



JURIDICAL REVIEW OF THE TRANSFER OF LAND OWNERSHIP RIGHTS THAT ARE TRADED BY PLOT IN SUMBAWA REGENCY

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Abstract

The research entitled "Juridical Review of Transfer of Land Ownership Rights in Kapling in Sumbawa Regency" aims to find out the process of transferring land ownership rights that are traded in kapling at the Sumbawa district land office, to find out the legal certainty of ownership of land plots that are traded in Sumbawa district.

The approach methods in this research are Normative and Empirical, the normative approach is a document study, and Empirical research is one type of legal research that analyzes and examines the operation of law in society.

The results of this study conclude that the registration of transfer of rights to land plots is held at the National Land Agency (BPN Sumbawa Regency) while the process of buying and selling land plots itself is held before a Notary / PPAT to obtain an authentic deed. and the process of transferring ownership rights to land plots that are traded, which includes using PPAT services, checking certificates to BPN, submitting proof of payment of SPPT PBB, submitting seller and buyer documents, signing the sale and purchase deed. The process of selling and buying before a Notary / PPAT is clear that there is legal security for the land plot being traded and gets legal protection in the event of a problem / dispute. Meanwhile, if the process of buying and selling land plots is carried out under the hand, then the lack of witnesses in the transaction process takes place because it is not through the presence of a Notary / PPAT.

Keywords: *Transfer of Rights, Kapling Land, Legal Certainty*

Abstrak

Penelitian yang berjudul “Tinjauan Yuridis Peralihan Hak Kepemilikan Tanah yang di Perjual Belikan Secara Kapling di Kabupaten Sumbawa” ini bertujuan untuk mengetahui proses peralihan hak kepemilikan tanah yang diperjual belikan secara kapling di kantor pertanahan kabupaten Sumbawa, untuk mengetahui kepastian hukum kepemilikan tanah kapling yang diperjual belikan di kabupaten Sumbawa.

Metode pendekatan dalam penelitian ini adalah Normatif dan Empiris , pendekatan normatif merupakan studi dokumen, dan penelitian Empiris merupakan salah satu jenis penelitian hukum yang menganalisis dan mengkaji bekerjanya hukum dalam Masyarakat.

Hasil penelitian ini menyimpulkan pendaftaran peralihan hak atas tanah kapling diselenggarakan di Badan Pertanahan Nasional (BPN Kabupaten Sumbawa) Sedangkan proses jual beli tanah kapling itu sendiri dilangsungkan dihadapan Notaris/PPAT untuk mendapatkan akta autentik. dan proses peralihan hak kepemilikan tanah kapling yang diperjual belikan yaitu meliputi menggunakan Jasa PPAT, Pemeriksaan sertifikat ke BPN, Menyerahkan bukti pembayaran SPPT PBB, Menyerahkan dokumen penjual dan pembeli, Penandatanganan akta jual beli. Proses Jual beli dihadapan Notaris/PPAT jelas adanya kepatian hukum terhadap tanah kapling yang diperjual belikan dan mendapat perlindungan hukum apabila terjadi permasalahan /sengketa. Sedangkan jika proses jual beli tanah kapling dilaksanakan dibawah tangan, maka kurangnya saksi dalam proses transaksi berlangsung karena tidak melalui Hadapan Notaris / PPAT.

Kata Kunci: Peralihan Hak, Tanah Kapling, Kepastian Hukum

INTRODUCTION

A land plot is a plot of land that has been prepared in accordance with the bookkeeping requirements in the use, control, ownership of land and the spatial plan of the residential environment or residential environment for building buildings. The number of perpetrators of the practice of splitting individual land plots and selling individual land plots raises its own problems, in some cases, for example, people who buy land plots in good faith who cannot obtain certificates of proof of rights, and there are also buyers of land plots who cannot build on the land they bought because they did not get permission to build buildings from the competent authorities. Conditions like

this then cause a lot of losses for the community, especially the perpetrators and buyers of land plots.¹

In the midst of the community in general, we often encounter now is the sale and purchase of land in plots, one example is Sumbawa Regency where the community in general also often buys and sells land in plots, because if it is sold as a whole, buyers are rarely interested because the price is fairly expensive, land plots are basically one way of selling land with the motive of economic profit and the price of land that is plotted is also relatively cheap and easily accessible by many people. Data on the division of sumbawa district Land Division of Kapling in 2022 is 2357 with an area of 2,128,372 M2. and data on the transfer of land rights in 2022 is 1932 with an area of 7,628,818 M2.² Many factors must be considered by the local government and the community because the amount of land is increasingly limited while the need for land is unlimited. On the other hand, every citizen has the same right to fulfill their needs in order to live in physical and mental prosperity as has been fully guaranteed by Article 28 H paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that everyone has the right to live in physical and mental prosperity, to have a place to live, and to get a good and healthy living environment and to receive health services.

