

Legal Analysis of the Form Deed of Sale and Purchase Agreements and the Disposal of Land Rights as the Basic Right to Apply Broking Which Has Expired

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Abstract. The purpose of this study was to analyze: 1) The validity of Deed of Sale and Purchase Agreements form and Release of Land Rights as the foundation for the right over Broking which the period has expired. 2) Barriers and Solutions for the right over Broking which the period has expired. This study is Social Legal research, this study will be presented on the implementation of the deed of waiver to apply transitions and changes in land rights that have expired. Are analytical, because of data obtained was conducted qualitative data analysis.

The research results are: 1) the Deed of waiver in this case not only as an authentic act which has been agreed by both parties, but also the legal consequences which are land-status building rights on which the period expires is released into state land and requested back with the new rights by the applicant. Applicant was granted a priority by the state to reapply new rights to the land that is the property that has a definite legal certainty. 2) Constraints that occur is the deed of relinquishment of rights is used as a pedestal right to request building rights that have expired can not start if the deed of release was made prior to the issuance of the Certificate of Registration of Land (SKPT) of the local Land Office,

Keywords: Deed; Deed of Release; Broking.

1. Introduction

Land is very closely related to human life, because everyone would need the land. Along with the increasing number of human will and narrowed the number of land today, the need for control of land will continue to grow. People will get the land tenure which includes possess is to be very significant when associated with the state as it is today.

Land problems should be avoided or anticipated, resulting in supply, allocation, control, use, and maintenance needs to be regulated, in order to ensure legal certainty in the acquisition and utilization as well as well as the implementation of legal protection for the people while maintaining the sustainability of its ability to support development activities. Man will live happy self sufficiency if they can use the land controlled or owned by it according to the laws in force, and people will live peacefully and peacefully if they can use their rights and obligations in accordance with certain limits in the applicable law governing human life in society.³

Legal actions deliberately carried out with the aim that the land rights of the divert switch to receiving the transfer is closely related to what is called the land purchase. In buying and selling land, property rights concerned transferred due to handover the land to another party forever (land rights was moving to take delivery), by the seller to the buyer, who at the time also gave the price to the seller.

Sale and purchase of an agreement by which one party (the seller) to bind himself to hand over ownership of an object from the other party (the buyer) to pay the agreed

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³ G.Kartasapoetra et al, 1985, *Hukum Tanah, Jaminan UUPA Bagi Keberhasilan Pendayagunaan Tanah*, Jakarta: Rineka Cipta, p. 29

price (Article 1457 of the Civil Code). In Article 1455 of the Civil Code states that the purchase was deemed to have occurred between the two sides by the time they reach an agreement regarding the traded object and the price, even if the object has not been submitted and the price has not been paid.

Broking is one example of the land rights of the primary rights, besides the right to use, and land use permits, which have a term. Broking has a term of 30 years and can be extended up to 20 years, where the transition process rights requires the Land Deed Official function in creating an authentic deed. Unlike the Property Rights of land that does not have a period of time and the land rights of the strongest and fullest, land with Building Rights, if the time period has expired, the land can not be transferred by the owner because of his status by law has to state land.

The understanding of the deed of a letter as evidence that the signature, which contains the events that form the basis of rights or agreements made since the beginning and intentionally to proof. Article 1866 of the Civil Code states that "evidentiary tool include: written evidence, witness evidence, conjecture, acknowledgment, oath. Everything is subject to the rules set forth in the following chapters ". Clear that the first written evidence placed of all the evidence mentioned in the article. The most important function is the deed as evidence.⁴

Land status state land can not be transferred or sold by the holder of a long right to the other party. In these circumstances the necessary functions of the Notary to create an authentic deed to carry out the transition process, but in reality in society do not all understand the function of Notary deed as what can continue the transition process of land rights have expired. So the question arises, why the land rights have expired sometimes pose a barrier for the owner to transfer it at the Land Deed Official deed. Background Based on the description above.

The purpose of this research is trying to answer the question concerning the validity of the form of Deed of Sale and Purchase Agreements and the Disposal of Land Rights as the foundation for the right over Broking which the period has expired and the power of the Law of the deed of sale and disposition of land rights.

Research methods

The method used in this research is the method of approach to social research legal. Specification of the research was analytic descriptive describes the applicable laws and regulations associated with the law theories and practice implementation.⁵ The approach in this study is the approach of Socio-Legal Research, approach to identify patterns in the relationship between the Parties to the Land Office by Notary and by the community (applicant). Primary and secondary data sources obtained by the study of literature and the method of interview. Interviews were conducted with Ms. Nur Wulandari, Notary and PPAT in the city, and Mr. Suroso, Head of Sub-Section Determination BPN Land Rights of Semarang.

