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Legal implications of oral agreements prior to the making of grant deeds

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Abstract

The significance of this study lies in recognizing the crucial role grants play within the social fabric of Indonesian communities. Despite their importance, grants, particularly in the context of land inheritance, often pose challenges, leading to complications such as the potential for withdrawal or annulment. This research aimed to dissect and comprehend the legal ramifications of verbal agreements made prior to the formulation of a grant deed, especially focusing on how such agreements influence the withdrawal of land ownership rights, as illustrated by the decision of the Kupang High Court (Case No. 23/Pdt/2017/PT.KPG). Employing a normative legal research approach, this investigation delves into secondary data and legal literature to interpret the law both as it is written and as it governs societal behavior. A comparative analysis of similar cases provides additional insights, revealing how varying interpretations of verbal agreements can impact the enforceability of grant deeds across different jurisdictions. This study proposed a detailed analysis, asserting the necessity for clearly defining real evidence in the form of authentic deeds. These deeds serve not only as conclusive proof of land ownership but also as a foundational element for any modifications to such ownership, premised on the mutual consent and responsibilities undertaken by both the grantor and grantee during the deed's creation. The grant deed emerges as a pivotal document, ensuring the grantee's rights over the land, predicated on the lawful acts executed by both parties involved in the transaction. By exploring these aspects, the research offers insights into enhancing the legal framework surrounding grants, aiming to mitigate the issues arising from oral agreements in land transactions.

Keywords:

cancellation; land transfer; social community; Kupang High Court; property transactions

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Introduction

The study of land division and property rights is of paramount importance due to the multifaceted roles land plays in economic stability, political power, legal systems, and social structures. In contemporary society, the management of land resources and ownership rights continues to provoke legal and social challenges, making it essential to develop a robust understanding of the mechanisms governing land transactions and rights conveyances. Land, as a finite and valuable resource, serves as a cornerstone for economic development, providing a foundation for agriculture, industry, and urbanization. Moreover, it holds significant political power, influencing territorial boundaries, sovereignty, and resource allocation. Legal systems around the world rely on well-defined property rights to ensure orderly land management, resolve disputes, and uphold justice. However, the complexities surrounding land ownership, inheritance laws, and land use regulations present ongoing challenges. Issues such as land grabbing, unauthorized settlements, and conflicts over resource exploitation highlight the need for effective governance frameworks and equitable distribution mechanisms.

Recent literature in the field has increasingly focused on the complexities of land rights as influenced by oral agreements and the legal consequences of such arrangements. For instance, R. Awaliyah & N. Faizah (2020) examined the non-reciprocal nature of grants, revealing how the absence of counter-obligations in such agreements can complicate legal disputes over property rights. Similarly, A. Sutedi (2019) delved into the protective nature of property rights under formal law, highlighting their resistance to external challenges. On another front, O. Moechtar *et al.* (2020) explored the legislative nuances that govern the reintegration of granted assets, illustrating the depth of legal frameworks required to manage such transitions effectively. Moreover, researchers like A. Kamalia *et al.* (2020) and R. Hidayat *et al.* (2023) have underscored the social functions of grants, emphasizing their role in wealth distribution and the potential societal impacts of their mismanagement. These studies collectively portray a landscape where the theoretical underpinnings of property law are continually being tested by practical challenges.

The primary objective of this research is to dissect and analyze the legal implications of oral agreements made prior to the creation of grant deeds, with a focus on how these agreements affect the withdrawal of land ownership rights. This involves a detailed examination of case law, notably the decision in the Kupang High Court Case No. 23/PDT/2017/PT.KPG¹, to elucidate the conditions under which oral agreements may influence

the enforceability of formal property transactions. The study aims to contribute to the enhancement of legal frameworks surrounding property transactions, particularly in contexts where oral agreements precede formal documentation, to prevent potential disputes and enhance transactional transparency.

In pursuit of this aim, the study set out several objectives: first, to systematically review and synthesize existing legal doctrines as they pertain to oral agreements and property rights; second, to conduct a comparative analysis of relevant case law to identify patterns and divergences in judicial interpretations; and third, to propose amendments or clarifications to existing legal standards to better address the complexities introduced by oral agreements in property transactions. By achieving these objectives, the research seeks to provide a grounded and comprehensive perspective on the interplay between verbal contracts and formal property rights, ultimately contributing to more stable and equitable land governance practices.

Materials and Methods

Normative legal research, often synonymous with doctrinal research, is an indispensable method within legal scholarship that primarily involves the examination of library materials or secondary data to uncover legal rules, principles, and doctrines (Zulfa *et al.*, 2023). Research relies heavily on written laws and regulations referred to as “law in books” and is used to determine norms or rules that dictate appropriate human behavior (Thioris & Dharsana, 2023). Law is often interpreted as it is codified in statutory texts, serving as a benchmark for societal conduct (Wijilestari *et al.*, 2022). Furthermore, defines normative legal research as a systematic process aimed at resolving legal issues by identifying applicable legal standards and doctrinal underpinnings (Thioris & Dharsana, 2023)

This study employs the normative research approach to explore the Legal Implications of Oral Agreements before the Creation of a Grant Deed and to analyze the characteristics of land ownership rights withdrawal by the grantor based on an oral agreement, as evidenced by the Kupang High Court Decision No. 23/PDT/2017/PT.KPG². The methodology integrates several specific legal research methods and case-study approach to achieve a comprehensive understanding of the issues at hand. Central to this study is the analysis of the Kupang High Court case, which provides a real-world application of the theoretical legal principles discussed. This method allows for an in-depth examination of how oral agreements and their subsequent formalization into grant deeds are treated under the current legal framework. This research includes a comparative study of

¹ Decision of the Supreme Court of The Republic of Indonesia No. 23/PDT/2017/PT.KPG . (2017, November). Retrieved from <https://putusan3.mahkamahagung.go.id/direktori/index/pengadilan/pn-kupang/kategori/perdata-1/page/86.html>.

