



Implications of differences in land office policies in the use of death certificates as A condition of inheritance

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Abstract

The transfer of land rights due to inheritance has been regulated as in the Regulation of the Minister of Agrarian and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 16 of 2021 concerning Land Registration. The regulation has stated several administrative requirements that must be met by the applicant, one of which is regarding the death certificate of the heir, namely the death certificate. In its realization, the implementation carried out by the Land Office regarding death certificates varies. There are several Land Offices that still use death certificates and death certificates, and there are also Land Offices that only allow the use of death certificates. The purpose of this research is to find out the background factors and impacts arising from the different policies at the Land Office. This research uses normative legal research methods by further examining related laws and regulations and also through a conceptual approach. The result of the research is that the policy differences that occur between land offices are caused by a new regulation, namely the Circular Letter of the Minister of Home Affairs dated February 15, 2023 Number 400.8.2.2/944/SJ which determines to use a death certificate as an administrative requirement related to the death of a person, one of which includes the transfer of land rights due to inheritance. So that with the issuance of the new regulation, the land office is in the adjustment stage and it is difficult to obtain a death certificate so that to fulfill the death certificate returns to the policy of the head of the land office. From this, it has an impact on legal uncertainty and confuses the community in making transfers because there are no rules that cover clearly and in writing because they are only based on the policy of the head of the land office in the form of oral.

Keywords: Land office policy, death certificate, transfer of land rights, and due to inheritance

Introduction

Humans in carrying out life cannot be separated from the use of land. Land can be utilized in various ways such as being used as a place to live, agriculture, plantations to the construction of buildings and other uses so that land is a valuable and hereditary asset. (Azis et al. 2021: 18). Land utilization has been properly regulated in the 1945 Constitution of the Republic of Indonesia Article 33 paragraph 3 explaining that "The land and water and the natural resources contained therein shall be controlled by the state and used for the greatest prosperity of the people", which was strengthened by the birth of Law Number 5 of 1960 concerning

Basic Regulations on Agrarian Principles (UUPA). (Slamet 2021:119).

UUPA regulates land rights, one of which is the right of ownership. Article 20 paragraph (1) of the UUPA explains that property rights are hereditary, strongest and fullest rights that people can have over land, so that if ownership of land is passed down to their heirs, it is necessary to carry out a process of transferring land rights. (Ayuningutami and Najicha 2021: 209). The transfer of land rights is the transfer of a land right, as stated in Article 20 paragraph (2) of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA), which states "Land ownership rights can be transferred and transferred to other parties." The transfer of a land ownership right can certainly be done in several ways such as buying and selling, grants, inheritance, exchange, division of joint rights and other actions that have been regulated more clearly in Article 94 paragraph (3) of the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land

Agency of the Republic of Indonesia Number 16 of 2021 concerning the Third Amendment to the Regulation of the Minister of Agrarian Affairs / 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.

Of course, to carry out the process of transferring land rights, the applicant must fulfill the procedures determined by the authorized agency, namely the land office located in each district / city. (Suyani, Suryadi, and Suparlin 2023:227). The rules regarding some of the requirements needed to carry out the process of transferring property rights to land are regulated more specifically in Article 111 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 16 of 2021. The documents that must be prepared are: a certificate of land rights or a certificate of ownership of an apartment unit in the name of the heir or other evidence of land ownership; a death certificate in the name of the right holder listed in the certificate in question from the head of the village/lurah where the heir lived at the time of death, hospital, health officer, or other authorized agency; a proof letter as an heir; a written power of attorney from the heir if the person applying for registration of the transfer of rights is not the heir concerned; and proof of identity of the heir. (Sangian 2017:104).

In connection with inheritance, which means that a legal event occurs, namely the death of a person, it is necessary to prove it with a death certificate as regulated in Article 44 paragraph (1) of Law Number 24 of 2013 concerning amendments to Law Number 23 of 2006 concerning

Population Administration, which states that every death must be reported to the head of the RT or lurah or other names in the domicile of the deceased population to the local implementing agency no later than 30 (thirty) days from the date of death. Article 44 paragraph (2) explains that as referred to in paragraph (1) the Civil Registration Officer records the Death Certificate and issues a Death Certificate Citation. (Annisa Fadilah Sidi Purba 2022:19).

