

# A Juridical Study on the Transfer of Land Rights for *Afwezigheid*

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**ABSTRACT:** The transfer of land rights in Indonesia is fundamentally grounded in the principles of legal certainty and justice within the national agrarian system. However, legal complexities arise when the rightful landowner is in a state of *afwezigheid* (absence), a situation in which the legal subject's absence creates vulnerabilities in the validity and registration of land transfers. The research problems in this study are the procedures for transferring rights to land and/or buildings for people whose whereabouts are unknown (*Afwezigheid*), and the legal considerations regarding the institution for determining a person's absence according to the Civil Code for land registration purposes, in accordance with the principles of justice and legal certainty. This research employs a normative juridical method with a qualitative approach, analysing statutory regulations, legal doctrines, and court decisions related to land transfers involving absentee owners. The study examines procedures for transferring land rights under conditions of absence, the role of judicial determinations as a substitute for the deed issued by the Land Deed Official (PPAT), and the supervisory function of courts in safeguarding the rights of absentee owners. Findings indicate that Indonesian courts play a pivotal role in balancing the principles of justice and legal certainty by validating materially lawful transactions conducted in good faith and providing a juridical basis for land registration when formal requirements cannot be fulfilled due to absence. The study concludes that judicial decisions function as an essential corrective mechanism within the land administration system. Strengthening regulatory clarity regarding *afwezigheid* in land transfers is necessary to enhance coherence, fairness, and sustainability in Indonesia's land law framework.

**KEYWORDS:** *Afwezigheid*; Transfer of Land Rights; Legal Certainty; Judicial Decision; Land Registration.

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## I. INTRODUCTION

The transfer of land rights is a crucial element of the agrarian legal system, significantly affecting legal certainty, the sustainability of resource management, and the protection of landowners' rights.<sup>1</sup> In Indonesia, the regulation of land rights transfer is governed by various legal provisions that focus on the validity and protection of rights, including Law Number 5 of 1960 concerning the Basic Regulations on Agrarian Principles, Government Regulation Number 24 of 1997, and Government Regulation Number 18 of 2021. However, in practice, there are special challenges that are closely related to the condition known juridically as "*Afwezigheid*" or the absence of the owner of land rights, both physically and legally, in the process of transferring these rights. This concept gives rise to a phenomenon in this study called "*Afwezigheid*", in which the absence of optimal legal attachment to the process of transferring rights, due to the absence of the right party, causes legal vulnerability and potential disputes.<sup>2</sup>

In the context of Indonesian law, *Afwezigheid* is a situation in which a person entitled to property, including land, is not known for a specific period and is confirmed absent through a court decision. Even though the owner of the land is physically absent, his rights as a legal subject are not automatically lost, creating legal complexity, especially in the management

<sup>1</sup> Raudah Rosalia, "Validity of Land Rental Agreement for Foreign Nationals' Borrowing Practices" (2025) 7:1 Alauddin Law Development Journal 81–94.

<sup>2</sup> Jinyup Kim, "Tackling biopiracy in Southeast Asia: the need for a legally binding regional instrument" (2020) 23:1 Asia Pacific Journal of Environmental Law 74–98.

and transfer of land rights.<sup>3</sup> The absence does not have to be interpreted as death, but rather as an unclear status of existence that can hinder the settlement of the owner's rights and cause legal uncertainty over the ownership of related assets.

The main problem arises when land rights are transferred without the owner's presence or express consent. Juridically, this raises fundamental questions about the validity and legal binding effect of the transfer-of-rights agreement. For example, whether the transfer can be considered valid and legally binding, given the entitled party's non-physical or non-formal presence. This lack of clarity creates a risk of ownership disputes, leading to legal uncertainty and potential violations of landowners' fundamental rights.<sup>4</sup>

Normatively, agrarian law in Indonesia, which implements Law Number 5 of 1960 concerning the Basic Regulations on Agrarian Principles, is guided by the principle of balancing legal certainty with the protection of land rights.<sup>5</sup> However, the special regulation on the management and transfer of land rights under *afwezigheid* conditions has not been fully developed and requires in-depth study. The judicial system has the authority to determine the status of *afwezigheid* through litigation, with the Heritage Property Centre responsible for managing and maintaining the property belonging to the absent party. This is a temporary mechanism that aims to protect land rights, but a thorough legal study is needed to assess its implications for the legality of the transfer of rights.<sup>6</sup>

Previous research conducted by Erlina B and Muhammad Guntur discussed the Factors Causing the Dispute over the Name of the Land

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<sup>3</sup> Yusup Abaidata, "Legal Review on the Transfer of Land Rights (Buying and Selling) to Minors" (2023) 3:3 *Estudiante Law Journal* 344–357.

<sup>4</sup> Khairil Qadarisman, Fokky Fuad & Anis Rifai, "Agrarian Issues in the Indonesian State: Case Study of MA Decision Number 777.Pk/Pdt/2019 and Legal Protection for Landowners" (2023) 4:5 *Journal La Sociale* 265–275.

<sup>5</sup> Rahmat Ramadhani, "Legal Protection for Land Rights Holders Who Are Victims of the Land Mafia" (2021) 2:2 *International Journal Reglement & Society (IJRS)*.

<sup>6</sup> M Yazid Fathoni, Adi Sulistiyono & Lego Karjoko, "Reformulation of Sale And Purchase Agreement Regulations in Creating Legal Certainty and Justice in The Transfer of Land Rights in Indonesia" (2024) 12:1 *Jurnal IUS Kajian Hukum dan Keadilan* 55–67.

