



Returning the Name of Certificate of Property Right based on Judge Decision in the Regency Indragiri Hulu, Riau Province

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<http://dx.doi.org/10.18415/ijmmu.v8i8.2907>

Abstract

In order to support land registration in accordance with the rule of law, it is necessary to take legal action that can be useful for people who want to transfer names to land transactions such as buying and selling grants and others, so as to provide legal certainty in society, and the names of people. which has obtained land can be listed in the certificate, one of the changes in the name of the land certificate can occur due to a court decision, where the applicant can request the court to order the Land Office to change the name of the applicant, therefore it is necessary to see how the mechanism of transfer of name is court ruling. In this study, the formulation of the problem is formulated, namely: 1. How is the process of changing the name of the certificate of title to land based on the judge's decision in the Indragiri Hulu district, Riau province, case study number: 42/Pdt.G/2017/PN.Rgt? 2. What is the Mechanism of Registering Land Rights Based on the Judge's Court Decision? The theory used in this research is the theory of legal certainty and the theory of authority. The method used in this thesis is a normative juridical approach, the data sources are primary, secondary and tertiary legal materials. The results of the research obtained are that the procedure for the transfer of title to ownership certificates 42/Pdt.G/2017/PN.Rgt at the Land Agency Office of Indragiri Regency, namely: takes 20 days. The mechanism for registering land rights based on court decisions, in this case district court decisions, is more casuistic in nature and depends on the court's decision itself. The interpretation of the competent authority is needed in making decisions regarding the determination of procedures (Issuance, Transfer and/or cancellation of rights) and the legal basis used (PP No. 24 of 1997 or Regulation of the Head of BPN No. 3 of 2011) to carry out land registration based on the court's decision, while the registration of land rights based on the Decision of the State Administrative Court is simpler and more focused than the registration of land based on the Decision of the District Court (Civil).

Keywords: *Notary; Bankruptcy; Disrespectful Dismissal of Notary Public*

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 descendants, and carry out various activities on the ground so that humans are always in contact with the ground. In addition, if viewed from an economic point of view, land is a commodity that has a very high economic value because land has permanent

properties and can be used in the future. The human need for land from time to time is increasing in line with development development, population growth and economic progress.

The imbalance between the increasing demand for land, with the limited availability of land, makes land prices always increase. Given the importance of land for human life and considering that land prices are always increasing, humans always try their best to own and control land in order to meet their needs and improve their welfare. Land in a country cannot be owned, controlled and used freely by humans, but is bound by the provisions set by the government or the state as the ruler of rights in general. The Unitary State of the Republic of Indonesia which is based on the 1945 Constitution regulates the control of land in general in Article 33 paragraph (3) which affirms that "Earth and water and the natural resources contained therein are controlled by the state.

The implementation of the registration of the transfer of ownership of land by way of buying and selling is regulated in the Basic Agrarian Law Number 5 of 1960, namely every transfer of ownership of land must be registered at the local Land Office. The registration of the transfer or transfer of rights is intended so that third parties know that the sale and purchase of the land has been carried out.³ In Article 37 paragraph (1) Government Regulation no. 24 of 1997 concerning Land Registration it is stated that "The transfer of land rights and ownership rights to flat units through buying and selling, exchanging, grants, income in companies and other legal acts of transferring rights, except for the transfer of rights through auction can only be registered if it is proven by deed made by the authorized PPAT according to the provisions of the applicable laws and regulations.

Article 21 of the UUPA which states that it can be seen that basically land ownership rights can only be owned by a single Indonesian citizen, and cannot be owned by foreign citizens and legal entities, both those established in Indonesia and those established abroad with the exception of legal entities. certain legal entities regulated in PP No. 38 of 1963. This means other than a single Indonesian citizen, and the entities indicated in PP No. 38 of 1963. No other party can become the holder of land ownership rights in Indonesia. With such provisions, it means that everyone cannot simply transfer ownership of land. This means that the Basic Agrarian Law provides restrictions on the transfer of ownership rights to land. In order for land ownership rights to be transferred, the party to whom the ownership rights to the land are to be transferred must be an individual Indonesian citizen, or certain legal entities as regulated in PP No. 38 of 1963.