METHOD

This research utilizes a Normative and Empirical research. normative legal research is doctrinal legal research, referred to as library research or document studies. It is called doctrinal legal research, because this research is conducted or aimed only at written regulations or legal materials.³ Sarjono Soekanto and Sri Mamuji explained that normative legal research is "legal research conducted by examining library materials (secondary data). Called

¹ Anjar Widharetno, Moh Saleh, Provisions for the division of individual land plots and sale of individual land plots in Jombang Regency, (Magnum Opus Law Journal) Narotama University, Jl. Arief Rachman Hakim, Surabaya, 2022.

² Official Data at the Sumbawa Regency Land Office in 2022

³ Muhaimin, Legal Research Techniques, 1st edition, Mataram University Press, 2020, p. 45

normative legal research or library legal research. while Empirical legal research is one type of legal research that analyzes and examines the operation of law in society.⁴ Empirical legal research is a legal research method that serves to see the law in real terms and examine how the law works in the community. because this research examines people in living relationships in society, the empirical legal research method can be said to be sociological legal research.⁵

RESULTS AND DISCUSSION

A. THE SUMBAWA DISTRICT AREA

Sumbawa Regency is located in the western part of Sumbawa Island. Its boundaries are: Flores Sea and Teluk Saleh to the north, Dompu Regency to the east, the Indian Ocean to the west, and West Sumbawa Regency to the west. Sumbawa Regency has an area of 8,493 km², and a population of approximately 500,000 people. Sumbawa Regency also includes Sumbawa Island, including Moyo Island (the largest island), Medang Island, Panjang Island, Liang Island, Ngali Island, and Rakit Island. With the enactment of Law No. 30/2003 on December 18, 2003, Kabupaten Sumbawa was officially divided into Kabupaten Sumbawa and Kabupaten Sumbawa Barat, so that Kabupaten Sumbawa includes 20 sub-districts, namely:⁶

Empang Subdistrict, Plampang Subdistrict, Lape/Lopok Subdistrict, Moyo Hilir Subdistrict, Moyo Hulu Subdistrict, Ropang Subdistrict, Lunyuk Subdistrict, Sumbawa Subdistrict, Batu Lanteh Subdistrict, Utan Rhee Subdistrict, Alas Subdistrict, West Alas Subdistrict, Labangka Subdistrict, Labuhan Badas Subdistrict, Tarano Subdistrict, Maronge Subdistrict, Unter Iwes Subdistrict, Rhee Subdistrict, Buer Subdistrict, North Moyo Subdistrict.

⁴ Ibid, Page. 47

⁵ Ibid. Pge. 80

⁶ <https://kab-sumbawa.atrbpn.go.id/>

Kabupaten Sumbawa has a fairly large area of 6,643.98 km² and many natural resources but is still limited in its utilization. In accordance with its topography, Kabupaten Sumbawa has an undulating terrain with many hills, most of which are at an altitude of 0 m - 1,730 m above sea level with an average rainfall of 98.11 mm/mL. When compared to the size of the area, the population density of Kabupaten Sumbawa is 57 people/square kilometer, with the occupation of the majority of the population's livelihoods being farming, fishing and others.⁷

B. The Process of Transferring Land Ownership Rights that are traded by Kapling at the Land Office in Sumbawa Regency

According to the Government Regulation No. 24, Article 1, Paragraph 1 of 1997 on Land Registration, Land Registration is a set of activities carried out by the authorities on an ongoing basis and the presentation and maintenance of physical and legal data in the form of maps and lists of land plots and housing units, including the provision of evidence of rights to land plots that already have rights and ownership rights to housing units and certain rights encumbering them.⁸

The transfer of rights takes place through sale and purchase, namely the transfer of rights as a result of an agreement in which one party commits to submit an object (land) and the other party commits to pay the promised price. Setiawan revealed that in customary law, the sale and purchase event is a land transaction, similar to a mutual agreement that is real in the field of law, cash and land objects. According to Article 1458 of the Civil Code: A sale and purchase is considered to have been concluded between the two parties as soon as they reach an agreement on the goods and the price, even if the goods have not been delivered and the price has not been paid.⁹

⁷ <https://kab-sumbawa.atrbpn.go.id/>

⁸ Government Regulation No. 24 of 1997 on Land Registration Article 1(1)

⁹ Waskito, Hadi Arnowo, Implementation of Land Registration in Indonesia, 2nd Edition, Kencana, Jakarta, 2019, p. 106.