Rights, of which the Seller is Unknown (*Afwezigheid*), and the Judge's Consideration of the Dispute over the Name of the Land Rights whose Owner Is Unknown (*Afwezigheid*) in Decision Number: 3/Pdt.G.2024/PN. Kla.<sup>7</sup> Nanang Fayakun, Setiyowati, and Edy Lisdiyono discussed Judges' Legal Considerations in Deciding the Application for the Determination of the Seller's Absence and Judges' Decision in Granting the Request for the Seller's Absence in Court Ruling Number: 52/Pdt.P/2014/PN Mkd Dated August 5, 2014.<sup>8</sup>

This study is different from the previous research because it examines both the normative and juridical analysis of the phenomenon of *afwezigheid* in the transfer of land rights and analyses the legal considerations regarding the institution for determining a person's absence according to the Civil Code for land registration purposes in accordance with the principles of justice and legal certainty. Apart from legal provisions, because the uncertainty of land ownership can hinder economic activities, pose the risk of disputes, and weaken legal protection, the handling of *the afwezigheid* phenomenon needs to be developed through a legal approach that is not only formally legal oriented but also responsive to social and real conditions in the field.

This includes the mechanism for the rehabilitation of land rights ownership and the improvement of related regulations according to the *Afwezigheid*, for instance, the stages and period for determining a person who is suspected of disappearing until they can be declared dead. With a more in-depth study, it is hoped that applicable juridical solutions can be found to ensure sustainability and justice in the national land system.<sup>9</sup> Therefore, this research is expected to make a significant contribution to the

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<sup>7</sup> Erlina B & Muhammad Guntur, "Pertimbangan Hakim Terhadap Sengketa Balik Nama Hak Atas Tanah yang Penjualnya Tidak Diketahui Keberadaannya (*Afwezigheid*) (Studi Putusan Nomor: 3/Pdt.G/2024/PN.Kla)" (2025) 5:1 *Innovative: Journal Of Social Science Research* 6470–6478.

<sup>8</sup> Nanang Fayakun & Edy Lisdiyono, "Journal Equity of Law and Determination of The Seller ' s Absence in The Sale and Purchase Agreement of Land Ownership Rights" (2022) 6:2 61–67.

<sup>9</sup> Kurnia Rheza Randy Adinegoro, "Tantangan Implementasi Sertipikat Tanah Elektronik di Kementerian Agraria dan Tata Ruang/Badan Pertanahan Nasional Republik Indonesia" (2023) 4:2 *Jurnal Ilmu Kenotariatan* 129–142.

development of land law theory and practice, especially in the field of land rights management involving *afwezigheid*. This study is relevant to contemporary land administration in Indonesia, given the increasingly complex social and economic dynamics and the need to improve inclusive and equitable legal protection.

## II. METHODS

This research uses a qualitative approach and a normative legal method, examining various written legal sources relevant to the transfer of land rights in the context of *afwezigheid*, or the absence of the right owner.<sup>10</sup> This approach is carried out by studying the literature, which involves collecting, reviewing, and analysing laws and regulations, legal doctrines, court decisions, and official documents related to agrarian law and civil law in Indonesia. This normative analysis aims to understand the legal framework governing the transfer of land rights in the context of a binding absence and the juridical implications thereof.<sup>11</sup>

For the data analysis, this study uses a qualitative approach, grouping data into main themes related to *afwezigheid* and then examining their legal implications within the national land system. A critical analysis is also conducted to identify the strengths and weaknesses of existing regulations and to provide policy recommendations based on the research findings. This method is expected to produce research results that are holistic, legally relevant, and applicable to the practice of land law in Indonesia.

## III. PROCEDURE FOR THE TRANSFER OF RIGHTS TO LAND AND/OR BUILDINGS FOR UNKNOWN PERSONS (*AFWEZIGHEID*)

Legal Subjects in Civil Law consist of persons and legal entities, which have their own rights and obligations. A legal subject can be unknown in

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<sup>10</sup> Setiyono Setiyono et al, "Has Indonesia Safeguarded Traditional Cultural Expressions?" (2024) 6:2 Jambura Law Review 206–239.

<sup>11</sup> Syalaisha Amani Puspitasari & Taupiqqurrahman Taupiqqurrahman, "Quo Vadis Status Kondominium Hotel Berdasarkan Perspektif Regulasi Rumah Susun di Indonesia" (2024) 7:3 Jurnal USM Law Review 1865–1881.

certain circumstances, namely due to absent circumstances (*afwezigheid*).<sup>12</sup> Article 463 of Book I, Chapter XVIII, of the Civil Code (KUHPer) governs absences (*afwezigheid*). However, Article 463 of the Civil Code does not limit the meaning of the term *van afwezigheid*. The meaning of absence is often interpreted in many ways in everyday life.<sup>13</sup> R. Soebekti translated the word *afwezigheid*, written in *the Burgerlijk Wetboek* of the Civil Code, into the word absenteeism.<sup>14</sup> A person's absence may be due to several things, namely leaving their place of residence without family permission, leaving long ago without any news, or being lost due to an accident or a natural disaster.<sup>15</sup>

A person can be declared absent if they meet several elements regulated in Article 463 of the Civil Code. First, the person leaves his place of residence. Second, the person does not appoint another person to represent his affairs or take care of all his interests. Third, the absent person appoints another person under a power of attorney, but the power of attorney has expired. Fourth, if there is an urgent need to take care of the property, in whole or in part, and, finally, legal action must be taken to fill the vacancy resulting from the absence of appointing a representative for it.<sup>16</sup>

**Table 1.** Circumstances of Absence in the Civil Code

Sections	About	Article
First	Absent Situation	463 - 465

<sup>12</sup> Dhimas Nur Muhammad Ruata, *Kedudukan Hukum Keadaan Tidak Hadir (Afwezigheid) Dalam Transaksi Jual-Beli Saham (Studi Kasus Kantor Balai Harta Peninggalan Surabaya)* Universitas Pembangunan Nasional Veteran Jawa Timur, 2023).

<sup>13</sup> Paskah Sukses Grata Zebua & Besty Habeahan, "Tugas dan Kewenangan Balai Harta Peninggalan dalam Mengurus Warisan yang Dititipkan Pengadilan Akibat Ketidakhadiran (Afwezigheid) Ahli Waris" (2024) 5:2 *The Indonesian Journal of Islamic Law and Civil Law* 280–297.

