

DUE TO THE LEGAL TRANSFER OF LAND OWNERSHIP OWNERSHIP THAT WAS MADE WITHOUT THE OWNER'S AGREEMENT OF THE BUILDING USE RIGHT CERTIFICATE THAT WAS ENSURED WITH LIABILITY RIGHTS

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ABSTRACT

In nature transition right on ground, often there is a number of problem , where No seldom in the manufacturing process deed transition right on land carried out by parties who do not entitled , and p This often get away from PPAT supervision , due No exists policy in regulation related transfer and registration right on land related importance matching the identity data of the parties with desired certificate _ done transition rights . As a result, redirects often occur ownership right on land without agreement owner to certificate right To use a building burdened with Mortgage , where the imposition of the Mortgage is also carried out by parties who are not entitled, or are not the actual owners of the land, an example of which can be seen in the case Decision Number 554 K/TUN/2020, the previous one has disconnected with decision Number 170/G/2019/PTUNJKT., and Decision Number 165/B/2020/PT. TUN. JKT. in case the is known there is transition right on the land that is done without agreement from the actual owner , where the land is also made collateral right dependent on the Bank PT. Bank QNB Indonesia , then in this research was conducted using normative research methods, with primary, secondary and tertiary legal materials. The research results show that a result law diversion ownership right on land without agreement owner to Encumbered Building Use Right Certificate right responsibility by those who are not owner original , based on theory consequence law Soeroso can filed cancellation on certificate right To use building in the district court as well as in the state administrative court , and with it was cancelled certificate right To use building those by then will no result either validity certificate right binding liability _ Building use rights certificate such , because to object Building use rights certificate the stated No apply or No Once there is , and certainty law on Certificate Granting Mortgage Rights whose object stated null and void in decision court , to delete and or is lost Because object guarantee that is certificate right on land form certificate right To use specified building _ null and void , legally automatic impact on no validity certificate gift right dependent ..

Keywords: Legal Certainty, Transfer of Land Rights, and Mortgage Rights.

INTRODUCTION

In the transition process ownership on land , role from Official Maker Land Deed and National Land Agency (later abbreviated become BPN) is very important , where Official Maker Land Deed (later abbreviated become a PPAT), basically authorized make deed related transition right on land like Deed Sell Buy , Deed Grant on land , Deed of Inheritance land , and deeds other related transition right on land (Sitaros and Puri,

2014), besides That Official Maker Land Deed is also authorized For make deed related guarantee right on land like deed loading right dependents (Buchmeiller , 2017). As for roles from the National Land Agency , related with publishing certificate right on land like certificate right property , right To use building , right To use business and rights use , as well publishing related certificate _ with guarantee right on ground , like certificate loading right dependents (Masjehoen , 2014) This in accordance with provision Article 37 Paragraph 1 of the Regulations Government Number 24 of 1997 concerning Land Registration .

Related transition right on land , is known that in the process transition right on land on PPAT, there is a number of condition like , certificate or proof mastery as meant in explanation Article 24 of the Regulations Government Number 24 of 1997 concerning Land Registration , identity of the parties , as well payment a number cost administration such as PPH and BPHTB. Related with the identity of the parties in transition right on ground , often there is a number of problem , where No seldom in the manufacturing process deed transition right on land carried out by parties who do not entitled , and p This often get away from PPAT supervision , due No exists policy in regulation related transfer and registration right on land related importance matching the identity data of the parties with desired certificate done transition rights . No seldom problem No exists matching the identity data of the parties with desired certificate done transition rights , result appearance dispute later day after happening transition rights , even No seldom found problem Where to land that has charged with guarantee to the bank as creditors , it turns out party the debtor no rightful owner on guaranteed land.

