

The Process of Transferring the Name of a Land Ownership Certificate Based on a Sale and Purchase Agreement in which the Seller Dies and the Heirs Refuse to Sign in Jepara

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Abstract. *The basic concept in buying and selling land is clear and cash. If the concept of light and cash cannot be fulfilled, it does not mean that buying and selling transactions cannot be carried out. The notary will make another instrument, namely by making a sale and purchase agreement (PJB). The deed of sale and purchase agreement (PJB) can be made in 2 (two) forms, namely the sale and purchase agreement (PJB) not yet paid off and the sale and purchase agreement (PJB) in full amount. The binding sale and purchase is considered paid off accompanied by the power of attorney to sell. If the PJB has been paid off but the seller has died then the PJB can still be signed which will be handed down to the seller's heirs. This study uses a sociological juridical approach, with analytical descriptive research specifications. Sociological juridical research is researching and studying law to see the workings of law in an empirical society. The primary data collection technique uses observation and interviews, and secondary data uses document studies and literature studies.*

Keywords: Agreement; Dies; Heirs; Refuse; Seller.

1. Introduction

Nowadays, human needs for new things continue to increase, including one of them, namely land, in this case land is one of the basic needs for humans where humans need land to build a place to live or other things, for example houses, shophouses, and others. It can even be said that every activity carried out by humans is related to land. Starting from birth to death, humans are also related to land or in the sense that they cannot be separated.

Land law in Indonesia is regulated in Article 5 of the Basic Agrarian Law (UUPA)¹, which states: "Agrarian law that applies to land, water and space is customary law, as long as it does not conflict with national and state interests, which is based on national unity, with Indonesian socialism and with the regulations contained in this law and with other legal regulations, everything by paying attention to elements that rely on religious law.

By referring to the article above, it means that humans or the Indonesian people may have property rights to land, where land rights are regulated in Article 16 paragraph (1) of the UUPA which states: "the strongest and most complete property rights to land". The strongest explains that property rights do not have a certain time limit or period of time and property rights are also registered with proof as legal force. Terfull explains that property rights give authority to the owner or possessor in terms of unlimited use.²

Transfer or transfer is a legal action carried out with the aim of transferring land rights from the transferor to the transferee.³Based on Article 20 paragraph (2) UUPA states "that property rights can be transferred and transferred. Transfer means a move that is not due to legal action (intentional) on the contrary due to a legal event (unintentional), such as being inherited. Meanwhile, diversion explains that there was deliberate intent that was carried out consciously, giving rise to legal action against property rights.

The transfer of the name of the certificate of land rights indicates that a sale and purchase of land has been carried out between the parties, according to customary law, in its implementation, most of it is simply a letter explaining that the seller has given up his land and received payment, but it is not proven by the existence of a deed of sale and purchase of land drawn up before Land Deed Drafting Official (PPAT) which has been regulated by applicable laws and regulations.

Buyers who already have a sale and purchase deed made by PPAT, as required by Article 1 of the Republic of Indonesia Government Regulation Number 24 of 2016, concerning Amendments to Government Regulation Number 37 of 1998 concerning Position Regulations for Land Deed Making Officials, which states that a PPAT deed is a deed that made by PPAT as proof that certain legal actions have been carried out regarding land rights. Therefore, the buyer is official or legal as the owner and can immediately register the land at the local Land Office.

¹Boedi Harsono, 2005, *Indonesian Agrarian Law History of the Establishment of Basic Agrarian Laws, Contents and Implementation*, Jakarta, Djangkat Publishers, p. 176.

²Effendi Wargan, 1994, *Agrarian Law in Indonesia, An Analysis from a Legal Practitioner's Point of View* Jakarta, PT. Raja Grafindo Persada, p. 273.

³*Ibid.*, p. 1.

Considering the importance of legal certainty in every transfer of land rights as a result of a land sale and purchase transaction, UUPA is required to register the transfer of rights due to sale and purchase.

However, in practice, the sale and purchase of land and the system of transfer of names does not always run smoothly. Sometimes unexpected things arise, and these problems usually arise in the future. No matter how capable we are in making an agreement, it cannot be denied that there are gaps in weaknesses which one day if a dispute occurs, they become openings to be used as excuses and self-defense for parties who will cancel, and even seek their own benefits from the agreement.

One example is the case of the certificate transfer process in Jepara Regency. In this case, there was a problem in the process of changing the name of the certificate of title to the land where the seller died before the process of changing the name of the certificate took place and the heir as the holder of the heir's obligations refused to carry out the process of changing the name of the land. Based on this description, this research will discuss further the process of completing a land sale and purchase if in the process of changing the name of the owner of the land rights (seller) dies and what legal protection measures (buyer) should be taken if the heir refuses in the process of changing the name of the title certificate based on the binding land purchase agreement?

