

## LEGAL CERTAINTY OF LAND REGISTRATION OBTAINED BASED ON DIVISION OF CO-PROPERTY RIGHTS OVER INHERITANCE AS A BASIC OF TRADING RIGHTS WITHOUT OTHER HEIRS APPROVAL

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### ABSTRACT

Freehold title of land are one of the most important type of property rights for the state and people of Indonesia as a society who are doing development. Article 20 Act Number 5 of 1960 Concerning Basic Regulation on Agrarian Principle (UUPA), it explain that freehold title is hereditary rights, strongest and fullest, can be obtained by person over the land, however such rights are not absolute because UUPA recognizes the social functions of land. Transfer Of rights caused by inheritance that is caused by law when the holder of rights or testator passes away. Since the time, the heirs become the new rights holders. About the persons that may be the heirs, it is regulated by the prevailing law. The study is titled "Legal Certainty of Land Registration Obtained Based On Division of Co-Property Rights Over Inheritance As a Basic of Trading Rights Without Other Heirs Approval". The matter of this study is "how the legal certainty of registration of land obtained based on division of co-property rights over inheritance as a basic of commerce rights without other heirs approval?" This research studies the proving strength of legal heir certificate as the basic for transfer of inheritance rights from other heirs, which also gives approval to sell the heritage property. Conclusion of this study is : transfer of land freehold title due to inheritance there is only a single heirs than can be a basic of commerce rights, must be presented another heirs to provide explanation in the form of legal heir certificate as the basis for transfer of inheritance rights from another heirs, also giving approval to sold inheritance for enjoy full beneficial rights. Transfer of rights cause inheritance must be registered to Regional Land Board as mandated by Government Ordinance Number 24 of 1997 Concerning Land Registration, which aims to provide legal certainty, providing information and for the implementation of land administration orderly. Land deed Officer is the authorized official to make the deed as transfer and registration basics. Regional Land Board in Indonesia adhering European Continental/ Civil law inheritance system regulated in Indonesian Civil Code.

Keywords : Land registration, co-property, commerce

### INTRODUCTION

The 1945 Constitution of the State of the Republic Indonesia (1945 Constitution), stating that Indonesia is rule of law (constitutional) that give surety and protection for citizen rights, such as citizen right to get, have and to relish property right. Freehold title of land are one of the most important type of property rights for the state and people of Indonesia as a society who are doing development. Shifting patterns of relationships between land owner with the land has occurred as effect of changes that arise in the development and engineering processes that occurred in society.

Article 20 Act Number 5 of 1960 Concerning Basic Regulation on Agrarian Principle (UUPA), it explain that freehold title is hereditary rights, strongest and fullest, can be obtained by person over the land, however such rights are not absolute because UUPA recognizes the social functions of land. Freehold title have hereditary character that mean is can be owned by landowner heirs. Article 36 Act Number 5 of 1960 Concerning Basic Regulation on Agrarian Principle (UUPA), stating that acquisition of land rights can be occur because inheritance from testator to heirs. Article 1023 Indonesian Civil Code, explain the heirs receive prior rights to register property or refuse inheritance.

Inheritance is transfer of freehold title to other party because the owner passes away. Transfer of freehold title occur for sake of law that mean with the death of the owner then the heirs obtained freehold title, transfer upon inheritance rights which form land through legal heir certificate created by the heirs, is known or legitimate by authorized official, then registration is done at Regional Land Board to be recorded in land register contains information on the new rights holder that is in the name of heirs, this is important to be done has the legal force.

Inheritance of land rights became co property, if the heirs more than one person must be accompanied legal heir certificate. In practically that happens the testator heritage property inherited to the heirs however the testator do not have descent. The rules of legislation the wife or husband from the testator not a the heir however only have rights a partially of inheritance. Heritage property who leaved by the testator who inherited to the wife when the wife will do transfer of rights in this case is trading will have difficulty to arrange in Regional Land Board. Transfer of rights process obtained because inheritance according to Regional Land Board regulation can be transfer the rights when it gets approval from the testator siblings. The testator heritage property is provable as a co-property (marital property) however the testator siblings must give a consent to divest co-rights in heritage property in order to transferred the rights. Inheritance obtained by wife as a single heir because the testator don't have descendants must get approval from another heirs, so can do legal action to sell that land. The testator who leave legacy of land

rights in which single heir because don't have descendants, the transfer of right can't be processed normally, because it has other conditions. The purpose of land registration is provide legal certainty and protection to owner of land rights. The titled of this study is "Legal Certainty of Land Registration Obtained Based On Division of Co-Property Rights Over Inheritance As a Basic of Trading Rights Without Other Heirs Approval".

