

ARTICLE

Transfer Of Rights to Transmigration Land Whose Existence Is Unknown to the Subject of Rights Based on A Court Decision of Permanent Legal Force

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Abstract:

Transmigration is an important part of the development of rural areas in Indonesia. Limited economic access and location resulted in trans migrants feeling uncomfortable to cultivate their land and choosing to return to their hometowns. Trans migrants who are in Sarong Regency who are still surviving and have purchased certificates belonging to other trans migrants who are no longer at the transmigration site or have returned to their home areas, find it difficult to transfer rights to the land at the National Land Agency Office in Sarong Regency, and to provide legal certainty between the subject of rights and land objects, registration of land rights transfer is carried out based on court decisions with legal force remain. The purpose of this study is to determine the obstacles that occur in the transfer of land rights based on court decisions with permanent legal force, the method used is an empirical legal research method. This research uses a statute approach and a case approach which is carried out by examining all laws and regulations related to this research. Land registration law in Indonesia only guarantees legal certainty over physical and juridical data recorded in certificates as evidence of property rights, while court decisions with permanent legal force (inkrahct van gewijsde) are only material evidence or confirm the party entitled to the land object.

Keywords: Transfer of rights, court decisions, legal certainty, transmigration land

1 | INTRODUCTION

Land in human life has a very important meaning including a place to grow crops for farmers, a place to produce goods and services, land is a treasure that is not easily destroyed and can be used as a source of life for every human being. The relationship between man and the land is very close, that the land as a place for man to live and continue his life. Indonesian people mostly live as farmers, farming, farming, so land is a very

important factor to improve the living standards of the people. One way to empower farmers, farm workers, and poor farmers, as well as farmer's victims of natural disasters by implementing transmigration programs. Transmigration is indeed very necessary for Indonesia to develop the country by building between villages and cities, transmigration is an important part of the development of rural areas in Indonesia.

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The land program intended for transmigration land is an implementation of the Basic Agrarian Law (UUPA) which is a manifestation of the implementation of the Land reform Principle. Now the term Land reform is renewed with the spirit of agrarian renewal which is popularly known as "Agrarian Reform". The earth, water, and space as much as possible for the welfare of the people are clearly stated in the Basic Agrarian Law (UUPA) as part of the Land reform law in Indonesia. (1)

The government has the authority to make policies on transmigration, including land acquisition and certification, the Government of the Republic of Indonesia issued Law Number 5 of 1960 concerning the Basic Regulations on Agrarian Principles which is also abbreviated as UUPA to regulate land policy, so that it is in administrative order. The main foundation in terms of land management in Indonesia is regulated in Article 33 Paragraph (3) of the 1945 Constitution which reads:

"The earth, water and natural wealth contained therein are controlled by the State and used as much as possible for the prosperity of the people".

The nature of the 1945 Constitution only contains the main points, so as an implementation of article 33 paragraph (3) Law Number 5 of 1960 concerning the Basic Regulation of Basic Agrarian Principles or also known as the UUPA, which was enacted on September 24, 1960.

The law carries out a vision and mission for the welfare and prosperity of all Indonesian people based on the principle of justice as the embodiment of the mandate of people's suffering, a concept that reflects the spirit and spirit of UUPA(2), namely:

1. Laying the foundation for the drafting of national agrarian law which is a tool to realize prosperity, happiness, and justice for the State and the people, especially the peasant people in order to be just and prosperous.
2. Laying the foundations for establishing unity and simplicity in land law.

3. Laying the groundwork for providing legal certainty regarding land rights for the people as a whole.

The transmigration program in Indonesia was carried out in the Dutch colonial era at the beginning of the 20th century, transmigration was originally an effort to move population in a planned manner, transmigration was a government program to overcome population density, equitable development and for the welfare of the people. (3)

The definition of transmigration according to law number 29 of 2009 concerning amendments to Law Number 15 of 1997 concerning transmigration, Transmigration is a voluntary movement of the population to improve welfare and settle in transmigration areas organized by the Government. Meanwhile, Transmigrants are citizens of the Republic of Indonesia who move voluntarily to the transmigration area. The definition of transmigration According to Heeren as quoted by H. Ruslan Majid, transmigration is displacement, in this case moving people from densely populated areas to sparsely populated areas within state boundaries in the framework of national wisdom to achieve a more balanced population distribution. (3)

The implementation of the transmigration program is equity in various aspects of development, such as education, health, mental spiritual / religious, sports, arts and others. Transmigration has a very important role for national development and transmigrants as objects of transmigration have contributed to regional development. (4)

Transmigration is very necessary in Indonesia to build a land of islands for equitable development of rural areas, and equal distribution of economic results. Soedharyo Soimin believes that the transmigration program is an effort to harmonize the spread of natural and environmental potential, so that the quality of life can be improved throughout Indonesia and human resources can be utilized more productively. (5) With the transmigration program, land ownership and land use in the origin and destination areas can be reorganized.

