

Court Ruling No. 42/Pid.Sus-TPK/2023/Pn-Bna: Legal Protection Against State Losses, BPN Aceh Jaya Land Certificate Sales

Fatin Nabila*

Universitas Islam Negeri Ar-Raniry Banda Aceh, Indonesia

Email: 210102284@student.ar-raniry.ac.id

Nahara Eriyanti

Universitas Islam Negeri Ar-Raniry Banda Aceh, Indonesia

Email: nahara.eriyanti@ar-raniry.ac.id

*Corresponding author

Abstract

This article analyzes the judge's considerations in Decision No. 42/Pid.Sus-TPK/2023/PN-Bna regarding legal protection against state losses in the sale of land certificates by the Aceh Jaya BPN apparatus, based on the MABI concept. This case focuses on the actions of the Aceh Jaya BPN Apparatus, which forged signatures and traded land certificates illegally, resulting in state losses of Rp 12,607,479,500 (twelve billion six hundred seven million four hundred seventy-nine thousand five hundred rupiah). This not only resulted in state losses but also harmed the community, which was deprived of its rights to land redistribution and the objectives of land reform. This study employs a qualitative approach, using a case study method and a normative juridical approach, to examine the juridical aspects of the sale of land certificates by the Aceh Jaya BPN Apparatus in the context of land redistribution activities related to land reform objectives that resulted in state losses. The results of the study indicate that the implementation of land redistribution activities for land reform objectives is contrary to the concept of *mabi'* because it does not meet the requirements for a valid sale and purchase agreement according to Islamic law, so the transaction is considered

invalid according to Sharia. This study highlights the importance of monitoring the implementation of land redistribution to achieve land reform objectives and enforcing integrity within the Aceh Jaya BPN apparatus to prevent the recurrence of abuse of authority.

KEYWORDS: Judge decision, Land Disputes, State Losses, and *Mabi'* Concept

Introduction

Land is a vital natural resource for all living beings in meeting their basic needs, including food, shelter, and agriculture. The use and utilization of land can provide benefits for the public interest, as stipulated in the 1945 Constitution of the Republic of Indonesia (UUD 1945) Article 33(3), which serves as the constitutional foundation, stating that: "The earth, water, and natural resources contained therein are controlled by the state and utilized for the greatest benefit of the people."¹

Land ownership is a special right granted to an individual and is entirely within their control, meaning that others have no right to utilize the land without the owner's permission. Under Islamic law, an individual who legally owns land may use and act on it as they see fit, such as selling or mortgaging it directly or through an intermediary, subject to the conditions established by Islamic law.²

Property rights and ownership are two distinct concepts that are not always complementary. Property rights over land are rights granted and established by Allah SWT to regulate human relationships with land objects in terms of control, utilization, and management of land, as well as the ability to take legal actions unless prohibited by Sharia law.³ Under Law No. 5 of 1990 on the Basic Principles of Agrarian Law, Article 20 defines ownership of land as a hereditary, strongest, and most complete right that a person may hold over land, which may be transferred or assigned to another person.

¹ Adminjurnal Adminjurnal and Titi Martini Harahap, "ELEMEN-ELEMEN HUKUM ISLAM DALAM HUKUM AGRARIA DI INDONESIA," *Maqasiduna: Journal of Education, Humanities, and Social Sciences* 2, no. 01 (2022), <https://doi.org/10.59174/mqs.v2i01.31>.

² Abdul Rahma Ghazaly, *Fiqh Muamalat* (Jakarta: Kencana, 2018). p. 47

³ Ahmad Syafi'i Sulaiman Jamrozi, "The Concept of Property Rights in Islam: A Maqmhid al-Syari'ah Perspective," *Jurnal Pikir* 2 (2021): 3, <https://ejournal.staidapondokkrempyang.ac.id/index.php/pikir/article/view/303>.

In Indonesia, many lands remain unregistered with unclear ownership, highlighting the importance of the state's role in providing legal certainty to land rights holders through land registration. Land registration results in the issuance of a land certificate, a valid and legally binding document that proves ownership of the land. The National Land Agency (BPN) issues the land certificate. It serves as a legal document that details the physical and legal characteristics of the land, including its area and boundaries, as well as the name of the landowner. This certificate holds high legal standing and is used to prove ownership of land in legal proceedings, such as land disputes.⁴

Law No. 5 of 1960 on the Basic Provisions of Agrarian Law (UUPA) regulates the legal validity of a certificate. This provision states that a valid and legal certificate is one issued through a valid land registration process by the competent authority. A certificate that is valid in the eyes of the law is a certificate issued by the district or city land office and signed by an authorized official. The authorized officials vary depending on the registration system in place. This registration aims to provide legal certainty and protection to land rights holders, enabling them to easily prove the legality of their land ownership.⁵

In Indonesia, the legal provisions regarding land ownership certificates for Indonesian citizens (WNI) are stipulated in Law Number 5 of 1960 concerning the Basic Agrarian Principles (UUPA), which stipulates that only Indonesian citizens (WNI) are entitled to land ownership rights. Under applicable regulations, ownership rights can be transferred and assigned to other parties. To provide certainty regarding land rights, Article 19 stipulates that the government shall register land that has been registered and subsequently issue proof of land rights, commonly referred to as a land title certificate. A certificate refers to strong evidence of the legality of land ownership. The certificate may be used as valid evidence of the physical and legal data contained therein, provided that such data remains consistent with the data in the survey document and land register, as well as the relevant rights in the resolution of disputes.⁶

⁴ Muhammad Yamin Lubis and Abdul Rahim Lubis, *Land Registration Law* (Bandung: Mandar Maju, 2008). p. 167

⁵ Angga B. Ch. Eman, "Resolution of Dual Certificates by the National Land Agency," *Lex et Societatis* 1, no. 5 (2013): 30, <https://ejournal.undip.ac.id/index.php/notarius/article/download/29170/16820>.

