

## **Judicial Considerations in the Rejection of Conservatoir Beslag in Land Disputes**

Mohammad Rafli Darussalam<sup>1</sup>, Dwi Handayani<sup>2</sup>, Sri Amlinawaty<sup>3</sup>

<sup>1</sup>Fakultas Hukum, Universitas Muslim Indonesia, Indonesia

<sup>2</sup>Fakultas Hukum, Universitas Muslim Indonesia, Indonesia

<sup>3</sup>Fakultas Hukum, Universitas Muslim Indonesia, Indonesia

Email Correspondence: [arrfff23@gmail.com](mailto:arrfff23@gmail.com)

**Abstract:** This study examines the urgency of legal protection in resolving land disputes by analyzing judicial considerations and the fulfillment of requirements for the issuance of *conservatoir beslag* in a court judgment at the appellate level. Land disputes constitute a significant issue as they relate to the certainty of rights, the potential for prolonged conflict, and the vulnerability of communities to document misuse or unlawful possession. The central problems addressed in this research are how judges consider and determine rulings in land dispute cases and whether the requirements for *conservatoir beslag* have been fulfilled in the case under review. The study employs a normative legal approach to examine relevant legal materials and identify the structure of judicial reasoning. The analysis shows that the judge's decision is grounded in the principles of justice, legal certainty, and the protection of lawful land rights by assessing valid ownership evidence, the legal standing of the parties, and the relevance of prior decisions that confirm unlawful acts committed by the defendant. The issuance of *conservatoir beslag* is considered to have met its foundational requirements, supported by sufficient preliminary evidence, a clearly identified disputed object, and reasonable concern over potential transfer of the object that could disadvantage the rightful party. The findings highlight the pivotal role of judges in maintaining the status quo of disputed objects to prevent further harm and strengthen legal protection for legitimate owners. This study recommends enhancing public legal education and strengthening inter-institutional coordination to support the effectiveness of preventive measures in land dispute cases.

**Keywords:** land dispute, judicial considerations, *conservatoir beslag*, legal protection, certainty of rights.

### **A. INTRODUCTION**

Land disputes are among the most complex and most frequently occurring forms of civil disputes in Indonesia, primarily because land holds significant social, economic, and historical value.[1] The problem becomes even more complicated when land is occupied without legal basis, land certificates overlap, or documents presented do not reflect the actual conditions. In this context, the existence of *conservatoir beslag* (prejudgment attachment) becomes an essential mechanism to ensure that the disputed object remains in *status quo* until a final and binding judgment is rendered.[2] This instrument serves as a preventive measure to avoid actions that may diminish or eliminate the value of the disputed object, such as transfer of rights, unilateral occupation, or construction on the

contested land. However, in practice, not all applications for *conservatoir beslag* are granted. Although in theory many scholars argue that judges tend to grant such applications based on the principle of prudence, judicial practice shows that certain considerations often lead judges to reject the request.[3]

A number of prior studies have examined the role of prejudgment attachment in the resolution of civil disputes. Some studies find that *conservatoir beslag* is frequently used as a protective measure to prevent the transfer of the disputed object, while others highlight the tendency of judges to act cautiously in issuing attachment orders to avoid mistakenly restricting property belonging to a party who may not be at fault. Additionally, previous research emphasizes that improper application of attachment may cause legal and economic harm, particularly when the restriction is imposed on an object that later proves to be unproblematic.[4] Nevertheless, these studies have not specifically examined cases in which an application for *conservatoir beslag* was rejected in a land dispute involving two parties who both possess strong legal claims and seemingly balanced grounds for ownership.[5] This is precisely where the *state of the art* of this research lies: a focused and in-depth analysis of judicial considerations in rejecting prejudgment attachment in land disputes, specifically in Decision No. 133/Pdt/2019/PT MKS.

From a normative perspective, the principle of protecting property rights and the prohibition of unlawfully taking the rights of others are also in line with the values of Islamic law. This is affirmed in the Word of Allah SWT: “O you who believe! Do not consume one another’s wealth unjustly, but only [in lawful] business by mutual consent...” (Qur’an, Surah An-Nisa: 29).

