

## Authority Of The Village Head In Transfer Of Rights To Traditional Land Law Perspective Land Registration

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### ABSTRACT

The Village Head other than being the Head of Government at the Village level also functions as a Customary Head who has a dominant role in the process of transferring land rights to customary law communities, the enactment of the UUPA and PP No. 24 of 1997 as the basis for land registration to regulates the validity of the transfer of rights based on the deed made by PPAT. So that the problem arises how the authority of the Village Head in the transfer of rights to customary land in the perspective of land registration law. This study uses a normative juridical research that examines the existing legal literacy using a statutory, conceptual and historical approach. The results of the study that the Village Head did not have direct authority in the process of transferring rights to customary land after the enactment of the UUPA and PP No. 24 of 2016 concerning Land Deed Maker Officials, but assisting the land registration process as the Adjudication committee and making a certificate of land history (land origin), under certain conditions the registration of the transfer of rights to land parcels is carried out with a deed not made by PPAT whose truth is considered enough by the Head of the Land Office, the deed made other than PPAT is valid in remote areas and has not been appointed by PPAT, the deed can be made by the Village Head or Notary.

### ABSTRACT

Kepala Desa selain sebagai Kepala Pemerintahan di tingkat Desa juga berfungsi sebagai Kepala Adat yang memiliki peran dominan dalam proses peralihan hak atas tanah kepada masyarakat hukum adat, berlakunya UUPA dan PP No. 24 Tahun 1997 sebagai dasar pendaftaran tanah untuk mengatur keabsahan peralihan hak berdasarkan akta yang dibuat oleh PPAT. Sehingga timbul permasalahan bagaimana kewenangan Kepala Desa dalam pengalihan hak atas tanah ulayat dalam perspektif hukum pendaftaran tanah. Penelitian ini menggunakan penelitian yuridis normatif yang mengkaji literasi hukum yang ada dengan menggunakan pendekatan perundang-undangan, konseptual dan historis. Hasil penelitian bahwa Kepala Desa tidak memiliki kewenangan langsung dalam proses peralihan hak atas tanah ulayat setelah berlakunya UUPA dan PP Nomor 24 Tahun 2016 tentang Pejabat Pembuat Akta Tanah, tetapi membantu proses pendaftaran tanah sebagai Panitia adjudikasi dan pembuatan sertipikat sejarah tanah (asal tanah), dalam kondisi tertentu pendaftaran peralihan hak atas bidang tanah dilakukan dengan akta yang tidak dibuat oleh PPAT yang kebenarannya dianggap cukup oleh Kepala Kantor Pertanahan, akta yang dibuat selain PPAT berlaku di daerah terpencil dan belum ditunjuk oleh PPAT, akta tersebut dapat dibuat oleh Kepala Desa atau Notaris.

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## I. INTRODUCTION

Land is a resource that plays an important role in human life because humans need land in various ways in various aspects of life. For example to build a residence, gardening and farming. So it can be concluded, humans carry out every activity on the ground. Soil is the main source of human life. And the continuity of the life of the nation is the land for the prosperity of the people fairly and evenly (Boedi, 2019). In addition, the sources of life from ancient times to the present are land (Sihombing, 2017).

Every human being has the right to land ownership which can be seen on the land register, this is one form of describing land rights. When registering for land, a record is made containing a summary of the legal details of land rights in the form of ownership of rights and changes. If there is a transfer in ownership of land rights, such as being sale and purchase, inherited, or given to someone else. Then the land rights must be re-registered which then the person will get a land certificate. Because the land certificate is proof of legal land ownership (Suyanto, 2021).

The reason the land certificate is proof of someone's legal ownership of the land is because it has been legally recognized that the land has been owned by someone listed in the land certificate. The land ownership rights can explain the relationship between the individual and the law on the land object owned. So it can be interpreted that the land rights contains straightforwardness, firmness, and clarity regarding the details of the incident that the person can own the land, so that the land has a clear history and has been legally recognized. The granting of ownership rights and matters that regulate land are known as agrarian law, namely the law is regulated by state administration officials who are tasked with regulating public interests related to ekagrarian (Hayatul, 2017).

