

# Legal Analysis of Transfer of Rights to Inherited Land Without the Consent of the Legal Heirs in Indonesia

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## ABSTRACT

This study aims to analyze the judge's considerations in making decisions on cases of transfer of rights to inherited land without the consent of the legitimate heirs and to analyze legal protection for the parties in Court Decision Number 84 / Pdt.G / 2024 / PN.Mtr. The research method used is normative legal research, using a legislative approach, a conceptual approach and a legal approach. The results of the study can be concluded that the judge's considerations in Decision Number 84/Pdt.G/2024/PN.Mtr are based on the Jurisprudence of Supreme Court Decision No. 34K/Sip/1960, dated February 3, 1960. Protection of rights is not only in the law in the book's but also based on law in action by paying attention to legal facts and empirical facts. And legal protection regarding the rights of heirs, both preventive protection and repressive protection, are based on statutory regulations concerning inheritance rights as stated in Article 833 Paragraph (1), Article 834, Article 1365 of the Civil Code, which are the basis for filing a lawsuit who have not be able to fully guarantee the rights of heirs and the court decision in Decision Number 84/Pdt.G/2024/ PN.Mtr.

**Keywords-** Transfer of Inheritance Land Rights, Heirs, Legal Protection

## INTRODUCTION

The need for land is increasing in line with the increasing population and the increasing needs of other natural resources, especially land. Land as part of the earth has a very important function because the role of land is also the main capital in the lives of the majority of Indonesian people. In addition, the role of land is very influential in every human activity, as a place to build buildings, both as a place to live and a means of other activities until death humans still need land for burial (Kusuma & Purwaningsih, 2024, p. 2). In Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia it is determined:

*"that the earth and water and the natural resources contained therein are controlled by the State and used for the greatest prosperity of the people."*

Transfer of rights to a plot of land is a legal event in which ownership rights to a plot of land are transferred from one rights holder to the person to whom the rights are transferred. Transfer of rights is included in legal actions that are carried out deliberately with the aim of transferring land rights from the person transferring the rights to the recipient of the rights. In this case, what is included as a form of transfer of land rights includes buying and selling land, land endowments, and land inheritance, as well as land gifts (Hidayatulloh, 2023, p. 2).

Transfer of land rights through inheritance or sale and purchase must also be carried out by the authorized party at the Land Office. In addition to providing legal certainty, the implementation of the transfer of land rights due to inheritance or sale and purchase at the Land Office can provide legal protection and justice for the community.

The legal problem of the sale and purchase agreement of inherited land without the knowledge of the heirs still occurs in the community. This means that there is an attempt to control the inherited land without sharing it with other heirs. This becomes a civil problem that must be resolved through the courts, because the parties assume that the dispute over the inherited land cannot be resolved through family and mutual deliberation as the transfer of land rights through inheritance that does not involve the heirs.

The death of a person has legal impacts and consequences on oneself, family, society and the surrounding environment. With death, other legal consequences also arise, namely the existence of a legal relationship involving the heirs regarding all their inherited assets before they are transferred/ transferred to the buyer (Irawan, 2018, p. 4).

Transfers of land originating from land sales, land endowments, and land inheritances, as well as land grants can then be registered for new rights through the Complete Systematic Land Registration Program organized by the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency of the Republic of Indonesia. Article 1 Number 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 6 of 2018 states that:

*"Complete Systematic Land Registration, hereinafter abbreviated as PTSL, is a Land Registration activity for the first time carried out simultaneously for all Land Registration objects throughout the territory of the Republic of Indonesia in one village/ sub-district or other name of the same level, which includes the collection of physical data and legal data regarding one or more Land Registration objects for the purpose of registration."*

The Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) recorded the number of registered and certified lands as of April 28, 2024. Data published by the ministry recorded an area of 112,081,933 registered lands. The number of certified lands reached 91,357,600. The data is a recap compiled by the ministry. It was explained that the Ministry's target in 2024 was to reach 120 million registered land plots, which until now (data as of April 28, 2024) has reached 112,081,933 registered land plots (2024).

Where the Land Rights Certificate is a proof of rights as referred to in Article 19 paragraph (2) letter c of Law Number 5 of 1960 concerning Basic Agrarian Principles for Land Rights, management rights, waqf land, each of which has been recorded in the relevant land book.

