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TRANSFER OF LAND RIGHTS THROUGH HIBAH BASED ON LAWS AND REGULATIONS

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Abstract

The topic of transitioning land rights through grants has high urgency, considering that land is a legal object of economic value and is increasingly needed in the era of globalization. However, there is a gap between theory and practice related to the implementation of the registration of granted land rights. Although laws and regulations, such as Government Regulation Number 24 of 1997, regulate the obligation to register land that has been transferred, practice on the ground shows that there are legal loopholes that allow the transfer of land rights without proper registration, thus potentially harming the parties involved. The purpose of this study is to analyze the mechanism of transfer of land rights through grants and the obstacles that arise due to unclear rules related to land rights registration. The method used in this study is a normative juridical research that analyzes laws and regulations and practical applications in the process of registering land grants by the Land Deed Making Officer (PPAT). The main findings of this study show that the lack of provisions governing in detail the mechanism of grant registration leads to legal loopholes that can be exploited for the transfer of land to other parties, including through the imposition of dependent rights. The results of this study suggest the need for further structuring regarding the regulations governing land grant registration to ensure legal certainty and avoid potential legal problems in the future.

Keywords: Transition; soil; grant.

1. INTRODUCTION

In the era of globalization like today, it causes human needs to increase rapidly. Given the growth of the population and developments in the increasingly advanced development, it will have an impact on increasing human needs in various aspects (Gultom & Harianto, 2022; Hidayati, 2021). One of them is the need for land which is increasingly needed (Suardana, 2023). Therefore, nowadays land is used as one of the sources of human life needs that must be met, so that the transfer of land rights occurs very often (Maria Avelina Abon et al., 2022; Rongalaha et al., 2023). One of the efforts to transfer land rights is by way of grants (Suardana, 2023; Wattilete et al., 2022). "A grant is a gift from a person to another person without any reimbursement and is done voluntarily, without any counter-

achievement on the part of the recipient, and the gift is carried out while the giver is still alive" (Sutedi, 2023).

The transfer of the object of ownership of land through a grant requires a legal act that can prove that the transfer has occurred and has been valid in the eyes of the law (Patahuddin, 2023). This can be done by way of grants, which are registered with the deed and made by the Land Deed Making Officer (Nisfa Lailah Sya'ban & Eva fauziah, 2024). As stated in the provisions of Government Regulation Number 24 of 1997 concerning Land Registration in Article 37 paragraph (1) it is stated that:

The establishment of land rights and ownership rights to flats through buying and selling, bartering, grants, income in the company and other legal acts of transfer of rights, except that the transfer

of rights through auction can only be registered if proven by a deed made by the authorized PPAT in accordance with the provisions of the applicable laws and regulations.

Furthermore, in the provisions of Government Regulation Number 24 of 1997 concerning Land Registration in Article 40 paragraph (1) it is stated that: "No later than 7 (seven) working days from the date of signing the deed concerned, PPAT is obliged to submit the deed it makes along with the relevant documents to the Land Office for registration"

Then followed by the provisions in the Regulation of the Minister of State Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration in Article 103 paragraph (1) which states that PPAT is obliged to submit the PPAT deed and other documents necessary for the registration of the transfer of rights concerned to the Land Office, no later than 7 (seven) working days from the signing of the deed concerned.

Judging from the three provisions of the laws and regulations, it is very clear that the grant deed made by the Land Deed Making Officer must be registered no later than 7 (seven) working days from the signing of the deed so that the registration process can be carried out immediately by the Head of the Land Office and provide legal certainty for the parties involved and who will be related to the object of ownership of the land.

On the other hand, in the transfer of land ownership through grants, obstacles and legal problems are found that can harm the parties involved. As we know, land is a souvenir or object that has high economic value (Sudiro & Putra, 2023). Therefore, land in this case is an object that becomes a special property that is increasingly becoming a trigger for various social problems (Abdullah et al., 2023).

The notary in charge of making a notarial deed in the form of a grant binding deed as a means of proof that there has been a transfer of ownership of the land from the grantor to the grantee. In a grant binding deed, there are no special regulations that regulate the continuation of the registration of the land object that has been granted to the competent body, namely to the Head of the Land Agency. This creates a loophole

to commit an act of violation of the law, for example by transferring the land object from the grantor to a third party such as a bank in the case of a land object as credit collateral.

Credit guarantee in the form of land is charged with the right of dependency, the right of dependency is a guarantee right charged on the right to land, where the creditor or bank first performs several procedures described in the provisions of general explanation number 7 of Law Number 4 of 1996 concerning the Rights of Dependents. In the process of imposing dependent rights, it is carried out with two stages of activities, (Natania et al., 2020; Silviana, 2020), namely:

The first stage of granting the right of dependency with the making of the Deed, the Granting of the Right of Dependency by the Land Deed Making Official, which was previously made a debt-receivables agreement from the pledged object.

