

## **Transfer of Rights on Land Because Sale and Purchase Which Have Not Been Certified and Its Rights Registration in The Land Office**

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**Abstract.** The purpose of this research is 1) To know the process of registration of transfer of land rights that have not been certified for sale and purchase and registration rights. 2) To determine the legal problems of transitional registration of land rights that have not been certified for sale and purchase and registration rights. 3) To know how the efforts and steps that should be done by the Land Office to resolve the legal problems of transitional registration of land rights that have not been certified for sale and purchase and registration rights.

The method used is empirical juridical approach in order to obtain adequate results. Specifications research used in this study is a descriptive analysis, from this study is expected to obtain a detailed and systematic description of the problem to be studied

Based on data analysis concluded that: 1) The preparation of the deed of sale of land rights, advance PPAT shall conduct an inspection at the office of district / city land on the validity of the certificate of land rights are concerned. Second, the implementation PPAT deed to be attended by the parties concerned to take legal actions (seller and buyer) or a person authorized by him with written authorization in accordance with applicable laws and regulations. Third, the registration of transfer of rights, shall submit PPAT deed and other documents necessary for registration purposes transfer of rights over the land to the office of district / city land no later than seven business days. Fourth, delivery of certificates 2) According to the law for the transition of land rights for the sale and purchase of the land that is not registered is already eligible purchase material that is "Clear and" Cash ". 3) regardless of the procedure established by law. Therefore, for the people concerned to register their land are required to meet the specified requirements.

**Keywords :** Transfer of Rights on Land; Purchase; Certified; Registration; Land Office.

### **1. Introduction**

In line with the development of society and the rapid development in all areas, land has an important and strategic role for human life. Regulations on land has been arranged, so as to minimize the problem. One way to realize an orderly in the land sector is the lack of legal certainty in the land sector, in particular to land ownership by an individual or individuals. As time land is also increasingly have many uses, it is because the land has the function, among others, to support the government's development and to provide shelter for people to get a decent livelihood.<sup>3</sup>

In society, the acquisition of rights to land more often done with the transfer of rights, that is through buying and selling. According Boedi Harsono, "*Dalam Hukum Adat Perbuatan Pemindahan Hak (Jual-Beli, Hibah, Tukar Menukar)*" is a legal act which is in cash". Buying and selling in the law of the land by paying the price at the same time in cash. Then, according to the law (BW) Article 1457 states that the sale of land is an

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<sup>3</sup>Soedharyo Soimin, *Status Hak dan Pengadaan Tanah*, Sinar Grafika, Jakarta, 1993, p. 100.

agreement by which the seller joins himself (that promise) to transfer the rights over the land to the buyer who bound themselves to pay to the seller the price have been agreed.<sup>4</sup>

The Government of the Republic of Indonesia later issued Act No. 5 of 1960 on Basic Regulation of Agrarian (UUPA/BAL) has been set must landowners to register their land rights. As is the transfer of land rights is a legal act of transfer of rights over land that was done on purpose so that these rights regardless of its original holders and the rights of others<sup>5</sup>.

As a legal basis in the implementation of land registration activities in Indonesia, the Government issued Government Regulation No. 10 of 1961 and completed by Government Regulation No. 24 of 1997 (abbreviated as PP 24/1997) On the Land Registry, as well as the Regulation of the Minister of Agrarian Affairs / Head of National Land Agency Number 3, 1997 (abbreviated Permen-Agra/Ka.BPN 3/1997) on the implementation of the regulation PP 24/1997. These conditions is a necessity and an obligation for the government to regulate and administer the registration of land in all regions of Indonesia, which is then regulated in Government Regulation No. 24 of 1997 concerning land registration. For rights holders, the land registration obligation under Article 23 BAL (property rights), Article 32 BAL (Usage Right), Article 38 (Broking).