In this study about the process of changing the name of BUDIARTO SEBUL, Male, born in Kelawat, on 03-07-1958, farmer occupation, religion of Islam, address Sungai Banyak Fish, RT/RW 013/005, Kelayang District, Indragiri Hulu Regency. hereinafter referred to as Plaintiff. With ROWADI, male, Islamic religion, farmer occupation, formerly having his address at Sei Pasir Putih village, Kelayang District, Indragiri Hulu Regency, now the address is unknown, hereinafter referred to as the ACCUSED. The legal problem related to this case is that the Plaintiff wants to reverse the name of the certificate of a plot of land that he has purchased from the defendant, the land certificate is still in the name of ROWADI and has not been renamed as in the name of the buyer BUDIARTO SEBUL, but the seller/defendant address/no longer known where he is, the Plaintiff wishes to obtain a decision from the Rengat District Court, which states that the land is legally owned by the Plaintiff case number: 42/Pdt.G/2017/PN.Rgt

Methodology

The research method that will be used is normative juridical. It is said so because this research was conducted to examine the application of the rules or norms in positive law. This research is also called

library research or document study, because this research will mostly be done through library research or better known as studies on secondary data.¹

Discussion

1. Process of Transfer of Title Certificate of Ownership to Land Based on the Decision of the Judge of Indragiri Hulu Regency, Riau Province Case Study Number: 42/Pdt.G/2017/PN.Rgt

In accordance with the provisions of Article 37 PP No. 24 of 1997, the sale and purchase (transfer of rights) relating to land must be carried out before a Land Deed Maker Official (PPAT). Although this term can be interpreted clearly, there are still some who do not understand exactly what Behind the Name is related to the transfer of rights. For land that has been certified, if there is a sale and purchase transaction between the seller and the buyer made before the Land Deed Maker Official, then the name transfer process will be carried out.

What is meant here is changing the ownership status of the seller as the previous land owner to the buyer as the new land owner. The transfer of name process is carried out at the local Land Office where the land is located. When the process is complete, the name of the new owner of the land will be written on the land certificate, namely the name of the buyer, while the name of the old owner is crossed out. Thus, the transfer of names process has been completed so that the buyer is legal as the new land owner. This process usually takes approximately 3-4 weeks at the local Land Office.²

One example of the case of transfer of title to a Certificate of Ownership based on the Judge's Decision at the Land Office of Indragiri Hulu based on decision number 42/Pdt.G/2017/PN.Rgt, where the researcher obtained this process based on interviews with officers from the Land Office of Indragiri Hulu Regency, namely with the following process: following :

1. The applicant named Budiarto Sebul submitted an application for the transfer of title to the Certificate of Ownership based on the judge's decision which he obtained with decision number 42/Pdt.G/2017/PN.Rgt.
2. The officer explains to the applicant that in accordance with Article 37 PP No. 24 of 1997 which states "The transfer of rights to land and ownership rights to apartment units through buying and selling, exchanging, grants, income in the company and other legal acts of transferring rights, except for the transfer of rights through auction, can only be registered if it is proven by a deed. made by the authorized PPAT according to the provisions of the applicable laws and regulations.
3. The process of changing the name of the certificate of title to land can be carried out if the person concerned has fulfilled the requirements or completed the required files. This is regulated in PERKABAN RI NO. 1 of 2010 concerning Service Standards and Land Regulations (SOP) Article 6 Paragraph (2) which states "requirements that must be met by the applicant so that his application can be processed further in the form of land documents and documents related to land as listed in Appendix II of this regulation."The files submitted by the applicant to the Land Office (BPN) to carry out the name transfer process based on the judge's decision are as follows:

¹ Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana, Jakarta, 2007, pg. 35.

² Interview with land rights registration officer at the Indragilir Hulu Land Office, On April 14, 2021.

- a. Original certificate
 - b. Photocopy of KTP and KK of husband and wife
 - c. Copy of Land and Building Tax Payable Tax Return (SPPT PBB) for the year concerned
 - d. Court Decision number 42/Pdt.G/2017/PN.Rgt.
4. The land registration section of the Indragiri Hulu Land Office receives the documents provided by the applicant where the documents are carried out for further processing.
 5. The documents provided by the applicant are processed as maintenance of land registration data and recorded in the land book and certificate of change, because the land has been registered (certified) and there is no order for cancellation/revocation of rights (Article 55 paragraph (2) PP 24 of 1997)
 6. After being combined with PerkaBPN No. 3 of 2011, processed as data recording of the transfer of rights based on court decisions.
 7. The name of the certificate for the name of the applicant Budiarto Sebul has been changed by the local land office for 3 months.

