

LEGAL CONSEQUENCES ON THE TRANSFER OF RIGHTS WHEN THEIR EXISTENCE IS NOT KNOWN BASED PP NO. 24 OF 1997 (STUDY OF LAND REGISTRY OFFICE IN CIREBON DISTRICT)

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Abstract: The human need for land from time to time is increasing in line with developments, population growth and economic progress. Land in a country cannot be controlled and used freely by humans, but is bound by conditions stipulated by the government or the state as the holder of rights in general. This study aims to find out what efforts have been made by the land registration office for certificates that cannot be renamed because the first owner or heirs are unknown and what legal consequences will occur if a certificate wants to be renamed but the first owner or heirs are not known. The research method used is normative juridical research method. Based on the results of the research, the efforts made by the Land Registration Office to complete the transfer of names if the whereabouts of the first owner or heirs are unknown, namely by a court decision because basically the certificate to be renamed is obtained from the transfer of rights through buying and selling without AJB and the consequences law that will be obtained because there is no first owner or heir, namely the certificate is not legally valid because the transfer of rights through buying and selling is not in accordance with Government Regulation No. 24 of 1997 concerning Land Registration.

Keywords: Heirs, Change of Land Rights, Return the Name

I. INTRODUCTION

Land has an important and strategic role for human life. Land is interpreted as a source of life for humans because this is where humans live, continue their descent and carry out various activities on the land, so that whenever and at any time humans are always in touch with the land. In addition, if viewed from an economic perspective, land is a commodity that has very high economic value because land has permanent properties and can be used in the future.¹

The human need for land from time to time is increasing in line with developments, population growth and economic progress. The balance between the increasing demand for land and the limited availability of land means that land prices always increase. Humans always try their best to own and control land in order to fulfill their needs and improve their welfare.² Apart from being a place of residence, land is also a source of livelihood for people who make a living through agriculture, mining and plantations. In human life, land has a very high value, not only having economic value, but also concerning issues of social and political values.³

Land in a country cannot be owned, controlled and used freely by humans, but is bound by provisions stipulated by the government or the state as the general rights holder. The government of the Republic of Indonesia appreciated the urgency of land for human life through its national land policy with the issuance of Law Number 05 of 1960 concerning Basic Agrarian Regulations, which is also abbreviated as the Basic Agrarian Law. The Basic Agrarian Law is a major milestone in the birth of land provisions in Indonesia, in which it regulates various types of land rights.

In order to guarantee proper land management, an institution that has special authority to deal with land issues is needed, therefore the National Land Agency (BPN) was formed. Specifically having the task of providing legal certainty for land management for Indonesian Citizens in various types of ownership rights to be used properly, the existence of the National Land Agency (BPN) itself is regulated in Law Number 05 of 1960.⁴

Property rights are the most important, strongest, most fulfilled and hereditary rights that people can have over land, then only property rights that are not limited by the state. The granting of property rights is not only given to individuals but can also be given to legal entities. Property rights can also be transferred and transferred to other owners.⁵

Prior to the transfer of ownership rights at the Land Office, land registration must be carried out first. Land registration will result in the provision of a letter of proof of ownership, which is generally called a land certificate, to the owner concerned and serves as strong evidence of the land rights he holds. Based on Government Regulation Number 24 of 1997 concerning Land Registration, the provisions of Article 84 say that the implementation and implementation of land registration must be electronic so that the data obtained is in the form of information data and/or electronic documents which are valid evidence in accordance with applicable legal provisions. Indonesia, which was built by the Minister of Agrarian Affairs and Spatial Planning as the ministry's data base. In land certificates, the term transfer of names is also found, namely where a certificate, if it wants to be transferred, must be accompanied by a

¹ M. P Siahaan, *Bea Perolehan Hak Atas Tanah Dan Bangunan Teori dan Praktek*, Raja Grafindo Persada, Jakarta, 2003, hlm.1

² Boedi Harsono, *Hukum Agraria Indonesia, Himpunan Peraturan-Peraturan Hukum Tanah*, Jakarta, Djambatan, 2010. Hlm. 70.