⁶ Law No. 5 of 1960 on the Basic Provisions of Agrarian Law

Land is a basic necessity closely related to human existence, serving not only as a place to live, work, and receive inheritance, but also as having significant legal and economic value. Therefore, land certificates are essential as a strong legal foundation to prevent legal disputes that often escalate into cases of land disputes, such as land expropriation, eviction, unclear land ownership status, and other issues requiring serious attention. Land registration aims to prevent future legal conflicts arising from unclear land ownership. The government is responsible for carrying out land registration throughout Indonesia to ensure legal certainty and stability. The government guarantees the right to land through the National Land Agency's implementation of land registration, enabling land-right holders of land rights to easily determine the legal status of a particular piece of land.⁷

One notable case in the context of land disputes involves the sale of land certificates during land redistribution activities related to *land reform*, resulting in state losses caused by the defendant, officials from the Aceh Jaya District Land Agency (BPN). The case began when the defendant, BPN Aceh Jaya, carried out the redistribution of Land Reform Object Land (TOL) in Paya Laot Village, Setia Bakti District, Aceh Jaya Regency, based on Letter No. 54/11.400/1/2016, which proposed land redistribution activities for 2016. The location for the Land *Reform* Object Redistribution activities in Aceh Province in 2016 was designated in Paya Laot Village, Setia Bakti District, Aceh Jaya Regency, covering an area of 507.8 hectares (five hundred seven point eight hectares), classified as state land, by Land History No. 20/10.17-400/RT/2016, issued and signed by the Head of the Aceh Jaya District Land Agency.⁸

During the selection process of eligible recipients for the redistribution of land *reform* objects located in Paya Laot Village, Setia Bakti District, Aceh Jaya Regency, conducted by the Head of the Land Regulation and Planning Section of the Aceh Jaya Land Agency (BPN) as the selection officer for eligible recipients of land *reform object* redistribution, the selection of eligible recipients for the land *reform object* redistribution activity should consider the criteria for the community (potential recipients) who are eligible to receive redistribution of land *reform* objects based on Task Letter Number: 301.3/St-

⁷ Irawan Soerodjo, *Legal Certainty in Land Registration* (Surabaya: Arloka, 2003). p. 249

⁸ Documentation of the Banda Aceh District Court Decision No. 42/Pid.Sus-TPK/2023/PN-Bna

2-11.400.14/VII/2016 and Task Letter Number: 248/400-100/VII/2016. However, in reality, the selection officers for the redistribution of land *reform* objects did not consider the eligibility criteria of the community (potential recipients) who are entitled to receive the redistribution of land *reform* objects located in Paya Laot Village, Setia Bakti Sub-district, Aceh Jaya District in 2016.⁹

This was evident during the land measurement conducted by the BPN Aceh Jaya District survey officers in 2016. After inspecting *the* redistribution site, it was found that the land is free from protected areas and has no existing ownership rights, thereby making it suitable for agricultural use. Consequently, the Head of the Land Regulation and Planning Section at the Aceh Jaya District Office instructed the village chief to collect photocopies of ID cards (KTP) and family cards (KK) to issue ownership certificates. A total of 260 KTP and KK documents were collected from the community and submitted to a BPN Aceh Jaya staff member. From these ID cards and family cards, forged documents were created, including physical land ownership documents (sporadic) and redistribution program participant statements, which were already filled out with the identities of the prospective recipients and signed in 260 copies. However, the owners of the collected ID cards and family cards, who were used as prospective recipients of the Land Redistribution Certificates for *Land Reform* Object (TOL) in Paya Laot Village, Setia Bakti District, Aceh Jaya Regency, had never cultivated the land, filled out, or signed the physical land ownership documents (sporadic) or the participant declaration forms for the redistribution of land *reform* objects () for the redistribution of land reform objects (TOL) in Paya Laot Village, Setia Bakti District, Aceh Jaya Regency. This procedural error prevented the process from proceeding to the next stage, therefore, the certificates cannot be issued, and the Aceh Jaya BPN officials have seized and taken control of the certificates to sell them by creating a sales deed before a notary, as if the defendant had purchased the redistribution certificates from the redistribution recipients, whereas they never sold the certificates or received any money from the defendant.¹⁰

This is inconsistent with the implementation guidelines for the 2016 land reform redistribution activities, and the distribution of certificates does

⁹ Ibid

¹⁰ Ibid

not align with the implementation guidelines for the 2016 *Land Reform* activities regarding the handover of certificates. This also contradicts the annex to the minutes of the handover of ownership certificates for the redistribution of land *reform* objects in 2016, as stated in the letter from the Head of the Aceh Jaya District Land Office, No. 266/5.17.300/XI I/2016 signed by the head of the Aceh Jaya District Land Office, it is stated that the community had signed the entire list of certificate handover for the 2016 redistribution. Still, all the signatures were forged, and the certificates were sold.¹¹

As a result of these actions, the state suffered a loss of Rp 12,607,479,500 (twelve billion six hundred seven million four hundred seventy-nine thousand five hundred rupiah) about the land redistribution activities for *land reform* in Paya Laot Village, Setia Bakti Sub-district, Aceh Jaya District. Not only did this result in financial losses for the state, but it also had adverse social impacts on the community. In the Banda Aceh District Court decision No. 42/Pid.Sus-Tkp/2023/Pn-Bna, the panel of judges ruled on the case involving the defendant. The public prosecutor from the Aceh Jaya District Prosecutor's Office did not accept the decision, deeming it too lenient and inconsistent with the defendant's actions, and thus appealed to the Banda Aceh High Court. However, the Banda Aceh High Court rejected all the arguments and grounds raised by the public prosecutor from the Aceh Jaya District Prosecutor's Office in the appeal memorandum. The appellate court upheld the decision of the Banda Aceh District Court, affirming that the trial court's legal considerations were based on sound and appropriate grounds.¹²

The panel of judges' decision is ironic and imbalanced because the judges ignored the fact that the defendant had neglected to implement the 2016 Land Reform, which stipulated that the community (prospective recipients) would obtain rights to redistributed land, as proven by ownership certificates; however, these certificates were forged and sold. Therefore, the author urgently needs to further examine the panel of judges' considerations regarding the facts of the trial that have taken place, as well as the lack of attention and legal protection from the judge, which is a right of the legally valid plaintiff and for which the plaintiff is the aggrieved party.

