

## Analysis of Transfer of Rights to Land Without a Deed of Sale and Purchase as Stated in Government Regulation Number 24 of 1997

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### ABSTRACT

The registration of land rights is conducted in accordance with the provisions of Article 19 paragraph (1) of Law Number 5 of 1960 to ensure legal certainty by the Government. The registration process of the transfer of land rights through sale and purchase is regulated in Government Regulation Number 24 of 1997, stating that the sale and purchase of land must be proved by a deed issued by the authorized official which is the PPAT. However, the information and knowledge of laws related to the transfer of land rights through sale and purchase transactions in remote areas is limited so that a significant number of transactions are still often carried out in traditional manner. The focus of this research is to analyze the process of the transfer of land rights to without a deed of sale and purchase. The research method used is the normative legal research method focused on normative premises, providing normative explanations, research results, and legal experts' opinions on the discussed issues. As a result, the related parties could file a lawsuit to the court and the decree serves as the basis for the registration for the transfer of rights at the National Land Agency.

**Keywords:** Transfer of rights, registration of rights, sale and purchase

### 1. PREFACE

Land appears as a gift from God Almighty and serves as one of the natural resources that affect human lives. Land bears two roles of function, which are social and capital assets. From the social asset aspect, the land is a social binding of the harmony among Indonesians as a community, people, and nation. Meanwhile, as a capital asset, it serves as the capital aspect in developments that must be utilized optimally for the fair and equitable welfare of the people, while still keeping sustainability in mind.

Therefore, the State shall manage lands for the people's affluence as regulated in the 1945 Constitution preamble since it denotes that one of the State's objectives is to improve public prosperity. Efforts to prosper the people are definite in Article 33 paragraph (3) of the 1945 Constitution, that "Land, water, and natural resources within shall be under the powers of the State and shall be used to the greatest benefit of the people". The State becomes responsible for governing the land as the surface of the earth and owing to the resources therein for the people's affluence [1].

In the national development context, the land's role grows essentially in relation to the ongoing increase in the number of people requiring lands for their settlement. In addition, the increasing need for lands has also triggered land issues in Indonesia, resulting in the enactment of the Law on Land, namely Law Number 5 of 1960 concerning Basic Agrarian Principles (hereinafter referred to as UUPA).

One of the purposes of the UUPA establishment is to offer the foundations to provide legal certainty and protection regarding the land rights for all Indonesians. This reason ultimately underlies the presence of Article 19 paragraphs (1) and (2), which state: "(1) To ensure legal certainty by the Government, land registration is implemented throughout the territory of the Republic of Indonesia according to the provisions stipulated in Government Regulations; (2) Land registrations as mentioned in paragraph (1) of this article include: a. Land measurement,

mapping, and recording; b. The registration of the rights to land and the transfer of the rights mentioned above; c. The granting of right certificates serves as powerful means of evidence.” [2] In 1961, the Government Regulation Number 10 of 1961 concerning Land Registration was published using Article 19 Paragraph (1) and (2) of the UUPA as the basis, to give legal clarity and land rights protection. This law was later revised and enhanced by the Land Registration Law under Government Regulation Number 24 of 1997. Furthermore, the Government issued implementing regulations in Government Regulation Number 24 of 1997, which was amended several times before being replaced by the Regulation of the Agrarian Minister and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 16 of 2021 concerning Land Registration.

The land registration or the registration of transfer of land rights shall be performed in front of the Land Deed Officials (PPAT), who is authorized to issue the PPAT deed in accordance with Article 37 paragraph (1) of the Government Regulation Number 24 of 1997 that, “The transfer of rights to land and ownership rights of apartment unit through sale and purchase, exchange, grants, company's in-kind contribution (*inbrens*), and other legal acts of transfer of rights, excluding the transfer of rights through auction, shall only be registered if it is proven by a deed issued by the authorized Land Deed Officials (PPAT) according to the provisions of the applicable laws and regulations.” [3]

Before publishing a transfer deed or Land Rights Assignment deed, or apartment unit ownership rights as part of its duties, the PPAT shall carry out certificate examination to: a. ensure the orthodoxy of the juridical and physical data on the hardcopy Certificate with the electronic data on the database through the electronic land information service [previously the data on the Certificate is compared to the land book juridical data]; and b. ensure and believe that the physical object of the land to be transferred and/or encumbered with rights is not in dispute. This obligation is in line with Article 97 paragraph (1) of the Regulation of the Agrarian Minister and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 16 of 2021 [4].