2. Results and Discussion

⁴ Sudikno Mertokusumo 2009, *Hukum Acara Perdata Indonesia*, Yogyakarta: Liberty Yogyakarta, p.162

⁵ Sumardi Suryabrata, 1993, *Metodologi Penelitian*, Jakarta: Rajawali, p.19

3.1. Validity of Deed of Sale and Purchase Agreements form and release of Land Rights as the foundation for the right over Broking which the period has expired.

Notary is a profession that run partly as the State authorities in the field of law private and have an important role in creating the authentic act that has the strength of evidence is perfect and therefore positions are positions of trust Notary, the Notary must have a good behavior.⁶

All rights to land can be handed over voluntarily to the State. This voluntary submission called by releasing land rights. This matter BAL in accordance with Article 27, which states that "The right belongs to delete" if:

- the land falls to the State:
 - for revocation of rights under Article 18;
 - because surrender voluntarily by their owners;
 - since abandoned;
 - because the provisions of Article 21 paragraph 3 and 26 paragraph 2.
- land destroyed.

Land acquisition is releasing the original legal relationship between the holder of the right / control the land by way of compensation. Both legal actions above have the same sense, the difference liberation of land rights is viewed from the need of land, usually performed for an area of land, while the release of land rights views of who owns the land, which he waived his right to the State for the benefit of the other.⁷ The release of land rights and land revocation is two (2) ways to obtain land rights, which are in need of land does not qualify as holders of land rights.

Basically, the waiver of land covering many aspects. As such, the release of land rights in the context of the renewal rights or rights change, the release of land rights in order to procure land for the construction of public interest, waiver of land to private interests as well as the release of land rights for the company in the context of investment.

In the release of land rights held when the subject that requires land is not eligible to be the holder of the necessary land rights that can not be obtained by the deed of sale and land-rights holders are willing to relinquish their land rights. Events waiver shall be made by affidavit or deed of waiver, the waiver made by holders of rights to land voluntarily. The legal basis for the release of land rights under Article 27, Article 34 and Article 40 Act No. 5 of 1960 on Basic Regulation of Agrarian Principles and procedures for implementation stipulated in the Regulation of the Minister of State for Agrarian Affairs / Head of National Land Agency No. 9 of 1999 on Procedures Granting and Cancellation Rights and the State Land Management Rights.⁸

The release of land rights carried out when the subject that requires land is not eligible to be the holder of the necessary land rights that can not be obtained by the deed of sale and land-rights holders are willing to give up the right to the land. With their relinquishment of rights, the land in question into state land. Parties who require such land can apply for new land rights to the local Land Office in accordance with the law

⁶ Article 15 (6) of Act 4 of 1996 on Mortgage of Land along Museums Relating to Land.

⁷ Mudakir Iskandar Syah, 2007, *Dasar-Dasar Pembebasan Tanah Untuk Kepentingan Umum*, Jakarta: Jala Gem Script, p.10.

⁸ Dwi Heny, *Pelaksanaan Akta Pelepasan Hak Sebagai Alas Hak Untuk Mengajukan Permohonan Peralihan dan Perubahan Hak Guna Bangunan Yang Jangka Waktunya Telah Berakhir Di Kabupaten Brebes*, Jurnal Akta Vol 5 No March 1, 2018, Unissula Semarang

and as appropriate by using the right base deed of release the right. So, concerned parties acquiring rights to land in accordance with the law and as appropriate.

Alas rights in this respect is the basis of evidence proving a person in the legal relationship between himself and the rights attached to the land applied for. By a right base should be able to legal bearing between the subject of rights (individual or legal entity) to an object right (one or several plots of land) that it rules, meaning that in a right base should be able to tell in a straightforward, clear and firm about chronological detail how one can master a plot so clear history over the ownership of the land.