<sup>14</sup> R Subekti, *Pokok-pokok Hukum Perdata* (Jakarta: PT Intermasa, 1982).

<sup>15</sup> Tsuruyyaa Maitsaa' Jaudah et al, "Prosedur Penetapan Ketidakhadiran Orang dalam Kasus Waris" (2025) 3:1 *Asabiyah: Jurnal Pengabdian Hukum* 236–246.

<sup>16</sup> Anak Agung Krisna Kumala Dewi, I Nyoman Putu Budiarta & Diah Gayatri Sudibya, "Hak Waris Bagi Ahli Waris yang Tidak Dapat Ditentukan Keberadaannya Menurut Kitab Undang-Undang Hukum Perdata" (2020) 1:2 *Jurnal Preferensi Hukum* 11–15.

Second	Statement of Possible Death	467 -471
Third	Rights and Obligations of Possible Heirs and Other Interested Persons, after a Declaration of Possible Death	472 - 488
Fourth	The rights that fall to an absent person whose life or death is in doubt	489 - 492
Fifth	Consequences of absenteeism in relation to marriage	493 - 495

Based on the chart of the arrangement of the circumstances of a person's absence regulated in the Civil Code, the period of absence is divided into 3 (three, namely: the period of taking temporary action, the period of legal suspicion of death, and the period of definitive inheritance. The time to take temporary action is the first step taken when a person leaves their residence without a power of attorney, and it is only taken when there is an urgent need to manage the property. The period of alleged death is regulated in Articles 467-471 of the Civil Code, where if the person is absent, disappears or is not at his residence for a period of 5 (five) years and does not leave a power of attorney, or is absent for 10 (ten) years, there is a power of attorney. However, it has expired; he has not been present for 1 (one) year. However, he is still confirmed as a crew member or passenger of a ship or aircraft, and the last if he is absent for 1 (one) year and is confirmed missing due to an incident resulting in a fatal event, such as a plane crash or ship sinking. The last period is the definitive heir period regulated in Article 484 of the Civil Code. This period begins after 30 (thirty) or 100 (one hundred) years from the birth of the absentee, as stated in the court decision. If the absentee returns, or there are signs that he is still alive. He has the right to ask for his wealth back and for the return of any assets related to the grant of the will or inheritance that fell to him, but

if it turns out that he is dead, such assets can only be transferred with the court's permission.<sup>17</sup>

When an individual in a state of *afwezigheid* has property to be transferred to someone else, the transfer process is problematic because no party can legally act to effect it.<sup>18</sup> In such circumstances, families and other interested parties often face difficulties in managing or dividing heritage assets due to a lack of clarity regarding the legal status of the absentee.<sup>19</sup> The determination of the presumption of death within a period of 5 (five) years or more after he departs from the place of residence of the absent person currently requires further legal review. In certain cases, such as the case that occurred in the case of the verdict Number: 265/Pdt.G/2023/PN Lbp, where there is a person who drowned in the sea, but his body has never been found, even though it has been searched through the most sophisticated equipment, it cannot provide certainty under the law. -Based on the provisions of Article 44 paragraph (4) of Law Number 23 of 2006 concerning Population Administration, which has been amended by Law Number 24 of 2013, a new death certificate can be made after a determination by the District Court regarding the alleged legal opinion of the person who is not present has died.

The transfer of rights to land and/or buildings can occur by legal transfer or by operation of law. Transfer by operation of law occurs automatically through inheritance. At the same time, transfer can also occur through the deliberate transfer of rights to land and/or buildings, namely through buying and selling, grants, exchanges, and income in the company (*inbreng*).

The procedure for the transfer of land and/or building rights for unknown persons (*Afwezigheid*) is divided into 2 (two) legal events, namely :

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<sup>17</sup> Syarifah Amalia Bin Tahir, Robby Putri Aulia Franata & Mada Ali Haykal Sidiq, "Implikasi *Afwezigheid* Serta Kedudukan Hukum Orang Tidak Hadir Di Dalam Perkawinan" (2022) 15:2 PROGRESIF: Jurnal Hukum 213–234.

<sup>18</sup> Viena Viena, Hasim Purba & Mahmud Siregar, "Analisis Keabsahan Penjualan Saham Pemegang Saham yang Dinyatakan Tidak Hadir dan Tidak Diketahui Keberadaannya (*Afwezigheid*)" (2025) 6:4 Jurnal Hukum Lex Generalis 1–26.

<sup>19</sup> Zebua & Habeahan, *supra* note 13.

First, transactions of transfer of rights to land and/or buildings have occurred, for example: sale and purchase, but the seller's whereabouts are no longer known, so that the buyer cannot make a Deed of Sale and Purchase (AJB) in front of the authorised Land Deed Making Office (PPAT). The transfer of land and/or building rights according to the National Land Law adopts the transfer of land and/or building rights from customary law. Still, the transfer of customary land rights is only dependent on legal acts that are cash, real, and clear. In terms of land rights transfer, the UUPA has norms that differ from those of customary law. One difference is that the UUPA specifies the obligation to register land. In contrast, customary law not only does not require it but also does not recognise the concept of land registration.<sup>20</sup>

Cash nature means that the agreed purchase and sale price must be paid in cash (in full)<sup>21</sup>, and the seller hands over the rights to the land to the buyer, who then pays the seller. The real meaning is that the will or intention expressed must be followed by real deeds to show the purpose of the sale and purchase.<sup>22</sup> Bright means that the act of buying and selling must be conducted in the presence of authorised officials. Article 37, paragraph (1) of Government Regulation Number 24 of 1997 requires all transfers of land rights to be made by deed of PPAT, except for transfers of rights through auction. According to Article 86 of Government Regulation Number 18 of 2021, PPAT may issue an electronic deed for the transfer of land rights. Based on Article 22 – 28 Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency, the issuance of electronic PPAT deeds is submitted for land registration data maintenance activities via an electronic system or land counters.