### PROBLEMS

The matter of this study is how the legal certainty of land registration obtained based on division of co-property rights over inheritance as a basic of trading rights without other heirs approval?

### THE STUDY

Legal certainty of land registration obtained based on division of co-property rights over inheritance as a basic of trading rights without other heirs approval.

#### 1. Cause of Action and Land Registration Object

Land registration is done by the government to provide legal certainty regarding the land rights that exist entire in Republic of Indonesia territory. Legal certainty toward land rights is marked by certificate as land ownership evidence. Certificate have a important role in strength of proof not only apply externally to other parties, it also has internal power, it provide secure for the holders or owner and the heirs, it means no difficulty to manage it, at least kept it safe and avoid from damage.

Cause of action Systemic and Complete Land Registration (PTSL), is simultaneous land registration activities covering all land registration objects that have not been registered in one village area or another name of the equal level. Cause of action Systemic and Complete Land Registration (PTSL) is :

- a. Government Ordinance Number 24 of 1997 Concerning Land Registration
- b. State Minister of Agrarian Ordinance Number 3 of 1997 Concerning Term of Implementation Government Ordinance Number 24 of 1997 Concerning Land Registration
- c. Ministry of Agrarian and Spatial Planning / Chief of National Land Agency Ordinance Number 35 of 2016 Concerning Acceleration of Systemic and Complete Land Registration
- d. Ministry of Agrarian and Spatial Planning / Chief of National Land Agency Ordinance Number 1 of 2017 Concerning Amendment of Ministry of Agrarian and Spatial Planning / Chief of National Land Agency Ordinance Number 35 of 2016 Concerning Acceleration of Systemic and Complete Land Registration
- e. Ministry of Agrarian and Spatial Planning / Chief of National Land Agency Decree Number 37/Kep.7.1/1/2017 Concerning Technical Guidelines of Systemic and Complete Land Registration

Land registration object, Article 9 Government Ordinance Number 24 of 1997 Concerning Land Registration, explain land registration hang over:

- a. Plots of land owned with freehold title, cultivation rights, building rights, rights to use
- b. Rights to manage
- c. Rights of strata ownership on multi-storey building units
- d. State land

#### 2. Purpose and Land Registration Process

Every citizen either male or female have a same opportunity to obtain land rights and to enjoy full beneficial rights and the results both for themselves or their families. Transition of land rights can occur because inheritance, if the rights holder dies then the rights are transferred to the heirs.

Transition of land rights because inheritance compulsory to registered, in order to provide protection for the heirs and orderliness of land registration administration. It is intended for data stored and can be presented the lasted data.

Article 51 verses (1) and (2) Government Ordinance Number 24 of 1997 Concerning Land Registration, state that a co-rights obtained as inheritance or other cause, need to be divided into individual rights. Covenant between the co-rights holders realized in Land Deed Official (PPAT) deed will be basic registration.

Transition process of land rights which the testator only have one heir is a wife it is can't be done with simple process, because the testator who left inheritance and there is only single heir because the testator don't have descendants arranged by specially term because has a different condition. Rights transition process because the testator don't have heirs must make legal heir certificate and or legal heir deed, with present secondary heirs testimony that is father, mother or siblings from testator. In legal heir certificate be explained that's wife it is single heir from the testator which confirmed by another heirs.

