



VALIDITY OF LAND GRANTS IN THE CONSTRUCTION OF DRINKING WATER FACILITIES MADE UNDER HAND IN THE DRINKING WATER SUPPLY PROGRAM AND COMMUNITY BASED SANITATION

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Land Grants; Drinking Water Facilities; Underhand Agreements. The implementation of land grants for the construction of drinking water facilities which are made privately and what is the validity of the private grant agreements that occur in the implementation of private grants in the Pamsimas program. The purpose of this research is to explain the implementation of grants that occur in the field in the Pamsimas program, as well as know the legal validity of land grants made privately. With the Pamsimas program implemented by the government which aims to provide clean water facilities for the community, land is needed to support construction development, so the community must contribute in the form of donating their land to the village government as a condition that must be met for the implementation of the Pamsimas program. This research was conducted in 3 provinces, namely Riau Province, Bangka Belitung Province, and Jambi Province. The problem in this research is the implementation of grant giving by village communities in the Pamsimas program by making grant statements privately, which means it is done without a PPAT deed being made and the land grants given on average do not have land certificates or have not been registered with the National Land Agency registrar. , and how valid it is. This happens due to a lack of legal understanding regarding land grant procedures according to the law and it has become a habit for village communities to make land grants privately without doing it before the PPAT. Another cause is the lack of costs to make a PPAT deed. The solution to this problem is by providing outreach to the community to understand what a grant is and registering the land one year before the development is carried out. Apart from that, the validity of the grant letter being executed is invalid because Government Regulation No. 24 of 1997 concerning land registration states that every grant of land and buildings must be made with a Deed from the Official Land Deed Maker (PPAT). If a grant in the form of land is not made by a notary, it will not have legal force.

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A. Introduction

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Land has an important role in human life, that human needs for land are very complex. Humans directly or indirectly, whenever and wherever they are, need land to be used as a source of life and a place to live with the aim of fulfilling their needs, both social, economic and cultural. Land is given to and owned by someone with the rights provided in the Basic Agrarian Law so that it can be used or exploited as best as possible (Harsono, 2013).

According to Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA), land itself is part of the entire earth, water and space, including the natural wealth contained therein for the purpose of exploiting the functions and interests of land use within the boundaries according to legislation as a gift from God Almighty. Realizing the increasing expansion of community activities in various fields and the increasing population and human need for land, it is very important to pay attention to the position of land, especially in its control, use and ownership. So that in order to achieve justice, appropriateness and welfare of the community, land procurement is carried out for the public interest, by the government which also provides opportunities for the community to provide their land for the public interest.

The meaning of public interest itself is based on article 1 paragraph 6 of Law Number 2 of 2012 as the interest of the nation, state and society which must be realized by the government and used as much as possible for the prosperity of the people. needs or interests of many people with the same goal. In Presidential Instruction No. 9/1973, public interests can be defined as activities involving 4 types of interests, namely the interests of the nation and state, the wider community, the interests of the people at large and the interests of development.

As for the public interest, based on Article 10 paragraph 3 of Law No. 2 of 2012 on land procurement for the public interest, land for the public interest is used for the construction of reservoirs, dams, weirs, irrigation, drinking water channels, water drainage and sanitation channels, and other water structures. . In the use of land for public purposes, one example is use for the Community-Based Drinking Water and Sanitation Provision Program which has become one of the national programs held by the Government and Regional Governments to increase rural residents' access to adequate drinking water and sanitation facilities using a land-based approach. public. In this case, the community can take part in helping government programs for the public interest, especially in the construction of drinking water facilities, by giving something of their ownership to the government, such as land in the form of a grant.

In relation to grants, grantmaking can be done privately, and can be done authentically. However, if it is related to the transfer of land rights at the National Land Agency office, the grant must be given through an authentic deed or PPAT deed. The making of a gift deed must be carried out in the presence of an official who has the authority to make such a deed, this is in accordance with the provisions contained in article 1682 of the Civil Code Law concerning How to Donate Things which states "No gift, except as stated in article 1687, can, the threat can be said to be void, and also if it is

carried out other than by means of a notarial deed, the original of which is kept by the notary".

The presence of a notary position is required by law which aims to help and serve the community who need authentic written evidence related to land regarding conditions, events or legal actions that will be carried out by the community. In the case of a grant as an example of a legal action, a notary as a public official must be present and sign the letter of delivery of the grant in the presence of two qualified witnesses. Then the notary is obliged to submit the deed and related documents to the Land Office for registration (Pramesti).

