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# Transfer Of Rights Over The Waste Land Of The Waduk Irrigation Agency Province Of East Java To Pensiants Of State Employees Based On A Letter To The Governor's Decision (Juridical Analysis Of The Decision Of The Bangil District Court Number 17/Pdt.G/2020/Pn.Bil)

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**Abstract :** Land is a primary need for the population for both housing and employment. To obtain legal certainty over land rights, it is necessary to have regulations governing the acquisition and transfer of community land rights, including the acquisition and transfer of property rights over community land originating from state land. The purpose of this research is to examine in depth the validity of the process of transferring the land rights of the reservoir assets of the East Java Provincial Irrigation Office to 7 retired Civil Servants (PNS). This research uses a normative juridical research method, which emphasizes the analysis of legal issues by using legal principles, laws and regulations and library materials related to the legal issues studied and analyzed in this research. The result of this research is that the authority of PPAT is authorized to make a Land Deed based on the Decree of the Governor of East Java on the assets of the East Java Provincial Irrigation Service reservoir to 7 Retired Civil Servants (PNS) at the time after being upgraded to a Certificate of Ownership and transferred to a Legal Entity / Developer, and also by existing regulations the transfer of rights to land assets of the former East Java Provincial Irrigation Service reservoir is legal so that it has permanent legal force. (Inkracht van gewijsde)

**Keywords:** Transfer of Rights, PPAT, Reservoir

## 1. Introduction

### A. Background

Land in human life needs is a very basic need, humans live in carrying out activities always need land and almost certainly every human need cannot be separated from land is a natural resource that has a very important meaning in human life. This is understandable because most of human life depends on land. Land as an object that can fulfill human needs has long been felt by people. The importance of land for humans can be seen from the fact that humans cannot

live apart from land<sup>1</sup>. Article 1 paragraph (2) of Law No. 5 of 1960 concerning Agrarian Principles emphasizes that all earth, water and space including natural resources contained therein within the territory of the Republic of Indonesia as a gift of God Almighty. This is in line with the philosophy adopted in the 1945 Constitution Article 33 paragraph (3).

As happened in the case in Pasuruan Regency where there is a dispute over ownership of land rights for a former strain or reservoir located in Nogosari Village, Pandaan Subdistrict, Pasuruan Regency where the reservoir is under the control of the East Java Provincial Government between 7 (Seven) Retired Civil Servants (PNS) of the Regional Irrigation Public Works Office of the First Level Province of East Java through their Attorney in their power of attorney dated February 3, 2020 who filed a Lawsuit for Unlawful Acts (PMH) on February 28, 2020 which was registered at the Bangil District Court Registrar with a Register Date of March 02, 2020 Number 17/Pdt.G/2020/PN.Bil with the Defendants, namely the Village Apparatus and the Village Head of Nogosari. With the basis of the lawsuit for Unlawful Acts (PMH) that have been committed by the Village Apparatus and the Village Head in this case is running the government in the village so far. The essence of the lawsuit is that the Plaintiffs want to regain the land that belongs to the Retired Civil Servants (PNS) with the Acquisition of Land Rights since July 31, 1999 where the Plaintiffs have paid compensation to the Provincial Government of the East Java Region I with each of them amounting to Rp.330,000, - (Three Hundred and Thirty Thousand Rupiah) and the Plaintiffs each get a portion of land covering an area of 200,000 square meters.  $\frac{+}{-} 200 M^2$ . In the transfer of land rights, the plaintiffs had the basis of evidence of the release of land rights with each of the Decrees issued by the East Java Provincial House of Representatives Level I as outlined in the East Java Provincial House of Representatives Decree No. 17 of 1997. In addition, a Decree of the Governor of East Java Province No. 2 of 1998 was also issued.