Classification of heirs according Indonesian Civil Code hang over :

- a. Group I (First)
  - a) Husband/ wife who lives together
  - b) Child
  - c) Descendants of child
- b. Group II (Second)
  - a) Father and mother
  - b) Siblings
  - c) Descendants
- c. Group III (Third)
  - a) Grandparents both from father or mother parties
  - b) Great-grandparents, etc. go to top

- d. Group IV (Fourth)
  - a) Uncle and auntie from father and mother parties
  - b) Uncle or auntie descendants counted to sixth degree from deceased
  - c) Grandfather or grandmother brothers with his descendants to sixth degree counted from deceased

Article 111 State Minister of Agrarian Ordinance Number 3 of 1997 Concerning Term of Implementation Government Ordinance Number 24 of 1997 Concerning Land Registration explain that letter of evidence as the heirs that is :

- a. Testament from testator.
- b. Court verdict.
- c. Court order/ Chief court order.
- d. For indigenous Indonesian Citizens : legal heirs certificated that is created by the heirs and be witnessed by 2 (two) witnesses and legalized by Chief Village and Sub-district Chief in the testator place at death time.
- e. For Indonesian Citizens Chinese Descent : inheritance rights description deed from notary.
- f. For Indonesian Citizen Foreign East Descent : legal heirs certificated from Orphans Chamber.

If the testator is indigenous (Indonesian Citizen) that is obey to custom inheritance law, to arrange right transition because inheritance, just by asking legal heirs certificated that is created by the heirs and be witnessed by 2 (two) witnesses and legalized by Chief Village and Sub-district Chief in the testator place at death time.

The legal heirs certificate can be used by Notary and Land Deed Official (PPAT) for apply rights transition to National Land Office. The heirs who already have certificate are required the right transfer because inheritance in a 6 (six) month time period, since the certificate owner passed away to the local National Land Office.

For transfer of rights registration cause inheritance concerning field already registered, as required by clause Article 36, must be submitted by who received the rights as inheritance to Regional Land Board, the rights certificate, death certificate of the person whose name is registered as the rights holder, and letter of evidence as the heirs. If the field which is inheritance unready registered, also submitted the mentioned documents in Article 39 verse (1) letter b. The documents prove existence rights over land on that bequeathed is required, because transfer of rights registration can be done after first registration be held for the rights and on name of the testator. If the heir more than one person, transfer of rights registration done to the person based on letter of evidence as the heirs.

After the transfer of land rights to a single heir that is wife, so the wife have a rights to manage that legacy and is obliged to repayment the testator debts. In addition to manage the wife also have a rights to enjoy full beneficial rights for survival her life. The legal action which can be done by wife is to sell heritage land.

Transition land rights because inheritance can be processed in National Land Office, with following requirements:

- a. Application forms already fill and signed by the applicant or endorsee above stamp duty;
- b. Letter of attorney if authorized;
- c. Photocopy identities of applicant/ the heirs (id card or family card) and letter of attorney if authorized, which has been authentication by the counter attendant;
- d. Authentic certificate;
- e. Legal heirs certificate in accordance with state gazette;
- f. Testament deed (if exist);
- g. Photocopy Notification of Tax Due (SPPT) Land and Building Tax current year which has been authentication by the counter attendant;
- h. Requirement evidence of Land and Building Transfer Duty Payment Slip (SSBPHTB), evidence of Income Tax Payment Slip.

### 3. Transition of Land rights With Commerce Method

Commerce is an covenant which have a consensual, it mean that commerce has been issued and binds the parties, that is seller and buyer as soon they reach agreement properties be a trade objects and price to paid. With the deal the seller is bound to hand over the properties being sold. Article 1459 Indonesian Civil Code state "The ownership rights over the assets sold do not transfer to the buyer until after delivery take place in accordance to the provisions of articles 612, 613 and 616".

Article 584 Indonesian Civil Code state that owner properties cannot be acquired to any manner other than by appropriation, attachment, prescription, legal or testamentary succession, and by assignment or delivery pursuant to a transfer of legal title, originating from the individual who was entitled to dispose of the property. These conditions require that to acquire the freehold title based on delivery pursuant must fulfill two conditions:

- a. Legal title existence to transfer freehold title
- b. Handover process

Every legal title that mean to transfer freehold title, must meet outlined terms by Article 584 Indonesian Civil Code. From these terms could be interpreted that before properties transfer, with intent to do transfer freehold title, can be done must be preceded by legal title which intended to transferring freehold title in the form of commerce covenant, barter or bequest.

