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THEORETICAL STUDY ON LAND REGISTRATION DATA

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Abstract

Land registration is a state obligation undertaken by the Head of the District Land Office/City assisted by PPAT, as mandated in Government Regulation number 24 of 1997 on Land Registration and Government Regulation number 37 of 1998 on the Regulation of the Land Deed Officer Position. Based on the research results can be given some conclusions that Constraint PPAT tasks related to supporting maintenance activities of land registration data that there are PPAT the administration have not implemented correctly according to the provisions, there are still assignee is only intended to get a deed made by PPAT and is not intended to register their rights, the existence of a less qualified certificate; so no change in juridical data for file submitted to the Land Office., and the result can not be implemented juridical data changes. That PPAT tasks in implementing land registration data is PPAT responsibility deed truth. covering the truth of events contained in the deed, the type of legal actions referred to by the parties, the object of legal actions both physical data and juridical data, and the identity of the parties. PPAT in coaching and examination by the District Land Office Tangerang there are still some in charging PPAT deed book list has not been in accordance with the provisions of the legislation that has been set.

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1. Introduction

Indonesia has a most stringent land registration and land licensing system in Asia (Monkkonen, 2013), The magnitude land rights role with the increasing land price, with the enactment of Basic Agrarian Law and its implementation regulations, the transfer of land rights is deemed necessary to be increased higher and regulated separately. In the national development the role of the land for the fulfilment of various purposes will increase both for settlement purposes and business activities. As a capital asset, the land has grown as a very important economic item, not only as a commercial material but also as a speculation object. On one side, land should be used and exploited as much as possible for the welfare and people prosperity and on the other hand must be preserved.

Legal certainty provision in land field for all Indonesia people which became one of objectives enactment of the Basic Agrarian Law can be realized through two efforts:

- a) Require any written law, complete, and clear-executed consistent with the spirit and its provisions content (Government Regulation No. 24 of 1997) so it is necessary to make the legislation ordered by Basic Agrarian Law in accordance with the spirit and principles of Basic Agrarian Law.
- b) In order to deal with concrete cases in the land sector, the legal certainty provision could not be realized only with the availability of eligible legal instruments, but also the land registration which allows the right holders to easily prove their rights to the land they control, very easy for economic activities such as selling or lending a modern, because the buyer or creditor will easily find the necessary information about the land that will be the object of a legal act to be done, because the information is stored in the land office as organizer of land registration and open to the public as well as for the government to implement the land policy.

The legal certainty guarantee could be realized by the implementation of good land registration in accordance with the laws and regulations. The Basic Agrarian Law No. 5 of 1960 seeks to realize the registration of land throughout Indonesia. This is affirmed in Article 19 paragraph (1) Basic Agrarian Law No. 5 of 1960 states in order to guarantee legal security, the Government carries out a registration of land throughout the territory of the Republic of Indonesia according to provisions regulated by Government Regulation. While the Government Regulation No. 24 of 1997 expressly states that the Government agency that conducts the land registration throughout the Republic Indonesia territory according to Article 5 is the National Land Agency of Indonesia (Indonesia: Badan Pertanahan Nasional (BPN)). Furthermore, in Article 6 paragraph (1) confirmed that in the framework of the land registry implementation, task implemented by the Head of the District Land Office / City. As in many countries, the maintenance of land ownership papers under state institutions authority (De Vries et al., 2015).

Article 5 of Government Regulation No. 24 of 1997 mention that the land registration conducted by BPN and its implementation is carried out by the Head of Land Affairs Office, except for certain activities which by this Government Regulation or the law concerned is assigned to other officials. In carrying out the land registration, the Head of the Land Office assisted by the Land Deed Official (Indonesia: Pejabat Pembuat Akta Tanah (PPAT)) and other officials assigned to perform certain activities under this government regulation and the relevant legislation.

Under these provisions, the government issued Government Regulation No. 37 of 1998 on the Regulation of PPAT Position and Regulation of the BPN No. 1 of 2006 concerning Provisions on the Implementation of Government Regulation No. 37 of 1998.

