

Validity of Transfer of Land Rights Based on Purchase Receipt Evidence (Study of Decision Number 7/PDT-G/2019/PN.Cbi)

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Abstract. *It can be said that every moment humans are in contact with land. In the transfer of land rights, one of them is by buying and selling with proof of receipt. In the transfer of land rights, land registration must be carried out to ensure legal certainty. There is a discrepancy in the application of the rules for implementing the registration of the transfer of land rights based on receipts. This receipt is a type of private deed made by the parties without the intermediary of an official. Article 1874 of the Civil Code states that a deed below is a writing that is signed and made without the intermediary or assistance of a public official. However, in practice the author found the registration of the transfer of land rights based on a receipt without a deed from the Land Deed Making Officer, whether the validity of this receipt can be used as a basis for the transfer of rights. This happened in a civil case in Court Decision Number 7 / PDT-G / 2019 / PN.Cbi. This study uses a normative legal method, which discusses more about the synchronization of law supported by secondary data and the approach used in this study is the statute approach. Data source: literature study, Data collection: literature study. Data processing: Data examination, data reconstruction, data systematics. Data analysis: Qualitative descriptive. The results of this study, receipts cannot be used as a basis for transferring land rights. However, civil cases in Court Decision Number 7 / PDT-G / 2019 / PN.Cbi. The legal act of buying and selling with this receipt evidence carried out by the parties is not stated in an authentic deed so that it does not have perfect evidentiary power. This receipt evidence can/cannot be used as a basis for transferring land rights, because it can be said that it can be used as a basis for transferring rights. However, with the results of this court decision, this decision can be used as authentic evidence of the basis for transferring land rights based on receipts.*

Keywords: *Court; Decision; Land; Transfer; Validity.*

1. Introduction

Land in human life has a very important role because it is a source of welfare, prosperity and life. In addition, land has a close relationship with humans because land has economic value for human life and can produce natural resources for many people. This is regulated in Article 33 paragraph (3) of the 1945 Constitution (hereinafter referred to as the UUD) which states:¹

"The water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people."

Based on the provisions of Article 2 paragraph (2) of Law Number 5 of 1960 concerning Basic Agrarian Regulations (hereinafter referred to as UUPA), the state's authority to manage natural resources covers three things, including:

1. Regulating and organizing the allocation, use, supply and maintenance of the earth, water and space;
2. Determine and regulate legal relations between people and the earth, water and space;
3. Determine and regulate legal relations between people and legal acts concerning the earth, water and space. These three authorities are carried out for the greatest prosperity of the people, which includes nationality, independence and welfare;

Furthermore, in terms of land control by the state, its implementation can basically be delegated to autonomous regions and customary law communities.

Then, regarding the granting of land to individuals or legal entities, it can be done by granting them land rights. These land rights are then registered to ensure legal certainty and have binding legal force. People often control land without registering land rights or do not yet have a certificate for their land. When the government evicts land, people say that it is their hereditary land.

According to Article 20 paragraph (1) of the UUPA, the definition of ownership rights is as follows:

"Hereditary, strongest and fullest rights that people can have over land bearing in mind the provisions in Article 6"

Article 6 of the UUPA is as follows:

"All land rights have a social function."

¹Bambang Eko Supriyadi, 2013, Forestry Agrarian Law, PT Raja Grafindo Persada, Jakarta, p.7.

Based on these provisions, the characteristics of ownership rights distinguish them from other rights. Ownership rights are hereditary, strongest and most complete rights that a person can have over land. The granting of this characteristic does not mean that the right is an absolute, unlimited and inviolable right. The words hereditary mean that ownership rights to land do not only last during the life of the rights holder, but if a legal event occurs, namely the death of the rights holder, it can be continued by his heirs. The word strongest means that ownership rights to land can be burdened with other land rights, for example burdened with Building Use Rights, usage rights, and other rights. This land ownership right must be registered. While the word most complete means that ownership rights to land have given broad authority to the rights holder in terms of using his land.

