TABELLIUS Journal of Law
ISSN 2988-6201
published by Master of Notarial Law Faculty of Law Universitas Islam Sultan Agung Semarang

The Legal Settlement Aspects of Land Grant Disputes Where Buildings Have Been Erected Due to Weak Evidence

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Abstract. *An agreement can be made if there is a skill, a halal cause, a thing and an agreement between the two parties. This research is descriptive analytical research which attempts to describe systematically and carefully the facts about the characteristics of a certain population. The approach that this author will take is the Sociological Juridical approach. The Sociological Juridical Approach emphasizes research that aims to obtain legal knowledge empirically by going directly into the object. Sociological Juridical Research is legal research using secondary data as initial data, which is then continued with primary data in the field. or towards society, researching the effectiveness of a Ministerial Regulation and research that wants to find relationships (correlations) between various symptoms or variables, as data collection tools consisting of document or library material studies and interviews (questionnaires). The Sociological Juridical Approach is aimed at reality by looking at the application of law (Das Sein). The researcher chose this type of legal research because the researcher saw a gap between the desired legal rules (Das Sollen) and the reality that occurred (Das Sein). A grant is giving something to a desired person voluntarily. In general, the definition of a gift is giving something to a desired person while they are still alive, which is different from the concept of inheritance. Grants themselves are quite often found at social events, such as giving land to social institutions or religious buildings. Not infrequently, grants are also given in the form of assets or property.*

Keywords: *Authority; Dispute; Grant; Mediation.*

1. Introduction

Law is related to norms or rules that exist in society, reflecting the values that exist in society. In fact, there is generally an opinion that states that good law, as envisioned by social society, requires rules (law) as a tool. These rules are in the form of legal regulations accompanied by strict sanctions. There is a situation that cannot be avoided, so that tension arises because there are differences in interests.[1].

The causes of grant conflicts include: First, sometimes the heir has emotional closeness to other people or social religious institutions, therefore generally the heir assumes that he is the sole owner of his property, so that the heir has full authority to take legal action whether in the form of inheriting his property to heirs or gift their assets to others. Sometimes these legal actions are not known to the heirs, so the heirs do not know that they have lost their right to inherit. Second, the heir makes a gift to another person whose amount reduces the share of the heir, because the assets that can be given as a gift are 1/3 of the heir's assets.[2] Third, namely not using consultation with the family which makes the grant taking place in the absence of witnesses from the party giving the grant. Therefore, misunderstandings often occur between the two parties, such as mutual claims on assets due to lack of clarity at the time of granting at the beginning, which leads to disputes between the heirs.[3]

Factors causing the frequent emergence of land disputes include; Land administration system, unequal distribution of land ownership. The legality of land ownership is based solely on formal evidence (certificates), without paying attention to land productivity.[4]

In principle, every land dispute can be resolved with norms and rules based on applicable law. Land regulations are regulated in a separate law, namely the Basic Agrarian Law or abbreviated as UUPA. In Article 4 of Law No. 5 of 1960 concerning Basic Agrarian Principles Regulations, the meaning of land is explained, namely that on the basis of the right to control from the state as intended in Article 2, various types of rights to the surface of the earth, called

[1]Ratnasari and Akhmad Khismi, 2017, Legal Problems of Invalid Land Deeds Because They Exceed the Smallest Share of Heirs, Unissula Journal Vol. 4. No. 02 p. 197.
[2]Rocky Marbun, 2011, Effective Tips for Resolving Legal Cases, South Jakarta: Trans MediaLibrary, p. 214
[3]Muniroh, Misbahatul. "The Impact of Grants in the Distribution of Inheritance from an Islamic Legal Perspective." (2022).
[4]Herlina Ratna Sambawa Ningrum, Legal Analysis of Land-Based Dispute Resolution Systems, Justice Journal of Legal Reform, Vol.1, No.2, 2014

land, are determined which can be granted. to and owned by people, either alone or together with other people and legal entities.[5]

Basically, certification is carried out for the benefit of the community, namely to obtain strong evidence regarding the validity of legal actions regarding land. Meanwhile, the purpose of holding the certification is: First, to provide legal certainty regarding the location, area and boundaries of the land. Second, to ensure certainty regarding the legal status of the land in question, by registering the land you will be able to know with certainty the status of the registered rights, for example ownership rights, business use rights, building use rights. Third, for certainty regarding land ownership. Regarding certainty regarding land ownership, the aim is to ensure that the right holder can be known for certain, whether an individual or a legal entity.