Problem the can found in example case Decision Number 554 K/TUN/2020, the previous one has disconnected with decision Number 170/G/2019/PTUNJKT., and Decision Number 165/B/2020/PT. TUN. JKT. in case the is known there is transition exercised rights _ without agreement from real owner _ that is party Rumeisa Suryodiningrat , where Rumeisa Suryadiningrat feel No Once divert right on Certificate No. 2828/ Menteng to Adi Ssitiwarih , however without agreement from Rumeisa Suryodiningrat , Adi Sasitiwarih's party has flip Name Certificate No. 2828/ Menteng on Name Adi Sasitiwarih 's side through agreement together November 24 2019 which was legalized by a Notary Sumarindang , which contains that plaintiff agreed about land and buildings on Jalan Teuku Ms Ditiro No. 58 Central Jakarta is designated for Adi Sasitiwarih . However , plaintiff No Once feel present before _ Notary Public Sumarindang , and signed document mentioned . _ On the Joint Decision Then is known that the National Land Agency issued SHGB Number No. 4343/ Menteng on the name Adi Ssitiwarih , and by Adi Ssitiwarih SHGB Number No. 4343/ Menteng the Then made collateral right dependent on the Bank PT. Bank QNB Indonesia based on Mortgage No. 4190/2015. So that party Rumeisa Suryadiningrat feel aggrieved and filed lawsuit on problem , and on the Decision Number 554 K/TUN/2020, parties Rumeisa Suryadiningrat win case Where panel of judges then state null and void SHGB Number No. 4343/ Menteng , and ordered to the Central Jakarta Land Office for revoke the Mortgage Number 4190/2015 rank I (first) with the holder of Mortgage Rights PT Bank QNB Indonesia, because proven SHGB Number No. 4343/ Menteng published with disabled law , so right dependent Not even number 4190/2015 own strength law .

Problems the same thing happened in the case Decision Number 448/ Pdt.G /2019/ PN.Jkt.Brt ., where party Tjiu Hamidi as owner Certificate of Property Rights (SHM) No. 187/Tanah Sareal , disadvantaged on happening guarantee right dependent of Property Rights (SHM) No. 187/Tanah Sareal at PT Madani National Capital based on agreement credit no. 58 dated 13 February 2017 which was carried out by the owner old land ie Djong Tjie Phin, where guarantee the No is known party Tjiu Hamidi as owner new , so on problem the culminate in happening dispute . Then problem the same thing happened in the case Decision Number 1012/ Pdt.G / 2019/ PN.Jkt.Brt , where on building use rights certificate Number 3719/ Kelurahan South Kedoya ,

done loading right dependent based on Deed Granting Mortgage Rights Number 331/2014, which is carried out by parties who do not entitled, ie Halim Sanusi who is the old owner over building use rights certificate Number 3719/ Kelurahan South Kedoya, which is done without to my knowledge owner new on building use rights certificate Number 3719/ Kelurahan Kedoya Selatan namely Soenardi Tantonono.

One side, if seen from perspective validity regulated agreements in Article 1320 Criminal Code, Agreement guarantee must agreed by the parties in agreement. Criminal Code Article 1320 explains condition legitimate something agreement namely; 1) Agreed those who tie himself; 2) Proficiency For make something engagement; 3) a matter certain, and 4) a lawful reason.

Agreed in something agreement is something the circumstances show will second split party each other accept One each other about main points from agreement held. With exists agreed, then agreement That has there, since moment That agreement tie second split parties and can carried out. One side Because credit given by banks is risky, then in the implementation of the bank must also notice principles healthy credit. Connection creditors and debtors are built on base contract or agreement. Agreement the must fulfil condition legit arranged agreement in Article 1320 Criminal Code Legit agreement neither is it can violate decency. According to Constitution Number 10 of 1998 concerning change on Constitution Number 7 of 1992 concerning banking state that in agreement credit must use guarantee that the agreement the No risky so Already naturally if made guarantee should on Name debtor.

From the description the above, got is known that researcher in study This want discuss about Legal Consequences of Transfer of Ownership of Land Rights Made Without the Owner's Approval of the Certificate of Utilization Rights of Buildings Encumbered with Liability Rights.

RESEARCH METHODS

In this study, researchers used the Normative Juridical Law Type Research method, namely legal research that emphasizes secondary data in research and examines the principles of positive law originating from library data.

The research approach used in this study include:

- a. Approach legislation (*statute approach*), namely approach taken with study all regulation related laws and regulations with issue discussed law.
- b. Approach Conceptual (*Conceptual Approach*) is approach in study the law provides corner view analysis settlement problem in study law seen from aspect concepts the law behind it, or even can seen from contained values in normalization A regulation relation with the concepts used.
- c. Approach Analytical (*Analytical Approach*) is analysis to material law For know meaning contained by the terms used in regulation legislation in a manner conceptual, all at once know its application in practices and decisions law.
- d. Approach case (*case approach*), where approach Case (*Case Approach*) is approach in study law normative researchers try build argument law in perspective case happening concrete in the field

In study this, researcher using secondary data in research. Secondary data is the bibliographical data in it contain material law, that is material primary laws, materials law secondary and materials law tertiary. The secondary data in research This consists from:

- a. Primary Legal Materials
 - 1) Amendments to the 1945 Constitution fourth

- 2) Civil Law Code _
- 3) Constitution Number 5 of 1960 concerning Trees Agrarian
- 4) Constitution Number 4 of 1996 concerning Mortgage Rights
- 5) Regulation Government Number 37 of 1998 concerning Regulation Position Official Maker Land Deed
- 6) Regulation Government Number 24 of 2016 concerning Changes to Regulations Government Number 37 of 1998 concerning Regulation Position Official Maker Land Deed

b. Secondary Legal Materials

Material composed law _ from all publication about law which is not is documents official as material the law provides explanation about material primary law , like design law , draft regulation area , results research , results work from circles existing laws _ its relevance with problem studied law . _

c. Tertiary Legal Materials

Material the law provides instruction nor explanation to material primary and tertiary law , eg dictionary , encyclopedia , index cumulative , and so on , throughout have relevance with appropriate research _ with title Legal Certainty Against Imposition of Mortgage Rights on Land .

Collection ingredients law done with method identify and inventory rule law positive , research material library (books , journals scientific reports _ results research), and sources material law other relevant _ with problem studied law . _ Ingredients existing law _ collected , next classification , selection and confirmation No contrary One each other, for make it easy analysis and construction .

1.3.5. Legal Material Analysis Techniques

The analytical technique used in study This among them are :

a. Interpretation grammatical

Some call it as interpretation interpretation based on grammar or knowledge language (*de grammaticale of taalkundige interpretatie*). Interpreter try find the meaning of a word, term , phrase , or sentence law with method connect text it's on the use of grammar or usage everyday .

b. Interpretation historical

Interpretation This based on history formation something formula law or legislation (*wethistorie interpretatie*). Interpreter see atmosphere How Formerly something legislation formed , incl investigate system law and politics the law behind it birth something legislation .

c. Interpretation systematic

Study to systematic law can carried out by law certain or law recorded . The goal is For stage identification to notions , main / basic in law , that is public law , subject law , rights and obligations , events law , relationship law and object law .

d. Interpretation teleological

Interpretation teleological often merged with interpretation sociological . This happen If meaning something Constitution set based on objective societal . Interpretation teleological can interpreted something text law Still apply but Already obsolete , no in accordance Again For applied to in current events and needs .

Discussion

1. Analysis of the Legal Consequences of Transfer Ownership of Land Rights Without Agreement Owner To Certificate of Building Use Rights Encumbered with Mortgage Rights

About theory certainty law , in study This used theory certainty law put forward by Gustav Von Radburch , which stated certainty the law " *that law should be certain, that it could not be interpreted and applied in one way today and in another tomorrow, in one way here and in another way there .* " must sure , that That No can interpreted and applied in One method day this and with another way tomorrow , in One way here and with _ another way there). So that certainty law according to Gustav has meaning demands law , that is , in order to be law become positive in a valid sense with sure , as well No deviate from objective For protect every individual in order to arrange What just do and do n't can done , and vice versa deed What course that is prohibited in any order individual the protected from arbitrariness government . As for the formula element from certainty law according to Gustav Radburch are :

On discussion This want discussed about How consequence law from happening diversion ownership right on land without agreement owner to certificate right To use burdened building _ right dependents , where to be example case in discussion study This is regarding loading right dependent to certificate right To use building , carried out by parties who do not right , because certificate right To use building made _ object guarantee in loading right dependent the published in a manner oppose law and or disabled administration . As for theory the law used For analyze problem the is theory consequence law used in study This For analyze formula problem first to discuss about consequence law diversion ownership right on land without agreement owner to certificate right To use buildings burdened with Mortgage Rights , where in study This theory used _ in connection with formula problem above is theory consequence proposed law _ Soeroso .