It is on this basis that the plaintiffs feel they are the rightful owners of the former Irrigation Service reservoir land. The problem started from 1999 until 2010 when the Plaintiffs ordered the Pasuruan Regency Irrigation Department employees to manage the land, but in early 2011 the Village requested the land by force because the Nogosari Village claimed that the former reservoir land was Village Cash Land (TKD). The plaintiffs then sought clarification at the Nogosari Village Hall by meeting with the then Village Head and presenting a Decree (SK) which aimed to provide an understanding that the land belonged to them as a result of legitimate acquisition, namely the release of assets from the East Java Provincial Irrigation Service to the plaintiffs as retired civil servants from the Irrigation Service. However, the Nogosari Village Government argued that the land was Village Cash Land (TKD) without providing any evidence. For this reason, the Plaintiffs filed a tort claim at the Bangil District Court.

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<sup>1</sup> Erna Sri Wibawanti, *Land Rights and Their Transfer*, (Yogyakarta: Liberty, 2013), Page 1

## B. Research Method

The type of research used in this writing is normative juridical research. Normative juridical research is research conducted by examining *legal materials* as the basic material to be researched by conducting a search for regulations and literature related to the problem under study.<sup>2</sup> The approach used in this research is the *statute approach*.<sup>3</sup> The statutory approach is an approach that is carried out by examining all laws or regulations related to the legal issues being studied, researchers can find ideas that can give birth to legal notions, legal concepts and principles that are relevant to the issues being studied. An understanding of the views and doctrines as mentioned above can be used as a basis for a researcher to build a legal argument in solving the issue being studied.

## 2. Discussion

### A. The authority of the Land Deed Official (PPAT) in making deeds of transfer of land rights based on Governor Decree No. 27 of 1998

Government Regulation No. 37 of 1998 on the Regulation of the Position of a Land Deed Official, in Article 1 paragraph (4), says that a PPAT Deed is a deed made by a PPAT as evidence that certain legal actions have been carried out regarding land rights or Property Rights over a Flat Unit. A PPAT Deed is an authentic deed, this is emphasized by Article 3 paragraph (1) of Government Regulation Number 37 of 1998 concerning the Regulation of the Position of a Land Deed Official which reads:

*"To carry out the main tasks as referred to in Article 2, a PPAT has the authority to make authentic deeds regarding all legal acts as referred to in Article 2 paragraph (2) concerning land rights and Property Rights Over Flat Units located within its working area".*

As an authentic deed, a PPAT Deed must fulfill certain requirements and procedures in terms of its making. According to Article 1868 of the Civil Code, an authentic deed is: a deed made in the form prescribed by law by or before a public official authorized to do so at the place where the deed is made. The making of a PPAT deed according to Article 24 of Government Regulation Number 37 of 1998 concerning the Regulation of the Position of a Land Deed Official, is regulated in the laws and regulations concerning land registration. Article 96 of 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 states that PPAT deeds must use forms or blanks in accordance with the form provided and the method of filling them out.

By looking at the case of the position of the land object which is the material of research that the land is the former strain / reservoir asset of the East Java Provincial Irrigation Service and already has *incrach* legal certainty. So that the legal owner is the 7th Retired Civil Servant of the East Java Provincial

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<sup>2</sup> Suratman and Philips Dillah. (2015), *Legal Research Methods*, Alfabeta Bandung, p. 51

<sup>3</sup> *Ibid.* p 104

Irrigation Service Based on the Decision of the Bangil District Court Number 17/Pdt.G/2020/PN.Bil.