2. Research Methods

This study uses a sociological juridical approach, with analytical descriptive research specifications. Sociological juridical research is researching and studying law to see the workings of law in an empirical society. The primary data collection technique uses observation and interviews, and secondary data uses document studies and literature studies.

3. Result and Discussion

An agreement is an event where two people promise each other to do something. And from this event, a legal relationship arises between the two people which is called an agreement. This means that if the agreement made is a binding sale and purchase agreement as was done by the Seller and the Buyer, then after the Seller offers the price and the Buyer agrees with the price offered, that's when the agreement between them is born.

According to Adriaan Pitlo, inheritance law is a collection of regulations that regulate the law regarding wealth due to the death of a person, namely regarding the transfer of wealth left by the deceased and the consequences of this transfer

for the people who acquire it both in the relationship between them and in the relationship between them with third parties.⁴

Looking at the provisions above, the death of a party to the agreement does not make the agreement nullify or end, or make the party's obligations disappear or do not need to be done. Because the heir automatically because of the law will obtain ownership rights to all goods, automatically/by law replaces the position of the heir in the field of property law. The rights and obligations of the heir (automatically become the rights and obligations of the heir), even if the heir has not/does not know there is an inheritance. So the death of one of the parties does not eliminate or cancel the legal relationship, but the rights and legal obligations are transferred to the heirs.

As for the procedures for transferring (inheritance) land rights as a result of someone passing away, 125 and land rights will be transferred to the heirs or heirs, then the heirs must register the transfer of rights based on inheritance regarding land plots that have already been registered (certified) must involve a public official (Agrarian Spatial Planning/National Land Agency), where the transfer of land rights to the heirs must be registered at the Land Office. This is regulated in Article 36 of Government Regulation Number 24 of 1997 which states as follows:

- 1 Maintenance of land registration data is carried out if there is a change in the physical data of the juridical data of the registered land registration object.
- 2 The right holder concerned is required to register the changes referred to in paragraph (1) to the Land Office.

This registration is based on Government Regulation Number 24 of 1997 concerning Land Registration, according to this regulation, land transfers due to inheritance must be registered at the local Land Office by including the following documents:

- 1 Original land certificate.
- 2 Death certificate.
- 3 Heir certificate.
 - a. For Indonesian citizens who are native Indonesian residents, a certificate of heirship made by the heirs witnessed by 2 (two) people confirmed by the Head of

⁴Adriaan Pitlo, 1979, *Inheritance Law According to the Dutch Civil Code*, translation by Isa Arief, Jakarta Intermedia, p. 1.

the Village/Subdistrict and the Subdistrict Head where the testator lived at the time of death.

b. For Indonesian citizens of Chinese descent with a Deed of Information on Inheritance Rights made by a Notary.

c. For other Indonesian citizens of Eastern Foreign descent, a Certificate of Inheritance made by the Heritage Center (Article 111 paragraph (1) C of the Minister of Agrarian Affairs/Head of the National Land Agency Regulation No. 3 of 1997 concerning Provisions for Implementing Government Regulation No. 24 of 1997).

In accordance with the fact that it appears that with the death of the seller, the binding sale and purchase agreement that has been made becomes the obligation of the heirs to complete it in matters relating to the transfer of the name of the certificate, because according to the explanation above that the death of the seller does not create legal consequences from the binding agreement he has made with the Buyer delete or expire. Because the rights and obligations of the heir automatically become the rights and obligations of the heir. This means that the rights and obligations of the Seller will automatically become the rights and obligations of the heirs.

With the death of the seller, it is not necessary to make a new binding sale and purchase agreement between the heirs and the buyer as long as the heirs accept the agreement made by the seller before he dies, because the agreement born from the agreement is not deleted and is still running. The heir as one of the heirs as the holder of the rights and obligations of the agreement, so that they can complete the agreement or the agreement that was born.

Based on the description above, it can be concluded that there is legal certainty regarding the process of transferring the name of the certificate even though the seller of the land has died, namely by the inheritance process first carried out by the Notary as long as the heirs agree and agree on the PPJB (underhand) made between the seller and the buyer while the seller is still alive.