² Ibidem, 2017.

British and Australian legislation. These jurisdictions were chosen due to their significant influence on common law traditions, which underpin many legal systems, including that of the study area. Comparing these systems helps to understand different approaches to land ownership and the enforceability of oral agreements. This involves a systematic breakdown of legal documents and statutes to interpret the letter of the law as it is applied in the case study. It also examines how the statutes are implemented in the courts, providing a formalistic perspective on the legal processes involved.

The inclusion of British and Australian laws serves to shed light on the variance in legal interpretations of oral agreements concerning land ownership. Both countries offer robust frameworks for property rights, which are pivotal in understanding how such agreements are viewed and enforced in different legal contexts. The study of these systems is crucial for proposing changes or enhancements to the local legal framework, especially to address gaps or ambiguities that might exist in the interpretation and enforcement of oral agreements in land transactions.

Through these methodologies, the research aims to create a detailed legal analysis that not only clarifies the legal standing of oral agreements in the context of grant deeds but also proposes potential legislative or doctrinal changes to improve the predictability and fairness of land ownership rights. This holistic approach ensures a thorough understanding of the normative legal implications and aids in crafting more effective and equitable legal policies.

Results and Discussion

Analysis of the legal power of oral agreements prior to the making of grant deed as a basis for withdrawing land ownership rights by the grantor. In this case, property rights are referred to as hereditary rights because basically the position of property rights can be passed down or inherited to the heir or successor. It is said to be the strongest right is because property rights can be easily defended from intervention from outside parties. Full property rights mean that property rights have a range of authority that is a level higher than the various other rights, so that property rights can also be said to be the main rights of all other forms of rights, for example, such as people who have property rights to a vehicle will easily lease it to other parties. The owner's authority is forever or unlimited if there is no interference from other authorities.

One of the efforts to transfer land rights is by way of grant (Awaliyah & Faizah, 2020) Grant is a gift made

by someone to another party, when both are still alive (Afida, 2023)-Within the structure of a grant, the transaction is characterized by the absence of reciprocal exchange; the grantor relinquishes rights to ownership of either partial or full assets to another entity without expecting any form of compensation from the grantee. To address this, lawmakers have instituted regulations mandating that the grantee must account for and reintegrate any received assets back into the estate of the grantor for proper assessment (Moechtar *et al.*, 2020).

Grants in Indonesia have a social function in the life of the community, where something can be given to anyone without discrimination (Kamalia *et al.*, 2020). Therefore, many people see the use of grants as a solution to wealth distribution (Krismanoro, 2022). However, grants in reality are often not the right solution when it comes to land inheritance, as this can lead to new problems, such as repossession or annulment (Hidayat *et al.*, 2023). In relation to the annulment of a grant as occurred in the Kupang High Court Decision No. 23/PDT/2017/PT.KPG¹ it started on September 15, 1993, Mr. J.F. (Defendant) married Ms. J.M. (Plaintiff's sister), because they did not have a house to live in, in 1997 Plaintiff allowed Defendant and his wife to occupy a house owned by the Plaintiff. Then, the Defendant requested that the land and house occupied by both of them be given to both of them, with a verbal agreement made by the Defendant and Plaintiff that the Defendant would not leave the Plaintiff's sister.

However, on January 22, 2016 the Defendant sued his wife J.M. (the Plaintiff's sister) for divorce which was registered at the Kupang District Court No. 17/PDT.G/2016/PN.KPG² and was decided on April 18, 2016 granting the Defendant's request for divorce. Because of this, the Plaintiff considered that the Defendant had violated the oral agreement that they had made previously, so the Plaintiff felt that the Defendant had violated the terms of the grant and based on that the Plaintiff filed a lawsuit which basically requested a decision to withdraw the grant that had been given. This is not in accordance with the reason why a grant can be revoked, because according to the definition contained in the Big Indonesian Dictionary, a grant is actually a voluntary gift that includes the transfer of rights to something to another individual. In addition, the revocation did not meet the requirements to declare the grant "void" as stipulated in the civil code. Article 1666 of the Civil Code of Indonesia³ defines a grant as a contract wherein the grantor voluntarily and permanently relinquishes an item for the grantee's benefit, who then accepts this contribution.

¹ Decision of the Supreme Court of The Republic of Indonesia No. 23/PDT/2017/PT.KPG . (2017, November). Retrieved from <https://putusan3.mahkamahagung.go.id/direktori/index/pengadilan/pn-kupang/kategori/perdata-1/page/86.html>.

² Decision of the Supreme Court of The Republic of Indonesia No. 17/PDT.G/2016/PN.KPG. (2016, November). Retrieved from <https://putusan3.mahkamahagung.go.id/direktori/index/pengadilan/pn-kupang/kategori/perdata-1/page/86.html>.

³ Civil Code of the Republic of Indonesia. (1945, August). Retrieved from https://perpustakaan.bldk.mahkamahagung.go.id/index.php?p=show_detail&id=794&keywords=.