¹¹ Ibid

¹² Ibid

This decision raises questions regarding the application of the principles of justice and transparency in the legal process for resolving land disputes in land redistribution activities under *the land reform* program, ensuring the enforcement of the law and providing certainty regarding the status of land to ensure the success of the redistribution program in improving the welfare of the community and not harming the state.

Research Method

In this study, the author conducted research using a normative legal research approach to examine the legal aspects of a case involving the sale of land certificates in the redistribution of Land Reform Objects, which resulted in state losses committed by the defendant, an official of the National Land Agency (BPN) of Aceh Jaya Regency, whose decision was handed down by the Banda Aceh District Court with Number 42/Pid.Sus -TKP/2023/PN-Bna, by examining the principles and legal foundations, as well as the regulations on corruption and their validity. Data analysis in this study employs a qualitative case study method. The data to be analyzed is the Banda Aceh District Court judge's decision No. 42/Pid.Sus-TPK/2023/PN-Bna. This is to obtain a clear picture of the data in the decision. This study aims to analyze the plaintiff's lawsuit, the facts revealed during the trial, and the judge's considerations in rendering the decision, utilizing the case study method.

The data sources encompass everything that can provide information about the data being researched by the author, including informants, respondents, physical evidence, and documents. The primary data in this study are Decision No. 42/Pid.Sus-TPK/2023/PN-Bna as the research material. Meanwhile, for secondary data, the author uses an approach that utilizes existing data obtained indirectly. Secondary data was obtained through library research by reading books, journals, articles, theses, and other materials.

The data collection technique used by the author is in the form of documentary data, namely the court decision of the Banda Aceh District Court No. 42/Pid.Sus-TPK/2023/PN-Bna. This documentary data serves as the primary data for the researcher to understand the sequence of the case, including the subject matter of the lawsuit, trial facts, the judge's considerations, and the court decision. In addition to this data, the author

also requires a review of other literature, including books, articles, internet media, dictionaries, and various studies, both published and unpublished. Data analysis is the process of processing data obtained by researchers to generate answers to the problems formulated in the research questions, based on valid and objective data. At this stage, the collected data will be fully processed to obtain the truth, which will be used to answer the problems raised in the research questions. This will be followed by data presentation and drawing of conclusions. Data analysis in this study employs a qualitative case study method. The data to be analyzed are the decisions of the Banda Aceh District Court No. 42/Pid.Sus-TPK/2023/PN-Bna. To obtain factual results, critical and analytical analysis is required.

Definition of Land Certificates and Legal Consequences

A land certificate is a legal document that contains a copy of the land registration details, as recorded in the survey letter and the land register.¹³ It is issued in accordance with the regulations governing land registration. The issuance of a land certificate is the result of a legal action, specifically the registration of land rights.¹⁴ This is stated in Government Regulation No. 24 of 1997 dated July 8, 1997, regarding Land Registration, particularly Article 1 paragraph (2), which states: A certificate is a document serving as proof of rights as referred to in Article 19(2)(c) of the Basic Agrarian Law, for rights over land, rights to manage endowed land, ownership rights by units of residential buildings, and liability rights, each of which is registered, and land registration serves as a strong means of proof. Based on the provisions outlined in the article above, it can be concluded that a land certificate is a document that serves as proof of rights over land that has been registered and functions as a strong, valid, and legally binding instrument of evidence.

The issuance of a land certificate is the result of a legal act in the form of land rights registration, as regulated in Article 19 of Law No. 5 of 1960 on the Basic Agrarian Law (Basic Agrarian Law), which states: Paragraph (1): To

¹³ Chairul Fahmi et al., "The State's Business Upon Indigenous Land in Indonesia: A Legacy from Dutch Colonial Regime to Modern Indonesian State," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 3 (August 24, 2024): 1566–96, <https://doi.org/10.22373/SJHK.V8I3.19992>.

¹⁴ Chomzah and Achmad Ali, *Land Law, Granting of Land Rights, Certificates and Related Issues* (Jakarta: National Library, 2003). p. 58

ensure legal certainty, the government conducts land registration activities throughout the territory of the Republic of Indonesia by the provisions set forth by government regulations. Paragraph (2): The registration referred to in paragraph (1) includes: a. Surveying, mapping, and demarcation of land; b. Recording of land rights and their transfers; c. Issuance of documents as evidence of valid and legally binding rights. Furthermore, Article 32 of Government Regulation No. 24 of 1997 states that certificates are issued for the benefit of parties holding land rights, based on the physical data contained in survey documents and the legal data registered in the land registry.¹⁵

A land certificate is a form of legal guarantee issued by the government, serving as strong evidence of land ownership. This means that the information contained therein has legal force and must be accepted by a judge as valid evidence, unless there is other evidence to the contrary. The existence of land certificates stems from the land registration process. In agrarian law, land registration is a series of systematic and continuous activities carried out by the state or government in the form of collecting information or data on specific lands in a particular area, processing and storing such data, and presenting it for the benefit of the public to provide legal certainty in the field of land, including the issuance and maintenance of documents evidencing land rights.¹⁶ The implementation of land registration is the responsibility of the state, carried out by the government for the benefit of the public, to ensure legal certainty in the land sector. In the case of activities involving the collection of physical data on land whose rights are registered, this may be delegated to private parties; however, to obtain legal validity, it must be approved by the authorized registration officer, as it will be used as evidence. The data included in land registration essentially covers two areas:¹⁷

1. Physical data refers to information regarding the location, boundaries, and area of the land and any structures or crops on it.

