

The Role of Notaries in Registration of Applications for Land Rights above Management Rights

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Abstract. *The purpose of this study was to analyze the role of a notary in registering applications for land rights over management rights. To analyze the process of determining land rights over management rights. The method used by the researcher is Normative Jurisdiction and The specifications in this study include descriptive analysis. The sources and types of data in this study are secondary data obtained from library studies. Based on the results of the study that The Role of Notaries in Application for Land Rights Above Management Rights are: a. As a Consultant who provides legal counseling to clients; b. As an Authorized Person entrusted by his client for his competence and expertise. The process of determining land rights over management rights in the conception of legal certainty through procedures and complete requirements, namely a certificate of building use rights that is requested to be converted into a right of ownership, a deed of sale and purchase or a letter of acquisition regarding the land and the house in question, a letter of approval from the holder Mortgage Rights (if the land is encumbered with Mortgage Rights), Applicant's Identity Card, and Letter of Recommendation from Perum Perumnas. The granting or stipulation of land rights included in any settlement of land issues is intended as an effort to provide legal certainty guarantees for the holders of the rights.*

Keywords: *Application; Land; Management; Rights.*

1. Introduction

The relationship between humans and land has existed since the existence of humans themselves. How important the meaning of soil for human life can be seen from the basic philosophy, that humans were created by God Almighty from soil, live (eat) from soil and after death will return to soil. All heavenly religions state that the first human being, the prophet Adam, was created by God from clay. Therefore, the role of land is very decisive for human life and livelihood. But in addition to these good things, the history of human life has recorded quite a number of bloody events due to disputes over land issues.¹

The Indonesian state, whose people's lives are still agrarian, earth, water and space, as a gift from God Almighty, has a very important function in building the ideals of a just and prosperous nation. The 1945 Constitution of the Republic of Indonesia Article 33 paragraph (3), affirms that "Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people". However, neither in the body nor in the explanation of the 1945 Constitution of the Republic of Indonesia, there is no explanation regarding the nature and scope of the state's right to control, which includes earth and water and the natural resources contained therein. In the explanation of the 1945 Constitution of the Republic of Indonesia, it is only emphasized that the earth and water and the natural resources contained in the earth are the principals of the people's prosperity, because they must be controlled by the state and used for the greatest prosperity of the people. Regarding the state's right to control the earth, the Basic Agrarian Law is further emphasized in Article 2 paragraph (2) which states that the state's right to control includes the authority to:²

- Regulate and administer the designation, use, supply and maintenance of the earth, water and space.
- Determine and regulate the legal relationships between people and the earth, water and space.
- Determine and regulate legal relations between people and legal actions concerning earth, water and space.

Land rights are rights that authorize the right holder to use and or take advantage of the land to which they are entitled. Article 4 paragraph (1) states that: "On the basis of the right of control from the State as referred to in Article

¹Umar Ma'ruf, (2010), *Politik Hukum di Bidang Pertanahan*, Badan Penerbit Universitas Diponegoro, Semarang, p.18

²Article 2 paragraph (2) of Act No. 5 of 1960 concerning Basic Regulations on Agrarian Principles (State Gazette of the Republic of Indonesia of 1960 Number 104, Supplement to the State Gazette of the Republic of Indonesia Number 2043).

2, it is determined that there are various types of land rights on the surface of the earth, which are called land, which can be given to and owned by people either alone or together with other people and legal entities.³

Management rights are part of State land whose authority to exercise State Controlling Rights are delegated to Management Rights holders, in UUPA Number 5 of 1960 it does not explicitly regulate Management Rights, HPL is implied in Article 2 paragraph (4) which reads; The implementation of the State Control Rights mentioned above can be delegated to autonomous regions and customary law communities, as long as it is necessary and does not conflict with national interests according to government regulations. In this case, the position of management rights is only the state's right to control land, not land rights.⁴

Holders of Management Rights, namely Departments, Directorates, and Autonomous Regions based on Article 9 of the Regulation of the Minister of Agrarian Affairs No. 9 of 1965 is obliged to register its management rights with the relevant land registration office. Land registration of Management Rights obtained by the Ministry, Directorate, and Autonomous Region.⁵ The reaffirmed in the Minister of Agrarian Regulation No. 1 of 1966 concerning the Registration of Use of Use Rights and Management Rights. Article 1 which reads: In addition to the right of ownership, the right to cultivate and the right to use the building will also have to be registered according to the provisions of Government Regulation No. 10 of 1961:⁶

- All usage rights, including those obtained by the Departments, are stated in the Minister of Agrarian Regulation Number 9 of 1965.
- All management rights as referred to in the Regulation of the Minister of Agrarian Affairs Number 9 of 1965.