In the Government Regulation No. 24 of 1997 on Land Registration, Article 5 states that land registration is organized by the National Land Agency. In addition, Article 6(1) states that the organization of land registration shall be carried out by the head of the Land Agency, except for certain activities that are assigned to other officials by this Government Regulation or the relevant legislation. In addition, Article 6(2) states that the head of the land office shall be assisted in carrying out land registration by the PPAT and other officials assigned to carry out certain activities in accordance with this Government Regulation and the relevant laws and regulations.¹⁰

Land registration itself is organized by the National Land Agency, which is organized at the level of Regency or Region II by the Land Office or Land Registration Office. Land registration by the National Land Agency is a manifestation of the State's right of control, in this case the executive power (in addition to the legislative and judicial powers). In connection with land registration, in order to ensure legal certainty, a certificate is then issued to the rightful party as proof of rights. Article 32(1) and (2) of Government Regulation No. 24 of 1997 on Land Registration states that:¹¹

"A certificate is a proof of right that serves as a strong evidence of the physical and juridical data contained therein, as long as the physical and juridical data are in accordance with the data contained in the measurement letter and the land book of the right concerned".

Based on the results of an interview with Mr. M. Zhafin Yordana Aswari, A.Md as part of the Registration and transfer of land at the Sumbawa district land office he said: ¹²

¹⁰ Government Regulation No. 24 of 1997 on Land Registration, Articles 5 and 6

¹¹ Desi Aprianti and Arifin Bur, "Legal Certainty and Legal Protection in the Land Registration Publication System in Indonesia," *Journal of Bina Mulia Hukum*, Universitas Padjadjaran, 2021.

¹² Interview with Mr. M. Zhafin Yordana Aswari regarding registering and transferring land at Sumbawa District Land Office.

"Regarding the registration of the transfer of rights to land plots, it is held at the National Land Agency (BPN Sumbawa Regency), while the process of buying and selling land plots itself is held before a PPAT to obtain an authentic deed."

This is in line with a personal interview with Notary / PPAT Yulius Koylal Putra, S.H., M.Kn. Who said: ¹³

"that the procedure and process of registering the transfer of land ownership rights traded in lots in Sumbawa Regency is through the Land Office. Meanwhile, from a legal point of view, the legal event of transfer of ownership of land sold in the plot itself has been transferred to the buyer when during the process of buying and selling land plots between the seller and the buyer and the process of selling the land plot takes place in front of a Notary/PAT. "

The transfer of rights is not limited to the entire parcel; it is also possible to transfer part of the land parcel in the form of splitting. This is the division of one land parcel into several parts, each of which is a new parcel unit with the same legal status as the original land parcel. The practice of subdivision is usually to annex small housing estates. In the process of splitting, the previous parcel identification number (NIB) is deleted, and a new NIB is generated for each resulting parcel.

The following table outlines the procedures for land division and completion in the Land Office of Sumbawa Regency :¹⁴

No	Year	Amount	Width
1	2018	1.519	1.550.706 M ²
2	2019	1.545	1.421.309 M ²
3	2020	2.271	2.278.032 M ²

¹³ Personal interview with the notary public / PAT Yulius Koylal Putra

¹⁴ Official Data at the Sumbawa Regency Land Office in 2022

4	2021	2.847	2.968.700 M ²
5	2022	2.357	2.128.372 M ²

The following table presents the Transfer of Land Rights in the Land Office of Sumbawa Regency :¹⁵

No	Year	Amount	Width
1	2018	1.680	6.656.982 M ²
2	2019	1.389	3.573.144 M ²
3	2020	1.732	4.369.013 M ²
4	2021	2.204	6.552.652 M ²
5	2022	1.932	7.628.818 M ²

C. The legal certainty of the ownership of land plots that are traded within the Sumbawa district is a matter of concern.

One of the primary objectives of land registration as outlined in Article 3 of PP No. 24 of 1997 concerning Land Registration is to provide legal certainty and legal protection to holders of rights to a parcel of land, apartment units, and/or other registered rights. This is done in order to facilitate the holders' ability to prove their status as holders of the rights in question and to provide them with legal certainty and legal protection.¹⁶

In Article 19, paragraph (2), letter c of the UUPA, it is stated that the nature of the proof of the certificate is that it is a strong evidentiary tool. This is because the physical data and juridical data contained in the certificate are considered correct as long as it cannot be proven otherwise by other evidence, which may take the form of certificates or other

¹⁵ Official Data at the Sumbawa Regency Land Office in 2022

¹⁶ The 1997 Indonesian government regulation on land registration (No. 24 of 1997)

evidence. In the event that a court decision has been rendered with permanent legal force, declaring the certificate to be invalid, the Head of the BPN of the Republic of Indonesia is then empowered to issue a decree on the cancellation of the certificate.¹⁷

