

The Juridical Implications for Refusal of Transfer of Land Rights based on The Deed of Purchase Agreement by The National Land Agency

Tiar Novi Sundari*)

*) Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, E-mail: arvintiar@gmail.com

Abstract. *The sale and purchase of land rights and their registration have been determined in the UUPA and the laws and regulations under it, the existing regulations stipulate that the transfer of land rights through the sale and purchase must be with the PPAT Deed. The Sale and Purchase Deed must be immediately registered with the Land Office related to legal certainty for the new owner as the holder of the land rights. This study uses an empirical juridical research approach, used to provide a qualitative description of the juridical implications of the rejection of the transfer of land rights. The results of this study are 1) The authority regarding refusing the transfer of land rights through a sale and purchase agreement as described above is the administrative authority at BPN as regulated in Government Regulation Number 24 of 1997 concerning Land Registration. 2) The juridical implications of the rejection of the transfer of land rights through a sale and purchase agreement by the National Land Agency, namely Article 45 paragraph (2) states that if there is a refusal by the Head of the Land Office, this will be submitted in writing, including the reasons for the refusal.*

Keywords: Buying; Refusal; Transfer.

1. Introduction

Land is very important for human life, where every human being carries out all daily activities related to and is above the ground. Humans need land in various aspects of life. Therefore, every human being will certainly always want to own land so that it is easier for them to carry out their daily activities, especially to be used as a place to live so that it can also be used to carry out their business activities.

The government as the party in power certainly wants all things to be arranged in an orderly manner, one of which is in the land sector. With the aim of creating a national land law that is in accordance with the ideals of the Indonesian nation,

Act No. 5 of 1960 concerning Basic Agrarian Regulations (UUPA) was made. The main objective of establishing the UUPA is to serve as the basis for drafting a national land law, realizing unity and simplicity in land law, and realizing legal certainty regarding land rights for all Indonesian people.¹The government expects welfare for the community in carrying out their daily activities, especially in the land sector and minimizing the occurrence of disputes or disputes between one community and another so that the community can carry out land tenure in an orderly manner and in accordance with applicable regulations.

UUPA is a formal law, which only contains the principles and principles of land law. For this reason, in order to provide legal certainty to the public, provide information to interested parties, and orderly administration of land, an implementing regulation is needed. One of them is in order to carry out land registration activities for land rights owned by the community, the government issued Government Regulation Number 10 of 1961 concerning Land Registration. However, as time went on, these regulations were not enough to provide satisfactory results, so as a form of improvement, Government Regulation Number 24 of 1997 concerning Land Registration (PP Number 24 of 1997) was born. In Government Regulation Number 24 of 1997, the objectives and system used are still maintained, which in essence has been set forth in the LoGA, namely land registration is held in order to provide legal certainty in the field of land, and the publication system is a negative system but which contains positive elements, because it will produce letters of proof of rights that apply as strong evidence, as stated in Article 19 paragraph 2 letter (c) of the UUPA. Where every community that has been registered has land rights and is given a letter of proof of rights, namely a certificate of land rights.

Land registration is a series of activities carried out by the Government continuously, continuously and regularly, including collection, processing, bookkeeping, and presentation and maintenance of physical data and juridical data, in the form of maps and lists, regarding land parcels and units flats, including the issuance of certificates of proof of title for land parcels that already have rights and ownership rights to flats units as well as certain rights that burden them.²Land registration is carried out based on the principles of simple, safe, affordable, up-to-date and open as stated in the provisions of Article 2 of Government Regulation Number 24 of 1997 and the explanation for achieving the goal of land registration is expected to create legal certainty guarantees. The granting of land rights is the authority of the state which is carried out by the government, in this case the National Land Agency of the Republic of Indonesia, with the procedures specified in the legislation. The result of land registration

¹Boedi Harsono, 2008, Indonesian Agrarian Law History of Formation, Content and Implementation, Revised Edition of the Twelfth Printing, Djbatan, Jakarta, p. 12

²Boedi Harsono, 2001, Indonesian Agrarian Law, Djbatan, Jakarta, p. 472

activities is proof of land rights, which is called a certificate.³

Based on Article 28 paragraph 1d of Government Regulation Number 10 of 1961 concerning Land Registration, it is stated that the Head of the Land Registration Office refuses to register the transfer of a land right, if one of the conditions below is not fulfilled: in the case of buying and selling, exchange, grant, gifts by testament, gifts according to custom and other actions intended to transfer property rights do not obtain permission from the Minister of Agrarian Affairs or the official appointed by him.

