

Registration of Land Ownership Rights Obtained Through Selling-Buying in the Presence Of The Village's Head

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Abstract

This research purposed (1) to determine the implementation of registration of land ownership rights obtained through selling- buying in the presence of the village head; and (2) to find out the obstacles in registration of land ownership rights obtained through selling- buying in the presence of the village head. This research was carried out in Kajuara Subdistrict of Bone District. The research's respondents were the Community Leaders and related Agencies in Bone District. The data were qualified as primary data in which the data obtained directly from the respondents through interview. The data also were qualified as secondary data in which the data found out through library research and data from relevant agencies. The data used is analyzed qualitatively. The results of the research indicate that (1) The implementation of registration of land ownership rights obtained through selling-buying in the presence of the village head can be registered systematically. The underhanded deed in the form of a statement / sale and purchase agreement made by the village head is considered sufficient by the National Land Agency (BPN) to be used as juridical evidence in land registration; (2) The obstacles in registration of land ownership rights obtained through selling-buying in the presence of the village head are the lack of community knowledge about land registration and the un-systematic registration.

Keywords: Selling-Buying, Village Head, Land Registration

1. Introduction

After the enactment of the UUPA, all land rights must be registered as explained in Article 19 paragraph (1), that to guarantee legal certainty by the government land registration is carried out in all regions of the Republic of Indonesia according to the provisions regulated by Government Regulation namely PP No . 10 of 1961 renewed with PP No. 24 of 1997 concerning Land Registration. To realize the existence of a legal certainty in every transfer of land rights, PP No. 24 of 1997 as the implementing regulation of the UUPA has determined that any agreement intends to transfer land rights, especially buying and selling, is carried out by the parties before the Land Deed Making Officer (PPAT) who is in charge of making the deed. Except, if the transfer is carried out through an auction, then it is proven by the Minutes of Auction made by officials from the auction office.

The existence of PPAT has not been known familiar among the Indonesian people especially those who live in rural areas. According to the public understanding, land buying and selling transactions is carried out under the principle of cash and clear as applying to customary law. Therefore, it is no need for formalities such as applying in western law that require transactions to be carried out before public officials.¹ According to article 37 paragraph (2) PP No. 24 of 1997, it states that in certain circumstances as determined by the minister and the Head of the Land Office can register the transfer of rights to the land area of ownership, which is carried out between individual Indonesian citizens as evidenced by a deed not made by the PPAT. However, according to the Head of the Land Office, the level of the statement's truth as indicated is considered only to register the transfer of rights concerned. In line with the paragraph of PP No. 24 of 1997, in making a systematic certificate carried out by the current government with a land registration program, some participated people in the program to register ownership rights on their land without PPAT deeds is only attaching a selling-buying agreement conduted in front of the head of adat / village head.²

Practically, based on the habit of selling-buying in the Kajuara Subdistrict, selling-buying has been completed after evidence of selling-buying has been shown (conducted) in front of the village head. If the land is certified, the seller's certificate is left to the buyer. Communities in the Kajuara sub-district carry out buying and selling transactions only with the agreement of the two parties and then make a proof of the transaction signed by both parties and known by the Village Head accompanied by the transfer of money from the buyer to the seller. The transfer process from the buyer to the seller does not have to be paid off. It is depending on the agreement between the two parties. With the evidence held, the buyer feels the transaction has been completed, and the

¹ Andy Hartanto, *Hukum Pertanahan (Karakteristik Jual Beli Tanah yang Belum Terdaftar Hak Atas Tanah)*, urabaya: LaksBang Jutitia, 2014, p. 108.

² Interviews with people who have taken part in the free certificate program held by the government.

buyer has the right to act as the owner of the land. The land transfer can be done anytime, when the new owner wants it.