This verse emphasizes the importance of safeguarding property rights and prohibiting unlawful appropriation or control without a valid legal basis, which is substantively relevant to the purpose of prejudgment attachment in preserving the disputed object from misuse by any party during the course of judicial proceedings.

Based on this research gap, the present study seeks to answer two main questions: (1) What were the judicial considerations underlying the rejection of *conservatoir beslag* in the land dispute adjudicated in Decision No. 133/Pdt/2019/PT MKS? (2) Was the rejection consistent with the legal requirements for the application of prejudgment attachment in civil court practice? To address these questions, this research employs a normative legal approach that focuses on analyzing court decisions, legal doctrines, and academic literature. This approach allows the researcher to examine the structure of judicial reasoning, assess the consistency of the legal arguments used, and identify whether the rejection of the attachment aligns with fundamental principles of civil law, such as justice, legal certainty, and the protection of good-faith parties. Thus, the study does not only analyze the text of the decision but also its context, observing how the judges balanced the interests of both parties in a dispute characterized by complex evidence and competing claims.[6]

The discussion is further expanded by examining the relevance of theories of evidence, the principle of judicial prudence, and the doctrine of preventive protection in civil law. This analysis is crucial because in many cases, applications for prejudgment attachment are not merely administrative requests; they also reflect litigation strategies intended to strengthen a party's procedural position. Consequently, the rejection of attachment may have significant implications for the course of the dispute, especially when the disputed object is at risk of being transferred or exploited by another party during trial proceedings. Accordingly, this study provides a deeper understanding of why judges may refuse to grant a request for *conservatoir beslag*, and it offers an academic contribution to the development of standards of objectivity, proportionality, and legal protection in the settlement of land disputes in Indonesia. The findings are expected to enrich scholarly discourse on the limits of judicial authority in ordering prejudgment attachment and to serve as a valuable reference for practitioners, academics, and the public involved in land-related legal matters.

## **B. METHOD**

This research employs a normative legal method, also known as doctrinal legal research, which includes the study of positive law, legal principles, clinical legal studies, the systematics of statutory regulations, synchronization of legislation, legal history, and comparative law. The legal materials used consist of secondary data, comprising primary legal materials, secondary legal materials, and tertiary legal materials. The techniques used for collecting research materials are documentation and literature study. All data obtained from primary and secondary legal materials are subsequently classified and analyzed to produce conclusions relevant to the issues discussed. The method applied is legal interpretation, which in this data analysis takes the form of descriptive analysis. The conclusions derived from the analysis, or the materials obtained through analytical processing, are then used to examine and discuss the problems investigated by the researcher. This approach is intended to produce discussions and conclusions that are accurate, relevant, and aligned with the issues being studied.

## **C. DISCUSSION**

### **1. Judicial Considerations in Issuing a Determination in a Land Dispute (Study of Decision No. 133/Pdt/2019/PT MKS)**

#### **a. Legal Standing of the Parties and the Facts of the Case**

Based on the lawsuit Number 49/Pdt.G/2018/PN.Mks, the judge first considered the legal standing of the plaintiff, Andi Baso Matutu, who claimed to be the legitimate heir of the late Andi Tjintjing Karaeng Lengkesse. The Inheritance Determination of the Religious Court Number 01/P.3HP/2010/PA.BUK serves as a formal document strengthening the plaintiff's status, because an inheritance decree constitutes primary evidence demonstrating kinship and entitlement to the estate.[7] Furthermore, the power

of attorney granted by all heirs through a notarial deed confirms that the plaintiff is authorized to represent the collective interests of the heirs in both extrajudicial and judicial processes. From the perspective of access to justice, this condition eliminates any argument that the plaintiff does not represent the rightful parties.

The judge then evaluated the procedural formalities, including the completeness of the lawsuit, supporting evidence, and the fulfillment of the requirements for *locus standi* and *personae standi in judicio*. By referring to Article 123 of the Herziene Indonesisch Reglement (HIR) as a benchmark for procedural compliance, the judge emphasized that the lawsuit met all formal prerequisites to proceed to substantive examination. This assessment is crucial, as it ensures that the court does not examine a case that is procedurally defective from the outset, thereby safeguarding the legitimacy of the judicial process in assessing the substance of the land dispute. Regarding the disputed object, the judge thoroughly examined the administrative chronology and the history of rights over the land presented by the parties. The disputed land was initially recorded in the *Surat Rincik Boetaja/Simana Tanae* of Karuwisi Village and was later registered under Certificate of Ownership (SHM) No. 351/Karuwisi/1982. The subsequent subdivision of the certificate and changes in ownership recorded by the National Land Agency (BPN), which resulted in SHM No. 629/Karuwisi, raised substantive questions regarding the procedure of subdivision, the validity of certificate forms, and the integrity of registration data. The judge was obliged to determine whether the subdivision and changes were carried out in accordance with land administration regulations, including whether they were supported by the consent of the rightful owner and proper supporting documents.

