# LEGAL CONSEQUENCE OF NOTARIAL DEED ON THE TRANSFER OF THE RIGHT OF USE TO THE RIGHT TO BUILD FROM THE FATMAWATI FOUNDATION TO PT. MEKAELSA

Shofi Nur Fajriana Kusuma
Lego Karjoko
Sapto Hermawan

**ABSTRACT**

*This study aims to (1) look for civil law instruments used by the aggrieved parties in the court trials at the South Jakarta District Court (Pengadilan Negeri Jakarta Selatan) and the State Administrative Court (Pengadilan Tata Usaha Negara Jakarta) using the available evidence. It also aims to (2) investigate how the court ruling affected the binding power of the cancellation of the rights to use transfer number 82/West Cilandak (remaining) in the name of Fatmawati Foundation that is 210,184m2 and located on Jalan RS.Fatmawati, West Cilandak, Cilandak, South Jakarta, DKI Jakarta. The court ruling also returned the land status into state land as well as reproposing the appeal to obtain the building right of PT. Mekaelsa to the Minister of Agrarian Affairs and Spatial Planning through the head of DKI Jakarta Province Agrarian Affairs and Spatial Planning district office in accordance with the applicable provisions. Into what extent the notary needed to be responsible of the state land ownership transfer is also explored. This research uses (1) normative research, that is the juridical normative. This method was used considering that the starting point of the study was the analysis on the rules of laws which opened the opportunity of land rights transfer. (2) Since this is a normative study, the problem approaches used in this study are the rules of laws approach, conceptual approach, and case study approach. The rules of laws approach is used to analyse the rules of laws related to the ownership right transfer from a legal institution to a body of institution. The conceptual approach is used to analyse legal authorities' point of views, while the case study approach is used by analysing cases that have legal finality. It can be concluded from the study that (1) the Land Relinquishment Deed of a land owned by the Fatmawati Foundation by the Fatmawati Foundation to PT. Mekaelsa written by Sri Rahayu as the notary in Bekasi and the statement of land relinquishment deed written by Vivi Novita Ranadireksa, SH, Mkn., as the notary in Jakartta as well as the release of the right to build certificate in the name of PT. Mekaelsa by the defendant are proven not to violate the Government Regulation of the Republic of Indonesia Number 24 of 2014 about the notary role or the Government Regulation of the Republic of Indonesia Number 24 of 1997 about the land registration*

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Keywords: Legal certainty, equality, dignified justice

## INTRODUCTION

In terms of a land right ownership, the principle of a fair legal certainty is closely related to the right transfer as well as its legal protection. The development of complex legal traffic in the communities requires even more legal certainty on individuals legal relationships as well the legal subjects. The Laws Number 5 of 1960 about the Basic Rules on Agrarian Principles (*Peraturan Dasar Pokok-Pokok Agraria, UUPA*) has become the foundation to obtain legal certainty about land rights for all citizens.

When ones want to get legal certainty, they need to have a written proof which states that they own the rights over an object, in the context of land ownership, that object is a piece of land. That written proof is certificate of land ownership right. Land ownership right certificate is a proof or a tool to prove the right to own over a piece of land. Thus, this certificate is considered as a valuable document/object. When an individual is given a right of ownership over a piece of land, that individual or legal institution has created a legal connection. The presence of that legal connection makes that individual or legal institution liable to legal act related to the piece of land that the individual or legal institution has owned and registered.

