
JURIDICAL ANALYSIS OF TRANSFER OF LAND OWNERSHIP RIGHTS UNKNOWN TO THE PREVIOUS OWNER

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ABSTRACT

The transfer of property rights over land from one party to another can be obtained through a court decision. Based on the provisions of Law No. 5 of 1960 concerning Basic Agrarian Principles and Government Regulation No. 24 of 1997 concerning Land Registration, the sale purchase and transfer of land rights must be carried out in front of a land deed official (PPAT). Many problems arise regarding the ownership of land rights carried out under the hand, in the sense that they are not in accordance with the applicable regulation. The case can be detrimental to the buyer and even a lawsuit must be made through the court. The case in this study is a case of transfer of land rights because the loss of the certificate was later found after 25 years and the owner has a good intention to apply for a name change, but the previous owner of the certificate is unknown. This study aims to ensure legal certainty in the transfer of ownership of land that is unknown to the previous owner and explain the legal consequences of the transfer of ownership of the land after the issuance of a court decision. This study uses a normative juridical method and the method of data collection uses interviews studies and reviews a applicable law and regulation as a basis for solving problems. Therefore, using a court decision can be the basis for rights that have permanent legal force in the transfer of land rights.

Keywords: Transfer of Rights, Land Ownership Rights, Certificates.

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INTRODUCTION

Land ownership is closely related to legal certainty regarding land rights, especially for the benefit of the community. In this case, the UUPA, the primary land law, regulates the main problems of Indonesian agrarian affairs in outline. Furthermore, further implementation is regulated through laws, government regulations and other laws and regulations. The legal certainty of land rights is aimed at land ownership, so the legal certainty of land rights will provide clarity and strong evidence of land ownership (Andari et al., 2014). In turn, the legal certainty of land rights provides clarity on two things, namely, subject certainty, namely certainty regarding the holder of the property right and object certainty, namely certainty regarding the land such as location, shape, area, boundaries and so on" (Murni & Sulaiman, 2022).

In line with human life development, land rights ownership is so important that the government protects land ownership through legislation, namely the Basic Agrarian Law and Government Regulation Number 10 of 1961 which was later replaced by Government Regulation Number 24 of 1997 concerning Land Registration. The public is required to register their land as stipulated in Article 32 paragraph (1) of Government Regulation No. 24 of 1997 concerning Land

Registration, namely that "a certificate is a proof of right that serves as strong evidence of the physical and juridical data contained therein as long as the physical and juridical data is by the data contained in the measurement certificate and land book of the right concerned."

The right of ownership is the most vital right to land, which authorizes the owner to re-grant another right on the land plot of the property right he owns (Wahid et al., 2017). According to Indonesian agrarian law, ownership of land can be interpreted in two concepts: physical control and juridical control (Doly, 2017). Physical ownership means that the legal subject controls and manages the land directly. In contrast, juridical control means that the legal subject has control based on legal grounds based on the Law (Rahadiyan Veda Mahardika et al., 2022). People generally own certificates or title deeds and manage their land according to their wishes. However, the facts are that people only have physical possession of land. This is because, according to their understanding, physical control of land is more important than juridical control (land certificates). This community perspective on land tenure and land ownership has become a hereditary history that is understood by the community in land ownership as evidenced by certificates (Utomo, 2023).

The existence of the ownership of land rights makes it possible for the transfer of rights to be carried out by legal subjects. According to Article 37 paragraph (1) of Government Regulation No.24 of 1997, the transfer of land rights and ownership rights over apartment units can be obtained through sale and purchase, exchange, grants, inclusion in companies and other legal acts of transfer of rights. Due to low awareness of the law, the community, in this case, only sells and buys land rights with receipts and even oral sales and purchases without proof of payment. Holding a land certificate means something other than that the legal subject already controls the land physically or juridically. However, there is a process to transfer the certificate's name from the old owner to the new owner first. Because the land in the Civil Code Book II on the Law of Objects is included in the class of tangible and immovable objects, then the transfer or transfer of property rights must be done with balik nama.

