land right holder to another. The party transferring or transferring the right must have the right and authority over the land to be transferred, while the party acquiring the right must meet the requirements as a right holder and must not conflict with the prevailing laws and regulations in Indonesia.

There are two forms of transfer of land rights, namely transfer to another party and transfer to another party.¹⁸ Transferred to another party is a transfer of an act carried out by force or an act carried out by law for the benefit of others. This is related to the object of inheritance, if the owner of the land rights dies, the object of inheritance will pass to his heirs by fulfilling the conditions according to the applicable law. Meanwhile, transfer to another party is the transfer of property rights to another person in connection with a deliberate act to transfer land rights through various legal actions such as sale and purchase, grants, exchanges, statements (inclusion) in company capital and auctions.¹⁹

The rights registration system is a legal act that causes changes in rights to be proven by a PPAT deed.²⁰ PPAT deeds have a very important position in order to realize orderly land administration which is the main

¹⁸ Nurlaili Azizah Rahmadhani and Edy Wahjuningati, "Problematika Peralihan Hak Atas Tanah Dasar Jual Beli Di Bawah Tangan Pada Sertifikat Hak Milik Nomor 11949 Di Kelurahan Sidosemo Kota Surabaya," *Jurnal Hukum Keadilan* 13, no. 1 (2024): 56–69, <https://doi.org/10.56943/judiciary.v13il.239>.

¹⁹ Arivan Amir, "Pengalihan Hak Penguasaan Tanah Menurut UUPA Dalam Rangka Pendaftaran Tanah Pertama Kali," *Jurnal Repertorium* 8, no. 1 (2019): 51–65, <http://dx.doi.org/10.28946/rpt.v8i1.311>.

²⁰ Liza Mayanti Famaldiana, "Implikasi Hukum Keterlambatan Pendaftaran Akta Peralihan Hak Atas Tanah (Studi Di Kantor Pertanahan Kabupaten Bima)," *Jurnal Ius IV*, no. 3 (2016): 502–11, <https://doi.org/10.29303/ius.v4i3.409>.

source in land maintenance and registration activities for BPN and the Land Office, but the transfer of land rights can also be done without a PPAT deed such as the transfer of rights from auctions, wills, and court decisions. This is to provide protection and legal certainty to holders of property rights to land owned in the form of land certificates.²¹

Transfer of Land Rights Based on Court Decisions That Have Obtained Permanent Legal Force (*inkracht*)

Registration of rights based on court decisions must first pay attention to the characteristics of the type and nature of the decision used as the basis for registering rights.²² This is so as not to cause problems in the future. The issue in this case does not specifically mention the sentence ordering the BPN or Land Office to transfer rights. When a person only has the physical possession of the land but does not own the land in accordance with applicable legal provisions or in other words a person does not have a land certificate because this certificate evidence is valid as a strong means of proof regarding physical data and juridical data in accordance with the measurement letter and land book rights for the land owner concerned as stipulated in Article 32 paragraph (1) of PP No. 24 of 1997.

Referring to Article 1 Point 20 of Government Regulation Number 24 of 1997, land certificates function as valid evidence in the eyes of the law so that right holders can easily prove that they are indeed the right holder of the land in accordance with juridical data and physical data on land certificates.²³ Certificates are also useful for preventing land ownership disputes and landowners can carry out legal actions on their

²¹ Addien Ifitah, "Kewenangan Pejabat Pembuat Akta Tanah (PPAT) Dalam Membuat Akta Jual Beli Tanah Beserta Akibat Hukumnya," *Jurnal Lex Privatum* 2, no. III (2014): 49–55, <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/6158>.

²² Danar Fiscusia Kurniaki, "Pendaftaran Hak Atas Tanah Berdasarkan Putusan Pengadilan," *Jurnal Fiat Justitia* 10, no. 3 (2016): 413–568, <https://doi.org/10.25041/fiatjustisia.v10no3.786>.

