



Supervision of the Protocol of the Deceased Conveyancer in Padang City

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<http://dx.doi.org/10.18415/ijmmu.v6i6.1240>

Abstract

Conveyancer plays an important role in assisting heads of district and city land offices in carrying out activities in land registration process. The provision governing conveyancer is listed in Article 7 of Government Regulation No. 24 of 1997 concerning Land Registration. Based on the data that the author obtained from Padang Land Office, the number of conveyancers in Padang is 122 people. These conveyancers are spread all over Padang where the most locations are in the center of Padang City. The main problems in this study are about: 1) how the implementation and procedures for submitting the protocol of the deceased conveyancer, and 2) how the supervision for submitting the protocol of the deceased conveyancer in Padang City. This legal study employed an empirical juridical approach; i.e. a study that approaches the problem by looking at the prevailing legal norms which then relates it to legal facts that occur in the field. In this study, the data sources were obtained from literature research and field research. The data collection technique was carried out through document study and structured interview. The results of the study will show how the procedure for submitting the protocol of the deceased conveyancer in Padang City and with the obstacles encountered in the procedure.

Keywords: Conveyancer; Protocol; Supervision

Introduction

Indonesia, as a state based on Pancasila and the 1945 Constitution of the Republic of Indonesia, guarantees certainty, order and legal protection, which in essence is truth and justice. Based on the conception of the National Land Law, as can be seen in Article 1 of Law No. 5 of 1960 (Basic Agrarian Law), all earth, water, space and natural resources contained therein are the property of the entire Indonesian nation, which is eternal, originating from the gift of God Almighty (Lucas & Warren, 2003).

In the management of land in Indonesia, especially in land registration activities, the conveyancer is a public official who is a partner of the National Land Agency to help strengthen/ confirm every legal action on the land plots carried out by the relevant subject which is stated in an authentic deed (Rahmi, 2010).. As mandated by Article 2 paragraph (1) Government Regulation No. 37 of 1998 that the task of the conveyancer is to carry out some of the land registration activities by making authentic deeds as proof that certain legal actions regarding land rights or ownership rights over the apartment units have been carried out. It will later become the basis for registration of changes in land data resulting from these legal

actions. The deed made by the conveyancer is the deed of the parties (*partij acte*). It means that the making of the deed is based on the information and data provided by the parties. Thus, the conveyancer is not liable for anything other than what is conveyed by the parties to him/her (Rismayanthi, 2016).

In carrying out the fostering and supervision functions of the conveyancer, the National Land Agency is based on the principle of order to realize the law administration of land administration (Maharani, 2018). The principle of legal certainty, for those who carry out legal actions before a conveyancer relating to the rights to a plot of land, apartment units, and other registered rights, guarantees legal protection for the parties (Fariabi, 2019). Since this guidance and supervision contains principles of law order, legal certainty and legal protection, guidance and supervision are principles of law administration in land administration (Susanto, 2016).

In principle, the guidance and supervision of the National Land Agency for conveyancers is the implementation of the principle of law administration of land administration which aims to maintain the guarantee of a sustainable balance in the legal relations arising from the interests of the user community in order to comply with the rules of law and regulations which contain justice and impose strict sanctions on those who do not obey them/ those who violate them.

As a step for guiding and supervising the conveyancer, the Padang Land Office has provided an explanation of the duties and liabilities of the conveyancer and techniques in making the deeds carried out by the conveyancer in formal and informal meetings. It is intended to avoid mistakes that might be made by the conveyancer in carrying out the tasks and functions. Obeying the rules does not only apply to parties who have legal relations relating to land but it also applies to conveyancers. Conveyancers who do not obey the rules in the field of land administration will also get sanctions. This is regulated in Article 8 to Article 11 of the Regulation of the Head of the National Land Agency of the Republic of Indonesia No. 1 of 2006 concerning Provisions for Implementing Government Regulation No. 37 of 1998 concerning Conveyancer Position Regulations. In this connection, the conveyancer can be dismissed with respect and with no respect.