The purpose of this study is to analyze the role of a notary in registering applications for land rights over management rights. To analyze the process of determining land rights over management rights.

³Article 4 paragraph (1) of Act No. 5 of 1960 concerning Basic Regulations on Agrarian Principles (State Gazette of the Republic of Indonesia of 1960 Number 104, Supplement to the State Gazette of the Republic of Indonesia Number 2043).

⁴Article 2 paragraph (4) of Act No. 5 of 1960 concerning Basic Regulations on Agrarian Principles (State Gazette of the Republic of Indonesia of 1960 Number 104, Supplement to the State Gazette of the Republic of Indonesia Number 2043)

⁵Article 9 Regulation of the Minister of Agrarian Affairs No. 9 of 1965 concerning the Implementation of Conversion of Tenure Rights over State Land and Provisions on Further Policy.

⁶Article 1 Regulation of the Minister of Agrarian Affairs No. 1 of 1966 concerning Registration of Use Rights and Management Rights.

2. Research Methods

The method used by the researcher is Normative Jurisdiction and The specifications in this study include descriptive analysis. The sources and types of data in this study are secondary data obtained from library studies.

3. Results and Discussion

3.1. The Role of Notaries in Registration of Applications for Land Rights Above Management Rights

Notaries are public officials who are authorized to make authentic deeds, in addition to other authorities determined by law. With the authority granted by the State to a notary as regulated in the Law of the Republic of Indonesia Number 2 of 2014 concerning amendments to Act No. 30 of 2004 concerning the Position of a Notary, the notary has the responsibility in carrying out his position. Notary is a profession in the field of law, especially in providing the making of service agreements.⁷

Notary profession in Indonesia is one of the professions that is quite old. This can be seen from the history of notarial law in Indonesia which began in the 17th century with the existence of "Oost Ind. Compagnie". The existence of a Notary is very much needed by the community, this is because the community needs someone whose information is reliable, trustworthy, whose signature and seal can provide strong guarantees and evidence, an impartial expert and an advisor who has no defects. , who kept his mouth shut, and made a covenant that could protect in the days to come. If an advocate defends someone's rights when a problem arises, then a Notary must try to prevent difficulties from occurring. The position of a notary as a functionary in society as an official who can be relied on by the community. A notary is usually considered an official from whom one can obtain reliable advice. Everything that is written and stipulated (constatir) is correct, a notary is a strong document maker in a legal process.

In making the Notary Deed, the Notary can provide suggestions if there is a difference of opinion between the parties by providing input to them about how the problem should be placed. A Notary Deed made before a Notary as a public official has formal evidence and material evidence, so that it can support the

⁷Dina Harindra Trisnani¹ and Umar Ma'ruf, 2018, The Validity of Notary's Agreement Which Is Signed Outside The Notary's Office, in Jurnal Akta, Volume 5 Issue 2, Unissula

upholding of the precautionary principle in the process of providing credit by the bank.⁸

Land ownership, the conception of national land law states that land throughout Indonesia belongs to the Indonesian nation, which at the same time becomes a symbol of unity for the integrity of the nation and state, therefore it cannot be traded or traded, cannot be used as an object of control that causes national disintegration. In the UUPA it is stated that in the concept of ownership there is a religious communalistic element, meaning that Indonesian legal provisions see that the land is a common property given by the Creator for the welfare of the community, meaning that Indonesia regulates the principle of a welfare state.⁹

Land has an important meaning in human life because most of human life depends on the soil. Land is not only seen in economic relations as a factor of production where people live on it, but land is a means of binding social unity among the Indonesian people for survival, besides that land is a capital factor in the implementation of development.¹⁰

The transfer of land rights can occur due to 2 (two) things, namely legal actions and legal events. The transfer of land rights due to legal actions is the transfer of land rights that occurs due to legal actions carried out by the parties. Legal actions that cause the transfer of land rights include buying and selling, exchanging, grants, income in the company, and the distribution of joint rights. The transfer of land rights due to legal events, namely the transfer of rights that occur due to the death of a person.