¹⁵ Chairul Fahmi, "The Application of International Cultural Rights in Protecting Indigenous Peoples' Land Property in Indonesia," *Https://Doi.Org/10.1177/11771801241235261* 20, no. 1 (March 8, 2024): 157–66, <https://doi.org/10.1177/11771801241235261>.

¹⁶ Parlindungan AP, *Land Registration in Indonesia* (Bandung: Mandar Maju, 1990). p. 70

¹⁷ Boedi Harsono, *Indonesian Agrarian Law Volume 1 (National Land Law)* (Jakarta: Jembatan, 1999). p. 73

2. Legal data includes information regarding the legal status of the land, the holders of rights, and other factors that may influence it.

However, in practice in Indonesia, land registration is not the responsibility of the state, but rather that of community members who have an interest in registering their land to obtain a certificate as proof of ownership rights. In some areas, there are still many unregistered or uncertified lands. Generally, people apply for a certificate when they intend to buy or sell a piece of land to avoid future disputes.¹⁸

Land registration is conducted based on the principles of simplicity, security, accessibility, modernity, and transparency.¹⁹ The principle of simplicity emphasizes that the rules and regulations governing land registration must be designed to facilitate the community involved in land administration. The principle of security states that the implementation of land registration must provide legal certainty, ensuring that the results of registration can legally prove ownership and that land control is carried out under applicable laws. The principle of accessibility ensures that the land registration process is accessible to all members of the public, particularly those in vulnerable economic circumstances. The principle of up-to-date information emphasizes the importance of comprehensive land registration and accurate, sustainable data, ensuring that the information stored at the National Land Agency remains current and reflects the actual situation on the ground. The principle of openness ensures that the public can easily access data recorded at the National Land Agency, thereby maintaining transparency in land information.

Under Article 3 of Government Regulation (GR) No. 24 of 1997 amending Government Regulation No. 10 of 1961 on Land Registration, the purpose of land registration is:

1. Providing legal certainty and legal protection for holders of rights to land, apartment units, and other registered rights, so that they can easily establish themselves as the holders of the relevant land. Therefore, rights holders can present and prove a certificate as

¹⁸ Sri Wahyuni et al., "THE ROLE OF COURTS IN RESOLVING CASES OF BANKRUPTCY OF ISLAMIC BANK CUSTOMERS," *JURISTA: Jurnal Hukum Dan Keadilan* 7, no. 1 (June 10, 2023): 1–23, <https://doi.org/10.22373/JURISTA.V7I1.42>.

¹⁹ Harsono...p. 74

evidence of land ownership. This is the primary purpose of land registration, as regulated in Article 19 of the Basic Agrarian Law. Obtaining a certificate is not merely an administrative requirement but a right guaranteed by law for holders of land rights.

2. Providing access to information for interested parties, including government agencies, so that they can easily obtain the necessary data for legal transactions regarding registered land parcels and apartment units. The presentation of such data is carried out by the district/city land office, known as the general register, which consists of registration maps, land lists, measurement certificates, land books, and name lists. Interested parties, especially prospective buyers or creditors, need and have the right to know the data stored in the lists at the land agency office before undertaking legal actions on a piece of land or an apartment unit. The purpose is to ascertain the legal status of the land.
3. The implementation of proper land administration and the regular registration of land are the principles and manifestations of proper land administration. To achieve adequate land administration, it is expected that every parcel of land and apartment unit, including transfers and cancellations of land rights, must be registered.

Land certificates have practical value and benefits for each party that owns or controls a piece of land:

1. With a land certificate, ownership rights over a piece of land can be proven legally and convincingly.
2. Land certificates are essential for bank loan applications, as banks consider land certificates as a secure form of collateral.
3. For heirs, the existence of a land certificate inherited from the deceased ensures the validity of the heirs' rights to the inherited land.
4. In a sale and purchase transaction, buyers of land with a certificate tend to pay a higher price than for land without a certificate, because the certificate provides legal certainty and security of ownership rights for the buyer.

Proof of land rights is a land certificate used as evidence of ownership.²⁰ The physical and legal data contained in the certificate must be accurate, as it is essential in carrying out daily legal actions and in court proceedings. However, at present, we still observe and find that many certificates owned by individuals cannot be used as evidence in court land disputes. Therefore, the certificates often no longer protect an individual's rights to a piece of land. One of the causes of this is that the certificates they hold are legally flawed.

A defective legal certificate is proof of land rights (land title certificate) that has been issued and contains several elements that cause it to be invalid, because its administration involves elements of coercion, error, fraud, formal procedures that have not been followed or have been violated, as well as legal consequences of its invalidity.²¹

The causes of all this may be due to the legal defect in the certificate they possess. Legal defects in the existence of a land certificate occur as a result of:

1. Administrative defects, including procedural errors, errors in the subject of the right, and errors in the calculation of land area. This occurs when an applicant applies for the issuance of a certificate to the National Land Agency (BPN), and the certificate is issued. Still, it is later discovered that the issuance violates administrative procedures. To address this issue, the BPN will typically conduct a re-examination through research and prevent any transfers or changes of ownership.
2. Legally defective certificates based on court rulings. Legally defective certificates due to court rulings arise when, during the court-initiated land registration process, elements of fraud, coercion, or forgery are discovered in the application for certificate issuance, resulting in the certificate being invalidated. Fraud refers to the manipulation of data so that the party who is not entitled becomes entitled. Coercion can occur when someone is forced to provide false information about land ownership, even though they are not entitled to the land. Forgery

²⁰ Chairul Fahmi, "THE DUTCH COLONIAL ECONOMIC'S POLICY ON NATIVES LAND PROPERTY OF INDONESIA," *PETITA: JURNAL KAJIAN ILMU HUKUM DAN SYARIAH* 5, no. 2 (2020), <https://doi.org/10.22373/petita.v5i2.99>.