³ Diana Lubis. *Peralihan Hak Atas Tanah Yang Tidak Diketahui Keberadaan Pemiliknya (Studi Kantor Badan Pertanahan Nasional Kabupaten Binjai)*. Tesis Pada Program Studi Kenotariatan Fakultas Hukum Universitas Sumatera Utara. 2020, hlm. 2

⁴ Zaki Ulya. *Badan Pertanahan Aceh Sebagai Perangkat Daerah Di Aceh Dalam Aspek Kepastian Hukum Bidang Pertanahan*. jurnal konstitusi 2015, hlm. 571

⁵ Samun Ismaya, *Pengantar Hukum Agraria*, Edisi Pertama. Yogyakarta, Graha Ilmu. 2011. Hlm.62.

transfer of name from the first owner to the second owner.

Before transferring the name of a land certificate, you must prepare a number of things so that you can change the name of a certificate, one of which must have a Sale and Purchase Deed (AJB). making the Deed of Sale and Purchase electronically made by the Land Deed Making Officer.⁶ The purpose of this sale and purchase deed is to make it easier for both parties to transfer ownership rights to a land and change the name of the certificate, but in reality there are still some who carry out land sale and purchase transactions that are not in accordance with Government Regulation Number 24 of 1997.

The number of decisions in the District Court involving the National Land Agency as the legal office carrying out the issuance of Certificates of Ownership of one of the plots of land located in the Widara Block, RT 001 RW 001, Durajaya Village with proof of ownership SHM Number 09 on behalf of TIMPEN, is now entered in the Grege District area (formerly included in the Beber District area), Cirebon Regency, where a sale and purchase transaction occurred with Mr. Kusma on March 14, 2005 Mr. KUSMA had purchased a piece of land with an area of $\pm 1576.5 \text{ m}^2$ for Rp. 75,000,000.- (seventy-five million rupiah) paid clearly, sincerely, by handing over the money in cash without having a Sale and Purchase Deed to appear before the Land Deed Making Officer, at that time carrying out the transaction was only evidenced by a receipt, until finally part of the land was built in 2009 covering an area of 195 m^2 on the land and is now inhabited by Mr. KUSMA's daughter, but the name will be reversed on behalf of KUSMA while Mrs. TIMPEN died on Thursday 15 February 2018 as evidenced by a Death Certificate from Durajaya Village Number 471.12/255/Dec dated 02 June 2021, marked with evidence P-10 and the heirs of Ms. TIMPEN are unknown whereabouts and addresses in the Republic of Indonesia, so an explanation from the Cirebon Regency National Land Agency must first determine the sale authorization. Purchasing from the District Court, therefore the event of this thesis research is intended according to the Court Decision Number 47/Pdt.G/2021/PN.Sbr on October 7 2021, this matter in the decision explains the case that the plaintiff the name KUSMA is dated July 12 2021 and has been registered at the Registrar Office of the Sumber District Court in the case register number 47/Pdt.G/2021/PN.Sbr dated July 13 2021.

Based on the description of the research background above, the formulation of the problem is as follows: 1) What are the consequences of the Law of Transferring Names if the whereabouts of the first owner or heir are unknown? 2) How effort settlement of the Cirebon District Land Office for certificates that cannot be renamed because the first owner or heir is unknown?

II. METHODS

1. Research Approach

In writing this thesis, the writer uses a normative juridical research approach, namely the approach to laws and regulations. This approach is carried out by reviewing laws and regulations related to the problem at hand.

2. Type of Research

In this study, researchers used qualitative research, namely research that aims to describe the facts and conditions or symptoms of research objects, which come from existing data sources, and utilize existing theories as explanatory material, thereby answering the problems that are the object of research.

3. Analysis of Legal Materials

⁶ I Sari,IGN Wairocana, M Resen. *Kewenangan Notaris dan PPAT dalam Proses Pemberian Hak Guna Bangunan Atas Tanah Hak Milik*. Jurnal Hukum, 2018.Hlm. 41-58.

In normative juridical research, researchers use two types of legal materials, namely in the form of primary legal materials and secondary legal materials.

