

Legal Remedies For Applicants For Land Registration Due To Inheritance That Has Been Distributed Inheritance But Rejected By The Land Office (Study In Blitar Regency)

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Abstract

The inheritance is agreed to fall to one heir, then the registration of the transfer of rights to the land can be directly made to one heir who has been determined. However, the fact that the land registration that must be taken by the heirs is different from the rules listed in Article 42 paragraph (4) of PP No. 24 of 1997. The Land Office does not accept applications for registration of transfer of inheritance as stipulated in Article 42 paragraph (4) PP land registration, so that the registration of the land must be registered first to all heirs, after which a deed of Division of Joint rights (APHB) is made for the refusal, of course, there will be legal consequences for the applicant. The problem in this study is a legal remedy for applicants for land registration because of inheritance that has been the division of inheritance but rejected by the Land Office and how the legal protection for applicants for land registration because of inheritance that has been the division of inheritance but rejected by the Land Office. This type of research is normative legal research. The method of approach uses a legislative and conceptual approach. Data sources come from primary and secondary sources of law. The results of this study indicate that legal remedies for applicants for land registration due to inheritance that has been the division of inheritance but rejected by the Land Office the factors that affect the inadmissibility of the registration of the transfer of land rights due to inheritance based on APHW are ignorance of service counter employees about the rules of registration of the transfer of land rights due to inheritance based on APHW, namely Article 42 paragraph (4) of Government Regulation No. 24 of 1997 on Land Registration. There has been no direction from the superior to the Front Office related to the National Land Agency circular on instructions for registration of transfer of Rights due to inheritance, probate grants and distribution of rights with B/HR number.02/I012/IV / 2023 dated April 13, 2023. Alternative efforts that can be made by the parties so that the registration of the transfer of rights due to inheritance based on APHW can be applied, can be done by a notary/PPAT or from the applicant himself. Efforts that can be done by a notary/PPAT one of them by filing a complaint related Land Office.

Keywords: *Land Registry, Inheritance, Land Office*

INTRODUCTION

As an effort by the government to ensure legal certainty related to land rights throughout the territory of the Republic of Indonesia, the government made regulations on this matter into Government Regulation Number 24 of 1997 concerning land registration, hereinafter referred to as PP Land Registration. Land registration is a series of activities carried out by the government continuously, continuously and regularly, including the collection, processing, bookkeeping, and presentation and maintenance of physical data and juridical data, in the form of maps and lists, regarding land plots and units of flats, including the provision of proof of rights for existing land plots and property rights to units of flats and certain rights that burden them. This arrangement is intended to provide encouragement to the community to obtain legal certainty and prevent land issues and conflicts that may occur at any time due to the absence of legalistas and evidence of legitimate ownership of land assets owned by the community. The concrete form of land registration is a certificate as proof of ownership of land rights, the evidence is used as the basis for the legal force of rights and legitimate ownership of land ownership owned.

Along with the development of community life, information education and technology that continues to grow is expected to be an adjustment in the implementation and implementation of

land registration. Land Registry there are several types. One of them is the maintenance of land data. Land data maintenance is a land registration activity to adjust physical data and juridical data in registration maps, land registers, name lists, measurement letters, land books, and certificates with changes that occur later. Maintenance of data is carried out one of them because of the transfer of land rights. The transfer of land rights may occur due to legal acts and legal events. The transfer of land rights due to legal events can occur because the holder of land rights deliberately transfers his rights to another party, while the transfer of land rights due to legal events occurs when the holder of land rights dies, so that the right to land itself breaks up and passes to the heirs.