Data on transfer of land rights through sale and purchase at the West Lombok BPN office in 2008- 2012 as many as 15,343 rights transfers. Where in 2008/1,584,325 hectares, 2009/5,819,409 hectares, 2010/4,737,080 hectares, 2011/6,032,906 hectares, 2012/12,699,741 hectares (*Badan Pusat Statistik Kabupaten Lombok Barat, Kabupaten Lombok Barat Dalam Angka*, 2018).

Transfer of rights to inherited land without a valid sale and purchase from the heirs still often occurs in society. This is reinforced by the discovery of the Mataram District Court decision with decision Number 84/Pdt.G/2024/PN Mtr regarding the dispute over the transfer of rights to inherited land without a valid sale and purchase from the heirs. Where in the main lawsuit the object of the dispute in the case is the legacy of the late Amaq Sinarah (the Plaintiffs' parents) as inherited land in 1984. That around 1993 the land was suddenly controlled by H. Saleh (Defendant II) without any rights, how did he do it? whereas the Plaintiffs as Heirs have never sold or transferred the land.

That in good faith, the Plaintiffs have repeatedly asked H. Saleh (Defendant II) and Mr. Zaenal Abidin (Defendant I) to voluntarily return the inherited land/land, however, Defendant I and Defendant II intentionally and openly sold the trees on the land and had been certified in 2021. This action caused the heirs (plaintiffs) to suffer losses and not obtain their rights as they should. In the verdict Number 84/Pdt.G/2024/PN Mtr, the judge rejected the plaintiffs' lawsuit in its entirety and sentenced the plaintiffs to pay the costs of this case jointly and severally in the amount of Rp1.440.000.- (one million four hundred and forty thousand rupiah).

Constitutional Justice Enny Nurbaningsih explained that the legal proof of ownership of land is a land title certificate, because through land registration it will be known who the land title holder is, when the land title was transferred, and who the new title holder is, including if the land is burdened with a mortgage. Even a deed of sale and purchase made before a PPAT cannot be stated as proof of ownership because it is only one of the requirements for the transfer of rights (Nurbaningsih, 2024)

Land cases often occur in society either because of buyers or sellers who do not act in good faith. Cancellation of legal products issued by the BPN (certificates) often occurs due to fraud, defective will, abuse of circumstances, making underhand sales and so on. The transfer of land rights through a sale and purchase

mechanism must be accompanied by a deed made by a PPAT. This is regulated in Article 37 of Government Regulation Number 24 of 1997 concerning Land Registration which determines that the transfer of land rights through legal acts, one of which is a sale and purchase, can only be registered if proven by a deed made by a PPAT.

Based on the background above, the author formulates two main problems, namely how the judge's considerations in giving a decision on the case of transfer of rights to inherited land without the consent of the legitimate heirs, and how the legal protection for the parties in the court decision.

## METHODS

The type of research that the author uses is normative legal research, normative legal research, namely law is conceptualized as what is written in laws and regulations (law in Books) or law is conceptualized as rules or norms that are benchmarks for proper human behavior (Amiruddin, 2008). The legal materials analyzed in this study are based on the main legal materials, namely by examining the principles of law, legal concepts, legal views and doctrines and regulations and legal cases related to the transfer of land rights to inherited land without the consent of the legitimate heirs, as stated in the court decision related to the writing of this article, namely the District Court Decision number 84/Pdt.G/2024/PN Mtr.

The approach methods used are the Statute Approach, the statutory approach and the conceptual approach, and the case approach. The technique of obtaining legal materials is carried out by means of a literature study of primary legal materials, secondary legal materials, and tertiary legal materials and/or non-legal materials (Fajar & Yulianto, 2015, p. 160). The processing of legal materials is carried out systematically by classifying legal materials and compiling legal materials so as to obtain research results systematically and logically. The analysis used is qualitative analysis, namely analysis that refers to legal norms contained in the laws and court decisions that are analyzed. Thus, a conclusion is obtained regarding the transfer of land rights to inherited land without a valid sale and purchase from the heirs in the District Court decision number 84/Pdt.G/2024/Pn Mtr.