Before the Basic Agrarian Law (UUPA) applied land transactions in the form of transfer of land rights that could be carried out before the village head and the acknowledgment was considered valid in the eyes of the law or considered legal. Because when the village head is a witness, it becomes the responsibility of the village head on government issues, development, social affairs including land affairs as well as the Village Head acting as the Customary Head who holds the highest power over customary land. Land registration is regulated in Article 19, Article 23, Article 32 and 38 of the Basic Agrarian Law (hereinafter also referred to as UUPA) then PP Number 10 of 1962 concerning Land Registration, in a further development on July 8, 1997 amended by Government Regulation Number 24 of 1997 concerning Land Registration.

The community at the village level still perceives the Village Head as the Head of Government at the Village level as one of the elements of community service providers in the land sector at the village level so that they are considered to have authority in the transfer of land rights based on the principle of agreement at the village level that the legitimacy of the transfer is considered valid according to local custom when carried out before the Village Head, then the Village Head issues a Certificate or a change in the Village C book, or a Tax Letter (SPPT) on land and buildings, assumptions like this occur from generation to generation and seem to be justified by the village community, based on this the researcher is very interested in examining how the authority of the Village Head in the transfer of rights to customary land in the perspective of land registration law.

Handayani, tri (2016), in his article entitled Legality of Land Certificates Issued by the Village Head As the basis for land sale and purchase transactions, explained that the implementation of the provision of land certificates by the village head often resulted in problems with the community, especially regarding the provision of certificates. overlapping land, giving rise to a dispute over the ownership of the land rights. The research method is descriptive. The type of research used is normative law. The results of the study stated that the legal force of buying and selling land based on a land certificate issued by the village head was legal and had legal force on lands that had not been certified. However, after the sale and purchase takes place on the basis of a land certificate issued by the village head, the buyer is obliged to immediately take care of the registration of the land at the land office where the land is located, because the land certificate issued by the village

head is not proof of ownership. land rights in accordance with the provisions of UUPA no. 5 of 1960 but only as evidence of physical control of land rights by someone (Handayani, 2016).

## II. RESEARCH METHOD

This type of research is normative legal research, research conducted by examining theories, concepts, legal principles, and statutory regulations. Researchers used three approaches, namely the Legislative Approach (Statue Approach), Conceptual Approach (Conceptual Approach) and Historical Approach (Historical Approach).

## III. RESULTS AND DISCUSSION

The Village Head acts as the Head of the Village Government and has the task of leading the administration of the village, implementing village development, fostering and empowering village communities. As confirmed in Law no. 6 of 2014 concerning Villages. The authority possessed by the village head includes providing services to the community related to the land sector in assisting the tasks of the Land Office in the land registration process.

In land affairs, especially regarding land registration prior to the enactment of the Village Law, the authority of the Village Head has the authority derived from customary law as a central determinant in the land registration process carried out at the village level, by transferring rights to the girik book, Village C Letter or the other terms. All land registration processes including the transfer of land rights are carried out using customary law based on customary authority attached to the Village Head, the authority of the customary head itself is not specifically regulated in legislation but grow and develop into trust in customary law communities.

For land customary law communities, the relationship between land and the legal community where they live has a very close relationship and even has a magical religious character, causing the legal community to have the right to control the land (Novita, 2021). Each region in Indonesia has different patterns and customary laws, but basically customary law with other laws has a different nature, namely pragmatism-realism, namely the needs of the community that are functionally religious can be met with customary law (Suriyaman, 2017). The land which is called the object of customary land law consists of ulayat rights and customary property rights (Risnidarim, 2017), that have a bond between the subject and the object, namely land rights, this bond is essential, where there is a relationship between control and use of land intended for personal and social interests (Anna, 2022).

Transfer of land rights when viewed from the perspective of customary law is a transfer using the concept of cash, transparent, real, tangible, and open which is carried out before the Village Head/Traditional Head accompanied by witnesses from village officials (village official) then the transfer is used as the basis for implementing land registration. The protection given by the customary head or village head is given to the seller, namely by asking for immediate payment within a certain period of time, this is in accordance with the obligations attached to Article 1513 of the Indonesian Civil Code, while the protection to the buyer is to check proof of ownership of land rights that are the object of the agreement., as stipulated in article 1491 of the Indonesian Civil Code (Socha, 2020). The two legal rules that apply to the provisions of the Indonesian Civil Code are long before UUPA was born. Land registration in Indonesia was originally an instrument for the success of landreform which aims to know and ensure the boundaries and ownership of land which later becomes landreform (Gunadi, 2022). Land registration aims to provide legal certainty guarantees that known as rechts cadaster, which includes the status of registered rights, certainty of the subject and certainty of the object of rights (Urip, 2019).

