

IMPLEMENTATION OF THE TRANSFER OF LAND RIGHTS HAS NOT BEEN CERTIFIED USING A DEED OF SALE AND PURCHASE TO THE LAMONGAN COMMUNITY IN EAST JAVA

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Abstract

Transfer of rights to land is the transfer of rights to land plots from one party to another in the process of buying and selling a land object. In its implementation, strong evidence is needed in the transfer of land rights so that there is no dispute in the future that harms one of the parties in the sale and purchase of land objects. In its implementation, there are often problems related to the transfer of rights to land that has not been certified. Government Regulation Number 24 of 1997 concerning Land Registration states that for the purposes of transferring rights to the Land Office, the sale and purchase of land rights must be proven by a PPAT deed. Proof of PPAT deeds is important in the transfer of land rights to strong evidence and is recognized by the state as an official authorized to make deeds in accordance with interests. The deed made by PPAT is a requirement to register the land in order to get a certificate on the land.

Keywords: Transfer, Land rights, Uncertified, Deed of Sale and Purchase

INTRODUCTION

Land is something that is very important in human life, almost all human activities are carried out on the ground, as well as natural resources that are mostly obtained from land for human consumption, land for many benefits and services for humans. Land itself in its sense according to the Basic Agrarian Law (UUPA) article 4 is the surface of the earth whose authority to use includes the body of the earth, water and space above it quoted from Budi Harsono (1999:18) in Dewi, C., & Murdapa, F. (2022:10-19) says the meaning of land in a more specific sense according to law, namely that in land law, the word land is used in a juridical sense as a sense that has been given an official limit by the UUPA as in the law article 4 that the right of control of the state is determined by the existence of various rights to the surface of the earth called land.

Along with the development of applicable Indonesian regulations and laws, ownership of land must be proven by the ownership of the certificate of the land issued. Quoted from Ayuningtyas, A. S, et al (2020: 74) According to Government Regulation Number 24 of 1997 concerning Land Registration, legal certainty regarding land rights as mandated by UUPA contains two dimensions, namely certainty of objects of land rights and certainty of subjects of land rights. From the citation, it is known that the land certificate can indicate the object, namely which land is and what size it is and the subject is ownership of the plot of land that is the object.

In its implementation, there are various obstacles related to the transfer of rights to land ownership, quoted from Kusuma, I. M. K. D, et al (2020: 213) stated that Transfer is a made-up legal behavior with a direction so that land rights are exchanged from those who transfer to receive transfers (Sutedi, 2008 in Kusuma, I. M. K. D, et al 2020: 213), then Kusuma, I. M. K. D, et al (2020:213) explained the concept of transferring rights to land in the law of transfer, "The transfer in question does not occur due to one legal act (intentionally) but due to a legal event (accidentally), for example bequeathing, while "transferred" shows the existence of intentionality then there is a legal behavior with that property right" (Maulidi et al., 2017 in Kusuma, I. M. K. D, et al 2020:213).

Meanwhile, in the transfer of rights to land ownership, there is a transfer process. The transfer of land rights is a process of changing the former land rights holders to the current land rights holders (Irvan et al., 2019). In the transfer of land rights will involve 2 dimensions, namely objects and subjects of land ownership quoted from Kusuma, I. M. K. D, et al (2020: 213) The transfer of land rights has 2 varieties of transfer of land rights, is to be transferred and transferred (Santoso, 1991 in Kusuma, I. M. K. D, et al 2020: 213). Ramadhani, R. (2021: 860-867) mentions land rights are rights to a certain part of the earth's surface, land rights are rights to certain parts of the earth's surface, which are limited, two-dimensional with a measure of length and width.

The reality in the implementation of the transfer of land rights in the field is that there are often problems in the process of transferring rights to the land. The problem that often occurs is in the transfer of rights to land that has not been certified or commonly called land Letter C. Quoted from Oktaviani, A., & Harjono, S. H. (2019: 43) explained that Letter C is a proof mark in the form of records located in the Village office or Kelurahan. Letter C citations are usually used as the basis for tax withdrawal and the information about the land contained in the Letter C book is not very complete and thorough. There are many cases of transactions or transfers of rights to land with the status of land letter C which in this study is in Lamongan Regency.

The relationship in this study is the number of problems and problems in relation to buying and selling and transferring rights to land that is not certified or has the status of letter C using AJB (sale and purchase deed). Farazenia, A. (2020) stated that Notaries and PPAT are authorized by the state to make authentic deeds regarding all acts, agreements and determinations required by laws and regulations and/or desired by interested persons to be stated in authentic deeds. In this statement, in relation to this research, the sale and purchase deed is issued by the authorized party, namely a notary or PPAT in signing in deeds, agreements or determining the transfer of land rights to land sale and purchase activities. This study aims to explain the procedure and implementation of the transfer of land rights through buying and selling activities carried out between parties with a sale and purchase deed issued by a notary or PPAT against land that is not certified or still has the status of letter C.

