

Legal Aspects of Sale of Land Unregistered

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3 Abstract

The principle of land law in Indonesia is publicity. Meaning publicity is every ground must be registered in order to meet the legal aspect, as legal evidence. The legal basis for the obligations stipulated in the land registration Regulation No. 24 of 1997 so that the land rights registered and certified. Therefore, the right to land that was born after 1997 required to be registered, while the lands that were born before 1997 only uses the deed of land deed officials certifying the legality of the land.

Keywords: Land Law, legal aspect of registration

1. Introduction

Soil is the embodiment of existence and for each individual region and country, as it is understood that Indonesia as an agricultural country and agriculture where as a source of livelihood for the people of Indonesia. Ground concerning livelihood of the people that get a special protection of the state, in Article 33 of the Constitution of 1945 subsection (3) states that "earth and water and natural resources contained therein shall be controlled by the state and used for the greatest prosperity of the people".

The meaning of Article 33, paragraph 3 of the Constitution of 1945 substantially at the state preserve and protect the central aspects of the soil, water and natural resources concerning the lives of many people in order to achieve prosperity of the people.

Indonesia is a country of law, as stipulated in Article 1 Paragraph 3 of the Constitution of the Republic of Indonesia Year 1945 a third amendment that Indonesia is a State of Law. The concept of State of Law was originally developed in Continental Europe, among others by Immanuel Kant, Paul Laband, Julius Stahl, Fichte, and others using the German term, namely "rechtsstaat". Indonesia interpret state of law as law enforcement, public justice and sovereign government.

In the history of its development, administration legal of land is less well known by the public especially the Indonesian community or customary known as customary law which is based on trust or mutual trust, so that society considers all activities regarding the land does not need to be registered and tend to omission. Activities related to land normally is the transition of land to others such as the sale and purchase, exchange, transfer of rights agreement, waiver, conveyance, auctions and grants.

The provision of legal certainty in the field of land in the first place requires the availability of the written law, fully and clearly implemented in a manner consistent with the spirit and content of its provisions. In confront the concrete cases, also required the implementation of land registration that allows the holders of land rights to easily prove their rights to the land under their control. For interested parties such as prospective buyers and prospective creditors to obtain the necessary information mengenai land that became the object of a legal act to be performed. For the government to implement land policy (Soedharyo Soimin, 2004:159).

Since the enactment of Law No. 5 of 1960 on Agrarian provisions, then there has been a fundamental change in the agrarian law in Indonesia, especially in the field of land law, called the Law of the Land, which is among the government and the public is also known as the Agrarian Law. So it can be said as well about the fundamental changes in the structure of the legal device, the conception underlying, as well as its content, which is expressed in the "Opinion" legislation should be in conformity with the interests of the people of Indonesia and meet anyway their need according to the demand of the times (Boedi Harsono, 2005:1).

Article 1 of Law No. 5 of 1960, which states that the entire territory of Indonesia is the unity of the homeland that consists of all the people of Indonesia are united as a nation of Indonesia. This means that the soil across Indonesia is a collective right of the people of Indonesia and eternal as the customary rights of indigenous peoples. From the above understanding Nations Rights of Indonesia contains two elements, namely, a) elements belonging together that is civil, but that does not mean the right of ownership in a juridical sense, common ground of all the people of Indonesia have united into a nation of Indonesia (Article 1 (1) of Law No. 5 of 1960); b) The element that is a public authority which is to organize and lead the acquisition and use of the land that belongs together (Arie S. Hutagalung, 2000:21).

Tenure on the ground as the object of the National Land Law include, 1) the right of the Indonesian people, contains 2 elements, namely, a. Elements of a civil nature belong together but that does not mean the right of ownership in a juridical sense, common ground of all the people of Indonesia who have been united into a nation of Indonesia as in Article 1 (1) of Law No. 5 of 1960 in this statement indicates that communalist public nature of the conception of the National Land Law; b. elements which are public authority, task to organize and lead and the use of the land that belongs together; 2) Land tenure rights of the State, it gives the authority to

control the physical and use such land rights because it solely as a public authority as defined in Article 2 of Law No. 5 of 1960; 3) the customary rights of indigenous people, land rights are still recognized throughout ulayar rights is still alive, its implementation is based on the provisions of No. 5 of 1960 and development interests are held at this time; 4) The rights of individuals, including, rights to land, land waqf property rights, security rights over land (encumbrance) and property rights on apartment units (Arie S. Hutagalung, Markus Gunawan, 2009:22).