Every act intended to transfer ownership rights to land is regulated by a government regulation. This is mandated by Article 26 of the Basic Agrarian Regulations (UUPA). Provisions for land registration in Indonesia are regulated in the UUPA Article 19 in conjunction with Article 37 paragraph (1) Government Regulation Number 24 of 1997 concerning Land Registration "Transfer of land rights and ownership rights to flat units through buying and selling, exchanging, grants, income in the company and other legal acts of transfer of rights, except for the transfer of rights through auction, can only be registered if it is proven by

⁸ Efty Hindaru Sudibyo, Amin Purnawan, 2017, The Role of Notaries in Making Mortgage Permit Deeds Due to the Elimination of Debts in the Perspective of Legal Certainty, in Deed Journal Vol. 4 No. 2, Unissula

⁹ Rosmidah, 2013, "Kepemilikan hak atas tanah di Indonesia," *Inovatif: Jurnal Ilmu Hukum*, 6(2), p. 63-76

¹⁰ Ilham, Djauhari, 2017, Permohonan Hak Milik Yang Berasal Dari Tanah Negara Di Kantor Pertanahan Kota Semarang, dalam *Jurnal Akta* Vol. 4 No. 3, Unissula

a deed made by the authorized Land Deed Maker (PPAT) according to the provisions of the legislation.¹¹

Land rights contain the authority as well as the obligation for the holder of the right to use it in the sense of controlling, using and taking advantage of a certain plot of land that is a right. Its use contains an obligation to preserve its capabilities and prevent its damage in accordance with the purpose of granting and the contents of the rights as well as the land designation stipulated in the spatial plan of the area concerned. Holders of land rights are not justified to act arbitrarily on their land, because in addition to the authority they have, they also have certain obligations and must pay attention to the prohibitions that apply to them, and the social function of each land right must also always be a guideline for the holder of the right to land. land rights.¹²

Building Use Rights are used for the purpose of constructing buildings, among others in the form of residential or residential houses, shop houses (ruko), office houses (rukan), shops, hotels, offices, industries (factories). Hak Guna Bangunan can occur on land with management rights, in addition to occurring on state land, or land with property rights. The UUPA does not explicitly mention management rights, only "management" in General Elucidation Number II Number 2. AP Parindungan states that the term Management Rights is taken from the Dutch language, namely *Beheersrecht*, which translates to Ownership Rights.¹³

In the concept of law, the relationship between people and objects is a relationship called rights. This means that the right of ownership of an object is called the right of ownership of the object. In relation to land ownership rights, there is a process that must be passed, namely the control process, where the right to control must be preceded by an act of occupation or occupation to obtain that control, and within a certain time limit will become property rights.

Notaries have the authority to make deeds related to land as stated in Article 15 paragraph (2) letter (f) of the Law of the Republic of Indonesia Number 2 of 2014 concerning amendments to Act No. 30 of 2004 concerning the Position of a Notary, in fact the relinquishment of land rights in the consolidation process carried out by the Head of the Land Office not through the services of a notary.

¹¹ Christiana Sri Murni, 2018, "*Peralihan hak atas tanah tanpa sertifikat*", *Lex Librum*, 4(2), p. 680-692.

¹² Arie Sukanti Hutagalung, (2005), *Tebaran Pemikiran Seputar Masalah Hukum Tanah*, Lembaga Pemberdayaan Hukum Indonesia, Jakarta, p.19.

¹³ A.P. Parindungan, (1989), *Hak Pengelolaan Menurut Sistem Undang-undang Pokok Agraria*, Mandar Maju, Bandung, p. 6.

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3.2.The process of determining land rights over management rights in the conception of legal certainty

The release of land rights is carried out on a letter or deed made before a notary stating that the right holder in question has relinquished his land rights and the deed is generally known as the Deed of Release of Rights.¹⁴ The material rights to land, which are regulated in Paragraph 16 Article (1) of the Basic Agrarian Law, are the strongest and most comprehensive.¹⁵

Provisions as a state of law (rechstaat) have strong and clear reasons for the interests of the citizens themselves. According to Gustav Radbruch,¹⁶ A German legal philosopher teaches the concept of three basic elements of law which some experts identify as the three goals of law, namely justice, expediency and legal certainty.

As a state of law, the recognition of the right to ownership has been regulated in various laws and regulations, these rules bind every citizen and even the government itself in order to create a guarantee of legal certainty regarding one's rights, this is in line with the legal theory developed by Roscou Pound, namely the law is a tool social engineering (Law as a tool of social engineering).

