

Registration of Transfer Grant of Rights to Land According to Customary Law as Well as The Role of The Notary / PPAT in Wonossalam, Demak

Rini Setyowati Abadi¹, Ervin Faizal Nurdiansyah² and Achmad Sulchan³

Abstract. The transition of land rights for the grant must be conducted through the procedures in accordance with the provisions occurred for the transition of land rights for the grant must be registered at the land office to obtain legal certainty in the form of a certificate, so that the land status would be clear. In practice, in the district Wonossalam-Demak are still many people who do grant without going through legal procedures that have been set and raises difficulties on many fronts for legal certainty on the grant agreement. This study aims to determine and analyze the role of notaries in the implementation of transitional registration of land rights because the grant. Notary entitled to be responsible if something happens on the issue of the agreement for him, the responsibility it be liable in peridana, civil, code of conduct, and administration.

Keywords: *Registration, Transfer of Rights To Land, Customary Law.*

1. Introduction

Land has a very important role⁴, that is to say in the Indonesian life or in the implementation of national development which was held as a continuing effort to realize a just and prosperous society based on Pancasila and the Constitution of 1945. Therefore, the setting of control, ownership and use of land needs to be more directed again, the assurance of orderliness in the field of land law, land administration, land use, or maintenance of the land and the environment, so the lack of legal certainty in the land sector⁵.

The regulations it says will allow anyone with an interest in the goods can easily determine how the prevailing law⁶ and authority and obligations that happened to him concerned with soil that have⁷.

To obtain legal certainty regarding land needs to know where it is located, what its limits, how much breadth, buildings or plant and what is on it, the status of the land, who hold the rights and there are no rights of other parties.

Land registration purposes under article 19 of the BAL is for legal certainty. As for the rule of law in question is included:

- Certainty about the person / legal entity that owns the rights to land also called the certainty of the subject land rights.

¹ Master of Notary's Student Faculty of Law, Universitas Islam Sultan Agung email rinisetyowatiabadi@gmail.com

² Students of Master of Law, Faculty of Law, Universitas Islam Sultan Agung email ervin.fn88@gmail.com

³ Lecturer of the Faculty of Law UNISSULA Semarang Indonesia.

⁴ Boedi Harsono 2008 *Hukum Agraria Indonesia* the Association of the Land Law Regulations Jakarta: Djambatan

⁵ Andi Hamzah 2005 *Kamus Hukum* Ghalia Indonesia

⁶ Achmad Chulaeni 1993 *Hukum Agraria* FH Diponegoro University Semarang p. 24

⁷ Abdul Ghofur Anshori 2009 *Institusi Kenotariatan di Indonesia* Hukum Press Yogyakarta

- The certainty of the location, boundaries, length and width of land called the certainty of land rights object.

Through the efforts of land registration, the parties concerned will be able to know the status and legal standing than the soils encountered, location, area, boundaries, who is the owner and the burden of what is in between.

In addition to the convening of the land registration:

- They are landless will easily be able to prove their right to the land under their control and their ownership to each given a letter of proof of rights by the government.
- They which requires above mentioned information that prospective buyers and prospective lenders that will accept land as collateral, would easily obtain it. Because these particulars are recorded in the land registry office open organizer for common. In common sense should know by seeing a list and ask the relevant documents or written statement about the data it needs from the office.

Relating to land registration purposes in order of registration activities that can be created by a situation in which: Persons and legal entities that have land can easily be proved that they are entitled to the land.

Research Methods

Specifications in this research⁸ is descriptive anasis because in this study is intended to provide a systematic overview about everything related to the implementation of registration transfer of grant land rights⁹ under customary law in the Wonossalam-Demak. The sample of research used purposive sampling method withdrawal of samples is done by taking the subject and object, because the author believes that the characteristics, because the properties and characteristics of each sample and used also qualitative analysis is data obtained through fieldwork and research libraries then systematically compiled and then analyzed qualitatively to achieve clarity issues to be discussed¹⁰.

2. Result And Discussion

2.1. Registration Of Transfer Grant Of Rights To Land According To Customary Law As Well As The Role Of The Notary / PPAT In Wonossalam, Demak

Grant agreement is usually done by the community is the provision of property from parents to their children or to other persons who are not heirs, as well as by people who do not have children to nephew and his brothers when they were alive. Agreements grant referred to above should be done right before the Agreement Official Land (PPAT) and made an agreement grants as defined in Article 37 Paragraph (1) of Government Regulation No. 24 of 1997 on Land Registration, for later transfer of land rights can directly registered with the Land Office to get a certificate as evidence is strong. But the majority of people living in rural areas who do not use the grant

⁸ Amirudin and H.Zainal Asikin 2012 *Pengantar Metodologi Penelitian* Ed. 6 Raja Grafindo Persada Jakarta p.76

⁹ *Ibid.*

¹⁰ Bambang Sunggono 2010 *Metodologi Penelitian Hukum* Raja Grafindo Persada Jakarta

procedure specified in the rules above. They did grant according to the tradition that they typically have done, that is in front of the village head and the device, and witnessed by community leaders, neighbors and family members, and also made a statement or news grant event only.