²³ I Ketut Okta Setiawan, *Hukum Pendaftaran Tanah Dan Hak Tanggungan* (Jakarta: Sinar Grafika, 2019).

land as long as they do not conflict with the law, public order, and decency.²⁴

Regulations in determining the object of land can be carried out transfer of land rights based on a court decision between the Land Office and the Religious Court are very different. The Land Office is obliged to implement if there is a transfer of rights based on a court decision that has the power of execution, but on the other hand, the ruling of the court decision actually raises various interpretations which result in doubts by the Head of the Land Office to follow up on the court decision by making changes to the data in the process of transferring land rights.

Related to the transfer of land rights and the clerk of the Banjar City Religious Court, West Java, should notify the Banjar City Land Office, West Java, regarding the contents of the court decision in which there is a change in the data of the land parcel that has been registered to make changes to the data on the transfer of land rights based on the decision. The provisions that apply at the Banjar City Land Office, West Java, to record changes in land registration data based on court decisions or stipulations of judges, as Article 125 of the Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration, namely :

- (1) Recording of changes to land registration data based on a Court decision or a stipulation of a Judge/Court Chairman by the Head of the Land Office in the relevant land book register and other public registers shall be carried out after receipt of the stipulation of a judge/Court Chairman or a Court decision which has permanent legal force and a copy of the Minutes of Execution from the clerk of the relevant District Court.
- (2) Recording as referred to in paragraph (1) may also be carried out at the request of an interested party by attaching:

²⁴ Adrian Sutedi, *Sertifikat Hak Atas Tanah*, (Jakarta: Sinar Grafika, 2011).

- a. a certified copy of the court decision or judgment which has obtained permanent legal force and a copy of the Minutes of Execution;
- b. the certificate of land rights or property rights over the flat unit concerned;
- c. the identity of the applicant.

Transfer of Land Rights Based on a Court Decision Using a PPAT Deed

The implementation of the transfer of land rights based on a court decision is a form of legal certainty for the parties with an interest in the land, because PP No. 24 of 1997 does not provide accommodation for the regulation of land registration and transfer of land rights without a PPAT deed even though the interested party owns and holds a land title certificate.

Transferring land rights based on a divorce verdict can be made with a grant deed on the basis of a court decision and making a statement letter between the applicant and the respondent to agree to carry out the grant process. This statement letter between the applicant and the respondent is used as a warkah which is a means of proving the physical data and juridical data of the land plot which is used as the basis for registering the land plot at the Land Office. The statement letter can be made under hand and then legalized by a notary to obtain legal certainty.

When associated with the case of divorce verdict number 722/Pdt.G/2020/PA.Bjr, related to the problem of SHM number XXX on behalf of the respondent, the transfer process can be carried out using a grant deed. The contents of the grant deed must clearly state the peace agreement resulting from mediation in court made between the applicant and the respondent.

The contents of the clause of this grant deed contain an agreement on the division of joint property during the marriage period and the peace agreement already has executorial force as in Article 9 and Article 10 of the

mediated peace agreement dated November 30, 2020 that the peace agreement takes effect after the judge grants the applicant's divorce petition so that this peace agreement is final and comprehensive which in divorce verdict number 722/Pdt.G/2020/PA.Bjr the judge granted the request to terminate the marriage between the applicant and the respondent. The provision to comply with this peace agreement is reaffirmed in Article 11 that the applicant and respondent will not legally sue each other in any form for what has been agreed in the peace agreement dated November 30, 2020.

The transfer of land rights can also be done using a grant deed given to the child so that the name on the certificate no longer belongs to the respondent but the land certificate will be in the name of the child. This can be done because based on Article 5 of the mediated peace agreement dated November 30, 2020, relating to child custody falls to the applicant, so that the respondent no longer has rights to the land.