RESEARCH METHODS

The research method used in this study is a normative legal research method, with a problem approach, namely using a statutory approach and a conceptual approach.

DISCUSSION

Transfer of Land Rights in Land Sale and Purchase Activities according to UUPA

All types of Transfer of Land Rights and Property Rights to Flats Units through buying and selling, exchanging, grants, income in the company and other legal acts of transfer of rights have been regulated in Law Number 5 of 1960 concerning Basic Regulations of Agrarian Principles, except for the transfer of rights through auction activities which can only be registered through the proof of deeds made by PPAT who have the authority in accordance with what is stated in Article 1 number 24, Government Regulation Number 24 of 1997 concerning Land Registration which states that if the PPAT is a General Officer who is given the authority as the maker of certain deeds in question is a deed of transfer and encumbrance of rights to land and Property Rights to Flats Units, and the deed of Grant of Power of Attorney. Apart from that, PPAT is also *obliged to support* its clients with the intention of transferring land rights by following the regulations of its position as a Land Deed Making Officer (PPAT).

According to the applicable laws, among others, Government Regulation Number 10 of 1961 concerning Land Registration, which is an implementing regulation of Law Number 5 of 1960 concerning basic regulations on Agrarian Principles (UUPA), PPAT is explained as an official who functions and is authorized in making deeds with the intention of transferring rights to the land sold, to and granting new rights and imposing rights to land to the buyer of the land.

It does not stop there that PPAT as a general official is given, among other things, a very strong legitimacy, because it has been recognized for its authority, be it philosophically, juridically or sociologically. Philosophically, the position as a PPAT is to serve the community, so that with these activities, people who are interested in terms of legal certainty and legal protection will get their rights. Sociologically, PPAT is very helpful for the community in terms of making deeds of transfer of rights to land, either through buying and selling, renting, grants or other legal acts, such as making a Power of Attorney for Dependent Rights and a deed of Granting Dependent Rights in Government Regulation Number 24 of the Year 2016 Amendment to Government Regulation Number 37 of 1998 concerning Regulations for the Position of Land Deed Making Officers with its implementing regulations Regulation of the Head of the National Land Agency Number 1 of 2006 concerning Provisions for the Implementation of Government Regulation Number 37 of 1998, where this Regulation repeals the Regulation of the Minister of Agrarian Affairs Number 4 of 1999.

The types of PPAT contained in Article 1 of Government Regulation 37 of 1998 concerning Regulations for the Position of Land Deed Making Officers, state, among others:

- 1) Land Deed Making Officers, hereinafter referred to as PPAT, are general officials who are authorized to make authentic deeds regarding certain legal acts regarding land rights or Property Rights to Flats Units.
- 2) Temporary Land Deeds are Government Officials appointed because of their position to carry out the duties of PPAT by making PPAT deeds in areas where there are not enough PPAT.
- 3) Special Land Certificate is an official of the National Land Agency who is appointed because of his position to carry out the duties of the PPAT by making certain PPAT deeds specifically in the context of implementing certain government programs or duties.

In carrying out their duties and authorities referred to in Article 2 of Government Regulation 37 of 1998 concerning Regulations for the Position of Land Deed Making Officers, the main duties of PPAT include:

- 1) PPAT has the main task of carrying out some of the land registration activities by making a deed as evidence of the implementation of certain legal actions regarding land rights or Property Rights to Flats Units, which will be used as the basis for registration of changes in land registration data caused by the legal act.
- 2) The legal acts as referred to in paragraph (1) are as follows:
 - a. buying and selling;
 - b. exchange;
 - c. grants;
 - d. income into the company (inbreng);
 - e. the division of common rights;
 - f. granting Of Building Use Rights / Right of Use on Land Property Rights;
 - g. granting of Dependent Rights;
 - h. the grant of the Power of Attorney imposes dependent rights.