The judge's analysis also included cross-verifying administrative land documents with historical or community-based evidence (e.g., *Simana* or village records). Since land disputes often require proof of historical possession and transfer of rights not always formally recorded, the judge juxtaposed modern written evidence with traditional documents to assess the continuity of ownership. In this case, the historical reduction of land area due to road development in 1973 and subsequent changes in size were crucial to determining whether the physical changes were consistent with official documents. The judge then examined the core issue—whether the defendants engaged in falsification or manipulation of certificate data. The criminal judgment establishing forgery served as a starting point in the civil judge's assessment because a final and binding criminal judgment functions as *res judicata* for certain facts (e.g., the commission of forgery). The judge analyzed whether this criminal conviction was relevant and whether it affected the legal status of the SHM used as the basis for the defendants' claim. In civil proceedings, a criminal judgment can reduce the plaintiff's burden of proving elements of wrongdoing and fault.

In addition to assessing evidence and facts, the judge considered the practical implications for interested parties: whether interim measures were necessary, the potential risks if the status quo was not maintained, and whether administrative actions

could be taken by BPN to clarify registration data. Thus, although the main focus was on the validity of the rights and the defendants' actions, the judge also considered preventive and reparative remedies such as the reasonableness of eviction orders, demolition of structures, or the award of damages. Finally, the judge also evaluated the defendants' arguments, including the ownership evidence they submitted, possible good faith acquisitions by third parties, and whether administrative errors may have occurred without criminal intent. Determining the burden of proof in each issue was key. The judge decided accordingly, based on civil procedural principles, assessing witness credibility, the strength of documents, and consistency of chronology. The judge's determination of the parties' legal positions is therefore grounded in a comprehensive evaluation of all these elements, forming a solid basis for substantive judgment on ownership and restoration of rights.

**b. Legality of the Certificate of Ownership as the Basis for Judicial Assessment**

The central issue in this case is the validity of Certificate of Ownership (SHM) No. 629/Karuwisi/1994, including its subdivisions and derivatives, which the defendants used as the basis for claiming the disputed land. The judge viewed the status of this certificate as more than a question of land administration—it concerned the integrity of land registration data that forms the evidentiary foundation of ownership under civil law. Therefore, the judge conducted a thorough examination of the certificate's issuance history, the legality of its subdivision, and the accuracy of the changes in land size recorded by BPN.

To ensure an objective assessment, the judge also evaluated the role of the National Land Agency (BPN) as the Co-Defendant. In land disputes, BPN's involvement is essential because it is responsible for issuing and maintaining land registration data. The judge examined whether there was maladministration, negligence, or unlawful conduct in the land registration, certificate subdivision, or modification of physical and juridical data. Essential questions included: whether the changes in land size were based on an official remeasurement, whether the rightful owner consented, and whether supporting documents complied with Government Regulation No. 24 of 1997 on Land Registration. The substantive assessment was heavily supported by final and binding criminal judgments, namely:[8] District Court of Makassar No. 620/Pid.B/2015/PN.Mks; High Court of Makassar No. 140/Pid/2016/PT.MKS; Supreme Court No. 419 K/Pid/2017. These judgments confirmed that falsification occurred in SHM 629/Karuwisi, particularly regarding the alteration of land area from 12,931 m<sup>2</sup> to 15,631 m<sup>2</sup> without legal basis and without a lawful remeasurement. These criminal facts have direct implications for the certificate's legality, because criminal judgments related to document forgery have binding effect (*binding effect of criminal judgment*) on factual findings in civil proceedings. Therefore, the civil judge was entitled—and obliged—to view the certificate as legally defective.