Related to certificate as powerful evidence, the certificate released by the District/City Land Affairs Office is still subject to a claim proposed by a party that feels that he or she is disadvantaged by the release of the certificate. The claim is submitted to the State Administrative Court if the land dispute is related to civil law. That claim aims to prove that the certificate is considered invalid thus subject to cancellation. This study investigates one case related to that claim dispute. There is one ruling entitled Jakarta State Administrative Court Ruling Number 143/G/3030/PTUN.JKT (*Putusan Pengadilan Tata Usaha Negara Jakarta Nomor 143/G/2020/PTUN. JKT*) which currently is still in dispute (in appeal) between PT. Mekaelsa that becomes Defendant II Intervention, the minister of Agrarian Affairs and Spatial Planning/The head of National Land Affairs Agency as Defendant I and Dr. Drs., HR. Prabowo Surjono, SH., MH. as the plaintiff. In the ruling, it is stated that the court cancelled the right to use transfer certificate Number 82/West Cilandak (remainder) under the name of Fatmawati Foundation as big as 210.184 $m^2$ located Jalan RS Fatmawati, West Cilandak, Cilandak, South Jakarta, DKI Jakarta and returned its status to become the state's land. Thus, the court also ordered PT. Mekaelsa to resubmit the appeal to obtain the right over the land to the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Affairs Agency through the head of DKI Jakarta District Land Affairs Agency in accordance with the available rules.

Based on the decision mentioned above, a transfer was done from Fatmawati Foundation to the Defendant II Intervention. This transfer was done under the Land Transfer and Use Deed on 5 December 2019 Number 7 and Statement Deed on 5 December 2019 Number 9 which both were made by and signed in front of Vivi Novita Ranadireksa, SH., Mkn., the notary in Jakarta. It was mentioned that the Fatmawati Foundation which is based in Jakarta has transferred all of its rights and authority over a 210.184 $m^2$ land which used to be under the certificate of right to use Number 82/West Cilandak (reminder). The land was transferred to PT. Mekaelsa.

A question then was raised. Why has not there been legal finality on the decision *(inkracht van gewisjde)*? The appeal is still in process in the higher court. The notary has made the deed of Physical Use and Transfer on 5 December 2019 Number 7 and the deed of statement on 5 December 2019 Number 9. Both deeds were made by and signed in front Vivi Novita Ranadireksa, SH., Mkn., as the notary in Jakarta. It was mentioned that the Fatmawati Foundation which is based in Jakarta has transferred all of its rights and authority over a 210.184 m2 land which used to be under the certificate of right to use Number 82/West Cilandak (reminder). The land was transferred to PT. Mekaelsa.

The notary in relation to the case is inevitably closely involved in the continuation of the aforementioned case processes. There was a suspicion that the notary has violated the Laws on Notarial Role by making the deed of Physical Use and Transfer on 5 December 2019 Number 7 and the deed of statement on 5 December 2019 Number 9. It was because despite the fact the case has not ended yet, the notary made the deed of Physical Use and Transfer. The notary is responsible towards the deed created if there is a civil case that can be processed through the civil court. The notary then can be investigated in their capacity of creating authentic deed which should not violate valid regulations. In the civil case investigation that involves a notary, civil law principles are used, in this case the law used is the one that is related to the ownership right. This will also affect the improvement of notarial service. A notary as a public authority has power to arrange authentic deed and as a result, has an important role in the community.

In article 1 section (1) Laws Number 30 of 2004 Jo. Laws Number 2 of 2014 on notarial role it is mentioned. "A notary is a public authority that has power to arrange an authentic deed among other powers as it is explained in this Law." A notarial position is based on trust *(vertrouwens ambt)*. Thus, if an individual is willing to trust *(vertrouwens person)* a notary to keep everything said to them confidential, even when there is some part of what the individual said to them as a notary that is not mentioned in the deed, that notary should not freely tell the content of the deed made and signed in front of them during the discussion to write the deed. The responsibility to keep a deed content classified is not only required by the Laws, but also by the notary themselves. A notary who cannot keep themselves should bear consequences in their practice. They will lose the public trust and no longer be considered as a trusted person *(Vertrouwens person).* Based on the explanation, the writers are interested to investigate the dispute regarding the deeds mentioned at the beginning of the introduction section.