One type of land right whose transfer must be registered is ownership right. Article 20 paragraphs (1) and (2) strictly regulate property rights, namely:

1. Ownership rights are hereditary, strongest and fullest rights that people can have over land, bearing in mind the provisions in Article 6.
2. Ownership rights can be transferred and assigned to another party. One form of transfer of ownership rights to land due to sale and purchase by auction is a legal act, as regulated in Article 41 paragraph (1) to paragraph (5).

Article 23 paragraph (1) states that every transfer, deletion and encumbrance of ownership rights with other rights must be registered. The registration is a strong means of proof regarding the deletion of ownership rights and the validity of the transfer and encumbrance of said ownership rights. Registration of the transfer of land rights has the purpose of legal certainty and protection. Registration of land rights, both for the first time and subsequent registrations due to transfer of rights or because of sale and purchase, gift, exchange, or because of endowment, all constitute a legal act that is properly administered by the Land Office.²

UUPA with its set of implementing regulations aims to realize the guarantee of legal certainty for land rights throughout Indonesia. When connected with government efforts in reorganizing the use, control and ownership of land, land registration is very important to realize legal certainty.³

According to AP Parlindungan, land registration comes from the word Cadastre (Dutch Kadaster) a technical term for a record, indicating the area, value, and ownership (or other rights) of a plot of land. This word comes from another word "Capistrum" which means a register or capita or unit made for Roman land tax (Capotatio Terrens). In a strict sense, cadastre is a record of land, the value of the land and its rights holders and for tax purposes. Thus, Cadastre is the right tool

²Yahya Harahap, 1986, Legal Aspects of Agreements, PT Alumni, Bandung, p. 182.

that provides a description and identification of the aforementioned and also as Continuous recording of land rights.⁴

The term land registration: gives the impression that the first object of registration or the only object of registration is land. Indeed, regarding the collection to presentation of physical data, land which is the object of registration, namely to ensure its location, boundaries, area in the registration map and also presented in the "land list". The word "Cadastre" which refers to the physical field activity comes from the Latin term "Capistratum" which is a list containing data about land.

The purpose of land registration is contained in Article 3 and Article 4 of Government Regulation Number 24 of 1997 (hereinafter referred to as Government Regulation Number 24 of 1997) is to provide legal certainty and legal protection to the holder of rights to a plot of land, apartment units and other registered rights so that they can easily prove themselves as the holder of the rights concerned. The purpose of providing legal certainty is the main purpose of land registration as stipulated in Article 19 of the UUPA. Therefore, obtaining a certificate is not just a facility, but is the right of the holder of rights to land guaranteed by law.⁵

In order to guarantee the certainty of rights and legal certainty over land, UUPA has outlined the necessity to implement land registration throughout Indonesia. According to Boedi Harsono, land registration is a series of activities carried out by the state or government continuously and regulated, in the form of collecting certain data, processing, storing, presenting for the benefit of the people in providing legal certainty in the land sector including evidence and its maintenance.⁶

Legal certainty includes certainty regarding the person or legal entity that is the rights holder, also called certainty regarding the subject of the rights, and certainty regarding the location, boundaries and area of land plots, also called certainty regarding the objects of the rights.⁷

In our society, the acquisition of land rights is more often done by transferring rights, namely through buying and selling. The definition of buying and selling in everyday terms can be interpreted as where someone voluntarily releases money to obtain goods. The transfer of land rights due to legal acts (buying and selling) can be registered and also proven by a deed of the Land Deed Making

⁴Dr. Urip Santoso, SH, MH, Registration and Transfer of Land Rights, 2010, Prenamedia Group, Jakarta, p. 12.

⁵Ibid. p., 18.

⁶ Boedi Harsono, 1999, Indonesian Agrarian Law, History of the Formation of the Basic Agrarian Law, Contents and Implementation, Djambatan, Jakarta, p.72.

⁷Wahid Muchtar, 2008, Understanding the Legal Certainty of Land Ownership Rights, Republic, Jakarta, p. 57.

Officer. The deed of the Land Deed Making Officer is proof that there has been a transfer of land rights due to legal acts through buying and selling and one of the absolute requirements for registering the transfer of Ownership Rights due to buying and selling at the Land Office.⁸Based on this background, the author is interested in choosing the title "Legislation of Transfer of Land Rights Based on Proof of Purchase Receipt (Study of Decision Number 7/PDT-G/2019/PN.Cbi)".