Based on these facts, the judge concluded that SHM 629 and its derivative certificates constituted defective titles that originated from irregular procedures and inaccurate data. Under land registration doctrine, a certificate that is substantively defective from the outset is considered to have no evidentiary value as proof of ownership, and therefore cannot serve as a legitimate basis for land possession. This reasoning aligns with the doctrine of *void ab initio*, meaning a document obtained unlawfully never has legal force from the beginning.

The judge's decision to annul the certificate's strength is also grounded in the fundamental principle *nemo plus juris transferre potest quam ipse habet*, meaning that no one can transfer rights greater than what they legally possess. Since the defendants' claimed rights derived from a forged certificate, all subsequent transfers—whether through sale, gift, or inheritance—are legally invalid. In other words, the defect in the root title contaminates the entire chain of title, providing no lawful ownership to any party acquiring the rights derivatively.

Furthermore, the judge emphasized that the existence of duplicate certificates and unauthorized physical changes creates systemic risks in land administration. Recognizing a defective certificate would enable document manipulation, land grabbing, and exploitation of bureaucratic vulnerabilities, thereby undermining public trust in the national land registration system. By applying the prudential principle, the judge prioritized the integrity of the land registration system to protect rightful owners. Ultimately, the judge's comprehensive assessment ensures that any claim to land must be grounded in accurate juridical and physical data acquired legally and free from criminal elements. This reasoning not only restores justice in the specific case but also establishes an important judicial precedent for safeguarding the integrity of land certification in Indonesia and reinforcing public trust in both the judiciary and land administration institutions.

### **c. Proof of Unlawful Acts (*Onrechtmatige Daad*)**

In determining whether the defendants committed an unlawful act, the judge referred to the elements of Article 1365 of the Indonesian Civil Code (KUHPerdata), which require: an unlawful act (*perbuatan melawan hukum*), fault, loss, and a causal relationship. Each element was examined using evidence presented at trial, including final and binding criminal judgments, witness testimonies, and documentary evidence.[9]

**1. Unlawful Act (*Onrechtmatigheid*):** The judge affirmed that the actions of Defendant I fulfilled the criteria for *onrechtmatigheid* because they manipulated data on the certificate of ownership and incorporated someone else's land into SHM 629/Karuwisi. The forgery involved altering land size and entering physical data that did not correspond to actual conditions on the ground. In civil law doctrine, *onrechtmatige daad* includes three categories: 1) acts contrary to statutory law, 2) acts violating another person's subjective rights, and 3) acts contrary to morality, propriety, or the duty of care. The defendant's actions fulfilled all three categories, thus proving the first element convincingly. The judge also noted that the criminal

conviction provided strong evidentiary value (*prejudicial evidence*) in establishing the fact of forgery.

**2. Fault (Schuld):** The element of fault was satisfied because the defendant acted deliberately (*dolus*), not merely negligently. Certificate forgery cannot occur without active involvement in administrative procedures, especially when altering physical data, increasing land area, and processing the issuance of a new certificate. The judge held that such conduct demonstrated *opzet* (criminal intent) to expand land ownership unlawfully. The prior criminal conviction for certificate forgery further confirmed that fault was not merely alleged but had been formally and materially proven in the criminal court.

**3. Damage (Schade):** The plaintiff suffered both material and immaterial damages. Material damages arose from the loss of rights to possess, cultivate, and utilize the inherited land. Immaterial damages involved the loss of legal certainty over family land and the prolonged dispute. In civil law reasoning, such damages constitute *loss of opportunity*, as the plaintiff was deprived of the ability to use the land for economic, social, and familial purposes. The judge found that these losses were the direct result of the defendant's unlawful actions, thereby satisfying the element of *schade*.

**4. Causal Relationship (Causal Verband):** To assess causality, the judge applied the theory of adequate causality—whether the loss was a foreseeable and reasonable consequence of the defendant's actions. Manipulating certificate data directly led to the issuance of a defective SHM, which strengthened the defendants' claims over the land. This caused the plaintiff to lose control of his inheritance. Thus, a direct causal link existed between the forgery and the plaintiff's losses. The judge stressed that without the forgery, the land dispute would not have arisen. The element of causality was therefore proven beyond doubt. After verifying all four elements of Article 1365 KUHPerdata—*onrechtmatigheid*, *schuld*, *schade*, and *causaliteit*—the judge concluded that the defendants' actions clearly constituted an unlawful act. Consequently, the defendants' possession of the land was illegal and lacked any legal basis. The judge also emphasized that such conduct not only violated civil law but also threatened the integrity of land administration, as document forgery can create damaging precedents and undermine public trust in the national land registration system.