## METHOD

Research methodology is a way of how a study is done. This study used a normative method, that was the juridical normative. This method was used considering that the starting point of the study was the analysis on the rules of laws which opened the opportunity of land rights transfer. According to Sudikno Mertokusumo, normative study is a scientific research procedure to seek for the truth based on legal scientific logic from the normative side. The fixed scientific logic in a normative legal study is built based on the scientific discipline and how normative legal science works, that is the legal science in which the object of study is the law itself. (Johnny Ibrahim, 2007. hlm.57). As the research used juridical normative method, the problem approaches used were rules of law approach, conceptual approach, and study case approach. The approach of rules of laws was used to analyse the rules of laws related to the transfer of ownership from a legal body to its board. The conceptual approach was used to analyse the point of view of legal authorities towards the dispute. Meanwhile, the case study approach was used by analysing cases with legal finality. The law materials used were the primary legal materials, secondary legal materials, and tertiary legal materials. The primary legal materials refer to law regulation. The secondary legal materials refer to legal materials obtained from library research in which the data collector collect data by analysing literature materials that contain primary legal materials, secondary legal materials, and tertiary legal materials. In addition, the secondary legal materials contain legal materials that give further explanation related to the primary legal materials such as studies results and articles from legal researchers which are related to the written research. The tertiary legal materials are, meanwhile, the legal materials that give clues related to the primary and secondary legal materials.

## RESULTS AND DISCUSSION

This part discusses the analysis on the lawsuit submitted by the plaintiff, the defendant's exception (in Indonesia's law context, an exception means a rebuttal submitted by the defendant to response to the lawsuit from the plaintiff), and the legal consideration made by judges.

Analysis on the Plaintiff's Lawsuit

Settlement ruling came from a statement of understanding and agreement entitled 'Mutual Settlement' between the plaintiff and the defendant. It contained a written statement as follows, 'That both parties have agreed and stated that all processes related to cases Number 147/Pdt.G/2001/PN. Jak-Sel, Number 533/Pdt.G/2000/PN. Jak-Sel, Number 124/Pdt.G/2001/PN. Jak-Sel are considered done and all lawsuits were dismissed. The dispute object is the Minister of Agrarian Affairs and Spatial Planning/the Head of the National Land Affairs Agency Decree Nnumber 23/HGB/KEM-ATR/BPN/III/2020 about the Granting of Building Right under the name of PT. Mekaelsa upon a piece of land in South Jakarta area, DKI Jakarta dated 6 March 2020. That piece of land was under the name of Fatmawati Foundation who owned the right to use (remainder). It was before under the ex-certificate of right to use Number 82/West Cilandak under the name of the Health Ministry Department of the Republic of Indonesia. Before it was divided, its original size was 228,798 $m^2$. It was located on Jalan Rumah Sakit Fatmawati/TB. Simatupang, West Cilandak, South Jakarta, DKI Jakarta. The land was still in dispute status. The plaintiff was against the Fatmawati Foundation. Moreover, the land was in collateral foreclose process and waiting for the further execution in the South Jakarta District Court. The plaintiff felt that he had been disadvantaged both material and immaterial by the release of the dispute object. He had filed a petition for a collateral foreclose and follow up execution upon the Settlement Decision upon Fatmawati Foundation's land (which was a part of ex-certificate of right to use Number 82/ West Cilandak under the name of the Department of Health of the Republic of Indonesia). In that Decision Letter, the defendant that was PT. Mekaelsa was ordered to submit an appeal to the head of the South Jakarta Land Affairs Office to release building rights certificate under the name of PT. Mekaelsa on the Fatmawati Foundation's land within three months starting on 6 March 2020. It was clear that the certificate released by the South Jakarta Land Affairs

Office was under the name of PT. Mekaelsa, thus the enterprise would be able to freely sell the land to other party. PT. Mekaelsa would also be able to use the land certificate as a collateral guarantee to get a loan from banks.

