

Grand Sulthan As The Basis For The Transfer Of Land Rights In Tebing Tinggi City Study Of The Decision Of The Supreme Court No.1928k/Pdt/2021

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Abstract. *The transfer of land rights is a legal event/action that results in the transfer of rights from one legal subject to another legal subject, thereby causing the loss of authority over the land. Land transfer refers to the process or action that changes land ownership from one party to another. This can occur through a variety of means, including sale, inheritance, gift, or voluntary or forced surrender. For example, if someone sells a house to someone else, that is a transfer of land. This research includes normative legal research, so the legal materials used are primary, secondary and tertiary legal materials. The technique for collecting legal materials that will be used as a source in this research is library research, namely collecting legal materials by reading statutory regulations, official documents, journals, articles from the internet, and other literature that is closely related to The issues discussed are based on secondary legal materials. Transfer of land rights is a right to transfer land rights from an individual to a legal entity. Legal transitions usually occur due to legal acts and legal events. The implementation of the transfer of land rights can occur due to transfer or transfer. Switching, for example due to inheritance of Decision Number. 13/Pdt.G/2020/Pn Tbt The Panel of Judges rejected the Defendants' exception in its entirety in the main case, rejecting the plaintiff's claim in its entirety. Decision Number 422/Pdt/2020/PT Mdn that accepts the bandi application from the Comparator's Attorney for the original Plaintiff based on the Decision of the Tebing Tinggi District Court Number 13/Pdt.G/2020/Pn Tbt, dated 20 July 2020 which is appealed in the exception and rejects the exception Appellee 1 and Appellee II, in the main case, canceled the decision of the Tebing Tinggi District Court which was appealed. At the cassation level, Decision Number 1928 K/Pdt/2021, namely granting the cassation petition from the cassation applicants consisting of the Chair of the Community Empowerment Institution, formerly the Community Social Institution, represented by Iskandar and Lalang Village, Rambutan District, Tebing Tinggi City, represented by Lura Adi Supeno, thereby canceling the Medan High Court Decision Number 422/PDT/2020/PT Medan and dated 21 October 2020 which annulled the Decision of the Tebing Tinggi District Court Number 13/Pdt.G/2020/PN TBT dated 20 July 2020.*

Keywords: Law, Transition, Rights, Land

1. INTRODUCTION

Land has a very important position and function in human life. For humans, land is a place of settlement, a place where humans carry out activities and even after death. The need for land is increasing in line with the increasing population and increasing other needs related to natural resources, especially land. Because land is part of the earth has a very important function. On the basis of the provisions of Article 33 Paragraph (3) of the 1945 Constitution, the earth, water, airspace, including the natural resources contained therein, are at the highest level controlled by the State, as the organisation of the power of all the people Transfer or transfer of rights is a legal action that aims to transfer rights from one party to another.

In contrast to the transfer of a right, the transfer of a right indicates the existence of a legal act deliberately carried out by one party with the intention of transferring his property rights to another person. Thus, the transfer of property rights is known or desired by the party conducting the agreement on the transfer of land rights. Sale and purchase of land is a legal act in the form of transfer of ownership rights (transfer of land in perpetuity) by the seller to the buyer. at that time the buyer also hands over the price to the seller. the sale that results in the transfer of ownership rights to land from the seller to the buyer is included in agrarian law and land law.

Land transfer refers to the process or act of changing the ownership of land from one party to another. This can happen through various means, including sale, inheritance, gift, or voluntary or forced surrender. For example, if someone sells a house to another person, it constitutes a land transfer. Likewise, if someone dies and their property is passed on to their heirs, it is also considered a land transfer. The transfer of land rights often has to fulfil certain formal requirements, such as the requirement for a written deed or contract. These requirements vary depending on the applicable legal jurisdiction, but the aim is to provide clarity and legal certainty. any jurisdiction requires the transfer of land rights to be registered at the land office.

This registration is important to give publicity to the change in ownership, as well as to protect the interests of the parties involved in the transaction. Land rights are rights that allow the right holder to use or benefit from the land they own. The word "use" means that the land can be used to construct a building, while the word "benefit" means that the land can be utilised for agriculture, plantations, and livestock.