## **2. Requirements for the Imposition of *Conservatoir Beslag* on Land Disputes Fulfilled in Decision No. 133/Pdt/2019/PT MKS**

In Indonesian civil procedural law, *conservatoir beslag* or prejudgment attachment functions as a preventive legal instrument intended to preserve the disputed object in its *status quo* throughout the litigation process.[10] The fundamental purpose of this mechanism is to prevent the defendant from undertaking actions that may eliminate or diminish the value of the disputed object, such as transferring, encumbering, altering rights over it, or engaging in other acts that may harm the plaintiff before the court's

decision obtains permanent legal force. Thus, *conservatoir beslag* serves not only as a mechanism of preservation but also as a form of preventive legal protection for parties whose rights are potentially threatened.

The legal basis for the application of *conservatoir beslag* rests on Article 227 of the *Herzien Inlandsch Reglement* (HIR) and Article 197 of the *Rechtsreglement Buitengewesten* (RBg).[11] These provisions grant the court authority to order the attachment of property belonging to the defendant if the plaintiff can demonstrate sufficient grounds to fear that the disputed object may be transferred or concealed by the defendant with the intention of evading a court ruling or causing loss to the rightful party. In land disputes, the urgency of applying this mechanism becomes even more significant, considering that land is a highly valuable asset prone to rapid transfer, whether through sale, grant, or certificate subdivision.

The discussion on *conservatoir beslag* in Decision No. 133/Pdt/2019/PT MKS provides a concrete illustration of how the court evaluates the fulfillment of both formal and material requirements of prejudgment attachment within the context of land disputes. The analysis of this decision demonstrates that all elements required under civil procedural law have been satisfied by the plaintiff. The following sections further elaborate on each requirement, along with the court's reasoning in deeming these conditions fulfilled.

**1) Existence of a Civil Dispute :** The first essential requirement for filing a *conservatoir beslag* is the presence of a genuine civil dispute between the parties.[10] A writ of attachment cannot be requested in an abstract manner or without a specific legal conflict; rather, it must be directly connected to the protection of rights in an ongoing civil case. In this matter, the plaintiff brought a lawsuit against the defendant concerning ownership of inherited land that was allegedly incorporated unlawfully into SHM No. 351/Karuwisi/1982, and subsequently into its derivative title, SHM No. 629/Karuwisi/1994, under the defendant's name. This legal conflict constitutes the core dispute, giving rise to the plaintiff's legitimate interest in preventing the transfer or misuse of the disputed land during the trial proceedings. This civil dispute not only satisfies the element of a *contentious claim*, but is also supported by a clear legal relationship between the plaintiff as the lawful heir under a decision of the Religious Court and the disputed land. This relationship provides the plaintiff with a strong legal standing to request a provisional attachment. Juridically, the existence of the heirship ruling serves as formal justification that the plaintiff possesses rights over the land, while the defendant's act of incorporating the inherited land into his personal land title demonstrates a potential threat to those rights.

Furthermore, from an empirical standpoint, the dispute reflects a concrete risk that the disputed land may be transferred, encumbered, or otherwise manipulated by the defendant before the case is resolved. Given that the defendant has previously been proven to have altered both the physical and administrative details of the land certificate, this concern is not speculative but grounded in objective factual

circumstances. Therefore, the primary requirement for granting a *conservatoir beslag* the existence of a valid civil dispute and a real necessity to preserve the disputed object in *status quo* has been fully satisfied both legally and factually.

- 2) **Clear Identification of the Disputed Object:** The judge found that the disputed land had been described by the plaintiff in a complete and detailed manner. The plaintiff not only identified the location of the land in general terms but also provided specific information regarding the size of the plot, its boundaries (north, east, south, west), the ownership history dating back to the original owner, as well as its direct connection to Certificate of Ownership (SHM) No. 629/Karuwisi/1994 and its subsequent subdivisions. This detailed description demonstrates that the plaintiff possesses actual knowledge of the disputed object and is able to substantiate a legally accountable relationship between himself, as a lawful heir, and the land in question.

