

The Role of Notaries in Making Deeds of Changes to Land Rights That Have Not Been Certified

Rohmatika Puspita

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

Abstract. *This study aims to determine the role of Notaries and PPATs in certifying land rights that have not been certified, also to determine the value of legal certainty of land rights that have not been certified, and to determine the legal status of changes in land rights that have not been certified. The research approach method used is normative law, namely the type of approach that refers more to the type of The Statute Approach Legislation approach. The types and sources of data used by researchers, namely secondary data, are divided into primary legal materials, secondary law and tertiary law. The data collection method uses literature studies and interviews and the data analysis method uses qualitative methods. The results of the study show that Notaries and PPATs must play a role in certifying land rights so that the rights and obligations of the certificate are clear and to avoid disputes. In addition, Notaries PPATs also play a role in making deeds, if there are land rights that have not been certified. The deed is made as proof that the land rights have been certified, and if the land is to be traded, the land rights are valid because a certificate has been made. In land rights that have not been certified guarantee "legal certainty" for the sake of order and justice in community life. The legal status if there is a right to land that has not been certified is weak or less strong in its legal status, in the sense that the right to land that has not been certified, if for example a sale and purchase occurs, then its legal status is not strong, not perfect, weak. In order for its legal status to be strong, it needs to be registered with the National Land Agency and a deed made by a Notary/PPAT so that its power becomes perfect. The legal consequences that occur due to the sale and purchase of uncertified land are disputes over ownership of land rights, the lack of evidence showing the land object makes the land object not have legal certainty so that the validity of its ownership cannot be determined.*

Keywords: *Role of Notary, Changes in Land Rights, Not Yet Certified*

1. Introduction

Notary is a very important profession and is very much needed in modern society, the position of a notary as a functionary in society until now is still respected. A notary is usually considered a public official where someone can get reliable advice. Everything that is written and determined (konstatir) is true, he is a strong document maker in a legal process. According to Law Number 2 of 2014, amendments to Law Number 30 of 2004 Article 1 number 1 of the Notary Law which is the basis for "Notary as a public official who is authorized to make authentic deeds and has other authorities as referred to in this law or based on other laws".

The notary's job is to provide assistance in making authentic deeds. Thus, it is important for a notary to be able to understand the provisions regulated by law so that the general public who do not know or do not understand the rules of law can understand correctly and not do things that are contrary to the law.

Notaries also provide responsibility for legal certainty to the community in the ratification of bindings and to provide legal reinforcement for legal bindings provided by law. In addition to the duties of a notary, he can also be an expert in legal discovery and legal advisor because in addition to making authentic deeds, notaries are also assigned and responsible for registering and validating letters / deeds made under hand.

and rights are rights that authorize the holder of the rights to use the land and/or take advantage of the land that he/she claims. The word "use" contains the meaning that the land rights are used for the purpose of constructing buildings, while the word "take advantage" contains the meaning that the land rights are used for purposes other than constructing buildings, for example: agriculture, fisheries, animal husbandry and plantations. Based on the provisions of Article 4 paragraph (2), the holder of the land rights is given the authority to use the land in question, likewise the earth and water bodies and the space above them are only as needed for direct interests related to the use of the land within the limits according to the UUPA and other higher legal regulations.¹

Transfer of land rights is one of the events and/or legal acts that result in the transfer of land rights from the owner to another party. The transfer can be intentional due to legal acts such as buying and selling, renting and so on, and

¹ Dwi Heny Ratnawati and Djauhari, 2018, "Implementation of Deed of Release of Rights as the Basis of Rights to Submit Application for Transfer and Change of Building Use Rights Whose Term Has Ended in Brebes Regency", AKTA Journal, Vol. 5, No. Page 249. url:<https://jurnal.uniissula.ac.id/index.php/akta/article/view/2554>. Accessed on July 27, 2023 at 23:00.

also unintentional due to legal events such as transfer of rights due to inheritance.²If the land is said to be owned but does not have proof of ownership certificate, then the land cannot be said to be owned but can be said to be land with usage rights status, because after the enactment of Law Number 5 of 1960, simultaneously all land rights must be registered with the National Land Agency. Land throughout Indonesia must be registered at the land office. And to get valid evidentiary power we can make it before a Notary or PPAT.

