

The role of officials who make land deeds in the process of transferring the status of use rights to freehold land in a fair manner and with legal certainty

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Abstract

Making Deed Documents regarding the transfer of land rights in Indonesia is the authority of the Land Deed Making Official as an extension of the government, in this case the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency of the Republic of Indonesia. The authority referred to is the creation of documents, for example: Deed of Sale and Purchase, Inheritance, Deed of Sharing of Joint Rights, Deed of Granting Mortgage Rights, Power of Attorney to Encumber Mortgage Rights, Use Rights on Freehold Land, and other legal acts. In each preparation of land rights transfer documents, it is necessary to check the clarity of the status of land rights so that they are made clear, in accordance with land data and provide legal certainty in accordance with applicable legal provisions. Provisions regarding Use Rights are specifically regulated in Articles 41 to 43 of the Basic Agrarian Law. In the provisions of Article 6 of Government Regulation Number 103 of 2015, it is stipulated that foreign citizens can obtain a period of granting the status of use rights to land for 30 years. If this period has expired, this can be done by making an agreement to extend the use rights for 20 years. The research method used in this research is the normative legal method. The results of the research explain that problems often occur in the field by Land Deed Making Officials in carrying out their positions, namely that often the files received do not meet the elements of the agreement and the applicable legal provisions and the actual agreement made so that in the signing and issuance of the Right to Use Deed in It is indicated that freehold land registered with the National Land Agency of the Republic of Indonesia, Regency/City does not meet the sense of justice and legal certainty.

Keywords : *Land Titles Registrar, Transfer of Use, Rights Status, Freehold Land*

I. INTRODUCTION

Land is a basic human need, as the main human need and as a fulfillment of needs for survival. Currently, the human population continues to increase, but the land area remains constant and does not increase, causing various kinds of conflicts or other problems over land in Indonesia. Land is not only a means of housing, but from land you can also obtain foodstuffs, petroleum, water and other very basic needs, due to limited land, the existence of the status of rights to land is often in conflict and has legal issues due to the lack of a basis. clear law as a guide and proof of ownership of land. Obtaining land rights status can be obtained in several ways, one of which is obtained through the Usage Rights process on Freehold Land. (R. Subekti, 1995).

Every country in the world has a constitution as the legal basis for running government (Rumiarta, Astariyani, & Amaral, 2022), as well as laws as the legal basis for its application in society, such as the implementation of the actions of land deed officials based on law. In Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, a Government Implementing Regulation Number 37 of 1998 concerning Position Regulations for Land Deed Making Officials (P.P.A.T) is issued in Article 2 paragraph (2) regarding the authority of the P.P.A.T position in making legal acts/deeds. that is: Buying and selling, Exchange, Grants, Income within the Company (Inbreng), Sharing of Joint Rights, Granting building use rights/use rights over freehold land, Granting Mortgage Rights, Granting power of attorney imposes mortgage rights.

As for the problem found in this research, there is an agreement on the binding agreement for the granting of use rights over land with ownership rights made between foreign citizens and Indonesian citizens. The binding agreement for the sale and purchase of use rights is followed by the signing of the Deed of Granting Use Rights on Land of Ownership in the presence of the Land Deed Making Official (PPAT) to then register the recording of proof of control of the Use Rights at the Regional National Land Agency in the Local Regency/City.

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For example, the Notary must be physically present and sign the deed in the presence of an audience and witnesses, (Kerina Maulidya Putri, et al, 2022), as well as the official who makes the land deed, this is done so that it has definite legal force. In the context of the contents of the agreement in the binding document for the sale and purchase of use rights made in front of a Notary. After a period of 50 years, foreign citizens who wish to continue using the status of use rights over proprietary land can apply for renewal of use rights over land within a period of 30 years. year. So, if the entire time period is accumulated, the total will be 80 years for the period of granting usage rights status, this is the main problem in this dissertation research.

Law is a series of regulations and/or statutory regulations that give rise to government institutions which have their respective authorities granted by statutory regulations (Rumiarta, 2022), including officials who make land deeds who receive authority from statutory regulations. Authority which usually consists of several authorities is power over a certain group of people or power over a field of government (Prajudi Atmosudirjo, 2013), such as the authority of officials who make land deeds. Relating again to the main tasks, functions and authority of the P.P.A.T in carrying out its position, the author tries to analyze the role of the P.P.A.T in carrying out its office by making a Right to Use agreement document on land owned by Indonesian Citizens which is made in several agreement documents combined within one time period or the day on which documents are signed for several periods of 80 years, and this has been carried out by P.P.A.T in several regions without considering problems that will occur in the future, considering that written agreements are in accordance with legal logic in making a treaty or agreement document. It should be made and implemented at the time of initial signing and the end of the agreement period, then a new written agreement can be made.