The Civil Code explains that a gift that has been given cannot be withdrawn by the grantor. However, the grantor can file a lawsuit to cancel the grant if the grantee has done things as stated in Article 1688 of the Civil Code (Batubara, 2020). A gift itself has the meaning of a gift made by someone to another party voluntarily and the gift is given by the owner while he is still alive, not when the owner has died, so it can be explained that the principle of a gift is quite different from the understanding and implementation of inheritance, and a gift is a gift that can be given to someone without blood ties or regardless of family relationship, which means the gift can be given to anyone the gift owner wants to give it to.

Grants that occur during the construction of drinking water facilities from the Community-Based Drinking Water Supply and Sanitation Program (Pamsimas) are done privately even though the regulations that have been made in the guidebook generally state that land grants must be known and proven by a written agreement, signed by the land owner as well as the heirs and the village head, after which the land grant must be recorded or a deed made at the PPAT or PPATS in order to avoid repossession from the entitled party. However, in its implementation, the researcher obtained field data that the implementation of the grant was only carried out up to the agreement stage or grant statement letter which was signed by the land owner, heirs as witnesses, the Village Head, and signed and known to the sub-district head, without a PPAT deed being made because it was not costs and lack of understanding of local communities. Meanwhile, in the positive law that applies in Indonesia, such as in the Civil Code, a grant of land and buildings made by someone must be in accordance with legal procedures, namely made by a Land Deed Official (PPAT). This research was conducted in 3 districts, namely Siak Regency, Riau Province, West Bangka Regency, Bangka Belitung Province, and Merangin Regency, Jambi Province. In practice, consultants or facilitators, in carrying out their duties and roles, do not carry out overall checks regarding the status or clarity regarding whether the land granted has a certificate or not. This occurs due to a lack of public knowledge, therefore the role of the facilitator is important in explaining and checking the data first.

Based on this research, the problem that will be discussed is the validity of land grants made by the community in the Pamsimas program which is done privately, and the author can assess that there is a lack of understanding in the community regarding

the applicable laws in accordance with the Act regarding how to grant land that is good, correct and legally valid. Based on the description above, the author raises the title Validity of Land Grants Under Hand for Community-Free Drinking Water and Sanitation Provision Programs.

B. Method

The scientific research method is a procedure for obtaining knowledge called science (Sunggono, 2010). Research Methodology is science or knowledge about the right way to do something to achieve a goal. Knowledge of this will be very useful in solving problems in daily activities related to knowledge and research or something to discover, develop or test truth systematically, logically and empirically using scientific methods. In short, it can be said that research methodology is the science that studies research methods. The results of research are in the form of scientific papers (Rachmat, 2016). This research method is empirical juridical. Empirical juridical research is legal research regarding the application or implementation of normative legal provisions in action on certain legal events that occur directly in people's lives. Empirical juridical research is field research, namely research examining legal regulations which are then combined with data or events that occur in the field in their implementation. The main data/material in this research was obtained directly from informants through online interview research, namely the Pamsimas District Coordinators. Interviews are used as a data collection technique if the researcher wants to find problems that the researcher wants to research directly by asking small questions to get detailed data from field sources who understand directly the problems or conditions in the field (Sugiyono, 2019). In this case, the research approach used in writing is the statutory approach. A normative research must also use a legal approach, because what will be researched are various legal regulations which are the focus and central theme of the research. In the legislative approach method, it is usually necessary to understand the hierarchy and principles in statutory regulations (Marzuki, 2005). and is carried out by reviewing all laws and regulations relating to legal issues handled and formed by state institutions or authorized officials.

C. Result & Discussion

1. Implementation of Land Grants in the Construction of Drinking Water Facilities Made Under Hand in the Pamsimas Program

The implementation of the 2008-2015 Pamsimas Program has succeeded in increasing the number of poor rural and suburban residents who can access drinking water and sanitation services, as well as increasing the values and behavior of clean and healthy living through community empowerment. The community empowerment approach has been able to increase community participation as strategic partners for the Regional Government and the Government in providing and improving the quality of drinking water and sanitation services.

The Pamsimas III Program, which was implemented in 2016-2021, a continuation of the Pamsimas I and II Programs (2008-2015), is an instrument for

implementing two national agendas which aim to increase population coverage of adequate and sustainable drinking water and sanitation services, namely (1) 100%-100% access to drinking water and sanitation, and (2) Community Based Total Sanitation. This program aims to increase the number of underserved communities, including low-income communities in rural areas, who can access drinking water and sanitation services, increase the application of clean and healthy living values and behavior in order to achieve the target of access to drinking water and sanitation in 2019 in the water sector. drinking and sanitation, through mainstreaming and expanding community-based development approaches. The Pamsimas III program is implemented to support sustainable settlement development in 15,000 villages and manage the sustainability of drinking water and sanitation services in more than 27,000 Pamsimas target villages.

