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TRANSFER OF LAND RIGHTS THROUGH SALE AND PURCHASE BASED ON RECEIPT IN KARANGASEM DISTRICT

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Sell buy right on land with sheet receipt without exists certificate sell purchases made in the presence of PPAT will very harm buyer . Registration of transfer of rights on land arranged in Article 37 paragraph (1) PP No. 24 of 1997 , the registration requirements for the transfer of land rights due to sale and purchase are mandatory fulfilled . Transition right on land with sheet receipt moment This Still happened in one Village in Karangasem Regency , with exists gap This give rise to problem moreover if one party died then Can happen dispute land , so appear problem How implementation registration transition right on land through sell buy based on receipts and how consequence law to transition right on land through sell buy with receipt . Method research used that is method study law empirical , with approach problem ie approach facts , approaches case , approach legislation , approach concept and approach sociology law . Research result This in implementation registration transition right on land through sell buy based on no receipt at BPN can done only with receipt Because receipt just proof payment paid off on land and registration the transition must made certificate sell buy from a Notary / PPAT and the consequences the law to transition right on land through sell buy with receipt that is Not yet exists transition right on land because receipt No can used For register transition right on land . So that need made it certificate sell buy in advance Notary / PPAT for parties buyer Can register The transition is up to BPN and the parties get rights and obligations as well as No There is dispute that is not productivity that arises later day.

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1. Introduction

The transfer of land rights through a sale is a legal act performed by the landowner to another party, resulting in the transfer of rights and obligations related to the land. There are two ways to transfer land rights: "beralih" and "dialihkan." "Beralih" indicates the transfer of land rights without any legal action by the owner, such as through inheritance. On the other hand, "dialihkan" refers to the transfer of land rights from the owner to another party due to a legal action. A legal action is an act that has legal consequences. (Ara Denara et al. 2019)

Regarding the sale of land rights, customary law follows a cash system, where payment to the seller and the transfer of land rights to the buyer are done simultaneously. Hilman Hadikusuma states that a sale generally takes place when the buyer makes payment and the seller hands over the object of the sale at the same time. (Urip Santoso, 2015)

Boedi Harsono argues that the transfer of land rights is based on Article 5 of the Basic Agrarian Law (UUPA), interpreted as customary law with a cash system. The UUPA does not explicitly detail the sale system used, but Article 5 of Law No. 5 of 1960 still recognizes customary law. In addition to the principles of cash and clarity, there is also the principle of publicity applicable to property law in Indonesia. According to this principle, immovable property must be registered in a public register to ensure legal certainty. This is consistent with UUPA provisions in Article 19(1) and Article 26(1), which state that the registration of land rights or other actions aimed at transferring ownership is regulated by government regulations. The relevant regulation is Government Regulation No. 24 of 1997 concerning Land Registration. According to Article 37 of Government Regulation No. 24 of 1997, sales can only be registered if proven by a deed made by the PPAT (Land Deed Official). Moreover, Article 23(1) of UUPA requires that every transfer of rights, including ownership, be registered as stipulated in Article 19 of UUPA to ensure legal certainty in land ownership. (Hilman Hadikusuma, 1994)

In essence, a receipt is made for a specific purpose and interest of the parties, serving as proof of payment according to the agreed price, and can be interpreted as a contract between the parties. A receipt that clearly states the identities of the parties, the purpose of the receipt, and is signed by the parties, or at least acknowledged by them, can be used as evidence. However, there is a possibility that the parties might dispute the signature, and a receipt does not have the same evidentiary strength as an authentic deed. (Boedi Harsono, 2008)

The purpose of land registration under Article 19(1) of UUPA appears to be primarily to provide legal certainty. However, the land registration system is also intended for other purposes, such as tax collection. Legal certainty is often simplistically conceived by the general public as a written proof, such as a certificate of land ownership, when facing ownership

claims. However, more fundamental aspects of legal certainty include consistency in norms and the absence of norm duplication. (Rifka Hidayani, et al, 2022)

If the transfer of land rights through a sale occurs in the presence of a PPAT, it will have strong evidence in the form of an AJB (Deed of Sale and Purchase) because AJB made by a PPAT is an authentic deed that has been recorded and assigned a deed number, which can be used for the process of transferring rights through sale or certificate name change at the Land Office (BPN). If the public performs a legal act of selling land rights only evidenced by a receipt without a sale and purchase agreement made before a Notary or AJB made before a PPAT, it is highly disadvantageous for the buyer, as there is no legal certainty regarding the transfer of the land rights purchased. Normatively, the certificate for the purchased land does not provide proof of the transfer of rights, and the certificate remains in the name of the seller, even if it has been handed over to the buyer. (Putri Satrianingsih, et al, 2019)