Before validity of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA), agrarian law in Indonesia was pluralism, namely western rights were subject to European law, and rights that applied to Indonesia were subject to customary law, meanwhile, regarding land registration, land registration is only carried out on lands subject to European law, which are

smaller in size, while for Indonesian lands, land registration is not carried out because it requires a large amount of money. The term land registration at that time was called a cadastral which was interpreted by Van Steein as a government agency that aimed to regenerate and take care of the administration of the legal state of certain regional conditions.

After the enactment of the LoGA, according to Article 19 concerning land registration addressed to the Government, while for holders of land rights it is regulated in Articles 23, 32 and 38 of the BAL. In addition to being regulated in the UUPA, land registration is also regulated in a law-level norm, namely Law no. 16 of 1985 concerning Flats, Law no. 4 of 1996 concerning Mortgage Rights, and regulated in the norms at the level of Government Regulations, namely each Government Regulation no. 4 of 1988 concerning Flats, Government Regulation no. 10 of 1961 concerning Land Registration and Government Regulation Number 24 of 1997 concerning Land Registration.

Changes from PP No. 10 of 1961 became Government Regulation No. 24 of 1997 concerning land registration is often interpreted as a technical change in the legislation, but the law was made not from a vacuum and therefore cannot be separated from its socio-historical context (Itta, 2020). As a justification for these changes, one of them is adjusting to the development of a more aspirational and responsive government administration system to meet the demands of the community in accelerating land registration to ensure legal certainty over the rights of land parcels owned by the people (Idham, 2022). Land registration is carried out with various activities including initial registration which is carried out through systematic, sporadic and regular maintenance of land registration includes physical and juridical data on land registration maps, names, measuring documents, and certificates followed by a history of the changes.

The stages of land registration are regulated in Article 6 paragraph (2) of PP No. 24 of 1997 regulates the land registration process, the Head of the Land Office is assisted by PPAT, PPAT activities assist the Head of the Land Office in land registration which focuses on maintaining registration data by making a deed of transfer of land rights, deed of distribution of rights, and deed of assignment of land rights the. The deed made by PPAT according to Article 1868 of the Indonesian Civil Code is an authentic deed or a deed that has been determined to be legally recognized because it was made by the government.

The authority of the Village Head in PP No. 24 of 1997 in Article 8, Article 24, Article 26 paragraph (2) and Article 39 play a role in assisting the land registration process including as an adjudication committee, making the origin of the land from the beginning when the land has not been registered until now when it has been registered and has land certificates, make a certificate to strengthen evidence of the right of ownership of the land in question, and make a certificate for land that is still not certified, from the above authority nothing confirms that the Village Head in his position is authorized to make a deed or letter of transfer of land rights either that authority comes from attribution, mandate and delegation.

Although the Village Head does not have the authority to make a deed or letter of transfer of rights, for land registration for the first time through the transfer of rights due to buying and selling, the Village Head is considered to have the authority to ratify the process of transferring rights at the village level as a party who knows about documents as evidence for the first time in registering land such as transfers that occurred before the enactment of the LoGA by issuing a sale and purchase seal at the village level.

This difference in the application of land registration law in the transfer of customary lands often raises legal problems in the form of land disputes, civil, administrative and criminal disputes regarding land ownership, land registration, land guarantee, land use, land tenure, and land rights disputes (Lili, 2021). From the resulting land conflicts, the regulation of land law seems to be merely guided by formal legality without looking at the material truth, thus triggering a protracted legal conflict, because judicial decisions in Indonesia are still formal legalistic and positivistic, that is, as long as they can prove ownership of customary land rights legally. positivistic, authentic,

supported by witnesses, the judge will provide legal protection for the ownership of the land (Lilik, 2017).