The implementation of land grants in the Pamsimas program carried out by researchers in West Bangka Regency, Bangka Belitung Province was carried out a year before the development was carried out. In implementing the grant, a PPAT Deed was never made due to lack of funds and community understanding so that the process of making a land grant letter was only signed by the Grantor, Heirs, Village Head, and was known up to the sub-district level. The person in charge of the Pamsimas program in North Sumatra also explained that the sub-district head only needs to know about the existence of the grant letter so that implementing the program does not require the issuance of an official letter from the sub-district head because the program implementation is only at the village level throughout Indonesia. And in implementing the grant, a complete check was not carried out to see whether the land donated had a grant letter or not, but from the research results obtained, most of the land granted did not have a certificate, but some were already certified. It's just that the implementation is still carried out under the hands.

The implementation of land grants for the Pamsimas program in Merangin Regency and Siak Regency was also carried out without a PPAT deed, but was only known by the village head of the village up to the sub-district level. In the implementation of land grants for the construction of drinking water facilities carried out by the Pamsimas program in Merangin Regency and Siak Regency, no construction was ever carried out on land where the grant letter was a use permit letter, but there were only pure grant letters and passing permit grant letters. For permits to pass through residents' land, only the land owner and village head must sign it. Problems that occur in Merangin Regency in implementing land grants are usually caused by the land owner's heirs not agreeing to the land grant.

The land grant process carried out in the Pamsimas program has been regulated in the Environmental and Social Security technical manual which states that there are three types of land provision, namely (Minum, 2021):

- a. Land grant (Grant of ownership of land) is the release of land ownership rights to another party after the consent of the grantor by giving ownership voluntarily and free of charge and irrevocably to the party receiving the

grant. The terms of the grant are voluntary, and there is a surrender of part or all of the rights to the land. The land grant must be registered with the PPAT or Temporary PPAT, which in this case is the sub-district head who has been appointed as a temporary PPAT by the Head of the National Land Agency.

- b. A use permit is the granting of the right to borrow for use from another party on a non-permanent basis or on the basis of a certain time that has been mutually agreed upon as long as the facility is used and is still being utilized properly by the community. During this period, the land owner cannot use his land according to his wishes. The use permit must also be known and proven by a written agreement signed by the land owner, including the land owner's heirs, and the authorized village authority, namely the local village head.
- c. Permit to pass is the granting of permission to use land to pass/pass through infrastructure funded by the program for the benefit of the community (for example: installation of pipes for pipe connecting routes to make water accessible to a village). The land owner can still use the upper part of the land that passes because the pipeline is made and installed underground, so it does not really interfere with the land owner's rights to do things on his land.

The land grant must be known and must be proven by a written agreement signed by the land owner and the land owner's heirs and the Village and registered as a village asset. The land grant must be registered with the PPAT or Temporary PPAT, which in this case is the sub-district head who has been appointed as PPATS by the Head of the National Land Agency. To avoid repossession from the party who has given the land, the donated land also needs to be issued a Deed of Grant by PPAT or PPATS and then separated through the local Land Office.

In the Pamsimas Program which is the Research Object in this writing, the regulations that have been created and stipulated in such a way are very good, only in terms of implementation in the field through data that the author obtained by interviewing the authorities for the Pamsimas program in three districts, it is explained that in The implementation of land grants for development is only carried out with a statement letter signed on a stamp of IDR 6,000 by the land owner, the heirs of the land owner, the Village Head, and signed and acknowledged by the Subdistrict Head. There was no grant deed that could be used as an authentic deed, which was the reason the grant deed was not made due to the lack of funds for the Pamsimas program. Apart from that, another reason is that the land donated by residents on average does not have a land certificate, but only has a Certificate of Ownership. Meanwhile, in the Technical Instructions for Environmental and Social Observers regarding grants in the Pamsimas program, it is stipulated that land grants must be known and can be proven by a written agreement signed by the land owner and heirs and from the village and must be registered as a village asset. Land grants

must also be registered in PPAT or PPATS. To avoid repossession from the rightful party, the donated land must be issued a Deed of Grant by PPAT or PPATS and then separated through the local Land Office (Minum, 2021). If it is possible and necessary to avoid conflicts in the future, for land that is donated but has not been certified/the deed has been made privately (girik, Village Head Certificate or other equivalent term), the land needs to be accompanied by a land certificate or equivalent document. published by the Land Office.