The second stage is by registering and checking

by the Land Office on the Title Certificate of the object of the guarantee, and this stage is when the right of dependency is born Charged.

It does not specifically regulate the provisions for the implementation of the grant binding deed, which is related to the registration requirement and the registration deadline for the transfer of the object of title to the land, from the grantor to the grantee, providing a gap to transfer the object of title to the land to another party, for example to a bank. "With the non-implementation of the registration process for the land to the Land Agency, the Title Letter for the land object is still in the name of the grantor, and with that, the creditor" (Sutedi, 2010). or the bank cannot know of the existence of a legal act, namely a grant that has been made before the imposition of the right of dependent.

This has the legal consequences of dependent rights that occur after the object of ownership over the land has been granted through a grant binding deed. This problem will cause a loss either to the bank (creditor) as the party that has provided a number of loan funds to the grantor, or a loss to the grantee, who has previously had the right to legal events that have occurred with the transfer of ownership of the land through the deed of binding the grant.

Therefore, with the absence of norms

regarding the implementing provisions of the grant binding deed, it will cause disruption of the enforcement of the legal function as well as the validity and legal force of the grant binding deed in the process of granting land titles, where the grant binding deed in practice is very necessary in certain matters. In addition, this will create a gap to be able to transfer the land object to other parties.

2. METHOD

Research is a scientific activity related to analysis and construction, which is carried out methodologically, systematically, and consistently. Methodology means according to a particular method or method; Systematic is based on a system, while consistent means the absence of contradictory things within a certain framework. The type of research used in this writing is normative juridical research (IRIANTORO & UTAMA, 2024). Normative juridical research is legal research that examines written law from various aspects, namely aspects of theory, history, philosophy, comparison, structure and composition, scope and material, coexistence, general explanations and article by article, formalities and binding forces of a law, and the legal language used (Azizah & Zubaedah, 2023).

3. RESULT AND DISCUSSION

The transfer of land rights, and especially the right of ownership of the land can be carried out correctly, then a PPAT who will make the transfer of land rights must ensure the truth about the rights to the land (property rights), and about the competence and authority to act of those who will transfer and accept the transfer of the rights to the land (Ginting, 2020; Masriani, 2022). With respect to the object of the land rights transferred, the PPAT must check the correctness of the documents:

Regarding the land parcel that has been registered or the ownership of the flat, the original certificate of the right concerned. In the event that the certificate is not submitted or the certificate submitted does not match the lists in the Land Office.

Regarding unregistered land plots:

A letter of evidence proving the right to the old land that has not been converted or a certificate from the Head of the Village/Village stating that the person concerned controls the plot of land in good faith, and there have never been any problems that arise in connection with the

ownership of the land.

b. A certificate stating that the land parcel in question has not been certified from the Land Office, or for land located in an area far from the position of the Land Office, from the holder of the rights concerned is confirmed by the Head of the Village/Village and in the event that the letter cannot be submitted, PPAT is obliged to refuse to make a deed of transfer of rights to the land including the title to the land to be transferred. If the right holder is unable to provide proof of ownership of his land either in the form of written evidence or other reliable forms, then the bookkeeping of rights can be carried out not based on ownership but based on evidence of physical control of the land, provided that:

Has been in possession for 20 years or more consecutively by the registration applicant and his predecessors.

Mastery is done in good faith and openly.

Strengthened by the testimony of a trustworthy person.

Mastery is not a problem or not in a disputed situation.

This provision is of course in addition to considering that customary law in Indonesia is basically mostly unwritten, including the right to prove the control of land plots, but it is enough to be recognized by the community or represented by local customary figures, as well as to pay attention to differences in the development of conditions and social life of the community. The transfer of property rights is carried out in accordance with the following provisions:

Transfer of ownership occurs due to sale and purchase, grants, inheritances, exchanges and other acts intended to transfer property rights.

The transfer of ownership and its supervision is regulated by Government Regulations.

Any transfer of ownership rights to land or any act intended to directly or indirectly transfer ownership rights to a foreigner or a person who is an Indonesian citizen concurrently with a foreigner who may have ownership rights is automatically void and the land falls to the state.

4. CONCLUSION

From the entire previous description, as a closing, the author can draw some conclusions about the mechanism of

transferring land rights through grants that have not been specifically and in detail regulated by laws and regulations, but they can be made as long as they refer to Article 1666 of the Civil Code where grants meet the elements, there are people who give something voluntarily while still alive, there are people who receive, and there is an object given, and the transfer of land rights is registered based on the land grant deed by PPAT to BPN.

The community should be more observant and legally understand the mechanism for registering land rights through land grant deeds by PPAT so that there are no problems related to the land object if it is pledged to other parties, and it is hoped that the community, especially in the family, will know legally the difference between the grant agreement by a notary and the land grant deed made by PPAT which will later be registered for the transfer of the land rights to BPN.

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