Regarding the submission of the protocol of the deceased conveyancer, especially in the Padang Municipality area, many heirs and employees of the Padang Municipality land office did not understand how the submission process or protocol appointment was because there were no regulations governing the procedure for submitting the protocol of the deceased conveyancer and about follow-up actions after the conveyancer's death which resulted in the cessation of regulations on the protocol because the conveyancer has passed away or retired. In this case, there are things that must be carried out after a conveyancer passes away.

Research Method

This study employs an empirical juridical approach; i.e. a study that uses a method of approach to the problem by looking at applicable legal norms which then relates it to legal facts that occur in the field (Marzuki, 2017). In addition, this study is categorized as a descriptive study that aims to describe precisely the characteristics of an individual, a particular condition, symptoms or group, or to determine the spread of a symptom, or to determine whether there is a relationship between a symptom and other symptoms in the public (Marzuki, 2017).

Primary data obtained through interviews; i.e. obtain information by asking directly to the parties interviewed, especially people who are authorized, know and are related to the effectiveness of the National Land Agency in supervising a notary/ conveyancer in the working area of Padang City. In this case, the interview is also a method of collecting data by means of communication through contact or

personal relationships between data collectors (interviewers) and data sources (respondents). This communication can be carried out directly or indirectly. The interview system used in this study is a semi-structured interview. Secondary data obtained through literature study.

To facilitate the collection of research data, data collection techniques are carried out as follows:

- a) **Structured interview:** data collection method used to obtain verbal information through structured questions and answers to related parties. In connection with the research topic, the author will conduct interviews with the Head of Land Relations Section, the Head of Data Maintenance and Conveyancer Sub-Section, and the Chairperson of the Padang City Conveyancer Association, the heir of the deceased conveyancer.
- b) **Document study:** research conducted by studying cases related to the problem under study.

In this writing, after the data has been collected, a qualitative analysis is then carried out. That is the descriptions in the study of data collected that does not use numbers but uses sentences based on legislation, the views of legal experts, the views of law enforcement officials, including experience in research.

Results and Discussion

Implementation of the Submission of the Protocol of the Deceased Conveyancer in Padang City

Submission of the protocol of conveyancer who stopped serving, was carried out to the temporary conveyancer who served next in the district concerned. In addition, if the district head is no longer designated as a temporary conveyancer, the Head of the Land Office will then hand it over to the conveyancer whose office in the district concerned and is appointed by the Head of the Land Office. Submission of protocol of special conveyancer is carried out to the next special conveyancer. The protocol submission is included in the Conveyancer Protocol Submission Report which is signed/ witnessed by the Head of the Land Office. If the Head of the Land Office is not legally available, it is signed/ witnessed by the designated officer. The conveyancer, who is appointed by the Head of the Regional Office or Head of the Land Office as the recipient of the protocol, must accept the conveyancer protocol. If the number and volume of the conveyancer protocol is large enough, submission can be carried out to more than one conveyancer that is in the same work area except for special and temporary conveyancers. The conveyancer protocol submission, as referred to in paragraph (2) to paragraph (6), is included in the Conveyancer Protocol Submission Report which is signed/ witnessed by the Head of the Land Office. If the Head of the Land Office is not legally available, it is signed/ witnessed by the designated officer. The conveyor appointed by the Head of the Land Office or Head of the Regional Office as the recipient of the protocol, as referred to in paragraph (2) to paragraph (4), must accept the relevant conveyancer protocol. The conveyor is required to lower the conveyancer nameplate when the person concerned resigns from the conveyancer position.

Letter from the Head of the Land Agency, No. 640 - 1262 dated April 10, 1989 concerning: the issue of the obligation to submit official protocols, stating that in asserting and carrying out the conveyance protocol conveyancer obligations, the National Land Agency issues an order to all Heads of Regional Offices/ Land Offices in All Municipality/ Regencies in throughout Indonesia. It aims to curb

the administration of conveyancer tasks, especially regarding the submission of protocol of conveyancer who has passed away, resigned, or moved to other work areas.

