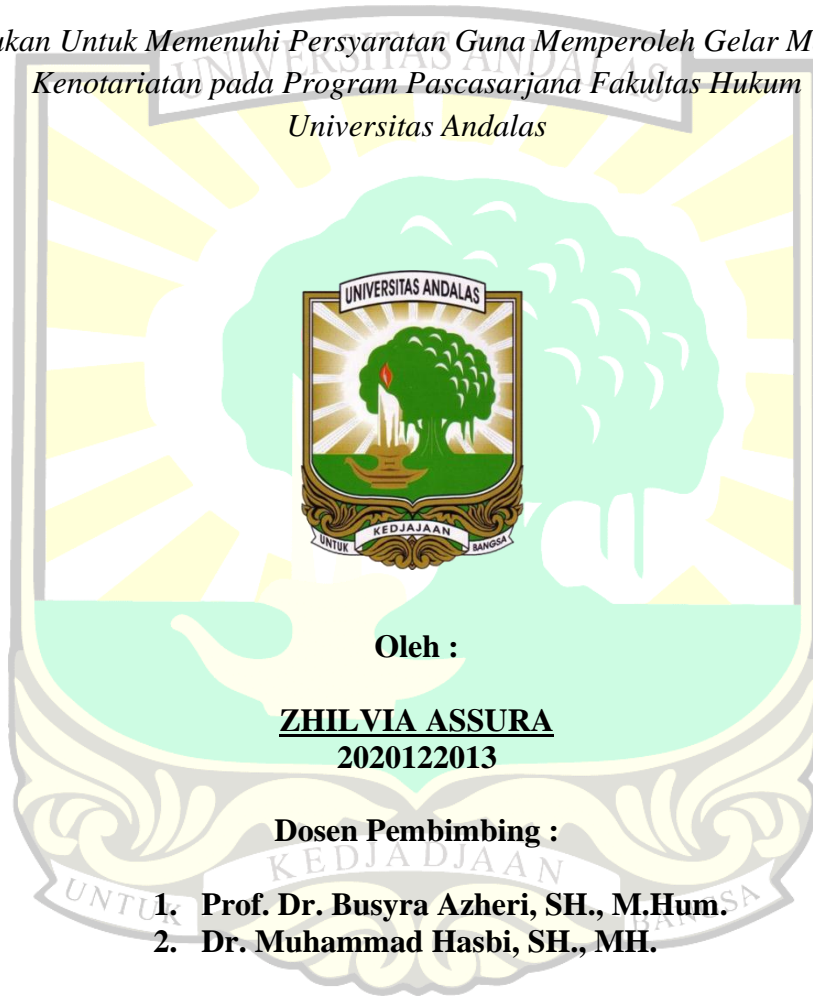


**PEMBATALAN PERJANJIAN PINJAM PAKAI DI BAWAH TANGAN
TERKAIT HAK GUNA PAKAI ATAS TANAH MELALUI PUTUSAN HAKIM
(ANALISIS PUTUSAN MAHKAMAH AGUNG NOMOR: 1378 K/Pdt/2021)**

TESIS

*Diajukan Untuk Memenuhi Persyaratan Guna Memperoleh Gelar Magister
Kenotariatan pada Program Pascasarjana Fakultas Hukum
Universitas Andalas*



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**PROGRAM MAGISTER KENOTARIATAN
PASCASARJANA FAKULTAS HUKUM
UNIVERSITAS ANDALAS
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ABSTRAK