2. Research Methods

This research uses a Sociological Juridical approach method which uses specificationsanalytical descriptive. The data used includes secondary data and primary data. Retrieval of data derived from primary legal materials, secondary legal materials and tertiary legal materials.

3. Results and Discussion

3.1. Legal Aspects of Settlement of Land Grant Disputes Where Buildings Have Been Erected Due to Weak Evidence

There needs to be legal certainty in resolving every existing problem, namely first,bahwa law is positive, meaning that positive law is legislation. Second, that law is based on facts, meaning it is based on reality. Third, that facts must be formulated in a clear way so as to avoid errors in meaning, as well as being easy to implement. Fourth, positive law must not be easily changed. This is based on his view that legal certainty is certainty about the law itself. Legal certainty is a product of law or more specifically legislation because positive law which regulates human interests in society must always be obeyed even though positive law is unfair.

Based on the provisions of Article 1313 of the Civil Code, there is no explicit mention of "written agreements". The Civil Code only defines an agreement as an act of one or more people binding themselves to another person. However, in general, agreements can be divided based on their form, namely verbal and

[5]Santika Ayu Trisnawati, Process for Settlement of Land Rights Disputes for Buildings That Have Been Sold But Are Still Used by Other Parties (Case Study at the Surakarta District Court), Journal, Faculty of Law, Muhammadiyah University of Surakarta, 2018, p.3.

written. An oral agreement is an agreement made by the parties by agreement only verbally, while a written agreement is made in written form (contract) either in the form of an authentic deed or a private deed. The legal strength of these two types of agreements does not actually lie in their form, namely whether written or verbal[6].

Making an agreement is basically not tied to a particular form. The Civil Code does not systematically mention the form of agreement. Each party entering into an agreement has freedom in making an agreement, in the sense of being free to make an agreement verbally or in writing. The principle of freedom of contract is a principle that gives parties the freedom to:

a) Make or not make an agreement;

b) Enter into an agreement with anyone;

c) Determine the contents of the agreement, its implementation and requirements; And

d) Determine the form of the agreement, namely written or oral.

In general, to determine the theory of legal certainty related to the agreement that occurred in the case study that the researcher studied, according to the form of the agreement, it is divided into:

1. Oral Agreement: This is an agreement in which the agreed agreement/clause is agreed orally. Oral agreements like this are still valid, but the problem is that if a dispute arises related to this agreement, the parties will have difficulty providing proof.

2. Written agreement there are two forms of this agreement, namely a written agreement with a private deed and a written agreement with an authentic deed.

A written agreement with a private deed is an agreement made by the parties alone without involving authorized officials. This agreement with a private deed still provides room for one of the parties to deny the contents of the agreement. What is meant by an agreement with an authentic deed is an agreement made by and/or before an authorized official. Thus, basically agreements that are executed verbally without being expressed in a written agreement, whether through private agreements or agreements with authentic deeds, are still recognized and validly executed based on the agreement of the parties, but have

[6] ?Margono Surya Partners. Legal Strength of Oral Agreements. Accessed from http://www.msplawfirm.co.id/Power-law-perkerjaan-lisan/ on August 4 2023. At 10:00.

the disadvantage of being weak in terms of evidence. Based on this, for certain agreements,

a) The grant agreement must be in written form in a notarial deed, except for the agreement granting land rights (vide Article 1682 of the Civil Code);

b) The agreement granting authority to place a mortgage on a ship must be in written form in a notarial deed (vide Article 1171 of the Civil Code);

c) The agreement to transfer receivables secured by mortgage must be in written form in a notarial deed (vide Article 1172 of the Civil Code);

d) The subrogation agreement must be in written form in a notarial deed (vide Article 1401 sub 2 of the Civil Code);

e) Transfer agreements (especially sale and purchase and grants) of land rights, except through auction, for land that has already been registered must be in written form in a deed from the official who made the land deed (see Article 37 PP Number 24 of 1997);

f) Transfer agreements (especially sale and purchase agreements and grants) of ownership rights to apartment units, except through auction, must be in written form in the deed of the land deed official (see Article 37 PP Number 24 of 1997);

g) The agreement to transfer land rights or ownership rights to apartment units by auction must be in written form in a deed from the land deed official (vide Government Regulation Number 24 of 1997);

h) The agreement granting authority to impose mortgage rights must be in written form in the deed of the land deed official (vide Article 15 paragraph (1) of Law No. 4 of 1996);