Based on preliminary research of several cases involving the sale of land rights evidenced only by a receipt in Seraya Village, Karangasem District, Karangasem Regency, where the holder of the land certificate is still listed as DT (i.e., I Wayan Sukra, I Komang Kenak, I Komang Mastra, I Ketut Kari, I Ketut Patra, I Ketut Patri, I Ketut Patir, I Ketut Pastiasa, I Ketut Karang, SHM No. 1306/Seraya, area 1060 m², SU date 4-12-2007, No. 308/Seraya/2007, certificate issued in Amlapura date 14-01-2008, purchased by I Putu Budiasa), the transaction only used a receipt dated September 12, 2011, witnessed by two residents without a sale and purchase agreement or deed executed before the village head or Notary/PPAT. Therefore, the author will further examine this issue in a study titled "Transfer of Land Rights Through Sale Based on Receipts in Karangasem Regency." This research will discuss the implementation of the registration of land rights transfers through sales based on receipts at the Karangasem Land Office and the legal consequences of such transfers. The general objective of this research is to develop legal knowledge related to the paradigm (science as a process) of science as a process. This research critically examines the implementation of land rights transfers through sales based on receipts in Karangasem Regency. (I Made Suwitra, 2021)

2. Method

This research method employs empirical legal research, commonly referred to as non-doctrinal legal research (Socio-Legal Research). The focus of this research is on the implementation and application of the law that occurs due to the gap between theory and reality (dasollen dassein) in the field. In this study, the examination is on the transfer of land rights through sales based on receipts in Karangasem Regency, where Article 37(1) of

Government Regulation No. 24 of 1997 on land registration states: "The transfer of land rights through sale, exchange, donation, incorporation into a company, and other legal acts of transfer, except for transfer through auction, may only be registered if proven by a deed made by a Land Deed Official." However, there are still cases of land rights sales conducted informally based on receipts in Karangasem Regency. The object of empirical legal research is the legal phenomenon. (Soetandyo Wignjosoebroto, 2002)

3. Result and Discussion

Registration In The Sale And Purchase Of Land Rights Based On Receipt

Land is a crucial aspect of human life, necessitating legal regulations for land ownership. Individual ownership can be established as land rights by the government through land registration. Any person, whether Indonesian citizens (WNI) or foreign nationals (WNA), residing inside or outside Indonesia, who has not lost the right to acquire land rights, can be registered. However, not everyone is competent to perform legal actions in land transactions. Land registration, as regulated in the Basic Agrarian Law (UUPA), is the initial step in establishing land ownership. The importance of land registration is underscored by the UUPA's mandate for the government to register land across Indonesia. (S. Chandra, 2005)

According to Urip Santoso, land registration originates from the term "Cadastre," which in Dutch is called "Kadaster." Cadastre is a technical term for a record showing the area, value, and ownership (or other rights) of a parcel of land. The term "Cadastre" comes from the Latin "Capistrum," meaning a register or unit used for Roman land taxes (Capitatio Terrens). In addition to describing and identifying a parcel of land, the Cadastre also functions as a continuous record of land rights. (Supriadi, 2012)

Boedi Harsono describes land registration as a series of activities carried out by the State/Government continuously and systematically. This includes collecting, processing, storing, and presenting data about specific lands in specific areas for the benefit of the public, providing legal certainty in land matters, including issuing and maintaining proof of rights. According to Article 19(2) of the UUPA, land registration includes: a) Measurement, mapping, and recording of land; b) Registration of land rights and their transfers; c) Issuance of proof of rights, serving as strong evidence. Regulations regarding land registration are further detailed in Government Regulation No. 10 of 1961 on Land Registration. Due to rapid developments and many land registration issues arising under this regulation, which could not be

satisfactorily addressed, the government introduced a new regulation, Government Regulation No. 24 of 1997 on Land Registration. Article 1(1) of this regulation clearly states that land registration is a series of activities carried out by the government continuously, systematically, and regularly, including the collection, processing, recording, presentation, and maintenance of physical and juridical data in the form of maps and lists, regarding land parcels and units of apartments, including the issuance of proof of rights for registered land parcels and units of apartments. (Urip Santoso, 2010)

The benefits of land registration for the public include: a) Providing security to land rights holders due to legal certainty regarding their land rights; b) Reducing land disputes; c) Facilitating transactions related to land, making them easier and cheaper; d) Enhancing investment by using land as collateral for long-term credit; e) The data obtained from land registration not only provides legal certainty but can also be used as a tool for tax assessment. (Boedi Harsono, 2018)

