



Registration of Transfer of Property Rights to Land Based on Exchange in Dharmasraya District

Julia Tika Sari; Kurnia Warman; A. Irzal Rias

Universitas Andalas, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v9i8.3971>

Abstract

Soil is one of the most important parts of human survival. In addition to land as a place to live, land is also a place to find fortune, therefore every human being tries to control a piece of land for the necessities of life. One of the arrangements for the transfer of land rights known in land legislation in Indonesia is the Land Swap. Substantively, the exchange is part of the engagement that was born from the agreement, therefore it is subject to the principle of freedom of contract, but because the object is land rights, in its implementation it must comply with the formal conditions stipulated in the legislation in the field of land law. Then in the transfer of land rights regarding proof that land rights are transferred, it must be proven with a deed made by and before the Land Deed Making Official (PPAT). the parties must be careful in looking at the certificates that have been received from the splitting process and not re-matching what was received with the condition of the land under control. 2) To find out how the process of collecting BPHTB on land and/or building swaps, i.e., taxpayers are required to calculate the amount of tax, pay their own tax payable in accordance with applicable tax regulations, so for simplicity and to provide convenience for taxpayers, a tax rate is set at 5% (five percent). 3) To Know the Process of Changing the Name of a Certificate based on Exchange in Dharmasraya Regency It can be seen that in the process of transferring the name of a certificate of ownership in exchanging land there are 3 (three) stages that must be carried out, namely: (a) The preparation stage before making a sale- buy land; (b) The stage of making the deed of exchange; (c) The stage of changing the name of the land certificate that was exchanged. The type of research used in this research is Juridical Empirical, namely research conducted directly in the field through interviews to obtain primary data. In addition, literature research was conducted to obtain secondary data.

Keywords: *Transfer of Ownership of Land; BPHTB Tax; Exchange*

Introduction

Land is a very complex matter because it involves many aspects of people's lives, the increasing number of people, the need for land also increases, even though the land area in the territory of the Indonesian state that can be controlled by humans is very limited, while the number of people who need land is increasing. Thus, the land problem for the past few years, especially in urban areas, seems to still lead to the arrangement of ownership of land rights in connection with the increase in development.

The purpose of land registration according to PP No. 24 of 1997 Article 3 PP No. 24/1997 are:

1. To provide legal certainty and legal protection to holders of rights to a parcel of land, apartment units, and other registered rights so that they can easily prove themselves as holders of the rights concerned;
2. To provide information to interested parties including the Government so that they can easily obtain the data needed to carry out legal actions regarding registered land parcels and apartment units;
3. For the implementation of orderly land administration.

Land rights can be transferred to other legal subjects without the will of the land rights holders themselves, this can occur because there are legal events such as the death of the land rights holders, as a result the land rights owned are transferred to their heirs, so that the transfer of rights to land rights land that occurs due to the process of inheritance. While land rights occur because they are transferred with the will of the holders of land rights themselves to make a transfer of their rights, the transfer of land rights like this usually occurs because of the legal actions of the holders of land rights, such as buying and selling, grants and exchanges.

The transfer of ownership rights to land by way of exchange means the transfer of a land right from one party to another. In contrast to the transfer of a right, the transfer of a right indicates the existence of a deliberate legal act carried out by one party with the intention of transferring his property rights to another person. Thus, the transfer of property rights is known or desired by the party who entered into the agreement on the transfer of land rights.

The implementation of the registration of the transfer of ownership of land by way of exchange is regulated in the Basic Agrarian Law Number 5 of 1960, the implementation of which is regulated in Government Regulation Number 24 of 1997 concerning land registration. Any transfer of ownership rights to land must be registered at the local land office.

The transfer of ownership rights to land by way of exchange means the transfer of a land right from one party to another. In contrast to the transfer of a right, the transfer of a right indicates the existence of a deliberate legal act carried out by one party with the intention of transferring his property rights to another person. Thus, the transfer of property rights is known or desired by the party who entered into the agreement on the transfer of land rights.

The implementation of the registration of the transfer of ownership of land by way of exchange is regulated in the Basic Agrarian Law Number 5 of 1960, the implementation of which is regulated in Government Regulation Number 24 of 1997 concerning land registration. Any transfer of ownership rights to land must be registered at the local land office.

The transfer of ownership rights to the land can only be proven by the deed. This legal act is commonly called "transfer of name." Any agreement that intends to transfer land rights must be proven by a deed of the Land Deed Making Official (PPAT). So the exchange of land rights must be done before the PPAT. As evidence that there has been an exchange of land rights, PPAT makes a deed of exchange. The deed of exchange is a requirement for the transfer of the name of the land certificate from the first party to the second party.