## RESULTS AND DISCUSSION

### Judge's Considerations in Making Decisions on Transfer of Rights Cases Inherited Land Without the Consent of the Legal Heirs

Transfer of rights to a plot of land is a legal event of the transfer of ownership rights to a plot of land from one rights holder to the person to whom the rights are transferred. Transfer of rights is included in legal actions that are carried out intentionally with the intention that the rights to the land are transferred from the person transferring the rights to the recipient of the rights. In this case, the forms of transfer of land rights include land sales and purchases (Hidayatulloh, 2023, p. 2). The provisions in Article 56 of the UUPA read:

*"As long as the Law concerning property rights as referred to in Article 50 paragraph (1) has not been formed, the provisions of local customary law and other regulations concerning land rights that provide authority as or similar to those referred to in Article 20, as long as they do not conflict with the spirit and provisions of this Law."*

Article 570 of the Civil Code defines that:

*"Ownership rights are the right to enjoy an item more freely and to act on the item completely freely, as long as it does not conflict with laws or general regulations established by the competent authority and as long as it does not interfere with the rights of others, all of which does not reduce the possibility of revocation of rights in the public interest and appropriate compensation, based on statutory provisions."*

Ownership rights can be revoked and the land falls to the state due to: revocation of rights, due to voluntary surrender by the owner due to abandonment and due to problems related to citizenship. In addition, land ownership rights can also be revoked due to a situation that causes the land to be destroyed. Ownership rights can arise in customary law both by individuals, citizens of associations and customary law associations because

philosophically, the theory and teachings of customary law on customary law associations (*rechtsgemeenschappen*) are based on the teaching of the eternity of the relationship of the legal obligation that is inward so that it is a magical relationship (*eeuwigheid magische rechtbetrekkingen*) between people and their land (Fathoni, 2020, p. 93).

Considering that in proving the Plaintiffs in case No. 84/Pdt.G/2024/PN.Mtr as the owner of the disputed land, the Plaintiffs submitted evidence in the form of a Tax Notification Letter for Land and Building Tax Payable (SPPT) for 2023 in the name of Amaq Sinarah, a Tax Notification Letter for Land and Building Tax Payable (SPPT) for 2023 in the name of Amaq Sinarah (evidence letters P-3 and P-5). In addition, the Defendants have also submitted a Tax Notification Letter for Land and Building Tax Payable (SPPT PBB) for 2023 in the name of Zaenal Abidin, a Regional Tax Payment Letter for 2023 in the name of Zaenal Abidin, a Regional Tax Payment Letter for 2024 in the name of Zaenal Abidin, a List of Tax Object Information for Land and Building Tax Assessment No. 3096 of 1991 in the name of Zaenal Abidin (evidence letters TIII-1, TIII-2, TIII-3, TIII-4, TII-5). In this case, the Panel of Judges based it on the Jurisprudence of Supreme Court Decision No. 34 K/Sip/1960, dated February 3, 1960, which stated that "The Land Tax Petuk Letter is not an "absolute proof" that the disputed land belongs to the person whose name is listed in the land tax petuk letter, it is only a sign of who must pay the tax on the land in question", so the Panel of Judges is of the opinion that the tax letter above is not proof of ownership, therefore the evidence letters P-3, P-5, TIII-1, TIII-2, TIII-3, TIII-4, TIII-5 must be set aside.

According to the author's analysis, the PBB SPPT is not absolute proof of land ownership, but what needs to be considered by the panel of judges in case No. 84/Pdt.G/2024/PN.Mtr is that the PBB SPPT is one of the requirements in making a certificate that proves that tax has been paid on an object that belongs to a legal subject or legal entity that will be requested for certificate registration. Based on the judge's consideration phrase "The Land Tax Petuk Letter is not an "absolute proof" that the disputed land belongs to the person whose name is listed in the land tax petuk letter, it is only a sign of who must pay tax on the land in question". The phrase shows that tax evidence is an obligation for taxpayers where of course if there is an obligation then there is a right. The right that must be fulfilled by taxpayers is of course control of the tax object that has been paid. However, in this case the tax object that has been paid by the Plaintiffs has been controlled by the Defendant by controlling without rights over the disputed object. Therefore, the evidence of the PBB SPPT attached by the Plaintiffs may not be set aside by the Panel of Judges in this case apart from the Certificate that has been attached as evidence of the Defendant's letter.