Article 1667 of the Civil Code of Indonesia¹ articulates that grants are irrevocable except under certain conditions. Specifically, it mandates that grants must pertain to existing assets. Grants concerning assets to be acquired or created in the future are considered invalid. Then, Article 1668 of the Civil² Code, states It's stipulated that the grantor is prohibited from asserting the right to sell or donate the granted item to someone else, rendering the grant null regarding that specific item. According to Article 1670 in the Civil Code³, a grant becomes invalid if it requires the grantee to settle debts or obligations, except for those explicitly mentioned in the grant deed or an annexed document (Alvian & Mujiburohman, 2022).

Basically, grants are not part of inheritance law but part of the law of engagement which has been regulated in book III (three) chapter X (tenth) of the Civil Code⁴. In addition, in the inheritance process there is one condition that must be met according to inheritance law, namely the heir/deceased person where he leaves some form of wealth. In contrast to grants, the conditions for granting grants are that the grantee must be conscious and at the time still alive during the process of implementing the grant (Yoka, 2021).

Granting is done by making a grant deed before an authorized official. For movable goods, it is usually done before a Notary, while for immovable goods it is usually done before a Land Deed Official (PPAT) (Mandasari, 2018). PPAT is in charge of carrying out some land registration activities by making deeds as evidence of certain legal actions regarding land rights. The position of PPAT is desired in law which has the aim of assisting and serving people who need authentic written evidence related to land regarding circumstances, events or legal actions (Adjie, 2014).

Article 1688 of the Civil Code⁵ clarifies that grants are generally irrevocable but lists exceptions where a grant can be canceled: if the agreed conditions are unmet, if the grantee commits a crime against the grantor, or if the grantee fails to provide financial support to the grantor, resulting in the grantor's poverty. Under the stipulations of the cited article, a grant may be rescinded upon fulfilling specific criteria for its termination. This process involves the grantor issuing a formal declaration to the grantee, asserting a claim over the previously granted assets. During this procedure, it's

imperative for both parties to duly consider their respective rights and responsibilities (Mandasari, 2018). In specific legal contexts, there may be instances where a party fails to meet its duties to the other. Under these conditions, the affected party is entitled to assert their rights and adhere to legal procedures outlined for such situations (Zia et al., 2020).

Agreements preceding a grant must be explicitly detailed by all parties to ensure clarity and safeguard their interests, preventing potential future conflicts. The case from the Kupang High Court illustrates the complications that can arise from unclear agreements. Per Article 1666 of the Civil Code⁶, a grant's revocation is strictly limited to certain conditions. In Kupang High Court's⁷ ruling the judge determined an oral agreement as a grant condition, leading to the deed's cancellation. Despite Article 1688 of the Civil Code⁸ stating grants are irrevocable barring specific criteria, this case prompts further investigation into how oral agreements influence grant cancellation decisions within the stipulated legal framework.

The PPAT Deed plays a crucial role in legal transactions, impacting both private and public law sectors. It serves as a foundation for the National Land Agency, specifically at the Regency/City Land Agency Office level, to manage the transfer and encumbrance of land rights. For the legal transfer of land rights via grants to be recognized, documentation by a PPAT, an authorized official, is required. This process ensures legal certainty for all parties involved in a grant, establishing clear rights and responsibilities (Olanda & Nurdin, 2022). However, the Civil Code provides provisions for it, so that grantors and grantees are also subject to rights and obligations in the grants they make (Table 1).

Furthermore, a grant is a form of gift from one person to another voluntarily. In civil law, grant or "schenking" is defined as an agreement made by a grantor during his lifetime with and irrevocably, to hand over an object for the needs of the grantee to be used as personal property (Syuhada, 2019). A grant is a binding and irrevocable legal act according to the will of one of the parties. However, in the event of certain reasons a grant can be withdrawn.

Article 1688 of the Civil Code⁹ specifies that a grant can be canceled if the original terms are not met, the grantee commits a crime against the grantor, or fails to

¹ Civil Code of the Republic of Indonesia. (1945, August). Retrieved from https://perpustakaan.bldk.mahkamahagung.go.id/index.php?p=show_detail&id=794&keywords=.

² Ibidem, 1945.

³ Ibidem, 1945.

⁴ Ibidem, 1945.

⁵ Ibidem, 1945.

⁶ Ibidem, 1945.

⁷ Decision of the Supreme Court of The Republic of Indonesia No. 17/PDT.G/2016/PN.KPG. (2016, November). Retrieved from <https://putusan3.mahkamahagung.go.id/direktori/index/pengadilan/pn-kupang/kategori/perdata-1/page/86.html>.

⁸ Civil Code of the Republic of Indonesia. (1945, August). Retrieved from https://perpustakaan.bldk.mahkamahagung.go.id/index.php?p=show_detail&id=794&keywords=.

⁹ Ibidem, 1945.

support the grantor financially if they become impoverished. Article 1667 of the Civil Code dictates that grants are valid only for existing goods at the grant's issuance. It clarifies that a grant involves: a unilateral agreement without expectation of return; its irrevocable nature; the grantor's positive intention towards the grantee;

necessity for the grantor to be alive at the grant's creation, though fulfillment may occur posthumously; and applicability to the grantor's existing tangible or intangible, movable or immovable assets. There are conditions that must be performed on the grant so that the grant agreement is valid and enforceable (Table 2).