Act Number 5 of 1960 Concerning Basic Regulation on Agrarian Principle, state that all of land commerce (properties which attached above the land) performed on clearly and cash. Words clearly and cash intended that handover and payment of land commerce conducted at the same time in front of authorized official in this case is Land Deed Official.

Procedure of transfer land rights with commerce method organized in Act Number 5 of 1960 Concerning Basic Regulation on Agrarian Principle, and Government Ordinance Number 24 of 1997 Concerning Land Registration, affirmed that land commerce must be proven with a deed which made by and in front of Land Deed Official. To ensure certainty and orderliness laws in land commerce, process of land commerce it can only be done on land that has land rights, it means object of land which validated with evidence of ownership land rights, in other words can be explained the seller is the rightful and lawful person or party to sell.

Process of commerce right over land which has been registered has a low legal risk, because ownership right and the legal subject of the seller real and clearly. For land has been not registered or not certified yet, has high legal risk and insecurity. (Soedjono, 2003, p. 106)

Concept of transfer rights of land with commerce method, seller party can be authorized to other party. Base on the attorney, endorsee in this case act for and on behalf of principal to sell the right over land. This authorization will be at risk if the land rights has been not registered or not certified yet.

#### 4. Co Property and Legal Certainty

Co property it means that property which cultivated by husband and wife during marriage go on. This definition based on comprehension of Articles 35 and 36 Act Number 1 of 1974 Concerning Marriage, as well as the articles about co property which contained in Compilation of Islamic Law and definition taken from a practical comprehension based on jurisprudence and custom law. The formulation of co property its pull out individual property which is obtained before marriage go on, well that comes from own business nor inheritance or bequest.

Act Number 1 of 1974 Concerning Marriage, recognize the mixing of properties in a limited way, because the unified properties in marriage is the properties which obtained by husband or wife in marriage, not include granting properties like a prize or inheritance which obtained by husband and wife in marriage. Congenital properties which brought each husband or wife to marriage don't enter as co property. With such construction it mean Act Number 1 of 1974 Concerning Marriage do not recognize "Prenuptial Agreement" as arranged in Indonesian Civil Code.

Heirloom in inheritance it often happens marriage properties including co property. Article 119 Indonesian Civil Code, state that from the moment of execution of marriage, shall arise joint marital property between the spouses. From this article can be explain the Indonesian Civil Code not recognize individual properties in marriage. Custom society who lives in Indonesia recognize existence of co property even with different name and term, basically the custom which organizes of co property not contradiction with Islamic Law.

According to Indonesian Civil Code with the moment of execution of marriage, there can be 3 (three) of properties in marriage, that is joint marital property between the spouses (co property), husband assets (include congenital assets of husband) and wife assets (include congenital assets of wife). The properties it's been since the moment of execution of marriage, thus means since marriage happens:

- a. Joint properties, because of the Law in this context recognize properties mix joint marital property between the spouses, not recognize individual properties (own property of each husband or wife). All congenital assets, which brought or obtained the husband or wife during marriage became co properties.
- b. In term of agreed, can be promised ignoring properties mix at all. In this context not recognize properties mix or co properties, there's only the properties of each husband and wife, either brought in marriage as well as obtained during marriage go on.
- c. If agreed by husband and wife candidates can make Prenuptial Agreement, a mixing of properties in a limited way. It means a situation between husband and wife it was agreed that during marriage go on, only particular properties which enter to joint properties as co property.

Clause in explanation State Minister of Agrarian Ordinance Number 3 of 1997 Concerning Term of Implementation Government Ordinance Number 24 of 1997 Concerning Land Registration, at section 14<sup>th</sup> concerning division of co-rights Article 136 state that :

1. If some rights over land or freehold title of multi-storey building units which originally co-owned by some person, be created belongings to one of co-rights holders in order to co-rights division, application for registration submitted by pertinent the single right holder or endorsee with enclose : deeds of rights over land or multi-storey building units pertinent; deed of co-rights division from Land Deed Official; ID card from co-rights holders; written letter of attorney if this application for registration are not done by interested rights holder; evidence of Land and Building Transfer Duty Payment Slip as mentioned in Act Number 21 of 1997 Concerning Land and Building Transfer Duty, in terms of duties owed; evidence of Income Tax Payment Slip as mentioned Government Ordinance Number 48 of 1994 Concerning Payment of Income Tax On Earnings From Transfer of Rights Over Land And/ Or Building and Government Ordinance Number 27 of 1996 Concerning Amendment of Government Ordinance Number 48 of 1994 Concerning Payment of Income Tax On Earnings From Transfer of Rights Over Land And/ Or Building in terms of tax payable.
2. Registration of co-rights division done like transfer of right registration as arranged at article 105.