A clear identification of the disputed object is a crucial element in a petition for *conservatoir beslag* because an error in identifying the object may result in the seizure of the wrong property (misidentified property), which not only harms third parties but also undermines the principle of legal certainty. Therefore, the judge emphasized that accurate data regarding the disputed object is an essential prerequisite to prevent misuse of the conservatory attachment mechanism. Furthermore, the judge considered that the disputed land is located in a strategic area with high economic value, creating a significant risk of physical alteration or rapid transfer of rights if preventive legal measures are not taken. In this context, the urgency of preventive legal protection increases in line with the heightened risk of legal evasion (*fraus legis*) by the defendant, who may attempt to transfer or encumber the land to another party. For this reason, supported by a strong and precise identification of the object, the judge found that the request for a conservatory attachment was not only appropriate to grant but also a proportional legal step to protect the plaintiff's rights during the course of the proceedings. Thus, the comprehensive description of the disputed object does not merely fulfill the formal requirements of the petition but also serves as a substantive safeguard to ensure that the attachment is carried out accurately, justifiably, and in accordance with the principle of prudence in civil procedural law.

- 3) **Reasonable Concern of Object Transfer:** The judge emphasized that the existence of a reasonable concern (*gegronde vrees*) constitutes the most crucial element in the imposition of a *conservatoir beslag*, as this instrument may only be granted when there is a real and concrete risk that the disputed object will be transferred or concealed, thereby rendering the execution of the final judgment ineffective.[12] In this case, the concern was not a mere abstract assumption, but was supported by concrete facts revealed during the proceedings. One significant finding was the defendant's act of dividing the original Land Ownership Certificate (SHM) No. 629/Karuwisi/1994 into several smaller parcels without any lawful

basis and without the consent of the lawful heirs. This unilateral subdivision indicated an intention to fragment the land into smaller units so that they could be more easily transferred to other parties.

In addition to the subdivision, the judge also noted that several of these subdivided certificates had already been transferred to third parties through sale transactions. This chain of transfers cannot be justified legally, as it contradicts the original ownership documents showing that the land forms part of the hereditary estate legally belonging to the plaintiff pursuant to a Religious Court Decree. The defendant's unauthorized sale of the land further strengthens the conclusion that the defendant had engaged in systematic and deliberate actions to transfer the disputed property and remove it from the reach of the law. This aligns with procedural doctrine which states that any action potentially obstructing the enforcement of a judgment constitutes conduct that gives rise to *gegronde vrees*.

These facts demonstrate that the risk of transferring the disputed object was extremely high. Without the imposition of a *conservatoir beslag*, there was a substantial likelihood that the property would continue to change hands—whether through sale, gift, or other schemes designed to conceal the true ownership. If such transfers occurred, the process of restoring the plaintiff's rights (*restitutio in integrum*) would become significantly more complex, and might even prove impossible if the property had been transferred to parties acting in bad faith or even to those who were unaware of the dispute (good-faith purchasers). In such circumstances, the final court judgment could lose its effectiveness and become merely a normative statement lacking enforceable power. Therefore, the judge concluded that the imposition of a *conservatoir beslag* was not only appropriate but urgent. By granting the attachment, the court ensured that the disputed property remained in status quo until the case attained final and binding force. Preventing the land from being transferred, leased, encumbered with security interests, or subject to physical alteration allows the court to avoid further harm and preserve the effectiveness of its eventual ruling. The judge's emphasis on the urgency of this measure is consistent with the precautionary principle in civil procedure, which requires the court to take anticipatory steps to protect the rights of the parties and to ensure the attainment of substantive justice in the resolution of the dispute.

- 4) Sufficient Preliminary Evidence:** One of the essential requirements for granting a request for *conservatoir beslag* (prejudgment attachment) is the presence of sufficient preliminary evidence (*prima facie evidence*).<sup>[13]</sup> A judge cannot impose such a measure solely on the basis of assumptions or unilateral allegations from the applicant; instead, the court must be convinced that there is an objective basis indicating the existence of a legal right that deserves protection, as well as a potential risk of loss should the object not be secured. In this case, the court found that the claimant had submitted not merely adequate but exceptionally strong and relevant preliminary evidence.