Given the above description, this research uses the legal basis of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, Government Regulation Number 24 of 1997, reference books and journals. To ensure legal certainty in the sale and purchase, the land sale and purchase process can be carried out on land owned based on land rights. This means that the land object is authorized with proof of ownership of land rights (Hartanto, 2014). With the registration of land, it will not only realize the security guarantee of its ownership in the direction of legal certainty, but even one owner will get the perfection of his rights (Sinaga, 2014). The purpose of this research is to protect and provide legal certainty to the owners of land rights that, by Government Regulation Number 24 of 1997 Article 4 paragraph (1) states "to provide legal certainty and protection as referred to in Article 3 letter (a) to the relevant right holders, land rights are given."

METHOD

The type of research used in this paper is normative juridical, namely research conducted by examining library materials and legislation related to what is being discussed, namely the transfer of land rights. This research method is an absolute element that must be contained in a study that has a function to advance science and aims to explain all the questions of the problem being studied (Zefanya & Lukman, 2022).

The method used in collecting data for this research is a literature study with secondary data. These materials explain primary legal materials such as books, journals, papers, literature, and research results. Secondary data used is published and general data, including laws and regulations, books, journals, or other materials related to the research. The method of data collection uses interviews and studying and reviewing applicable laws and regulations as a basis for solving problems.

RESULTS AND DISCUSSION

In the case of buying and selling land, the object is the land certificate. If the land is already certified, there is no problem (Murni, 2018). Article 4 paragraph (1) of the Basic Agrarian Law states that "based on the State's right to control as referred to in Article 2, there are various kinds of rights over the surface of the earth, called land, which can be given to and owned by persons, either alone or together with other persons and legal entities".

This guarantees that every person who has a land right to obtain a certificate to obtain legal certainty and become proof of ownership of a valid land right, per Article 4 paragraph (1) of Government Regulation No. 24 of 1997 concerning Land Registration. Transfer of land rights is a legal act to transfer land rights to other parties (Zulhadji, 2016). The transfer of rights is not merely the transfer of certificates and control of the land but must be reversed. The transfer of land rights or the transfer of the name of a certificated land certificate can be done by making a Sale and Purchase Deed to a PPAT, regulated in Government Regulation 24 of 1997 concerning Land Registration (Manueke, 2018). In making a sale and purchase deed, it must be attended by the parties to the sale and purchase and witnessed by at least two witnesses. PPAT, by seven working days from the signing of the Sale and Purchase Deed, must submit the deed and related documents to be registered with the land office.

In the Court Decision case raised in this paper, the previous owner or seller's whereabouts are unknown. This may be due to death, change of domicile, or other reasons. So the question arises: How is the process of transferring rights that the previous owner does not know, and what are the legal consequences after the court decision is issued?

Process of Transfer of Land Rights Unknown to the Previous Owner

Transfer of land rights (*balik nama*) that the previous owner does not know is suggested by the land agency using a court decision. Article 55, paragraph (2) of Government Regulation No. 24 of 1997, states that "Recording as referred to in paragraph (1) may also be carried out at the request of an interested party, based on an official copy of a Court decision that has obtained permanent legal force or a copy of the determination of the Chairman of the Court concerned which is submitted by him to the Head of the Land Office".

So with the court's decision, the transfer of ownership rights to land from one party to another and the buyer or owner afterwards has the right to transfer rights (*balik nama*), which was initially in the seller's name, to the buyer's name. Strengthened by Article 4 paragraph (1) of Government Regulation No. 24 of 1997 concerning Land Registration, namely "To provide legal certainty and protection as referred to in Article 3 letter a, the relevant right holder is given a land right."