Theoretically, some communities practice in the Kajuara sub-district are against to PP 24 of 1997. According to Article 37 paragraph (1) PP 24 of 1997 concerning Land Registration, all forms of transition, especially selling-buying must be done in front of PPAT, then the deed made in front of the PPAT can be registered with the BPN. However, according to the testimony of one of the residents of the kajuara sub-district, the proof of the transaction conducted in front of the village head is attached to systematic land registration. It can be said that there is gap between law in book and law in action in the case of the land transfer in the Kajuara sub-district. Although the main objective of this systematic land certification program is to provide cheaper, faster and simpler services for the community, but it has to consider the conditions for making a certificate specifically for proof of transfer of purchase rights, as mentioned in PP 24 of 1997.

Therefore, The focus of this research is to find out and analysis whether the registration of the transfer of land rights through buying and selling in the presence of the village head has legally bound and the obstacles faced for land ownership are only proven by a statement from the village head.

2. Research Method

This research was a juridical-empirical research. It was the method or procedure used to solve research problems by examining secondary data first to then proceed with conducting research on primary data in the field.¹ This research was conducted in Kajuara Subdistrict of Bone District. The primary data obtained through purposive sampling to have a close relationship with characteristics of the population that were previously known.² The data were analyzed qualitatively.

3. The Implementation of Registration of Land Ownership Rights Obtained Through Selling-Buying In The Presence Of The Village Head

UUPA regulates land registration which aims to guarantee legal certainty. This land registration is an obligation for the government and holders of land rights. The provisions regarding the obligation for the government to administer land registration throughout the territory of the Republic of Indonesia are stipulated in Article 19 of the UUPA. Further provisions on land registration according to Article 19 Paragraph (1) of the UUPA are regulated by government regulations (PP) - called PP No. 10 of 1961 concerning Land Registration, LNRI in 1961 No. 28-TLNRI No. 2171; PP No. 10 of 1961 then declared invalid after the enactment of PP No. 24 of 1997 concerning Land Registration, LNRI 1997 No. 59-TLNRI No. 3696. Both PP No. 10 of 1961 and PP No. 24 of 1997 concerning Land Registration are a form of land registration in order to provide legal certainty and legal protection to holders of land rights, with strong evidence produced at the end of the land registration process in the form of Land Book and land certificate consisting of Copies of Books Land and Measure Letter.

a. Terms of Land Registration

Land registration can be divided into 2 (two) models, namely land registration for the first time and maintenance of the land registration data. The first registration can be done by attaching some proof of ownership based on PP 24 of 1997. It is divided into 2 (two), namely new rights and old rights. Those rights can be done in 2 (two) ways, namely registration in a sporadic and systematic manner. However, for selling-buying land based on a Certificate / selling-buying agreement made by the village head can only be registered systematically. According to article 37 of PP 24 of 1997, all forms of transfer of land rights can only be registered if a PPAT certificate is made, but in article 5 of the UUPA it is also explained that Indonesian Agrarian Law is based on customary law. As is known that the National Land Law in Indonesia consists of written legal norms as outlined in laws and regulations and unwritten legal norms in the form of Customary Law and new Customary Laws which are not Customary Law.³

The customary Law is part of customs. It can be said then the customary law is a concretization of legal awareness, especially in simple social and cultural structures of the society⁴ the customary Law based on the UUPA is the original law of the indigenous people which is a law that lives in an unwritten form and contains

¹ Soejono Soekanto, Pengantar penelitian hukum, Jakarta: UI Press, 1995, p. 46

² Amiruddin, dan Zainal Asikin, Pengantar Metode Penelitian Hukum, Jakarta: Rajawali Pers, 2010, p. 106.

³ Boedi Harsono, *Hukum Agraria Indonesia (Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya)*, Jakarta: Djambatan, 2008, p. 264.