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<sup>20</sup> M Yazid Fathoni, “Kedudukan Hukum Peralihan Hak Atas Tanah Secara Adat Dalam Perspektif Hukum Positif Indonesia” (2022) 8:1 Jurnal IUS Kajian Hukum dan Keadilan 190–205.

<sup>21</sup> Sumitro Salim, “Penerapan Sifat Terang Dan Tunai Dalam Jual Beli Tanah Yang Belum Lunas (Studi Putusan Pengadilan Negeri Tanjung Karang Nomor 6/PDT.G/2020)” (2021) 3:4 Indonesia Notary 659–680.

<sup>22</sup> Asta Tri Setiawan, Sri Kistiyah & Rofiq Laksamana, “Problematika Keabsahan Jual Beli Tanah di Bawah Tangan Tanah di Kawasan Transmigrasi” (2021) 4:1 Tunas Agraria 22–39.

In addition, the sale and purchase of land and/or buildings, in accordance with national land law, must meet both material and formal requirements. The material conditions in buying and selling consist of the seller being the person who has the right to sell, the buyer being a qualified person as the subject of the holder of land rights, and the object of sale and purchase is free from confiscation, not in dispute and not used as a guarantee for debt repayment. The formal requirements are that the sale and purchase of land and/or buildings be carried out before the PPAT, which issues the sale and purchase deed. The transfer of land and/or building rights that have occurred but are not registered because the transfer was conducted through an underhanded sale, evidenced by a written document, for example, only with the receipt form, or based on customary law practices commonly applied within customary communities, can cause losses, especially in terms of administration and costs. From an administrative perspective, the buyer does not hold the sale and purchase deed, and the certificate remains registered in the seller's name. In terms of costs, buyers will spend more to locate the seller and pay sales taxes because the Taxable Sale Value of Property (NJOP) for land and/or buildings increases every year. The seller's absence, whose whereabouts cannot be ascertained (*afwezigheid*), further worsens the situation, becoming a major obstacle for the buyer in fulfilling the administrative requirements set by the National Land Agency (BPN) as a condition for changing the certificate's name.<sup>23</sup>

In practice, to overcome legal problems that occur when the sale and purchase has been completed, but the sale and purchase deed has not been made because the seller is no longer known (*afwezigheid*), the buyer can file a lawsuit to the District Court so that the sale and purchase transaction carried out under the hand can be ratified by the Judge, as the decision with Number 116/Pdt.G/2019/Bkn and decision Number 191/PDT. G/2021/PN Smg<sup>24</sup> so that the District Court judge can then order the local Land Office to register the sale and purchase. Based on the decision of the district court judge, the buyer can submit an application for registration of the sale and purchase to the local land office by submitting the necessary

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<sup>23</sup> B & Guntur, *supra* note 7.

<sup>24</sup> Elvia Qonitah Maliha & Dinda Keumala, "Keabsahan Kuitansi Sebagai Bukti Jual Beli Tanah Menurut Hukum Tanah Nasional" (2024) 1:1 *Amicus Curiae* 384–392.

documents, such as a copy of the judge's decision, the buyer's personal data consisting of Identity Card (KTP), Family Card (KK), Taxpayer Identification Number (NPWP), land plot data, consisting of the original land rights certificate, Notification of Land and Building Tax Payable (SPPT PBB) for the current year as well as building permits (IMB), purchase receipts and proof of payment of seller tax (Income Tax) and buyer's tax (Land and Building Rights Acquisition Duty). The land office will accept the submission of the application for registration of the sale and purchase, and record changes in the juridical data of the land plot in the general register, in accordance with the provisions that have been established.

Second, transfer of rights to land and/or buildings belonging to an unknown person (*Afwezigheid*) until it is declared likely to be deceased, so that a death certificate can be made at the civil registry office. Upon a person's death, the inheritance process begins. The rights and obligations of the heir for the sake of the law pass to the heirs. The heirs must obtain a certificate of proof as heirs to demonstrate that they are the legal heirs of the deceased and to take care of the deceased's legacy.<sup>25</sup> Proof of heirship can be in the form of:

- 1) Will from the heir;
- 2) Court decisions;
- 3) Appointment of judges/chief justices;
- 4) Statement of heirs made by the experts, witnessed by 2 (two) witnesses, and known by the Head of the Village/Lurah and Sub-district, the remaining heirs at the time of death;
- 5) Deed of proof of inheritance rights from the Notary who is domiciled at the place of residence of the heir at the time of death;  
or
- 6) Certificate of inheritance from the Heritage Centre.

The documents submitted to the Head of the Land Office for the registration of the transfer of land and/or building *rights in Afwezig* consist

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<sup>25</sup> Dinda Keumala, "The Dialectic of Notary Inheritance Deed Arrangement" (2023) 38:1 *Yuridika* 143–158.

of a death certificate, a certificate of proof as an heir, the original certificate of land rights, the current year's Land and Building Tax Payable Tax Notification Letter (SPPT PBB) and a building permit (IMB), an Income Tax exemption certificate (Pph) due to inheritance and proof of payment of the beneficiary's tax (Duty on the Acquisition of Rights) Land and Buildings). If there is more than 1 (one) heir and there has been no distribution of the inheritance, then the registration of the transfer of rights is carried out to the heirs as joint ownership. The further division of rights can be carried out through the division of joint rights, namely by executing a Deed of Joint Rights Distribution (APHB) before the authorised PPAT in accordance with applicable laws and regulations. However, if the heirs are more than 1 (one) person and at the time of registration the transfer of rights is accompanied by an inheritance deed containing information that the Land Rights or Property Rights to a certain Flats Unit fall to 1 (one) inheritance, then the recording of the transfer of rights is carried out to the beneficiary of the inheritance concerned based on the inheritance deed.