Sale and purchase of land rights and registration determined in the UUPA and the laws and regulations under it, the existing regulations stipulate that in transferring land rights through buying and selling, it must be with a PPAT Deed. The sale and purchase deed must be immediately registered with the Land Office in relation to legal certainty for the new owner as the holder of the land rights. The legal determination of whether or not the registration of the transfer of land rights in the sale and purchase process at the Land Office has been regulated based on statutory regulations in Government Regulation Number 24 of 1997 concerning Land Registration.

The case of the Head of the Land Office refusing to register the transfer of land rights in the sale and purchase of land rights, one of which occurred in Boyolali Regency where the Boyolali District Land Office refused to register the transfer of Certificate of Property Rights Number 5566 Winong Village with file number 60436/2020 dated 11 September 2020 with the reason as follows :

1. Whereas based on the pointer column of the Land Book of Property Rights Number 5566 Winong village it is stated that this property cannot be transferred in part or in whole for 10 years, except to parties who meet the requirements with reasons acceptable to the Head of the Land Office.
2. Whereas the certificate was issued on September 5 2020 and when the sale and purchase deed was drawn up and registered with the Boyolali District Land Office it had not been 10 years old and was not accompanied by a permit from the Head of the Boyolali District Land Office.

The land book or certificate contains a note stating that the right cannot be transferred in part or in whole for 10 years, except to parties who meet the requirements with reasons acceptable to the Head of the Land Office and the sale and purchase of absent land, because absentee/guntai land ownership is not permissible and violates the principle in Article 10 of the UUPA.

³ Maria SW. Sumardjono, 2001, Land Policy Between Regulation and Implementation, Kompas Book, Jakarta, p. 81

In this regard, related to the role of BPN/ATR as law enforcers who have the function and duty to supervise and enforce the prohibition of absentee/guntai ownership of agricultural land, the National Land Agency/ATR as the executor of policies in the field of land is highly expected in the supervision, enforcement and enforcement related existing regulations for the entire community to support the implementation of the land reform program in Indonesia, bearing in mind that the functions and duties of the National Land Agency are as described in Article 2.3 of the Presidential Regulation of the Republic of Indonesia No. 20 of 2015 concerning the National Land Agency that the BPN/ATR has the authority full control over and enforcement of Absentee/Guntai land tenure.

It can be formulated in this research: what is the authority of the National Land Agency in rejecting the transfer of land rights through a sale and purchase agreement? What are the juridical implications of the rejection of the transfer of land rights through a sale and purchase agreement by the National Land Agency?

2. Research Methods

This research uses empirical juridical. An empirical juridical approach is used to provide a qualitative description of the juridical implications of the rejection of the transfer of land rights based on the deed of sale and purchase agreement by the National Land Agency. This research is descriptive analytical. Analytical Descriptive, namely describing the applicable laws and regulations associated with legal theories and the practice of implementing positive law concerning problems.⁴

3. Results and Discussion

3.1. Authority of the National Land Agency in Rejecting the Transfer of Land Rights through a Sale and Purchase Agreement

Buying and selling is interpreted as a legal act in the form of surrender of ownership rights (handing over of land forever by the seller to the buyer who at that time also surrenders the price to the seller.⁵ Sale and purchase, namely the transfer of rights as a result of an agreement having been made in which the first party binds himself to surrender an object (land) and the other party to pay the price that has been promised. According to Article 1458 of the Civil Code, buying and selling is deemed to have taken place between the two parties, as soon as the people reach an agreement regarding the goods and the price, even though the goods have not been delivered and the price has not been paid.