The provision was addressed to the government to hold land registration throughout the territory of the Republic of Indonesia with the aim of ensuring legal certainty with respect to tenure, which requires certainty regarding:

- Land rights; whether property rights, the right to cultivate, building rights, use rights, or rights management.
- Who has the land; this is very important because the deeds of the law with respect to land only valid if done by the right holder.
- Land owned by the location, area, borders, it is very important for the prevention of disputes.
- The law applicable to the land, to make it easier to know what authorities, and obligation to land-rights holders.<sup>6</sup>

Based on the background of the problems mentioned above, then the problem can be formulated as follows: How does the process of transitional registration of land rights that have not been certified for sale and purchase and registration rights?; What legal problems of transitional registration of land rights that have not been certified for sale and purchase and registration rights?; How the efforts and steps that should be done by the Land Office to resolve the legal problems of transitional registration of land rights that have not been certified for sale and purchase and registration rights?

## **Research methods**

The method used is empirical juridical approach in order to obtain a more adequate results<sup>7</sup>. Empirical legal research is a study that was originally researching on secondary data to then proceed with research on primary data in the field.

Specifications research used in this study is a descriptive analysis, from this study is expected to obtain a detailed and systematic description of the problem to be studied.

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<sup>4</sup>Harun Al-Rashid, *Sekilas Tentang Jual-Beli Tanah (Berikut Peraturan –Peraturanya)*, Ghalia Indonesia, Jakarta, 1986, p. 51.

<sup>5</sup>Saleh Adiwinata, *Pengertian Hukum Adat Menurut Undang-Undang Pokok Agraria*, Alumni, Bandung, 1980, p. 21.

<sup>6</sup>Bachtiar Effendie, *Kumpulan Tulisan Tentang Hukum Tanah*, Alumni, Bandung, 1993, p. 80.

<sup>7</sup>Bambang Waluyo, *Penelitian Hukum dalam Praktek*, Sinar Grafika, Jakarta, 1991, p. 16.

The analysis is meant by an idea, facts obtained will be analyzed carefully to address the problem

## **2. Discussion**

### **2.1.Registration Process Of Transfer Of Rights On Land Because Sale And Purchase Which Have Not Been Certified And Its Right Registration**

PPAT deed to be attended by the parties concerned to take legal actions (seller and buyer) or a person authorized by him with a written power of attorney in accordance with the legislation in force. The power of attorney for the seller to be with notarization, whereas the power of attorney for the buyer may by deed under hand. The documents submitted to the seller of PPAT in making the deed of sale is a photocopy of identity card (KTP), a photocopy of the family, a marriage certificate, a tax return payable (SPPT) property tax. The documents submitted to the PPAT buyers in making the deed of sale is a photocopy of identity card (KTP), a photocopy of the family, the marriage certificate.

Deed PPAT must be witnessed by at least two witnesses, according to the legislation in force qualified to act as a witness in a legal act, testifying among others, the presence of the parties or their attorneys, the existence of the documents shown in deed, and has been the implementation of the legal acts by the parties concerned. Land Deed Official shall read the deed of sale to the parties concerned (buyers and sellers) and provide an explanation regarding the content and purpose of the deed, the procedure of transfer of registration rights. PPAT Deed made as many as two original sheets, the sheets are stored in the office PPAT and one sheet submitted to the Head of the district land office / municipality for registration purposes,<sup>8</sup>

- Registration of Transfer of Rights Land Deed Officer shall submit PPAT deed and other documents necessary for registration purposes transfer of rights over the land to the land office district / municipality, no later than seven working days from the signing of the deed in question. The documents submitted by PPAT to register the transfer of land or property rights to the apartment units to the district land office / local municipalities are:
  - Letter of application for registration of transfer of rights signed by the assignee (buyer) or their proxies,
  - Written authorization of the assignee (buyer) when applying for registration of transfer of rights not right receiver (buyer),
  - PPAT deed of sale by which time a deed was served and that the area of work includes the lay of the land in question,
  - Proof of identity rights of the assignor (seller),
  - Proof of identity of the party receiving the right (buyer),
  - Native land certificates were transferred (bought and sold),
  - Permits assignment when necessary,
  - Proof of payment of fees for acquisition of land and buildings (BPHTB), in which case these duties are owed, and
  - Proof of payment of income tax (VAT), in which case the tax owed.<sup>9</sup>
- Delivery of Certificates

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<sup>8</sup> Sahat HMT Sinaga, *Jual beli Tanah Dan Pencatatan Peralihan Hak*, Pustaka Sutra, Bekasi, 2007, hal.36.