#### **IV. THE PRINCIPLES OF JUSTICE AND THE LEGAL CERTAINTY ON *AFWEZIGHEID* FOR LAND REGISTRATION**

In practice, the relationship between the institution of determination of absence and land registration is clearly seen in several court decisions, both at the first level and the Supreme Court, which basically use the determination/decision of the judge as the basis for changing the name or transfer of rights when the owner of the certificate is not present or whose whereabouts are unknown. That, without the Land Deed Officials (PPAT) deed because the seller cannot attend, the judge's endorsement of the agreement and order to the land office is sufficient to record the change of rights holders, as long as the conditions for the validity of the contract and the buyer's good faith are proven.

This can be seen in Decision Number 11/Pdt.G/2024/PN Mjl, the panel of judges stated that the validity of a land sale and purchase where the seller cannot be present directly and whose whereabouts are difficult to trace, after it is assessed that the agreement, object, and cause of the

agreement have been fulfilled. The payment has been made in real terms. The judge then ordered the National Land Agency of the Republic of Indonesia, Regional Office (ATR/BPN), to record the change of the right holder's name on the certificate to the plaintiff's name, so that the land administration can be completed even if the seller is physically absent.

In addition to Decision Number 11/Pdt.G/2024/PN Mjl, several other decisions show a similar pattern, namely the judge authorises the sale and purchase or transfer of land rights without a PPAT deed because the parties, especially the seller, cannot be present or are difficult to trace, then makes the decision the basis for registration or name change at the land office.

For example, in Decision Number 5/Pdt.G/2024/PN Pct, the panel of judges granted the plaintiff's lawsuit to purchase land from the parties whose whereabouts are now unknown. At the same time, the certificate remains registered in the defendants' names. The judge declared the legal relationship and the sale and purchase valid, then ordered the land office to issue or reverse the name on the certificate in the plaintiff's name, even though the defendants never appeared at trial. Due to the defendant's absence, the judge declared a *verstek* decision.

From this decision, it appears that the path of lawsuit or application to the court is seen as a corrective mechanism to fill the void due to the absence of the owner and provide a basis of certainty for ATR/BPN officials to act, as long as the material elements of the sale and purchase and the good faith of the buyer are convincingly proven.

Article 37, paragraph (1) of Government Regulation Number 24 of 1997 is still used as a reference. Still, when a PPAT deed cannot be issued because the seller is not known to exist, a court decision with legal force can serve as a substitute for the PPAT deed as a basis for land registration. This consideration is in line with the logic in Decision 11/Pdt.G/2024/PN Mjl, where the judge recognises the sale and purchase that is materially legal and then orders the ATR/BPN to record the transfer of rights even though the seller is absent.

In addition to the above decision, there is Decision Number 44/Pdt.G/2023/PN Kln, which shows that the judge authorised the sale and purchase of land under hand without a PPAT deed and made it the basis for the transfer of land rights through registration based on a court decision. In this case, the judge first checked the fulfilment of the legal conditions of the agreement, the proof of payment, the buyer's physical possession, and the witness statements, then declared the sale and purchase valid and ordered the land office to process the transfer of rights on behalf of the plaintiff.

Thus, a court decision can have the same evidentiary force as a PPAT deed for the benefit of land administration when an authentic deed is impossible to make, for example, because the seller disappears, is uncooperative, or difficult to trace. This pattern of consideration strengthens the legal construction seen in Decision 11/Pdt.G/2024/PN Mjl: the judge fills the formal void (absence of PPAT deed and the absence of the seller) with a decision that affirms the validity of the sale and purchase, so that protection for buyers in good faith remains guaranteed.

The Supreme Court has the authority to declare the cancellation of land registration or land rights certificates if the issuance process does not meet the provisions of the law, either because the correct basis of rights does not support it, is carried out procedurally, or violates the rights of other parties.<sup>26</sup> This authority is consistent with the principle that a certificate is strong evidence but not absolute, and can still be cancelled if it is proven to be legally flawed.<sup>27</sup>

In a number of its decisions, the Supreme Court emphasised that administrative defects in the registration process, such as the absence of proof of legal possession, the failure to acknowledge the existence of the previous owner, or the manipulation of physical and juridical data, are

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<sup>26</sup> Ahmad Wiranto et al, "The Implementation of Cancellation of Land Title Certificates Due to Administrative Defects After the Enactment of Government Regulation No 18 of 2021: A Case Study of the Land Office in Malang Regency" (2024) 10:7 Path of Science 5001–5008.

<sup>27</sup> Rizal Iskandar Soewito & Gunawan Djajaputra, "Legal Certainty For Holders of Land Rights Over The Issuance of Multiple Certificates" (2024) 4:4 Journal of Law, Politic and Humanities 854–860.

sufficient grounds to declare the certificate to be without legal force. This is seen as contrary to the principles of legal certainty, administrative accuracy, and justice for the parties.<sup>28</sup>

One example can be seen in the Supreme Court Decision Number 226 K/Sip/1974, where the Court stated that land rights certificates may be cancelled if the basis for their issuance is invalid or the acquisition process violates others' rights.<sup>29</sup> In this case, the certificate was considered defective because the registration applicant applied without a clear basis of rights, could not show proof of legal tenure, and ignored the fact that there was a previous owner who physically controlled the land. The Supreme Court held that the action was contrary to the principles of certainty and justice and therefore declared the certificate null and void.

Another decision, namely Supreme Court Decision Number 370 K/Sip/1955, also affirms the same principle, namely that the issuance of a certificate of proof of land rights that does not follow procedures and violates the rights of third parties can be cancelled.<sup>30</sup> Thus, judicial practice shows that a certificate is not absolute evidence, and the Supreme Court will annul it if it is found to contain substantive or procedural legal defects, especially when its issuance is detrimental to those with more legitimate rights.

In contrast to Decision 11/Pdt.G/2024/PN Mjl, which actually gives buyers in good faith the legitimacy to register their rights, this decision shows that judges can also use their authority negatively, namely, by cancelling certificates issued without an adequate evidentiary process or without involving the legal owner. Thus, jurisprudence shows two directions: the court can be a "bridge" when the owner is absent, but the

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<sup>28</sup> Raymond Talinbe Abdulai & Edward Ochieng, "Land registration and landownership security: An examination of the underpinning principles of registration" (2017) 35:1 Property Management 24–47.