Prior to the enactment of the Basic Agrarian Law, there was dualism in the land law system in Indonesia, there were two completely different land law systems, the first system with western land law, the main regulations were regulated in the Civil Code, which was capital individualism. The second system is the customary land law system based on the principles of indigenous Indonesian law, which is societal in nature..

2. THEORETICAL REVIEW

A theoretical framework is a framework of thought, theory, or thesis about a case or problem that is the subject of comparison, a theoretical guide that is agreed or disagreed with. Policy approaches include the interrelated notions of goal-oriented approaches, rational approaches, economic and pragmatic approaches, and value-oriented approaches. The structure of the legal system consists of: the number and size of courts, their jurisdiction (including the types of cases they are authorised to hear), and the procedure for appealing from one court to another. Structure also means how the legislature is organised, what the president can and

cannot do, what procedures are followed by the police and so on. So the legal structure consists of the existing legal institutions, which are meant to implement the existing legal instruments existing legal instruments.

The theory of legal certainty is one of the objectives of law and it can be said that legal certainty is part of the effort to be able to realise justice. realise justice. Legal certainty itself has a real form, namely the implementation and enforcement of a law against an action that does not look at who the individual is doing. Through legal certainty, everyone is able to predict what he will experience if he takes a certain legal action. Legal certainty is also needed to realise the principles of equality before the law without discrimination. From the word certainty, it has a close meaning with the principle of truth. This means that the word certainty in legal certainty is something that can be strictly syllogised in a legal formal way.

Based on Jan M. Otto's opinion, it explains that the rule of law that is able to create legal certainty is a law that is born through and can reflect the culture that exists in society. The theory of legal certainty put forward by Jan M. Otto can be referred to as realistic legal certainty, meaning that legal certainty can require that there is harmony between the state and the people who have an orientation and understand the country's legal system.

3. RESEARCH METHODS

In a scientific study, to obtain facts or principles or evidence to solve a particular problem, a research method is needed or how the facts or principles or evidence are obtained. the facts or principles or evidence are data, both written data and human behaviour. In this study, the authors used several research methods in order to obtain data to solve problems in the object of research.

Research can be defined as all search activities, investigations and scientific experiments in a particular field to obtain new facts or principles that aim to improve science and technology. Meanwhile, according to Tyrus Hillway (Introduction to Research) that research is a scientific method carried out through careful and complete investigations, of all the evidence that can be obtained about a particular problem, so that a solution can be obtained for that problem.

This research includes normative legal research, so the legal materials used are primary, secondary, and tertiary legal materials. The technique of collecting legal materials that will be used as a source in this research is a literature study, namely the collection of legal materials by reading laws and regulations, official documents, journals, articles from the internet, and other literature that is closely related to the problems discussed based on secondary legal materials.

In this study, researchers used normative legal studies, namely research focused on examining the application of rules or norms in positive law. Normative legal research is also commonly referred to as doctrinal legal research, which is a legal research that does not touch or enter the empirical or sociological legal area in collecting the data needed in the research.

The data collection tool in this research uses document studies or literature studies, which means looking for data by studying documents or library materials in accordance with the problems studied. In research, it is generally distinguished between primary data and secondary data. Primary data is data collected and processed by researchers directly from the subject or object of research, while secondary data is data obtained indirectly from the object or subject of research. In this research, the author will use the law, namely:

Secondary data obtained by examining library materials

1. Primary Sources

Namely legal materials such as legislation, related to land, which are used to study land tenure and ownership, as well as the function of land rights certificates, the Civil Code related to sale and purchase agreements.

2. Secondary Legal Materials

Namely materials that provide an explanation of primary legal materials in the form of books, journals, theses, and others.

3. Tertiary Legal Materials

Namely supporting materials that explain and provide information on primary and secondary legal materials such as legal dictionaries and encyclopedias.