The dispute object clearly violated the Government Regulation Number 24 of 1997 about Land Registration as well as paragraph 6 on the Refusal of Transfer of Registration and Encumbrance of Rights, Article 45 section (1) letter e, J0. Article 39 section (1) letter f. The defendant, in releasing the decision letter of granting the building rights to PT. Mekaelsa, has violated the Court Ruling that has legal finality as well as some Decree from the Supreme Courth of the Republic of Indonesia that contained an order to the Head of the South Jakarta District Court to confiscate the land and follow-up execution based on the Settlement Verdict. Based on the Regulation of the Minister of Agrarian Affairs and Spatial Planning/ Head of National Land Affairs Agency Number 9 of 1999 on the Instructional Procedure to Grant and Cancel Rights over A Piece of Land As A Result of Administrative Defect. In the article 106 section (1) and article 107 letter b, it is stated that if there is an administrative defect in the Minister of Agrarian Affairs and Spatial Planning/ Head of National Land Affairs Agency Regulation, the regulation can be cancelled by the Minister themselves. When the court was in progress, the plaintiff experienced disadvantage because PT. Mekaelsa had a building right certificate for the Fatmawati Foundation's land (ex-certificate of the right to use Number 82/West Cilandak (remainder)). The plaintiff had filed for a follow-up execution to the Chief of the South Jakarta District Court since May 2019 for the Settlement Decision Number 147/Pdt.G/2001/PN. West Jakarta dated 27 February 2002 on the Ex. Fatmawati Foundation's Land (ex-certificate of the right to use Number 82/West Cilandak (remainder) under the name of the Department of Health of the Republic of Indonesia with the size of 210,184m$^2$) located in Cilandak, South Jakarta, DKI Jakarta. This decision was supported by the Letter of the Chief of the DKI Jakarta High Court to the Chief of the South Jakarta District Court Number W10.U/3335/HK-07/V/2019 dated 28 May 2019 which stated that there was no reason to delay the follow-up execution on the Settlement Decision, therefore it needed to be proceeded to get closure for legal certainty *(rechtzekerheid)*.

Analysis on The Exception from the Defendant (The Minister of Agrarian Affairs and Spatial Planning/ Head of the National Land Affairs Agency)

The dispute meant by the plaintiff was the dispute with the Fatmawati Foundation instead of PT. Mekaelsa as the Defendant II Intervention that the defendant had issued dispute object for. In the Statement Deed Number 60 dated 29 December 2019 which was made by and in front of Vivi Novita Ranadireksa, SH., Mkn., the Notary in Jakarta by Prijono Arto Negoro, Siti Suryaning Diani, Hasffery and Dwi Librianto, each played role as the Chairman of the Executive Board, Secretary, Supervisory Board and Governing Board of Fatmawati Foundation, it was emphasized that, in relation to two decisions on the same subject and object which were in contrast/against each other between the Fatmawati Foundation and Drs. HR. Prabowo Surjono, SH., which in short was about the inability to process the follow-up execution of the Settlement Verdict dated on 27 Februari 2002 Number 147/Pdt.G/2001/PN. Jak-Sel, the dispute did not relate to status of the land or land object. Moreover, it was also stated that the dispute related to the executive board of the foundation and the compensation received by the foundation. Thus, the problem was our internal problem (Fatmawati Foundation).

Related to the two verdicts related to the similar subject and object which were in contrast with/against each other between the Fatmawati Foundation and Drs. HR. Prabowo Surjono, SH., the Letter of South Jakarta District Court Chief dated 28 December 2018 Number W10-U3/3752/HK.02/12/2018, which was about the appeal related to the issuance of DKI Jakarta High Court Verdict dated on 11 April 2008 Number 402/Pdt/2007/PT. DKI, stated that the execution related to those verdict could not be processed because those two different verdicts were about one single matter that becomes both subject and object. Related to that, the Chief of the South Jakarta District Court had also issued a letter Number W10-U3/2974/HK.02/12/2019 dated on 4 December 2019 about the appeal to receive an explanation/instruction related to the Letter of the Chief of the DKI Jakarta High Court W10-U3/3335/HK.07/V/2019 dated on 28 Mei 2019 to Fatmawati Foundation. The letter, in short also stated that the execution related to the case could not be processed.