2. Research Methods

The approach method that will be used in this study is the normative legal approach method. Normative legal research uses library materials as the main data to analyze cases, and does not conduct field research. The research specification is descriptive, namely research that is intended to provide data that is as accurate as possible with humans, conditions or other symptoms, and only explains the condition of the problem object without intending to draw generally applicable conclusions. Data sources are based on secondary data. The data collection method used in this study is a documentation study, namely data collection aimed at research subjects. The data analysis method used in analyzing data is qualitative analysis.

3. Results and Discussion

3.1. Validity of Transfer of Land Rights Based on Receipt Evidence

Basically, a receipt is made for a specific purpose and interest of the parties, namely as proof of receipt of payment of a sum of money according to the agreed price, so that it can be interpreted that an agreement has been made between the parties.⁹A receipt that clearly states the identities of the parties, the intent and purpose of making the receipt and then signed by the parties or at least known regarding the legal act can be used as evidence. However, because there is still a possibility for the parties to deny the signature, the receipt does not have the power of physical proof like an authentic deed.¹⁰Proof of receipt in the short term still does not show any legal impact for the buyer, because if there is an interest or desire to take legal action against the rights to the land.

According to researchers, a receipt, which is a private letter, when used as proof of ownership as a form of transfer of land rights in a sale and purchase, can be said to have a weak status to prove that land rights have been transferred from the seller to the buyer, because the receipt cannot be used as a basis for submitting land registration at the local Land Agency Office.

⁸Yahya Harahap,. Loc. Cit. p. 190.

⁹Rifka Hidayani and Mohammad Fajri Mekka Putra, 2022, Legal Force of Receipt as Evidence of Private Sale and Purchase of a Plot of Land in Decision Number 135/PDT.G/2021/PN.PB, The Juris Journal of Legal Science, Vol. 6, No. 2, p. 410.

¹⁰Ni Nyoman Putri Satrianingsih and AA Ngurah Wirasila, 2009, Transfer of Land Ownership Rights Through Private Sale and Purchase Agreements, Kertha Semaya Journal, Vol. 7, No. 6, p. 8.

The author examines the decision on a civil case based on the Bogor District Court Decision Number: 32/PDT/G/2016/PN.Bgr. In this case, the Panel of Judges in its considerations is of the opinion that the Plaintiff has been able to prove the arguments of his lawsuit and because the Plaintiff has been able to prove the arguments of his lawsuit, the Plaintiff's lawsuit should be granted. Based on this, the Panel of Judges in its decision, the Panel of Judges decided in Case Number: 7/PDT-G/2019/PN.Cbi, the Plaintiffs' lawsuit in its entirety with Verstek The Plaintiffs are the legal heirs of the late Nurhayati Kayun, the deceased, Nurhayati Kayun is the sole legal owner of the Building Use Rights Certificate No. 1257 which is proof of ownership of land and buildings covering an area of 90 m² (ninety square meters) located in Taman Raya Citayam Block D1 No. 15 Kel. Rawa Panjang Kec. Bojong Gede Kab. Bogor Prov. West Java, The sales receipt dated May 30, 2009 for a down payment of Rp. 20,000,000 (twenty million rupiah) and the payment in full on August 15, 2009 for Rp. 65,000,000 (sixty five million rupiah) is legally valid as evidence of a valid sale and purchase between the deceased Nurhayati Kayun and the Defendant.

According to the author, a sale and purchase that is not made before a Land Deed Official is still valid even if it is only based on a receipt. This is based on the Supreme Court Jurisprudence Number 126.K/Sip/1976 dated April 4, 1978 which decided that:

"For a land sale and purchase to be valid, it does not absolutely have to be a deed made by and before the Land Deed Official. This official deed is only a piece of evidence."

The judge's decision in relation to the making of a deed of sale and purchase is to be used as a basis for applying for a land title certificate, but this depends on the content of the decision. If the content of the decision validates a sale and purchase, then the court decision can be used as a basis for applying for a land certificate. The function of the court decision is to validate a land sale and purchase process which has the same function as the deed of sale and purchase made by the PPAT.

