



## Registration of Transfer of Land Ownership Due to Inheritance in order to Ensure Legal Certainty

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### Abstract

Land is the highest value of wealth and is also a source of life. To prevent disputes from occurring, the Government will hold land registration in accordance with article 19 paragraph (1) of the UUPA. The transfer of land rights is the transfer/transfer of land rights from the old right holder to the new right holder. Based on Article 42 paragraphs (1) and (2) of Government Regulation Number 24 of 1997 concerning Land Registration regulates the obligation of heirs to register the transfer of their rights to the Land Office. But the reality is that there are still many heirs who have not registered their transition eventhough there are clear rules that regulate it. The approach method uses the normative juridical approach as the main approach supported by the empirical juridical approach. Based on the results of the discussion and analysis, it is concluded as follows: First, the registration of the transfer of ownership of land due to inheritance in order to ensure legal certainty, based on the completeness of the rights, must meet 2 (two) conditions, namely the material condition and the immaterial condition. But in reality, there are still many heirs who have not registered the transfer of their rights. The causative factors include: the level of public education is still low so that there is a lack of legal awareness about the importance of land registration, the cost of managing certificates is expensive, not all heirs have the cost for the transition process, ignorance of land registration requirements and procedures. Second, as a result of the law, there is a transfer of ownership of land because the heirs are the heirs as the holders of the right to get legal protection because materially and immaterially, the rights and obligations of the heirs are directly transferred to the heirs.

## INTRODUCTION

Land also has an important meaning for the life of the Indonesian nation, this is because the State of Indonesia is an agrarian country. So soil is a very important object in various aspects of life even until the death of a person who needs land, therefore humans are inseparable from the relationship with the land so that the land has a higher economic value. To prevent disputes, it is necessary to hold a land registration. Aware of its duties and obligations, the government has stipulated it in article 19 paragraph (1) of the UUPA which states that:

“To ensure legal certainty by the government, land registration is held throughout the territory of the Republic of Indonesia in accordance with the provisions regulated by Government Regulations”.

Furthermore, paragraph (2) provides details that:

“The land registration mentioned in paragraph (1) includes: a. Land measurement, mapping, and bookkeeping; b. Registration of land rights and transfer of these rights; c. Giving a valid proof of rights certificate as a strong evidence”.

These provisions are a necessity and obligation for the government to regulate and organize the land registration movement throughout Indonesia, which is then regulated in Government Regulation No. 24 of 1997 concerning Land Registration and its Implementation Regulations Regulation of the Minister of State Agrarian Affairs/Head of the National Land Agency No. 3 of 1997 expressly regulates the procedures and conditions that is determined in the event of a registration process for the transfer of land rights. To ensure legal certainty by the government, land registration is held which is *recht-cadastral*, meaning that it aims to ensure legal certainty.<sup>1</sup>

The implementation of land registration includes first-time land registration activities and land registration data maintenance activities. Land registration data maintenance activities are carried out if there is a change in the physical data or juridical data of the land registration object that has been registered and the right holder concerned is obliged to register the change. One of the changes in question is caused by inheritance, or called registration of transfer of rights due to inheritance. The transfer of rights due to inheritance occurs when the right holder or heir dies, since then the heirs become the new right holder.<sup>2</sup> The law that applies is called inheritance law. Inheritance Law is the rules and principles that govern the procedure for the transfer of property and the rights and obligations of a person who has passed away.<sup>3</sup> Based on the above, it is stated that the ownership (of the land) can be transferred and transferred to another party. One of the reasons for this change is the end of a person's ownership of land due to death. Because with this legal event, there is a transfer of wealth from the deceased person, both material and immaterial wealth to the heirs of the deceased person. With the death of the land owner, the heirs have the obligation to register their inherited land to the Land Office based on Article 42 paragraphs (1) and (2) of Government Regulation Number 24 of 1997 concerning Land Registration which regulates the obligation of heirs to register the transfer of their rights regarding the land plots of rights that have been registered and those that have not been registered, namely:

- (1) For the registration of the transfer of rights due to inheritance regarding the land plot that has been registered and the ownership of the apartment unit as required according to the provisions as intended in Article 36, it must be handed over by the person who receives the right to the land or the title to the apartment unit concerned as an inheritance to the land office, the certificate of the right concerned, the death certificate of the person whose name is recorded as the holder of the right and the certificate of proof as an heir.
- (2) If the land plot which is an inheritance has not been registered, it is mandatory to submit documents as intended in Article 39 paragraph (1) letter b.