Transfer of Land Rights Based on a Court Decision Without the Use of a PPAT Deed

Article 37 paragraph (1) of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 21 of 2020 concerning Handling and Settlement of Land Cases, that “every court decision that has permanent legal force must be implemented”. The existence of a decision regarding the transfer of rights encourages the parties involved in the dispute to submit to the decision issued by the judge.

Basically, all decisions are *condemnatory* (punishing) and the decision can be considered as a substitute for a deed as a basis for transferring the disputed land object in the decision. Court decisions with permanent legal force are categorized as authentic letters or deeds. As for the transfer of the name of the certificate, it can be done after the verdict

is *inkracht* or has permanent legal force.²⁵ Thus, a court decision can be directly used as the basis for transferring the name of the land without having to make a PPAT deed first or additional letters if all documents for transferring land rights are complete.

Divorce verdict number 722/Pdt.G/2020/PA.Bjr in ruling number 4 only explains that the parties bound by the peace agreement must follow what they have agreed, but the peace agreement has explained in detail about the agreement to transfer land rights from the joint property owned by the parties during the marriage. The peace agreement that has been ratified by the mediator judge will become a legal consideration and become an integral part of the divorce verdict.

Changes in the transfer data of SHM number XXX located at Perum Az-Zahra Kota Banjar, West Java based on a court decision or stipulation is carried out based on the provisions of Article 55 of Government Regulation Number 24 of 1997. The Registrar of the Banjar City Religious Court of West Java needs to notify the Head of the Banjar City Land Office of West Java of the contents of all court decisions that have obtained legal force and provide a copy of the determination of the Head of the Banjar City Religious Court of West Java which results in a change in data regarding registered land parcels or apartment units for the transfer of land rights. The peace agreement that has become an integral part of the divorce verdict number 722/Pdt.G/2020/PA.Bjr must be respected and can be used as a basis for the transfer of land rights by the Land Office of Banjar City, West Java as the verdict is compelling.

In principle, the transfer of land rights under Article 37 paragraph (1) of Government Regulation No. 24 of 1997 may be carried out through sale and purchase, exchange, grant, capital injection into a company, and other legal acts of transfer of rights, except that a transfer of rights through

²⁵ Maya Sartika, "Kedudukan Putusan Pengadilan Yang Sudah Berkekuatan Hukum Tetap Dalam Pembatalan Sertifikat Hak Atas Tanah," *Jurnal Sosial Humaniora* 2, no. 1 (2019): 71–78, <https://doi.org/10.47647/jsh.v2i1.138>.

auction may only be registered if proven by a deed drawn up by a Land Deed Official (Pejabat Pembuat Akta Tanah, "PPAT") authorised in accordance with the applicable laws and regulations.

In certain circumstances, as determined by the Minister or Head of the Land Office, the transfer of rights over a freehold land parcel between individual Indonesian citizens may be registered based on a deed not drawn up by a PPAT, provided that, according to the Head of the Land Office, the degree of authenticity of the deed is deemed sufficient to register the transfer of the relevant rights.²⁶

In theory, a judge's ruling may serve as the basis for the transfer of rights (the change of name on a land certificate). A court decision with permanent legal force falls within the category of authentic deeds or documents. The change of name on the certificate may be carried out once the decision has inkraht or obtained permanent legal force. Thus, a court ruling can directly serve as the basis for the change of name on land ownership without the need to first execute a deed through a PPAT.

The reluctance or refusal by several National Land Offices to process the transfer of land rights from joint property arising from a peace agreement affirmed by a court ruling remains a legal issue that must be addressed to ensure legal certainty. One of the most effective solutions is to bring the matter to the National Working Meeting of the Supreme Court, which is held annually, for discussion and agreement during the Plenary Session. The final outcome may then be formalised through a Supreme Court Circular Letter (Surat Edaran Mahkamah Agung, SEMA) concerning the Implementation of the Results of the Supreme Court Plenary Session.