Please note that the Death Letter and Death Certificate are different. The death certificate is the first document issued after a person dies, the death certificate is issued by the hospital / health center where the person died or can also be issued by the village head / village head where the person died, this death certificate cannot be used as a final document in determining the status of a person's death because the death certificate is only used as an initial document to report a death and does not have the same legal force as a death certificate. (Novi 2022:53). Meanwhile, a death certificate is an administrative document issued by the authorized agency, namely the local Population and Civil Registry Office, which has final evidentiary power, this death certificate is issued by the local Population and Civil Registry Office after receiving a death report from the family or representative (Islamiyah 2017:21).

In the implementation of the transfer of land rights due to inheritance, the land office determines its own requirements regarding death certificates. Looking at empirical facts, there have been differences where there are land offices that require the use of death certificates and there are land offices that allow the use of both death certificates and death certificates with conditions. For example, as happened in the Land Office of Sukoharjo Regency, Central Java, which allows the use of death certificates with the provision that the heirs died before 2016, above 2016 is applied using a death certificate, in contrast to the Surakarta City Land Office which requires the use of a death certificate as a condition of death certificate for the transfer of land rights due to inheritance.

Reviewing that in Permen ATR / BPN No. 16 of 2021 explains that death certificates use death certificates, but the Land Office as an implementing agency makes different policies, causing legal uncertainty about these rules so that the authors are interested in conducting research related to the factors that cause and the implications arising from these policy differences.

Methods

Research methodology is the science of the stages that must be passed in a research process, or the science that discusses scientific methods in seeking, developing, and testing the truth of knowledge (Soekanto 2012). The method used in this research is normative juridical, which is research focused on the application of rules or norms in positive law. Normative juridical research is carried out by examining various formal legal rules such as laws, regulations and literature containing theoretical concepts which are then related to the problems to be discussed in this study (Fajar et al. 2010).

The data sources in this study use primary data consisting of the Civil Code, the Basic Agrarian Law and the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 16 of 2021 concerning the Third Amendment to the Regulation of the Minister of Agrarian

Affairs / 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 and secondary data which includes books, previous research, journals, articles, internet and others that support primary data.

The research approach used is as follows (Mahmud Marzuki 2016: 133):

1. The statute approach is carried out by reviewing all laws and regulations related to the legal issues being addressed. The statutory approach is shown to study the suitability and consistency between one another.
2. Conceptual approach is an approach that departs from the views and doctrines that develop in legal science. The author will find ideas that give birth to legal notions, legal concepts, and legal principles that are relevant to the issue at hand. An understanding of these views and doctrines is the basis for the author in building a legal argument in solving the issue at hand.

Then, the data collection technique that the author did in this study used literature studies which were used as primary data and field studies to be used as secondary data.

Results and discussion

The National Land Agency is a government agency under the auspices of the Ministry of Agrarian Affairs and Spatial Planning / National Land Agency which has duties and responsibilities in the field of land in Indonesia with different work units, namely the Regional Office of the National Land Agency which is located in each Province and the Land Office which is located in each Regency / City. (Sumual, Palilingan, and Musa 2020: 28). Based on Article 2 of the Presidential Regulation of the Republic of Indonesia Number 48 of 2020 concerning the National Land Agency, the task of the National Land Agency is to assist the President in managing and advancing land administration, in accordance with Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles and other related regulations including regulating, using, controlling, and owning land, determining land rights, measuring and registering land, and taking care of other matters related to land issues. (Ali Chomzah 2004:14). Then Article 3 of the Presidential Regulation states the functions of BPN as follows (Ardani 2019: 482-83):