1). Primary Legal Materials

It is legal material that is authoritative, meaning it has authority or is binding in this study, which consists of:

- a. The 1945 Constitution regulates land tenure in general as stated in Article 33 paragraph (3);
- b. Law Number 5 of 1960 concerning Basic Agrarian Regulations;
- c. Government Regulation Number 24 of 1997 concerning Land Registration;
- d. Government Regulation of the Republic of Indonesia Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning Position Regulations for Land Deed Officials;
- e. Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 16 of 2020 concerning Organization and Work Procedures;

2). Secondary Legal Materials

Includes books related to problems, writings by experts, papers, journals, or scientific meetings that are relevant to research.

4. Legal Material Collection Techniques

In this normative juridical study, legal research methods were used by collecting literature or secondary materials.⁷ The data collection technique was carried out by interviewing employees working at the Cirebon district land office as supporting data.

III. RESULTS AND DISCUSSION

A. The Legal Consequences of Transfer of Names If the First Owner or Heirs are Unknown.

In the civil case, the lawsuit was between Mr. Kusma as the plaintiff against the heirs, Mrs. Timpen as the defendant. Where in this case Mr. Kusman as the buyer of the land located in Durajaya Village with proof of SHM ownership with number 9 on behalf of Timpen, is now included in the Kec. Greged (formerly included in the district of Beber), Kab. Cirebon.

After the land was bought by Kusman and since then until now it has been owned by Kusman, and in 2009 the buyer has built a house building with an area of 195 m² on the land and is now inhabited by the daughter of Mr. Kusman, and every year Mr. Kusman routinely pay land and building tax on the land as stated in the Land and Building Tax Linked Tax Return (SPPT PBB) from 2018 to 2021. However, when you want to return the name of the Property Rights Certificate to the Cirebon district National Land Agency Office, cannot be carried out and carried out because in the certificate it is still in the name of Timpen's mother who has passed away and the Legal Heirs the address of the deceased is unknown in the Republic of Indonesia.

Mr. Kusman has been trying to find the legal heirs of the late Mrs. Timpen by tracing information and data on residents from the Rukun Tetangga, Rukun Warga, and the Surajaya Village Office, Kec. Greged, Kab. Cirebon regarding citizen data on behalf of Timpen's mother, but it didn't work out that the legal heirs did not know the whereabouts of their residential address. Because the addresses of the legal heirs of Timpen's mother are unknown, according to the explanation from the National Land Agency for Cirebon district, there must first be a sale and purchase approval from the District Court.

Land is the most important part of human life because we always need land and live on land for the sake of human survival. The definition of land itself is regulated in Article 4 of the UUPA which states that on the basis of the right to control from the state as referred to in

⁷ Muchtar, Heni. *Analisis Yuridis Normatif*, jurnal ilmiah ilmu-ilmu humaniora. 2015, hlm.84

Article 2 it is determined that there are various rights over the surface of the earth, called land, which can be given to and owned by people, whether alone or together with other people and legal entities.

Individuals or legal entities that can be declared as controlling a land must first transfer ownership rights to land, where the transfer of rights occurs when carrying out a legal action or legal event which includes buying and selling, grants, inheritance, or auctions. Furthermore, as proof that a person controls and owns the land, it will be proven by having a certificate of ownership or a Certificate of Property Rights (SHM).

Before the issuance of the Property Rights (SHM) must first carry out land registration, in Article 1 Government Regulation Number 24 of 1997 states that land registration is a series of activities carried out by the government continuously, continuously and regularly, including collection, management, book keeping and presentation as well as maintenance of physical data and juridical data, in the form of maps and lists, regarding land parcels and apartment units, including the issuance of certificates of proof of title for land parcels that already have rights and ownership rights to housing units structure and certain rights that burden it. Land registration must also be in accordance with the principles and objectives in accordance with Article 2, 3 paragraph (a) which states that land registration is carried out based on the principles of simple, safe, affordable, up-to-date and proven. Land registration also aims to provide legal certainty and legal protection for rights holders over a parcel of land or apartment units and other registered rights. For this reason, the registration of property rights is also very important for the process of land ownership.