From both requirements mentioned above clearly there is a difference, in determined requirements as well as on administration processes which performed at Regional Land Board.

In Semarang Regional Land Board transferred of rights over land registration processes cause inheritance using legal heirs certificate, if all documents is complete and accept the Chief of Semarang Regional Land Board will immediately record at that land deed direct transfer from testator to the agreed heir as rights addressee base on legal heirs certificate, and previously unrecorded all the existing heirs name according with legal heirs certificate, so the processes is direct to on behalf of the designated heir as rights holder in legal heirs certificate.

Transferred of rights registration cause inheritance designated one of the heirs as rights holder required with deed made by Land Deed Official, that is Co-rights Division Deed. Government Ordinance Number 24 of 1997 Concerning Land Registration firmly organize about procedure and conditions specified in terms of transferred of right over land processes. If a later there is a lawsuit toward the deed which are made the parties must be able to personally prove against the lawsuit. That mean if the heirs deny the deed who they made, then they must personally prove toward untruthful of the deed. Authentic deed have absolutely verification, if any parties sues and then such party shall prove the lawsuit. Authentic deed is the only one the safest basic of transfer of rights over land, in the process of create it the Notary/ Land deed Official ensure toward certainty of signing, certainty of the subject, certainty of signing period, certainty of deed contents, and the parties will not be able to deny toward what they have made relate with the deed, therefore legal's certainty and protection to the parties will be more assured. (E. Setyosusiliowati, Chief of Sub Section Dispute and Conflict, July 4, 2017)

Transfer with base on legal heirs certificate in the form of private deed can generate conflict in the future, it is because processing from create legal heirs certificate which is transfer basic to designated one of the heirs as rights holder only created by the heirs with only known by Chief Village and Sub-district Chief. Created of legal heirs certificate can be created by one of the heirs without approval from other heirs, for example whether signing of legal heirs certificate is really done by all heirs.

Legal procedures transferred of rights registration cause inheritance which conducted on Semarang Regional Land Board is referring to clause State Minister of Agrarian Ordinance Number 3 of 1997 Concerning Term of Implementation Government Ordinance Number 24 of 1997 Concerning Land Registration, where the registration process of rights transfer cause inheritance the process can be done at once or one time registration process rights transfer, as for intention from Semarang Regional Land Board to apply procedure of rights transfer registration cause inheritance can be done at once is :

- a. Administration, in terms of rights transfer cause inheritance at Semarang Regional Land Board where rights transfer basic using legal heirs certificate then administration process is one time, it mean administratively there is acceleration at registration process, cause when do not use legal heirs certificate then process of rights transfer from the heirs to one of the heir done two time process, that is rights transfer process from the heirs to all the heirs, and then followed by transfer process from the heirs to one of the heir with using base on deed who made by Land Deed Official.
- b. Applicant, in terms of registration of rights transfer cause inheritance basically the heirs rights to inheritance objects is already exists, that mean these rights arise after the testator passed away, therefore when occur transfer of rights then the heirs no need to be charges burdened arising from the transfer of rights, therefore as consideration from Semarang Regional Land Board then the process of rights transfer done at once the point is lighten the applicant from charges will arise if rights transfer basic is done with deed from Land Deed Official.