i)The mortgage rights guarantee agreement must be in written form in the deed of the land deed official (vide Article 10 paragraph (2) of Law No. 4 of 1996);

j)The fiduciary guarantee agreement must be in written form in a notarial deed (vide Article 5 paragraph (1) of Law No. 42 of 1999);

k) The firm establishment agreement must be in written form in a notarial deed (vide Article 22 of the Commercial Code);

l)The agreement to establish a cooperative must be in written form in the deed of the official who created the cooperative deed (vide Article 7 of Law No. 25 of 1992);

m) The agreement to establish a foundation must be in written form in a notarial deed (vide Article 9 paragraph (2) of Law No. 16 of 2001); And

n) The agreement to establish a limited liability company must be in written form in a notarial deed (vide Article 7 of Law No. 40 of 2007). Agreements that have been determined by the Law must be implemented properly, because if they are not implemented, the legal consequences will be that the agreements made will become invalid, so they are null and void, and will not give rise to an agreement (the agreement is deemed to have never existed);

Thus, based on the description above, certain agreements which based on statutory regulations must be in written form cannot be in oral form. Apart from the agreement as mentioned above, it can be made verbally.

In civil procedural law, regarding evidence in court there are 5 (five) pieces of evidence regulated in Article 1866 of the Civil Code which states that:

These pieces of evidence consist of:

1) Written proof;

2) Evidence with witnesses;

3) Estimate;

4) Recognition; And

5) Oath.

As explained regarding the conditions for the validity of an agreement in the formulation of Article 1320 of the Civil Code above, there is no requirement that an agreement be made in writing. Thus, unwritten agreements/oral agreements also have binding force between the parties making the agreement/engagement. However, in the process of proving a civil case, generally the evidence used by the party arguing for something (Vide Article 163 HIR) is documentary evidence. This is because in a civil relationship, a letter/deed is deliberately made with the aim of facilitating the evidentiary process, if in the future there is a civil dispute between the parties involved.[7]

[7]Aries, Albert. Regarding Proving Unwritten Agreements. Uploaded on August 4, 2023. Retrieved fromhttps://www. Hukumonline.com/klinik/detail/ulasan/lt51938378b81a3/sebuahproof of unwritten agreement/ on August 4, 2023. 10:00

There is a civil relationship between the parties in the form of an agreement, but it is not supported by evidence. In problems like that, don't settle for non-litigation, litigation is also very difficult, because every argument that is put forward must be proven. This problem often occurs in oral agreements, where one party defaults because he argues that there was never an agreement. Such cases need to be constructed with evidence so that the legal action can be resolved on the basis of a clear claim.[8]

3.2. The role of the Ministry of Religion in the legal aspect of resolving land grant disputes where buildings have been erected due to weak evidence

Non-litigation dispute resolution is a settlement outside of court, which is also known as alternative dispute resolution. Alternative dispute resolution or alternative dispute resolution (ADR), is dispute resolution based on an agreement (consensus) carried out by the parties to the dispute either without or with the help of a neutral third party.[9]

Non-litigation resolution is a dispute resolution mechanism that is based on the principle of solving problems by working together accompanied by good faith by both parties to find a win-win solution. The problem solving process is carried out closed to the public and the confidentiality of the parties is guaranteed and the proceedings are faster and more efficient. The resolution of litigation tends to produce new problems because it is win-lose, unresponsive, the proceedings are relatively slow and are often carried out openly to the public.[10].

If we look at the quantity and quality, settlements carried out through litigation or judicial institutions are no better than settlements carried out non-litigation or outside the courtroom, both regarding business disputes and disputes caused by everyday problems.[11].

In resolving disputes outside of court, the disputing parties do not go through a formal legal process, the parties simply submit their case to a third party to

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[8]Fajar Sahat Ridoli Sitompul and Igusti Ayu Agung Ariani. Civil Law. Faculty of Law, Udayana University. The Binding Strength of Agreements Made Orally. Accessed from https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/10352/7525 on July 21 2023. At 10:55.

[9]Runtung, Medan : USU Press. 2006, "Empowering Mediation as an Alternative Dispute Resolution in Indonesia" Speech by Professor at USU Faculty of Law, P. 2

[10]Frans Hendra Winarta, Jakarta : Sinar Graphics, 2012, "Indonesian National and International Arbitration Dispute Settlement Law". Pp 9 - 28

[11]Mangatas Sihotang, Tan Kamello, Muba Simanihuruk, April 2006, "Study of Mediation as a Legal Policy in resolving Civil Case Conflicts in the Medan Class 1A District/Commercial and Human Rights Courts" USU Development Studies Journal Volume 1 Number 2. p. 49

resolve the dispute.[12]. Because out-of-court dispute resolution is the voluntary will of the interested parties to resolve their disputes outside of court.