Problematic frequent of buying and selling land is unregistered, because the land is not registered so. Referred to understand the dispute is a dispute between the parties to an object in which there are some rights and obligations and should be completed by kinship or litigation and administrative paths in the authorities.

2. Research Methods

Research is a principal means in the development of science. It aims at uncovering the truth systematically, methodologically, and consistently, including legal research. As a sui generis science, which means legal science as a separate science, legal science has its own characteristic that is normative (Philip M Hadjon and Tatik Sri Djatmiati, 2005: 1). Thus, the research method in legal science also has its own method. As a consequence, research method and procedure in natural sciences and social sciences cannot be applied in the legal science (Peter Mahmud Marzuki, 2006: 26).

The research type of this paper is the normative-juridical type using the normative legal research method, that is reviewing and analyzing legal materials and legal issues related to the problems studied. This study was conducted to solve the emerging problems, while the results to be achieved is the prescription of what to be done to resolve the problem.

The approach used in this study is the historical approach and conceptual approach. The historical approach enables the researcher to understand more deeply the law concerning a system, institution, or a specific legal regulation so it can minimize the mistakes, both in the understanding and application of an institution or a specific legal provision. The currently valid legal order contains the elements of the past legal order and forms the new components of the future legal order.

The historical approach is applied by examining the background of what is learned and the development of the legal issues encountered. This research is to trace the history of civil law in Indonesia. On the other hand the researcher also looks for the philosophy of legal dynamics from time to time like a study of land law in Indonesia.

The conceptual approach is an approach that starts from the views and doctrines in legal science. The view and doctrine will find an idea that provides legal understanding, legal concepts and legal principles that are relevant to the legal issues encountered in this study. Sources of legal materials used in this study is the Primary Legal Materials, that is the authoritative legal materials, which means that the legal materials have the authority, which consists of legislation, official records or treatises.

In this research, legislation as the primary legal materials is the Constitution of the Republic of Indonesia Year 1945 (UUDRI 1945) and Law No. 5 of 1960 on Agrarian provisions. Secondary legal materials cover all publications of law which are not official documents. This legal publication includes the legal text books, theses, dissertations, dictionaries, and the commentaries on court decisions, also the experts' legal opinions published in journals, magazines or the Internet

3. Result and Discussion

Historical of land registration in Indonesia

Regulation of the land / agrarian in Indonesia have been there before Indonesia's independence, ie since before the colonial era. At the time of the royal about land regulations have been set by the decision of the King, at which time the ownership of the land solely owned by the King and his subordinates while the people are only given the authority to work the land / paddy field with a profit-sharing system with the King through an application procedure to the King and only applies to tenants only.

After a time when the Dutch came to Indonesia Indonesian territory still controlled by the king. Regarding ownership of land still controlled by the government and it's just that people are no longer just as a tenant, but also given the right to rent by the King, known as Landrente that ground rent king, not the lease of government land, at that time farmers or people simply acting as a tenant rather than as tanah.pada owners over that time also began to emerge a land registration system that is limited to the lease of land by peasants and then the next couple of years to grow and start to be leased to the private sector to a specific period.

It likewise justified by the opinions Erman Rajagukguk that policies lease system of land issued by the government of Raffles (during the British colonial rule) or the Governor General Van Der Cappelen (in the Dutch

colonial administration) although often campaigned as an attempt to change the fate of farmers how to reduce the power of regents and officials level on the other, and unleash the power of their land, but the motive really is to liberalize the economic system in Java, and make the land as a commodity, in order to attract foreign capitalists, who are able to invest and exploitation in the colonies (Erman Rajaguguk, 1995: 13).