Article 37 paragraph (1) of Government Regulation No. 24 of 1997 states that the land transition and property rights to the apartment units through the sale, exchange, donation, inclusion in the company and legal acts of punishment other rights, except for removal rights through auctions can only be registered if proven by deed made by PPAT authorized under the provisions of the legislation in force. Legal act in question is a sale and purchase, exchange, donation, inclusion into the company, the collective-division rights, the Building rights, Giving Deposit Rights, Power of Attorney Charges Deposit Rights.

PPAT given the task, authority and trust as much as possible to provide services to the community in deed terms of the legal acts in the land registration context. PPAT in the face of a heterogeneous society with a wide problem range, namely that there are subject to the Civil Law, Customary Law, facing papers are not complete proof, high land values as well as the various issues relating to the various interests. This requires an expertise and prudence in the papers right evidence, etc.

In practice, there are sometimes gaps in the existing regulation, such as the frequent transition of land rights without being done in the presence of PPAT or otherwise known as the transfer of rights under the hands. In addition, many PPAT finds that the deed does not comply with the prevailing regulations, PPAT does not read deed contents, the PPAT signed the deed of granting the mortgage rights does not notice that the Power of Attorney for Deployment Rights has expired, PPAT which makes deed for buyers and sellers who have no authority and ability to act, PPAT make field deed outside the working area, PPAT in making the deed does not present the parties and the relevant witnesses. In fact, many countries have well documented the importance of witnesses in land transactions such as Ghana (Abdulai & Owusu-Ansah 2014), Ethiopia (Bezu & Holden 2014), Imperial China (Hase 2013; Fung & Lee 2014; Lai 2015), Papua New Guinea (Koczberski, Curry & Anjen 2012), Benin (Yemadje et al 2012), Nepal (Chhetri, 2014).

The actions carried out by the PPAT resulted in a legal defect in the PPAT deed, which could lead to the emergence of land disputes resulting in vulnerability occurrence in land law issues and complicate efforts to realize legal certainty, rights certainty and may cause harm to the creditor. In the implementation of its duties, PPAT is required to be more professional in performing its duties and authority as a designated official in making authentic deed. This is in accordance with the opinion of Huenchuleo et al. (2012) that land registration has a major role in the natural system and has a psychological aspect. In addition, land registration has a positive result in improving the ownership security (Yami & Snyder, 2016), as official records of legally recognized (Murtazashvili & Murtazashvili, 2016).

In many cases, researchers have discussed land registration transactions and residential construction (Manirakiza, 2014) to create ownership (Lai et al., 2016). However, when examined in the following articles, it turns out that certain land rights have an obligation imposed on the right holder as mandated by Article 23, 32, 38 of the Basic Agrarian Law so that any land which may be entitled to rights shall be the land of rights in the person name who registered it with government implementation.

Further provisions of land registration according to Article 19 paragraph (1) of the Basic Agrarian Law governed by Government Regulation. The Government Regulation in question is Government Regulation No. 10 of 1961 concerning Land registration, State Gazette of the Republic Indonesia No. 1961. 28 - Supplement to State Gazette No. 2171 Government Regulation No. 10 of 1961 are no longer valid with the enactment of Government Regulation No. 24 of 1997 on Land Registration, State Gazette of the Republic Indonesia Year 1997 No.59 - State Gazette of the Republic Indonesia No.3696. Government Regulation no. 24 of 1997 was ratified on 8 July 1997 but has only been effective since October 8, 1997. Government Regulation no. 24 of 1997, the implementation is regulated in the Regulation of the Minister of Agrarian Affairs / Head of BPN (Agrarian Regulation / Head of BPN) No. 3 of 1997 concerning Provisions on the Government Regulation Implementation No. 24 of 1997 on Land Registration and has been amended again with Regulation of the Head of BPN No. 8 of 2012.

In carrying out the land registration, the Head of the Regency / Municipal Land Office cannot carry out its own, but requires other party's assistance, namely PPAT and other officials assigned to carry out certain activities under this Government Regulation and the relevant legislation. Other officials assisting the certain activities implementation in land registration shall be officers of the auction office, Officials of Deed of Wakaf Promoter, and Adjudication Committee.