Based on Article 7 of Law No. 3 of 1972 concerning the Basic Provisions of Transmigration, it is stipulated that transmigrants are entitled to land in yards and/or agricultural land with land rights according to applicable regulations. In the explanation of the Law, it is emphasized that the granting of at least 2 hectares, this is in accordance with the Basic Agrarian Law, namely regarding the minimum limit of land that can be owned by individuals with the understanding that more than 2 hectares can be given according to local soil conditions, types / types of agricultural production (for example for export crops) and the ability to cultivate the land. Granting land to transmigrants not farmers, for example fishermen, plantation workers, industrial workers and so on at least 4 hectares for yards located not far from the place of work. This is important to provide a guarantee of old age for transmigrants.

Government Regulation No. 42 of 1973 concerning the Implementation of Transmigration in Article 28 Paragraph (1) states that Transmigrant farmers have the right to obtain land of at least 2 (two) hectares whose use is divided as follows: a. 1/4 (quarter) hectare is used for houses and yards; b. 13/4 (one and three-quarters) hectares are used for cultivation and/or rice fields. And in Paragraph (2) Transmigrants are not farmers entitled to obtain land of at least 1/4 (quarter) hectare which is used for houses and yards.

The Transmigration Program in Irian Jaya (Tanah Papua) lasted from 1964 to 1999, the land of Papua as a transmigration recipient area, In the era of special autonomy through Law No. 21 of 2001 concerning Special Autonomy for Papua Province, the transmigration program changed from a centralistic system to decentralization, in the sense that local governments have a big role in the implementation of transmigration. Indigenous peoples in Papua are also involved in making decisions to determine the progress of transmigration, because indigenous peoples are the owners of customary land (6) or customary land that is used as a transmigration project.

Limited economic access and location resulted in transmigrants feeling uncomfortable to cultivate their land and choosing to return to their MEERP

hometowns. So that the transmigration land certificates they have are transferred to surviving Transmigrants, under their hands by submitting certificates and photocopies of Identity Cards. (7) Currently, transmigration sites that were once far from economic access have developed and have high economic value, many locations of business land II were once forests and are now open to residential areas and even housing. Transmigrants who are in Sorong Regency who are still surviving and have purchased certificates belonging to other transmigrants who are no longer at the transmigration site or have returned to their home areas, find it difficult to transfer rights to the land at the National Land Agency Office in Sorong Regency, even though they have been physically controlled and cultivated and even built houses to their children and grandchildren.

The Office of the National Land Agency in Sorong Regency could not register the transfer of rights. Because the sale and purchase agreement uses a letter made under the hand and does not use an authentic deed in the form of a Deed of Sale and Purchase made before the Land Deed Making Officer (PPAT) or the Temporary Land Deed Making Officer (PPATS). Because the change of ownership or transfer of rights is a change in juridical data regulated in Article 94 paragraph 3 of the Atr/BPN Ministerial Regulation number 16 of 2021, thus creating legal uncertainty for transmigrants who physically occupy and hold certificates that are still in the name of transmigrants who are no longer in the transmigration location.

That the guarantee of legal certainty in land registration is that the government guarantees that the right holder (subject) is really entitled or has a legal relationship with the land (its object), as evidenced by the bookkeeping of juridical data and physical data on land plots that are received as correct data and supported by the availability of cadastral measurement maps, general lists of registered land plots and the preservation of the general list with up-to-date data and to The right holder is given a valid proof of rights as a powerful evidentiary tool commonly called a land certificate. (8)

Therefore, it is necessary to conduct research related to the legal issue of transmigrants who control the physical land to provide legal certainty over their land rights. One solution to provide legal certainty to transmigrants is to transfer land rights based on court decisions with permanent legal force through civil lawsuits in local district courts. As per the decision of the Sorong District Court No.88/Pdt.G/2018/PN SON, dated September 05, 2018, it tried a civil case in a lawsuit case between Elkana Siringo Ringo as Plaintiff and Marthen Manas as Defendant I, Yulius Ginuni as Defendant II, Yusuf IEK as Defendant III, and Wagimin Riono as Defendant IV.