So if we refer to the facts in the decision that the former strain / reservoir land has a right base in the form of a Governor's Decree of the Governor of East Java Province Decree No. 27 of 1998 Dated April 15, 1998 concerning the release of Rights to Land-land. land managed by the Regional Irrigation Public Works Office of East Java Province to each of the 7 Retired Civil Servants (PNS) of the East Java Provincial Irrigation Office and the East Java Provincial DPRD Level I Decree No. 17 of 1997 dated July 2, 1997 concerning the release of Rights to Former Stren / Former Reservoir Land in the Control of the Regional Level I Provincial Government and also the Minister of Home Affairs Decree No. 593: 593.35-555 Dated May 31, 1999 concerning the Ratification of the Decree of the Governor of the East Java Regional Head Level I No. 27 of 1998 and No. 111 of 1998 concerning the release of rights to the lands of the former stren / former reservoirs in the control of the Provincial Government of the Level I region of East Java managed by the Regional Irrigation Public Works Office of East Java Province. So based on the facts in the field, the land will now be dredged to be dried up and will be sold as Plot Land. So that in the formulation of our second research problem, namely discussing the authority of the Land Deed Official (PPAT) whether it has the right to make a deed of transfer of land rights based on the Governor's Decree. Therefore, from the results of our research, if the landowner or the 7 people wish to resell the land and make plots in the form of land plots, they must first be upgraded by applying for a Certificate of Ownership (SHM) to the National Land Agency, so that it will be issued in the form of 7 certificates on behalf of each owner of the governor's decree such as that done by Mr. Witness SUKATNO who is also a retired civil servant at the East Java Provincial Irrigation Office and has filed a field that has been purchased through the mechanism of payment of compensation to the State through a cooperative within the East Java Provincial Irrigation Office so that the issuance of a Certificate of Ownership (SHM) Number : 774 whose object is in the Tawangrejo Reservoir located in Tawangrejo Hamlet, Tawangsari Village, Pandaan District, Pasuruan Regency.

Then if after the Certificate of Ownership (SHM) appears in the name of each of the 7 Retired Civil Servants, the next stage is to apply for the Release of Land Rights, which can be made a Deed of Release of Rights before a Notary to the name of a Limited Company (PT) because it is not in the Authority of PPAT in making legal products of Deed of Release of Rights in accordance with Government Regulation Number 24 of 2016 concerning Amendments to Government Regulation Number 38 of 1997 concerning Regulations on the Position of Land Deed Officials:

1. *Buying and selling*
2. *Exchange*
3. *Grants;*
4. *Inclusion in the company (inbreng)*
5. *Division of joint property;*

6. *Granting of building use rights or use rights on freehold land*
7. *granting of mortgage rights*
8. *Granting power of attorney to encumber mortgage rights*

While the Deed of Release of Rights is the authority of the Notary as in Law Number 2 of 2014 concerning the Office of Notary, the Authority of Notary to make deeds as follows:

1. *Establishment of Limited Liability Company (PT), amendments as well as Minutes of General Meeting of Shareholders.*
2. *Foundation Establishment.*
3. *Establishment of other business entities.*
4. *Power of Sale.*
5. *Lease Agreement, Agreement.*
6. *Buying and selling.*
7. *Description of Inheritance Rights.*
8. *Testament.*

The relinquishment of land rights is done on a letter or deed made before a notary stating that the relevant right holder has relinquished his land rights. The deed or letter in question is generally titled Akta Pelepasan Hak (Deed of Release of Rights). Deed of Relinquishment of Rights is sometimes known as Surat Pelepasan Hak or SPH. The Deed of Relinquishment of Rights must be made in the presence of a notary in order to have perfect evidentiary power compared to if it is made underhand.<sup>4</sup> So based on the above explanation, the APH is not made by a Land Deed Official (PPAT) like a Sale and Purchase Deed (AJB), but in the presence of a notary.

After the Deed of Release of Rights before a Notary, if the landowner wants to resell in the form of a land plot business, he only needs to apply for a change from the Certificate of Ownership (SHM) to a Certificate of Building Rights (SHGB), so there is no maximum limit on the number of splits carried out by the Land Deed Official (PPAT) Then, for each plot of land that has been split, a measurement letter, land book and certificate are made to replace the measurement letter, land book and original certificate Referring to Article 2 paragraph (1) of the Decree of the Minister of Agrarian Affairs / BPN 6/1998 which reads in full:<sup>5</sup>