Table 1. Obligations of grantor and grantees and rights of the grantors

Obligations	The obligation of the grantor:	After the grantor hands over the property or object that is granted to the grantee, then since then there are no more obligations that bind the grantor.
	Obligations of grantees.	1. Pay off any debts of the grantor or other objects, provided that the debts and expenses to be paid have been expressly stated in the Grant Deed.
		2. Providing maintenance to the grantor if the grantor falls into poverty.
3. Returning objects that have been granted based on the rules set forth in the Civil Code.		
Rights	Grantors also have rights related to their grants.	1. The grantor is entitled to use a certain amount of money from the property or object he grants, provided that this right has been agreed upon in the grant.
		2. The grantor has the right to take the object he has given if the grantee dies before the grantor, provided that this applies if it has been agreed beforehand.
		3. The grantor may revoke the grant, if the grantee does not fulfill the obligations specified in the grant deed or other matters stated in the Civil Code.

Source: developed by the authors

Table 2. Conditions that must be performed on the grant

Conditions for grantor	a. The item granted is the property of the grantor (it is not valid to give away someone else's property).
	b. The grantor is not a person whose rights are restricted for some reason.
	c. The grantor is a person who is capable of acting according to the law.
	d. There is no coercion received by the grantor in making the grant.
Conditions for grantees	A grantee must be a person who actually exists at the time the grant is made. What is meant by actually existing is that the person (grantee) has been born, and it is not disputed whether he is an adult, child or lack of intelligence. So that granting grants to babies who are still in the womb is invalid.
Conditions for goods that can be donated	a. The goods are already there;
	b. The item has a value;
	c. The goods can be possessed of their substance, accepted for circulation and their ownership can be transferred;
	d. The donated goods can be separated and handed over to the grantee.

Source: Structured by the authors on the basis of S. Lingga Saputra (2019)

The existence of these conditions in granting grants, giving rise to rights and obligations regarding the grants given. The emergence of rights such as in the event that the grantor is entitled to use a certain amount of money from the property or object he grants provided, that this has been promised beforehand when the grant occurs. In addition, the grantor can also take back the goods he gave if the grantee dies before the grantor. This must also be stated or agreed in advance at the time of granting. Although actually grants cannot be withdrawn except for grants given by parents to their children, there are exceptions that can be made by the grantor so that the grantor can withdraw his gift. As this has been included in the grant deed or is contained in Article 720 the Compilation of Sharia Economic Law Regulation¹ which states that there are other things in the event that the grantee does not fulfill its obligations.

After the granting of his property to the grantee, then immediately at that time the grantor has no

binding obligations on him. Due to the concept of granting grants that are made freely and irrevocably. So, in the case of canceling a grant legal action must go through the correct procedure so that the ownership status of land rights can be clearly known (Enty *et al.*, 2019). Therefore, grants of land and buildings must be made in the form of an authentic deed before a Land Deed Official (PPAT). In Article 1 paragraph 4 of Government Regulation of the Republic of Indonesia No. 24 of 2016 concerning Amendments to Government Regulation No. 37 of 1998 concerning Regulations on the Position of Land Deed Officials, explains the definition of a Land Deed Official (PPAT)² deed: "A PPAT (Land Deed Official) deed serves as proof of completed legal transactions regarding land or property rights. The deed's effectiveness is negated if the legal action it represents is annulled. There are two key scenarios for deed cancellation: 1) the deed loses its evidentiary value if the legal action it records is revoked, and 2) if a transaction

¹ The Compilation of Sharia Economic Law Regulation. (2011, August). Retrieved from <https://perpustakaan.mahkamahagung.go.id/assets/resource/ebook/02.pdf>.

² Government Regulation of the Republic of Indonesia No. 24 "On Amendments to Government Regulation Number 37 of 1998 Concerning Regulations on the Position of Land Deed Officials". (1998, November). Retrieved from <https://bphn.go.id/data/documents/98pp037.pdf>.

is annulled after being recorded at the land office, the official registration remains unchanged” (Adjie, 2014).

Canceling a deed before its registration at the land office can be executed with a notarial deed, reflecting the civil nature of the agreement documented in the PPAT deed. However, if the deed’s cancellation occurs post-registration, Article 45 of Government Regulation No. 24/1997¹ mandates that it must be executed via a court decision (Adjie, 2014). Following civil law principles, upon deed cancellation, conditions should revert to their state before the legal action documented in the deed occurred.

Article 45 of Government Regulation No. 24/1997 stipulates that cancelling a PPAT² deed during its registration at the land office requires a court decision due to the need for detailed examination. If parties mutually agree to cancel without disputes, they can approach a notary to draft an annulment deed. Disagreements necessitate seeking cancellation through the general or district court. Regardless of registration status at the land office, parties can opt for cancellation via a notarial deed if there’s no contention, subsequently requesting cancellation at the land office, which then only acts to cancel the deed’s registration without delving into the civil dispute. A grant becomes effective once issued, requiring familiarity between the grantor and grantee, and must be formalized through a grant deed by an authorized official, as mandated by Article 1682 of the Civil Code³. An authentic deed, as defined in the Civil Code, is a document created legally by an authorized official, serving as conclusive evidence for those involved. However, in the context of national land law, a PPAT’s deed, according to Government Regulation No. 24 of 1997⁴, is considered strong evidence, distinguishing its legal standing from the perfect evidence outlined in the Civil Code.