The transfer of land rights due to the death of the holder of land rights is known as inheritance. The transfer of rights due to inheritance is obliged to be registered by the heirs with the Land Office. In the provisions of the transfer of land rights due to inheritance, there are provisions that regulate the registration of the transfer of rights can be directly registered to one person only if there is an agreement on the division of inheritance. This provision is contained in Article 42 paragraph (4) of Government Regulation Number 24 of 1997 concerning land registration, which states that: "If the recipient of the inheritance is more than one person and the time of the transfer of the right is registered accompanied by a deed of inheritance which contains information that the right to land or property rights to a particular unit of flats falls to a certain recipient of the inheritance, the registration of the transfer of land or property rights to the unit of flats is carried out to the recipient of the inheritance"

This means that if there is a deed of division of inheritance which states that the inheritance is agreed to fall to one heir, the registration of the transfer of rights to land can be directly made to one heir who has been determined. However, the fact that the land registration that must be taken by the heirs is different from the rules listed in Article 42 paragraph (4) of PP No. 24 of 1997. The Land Office does not accept applications for registration of inheritance transitions as stipulated in Article 42 paragraph (4) PP land registration, so that the registration of the land must be registered first to all heirs, after that a deed of Division of Joint rights (APHB) is made for the rejection, of course, there will be legal consequences for the applicant, which the researcher describes: 1. The SKB PPh Waris 2. Pay income tax APHB 3. Pay BPHTB 2 (two) times

Based on the explanation of the problem above, the application of Article 42 paragraph (4) PP No. 24 of 1997 has not been effective. One indicator of the ineffectiveness of the implementation of Article 42 paragraph (4) PP 24 of 1997 is the issuance of a circular letter from the National Land Agency on instructions for registration of transfer of Rights due to inheritance, probate grants and distribution of rights with number B/HR.02/1012/IV / 2023 dated April 13, 2023. The circular was issued as a guide for the implementation of transitional provisions for inheritance rights, probate grants, and the distribution of joint Rights, which in it alludes to the implementation of Article 42 paragraph (4) PP 24 of 1997. Although the circular has been out, but its implementation is still not effective. Application for registration of land due to an existing inheritance division of inheritance is still not accepted. The ineffectiveness of the implementation of Article 42 paragraph (4) of PP 24 of 1997 causes difficulties for the heirs. First, in terms of land registration time, it takes longer because the process of transferring rights is carried out 2 (two) times, namely from the heir to all heirs (joint rights), then the distribution of joint rights to one heir. Whereas when compared to Article 42 paragraph (4), the land registration procedure is carried out directly from the heir to one heir based on the deed of division of inheritance, the transition only occurs 1 (one) time so that the procedure takes a shorter time. Second, in terms of the cost of switching from Joint rights to one heir requires the creation of a deed of Division of Joint rights (APHB). APHB is made by the land deed officer (PPAT) so that the heirs must pay PPAT service fees. In addition to paying PPAT service fees, heirs must pay more tax payable,

namely BPHTB from APHB and transition tax to one heir. Meanwhile, if the transfer of Rights is carried out under Article 42 paragraph (4) PP land registration, the heirs do not need to pay PPAT services because the transition is not through APHB and taxes to be paid only 1 (one) time, namely from heir to heir.

RESEARCH METHODS

The type of research used in this study is legal research. according to Soerjono Soekanto is “a scientific activity based on methods, Systematics and certain thoughts, which aims to study one or several specific legal phenomena, by analyzing them.” In addition, he added that legal research can also be in the form of ‘in-depth examination of legal facts to then seek a solution to the problems that arise in the symptoms concerned. This type of research is used to answer what the legal consequences of the implementation of the registration of the transfer of land rights due to the existing inheritance of the division of heirs, and what legal efforts can be made by the heirs as applicants because of the losses faced in the registration of the transfer of land rights due to the existing inheritance of the division of heirs. In this study, empirical research approach is also used in the form of interviews as a way to answer the first problem, namely the cause of rejection of the registration of the registration of the transfer of land rights due to inheritance that already exists inheritance division. In addition, this study is limited to the registration of the transfer of land rights in the area of Blitar Land Office.

RESULT AND DISCUSSION

Analysis of the effectiveness of the application of Article 42 paragraph (4) pp no. 24 of 1997 on Land Registration.