In 1854 the Dutch government revalued agrarian legal institutions by imposing Regeringsreglement and 1870 also Agrarische Wet and Agrarisch Besluit. The aim is to ensure the ownership of the indigenous population of indigenous land or customary rights, although not absolutely protect the rights of the people there are at least some recognition. Dutch agrarian law at the time was not an administrative nature, because in principle does not regulate the procedure of transfer of rights based solely on a belief that does not provide certainty and legal protection ; does not regulate the procedure of land tenure; not regulate evidence of land rights. So it is deemed necessary, the Government issued regulations regarding Overschrijvings Ordinance (Ordinance Thirdly). The goal is to reorganize the provisions of the registration rights and reorganize the provisions of the transfer tax.

Furthermore, to achieve legal certainty and effectiveness, the government formed Law No. 5 of 1960 on the Basic Regulation of Agrarian or abbreviated BAL. Basically the establishment of Law No. 5 of 1960 one of which aims at laying the groundwork to provide legal certainty regarding the rights to land for all the people, to have carried out land registration in every land throughout Indonesia, meaning it has provided the basics to create certainty law of the rights to land for the people of Indonesia, especially for the farmers as the public can be protected rights.

Setting land registration includes registration for the first time, as well as for registration of transfer of land rights, implementation of land registration previously set out in Chapter III of Article 12 of Government Regulation No. 10 of 1961, whereas in force at present, provided for in Article 11 and for registration of transition land rights stipulated in Article 19 of Regulation No. 24 of 1997. Registration of land divided into two parts, namely a) the registration of land for the first time to communally held land that has not been registered, and; b) registration of transfer of land rights.

Obligations and land registration order also applied to the transition of land rights in the form of purchase, inheritance, donation, exchange and so forth. Mandatory registration of land property rights stipulated in Article 23 of Law No. 5 of 1960, which is 10 Property rights, and any transition, abolishment and assignment to the rights of others must be registered according to the provisions referred to in Article 19 of Law No. 5 of 1960, 2) The registration referred to in subsection (1) is a powerful tool pebukitan regarding the abolishment of property rights as well as the validity of the transition and the imposition of such rights.

In the land law known two land registration system, namely a) Registration of Titles, is a system of registration of rights. In the registration of titles, each recording rights must be evidenced by a deed, but in organizing the registration is not aktanya listed, but his rights were created; b) Registration of Deeds is the deed registration system. In this system, the deed is a deed and therefore juridical data that is listed Land Registration Officers (PPT). Applicants Land officials are passive and do not test for the accuracy of the data referred to in the deed listed.

Based on Government Regulation No. 10 of 1961 as amended by Government Regulation No. 24 of 1997 on land registration, land registration system used was the system of registration of rights. In the system of registration of rights, those recorded in the land book are rights holders on the land until it can be proven otherwise

Rights registration system can be seen from the land book as a document that contains data on the juridical and physical data collected and presented, and the issuance of certificates as proof of rights letter listed. Bookkeeping in the land book and recording the measurement certificate that is proof that the holder of the rights concerned and their rights and areas of land described in a letter as a legal measure has been registered (Erman Rajaguguk, 1995:221).

Right transition from Purchase Agreement

The transition of land rights as the object of purchase is born of an agreement, the definition of a contract or agreement originated from engagement as stipulated in the Civil Code book III, the notion of engagement is a legal relationship of the wealth of property between two or more parties, which entitles a party to demands the achievement of the other, while the other parties are required to meet that demand. And some scholars who define engagement as set forth in the book III of the Civil Code as the legal relationship in the field of property law, in which on the one hand there is the right and on the other there is an obligation (J.Satrio,1993:12).

Meanwhile, according to Mariam Darus Badruzaman, engagement is the relationship between two or more people, located in the property, with one party entitled to the achievement and the other party must fulfill these achievements. Inside there are two sides of the engagement, the first party entitled to achievement and both shall provide prestasi.Perikatan itself can occur because of two things: the treaties and laws.

Civil Code book III of engagement therein second chapter of engagement-engagement which is born of the agreement or contract, Subekti distinguish engagement and agreement as follows: Engagement is an abstract event, while an agreement is a concrete legal events. Meanwhile, according to Article 1313 of the Civil Code of agreement or contract is an act by which one or more persons bind themselves to one or more other people.

According to R. Setiawan in addition incomplete formulation is also very broad. Incomplete because it only mentions unilateral approval only. Very spacious because he used the words of the act included representatives from the voluntary and act against the law, therefore it must needs be held improvement regarding the definition is: The act should be interpreted as a legal act is the act that is intended to lead to legal consequences, adding words or mutually bound themselves to in Article 1313 Civil Code, so that the formulation be: consent is a legal act in which one or more persons bound themselves or mutually bound themselves to one or more persons (R. Setiawan, 1979:42).