⁴ Soejono Soekanto, Hukum Adat Indonesia, Jakarta: Raja Grafindo, 2011, p. 338.

original national elements, namely the nature of society and kinship based on balance and overwhelmed by a religious atmosphere.¹

Systematic land registration in the Kajuara Subdistrict area in a government program in Kajuara Subdistrict have occurred 2 times. First, the program was carried out around the 1990s, where the community was familiar with the term coconut certificate. At that time the certified land was land which had coconut. Second is Complete Systematic Land Registration (PTSL) which was held at the beginning of 2018 with a target of 6,970 parcels of land in Kajuara Subdistrict.² The Complete Systematic Land Registration Program is regulated in ATR Minister Regulation / BPN No. 6 of 2018 concerning Complete Systematic Land Registration which is an improvement in the substance / material of the ATR Ministerial Regulation / BPN No. 12 of 2017 concerning the Acceleration of Complete Systematic Land Registration which aims to provide legal certainty and legal protection of community land rights in a fair and equitable manner, and to encourage the country's economic growth in general and the people's economy in particular.

The conditions needed for making systematic land certificates are quite easy. Simply complete some administrative requirements in the form of:

- a. Certificate from the village head.
This letter explains the basic tenure of land which is not registered.
- b. Debt Tax Return (SPPT).
SPPT is a letter used by the Directorate General of Taxes to notify the amount of tax payable to taxpayers.³ This letter is a tax letter explaining that it is true that the person concerned has so far controlled the land by paying taxes.
- c. Applicant Identity Card (KTP).
KTP is needed to find out the identity of the applicant that the identity in the statement made by the village head is indeed the name of the person concerned.
- d. Family Card.
A family card is a family identity card that contains data about names, arrangements and relationships in the family, as well as family members' identities.⁴

The high interest of the people of Kajuara Subdistrict is proven by the registration of 6,883 land parcels of the target of 6,970 land parcels. In Bulu Tanah Village 498 plots of land from 500 land parcels were targeted for the PTSL program, for 370 land parcels of Awang Tangka and 300 plots of land for Abbumpungeng Village.⁵ Land certifications in the PTSL program, mostly prove the basis of land tenure with a statement of sale and purchase in front of the village head.⁶

b. Registration Procedure

The procedure for systematic land registration based on Government Regulation No. 24 of 1997 concerning Land Registration are:

- a. The existence of a work plan implemented in the areas stipulated by the minister (Article 13 paragraph 2)
The systematic Land Registration is based on a range of work plans and is carried out in areas determined by the Minister of Agrarian Affairs⁷
- b. Establishment of the Adjudication Committee (Article 8)
In implementing systematic land registration, the head of the Regency / City Land Office is assisted by an Adjudication Committee formed by the State Minister of Agrarian Affairs or a designated official.
- c. Collection and Processing of Physical Data
For the purposes of collecting and processing physical data measurements and mapping are first carried out whose activities include:
 - 1) Making a registration base map
 - 2) Determination of boundaries of land parcels

¹Boedi Harsono (I), Op.Cit,p. 179.

² Interview with Ilyas, secretary of Kajuara Subdistrict, at the Kajuara Sub-District Office, on. July 13, 2018

³ Article 1 number 5 of Law No. 12 of 1985 concerning Land and Building Taxes.

⁴ Article 1 Number 13 of Law No. 23 of 2006 concerning Administrative Population.

⁵ 2018 PTSL Report Data About land infrastructure

⁶ Interview with Abbumpungeng Village Head, A. Muh. Ridha Kadir, Duun Kawerrang Residence, May 25, 2018

⁷Urip Santoso, *Pendaftaran dan peralihan hak atas Tanah*. Kencana: Jakarta.2010., p. 144.

- 3) Measuring and mapping land parcels and making land registration maps and making registration maps (Article 20).
 - 4) Making land register (Article 21)
 - 5) Preparation of Measuring Letters (Article 22)
- d. Jurisdiction of data collection and processing and bookkeeping of rights
- 1) New Rights (Article 23)

In juridical data collection activities, there is a difference between proving new rights and old rights. New rights are new rights granted or created since the entry into force of PP 24 of 1997, while old rights, namely rights to land originating from the conversion of rights that existed at the time the UUPA came into force and rights which has not been registered according to PP 10 of 1961.
 - 2) Old Rights (Article 24, Article 25, Article 26, Article 27, and Article 28)