The legal act is contained in the deed as the basis for registration of changes to the registration data. The various forms of deeds according to Article 95 of the Regulation of the Minister of Agrarian State / Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning land registration in Murni, C. S. (2018: 687-688) are:

- (1) The land deed made by the PPAT to be used as the basis for registration of changes in land registration data shall be:
 - a. Buying and selling,
 - b. Exchange,
 - c. Grants,
 - d. Income into the company (inbrengr)
 - e. Division of common rights,
 - f. Granting of Building Rights / Land Use Rights Property Rights,
 - g. Grant of Dependent Rights,
 - h. Grant of Power of Attorney to Impose Dependent Rights
 - i. Deed of Granting Building Use Rights to Owned Land
 - j. Deed of Grant of Right of Use over Land Title.
- (2) In addition to the deeds as referred to in paragraph (1) the PPAT also makes a Power of Attorney for Dependent Rights which is a deed of power of attorney in the making of the deed of granting dependent rights. The form and type of deed is carried out using the form in accordance with the form referred to in accordance with paragraph (1) above. Registration of changes in registration data should not violate the provisions. All legal acts relating to land shall be carried out by authentic deeds made by and before the Land Deed Making Officer, using a form specific to the making of the deed of law. This provision is binding (dwingend) by containing legal consequences that a transaction with an object in the form of land if carried out with a deed made under the hands is threatened with invalidity, because it is contrary to the legislation that requires a deed made by and before the Land Deed Making Officer.

There are 3 main elements in order to fulfill the formal requirements of a deed is an authentic deed, namely:

1. In the form prescribed by law;
2. Made by or in the presence of a general officer;
3. The deed was made by or before the general officer authorized to it and the place where the deed was made.

The elements in the authentic deed by the deed of the Land Deed Officer or PPAT are *implicitly* confirmed in the law and made by the Land Deed Making Officer who holds the authority under the duties of the Land Deed Making officer himself.

In carrying out its duties as a PPAT as explained and mentioned above, PPAT is also responsible for the implementation of legal protection and certainty that has been authorized to do so. According to the explanation of Article 39 paragraph 1 of PP Number 24 of 1997 in Abuyazid Bustomi (2020: 168-182) PPAT is responsible for ensuring the truth:

- a. Make a deed that functions as:
 - 1) Evidence of certain legal acts regarding land rights or property rights to units of flats.
 - 2) The basis for the registration of changes in land registration resulting from the legal act.
- b. Making Deeds, PPAT Deeds must be made in such a way that they can be used as a strong basis for registration of the transfer of rights and encumbrance of rights concerned
- c. The PPAT deed must be made in such a way that it can be used as a solid basis for registration of the transfer of rights and the encumbrance of the rights concerned.

As the duties, responsibilities and authorities of PPAT in assisting the duties of the Head of the Land Office in the implementation of part of the land registration by making deeds that are used as administrative evidence in the registration of land data changes, as a General Officer in making deeds, the deeds issued are given the position of authentic deeds. The PPAT deed is made as evidence in ascertaining a legal event with the aim of avoiding disputes.

Procedure for Transfer of Land Rights Has Not Been Certified

The transfer of rights to uncertified land that took place before the enactment of the huku which regulates land registration, namely Government Regulation Number 24 of 1997, can be proven using an authentic deed made by PPAT, but if the transition is carried out by a deed under the hand or made by the parties related to the sale and purchase transaction of the piece of land witnessed by the village head or village head, then the deed can be used as proof for the transfer or transfer of rights to the land to be registered with the land office. However, if the sale and purchase of uncertified land is carried out after the enactment of the relevant regulation, namely Government Regulation Number 24 of 1997 concerning Land Registration, then the proof can only be proven by the AJB (sale and purchase deed) made before the relevant officials, namely PPAT. And if the process is not carried out with a deed signed by the PPAT, then the transaction or sale and purchase process must be repeated with the deed made by the PPAT in

order to meet the requirements and provisions regarding the transfer of land rights as stated in Government Regulation Number 24 of 1997.

In its implementation in the field, in community groups, especially the Lamongan community who live in rural areas, not all of them are familiar with the duties and functions of PPAT as officials making sale and purchase deeds related to the interests of buying and selling activities on a piece of land. There are still many buying and selling activities that do not have evidence or strong legal force for the sale and purchase of the land. Most of these transactions are carried out still with underhand deeds witnessed by the village chief, and there are even land sale and purchase transactions only with receipts whose legal force is very uncertain and weak. It is possible that this will cause problems and disputes if there are parties who hope for benefits.

In the process, often rural communities are displaced who do not know PPAT using the principle of buying and selling land with customary law. Quoted from Kusuma, I. M. K. D., et al (2020: 216) mentioned the elements in buying and selling land based on customary law, namely:

1. Conformity of prices and goods.
2. Payment and delivery are carried out simultaneously.
3. Done in writing (land sale and purchase letter) or orally.
4. It is carried out in the presence of the Traditional Head/Village Head and the Village Secretary as witnesses to the incident.