The regulation of land rights is one of the obligations of the state to regulate it for the realization of legal certainty and the preservation of the rights of each party. In addition to legal certainty, the rule of law in this country also provides legal protection for the recognition of the rights of its citizens.

Land registration is a mandate from Article 19 of Act No. 5 of 1960 concerning Basic Regulations of Agrarian Principles, it is clearly stated in Article 19 paragraph (1) of the LoGA that to ensure legal certainty by the Government, land registration is held throughout the territory of the Republic of Indonesia according to the provisions -stipulations regulated by Government Regulation.

¹⁴Mochamad Elmo Sidiq, Amin Purnawan, 2018, *Peran Notaris Dalam Transaksi Pengadaan Tanah Untuk Lokasi Pembangunan Komplek Perkantoran Pemerintah Kabupaten Sekadau*, dalam *Jurnal Akta* Vol 5 No 1, Unissula

¹⁵Vediyas Puspa Yunansa and Umar Ma'ruf, 2018, *The Legal Consequences Of The Unregistered Notarial Agreement Related To Paragraph 40 Government Regulation No. 24 Of 1997 About Registration Of Land On The Perspective Of Legal Philosophy*, dalam *Jurnal Akta* Volume 5 Issue 2, Unissula

¹⁶Ali, Achmad, (2008), *Menguak Tabir Hukum*, Cetakan ke-2, Ghalia Indonesia, Bogor.

Furthermore, with the mandate of this law, the government issued Government Regulation Number 10 of 1960 concerning Land Registration which was later revised by Government Regulation Number 24 of 1997.

In Government Regulation No. 24/1997 which is a refinement of Government Regulation No. 10 of 1961, the purpose and system used so far have been essentially stipulated in the UUPA, namely that land registration is held in order to provide legal certainty in the control and use of land. What is even more important is the land registration system that was developed, especially regarding the publication system which continues to use a negative system but which contains positive elements, does not adhere to negative principles and is not purely positive, because land registration will only produce letters of evidence. rights that apply as strong evidence as stated in Article 19 Paragraph (2) letter c, Article 23 Paragraph (2),

The process of determining land rights over management rights at the Land Office of Indramayu Regency in the Conception of Legal Certainty through procedures and completing the requirements, namely a certificate of building use rights that is requested to be converted into a right of ownership, a deed of sale and purchase or a letter of acquisition regarding the land and the house in question. , an approval letter from the mortgage holder (if the land is encumbered with a mortgage), the applicant's identity card, and a letter of recommendation from Perum Perumnas. And the government is obliged to carry out land registration throughout the territory of the Republic of Indonesia is regulated in Article 19 paragraph (2) of the Basic Agrarian Law, this Article includes; a. Measurement, mapping, and bookkeeping of land; b. Registration of land rights and the transfer of such rights; c. Provision of letters of proof of rights, which serve as strong evidence.

The granting or stipulation of land rights included in any settlement of land issues is intended as an effort to provide legal certainty guarantees for the holders of the rights. In order to guarantee legal certainty which is one of the main objectives of the LoGA, the Law instructs the government to conduct land registration throughout Indonesia which is *Rechtskadaster* in nature, meaning that the aim is to guarantee legal certainty and certainty of rights as regulated in Article 19 of the LoGA. As a technical basis for land registration, it is regulated in Government Regulation no. 10 of 1961 on land registration, later refined in Government Regulation no. 24 of 1997.

4. Conclusion

Based on the description in the previous chapter, the authors conclude that: The Role of Notaries in Registration of Applications for Land Rights Above Management Rights at the Land Office of Indramayu Regency are: a. As a

Consultant who provides legal counseling to clients; b. As an Authorized Person entrusted by his client for his competence and expertise. The process of determining land rights over management rights at the Land Office of Indramayu Regency in the Conception of Legal Certainty through procedures and completing the requirements, namely a certificate of building use rights that is requested to be converted into a right of ownership, a deed of sale and purchase or a letter of acquisition regarding the land and the house in question. The approval letter from the mortgage holder (if the land is encumbered with a mortgage), the applicant's identity card, and a letter of recommendation from Perum Perumnas. And the government is obliged to carry out land registration throughout the territory of the Republic of Indonesia is regulated in Article 19 paragraph (2) of the Basic Agrarian Law, this Article includes; a. Measurement, mapping, and bookkeeping of land; b. Registration of land rights and the transfer of such rights; c. Provision of letters of proof of rights, which serve as strong evidence.

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