

Unknown Transfer of Land Rights The Existence of The Owner Registered in The Land Certificate

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Abstract. Land registration and ownership of land title certificates provide legal certainty and protection for land owners. Legal uncertainty often arises due to ignorance about the whereabouts of land owners. This is a problem that requires serious attention and effective solutions. The objectives of this study are to: 1) Find out the procedure for transferring land rights when the owner registered in the land certificate whose whereabouts are unknown. 2) Find out the obstacles and solutions to the transfer of rights when the owner registered in the land certificate whose whereabouts are unknown. The research methods applied in this study are the Statute Approach and Case Approach.

The research results concluded: 1) The procedure for transferring land rights when the owner registered on the land certificate whose whereabouts are unknown is by means of Initial Data Verification, Administrative Search, Public Announcement, Involvement of Authorities, Every stage of the owner search must be documented systematically. 2) The absence of a registered landowner makes it impossible to take direct legal action, thus causing a deadlock in the transfer process. In cases like this, one solution that can be taken is through the court ruling mechanism as regulated in Article 37 paragraph (2) of Government Regulation Number 24 of 1997, which allows for alternative evidence under certain conditions.

Keywords: Transfer of Rights, Certificate, Owner.

1. Introduction

The Unitary State of the Republic of Indonesia (NKRI) is a state of law that is oriented towards public welfare as written in the 1945 Constitution Article 1 paragraph (3). In this context, law has a role in creating justice, order, and security in the midst of society. Law also functions as a compelling order to

protect the interests of people in society. Therefore, all actions of citizens must be based on law, both society and officials, including farmers and ministers. Judicial power is also needed to enforce the rule of law and ensure justice. Land issues are one of the most fundamental issues in Indonesian society, especially in the land sector. On the one hand, citizens want to defend their rights to land, while the government must provide public welfare for the entire community. Legal protection is needed for the benefit of society, and this can be realized if there are rules or regulations that are obeyed by society.

In order to achieve legal certainty over land, the Law requires rights holders to register their land. Government Regulation Number 10 of 1961 and Government Regulation Number 24 of 1997 concerning land registration have been replaced by Government Regulation Number 18 of 2021. PP 18/2021 defines that land registration is a series of activities carried out by the government continuously and regularly, including the collection, processing, bookkeeping, presentation, and maintenance of physical and legal data and storage of general lists and documents in the form of data, electronic information and/or electronic documents created through the Ministry's electronic system. The land certificate issued is proof of land rights for which rights already exist.¹ Land certificates have meaning for their owners, because they function as strong evidence with clear legal status. This makes it easier for land owners to prove their rights, and other parties interested in the land can obtain reliable information. However, there are still many people who own land without a certificate, because the land has not been registered so the owner is not known for sure.

Government Regulation Number 18 of 2021 replaces PP 24/1997 and PP 10/1961 and is the implementation of the mandate stipulated in Article 19 of the UUPA. This regulation stipulates that land registration is carried out by the government continuously and sustainably. This process involves the collection, processing, bookkeeping, and presentation and maintenance of physical and legal data and storage of general lists and documents in the form of data, electronic information and/or electronic documents created through the Ministry's electronic system, regarding land plots and apartment units².

NKRI as a country of law must be able to resolve legal disputes over land. Regulations are needed that can protect the rights of citizens while providing general welfare for the entire community. Only with strong legal protection can the interests of the community be realized and obeyed by all parties. Land disputes often arise due to ignorance of the owner's whereabouts, as happened in Tarakan City. For example, on December 24, 1985, a land sale and purchase agreement was made between the Plaintiff and the Defendant for Rp. 1,500,000. However, in September 2022, when the Plaintiff was about to change the name

¹Zahra Jati Apritania, 2021, "Transfer of Land Rights Owned by Children by Persons Acting as Guardians", *Journal of Legal Studies: Alethea*, No. 4.2, pp. 115-130.

²Gunsu Nurmansyah, 2024, "Analysis of Land Rights Transfer in the Toll Road Development Process Based on Agrarian Law", *Journal of Business Law*, No. 13. Vol. 01, pp. 1-9.

of the land ownership certificate at the Notary/PPAT office, he encountered obstacles because he could not find the Defendant. This dispute was finally brought to the Tarakan District Court with decision number 57/Pdt.G/2022/PN TAR.

Legal uncertainty often arises due to ignorance about the whereabouts of the landowner. This is a problem that requires serious attention and effective solutions. In this context, the author argues that further research is needed to understand and resolve disputes caused by unclear land ownership, as occurred in the case at the Tarakan District Court.

In response to this problem, the author is interested in conducting research by choosing the thesis title: "**Transfer of Land Rights Where the Whereabouts of the Owner Registered on the Land Certificate is Unknown**". This research is expected to provide a significant contribution to resolving land disputes that frequently occur in Indonesia.