If the author of the analysis uses the theory of legal certainty, where in the theory it is emphasized that legal certainty is a product of the law itself. Where in legal certainty regarding ownership of land rights is seen from the ownership of the certificate and or can be proven otherwise. In legal certainty is closely related to justice, where justice is a right that must be received by all Indonesian people without exception and justice has also been regulated in Pancasila as a symbol of the State and The Constitution of the Republic of Indonesia, as stated in the Preamble of the 1945 Constitution of the Republic of Indonesia, it is also mentioned in the fifth principle of Pancasila, namely Social Justice for All the People of Indonesia.

In terms of justice, if reviewed again with the case in the decision of case No. 84 / Pdt.G / 2024 / PN.Mtr, legal certainty regarding ownership of the object only provides legal certainty to the Defendants who have a certificate as proof of ownership of land rights. While we know that ownership of a certificate as proof of ownership of land rights is not only based on ownership of the certificate, but also other evidence such as SPPT-PBB which is proof of tax payment for the object it owns. Other evidence must also be considered by the panel of judges in the decision, such as evidence of witness statements who know about the inheritance object in dispute.

Considering, that in the trial the Panel of Judges heard the testimony of the Witness presented by the Plaintiffs named:

Witness H. Zuaeni Ma'sum

as Head of Bretok Hamlet from 1985 to 2000, who in essence explained that the owner of the disputed land was Amaq Sinarah and the Witness knew about it from the SPPT because in the past residents paid the SPPT from



house to house by officers from the village.

Witness Ayudin

as Head of Neighborhood Association since 1985, who in essence explained that to the Witness' knowledge the owner of the disputed land is Amaq Sinarah and the Witness knows this because the Witness once received a SPPT in the name of Amaq Sinarah at Amaq Sinarah's house and according to H. Saleh's confession that the disputed land was purchased from Inaq Kinasih (Amaq Sinarah's sibling) and when asked by the Village Head, H. Saleh did not have a land sale and purchase deed because it had been damaged for a long time.

Witness Heri Mardani

Which basically explains that the Witness' capacity in the mediation was only to listen and what the Witness heard when the Village Head asked H. Saleh a question regarding the acquisition of the disputed land was that H. Saleh explained that he obtained the disputed land because H. Saleh had made a sale and purchase with Inaq Kinasih (a relative of Amaq Sinarah), but H. Saleh did not have proof of the land sale and purchase deed because it had been lost.

Considering, that from the statements of the witnesses presented by the Plaintiffs above, the Panel of Judges is of the opinion that the witnesses can know about the problem of land ownership belonging to the Plaintiffs only based on the SPPT in the name of Amaq Sinarah even though previously the Panel of Judges had considered that the SPPT was not proof of land ownership. From the judge's consideration regarding the statements given by the Plaintiff's witnesses, it should not be set aside.

According to Sri Wardah and Bambang Sutiyoso in their book entitled "Civil Procedure Law and Its Development in Indonesia", testimony or witnesses are statements from third parties who are not parties to the case in court to provide certainty to the judge about the disputed events, verbally and personally and about things that they have experienced and known themselves (2024).

In this case, the witnesses have fulfilled the requirements as witnesses and have been sworn in to give testimony. As regarding witnesses and oaths, it is regulated in Article 1909 of the Civil Code that "all persons who are competent to be witnesses are required to give testimony before a judge". Regarding oaths as evidence of civil procedure, the provisions of Article 1929 of the Civil Code explain that there are two types of oaths that can be delivered before a judge, namely:

1. an oath ordered by one party to another party to termination of a case; the oath is called the oath of decision.
2. an oath ordered by a Judge because of his position to one of the parties.

Yahya Harahap in his book entitled "Civil Procedure Law on Lawsuits, Trials, Confiscation, Evidence, and Court Decisions" explains that an oath as evidence in civil procedure law is a statement or statement that is confirmed in the name of God, with the first goal, so that the person who swears in giving the statement or statement is afraid of God's wrath if he lies. Second, fear of God's wrath or punishment is considered a driving force for those who swear to reveal the truth.

According to the testimony given by the plaintiff's witnesses, according to the author's analysis of SPPT ownership if referring to the Supreme Court Decision Jurisprudence No. 34 K/Sip/1960, dated February 3, 1960, it is stated that "The Land Tax Petuk Letter is not an "absolute proof" that the disputed land belongs to the person whose name is listed in the land tax petuk letter, it is only a sign, who must pay tax on the land in question". The author's analysis of the Jurisprudence which is the benchmark for the decision in this case is that the SPPT is not absolute proof of ownership of the land. However, the SPPT is who must pay tax on the land. So when discussing who must pay tax, it is attached to who owns and can control the land.