The importance of certificate ownership as proof of ownership rights under Government Regulation no. 24 of 1997 is very necessary related to increasingly growing demand for land. In Article 37 paragraph (1) Government Regulation No 24 of 1997, regarding the transfer of ownership rights to land, there are various ways as mentioned above, one of which is buying and selling.

Legal actions carried out before the Land Deed Making Officer, attended by the first party (as the seller) and the second party (as the buyer). Buying and selling is carried out before the PPAT in order to make a sale and purchase statement or sale and purchase deed (AJB). Then after the two parties concerned have finished buying and selling, the PPAT will proceed to land registration.

After the land registration is carried out, there must be a transfer of the name of the title certificate for ownership of the land. The transfer of names relates to the transfer of rights, for land that has been certified.

Government Regulation Number 24 of 1997 Article 37 paragraph (1), Transfer of rights must be made at the Land Deed Making Officer, as an official who directs and assists individual communities and legal entities, but if not through PPAT or PPATS one day there will be obstacles in carrying out the process of transferring names or buying and selling that will be carried out at a later date, buying and selling without a PPAT is called buying and selling underhanded. Deeds under the hand are not recognized by the state so that in order for them to be recognized by the state they must be made at the official making the land deed, in order to issue a Sale and Purchase Deed due to the transition to buying and selling.⁸ If there is no AJB in the process of transferring rights, then the transfer of names on the certificate of land ownership cannot be processed at the local Land Office. AJB's position is very important in the eyes of the law.

The legal consequences that will occur if there is no AJB behind the name as stated is

⁸ Wawancara dengan Budi Aripin, S.Sos.,SH., M.Kn. Selaku Notaris dan PPAT di kota Cirebon, (Cirebon, tanggal 27 Juli 2022. Pukul 11.17 WIB).

invalid and cannot be processed, unless the first owner (seller) or second owner (buyer) wants to make a sale and purchase again before the PPAT just to make a Sale and Purchase Deed . If the first party is not present or not present, he can be replaced with a legal heir, if a legal heir is also absent or his whereabouts are unknown. Then it must go through the determination of the approval of the sale and purchase at the District Court in the area.⁹

Based on the results of an interview with Mr. Miftah Kusni, S.H., who stated that in the process of transferring names without AJB and there was no first owner or legal heir, they had to go through a court order. After the Cirebon district National Land Agency requests that the parties concerned make a sale purchase determination in court, then the parties must go to the District Court in Cirebon Regency to submit an application for a sale purchase authorization determination.¹⁰

Based on Government Regulation Number 24 of 1997. And the requirements that must be completed when submitting an application for determining the sale and purchase of land include a copy of the ID card of the seller (Mrs Timpen) and the buyer (Mr. 2005 (at the time the sale and purchase took place), proof of payment for PBB for 2018 2019 2020 and 2021, photocopy of certificate on behalf of Timpen's mother, and because Timpen's mother has died and her heirs are not in the territory of the Republic of Indonesia, there must be a statement from the sub-district or village explaining that Mrs. Timpen was a resident of our village who died on February 15 2018 and the heirs of Mrs. Timpen are unknown in the territory of the Republic of Indonesia. And for the process of determining the results of the court for about 3 months.¹¹

B. Settlement Efforts by the Land Office for Certificates That Cannot Be Reversed Because the First Owner or Heirs are Unknown.

Article 20 paragraph (2) of the UUPA stipulates that property rights can be transferred and transferred to other parties. There are two forms of transfer of Land Ownership Rights, switch and transfer. Transfer means the transfer of property rights from the owner to another party due to a legal event, such as inheritance which is legally transferred to heirs who meet the requirements as objects of property rights. Transferred means the transfer of property rights from the owner to another owner caused by legal actions, such as buying and selling, exchange, grants, income in capital companies and auctions which will lead to legal consequences.

This is in accordance with the example of the problem in chapter 3 where the parties involved in buying and selling obtain their rights through inheritance, that on March 14 2005, Kusma had purchased 1 plot of land with an area of approximately 1576.5 m2 located in Block Widara RT 01 RW 01, Durajaya Village with proof of ownership of SHM with number 9 on behalf of Timpen, now included in the territory of the Kec. Greded (formerly included in the district of Beber), Kab. Cirebon in accordance with evidence of a Certificate of Sale and Purchase of Land dated March 14, 2005, with a price of 75,000,000, from a seller named Timpen (female, Muslim, native Indonesian citizen, and died due to illness in 2018).