Previously, when the data was not converted into electronic form in the electronic land information service, PPAT had to conduct a certificate examination and the Land Office regarding the suitability of the certificate of land rights or ownership rights with the available registers at the local Land Office by showing the original certificates before issuing a deed of transfer or assignment of Land Rights or ownership rights to apartment unit as part of his duties. If the certificate matched the registers in the Land Office, the Head of the Land Office or the nominated official should provide a stamp or writing to the certificate: “It has been checked and is matching with the registers at the Land Office” on the page of the original certificate then initialed and given checked date. This obligation follows Article 97 paragraph (1) and (2) of the Regulation of the Agrarian Minister and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 3 of 1997.

According to juridical means, the transfer of land rights is carried out in writing with a deed drawn up by an authorized official and registered at the district land registry office. This procedure is closely related to the transfer of land rights procedures since it determines the legality of the transfer of rights. Thus, the legality of transfer of land rights is primarily determined by the fulfillment of all material and formal requirements.

The information and knowledge of laws related to the transfer of land rights through sale and purchase transactions in remote areas, however, remain limited and insufficient. Significant numbers of transactions are still often carried out in traditional manner, rendering no updates on the juridical data stored by the National Land Agency, resulting in potential occurrence of significant disputes, such as multiple land certificates, fake land certificates, or villagers' lands or property with no certificates.

In the light of the above, this writing aims to address the question of legality of land rights transfer carried out traditionally i.e., through mere underhand deed as evidence of such transaction, while keeping the prevailing laws and regulations in mind.

### **Research Question**

How is the process of land rights transfer without a deed of sale and purchase regulated according to Government Regulation Number 24 of 1997?

## **2. RESEARCH METHODS**

This research employed the juridical normative legal research method since this research begins with normative premises, providing normative explanations, research results, and legal experts' opinions on the discussed issues. Besides, this research also conducted a legal review as an applicable norm or rule [5].

In the research, the writer used library research data collection techniques. The aim is as a reference for solving research problems [6]. All the data that has been collected and obtained both from primary data and secondary data materials will be analyzed with qualitative analysis, which is the data compiled systematically and analyzed qualitatively.

This normative legal research was conducted utilizing two data materials:

1. Primary data materials, which are: the 1945 Constitution, the Indonesian Civil Code (KUHPerdata), "Law Number 5 of 1960 concerning Basic Agrarian Principles, "Government Regulation Number 24 of 1997 concerning Land Registration, the Regulation of the Agrarian Minister and Spatial Planning/Head of National Land Agency Number 3 of 1997 concerning Implementation of Government Regulation Number 24 of 1997 concerning Land Registration, and the Regulation of the Agrarian Minister and Spatial Planning/Head of the National Land Agency Number 16 of 2021 concerning Land Registration;"
2. Secondary data materials including books or literature referred by the author.

## **3. RESULTS AND DISCUSSION**

In general, the practice of selling and purchasing land rights is governed by Government Regulation Number 24 of 1997 concerning Land Registration and Government Regulation Number 37 of 1998 concerning the Regulation of PPAT position, which state that the rights to sell and purchase land must be performed in front of an authorized official. The authorized personnel in this situation are the PPAT, whose operating area covers the region where the relevant land on sale is located" [7].

The transfer of land rights, according to Parlindungan," refers to the land right transfer from the previous rightholder to the new rightholder following the terms of the applicable laws and regulations [8]. There are two ways to transfer land rights: automatically transferred and being transferred. Transferred denotes that the owner does not take any formal action to transfer land rights, such as in circumstances of inheritance. Meanwhile, being transferred refers to the legal transfer of land rights, such as sale and purchase transactions.