<sup>9</sup>Urip Santoso, Op-cit, p. 377.

Land title certificates that have changed the name of the holder of the rights holder long as the seller becomes the new rights holders as a buyer by the head of the district land office / municipality, then the entry will be submitted to the registration of transfer of land by the buyer or his proxy.

## **2.2. Legal Problems of Land Rights Registration Transition That Have Not Been Certified For Buying And Selling In their Right Registration**

Legal actions that the land purchase is often done under the hand, sometimes only a sheet evidenced by a receipt as proof that there has been buying and selling and not a few people who just have proof of ownership of land. Thus resulting in the transfer of land rights for the sale and purchase can not be registered as mandated by the provisions of Article 19 and Article 23 of Act No. 5 of 1960 on Agrarian.

In this case the consequences of the law is not a shift of land and / or validity of transfer of rights over land and the lack of legal certainty and legal protection. As affirmed the provisions of Article 23 paragraph (2), which reads:

*"Registration referred to in subsection (1) is a tool strong evidence regarding the abolishment of property rights as well as the transfer and loading legality and under its rights."*

In order to obtain legal certainty, the public in legal actions related to the transfer of land rights, namely the sale and purchase, must register transfer of rights over land. Therefore, in terms of buying and selling land can not be resolved simply by the parties concerned, but in order to purchase the lawful it is very necessary intervention competent authorities to complete as well as any transfer of rights to land for sale and purchase shall be subject to and the procedure set and or mandated by applicable law. Then any transfer of property rights to land for sale and purchase must be registered either already certified or not registered, according to the provisions referred to in Article 19 of the BAL, as has been stipulated in Article 23 paragraph (1) of the BAL, which the Government Regulation No. 24 of 1997 on Land Registration Article 37 paragraph (1) states that the transfer of rights to land through purchase can only be registered if proven by deed made by PPAT authorized under the provisions of the legislation in force. Due to the necessity of registration transfer of rights to land as referred to in Article 23 paragraph (1) BAL is an evidentiary tool on its clear property rights as well as the validity of the imposition of such a right shift, based on the wording of Article 23 paragraph (2) BAL. which in the Government Regulation No. 24 of 1997 on Land Registration Article 37 paragraph (1) states that the transfer of rights to land through purchase can only be registered if proven by deed made by PPAT authorized under the provisions of the legislation in force. Due to the necessity of registration transfer of rights to land as referred to in Article 23 paragraph (1) BAL is an evidentiary tool on its clear property rights as well as the validity of the imposition of such a right shift, based on the wording of Article 23 paragraph (2) BAL. which in the Government Regulation No. 24 of 1997 on Land Registration Article 37 paragraph (1) states that the transfer of rights to land through purchase can only be registered if proven by deed made by PPAT authorized under the provisions of the legislation in force. Due to the necessity of registration transfer of rights to land as referred to in Article 23 paragraph (1) BAL is an evidentiary tool on its clear property rights as well as the validity of the imposition of such a right shift, based on the wording of Article 23

paragraph (2) BAL.

Explicitly also set out in Article 3 letter a Government Regulation No. 24 of 1997 on Land Registration, that as for the purpose of land registration which is to provide legal certainty and legal protection to rights holders on a plot in order to easily be able to prove himself as the holder rights are concerned. To provide certainty and legal protection as defined in Article 3 letter a, to the holders of the rights in question were awarded certificates of land rights, as stipulated in Article 4 of Government Regulation No. 24 of 1997 on Land Registration.

Legal certainty in land registration activities mentioned above, among others:<sup>10</sup>

- Legal certainty regarding person or bodies as rights holders (the subject of rights);
- Legal certainty striking locations, boundaries, as well as a plot area of rights (subject of rights); and
- Legal certainty regarding their rights.