²¹ Rusmandi Murad, *Resolution of Legal Disputes Over Land* (Bandung: Alumni, 1991). p. 29

occurs when the required documents are not legally available, so the identity is forged using a Resident Identity Card (KTP).

Efforts to resolve or address issues arising from defective legal certificates can be undertaken as follows:

1. Administrative resolution by the National Land Agency (BPN)
The National Land Agency can resolve land disputes administratively through complaints or objections from the public. The BPN's efforts to resolve land disputes between the disputing parties through non-litigation channels include mediation, conciliation, or other measures.

2. Resolution through the courts

Suppose resolution through consultation between the disputing parties is unsuccessful, and the disputing parties do not accept the administrative resolution by the BPN. In that case, the final option is to go through the court. During the court proceedings, there is a possibility that the plaintiff's claim may be accepted or rejected. If the lawsuit is denied, it indicates that the certificate issued is valid according to the law and by the applicable procedures. Thus, the Head of the BPN can issue a decision rejecting the third party's objection to the certificate. As a consequence of this rejection, the decision regarding the certificate that has been issued remains legally binding and valid.

The Concept of *Mabi'* in Islamic Commercial Law

In Islamic law, commercial activities are regulated through binding (prescriptive) principles to create fair and beneficial transactions. The purpose of these regulations is to prevent disputes between individuals, protect the interests of society in the buying and selling process, and avoid elements of uncertainty or *gharar*.²² If these provisions are not fulfilled or

²² M. Sholahuddin, *Principles of Islamic Economics* (Jakarta: PT Raja Grafindo, 2007). p. 188

ignored, the transaction is considered invalid. Islam emphasizes that there are methods that are by Sharia law, but there are also those that are contrary to the common interest and are prohibited in Islam. This distinction is based on the fundamental principle that the acquisition of wealth that benefits one party but harms another is considered *ghair nasyu'* (not by Sharia). In contrast, how people mutually consent and both benefit and achieve justice is *nasyu'*.

In the context of fiqh, the object in a sale and purchase transaction is called *mabi'*, which is a commodity that is legally permissible to be sold and purchased and meets certain conditions. *Mabi'* refers to goods that can be measured, weighed, have a price value, and can be exchanged. The item must be identifiable and distinguishable through clear characteristics or specifications, as its characteristics have been generally determined; therefore, there is no need for a specific definition for each transaction. Fiqh scholars have established standards and principles of openness regarding *mabi'* as the object of sale and purchase to provide clarity and justice so that the parties can use them when conducting sale and purchase transactions.²³

One of the requirements in a sale and purchase agreement is the concept of *mabi'* as part of the *ma'qud alaih* (meaning "something that is agreed upon"). In terms of terminology, *ma'qud alaih* refers to property or goods that will be transferred from one party to another in a transaction. *Mabi'* is an item that can be exchanged for something else, namely property that is exchanged for money in a sale and purchase transaction, and *mabi'* is the object of sale and purchase that includes all types of goods that can be seen in terms of quantity, weight, size, and measurement.²⁴

According to Islamic jurists, several criteria must be met for a *mabi'* or item to be legally sold, including: the item being sold must have value, be usable in an emergency, be legally owned, be transferable to the buyer, be known to both parties, and be in a pure state. In practice, goods that meet the requirements are considered legally valid (legal) for sale.²⁵

In the concept of fiqh muamalah, the discussion of *mabi'* as the object of a transaction, along with its requirements, has received significant attention from fiqh scholars. An item that is the subject of a sale or purchase

²³ Rachmad Syafe'i, *Fiqh Muamalah* (Bandung: Pustaka Setia, 2000). p. 86

²⁴ Abdul Aziz Muhammad Azzam, *Fiqh Muamalat: Transaction Systems in Islamic Fiqh* (Jakarta: Amzah, 2014). p. 47

²⁵ Oni Sahronu, *Fiqh Muamalah: Dynamics of Contract Theory and Its Implementation in Sharia Economics* (Depok: Rajawali Press, 2017). p. 38

must meet specific requirements for the transaction to be considered legally valid. This indicates that the parties to the transaction have fulfilled all the elements that constitute the validity of the contract. The criteria related to the substantive conditions *of mabi'*, according to the fuqaha, that must be fulfilled are:

In implementing the transaction object, determining the sale and purchase prices aims to create balance and set the sale and purchase prices for an object under Islamic law.²⁶ The criteria *for determining the conditions of the transaction* must include elements such as the quality of the goods, their condition or suitability, the equivalence of the realized price, and the price structure. In this regard, neither party will question the existence of the goods being sold, as both the seller and the buyer are fully aware of the goods' validity. For example, for the party conducting the sale and purchase, the goods being sold must have value; this value can be readily determined and recognized beforehand. Based on its quality, the object being sold must be clearly defined and understood by both parties.²⁷

The conditions for the goods (*mabi'*) as the object of a sale and purchase must meet the following requirements:

1. Purity

Purity of the goods in the context of sale and purchase means that the goods being sold must be in a pure state, meaning they are not included in the category of impure goods or goods prohibited by Islamic law. This is based on the teachings conveyed by the Prophet Muhammad (peace be upon him): "Jabir (may Allah be pleased with him) heard the Prophet (peace be upon him) say: 'Verily, Allah has forbidden the sale of wine, carrion, pigs, and idols...'"²⁸

2. Beneficial

In essence, every item that is the subject of a sale must be something that has a benefit, such as something that can be consumed (rice, fruits, fish, and so on). Therefore, what is meant by an item that can be utilized is an

²⁶ Armida, "Analysis of Quality Control in Coffee Bean Sales Transactions from an Islamic Law Perspective," *Journal of Islamic Law and Islamic Social Institutions* 9, no. 2 (October 2021): 405, <https://jurnal.staialhidayahbogor.ac.id/index.php/am/article/view/1321>.

