

The Legal Consequences Of The Unregistered Notarial Agreement Related To Paragraph 40 Government Regulation No. 24 Of 1997 About Registration Of Land On The Perspective Of Legal Philosophy

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Abstract. The land disputes caused by unregistered notarial agreement according to Paragraph 40 Government Regulation No. 24 the Of 1997 about registration of the land creates a legal issue in the society. The unfinished process of implementation causes legal uncertainty to all parties. The authentic agreement or certificate of ownership has the similar legal force and valid to all the holders. The legal consequences of the unregistered notarial agreement related to Paragraph 40 Government Regulation No. 24 the Of 1997 about the Land Registration will cause "null and void". So the legal position related to the ownership of the land title certificate is undamaged (the legal issue doesn't change) according to the rights holder written on it. There are two ways of completion, which are the land dispute resolution by Court (Litigation) and the land dispute resolution by non-Court (Non-Litigation).

Keywords: Notarial Agreement; Land Registration; Legal Philosophy.

1. Introduction

Constitutionally, the State gives protection to what God has given. It is written on the Constitution 1945 paragraph 33 article (3), which is, "earth and water and the natural capital contained on it is managed by the State and utilized properly for people's prosperity". To guarantee the legal certainty of the land ownership, then the Acts of Agrarian Principle was issued No. 5 the Of 1960 about agrarian and the implementation rules that were written on Governmental Regulation No. 10 the Of 1961 and as the era changes, it was changed by Governmental Regulation No. 24 the Of 1997 about the land registration.

There are numerous people who do legal activities, such as the transfer of the land rights especially related to the certificate made and signed in front of the Land Titles Registrar; all of these processes aren't done by all parties by unregistering them in the local Land Affairs Office. All parties only create the certificate that is created and signed in front of the Land Titles Registrar without further process according to the implementation regulation that has been issued by Government as Government Regulation No. 24 the Of 1997 about Land Registration.

A Land Titles Registrar who is given a mandate by Government according to the Acts to serve the people's needs, not only to create a certificate categorized as notarial agreements, such as sewing the clothes for the Taylor. All of the responsibilities have to be done according to the regulations, such as by giving "the Agreement Number."

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that has legal consequence of the Numbering and located after "the agreement title", as written on paragraph 40 Government Regulation No. 24 the Of 1997 about the Land Registration, as follow:

"(1) At least 7 (seven) work days since the agreement is signed, the Land Titles Registrar has to give the agreement and other related documents to the Land Affair Office to be registered;

(2) The Land Titles Registrar has to send the written announcement about the agreement has been sent as mentioned in the article (1) to all related parties.

So the imperfect implementation will bring the legal problem in the future and there is no legal certainty to all parties.

On the Hadist narrated by Ibnu 'Abbas, he heard Rasulullah SAW was saying:

"If only human being is given two valleys contained wealth, sure they will still want the third valley. Something can fulfill human's stomach is only the soil. Allah surely will receive repentance for all who wants to". (HR. Bukhari No. 6436)³

The transfer of land rights is a legal activity to transfer the rights from one party to another. Whereas the registration of transfer of land rights is a recording of the land right's transfer. The consequence of this transfer is purposed to protect all parties who create the agreements in front of Land Titles Registrar to get the legal certainty of someone or institution who becomes a holder of that land, the legal certainty of a land included the location, border and objects and also the legal certainty of all rights above.

2. DISCUSSION

2.1. The Legal Consequences of the Unregistered Notarial Agreement Related to Paragraph 40 Government Regulation No. 24 the Of 1997 about the Land Registration on the Perspective of Legal Philosophy

The material rights of a land, which is regulated on Paragraph 16 Article (1) the Acts of Principal Agrarian, is the strongest and the fullest. The strongest shows that the unlimited period and the proprietary is registered by the existence of "proof of rights" so it has legal certainty. It means the right holders have unlimited authority. All rights of land have substantive character (*zakelijk character*), which are: 1) Able to transfer and being transferred to other parties, 2) Able to be made as a guarantee of a debt and, 3) Able to be burdened with the dependent rights.

On Paragraph 20 Article (2) the Acts of Agrarian Principles written that the rights of ownership are able to transfer and be transferred. To transfer means happening without a legal activity (deliberately) but due to the legal phenomenon (non-deliberate), such as inherited. Whereas be transferred shows there are deliberate so the legal activities to the right of ownership are purposed to transfer the right of land to the receiver.