In order to purchase and transfer of other rights of land registration functions are to:

- Strengthen the evidence, because the assignment is recorded in the land books and certificates listed right now who the rights holder.
- Expanding proof, because the sale of land registration can be known by the public purchasing or ready Counts.

### **2.3. Efforts And Steps That Should Be Done By Land Office Registration Law To Solve Problems of Transfer of Rights on Land that Have Not Been Certified For Buying And Selling their Right Registration**

- Adding and always keep all the technical equipment at the Land Office in order to increase capacity to provide the certificates as well as improve service delivery to the public so that the implementation of land registration can run as expected.
- At the time would make the deed of sale which witnessed or verified by the village, the village secretary held a re-checking of the boundaries of the land before it made a deed of sale of the village. implementation of land registration activities in order to create orderly administration of land, the delineation is done by the owner of the land, and landowners adjacent or contiguous in contradictive (the existence of an agreement between the two sides), which is known as the principle of contradictive delimitation.
- On away ground locations or may be prone to flooding, then appealed to the public to estimate about the location, distance and weather conditions, which will be measured considering the location of the location and do not seem long.
- People who want to register the land should come directly to the Land Office, accompanied by someone who is already experienced in land or in this case the device villages / wards. In order for land registration attempts can be processed easily, quickly and did not seem convoluted.

## **3. Closing**

### **3.1. Conclusion**

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<sup>10</sup>Bachtiar Effendie, *Pendaftaran Tanah di Indonesia dan Peraturan-peraturan Pelaksanaannya*. Alumni. Bandung, 1980, p. 9-10

- The preparation of the deed of sale of land rights, *first*, advance PPAT shall conduct an inspection at the office of district / city land on the validity of the certificate of land rights are concerned. *Second*, the implementation PPAT deed to be attended by the parties concerned to take legal actions (seller and buyer) or a person authorized by him with written authorization in accordance with applicable laws and regulations. *Third*, the registration of transfer of rights, shall submit PPAT's deed and other documents necessary for registration purposes transfer of rights over the land to the office of district / city land no later than seven business days. *Fourth*, delivery of certificates.
- According to the law, if the transition of land rights for the sale and purchase of the land that is not registered is already eligible purchase material that is "Clear and" Cash ".
- Not in spite of the procedures established by law. Therefore, for the people concerned to register their land are required to meet the specified requirements.

### **3.2. Suggestion**

- Expected socialization needs for communities in remote villages of the process of transfer of land rights so that they can know.
- Notary creating namely in the manufacture of a deed of sale must be carefully and thoroughly in order to make the process of land registration and transfer of his property more quickly.
- Legal protection, which is directed more to the efforts to resolve the dispute, such as for example is the settlement of the dispute in court, so that based on the jurisprudence of the buyer's rights to land can be protected.

### **4. Bibliography**

- [1] Bachtiar Effendie, *Kumpulan Tulisan Tentang Hukum Tanah*, Alumni, Bandung, 1993.
- [2] Bachtiar Effendie, *Pendaftaran Tanah di Indonesia dan Peraturan-peraturan Pelaksanaannya*. Alumni. Bandung, 1980.
- [3] Harun Al-Rashid, *Sekilas Tentang Jual-Beli Tanah (Berikut Peraturan – Peraturanya)*, Ghalia Indonesia, Jakarta, 1986.
- [4] Regulation of the Minister of Agrarian Affairs / Head of BPN No. 3 of 1997 on the Implementation of Government Regulation No. 24 of 1997 on Land Registration
- [5] Government Regulation No. 24 of 1997 on Land Registration
- [6] Government Regulation No. 38 of 1998 on the Land Deed Official
- [7] Sahat HMT Sinaga, *Jual beli Tanah Dan Pencatatan Peralihan Hak*, Pustaka Sutra, Bekasi, 2007.
- [8] Saleh Adiwinata, *Pengertian Hukum Adat Menurut Undang-Undang Pokok Agraria*, Alumni, Bandung, 1980.
- [9] Soedharyo Soimin, *Status Hak dan Pengadaan Tanah*, Sinar Grafika, Jakarta, 1993.