The goal of land registration, according to Article 19 of the Basic Agrarian Law and reaffirmed in Government Regulation No. 24 of 1997, is to provide legal certainty in land matters. Legal certainty includes certainty regarding the location, boundaries, and area of the land, the status of the land, and the rights holders, as well as the issuance of certificates. The main goal of land registration is to provide legal certainty, which includes: a) Certainty of the registered rights status; b) Certainty of the rights holder; c) Certainty of the object of the rights. Yanis Maladi states that the purpose of land registration, besides facilitating socio-economic transactions, is to provide legal certainty in terms of cadastre rights, individual rights, and to provide legal protection to parties who acquire land in good faith. (Irawan Soerojo, 2003)

The purpose of land registration aligns with one of the three legal objectives proposed by Gustav Radbruch: justice, utility, and legal certainty. However, achieving all three legal objectives simultaneously is challenging. Radbruch also mentions a conflict between justice, certainty, and utility in practice. Prof. Sudikno Mertokusumo supports this by stating that while justice is an ideal goal, focusing solely on justice may sacrifice legal certainty, and vice versa. (MH John, 2000)

A.P. Parlindungan emphasizes: a) The issuance of land certificates provides legal certainty and protection to the owner; b) The Land Office must maintain all necessary information for a land parcel, both for the government's planning and public interest; c) The need for orderly land administration. The researcher simplifies this by suggesting that achieving the highest justice might conflict with legal certainty. According to the theory proposed by Gustav Radbruch, the objective of land registration is to ensure legal certainty for land rights holders, confirming

that the registered person is indeed the rightful owner of the land, and allowing the government to provide legal certainty and protection through land certificates. Legal certainty regarding both the subject and object (land) helps prevent conflicts over land ownership. This includes clear identification of the land owner and the land's dimensions and boundaries, as reflected in the land measurement certificate (certainty of object).

The registration of land rights transfer is a part of maintaining land registration data, which includes recording rights transfers, encumbrances, and changes in registration data, ensuring legal certainty, and maintaining orderly land administration. Numerous issues arise from land rights transfers that are not immediately registered, especially when such transfers are conducted informally with receipts. Land registration involves the initial registration or recording of a land right in the land book. Rights transfer occurs when the ownership status of land rights moves from one party (the grantor) to another (the grantee). Transfers can happen due to legal events (e.g., inheritance) or legal actions (e.g., intentional transfer of rights).

In a sale transaction, there are material and formal requirements. Material requirements include that the person performing the sale must be named in the certificate or, if the land is not registered, be competent to sell the land. If the seller is a minor, a guardian or authorized representative must handle the sale, evidenced by a notarized power of attorney. Formal requirements include that all sales transactions must be documented with a deed made by a Notary/PPAT.

Article 37(1) of Government Regulation No. 24 of 1997 specifies that transfers of land rights through sale, exchange, donation, incorporation into a company, and other legal acts, except for auctions, must be registered with proof of a deed made by a Notary/PPAT. This ensures legal certainty for the parties involved by confirming that the rights transfer has been executed and serves as the basis for registration at the local Land Office.

According to an interview with Ni Luh Putu Suartini, Head of Data Maintenance and PPAT Guidance at BPN Karangasem, on May 16, 2024, land rights transfer registration is a critical part of land administration aimed at providing legal certainty and protection. BPN views this registration as essential for ensuring legal certainty and preventing future disputes, involving rigorous document verification, official recording, and issuance of new land certificates.

An interview with I Ketut Nova Arsana, Notary/PPAT in Karangasem, on May 16, 2024, highlights that land rights transfer registration involves several stages according to

Indonesian regulations. Notaries/PPAT play a crucial role in ensuring legal compliance, validating documents, verifying tax payments, and ensuring correct registration with the Land Office to prevent future legal issues.

During the registration process, PPAT must submit the deed and other necessary documents to the local Land Office within seven working days of signing the deed. Required documents include: 1) An application for rights transfer registration signed by the rights holder (buyer) or their representative; 2) A written power of attorney if the applicant is not the rights holder; 3) The sale deed by the PPAT; 4) Identity documents of the transferring party (seller); 5) Identity documents of the receiving party (buyer); 6) The original land certificate being transferred; 7) Transfer permit if required; 8) Proof of payment of land and building acquisition tax (BPHTB), if applicable; 9) Proof of payment of income tax (PPh), if applicable.