Regarding the plaintiff's claim that stated that he would still file for a follow-up execution related to the Settlement Verdict dated on 27 February 2002 Number 147/Pdt.G/2001/PN, Jak-Sel, it had been decided and clearly stated that the follow-up execution could not be done. It was mentioned in the Letter/Response from the Chief of the South Jakarta District Court Nomor W10-U3/2974/HK.02/12/2019 dated on 28 May 2019 upon the Letter of the DKI Jakarta High Court Number W10-U3/3335/HK.07/V/2019 that was filed to the Chief of the South Jakarta District Court.

Analysis on The Statement of Defense from the Defendant II Intervention (PT. Mekaelsa)

Regarding the two verdicts on the same matter which became a subject and object which were in contrast with/against each other between the Fatmawati Foundation and the plaintiff, the deed of the Chief of the Civil Supreme Court to the Fatmawati Foundation dated on 25 January 2017 Number 11/PAN.2/114/2016/SK. Perd., had answered the deeds from the Republic of Indonesia Supreme Court. It was stated. "That the authority to carry out the verdict (execution) fully belongs to the Chief of the District Court that made the verdict in the first level court." Thus, related to the two different verdicts which were in contrast with/against each other on one matter that became a subject and object between the Fatmawati Foundation and the plaintiff, it was the authority of the chief of the South Jakarta District Court to decide whether or not the verdict (execution) could be carried out. The chief of the South Jakarta District Courth had firmly stated for four times through the letters: the letter of the chief of the South Jakarta District Court to the Deputy Chief of the Civil Supreme Court dated on 22 November 2010 Number W10-U3/9317/HK.02.04.XI.2010, the letter of the chief of the South Jakarta District Court to the Fatmawati Foundation dated on 28 December 2018 Number W10-U3/3752/HK.02/12/2018, the letter of the Jakarta District Court Number W10-U3/3751/HK.02/12/2018, and the letter of the chief of the South Jakarta District Court to the Fatmawati Foundation dated on 4 December 2019 Number W10-U3/2974/HK.02/12/2019.

The Settlement Decision dated on 27 February 2002 Number 147/Pdt.G/2001/PN. Jak-Sel to carry on the verdict (execution) was considered as having no legal power both in the Central Jakarta District Court Verdict dated on 31 July 2003 Number 32/Pdt.G/2003/PN. Jkt-Pst, and in the South Jakarta District Court Verdict dated on 16 March 2004 Number 552/Pdt.G/2003/PN. Jkt-Sel. Both verdicts have had legal finality. Thus, the settlement decision should be considered as non-executable. Even if the plaintiff felt that there was unfinished legal matters between him and the Fatmawati Foundation, he could file a suit in the General Court instead of the Administrative Court because the dispute between the plaintiff and the Fatmawati Foundation was a civil

dispute related to the land ownership and management in the Fatmawati Foundation. It had no relation with PT. Mekaelsa (Defendant II Intervention).

Analysis on The Judges' Consideration Analisa

Below are the considerations taken by the judges:

Considering that the plaintiff in his lawsuit had filed for the cancellation of or decision of invalidity upon the Regulation of the Agrarian Affairs and Spatial Planning Minister/Head of the National Land Affairs Agency Number 23/HGB/KEM-ATR/BPN/III/2020 dated on 6 March 2020 on the Granting of Building right to PT. Mekaelsa upon a piece of land in South Jakarta, Considering that during the court investigation, a quo, the court had decided PT. Mekaelsa as the Defendant II Intervention ,

Considering that the dispute object that the plaintiff had filed was the Minister Regulation of the Minister of Agrarian Affairs and Spatial Planning/ Head of the National Land Affairs Agency Number 23/HGB/KEM-ATR/BPN/III/2020 dated on 6 March 2020 on the Granting of Building Right under the name of PT. Mekaelsa upon a piece of land in South Jakarta, DKI Jakarta,

Considering that based on the lawsuit, statement of defense, reply, and rejoinder, and conclusion from each party, thus the judges would decide whether the defendant's action in issuing the dispute object had violated the effective law and regulations and basic principles of good governance or not,