That the Plaintiff is the son of Albinem Siringo Ringo who owns a land area of 10,000 m², with certificate number 1259/Malawili, located on Jalan Sorong Klamono, Kelurahan Malawili, Aimas District, Sorong Regency, which was purchased from Waginem the wife of Wagimin Riono one of the Transmigrants in Sorong Regency, based on a Receipt in 1998 and has not been processed to transfer his rights to the name of Albinem Siringo Ringo. The suit case was decided on a Vertex basis and has permanent legal force based on the Certificate of Judgment of the Judge has permanent legal force (Inkrach Van Gewijsde) No. 02/BH/2019/PN Son, dated July 17, 2019, with the judgment (9) "Stating that the Plaintiff is the legal owner according to the law of the litigated land located on Sorong Klamono road, Malawili Village, Aimas Subdistrict, Sorong Regency." In the judgment of the case, it has actually been determined that the person entitled to ownership of the land of the object of dispute is Albinem Siringo Ringo, but the court decision that has permanent legal force (inkrahct van gewijsde) turned out to be just a material proof against the party entitled to the land of the object of the dispute, because in fact Albinem Siringo Ringo could not carry out legal actions against the land because of the name Wagimin Riono is still listed in the certificate. This creates new problems because it has the potential to cause legal uncertainty over the status of the land, because the disputed land cannot be used by the rightful due to the status of land ownership that

has not been recorded in the name of Albinem Siringo Ringo.

The granting of land ownership rights status must have a legal act above that right, the legal act in question is the act of transferring the right from the first person who has registered the right to the second person (the other party). (8) Albinem Siringo Ringo must register the transfer of his rights obtained under the judgment of the court, but based on the judgment of the court whether the National Land Agency can process the registration of the transfer of rights, because in its judgment it does not order the Office of the Land Agency to adjust the physical and juridical data on the land book. As stipulated in article 55 of the Regulation of the Head of the National Land Agency No. 3 of 2011 concerning Management of Land Case Assessment and Handling. So that the problem in this study is how many obstacles the National Land Agency of Sorong Regency in resolving the problem of registration of transfer of rights to transmigration land that is not known the existence of the subject of rights based on a court decision that has obtained permanent legal force?

2. RESEARCH METHODS

Legal research is one of the scientific activities based on certain methods, systematics and thoughts with the aim of studying one or several symptoms of a particular law by means of analyzing them. (10) This type of research in legal writing is empirical legal research. Researchers want to get the facts and primary data directly in the field. Empirical research, research that begins with secondary data and then continues with research on primary data in the field or on the community. (10)

The approach method used in this study is the statute approach and the case approach, by examining all laws and regulations related to this research, as well as examining cases related to the issue at hand that have become court decisions that have had permanent legal force. In descriptive qualitative research always presents its findings in the form of detailed, complete, and in-depth sentence descriptions of the process of how things happen. (11)

This study uses a data collection method based on primary legal materials and secondary legal materials. The data collection carried out in this research is by using field research methods (Field Research) and Library Research (Library Research).

3. RESULTS AND DISCUSSION

Implementation of activities to record the transfer of land rights as stipulated in article 125 paragraph 1 of the Regulation of the Minister of Agrarian State / Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration, namely:

changes in land registration data based on court decisions or the determination of judges/chief justices by the head of the land office in the relevant land book list and other general registers are carried out upon receipt of the determination of the judge/chief justice or court decisions that have permanent legal force and a copy of the Minutes of Execution from the clerk of the District Court concerned.

The obstacles faced by the Sorong Regency Land Office in carrying out the recording of the transfer of rights based on the decision of the Sorong District Court No.88 / Pdt.G / 2018 / PN SON, because the court's decision did not confirm ordering the Head of the Land Office to change the juridical data on the land book, so that the Sorong Regency land office in carrying out the court decision, needs to analyze and consider the court's decision because the decision has been has a fixed legal force, because a case, object, and party are the same and have been decided by a court and have permanent legal force, whether the Judge grants or rejects, the case cannot be re-examined a second time (Principle Ne bis in idem). As the decision of the Sorong District Court No.88/Pdt.G/2018/PN SON, in the subject matter of the case:

1. Grant the plaintiff's suit in its entirety.
2. Declare that the sale and purchase between defendant IV (Wagimin Riono) and the plaintiff is valid based on a receipt in 1998

in the amount of Rp.1,000,000 ,- (one million rupiah).