Discussing about the transfer of rights of the land related to Paragraph 40 Government Regulation No. 24 Of 1997 about the Land Registration, there were numerous people

³ Muhammad Abduh Tuasikal *Article of Rumaysho.com* finished in Sleman 21 Muharram 1431 H

did legal activities by transferring their material rights under the counter without involving the authorized officials and/ or created and signed by Land Titles Registrar or so-called Authentic Agreement, but this process wasn't perfect due to all parties couldn't register the Authentic Agreement directly to the local Land Affairs Office. Before the Government Regulation No. 24 the Of 1997 about the Land Registration was issued, there were high numbers of a land dispute in the society for both criminal and civil. There were various legal issues related to the land dispute. One of them was there was no legal certainty if the Authentic Agreement was created, which was a agreement of sale and purchase created and signed in front of the Land Titles Registrar who agreed with the Regulations and proceeded its right transfer process indirectly in the local Land Affairs Office. So there were numerous people whose the certificate of ownership didn't proceed its transfer (of the name of the owner), but the second party, which was the candidate of right holder was guided by an evident created by the Land Titles Registrar or so-called the Notarial Agreement as stated on the Government Regulation No. 37 the Of 1998 about the Regulation of Land Titles Registrar Responsibilities Paragraph 1, which is:

"The Land Titles Registrar, or so-called PPAT, is a public officer who is given a right to create the authentic agreements of certain legal activities about the rights of the land or the ownership right of an apartment unit".

While the agreement wasn't proceeded in the local Land Affairs Office, so the right holder, whose name was written on the agreement, belong to the same old right holder. At that time, there were double agreements, replacement agreement or genuine but fake agreement. It appeared the legal issues for all parties due to the Authentic Agreement which was created in front of Land Titles Registrar with/ or not processed agreement in the local Land Affairs Office had the same position under the law.

Another case, the land dispute in the mortgage right which was if Paragraph 40 Government Regulation No. 24 the Of 1997 about the Land Registration wasn't applied, there might be numerous legal issues between debtor and creditor if experienced the default/ breach of contract. The Agreement of Mortgage Right principally was an assessor agreement after the credit agreement was made between both debtor and creditor. There were numerous creditor who was breach of contract and didn't acknowledge the Agreement of Mortgage Right, especially if the agreement wasn't registered soon in the local Land Affairs Office as mentioned by Paragraph 13 Article (1) and Article (2) Acts No. 4 Of 1996 about the Mortgage Right of the Land and Materials Related to, which read:

(1) The giving of the Mortgage Right must be registered in the Land Affairs Office;

(2) At least 7 (seven) work days after signing the Agreement of Mortgage Right as mentioned on Paragraph 10 Article (2), the Land Titles Registrar has to send the Agreement of Mortgage Right and other needed letters to the Land Affairs Office.

From the perspective of Legal Philosophy, the Agreement was created and signed in front of the Land Titles Registrar related to the transfer of Rights of the Land had to be registered soon in the local Land Affairs Office as the purpose on it. The signing was done by (some) people who came, witnesses and the Land Titles Registrar followed by

giving "The Agreement No." written on the part of head of Notarial Agreement that was created and had the legal consequences to be done by all parties, and if the implementation wasn't done as the Acts so it was stated as "null and void". That was the reason why the Notarial Agreement that was created by (all) comers wasn't valid since automatically the Acts canceled it. So the position under the law related to the ownership of the land title certificate was undamaged (the law wasn't changed) as the same old owner written on it.

2.2. How to Solve the Issues While the Dispute Exists

Talking about the land dispute, the writer concludes that the problem solving related to it can be done by 2 (two) ways, which are:

- Land Dispute Resolution by the Court (Litigation)

The authority of District Court to solve the land dispute can be seen from the jurisprudence of the decision of the Supreme Court of Republic of Indonesia No. 701 K/Pdt/1997 aged 24 March 1999, and the decision of the Supreme Court of Republic of Indonesia No. 1816 K/Pdt/1986 aged 22 October 1992. The authority of the Administrative Court to solve the land dispute can be seen on the Acts No. 9 the Of 2004 about the amendment of Acts No. 5 the Of 1986 about the Administrative Court Paragraph 2, Paragraph 5 article (1), Paragraph 51. Whereas the jurisprudence can be seen on the decision of the Supreme Court of the Republic of Indonesia No. 84 K/TUN/1999 aged 14 December 2000 and the decision of Supreme Court of Republic of Indonesia No. 1687 K/Pdt/1998 aged 29 September 1999.⁴