Based on these provisions, the transfer of ownership of land due to inheritance that has been registered will refer to Article 36 of Government Regulation Number 24 of 1997 concerning Land Registration which reads as follows:

- (1) The maintenance of land registration data is carried out if there is a change in physical data or juridical data of the land registration object that has been registered.
- (2) The holder of the right concerned is obliged to register the changes as referred to in paragraph (1) to the Land Office.

As for the transfer of ownership of land due to inheritance that has not been registered, the documents regulated in Article 39 paragraph (1) letter b of Government Regulation Number 24 of 1997 concerning Land Registration must be submitted, namely:

- (1) Proof of rights as intended in Article 24 paragraph (1) or a certificate from the head of the

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<sup>1</sup> Boedi Harsono, *Indonesian Agrarian Law History of the Establishment of the Basic Agrarian Law, Its Content and Implementation*, Djambatan, 2005, pp. 471-472.

<sup>2</sup> Rizal Effendi, *Thesis on the Implementation of Registration of Transfer of Land Rights Due to Heritage Related to the Making of Deed of Distribution of Shared Rights*, University of Semarang, Semarang, 2008.

<sup>3</sup> Eman Suparman, *Indonesian Inheritance Law*. Second Printing, PT. Refika Aditama, Bandung, 2007, p.2.

village/sub-district stating that the person concerned controls the land as intended in Article 24 paragraph (2), and

- (2) A certificate stating that the land plot in question has not been certified from the land office, or for land located in an area far from the position of the land office, from the right holder concerned with the confirmation of the head of the village/sub-district.

At any time, the legal event can occur, such as the death of a person that results in the transfer of land rights to his heirs as evidenced by the heirs' certificate made by the heirs witnessed by 2 (two) witnesses and corroborated by the Head of the Village/Village and Sub-district where the heir lives at the time of death. The Certificate of Heirs is regulated in Article 42 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration and the Circular Letter of the Department of Home Affairs of the Directorate General of Agrarian Affairs dated December 20, 1969 NumberDpt/12/63/12/69 concerning the Certificate of Inheritance and Proof of Citizenship.<sup>4</sup> From the rules it is determined that:

- (1) For indigenous Indonesian citizens: the heir's certificate is made by the heirs witnessed by 2 (two) witnesses and corroborated by the Head of the Village/Village and Sub-district Head where the heir lives at the time of death.
- (2) For Indonesian citizens of Chinese descent: deed of inheritance right from a Notary.
- (3) For other Indonesian citizens of Foreign Eastern descent: a certificate of inheritance from the Heritage Treasure Center."

The implementation of registration of the transfer of ownership of land due to inheritance is regulated in the Basic Agrarian Law Number 5 of 1960, the implementation of which is regulated in Government Regulation Number 24 of 1997 concerning Land Registration. By registering the land, you will get a Land Ownership Certificate called a certificate. The issuance of a valid certificate of proof as a strong proof tool for land rights holders. The certificate given will provide an important meaning and role for the right holder concerned which functions as evidence over the land, especially in the event of a dispute over land. In article 32 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration, it is stated that: a certificate is a strong proof letter regarding physical data and juridical data contained in it.

However, in reality, even though there is already Government Regulation Number 24 of 1997 concerning Land Registration which regulates land registration procedures and procedures that help and facilitate the community in managing the transfer of their rights, there are still many people who have not registered the transfer of their rights to the Land Office. This is evidenced by the number of heirs who receive a piece of land from the heirs who have not registered the transfer of ownership of their land, even the land has been left for many years still in the name of the deceased to several generations of their successors. We still often find that a family lives on land and buildings that are still recorded in the name of their grandfathers and great-grandfathers who have long since died. In addition to the reasons mentioned above, land obtained by the community from inheritance is registered for the transfer of rights to their land only if there is an urgent interest, for example to borrow money from the bank, where the land will be used as debt security. This is not in accordance with the rules of Article 20 paragraph (1) of Government Regulation Number 10 of 1961 concerning Land Registration which requires the heirs to register the transfer of the right within 6 months from the date of the person's death.