²⁶ Bernadetha Aurelia Oktavira, "Ketentuan Balik Nama Atas Tanah Harta Gono-Gini" (Hukum Online, 2022), <https://www.hukumonline.com/klinik/a/ketentuan-balik-nama-harta-gono-gini-lt5ceca1e9f2eb3/>.

V. Conclusion

The executorial power in divorce verdict number 722/Pdt.G/2020/PA.Bjr is in the irah-irah which reads “For the Sake of Justice Based on God Almighty”. The irah-irah is a sign that means that the divorce verdict has executorial force that can force the applicant and respondent to carry out the court decision that has been determined by the judge.

Transfer of land rights based on a court decision can be carried out based on the provisions of Article 55 of Government Regulation Number 24 of 1997, the Religious Court needs to notify the Land Office that there is a transfer of land rights contained in the case and the Land Office can immediately carry out the process of transferring the land rights. This transfer of land rights can use a grant deed provided that the contents of the grant deed clause contain a peace agreement resulting from mediation on November 30, 2020 and divorce verdict number 722/Pdt.G/2020/PA.Bjr and make a warkah or statement letter between the applicant and the respondent that they agree to transfer land rights using a grant deed.

References

- Amir, Arivan. “Pengalihan Hak Penguasaan Tanah Menurut UUPA Dalam Rangka Pendaftaran Tanah Pertama Kali.” *Jurnal Repertorium* 8, no. 1 (2019): 51–65. <http://dx.doi.org/10.28946/rpt.v8i1.311>.
- A.S., Bambang Sugeng and Sujayadi. *Hukum Acara Perdata Dan Dokumen Litigasi Perkara Perdata*. Jakarta: Kencana, 2011.
- Famaldiana, Liza Mayanti. “Implikasi Hukum Keterlambatan Pendaftaran Akta Peralihan Hak Atas Tanah (Studi Di Kantor

- Pertanahan Kabupaten Bima).” *Jurnal Ius* IV, no. 3 (2016): 502–11. <https://doi.org/10.29303/ius.v4i3.409>.
- Fatwa Pengadilan Agama Kota Banjar Jawa Barat Nomor 2205/KPA.W10-A25/HK.05/IX/2023 Perihal Jawaban Permohonan Pendapat Hukum atas Saudara Al Furqan, Jawaban Surat Nomor 388/32/79.UP.02/VIII/2023 (Pengadilan Agama Kota Banjar Jawa Barat September 18, 2023).
- Harahap, Yahya. *Ruang Lingkup Permasalahan Eksekusi Bidang Perdata*. Jakarta: Sinar Grafika, 2014.
- H.S., Salim. *Contract Law: Theory and Techniques of Contract Drafting*. Jakarta: Sinar Grafika, 2008.
- Iftitah, Addien. “Kewenangan Pejabat Pembuat Akta Tanah (PPAT) Dalam Membuat Akta Jual Beli Tanah Beserta Akibat Hukumnya.” *Jurnal Lex Privatum* 2, no. III (2014): 49–55. <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/6158>.
- Khairandy, Ridwan. “Landasan Filosofis Kekuatan Mengikatnya Kontrak.” *Jurnal Hukum*, Edisi Khusus, 18 (2011): 36–55. <https://Journal.uui.ac.id/IUSTUM/article/view/7232>.
- Khoiruddin, Aldi Rizki, and Muhammad Rustamaji. “Mengadili Perkara Ne Bis In Idem Kajian Putusan Nomor 957 K/PID.SUS/2018.” *Jurnal Yudisial* 16, no. 1 (2023). <https://doi.org/10.29123/jy/v16i1.570>.
- Kurniaki, Danar Fiscusia. “Pendaftaran Hak Atas Tanah Berdasarkan Putusan Pengadilan.” *Jurnal Fiat Justitia* 10, no. 3 (2016): 413–568. <https://doi.org/10.25041/fiatjustisia.v10no3.786>.
- Mahardhita, Gempur. “Proses Penyelesaian Perkara Harta Bersama Di Pengadilan Agama.” *Jurnal An Nawawi: Jurnal Hukum Dan Ekonomi Islam* 1, no. 2 (2021): 121–44. <https://doi.org/10.55252/annawawi.v1i2.15>.