In example case Decision Number 554 K/TUN/2020, the previous one has disconnected with decision Number 170/G/2019/PTUNJKT., and Decision Number 165/B/2020/PT. TUN. JKT. in case the is known there is transition exercised rights _ without agreement from real owner _ that is party Rumeisa Suryodiningrat , where Rumeisa Suryadiningrat feel No Once divert right on Certificate No. 2828/ Menteng to Adi Ssitiwarih , however without agreement from Rumeisa Suryodiningrat , Adi Sasitiwarih's party has flip Name Certificate No. 2828/ Menteng on Name Adi Sasitiwarih 's side through agreement together November 24 2019 which was legalized by a Notary Sumarindang , which contains that plaintiff agreed about land and buildings on Jalan Teuku Ms Ditiro No. 58 Central Jakarta is designated for Adi Sasitiwarih . However , plaintiff No Once feel present before _ Notary Public Sumarindang , and signed document mentioned . _

On the Joint Decision Then is known that the National Land Agency issued SHGB Number No. 4343/ Menteng on the name Adi Ssitiwarih , and by Adi Ssitiwarih SHGB Number No. 4343/ Menteng the Then made collateral right dependent on the Bank PT. Bank QNB Indonesia based on Mortgage No. 4190/2015. So that party Rumeisa Suryadiningrat feel aggrieved and filed lawsuit on problem , and on the Decision Number 554 K/TUN/2020, parties Rumeisa Suryadiningrat win case Where assembly judge then state null and void SHGB Number No. 4343/ Menteng , and ordered to the Central Jakarta Land Office for revoke the Mortgage Number 4190/2015 rank I (first) with the holder of Mortgage Rights PT Bank QNB Indonesia, because proven SHGB Number No. 4343/ Menteng published with disabled law , so right dependent Not even number 4190/2015 own strength law .

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done loading right dependent based on Deed Granting Mortgage Rights Number 331/2014, which is carried out by parties who do not entitled, ie Halim Sanusi who is the old owner over building use rights certificate Number 3719/ Kelurahan South Kedoya, which is done without to my knowledge owner new on building use rights certificate Number 3719/ Kelurahan Kedoya Selatan namely Soenardi Tantonno.

Regarding transition right Subekti explain Acquisition rights, usually happen Because transfer right in a manner special or one by one from a to others, for example Because sell buy, gift, exchange and so on. This named acquisition based on a "*bijzondere title*." But there are also gains rights in a manner general, with No use details one by one. it _ happened to one inheritance or marriage with mixing riches (*boedelmenging*). A heir get whole or part from all right si died. A married wife _ in mixing riches obtain half h of all rights her husband. In matter This bunch right somebody move "*en bloc*" to a other. Acquisition This named something income based _ an "*algemene title*."

According to Subekti in BW system, available governing system _ something transfer right consists over two parts. First something "*obligatory overeenkomst*" and second something "*zakelijke overeenkomst*." That is meant with the first, that is each purposeful agreement _ move right it, for example agreement sell buy or exchange, while the second, i.e transfer right That alone. In connection This is important is legitimate reversal Name in matter sell buy things that don't move That depending on legal or No legit agreement obligatoir, or must looked at regardless from *obligatoir overeenkomst* it. Question this is important for parties _ third, because There is possibility something agreement sell buy one _ day canceled Because apparently people who have sell thing already _ submitted No entitled sell object it, meanwhile object That perhaps has for sale more continued by si buyer.

In today's world, that's all that matters is the very last way mentioned it, that is " submission (leveraging)". Word submission has two meanings. First form of action submission power mere ("*feitelijke levering*"). Second deed purpose law _ move right owned by to others ("*jurische levering*"). Two senses the appear in transfer right owned by on things that don't move, because transfer This No Enough held with transfer power mere, but must also be made something letter submission (" deed of van transport") which must be quoted in the list of deeds. On the contrary, against moving object _ second deed the has become one, because according to law, against moving object _ this is normal levering form submission from hand to hands. How importance consequence understanding about the " submission ". appear If We compare BW system with Civil Code system regarding problem this. According to the Civil Code, in matter sell buy, rights owned by move at the moment agreement sell buy That closed, meanwhile according to a BW system agreement sell buy not yet move right owned, without the act of "leveraging," ie For moving object _ submission from hand to hands and for things that don't move citing " van transport deed " in the eigendom register, which is called " back name. It is also known that the land already has HGB Certificate No. 4343/Menteng as proof of ownership of Adi Ssitiwarrah where the HGB Certificate No. 4343/Menteng is HGB Certificate No. 2828/Menteng and Measurement Letter No. 1289 Year 1981, on behalf of Meester Mohamad Roem.

Based on his history of ownership, Meester Mohamad Roem has Meester Mohamad Roem's wife named Markisah Dahlia Mohamad Roem, Meester Mohamad Roem's 2 children named Roemoso Roem and Rumeisa Roem (Plaintiff), then Meester Mohamad Roem died on September 23, 1983 and left heirs Markisah Dahlia Mohamad Roem, Roemoso Roem and Rumeisa Roem.