For the Solok Regency area, there are still many people who have not registered the transfer of their rights, which can be seen from the land registration data at the Solok Regency

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<sup>4</sup> Habib Adjie, *Proving as an Heir with a Notary Deed (in the form of a Deed of Inheritance)*, Bandung: Mandar Maju, 2008 p. 7

Land Office that has been registered, the number is relatively small compared to the lands that have not been registered. This may be one of them influenced by the low level of education of the people there and most of their livelihoods are farming, so that the lack of public awareness of the importance of land registration to obtain a certificate. They also do not know and realize what the legal consequences of the transition due to the inheritance are.

## **RESEARCH METHODS**

The specification of this study is descriptive analytical research, with a normative juridical approach by conducting research on legal rules related to the registration of the transfer of ownership rights to the tanag due to inheritance. Supported by an empirical juridical approach, by conducting research to see the work of these legal rules at the Solok Regency Land Office.

## **RESULTS AND DISCUSSION**

### **Implementation of Registration of Transfer of Land Ownership Due to Inheritance**

#### **1. Requirements for Registration of Transfer of Land Ownership Due to Inheritance**

Registration of land rights because land inheritance must be carried out by the holder of land rights who obtains an inheritance. These obligations have been regulated and explained in Article 42 paragraphs (1) and (2) of Government Regulation Number 24 of 1997. The requirements for documents that must be prepared and completed at the stage of registration of the transfer of ownership of land due to inheritance are in accordance with Government Regulation No. 24 of 1997 as follows:

- a. A letter of request to the head of the land office for the transfer of rights signed by the applicant or his legal representative.
- b. Copy of each heir.
- c. Death certificate in the name of the right holder.
- d. Certificate of inheritance.
- e. SPPT (Outstanding Tax Return) last year.
- f. The payment sign of the Land and Building Rights Acquisition Fee (BPHTB), although nil, is still attached.
- g. For land that has been certified, attach a land certificate.
- h. For land that has not been certified, it must complete the requirements for applying for a certificate for the first time.

#### **2. Procedures or Procedures for Registration of Transfer of Land Ownership Due to Inheritance**

In Government Regulation Number 24 of 1997 concerning Land Registration, it has been clearly regulated about the procedures or procedures for land registration to serve and facilitate the community in managing their land. In serving the community as public servants, the Solok Regency Land Office provides a service counter in order to make it easier for the community to register their rights, including:

- a. Counter I  
It is an information and complaint counter. This counter provides services in the form of land information such as the type or type of existing services, requirements, management procedures and costs. In addition, this counter is also checked for the completeness of the application/registration file.
- b. Counter II  
It is a file receipt service counter that is in all land service activities.
- c. Priority Counter  
It is a counter that provides services that are provided specifically for applicants who take

care of their own applications and are not represented or without intermediaries. The public is provided with convenience with priority counter services in registering their applications without waiting in line.

d. Counter IV

It is a counter for handing over or taking certificates when the applicant's file has been completed.

The implementation procedure of the registration of the transfer of land rights due to inheritance that has been registered (certified) is as follows:

- a. The applicant submits an application for the transfer of ownership of land over the inheritance through the Solok Regency Land Office by bringing a complete file to be received at counter 1 officer.
- b. The counter 1 officer will receive and examine the completeness of the documents, if it is complete, then it will be handed back to the applicant to be submitted to the counter 2 officer, to be registered.
- c. The counter 2 officer makes a deposit warrant, the original of which is given to the applicant to make the registration payment through the bank. After the applicant makes the payment by submitting proof of deposit to the counter 2 officer, then the counter 2 officer submits a document receipt letter to the applicant as evidence for taking the certificate when it has been completed.
- d. The counter 2 officer then submits the documents to the Coordinator of the Sub-Section of Determination of Rights and Registration for processing.
- e. The Coordinator of the Sub-Section of Determination of Rights and Registration after receiving the documents from the counter 2 officer studies the documents and makes a disposition, then the documents are handed over to the land book and certificate officer.
- f. Land book and certificate officers perform duties such as:
  - 1) Borrowing documents from archival officers
  - 2) Recorded a shift in land books and certificates.
  - 3) Recording on DI 204.
  - 4) Record on DI 203 (if there is no NIB yet).
- g. Submit documents to the Coordinator of the Sub-Section of Determination of Rights and Registration
- h. The Coordinator of the Sub-Section of Determination of Rights and Registration made corrections and affixed the paraphrasing of the transition record on the land book and the certificates and documents were given to the Head of the Survey and Mapping Section
- i. The Coordinator of the Survey and Mapping Sub-Section also made corrections and affixed paraphrasing and recording the transition on the land book and certificate and handed over the documents to the bookkeeper.
- j. Bookkeepers do:
  - 1) Bookkeeping in DI 208
  - 2) Include the DI number 208 on the land book and certificate
  - 3) Affixing the Garuda stamp on the land book and the certificate and survey letter
  - 4) Doing bookkeeping on DI 307
  - 5) Informing counter 2 officers to cross out DI 301 that the certificate has been processed
  - 6) Submit documents to the archivist
  - 7) Submit the certificate to the counter 4 officer
- k. The counter 4 officer records on DI 301 and when the certificate is completed, it is handed over to the applicant.

Meanwhile, the procedure that must be taken for land that has not been certified will be longer, because it is through the land registration system for the first time. The method of land registration can be carried out through:

a. Systematic Land Registration.

Systematic land registration is the first land activity that is carried out simultaneously including all land registration objects that have not been registered in the area or part of the area of a village/sub-district known as PTSL (Complete Systematic Land Registration) activities. Regarding the Land Registration Theory used by the author, based on Government Regulation Number 24 of 1997 concerning Land Registration and Article 19 paragraph (1) of the UUPA which states that:

To ensure legal certainty by the Government, land registration is held throughout the territory of the Republic of Indonesia in accordance with the provisions regulated by Government Regulations.

The land registration activities carried out include all land registration objects that can be known from the existence of the Land Book (*Register*) as a form of document storage that contains juridical data and physical data that is collected and presented until the issuance of a certificate (*Certificate of Title*) as a sign of proof of registered rights that applies as a strong evidence to ensure legal certainty. The process that was passed showed that the use of Land Registration Theory used by the author was very appropriate. The implementation of land registration systematically, the procedures and completeness of the documents are:

1) Collection and Processing of Physical Data.

For the collection of physical data, the landowner can show the location, boundaries and area of the land to the Land Office officer in terms of measurement and mapping, after the landowner can send a letter or notice of request for the designation of the boundaries of the land to guarantee a definite location or boundary.

2) Collection and Processing of Juridical Data and Bookkeeping of Rights.

For land owners who will register their rights with the Land Office, they must complete documents as a collection of juridical data, which proves their ownership.

3) Announcement of Physical Data and Juridical Data and Their Endorsement.

4) Announcement of the results of physical data collection and juridical data:

Announcements are made for 15 (fifteen) calendar days. Interested parties are given the opportunity to raise objections regarding the announcement of physical data and juridical data as referred to above during the announcement period.

5) Affirmation of Conversion and Recognition of Rights

After being announced for 15 (fifteen) calendar days, no party sued, then Committee A ratified the Results of Physical Data Research and Jurisprudence Data.

6) Certificate Issuance

As a proof of rights certificate, it is issued for the benefit of the right holder concerned, in accordance with the physical data in the survey letter and juridical data that has been registered in the land book.

7) Presentation of Physical Data and Juridical Data

In order to provide opportunities for interested parties to easily obtain the necessary information, the Head of the Land Office hereby organizes land registration administration in the form of a general list, consisting of registration maps, land lists, survey letters, land books and name lists.

8) General List and Document Storage

a) Documents that are a means of proof that have been used as the basis for registration, are given identification cards and stored at the Land Office.

- b) Gradually, land registration data is stored and presented using electronic equipment such as survey drawings, survey letters and registration maps, while lists of contents can be stored as textual digital data.

b. Sporadic Land Registration.