To prove the existing land rights and originating from the conversion of old rights the juridical data is proven by evidence regarding the existence of such rights in the form of written evidence, witness statements and / or statements related to the degree of truth by the Adjudication Committee considered as a basis for registration rights, rights holders, and other rights that burden them.¹
 - 3) Book-keeping of Rights (Article 29 and Article 30)

Book-keeping of rights in the land book and its recording in the measuring letter are proof that the rights concerned and their rights holders and land parcels outlined in the legal letter have been registered according to PP 24 of 1997 concerning Land Registration.
- e. Issuance of Certificate (articles 31 and 32)

Certificate as proof of rights, issued in the interest of the relevant rights holders in accordance with the physical data contained in the measurement letter and juridical data that has been registered in the land book. Obtaining a certificate is the right of holders of land rights guaranteed by law.
- f. Presentation of physical and juridical data (Article 33 and Article 34)

In order to present physical data and juridical data, the land office organizes land registration procedures in the form of a general list consisting of registration maps, land registers, measuring letters, land books and list of names. The general nature of the openness of the data is determined in Article 34 of PP 24 of 1997 concerning Land Registration. For the presentation of physical data and juridical data determined in more detail in Article 187 up to Article 192 Ministerial Regulation Number 3 of 1997 concerning Implementing Regulations Government Regulation No. 24 of 1997 concerning Land Registration.
- g. Storage of general lists and documents (Article 35)

Documents which are evidence devices that have been used as the basis of registration, are given identification cards and stored at the Land Office or elsewhere determined by the minister, as an integral part of the general list. Gradually, land registration data is stored and presented using electronic and microfilm equipment.

The systematic land registration, the community does not have to make a PPAT Deed, just a certificate as proof of ownership signed by the village head and several witnesses. For a certificate / sale and purchase agreement made by the village head made as a citizen as one of the juridical proofs for systematic land registration, it contains several important things:

- a. Identity of the parties;
- b. The area of land that is the object of selling-buying;
- c. Price agreed by the parties;
- d. Location;
- e. Limit; and
- f. Signature;

The undersigned in the statement / sale and purchase agreement there are several parties:

1. The seller (first party);
2. Buyers (second party);
3. Witness at least two people; and
4. Village Head.

Based on the contents of the statement / sale and purchase agreement made before the village head, according to the author it is clear and concrete as one of the legitimate conditions of selling-buying in customary law is

¹Article 24 PP 24 of 1997 concerning Land Registration.

concrete. Judging from the detailed data needed in making this certificate, these concrete conditions cannot be fulfilled if they do not meet the cash and light requirements described earlier. Therefore, this certificate / sale and purchase agreement can be used as one of the juridical proofs in land registration, even though it is only for systematic registration.

4. Obstacles In Registration of Land Ownership Rights Obtained Through Selling-Buying In The Presence of The Village Head

Providing legal certainty in land registration includes certainty of registered rights, certainty of the subject of rights, and certainty of object rights. However, in the land registration process, there are many obstacles faced by the BPN and the community as owners of land rights. The obstacles are different in each region, including some obstacles on land registration which are currently faced in Kajuara Subdistrict.

a. Obstacles faced by the Land Agency of Bone District

Land registration for the first time based on what happened in Kajuara Sub-district at the initiative of the local community is very rare. Based on data from National Land Agency from 2016 to 2017, the land registration in Kajuara Sub-district in 2016 were only 24 plots of land registered, whereas in 2017 were only 17 plots of land registered. While based on data from the land and sub-district offices, from 124.13 KM² of the area of Kajuara Subdistrict, only 23,907,325 m² were registered as ownership rights with a total ownership of 8,599. Whereas those registered as Building Utilization Rights were 49,849 m² with a total of 159 rights and Hak Pakai covering an area of 208,772 m² with many rights to use 49 fields. Based on the data, it is very clear that there are still very few land parcels registered compared to the total area of Kajuara Sub-District as a whole, which is mostly land area.