The PPAT has a very important role in land registration, which is assisting the Head of the Regency / Municipal Land Office to carry out certain activities in land registration, as described in Article 6 paragraph (2) of Government Regulation No. 24 of 1997 and as set forth in Government Regulation Number 37 of 1998 on the Regulation of PPAT. Tangerang regency is one of districts that have a lot of land rights transition. With the increasingly high volume of work, the PPAT increasingly demanded more professional in carrying out their duties.

Referring to the provisions of Article 6 paragraph (2) of Government Regulation No. 24 of 1997 states that in the land registration implementation, Head of the Land Office, assisted by the PPAT task to assist the Chief of the Land Office, must be interpreted in the context of the implementation of land registration pursuant to Article 6 paragraph (1) is assigned to the Head of the Land Office.

Maintenance activities include land registration data transfer, charging registration rights and other land registry data changes. In accordance with the conversion law, the ownership proof of this right is essentially a representation of the State's recognition of the right of ownership owned by Indonesian citizens. Legitimate rights should be protected by the state. Property rights are a right that has the highest level of ownership relative to other ownership rights (Donnelly, 2012; Becker, 2014; Segal & Whinston, 2012).

The system adopted in Basic Agrarian Law and Government Regulation Number 24 of 1997 is a negative system, but which contains a positive element because it will proof produce letters of rights that apply as a powerful evidentiary. In theory the use of the land registry (Barry and Roux, 2013), are useful in maintaining land deed. This is in accordance with the opinion of Barry & Danso (2014) which states that in order to protect the land interests, especially beliefs and attitudes towards land registration.

2. Problem Statement

In this research can be identified several problems, namely:

1. The PPAT task in implementing land registration data related to Government Regulation No. 24 of 1997 and Government Regulation No. 37 of 1998.
2. The PPAT in implementing the land registration data and guidance The PPAT by the Tangerang District Land Office

3. Research Questions

1. What factors are constraints the PPAT task is related to Government Regulation No. 24 of 1997 and Government Regulation No. 37 of 1998?
2. How PPAT implement land registration data and guidance PPAT by the Tangerang District Land Office?

4. Purpose of the Study

1. To examine factors are constraints the PPAT task is related to Government Regulation No. 24 of 1997 and Government Regulation No. 37 of 1998.
2. To examine PPAT implement land registration data and guidance PPAT by the Tangerang District Land Office.

5. Research Methods

This research uses normative research and empirical juridical. This research will analyse the research object by using secondary data and primary data. This study is analytical descriptive, which reveals legislation relating to legal theories that become the research implementation object of PPAT tasks in Tangerang District with Government Regulation No. 37 of 199.

Data sources used in this study are secondary and primary data. Secondary data obtained from library materials while primary data is data obtained from interviews with staff of the Land Office and PPAT in Tangerang District.

This research uses descriptive qualitative analysis. After all the necessary data are collected then analysed, connected with the primary data so that the description of the PPAT task in implementing and registration data.

6. Findings

6.1. Constraints Implementation PPAT Tasks in Maintenance Activities of Land Registration Data and Settlement Efforts

Based on data at the Land Office of Tangerang Regency there are several constraint implementation of PPAT tasks in supporting the maintenance activities of land registration data as follows:

- a. That there are still some recipients of the purpose right only to obtain the deed made by the PPAT and not yet intend to register the rights received, resulting in changes non-implementation in juridical data;
- b. Their deeds are less qualified to be registered switchover rights as stipulated in Article 45 paragraph (1) of Government Regulation No. 24 of 1997;

- c. There are still PPATs who have not carried out proper administrative order in accordance with the provisions;
- d. There are limitations on the staff of the Land in order to develop the PPAT;
- e. Lack of communication between the PPAT and the Land Office, so there are differences in understanding a provision;
- f. In the SSB validation case, the Regional Revenue Service Office takes a long time so that it is late to register deed to the Land Office.