Conveyancer protocol is a collection of original transfer deeds or land rights and other registries/ records relating to the making of the deed. The conveyancer protocol is actually a state archive. Therefore, it must be managed as well as possible so that the storage and submission must be carried out in an orderly manner. Basically, the obligation to surrender the conveyancer protocol belongs to the conveyancer who will move to the work area, the conveyancer who requests to stop working, or the heirs of the conveyancer who passed away.

In connection with the making of the land deed, the submission of the conveyancer protocol from the conveyancer which has a working area of less than 1 (one) working area of the District/ Municipality Land Office is as follows:

- a. Conveyancers who will move work areas or propose to resign are required to submit the conveyancer protocol to other conveyancers whose names are listed in the Decree of the Head of the National Land Agency.
- b. Regarding the conveyancer protocol of a conveyancer who passed away, one of his/her heirs, within one month after the conveyancer passed away, must submit the conveyancer protocol to the Head of the Land Registration Section at the local District/ Municipality Land Office, which is then submitted to the other conveyancers whose names are listed in the Decree of the Head of the National Land Agency.
- c. Particularly for the district head who can still act due to his/her position as Provisional Actor of the Land Deed that will be moved or resigned, the submission of the conveyancer protocol must be made to other sub-district heads who replace him/her at the time of his appointment as the local district head. The submission of the conveyancer protocol is signed/ witnessed by the Head of the District/ Municipality Land Office.
- d. Related to the conveyancer protocol from the district head who passed away, the party who was obliged to surrender it was a staff of the District Office concerned who usually assisted the deceased district chief as the Acting Officer of the Land Deed in making the conveyancer deed. It was submitted to the Head of the Land Registration Section at the District/ Municipality Land Office within one month after the district head passed away. Then, the Head of the Land Registration Section must submit it again to another district head who replaces him/her at the time of his/her appointment.

The submission of the conveyancer protocol from the conveyancer who has a work area of more than 1 (one) working area of the District/ Municipality Land Office is as follows:

1. Conveyancers who will move to work areas and conveyancers that apply to resign must submit the conveyancer protocol to other conveyancers whose names are listed in the Decree of the Head of the National Land Agency.
2. Regarding the protocol conveyancer who passed away, one of his/her heirs, within one month after the conveyancer passed away, must submit it to the Head of the Land Registration Section at

the respective District/ Municipal Land Office. Then it is submitted again to another conveyancer whose name is listed in the Decree of the Head of the National Land Agency.

3. Specifically in the Special Capital Region of Jakarta, in the conveyancer protocol of the conveyancer (not the district head) who passed away, the obligation to submit it is carried out by one of his/her heirs to the Head of the Land Measurement and Registration Division at the Regional Office of the National Land Agency within one month after the conveyancer passed away.

Based on the results of an interview with Mrs. Sivia Septriana, SH as the Chief Staff in the Data Maintenance and Development Section of the Conveyancer of Padang City, she explained that the conveyancer protocol submission report is signed/ witnessed by the Head of the respective District/ Municipal Land Affairs Office. Specifically for the conveyancer protocol submission report in the Special Capital Region of Jakarta, it is signed/ witnessed by the Head of the Regional Office of the National Land Agency, except for the handover of the conveyancer protocol made by the Provisional Actor of the Land Deed Maker which is signed/ witnessed by the Head of the Land Affairs Office in the region each. The conveyancer protocol handover report is sent to the Head of the Regional Office of the Provincial National Land Agency and the Head of the National Land Agency.

According to amendments to Conveyancer No. 37 of 1998 (Government Regulation No. 24 of 2016) referred to as the conveyancer working area is an area that shows the authority of a conveyancer to make a deed regarding land rights and ownership rights on a unit of flats located within. Regarding this work area, there are fundamental changes that have not yet been effectively applied. According to Article 12 paragraph (1) Government Regulation No. 37 of 1998, the conveyancer work area is a working area of the District/ Municipality Land Office. However, this provision has been amended by Government Regulation No. 24 of 2016 so that the conveyancer work area is one provincial area. This new provision provides a significant change. Initially, the conveyancer could only make deeds whose land/ flats were located in one city/ district in accordance with the local Land Office. Then, the coverage area becomes wider than before and is the same as the notary work area.