<sup>29</sup> Desy Agatha Sari, M Sudirman & Benny Djaja, "Pertanggungjawaban Hukum Perdata Pejabat Pembuat Akta Tanah (PPAT) Dalam Peralihan Hak Atas Tanah (Analisis Putusan Nomor 86/PDT.G/2009/PN.DEPOK)" (2024) 6:1 Journal of Social and Economics Research 595–608.

<sup>30</sup> Hulman Panjaitan, *Kumpulan Kaidah Hukum Putusan Mahkamah Agung Republik Indonesia Tahun 1953 – 2008 Berdasarkan Penggolongan* (Jakarta: Prenada Media, 2016).

legal relationship is clear, and at the same time, it can be a "filter" that cancels registration when the owner's absence is abused to obtain a certificate illegally.

When juxtaposed, Decisions 11/Pdt.G/2024/PN Mjl, 5/Pdt.G/2024/PN Pct, and 44/Pdt.G/2023/PN Kln show a consistent pattern that the judges: 1) Examine in advance the legality of the sale and purchase (agreement, object, causa, and payment) as well as the good faith of the buyer. 2) Decide instead of the PPAT deed when the seller is not present or unknown, then order the ATR/BPN to register or change the name.

This pattern strengthens the argument that the institution of determination or the judge's decision regarding land transactions with parties who are not present is an instrument to balance the principles of justice and legal certainty, justice for buyers who have fulfilled their achievements and control the land, as well as certainty for land administration to have a strong juridical basis in changing land book data.<sup>31</sup>

At the same time, jurisprudence that cancels registration without the basis of legal rights is a warning that when the absence of the owner is manipulated, or there is no evidence of a legitimate transaction, the judge will actually re-establish the original status to protect the rights of the owner and maintain the integrity of the land registration system.

The Supreme Court issues several determinations regarding absentee persons (*afwezigheid*) to enable the Heritage Centre to manage and then divide or transfer assets, including land, belonging to people whose whereabouts have been unknown for a long time.<sup>32</sup> In such a determination, the judge usually declares a person to be absent, appoints the Heritage Center as the administrator, and gives specific authority to manage and, if necessary, sell or divide the land based on the provisions of Indonesian civil law confirming that any act of transfer of property carried

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<sup>31</sup> Khairunnisah Khairunnisah, "Aspects of Legal Certainty Regarding the Transfer of Land Rights Using a Power of Attorney Deed" (2024) 2:1 ANAYASA: Journal of Legal Studies 113–122.

<sup>32</sup> Jessica Vania Theresa Samosir, "Legal Position Of A Person Who Is Not Attended (*Afwezigheid*) According To The Kuhperdata (Case Study At The Career Of Health Of Medan)" (2021) 3:3 Journal of Law Science 109–118.

out by a guardian, guardian, or curator must be subject to the principles of prudence and judicial supervision. Under the Civil Code, particularly Article 447, the guardian is not permitted to take actions that go beyond the limits of ordinary management (*daden van beschikking*) of the property of the person in custody without prior permission from the District Court.

Such actions include the sale, transfer of title, encumbrance, or other legal acts that may change the status or reduce the value of the assets of the legally incompetent party. A similar principle is affirmed in the Regulations of the Heritage Center (*Staatsblad 1924 No. 556 jo. Stb. 1925 No. 448*),<sup>33</sup> in particular Article 23 and Article 41, which require that the Heritage Center in its capacity as curator or guardian is obliged to apply for permission to the court before taking any action outside of ordinary management, including selling or encumbering the property of a person under its supervision. Thus, both the Civil Code and the regulations of the Heritage Property Centre consistently designate the judicial control mechanism as an essential prerequisite for protecting the rights of vulnerable legal subjects and preventing abuse of authority in the management and transfer of assets.

Article 484 of the Civil Code shows that when the sale of land belonging to a person who is declared absent is made before the specified deadline (for example, before 30 years), the transfer is considered contrary to the law and has the potential to be cancelled because it is considered not to meet the requirements of the subject in Article 1320 of the Civil Code. This shows that even if there is a determination of *afwezigheid*, the judge must still ensure that the action on the land does not exceed the time limit and authority regulated by law, to protect the rights of absentee persons.

In resolving land rights disputes in Indonesia, the Supreme Court has established consistent jurisprudence on the procedure for testing the legitimacy of certificates and the authority to prove authentic evidence of land rights.<sup>34</sup> In the context of double certificates, the Supreme Court held

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<sup>33</sup> Anik Iftitah et al, "Pengantar Ilmu Hukum Indonesia" (2023) Serang.

<sup>34</sup> Alberto Paskah Tarigan & D Debora, "Dispute Resolution of Certified Land Rights in Sale and Purchase Transactions" (2025) 5:1 Golden Ratio of Data in Summary 72-78.

that if two or more certificates are issued on the same land object and both are authentic, the first certificate is valid and has the force of law as the most substantial proof of right.<sup>35</sup> This legal opinion has been recorded in several Supreme Court decisions, including Decision Nos. 976 K/Pdt/2015, 170 K/Pdt/2017, and 1318 K/Pdt/2017, and has subsequently become part of the permanent jurisprudence governing the case of double land certificates.

Regarding these decisions, the Supreme Court generally does not decide on the issue of registration or renaming of land rights on behalf of the plaintiff without the defendant's consent when the defendant is absent or uncooperative. Rather than providing a rule that the permission of the absent party is not required, the judgments primarily ensure that, in the case of a double certificate, the legitimacy of the certificate is determined by the order in which it was issued, rather than merely a factor of physical mastery or written consent of the other party.

In addition, Supreme Court Decision No. 1131 K/Pdt/2020 shows that the Supreme Court assesses the importance of physical control and the legal relationship between the subject and the object of the land as part of the examination material (for example, in the context of land that is "no longer physically controlled" by the owner). In the ruling, the Supreme Court stated that if the owner no longer physically controls his land and there is no clear legal relationship between the right holder and the object, then the sale and purchase transaction can be declared null and void, so that the buyer does not get legal protection as a party in good faith.