2. Research Methods

This study uses a normative legal research approach method, namely a type of approach that refers more to the type of The Statute Approach Legislation approach. Researchers use the type and source of data, namely secondary data, divided into primary legal materials, secondary law and tertiary law. The data collection method uses literature studies and interviews and the data analysis method uses qualitative methods.

3. Results and Discussion

3.1. The Role of Notaries and PPAT in Land Rights Certification

Notaries must play a role in certifying land rights, because people who use notary services certainly have expectations that the services provided by notaries truly have value and weight that can be relied on, in addition to providing legal certainty to legal subjects, providing justice and a sense of security in society, can also protect society from disputes and fulfill basic rights guaranteed by the constitution for citizens.³The role of a Notary as well as a PPAT is to make a deed, if there is a right to land that has not been certified. The deed is made as evidence that the right to the land has been certified, and if the land is to be traded, the right to the land is valid because a certificate has been made.

In his position, a notary basically has authority over deeds made by him that are related to land. In addition to providing legal services, notaries are expected to provide legal counseling as stated in Article 15 paragraph (2) UUJN, especially in terms of making deeds, so that in addition to making authentic deeds, notaries are also permitted to provide an understanding of what is permitted and prohibited by law.⁴

² Muhammad Yamin Lubis, 2008, Land Registration Law, Mandar Maju, Bandung, p. 27

³ Muhammad Nurohim, 2018, "The Role of the Notary in the Transfer of Land on the Basis of Letter Rights from the Subdistrict Head". Focus UMPI, Vol. 7 No. 2. p. 73

Notaries in carrying out their duties have a complex role because they play an important role in connecting social life, practical economy with laws and regulations and the legal world. Notaries as public officials (*openbaar ambtenaar*) are also responsible for making written evidence of legal acts that can be accounted for.

Some of the reasons why a Notary holds or entrusts a Land Title Certificate are:

- a. To check with BPN
- b. There is a Notary's Honorium that has not been paid by the buyer and/or seller in accordance with what was agreed by both parties.
- c. The developer entrusts a master certificate for (separation) purposes if someone wishes to purchase land and buildings constructed by the developer in question.
- d. The buyer has not fulfilled his obligation to pay in full the price of the land that is the object of the sale and purchase."⁵

The authority granted by law to a notary, it is seen that a notary is a job with special expertise that requires broad knowledge and heavy responsibility to serve the public interest, because the core of a notary's task is to regulate in writing and authentically the legal relationship between the parties who mutually request the services of a notary. So that it is not uncommon for various things in the laws and regulations to require certain legal acts to be made in authentic deeds, such as the establishment of limited liability companies, cooperatives, fiduciary guarantee deeds and so on in addition to the deeds being made at the request of the parties.

Authentic deeds as the strongest and most complete evidence have an important role in every legal relationship in the life of society. In various business relationships, banking activities, land certification, social activities, and others, the need for written evidence in the form of authentic deeds is increasing in line with the growing demand for legal certainty in various economic and social relationships, both at the national, regional and global levels. Through authentic deeds that clearly determine rights and obligations, guarantee legal certainty, and at the same time it is hoped that disputes can be avoided. Although the dispute cannot be avoided, in the process of resolving the dispute, authentic deeds will be strong written evidence and provide real contributions to resolving cases cheaply and quickly. Authentic deeds essentially contain formal truth with what the parties have notified the PPAT. However, the PPAT has an obligation to