Transfer of land rights through the courts can be carried out through the civil procedural law process. An *interactive* court decision can serve as a basis for the plaintiff/land purchaser to register the transfer of land rights or to transfer the name of the certificate to the District Land Office in the

absence of a sale and purchase deed drawn up by a land deed official (PPAT). Civil procedural law is a legal regulation that regulates how to resolve civil cases through the judicial body. According to Wirjono Prodjodikoro, Civil Procedure Law is a series of regulations that contain how people must act towards and before the court and how the court must act on one another to run civil law regulations (Rasyid & Herinawati, 2015). The purpose of civil procedural law is to protect the rights of individuals in civil disputes, such as the right to transfer land, the right to provide relevant evidence and arguments, the right to obtain a decision based on the law and facts, and the right to enforce court decisions (Faradhiba, 2023).

Legal remedies that can be taken can be outside the court and inside the court. Outside the court is mediation, which is one of the alternative dispute resolution. In Decision Number 59/Pdt.G/2023/PN Cbn, the case was about the transfer of ownership rights to land that the previous owner or seller did not know. According to the author's analysis, the plaintiff purchased a piece of land from the Defendant legally under the hand with proof of payment in the form of a receipt. However, the plaintiff transferred rights (*balik nama*) 25 years after purchasing the land. The plaintiff wanted to make a sale and purchase deed before a PPAT. However, the seller's whereabouts were unknown, so he could not make a sale and purchase deed before a PPAT because Government Regulation No. 24 of 1997 explained that in making a sale and purchase deed, the seller and buyer must be present to sign the sale and purchase deed. The buyer finally made a lawsuit letter and carried out the process of transferring rights with civil procedural law through the court.

Decision Number 59/Pdt.G/2023/PN Cbn states that the Defendant was not present in 3 (three) proper summonses, so the judge decided the case without the Defendant's presence. Article 125 HIR/149 R.Bg states that if on the appointed hearing day, the Defendant neither appears nor sends someone else to be present as his representative, even though he has been properly summoned, the lawsuit is accepted with a decision outside the presence of the Defendant (*verstek*) unless it turns out that the District Court thinks that the plaintiff's claim is against the right or has no legal basis. Regarding the understanding of *verstek*, it is closely related to the function of litigation in court, and this is inseparable from the imposition of a decision on a disputed case, which authorizes the judge to decide without the presence of the plaintiff or Defendant (Maswandi, 2017).

The buyer has carried out legal actions legally and has not committed illegal acts. However, the receipts owned do not have legal force to prove their authenticity. Therefore, the evidentiary power to carry out the legal act of transferring rights needs to be stronger. It needs to be supported by other evidence or certificates, so the old proof of rights can only stand with others if you want to carry out a legal action (Winata Nadia, 2021).

Legal consequences after court decision

The above case can be included in a land dispute, namely a case concerning the overlapping of an old certificate into a new certificate. Overlapping certificates of land rights issued by the land office can certainly be studied with errors in the juridical and physical data collection process so that overlapping with the term double certificate will certainly impact the ownership of each party, who will certainly ask for legal certainty over the dispute that occurred (Pranoto & Sunarno, 2020).

The legal consequences of the Cirebon City Court Decision Number 59/Pdt.G/2023/PN Cbn, namely by stating that it is true that the Plaintiff has purchased the plot of land and it is declared valid that the owner of the land has been transferred to the Plaintiff where the issuance of certificates by the plaintiff in the name of the plaintiff is not an illegal act so that the plaintiff can

control the land physically and juridically. This is in accordance with the theory of legal certainty according to Gustav Radbruch, which is to realize justice in legal certainty in the real form of implementation and law enforcement.

CONCLUSION

From the results of the above research, it can be concluded that a court decision can be used as the basis. The process of transferring land ownership through the civil procedure legal process, and the judge has the authority to order the Head of the Defense Office to issue a duplicate certificate in the name of the plaintiff through a decision letter and declare that the previous certificate (certificate in the name of the Defendant) is no longer valid, this is based on the provisions of Government Regulation No. 24 of 1997 concerning Land Registration and Article 125 HIR/149 R.Bg. And with this decision, the plaintiff can get legal certainty and justice in the form of juridical physical control of the land rights.

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