Putusan Mahkamah Agung Nomor 1378 K/Pdt/2021 membatalkan surat-surat atau dokumen-dokumen, serta perjanjian-perjanjian terkait tanah yang menjadi objek sengketa. Selain itu, diketahui bahwa perjanjian pinjam pakai dan surat hak guna pakai atas tanah hak milik dalam sengketa tersebut tidak dibuat secara autentik, sehingga dianggap sebagai tulisan di bawah tangan. Rumusan masalah dari penelitian ini yaitu, 1) Bagaimana ketentuan hukum perjanjian pinjam pakai atas tanah dan pemberian hak guna pakai atas tanah? 2) Bagaimana ketentuan hukum pembatalan perjanjian di bawah tangan melalui putusan hakim? 3) Bagaimana pertimbangan hakim terhadap pembatalan perjanjian pinjam pakai di bawah tangan terkait hak guna pakai atas tanah dalam Putusan Mahkamah Agung Nomor 1378 K/Pdt/2021 dan bagaimana analisisnya berdasarkan teori perlindungan hukum? Metode penelitian yang digunakan adalah yuridis normatif. Penelitian bersifat eksplanatoris dengan menggunakan pendekatan penelitian perundang-undangan dan pendekatan kasus. Sumber data kepustakaan, berupa data sekunder yang terdiri dari bahan hukum primer, bahan hukum sekunder, dan bahan hukum tersier. Teknik pengolahan data studi dokumen, jenis data yang diperoleh dianalisis secara kualitatif kemudian disajikan secara deskriptif. Berdasarkan hasil penelitian dapat disimpulkan bahwa, 1) Objek pinjam pakai adalah segala yang tidak musnah karena pemakaian sesuai ketentuan Pasal 1742 KUHPerdara. Tanah merupakan objek yang tidak dapat musnah karena pemakaian, sehingga tanah dapat dijadikan objek perjanjian pinjam pakai. Sedangkan, pemberian hak guna pakai diatur dalam UUPA dan peraturan pemerintah turunannya. 2) Apabila salah satu pihak menyangkal suatu perjanjian di bawah tangan, maka dapat diperiksa di muka pengadilan sebagaimana ketentuan Pasal 1877 KUHPerdara dan Yurisprudensi MA RI Nomor 167K/SIP/1959 menyatakan bahwa, jika perjanjian di bawah tangan disangkal maka, nilai kekuatan formil dan pembuktian surat tersebut runtuh dan anjlok sehingga, hakim dapat mempertimbangkan untuk membatalkan perjanjian di bawah tangan. 3) Putusan mahkamah agung sebagai penegak hukum telah memberikan perlindungan atas hak masyarakat, dalam hal ini ialah pemilik tanah.

Kata Kunci : *Pembatalan Perjanjian, Pinjam Pakai di Bawah Tangan*

**CANCELLATION OF UNDERSTANDING LEAN TO USE
AGREEMENTS REGARDING THE RIGHT TO USE THE LAND
THROUGH THE JUDGE'S DECISION (ANALYSIS OF THE
JURISDICTION OF THE SUPREME COURT NUMBER: 1378 K/Pdt/2021)**

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ABSTRACT

Supreme Court Decision Number 1378 K/Pdt/2021 cancels letters or documents, as well as agreements related to the land that is the object of the dispute. In addition, it is also known that the loan-use agreement and usufructuary rights over the privately owned land were not made authentically, so they were considered private writing. The formulation of the problem of this research is, 1) What are the legal provisions of the land lease agreement and the granting of usufructuary rights over land? 2) What are the legal provisions for canceling private agreements through a judge's decision? 3) What is the judge's consideration of canceling the private lease agreement regarding land use rights in the Supreme Court Decision Number 1378 K/Pdt/2021 and how is the analysis based on the theory of legal protection? The research method used is normative juridical. The research is explanatory in nature by using a statutory research approach and a case approach. Sources of library data, in the form of secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. Document study data processing techniques, the type of data obtained was analyzed qualitatively and then presented descriptively. Based on the results of the study it can be concluded that, 1) The object of lending and use is anything that is not destroyed due to usage according to the provisions of Article 1742 of the Civil Code. Land is an object that cannot be destroyed due to use, so that land can be used as the object of a lease agreement. Meanwhile, the granting of usufructuary rights is regulated in the UUPA and its derivative government regulations. 2) If one of the parties denies an underhanded agreement, then it can be examined before the court as stipulated in Article 1877 of the Indonesian Civil Code and the Supreme Court Jurisprudence Number 167K/SIP/1959 states that, if an underhanded agreement is denied, then the value of formal strength and proof the ebb collapses and plummets so, the judge may consider canceling the underhand agreement. 3) The decision of the supreme court as a law enforcer has provided protection for the rights of the community, in this case the land owner.

Keywords: *Cancellation of Agreement, Borrow and Use Under the Hand*