If we look at Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Article 1 point 10 states that dispute resolution outside of court can be carried out by means of: consultation, negotiation, mediation, conciliation or expert assessment.[13].

In carrying out the process of resolving land disputes, the author concludes that the resolution route is carried out through mediation. Mediation itself is a peaceful process in which the disputing parties hand over the resolution to a mediator to achieve a fair final result, without wasting too much money, but still effective. and is fully accepted by the parties to the dispute voluntarily.

According to Rachmadi Usman, mediation is a way of resolving disputes outside of court through negotiations involving parties who are neutral (non-interventionist) and impartial to the disputing parties and whose presence is accepted by the disputing parties.[14].

Referring to Supreme Court Regulation Number 1 of 2008 concerning Mediation Procedures in Court, Article 1 point 7 mediation is a method of resolving disputes through a negotiation process to obtain agreement between the parties with the assistance of a mediator.[15].

In this mediation process, an agreement occurs between the disputing parties, which is a mutual agreement (consensus) accepted by the disputing parties. Mediation settlement is carried out by the parties with the assistance of a mediator. The mediator here must play an active role by trying to find various solution options to resolve the dispute that will be decided by the parties.

Mediators should have the techniques used to resolve disputes. The tactics that a mediator must use in leading a settlement include:[16]:

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[12]Dewi Tuti Muryati, B. Rini Heryani, 1 June 2011, "Regulation and Mechanism for Resolving Non-litigation Disputes in the Trade Sector" Journal of Social and Cultural Dynamics, V. 13. p.
[13]See Article 1 point 10 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution
[14]Rachmadi Usman, 2012 "Mediation in Court in Theory and Practice" Jakarta : Sinar Graphics, p. 24.
[15]See Article 1 point 7 of Supreme Court Regulation Number 1 of 2008 concerning Mediation Procedures in Court.
[16]Joni Emirzon, 2000, "Alternative Dispute Resolution Outside of Court (Negotiation, Mediation, Conciliation & Arbitration)" Jakarta: PT. Gramedia Pustaka Utama, pp. 85-88. Compare with Runtung, Op. Cit. p. 14-15.

1. Tactics for developing a decision framework (decision framing). This tactic is necessary

This is done to avoid a slow settlement process. A mediator can develop a decision framework in the form of an action agenda, manage issues to generate momentum for resolution, maintain negotiation targets and strive to meet the expectations of the parties.

2. Tactics to gain authority and cooperation. This tactic is carried out with the aim of gaining authority and good cooperation, a mediator must be neutral, speak in a language that is understood by the parties, build relationships, listen actively, emphasize potential benefits, minimize differences, and focus on togetherness.

3. Tactics to control emotions and create the right atmosphere. In this tactic, a mediator sets ground rules, controls hostile feelings and uses humor, sets an example of appropriate behavior, and throws away issues that easily give rise to debate.

4. Informative tactics. This tactic is carried out by holding meetings, urging the parties to talk and teaching the bargaining process.

5. Problem solving tactics. This tactic is carried out by a mediator by simplifying the dispute, developing a common set of interests, making concrete suggestions for creating an agreement, and taking responsibility for concessions.

6. Tactics to avoid embarrassment (face-saving). In this tactic, the mediator must be able to control the atmosphere for a good resolution and maintain the good name of the dispute between the parties.

7. Coercive tactics (pressuring). This tactic needs to be carried out by the mediator with the aim of avoiding a prolonged settlement by setting a time limit. Inform the parties that their position is unrealistic because it creates doubts in the parties about the solution and puts pressure on costs beyond settlement.

4. Conclusion

In the theory of legal certainty, it looks at the conditions for the validity of the agreement listedIn the formulation of Article 1320 of the Civil Code above, there is no requirement that an agreement must be made in writing, that unwritten agreements/oral agreements also have binding force between the parties making the agreement/engagement. Legal certainty. The application of mediation as a settlement route is considered better than in litigation, the use of mediation in resolving disputes according to law has the potential to produce fair

and just decisions. Based on the existing evidence of the Grant, land certification or Accelerated Complete Systematic Land Registration (PTSL) must be registered through the ATR/BPN ministry.

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Interview:

Interview with Mr. Samhudi as Principal, on August 04, 2023.