The certificates represent proof certificate of land rights, an affirmation of the state's recognition of land tenure individually or jointly or legal entity whose name is written in it and at the same time explaining the location, image, size and boundaries of the land parcels. So that the certificate is an important thing for the people of Indonesia.⁹

On the implementation of the deed of waiver that is used as a pedestal right to apply for a change and a shift in building rights on which the period has expired is a form of land registration activities in terms of land with the status of building rights on which the period has ended will be the land of the State and will be transition along with the change of the land rights. Where the land is released by the rights holder to the State and requested back by the applicant with the new rights. Rights to land already owned by someone-transferable rights status into a new land rights are another kind. Changes in the status of these rights do because they want to strengthen the rights of building rights into property rights.¹⁰

Implementation of the deed of waiver as the right base in applying for building rights on which the period has ended or can be called also procedures for granting property rights are as follows:¹¹

- Petition submitted to the Minister through the Chief of the Land Office;
- File the application is accepted, then inspected and examined the completeness of physical data and juridical data;
- The file is recorded in the entry form according to the example Annex;
- Provide a receipt file the appropriate request form fields;
- Notify the applicant to pay the costs necessary to complete the request with the details in accordance with the provisions of the legislation in force;
- Head of the Land Office examined the completeness and correctness of data juridical and physical data application for land titles, as well as checking eligibility can be granted or whether or not further processed in accordance with the provisions of the applicable laws and regulations;
- In the case of the requested land measuring no letter, the Head of the Land Office ruled the Infrastructure Section Chief Land to take measurements;
- Further, the head of the Land Office ruled to:
 - Head of Sub-Section Determination of Land Rights and Land Rights Society Empowerment to check for the right to land that has been registered and soil physical data and juridical data has been enough to make a decision as stated in the Minutes of Examination Land (establishing Rapport).
 - The research team soil to check for the right to land that has not been registered poured into news events.

⁹ Herman Hermi, 2004 *Cara Memperoleh Sertifikat Tanah Hak Milik, Tanah Negara dan Tanah Pemda, Teori dan Praktek Pendaftaran Tanah di Indonesia*, Bandung: Mandar Maju, p. 3

¹⁰ Interview with Nur Wulandari, Notary and PPAT in Semarang, dated 22 November 2019

¹¹ Interview with Mr. Suroso, Head of Sub-Section Determination BPN Land Rights Semarang, dated 23 November 2019

- A soil investigation committee to examine the petition rights other than those examined as referred to in paragraphs a and b, which is noted in the minutes Examination Land;
- If the juridical and physical data incomplete Head of the Land Office notify the applicant to complete it;
- After considering the opinion of the Head of Sub-Section Determination of Land Rights and Community Empowerment Land Rights Research Team appointed or soil or soil examination committee A, Head of the Land Office issued a decree granting property rights to land being requested or refusal decision accompanied by the reason for disapproval;
- If the Decree of the land rights of property rights can be accepted and published by the Head of the Land Office to the next process is the issuance of the certificate.

Certificates as proof of the right is a copy of the book and the soil measurement certificate after sewn together along with a paper cover whose shape has been set. And the book is a bookkeeping land rights to land, a land book are only used to register the rights to land. While the measurement certificate is basically an excerpt from the land registry map. Who are authorized to sign the land book and the certificate is the Head of the Land Office. After certificating, the certificate is submitted to the rights holder or applicant or their proxies made in writing.¹²

In terms of implementation as the foundation deed of waiver the right to apply for the transition and changes in building rights on which the period has expired by the Land Office in general is in conformity with the existing regulations. So that's the theory of the effectiveness of the law as Soerjono Soekanto suggested that effectiveness comes from the word meaning effectiveness level up or to what extent the group reaches the destination. In terms of land use rights with the status of a building that has expired, the land becomes state land in which to do transfer of land rights once coupled with the process of renewal of land rights in the petition who use the deed of waiver as the base for their rights.

In line with the above, the execution of the deed of waiver must be in accordance with the level set by the Law, in this case the deed of waiver is not only limited to the authentic act and deed that has fulfilled the terms of a legal contract that has been agreed between the two sides with without causing a particular law. Deed of waiver that is used as a pedestal right to apply for the transition and changes in building rights on which the period has expired must meet the requirements of authentic a deed that is in accordance with article 1868 Civil Code, a certificate can be said to be authentic if it has met the elements as follows, namely :

- Made in the form prescribed by law;
- Made by or in the presence of competent public authority for the purpose of making such deed;
- Created in the authorized notary.

It also should qualify the validity of a treaty, namely Article 1320 of the Civil Code. In line with the above explanation, according to Soerjono Soekanto theory is that an effective legal effectiveness whether or not a law is determined by five (5) factors, namely:¹³

- Factors own law (statute);

¹² Interview with Nur Wulandari, Notary and PPAT in Semarang, dated 22 November 2019

¹³Soeryono Soekanto 2008, *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*, Jakarta: Raja Grafindo Persada, p. 8.

