

Implementation of Registration of Transfer of Ownership Rights on the Basis of Grant in Semarang City

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Abstract. *This study aims to determine and examine the implementation of the transfer of ownership rights based on grants in Semarang City, to determine and examine the obstacles and solutions in the process of registering the transfer of ownership rights based on grants in Semarang City, and to find out the deed of grant. The research approach method used in this thesis is a qualitative approach. The specifications of this study use descriptive analysis. The types of data used in this study are primary data including interviews with Land Office Officials or Employees and Land Deed Making Officials in Semarang City, as well as secondary data containing books and other supporting documents. Research data collection by interview. The data analysis method used in analyzing the data is descriptive qualitative. The results of the study indicate that the implementation of the transfer of ownership rights registration based on grants in Semarang City through 2 (two) stages namely making a deed of grant at the Land Deed Making Official (PPAT) and registering at the National Land Agency of Semarang City, as well as obstacles and solutions in the process of registering the transfer of ownership rights to land due to grants in Semarang City in the form of certainty of rights and issues regarding land registration fees.*

Keywords: *Adopted; Children; Grant; Transfer.*

1. Introduction

Land is used in human life and has a very important function, namely as a source of life for humans. Because most human life depends on land. That land is only one part of the earth. Article 4 of the UUPA states that on the basis of the right to control from the State as part referred to in Article 2, various rights to the surface of the earth, called land, are determined, which can be given to and owned by people either alone or together with other people and legal entities. Meanwhile, in Article 1 paragraph (2) of Government Regulation Number 24 of 1997, a land

plot is a part of the earth's surface which is a limited unit of land and that alone is the object of land registration in Indonesia.¹

Based on Article 33 paragraph (3) of the 1945 Constitution, a law is needed to regulate the basic agrarian principles which was ratified on September 24, 1960 and enacted Law Number 5 of 1960 concerning Basic Agrarian Regulations or UUPA. The purpose of establishing UUPA is to provide a basis for providing legal certainty regarding land rights for the people in efforts to utilize the functions of the earth, water, and space and the natural resources contained therein for the common welfare in a just manner.²Article 19 of Law Number 5 of 1960 contains general provisions for land registration in Indonesia which function to guarantee legal certainty of land rights.

A gift can only be carried out by the party who has the right to the object to be donated, and that party is competent to carry out the legal action. The goods that are used as gifts are goods that already exist, not goods that will exist at a later date, for example land.³The transfer of land rights from the owner to the recipient is accompanied by a legal handover (*juridische levering*), which is a handover that must fulfill legal formalities, including fulfilling the requirements, carried out through established procedures, using documents, made before a Land Deed Making Officer (PPAT).⁴

A gift can only be registered if the deed of gift is drawn up by a Land Deed Official (PPAT). Anyone wishing to donate land and buildings to another party is required to draw up a deed of gift with a Land Deed Official (PPAT). A deed of gift is legally binding and serves as valid evidence under the law. Therefore, if any disputes arise regarding the gift, the deed of gift can be used as evidence.⁵

In general, a person's reason for adopting a child is because they have made good efforts in their marriage, both medically and non-medically. However, not all adoptions are based on the inability to produce children. Adoption has both positive and negative aspects. The positive aspects include peace of mind and happiness for the adopter. Meanwhile, the negative aspects can relate to inheritance. A gift is a means of legally transferring property from the adoptive parents to the adopted child, with the adoptee receiving a third of the estate.

Adoptive parents who donate assets in the form of land also need to look at the child's ability to take applicable legal action. Adopted children who are under the age of 21 (twenty one) years or who are still minors must be protected by

¹Asri Arinda, 2016, "Implementation of Transfer of Land Ownership Rights Through Grants for Minors," *Jurnal Repertorium* Vol. 3 No. 2, p. 1.

²Bachtiar Efendi, 1993, *Collection of Writings on Land Law*, Alumni, Bandung, p. 34.