Normatively, the author tries to analyze the legal issues regarding the granting of Right to Use status on land owned by Indonesian citizens. Apart from that, it is estimated that there are other problems related to the granting of Right to Use status to land of Freehold to Foreign Citizens which is also related to Temporary Residence Permits and A foreign citizen's passport which is used as an attachment document in signing a Usage Rights agreement on land owned by an Indonesian citizen, is it possible that with the limited period of time the Foreign Citizen's Stay Permit Card can become a legal loophole in the future for a legal act of signing the document has already taken place in front of the Land Deed Making Official, because it is not impossible that in the future if there is a legal problem it will involve the Land Deed Making Official or Notary who made the initial agreement regarding the granting of Right to Use status on the land of Ownership Rights for which the status was issued. by the National Land Agency, Land Deed Officials or Notaries will be asked to be responsible for the documents or agreements that have been made.

II. METHODS

The research method uses normative legal research methods to find out the relationship between legal regulations and society as well as classifications that influence the implementation of law in society, as primary legal material. The second secondary legal material was obtained through literature study. This research specification analyzes law based on normative legal research and is related to positive law regarding the main research problem. Based on primary legal materials and secondary legal materials, identification, classification and validation. Analysis of legal materials is carried out, and the results are displayed in the form of scientific writing.

III. RESEARCH RESULTS AND DISCUSSION

That to obtain land rights status can be obtained in several ways, one of which is obtained through the process of Right to Use on Freehold Land. (R. Subekti, 1995). Material requirements what determines the validity of the Right to Use the land, among others, users with Usage Rights status have the right to use the land in question. What this means is that as a recipient of rights, you must fulfill the requirements to own the land that you will use. To determine whether or not the user is entitled to obtain use rights over the land, what he or she pays for depends on what rights exist on the land, whether ownership rights, business use rights, building use rights, or use rights.

Ownership Rights Holders have the right to sell the land or impose other rights on the land they own. The person who has the right to sell or rent out a plot of land is of course the legal holder of the rights to the land who is called the owner. If there is only one person who owns the land certificate, then he has the right to sell or impose other rights on the land himself. However, if the land owners are two or more people, those who have the right to sell the land or impose other rights on the land are several names on the certificate who must bind themselves consciously and mutually agree. No one person can take legal action (Effendi Wargan, 1994), the land rights being transacted are not in dispute.

Formal requirements, after all material requirements are met, the formal requirements are the drawing up of a Deed of Granting Use Rights on Freehold Land made by P.P.A.T and signed by the parties. Based on the description above, it can be understood that the Right to Use agreement on land is an agreement in which the parties bind themselves to carry out legal acts of Right to Use where the land is the object. The Right to Use land agreement must fulfill material and formal requirements, where the material conditions determine whether it will be valid. In a Land Use Rights agreement, after the

material requirements are fulfilled, the Land Use Rights are executed. A Deed of Granting Use Rights on Ownership Land is drawn up and signed before the P.P.A.T. which is also a formal requirement.

That the document for the signing of the Deed of Agreement on the Granting of Use Rights on Land of Ownership between Foreign Citizens and Indonesian Citizens before a Notary was carried out, then followed by the Signing of the Deed of Granting of Use Rights on Land of Ownership in the Presence of the Land Deed Official along with the accompanying documents. other support for the recording and registration process with the local National Land Agency (Tampil, 2005), if the documents are complete a Right to Use certificate will be issued on Freehold Land by the local Regency/City National Land Agency. This is very risky and very dangerous for the generations/descendants of Indonesian citizens who own the land recorded on the land certificate, because they do not know the main contents of the agreement document made before a Notary or Land Deed Official if their parents are recorded in the name on the certificate. dies and archival evidence of land certificates owned must be proven to the court if a legal problem arises between the heirs and the foreign national (Tampil, 2005). That as a public official who has the authority to make deeds and other authorities (Salim, 2015), including in this case the official who makes land deeds.

That legal principles are basic thoughts (Dewa Gede Atmadja, 2018). Legal principles are a safeguard against arbitrary decisions by the government (Diseth & Høglend, 2011), including in this case the officials who make land deeds are also bound by legal principles. So if we analyze the granting of Usage Rights status and the period of Usage Rights granted to foreign citizens in Government Regulation Number 103 of 2015 and examined based on article 9 paragraphs 1 and 2 of the Basic Agrarian Law "it can reduce the rights of Indonesian citizens to own Hak Pakai status. Ownership of land that is hereditary, strongest and fulfilled", because over a long period of time it will reduce the philosophical value of the property right to control, utilize and enjoy the results of the use of the land. In other words, the concept of Ownership Rights is not violated, but a minimum of at least 50 years is required or another agreement is agreed which will be made before the Land Deed Making Officer for the process of handing over the Use Rights to submit an application for the Ownership Rights to be re-owned or canceled based on mutual agreement, or canceled based on the Decision. The court, assuming that when an agreement is made between an Indonesian citizen and a foreign citizen, at least two generations of Indonesian citizens are required to be able to reach the process of returning the status of Right to Use to Right to Ownership.