4. RESULTS AND DISCUSSION

In terms of land ownership, the conception of national land law states that land throughout Indonesia belongs to the Indonesian Nation, which is also a symbol of unity for the integrity of the nation and state, therefore it cannot be bought and sold or traded, it cannot be used as an object of control that causes national disintegration. The transfer of land rights can occur due to 2 (two) things, namely legal acts and legal events. Transfer of land rights due to legal acts is the transfer of land rights that occurs due to legal acts carried out by the parties. Legal actions that cause the transfer of land rights include sale and purchase, exchange, grants, inclusion in a company, and division of joint rights. The transfer of land rights due to legal events is the transfer of rights that occurs due to the death of a person.

The transfer of land rights is the process of transferring ownership or related rights to a land from one party to another. In the Civil Code (KUHPerdata), the transfer of land rights is included in the category of transfer of rights to immovable objects. Immovable objects refer to

assets that have a fixed or immovable nature. Land is a prime example of an immovable object as it is naturally located in a certain location and is difficult to move. In the context of the transfer of land rights, this process can occur through various means, such as through an agreement between the parties involved. For example, one person can sell or bequeath land rights to another, or two people can exchange their land rights. However, the transfer of land rights is not only limited to agreements. The process can also occur through law, for example through a court order or as a result of certain events such as the relinquishment of rights by the owner.

Every action intended to transfer property rights over land is regulated by Government Regulation. A land certificate is proof of one's ownership or control over land. Article 4 paragraph (1) of the UUPA guarantees the right of every land right holder to obtain a certificate. The main and foremost function of the certificate is proof of legal and strong ownership of land rights. This is based on the provisions of Article 19 paragraph 2 letter c of the UUPA. Land certificates are evidence that acts as a valid and strong means of proof as long as the data in the certificate is in accordance with the data contained in the measurement letter and land book concerned.

Based on Decision Number 13/Pdt.G/2020/Pn Tbt adjudicating a civil case that the Plaintiff named Rusiah resides on Mount Krakatau Street, Neighbourhood 2, Lalang Village, Tebing Tinggi City & His Attorney. While the Defendant, namely:

1. The Chairman of the Community Empowerment Organisation (LPM) is represented by ISKANDAR who is based in Lalang Village, Rambutan Sub-District, Tebing Tinggi.
2. Lalang Village, represented by Lurah Adi Supeno, residing in Lalang Village.

Tebing Tinggi CityThe object of the lawsuit dispute is in the form of a plot of land based on the certificate of Juak Beli Tanah Kampung dated 14 March 1954 which was known to the village headman of Rantau laban an. The POSITA that the late Tukimin (legal husband of RUSIAH) worked in one of the plantations in rambutan and retired around the 70s and as long as the employee entered the SOKSI membership so that he was given an ex-TAPOL KTP so that he was obliged to report to the village which happened to be the village head named syamsudin hasibuan retired from the army. That in 75s tukimin was sickly and at that time the head of the village of Rantau laban named syamsudin hasibuan came and asked that the plaintiff's land be partially handed over for the purposes of the Rantau laban lurah office That in his sickly and depressed condition alm tukimin agreed to the request of the head of the village of Rantau laban, Tebing Tinggi sub-district named syamsuddin hasibuan.

The petition states that the plaintiff is the legitimate landowner of the land in question

Declaring that the actions of defendants 1 and 2 who continue to control the land in question and are not willing to return it are unlawful acts that are detrimental to the plaintiff both materially and immaterially Punishing defendants 1 & 2 to pay compensation Declaring valid and valuable bail confiscation (conservatori beslag).

EXCEPTIONS :

1. Regarding the Legal Position and Capacity of the Plaintiff That in the plaintiff's lawsuit does not explain whether in filing the aquo lawsuit, the plaintiff was authorised by other heirs. That the plaintiff's claim is incorrect in naming the institution and does not mention the name of the village of legal domicile. That the plaintiff's lawsuit is wrong in naming and identifying defendant 1 and does not mention the name of the village or kelurahan as the legal domicile of defendant 1, resulting in an imperfect lawsuit and wrong parties.
2. Lack of Parties That the plaintiff's statement of claim states that part of the land has been transferred by the plaintiff from several parties. That the withdrawal of several parties who have received the transfer of rights to the tukimin land makes the lawsuit less parties about the wife not knowing and allowing the transfer of land. That even if the plaintiff objects to the actions of her husband (alm tukimin) then the objection should be addressed to her husband and not instead ask for the return of the land that has been compensated.
3. About the Expiration of Claim That as stipulated in Article 1967 of the Civil Code which states that all individual lawsuits are extinguished and expire with the passage of thirty years That in his lawsuit the plaintiff stated that around 1977 alm tukimin gave land to the village head of Rantau laban, Tebing Tinggi sub-district and until now the plaintiff has never controlled the land, and only on 22 April 2020 after 43 years had passed, did the plaintiff make legal claims by suing the object of the case.