When connected with the theory of legal effectiveness that uses the theory of legal systems proposed by Lawrence M. Friedman as an indicator, the factors causing the non-receipt of the application for registration of the transfer of land rights due to inheritance under APHW will be described as follows:

1. Legal Substance

The substance of the law is the overall rules of legal norms or positive legal rules (including the principles of law and legal norms) which include legislation, then in the substance of the law has provided adequate legal rules, namely Article 42 paragraph (4) of Government Regulation No. 24 of 1997. This means that the legality of the implementation norms of Article 42 paragraph (4) PP 24 year 1997 has been fulfilled. Then seen in terms of the content or meaning of the article, the phrase Article 42 Article 42 paragraph (4) of government regulation number 24 of 1997 is formulated specifically and clearly. Besides that, the norm of Article 42 paragraph (4) of government regulation number 24 of 1997 is also contained in Article 111 paragraph (5) of the ATR/Ka regulation. BPN Number 16 of 2021, which is a concrete norm and is classified as technical because the material content of the provision is in a Ministerial Regulation classified as an “implementing regulation”. That is, a set of norms has become available in regulating the mechanism of registration of the transfer of rights due to inheritance on the basis of APHW. Based on the description of the substance of the law, then according to the analysis of researchers about the substance of the law has been available and has been fulfilled.

2. Legal Structure

As mentioned by Lawrence M. Friedman is the rules and norms that guide law enforcement officials. as the executor of the legislation, Blitar Regency Land Office is required to be credible to be able to implement Article 42 paragraph (4) of Government Regulation No. 24 of 1997 on Land Registration properly. In practice, registration of transfer of rights due to direct inheritance to one of the heirs based on APHW is never used in the registration of transfer of rights due to inheritance at the Blitar Regency Land Office. The entire registration of the transfer of rights due to inheritance, which seems to impose all the stages of the process with APHB, raises questions about the competence and knowledge of the law on the part of the Blitar Regency Land Office.

3. Legal Culture

The legal culture in question is the attitude towards the law, which is one of the indicators of the functioning of the law. The inhibition of the application of Article 42 paragraph (4) of Government Regulation No. 24 of 1997 according to the analysis of researchers due to the lack of coordination between superiors and subordinates, and the absence of socialization of Article 42 paragraph (4) of Government Regulation No. 24 of 1997 as well as circular on registration instructions for the transfer of Rights due to inheritance, probate grants and the distribution of Joint rights is a lack of awareness of the law.

Factors Affecting The Inadmissibility Of Registration Of Transfer Of Land Rights Under The Deed Of Division Of Inheritance (APHW).

Land registry according to A.P Parlindungan comes from the word Cadastre, a technical term for a record that shows the area, value, and ownership of a plot of land. Cadastre itself comes from the Dutch language, Cadastre which means a register made for the Roman land tax. One of the land registration activities is the maintenance of land registration data, one of which includes registration of transfer of rights due to inheritance. In Article 42 paragraph (4) of Government Regulation No. 24 of 1997 on land registration, states that if the recipient of the inheritance is more than one person and at the time of registration is accompanied by a deed stating that the right to land falls to one of the heirs, the registration is made to the recipient of the inheritance in question. From these provisions, it can be concluded that the registration of the transfer of rights can be registered directly to one of the heirs by including The Deed of Division of inheritance (APHW) which contains information that the right to land falls to one of the heirs who is agreed to accept. However, the application of registration of transitional rights due to inheritance based on APHW is still experiencing obstacles, especially in Blitar District Land Office, therefore the researchers wanted to analyze what factors affect the inadmissibility of registration of transitional rights due to inheritance based on APHW.