³*Ibid*

⁴Abdul Kadir Muhammad, 1994, *Property Law*, First Edition, Citra Aditya Bakti, Bandung, p. 55

⁵*Ibid*.

biological parents or legal guardians to receive the gift. An adopted child who is competent in the eyes of the law may and is entitled to the assets he or she has received from the gift. Granted land that has been given by adoptive parents to their adopted child and has been legalized before an authorized official, then the rights to the land automatically transfer absolutely to the adopted child and cannot be taken back, unless the gift is made to a biological child.

Land registration essentially aims to provide certainty of rights to landowners. The issuance of a certificate provides landowners with a sense of security regarding their rights to the land. In order to provide legal certainty to land rights holders, a land certificate serves as strong evidence. A land certificate is a valid proof of the physical and legal data contained therein, as long as the data corresponds to the data contained in the relevant land survey letter and land book. One issue closely related to legal certainty in land registration is the issue of proof.⁶

Based on the description above, as well as the lack of information and awareness from the community are factors that prevent people from registering the transfer of land rights due to grants in the Semarang City area. So this problem is interesting for the author to the need to further study how the implementation of the registration of transfer of ownership rights based on grants in the City of Semarang. Based on this, the author is interested in writing a thesis with the title: Implementation of registration of transfer of ownership rights on the basis of grants in the city of Semarang.

2. Research Methods

The author used a qualitative approach in compiling this legal research paper. This research specification uses analytical descriptive methods, aiming to present the research results in as much detail as possible regarding the problems, obstacles encountered, and legal remedies available to resolve them. Data sources come from primary and secondary data. Data collection methods include interviews. The data analysis method used is qualitative descriptive.

3. Results and Discussion

3.1. Implementation of Registration of Transfer of Land Ownership Rights Due to Gifts to Adopted Children in Semarang City

Marriage according to Article 1 of Law Number 1 of 1974 which has been revised by Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, is a physical and spiritual bond between a man and a

⁶Dr. H. Arifin Bur, SH, M.Hum, & Desi Apriani, SH, MH, 2017, "Certificates as a Strong Proof Tool in Relation to the Land Registration Publication System," UIR Law Review Vol. 1 No. 2, p. 129.

woman as husband and wife with the aim of forming a happy and eternal family or household based on God Almighty.

Law Number 39 of 1999 concerning Human Rights has included the rights of children, the implementation of the obligations and responsibilities of parents, families, communities, governments, and the state to provide protection for children. However, a law that specifically regulates child protection is still needed as a legal basis for the implementation of these obligations and responsibilities with the existence of Law Number 23 of 2002 which was later amended to Law Number 35 of 2014 concerning Child Protection.

Article 171 letter (h) of the Compilation of Islamic Law (KHI), the meaning of an adopted child is a child whose care for his daily life, education costs, and so on, the responsibility of his birth parents to his adoptive parents is transferred based on a court decision. If seen from this definition, it can be understood that guardianship over an adopted child has been transferred from his biological parents to his adoptive parents.

Adoption is an act with legal consequences, granting the adopted child legal standing with respect to their adoptive parents. This includes the right to receive a gift of property from their adoptive parents. Giving a gift is one way adoptive parents can show their affection for their adopted child. Islamic law stipulates that an adopted child cannot establish an inheritance relationship with their adoptive parents. Therefore, an adopted child cannot inherit their adoptive parents' property.

A gift is generally a gift from one person to another during their lifetime. Generally, the rules regarding gifts are regulated in Articles 1666 to 1693 of the Civil Code. A legally executed gift is binding on the donor and has consequences from the moment the gift is received by the recipient and approved by the parties involved, as required while the donor and recipient are still alive.