One example of a case study on the Certificate of Ownership No. 2764/Sungai Kambut, Date of measuring letter 02 October 2018, with Number 1886/2018, Area 10,730 M2 in the name of Emiarni with Certificate of Ownership No. 2765/Sungai Kambut, Date of measuring letter 02 October 2018, with Number 1887/2018, Area 10,730 M2 in the name of Darwanto which before the exchange, each of them had carried out a transfer process with a deed of sale and purchase from the previous first party to each each of the parties mentioned above before the PPAT in Dharmasraya Regency.

After several years, the parties realized that each of the map drawing certificates did not match the land that had been controlled by each party. Dharmasraya Regency Land Affairs and each party did not match the results of the certificate issued from the Dharmasraya Regency Land Office with the land controlled by each party. After knowing the difference, then the parties make an agreement by making an underhand agreement letter with sufficient stamp duty which contains an agreement to exchange the certificate without compensation and each party has agreed, then the certificate exchange process will be carried out at the Land Deed Making Officer's Office (PPAT) on October 18, 2019.

That the conditions for the exchange deed process, one of which is to carry out Tax Verification at the Regional Finance Agency (BKD) Office and the Parties have taken care of the BKD office and the results from the BKD office state that they are required to pay Land and Building Rights Acquisition Fees (BPHTB) and Taxes Income (PPH) where one of the parties objected to it because they felt they did not sell and received compensation from each party.

From the description of the background above, so that researchers are interested in conducting research by choosing the title: "**Registration of Transfer of Ownership of Land based on Exchange in Dharmasraya Regency**".

Research Methods

The approach method used in discussing this research problem is an empirical juridical approach. The juridical approach is used to analyze various laws and regulations related to the registration of the transfer of ownership rights to land based on exchange. While the empirical approach is used to analyze the law which is seen as patterned community behavior in people's lives who always interact and relate to social aspects. Thus the empirical juridical approach is a legal research method that seeks to see the law in a real sense or it can be said to see, examine, how the law works in society.

Research Result

Based on the research that the author conducted with Mr. Darwanto and Ms. Emiarni in Nagari Sungai Kambut, Pulau Punjung District, Dharmasraya Regency, West Sumatra Province, in 2015 Mr. Darwanto and Ms. Emiarni had purchased a plot of land from the First Party with a Certificate of Ownership Number 2764 and Number 2765 which is located in Nagari Sungai Kambut, Pulau Punjung Subdistrict, Dharmasraya Regency where both parties purchased the plot of land adjacent to each other.

Furthermore, Mr. Darwanto and Ms. Emiarni explained that the land was still in the state of the Parent certificate, which means it had not been divided into each plot, therefore both parties came to the Land Office of Dharmasraya Regency to carry out the process of solving the certificate. Mr. Darwanto and Ms. Emiarni that the parties did not register procedurally through the existing registration counter, the parties carried out the resolution process by asking for help from persons at the Dharmasraya Regency Land Office and the parties did not re-check the certificate and did not see the results of the certificate, which had been broken up due to the ignorance of the parties, for years they did not know the difference between the certificates, so what the parties gave to the Dharmasraya Regency Land Office, the certificate was only accepted without checking the size drawing on the certificate.

Mr. Darwanto and Ms. Emiarni went to the office of the Land Deed Making Officer (PPAT) and consulted what steps would be taken so that the certificate received was in accordance with the actual or controlled land and after PPAT saw the certificate and land then PPAT saw that there was also no compensation then PPAT recommends exchanging the Certificate of Ownership No. 2764/Sungai Kambut, Date of measuring letter 02 October 2018, with Number 1886/2018, Area 10,730 M2 in the name of Emiarni with Certificate of Ownership No. 2765/Sungai Kambut, Date of measuring letter 02 October 2018, Number 1887/2018, Area 10,730 M2 on behalf of Darwanto by following the procedures in the transfer of land rights.

PPAT conducts inspection of the certificate of land rights, which is necessary to ensure the suitability of the technical and juridical data between the land certificate and the land book at the Land Agency Office. The inspection of land rights certificates is also carried out by PPAT which aims to ensure that the land that is the object of the exchange is not involved in a legal dispute, is not guaranteed, is not being confiscated by the authorities, and there is no blocking. Where if there is a record in the land book in the Land Office of Dharmasraya Regency, then the parties are obliged to first clean up the record. If the record is in the form of a block, then the block must be lifted first. Because without this process exchange will not be possible. In this case, the First party must also include a statement that the land object being exchanged is not in a legal dispute.

In addition to checking the certificate of land rights at the Dharmasraya Regency Land Office, PPAT will then examine the PBB Tax Payable Notification Letter (SPPT). This check is carried out to ensure that there are no arrears in PBB payments. At the same time to calculate the costs and taxes that are the obligations of each party. Where the calculation of these costs can be done based on the Sales Value of the Tax Object (NJOP).