It was later discovered that Roemoso Roem was married to Adi Sasitiwarrah (intervention defendant), but on March 6 1993 Markisah Dahlia Mohamad Roem died and Roemoso Roem died on January 31 2009, and after Roemoso Roem's death, HGB Certificate No. 2828/Menteng was controlled by Adi Ssitiwarrah without the knowledge of Rumeisa Roem (Plaintiff) as one of the heirs of Mohamad Roem and Markisah Dahlia Mohamad

Roem, and reversed the name of the HGB Certificate No. 2828/Menteng later became HGB Certificate No. 4343/Menteng on behalf of Adi Sasitawarih by falsifying a letter in the form of a Joint Agreement dated November 24 2010 which was legalized by Notary Sumarindang, while it is known that the joint decree was made without the approval of Rumeisa Roem (Plaintiff), and the distribution of inheritance between Rumeisa has not been determined Roem (Plaintiff) and Adi Sasitawarih.

So that in Decision Number 554 K/TUN/2020, which was previously decided by decision Number 170/G/2019/PTUNJKT., and Decision Number 165/B/2020/PT. TUN. JKT. in this case it is known that there was a transfer of rights that was carried out without the consent of the actual owner, namely Rumeisa Suryodiningrat, where Rumeisa Suryodiningrat felt that she had never transferred her rights to Certificate No. 2828/Menteng to Adi Sasitawarih, but without the approval of Rumeisa Suryodiningrat, Adi Sasitawarih has reversed the name of Certificate No. 2828/Menteng on behalf of Adi Sasitawarih through a joint agreement dated November 24 2019 which was legalized by Notary Sumarindang, which stated that the plaintiffs agreed that the land and building on Jalan Teuku Cik Ditiro No. 58 Central Jakarta were intended for Adi Sasitawarih. However, the plaintiff never felt present before Notary Sumarindang, and signed the documents mentioned. Based on the Joint Decree, it was later discovered that the National Land Agency issued SHGB Number No. 4343/Menteng in the name of Adi Sasitawarih, and by Adi Sasitawarih SHGB Number No. 4343/Menteng is then used as collateral for mortgage rights at Bank PT. Bank QNB Indonesia based on Mortgage No. 4190/2015. So that Rumeisa Suryodiningrat felt disadvantaged and filed a lawsuit over the problem, and in Decision Number 554 K/TUN/2020, Rumeisa Suryodiningrat won the case where the panel of judges later declared SHGB Number No. 4343/Menteng, and ordered the Central Jakarta Land Office to revoke Mortgage Right Number 4190/2015 rank I (first) with the Mortgage holder PT Bank QNB Indonesia, because it was proven SHGB Number No. 4343/Menteng was issued with legal defects, so that the mortgage right No. 4190/2015 has no legal force.

It is known that the judge's considerations in examining this case were that the decision on the object of the dispute was issued on the basis of a mutual agreement which was never made by the Plaintiff and was declared defective, and the legal actions of the Land Office conflicted with Article 42 of Government Regulation Number 24 of 1997 concerning Land Registration.

From the description the if connected with theory consequence law put forward by Soeroso previously Where elements is birth , change or disappearance something circumstances law , where consequence law real from it was cancelled HGB certificate No. _ 4343/ Menteng on Name Adi Sasiwarih based on Decision Number 554 K/TUN/2020 of course cause the cancellation also Mortgage No. 4190/2015 made by PT. Bank QNB Indonesia based on Adi Sasitawarih , and as as a result HGB Certificate No. 2828/ Menteng on Name Meester Mohamad Roem return happen and be owned by from Rumeisa Suryodiningrat (Rumeisa Roem) the truth is expert inheritance legitimate from Meester Mohamad Roem and Adi Sasitawarih as expert inheritance from Roemoso Roem (late husband _ from Adi Sasitawarih) with provision HGB Certificate No. 2828/ Menteng must shared in accordance provision heir trusted and used by each party .