²⁷ Yuspin and Wardah, "The Application of Sharia Principles in the Implementation of Murabahah Contracts," *Journal of Legal Studies* 10, no. 1 (March 2007): 59, <https://repository.metrouniv.ac.id/id/eprint/3167/>.

²⁸ Teungku Muhammad Hasbi Ash Shiddieqy, *Collection of Legal Hadiths* 7 (Semarang: PT. Pustaka Rizki Putra, 2001). p. 3

item whose use is permitted by Islamic law, meaning that the utilization of the item does not violate the applicable rules and regulations.

3. Owned by the seller

When entering into a sales agreement for a good, the seller must either have legal ownership of the good or have obtained the authority to sell from the legal owner of the good. The good being sold is not stolen, pledged, or disputed.

4. Can be transferred

Goods can be transferred, meaning the seller (whether as the owner or as an authorized party) must deliver the goods that are the subject of the sale to the buyer by the agreed-upon form and quantity at the time of delivery. The Prophet Muhammad (peace be upon him) said: "...and from Ibn Mas'ud, that the Prophet (peace be upon him) said: "Do not buy fish in water, for that is gharar."²⁹ Based on this legal provision, it can be concluded that the item being sold must have a clear and tangible form, and its quantity must be determinable in terms of size or type of item.

5. Clear object of sale

The item being sold must be presented. If, in a sale, the condition of the item and its price are unknown, the sale agreement is invalid, as it may be considered to contain fraud or ambiguity that could harm one of the parties.

Analysis of the Judge's Considerations in Decision No. 42/Pid.Sus-TPK/2023/PN-Bna

The decision examined by the author is a case at the Banda Aceh District Court No. 42/Pid.Sus-TPK/2023/PN-Bna, in which the judge examined and decided on a case related to a land dispute in the sale of land certificates in a land redistribution program for *land reform*, which caused state losses committed by the Aceh Jaya district BPN (National Land Agency) officials, which had been finalized and resolved through litigation. In the

²⁹ A. Qadri Hassan, Translation of Nailul Authar (Collection of Legal Hadiths) (Surabaya: PT Bina Ilmu, 1983). p. 1652

decision, the facts of the trial can be traced, as well as the polarization of the case between the community (potential recipients of land redistribution under *the land reform program*) and the BPN officials of Aceh Jaya regarding the land redistribution activities of the Tanah Obyek *Landreform*, which were found to be inconsistent with the proposal for land redistribution activities in 2016, resulting in state losses and the deprivation of the community's rights to the redistributed land, as well as the illegal issuance of land certificates.³⁰

Based on the lawsuit filed by the recipients of the redistributed land *reform land* and the legal proceedings, including rebuttals and counter-rebuttals, as well as all the facts presented in court, the panel of judges made several legal considerations regarding the case. The judicial considerations referred to in this study are the legal considerations outlined in Court Decision No. 42/Pid.Sus-TPK/2023/PN-Bna, the court stated that in the issuance of land certificates for the redistribution of *land reform* objects by the Aceh Jaya BPN officials, there was forgery of signatures and the sale of land certificates, rendering the certificates invalid.

The judge's consideration of the case of land sales by the Aceh Jaya BPN officials was significantly influenced by the audit findings of state losses amounting to Rp. 12,607,479,500.00 (Twelve Billion Six Hundred Seven Million Four Hundred Seventy-Nine Thousand Five Hundred Rupiah). Thus, the actions taken exceeded the provisions of Article 33 of Government Regulation of the Republic of Indonesia No. 18 of 2016, which regulates land control to ensure redistribution proceeds by regulations and does not harm the state. This audit report is considered valid evidence and forms the basis for the judge's consideration in determining state losses.

The judge considered the magnitude of the loss as a crucial factor in determining the severity of the sentence. There were attempts at negotiation within the judicial mafia regarding Decision No. 42/Pid.Sus-TPK/2023/PN-Bna. State loss occurs when there are elements of unlawfulness, disparity, and abuse of authority.

³⁰ Jurnal Ekonomi dan Perbankan Syariah et al., "A Challenge and Development of Corporate Zakat Distribution on Shari'ah Commercial Banks in Nanggroe Aceh Darussalam," *Al-Ammal: Jurnal Ekonomi Dan Perbankan Syari'ah* 17, no. 1 (May 9, 2025): 63–76, <https://doi.org/10.70095/ALAMWAL.V17I1.18465>.

The appellate court increased the defendant's sentence, taking into account the magnitude of state losses and the defendant's role in the land certification process that resulted in approximately 260 Certificates of Ownership (SHM). This process could only have occurred due to the involvement of the head of the Aceh Jaya Land Office, who signed the documents, thereby leading to a criminal conspiracy that resulted in state losses. The state losses in the land certificate redistribution case are estimated to reach approximately Rp 12.6 billion, comprising state land that was certified and sold to recipients who were not eligible farmers, thereby preventing the land from being cultivated for the redistribution objectives.

In the judge's assessment, the state losses were calculated based on trial evidence and by Supreme Court Circular No. 4 of 2016, which allows judges to determine the extent of state losses based on evidence presented in court, rather than solely relying on the state audit report from external audits. This is also evident in other cases in Aceh, where judges assessed state losses differently from the calculations of prosecutors or the BPKP (Financial and Development Supervision Agency).