- a. Preparation and determination of policies in the field of land;
- b. Formulation and implementation of policies in the field of land surveying and mapping;
- c. Formulation and implementation of policies in the field of rights determination and land registration;
- d. Formulation and implementation of policies in the field of land redistribution, community land empowerment, land stewardship, land arrangement in accordance with spatial plans, and arrangement of coastal areas, small islands, borders and certain areas;
- e. Formulation and implementation of policies in the field of land acquisition and land development;
- f. Formulation and implementation of policies in the field of controlling and controlling land tenure and ownership, as well as the use and utilization of land in accordance with spatial plans;
- g. Formulation and implementation of policies in the field of handling and preventing disputes and conflicts as well as handling land cases;

- h. Supervision of the implementation of tasks within BPN;
- i. Implementation of task coordination, coaching, and providing administrative support to all organizational units within BPN;
- j. Implementation of data management and information on land and sustainable food agricultural land; implementation of research and development in the field of land; and
- k. Implementation of human resource development in the land sector.

The Land Office (hereinafter referred to as Kantah) is a working unit of the National Land Agency in the Regency or City area, which in this case conducts registration of land rights and maintenance of the general register of land registration. (Djohan Oe 2015:69). Each Land Office is led by a Head who acts as a policy maker within the office. The Head of the Land Office has almost the same authority as the Head of the Regional Office of the National Land Agency in implementing the government internal control system in accordance with applicable laws and regulations. The Head of the Land Office is responsible for coordinating and providing direction and instructions for the implementation of tasks to his subordinates. The Head of the Land Office is obliged to monitor the implementation of the duties of his subordinates and take the necessary steps in case of deviation in accordance with the provisions of laws and regulations. (Sumual et al. 2020: 28).

The role of the head of the land office in policy making, there will be differences between land offices in their implementation related to land registration, transfer of land rights and other land affairs. One of the differences that occurs is regarding the use of death certificates in the case of transfer of land rights due to inheritance. It is written in the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 16 of 2021 concerning the Third Amendment to the Regulation of the Minister of Agrarian Affairs/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 Article 111 which states that one of the administrative requirements for the transfer process to the heirs is in the form of a death certificate of the heir issued by the head of the village/lurah where the heir lived when he died, hospital, health officer, or other authorized agency. However, in its realization, the author found that the land office made a policy by requiring the use of a death certificate in applying for the transfer of land rights due to inheritance.

After the author conducted interviews with sources in several land offices, the author found that there are new rules regarding the use of death certificates in the service process related to the death of a person with the issuance of the Minister of Home Affairs Circular Letter dated February 15, 2023 Number 400.8.2.2/944/SJ, which also applies to the scope of land, one of which is in the case of transfer of land rights due to inheritance. Therefore, since the issuance of the circular letter, the land office has imposed a requirement to use a death certificate as an administrative requirement for all applications for first-time land registration services and maintenance of land registration data carried out at the land office.

Although the rules for the use of death certificates have begun to be enforced, it turns out that the author found

differences at the land office in terms of death certificates for the transfer of land rights due to inheritance, where a separate policy was taken by the head of the land office. The policy of the head of the office is in the form of allowing the use of death certificates in the case of transfer of land rights due to inheritance and some must continue to use death certificates as an administrative requirement for the transfer of land rights. As the author found in the Surakarta City Land Office, which after the issuance of the circular requires the use of a death certificate without exception, it is different in the Sukoharjo Regency Land Office, which after the issuance of the circular still allows the use of death certificates provided that someone who died occurred before 2016.

This is motivated by several factors that occur, namely:

1. The adjustment stage, although the new regulation has been disseminated throughout Indonesia, some regions are still in the adjustment stage to use the death certificate as an administrative requirement at the land office related to the death of a person.
2. It is difficult to obtain a death certificate, not a few people complain about the difficulty of obtaining a death certificate issued by the Population and Civil Registry Office. This happens because in applying for a death certificate there are conditions that are difficult to obtain such as the identity of the deceased person is missing such as an Identity Card, Birth Certificate or Family Card which can be caused by the person who died too long ago and the heirs did not immediately take care of the death certificate so that the database was not found in the state population system. Therefore, there are land offices that still allow the use of death certificates.
3. Lack of public awareness, related to this, of course, the role of the government also plays a role in this, where the government must routinely conduct socialization and counseling regarding the importance of death registration and easy access to death registration services. The lack of literacy and knowledge makes people think that death registration is not an important and urgent matter. So that the use of death certificates already exists in the form of death certificates and there are still those who use death certificates.
4. Prevention of document abuse, by requiring the use of death certificates in fulfilling administration at the Land Office, is expected to minimize the occurrence of fake death certificates, considering that death certificates can only be issued by the Population and Civil Registry Office and become valid and strong evidence and become state recognition of a person's death.
5. Standardization of documents, the use of death certificates that began to be used as administrative requirements related to the death of a person aims to use the same type of document as valid and recognized evidence of a person's death so as to facilitate handling and reduce the risk of errors. There are land offices that have begun to apply death certificates as administrative requirements to support government programs in recording population administration. Because previously, there were various types of documents used as proof of death, such as death certificates from hospitals, death certificates from urban villages that were sufficient to be used as information on a person's death.

As a result of the differences in the use of death certificates as a condition for the transfer of land rights due to inheritance at the land office, several implications arise, among others:

1. Legal uncertainty, if there are differences in policies between one Land Office and another, this can cause legal uncertainty for the community. The community becomes confused about which documents should be used and legally recognized;
2. Discrimination and injustice, if the policy difference does not have a strong basis, it can be considered as a form of discrimination and injustice for the people who apply;
3. In-efficiency and high costs, the public may have to pay higher costs to process different death documents according to the policies of each Land Office, causing inefficiency due to the different policies;
4. Abuse of authority of the head of the land office, abuse of power or rights owned by the head of the land office can occur with the aim of personal gain, the interests of certain groups, or goals that are not in accordance with their duties and responsibilities. This abuse of power can include actions such as corruption, nepotism, misuse of funds, manipulation of documents, or other actions that violate ethics, laws, or policies governing leadership and services in the land office so that this kind of abuse of power can harm the community and weaken integrity and trust in land institutions;
5. Obstacles to data integration, policy differences can hamper efforts to integrate population and land data nationally, making it difficult to obtain accurate and integrated information. Reviewing the factors and implications, it is necessary to harmonize and standardize policies related to death certificate requirements in the process of transferring land rights due to inheritance in all Land Offices in Indonesia. This can be done by issuing new regulations or revising existing regulations, so as to provide legal certainty and uniformity of implementation in the field. In addition, there needs to be coordination and synchronization between the agencies addressed by the circular letter, one of which is the land office and the local Population and Civil Registry Office to ensure the availability and ease of obtaining death certificates for people in need.

Conclusions

There have been policy differences among land offices on the use of death certificates as a condition for the transfer of land rights due to inheritance. This difference can be seen from the fact that some land offices still allow the use of death certificates as supporting documents, while other land offices require the use of death certificates as the only recognized document. For example, the Sukoharjo District Land Office allows the use of a death certificate provided that the heir died before 2016, while for 2016 and above, a death certificate must be used. On the other hand, the Surakarta City Land Office strictly requires the use of a death certificate without exception as a condition of death certificate for the transfer of land rights due to inheritance. This policy difference is caused by several factors, including the existence of new rules from the Minister of Home Affairs Circular Letter dated February 15, 2023 Number 400.8.2.2/944/SJ which requires the use of death certificates, the adjustment stage to the new rules in each

land office, the difficulty of the community to obtain death certificates due to complicated requirements, lack of public awareness about the importance of death registration, efforts to prevent document misuse by using death certificates that are more valid and stronger, and standardization of documents using death certificates to facilitate handling and reduce the risk of errors. These policy differences have significant implications, such as legal uncertainty, potential discrimination and injustice, in-efficiency and high costs for the community, the risk of abuse of authority by the head of the land office, and obstacles in the integration of population and land data nationally. Therefore, it is necessary to harmonize and enforce clear rules related to the use of death certificates as a condition for the transfer of land rights due to inheritance to create legal certainty, justice, and efficiency for the community.

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