⁵ Muhammad Azmi Khoirurrijal, et.al. The Validity of Notary's Action to Withhold Client's Certificate in the Event of Underpayment of Commission for Certificate Management Services, p. 298

ensure that what is contained in the PPAT Deed has been truly understood and is in accordance with the wishes of the parties, namely by reading it so that the contents of the PPAT Deed are clear, and providing access to information, including access to related laws and regulations for the parties signing the deed. Thus, the parties can freely determine whether or not to agree to the contents of the PPAT Deed that they will sign.⁶

PPAT plays a very important role in providing certainty and providing legal protection for interested parties. Because, the law in community life requires evidence that clearly determines the rights and obligations of a person as a legal subject in society. In this case, the evidence in question is a certificate. An authentic deed as the strongest evidence has an important role in every legal relationship in community life, which in this case is land ownership rights.⁷

3.2. The Value of Legal Certainty of Rights to Uncertified Land

Legal certainty is something that can only be answered normatively based on applicable laws and regulations, not sociologically, but legal certainty normatively is when a regulation is made and enacted with certainty because it regulates clearly and logically in the sense that it does not cause doubt (multi-interpretation) and is logical in the sense of becoming a system of norms with other norms so that they do not conflict. or cause norm conflicts arising from uncertainty. Certainty is a condition where human behavior, whether individual, group or organization, is bound and within the corridor outlined by legal rules.

The order of society is closely related to the certainty of law, because order is the core of certainty itself. Order causes people to be able to live with certainty so that they can carry out the activities needed in community life.

Certificates as proof of legal ownership are very important to protect and guarantee legal certainty for rights holders so that there is a sense of security over the land they control. If someone who owns a plot of land but does not register their land at the land office, then the land is vulnerable to disputes. Although land title certificates are very important, in reality there are still many people who have not registered their land or do not have certificates for various reasons, for example, they already have proof of ownership in the past which is only in the form of letter C, expensive administration costs and the

⁶ Ratih Mega Puspa Sari, Sidik Purnama, Gunarto, 2018, "The Role of PPAT in Land Certification Due to Sale and Purchase", Vol. 5, No. 1, AKTA Journal, url:<https://jurnal.unissula.ac.id/index.php/akta/article/view/2553/1914>.

⁷ Sulistiyo Rini and Arpangi, 2023, "The Role of PPAT (Land Deed Official) in Making Housing Sale and Purchase Deeds", Sultan Agung Scientific Journal, Vol. 02, No. 01, p. 509, url:<http://jurnal.unissula.ac.id/index.php/JIMU/article/view/31320/8406>

administration process which is generally considered complicated by the community. Someone who owns a plot of land but does not have a certificate, then there is no legal certainty over the plot of land, and is vulnerable to interference from unauthorized outside parties, because the original owner does not have valid proof of ownership, in this case a land title certificate. In addition, if people want to transfer ownership of land by buying and selling, this tends to be difficult when transferring ownership if the land was not initially certified.

Therefore, to ensure legal certainty for land rights holders, according to the Government Regulation, land rights holders who have been registered will be given a certificate as strong evidence. This is in accordance with Article 4 of Government Regulation Number 24 of 1997 which states that in order to provide legal certainty and protection as referred to in Article 3 letter a, the relevant rights holders will be given a land rights certificate. Land that has not been certified consists of former customary land and state land. Former Customary Land Rights come from customary land or other lands that have not been converted into one of the lands with certain rights, which are generally known as *girik, petok, bocorik, ketitir* and so on.⁸

For a piece of land that has not been certified, there is no strong evidence of ownership of the land that can prove ownership and also the clarity of its area and boundaries. In addition to having an impact on the buyer, the sale and purchase of land that has not been certified can also be detrimental to the landowner or seller, for example if there is a dispute over the land object in question, the sale and purchase can be canceled because the owner does not have valid evidence in the form of a certificate of ownership. In order to obtain legal certainty, the community who carries out this legal action together with the transfer of land rights, namely the sale and purchase, is required to register the transfer of land rights. Therefore, in the case of land sales and purchases, it cannot be resolved simply by all related parties, but so that the sale and purchase is legally valid, it is necessary for the intervention of authorized officials to complete it and all transfers of land ownership because the sale and purchase must comply with the rules and procedures regulated or mandated by the applicable law.⁹

Legal certainty regarding land rights is needed to create justice in land ownership between various elements in a country. The regulation of land rights should be in favor of the small community so that it can create justice and to provide legal

⁸ Irma Devita Purnamasari, 2010, Popular Practical Legal Guide, Smart, Easy and Wise Tips in Understanding Land Law, Kaifa, Bandung, p. 32.