Agreement is a legal relationship between two or more parties based on an agreement to give rise to legal consequences (Sudikno, 1996:103-104). While J Satrio provides definitions raises agreement and contains provisions of rights and obligations between the two parties, or in other words, the agreement contains engagement (J. Satrio, 1992:3).

Agreement of buy and sell

It is called buying and selling if the object sold has been transferred from the seller to the buyer. While the purchase agreement if the object that is traded has not been transferred or will switch at a time will come when the conditions have been met. The purchase agreement will be selling if the conditions are met and the object to be traded has been transferred to the buyer (MR Tirtaamidjaja, 1970: 24).

The terms of the purchase agreement that includes the terms specified in Article 1320 of the Civil Code, for the validity of the parties' agreement must meet these requirements under this Agreed those who bind themselves, Skills to make a commitment, a certain thing and a cause which is not prohibited law. While the principles in the agreement are subject to Article 1338 of the Civil Code, namely Konsensualitas principle, principle of freedom of contract, Pacta Sunt Servada Principles, Principle of Balance and Good Faith Principle.

The main of principle is that there are intermediate selling the rights attached to the owner, it means a person has legal force as the land owners. Alas property rights contains legal consequences, so that the legality of buying and selling if the subject of legitimate law as rights owners and selling through the mechanism agreed upon and defined by law. ⁴

Transfer of right which is subject to customary law, there are two important things to be observed, namely a) transfer of rights must be in cash and bright, that the seller delivers the goods according to the price agreed and immediately receive money, while the direct buyer receives the goods. The transition should be carried out dihadapn competent authority (usually in the presence of the village chief or head of Alliance Customary Law) in the presence of several witnesses;

b) The guarantee of chiefs / legal community / village so that the rights of heirs, the neighbors (Buren recht) and fellow members of the tribe (naastings recht) was not violated when land rights will be transferred either sold off, sold yearly or sold liens , If the transaction or transfer of land rights is no support (guarantee) of chiefs / legal community / village, then such actions are considered actions that do not light, are not valid and does not apply to any third party.

On the other hand for the transfer of land rights are subject to the Law of Agrarian West, transfer rights or title transfer must go through overschrijving ambtelaar. This process can be done after the transaction Purchase in advance before a notary or body / other officials are the same, then the ownership through overschrijving ambtelaar.

Legal Aspect of Land Registration

Based on Government Regulation No. 24 of 1997 on Land Registration to the sale and purchase of land should be done with a deed made by and in front of the Land Deed Officer (PPAT). Buying and selling process can only be done on land owned by the rights over the land, has been endorsed or proved by evidence of land ownership issued by the National Land Agency. This is done in order to ensure certainty of law and order, thus the seller is a person or party who has the right and lawful to sell the land to the buyer.

Settlement of land disputes

Regulation of the National Land Agency No. 3 of 2011 on the Management Assessment and Handling of Cases of Land, land disputes are disputes, conflicts and cases of land were submitted to the National Land Agency of the Republic of Indonesia to get treatment, completion of appropriate legislation and / or the land policy national.

Dispute resolution is an attempt to resolve the dispute of the parties who have an interest in it either through litigation and non-litigation. Indonesia is a country of laws that uphold the values of justice and law

enforcement. Manifestation authority of law enforcement is done by the judiciary, as Article 24 of the Constitution of the Republic of Indonesia Year 1945 states that "The judicial power is an independent power to organize judicial administration to uphold law and justice".

The elements of the judicial authorities in Indonesia include Supreme Court and judicial bodies underneath within the general courts, religious courts, military courts, administrative courts, and the Constitutional Court. Where both elements have the authority diverse, first Supreme Court judge on appeal, examine the legislation under the legislation of laws and judicial bodies underneath specifically addressing issues of criminal law, civil, administrative, and military on the first level and second. Chairman, Constitutional Court authority to hear at the first and last decision is final for a law against the Constitution, rule on the dispute the authority of state institutions whose authorities are granted by the Constitution, dissolution of political parties, and to decide disputes concerning the results general elections.