Related to the appointment of the conveyancer, since the stipulation of the Decree of the Minister of Agrarian Affairs and Spatial Planning of the Republic of Indonesia No.208/KEP-17.3/VIII/2015 dated August 13, 2015 concerning the Conveyancer Work Area, the appointment system regardless of formation was put in place. It means that the conveyancer can be moved in any work area. It is different from the notary formations that are currently in place with a tiered system according to their categories. Appointment of a notary may no longer be carried out at domiciled places (cities/ districts) included in categories A, B and C; except displacement (tiered). Appointment of new notaries is only open to areas of domicile with category D (D: cities/ districts outside the above categories, in accordance with Minister of Law and Human Rights Regulation No. 27 of 2016).

According to the previous provisions, based on Government Regulation No. 37 of 1998, in the case of a conveyancer being appointed (based on a Ministerial Decree) and sworn in/ inaugurated (in the sense: evidenced by the Inauguration Report) or carrying out his/her duties as a notary in a different domicile with the notary's position, the conveyancer's position ceases by itself (Article 8 paragraph (1) letter c). Article 9 further explains that the conveyancer concerned can be reappointed as a conveyancer in the new domicile/ work area. Regarding the dismissal by itself, it does not require a related ministerial decree (Article 25 of the Head of National Land Agency Regulation No. 1 of 2006). The legal consequence is that from the date of dismissal the conveyancer is no longer authorized to make a deed.

As explained above, according to Government Regulation No. 37 of 1998, different domicile/ work area between conveyancer and notary led to the dismissal of the conveyancer by itself. However,

this provision has subsequently been amended by Government Regulation No. 24 of 2016. Provisions in Article 9 paragraph 1 Government Regulation No. 24 of 2016 states that in that case the conveyancer concerned has 2 options to do. The first is to submit a request to move the conveyancer domicile according to the notary domicile to the minister. Second, stop as a notary public at a different position than the position of the conveyancer. If the first option is chosen, according to the provisions of Article 10 paragraph (4), the conveyancer must first be dismissed by the minister; i.e. in the form of a temporary stop. After the minister made a temporary dismissal, the conveyancer subsequently stopped carrying out his/her position. However, the amendment to the Government Regulation did not explain the time period for the temporary dismissal and it caused confusion.

Related to the temporary dismissal, the conveyancer protocol is then submitted to the conveyancer in its working area (Article 27 paragraph (1) Government Regulation No. 24 of 2016). Since the beginning of the appointment, the conveyancer is indeed required to make a statement to accept protocols from other conveyancers. The problem is what if there is no conveyancer who wants to accept the protocol. Article 29 Government Regulation No. 37 of 1998 states that the Head of the Regional Office of the Provincial National Land Agency will appoint a conveyancer who must accept it. Furthermore, the conveyancer protocol handover is included in the conveyancer protocol Handover Report which is signed/ witnessed by the Head of the local Land Office.

The difference between the domicile/ work area between the conveyancer and the notary, on the one hand, requires the conveyancer to propose a change of position according to the notary's position or resign as a notary in the new domicile. On the other hand, the process of moving or resigning here is not just a process. There are procedures and steps that are actually not easy to do. In other words, when this happens, a conveyancer must choose whether to continue to be a conveyancer or stop being a conveyancer and continue as a notary and expect that at least there is a change so that the two positions can follow one another. The notary follows the conveyancer and vice versa the conveyancer follows the notary. However, the current regulation is that the conveyancer follows the notary, but the notary cannot follow the conveyancer.

In the case of Ja'afar SH Conveyancer who passed away on September 12, 2018, the protocol of the late Ja'afar SH Conveyancer, Mkn., was recommended by the notary heir/ Ja'afar Conveyancer to be submitted to the Notary/ Conveyancer Husna Primadona SH, MKn. The process of submitting the protocol of the late Conveyancer Ja'afar SH runs according to the applicable rules and there are no problems. When the deceased passed away, one of the employees of the deceased had known and understood about the procedure. After the deceased passed away, the employee told the Padang City Land Agency Office about the death of the Ja'afar Conveyancer and notified the appointment of the Ja'afar Conveyancer protocol recipient.