Apart from PP NO. 24 of 1997, in PP No. 24 of 2016 concerning Amendments to PP No. 37 of 1998 concerning Land Deed Maker Officials, the Village Head in his position does not have the authority to make a deed or letter of transfer of rights, the authority to make the deed / transfer of rights is in the PPAT and the authority other than the PPAT is the Camat or Village Head as the current Temporary PPAT. This position is appointed because of the position which is used to carry out PPAT tasks in the region but there is not enough PPAT, as well as Special PPAT appointed by National Land Agency Officials in certain programs. The existence of Temporary PPAT and Special PPAT was historically intended for the effectiveness of the Deed making service and the authority possessed was delegative and casuistic (Djumardin, 2017).

In Law no. 6 of 2014 concerning Villages also does not regulate the authority of the Village Head in the process of transferring land rights. In fact, there is an inconsistency in the legal norms of land registration in PP 24 of 2016 with PP 24 of 1997, the validity of the transfer of rights to land parcels with property rights, namely according to the provisions of Article 37 of PP 24 of 1997 which recognizes proof of transfer of rights to land parcels if it is proven by a deed that is not made by the PPAT, whose level of truth is deemed sufficient by the Head of the Land Office to register the transfer of the right in question, so that this provision provides a legal loophole that in addition to the deed products made by PPAT, there are products other than PPAT which can be used as the basis for the transfer of rights by the Head of the Land Office.

Although the provision does not specifically confirm when in remote areas and has not been appointed Temporary PPAT, as explained in Article 37 paragraph (2) PP No. 24 of 1997, the deed that was not made by PPAT is the deed of the Village Head, or notarial deed, so that subjective authority rests with the Head of the Land Office to assess the level of truth, but the Village Head as an official close to land affairs at the village level or in the customary law community, so that the Certificate made by the Village Head or Customary Head regarding Information there has been a sale and purchase or transfer of rights is categorized as a deed that is not made before the PPAT and has the truth that there has been a transfer of land rights based on the law that develops in the community. In addition to the Village Head, the legal product of a notary as a public official in the form of a deed or legalization of the sale and purchase agreement of the parties whose truth value can be recognized by the Head of the Land Office.

The law that development in the community which is defined as the application of customary law which customary law cannot be ruled out, such as norms that exist in indigenous peoples, new customary law that existed before the enactment of the UUPA or Government Regulations regarding land registration, moreover Article 5 of the LoGA emphasizes that national land law is a customary law which has a meaning where the basis for making regulations or applicable legal law must be in accordance with local customary law.

Customary law which is still recognized by the community makes it a habit among the surrounding community to conclude that the transfer of land rights is witnessed or confronted by the village head. The transfer of land rights is carried out in accordance with customary law, even though it is not before the PPAT it is still considered valid as long as the material has been fulfilled (Made, 2020). These conditions are related to the authority and rights of both parties, namely between the seller and the buyer, on the other hand, the formal requirements must also be fulfilled, namely relating to proof of the sale and purchase of land rights in front of and witnessed by the village head, through a deed as evidence that a legal change has taken place (Basyarudin, 2021).

In the legal system of land registration in Indonesia, it cannot be separated from the perspective of the administration and applicable law, with the background of proof of various land rights and the limited ability of the government in preparing physical data and juridical data, the land registration system adopted by Indonesia is a negative system with a positive tendency (Waskito,

2019). Meanwhile, the system adopted by the UUPA is a negative publication system that is valid for 5 (five) years as an effort to provide legal protection to true rights holders (Desi, 2021).

#### IV. CONCLUSION

The Village Head in his position does not have attributive authority, delegation and mandate to make a deed of transfer of land rights, but in Government Regulation 24 of 1997 the Village Head can be appointed as a Temporary PPAT if in the area where the object of transfer of land rights is not contained PPAT or less PPAT. Therefore, the authority that exists in the village head is not directly attached. In land registration for the transfer of rights using a deed made by PPAT and deed that is not made by PPAT in remote areas and has not been appointed by PPAT, the deed can be in the form of a deed made by the Village Head and Notary whose truth content is determined subjectively by the Head of the Land Office. Based on several things found in the research, it is necessary to synchronize the law in Government Regulations to carry out land registration, namely PP No. 24 of 1997 concerning Land Registration and Government Regulation No. 24 of 2016 concerning Land Deed Making Officials who regulate the deed or certificate that there has been a transfer of land rights. In addition, it is necessary to make future legal arrangements (*ius constituendum*) regarding the Authority of the Village Head in the transfer of land rights by making amendments or changes to Law no. 6 of 2014 concerning Villages and PP No. 24 of 1997 concerning Land Registratio.

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