"An application for registration of a Hak Milik as referred to in Article 1 shall be submitted to the Head of the Local District/Municipality Land Office by letter in accordance with the form as set out in Appendix I to this Decree, accompanied by: a statement from the applicant that with the acquisition of the Hak Milik for which registration is requested, the person concerned will have a Hak Milik on land for a dwelling house of not more than 5 plots of land covering a total area of not more than 5000 m.<sup>2</sup> "

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<sup>4</sup> <https://www.hukumonline.com/klinik/a/pengajuan-surat-pelepasan-hak-atas-tanah-ke-kantor-pertanahan-lt4e4ced09c8bca/>

<sup>5</sup> Erna Sri Wibawanti and R. Murjiyanto, *Land Rights and Their Transfer*, (Yogyakarta: Liberty, 2013), p. 164. 164.

So that if a Building Rights Title Certificate has been issued in the name of a Limited Liability Company (PT), this is where the authority of the Land Deed Official (PPAT) is in the process of splitting or splitting into a Sale and Purchase Deed (AJB) to the buyers of land lots that originated from the rightful basis of the Governor's Decree.

It can be concluded that the authority of the Land Deed Official (PPAT) in the transfer of land rights from the inventory assets of the East Java Provincial Irrigation Office based on Governor Decree No. 27 of 1998 is when the land has been upgraded to a Certificate of Ownership (SHM) in the name of 7 retired Civil Servants (PNS) of the East Java Provincial Irrigation Office and then transferred through the stage of a Deed of Release of Rights before a Notary or a Letter of Release of Rights before the National Land Agency (BPN). through the stage of the Deed of Release of Rights before a Notary or Letter of Release of Rights before the National Land Agency (BPN) to a Legal Entity or Limited Liability Company (PT) or developer whose purpose is that the land is in the name of the legal entity and can be sold in the form of plots or taving land so that a Sale and Purchase Deed (AJB) can be made by a Land Deed Official (PPAT).

B. Validity of Transfer of Land Rights of Former Reservoir Assets of the East Java Provincial Irrigation Office with a Governor Decree

In general, land can be divided into two: state land and freehold land. State land is land that is directly controlled by the state. Directly controlled means that there are no other parties' rights on the land. The land is also called free state land. The use of the term state land began during the Dutch East Indies era. In accordance with the concept of the relationship between the Dutch East Indies government and land in the form of an ownership relationship with a statement known as Domein Verklaring which states that all land that other parties cannot prove as eigendom rights is domein or belongs to the state.

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The legal effect of this statement is detrimental to land rights owned by the people as individuals and customary rights owned by customary law communities, because unlike western land rights, there is generally no evidence of rights on customary land rights. The existence of the concept of state domein means that customary land is called non-free state land or *onvrij landsdomein* because it is attached to a right, but outside of that all land is called free state land *Vrij Landsdomein*. Thus the so-called state land is land that is not attached to a right, namely property rights, business use rights, building use rights, use rights on state land, management rights as well as customary land and waqf land. The scope of state land includes:<sup>7</sup>

- a. Lands that are voluntarily surrendered by their owners.

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<sup>6</sup> Djuhaendah Hasan, *Security Institutions for Land and Other Objects Attached to Land in the Conception of the Application of Horizontal Separation*, (Bandung: Citra Aditya Bakti, 1996), Page 76

<sup>7</sup> Maria s. W. Sumardjono, *Land Policy Between Regulation and Implementation*, (Jakarta: Kompas book publisher, 2001). Page 62

- b. Land titles that have expired and have not been renewed.
- c. Lands where the titleholder has died without heirs.
- d. Abandoned lands.
- e. Lands taken for public use.

According to Law No. 5/1960 on Agrarian Principles, all land in the territory of the Republic of Indonesia is controlled by the state. If there are no specific party rights on the land, the land is directly controlled by the state and if there are specific party rights on the land, the land is titled land. Hak land is land that is controlled by the state but the control is not direct because there are certain party rights that exist on it. If the rights of certain parties are removed, the land concerned becomes land directly controlled by the state. In addition to state land, there is also titled land. Title land is land owned by individuals or legal entities with a land right in accordance with applicable regulations. So on the land there is one of the land rights as stipulated in Law Number 5 of 1960 concerning Agrarian Principles.