2. Research Methods

The research in this thesis includes normative legal research, this type of research focuses on the analysis and research of library materials or secondary data. In this study, there are various approaches used to analyze and understand legal norms. Two of them are the Statute Approach method and the Case Approach method. The types and sources of data used are primary data and secondary data, secondary data is data obtained through literature studies, which consist of: Primary Legal Materials, Secondary Legal Materials, Tertiary Legal Materials. The data collection method in this thesis uses literature studies. Literature studies are an important method in research that allows researchers to collect information from various written sources. Data analysis is an activity in research in the form of conducting studies or reviews of the results of data processing assisted by previously obtained theories. The analysis in this study is prescriptive.

3. Results and Discussion

3.1. Procedure for Transfer of Land Rights when the Owner Registered in the Land Certificate is Unknown

Tarakan District Court Decision Number 57/Pdt.G/2022/PN Tar focuses on a land dispute involving Mulyati as the Plaintiff and Musyarafah as the Defendant. This dispute began with a land sale and purchase transaction that took place on December 24, 1985, where Mulyati purchased land with an area of 638 M2 on Jalan Simpang Amal, Mamburungan Village, from Musyarafah for Rp1,500,000. Evidence of the transaction was in the form of a payment receipt and Certificate of Ownership Number 47 issued on March 25, 1982 in the name of Musyarafah. However, after the transaction, the certificate name change process was not carried out. Only in 2022, the Plaintiff attempted to change the name on the

certificate, but encountered difficulties because the Defendant's whereabouts were unknown.

Along the way, Mulyati faced obstacles in completing the land administration related to the name change process. The notary/PPAT contacted by Mulyati said that one of the requirements for the name change process was the presence of the seller or the Defendant. After various efforts to find Musyarafah did not produce results, the Plaintiff was advised to file a lawsuit with the Tarakan District Court to obtain a court ruling that could later be used as a requirement for the name change at the Land Agency.

However, the important basis for this decision is the Panel of Judges' assessment that the Defendant has committed an unlawful act. The Panel of Judges based this decision on Article 1365 of the Civil Code which regulates unlawful acts. According to the judge, the Defendant's actions in not transferring the certificate after receiving full payment, and not being able to find his whereabouts to continue the process, constitute a violation of the Plaintiff's subjective rights. The judge also considered that the Defendant's actions were contrary to his legal obligation to assist in the administrative process of transferring the certificate, which is part of the seller's obligations after the land sale and purchase transaction has occurred.

In this decision, several points can be taken that can be studied in relation to agrarian law and the protection of the rights of parties conducting land sale and purchase transactions. First, from a procedural aspect, the decision taken by default is in accordance with applicable legal provisions. Second, from a substantial aspect, this decision is based on strong evidence, both written evidence and witness testimony. Third, from a legal protection aspect, this decision provides a concrete solution for parties who have difficulty in completing land administration due to the unknown whereabouts of the seller. Fourth, from a justice aspect, this decision provides justice for the Plaintiff who has fulfilled his obligations as a buyer, namely making full payment. The court protects the rights of buyers and provides legal certainty for land that has been purchased through legal procedures. With this decision, the Plaintiff can continue the administrative process that was previously delayed and obtain certainty regarding the ownership status of the land that has been purchased. The mechanism for searching for land owners whose whereabouts are unknown has a strong legal basis, both in the Basic Agrarian Law (UUPA) and in other laws and regulations related to land registration. Several of these Articles regulate various forms of land rights transfer, such as sale and purchase, grants, and other rights transfers. If the owner's whereabouts are unknown, the process of transferring land rights becomes difficult because the presence of the owner or party is required. In this regulation, it is explained that the Land Deed Making Officer (PPAT) has the right to refuse to make a deed of transfer of rights if the original certificate cannot be submitted or if the certificate does not match the

data recorded at the Land Office. This situation often occurs if the land owner's whereabouts are unknown.³

a. Initial Data Verification

The first stage in the owner search mechanism is to verify the initial data listed in the land certificate. In accordance with Article 31 of PP No. 24 of 1997, a land certificate is strong evidence related to the physical and legal data of the land in question. This verification includes checking the owner's name, last recorded address, identity number (KTP or passport), and history of land ownership. If there is data that is inconsistent or incomplete, the owner search process will become more complicated.

b. Administrative Search

PP No. 24 of 1997, applicants can submit requests for information related to the history of land ownership recorded at the Land Office. Land certificates stored Population data at the sub-district or village level can be an important source of information. Checking the last domicile data of the landowner is done through administrative data available at the sub-district/village office. This agency holds complete data on a person's population status. Checking the population status of the landowner can be done here, including to verify whether the person concerned has moved, died, or is still actively registered in the population system.

c. Public Announcement

After the administrative data has been verified, the next step is to make a public announcement to search for the missing owner. The principle of publicity in land registration announcements in national and local newspapers are a common method. In accordance with common practice, these announcements are also posted on the notice board of the Peta Office. Announcements are also made at the sub-district or village office where the land is located. Information can be conveyed through local community forums to expand the search scope.

d. Involvement of Authorities

Authorities such as the police can also be involved in the search. A request for a search of a person to the police can be submitted, and the police. If the landowner is a foreign citizen (WNA), the search can be carried out through the embassy of the country concerned. The embassy can assist through diplomatic channels and the population system in the country of origin of the landowner.