- Land Dispute Resolution Outside the Court (Non-Litigation)

To solve the dispute using nonlitigation or *Alternative Dispute Resolution* (ADR) is actually a dispute resolution model that is familial than the resolution by the Court that is more confrontational, takes more into account of win and lose and ignore the social elements in society that are familial and mutual help.⁵

According to the Acts No. 30 the Of 1999 about Arbitrage and Alternative Dispute Resolution can be done by following:

- Negotiation;

Negotiation is a kind of dispute resolution outside the court.⁶

- Conciliation

Conciliation is a kind of the main social conflict resolution. This resolution can be done by the certain institution, which allows the growth of discussion and vote pattern.

- Mediation

⁴ Bernhard Limbong *Politik Tanah* Pustaka Margaretha Jakarta p.123-124.

⁵ *Ibid* p.126-127

⁶ *Op. Cit.* Bernhard Limbong *Politik Tanah* p. 134

Mediation is a control of dispute conflict (land affairs) that is done by doing the consensus between two conflicting parties to look for the third party that is neutral as a mediator to solve the dispute or conflict.

- Arbitrage

Arbitrage is a conflict or dispute control that is done by two conflicting parties deal to accept or be forced to see the third party who will decide for them.

According to the writer, the legal implication of Paragraph 40 Government Regulation No. 24 the Of 1996 about the Land Registration that states:

- (1) At least 7 (seven) work days since the agreement is signed, the Land Titles Registrar has to give the agreement and other related documents to the Land Affair Office to be registered;
- (2) The Land Titles Registrar has to send the written announcement about the agreement has been sent as mentioned in the article (1) to all related parties.

To the Land Titles Registrar who violate the terms as mentions on that paragraph can be subjected to sanction according to Paragraph 62 Government Regulation No. 24 the Of 1997 about the Land Registration, which is the written warning to the discharge of his/her position as a Land Titles Registrar, besides the Land Titles Registrar also can be chargeable by other parties who incur loss due to the ignorance to the provisions.

The sanction written on paragraph 62 Government Regulation No. 24 the Of 1997, for the violation of paragraph 40 article (1) Government Regulation No. 24 the Of 1997 can be categorized as an administrative sanction. This sanction is a sanction to the Land Titles Registrar related to the provisions of the period of agreement registration that has to be done by the Land Titles Registrar.

3. CLOSING

3.1. Conclusion

- The transfer of the Land Right or Mortgage Right that is charged as a bank collateral needs to be registered to the local Land Affair Office, related to Paragraph No. 40 Government Regulation No. 28 the Of 1997 about the Land Registration if those provisions aren't done so it causes "null and void". So the legal position related to the ownership of the proof of the land right is undamaged (the law isn't changed) according to the right holder on it.
- If the Land Titles Registrar violates the provisions related to Paragraph 40 Government Regulation No. 28 the Of 1997 about the Land Registration can be examined according to Paragraph 62 Government Regulation No. 28 the Of 1997 about the Land Registration, which is in form of administrative sanction or discharge as a Land Titles Registrar.

3.2. Suggestion

- The Land Titles Registrar as a social service also must have a characteristic to give education to the society so there are no more Notarial Agreement or Authentic Agreement that are issued without registered in the local Land Affair Office.

- Minister or officials who are in charge to do the guidance and supervision to the Land Titles Registrar should be more active and responsive so there are no more violations of law by the Land Titles Registrar.

4. References

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- [3] Acts No. 5 the Of 1960 about *the Principle of Agraria* (National Paper No. 104 the Of 1960).
- [4] Government Regulation No. 24 the Of 1997 about *the Land Registration* (National Paper No. 59 the Of 1997).
- [5] Government Regulation No. 37 the Of 1998 about *The Regulation of the Land Titles Registrar* (National Paper No. 52 the Of 1998).
- [6] The Regulation of Ministry of Agrarian/ Head of National Land Affair Board No. 3 the Of 1997 about *the Provisions of the Implementation of the Government Regulation* No. 24 the Of 1997 about the Land Registration.