After the land was bought by Kusman and since then until now it has been owned by Kusman, and in 2009 the buyer has built a house building with an area of 195 m2 on the land and is now inhabited by the daughter of Mr. Kusman, and every year Mr. Kusman routinely pay land and building tax on the land as stated in the Land and Building Tax Linked Tax Return (SPPT PBB) from 2018 to 2021. However, when you want to return the name of the Property

⁹ Wawancara dengan Budi Aripin, S.Sos.,SH., M.Kn. Selaku Notaris dan PPAT di kota Cirebon, (Cirebon, tanggal 27 Juli 2022. Pukul 11.17 WIB).

¹⁰ Wawancara dengan bapak Miftah Kusni, S.H. Selaku Ketua Seksi Penyelesaian Sengketa Kantor Pertanahan Kabupaten Cirebon (Cirebon, 7 November 2022. Pukul 10.36)

¹¹ Wawancara dengan Bapak Surya. Selaku Panitera Pengganti di Pengadilan Negeri kota Cirebon, (Cirebon, tanggal 15 November 2022. Pukul 11.17 WIB).

Rights Certificate to the Cirebon district National Land Agency Office , could not be carried out and carried out because in the certificate it was still in the name of Timpen's mother who had passed away and the legal heirs of the deceased were not known for their addresses in the Republic of Indonesia.

Mr. Kusman has been trying to find the legal heirs of the late Mrs. Timpen by tracing information and data on residents from the Rukun Tetangga, Rukun Warga, and the Surajaya Village Office, Kec. Greged, Kab. Cirebon regarding citizen data on behalf of Timpen's mother, but it didn't work out that the legal heirs did not know the whereabouts of their residential address. Because the addresses of the legal heirs of Timpen's mother are unknown, according to the explanation from the National Land Agency for Cirebon district, there must first be a sale and purchase approval from the District Court.¹²

The results of interviews conducted by the author to the Cirebon District Land Agency office in the section on Determination of Rights and Registration, usually the obstacle is that the certificate behind the name is not usually a private sale and purchase, meaning that the sale and purchase is without going through PPAT or PPATS and there is only evidence in the form of testimony from the head village in the village, then proof of payment receipt.¹³

Buying and selling carried out under the hands is confirmed that there is no evidence of AJB and there is only proof of payment receipts and testimony from the village head, then the BPN will request that the sale and purchase be carried out again at the Land Deed Making Officer and attended directly by the parties concerned to get a letter AJB. when repeating the sale and purchase before the PPAT but it turns out that the seller is not present or dies, he can be replaced by a legal heir. If it turns out that in this re-sale and purchase transaction there is nothing from the seller (the old owner) then the PPAT will say that the AJB can only be made according to procedures from the Office of the National Land Agency in Cirebon district.

The efforts made by BPN are to wait for a decision or determination from a court judge, whether the land can be renamed or not and whether or not the land can be renamed without an AJB letter from the PPAT or PPATS.¹⁴ This must be through the approval of the parties concerned, whether they want to or not to be processed first in court.

If there is a land sale and purchase transaction that causes a case to go to court, before making a decision, the judge must ensure that the incident that was submitted to him has occurred. The judge did not give an answer right away but had to conduct an examination regarding the evidence that the land had indeed been trading underhanded.¹⁵ For cases of buying and selling land where there is no deed of sale and purchase to return the name of the land certificate, the case will be resolved in accordance with the procedures and regulations that apply.

For cases of buying and selling land where there is no deed of sale and purchase to return the name of the land certificate, the case will be resolved in accordance with the procedures and regulations that apply. Based on the judge's decision on the sale and purchase issue without a sale and purchase deed, the judge is of the opinion that the evidence presented is strong enough and the defendant or the defendant's guardian has committed an unlawful act because they cannot come to court.