Attachment of SPPT PBB as evidence of the Plaintiffs' letter is not separated from the basis of ownership of land rights. Customary law that applies continuously in the disputed area, land ownership is not only proven by having

to be registered or certified first (Law In book's), but in legal practices that occur in reality (law in action).

When a landowner dies, the heirs, usually consisting of sons and daughters, do not immediately divide the land, but continue to work on it together and the results are then shared together. Usually, control over the land is given to the first son, while the daughters who are married are given provisions (Sasak: sangu) in the form of several bundles of rice each harvest season. Privately owned rice fields are obtained by purchasing, inheritance from parents or converting a free plot of land into a field, garden or rice field through a claim process (Sasak: ngagum) followed by work and then over time the administration of ownership documents in the form of land certificates (Ali, 2024).

According to the author's analysis of customary law that continues to apply in the disputed area, it cannot be blamed by law because customary law is part of the implementation of UUPA and still continues to apply to this day. When the SPPT PBB is used as written evidence in court, it must be considered because each region has its own understanding and customary way to recognize ownership of land rights.

### **Legal Protection for the Parties in Court Decision Number 84/Pdt.G/2024/PN.Mtr**

According to Satijipto Raharjo, legal protection is "Providing protection for human rights (HAM) that are harmed by others and this protection is given to the community so that they can enjoy all the rights granted by law" (Salim HS & Septiana Nurbani, 2022).

Legal protection of the heir's property rights in its development has not run smoothly. This is because the inheritance law in force in Indonesia in its implementation has not been able to effectively provide protection for the heirs. The ineffectiveness of legal protection for heirs can be seen in disputes over the sale and purchase of inherited land objects carried out by parties who are not heirs unlawfully (Husien & Khisni, 2017, p. 76).

Heirs must file a lawsuit for unlawful acts against the party who sold the inherited land without rights and sue in civil court. Where the rights in inheritance are emphasized in Article 833 paragraph (1) of the Civil Code, that the heirs automatically, by law, receive ownership rights over all goods, all rights and all debts of the deceased.

In the case of Court Number 84/Pdt.G/2024/PN.Mtr that the inheritance left by the Heir to the Plaintiffs is a plot of inherited land located in Dusun Ranjok Timur, Mekarsari Village, Gunungsari District, West Lombok Regency according to the STTP Number (NOP): 52.01.060.015.004-0005.0 which is registered in the name of Amaq Sinarah with an area of 6,484 M2 and has not been certified. In the evidence letter P\_3 the Plaintiffs attached a notification of tax payable for land and building tax (SPPT-PBB) in the name of Amaq Sinarah (Heir) which is still being paid until 2023.

Based on the judge's consideration based on the Supreme Court Jurisprudence Decision No. 34 K/Sip/1960, dated February 3, 1960, it is stated that "The Land Tax Petuk Letter is not an "absolute proof" that the disputed land belongs to the person whose name is listed in the land tax petuk letter, it is only a sign, who must pay tax on the land in question". According to the author's analysis of the Jurisprudence which is the benchmark for the decision in this case, the SPPT is indeed not absolute proof of ownership of the land. However, the SPPT is who must pay tax on the land. So when discussing who must pay tax, it is attached to who owns and can control the land.

The object in this case is still being worked on by one of the Plaintiffs (Plaintiff II), namely H. Assanahar until around 1993 and the land without rights was suddenly controlled by H. Saleh (Defendant II). The control was carried out by evicting H. Asannahar (Plaintiff II) as the heir on the grounds that the land had been purchased from the parents of the Plaintiffs, but after being traced until the time the lawsuit in Court Case Number 84/Pdt.G/2024/PN.Mtr was filed, the sale and purchase never took place.

The control of the object by the Defendants in this case was carried out in an unlawful manner and has fulfilled the elements of an unlawful act in Article 1365 of the Civil Code, where the object controlled and certified by the Defendants is an inheritance object left by the Heir (Amaq Sinarah) to his heirs (the Plaintiffs), the object that has been controlled by the Defendants is still subject to tax payments until 2023, and the object has been

transferred by means of sale and purchase with illegitimate heirs in carrying out legal acts against the inheritance object which causes material and immaterial losses to the Plaintiffs.