In submitting the deceased Ja'afar SH protocol, there were no obstacles because it was in accordance with applicable regulations. However, as of November, the Conveyancer Ja'afar SH signboard had not been replaced with the new Conveyancer signboard. Thus, the Padang City Land Agency Office then checks and informs that the signboard must be replaced immediately. They were concerned about the misuse of the signboard by the employee of the late Conveyancer Ja'afar SH.

Supervision of the Protocol of the Deceased Conveyancer in Padang City

Conveyancers are obliged directly to the conveyancer protocol. However, the reality that is happening in the community today is that not all conveyancers can understand the procedure of conveying the conveyancer protocol and are willing to carry out their obligation to submit the

conveyancer protocol to the conveyancer that has been appointed by the Padang City Land Office to accept the transfer of the conveyancer protocol. This causes confusion for the people who need the conveyancer protocol which should be stored and maintained by a conveyancer appointed by the Regional Supervisory Council. It can indirectly have fatal consequences and can even cause huge material losses for the people who will or still need the deed contained in the conveyancer protocol for legal certainty.

The responsibility of the conveyancer to the conveyancer protocol that has not been left to other conveyancers in this case can be categorized as an unlawful act. Acts against the law here are broadly defined as an act that not only violates the law but also violates propriety, decency or the rights of others and causes harm. This also happened in Padang where a conveyancer who had entered retirement did not submit the protocol to the Land Office to be submitted to another protocol holder conveyancer. This is because the conveyancer who will retire has forgotten its obligations as a conveyancer that has entered retirement. Therefore, the Land Office takes the action of taking the conveyancer protocol to further appoint and submit it to another protocol holder conveyancer.

It is different from the late Conveyancer Desrizal SH. MKn. When he died, no one came to the Head of Office regarding the conveyancer protocol because at that time his family was not in Padang City. In the end, the Padang City Land Agency Office took action by visiting and informing its employees about the Conveyancer Desrizal SH protocol that had passed away so that the employee notified the Conveyancer Desrizal's family to undergo the protocol submission procedure and requested to submit a letter to the Head of the Land Agency Office in the format which has been determined and meets the Head of Office to submit the protocol to the conveyancer appointed by the Head of the Padang City Land Agency Office. In this case, the heir of the late Conveyancer Desrizal SH did not recommend the conveyancer who would accept the protocol, so the Padang City Land Agency Office appointed Conveyancer Irwan Maulana SH. MKn to receive protocol from the late Conveyancer Desrizal SH. MKn.

Besides that, the conveyancer is also entitled to get legal protection. The form of conveyancer position protection and the conveyancer protocol are not explicitly stated because the conveyancer is an official appointed specifically to facilitate the registration/ recording of land rights to the National Land Agency in the case of transitional legal acts, imposition and authorization of land rights. This was confirmed by the existence of a memorandum of understanding between the Indonesian National Police and the Conveyancer Association Police Number: B/1056/V/2006, Number: 01/MoU/PP-INI/V/2006 concerning Development and Enhancement of Professionalism in the Field of Law Enforcement.

As determined in Article 66 paragraph (3) of the regulation of the Head of the National Land Agency, the guidance and supervision of the conveyancer by the Head of the Land Office are as follows:

1. Help convey and explain land policies and regulations as well as technical instructions for carrying out conveyancer tasks that have been determined by the Head of the Agency and the laws and regulations;
2. Check the deed made by the conveyancer and notify in writing to the conveyancer concerned if found a deed that does not meet the requirements to be used as a basis for registration of rights;
3. Conduct an examination regarding the implementation of the operational obligations of the conveyancer.

In carrying out the tasks as a conveyancer or notary, all actions relating to the implementation of obligations in the making of the conveyancer deed will be supervised by the Head of the local Land

Office, including inspection of deed making, procurement and filling protocols and the implementation of all the obligations that have been determined. Therefore, before carrying out duties as a conveyancer, it is advisable to coordinate in advance with the Land Office.