Analysis of Kupang High Court decision. Legal certainty is a fundamental principle in law that aims to provide predictability, stability, and security within legal systems. It ensures that individuals can understand their rights and obligations under the law, thereby fostering trust in the legal system (Alexy, 2015). One of the

objects that are often donated is land and house building objects. In Indonesia grants in the form of land are included in the legal act of transferring ownership of land as a fixed object or immovable object from the previous owner to the grantee later. Ownership and transfer of disputed land occurred between Mr. S.M. (Plaintiff) as the sibling of Ms. Y.M. and Mr. J.F. (Defendant) as the husband of Ms. Y.M. with the sitting of the case. On September 15, 1993 Defendant married the sister of Plaintiff on September 15, 1993 during the marriage they did not have children based on the case as stated in the Decision of the Kupang District Court No. 144/Pdt.G/ 2016/PN.Kpg⁵. After marriage they did not have a house so in 1997 Plaintiff allowed Defendant and his wife to occupy a house belonging to the Plaintiff on land belonging to the Plaintiff.

After occupying the house and land, Defendant verbally agreed with Plaintiff that Defendant would not leave the sister of Plaintiff “until death do them part”. On May 13, 2005 Plaintiff granted the aforementioned land to Defendant based on grant deed No. 23/V/KOB/2005⁶ made before Notary Public Planner, to be subsequently transferred into the name of Defendant. However, on January 22, 2016 Defendant sued his wife for divorce which was registered at the Kupang District Court No. 17/PDT.G/2016/PN.KPG⁷ and was decided on April 18, 2016 where the verdict granted the request for divorce from Defendant. Plaintiff did not accept the divorce and considered that Plaintiff had violated the oral agreement prior to the making of the grant deed before the PPAT which was considered one of the conditions of the grant.

In this case, the oral agreement in the grant before the deed was made was considered a condition of the grant, so that by suing for divorce the sister of Plaintiff, the goods that had been granted could be withdrawn. In the Kupang District Court Decision No. 144/Pdt.G/2016/ PN.Kpg⁸. rejected the claim of Plaintiff, which then Plaintiff filed an appeal where the verdict of the Kupang High Court Decision No. 23/PDT/2017/PT.KPG⁹. The decision of the Kupang High Court is self-ruling which basically grants the appeal from Plaintiff and

¹ Government Regulation of the Republic of Indonesia No. 24 “On Amendments to Government Regulation Number 37 of 1998 concerning Regulations on the Position of Land Deed Officials”. (1998, November). Retrieved from <https://bphn.go.id/data/documents/98pp037.pdf>.

² Ibidem, 1998.

³ Civil Code of the Republic of Indonesia. (1945, August). Retrieved from https://perpustakaan.bldk.mahkamahagung.go.id/index.php?p=show_detail&id=794&keywords=.

⁴ Government Regulation of the Republic of Indonesia No. 24 “On Amendments to Government Regulation Number 37 of 1998 concerning Regulations on the Position of Land Deed Officials”. (1998, November). Retrieved from <https://bphn.go.id/data/documents/98pp037.pdf>.

⁵ Decision of the Supreme Court of The Republic of Indonesia No. 17/PDT.G/2016/PN.KPG. (2016, November). Retrieved from <https://putusan3.mahkamahagung.go.id/direktori/index/pengadilan/pn-kupang/kategori/perdata-1/page/86.html>.

⁶ Decision of the Supreme Court of The Republic of Indonesia No. 23/PDT/2017/PT.KPG. (2017, November). Retrieved from <https://putusan3.mahkamahagung.go.id/direktori/index/pengadilan/pn-kupang/kategori/perdata-1/page/86.html>.

⁷ Decision of the Supreme Court of The Republic of Indonesia No. 17/PDT.G/2016/PN.KPG. (2016, November). Retrieved from <https://putusan3.mahkamahagung.go.id/direktori/index/pengadilan/pn-kupang/kategori/perdata-1/page/86.html>.

⁸ Decision of the Supreme Court of The Republic of Indonesia No. 144/PDT.G/ 2016/PN.Kpg. (2016, November). Retrieved from <https://putusan3.mahkamahagung.go.id/direktori/index/pengadilan/pn-kupang/kategori/perdata-1/page/86.html>.

⁹ Decision of the Supreme Court of The Republic of Indonesia No. 23/PDT/2017/PT.KPG. (2017, November). Retrieved from <https://putusan3.mahkamahagung.go.id/direktori/index/pengadilan/pn-kupang/kategori/perdata-1/page/86.html>.

withdraws the object of the grant because the oral statement before making the deed is considered as one of the conditions of the grant so that by not fulfilling the conditions of the grant, in accordance with Article 1688 of the Civil Code¹, the grant can be withdrawn.

Generally, a grant once made cannot be retracted or annulled. However, as specified in Article 1688 of the Civil Code², exceptions allow for a grant's cancellation under circumstances such as unmet conditions, criminal actions by the grantee against the grantor, or the grantee's failure to provide financial support to an impoverished grantor. For an agreement to be deemed valid and enforceable, it must satisfy four criteria outlined in Article 1320 of the Civil Code³: mutual consent between parties, legal capacity to make an agreement, a specific subject matter, and a legitimate reason for the agreement.

Agreement terms are categorized into subjective and objective types. The parties' mutual consent and legal capacity to contract are subjective terms, focusing on the individuals involved. The existence of a specific item and a legitimate reason for the agreement represent the objective conditions. Adhering to the legal criteria for agreements is essential in grant implementations. Violations of these criteria can lead to legal repercussions: non-fulfillment of subjective conditions allows for cancellation by the parties concerned, whereas breaching objective conditions renders the agreement invalid. In the case at hand, Plaintiff met the agreement's legal requirements, fulfilling the grant terms per Article 1666 of the Civil Code⁴. This is supported by evidence and witness testimony confirming that the Grant Deed No. 23/V/KOB/2005⁵ was duly executed by both Plaintiff and Defendant before a Notary, indicating mutual agreement and complete documentation.