That there is a juridical problem, namely that it cannot be determined exactly what the law is (legal indeterminacy), so it will have an impact on justice and legal certainty (Mathias Klatt, 2008). Based on the results of the analysis regarding the regulation of ownership of Right to Use land by Foreign Citizens, this is quite worrying. This can be a reference for the Central Government and the People's Representative Council of the Republic of Indonesia as regulators or drafters of Laws to immediately issue clear and definite regulations or legal rules. so as to protect the rights of Indonesian citizens. And the government is required to be able to act in accordance with the norms or theories of justice, legal certainty, legal benefits as well as legal renewal and the theory of the role of the State by implementing national principles, the principle of nationality and the principle of guaranteeing legal certainty and legal protection in accordance with the 5th Principle of the Law. The 1945 Constitution of the Republic of Indonesia is social justice for all Indonesian people.

That justice is the main virtue of the presence of social institutions. However, benevolence for the entire community cannot override or challenge the sense of justice of everyone who has acquired a sense of justice (Pan Mohamad Faiz, 2009). If we talk about authority, then the authority of an official must be clearly and firmly regulated in the legal regulations governing that position, so that if an action occurs outside that authority by an official it is said to be an unlawful act (Jozan Adolf, 2020) , including in this case the authority of officials who make land deeds.

Foreign citizens who wish to have Usage Rights over land in Indonesia must have a passport and a Temporary Stay Permit Card (KITAS) issued by an authorized immigration official. KITAS is a written statement provided by an authorized official appointed by the Government of the Republic of Indonesia which contains approval for foreigners to obtain a temporary residence permit in the area. It turns out that there are obstacles to the immigration authorities in checking residence permits, especially work KITAS of foreign nationals. There are several foreign nationals who are found by the immigration authorities whose KITAS permits do not comply with their valid permits, and even when the validity period has expired (expired) they still remain in Indonesia. For example, there are foreign nationals who work or do business and reside in Indonesia, but their KITAS permits have expired or do not match their classification. Indonesia's natural beauty is an attraction for foreign tourists visiting Indonesia, however, quite a few foreign nationals commit immigration-related violations in Indonesia, one of which is violating the time limit for their residence permit (overstay).

The legal consequences for foreign nationals who exceed their residence permit in Indonesia if the foreigner holds a residence permit whose validity period has expired and is still in Indonesian territory for less than 60 (sixty) days from the time limit of the residence permit is subject to sanctions in the form of a fine in accordance with the provisions statutory regulations, if you do not pay, you will be subject to immigration administrative action in the form of deportation and detention. The main factor in the occurrence of expired or (Overstay) KITAS violations is because supervision carried

out by the Immigration Office needs to be increased so that these violations occur because the supervision carried out by the Immigration office is only checking documents or Visas for foreigners and foreigners who commit violations. The violation of expired KITAS (Overstay) is not remembering the time period given by the Immigration Office so that it is negligence by the foreigner.

In order for Indonesia to remain safe and peaceful, supervision of foreigners in Indonesian territory is needed, in the form of supervision of foreigners entering, whereabouts, activities and leaving Indonesian territory. The analysis that can be given is that Law Number 6 of 2011 is still not effective enough because there are still many shortcomings experienced by the Immigration Office, such as the lack of funds and infrastructure owned by the Immigration Office in several regions of Indonesia, in addition to the vastness of the Immigration work area so that There are many violations of expired Temporary Stay Permit Cards (Overstay) which often occur in Immigration work areas.

Apart from that, foreign citizens do not fully understand the importance of Law Number 6 of 2011 concerning Immigration for them. With the increasing number of foreign citizens entering Indonesian territory, especially Bali in particular, it does not rule out the possibility that violations will occur, especially residence permit violations. Immigration supervision carried out by the Directorate General of Immigration and its staff is carried out with immigration administrative actions and field supervision so that the surveillance process carried out by immigration is not only foreigners leaving or entering Indonesian territory, but also when they are in Indonesian territory. Apart from that, immigration supervision is not limited to administrative actions only, but also in terms of immigration investigation actions.

Radicalism is a crime that threatens state security and is therefore classified as a criminal offense. The function of immigration control to deal with potential radicalism can run well with cooperation, coordination and active participation between Immigration, the Indonesian National Police, BNPT and the community. (Nur Dwiki Hendra Graha, 2019). Based on the results of this analysis, it is feared that in making and signing a Right to Use agreement document on land owned by an Indonesian citizen, there is a very high risk of legal abuse even though the agreement or agreement is made before a Notary and immigration regulations relating to the making of a Right to Use agreement for a very long period of time. and long, and there are potential legal loopholes that could be detrimental to Indonesian citizens, because the Right to Use agreement must be made once the agreement period is running and ends according to the date of the agreement, and it is best if you want to extend or renew the Right to Use agreement on Freehold Land. renewal documents after the current year period ends so that there are no conflict cases or other legal problems.

IV. CONCLUSION

It is hoped that the role of Land Deed Drafting Officials in carrying out their main duties and authority can be a barrier to legal boundaries and can provide direction and legal education to the community so that in every document making and signing of agreements there is legal certainty and justice. The author's advice is that before signing the document, it is best to check the data or completeness of identity or documents such as Passport and KITAS for Foreign Citizens so that there are no other legal problems in the future which could involve the Land Deed Making Officer (P.P.A.T) in making the deed, especially the Deed of Granting Use Rights. on Freehold Land.

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