The elements of an unlawful act in Article 1365 of the Criminal Code are as follows:

1. There must be an act (positive or negative)
2. The act must be against the law
3. There is a loss
4. There is a causal relationship between the unlawful act and the loss
5. There was an error.

What is included in the unlawful acts themselves are acts that: (Tobing, 2024)

1. Contrary to the legal obligations of the perpetrator
2. Violating the subjective rights of others
3. Violating the rules of etiquette

In the case of Court Number 84/Pdt.G/2024/PN.Mtr, the Plaintiffs have filed a lawsuit for unlawful acts committed by the Defendants who have controlled and issued certificates for the inherited land of the plaintiffs. The unlawful acts committed by the Defendants have resulted in material and immaterial losses and the failure to fulfill the rights of the Plaintiffs as heirs of the late Amaq Sinarah (Heir). Legal steps that can be taken by the heirs who feel that their rights have been violated because their land was sold without their consent, can file a civil lawsuit on the basis of unlawful acts, as regulated in Article 1365 of the Civil Code, which reads:

*Every act that violates the law and causes loss to another person requires the person to incur wrongful losses to compensate for the loss.*

The form of legal protection provided by laws and regulations in land dispute cases is repressive legal protection. Repressive legal protection Courts within the scope of general justice. Theoretically, the forms of legal protection can be divided into two forms, namely: (Warnawati & Isharyanto, 2023)

### **Preventive**

A legal protection Is a preventive. Submitting objections (inspraak) to his opinion before a decision gets a definitive form. This legal protection aims to prevent disputes from occurring and is very important for government actions that are based on freedom of action.

### **Repressive legal protection**

Functions to resolve disputes if they occur through bodies which can generally be divided into two, namely courts within the scope of general justice and government agencies which are administrative appeal bodies.

According to the author's analysis, the rules that are the basis for the Plaintiffs in filing a lawsuit in Court Case Number 84/Pdt.G/2024/PN.Mtr are not optimal in protecting the rights of the Plaintiffs. This can be seen in the considerations and decisions given. The judge's considerations in the decision in this case are only based on Proof of ownership of the certificate owned and become written evidence from the Defendants without considering the origin of ownership and how the process of obtaining the certified object was.

When analyzed using the legal protection theory, this theory plays a crucial role in creating justice and order in society by integrating various interests through fair regulations, encompassing both preventive and repressive

protection to ensure that individual rights are safeguarded. Legal protection theory examines and analyzes the forms, objectives, and implementation of protection, as well as the legal subjects being protected and the objects of protection provided by law (Salim HS & Septiana Nurbani, 2022). The legal protection provided by the state is closely related to the applicable regulations that can be enforced to obtain protection in a specific matter, in this case, the ownership of land rights. The regulations that can serve as the basis for filing lawsuits and strengthening the transfer of inheritance land rights are found in Article 1365 of the Indonesian Civil Code (KUHP), Article 834 of the KUHP, and Article 833 paragraph (1) of the KUHP. However, these legal provisions only serve as justifications for filing claims and regulating the transfer of inheritance land rights, rather than being definitive rules that provide direct protection to the aggrieved parties.

The Unitary State of the Republic of Indonesia based on the 1945 Constitution is a constitutional state that provides guarantees and provides protection for the rights of citizens, including the rights of citizens to obtain, have and enjoy property rights. The rule of law requires all actions or deeds of the authorities to have a clear legal basis or have legality, both based on written law and unwritten law (Adrian Sutedi, 2023, p. 1).

Protection of human rights is an important element in the rule of law. If in a country, human rights are neglected or grossly violated and the suffering caused cannot be resolved fairly, then that country not yet fully a country of law. In the protection and enforcement of human rights humans, the government is tasked with respecting, protecting and upholding them. Based on this, it can be said that protection of human rights is a fundamental right that must be obtained by every citizen and must be carried out by the government as the state administrator (Saripi, 2018, p. 5).

The state is obliged to guarantee the implementation of human rights for everyone who exists under its authority. This obligation is carried out by the state by taking the necessary steps, whether in the legislative, administrative, judicial or practical fields, to create all the conditions needed in the social, economic, political or other fields and the legal guarantees needed for all people under its jurisdiction, individually or together, to be able to enjoy all these rights and freedoms in practice (Rahayu, 2015).