Based on the legal facts above, it can be concluded that indeed the transfer of land rights (Right of Use) of the former strain / former reservoir of the inventory assets of the Public Works Department of Irrigation of the level I region of East Java Province.<sup>8</sup> It has permanent and binding legal force because the statutory regulations are valid and convincing with all existing evidence in accordance with Article 2 Letter (a) of the Regulation of the Minister of Home Affairs Number 6 of 1972 concerning Delegation of Authority to Grant Land Rights:

*"The governor, the head of the region, gives a decision on the application for granting property rights on State land and accepts the release of rights with an area of :*

- 1. For agricultural land not exceeding 20,000 M<sup>2</sup> (Twenty thousand square meters)*
- 2. For building/residential land not more than 2,000 M<sup>2</sup> (Two thousand square meters)*

Article 2 Letter (c) of Regulation of the Minister of Home Affairs Number 6 of 1972 Concerning Delegation of Authority to Grant Land Rights:

*"The governor, the head of the region, gives a decision on the application for granting property rights on State land and accepts the release of rights with an area of :*

- 1. To the transmigrants*
- 2. In the framework of land reform implementation*
- 3. To former non-permanent gogolans, to the extent that the land is a former non-permanent gogolan.*

So with the existence of these regulations, *the* Governor is authorized to give a decision on the application for granting property rights to state land, especially since the disputed obyk land is part of the inventory of the Regional Government of East Java Province as evidenced by the existence of evidence of the Goods Inventory Card (KIB) A. land Item Code Number: 01.11.07.01 Date

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<sup>8</sup> Based on the Decision of Bangil District Court Number 17/Pdt.G/2020/PN.Bil

March 31, 1084 Type of Goods Klangkung Reservoir Land Area 3110  $M^2$  with the address of Nogosari Village, Pandaan Subdistrict, Pasuruan Regency where Klangkung Reservoir is one of 7 reservoirs that are in the inventory of the East Java Provincial Irrigation Service in Pasuruan Regency.

### 3. Conclusion

We can conclude that the authority of the Land Deed Official (PPAT) is when the status of the land is either before or has been upgraded to a Certificate of Ownership (SHM.) and also related to the transfer of land rights of the former strain / reservoir of the East Java Provincial Irrigation Service to 7 Retired Civil Servants of the East Java Provincial Irrigation Service is in accordance with existing regulations and rules by considering the existing legal facts, we can conclude that the Transfer of Land Rights controlled by the State to 7 Retired Civil Servants of the East Java Provincial Irrigation Service is correct and in accordance with the regulations specified by law. And it has been declared *inkracht* or has permanent legal certainty in accordance with existing regulations and rules.

### 4. Advice

We can provide views related to the case that occurred, indeed in the world of land things like this there are many cases of disputes over the transfer of land rights both individuals and legal entities both between people to people and the State to individuals. The beginning of the problem is that the owner of the right does not immediately change the name to his own name if there is a change in ownership either due to sale and purchase, grants, or inheritance, conflicts like this will continue to recur, besides that it must also continue to be encouraged.

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Regulation of the Minister of Home Affairs No. 6 of 1972 concerning the delegation of authority to grant land rights

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Government Regulation No. 24 of 1997 on Land Registration;

Decree of the Governor of East Java Level I Number 2 of 1998

Decree of the Minister of Home Affairs Number 593.35-555 Regarding the Ratification of the Decree of the Governor of East Java Province Level I Number 27 of 1998 and Number 111 Regarding the Release of Rights to Former Stren / Reservoir Lands under the Control of the Provincial Government of East Java Province Level I managed by the Regional Irrigation Public Works Office of East Java Province Level I.

Decree of DPRD level 1 of East Java Province Number 17 of 1997