Grant is a legal act involving several parties which in practice must be able to create legal certainty regarding the rights and obligations of the parties concerned. In this case, an agreement is needed. Based on Exhibit P. 2, corresponding to Exhibit T.2, and witness testimony, it was confirmed that Grant Deed No. 23/V/KOB/2005⁶ was prepared by Notary. The witness testified that there were no stipulations in the deed indicating the grant's revocation upon divorce. Additionally, both parties personally appeared before the Notary, where the

deed was read and agreed upon without representation (Dewantara *et al.*, 2019).

The Grant Deed made before PPAT as in the decision has perfect evidentiary power, so it does not need to be made or added with other evidence (Sumangkut & Anand, 2018). If there is a party that denies it, then that party must prove their statement in accordance with applicable legal rules. In the decision, it is known that Plaintiff verbally agreed that Defendant would not leave plaintiff sister "until death do them part". However, the fact that Defendant and Ms.Y.M. had divorced based on a court decision on April 18, 2016, and because of the divorce, Plaintiff wanted to cancel the grant on the grounds that they had reneged on the oral agreement before making the grant deed before the PPAT.

Agreements that have been determined by law must be applied properly, because if they are not applied, the legal consequences are that the agreements made are invalid, so they are null and void, and do not give rise to an agreement (the agreement is considered to have never existed). Oral agreements cannot be applied in agreements that have been stipulated by the law, in other words, as long as there is no law that regulates an agreement must be in writing, then an oral agreement is still valid as an agreement that binds the parties who make it (Rumagit & Idham, 2021).

Based on this description based on Article 37 Paragraph (1) of Law No. 24 of 1997 concerning Land Registration⁷, a grant deed must be in writing and made by a PPAT authorized to do so that the grant deed has perfect evidentiary power as explained in Article 1870 of the Civil Code that for interested parties including their heirs and those who get rights from them, an authentic deed is perfect evidence according to the substance (which is contained in the authentic deed).

Attributed to the cancellation of the grant deed in the Kupang High Court Decision No. 23/PDT/2017/PT.KPG⁸. because the oral agreement before the making of the grant deed before the PPAT as the grant deed No. 23/V/KOB/2005⁹ made by Notary, is not in accordance with the provisions of evidence and based on the facts in the trial in the Decision which is reinforced by witness testimony where in the Grant Deed there are no words or information stating that the condition of the grant is that if the divorce then the grant will be

¹ Civil Code of the Republic of Indonesia. (1945, August). Retrieved from https://perpustakaan.bldk.mahkamahagung.go.id/index.php?p=show_detail&id=794&keywords=.

² Ibidem, 1945.

³ Ibidem, 1945.

⁴ Ibidem, 1945.

⁵ Decision of the Supreme Court of The Republic of Indonesia No. 17/PDT.G/2016/PN.KPG. (2016, November). Retrieved from <https://putusan3.mahkamahagung.go.id/direktori/index/pengadilan/pn-kupang/kategori/perdata-1/page/86.html>.

⁶ Ibidem, 2016.

⁷ Government Regulation of the Republic of Indonesia No. 24 "On Amendments to Government Regulation Number 37 of 1998 Concerning Regulations on the Position of Land Deed Officials". (1998, November). Retrieved from <https://bphn.go.id/data/documents/98pp037.pdf>.

⁸ Decision of the Supreme Court of The Republic of Indonesia No. 17/PDT.G/2016/PN.KPG. (2016, November). Retrieved from <https://putusan3.mahkamahagung.go.id/direktori/index/pengadilan/pn-kupang/kategori/perdata-1/page/86.html>.

⁹ Ibidem, 2016.

withdrawn or canceled. So that the end of marriage due to divorce is not one of the conditions for the Grant of Plaintiff to withdraw the grant that he has given to Defendant and his wife Ms. Y.M. and request that the Grant as stated in the Grant Deed No. 223/PDT/2017/PT.KPG¹ made by Notary.

UK and Australia's legal stance on oral agreement. In the UK, the legal framework concerning oral agreements, particularly in the context of property transactions including the making of grant deeds, is primarily governed by common law principles and statutory provisions. The legal implications of oral agreements prior to the making of grant deeds are significantly influenced by the Law of Property (Miscellaneous Provisions) Act 1989,² which stipulates requirements for contracts involving the sale of land or real estate (MacKenzie & Nair, 2020).

Under the Law of Property (Miscellaneous Provisions) Act 1989, Section 2(1)³, contracts for the sale or other disposition of an interest in land must be in writing and signed by or on behalf of each party. This requirement underscores the necessity for formal documentation in property transactions and inherently limits the legal recognition of purely oral agreements concerning (MacKenzie & Nair, 2020). The sale of land or the transfer of interest in land, including the creation of grant deeds. Exceptions and Considerations

While the statutory requirement emphasizes written contracts, English law does recognize the significance of oral agreements in certain contexts, albeit with considerable limitations. In exceptional circumstances, courts may enforce oral agreements related to property under the doctrine of proprietary estoppel. This principle applies when one party has relied on a promise to their detriment, and the promisor is estopped (prevented) from reneging on that promise. However, successfully invoking estoppel requires clear evidence of reliance and detriment, making it a challenging path to enforce oral agreements. The second limitations – contract formation. Oral agreements may still play a role in the formation stage of a contract for the disposition of an interest in land, acting as a precursor to the written agreement. However, the legal enforceability of any claim based on the oral agreement would necessitate transitioning to a formal written contract compliant with the Law of Property (Miscellaneous Provisions) Act 1989⁴.