To find out directly how the process of implementation of the application for registration of transfer of rights due to inheritance in the Land Office of Blitar Regency, before conducting the interview, the researcher consulted the officers at the service counter by positioning themselves researchers like applicants for registration of transfer of rights due to inheritance. In the consultation, the researcher asked whether the transfer of rights due to inheritance can be done directly to one of the heirs without having to first create joint ownership. From the consultation, the researcher can conclude that the transfer of rights due to direct inheritance to one of the heirs without having to be made into joint ownership cannot be done by reason of all procedures for the transfer of rights because inheritance is through joint Rights First and then if you want to transfer to one of the heirs, you must use the deed of Division of Joint rights (APHB). In fact, it can be said that the officers at the service counter of the Blitar Regency Land Office are less aware of the existence of a regulation stating that the registration of the transfer of rights due to inheritance can be made to one of the heirs only by including The Deed of Division of inheritance (APHW) as proof of inheritance division.

Furthermore, the consultation continued with the head of Sub-Section (Head of Sub-Section) ATR / BPN Blitar Regency, according to his statement that there has never been a registration of transfer of rights due to inheritance as referred to in Article 42 paragraph (4) PP No. 24 of 1997. In line with the information obtained from the consultation with the service counter, that indeed all registration of the transfer of rights due to inheritance if it is to be transferred to one of the heirs only, it must be made a joint right first and then use APHB to transfer the rights to one of the heirs only. During the consultation, the researcher also discussed the circular on instructions for registration of transfer of Rights due to inheritance, probate grants and distribution of Joint Rights issued on April 13, 2023, but still all registration of transfer of rights due to inheritance is all through joint rights.

Then the researchers conducted an interview with a resource person who is positioned as the Front Office, from the information obtained from the interview the researchers summarize that there has never been an applicant who applied for registration of the transfer of inheritance rights directly to one of the heirs only. The interviewee said that he had never seen APHW used to transfer land rights to one of the heirs. The same applies to the previously described circular. He said that there was no direction from the superior regarding the circular so he did not know about the circular.

At the time of the study, researchers found differences in the information that researchers obtained from interviews, which researchers will describe as follows:

1. The problem was discovered during an interview with the head of Rights determination and transition section, Mrs. Emi Makhmuda. He said that the registration of the transfer of rights due to inheritance based on APHW was received at the Blitar Regency Land Office. It's just that according to his statement, the registration of the transfer of rights due to inheritance based on APHW has never been filed at the Blitar Regency Land Office. This statement certainly contradicts the statement of the head of Sub-Division who said that the registration of the transfer of rights due to inheritance was not accepted at the Blitar Regency Land Office.
2. Researchers again found the problem when the interview continued with Notary / PPAT Blitar, namely Mr. Sulin, and Mr. Novi Cahyowidodo. Both are notary / PPAT Blitar Regency. From the interview, both have never done land registration because of inheritance based on APHW. From the results of interviews that the researchers summarize, both said that they had never done land registration based on APHW because to their knowledge the land registration for inheritance at the Blitar Land Office only accepts land registration for inheritance based on APHB.

From the interview, the researchers also found that the Blitar Regency Land Office never socialized Article 42 paragraph (4) of government regulation no. 24 of 1997 as well as a circular on instructions for registration of transfer of Rights due to inheritance, probate grants and distribution of Joint rights. Employees at the counter was not directed to socialize this regulation to the notary / PPAT local and the community, especially the people who register the transfer of rights due to inheritance. According to the analysis of researchers, the absence of socialization of Article 42 paragraph (4) of government regulation No. 24 of 1997 as well as the circular on registration instructions for the transfer of Rights due to inheritance, probate grants and the distribution of Joint rights as if to allow all transfers of rights due to inheritance must all go through joint Rights, which results in if there is an applicant who wants to transfer his rights to one of the heirs alone must make APHB which results in the applicant having to pay tax 2 (two) times. In the absence of socialization, researchers assess the principle of land registration is the principle of simple and affordable principles ruled out.