⁴Sumardi Suryabrata, 1993, *Research Methodology*, Rajawali, Jakarta, p.19

⁵Boedi Harsono, *Indonesian Agrarian Law, History of Compilation of Content and Implementation*, Jakarta: Djtangan, 1975, p. 65.

The information presented in the land book or other public register must be in accordance with the facts or actual legal facts and always up-to-date, ownership rights and or land rights according to the cash-straight principle have been transferred after the parties made the deed at the Land Deed Making Officer, even ownership may have been switch before facing the PPAT, but what is presented in the land book and certificate has not been changed. In compliance with the publicity principle of land registration, changes to the information in the Land Book and Certificate must be made immediately.

In order to obtain strong and extensive evidence, the legal act of transferring rights must be registered with the Office of the National Land Agency to be recorded in the land book and certificate concerned. By recording the transfer of rights on the certificate, a strong letter of evidence is obtained. Article 37 paragraph (1) PP No. 24 of 1997 which stipulates: the transfer of land rights and ownership rights to apartment units through buying and selling, swaps, grants, income in companies and other legal actions for transferring rights, except for transferring rights through auctions, can only be registered if proven by a valid deed made by the authorized PPAT according to the provisions of the applicable laws and regulations.

Implementation of the registration of the transfer of land rights by buying and selling at the Land Office, the applicant does not come directly to the Land Office. However, the registration of the transfer of rights is represented by the PPAT. This is because in addition to the PPAT's duty to draw up the land sale and purchase deed, the PPAT is also tasked with registering the transfer of rights at the local land office no later than 7 days after the signing of the land sale and purchase deed.

The National Land Agency of the Republic of Indonesia is a government agency that is given the authority to take care of land administration. Originally the National Land Agency was formed by Presidential Decree No. 26 of 1988 concerning the National Land Agency. Presidential Decree Number 26 of 1988, then added with Presidential Decree Number 154 of 1999 amended by Presidential Decree Number 95 of 2000,⁶to the last Presidential Regulation of the Republic of Indonesia No. 20 of 2015 concerning the National Land Agency.

The authority to refuse the transfer of land rights through a sale and purchase agreement as described above is the administrative authority at BPN as regulated in Government Regulation Number 24 of 1997 concerning Land Registration. Based on the explanation of Article 45 PP No. 24 of 1997 regarding the Head of the Land Office for refusal of the transfer of rights, if one of the following conditions is not met:

a. Certificates or certificates regarding the condition of land rights are no longer in accordance with the existing registers at the Land Office.

⁶Urip Santoso, Registration and Transfer of Land Rights, Print III, Kencana Prenada Media Group, Jakarta, 2013, p. 205.

- b. The legal actions referred to in Article 37 paragraph (1) are not proven by a PPAT deed or quotation of the tender minutes as referred to in Article 41, except in certain circumstances as referred to in Article 37 paragraph (2).
- c. Documents required for registration of the transfer or encumbrance of the rights concerned are incomplete;
- d. the other conditions specified in the relevant laws and regulations are not met;
- e. the land in question is the object of a dispute in court;
- f. Legal actions proven by the PPAT deed are canceled or canceled by a court decision that has permanent legal force; or
- g. the legal action referred to in Article 37 paragraph (1) is canceled by the parties before being registered by the Land Office.

In the legal actions in the provisions of Article 37 paragraph (1) namely the transfer of land rights and ownership rights to apartment units through buying and selling, swaps, grants, income in companies and other legal actions of transferring rights, except for the transfer of rights through auctions can only be registered if proven by a deed made by the authorized PPAT according to the provisions of the applicable laws and regulations. Or excerpts from the minutes of auction in accordance with the provisions of Article 41, except for certain circumstances as determined by the Minister, the Head of the Land Office can register the transfer of rights over a parcel of land with ownership rights.