The duplicates in the verdict are:

- a. Accept and grant the exceptions of the 1st & 2nd respondents in their entirety.
- b. Declare that the plaintiff does not have legal standing and capacity to sue
- c. Declare that the plaintiff's lawsuit is wrong in mentioning the institution and does not mention the name of the village of legal domicile
- d. Declare that the plaintiff's lawsuit lacks parties
- e. Stating that even though the wife did not know and authorise the transfer of land, the transfer of compensation was still valid
- f. Declare that the plaintiff's lawsuit has expired to sue

In the main case :

- a) Reject the plaintiff's claim in its entirety
- b) Declare the surrender of land as valid as the letter of surrender of land with compensation for a plot of land dated 1 September 1977 between tukiman and the Village Social Institution of Rantau laban village
- c) Order the plaintiff to pay court costs

Decision of Tebing Tinggi District Court No.13/Pdt.G.2020/PN Tbt In the exception:

- Reject the defendants' exceptions in their entirety.

In the main case:

- Reject the plaintiff's claim in its entirety
- Punish the plaintiff to pay court costs

In the MEDAN STATE COURT DECISION NO 422/Pdt/2020/ PT MDN dated 21 October 2020, the ruling reads as follows:

Adjudicate:

Accept the appeal of the legal representative of the appellant originally the plaintiff against the decision of the Tebing Tinggi District Court number: 13/Pdt.G/2020/PN. TBT, dated 20 July 2020 which is compared:

In Exception:

Reject the Defendants' Exception

In the Matter of the Case:

- Reject the Plaintiff's claim in its entirety
- Punish the appellant to pay the costs incurred in all levels of court in the amount of Rp 500,000 (Five Hundred Thousand Rupiah)
- Cancels the decision of the Tebing Tinggi District Court No.or : 13/Pdt.G/2020/PN.TBT, dated 20 July 2020 which is appealed against

And judge for yourself:

1. Grant the plaintiff's claim in part:
2. Declare that the plaintiff is the legal owner of the land in question as marital property between the plaintiff and the late Tukimin, the land was formerly located in the village of Rantau Laban, Rambutanb Sub-District, Tebing Tinggi City, now Lalang Village, with the following boundaries and measurements:
 - East side with Medan - Tebing Tinggi Public Road 13 metres
 - West of the Tukimin/Rusiah parcel 13 metres
 - South side with former tukimin parcel now alfa mart 30.80 metres

- North of the public market with SD Impres Kampung Lalang / Jl. Gunung
- Krakatau 30.80 metres

Is partly and as described in the grand sulthan No. 1350 jang tertarich / dated 24 November 1940 Sultan van Deli Named Sultan Aminudin Sani Perkasa Alam obtained by the plaintiff based on the certificate of sale and purchase of kampoeng land dated 14 March 1954 known to the former penghulu kampung Rantau laban kecamatan rambutan kota tebing tinggi now kelurahan Lalang kecamatan rambutan kota tebing tinggi.

3. Declare that the actions of the 1st and 2nd respondents, originally the 1st and 2nd Defendants, who continue to control the land in question and are not willing to return the land to the plaintiff, are unlawful acts that have harmed the plaintiff both morally and materially.
4. Punish the Appellant I and Appellant II, originally Defendant I and Defendant II, who are in control of the land in question, to hand over/return it to the plaintiff in good and vacant condition
5. Punish the Appellant I and the Appellant II originally Defendant I and Defendant II jointly and severally to pay material damages to the plaintiff in the form of rent for the land in question since this case was registered at the registrar of the Tebing Tinggi District Court on 22 April 2020 until this decision is legally binding per year in the amount of Rp 10,000,000 (Ten Million Rupiah).