One of the principal pieces of evidence is the **Religious Court Determination** establishing the claimant as the lawful heir of the deceased landowner. This determination possesses the evidentiary strength of an authentic legal instrument, providing juridical legitimacy to the claimant's legal relationship with the disputed property. It also affirms the claimant's legal standing as the party entitled to protect and litigate over the inherited estate.

In addition, the claimant presented **original ownership documents**, including the earlier certificate and the historical chain of title, demonstrating that the land rightfully belonged to the claimant's late father. These documents serve as critical references for the judge to reconstruct the historical trajectory of ownership and to assess whether the subsequently issued certificates (SHM No. 629/Karuwisi/1994 and its subdivisions) contain administrative or substantive defects.

One of the most determinative pieces of preliminary evidence is the **final and binding criminal court decision** declaring that the defendant had forged land documents, including falsifying land certificates and unlawfully altering the land area. This criminal conviction carries significant juridical implications through the doctrine of *res judicata pro veritate habetur*, which obliges civil courts to accept as true any facts already proven in a criminal case without requiring re-examination. The fact that the defendant was criminally proven to have falsified certificates provides a compelling basis that the disputed land was indeed unlawfully controlled and transferred.

This set of preliminary evidence complete, authentic, and mutually reinforcing convinced the judge that the claimant's assertions were not speculative or unfounded. Instead, they established a *prima facie case* indicating that the claimant possessed legitimate rights over the disputed land, whereas the defendant had undertaken active measures to control or transfer the property unlawfully. These circumstances provided the court with an objective foundation to conclude that interim legal protection in the form of prejudgment attachment was both appropriate and necessary to prevent greater harm and to ensure the effectiveness of the final judgment.

Accordingly, the requirement of sufficient preliminary evidence has been fulfilled both **formally**, through the presence of authentic documents and judicial decisions, and **substantively**, as these pieces of evidence directly demonstrate the legal relationship between the claimant, the disputed property, and the unlawful acts committed by the defendant. Collectively, this evidence forms a robust foundation for the judge to grant *conservatoir beslag* as a preventive legal measure in land dispute litigation.

##### **5) Non-Prejudice to Good Faith Third Parties**

One of the fundamental principles in the application of *conservatoir beslag* (conservatory attachment) is that the order for seizure must not cause harm to third parties acting in good faith (*derden te goeder trouw*).<sup>[14]</sup> This principle aligns with

the doctrine of legal protection in civil law, which mandates that the law must provide certainty and protect individuals who act with due care and comply with proper procedures. Therefore, in issuing an attachment order, the judge must ensure that such measure does not obstruct or impair the rights of third parties who acquire the disputed object through lawful and good-faith transactions.

In this case, the judge determined that the transfer of certificates conducted by the defendant could not be categorized as transactions involving good-faith third parties. This is because the basis of such transfers originated from a certificate with a defective legal status (*defectuous title*). The parent certificate had been altered in terms of land size and physical data without undergoing the official procedures of the National Land Agency (BPN), including the absence of re-measurement and physical verification as required under the Minister of ATR/BPN Regulation on Land Registration. Thus, any party acquiring rights over the land should have known, or at least reasonably suspected, the administrative and substantive irregularities in the issuance of the certificate.

Moreover, the court found that third parties who acquired the subdivided certificates did not fulfill the standard of *due diligence* expected in land transactions, such as verifying the authenticity of the certificate's origin, tracing the ownership history, and examining the consistency of physical and juridical data. The absence of these measures shows that such acquisitions cannot be protected as good-faith transactions under Article 1338 of the Indonesian Civil Code and general land law principles.

The judge also considered that the application of *conservatoir beslag* was necessary to prevent further losses arising from the transfer of the defective certificate. Without the attachment, the disputed land could continue to be transferred to more parties, thereby complicating the execution of the judgment and potentially giving rise to new legal disputes, including *derden verzet* claims. Therefore, the attachment in this case does not conflict with the interests of bona fide third parties; instead, it serves as an essential legal safeguard to maintain the integrity of the legal process and prevent the misuse of a defective certificate to establish new ownership claims.