Each stage of the owner search must be systematically documented. This documentation is to prove that all search efforts have been carried out optimally. The documentation includes chronological recording and evidence collection. Every search effort, including the date and time of its implementation, the agency contacted, and the results, must be clearly recorded. In addition,

³Zahra Jati Apritania, 2021, "Transfer of Land Rights Owned by Children by Persons Acting as Guardians", *Journal of Legal Studies: Alethea* 4.2, pp. 115-130.

evidence of correspondence with related agencies, copies of announcements in the mass media, documentation of announcements at the land office and sub-district, and reports from the police must be collected and stored properly.⁴

If all search efforts have been made but the landowner is still not found, the next step is to file an application with the District Court to obtain a determination of the status of "whereabouts unknown." In this case, Article 463 of the Civil Code regulates the state of absence or *afwezigheid*. This application must be accompanied by proof of land ownership, complete documentation of search efforts, statements from related agencies, evidence of public announcements, and relevant witnesses.

The procedure for making a deed in the transfer of land rights whose owner's whereabouts are unknown requires a careful and thorough approach to ensure legal certainty, the validity of the transfer, and protection of interested parties. The notary or Land Deed Making Officer (PPAT) who is on duty in such cases must carry out a series of strict procedural stages, starting from initial verification, public announcement, to registration at the Land Office. These steps are to minimize the risk of disputes in the future and protect all parties involved, including the old owner, heirs, and new owner. The stages of the Deed Making Procedure include:

1. Initial Preparation and Verification Stage

The first step in this procedure is verification and examination of the basic documents related to the land to be transferred. Notaries/PPAT are required to check the authenticity of the land certificate through the Land Office, as well as ensure the validity of the right base based on the provisions of Article 19 of UUPA No. 5 of 1960, which regulates land registration as a form of legal certainty for the rights thereon. Verification also includes tracing the history of land ownership and checking the Land and Building Tax (PBB).⁵

2. Public Announcement Stage

If the owner or heir cannot be found, the next step is to make a public announcement. This announcement must be made in the national mass media, with the provision that it must be done at least twice with a 30-day interval between each announcement. The information included in the announcement must include details of the land and the last owner listed on the certificate. The purpose of this announcement is to provide the owner or heir with the opportunity to file a claim for the land within a certain period of time.

3. Court Determination Stage

If after the public announcement stage there are no claims received from the

⁴Gunsu Nurmansyah, 2024, "Analysis of Land Rights Transfer in the Toll Road Development Process Based on Agrarian Law", *Journal of Business Law*, Vol.13, No.1, pp. 1-9.

⁵Susan Rampengan, 2023, "Legal Consequences of Cancellation of Land Title Certificates Due to Overlapping between Land Rights and Customary Property Rights", *Civilia: Journal of Legal Studies and Civic Education* 2.4, pp. 83-94.

owner or heirs, the next step is to file a request for a court ruling. This submission is made at the competent District Court, by including a letter of application along with evidence that all search and announcement efforts have been carried out according to procedure. In the letter of application, it is necessary to describe in detail the chronology of the case, the legal basis used, and evidence supporting the transfer of rights.⁶

4. Deed Making Stage

With the court ruling, the notary/PPAT can proceed with the preparation of the deed of transfer of rights. The draft deed must be made in accordance with the format specified in the laws and regulations and must contain all relevant information, including the basis for the court ruling and complete data on the land and the parties involved. This deed must also include a special clause related to the status of the owner whose whereabouts are unknown and a legal security mechanism to protect the interests of the owner that may arise in the future.⁷

In preparing the deed, the PPAT must ensure the completeness of supporting documents such as court decisions, land certificates, and other relevant evidence. also to coordinate with interested parties, such as prospective buyers, heirs, or other parties who have a legal interest in the land. This is in accordance with Article 1320 of the Civil Code which regulates the requirements for a valid agreement, including in this case the preparation of a valid deed of transfer of rights.