Registration process of rights transfer cause inheritance not accompanied with legal heirs certificate who designated one of heirs as rights holder, then after the registration of rights transfer is complete to on behalf of all the heirs, and then the heirs agreed to designate one of the heir as a rights holder, the as rights transfer basic from the heirs to one of designated rights holder cannot only with make legal certificate, but the rights transfer must using based on co-rights division deed who made by Land Deed Official. (Tuti, Staff Sub Section Transfer, Rights Burden and Land Deed Official, July 4, 2017)

Cause of action Semarang Regional Land Board processing of rights transferring because inheritance which testator don't have descendant is Article Number 36 Verse (2) Act Number 1 of 1974 Concerning Marriage. it can be done direct by rights addressee cause inheritance without having to get approval from anyone in other words the rights addressee can do independent legal action without approval. To support the practice in the field Semarang Regional land Board issued Operational Standard Number 1 of 2010 Concerning Service of Land Registration Data Maintenance Sub Chapter Transfer of Land Rights and Multi-Storey Building Units. This term state that process of right transfer because inheritance which testator don't have descendant can be done because legal heirs certificate which created and witnessed together by the heirs group I (first) and group II (second). It was created as the main of foundation baseline to processes transfer of rights, in addition to other requirements which have been determined.

In factual National Land Office ask for heirs giving approval in order to transfer inheritance in order to be sold. In practice at society, it is not simple the heirs giving approval to sell, because other heirs desire rights to inheritance. To resolve this problem the heirs in this case the wife, can prove that properties obtained during marriage it is co properties. This can be done by matching acquisition of land rights with year of the wedding is recorded on Marriage Deed.

Base on declaration and approval from other heirs, the inheritance rights can be transferred to the wife and for enjoy full beneficial rights to be sold to other parties.

## CLOSE

### Conclusion

Legal certainty of land registration obtained based on division of co-property rights over inheritance as a basic of trading rights without other heirs approval, concluded as follows :

- a. The implementation of registration of rights transfer over the land cause inheritance who applied by Semarang Regional Land Board can be done only with make legal heirs certificate where with based on legal heirs certificate the

contents is designated one of the heirs as rights holder, the registration of rights transfer can be done immediately without a legal action in presence of authorized official that is Land Deed Official, with make Co-rights Division Deed. That mean private deed can be as basic of right transfer in terms of rights transfer cause inheritance as it is arranged in Government Ordinance Number 24 of 1997 Concerning Land Registration.

- b. Registration process of rights transfer cause inheritance at Semarang Regional Land Board do not use Co-Rights Division Deed cause :
  - The custom inheritance influence especially parental inheritance system although Semarang Regional Land Board adhering European Continental/ Civil law inheritance system regulated in Indonesian Civil Code;
  - Policy from Semarang Regional land Board through Operational Standard Number 1 of 2010 Concerning Service of Land Registration Data Maintenance Sub Chapter Transfer of Land Rights and Multi-Storey Building Units, in terms of Registration process of rights transfer cause inheritance in order to accelerating process;
  - Alleviate the costs incurred consequence from right transfer registration done on Semarang Regional Land Board, if right transfer registration cause inheritance used Co-rights Division Deed from Notary/ Land Deed Official requires an additional budget, and then Semarang Regional Land Board take on policy that transfer of land freehold title due to inheritance there is only a single heirs than can be a basic of commerce rights, must be presented another heirs to provide explanation in the form of legal heir certificate as the basis for transfer of inheritance rights from another heirs, also giving approval to sold inheritance for enjoy full beneficial rights. Although legal heirs certificate used as the basic rights transfer very vulnerable to generate a dispute in the future. Because just created on private deed.

### Suggestion

The suggestion which can be given according to conclusion are as follows :

- a. Expected the right addressee over the land which obtained from inheritance immediately to register the rights transfer to Regional Land Board, so it can give firmly legal protection to rights holder.
- b. Government especially National Land Board trough the Regional's Land Board all over Indonesia more to socialize agrarian regulations especially about land registration according to provision in Government Ordinance Number 24 of 1997 Concerning Land Registration, so it is community will in terms of doing legal action towards rights over land which obtained from inheritance can be use authentic deed (Co-rights Division Deed), if the rights transfer using private deed then it should be Regional Land Board make standard terms about how the form and the contents from the private deed, so that disputes who feared will be arise in the future can be avoided.

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Interview with Mrs. Tuti. Staff of Sub Section Transfer, Rights Burden and Land Deed Official Semarang Regional Land Board. July 4, 2017

Interview with Mrs. Eny Setyosusiliowati. Chief of Sub Section Dispute and Conflict Semarang Regional Land Board. July 4, 2017

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