In this case, at each conveyancer deed making, coordination with the local Land Office is aimed at obtaining information about the status of the land for which the deed will be used; whether or not the land has actually been registered or whether or not the juridical data and physical data contained in the certificate are in accordance with the data in the land book at the Land Office. Adjustment of data in certificates and data in the land book is better known as "clean check". It means that a conveyancer must always coordinate with related parties in carrying out the task.

In addition, a conveyancer must also ensure that the making of the deed is actually carried out with the actual circumstances and information of the parties concerned. For instance, the real situation is that in making the deed the parties actually present and sign the deed in front of the conveyancer and it is not carried out at the office but signed at their respective homes. If in the future the supervisor finds such acts, it is categorized as a serious violation and will be a reason for dismissing a conveyancer from the position. In addition, the conveyancer has the potential to be subject to a criminal offense by making false statements in an authentic deed. Thus, matters relating to the making of the deed must contain certainty from the subjects concerned.

Then, even though there is no requirement, it is advisable to do a field check as much as possible to ensure the existence, exact location, and state of the land to avoid things that are not desirable; for instance, disputes and fictitious land. This is important because one of the conditions for making a conveyancer deed is that the land must be free of disputes. If a conveyancer makes a deed for land that is in dispute, the conveyancer has committed a serious violation. It has legal consequences that are not only the threat of revocation of the position held but also the material of investigation by law enforcement officials who can eventually put them in prison. In this case, it means certainty about the object.

There are provisions of the law regarding the period of submission of the deed to the land office by the relevant conveyancer, which is no later than 7 days after the deed is signed. This needs to be taken into account, especially in making the Deed of Granting Underwriting Rights, where the law on mortgage rights expressly regulates the deadline for submitting Deed of Underwriting Right to the land office a maximum of 7 days from the signing of the deed. In this case, it means a certainty in the time limit.

Whatever tasks are carried out in drafting the deed of granting Mortgage Rights must be reported periodically to the National Land Agency. Even when it does not carry out any tasks or the act is zero, it must still be reported to the National Land Agency. In this case, it means compliance in submitting a report.

Conclusions

- a. For a conveyancer who passed, one of the heirs/ family or employees must report it to the Head of the local Regency/ Municipality Land Office within 30 (thirty) days after the conveyancer passed away and the Head of the District/ Municipality Land Office reports the death of the conveyancer to The Head of the Regional Office of the Provincial National Land Agency is accompanied by a proposal to appoint a conveyancer which will be entrusted with the protocol of the deceased conveyancer. Heirs, closest relatives or those who master the conveyancer protocol who passed away must surrender the relevant conveyancer protocol to the conveyancer appointed by the head of office. Submission of the conveyancer protocol that stops serving, not because of death, is carried out to other conveyancers within 7 (seven) working days from the date that the conveyancer stops serving. However, if according to the notification from the conveyancer, there

is nothing is specified, it will be appointed by the Head of the Land Office within 7 (seven) working days from the date of appointment of the protocol recipient.

- b. The heirs of the conveyancer are obliged directly to the conveyancer protocol. However, in reality, not all conveyancer heirs can understand the procedures for submitting conveyancer protocols and want to carry out their obligations to submit conveyancer protocols to conveyancers who have been appointed by the Padang City Land Office to accept the transfer of the conveyancer protocol. This causes confusion for the people who need the conveyancer protocol which should be stored and maintained by a conveyancer appointed by the Regional Supervisory Council. Indirectly, it can have fatal consequences and can even cause huge material losses to the people who will or still need the deed contained in the conveyancer protocol for legal certainty. The liability of the conveyancer to the conveyancer protocol that has not been submitted to other conveyancers in this case can be categorized as an unlawful act. Acts against the law here are broadly interpreted; i.e. an act that not only violates the law but also violates propriety, decency or the rights of others and causes harm. This has also happened in Padang City where the heirs of the deceased conveyancer did not submit their protocol to the Land Office to be submitted to other protocol holders because the conveyancer forgot his/her obligations. Thus, the Land Office takes the action of taking the conveyancer protocol to further appoint and submit it to another protocol holder conveyancer.

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