From the elements mentioned, it can be known if there is no strong and formal evidence by involving the authorized official in making the sale and purchase deed so that the transaction is valid and becomes strong evidence and legal force. In the conclusion of his journal Kusuma, I. M. K. D., et al (2020: 217) added that the transfer of property rights to land according to customary law, namely a transition that uses the concept of cash, light, and real, or can be interpreted in cash, open, and manifestly only carried out in front of the village head / customary head accompanied by witnesses, in the transfer of land rights based on Customary Law which is carried out without before the PPAT (Land Deed Making Officer) is valid as long as the material requirements are met.

The duties and authorities of PPAT have been regulated in PP Number 24 of 1997 concerning Land Registration which confirms that PPAT is a General Officer who is authorized to make certain land deeds (Article 1 number 24). Meanwhile, in PP Number 37 of 1998, it is stated that PPAT is a general official who is authorized to make authentic deeds regarding certain legal acts regarding land rights or property rights to units of flats (Article 1 number 1). From the explanation based on the regulation, it is known that the role of PPAT in making deeds of sale and purchase of land has been protected by law and can be accounted for, and has strong legal force.

Buying and selling land that has not been certified has the main purpose, namely to be registered with the District / City Land Office through sporadic land registration, then the sale and purchase must be made with a PPAT deed. Without the fulfillment of the applicable laws and regulations, the transfer of land rights cannot be carried out. The sale and purchase process is only carried out on land owned based on land rights, meaning that land objects that are authorized or proven through proof of ownership of land rights are issued to the competent authority, namely the National Land Agency.

Quoted from Putra, I. M. H., et al (2019: 372-376) The sporadic land registration system is a registration procedure on land that has not been certified, namely the act of registering land for the first time regarding one or several objects of registration in the area or part of the area in the village or village. The transfer of rights to land is the transfer of rights to a deliberately carried out piece of land that is devolved rights to the recipient or in this case the buyer.

In the process of transferring land rights through the sale and purchase of uncertified land, namely by checking and ensuring the land to be purchased, after the land is clearly proof and ownership, a sale and purchase deed will be made by the PPAT. After the deed is signed and completed by the PPAT after that the deed will be handed over to the recipient, namely the buyer, to be registered as required by PP Number 24 of 1997. Land registration for the first time can be submitted by the buyer or it can also be authorized to the other party. PPAT can also authorize the maker of the sale and purchase deed to apply for registration of land rights for the first time and at the same time register the transfer of rights to land carried out through the sale and purchase made before the PPAT concerned. If the land registration is carried out by a third party or authorized to the PPAT, it must be attached with a special power of attorney to register land rights and transfer rights to the land.

Quoted from Ayu, I. K. (2019: 338-351) about the stages of the sporadic land registration procedure as follows:

1. Sporadically apply for land registration to the Head of the Land Office
2. Pay the registration fee. This registration fee has been stipulated in Government Regulation Number 46 of 2002 concerning Tariffs on types of non-tax state revenues that apply to the National Land Agency.

3. After payment of the registration fee, the land measurement is then carried out by the measuring officer from the Land Office
4. Collection and research of juridical data on land plots and boundary determination
5. Announcement of physical data and juridical data and their attestation. The announcement is made within 60 days, after the announcement period ends, it is then ratified by the Head of the Land Office
6. Bookkeeping of rights, after recognition and ratification of rights after being announced, then a land rights book on the land is made which is signed by the Head of the Land Office.
7. Regulation of the certificate, which is carried out after the creation of the land rights book on the land in question, where the quotation of juridical data and physical data of the land listed in the land book is then written in the certificate of rights to the land.
8. Submission of the certificate, which is carried out after the certificate has been completed and signed by the Head of the Land Office.

The procedure that has been mentioned is the registration procedure for sporadic transfer of land rights according to PP No. 24 of 1997 About Land Registration.

CONCLUSION

The transfer of rights to uncertified land that took place before the enactment of the law governing land registration, namely Government Regulation Number 24 of 1997, can be proven using an authentic deed made by PPAT, but if the transition is carried out by a deed under the hand or made by the parties relating to the sale and purchase transaction of the piece of land witnessed by the village head or village head, then the deed can be used as proof for the transfer or transfer of rights to the land to be registered with the land office. However, if the sale and purchase of uncertified land is carried out after the enactment of related regulations, namely Government Regulation Number 24 of 1997 concerning Land Registration, then the proof can only be proven by the AJB (deed of sale and purchase) made before the relevant officials, namely PPAT in order to fulfill the terms and conditions of the transfer of rights to the land to be registered with BPN until strong evidence is received, namely a certificate of the land.

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