3.2. Juridical Implications for Rejecting the Transfer of Land Rights through a Sale and Purchase Agreement by the National Land Agency

The transfer of land rights is a legal act of transferring land rights that is carried out intentionally so that these rights are released from the original holder and become the rights of another party.⁷Since the enactment of the UUPA, the transfer of land rights can be carried out through buying and selling, exchange, grants, gifts by will, gifts according to custom and other actions intended to transfer property rights.

Article 37 paragraph 1 Government Regulation No. 24 of 1997, it is emphasized that: Transfer of land rights and ownership rights to apartment units through buying and selling, exchanges, grants, entering company data and other legal actions for transferring rights, except for transferring rights through auctions can only be registered if proven by a valid deed made by the authorized PPAT according to the provisions of the applicable laws and regulations.

The transfer of land rights, and in particular the ownership rights to the land can be carried out correctly, then a PPAT who will make the transfer of land rights must ensure the truth regarding the land rights (property rights), regarding the skills and authority to act from those who will transfer them and accept the transfer of rights over the land.

⁷K. Wantjik Saleh, *Your Rights to Land*, Ghalia Indonesia, Jakarta, 1977, p. 4-5.

Implementation of the registration of the transfer of land rights by buying and selling at the Land Office, the applicant does not come directly to the Land Office. However, the registration of the transfer of rights is represented by the PPAT. This is because in addition to the PPAT's duty to draw up the land sale and purchase deed, the PPAT is also tasked with registering the transfer of rights at the local land office no later than 7 days after the signing of the land sale and purchase deed.

The juridical implication of the rejection of the transfer of land rights through a sale and purchase agreement by the National Land Agency, namely in Article 45 paragraph (2) states that if there is a refusal by the Head of the Land Office, this matter will be submitted in writing including the reasons for the refusal. Article 45 paragraph (3) states, a letter of refusal to transfer land rights is submitted directly to the party concerned accompanied by the return of the application file, with a copy to the PPAT.

4. Conclusion

The authority to refuse the transfer of land rights through a sale and purchase agreement as described above is the administrative authority at BPN as regulated in Government Regulation Number 24 of 1997 concerning Land Registration. Based on the explanation of Article 45 PP No. 24 of 1997 regarding the Head of the Land Office refusing to transfer rights, if one of the conditions in Article 45 paragraph (1) is not fulfilled. The juridical implication of the rejection of the transfer of land rights through a sale and purchase agreement by the National Land Agency, namely in Article 45 paragraph (2) states that if there is a refusal by the Head of the Land Office, this matter will be submitted in writing including the reasons for the refusal. Article 45 paragraph (3) states, a letter of refusal to transfer land rights is submitted directly to the party concerned accompanied by the return of the application file, with a copy to the PPAT.

5. References

Books:

- [1] Harsono, Boedi. 1975. *Hukum Agraria Indonesia, Sejarah Penyusunan Isi dan Pelaksanaan*, Jakarta: Djambatan.
- [2] _____. 2001, *Hukum Agraria Indonesia*, Djambatan, Jakarta.
- [3] _____. 2008, *Hukum Agraria Indonesia Sejarah Pembentukan, Isi dan Pelaksanaannya, Edisi Revisi Cetakan Keduabelas*, Jakarta: Djambatan.
- [4] Saleh, K. Wantjik. 1977. *Hak Anda Atas Tanah*, Jakarta: Ghalia Indonesia.

- [5] Santoso, Urip. 2013. Pendaftaran dan Peralihan Hak Atas Tanah, Cetakan III, Jakarta: Kencana Prenada Media Group.
- [6] Sumardjono, Maria SW. 2001, *Kebijakan Pertanahan Antara Regulasi dan Implementasi*, Jakarta: Buku Kompas.
- [7] Suryabrata, Sumardi. 1993, *Metodologi Penelitian*, Rajawali, Jakarta.

Regulation:

- [1] The 1945 Constitution of the Republic of Indonesia
- [2] Civil Code (KUHPerdato)
- [3] Act No. 5 of 1960 concerning Basic Agrarian Regulations (UUPA)
- [4] Government Regulation Number 24 of 1997 concerning Land Registration