The Supreme Court's cautious approach to renaming land rights, especially when the transfer is carried out without the consent of all interested parties, such as heirs. Name changes without the written permission of other

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<sup>35</sup> Nurussabila Aulia & Dedy Hernawan, "The Legal Certainty for Land Rights Holders Due to the Issuance Certificates Overlap of Certificates (Overlapping) on property Rights Certificate No. 60 Certificate Issued in 1956 and Certificate of Ownership No. 01729 Published in 2019 is Linked to Gover" (2025) 5:2 Journal of Law, Politic and Humanities 963–973; Titi Resmiyanti, Akhmad Khisni & Achmad Sulchan, "Dispute over Double Certificate on the National Land Agency of Indramayu District" (2020) 6:4 Jurnal Akta 703–710.

parties are often seen in the study as problematic and are not necessarily ordered by the court to be recorded by BPN.

Based on the description of the above decisions, it can be concluded that although the Supreme Court has established a strong jurisprudence regarding the assessment of double certificates based on the order of time of issue, no Supreme Court decision explicitly stipulates that the registration or renaming of land rights can be carried out without the consent of the absent defendant based only on the old possession and evidence of the basis of the right alone.<sup>36</sup> The available rulings show that the Supreme Court places greater emphasis on the formal aspects of certificates and proof of rights, as well as on the legitimacy of the legal relationship between the owner and his object, when deciding agrarian disputes.<sup>37</sup>

The above ruling sends the message that the formal presence of all parties is not always an absolute requirement if the facts and evidence are sufficient, and that the absence of negligent or unknown parties should not be a permanent obstacle to land administration settlement. However, the judge still requires that the buyer or plaintiff act in good faith and that there be no indication of a violation of the procedures and rights of other parties, so that the principle of justice is maintained.

In addition, from the above series of rulings, it appears that the judge used his authority to convert imperfect civil facts (for example, buying and selling without a PPAT deed because the seller was not present) into a juridical basis that the land office can use to provide certainty of land ownership status.

On the other hand, courts are also careful to limit the authority of the curator or buyer, for example, by requiring a specific deadline or strong proof of possession, so that the rights of the absent owner are still respected and not arbitrarily sacrificed. Thus, the institution for determining the absence and the judge's decision that orders the name change or authorises the curator functions as a meeting point between the

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<sup>36</sup> Abdulai & Ochieng, *supra* note 28.

<sup>37</sup> Enny Agustina, "The Used of Certificate of Land Rights on Proving in Land Disputes" (2021) 2:2 Administrative and Environmental Law Review 71–80.

principle of justice (protection of the rights of owners and buyers in good faith) and the principle of legal certainty (certainty of certificate status and land registration data) in Indonesian land practice.

From the above description, it can be seen that the judges considered the decisions that have been *inked* in their relevance to *Afwezigheid* and the land registration in the following table:

**Table 2.** Consider the judges in the decisions concerning *Afwezigheid*

No	Decision	Key Issues	Judge's Considerations	<i>Afwezigheid</i>
1.	Mojolaban District Court – Decision 11/Pdt.G/2024/PN Mjl	Buying and selling land without the presence of a seller	The judge stated that the sale was legal (the requirements of Article 1320 of the Civil Code were met), and the proof of real payment, the seller's whereabouts were unknown	The decision to replace the PPAT deed → BPN was ordered to change the name even though the seller was absent
2.	Pacitan District Court – Decision 5/Pdt.G/2024/PN Pct	The defendants were not present, certificates in their names	The judge recognises the legal relationship of sale purchase + payment; verstek verdict; Buyers in good	The decision to replace the defendant's consent → BPN is required to change the name

No	Decision	Key Issues	Judge's Considerations	<i>Afwezigheid</i>
			faith	
3.	Klaten District Court – Decision 44/Pdt.G/2023/PN Kln	Buying and selling underhanded; Seller Not Present	The judge examines proof of payment, witnesses, and physical possession; the Sale and purchase are declared valid.	The decision is used as a basis for transfer and registration, even without a PPAT deed.
4.	Supreme Court – Decision 226 K/Sip/1974	Certificate of disability and no legal basis	The certificate can be cancelled if there is no legal control/clear basis of rights; publication violates the rights of others.	The Supreme Court can cancel a certificate if the original process does not involve the correct owner.
5.	The Supreme Court – Decision 370 K/Sip/1955	Certificate of issuance without legal procedures	Certificates that infringe on the rights of third parties may be revoked	BPN may not process a name change/change if the issuance policy is invalid
6.	The Supreme Court – Decision 976 K/Pdt/2015; 170 K/Pdt/2017;	Dual certificates	Rule: "The certificate issued first is	Strengthening the principle of legal certainty, but

No	Decision	Key Issues	Judge's Considerations	<i>Afwezigheid</i>
	1318 K/Pdt/2017		the valid one"	not deciding the question of name change without the presence of the owner
7.	The Supreme Court – Decision 1131 K/Pdt/2020	The Supreme Court refuses to buy and sell because physical possession is lost → there is no proven legal relationship.	Land that is no longer physically controlled by the owner	Demonstrate the Supreme Court's prudence; it doesn't automatically approve a switch without the owner being present

Therefore, from Table 2 above, it can be concluded thematically in the following Table 3:

**Table 3.** Consider the judges' application of the Principles of Law in decisions concerning *Afwezigheid*.

Principle	Key Findings of the Verdict
The Principle of Justice	The judge protects the buyer in good faith when the seller is absent (Mojolaban District Court – Decision 11/Pdt.G/2024/PN Mjl, Pacitan District Court – Decision 5/Pdt.G/2024/PN Pct, and Klaten District

Principle	Key Findings of the Verdict
Court – Decision 44/Pdt.G/2023/PN Kln).	
The Principle of Legal Certainty	The decision was used to fill the formal void (absence of a PPAT deed), providing a basis for BPN to change its name.
Judicial Control	The Heritage and Guardianship Agency must obtain permission from the District Court before selling/transferring assets (Article 447 of the Civil Code; Articles 23 and 41 of the Regulations of the Heritage Property Center).
Protection of Absentee Owner's Rights	The Supreme Court annulled certificates issued without the right of justification (226 K/Sip/1974; 370 K/Sip/1955).
Caution against <i>Afwezigheid</i>	The Supreme Court does not automatically approve the name change without the owner's consent if physical possession is not proven (1131 K/Pdt/2020).
Dual Certificate	Jurisprudence rules: the certificate issued first is valid (976 K/Pdt/2015; 170 K/Pdt/2017; 1318 K/Pdt/2017).