Transfer of land rights in Indonesia is carried out following the Government Regulation Number 10 of 1961 concerning Land Registration as amended by Government Regulation Number 24 of 1997 concerning Land Registration. Article 37 paragraph (1) of Government Regulation Number 24 of 1997 states, "The transfer of rights to land and ownership rights to apartment unit through sale and purchase, exchange, grants, company's in-kind contribution (*inbreng*), and other legal acts of transfer of rights, excluding the transfer of rights through auction, shall only be registered

if it is proven by a deed issued by an authorized Land Deed Official (PPAT) according to the provisions of the applicable laws and regulations.”

The transfer of land rights can occur through sale and purchase, grants, exchange, auctions, inheritance, merger or consolidation, and other means for transferring rights. The following are the explanation for some transfer mechanisms of land rights:”

### **Transfer of Land Rights to Through Inheritance**

Inheritance refers to the transfer of property rights from an individual who has been deceased to another individual designated by the concerned and/or appointed by the court as heirs. The arrangements of registration of land rights transfer through inheritance are regulated in the Agrarian Minister and Spatial Planning/Head of National Land Agency Regulation Number 16 of 2021, which in Article 111 states that, “The application for registration of the transfer of land rights and ownership rights to apartment unit shall be submitted by the heirs or their proxies by attaching:

- a. The certificate of land rights and ownership rights to apartment unit on behalf of the heir or other proof of land ownership;
- b. Death certificate of the rights holder listed in the certificate issued by the head of the village where the deceased live at the time of death, hospital, health officers, or other authorized agencies;
- c. Certificates of legal heir, including:
  - i. Testamentary disposition of the testator;
  - ii. Court decrees;
  - iii. Order of the judges/chief of the court;
  - iv. A statement of the heirs made in the presence of 2 (two) witnesses and confirmed by the head of the village and the head of the subdistrict overseeing the area where the testator resides at the time of death;
  - v. Deed of inheritance rights issued by a Notary domiciled in the area where the testator resides at the time of death; or
  - vi. Certificate of inheritance from the Property and Heritage Agency.
- d. A written Power of Attorney from the heirs in the event the registration of the transfer of rights is not filed by the heirs concerned; and
- e. Proof of identity of the heirs.”

### **Transfer of Land Rights Through Grants**

According to Article 1666 of the Indonesian Civil Code, a grant is an arrangement in which the grantor freely and irreversibly transfers property over their lifetime to the beneficiary receiving the gift. Every person and/or legal entity may be a grantee/receive a grant unless the grantee is declared legally unable to take legal action. The transfer of land rights resulting from a grant does not always occur when the grantor gives over the land to the grantee. Article 37 of Government Regulation Number 24 of 1997 stipulates that the transfer of land rights must be documented by a deed signed by an authorized PPAT in accordance with the applicable laws and regulations.

Article 1685 of the Indonesian Civil Code stipulates that grants for minors under parental supervision shall be accepted by those who exercise such parental rights. Similarly, grants for individuals under guardianship shall be accepted by the guardian authorized by the district court to represent said individuals. According to Article 1672 of the Indonesian Civil Code, the grantor may reserve the right to reclaim the granted assets if the grantee or their heirs predecease the

grantor, provided that an agreement has been made between both parties concerning such reclaim [9].

### **Transfer of Land Rights Through Auction**

Auction is every public sale of goods in which the prices are offered verbally and/or in writing as an effort to gather interested or prospective buyers. Auction is divided into 2 (two) based on its nature, namely:

a) Execution auction, conducted to execute court decrees related to mortgages, confiscations due to tax default, confiscations conducted by the prosecutor's office or the investigating prosecutor, and confiscations conducted by the Committee of State Receivables Management (PUPN); and

b) Non-execution auction, conducted for properties controlled or owned by central and regional government agencies, State-Owned Enterprises (BUMN) or Regional Administration-Owned Enterprises (BUMD), and auctions of land rights or property rights to apartment units owned or controlled by individuals or legal entities.