The legal framework in the UK, therefore, presents a clear preference for written documentation in property transactions, reflecting the principle that formalizing agreements in writing provides clarity, reduces

disputes, and ensures a reliable record of the transaction terms. For individuals engaging in transactions involving the disposition of land or the creation of grant deeds, the practical implication is the necessity of formalizing agreements in writing to ensure they are legally enforceable.

In Australia, the legal framework concerning property transactions, including the creation of grant deeds, significantly relies on the principles outlined in the common law, as well as specific statutory requirements. These laws collectively shape the legal implications of oral agreements made prior to the formalization of grant deeds. A pivotal piece of legislation in this context is the Property Law Act, which exists in various forms across Australian states and territories, reflecting the decentralized nature of Australia's legal system.

In Australia, the legal implications of oral agreements prior to the making of grant deeds are significant and can have far-reaching consequences. While grant deeds are typically formalized through notarial deeds to ensure legal certainty and compliance with regulations, the validity of oral agreements in land transactions is also recognized under certain conditions. Oral agreements can be legally binding as long as there is no specific requirement for the agreement to be in writing, providing a level of legal certainty for the involved parties. However, the preference for formalized notarial deeds is evident in the legal system to minimize disputes and ensure clear property rights.

A fundamental principle underpinning property transactions in Australia is the requirement for written contracts, as dictated by the Property Law Act in various states. For instance, the Property Law Act 1974 (Qld) Section 59⁵ requires that contracts for the sale of land or interest in land must be in writing to be enforceable. Similar provisions exist in other jurisdictions within Australia, such as the Conveyancing Act 1919 (NSW) Section 54A⁶. These requirements underscore the importance of formalizing property transactions through written documentation, effectively limiting the legal recognition and enforceability of purely oral agreements concerning the sale of land or the creation of grant deeds.

Exceptions and Equity Considerations Despite the general requirement for written contracts, Australian law does provide for exceptions where oral agreements related to property may have legal implications:

■ **Estoppel:** Similar to the UK, Australian courts may enforce oral agreements under the doctrine of estoppel, particularly proprietary estoppel. This legal principle

¹ Decision of the Supreme Court of The Republic of Indonesia No. 17/PDT.G/2016/PN.KPG. (2017, November) Retrieved from <https://putusan3.mahkamahagung.go.id/direktori/index/pengadilan/pn-kupang/kategori/perdata-1/page/86.html>

² Law Property. (1989, March). Retrieved from <https://www.legislation.gov.uk/ukpga/1989/34/contents>.

³ Ibidem, 1989.

⁴ Ibidem, 1989.

⁵ Property Law Act of the United Kingdom. (1974, March). Retrieved from https://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/consol_act/pla1974179/s59.html.

⁶ Conveyancing Act. (1919, June). Retrieved from <https://legislation.nsw.gov.au/view/html/inforce/current/act-1919-006>.

comes into play when one party has acted to their detriment, relying on a promise or representation made by another party regarding property rights. If it would be unconscionable for the promisor to go back on their word, the court may enforce the oral agreement to prevent injustice.

■ **Part Performance:** The doctrine of part performance may allow for the enforcement of oral agreements related to land transactions in certain circumstances. If one party has taken significant steps in reliance on an oral agreement (e.g., making improvements to the property), Australian courts may recognize the agreement as binding, even in the absence of written documentation, to prevent unjust enrichment.

The legal landscape in Australia places significant emphasis on the necessity of written agreements for property transactions, aligning with principles of clarity, reliability, and dispute avoidance. However, the legal doctrines of estoppel and part performance provide avenues through which oral agreements may be recognized under specific circumstances, highlighting the courts' willingness to mitigate potential injustices arising from strict adherence to formality requirements.

In rare cases, if an oral agreement regarding land has been partly performed, courts might consider specific performance as a remedy. This would typically involve unique or exceptional circumstances where not enforcing the agreement would result in significant injustice.

Discussion

The comparative analysis conducted between the results of this research and the findings of other scholars highlights the critical role of formal grant deeds in protecting property rights, as well as the complexities introduced by prior oral agreements. A. Sutedi (2019) emphasizes the definitive and robust nature of property rights, suggesting that such rights can effectively shield against external interferences. This aligns with the current research, which also underscores the protective capabilities of formal grant deeds. However, this research extends beyond A. Sutedi's analysis by addressing the vulnerabilities introduced by verbal agreements made before the formalization of these deeds, pointing out potential legal challenges that could arise when these preliminary verbal agreements are contested.

R. Awaliyah & N. Faizah (2020) examine the nature of grant transactions, highlighting the absence of reciprocal obligations within them. Their observations correlate with this research's findings, particularly in illustrating the complexities that arise when such non-reciprocal agreements are legally challenged. This study elaborates on their findings by exploring how these non-reciprocal agreements, when contested, complicate the legal landscape, as seen in the Kupang High Court case. O. Moehtar *et al.* (2020) discusses the legislative requirements for grantees to reintegrate granted assets back into the grantor's estate, which

resonates with the need for clear documentation to cement the terms of a grant discussed in this research. However, unlike Amanat's focus, this study dives deeper into the implications of oral agreements preceding such formal documentation, potentially leading to legal disputes that challenge the initial intentions outlined in grant agreements.