The land deed maker (PPAT) has an important role in land registration, namely to support the head of the Regency/City Land Office in carrying out certain activities in land registration, without the existence of a PPAT it is very difficult to carry out the activities of maintaining land registration data, this is related to the function of the deed made by the PPAT as proof that a certain legal act is true and has been carried out, as well as a source of data needed to maintain land registration data stored at the PPAT. The maintenance of land registration data is a function of the deed made by the PPAT, which serves as proof that a certain legal action has been carried out and as a source of data needed to maintain data stored at the Land Office.¹⁸

The sale and purchase deed (AJB) made by the Land Deed Official (PPAT) serves as a bridge, facilitating the processing of the certificate as proof of rights. The land title certificate is the result of the land registration process, as stipulated in Article 19 paragraph (2) of the UUPA. This process encompasses a series of activities that culminate in the provision of evidence of rights, which serve as valid evidence. The certificate of land rights is a compilation of the land book and measurement letter (for systematic land registration) or situation drawing (for sporadic land registration), which are sewn together. The form of the certificate is determined by the Minister.¹⁹

That is why a parcel of land must be registered, because with the implementation of a systematic and complete land registration, it can

¹⁷ The Law on the Basic Regulation of Agrarian Principles (No. 5 of 1960)

¹⁸ Rahmad Sesar Oktaviyano, "Legal Protection of PPAT against Land Registration Constraints Due to the Covid-19 Pandemic" (Media Keadilan Journal of Legal Sciences), Universitas Muhammadiyah Mataram, 2022

¹⁹ Giovanni Rondonuwu, "Legal Certainty of Land Rights Transfer through Sale and Purchase Based on PP No. 24 of 1997 Concerning Land Registration," Sam Ratulangi University Journal, 2017

have an impact on the emergence of a strong legal certainty in terms of proving ownership of certificates. In practice, the community has 3 ways of managing land registration applications, namely by actively managing themselves to the local National Land Agency, managing with assistance through Notary / PPAT services, and following government programs in the event that the area where the land is located there is a mass / simultaneous Pemsertifikatan project.²⁰

Based on the above description, the legal security of the land plot being traded is clear. The parties to the sale and purchase transaction through the presence of a Notary / PPAT will receive strong and guaranteed legal protection if in the future there is a problem / dispute over the land plot being traded. However, if the parties buy land that is traded by the plot itself or through under the hand, then in the future if there is a problem / dispute that occurs against the land that is traded, there is a lack of witnesses in the process of the sale transaction of the land plot because it is not through the presence of a Notary / PPAT.

CONCLUSION

The results of the research on the transfer of land ownership rights traded in plots in Sumbawa Regency permit the researcher to conclude that:

- 1.) The process of transferring land ownership rights that are traded by plot at the Sumbawa Regency land office.
 - a. In accordance with Government Regulation No. 24 of 1997 concerning land registration, Article 5 stipulates that the National Land Agency is responsible for organizing land registration. Moreover, Article 6, paragraph 1, delineates the scope of activities that fall under the purview of the head of the land office, with the exception of certain activities that have been assigned to other officials by virtue of this government regulation or relevant legislation. Moreover, Article 6, paragraph 2, stipulates that in the execution of land

²⁰ Arivan Amir, "Transfer of Land Tenure Rights According to UUPA in the Framework of the First Land Registration," *Kenotarian Law Scientific Journal*, Sriwijaya University, Palembang, 2019

registration, the head of the land office is assisted by PPAT and other officials, who are assigned to perform specific activities in accordance with this government regulation and the relevant legislation.

b. Registration: The transfer of rights to land plots is held at the National Land Agency (BPN) in Sumbawa Regency. The process of buying and selling land plots itself takes place in front of a PPAT to obtain an authentic deed. Furthermore, the process of transferring ownership rights of land plots that are traded includes using PPAT services, checking certificates with the BPN, submitting proof of payment of SPPT PBB, submitting seller and buyer documents, and signing the sale and purchase deed.

2) The legal certainty of land plots traded in Sumbawa Regency

Those engaged in the sale and purchase of land plots, conducted in the presence of a notary or PPAT, are afforded legal certainty with regard to the land in question. Furthermore, the transaction provides legal protection in the event of future disputes or problems. However, in the event that the parties involved in the sale and purchase of land plots conduct the transaction without the presence of a Notary or PPAT, there is a lack of witnesses to the process of buying and selling land plots.

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Interview

An interview with Mr. M. Zhafin Yordana Aswari was conducted as part of the land transfer section at the Sumbawa Regency Land Office.

A personal interview was conducted with Notary/PPAT Yulius Koylal Putra.

An interview was conducted with Ms. Nopi Susilwati, who serves as the counter and registration section at the Sumbawa Regency Land Office (Sumbawa Land Office).