

OWNERSHIP OF LAND OWNERSHIP RIGHTS BY TRADITIONAL VILLAGES VIEWED FROM INDONESIAN LAW

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Abstract:

Transfer of land rights and review of Indigenous Villages' position as land rights owners based on Indonesian positive law. This writing includes normative legal research or what is usually called 'library research', namely research by examining secondary materials or data regarding research on legal principles, research on legal systematics, research on the synchronization stages of vertical and horizontal norms, harmonization of law and legal history. The provisions of the transfer of rights to land under the UUPA as a legal act of transfer of land rights are deliberately carried out so that the right is independent of the holder and transferred to another party. Customary villages, as owners of property rights to land reviewed under the law, can be domiciled as legal subjects of land rights owners, usually found through the purchase process or other businesses. However, there is still a potential dispute over efforts to certify customary village land.

INTRODUCTION

Indonesia is a unitary country that has various ethnic groups and customs within it (Caturiasari et al., 2021; Sari, 2021). Land and humans are two things that are very closely related. Soil has various vital roles in human life (Rasyad, M, 2019). This can be understood because land is a place to live, where life takes place. Humans are also able to get food by utilizing the land. Indirectly, land is also a fundamental need in human life. All living creatures also need soil, which can allow various plants to grow, which is needed by humans or other living creatures.

People value land as "the source of life from birth to death. The land is used for residence and a source of human livelihood, such as growing rice, corn, and vegetables. Theoretically, land is a foundation that plays a vital role in continuing human life. Besides that, land is the root of wealth for those who own and control it because everything contained in it is the root of income or income. The importance of land for human life is that it has a fundamental contribution to the Indonesian nation regarding implementing and continuing national development to create a just and prosperous society, as stated in Pancasila and the 1945 Constitution of the Republic of Indonesia. Everyone has the same rights, which are similar to others, including land rights (Syarif, E, 2014). with the following statement, Indonesia, as an agricultural and archipelagic country, issues UUPA.

This land nationalization also freed Indonesian land from the shackles of the Dutch colonial period. By providing certainty regarding the community's status regarding land ownership. Concerning the basic rules governing Indonesian land. It cannot be denied that land is an inseparable unit in human life. This also happens to indigenous communities. The lives of indigenous communities with their traditional rights, including land rights, are maintained in such a way as a source of survival (Jayantiari & Wijaya, 2017; Pellokila, 2021; Tanjung, 2021). Following



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President Jokowi's land certificate policy, the local village government wanted to certify the land in the village's name. The landowner's family disagreed because they feared irregularities in the owner's name on the land certificate.

On the other hand, after KEPMEN ATR/BPN Number 276/KEP-19.2/X/2017 was enacted, it legitimized Traditional Villages (pakraman) as subjects who own land rights. However, the land issue regarding residents' land, which is lent to be used as a village hall but which later wants to be certified in the village's name as village land, certainly requires further study. Focus on legal issues regarding Ownership of Land Ownership Rights by Traditional Villages, which has the potential for disputes to arise that could arise from efforts to transfer ownership rights to land from residents that were previously used by the traditional village to become property rights of the traditional village.

METHODS

This writing includes normative legal research. Normative legal research, or what is usually called 'library research,' is research by examining secondary materials or data regarding research on legal principles, research on legal systematics, research on the synchronization of vertical and horizontal norms, harmonization of law and legal history (Soerjono, Soekanto, 2014). This research is related to analyzing land ownership by traditional villages with the authority to own land ownership rights.

RESULT AND DISCUSSION

Provisions for Transfer of Land Rights. UUPA is a legal rule regulating land and creating a single national land law. It is based on customary law as an original law adapted to society's interests in a modern country. Juridical provisions regarding the land sector are the implementation of Article 33 Paragraph (3) of the 1945 Constitution, which regulates that land and water and the natural resources contained therein are controlled by the state and used as much as possible for the prosperity of the people.