After the inspection is complete, the next step is for PPAT to ask the parties to complete the documents first before the deed of exchange is made by PPAT, where the requirements are as follows:

- a. The original certificate to be exchanged.
- b. Photocopy of the marriage book of the parties
- c. Photocopy of Identity Card (KTP) of each party.
- d. Photocopy of Family Card (KK) of each party.
- e. Regional Tax Payment Letter of Customs on Land and Building Rights Acquisition (SSPD-BPHTB).
- f. Tax Payment Letter (SSP).
- g. Land and Building Tax Payable Tax Return (SPPT PBB).

The parties have completed the data and have come to the office of the Regional Finance Agency (BKD) to request a letter of deposit for local taxes on land and building rights acquisition fees (SSPD-BPHTB). and the parties have received the letter from the Regional Finance Office (BKD) with the result that the parties are subject to tax respectively with the provisions of PPH tax by Mr. Darwanto and BPHTB tax by Ms. Emiarni and taxes must also be paid to the 2 (two) certificates which where the parties have explained that the land was only exchanged, no compensation was incurred there due to the negligence of the parties not to check the certificates received earlier. If the above conditions are complete and the tax has been paid or deposited to the Bank, the parties submit it to the PPAT and then the PPAT performs the certificate exchange process by making a deed of exchange between the parties and the PPAT reads the contents of the deed to the parties concerned and provide an explanation of the contents and purposes of making the deed in the presence of at least 2 (two) witnesses from the PPAT Party and the registration procedures that must be carried out subsequently in accordance with applicable regulations.

If the making of the deed of exchange has been completed, the PPAT then submits the files of the deed of exchange to the Land Office of Dharmasraya Regency for the purpose of changing the name of the certificate to the name of the second party as the new owner of the land. That the submission of the documents must be carried out no later than 7 (seven) working days after the deed is signed. Based on the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 1 of 2010, the process of changing land rights / the process of changing the name of the certificate of land rights will be described as follows, namely after making the deed of exchange, the PPAT then submits the file of the deed of exchange to the Office of the Agency National Land, for the purpose of changing the name of the certificate, not later than 7 (seven) working days from the signing of the deed of exchange of land.

The authority of a Notary as a PPAT in the transfer of land rights through the exchange described above is only carried out when the interested parties come to the Notary's office. Notaries as PPAT are only passive, namely waiting, receiving and providing services to the parties who come to the Notary's Office.

The files that must be submitted to the Dharmasraya Regency Land Office to carry out the transfer of names are as follows:

- a. Cover Letter from PPAT.
- b. Application for change of name signed by PPAT.
- c. Power of Attorney signed by the power of attorney, namely the Second Party and PPAT.
- d. Original and photocopy of Land Rights Certificate.
- e. The PPAT exchange deed is complete and has been initialed by each party along with 2 (two) witnesses along with the PPAT signature.
- f. Photocopy of Identity Card (KTP) and Family Card (KK) which are still valid and legalized by the competent authorities.
- g. Photocopy of Identity Card (KTP) and Family Card of Witnesses.
- h. Copy of PPAT Identity Card (KTP).
- i. Photocopy of the Marriage Book of the parties.
- j. Proof of payment of Income Tax (PPh) payment.
- k. Proof of payment of Customs on Acquisition of Land and Building Rights (BPHTB).
- l. Photocopy of land certificate which has been validated by BPN.
- m. Proof of payment of Land and Building Tax for the last year.

References

Books

- A. Sri Sabarini, Land Ownership Structure, Problems and Prospects, Projustitia (Number 1 Year VII, January 1989), p.5.
- Adrian Sukedi, Transfer of Land Rights and its Registration, Ed.1,Cet.2, Sinar Graphic, Jakarta,2008,p.143
- I Wayan Suandra, Indonesian Land Law, Jakarta: PT.Rineka Cipta, 1994, p.11.
- Muchsin, SH, Imam Koeswahyono and Soimin, Indonesian Agrarian Law in Historical Perspective, Bandung: PT Refika Aditama, p.53
- R. Atang Ranumiharja, Development of Agrarian Law in Indonesia, Tarsito, Bandung.
- Supriadi, SH., M.HUM, Agrarian Law, Sinar Graphic, Jakarta, 2008, p.1.
- Sri Winarsih, PPAT Function in Land Rights Registration, Yuridika Vol.18 No.4 July-August 2003, p. 366.
- Urip Santoso, Agrarian Law and Land Rights, Kecana, Jakarta, 2007. pp. 91-92.
- Wantjik Saleh, Your Rights to Land, Jakarta : Ghalia Indonesia, 1987, p. 7.

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).