In Awang Tangka Village during 2016 to 2017, there has never been a sporadic registration, so is the Abbumpungeng Village. Whereas in Bulu Tanah Village, there was only 1 person in 2017 who registered his land on his own initiative. As long as the village head was currently in office from 2014, there were only 3 plots of land registered. In Abbumpungeng Village, land registration has never occurred on the basis of the initiative of its citizens as long as the village head is currently in office.¹ According to the Head of Awang Tangka Village, several residents took the initiative to register their land because they needed to be made a collateral at the bank. Because of this, most people are lending their land because they need capital, but they don't want it and it's rather difficult to sell their land. So if they are certified, the bank can provide a loan with a certificate as a guarantee.²

b. Obstacles faced by the community

Sporadic land registration can be done using an underhanded deed in the form of a statement / sale and purchase agreement made by the village head, but there are several obstacles faced by the community in its registration. In general, there are several obstacles encountered in sporadic certification;

a. Lack of knowledge about land registration

Knowledge about land registration can be in the form of locations, conditions and procedures for registering land

b. Time

The time needed for the announcement of 60 days is longer than the systematic registration, and according to residents who have registered the land, it can be up to three months or even 5 new months the certificate is issued.

c. Fee

Fees for registering sporadic land are subject to three types of costs, namely: service fees, measurement fees, and transportation costs for measuring officers. Costs needed for land measurement and registration are based on PP No. 128 of 2015 concerning Types and Tariffs for Types of Non-Tax State Revenues that apply to the Ministry of Agrarian and Spatial Planning / National Land Agency.

Certified land registration has far more complicated constraints than lands that are not yet certified / not yet registered. Because the underhanded deed in the form of a certificate / sale and purchase agreement known by the village head cannot be used as a basis for registration. Because all types of transfers for land in the Bone Regency region must be made authentic certificates made by the authorities, namely PPAT. Whereas in Kajuara Subdistrict, as previously explained, the PPAT of Kajuara Sub-District had never previously made a land deed. So that residents who want to make a deed must go to the PPAT in the district capital, while the distance is quite

¹ Interview with the local village / government.

² Interview with Head of Awang Tangka Village, A. Nurwahidah, Awang Tangka Subdistrict Office, May 21, 2018

far. So that residents who have bought and sold before the village head prefer to save the certificate. The important thing is that the seller can no longer control the land.

So the registration of land selling-buying carried out in the presence of the village head as evidenced by an underhanded deed in the form of a statement / sale and purchase agreement for sporadic registration encountered many obstacles both in terms of administration and costs. Whereas for systematic registration in terms of administration does not make it difficult for the community as well as for the costs charged in systematic registration. Thus sporadic land registration is indeed classified as far more difficult and expensive compared to systematic registration. However, systematic registration of land is not every when it can be done.

5. Conclusion

It can be concluded that:

- a. Land registration that selling-buying in the presence of the village head can be registered systematically, the underhanded deed in the form of a certificate / selling-buying agreement made by the village head is considered sufficient by the land to be used as juridical evidence in systematic land registration. The sporadic registration can be done if the certificate is accompanied by rincik as proof of ownership of ex-customary land. Registration of land data maintenance itself can be done if the land is in a certain condition as determined under article 37 paragraph (2) PP 24 of 1997 concerning Land Registration.
- b. Some obstacles faced in registering property rights obtained through selling-buying conducted in the presence of the village head for sporadic registration are three obstacles. First, it is the lack of knowledge about land registration. So that the community feels that the requirements given by the land are quite difficult to fulfill, time / opportunity because of the considerable distance so that it takes up the time and costs required. Whereas for registration systematically the constraints are present within the community itself such as lack of knowledge about the importance of land registration so that they do not feel the need for ownership of their land, the number of selling-buying agreements that are not in accordance with their statements, the existence of some land that is registered without being known by the seller and buyers and registration is rarely done systematically.

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