UUPA Article 4 Paragraph (1) contains the legal basis for land rights. Land rights provide freedom to the right holder in determining how to use or take advantage of their land. In this regard, another important thing that must be understood is that the freedom to use or take advantage of the land owned indirectly determines what is obligatory, prohibited or permissible as part of the content of tenure rights. This factor also gives rise to or causes differences between land tenure rights. Theoretically, the types of land rights, according to UUPA, include property rights, business use rights, building use rights, and use rights.

Transfer of land rights is a legal action carried out so that ownership can be transferred to another person intentionally (Auri, 2014). This transition arrangement is carried out through a written deed by an authorized official at the land office. This concerns the legality of the transition carried out using procedures by the law. If formal procedures are not carried out, this has implications for the legal aspect of the transition act itself (Maulidi et al., 2017). Customary law regulates the relationship between land and customary law communities as the occupying parties with their meaning. The relationship between customary law communities and land is very close and has a magical religious nature (Dewi, 2020).

Understanding the nature of magical religious relationships is undoubtedly placed in a reality approach where land is interpreted as something that contains "value" and "virtue." The conditions for transferring land rights consist of formal and material requirements. In the theoretical framework, several material conditions influence the validity of buying and selling land (Saranaung, 2017).



1. The buyer has the right to purchase the land in question. This means that the buyer, as the recipient of the rights, must meet the requirements to own the land he wants to buy. To determine whether or not the buyer is entitled to obtain rights to the land he purchased depends on what rights exist on the land, whether ownership rights, building use rights, or use rights.
2. The seller has the right to resell the land in question. The only person with the right to sell a particular plot of land is the legal holder of the rights to that land, who is called the owner. If there is only one owner of a plot of land, then he has the right to sell the land himself. However, if the land owners are two people, then the two people together have the right to sell the land. No one person can act as a seller.
3. The land rights can be bought and sold and are not in dispute. Regarding land, what rights can be bought and sold have been determined in the Basic Agrarian Law: property rights, business use rights, building use rights, and use rights.

If one of these material conditions is not fulfilled, it means that the seller is not the person who has the right to the land he is selling. If the buyer does not meet the requirements to be the owner of the rights to the land, or if the land being traded is in dispute or an island that cannot be traded, then the sale and purchase of the land is invalid. Land sales and purchases carried out by those who do not have the right to do so are null and void. This means that from the beginning, the law assumes that the sale and purchase never occurred. The seller has the right and authority to sell land rights. The person with the right to sell is the person whose name is listed on the certificate or other than the certificate. A person has the authority to sell his land as an adult. If the seller is under guardianship, then he is represented by his guardian. If another person represents the seller as a power of attorney, then a power of attorney shows a notarized power of attorney.

The transfer of land and objects on it is carried out using a PPAT deed. Furthermore, the land transfer from the owner to the recipient is accompanied by a juridical handover, which must fulfill statutory formalities, including the requirements. It is carried out through established procedures using documents made by and before PPAT."

Traditional Villages Ownership of Land Ownership Rights by Traditional Villages. Bali is the center of world tourism, which makes people compete to control land in Bali. "Bali, which is famous for its characteristics, can be seen from the life of the Hindu religion, customs and culture, which are integrated in a harmonious atmosphere without being separated from the participation of all components and the legacy of a principle of community unity that existed long before Indonesia's independence, namely Pekraman Village. Traditional villages in Bali are one of the various legal units of indigenous communities in Indonesia. Traditional villages, as units of customary law, are bound by customs or customary law, which has unwritten and written rules of etiquette that are made together, usually known as awig-awig.

"Traditional villages have a dual position, namely social, religious and social, and have the function of assisting the government in implementing development, especially in the religious, cultural and social fields, implementing customary laws and customs." PP No. 72 of 2005 concerning Villages provides the understanding that "Villages are legal community units that have territorial boundaries that have the authority to regulate and manage the interests of local communities, based on local origins and customs that are recognized and respected in the Government system of the Unitary State of the Republic of Indonesia." Traditional villages have plots of land that are used as development sites. Traditional villages at least have a plot of land that will be used as a location for buildings belonging to the traditional village, such as the village temple building as a place for prayer gatherings with traditional village residents, have a plot of land as a place to build meeting halls, such as Banjar halls, village wantsilan and so on. Every traditional village must also have land

that functions as a burial ground, so in this case, the status of the land owned by the village is property rights. "Property rights are hereditary, strongest and fullest rights that people can have over land. Ownership rights can be transferred and transferred to other parties. Ownership rights are the strongest and fullest rights among other land rights.