From some of these constraints on the District Land Office Tangerang has taken several efforts to settle, which sent a letter to the prospective assignee for the complete lack of a file, restore the deed concerned to the PPAT accompanied by reasons clearly the reason for denial, held guidance starting on 18th May 2015 corresponding letter of the Head of the Land Office of Tangerang Regency on May 15, 2015, in guidance revision in order to reach agreement, advising PPAT before the deed was signed in order to carry out validation SSB-BPHTB first so it is not too late registered.

6.2. PPAT Task Mechanism to Support Land Maintenance and Procedures Deed

Based on data and documentation at the Tangerang District Land Office, it is known that all PPAT in the working area of Tangerang District Land Office, has undertaken oath of office suit the legislation in force. But some PPAT:

"has not submitted its report in the period before the 10th of the following month. That from January to May 2015 there were no PPAT who retired because of the age of 65 years, and no PPAT who runs off. Whereas from 2014 to May 2015, there was one PPAT who died "(Interview result on 1 July 2015) .

There are several PPAT submitted for registration are sometimes not eligible to be registered as regulated in Article 45 paragraph (1) of Government Regulation No. 24 of 1997, so the Land Office returns it to the relevant PPAT for repair. Still there are some PPAT not fill deeds register on a daily basis and close it by using black ink, accompanied by initials PPAT concerned and write "Nihil" if not a deed, and not all use the form as specified in the legislation.

6.3. PPAT Task For Supporting Maintenance of Land Registration Data and Guidance PPAT

Based on the General Provisions of Article 1 of Government Regulation No. 24 of 1997 and Article 2 paragraph (2) of Government Regulation No. 37 of 1998 declared PPAT assigned to perform some tasks of land registration activities, therefore, demanded professionalism PPAT in deed because the deed is the main source of data for land registration data maintenance purpose.

From the research, it is known the number of PPAT in the Tangerang District Land Office in 2014 as many as 448 people and one person who died, and the number of PPAT from January to May 2015 as many as 289 people. The number of PPAT deeds in 2014 amounted to 43,164 deeds, while the total number of PPAT deeds from January 2015 to May 2015 can not yet be given data by the Tangerang District Land Office because not all PPAT reports.

Based on data at the Tangerang District Land Office in 2014 no implement guidance and inspection agency PPAT territory, after the date of May 18, 2015 implemented new guidance and inspection PPAT. In the investigation there are PPAT which implement the provisions contained in Government Regulation No. 37 of 1998 on the Position Rules PPAT there are some deficiency are:

- a. Filling in the register book of deed is not done every day and does not cover it by using black ink with initials PPAT concerned and wrote "Nihil" if not make deed;
- b. When filling the register of deeds, page book is not written so that officers who came to inspect the books had difficulty include pages;
- c. No binding warkah support correctly created deeds (for warkah binding every 25 deeds and for deeds are made binding every 50 deeds).

Based on the findings at the time of the examination, the Land Affairs Officer at the same time conducted direct guidance and reprimand, so that the deficiencies can be addressed. Tangerang District Land Office has been doing coaching starting on May 18, 2015 to PPAT and only 50 PPAT can be examination, while as many as 239 PPAT people PPAT could not be developed and inspection.

7. Conclusion

1. Constraint PPAT tasks related to Government Regulation No. 24 of 1997 and Government Regulation No. 37 of 1998 on the District Land Office Tangerang is PPAT has not performed proper administration according to provisions, SSB validation in the Office Department of Revenue requires a long time so there is no change in juridical data for file submitted to the Land Office.
2. Land registration data is the PPAT responsibility related to deed truth covering several aspects, namely that the incident truth in the deed, regarding the type of legal action referred to by the parties, the legal deed purpose, whether physical data or juridical data, and identity The constituents are the parties who perform legal acts. In the PPAT guidance and inspection by the Land Office of Tangerang Regency there are still some PPATs that do not fill deed register book and do not close it by using black ink accompanied by PPAT paraf and write "Nihil" if not make deed, do not write book page on filling book list deed so the officers came to difficult make pages listing.

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