The implementation of the grant is customary in the village Jogoloyo Wonosalam District of Demak regency is as follows:

- The parties came to the village head office along with several members of his family.
- Grantor expressed his intention to give grants to grantees.
- The village head should really know that the grantor is actually legitimate of the objects owner (ground) to be granted and to check whether the land is really no
- Giving grants must be able to prove that the object of grant (land) are really his, not in dispute with other parties and pledged as collateral for bank loans.
- The village head informed him that the grantor must make a statement of the grant (that grant is done consciously, voluntarily and without coercion) are sufficiently stamped and signed by the parties (grantor and grantee) which are known by the village head and the device (village secretary)
- Afterwards, the village chief made a statement / minutes of the grant, that the grantor has donated object grants (ground) to the grantee signed by the parties (grantor and grantee), village heads and devices (village secretary), as well as witness (usually family members, neighbors, and community leaders).

So the role of community leaders in a process that is done by custom grant is a witness who knows the events above.

To grant made by different people of the village, for example between grantors and grant recipients do not live in a rural area then the manner set is carried out in the village where the object of the grant (the ground) was located. In this case the right to make witness and make the minutes of the grant is the village head and the village where the land is located.

Regarding the land area to be granted no provisions, depending on the willingness of grantors who will hand over his property to the donee. However, there is a provision that the land will be donated should not be more than 1/3 (one third) property grantors. It is intended that the donor not to have residual soil that is too little¹¹.

When viewed in terms of its legitimacy, legal acts grant according to customary law, as was done by the people of Purworejo and Village Margolinduk District of Wonosalam Demak above, all done in bright and cash is legitimate, although not made by agreement officials Agreement Land (PPAT) because the function of PPAT agreement sebagai only basic transitional land rights registration in the Land Office. However, the grant agreement that was not made by agreement Land Agreement Official (PPAT) can not shift their land rights registered in the Land Office. Therefore, if the parties shall register the transfer of land rights it should return the process from the beginning. in front of the Land Agreement Official (PPAT)¹².

The parties, namely the grantor and the grantee came to the Land Agreement Official (PPAT) with diseripi by the village head and village with letters as follows:

- The Minutes of grant made by the village head and the device (village secretary)

¹¹ Fia S. Aji Hak Pakai <http://faji.blogspot.com/diakses> dated December 28 2008

¹² Ministry of National Education 2012 Dictionary of Indonesian Language Language Center (fourth edition) PT.Gramedia Pustaka Utama Jakarta

and signed by the parties and witnesses

- Copies of the book C / village
- Title agreement, if the soil is certified.
- A letter stating the grant (that grant is done consciously, voluntarily and without coercion) are sufficiently stamped and signed by the parties (grantor and grantee) which are known by the village head and the device (village secretary) "

If the grantor can not exist at the time facing the Land Agreement Official (PPAT), he can authorize another person to act behalf. In this case the required power is not the power of absolute. The legal basis is the Minister of the Interior Instruction No. 14 of 1982 on the Prohibition of Use Power of Absolute Assignment In Land. The power of attorney signed by the grantor and legalized by head desa where the donor resides. Before the Agreement Official Land (PPAT) do its job an agreement grants in order to move the titles to land were asked to him, the first he researched the subject and object grant, so the Agreement Official Land (PPAT) can not easily make an agreement of grant, because if there is a mistake or offense he can be sued for damages inflicted. With the threat *adanya lehih* then he will be cautious and will not be hasty in *membuat* agreement requested by clients. In short, the Land Agreement Official (PPAT) just willing to make the agreement of grant requested if the subject and the object grant meets the requirements¹³.

Land Agreement Official (PPAT) will resist making *aktanya* grants if:

- Unable to show proof of ownership of land or a certificate
- The land was used as collateral on a bank
- The land is currently in a dispute with other parties
- *Femberi* grants no right to grant to the land.

Not forever Land Agreement Official (PPAT) pass the request of the parties to create the desired grant agreement. Land Agreement Official (PPAT) should reject the agreement transfer of land rights or the imposition of debt with the guarantee agreement land if:

- The land in dispute
- The land has become an object of confiscated
- The land is controlled by the state
- Who received the rights was not the owner or the owner's power
- Who received the rights are not entitled to have the land rights
- The rights are transferable leasehold (Transition leasehold large estates on commonly only can be done in the presence of a special officer appointed by the Minister of Home Affairs that the Chief Directorate for Land Registration)
- The plot is located outside the working area of the Land Agreement Official (PPAT)

If the existing plot *sertifikatnya* but can not demonstrate to the Land Agreement Official (PPAT)

2.2. Constraints in Implementing Land Rights Registration Transition Grant According Customary Law As well as the role of the Notary / PPAT in Demak and efforts made to Overcome It

These constraints because of:

- Grant that happend on the list because it is not made by Agreement Official Land

¹³ Tan Jong-Kie 2007 *Notary Studies* Sundries Notarial Practice Book I PT Ihtiar Baru van Hoeng Jakarta

(PPAT) as required under Article 37 Paragraph (1) of Government Regulation No. 24 of 1997 on Land Registration that every agreement of transfer of land rights must be proven by agreement, Land Agreement official (PPAT)

- Most people who become respondents did know that the grant process should be done in front of the Land Agreement Official (PPAT), so that they remain do the grant in front of the village head and the device in the presence of leaders. community, neighbors and family members, as they typically have done so far.
- If in the end they mtngtshui that the grant they've done customarily turned out not to be used for the care of the transfer of rights to the land at the Land Office to obtain the certificate as valid evidence, and they have to repeat the process tersehut before Agreement Official Land (PPAT) then they can not do so because they are afraid if it turns out the costs are expensive so terhentilah the grant process.