### **Transfer of Land Rights through Sale and Purchase**

Article 37 of Government Regulation Number 24 of 1997 concerning Land Registration states that Deed of Sale and Purchase (AJB) acts as the legal proof that the ownership to land and structures have been transferred to third parties. For specified locations where PPAT is regarded as unusual, the AJB must be made before the PPAT or subdistrict head. Underhand transfers or land and construction rights are forbidden under the law. However, in practice, several underhand land sale and purchase transactions were done without the presence of PPAT. Underhand refers to the sale and purchase agreement of land rights which is solely executed under the parties' agreement in cash or part [10].

According to Sahat, if the National Land Agency rejects such underhand sale and purchase transaction on the registration process of the transfer of land rights, one of several ways to solve this issue is that the parties should reiterate the agreement of the land sale and purchase before the PPAT [11]. Otherwise, the buyer should file a lawsuit to the court in accordance with Article 125 of Regulation of the Agrarian Minister and Spatial Planning/Head of National Land Agency Number 3 of 1997.

In accordance to Article 125 of Regulation of the Agrarian Minister and Spatial Planning/Head of National Land Agency Number 3 of 1997 [12], "the registration of changes in land registration data based on court decisions or stipulations of Judge/Chairman of the Court by the Head of the Land Office in the relevant land book and other general registers are carried out after receiving the decision of the judge/Chairman of the Court or by receiving Courts decision that have permanent legal force and a copy of the Minutes of Execution from the clerk of the District Court concerned."

Land disputes court settlement is regulated in the Law of Civil Procedure adopted in Indonesia by following the flow of civil case trials, which are regulated in the Indonesian Civil Code, *Het Rechtsreglement Voor de Buitengewesten* (RBg), the procedural law for Java and Madura regions, and *Het Herziene Indonesisch Reglement* (HIR), the procedural law for regions outside Java and Madura [13].

Submitting a lawsuit to the court regarding the sale and purchase of land made without an official deed of sale and purchase often occurs as in Decree Number 265/Pdt.G/2020/PN.Kpg, where underhand sale and purchase of land was solely executed under a receipt instead of the deed before the PPAT; as a result, no registration for the transfer of land rights may be

submitted. Thus, the buyer files a case in court, requesting that the sale and purchase transaction be declared genuine. Furthermore, the decree acts as the foundation for registering the transfer of bought land rights [14].

#### **4. CONCLUSION AND RECOMMENDATIONS**

##### **Conclusions**

According to Government Regulation Number 24 of 1997, the registration process for land rights transfer due to sale and purchase transactions must be completed before the PPAT. Following that, the registration can be filed with the National Land Agency's Office. In actuality, however, shady property sale and purchase transactions that did not take place before the PPAT continue to exist. Thus, the registration for land rights transfer at the National Land Agency Office cannot be managed in such instances. Following Article 125 of Regulation of the Agrarian Minister and Spatial Planning/Head of National Land Agency Number 3 of 1997, the buyer can file a lawsuit to the court. Land disputes settlement in court is regulated in the Law of Civil Procedure adopted in Indonesia by following the flow of civil case trials, which are regulated in the Indonesian Civil Code, *Het Rechtsreglement Voor de Buitengewesten* (RBg), the procedural law for Java and Madura regions, and *Het Herziene Indonesisch Reglement* (HIR), the procedural law for regions outside Java and Madura. Then the Court will issue a decree that the sale and purchase transaction is valid. In addition, the decree serves as the basis for the registration for the transfer of rights at land at the National Land Agency.

##### **Recommendations**

The Government should examine the numerous underhand sale and purchase cases carried out without a deed of sale and purchase made by an authorized PPAT. Furthermore, the Government should also disseminate the applicable regulations to the public through widespread socialization to avoid or minimize similar cases.

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