The review of legal frameworks in the UK and Australia further enriches this comparative analysis. In the UK, as noted by J.A. MacKenzie & A. Nair (2020), the necessity for contracts involving land to be in writing reinforces this research's emphasis on the importance of formal documentation in property transactions. This parallel underscores the common legal requirement across jurisdictions to prevent disputes and enhance clarity in property dealings. Similarly, in Australia, while oral agreements can be legally binding under specific conditions, the overarching preference for formalized deeds mirrors the conclusions drawn in this research regarding the Indonesian legal context. The necessity for written contracts, as dictated by the Property Law Act in various Australian states, supports this study's recommendations for enhancing legal certainty through authentic deeds, aligning with international standards to minimize disputes and ensure clear property rights.

These findings suggest a global convergence on the importance of formal documentation in land transactions, aligning doctrinal insights with practical legal requirements to mitigate conflicts arising from oral agreements. The integration of international legal standards into national practices, as suggested by the comparative study, could serve as a valuable blueprint for Indonesia. This approach would not only enhance legal certainty but also reduce the potential for disputes, fostering a more comprehensive and conflict-minimizing legal framework for property transactions. This synthesis not only supports the need for robust legal frameworks, as discussed, but also sets a foundation for further research into the harmonization of legal practices across jurisdictions to ensure a more effective handling of property rights and transactions.

Conclusions

The analysis of the decision from the Kupang District High Court serves as a critical case study demonstrating the substantial evidentiary power of authentic deeds in the context of grant deeds. This case underpins the broader theoretical implications regarding the role of oral agreements and formal documentation in the legal framework governing land ownership and transfers. In essence, the case illustrates how an authentic deed, established through the formal legal processes and acknowledged by a qualified official such as a PPAT, can serve as irrefutable proof of ownership and a solid foundation for any subsequent alterations to property rights.

From a theoretical standpoint, the findings from this case emphasize the necessity of formal documentation in substantiating the rights conveyed through grants, particularly when oral agreements are involved. The inherent risks associated with relying solely on oral agreements in property transactions are manifestly evident; such agreements are susceptible to disputes due to their inherently unverifiable nature and the potential for misinterpretation. Consequently, this underscores the importance of converting any preliminary oral agreements into formally documented deeds to ensure clarity, enforceability, and legal standing in property transactions.

Further analysis legislation of the UK and Australia, reinforces these conclusions. Both jurisdictions exhibit a strong preference for written documentation in property transactions, as demonstrated by statutory requirements such as the Law of Property (Miscellaneous Provisions) Act 1989 in the UK and similar provisions under the Property Law Act in various Australian states. These laws mandate that substantial property transactions be formalized through written contracts, thereby limiting the legal recognition and enforceability of purely oral agreements.

Such requirements align with the theoretical perspectives suggested by the Kupang case, emphasizing the universal legal principle that formal documentation provides not only legal certainty but also reduces the likelihood of disputes.

In conclusion, the general theoretical implications derived from this analysis advocate for the stringent application of formal documentation in property transactions. This approach is essential to solidify the legal standing of grant deeds and safeguard the rights of all parties involved. Adhering to this principle can help mitigate the legal complexities and challenges that typically arise from oral agreements in the context of land ownership and transfers, promoting a more stable and predictable legal environment for property dealings. A promising area for further research could be the study of the problems caused by the practice of oral agreements in other regions.

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None.

Conflict of Interest

None.

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Правові наслідки усних домовленостей, що передують укладанню грантових договорів

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Анотація

Актуальність цього дослідження полягає у визнанні вирішальної ролі, яку гранти відіграють у соціальній структурі громад Індонезії. Попри їхню важливість, гранти, особливо в контексті успадкування землі, часто створюють проблеми, що призводять до ускладнень, таких як можливість відкликання або анулювання. Це дослідження мало на меті проаналізувати й осмислити правові наслідки усних домовленостей, укладених до складання акта про надання гранту, зосередившись на тому, як такі домовленості впливають на позбавлення права власності на землю, як це проілюстровано в рішенні Високого суду Купанга (справа № 23/Pdt/2017/PT.KPG). Завдяки використанню нормативно-правового підходу було ґрунтовно розглянуто вторинні джерела та юридичну літературу, щоб інтерпретувати закон так, як він написаний, і так, як він регулює поведінку суспільства. Порівняльний аналіз таких справ дав додаткову інформацію, показуючи, як різне тлумачення усних домовленостей може впливати на можливість виконання грантових договорів у різних юрисдикціях. Доведено необхідність чіткого визначення реальних доказів у вигляді автентичних актів. Ці акти слугують не лише беззаперечним доказом права власності на землю, а й основоположним елементом для будь-яких змін у цьому праві, що ґрунтується на взаємній згоді та обов'язках, взятих на себе як надавачем, так і отримувачем під час укладання акта. Договір про надання права на землю є ключовим документом, що забезпечує права отримувача на землю, які ґрунтуються на законних діях обох сторін, що беруть участь у транзакції. На підставі вивчення цих аспектів дослідження запропоновано ідеї щодо вдосконалення нормативно-правової бази, яка регулює надання земельних ділянок, з метою розв'язання проблем, що виникають у зв'язку з усними домовленостями в земельних транзакціях.

Ключові слова:

анулювання; передача землі; соціальна громада; Високий суд Купанга; майнові операції