In the field, when implementing grants, the problem is often the lack of understanding among village communities regarding the types of land provision (grants, use permits, and bypass permits) and the consequences of the procedures for recording and administering documents for each type of land provision. Another obstacle is that land provision has not been well documented; The process of providing land which is carried out by grant is administratively incomplete, so it does not yet have legal force that can be accounted for, for example in the field, the village community who donated their land only has a Land Ownership Certificate and has not registered their land with BPN so they do not have a certificate for it. land as an authentic deed. Furthermore, obstacles related to grants are the actions of the grantor or heirs in default of the Grant Statement Letter which was approved at the beginning before the program development was carried out. At the start of the program, the grantor and heirs were willing to give away a plot of land, but later on they asked for compensation or what usually happens more often is that the heirs asked for the land back.

2. Validity of Land Grants in the Construction of Drinking Water Facilities Made Under Hand in the Pamsimas Program

After the issuance of PP No. 24 of 1997 which explained that every grant of land must be done with a PPAT deed. PPAT is a public official who is given the authority to make authentic deeds regarding certain legal acts, one of which is regarding land rights by making a PPAT deed as proof that a legal act has occurred. So that the acquisition of land, whether by gift or will, can be registered as a transfer of rights at the local Land Office as a form of security and legality regarding the transfer of land rights through a gift. The purpose of land registration based on PP No. 24 of 1997 concerning Land Registration is to provide legal certainty or legal protection to land rights holders, to provide information to interested parties and the government, apart from that it aims to maintain orderly land administration. The legal force in the deed of gift lies in the function of the authentic deed itself, namely as a valid means of evidence according to the KUHPer law so that this is a direct consequence which is a necessity that has been stipulated in the statutory provisions, that there must be an authentic deed as a means. proof of the transfer of land rights through a grant. Things that can cancel a gift have been explained in article 1688 of the Civil Code, namely that a gift cannot be withdrawn or deleted because of it, except in the following cases:

- a. due to failure to fulfill the conditions determined by the grantor;

- b. If the recipient of the grant has committed a crime or assisted in a crime aimed at taking the soul of the grantor or any other crime against the grantor;
- c. Refuse to provide subsistence allowance to the grantor after the grantor falls into poverty.

The validity of the land grant in the Pamsimas program can be concluded that in its implementation it is invalid because it does not fulfill the contents of Government Regulation Number 24 of 1997 concerning Land Registration Article 37 paragraph (1) which reads: Transfer of land rights and ownership rights to flats through sale and purchase, exchanges, grants, inclusion in companies and other legal acts of transfer of rights, except transfer of rights through an auction process can only be registered if proven by a deed made by the authorized PPAT according to the provisions of statutory regulations. This is because the grants made in the Pamsimas program are only made by making a statement letter signed by the land owner, heirs as witnesses, the Village Head, and the District Head without a PPAT deed being made and the land being registered with the National Land Agency.

The sub-district head, in the results of research discussed in the journal *Legal Certainty of the Position of the Sub-District Head as Temporary Land Deed Officer*, shows that in Government Regulation Number 24 of 2016 there is legal uncertainty in the formulation of the article as a result of ambiguity. legal norms regarding the implementation of the Temporary PPAT position. This legal uncertainty can be seen from the appointment of a temporary PPAT to the sub-district head, where the sub-district head is a state administrative official whose regulations are in conflict with the PPAT position rules which prohibit PPAT from being held by civil servants. The sub-district head in his position is a civil servant so the responsibility for the temporary PPAT should be transferred to the village head, where the existence of the village head is also accommodated in the provisions of the PPAT's position as a temporary PPAT. This is considered to provide more legal certainty and is an ideal solution in implementing the Temporary PPAT. Apart from that, in the explanation of the dissertation entitled "Problematics of the Position of the Subdistrict Head as a Temporary Land Deed Official in the Implementation of Land Registration" written by Endang Sri Handayani, SH, SpN, MH regarding the Subdistrict Head as a Temporary PPAT not having a protocol and not taking the PPAT educational exam so that in Land registration often has problems with deeds which can be detrimental to the community (Iryadi, 2020). The sub-district head as a Temporary PPAT in the implementation of land registration is no longer needed for regional areas in Indonesia because PPAT has been fulfilled (Kampus).