Efforts That Can Be Made By The Parties To Be Able To Implement The Registration Of The Transfer Of Inheritance Using APHW(Deed Of Division Of Inheritance)

Deed of distribution of inheritance (APHW) is a deed that contains information that the

heirs agreed the certificate is registered to one of the heirs. APHW is made if the land has not been registered but the heirs have agreed that the land will later be registered to one of the heirs only. Unlike the deed of Division of Joint rights (APHB), APHB is a deed made by PPAT which contains an agreement between joint rights holders regarding the division of joint rights. Meanwhile, the division of joint rights is a legal act carried out by Joint rights holders aimed at ending joint ownership. In APHB, APHB is created when the land has been registered to all heirs (joint right) so that the agreement is made by the heirs after the land has been registered as joint right.

It is the authority for the heirs if they want to make an agreement in dividing the inherited property in the form of land rights to one of the heirs only, without having to make the land rights into joint ownership. However, based on the findings of researchers at the study site, registration of inheritance rights based on APHW is still not accepted. So that the heirs have to register the transition of their heirs to joint Rights First, and only then the transition to one of the heirs using APHB. So the researcher through this paper will analyze what efforts can be made by the parties in order to register the transfer of their inheritance rights using APHW as the basis for the transfer of their inheritance.

1. File A Complaint

Based on Article 1 Number 1 of ATR/BPN Regulation Number 4 of 2022 concerning complaint management of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency, a complaint is the submission of a complaint submitted by the complainant to the complaint manager for implementing services that are not in accordance with service standards, or waiver of obligations and/or violation of prohibitions. Complaints are grouped into 2 (two), namely supervisory complaints and non-supervisory complaints. Supervisory-level complaint as meant in Paragraph (1) letter a is a complaint that contains:

- a. information on indications of irregularities or abuse of authority committed by the civil apparatus of the Ministry;
- b. information on indications of irregularities in public services;
- c. Case; or
- d. information or reports on indications of violations in the use of space and land;

While the complaint does not contain supervision in question is the complaint does not contain supervision of complaints that contain suggestions and/or constructive criticism, so that it is beneficial for the improvement and implementation of good governance. In this study, the complaint that can be done by a notary / PPAT is a complaint without supervision.

Before researchers discuss further, it is necessary to explain in advance the parties involved in this complaint service:

- a. Complainants are all parties, both citizens and residents, both individuals, groups and legal entities who submit complaints to the Ministry.
- b. Complaint Management executor is an official or employee assigned by the person in charge of Complaint Management to manage complaints.
- c. The person in charge of Complaint Management is an official who has responsibility in the implementation of Complaint Management at the ministry level, the Regional Office of the National Land Agency, and the Land Office.

The person in charge of managing complaints, among others, is; 1. Office of the deputy high leadership who has duties and functions in the field of Secretariat, for the Ministry; 2. Pratama high-ranking officials who lead regional offices, for regional offices; and 3. Official administrator who heads the Land Office, for the Land Office.

No less important before filing a complaint, please note the complainant must include the following conditions for filing a complaint:

- a. the identity of the complainant / power of attorney at least contains the name of the person or institution/institution, population identification number, address and telephone number/mobile phone;
- b. power of attorney when powered;
- c. a clear chronological description of the complaint; and
- d. data related to the legal relationship between the complainant and the object complained of in the event of a complaint regarding land rights.

Forms Of Submission Of Complaints

Complaints can be made in the following ways :

1) Face To Face

Based on Article 4 of the ATR/BPN Regulation Number 4 of 2022, complaints can be submitted face-to-face. The face-to-face complaint in question is a negotiation activity carried out with the Blitar Regency Land Office. Face-to-face complaints have been made by Bpk. Notary Sulin. In an interview conducted by researchers to Bpk notary Sulin Sulin, in his speech he had negotiated with the Blitar Regency Land Office regarding the application for registration of land rights transfer due to inheritance based on the deed of inheritance (APHW). At that time, he knew that in the Blitar Regency Land Office all the transfer of rights due to inheritance was carried out by mutual rights and therefore he conducted negotiations with the intention of wanting to register the transfer of his client's inheritance rights based on APHW. But the negotiations did not find a bright spot due to the lack of understanding between the two sides.