Considering that looking at the size of the land in the dispute object that PT. Mekaelsa had been granted the building right was 208,398 $m^2$ , based on the Regulation of the Minister of Agrarian Affairs and Spatial Planning/ Head of the National Land Affairs Agency Number 3 of 1999 about the transfer of authority on the grating and cancelling of Right over the state land verdict, the defendant had an authority to issue the decision related to the dispute object,

Considering that the appeal filed by Nono Sampono who acted for and on behalf of PT. Mekaelsa (Defendant II Intervention) as a legal entity based on the Perseroan Terbatas (Limited Liability Company) Deed dated on 10 January 2006 Number 11 which was made by and in front of Ambiati, SH., a notary in Bekasi that had been legalized based on the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia on 8 September 2006,

Considering that in the court verification, it had been found legal evidences which were the issuance of the dispute object had been in accordance with the procedures written in Article 39 of the Regulation of Agrarian Affairs and Spatial Planning Minister/ Head of the National Land Affairs Agency Number 9 of 1999 on the procedure of the granting and cancelling of the right over a piece of state's land as well as the right to manage,

The issuance of the dispute object was proven from the authority, procedure, and substance materials not to violate the Minister of Agrarian Affairs and Spatial Planning/ Head of the National Land Affairs Agency Regulation Number 9 of 1999 about the Procedure of Granting and Cancelling the Right over A Piece of State's Land as well as the Right to Manage, the effective rules and regulation, the general principles of good governance. Thus, it was appropriate in accordance with the law to deny the claim submitted by the plaintiff once and for all. The defendant who issued the dispute object was not proven to violate any effective laws and regulation as well as the general principles of good governance. Therefore, the appeal from the plaintiff could be considered irrelevant to be granted and according to the law should be considered as denied.

Analysis on the Role of Notary/PPAT

What could make the Notarial Deed that stated the transfer of the Right to Use from the Fatmawati Foundation to the Building Right of PT. Mekaelsa valid?

To answer this question, according to Suhartiningsih (expert witness), a notary is responsible of people who face them and making sure that those people are really the parties who need to have agreement deed. Furthermore, after the deed is read and all parties' intention is well written, the deed, is then signed by the notary and all parties without any break time/right at that moment. Thus, the judges considered that the defendant when issuing the dispute object did not violate the effective rules and regulation and the general principles of good governance. Therefore, the plaintiff's appeal was not relevant to be granted and according to the law needed to be denied.

**Conclusion**

Based on the theoretical analysis and supported by the result of the analysis as well as referring to the problem statement that has been explained, it can be concluded that in the trial of the dispute object, it was found that from the authority, procedure, and substance side the issuance of the dispute object did not violate the Minister of Agrarian Affairs/Head of the National Spatial Planning Agency Regulation Number 9 of 1999 about the procedure of granting and cancelling rights over a piece of state's land as well as right to manage, rules and regulation, or the general principles of good governance. Thus, the deed of the Right Transfer over the Fatmawati Foundation's land by the Fatmawati Foundation to PT. Mekaelsa which was made by Sri Rahayu, SH., a notary in Bekasi dan the deed of right transfer statement which was made by Vivi Novita Ranadireksa, SH., Mkn., a notary in Jakarta as well as the issuance of the building right under the name of PT. Mekaelsa by the defendant (the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Affairs Agency) were not proven to violate the regulation on the notarial position (Laws Number 2 of 2014). Furthermore, they were also proven not to violate the Government Regulation Number 24 of 1997 on Land Registration.

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Andi Muh Ali Rahman, *Hukum Administrasi Negara & Peradilan Tata Usaha Negara.*

Shofi Nur Fajriana Kusuma
*Faculty of Law*
*Sebelas Maret University, 57127, Surakarta, Indonesia*
*Email: fajriana1996@gmail.com*

Lego Karjoko
*Faculty of Law*
*Sebelas Maret University*
*Sebelas Maret University,571272, Surakarta,Indonesia*
*Email: legokarjoko@staff.uns.ac.id*

Sapto Hermawan
*Faculty of Law*
*Sebelas Maret University*
*Sebelas Maret University, 571272, Surakarta,Indonesia*
*Email: saptohermawanfh@staff.uns.ac.id*