The sentences imposed on BPN officials and defendants related to land redistribution in Aceh Jaya vary, ranging from one year to five years in prison for the head of the land office, as well as fines and the obligation to pay compensation for state losses already enjoyed by the defendants.

There has also been criticism from the public and transparency organizations regarding the verdict, which is considered lenient, as well as allegations of judicial corruption in this case. As a result, the public prosecutor plans to appeal for a harsher sentence in line with the losses incurred by the state. In conclusion, the judge considered the state losses in the land certificate redistribution case in Aceh Jaya by evaluating the trial evidence, the role of the National Defense Agency (BPN), the value of the misused land, and the principles of social justice, resulting in a sentence tailored to the level of involvement and the losses incurred.

Court Findings in Judge's Decision No. 42/Pid.Sus-TPK/2023/PN-Bna

In the main case, it was revealed that the Aceh Jaya BPN office carried out land redistribution activities for *land reform* in 2016 covering an area of

507.8 hectares located in Paya Laot Village, Setia Bakti District, Aceh Jaya District, which is classified as state-owned land and has been declared clean and clear based on the results of the inventory and identification of the objects, which is one of the stages of the TOL redistribution activity, stating that the land in question is correct.

It was confirmed in court that the public prosecutor had presented Aidil Putra as an auditor for the examination and/or calculation of state financial losses, who concluded that there had been state financial losses resulting from *the land redistribution* activities for the 2016 fiscal year, totaling Rp. 12,607,479,500.00, - (Twelve Billion Six Hundred Seven Million Four Hundred Seventy-Nine Thousand Five Hundred Rupiah) using the method of calculating the number of certificates issued along with their areas, Calculating the Taxable Value of the Tax Object (NJOP) by the regulations issued by the Regent (per square meter), Calculating the total financial loss to the state by multiplying Item A by Item B ($A \times B$).

Considering that it was revealed in court proceedings that the expert witness, Aidil Putra, was unable to explain in detail the total loss of Rp. 12,607,479,500.00 (Twelve Billion Six Hundred Seven Million Four Hundred Seventy-Nine Thousand Five Hundred Rupiah). The expert was also inconsistent in identifying state-owned land and state land. In performing his duties, he neglected his responsibilities, which, in our opinion, resulted in the primary functions of the District Inspectorate, as well as the authority of the District Inspectorate in determining state losses and calculating state losses, being incorrect.

Expert Aidil Putra, as the district inspector of Aceh Jaya, also never coordinated or reported to the Governor of Aceh, who represents the central government, regarding the calculation of state financial losses incurred. Furthermore, the Governor of Aceh, through his secretary, never conducted supervision involving the institution responsible for internal oversight of government activities in handling reports of abuse of authority and/or financial losses to the state/Thus, the actions taken by the expert have exceeded the authority of the expert as stipulated in Article 33 of Government Regulation of the Republic of Indonesia Number 18 of 2016 on Regional Government Institutions, which states that the National Land Agency is a vertical institution, whose accountability and supervision are vested in the relevant government agency, and the National Land Agency also has its audit institution, therefore, the experts from the Aceh Jaya

Regency Inspectorate are required to actively coordinate with the relevant institutions. This is because the funding source for the 2016 land redistribution activities related to *land reform* comes from the Budget Implementation Allocation (DIPA) of the National Land Agency.

The state land agency and its experts have neglected their duties, particularly the primary functions and authority of the district inspectorate in determining state losses and the method used to calculate such losses by the Aceh Jaya District Inspectorate, which, in our opinion, is incorrect. Aidil Putra, as the district inspector of Aceh Jaya, has never coordinated or reported to the Governor of Aceh, as the representative of the central government, regarding the activities related to calculating state financial losses caused, nor has the Governor of Aceh, through his SKPA, (Aceh Regional Government Agency) has also never conducted supervision involving institutions responsible for internal government oversight in handling reports of abuse of authority and/or financial losses to the state or region. As a result, the actions taken by the expert have exceeded the authority of the expert as stipulated in Article 33 of Government Regulation of the Republic of Indonesia Number 18 of 2016 on Regional Government Agencies.

Regarding the data, documents, and information used to calculate the amount of state losses, the Aceh Jaya District Inspectorate Team obtained them from investigators at the Aceh Jaya District Prosecutor's Office. The Aceh Jaya District Inspectorate Team only calculated the amount of state losses based on general data and assumptions, and admitted that they did not understand how the state losses occurred in connection with the 2016 toll road redistribution activities in Aceh Jaya District. An auditor in the collection and testing of evidence should adhere to the Internal Government Oversight Audit Standards (SA-APIP), which stipulate that auditors must collect sufficient, competent, and relevant evidence. Additionally, Regulation No. 01 of 2007, dated March 7, 2007, of the State Audit Agency, states: "Sufficient, competent, and relevant evidence must be obtained to serve as a sufficient basis for the findings and recommendations of the auditor."

Based on the above, it can be concluded that the public prosecutor cannot prove the actual occurrence of state losses. This is because the public prosecutor only requested that the Aceh Jaya District Inspectorate calculate the amount of losses based on available general data.

Based on applicable laws and regulations, as well as the legal facts revealed in court, as mentioned earlier, the audit results on state losses conducted by the Aceh Jaya District Inspectorate are invalid under the law because an unauthorized body carried them out, and no actual state losses were found. Therefore, the element "capable of causing harm to state finances or the national economy" is deemed not fulfilled.