Meanwhile, in Supreme Court Decision No.1928/K/Pdt/2021, the court is to grant the cassation petition of the cassation petitioners. Cancelling the decision of the medan high court NO. 422/PDT/202/ PT MDN dated 21 October 2020 which cancels the decision of the tebing tinggi district court no 13/pdt.G/2020/PN Tbt dated 20 July 2020.

Self-adjudication:

In the exception, reject the defendants' exception in its entirety In the main case :

Reject the plaintiff's claim in its entirety and order the respondent in cassation to pay the court costs incurred. In the case of rejecting the defendants' exclusion entirely and rejecting the plaintiff's claim in its entirety with due observance of Article 283 RbG/163 HIR, Article 194 Rbg/183 HIR and Article 1365 of the Civil Procedure Code and other relevant regulations.

Indonesian land law adheres to a Negative Publications land registration system that contains positive elements. This system means that the Government recognises land rights certificates as evidence of rights, as strong evidence as long as it cannot be proven otherwise, therefore the Government considers what is conveyed by the applicant and has been clarified to be true. A land title certificate is a product of the Government that is created by law, and is

concrete in nature because it is intended for a subject and object that can be determined.

In the provisions of the requirements for transfer of rights, it states that the validity or not of the transfer of land rights through sale and purchase transactions must fulfil two elements including; (1) Formal Requirements: The formal requirements refer to the requirements that must be fulfilled in terms of the form or procedure established by law to make an agreement or legal transaction valid. This means that in the context of land sale and purchase, the formal requirements can include requirements regarding the writing of the agreement in writing, the signatures of the parties involved, and the implementation or registration requirements stipulated by laws and regulations. (2) Material Requirements: Material requirements relate to the substance or content of the agreement or legal transaction that must be fulfilled to be legally valid. In the context of land sale and purchase, material requirements may include aspects such as the validity of land ownership, the existence of consent and agreement between the parties involved, the payment of the agreed price, and the absence of any disputes or legal restrictions regarding the land being traded.

Some amplification of the above definitions, we can understand that the transfer of rights is the process or act of transferring something from one party or status to another party or status. In the context of civil law, transfer refers to the transfer of rights, obligations, or ownership of an object or property from one individual or entity to another. Transfer can occur through various means, such as sale and purchase, grant, inheritance, transfer of shares, or other agreements. The purpose of transfer is to change or transfer existing rights or ownership to a new party in accordance with applicable legal provisions. Contextually, the transfer of rights to an object can be done in real terms, meaning that the object obtained can be seen directly and is in the hands of the person concerned, but there is also a symbolic or indirect transfer of rights, only through the form of a letter or certificate, this happens to immovable objects.

Land rights certificates also have an individual and final nature, which is not intended for the general public, but is only intended for those listed in the certificate and does not require approval from other agencies. In terms of the consequences caused, government action in the context of granting land rights certificates has the aim of creating a new legal situation (*Recht Sechpendde / Constitutieve Beschikking*) so that new legal rights and obligations are born against certain persons or legal entities that already have land rights certificates.

5. CONCLUSIONS AND SUGGESTIONS

Conclusion :

1. In the first instance decision, Tebing Tinggi Court Decision No. 13/Pdt.G/2020/PN.TBT Dated 20 July 2020, the panel of Judges rejected the plaintiff's claim in its entirety despite a dissenting Opinion
2. In the Decision of the High Level, Medan High Court Decision No. 422/Pdt/2020/PT MDN Dated 21 October 2020 accepting the Appeal of all Plaintiffs and cancelling the Decision of the Tebing Tinggi Court
3. In the Cassation Stage, Supreme Court Decision No. 1928K/Pdt.G/Pdt/2021 Dated 20 August 2021 accepting the appeal of the Plaintiffs in Cassation

Suggestions :

The author suggests that expert witnesses who have competence in assessing a grand sultan's letter should be involved, namely from the deli sultanate foundation so that the problem can be resolved.

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