Sporadic land registration is a land registration activity for the first time regarding one or several land registration objects in the area or part of the area of a village/sub-district individually or collectively. Land registration is sporadically carried out at the request of interested parties, namely the party entitled to the object of land registration concerned or its proxy.

1) Location measurement by Officer

After the application files are examined and researched by the Land Agency Office officer and declared complete, the land surveying officer appointed by the head of the land office will come to the location to conduct a direct measurement

2) Issuance of Survey Letter

After the measurement process is completed, the land surveying officer makes a report and issues a land plan along with its area. This report will be known by the head of the land office under the name of Survey Letter.

3) Research by Committee A Officer

Committee A officers are officers from the BPN Office with the local Village Head or Village Head. The Committee A Officer Team conducted a re-study so that there were no mistakes in the field.

4) Announcement of Juridical Data in Urban Villages and BPN

The announcement of juridical data on the Village and Land Office announcement boards is installed for 30 calendar days. The goal is to announce to the wider community and avoid problems with other parties. If any party raises objections to the land, the application for an official certificate is temporarily stopped until the problem with the related parties is resolved.

5) Issuance of Decree of the Head of BPN Office

If after 30 days of juridical announcement in the Village and Land Office and there are no objections, then the next process is the issuance of a Certificate (SK) of Land Rights. This Right Decree to become an official land certificate needs to carry out two final stages in the Registration and Information (PHI) Sub-section, namely; payment of Land Rights Acquisition Duty, Certificate Registration.

6) BPHTB Payment

BPHTB or Land Rights Acquisition Fee must be paid by the applicant in accordance with applicable regulations. The amount of BPHTP is calculated from the area of land recorded in the Survey Letter.

7) Registration of the Right to Certificate Decree

The final process of land certification is the registration of the Right Decree along with proof of BPHTB payment to become a Certificate of Property Rights (SHM).

### 3. Factors Cause/Obstacle of Heirs Not Registering the Transfer of Land Ownership Due to Inheritance

Based on the results of the above research, it shows that there are still many people in Solok Regency in the implementation of land rights transfer registration because the inheritance does not meet the provisions of Article 42 of Government Regulation Number 24 of 1997 concerning Land Registration. The heirs did not immediately register the transfer of their land rights after their parents died. The factors that cause the heirs not to immediately register the transfer of ownership of their land are:

- a. There are still many levels of community education that are still low, resulting in a lack of public legal awareness of the importance of land registration.
- b. Land management is expensive.
- c. Not all heirs have a fee for the transfer of rights.
- d. The parties' ignorance of the registration requirements and procedures.

Regarding the Land Registration Theory, one of the aspects in the Basic Agrarian Law (UUPA) is land registration, this is very important, because it is closely related to maintaining citizens' ownership rights to their land and the protection obtained by legitimate land owners. In accordance with Article 36 of Government Regulation Number 24 of 1997 concerning Land Registration which reads as follows:

- (1) Maintenance of land registration data is carried out in the event of a change in physical data or juridical data of the land registration object that has been registered.
- (2) The holder of the right concerned is obliged to register the amendment as intended in paragraph (1) to the Land Authority.

Based on these provisions, every change in physical data or juridical data, the heirs are obliged to register the transfer of their rights to the Land Office. With land registration, a certificate is obtained that has changed the name of the old right holder who has died to the new right holder to ensure legal certainty for the owner.

## **Legal consequences of the transfer of ownership of land due to inheritance.**

### **1. The material transfer of the rights and obligations of the heirs to the heirs**

Transferred/transferred rights means the transfer of ownership of land from the owner to another party due to a legal act. The transfer of land bag ownership is regulated in Article 20 paragraph (2) of the UUPA, namely Property Rights can be transferred and transferred to other parties. As a result of the law, there is a transfer of ownership of land because the inheritance is the heir as the holder of the right to land receives legal protection because materially the rights and obligations of the heir are directly transferred to the heir as the holder of the right to land and until now still control the land.

In addition, the legal consequence of the transfer of ownership of land due to inheritance is that if the certificate has been issued in the name of the new right holder, in this case the heirs, the heirs can carry out legal acts such as Buying and Selling, Grants, Exchange, Distribution of Collective Rights, etc.