Ownership rights are land rights that give the owner the authority to give back another right over the plot of land he owns." Only Indonesian citizens can have ownership rights to land, and foreigners cannot own this. Conflicts regarding the transfer of land rights often occur, considering that the need for land increases every year. Land claims in the case above will undoubtedly cause conflict due to disagreement from the family. The process of granting rights to use land by the family and the village government is carried out voluntarily without any agreement. Concerning the Appointment of Legal Entities regulates, "those who can have ownership rights to land are as follows:

1. State Bank
2. Agricultural Cooperative Associations were established under Law No. 79 of 1958.
3. Religious bodies
4. Social agencies."

Based on these provisions, it is clear that villages are not legal subjects who can have ownership rights to land. Traditional village land in Bali is divided into four types, namely (Suasthawa et al. M, 2001):

1. Village Land
2. Tanah Laba Temple
3. Village Yard Land
4. Village Father's Land."

Theoretically, the transition between communities that are subject to customary law can be identified as follows:

- a. The rights transfer must be direct and precise, meaning that the seller hands over the goods according to the agreed price and immediately receives the goods. The transition must be carried out before an authorized official (usually before the Village Head or Head of the Customary Law Association) and witnessed by several witnesses.
- b. There is a guarantee from the chief of the tribe/legal community/village that the rights of heirs, neighbors (Burenrecht) and fellow tribe members (Naastingsrecht) are not violated if the land rights are transferred. Suppose the land rights transaction or transfer does not have support (guarantee) from the chief/indigenous community/village. In that case, the action is considered an unclear act, invalid and does not apply to third parties. "For a right that has not been registered for the first time, either sporadically or systematically, which means that the land does not have any evidence, but the transfer is carried out under the hands of the village head/sub-district head." The land in dispute is the land of residents who are lent to be used as a village hall but want to be certified in the name of the village to become village land. Village land is generally acquired through purchasing efforts with village funds or other businesses, whereas the land in dispute is not the result of purchase. Hence, it is not owned by the village, so the village cannot certify the land. Then there is the fact that villages are not legal subjects that can have land rights, so if it is certified, the land must be in the name of an individual, so there is concern that there will be irregular land ownership.

This shows that land is an essential component for Indigenous communities, so a regulation that can regulate customary land well is needed so that the existence of customary land is evident.



The underlying regulations must also be vital to create customary land with legal certainty. As is known, the law has three aspects, namely justice, finality, and legal certainty. The aspect of justice referred to is that it refers to equality of rights before or before the law without distinction so that every citizen has the same rights before Legal law. The finality aspect has a goal of justice, namely providing a benefit from justice to promote goodness or prosperity. Tan, in life and humans, and the aspect of legal certainty, aims to guarantee that a regulation or law functions as a fair regulation. implement and obey (Muhtadli, 2020; Ubaidillah, 2020; Winardi, 2020). This means that if it is related to customary land regulations, then this regulation, in addition to having the value of justice and benefit, a regulation governing customary land in Bali must exist first. Then, the rules have the value of legal certainty so that the community can implement and obey them. , so that customary land continues to exist now and in the future without giving rise to land conflicts both verbally and horizontally.

CONCLUSION

Provisions for the transfer of land rights are based on the UUPA. The transfer of land rights can be interpreted as a legal act of transferring land rights, which is deliberately carried out so that the rights are separated from their holders and transferred to another party. Transfer of land rights is a legal action carried out intentionally so that ownership is transferred to another person. Land rights, such as property rights, can be transferred and transferred. The transfer of land rights is due to inheritance, while transfers are due to buying and selling, bequests, or exchanges. "Furthermore, regarding the position of traditional villages as owners of land rights, viewed based on Indonesian positive law, they can act as subjects who own land rights which are usually obtained through purchasing efforts with village funds or other businesses." However, the disputed land is not the result of purchase, so the village does not own it, so the village cannot certify the land.

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