In this case, the resolution was using the litigation method, the judicial process. The method taken was through filing a lawsuit filed by the buyer against the seller which was submitted/submitted to the Jepara District Court. Given the mediation process carried out in the village and at the Notary & PPAT Office of Jepara Regency. Having not reached an agreement between the two parties, mediation efforts at the Notary & PPAT Office aim to provide legal understanding for the parties regarding the case. Bearing in mind that Notaries & PPATs have duties and authorities in accordance with the provisions in Law of the Republic of

Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries. Its duties and authorities are:

1 The notary has the authority to make authentic deeds regarding all actions, agreements and stipulations that are required by laws and regulations and/or that are desired by interested parties to be stated in an authentic deed, guarantee the certainty of the date of making the deed, save the deed, provide grosse, copies and quotations of the deed, all of that as long as the making of the Deed is not also assigned or excluded to other officials or other people determined by law.

2 Apart from the authority as intended in paragraph (1), the Notary also has the authority to:

a. Validate the signature and determine the certainty of the date of the letter under the hand by registering it in a special book.

b. Post private letters by registering in a special book.

c. Make a copy of the original letter under your hand in the form of a copy containing the description as written and depicted in the letter concerned.

d. Validate the suitability of the photocopy with the original letter.

e. Providing legal counseling regarding the making of Deeds.

f. Make Deeds relating to land.

g. Make a deed of minutes of auction

3. In addition to the authorities referred to in paragraph (1) and paragraph (2), a Notary has other authorities as regulated in laws and regulations.

Based on Article 15 of Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries, it explains the duties and authorities of Notaries. This article explains that the duties and authority of a Notary are coordinated by the minister who handles government affairs in the agrarian and spatial planning sectors. The Notary's Office provides legal certainty and protection to the holder of rights to a registered plot of land, with the aim of being able to prove himself as the holder of the rights in question.

The notary office is responsible for providing guarantees of legal certainty in transferring the name of the certificate of ownership rights, meaning that by

doing so the land registration notary can determine the status of the registered rights with certainty and the responsibility regarding certainty regarding the subject of the rights, meaning that with land registration it can be known with certainty the location of the land, the boundaries of the land, and the size (area) of the land.

Settlement of land sale and purchase disputes in the process of transferring names, in cases that exist in the Jepara Regency area is taken through mediation at the notary's office as a mediator who has the function of intermediary to negotiate for the parties to the dispute over land in order to avoid disputes between the two parties from the applicant or the respondent. The essence of this negotiation is to find a solution or settlement that benefits the rights of both parties to the dispute. If both parties agree, then one of the parties releases their rights by peace on the parties' own conscience.

In the settlement of the above case in the absence of an agreement at the time of mediation, the parties agree to resolve the dispute through litigation (Court), the buyer can file a lawsuit with the Jepara Regency District Court on the basis (evidence) of the Land Sale and Purchase Agreement (underhand), as well as evidence – other evidence.

Submission of a buyer's lawsuit to the panel of judges contains (petitum) including:

1. Ratify the Land Sale and Purchase Agreement
2. Order BPN to carry out the process of transferring the name of the certificate

After the lawsuit is granted, the buyer can carry out the process of changing the name of the certificate without the heirs signing it and on the basis of the court decision of the Notary & PPAT and BPN can carry out the process of changing the name of the certificate.

The court decision is also part of legal certainty and legal protection regarding the process of transferring names where the seller dies and the heirs refuse, in this case the court decision provides the consequence that the binding agreement for the sale and purchase of land (underhand) is valid in accordance with Article 1320 of the Civil Code, namely regarding the terms of the agreement are valid, there is an agreement between the sellers who have agreed to bind themselves to the buyer to sell the certificate of rights to their land, and ask the National Land Agency (BPN) to carry out the process of transferring the name of the certificate.

4. Conclusion

In accordance with the fact that it appears that with the death of the seller, the binding sale and purchase agreement that has been made becomes the obligation of the heirs to complete it in matters relating to the transfer of the name of the certificate, because according to the explanation above that the death of the seller does not create legal consequences from the binding agreement he has made with the Buyer delete or expire. Because the rights and obligations of the heir automatically become the rights and obligations of the heir. This means that the rights and obligations of the Seller will automatically become the rights and obligations of the heirs.

5. References

- Adriaan Pitlo, 1979, *Hukum Waris Menurut Kitab Undang Undang Hukum Perdata Belanda, terjemahan oleh Isa Arief*, Intermedia, Jakarta
- Boedi Harsono, 2005, *Hukum Agraria Indonesia Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi, Dan Pelaksanaannya*, Penerbit Djambatan, Jakarta.
- Effendi Perangin, 1994, *Hukum Agraria di Indonesia, Suatu Telaah dari Sudut Pandang Praktisi Hukum*, PT. Raja Grafindo Persada, Jakarta.