MH John argues that preventive protection is a crucial legal strategy to prevent violations or disputes before they arise. In the context of land rights transfer registration, preventive protection ensures that all processes are carried out correctly and in compliance with legal provisions, reducing the risk of disputes and enhancing legal certainty and protection. The procedure for transferring land rights through sale, including the sale and registration process as per Government Regulation No. 24 of 1997, requires a Notary/PPAT's deed and supporting documents, including the sale deed, ID cards, and proof of tax payments. According to MH John's legal protection theory, land rights transfer registration is designed to provide legal certainty, justice, and protection for the parties involved in land transactions. This theory emphasizes the importance of clear, transparent, and fair regulations to protect individual rights and ensure that government administrative actions do not disadvantage parties. In the context of MH John's legal protection theory, land rights transfer registration by BPN involves both preventive protection (through Notary/PPAT) and remedial protection (through courts and land certificates), offering proactive protection and providing mechanisms for resolving disputes if rights are violated.

Legal Effects Of The Transfer Of Land Rights Through Sale And Purchase With Receipt In Karangasem District

The transfer of land rights (HAT) is a legal act that involves transferring ownership and obligations from the landowner to another party. In Indonesian customary law, land sales must be conducted on a cash basis, where payment and the transfer of land rights occur simultaneously. This contrasts with Western law, which follows a consensual system. According to Article 5 of the Basic Agrarian Law (UUPA), land transactions should adhere to

customary law, implying a cash system. The UUPA does not explicitly outline the sale system but recognizes customary law. Additionally, the principle of "publication" requires that the transfer of immovable property, including land, be registered to ensure legal certainty. (Christie Masengie, 2017)

Under the UUPA and its regulations, land rights transfers must be conducted before an authorized official, such as a Land Deed Official (PPAT), and recorded at the Land Office (BPN). According to Government Regulation (PP) No. 24 of 1997, any legal act involving land must be documented with an authentic deed created by a PPAT. This ensures legal certainty and protects the parties involved in land transactions. (R. Subekti, 1981)

A receipt, while serving as evidence of payment in land transactions, does not suffice for the legal transfer of land rights. The receipt is considered an informal document with limited legal standing, as it does not fulfill the formal requirements set by law, such as creating a deed by a PPAT. The Supreme Court of Indonesia has consistently ruled that receipts cannot validate land sales, emphasizing the need for compliance with formal legal procedures. (J. Satria, 1992)

The legal consequences of transferring land rights based solely on a receipt include the inability to register the transfer at the Land Office, the risk of legal disputes, and the lack of legal protection for the buyer. The buyer's ownership is not legally recognized without an authentic deed, making it difficult to prove ownership and potentially leading to disputes.

To achieve legal certainty, land sales should be documented with a Sale and Purchase Deed (AJB) created by a PPAT. This formal process ensures that the transaction is legally valid, protects the buyer's rights, and prevents potential conflicts. The theory of legal certainty, as articulated by Gustav Radbruch, underscores the importance of clear, consistent legal procedures to protect the rights of all parties involved in land transactions. (John Rawls, 1971)

In summary, transferring land rights based on a receipt does not provide legal certainty or protection, making it essential to follow the proper legal procedures to ensure the legitimacy of land transactions in Indonesia.

4. Conclusion

Office Karangasem Regency does not can done if only with receipt , because receipt just proof on payment land such and for land the Can registered the transition to the National Land Agency of Karangasem Regency then must be AJB is made at the Notary / PPAT so that the AJB later can used as formal proof and requirements registration HAT transition in BPN

Karangasem Regency and its consequences the law to HAT switching through sell buy with receipts that occurred in Karangasem Regency , namely Not yet exists HAT switching is due to receipt No can used For register HAT switching , receipt legitimate stated only as tool proof payment on sell buy , so registration HAT switching yet Can carried out at BPN Karangasem Regency .

Need done follow continued and made AJB in front of him Notary / PPAT so party buyer Can register the transition to BPN with complete documents completeness HAT transition such as the AJB made by PPAT, the identity of the KTP of the parties , the HAT certificate that will be registered transition and proof PPH and BPHTB payments must be equipped so that registration HAT switching can carried out by BPN and the parties get rights and obligations as well as No give rise to problems later day and Must quick made AJB official in front of Notary / PPAT so HAT switching can registered with BPN and not give rise to dispute later day and government area must increase education and supervision law related HAT switching with carry out outreach and education involving law expert law land For explain to the public that the HAT transition must use the AJB made by PPAT in accordance with PP No. 24 of 1997 concerning Land Registration , so later day No Again happen sell buy only with use receipt Because will harm buyer No Can register transfer of purchased HAT from seller at the Land Office.

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