2. *Mechanism of Land Rights Registration Based on Court Decision*

In the registration of land rights based on court decisions that have permanent legal force, there are two kinds of schemes, namely registration of land rights based on District Court decisions and registration of land rights based on court decisions of the State Administrative Court. Therefore, the researcher in this case tries to explain the scheme as follows:

1. Land Rights Registration Scheme Based on District Court Decision
2. BPN RI is obliged to implement court decisions that have permanent legal force, unless there is a valid reason not to implement them.
3. The valid reasons as referred to in paragraph (1) include:
 - a. against the object of the decision there are other decisions that are contradictory;
 - b. the object of the decision is being placed for confiscation of collateral;
 - c. against the object of the decision being the object of a lawsuit in another case;
 - d. other reasons regulated in laws and regulations.
4. Court decisions in this case that already have permanent legal force (*Inkracht Van Gewijsde*) are expected to be implemented voluntarily by the parties convicted of carrying out the decision. This is in order to maintain the authority of the judiciary, but it is not uncommon to find in practice that the party who must carry out the judge's decision does not want to voluntarily fulfill the contents of the decision so that in the end they must be executed. In principle, the judge's decision is only "condemnatoir" with an order containing only punishments that can be executed, such as a sentence

containing the surrender of an item, vacating a plot of land, paying a sum of money, or committing a certain act and so on.³

Mechanisms for land registration, which actually do not have standard implementation standards, even tend to have multiple interpretations and depend on court decisions. The article also indicates the synchronization of Article 116 paragraph (2) of Law no. 51 of 2009 concerning the Second Amendment to Law no. 5 of 1986 concerning the State Administrative Court which stipulates that: "If after 60 (sixty) working days the court's decision which has obtained permanent legal force as referred to in paragraph (1) is received by the defendant not carrying out his obligations as referred to in Article 97 paragraph (9) letter a, the disputed state administrative decision has no legal force anymore". The two articles provide a time limit for the authorized official to implement the court's decision, in this case the Administrative Court Decision which has permanent legal force.⁴

Conclusion

1. Procedures for Transfer of Title Certificates to Land Titles at the Land Agency Office of Bulukumba Regency, namely: based on the judge's decision, namely Registration of Land Rights Certificates, Examination of Files at the Land Office, Payment of Land Rights Registration Fees, the process of transferring names based on the judge's decision takes 20 day.
2. The mechanism for registering land rights based on court decisions, in this case district court decisions, is more casuistic in nature and depends on the court's decision itself. The interpretation of the competent authority is needed in making decisions regarding the determination of procedures (Issuance, Transfer and/or cancellation of rights) and the legal basis used (PP No. 24 of 1997 or Regulation of the Head of BPN No. 3 of 2011) to carry out land registration based on the court's decision, while the registration of land rights based on the Decision of the State Administrative Court is simpler and more focused than the registration of land based on the Decision of the District Court (Civil).

Suggestion

1. The process of transferring the title to land rights certificates at the Land Office of Indragiri Hulu Regency should improve services in terms of time efficiency and increase in human resources, so that the community can enjoy good services.
2. It is necessary to synchronize the laws and regulations governing the registration of land rights by BPN, especially the registration of land rights based on court decisions so that there are no differences in viewpoints so as to provide legal certainty for authorized officials and relevant stakeholders in the implementation of land rights registration based on court decisions. The idea of establishing a special court for land should also be considered so that there is no dualism in the competence of the judiciary (the District Court and the State Administrative Court) that handles land cases.

³ Mulyadi, Lilik. (2009). *Putusan Hakim Dalam Hukum Acara Perdata (Teori, Praktik, teknik membuat dan permasalahannya*. Bandung: Citra Aditya Bakti, pg. 377.

⁴ Article 3 paragraphs (1 and 2) Regulation of the State Minister of Agrarian Affairs/Head of BPN No. 9 of 1999.

References

Article 3 paragraphs (1 and 2) Regulation of the State Minister of Agrarian Affairs/Head of BPN No. 9 of 1999.

Interview with land rights registration officer at the Indragilir Hulu Land Office, On April 14, 2021.

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Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana, Jakarta, 2007.

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