⁹ I Made Handika Putra, et al., 2019, "Selling and Buying of Ownership Rights to Uncertified Land", Jurnal Analogi Hukum, Vol 1 No 3, p. 375.

certainty for the rights of community land ownership. As is known, the Basic Agrarian Law as the basis for regulating land rights only regulates matters that are classified as basic, so there are several provisions that should exist to regulate matters that are classified regarding land, such as laws and regulations, government regulations, and ministerial regulations.

3.2. Legal Status of Deeds of Change of Land Rights That Have Not Been Certified

The legal status if there is a right to land that has not been certified is weak or less strong in its legal status, in the sense that the right to land that has not been certified if for example a sale and purchase occurs, the legal status is not strong, not perfect, weak. In order for the legal status to be strong, it needs to be registered with the National Land Agency and the deed must be made by a Notary/PPAT so that its strength becomes perfect.

Transfer of rights to uncertified land carried out before the enactment of Government Regulation Number 24 of 1997 concerning Land Registration, the evidence of the transfer of rights can be in the form of an authentic deed made by a PPAT, but if it is done with a private deed made by the parties (seller and buyer) witnessed by the Village Head or Lurah, then the deed can be used as evidence of the acquisition of land rights and can be registered with the Land Office. Meanwhile, the sale and purchase of rights to uncertified land carried out after the enactment of Government Regulation Number 24 of 1997 concerning Land Registration, must be proven by a deed of sale and purchase made by or before a PPAT. If it is not made with a deed of sale and purchase made by a PPAT, then the sale and purchase process must be repeated with a sale and purchase made by a PPAT. This is to meet the requirements and provisions for the transfer of rights to land to be registered based on Government Regulation Number 24 of 1997 concerning Land Registration. Among the Indonesian people, especially those living in rural areas, until now not all of them are familiar with the existence of PPAT. In conducting land transactions, there are still some people in rural areas who write it down in a deed signed by the parties with the knowledge of the Village Head. There are even land transactions that are only written down in the form of payment receipts without making a deed of agreement. This type of land transaction model still occurs in some people in rural areas, because they feel that their transactions are sufficient if only proven by a deed made by themselves or simply a note of proof of payment.

The lack of proof of land ownership is one of the causes of the minimal process of land rights registration. Another cause is the lack of public knowledge about the importance of proof of land rights ownership. The process of making a

Certificate requires them to have complete documents for the land they own. Land owned by rural communities or indigenous communities is owned hereditarily from their ancestors, the land ownership certificates they have are very minimal, some even do not have any at all.

A piece of land that is traded without a land title certificate often raises concerns, especially for buyers who do not have legal clarity. For a piece of land that has not been certified, there is no strong evidence of ownership of the land that can prove ownership and also the clarity of its area and boundaries. In addition to having consequences for the buyer, the sale and purchase of land that has not been certified can also be detrimental to the landowner or seller, for example if there is a dispute over the land object in question, the sale and purchase can be canceled because the owner does not have valid evidence in the form of a land title certificate.

The legal consequences that occur due to the sale and purchase of uncertified land are disputes over land rights, the lack of evidence showing the land object makes the land object have no legal certainty so that the validity of its ownership cannot be determined, which is very detrimental to the sale and purchase of land ownership rights that have not been certified is usually very detrimental to the buyer because the buyer when a dispute occurs over the land purchased cannot show strong evidence in the form of a certificate. In addition, the legal consequences of this sale and purchase can also be detrimental to the land owner or seller where the selling price of the land will be cheaper than the price of land that has been certified, or it is possible that this sale and purchase can be canceled or not occur at all due to the absence of strong evidence.