In connection with the transfer of rights to inherited land without the consent of the heirs, in Article 28 G paragraph (1) of the 1945 Constitution of the Republic of Indonesia mentions the existence of the right to property for every citizen as a human right as follows: *"Everyone has the right to protection of themselves, their family, their honor and the property under their control, and has the right to a sense of security and protection from the threat of fear of doing or not doing something that is a human right."*

According to the author's analysis regarding the judge's considerations in the decision, if re- analyzed using the theory of legal protection. That in the considerations is only limited to the provisions of laws and regulations without considering and seeing the protection of the human rights of the Plaintiffs. Where the rights of the Plaintiffs to fight for ownership of their inherited land rights were not considered by the panel of judges and rejected all arguments in the lawsuit filed by the Plaintiffs. The judge's considerations tend to be too positivistic and ignore all evidence owned by the Plaintiffs to defend their rights as heirs in the object.

In Indonesia, the publication system used is a negative publication system which places registration as a determinant of a person as the owner of a land right depending on how to obtain a land right. This principle is known as *nemo plus juris in alium transferre potest quam ipse habet* (a person cannot transfer a right beyond what he owns) (Fathoni, 2020, p. 134).

The characteristics of a negative publication system in land registration are: (Santoso, 2015, pp. 266–267).

1. The land registration system uses a deed registration system (registration of deed)
2. Certificates issued as proof of rights are strong, namely physical data and legal data listed in the certificate are considered true as long as it is not proven otherwise by other evidence. Certificates are not the only proof of rights.
3. The state as the registrant does not guarantee that the physical data and legal data in land registration is



correct.

4. In this publication system, an expired institution (acquisitive verjaring or adverse possessive).
5. Other parties who are disadvantaged by the issuance of a certificate can file an objection with the land registration administrator to cancel the certificate or file a lawsuit in court to request that the certificate be declared invalid.
6. Land registration officers are passive, that is, they only accept what is stated by the land registration officer.

According to the author's analysis in the negative publication system, the determination of ownership of a land right is dependent on how to obtain it, not based on the existence of a certificate that is proof of ownership of a land right. If an act committed in obtaining land rights is related to a violation of the principle of good faith, then the act can have legal consequences in the form of material and immaterial losses for the injured party.

## CONCLUSION

Transfer of Rights to inherited land without the consent of the legitimate heirs based on Decision Number 84/Pdt.G/2024/PN.Mtr regarding proof of ownership of the SPPT PBB from the plaintiff, based on the juridical facts, the Panel of Judges based it on the Jurisprudence of the Supreme Court Decision No. 34K/Sip/1960, dated February 3, 1960, which states that "The Land Tax Petuk Letter is not an "absolute proof" that the disputed land belongs to the person whose name is listed in the land tax petuk letter, it is only a sign of who pays the tax on the land in question. The empirical fact is that customary law that continues to apply in the disputed area, land ownership is not only proven by having to be registered or certified first (Law In Book's), but in legal practices that occur in reality (law in action). Customary law that applies in the area cannot be blamed by law because customary law is part of the implementation of the UUPA and is still in effect today.

Legal protection for heirs of the inheritance object is still not fully able to guarantee the rights of the heirs. Preventive legal protection has been provided by the state in conjunction with the rules that can be the basis for filing a lawsuit and strengthening the transfer of rights to the inherited land contained in Article 1365 of the Criminal Code, Article 834 of the Criminal Code, Article 833 paragraph (1) of the Criminal Code, but the basis of these articles is only a reason for filing and regulating the transfer of rights to inherited land, not a definite rule that is the basis for definite protection for the injured parties. Repressive legal protection based on court decision Number 84/Pdt.G/2024/PN.Mtr states that it is based on the Jurisprudence of the Supreme Court Decision No.34K/Sip/1960, dated February 3, 1960, which states that "The Land Tax Certificate is not an "absolute proof" that the disputed land belongs to the person whose name is listed in the land tax certificate, it is only a sign of who pays the tax on the land in question. that the protection of rights is not only in the law in the book's but also based on law in action. Because the certificate is not the only proof of ownership of land rights. So the court decision is legally correct.

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