Article 171 letter (g) of the Compilation of Islamic Law (KHI) states that: "A grant is the voluntary giving of an object without compensation from one person to another person who is still alive to be owned." A grant is giving the right to own an object to another person based on sincerity of heart on the basis of mutual assistance to fellow human beings in matters of goodness. The result of the transfer of ownership rights from the grantor to the grantee gives rise to legal consequences that require the grantor to give the goods or assets that were donated to the grantee.⁷

Grants are an example of a form of legal action that is based on the principle of freedom of contract, which is known as a basic value in contract law. The

⁷Nor Mohammad Abdoeh, 2018, "Gifts of Property to Adopted Children: A Sociological Study of the Maximum Share of One-Third," *Cakrawala: Journal of Islamic Studies* Vol. 13 No. 1, p. 3.

principle of freedom of contract is regulated in Article 1338 paragraph (1) of the Civil Code. Normatively, the scope of the grant regulations in the Civil Code only covers matters that regulate grant material in general, so there are no regulations in the Civil Code that regulate agreements for granting gifts to adopted children made before the Land Deed Making Officer (PPAT).⁸

A gift made to an adopted child as the recipient is valid. However, Article 1086 of the Civil Code states that gifts given by a testator to a child or descendant must be included in the calculation of the testator's inheritance. However, this provision is not absolute, as there are several exceptions stipulated by law.

Exceptions stipulated in the Civil Code include provisions such as the need for a clause in the gift agreement that expressly states the exemption of the gifted object from inclusion in the testator's estate, as well as heirs in the same line who are categorized as biological or adopted children refusing to accept the inheritance or inheritance from the testator. Therefore, the gift cannot be included in the testator's estate.

The gifting process carried out by adoptive parents to an adopted child requires approval, which is carried out in the presence of the testator's heirs, before a notary. This is to avoid misunderstandings and potential disputes within the family. A person may give a gift to someone other than their child as long as it does not violate the provisions and limitations of the gift. Gifts are limited to a maximum of 1/3 (one-third), with the remainder distributed to the rightful heirs.⁹

Donations can only be made for existing assets. If they involve new assets that will be acquired in the future, the donation is void. Prior to the enactment of Government Regulation Number 24 of 1997, land ownership, according to the Civil Code, must be made in writing by a notary. Land donations not made by a notary are not legally binding, as they are subject to customary law and can be made privately. However, the process at the Land Office must be formalized with a deed from a Land Deed Making Officer (PPAT).

3.2. Obstacles and Solutions in the Process of Registering Transfer of Land Ownership Rights Due to Grants in Semarang City

Land registration through donations is included in land registration activities, which involve maintaining land registration data. Land donations result in changes to the physical or legal data of registered land objects. The relevant rights holder is required to register changes to the physical or legal data with the

⁸Nursandi, I Nyoman Putu Budiarta, and Ni Gusti Ketut Sri Astiti, Legal Consequences of Land Grant Agreements to Adopted Children Made Before Land Deed Officials (PPAT) According to the Civil Code, *Jurnal Analogi Hukum*, Volume 4, Number 3, 2022. CC-BY-SA 4.0 License. p.2.

⁹Nur Indah Utami; Ferryani Krisnawati; Suryati, The Position of a Deed of Gift for Adopted Children from the Gift of Assets from Adoptive Parents (Decision Study Number: 1637/Pdt.G/2019/Pa.Jp) *WLR Journal* 5 (1) 47-53, p. 3.

Head of the District/City Land Office for recording in the land register. Changes to physical data can include the division, separation, or merging of land parcels. Changes to legal data occur due to the transfer of rights from the donor to the recipient.

Some things that become obstacles in implementing grant registration, namely:

- 1) The factor is a lack of understanding of the function and use of a gift deed.

In general, the public still doesn't understand the function and usefulness of gift deeds. This is due to a lack of information and outreach within the community. Accurate and easy-to-understand information about gifts is needed to raise public awareness and help them register their gift deeds.

- 2) The factor that people think is that it requires expensive costs to make a deed of gift.

- 3) The factor is that it takes too long to process the grant deed and certificate.

