

# Kedudukan Saksi Guna Memenuhi Asas Terang dan Tunai dalam Pembuktian Jual Beli Tanah (Studi Putusan Mahkamah Agung Nomor 3469/K Pdt/2021) = The Standing of The Witness to Fulfill The Principles of Light and Cash in Proof of The Land Sale (Study on Supreme Court Decree Number 3469/K Pdt/2021)

Tiara Jayaputeri, author

Deskripsi Lengkap: <https://lib.ui.ac.id/detail?id=9999920528255&lokasi=lokal>

---

## Abstrak

Saksi menurut Pasal 164 HIR semestinya melihat, mendengar dan mengalami sendiri suatu peristiwa hukum. Namun dalam kenyataannya, saksi yang tidak melihat, mendengar dan mengalami sendiri suatu peristiwa hukum dapat memberikan kesaksian di hadapan pengadilan dan diterima kesaksiannya oleh majelis hakim. Dalam kenyataannya, saksi yang tidak mengalami, melihat, mendengar secara langsung dalam putusan a quo dibenarkan sebagai alat bukti saksi yang meyakini hakim bahwa transaksi jual beli tanah telah dilakukan hingga menimbulkan pertanyaan tentang pemenuhan asas terang dan tunai sebagai persyaratan jual beli tanah. Dengan menggunakan metode penelitian doktrinal, penelitian dilakukan dengan mengkaji kedudukan saksi perkara jual beli tanah untuk mengetahui hak dan kewajiban saksi serta menganalisa fungsi saksi guna memenuhi asas terang dan tunai dalam jual beli tanah, serta mengapa hakim perkara a quo tidak mempertimbangkan menghadirkan saksi instrumenter dalam proses pembuktian. Hasil penelitian menghasilkan bahwa kedudukan Saksi TY dalam proses pembuktian jual beli tanah perkara a quo adalah permulaan pembuktian saja. Saksi TY dalam kapasitasnya memberi kesaksian memiliki hak dan kewajiban sebagai saksi. Diketahui juga bahwa belum ada ketentuan mengenai unsur yang harus dicapai asas terang dan tunai dalam jual beli tanah sesuai hukum tanah nasional. Namun, dapat diketahui bahwa sekurang-kurangnya sifat kontan/terang dalam hukum adat mengandung pengertian bahwa suatu perbuatan itu nyata, suatu perbuatan itu simbolis, suatu perbuatan itu telah selesai seketika itu juga. Dalam kasus a quo, AJB 45/2021 dibuat di hadapan notaris/PPAT HH, S.H. telah memenuhi unsur kontan, di mana perbuatannya nyata dilaksanakan di hadapan pejabat umum. Asas tunai yang diformulasikan dari prinsip konkret atau visual tidak terpenuhi dalam perkara a quo karena hubungan jual beli tidak dapat dianggap terjadi karena tidak ada ikatan yang dapat dilihat atau alat bukti tertulisnya, walaupun ada saksi YT yang menyatakan bahwa dirinya hanya mengantarkan sekretaris Tn. JK ke notaris dengan membawa uang Rp700.000.000,- untuk penyerahan uang tanpa alasan-alasan lebih lanjut. Majelis hakim gagal untuk mengidentifikasi bahwa terdapat saksi akta dalam AJB 45/2015 yang seharusnya menyaksikan pembuatan AJB 45/2015 yang menyatakan kepada siapa uang tersebut diserahkan.

.....Witnesses according to Article 164 HIR should see, hear and experience a legal event themselves. However, in reality, witnesses who have not seen, heard or experienced a legal event themselves can testify before the court and have their testimony accepted by the panel of judges. In reality, witnesses who have not experienced, seen or heard directly in the said case are justified as evidence for witnesses who believe the judge that a land sale and purchase transaction has been carried out, raising questions about the fulfillment of the principle of light and cash. as a condition of buying and selling land. By using doctrinal research methods, research is conducted by examining the position of the witness in a land sale and purchase case is to find out the rights and obligations of the witness and to analyze the function of the witness in order to

fulfill the principles of light and cash in land buying and selling, and in this case why the judge in the said case did not consider presenting an instrumental witness in the evidentiary process. The results of the research show that the position of Witness TY in the process of proving the sale and purchase of land in the a quo case is just the beginning of proof. Witness TY in his capacity to testify has rights and obligations as a witness. It is also known that there are no provisions regarding the elements that must be achieved when applying the clear and cash principles in a land sale and purchase in accordance with national land law. However, it can be seen that at least the direct/bright character in customary law implies that an action is real, an action is symbolic, an action is completed instantly. In the a quo case, AJB 45/2021 was made before a notary/PPAT HH, S.H. has fulfilled the cash element, in which the actual action was carried out before a public official. The principle of cash, which was formulated from concrete or visual principles, was not fulfilled in the a quo case because the sale and purchase relationship could not be assumed to have taken place because there were no visible ties or written evidence, even though there was witness YT who stated that he only accompanied Mr. JK to the notary with Rp. 700,000,000 to hand-over the money without further reasons. The panel of judges failed to identify that there were deed witnesses in AJB 45/2015 who should have witnessed the making of AJB 45/2015 which stated to whom the money was handed over.