Settlement through litigation is done by filing a lawsuit for breach of contract or broken a promise to purchase agreement of land that is not registered. Aspect of proof lies in agreements made under the hand or authentic. If under the hand it must bring both parties and witnesses can be recognized truth. Land dispute resolution can be done through administrative by submission or a complaint to the National Land Agency. This complaint is an objection to the issuance of a certificate by the National Land Agency in this case is considered as the decision of the Administrative Officer.

Land disputes are broadly grouped, namely control of the land without right, the differences in perceptions, values or opinions, interests on the status of the control over certain lands that are not yet clung to the right (ground state), and which has clung rights by certain parties; Double certificates, ie differences in perceptions, values or opinions, interests concerning a certain parcels of land that have a certificate of land rights is more than one; Deed of Sale and Purchase Fake, ie differences in perceptions, values or opinions, interests concerning a certain parcels of land because of the Deed of Sale and Purchase false; Fallacy designation boundary, ie a difference of opinion, the value of interests regarding the location, boundaries and vast areas of land recognized teiah the parties established by the National Land Agency of the Republic of Indonesia based on the incorrect designation limits; Overlap, ie a difference of opinion, the value of interests regarding the location, boundaries and vast areas of land recognized one particular party because of the presence of overlapping land ownership boundaries (www.bpn.go.id).

Aspects of Land Ownership Verification

Land ownership by a person or legal entity must be evidenced through a verification shown with a variety of evidence. However aspect is the strongest proof that birth certificates as proof of land a strong right to the ownership of land rights. Article 23 of Government Regulation No. 24 of 1997 set of proof of ownership rights to the land, stating that in order to obtain the truth juridical data for new rights and for the purposes of the registration rights of the proof is done by 1) a new Land Rights Evidenced by;

2) The granting of the competent authorities give the right in question under the applicable provisions when granting such rights derived from state land or land management rights. Determination of the competent authority regarding land titling State may be issued individually, collectively or in general. At this time the setting of the competent authorities issued a decree granting rights to state land or land management rights governed Minister of State Agrarian / BPN No. 3 of 1999 on Delegation of Authority to Grant and Cancellation Decisions Granting rights to Land State, while the procedures for granting rights State land or land management rights stipulated in the Regulation of the State minister of Agrarian / BPN No. 9 of 1999 on Procedures for Granting and Cancellation rights and the State Land management Rights.

3) The original deed containing PPAT granting such rights by right holders belonging to the assignee concerned if the building rights and the right to use the property. Granting building rights or rights of use of land property rights in addition to stipulated in the Regulation of the Minister of State for Agrarian Affairs / Head of BPN No. 3, 1997; a) With Proven Management Rights Management Entitlement Determination by the competent authority; b) Determination of the provision of management rights by the Head of National Land Agency of the Republic of Indonesia. Mekanisme Entitlement Management stipulated in the Regulation of the State Minister of Agrarian / BPN No. 9 of 1999;

c) Proven Waqf Land With Deed of Pledge Endowments; What is meant Deed Pledge Deed of Pledge waqf endowments are referred to in the Government Regulation No. 28 Year 1977 on Land Owned perwakafan. The provisions concerning bookkeeping endowments terms of the object, the bookkeeping is the registration for the first time, although the plot in question had previously been listed as a ground Properties. Officials authorized to issue Deed of Pledge is the official charitable Waqf Deed Pledge (PPAIW) which is chaired by the Head of the Religious Affairs Office (KUA Head). d) Properties Top Unit Flats Evidenced By Deed of Separation; Properties on Unit Flats is individual ownership rights over a particular flats, which includes and is an inseparable part of the collective rights on what is called bagianbersama, objects together, and the land together, building a housing project was erected. Bookkeeping property rights to the apartment units is based on

a deed of separation, which shows the apartment units which were owned and how proportionate part owner of objects which di haki joint.