Furthermore, applicants at the Semarang City Land Office face a significant obstacle in the registration process, requiring a Lentera account for the validation of analog certificates. Validation of a certificate can take anywhere from two months to six months from the date of registration. However, if the validation result is less than 100%, the applicant is required to re-measure the analog certificate. The re-measurement process can take up to six months.

There is still a widespread perception that obtaining land title certificates for grants is time-consuming. One community member has demonstrated that registering their land sporadically and individually requires a certificate processing period ranging from 3 or 4 months to 8 months or even longer. Efforts to address the barriers to sporadic land registration are due to the significant costs of transferring grants within the community. The government has made efforts to minimize the amount of the obligation to be paid by only using the land price in determining the NJOP.

The Land Office is also making efforts to address this issue by conducting systematic land registration, which can reduce costs and expedite the certificate issuance process, in accordance with agreed-upon timelines. The need to raise public awareness requires the Land Office to conduct outreach to disseminate easily understood information, especially in rural areas.

The solution to overcome the obstacles faced by Land Deed Officials (PPAT) in the process of registering land transfers due to grants involves preventive, collaborative actions and the use of technology, namely:

- 1) The solution to the problem of documents and data is that document examinations that must be more thorough by PPAT are required to carry out

careful and in-depth document examinations from the start, including the authenticity and completeness of all requirements in the process of registering land transfers due to gifts.

2) The solution is to coordinate with related parties and collaborate with village/sub-district officials or related agencies to verify data in the field, especially if there is a discrepancy between physical and legal land data.

3) The solution to utilizing Pre-application services is to use pre-application features or services at the local Land Office to speed up and ensure more accurate initial data validation before the deed of gift is made.

4) Solutions to legal counseling problems in order to increase socialization and counseling of land law to the community on a regular basis, in collaboration with the National Land Agency (BPN) and local governments, regarding the importance of correct grant procedures and the risks of disputes.

5) Solutions to operational and technical constraints for optimizing electronic systems by optimally utilizing electronic registration systems (such as the KKP application). Land land owners (PPAT) must ensure a stable internet connection and that the data input conforms to the format required by the National Land Agency (BPN). Land land owners (PPAT) must immediately report any system technical problems or data discrepancies to the Help Desk at the local Land Office for prompt resolution.

6) Improving the competence of Human Resources (HR) in PPAT and its office staff requires regular training or technical guidance from the Land Office and the professional organization, the Association of Land Deed Officials (IPPAT) to improve understanding of the latest regulations and electronic systems.

7) The solution to the Human Resources (HR) factor in terms of professionalism for Land Deed Officials (PPATs) is to act professionally, carefully, honestly, and impartially. Thoroughness in reviewing and validating documents is key to avoiding registration rejections.

8) Client education for applicants by providing transparent and detailed explanations to clients regarding the requirements, costs, and timeframe of the grant application process, so that client expectations are realistic and they are proactive in completing the requirements.

The land title grant process is one example of how legal objectives can contribute to achieving legal certainty, justice, and prosperity. Through grants, communities can voluntarily transfer assets to entitled parties, expedite the legal transfer of ownership, and prevent potential future disputes.

4. Conclusion

The implementation of registration of transfer of land ownership rights due to gifts to adopted children in the city of Semarang has been carried out in accordance with the provisions of applicable laws and regulations. Based on the results of the study, it states that the transfer of land ownership rights due to gifts to adopted children in the city of Semarang is carried out through 2 (two) stages, namely: first, making a deed of gift at the Land Deed Making Officer (PPAT), then for the second stage, registration is carried out at the Semarang City National Land Agency. Obstacles in making a deed of gift and land registration are caused by several factors, including: Certainty of rights and issues regarding land registration fees. To be able to overcome these obstacles, the Land Office continues to make efforts to help the community by carrying out various activities such as holding counseling/socialization regarding land registration.

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