- Law enforcement apparatus, namely the parties to form and apply the law;
- Factor means or facilities to support the rule of law;
- Community factors, namely the environment in which laws apply applied;
- Cultural factors, namely as a result of the work, creativity and taste that is based on human initiative in social life.

To the deed of relinquishment of rights is used as a pedestal right to apply for a change and a shift in building rights on which the period has expired at the office of the land in general are consistent with the required laws that exist.

Deed of waiver in this case not only as an authentic act which has been agreed by both parties, but also give legal effect that the land that was formerly the status of land rights and the duration has expired is released into state land and please come back with the right new by the applicant in this case the applicant or the public community and granted the right of priority by the state to reapply new rights to the land, namely soil in property rights. Petitioners in this case in society as citizens of Indonesia in accordance Agrarian Law No. 5 of 1960 Article 21, paragraph 1, that: "Only Indonesian citizens who may have property rights".

Deed of waiver in this case has given benefit to the community that is useful in the renewal rights to build on land which the period has ended up being the freehold land. When the land was freehold applicant or community has a definite legal certainty on land he owned. Where the property is hereditary rights, the strongest and most that can possess people on the ground. Besides, it also deed of waiver can provide justice in society as citizens of Indonesia that we can have a land with the land status of property rights.

3.2. Obstacles and Solutions for the right over Broking which the period has expired

On the implementation of the deed of waiver as a pedestal right to apply for rights to build the time period has expired on the results of research there are two (2) weaknesses that must be considered are:

- Deed of waiver can be made after the issuance of the Certificate of Registration of Land (SKPT) issued by the Land Office.
- Should evidence of the keel of the Bank that provides financing or recommendation from the developer.

As a solution to these shortcomings, namely:¹⁴

- Regarding the deed of relinquishment of rights, often already made before their Certificate of Land Registration (SKPT) of the local Land Office it can be repeated to make a deed of waiver again that the date after the Certificate of Land Registration (SKPT) of the local Land Office it out, or if you already understand about the deed of waiver can be used if his calendar after the Certificate of Land Registration (SKPT) of the local Land Office then be used deed binding sale and purchase fully paid and the deed of power it is expected that the seller comes to the Notary Office of only one time. And further authorizes the buyer to the next process.
- Regarding the keel must be evidence or a letter of recommendation from a developer I have found no solution to address these weaknesses in the execution of the deed of relinquishment of rights as the right base to apply for building rights on which the period has expired. In this case the Land Office did not dare to renew the

¹⁴ Interview with Mr. Suroso, Head of Sub-Section Determination BPN Land Rights Semarang, dated 23 November 2019

rights without any evidence of the keel or recommendation of the National Housing Authority Housing. Given the evidence of the keel or the recommendation of the National Housing Authority is a juridical data of land that must be completed.

- As for other solutions so that people can make the transition at a time to make changes right to the certificate of housing they buy without having to wait until the loan is paid off is the developer and the Bank is expected to make the transition and changes the first just after the certificate is installed encumbrance, to ensure repayment debts.

3. Closing

3.1. Conclusion

Based on the description above, the conclusions in this thesis are:

- Validity of Deed of Sale and Purchase Agreements form and release of Land Rights as the foundation for the right over Broking which the period has expired. In terms of the status of land Broking which has expired the land into state land in which to do the transition and renewal rights in the deed of waiver petition using as rights. Deed of waiver in this case not only as an authentic act which has been agreed by both parties, but also the legal consequences which are land-status building rights on which the period expires is released into state land and please come back with the right new by the applicant.
- Obstacles and Solutions for the right over Broking which the period has expired, namely deed release was made after a date of the Certificate of Registration of Land (SKPT) of the Land Office, or in transactions between buyers and sellers used the deed binding sale and purchase and the deed of power first and when the certificate of Land Registration (SKPT) of the Land Office issued new has followed deed of waiver. Deed of waiver can not be run without any evidence of keel or a letter of recommendation from the National Housing Authority Housing which is a juridical data of land, there is no substitute for proof solution keel of the parties to give financing or recommendation from the developer.

3.2. Suggestion

- For the Government of the Land Office in this regard is expected to be more active to socialize about the transition and also changes in land rights, so that the risk of weakness in the execution of the deed of waiver as the right base for the application of building rights on which the period has expired is minimized.
- For Notary also should be more careful when accepting the application for renewal of land rights that have expired. Notary must investigate and prepare the conditions that must be met by the applicant. And also a Notary in a deed waiver should pay attention to the authenticity of a certificate and must also consider the terms validity of a treaty in accordance with Article 1320 of the Civil Code.

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