Then how to obtain truth juridical data for land rights that have been too long in order to obtain the truth juridical data provided for in Article 24 of Government Regulation No. 24 of 1997 states that in order to obtain the truth juridical data for old rights and for the purposes of registration of the rights evidenced in two ways: 1) Land rights arising from the conversion rights of long dibuktian with evidence of the existence of such rights in the form of written evidence, witness testimony and / or statements concerned that the levels of truth by the adjudication committee in registration land systematically or by the Head of the Land Office in sporadic land registration, are considered sufficient to register the rights, the rights holders and the rights of others burdens. Proof of ownership of it basically consists of a proof of ownership on behalf of rights holders at the time of entry into force of the BAL and if such rights then switch, evidence consecutive rights to the holder of the right hand at the right time to do the bookkeeping.

Tools written evidence in question could be, Grosse deed eigendom rights issued under Overschrijvings Ordinance (Gazette 1834-27), Grosse deed eigendom rights issued under Overschrijvings Ordinance (Gazette 1834-27), Letter of proof of ownership issued by self-government is concerned; or, Certificate of ownership issued by the Minister of Agrarian Regulation No. 9 of 1959; or decree granting property rights of the competent authorities, both before and since the enactment of Law No. 5 of 1960, which was not accompanied by an obligation to register the rights granted, but have been met to the obligations referred to therein.

Deed of transfer made under the hand that bore the testimony by the Head of Indigenous / village chief / village created before the enactment of Government Regulation No. 24 of 1997; or deed of transfer of land made by the Land Deed Officer (PPAT) whose land has not been recorded; or Deed of Pledge Endowments / Endowment Pledge Letters made before or since commenced on Government Regulation No. 28 of 1977; Minutes auctions or made by an authorized official auction, where the land has not been recorded; or a letter of appointment or replacement purchase land plots of land taken by the Government or Local Government; or Pethuk Tax / Landrente, girik, pipil, ketitir and Verponding Indonesia prior to the enactment of Government Regulation No. 10 of 1961; or certificate of land history ever made by the Office of Land and Building Tax; or Other forms of proof tool written by whatever name also referred to Article 11, Article Article VI and Article VII Conversion provisions of Law No. 5 of 1960.

Conversely in the case of written evidence is incomplete or there is no proof of ownership, can use witness testimony or statement in question would be credible in the opinion of the Adjudication Committee in land registration systemically or by the Head of the Land Office in sporadic land registration. What is meant by the witness is a person competent to testify and determine its ownership. whereas in the case or is no longer available as a complete verification tools, can be done by naming the books can only be made based on the fact of physical domination by the registrant and its predecessors.

The requirements that must be met as follows, a) the acquisition and use of land is done real good faith for 20 years or more in a row; b) revelation possession and use are not inviolable and the arena was considered to be recognized and approved by customary law communities or villages / wards concerned; c) this fact is reinforced by the testimony of people who can be trusted; d) the other party has been given the opportunity to raise objections through an announcement; e) The truths mentioned above have been examined; c) Conclusion on the status of the land and rights holders in the form set forth in the decision of recognition of the right concerned by the Adjudication Committee in the systematic land registration, and by the Head of the Land Office in sporadic land registration.

The transition of land rights in this case the sale and purchase of the land that has not been certified and performed before the entry into force of Regulation No. 24 of 1997, the evidence of the transition of land rights in the form of an authentic deed made by PPAT, but if made by deed under the hand made by sellers and buyers and witnessed by the village chief or headman, then the certificate can be used as proof of acquisition of land and can be registered with the Land Office.

Conversely, if the sale and purchase of land rights which are not registered or have not been certified is made after the entry into force of Regulation No. 24 of 1997, the transfer of these rights must be proven by the Deed of Sale and Purchase made by and before PPAT. But if the land is not made with a deed of sale made by PPAT, thus buying and selling activities should be repeated with a deed of sale made by PPAT as a submission to the provisions of Regulation No. 24 of 1997 so that the land rights registered and certified.

4. Conclusion

Basically any rights over land in Indonesia shall be registered and meet the terms and conditions set forth in Regulation No. 24 of 1997. There are three (3) aspects of the purpose of the law, namely certainty, usefulness and fairness. Three of these aspects must be fulfilled in any legal actions, especially the transition of land rights, which did land registration has been providing legal certainty that the land title certificates as

evidence of authentic, of legal certainty is also the benefit that the evidence is authentic legally enforceable remains and evidence were perfect, so as to provide justice to the subject of law on the recognition of the ownership rights to land someone who legally.

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