### **2. Certificates as Authentic Evidence**

The legal consequences that arise as a result of the process of transferring ownership of land due to inheritance and the position of inherited land after land registration is carried out are that the heirs are declared legally to have inherited property after inheritance by strengthening the existence of a certificate of ownership land. The existence of land rights certificates as a product of officials as the implementation of land registration, is regulated in Article 32 paragraph (1) of Government Regulation No. 24 of 1997, that:

The certificate is a certificate of proof of rights that is valid as a strong proof tool regarding the physical data and juridical data contained in it, as long as the physical data and juridical data are in accordance with the data in the survey letter and the land book concerned.

The strength of the evidence of the certificate of land ownership as proof of ownership of land rights has been determined in Article 23 of Government Regulation Number 24 of 1997 concerning Land Registration which regulates the proof of ownership of land rights states that in order to obtain the truth of juridical data for new rights. Furthermore, in Article 32 paragraph (2) of Government Regulation Number 24 of 1997 concerning Land



Registration, namely in the event that a certificate has been issued legally on a piece of land in the name of a person or legal entity that acquires the land in good faith and in real control of it, then another party who feels that he has the right to the land can no longer demand the exercise of the right if within 5 (five) years from the issuance of the certificate does not apply objection in writing to the certificate holder and the Head of the Land Office concerned or not to file a lawsuit to the court regarding the land tenure or issuance of the certificate.

Observing the content of the provisions in Article 32 paragraph (2), that the certificate of land rights can be transformed into a certificate of proof of absolute rights if it meets the requirements or elements cumulatively, namely: a. The certificate is legally issued in the name of a person or legal entity; b. The land is acquired in good faith; c. Land is actually controlled; d. Within 5 (five) years from the issuance of the certificate, no one has filed a written objection to the certificate holder and the head of the local district/city land office or has not filed a lawsuit to the court regarding land tenure or the issuance of the certificate.

### 3. Legal Certainty and Protection

Legal protection in a narrow sense is something that is given to legal subjects in the form of legal instruments, both preventive and repressive, as well as in written and unwritten forms. In other words, legal protection can be interpreted as an illustration of the function of the law, namely peace for all human interests in society so that harmony and balance in people's lives are created.

Regarding the Theory of Legal Certainty in accordance with Article 19 of Law Number 5 of 1960 concerning the Regulation of the Agrarian Constitution (UUPA)", it is said that "land registration is intended to provide legal certainty, what is meant by legal certainty is to provide certainty of land rights related to physical data and juridical data regarding the control of a land so that the purpose of land registration can be achieved. The concept of legal protection for land rights holders cannot be separated from the issue of justice in the implementation of the law itself.

## CONCLUSION

Registration of transfer of ownership of land due to inheritance in order to ensure legal certainty, based on Government Regulation Number 24 of 1997 concerning Land Registration that for registration of transfer of rights must meet the material requirements, namely the heirs must meet the requirements as the right holder, and the immaterial requirements must be proven by the heir's death certificate and the certificate as an heir. Based on Article 42 paragraphs (1) and (2) of Government Regulation Number 24 of 1997 concerning Land Registration, it has been regulated about the obligation of heirs to register the transfer of their rights due to inheritance. However, even though there are clear rules that govern it, in reality there are still many heirs who have not registered their transition. This is evidenced by the land registration data at the Solok Regency Land Office which has been registered in relatively small amounts compared to land that has not been registered. Obviously this is contrary to Article 42 of Government Regulation Number 24 of 1997 concerning Land Registration. The causative factors or obstacles are: due to the low level of public education so that there is a lack of legal awareness about the importance of land registration, land management is expensive, not all heirs have costs for the transition process, ignorance of the parties regarding the requirements and procedures for land registration.

The legal consequence of the transfer of ownership of land due to inheritance is the transfer of property from the deceased, both material and immaterial property to the rightful heirs by issuing certificates as authentic evidence to obtain legal certainty, in addition to the legal consequences of the transfer of ownership of land because inheritance will make it easier

for them to manage land in the future such as Performing legal acts of buying and selling, grants, etc.

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