Although in society there are many transactions of land that have not been certified, basically the land that is traded, although not registered with the National Land Agency, still has the legality to be traded. This is based on the implied meaning contained in the provisions of Article 19 of PP No. 24 of 1997 which in essence states that every agreement with the intention of transferring land rights must be proven by a deed made by an authorized official, in this case a PPAT.¹⁰

4. Conclusion

The role of a Notary as well as a PPAT is to make a deed, if there is a right to land that has not been certified. The deed is made as evidence that the right to the land has been certified, and if the land is to be traded, the right to the land is

¹⁰ Hartana, Kadek Diah Karuni, 2022, "Study of the Legality of the Sale and Purchase of Uncertified Land and its Legal Consequences According to Government Regulation Number 24 of 1999", *Undiksha Citizenship Education Journal*, Vol. 10 No. 3, pp. 312-313.

valid because a certificate has been made. The order of society is closely related to the certainty of law, because order is the core of certainty itself. Order causes people to be able to live with certainty so that they can carry out the activities needed in community life. Certificates as proof of legal ownership are very important to protect and guarantee legal certainty for rights holders so that there is a sense of security over the land they control. The legal status if there are rights to land that have not been certified is weak or less strong in legal status. In order for the legal status to be strong, it needs to be registered with the National Land Agency and the deed made by a Notary/PPAT so that its power is perfect.

5. References

Journal and Internet

Dwi Heny Ratnawati and Djauhari, 2018, "Implementation of Deed of Release of Rights as the Basis of Rights to Submit Application for Transfer and Change of Building Use Rights Whose Term Has Ended in Brebes Regency", AKTA Journal, Vol. 5, No. p. 249. url:<https://jurnal.unissula.ac.id/index.php/akta/article/view/2554>. accessed on 27 July 2023 at 23.00.

Hartana, Kadek Diah Karuni, 2022, "Study of the Legality of the Sale and Purchase of Uncertified Land and its Legal Consequences According to Government Regulation Number 24 of 1999", Undiksha Citizenship Education Journal, Vol. 10 No. 3, p. 312-313.

I Made Handika Putra, et al., 2019, "Selling and Buying of Ownership Rights to Uncertified Land", Jurnal Analogi Hukum, Vol 1 No 3, p. 375.

Muhammad Nurohim, 2018, "The Role of the Notary in the Transfer of Land on the Basis of Letter Rights from the Subdistrict Head". Focus UMPI, Vol. 7 No. 2. p. 73

Ratih Mega Puspa Sari, Sidik Purnama, Gunarto, 2018, "The Role of PPAT in Land Certification Due to Sale and Purchase", Vol. 5, No. 1, AKTA Journal, url:<https://jurnal.unissula.ac.id/index.php/akta/article/view/2553/1914>

Sulistiyo Rini and Arpangi, 2023, "The Role of PPAT (Land Deed Official) in Making Housing Sale and Purchase Deeds", Sultan Agung Scientific Journal, Vol. 02, No. 01, p. 509, url:<http://jurnal.unissula.ac.id/index.php/JIMU/article/view/31320/8406>

Book :

Irma Devita Purnamasari, (2010), Popular Practical Legal Guide, Smart, Easy and Wise Tips in Understanding Land Law, Kaifa, Bandung, p. 32.

Komar Andasmita, 1983, Notary at a Glance, Bandung Alumni, Bandung, p. 2.

Muhammad Azmi Khoirurrijal, et.al. The Validity of Notary's Action to Withhold Client's Certificate in the Event of Underpayment of Commission for Certificate Management Services, p. 298

Muhammad Nurohim, 2018, "The Role of the Notary in the Transfer of Land on the Basis of Letter Rights from the Subdistrict Head". Focus UMPI, Vol. 7 No. 2. p. 73