2) Submit An Objection Letter

The objection letter basically contains a complaint addressed to a particular agency. An objection letter can be made and filed individually, but it is recommended that the objection letter be filed by the notary / PPAT concerned. An effort is needed from the Notary as an intermediary between the heirs and the Land Office, therefore practical legal steps that can be taken by the notary if the APHW made before him cannot be used as a basis in the transition of inheritance, if the face-to-face complaint has not been successful, the notary concerned can file a letter of objection (complaint) in writing to the head of the Local Land Office. If the effort has not been successful, it can be followed up by filing a letter of objection (complaint) again which this time is addressed to the provincial BPN Regional Office in charge.

3) File A Complaint Through The National Public Service Management System Application.

National Public Service Complaint Management System application using the report application! or hereinafter SP4N - report! is a service delivery of all aspirations and complaints of the people online that is integrated in the management of complaints in stages at each public service provider and managed by the Ministry of Administrative Reform and Bureaucratic Reform in collaboration with the Presidential Staff Office and the Ombudsman of the Republic of Indonesia. SP4N-REPORT! is a service delivery of all aspirations and complaints of the people online that is integrated in the management of complaints in stages at each public service provider. On October 27, 2020 SP4N-report! it has been established as a general application for the management of Public Service complaints through Panrb Ministerial Decree No. 680/2020. The application can be downloaded on the phone through the Play Store application on Android-based phones and through the App Store application on iOS-based phones. Submissions can be submitted through the application by clicking the "report " icon in the report application! Then click "complaint", then enter the title of the report along with the report you want to submit.

Completion of the follow-up of complaints is not subject to supervision for a maximum of 10 (ten) working days from the receipt of the complaint file from the complaint management executive. In addition, efforts are needed from notaries / PPAT to socialize among fellow notaries

regarding the use of APHW as a basis for registration of inheritance transitions. The socialization is expected to achieve an understanding of a rule that makes it easier for applicants to register the transfer of rights due to inheritance, that there is a rule that can facilitate the heirs who have an agreement on the division of inheritance.

CONCLUSION

Factors affecting the inadmissibility of registration of the transfer of land rights due to inheritance under APHW are as follows:

1. Ignorance of service counter employees about the rules of registration of transitional land rights due to inheritance based on APHW, namely Article 42 paragraph (4) of Government Regulation No. 24 of 1997 on Land Registration.
2. There has been no direction from the superior to the Front Office related to the National Land Agency circular on instructions for registration of transfer of Rights due to inheritance, probate grants and distribution of rights with B/HR number.02/1012/IV / 2023 dated April 13, 2023.
3. The absence of socialization on Article 42 paragraph (4) of government regulation number 24 of 1997 on land registration, as well as the National Land Agency's circular on instructions for registration of transfer of Rights due to inheritance, probate grants and distribution of Joint rights number B/HR.02/1012/IV / 2023 dated April 13, 2023, on the registration of the transfer of land rights due to inheritance under APHW. So far, the Land Office does not seem to want all land registrations due to inheritance through joint Rights.

Alternative efforts that can be made by the parties so that the registration of the transfer of rights due to inheritance based on APHW can be applied, can be done by a notary/PPAT or from the applicant himself. Efforts that can be done by a notary/PPAT one of them by filing a complaint related Land Office. Complaints can be made in 2 (two) ways, which are described as follows:

- 1) face-to-face, that is, complaints submitted orally through negotiations carried out with the relevant Land Office.
- 2) file an objection letter. The objection letter contains a complaint addressed to the head of the relevant Land Office.
- 3) file a complaint through the SP4N online service-report!. This service can be accessed via mobile phones by downloading the application, and following the instructions for submitting complaints in the application.
- 4) in addition, efforts are needed from notaries / PPAT to socialize among fellow notaries regarding the use of APHW as a basis for registration of inheritance transitions. The socialization is expected to achieve an understanding of a rule that makes it easier for applicants to register the transfer of rights due to inheritance, that there is a rule that can facilitate the heirs who have an agreement on the division of inheritance .

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