Based on the annotations of several court decisions, both the decision of the court of first instance or appeal (Judex Factie) as well as the cassation level decision (Judex Iuris), then in the perspective of legal politics, especially related to legal institutional politics, the court has a decisive role to make legal discoveries in the form of providing an official interpretation and assessment of the status of the party's absence in the context of land registration through the act of buying and selling as a civil event. Therefore, the court, through the judge, is certainly required to conduct a careful and thorough examination before providing legal considerations

and the decision's dictum regarding the status of the parties' absence in relation to the validity of the registration or transfer of land plots.

The discovery of the law by the judge through the judge's decision is, in essence, in line with the principle of judge-made law, namely, the judge issues a decision on the legal problem examined and tried by him. The existence of a court decision is a form of legal certainty. However, to realise legal certainty in the form of the decision, the judge is, of course, guided by the principles of professionalism and prudence in examining and adjudicating a case. These three principles are important requirements that cannot be separated so that the judge's decision contains aspects or values of justice.

Ideally, a judge's decision should contain three (3) aspects of justice: moral justice, legal justice, and social justice. The aspect of legal justice certainly derives from positive law, which operates within a legislative hierarchy. The aspect of moral justice stems from the judge's moral responsibility, which is inherent in his profession and philosophically reflects God's representation through the *rrahs* in the systematics of decisions written: "For Justice Based on the One Godhead". Meanwhile, the aspect of social justice in the judge's decision benefits the community, especially by providing and maintaining social order. Therefore, the existence of the dynamics of the judge's decision as explained in the annotation table above, there is a causustically legal certainty in the form of a judge's decision which in legal considerations and dictum or its *amar*, has provided the principle of justice that meets 3 (three) aspects, namely the aspect of legal justice, the aspect of moral justice and the aspect of social justice.

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The fulfilment of the three aspects of justice in a judge's decision must, of course, be supported by the legal policy of the Supreme Court of the Republic of Indonesia. The policy can take the form of establishing written regulatory norms that serve as binding guidelines for all judges when making decisions within each judicial jurisdiction. In practice, so far, the Supreme Court of the Republic of Indonesia has chosen to issue regulations in the form of Supreme Court Regulations (Perma) or Supreme Court Circular Letters (SEMA) to fill gaps in formal or procedural law. This can be seen from several legal products of Perma and SEMA, namely Perma Number 3 of 2022 concerning Electronic Mediation in Court, Perma Number 2 of 2015 as amended by Perma Number 4 of 2019 concerning Amendments to Perma Number 2 of 2015 concerning Procedures for Settlement of Simple Lawsuits and finally SEMA Number 1 of 2026 concerning Guidelines for the Implementation of the Criminal Code of 2023 and the Criminal Code of 2025. Therefore, according to the author, it is necessary to have a written legal policy in the form of a Perma or a SEMA that regulates the obligation to fulfil three aspects of justice in every judge's decision.

## VI. CONCLUSION

The phenomenon of *afwezigheid* in the transfer of land rights presents a significant juridical challenge within Indonesia's agrarian legal system, particularly in balancing the principles of justice and legal certainty. The absence of a landowner does not automatically extinguish their legal status or proprietary rights; however, it creates procedural and substantive obstacles in the execution and registration of land transfers. This condition gives rise to what this study conceptualises as "*afwezigheid*", in which the lack of the right holder's physical or formal presence generates legal vulnerability and potential disputes.

Normatively, Indonesian civil and agrarian law provides mechanisms to address absentee conditions, including judicial determinations of absence, the appointment of the Heritage Property Centre, and court authorisation for acts that exceed ordinary management. In practice, court decisions have evolved into a corrective legal instrument to fill formal gaps, particularly when the Land Deed Official (PPAT) cannot execute the deed due to the seller's absence. District Court rulings demonstrate that judges may validate materially lawful transactions conducted in good faith and order the National Land Agency (ATR/BPN) to register or transfer land rights, thereby ensuring administrative continuity and protecting buyers.

At the same time, Supreme Court jurisprudence emphasises caution by annulling certificates issued without a valid legal basis, proper procedures, or legitimate control over the land. This dual judicial function illustrates that the court acts both as a bridge, facilitating legal certainty when formal requirements cannot be met, and as a filter, preventing the abuse of absentee status to obtain land rights unlawfully. Such jurisprudence reinforces that certificates, although strong evidence, are not absolute and remain subject to judicial review.

Ultimately, judicial interpretation plays a decisive role in shaping land law practice in cases involving *afwezigheid*. The judge's role as a law-finder (judge-made law) contributes to the realisation of moral, legal, and social justice. Nevertheless, greater regulatory clarity and harmonisation are required to provide a more comprehensive framework governing land transfers under conditions of absence. Strengthening legal safeguards,

procedural standards, and institutional coordination will enhance protection for absentee landowners while maintaining certainty and fairness in Indonesia's land registration system.

The existence of a legal policy in the form of Perma or SEMA that provides binding guidelines for each judge to contain 3 (three) aspects of justice in the decisions he makes is something that can provide the value of the usefulness of the judge's decision. In addition, there is a need for harmonisation or synchronisation of norms between civil law and land law that regulate the institution of *afwezigheid* and its implications for determining the validity of a person's acquisition of land.

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