Review of the *Mabi* Concept in Judgment No. 42/Pid.Sus-TPK/2023/PN-Bna

Judgment No. 42/Pid.Sus-Tpk/2023/Pn-Bna Regarding the Sale of Land Certificates by Aceh Jaya BPN Officials: Reviewing the *Mabi'* Concept. The *Mabi* concept, as reviewed in the sale of redistributed land certificates in Aceh Jaya, can be understood from the perspective of *fiqh muamalah*, specifically in the context of buying and selling.

Mabi' is the object or item being sold in a sale and purchase transaction. In *fiqh* terminology, *mabi'* is something that can be identified and distinguished from other items through specific criteria. *Mabi'* must be an item that has value, can be used, owned, transferred, known by both parties, and pure (not impure). In the context of buying and selling, *mabi'* can be tangible goods that can be measured, weighed, or valued, thereby making the transaction valid and meeting the requirements of an Islamic sales contract.

In a sale, in addition to *mabi'* (the item being sold), there is *tsaman* (the price). *Tsaman* is typically a medium of exchange, such as money or another item. Not all prices can be *mabi'*, but all *mabi'* can be used as *tsaman*. For example, if a kilogram of sugar is sold for Rp 1,000, then the sugar is *mabi'* and the Rp 1,000 is *tsaman*.

Land redistribution certificates in Aceh Jaya are documents that indicate ownership rights to land resulting from redistribution. In the context of Islamic jurisprudence, these certificates can be considered as objects of sale (*mabi'*) if they meet the validity requirements for the object of the transaction, namely, clarity regarding its existence, value, and ownership. The sale of redistribution certificates must adhere to principles of fairness and not harm others. It must comply with Islamic law governing sales to prevent fraud or ambiguity regarding the object of the transaction.

In practice, the sale of redistribution certificates must ensure that the object being sold is a valid and clearly defined right to land. Additionally, the price or *tsaman* must be agreed upon transparently and must not contain elements of *gharar* (uncertainty) or *riba*. This is important to ensure that the sale of redistribution certificates in Aceh Jaya is legally valid under Islamic law and benefits all parties involved.

The concept of *mabi'* in the sale of redistribution certificates in Aceh Jaya is that the certificate must be considered a valid object of purchase, meet *fiqh* requirements, and the transaction must be conducted with principles of justice and transparency under Islamic law. A review of *mabi'* (the object of sale) in cases of redistribution land certificate sales in Aceh Jaya that have harmed the state and society reveals serious deviations and significant losses.

In this context, redistribution of land certificates is *mabi'*, i.e., objects of sale. However, these certificates not only function as ownership documents but also as symbols of land rights that should be managed and distributed fairly for the benefit of the community and the state.

Based on reports and court rulings, there have been cases of corruption in the issuance of redistribution land certificates in Paya Laot Village, Setia Bakti District, Aceh Jaya, involving local officials from the National Land Agency (BPN). The modus operandi involved the illegal issuance of certificates, resulting in state losses of Rp 12 billion.

The illegal sale or issuance of redistributed land certificates has resulted in financial losses to the state and compromised social justice. The community that should have received land rights has been disadvantaged because the land was not distributed properly and transparently. Additionally, allegations of judicial mafia involvement and a lenient legal process have exacerbated injustice and eroded public trust in the enforcement of the law.

According to *fiqh muamalah*, *mabi'* must be a valid object, with a clear ownership status, and not detrimental to other parties. The redistribution of land certificates issued illegally does not meet these requirements because their ownership status is flawed, resulting in social and state losses. Therefore, the sale and purchase of these certificates is contrary to the principles of justice and the validity of the sale and purchase agreement.

Conclusion

Based on the explanations provided above, it can be concluded that in the Banda Aceh District Court's decision in Case No. 42/Pid.Sus-TPK/2023/PN-Bna regarding state losses from the sale of land certificates by the Aceh Jaya BPN officials under the concept of mabi in the redistribution of land *reform* objects is contrary to the implementation guidelines for the redistribution of land *reform* objects in 2016. The distribution of certificates does not comply with the provisions regarding the handover of certificates. This is also contrary to the annex to the minutes of the handover of ownership certificates for the redistribution of land *reform* objects in 2016, No. 266/5.17.300/XI I/2016 signed by the Head of the Aceh Jaya District Land Office, it is stated that the community had signed the entire list of certificate handover for the 2016 redistribution. Still, all the signatures were forged, and the certificates were sold, resulting in state losses amounting to Rp 12,607,479,500. (Twelve Billion Six Hundred Seven Million Four Hundred Seventy-Nine Thousand Five Hundred Rupiah) Not only did it cause financial loss to the state, but it also had adverse social impacts on the community.

The illegal sale or issuance of redistributed land certificates has resulted in financial losses to the state and compromised social justice. The community that should have received the right to the land has been disadvantaged because the land was not distributed properly and transparently. Additionally, allegations of judicial mafia involvement and a lenient legal process have exacerbated injustice and eroded public trust in the enforcement of the law. The certificates in question, which are redistribution land certificates in Aceh Jaya, were sold illegally, resulting in losses to the state and the community, as they do not meet the legal requirements for land sales. This case has resulted in state losses of billions of rupiah, undermined social justice, and eroded public trust in the relevant institutions. A firm and transparent legal response is urgently needed to restore confidence and ensure that land redistribution proceeds by the principles of justice and the rule of law.

Based on Decision No. 42/Pid.Sus-TPK/2023/PN-Bna, it is recommended that the Aceh Jaya National Defense Agency conduct an evaluation of the land management system, particularly in the land redistribution process, strengthen the integrity of officials, and instill the

principle of *Mabi'* in Islamic law, which prohibits the sale of something that is not one's right. Additionally, the judicial institutions, particularly the panel of judges, are advised to issue more decisive and proportional rulings against perpetrators of corruption, ensuring the maximum recovery of state losses. Academic recommendations are made to students of Islamic economic law to conduct further research on this ruling from various perspectives.

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