3.2. Obstacles and Solutions to Problems Arising in the Transfer of Land Rights Based on Purchase Receipt Evidence

Land Disputes hereinafter referred to as disputes are land disputes between individuals, legal entities, or institutions that do not have a broad impact as referred to in Article 1 Number 2 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 21 of 2020 concerning Handling and Settlement of Land Cases. The emergence of land disputes begins with complaints from one of the parties (legal entities or individuals) regarding demands and objections to their land both in terms of priority and status. With the hope that a settlement can be achieved in accordance with statutory regulations and land rights are obtained by the party

with more rights (priority), therefore the resolution of land disputes depends on the nature of the problem.

There are 2 (two) ways to resolve disputes, namely through litigation and non-litigation. The sale and purchase of land rights carried out underhand, if a dispute arises between the seller and the buyer, the deed underhand can still be denied and only has perfect evidentiary force if it is acknowledged by both parties, or strengthened again with other evidence. Land sale and purchase transactions with receipts are indeed easy in terms of process, and do not require a lot of money, but behind that there will be various negative consequences, for example, land can be sold by those who are not entitled to the land, the seller does not acknowledge the sale and purchase, to reselling the land to another party. In addition, there are other possibilities such as control of land with an area greater than the provisions, the unknown area of land owned by a party causes the limitation of the land area expected by the UUPA not to be realized. Therefore, it is said that a deed underhand is the beginning of written evidence of the emergence of a legal dispute regarding land starting from a complaint by one party (person or legal entity) containing objections and demands for land rights both regarding land status, priority and ownership with the hope of obtaining an administrative settlement in accordance with the provisions of applicable regulations. Thus, the transfer of land rights carried out underhand cannot be registered with the Land Office. If at any time a dispute arises regarding the sale and purchase, the underhand sale and purchase agreement can be used as evidence, although its evidentiary force is weak. Even though it was made underhand, the sale and purchase agreement has fulfilled the requirements of the agreement and the principles of the agreement regulated in civil law, where an agreement will be binding and become law for the parties who have made the agreement (the principle of *pacta sunt servanda*), so that the agreement can be used as evidence, although it has only a strong evidentiary force, not perfect.

According to the author, the transfer of land rights based on proof of purchase receipts often faces various obstacles because receipts are not considered as legal proof of land ownership. The following are common obstacles and solutions that can be taken:

1. Lack of strong legal evidence;
2. Risk of ownership disputes;
3. Complicated legalization process;
4. Lack of legal certainty;

The solution to this problem is:

1. Manage land certificates through the BPN;

2. Make a Sale and Purchase Deed before the Land Deed Official before carrying out the transfer of rights;
3. Settlement of disputes through legal means or mediation;
4. Education and socialization;
5. Verify land status before purchase;

By overcoming these obstacles through appropriate solutions, the process of transferring land rights can be carried out more safely and in accordance with applicable legal regulations.

4. Conclusion

The validity of the transfer of land rights based on a valid receipt as long as there is no other evidence that shows land ownership and has a stronger legal status. Based on the Supreme Court Jurisprudence Number 126.K/Sip/1976 dated April 4, 1978 which decided that: "For the validity of a land sale and purchase, it is not absolutely necessary to have a deed made by and before a Land Deed Making Officer. This Official's Deed is only a means of evidence". In addition, a sale and purchase that is not made before a Land Deed Making Officer is still valid, so the ownership rights are transferred from the seller to the buyer, as long as the sale and purchase meets the material requirements regarding the seller, buyer and land. The receipt used as evidence in court must be stamped because in order to be used as evidence, the receipt must meet the administrative requirements, namely paying the Stamp Duty owed if the receipt is not stamped. Common obstacles and solutions that can be taken, namely: lack of strong legal evidence, risk of ownership disputes, complicated legalization process, lack of legal certainty, solutions to these problems are: taking care of land certificates through the BPN, making a Deed of Sale and Purchase before the Land Deed Making Officer before transferring rights, resolving disputes legally or through mediation, education and socialization, verifying land status before purchasing.

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