5. Registration and Recording Stage

The final stage in this procedure is to register the deed of transfer of rights at the Land Office. An application for registration of transfer of rights must be submitted by attaching all supporting documents, including land certificates, deed of transfer, and court decisions. This process follows the provisions of PP No. 18 of 2021 which regulates the procedures for registering transfer of land rights.⁸

Once all the requirements are met, the Land Office will record the transfer of rights in the land book and issue a new certificate in the name of the new owner. This certificate becomes valid evidence in accordance with Article 33 of PP No. 24 of 1997, which states that a certificate is strong evidence of land ownership, as long as no other party can prove otherwise.

⁶Shinta Andriyani, Arief Rahman, and Wiwiek Wahyuningsih, 2023 "Rights and Obligations in the Transfer of Land Rights in the Context of Land Registration (Jatisela Village, Gunungsari District, West Lombok Regency)", *Empiricism Journal* 4.1, pp. 150-155.

⁷Vara Pontoh Dila, Nirwan Junus, and Zamroni Abdussamad, 2023, "Mechanism for Transfer of Land Rights in the Form of Sale and Purchase at the East Bolaang Mongondow Land Office", *Journal of Social Sciences, Humanities and Arts* 1.3, pp. 484-489.

⁸Elias Thesia Hence, et al., 2023, "Socialization of Law on the Role of Land Deed Officials (PPat) in Land Ownership Rights Registration in Asei Besar Village, East Sentani District, Jayapura Regency", *Jurnal Pengabdian Masyarakat Bangsa* 1.7, pp. 1306-1312.

3.2. Obstacles and Solutions to Transfer of Rights when the Owner Registered on the Land Certificate is Unknown

The transfer of land rights whose owner is unknown is one of the challenges in the land law system in Indonesia. This transfer of rights is problematic because legal procedures require a valid deed as the basis for the transfer, as regulated in Article 86 of Government Regulation Number 18 of 2021 concerning Land Registration. The PPAT as an authorized official must make the deed, but if the registered owner is unknown, this process is disrupted because one of the elements for making the deed is not fulfilled.⁹ However, if the owner of the certificate is unknown, the process of transferring rights becomes full of risk because there is a possibility of a lawsuit in the future from a party claiming to be the heir or legal owner. To minimize this risk, the procedure for announcing and searching for the owner must be carried out thoroughly and well documented, so that if there is a lawsuit, all the processes that have been carried out can be used as a basis for defense. A strong court decision is also needed as a legal basis for the transfer of land rights.

Obstacles in the form of legal protection for interested parties also cannot be ignored. Article 45 of Government Regulation Number 18 of 2021 states that the head of the land office has the right to refuse to register the transfer of rights if there is a reasonable objection. This means that if during the transfer process a party files an objection to the process, the registration cannot be continued. To overcome this obstacle, it is necessary to ensure that the verification and announcement process is carried out thoroughly and openly, so that interested parties have sufficient opportunity to file objections before the transfer process continues.

From the various obstacles mentioned above, it is clear that the transfer of land rights with unknown owners requires a comprehensive approach. Regulation strengthening is needed by creating special rules that regulate in detail the procedures for transfer of rights in cases of unknown owners. In addition, modernization of the land administration system through the implementation of integrated information technology is needed so that the process can be carried out more quickly and efficiently. Coordination between agencies must also be improved through the formation of integrated teams and shared information systems. In addition, there is a need for simplification of procedures without reducing the aspects of caution and legal protection for all interested parties. The development of more efficient and affordable financing mechanisms is also an important solution, so that the process of transfer of rights is not burdened by excessive costs. Strengthening the role of the judiciary in providing legal

⁹Christianto Walujo Rici, and Noenik Soekorini, 2023, "Criminal Responsibility for Transfer of Land Rights Carried Out in an Unlawful Manner", *Civilia: Journal of Legal Studies and Civic Education*, Vol 2, No.4, pp. 72-82.

certainty is also needed so that the process of transfer of rights can run smoothly and appropriately.

4. Conclusion

The procedure for transferring land rights in cases where the owner is unknown must go through a more complex mechanism than a regular transfer of rights. The first step is to submit an application to the court to obtain a valid legal determination as the basis for the transfer of rights, as stipulated in Article 37 paragraph (2) of Government Regulation Number 24 of 1997. This process involves document examination, public announcements to find interested parties, and coordination with various agencies such as the Land Office, Disduk capil, and the police. After the court decision is obtained, the Land Deed Making Officer (PPAT) can make a transfer deed, which is then registered with the Land Office for renewal of the land certificate. The main obstacles in this transfer of rights include difficulties in carrying out direct legal acts, namely incomplete document verification, long processing times, high costs, and uncertainty of legal status during the process. Solutions that can be taken include: using a court decision as the basis for the transfer of rights, utilizing information technology to accelerate the verification and announcement process, developing an integrated land information system, and optimizing coordination between various agencies. The procedure must also be thoroughly documented, utilizing digital archives to prevent loss or damage to documents.

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