¹² Dokumen Seksi Penyelesaian Sengketa Kantor Pertanahan Kabupaten Cirebon. (Kamis, tgl 11 Agustus 2022, jam. 11.30 WIB)

¹³ Wawancara dengan Ferawati, SH. Selaku Seksi Penetapan Hak dan Pendaftaran di Kantor Badan Pertanahan Nasional Kabupaten Cirebon. (Cirebon, 2 Agustus 2022. pukul 11.45 WIB).

¹⁴ Wawancara dengan Ferawati, SH. Selaku Seksi Penetapan Hak dan Pendaftaran di Kantor Badan Pertanahan Nasional Kabupaten Cirebon. (Cirebon, 2 Agustus 2022. pukul 11.55 WIB).

¹⁵ Wawancara dengan Ferawati, SH. Selaku Seksi Penetapan Hak dan Pendaftaran di Kantor Badan Pertanahan Nasional Kabupaten Cirebon. (Cirebon, 11 Agustus 2022. pukul 11.15 WIB).

The whereabouts of the Defendant whose whereabouts are no longer known, and if the Defendant cannot appear again before the Notary or PPAT, in order to be able to carry out the land sale and purchase process it will feel valid if the land sale and purchase process is made before the Notary or PPAT, it is enough for the judge to decide and gave permission to the defendant to approach AJB both as a seller and a buyer.¹⁶

In accordance with Article 55 paragraph (1) Government Regulation Number 24 of 1997 that court clerks are obliged to notify the land office regarding the contents of all court decisions that have obtained permanent legal force and decisions of the head of the court which result in changes to data regarding registered land parcels or apartment units. to be recorded in the relevant land book and as far as possible on the certificate and other registers.

IV. CONCLUSION

1. The conclusion that the author can convey is that in a land title transfer, it can be done at the National Land Agency office and must meet the requirements to transfer the name of the certificate. It can be seen that behind the name of the certificate of ownership there are 3 stages, the first is the preparation stage before the sale and purchase is carried out, the second is the stage of making the deed of sale and purchase, and the third is the stage of returning the name of the certificate of ownership. In this study, these stages were not carried out properly, of course, you have to start with the first stage, then you can do the transfer of names. There is no transfer of names without the presence of the first party or legal heirs legal because the first party is to prove that it is true that the land belongs to the first party sold to the second party, because the sale and purchase of land is a private sale without involving PPAT or PPATS which results in the absence of an AJB letter. However, according to custom, the sale and purchase is legal because it is in accordance with the cash and clear principle which is carried out before the village head or customary head or head of customary law.
2. The conclusion that the author can convey from the discussion and results of interviews at the second Cirebon District Land Office in accordance with Article 55 of Government Regulation Number 24 of 1997, when the name of the certificate was returned, it turned out that there was still evidence that was not strong enough that the land had actually been sale and purchase then the next must be processed in court waiting for a decision from a court judge, whether or not the name of the certificate can be reversed without AJB and without the presence of the first party or legal heirs. Whereas the decision from the land court can be reversed with the second party (the new owner of the certificate) making an AJB letter at the PPAT or Notary with the new owner as seller and buyer, then the name of the certificate can be reversed according to BPN procedures.

V. SUGGESTION

1. Advice from the author if you want to buy and sell land, ask those who are more familiar with buying and selling land or about the process of buying and selling land properly, because buying and selling land, as discussed by the author here, buying and selling without AJB means not involving PPAT or PPATS, and in general, buying and selling occurs due to a lack of understanding from both parties of the steps that must be taken so that the buying and selling goes according to the applicable regulations.
2. The author suggests that people can quickly process certificates that are still in the name of the owner's name and be replaced with a new owner so that in the future things that are detrimental both financially and time are not wasted, it is better to process them

¹⁶ Wawancara dengan Ferawati, SH. Selaku Seksi Penetapan Hak dan Pendaftaran di Kantor Badan Pertanahan Nasional Kabupaten Cirebon. (Cirebon, 11 Agustus 2022. pukul 11.30 WIB).

immediately when finished buying and selling in front of the PPAT. Because it is feared that if it will be processed several years later or processed only when it is needed, there will be lost evidence and this will result in incomplete requirements for returning the SHM name.

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