So that after the issuance of the Government Regulation (Government Regulation Number 24 of 1997 concerning Land Registration), for those who are Indonesian citizens who must comply with the Civil Code in the implementation of land grants must be made in written form by a Notary, land grants that are not made by a Notary does not have legal force, so those who are subject to customary law can

make it privately, but the process must continue at the Land Office and must be made with a PPAT deed (Land Deed Maker Official). Every grant of land or building must be made by a Notary/Land Deed Official (PPAT), namely in the form of a grant deed. So, if someone wants to donate their land or building to another party, then in implementing the gift, a grant deed must be drawn up by PPAT. In addition, the act of gift is attended by at least two witnesses. If a land dispute occurs, such as the one in Jambu Tonang village, the resolution is by negotiation, mediation, or by adjudication. This adjudication process is where a third party plays a role in designing a more realistic and objective solution to the dispute for both parties involved in the dispute than if they were. Then, in Law Number 48 of 2009 concerning Judicial Power, especially in Chapter XII concerning Extrajudicial Dispute Resolution, Article 60 states:

- a. Alternative dispute resolution is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely settlement outside of court by means of consultation, negotiation, mediation, conciliation, or expert assessment.
- b. Dispute resolution through alternative dispute resolution as intended in paragraph (1) results are stated in a written agreement.
- c. The written agreement as intended in paragraph (2) is final and binding on the parties to be implemented in good faith

It can be concluded that if a grant is made by private letter, the transfer of ownership rights can take effect when a Deed of Grant has been made before an authorized Notary/PPAT. So that gifts for immovable property such as land and buildings are made by the parties without using an authentic deed, it can be said that the validity of the gift is invalid because the gift must be made in an authentic deed, it cannot be made in a private deed (Article 1682 of the Code -Civil Law), especially if there are parties who deny the gift made privately, then the gift deed cannot be used as evidence. A deed made privately and its evidentiary power can be absolute if the deed is legalized or legalized by the PPAT. Private deeds that are legalized by a notary are generally made by the interested parties themselves with the agreement of both parties, while the signatures and/or thumbprints are carried out before the PPAT. In private deeds made by the parties themselves and whose signatures or thumbprints are made before the PPAT, responsibility regarding the content and provisions contained in the agreement rests with the parties who made it, while the PPAT's responsibility is only limited to the correctness of the signatures. or thumbprint and the validity of the letter. So that grants carried out in government programs in villages can be concluded regarding their legal validity and are not valid, but due to limited costs, facilities and community knowledge, this Pamsimas program is still implemented under the hand as long as there are no people who object and it is done voluntarily without any assistance. compulsion so that there are no problems in the future.

D. Conclusion

The first conclusion in this research is that the implementation of land grants in the Pamsimas program that researchers carried out in West Bangka Regency, Merangin Regency and Siak Regency was carried out without a Grant Deed being made by PPAT which could be used as an authentic deed, which was the reason the Grant Deed was not made due to lack of funds. for the Pamsimas program so that it is only known by the village head of the village up to the sub-district level. Apart from that, another reason is because the land donated by residents usually does not have a land certificate, but only has a Certificate of Ownership and there is no overall check whether the land that was donated has a certificate or not, because this also does not affect the process of the grant being carried out under their own hands. There are 3 types of grant letters used in the implementation of the Pamsimas program, namely pure grants, use permits, and passing permits. Pure grants are the release of land ownership rights to another party after the grantor agrees by giving ownership voluntarily and free of charge and not can be withdrawn to the recipient of the gift or can be interpreted as a gift in full without a time limit. A use permit is the granting of the right to borrow for use from another party on a non-permanent basis or on the basis of a certain time that has been mutually agreed upon as long as the facility is used and is still being utilized properly by the community. A passing permit is the granting of permission to use land to pass through/pass through program-funded infrastructure for the benefit of the community (for example: installing pipes for pipe connecting routes to make water accessible to a village). What these three research objects have in common is that they make a grant letter under their own hands, and the difference is that in West Bangka district the implementation of the grant is done with a use permit and a pass through permit. Meanwhile, in the other two regencies, Siak Regency and Merangin Regency carry out grants only with pure grants and passing permits.

Second, although the implementation of land grants carried out under the Pamsimas program in the regulations is good, in its implementation the granting is still done in a private manner, even though the reason is a lack of costs, its validity cannot be justified because grants made without a PPAT deed can be said to be invalid. , because the capacity and authority of the grant that has permanent legal force for making the grant deed is a PPAT who has been appointed, and has a protocol and has the correct PPAT education as an authorized public official in accordance with the rules stated in government regulation No. .24 of 1997 concerning land registration. If this is still done, land transfer cannot be carried out, because the evidence required is mandatory land certificates and evidence of deeds or other agreements. In order to fulfill the necessary requirements for all of this, it cannot be done if the deed is done privately.

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