- Mahkamah Agung RI. Pedoman Pelaksanaan Tugas Dan Admisistrasi Pengadilan, § Buku II (1994).
- Oktavira, Bernadetha Aurelia. “Ketentuan Balik Nama Atas Tanah Harta Gono-Gini.” Hukum Online, 2022. <https://www.hukumonline.com/klinik/a/ketentuan-balik-nama-harta-gono-gini-lt5ceca1e9f2eb3/>.
- Pasal 36 Ayat (1) dan (2) Peraturan Pemerintah Nomor 24 Tahun 1997 tentang Pendaftaran Tanah (n.d.).
- “Pasal 125 Ayat (1) Dan (2) Peraturan Menteri Negara Agraria/Kepala Badan Pertanahan Nasional Nomor 3 Tahun 1997 Tentang Pendaftaran Tanah Sebagaimana Dikuatkan Dengan Surat Kantor Pertanahan Kota Banjar Jawa Barat Nomor 436/32.79.UP.02/IX/2023 Perihal Permohonan Pendapat Hukum Atas Surat Saudara Al Furqan, Jawaban Surat Nomor 388/32/79.UP.02/VIII/2023,” September 6, 2023.
- Perkara Perceraian, No. 722/Pdt.G/2020/PA.Bjr (Pengadilan Agama Kota Banjar Provinsi Jawa Barat December 10, 2020).
- Rahmadhani, Nurlaili Azizah, and Edy Wahjuningati. “Problematika Peralihan Hak Atas Tanah Dasar Jual Beli Di Bawah Tangan Pada Sertifikat Hak Milik Nomor 11949 Di Kelurahan Sidosemo Kota Surabaya.” *Jurnal Hukum Keadilan* 13, no. 1 (2024): 56–69. <https://doi.org/10.56943/judiciary.vl3il.239>.
- Santoso, Urip. *Pendaftaran Dan Peralihan Hak Atas Tanah*. Jakarta: Prenada Media, 2008.
- Sartika, Maya. “Kedudukan Putusan Pengadilan Yang Sudah Berkekuatan Hukum Tetap Dalam Pembatalan Sertifikat Hak Atas Tanah.” *Jurnal Sosial Humaniora* 2, no. 1 (2019): 71–78. <https://doi.org/10.47647/jsh.v2i1.138>.
- Sarwono. *Hukum Acara Perdata Teori Dan Praktik*. Jakarta: Sinar Grafika, 2012.

- Setiawan, I Ketut Okta. *Hukum Pendaftaran Tanah Dan Hak Tanggungan*. Jakarta: Sinar Grafika, 2019.
- Soekanto, Soerjono. *Pengantar Penelitian Hukum, Cetakan Ke Tiga*. Jakarta: UI Press, 2014.
- Soemitro, Ronny Hanitijo. *Metodologi Penelitian Hukum Dan Jurimentri, Cetakan Ke Empat*. Jakarta: Ghalia Indonesia, 1990.
- “Surat Pejabat Pembuat Akta Tanah Kota Banjar Jawa Barat Perihal Permohonan Pendapat Hukum Atas Surat Saudara Al Furqan, Jawaban Surat Nomor 388/32/79.UP.02/VIII/2023,” August 25, 2023.
- Sutedi, Adrian. *Sertifikat Hak Atas Tanah*,. Jakarta: Sinar Grafika, 2011.
- Usman, Rachmadi. *Mediasi Di Pengadilan Dalam Teori Dan Praktik*. Jakarta: Sinar Grafika, 2012.

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