3. Stating that the plaintiff is the owner of a land area of 10,000 m² (ten thousand square meters) located at Sorong-Klamono Street, Malawili Village, Aimas District, Sorong Regency.
4. Punishing the defendants or anyone else on the land of the object of dispute to dismantle the building of the warehouse for storing goods that are on the land of the object of dispute and hand over the land of the object of dispute to the plaintiff in the circumstances as before.
5. Declare all the evidence of the acquisition of land from the land of the object of dispute as a result of the possession of customary land without basis and good reason in accordance with the applicable rule of law, whether on behalf of defendant II or on behalf of anyone without the force of law, as evidence in this case.
6. Declare that the decision of the Sorong District Court can be carried out first even if there are legal remedies verset, appeal or cassation.
7. Punishing the defendants to pay all costs incurred in this case.

Based on the judge's consideration, the judge granted part of the plaintiff's claim, namely:

1. Declaring Defendant I, Defendant II and Defendant III who have been lawfully summoned to appear before the trial, not present.
2. Grant plaintiff's suit in part with verstek.
3. Declare that the sale and purchase between Defendant IV and the Plaintiff is valid based on the sale and purchase receipt in 1998 in the amount of Rp.1,000,000 ,- (one million rupiah).
4. Declares that the Plaintiff is the legal owner of the litigant land located on Sorong Klamono road, Malawili Village, Aimas District, Sorong Regency.
5. Punishing the defendants or anyone else on the land of the object of dispute to dismantle the building of the warehouse for storing

goods on the land of the object of dispute and hand over the land of the object of dispute to the Plaintiff in the circumstances as before.

6. Stating that all the letters of evidence of land tenure of the land of the object of dispute as a result of the control of customary land without basis and compelling reason in accordance with the applicable rule of law, whether on behalf of defendant II or on behalf of any person, have no legal force as evidence in this case.
7. Punishing the Defendants to pay the costs incurred in this case in the amount of Rp.2,116,000,- (two million one hundred and sixteen thousand rupiah).

The judge in passing the judgment in accordance with the *posita* and *petitum*, as explained by Mr. Lutfi Tomu S.H as the Judge of the Sorong District Court, that the Judge in deciding a lawsuit case is in accordance with the *posita* and *petitum* and must not exceed what is stated in the content of the suit.

The judge's decision is only material proof of the party who is entitled to the disputed object's land, but formally the entitled party has not been able to carry out legal actions, so that legal certainty can be realized, the Plaintiff and his attorney must coordinate with the National Land Agency so that materially and formally the party entitled to the land of the object of the dispute is guaranteed legal certainty and has a legal relationship between the subject and object of law. The judge's ruling is only material evidence is an obstacle faced by the Sorong Regency Land Office to record the transfer of its rights because formally the judgment has not confirmed to make changes to the juridical data on the land book.

The Office of the National Land Agency of Sorong Regency in overcoming these obstacles by creating a smart land legalization program (Proletar) by conducting a Memorandum of Understanding (MoU) Cooperation Agreement with the Legal Rock Institute (LBH) Legal Aid Post (Posbakum) and the Sorong Justice and Peace Legal Aid Association (PBHKP) to provide legal assistance and assistance to the community to be able to file a Civil lawsuit in the Sorong District Court and MEERP

obtaining a judgment of permanent legal force as the basis for the transfer of rights through a Court Decision.

4. CONCLUSIONS

The smart land legalization program (Proletariat) created by the National Land Agency of Sorong Regency is to overcome obstacles that occur in the process of transferring rights based on court decisions with permanent legal force, so that people who have long bought transmigration land and have not been transferred rights and the whereabouts of their rights subjects / initial owners listed in the land certificate are unknown, then it must coordinate with the Sorong Regency National Land Agency Office so that in filing a lawsuit, *posita* and *petitum* must confirm the Sorong Regency National Land Agency to carry out the process of returning the name of the certificate.

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