Ultimately, the judge concluded that no lawfully protected good-faith third party would be harmed by the issuance of the *conservatoir beslag*. Thus, this requirement was fully satisfied. The attachment order is a proportional and necessary legal measure to prevent further misuse of the defective certificate and to ensure that the disputed land remains in *status quo* throughout the litigation process.

#### **6) Procedural Compliance**

The application for *conservatoir beslag* in this case was submitted by the plaintiff in accordance with the proper procedures of civil procedural law as stipulated under Article 227 of the *Herziene Indonesisch Reglement* (HIR).[15] The plaintiff

filed the application in writing to the Makassar District Court, outlining the legal grounds that justify the urgency of the seizure, identifying the disputed land object requested to be seized, and attaching relevant supporting evidence. Fulfilling these administrative requirements is a fundamental step to ensure that an application for seizure is not submitted arbitrarily or without adequate legal basis.

In its ruling, the court assessed that the plaintiff's application met the formal requirements, including the identities of the parties, a clear description of the legal relationship between the plaintiff and the disputed object, and an explanation of the real risks that may arise if the seizure is not promptly ordered. Furthermore, the material requirements were also satisfied through the presentation of legal facts that demonstrate that the defendant's actions regarding the transfer of the certificate could result in serious losses and obstruct the enforcement of judgment in the future.

Additionally, the court emphasized that the application was submitted at the correct procedural stage before the case was decided and while the disputed object was still under the defendant's control. This is significant because *conservatoir beslag*, as a preventive measure, may only be imposed while the case is still under examination and when there are indications that the disputed object may be transferred. The coherence between the legal basis, timing of submission, and the plaintiff's juridical interest renders the application compliant with all procedural requirements established under civil procedural law.

The court also found no evidence of abuse of process by the plaintiff. There were no indications that the seizure request was filed to unlawfully pressure the defendant or to obtain an unfair advantage. On the contrary, the application was submitted as a proportionate legal measure to protect against the risk of the object being transferred. Therefore, the court concluded that the application for *conservatoir beslag* in this case fully satisfies both formal and material procedural requirements and is thus justified to be granted.

### **C. CONCLUSION**

The judge in Decision No. 133/Pdt/2019/PT MKS adjudicated this land dispute based on the principles of justice, legality, and legal protection of rightful ownership. A key consideration was the recognition of the plaintiff's status as a lawful heir, as established by a ruling of the Religious Court, which provides the juridical legitimacy for the plaintiff's claim over the disputed land. Further evidence was strengthened through official documents, including the original land ownership certificate and a valid history of transfer, supported by a prior criminal judgment which declared that the defendant had committed document forgery and unlawfully altered the physical data of the land. The application of the principle *res judicata pro veritate habetur* meant that facts already proven in the criminal case did not need to be re-established in this civil proceeding. Based on the collective evidence, the judge concluded that the defendant's actions ranging from unlawful possession, encroachment, to unauthorized transfer of

the disputed land constituted an unlawful act that harmed the plaintiff as the legitimate owner. Consequently, the court ordered the restoration of the plaintiff's rights, including the eviction and demolition of illegal structures erected on the land. In line with these findings, the imposition of *conservatoir beslag* was deemed to have fulfilled all legal requirements under Article 227 of the HIR, including the existence of an ongoing civil dispute, clear identification of the disputed object, reasonable grounds to believe that the object might be transferred by the defendant, and the availability of sufficient preliminary evidence such as the heirship ruling, original ownership documents, and the criminal judgment concerning certificate forgery. The judge emphasized that the attachment is not punitive in nature but serves as a preventive legal mechanism to preserve the disputed object in *status quo*, ensuring that the enforcement of the final judgment will not become futile should the object be transferred or controlled by third parties during the judicial process. This decision also highlights the importance of improving public legal literacy regarding the function of *conservatoir beslag* as a preventive safeguard in land disputes. Adequate legal education and broader dissemination of procedures, benefits, and requirements for securing provisional attachment are necessary to enable communities to utilize this mechanism effectively. Furthermore, strengthening coordination between the courts and the National Land Agency (BPN) is crucial to expedite the verification of land documents and ensure that each attachment order is based on accurate and up-to-date land data, thereby enhancing the reliability of land dispute resolutions and the overall quality of judicial decisions.

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