To overcome the constraints above, efforts should be made include:

- Grant is done by custom can not dl the list because it is not made by agreement Agreement Official Land (PPAT) as required under Article 37 Paragraph (1) of Government Regulation No. 24 of 1997 on Land Registration that every agreement of transfer of land rights must be proven by agreement Land Agreement official (PPAT). For that they have to redo the grant process in the presence of the Land Agreement Official (PPAT), having made the transition of its grant agreement land rights may be registered at the Land Office to obtain a title agreement as strong evidence for the parties”.
- Ignorance of the public, especially those living in pedcsan process pengibahan right in accordance with the provisions of Government Regulation No. 24 of 1997 tentang Land Registry should get an effort that must be addressed by the relevant agencies such as the National Land Bureau of Demak regency, Head Subdistrict Jogoloyo Wonosalam and village heads and village heads Purworejo, so that all matters relating to the transfer of land rights is no longer done by custom, so they can be registered at the land Office to obtain the certificate as valid evidence.
- Regarding the public fears the respondents if they have to do grant through Agreement Official Land (PPAT) apparently costs expensive, so before making a grant they can ask in advance to office Agreement Official Land (PPAT) of the amount of costs to be incurred, they do not need to feel worried and afraid that the cost would be too expensive because the price set is an existing the price standard.

3. Closing

3.1. Conclusion

- Exercising their grants according to customary law in the District of Wonosalam Demak is the party facing the village chief to notify the intent. If the eligible grant customary then made a statement of grant, then head of the village make a statement / minutes of the grant was signed by the parties (grantor and grantee), village heads and devices (village secretary), and the witnesses (usually family members and neighbors)
- Factors that cause people in the village of Wonosalam Demak did grant without going through the Land Agreement Official (PPAT) among others is because they do not know because, according to custom they've done and for fear of being

expensive.

- There are obstacles that arise in the implementation of transitional registration of land rights for grants under Customary Law in the village Jogoloyo, Wonosalam, Demak. These constraints would have to obtain follow-up and made efforts to address them as described above.

3.2. Suggestion

- Implementation of the grant according to customary law in the District of Wonosalam Demak the sample in this study is the village Jogoloyo as described above can not be registered inbetween land rights in the National Land Agency Demak as sodium absorption ratio created by agreement Agreement Official Land (PPAT) as specified in Article 37 of Government Regulation No. 24 of 1997 on Land Registration. Therefore, if the people will do a direct grant through the Land Agreement Official (PPAT) so no need to repeat the process of grant has been done through the village head. It also will be a cost to be incurred.
- Factors that cause people in the village Jogoloyo in District Wonosalam Demak do grant without going through official Land Agreement (PPAT) among others is karen they do not know, because According to the habits they've done and for fear of high costs can be addressed and eliminated if done immediately asosatif efforts both from the village chief and devices as well as community leaders.
- The obstacles that arise in the registration of transfer of land rights for grants under Customary Law in the District Wonosalam Demak should as soon as possible to get the follow-up of the agencies involved in this case, among others, as the Agreement Official Land (PPAT), Agency National land Demak and other agencies with related like Demak regency administration, village head Jogolyo Wonosalam to do efforts to overcome them.

4. Bibliography

- [1] Abdul Ghofur Anshori 2009 *Institusi Kenotariatan di Indonesia* Hukum Press Yogyakarta
- [2] Achmad Chulaeni 1993 *Hukum Agraria* FH Diponegoro University Semarang
- [3] Amirudin and H.Zainal Asikin 2012 *Pengantar Metodologi Penelitian* Ed. 6 Raja Grafindo Persada Jakarta
- [4] Andi Hamzah 2005 *Kamus Hukum* Ghalia Indonesia
- [5] Bambang Sunggono 2010 *Metodologi Penelitian Hukum* Raja Grafindo Persada Jakarta
- [6] Boedi Harsono 2008 *Hukum Agraria Indonesia* the Association of the Land Law Regulations Jakarta: Djambatan.
- [7] Fia S. Aji *Hak Pakai* <http://fiaji.blogspot.com/diakses>, dated December 28, 2008
- [8] Ministry of National Education 2012 Dictionary of Indonesian Language Language Center (fourth edition) PT.Gramedia Pustaka Utama Jakarta
- [9] Tan Jong-Kie 2007 *Notary Studies Sundries Notarial Practice* Book I PT Ichtiar Baru van Hoeng Jakarta