Then related element consequence proposed law _ Soeroso that is birth , change or disappearance something connection law , between two or more subject law , where the rights and obligations one party _ face to face with rights and obligations party else , is known with it was cancelled HGB certificate No. _ 4343/ Menteng on Adi Sasitawarih 's name based on Decision Number 554 K/TUN/2020 of course cause connection law between Adi Sasitawarih and PT. Bank QNB Indonesia also disappeared /deleted, because object Mortgage No. _ 4190/2015 ie HGB certificate No. _ 4343/ Menteng stated null and void and no own strength law so that Mortgage Certificate No. _ 4190/2015 as well automatic considered deleted or No apply , with provision debt

receivables between Adi Sasitawarih and PT. Bank QNB Indonesia does not delete it like that course , because PT . Bank QNB Indonesia still can submit lawsuit deed oppose law based on Article 1365 of the Criminal Code , as well as submit criminal proceedings report Because using Fake Letters in accordance Article 263 of the Criminal Code to Adi Sasitawarih 's side For can obtain change make a loss Because use HGB certificate No. _ 4343/ Menteng which is known results from deed oppose the law that was carried out by Adi Sasitawarih . Furthermore related element theory consequence proposed law _ Soeroso that is birth penalty if done counter action _ law Where deed Adi Ssitawarih who registered come back Name HGB Certificate No. 2828/ Menteng become HGB certificate No. _ 4343/ Menteng on Adi Sasitawarih 's name with falsify letter in the form of a Joint Agreement dated 24 November 2010 which was legalized by a Notary Sumarindang without agreement Rumeisa Suryodiningrat (Rumeisa Roem) the truth is expert inheritance legitimate from Meester Mohamad Roem or owner original from HGB Certificate No. 2828/ Menteng so that exists penalty form repeal HGB certificate No. _ 4343/ Menteng on Adi Sasitawarih 's name Already fulfil element consequence law put forward by Soeroso .

So that based on description the on basically known _ consequence law diversion ownership right on land without agreement owner to Encumbered Building Use Right Certificate right responsibility by those who are not owner original , got filed cancellation on certificate right To use building in the district court as well as in the state administrative court , and with it was cancelled certificate right To use building those by then will no result either validity certificate right binding liability _ Building use rights certificate such , because to object Building use rights certificate the stated No apply or No Once there .

2 Analysis of Legal Certainty on Certificates Granting Mortgage Rights Which Object stated Cancel By Internal Law Decision Court

On discussion study this is what you want discussed certainty law on Certificate Granting Mortgage Rights whose object stated null and void in decision court , where because that was discussed related with decision court then it is used For analyze problem the use theory certainty law of Jan Michiel Otto for analyze and answer legal certainty _ Certificate Granting Mortgage Rights whose object stated null and void in Decision Court , where in his theory Jan Michiel Otto explained certainty law explained more dimension juridical , which Jan Michiel Otto defines certainty law as following :

- a.Available the rules are clear , clear , consistent , as well easy obtained or accessed , and published as well as recognized by the state,
- b.agency government apply rule law the in a manner consistent and also subject and obedient to the rules law the ,
- c.Inhabitant in a manner principle adapt behavior they to rule law the ,
- d.Independent and non-independent judicial judges side , capable apply rule law the in a manner consistent when finish dispute law , and
- e.Judicial decision in a manner concrete carried out .

Theory Certainty law compiled by Jan Michiel Otto based on exists view will possibility No its functioning law as should be inside practice which is problem seriously , fine for ordinary people nor ruler . Most people in developing countries in life daily must face worry and uncertainty about what are they experience nor still _ will they face . Worry and uncertainty This regarding with guarantee safety and sustainability source livelihood ,

protection security property , land , house and family from self them . The law there is not (able to) function as net possible safeguards _ dependable If circumstances emergency appears .

Draft certainty law according to Hans Kelsen , there is in perspective court must answer No only about facts , but also questions about law , done with determine is norm generally applied _ is valid which means question is norm the has made with specified way _ constitution . Function court This stand out specifically when there is doubt is deed the defendant or defendant truly is something delict _ Court must determine existence norm the it seems like determine existence existence delict _ Function determine existence norm generally applied by the courts implicate importance function interpretation norm such , ie determine meaning .

More continued Jan Michiel Otto explaining that for party ruler absence system effective law _ is constraint main for development and implementation policy proposed development . _ Failure function law become barrier main obstacle _ success implementation and achievement objective policy development . The law after all proven absolute needed For ensure success almost all development programs most important : security , growth economy , equity , democratization , management environment . Each conversation about and formulation policy in the end will culminating in an appeal , even demands developed new formal mechanisms and structures . If that all it turns out Then No works , then what happened _ is We dotted reject from very no position profitable and in the end We only perpetuate behind . Reason No its effective law own reasons juridical and nonjuridical . Practitioners _ or carrier law in developing countries , remember exists incompleteness sources law , often experience difficulty seek and find rule which law should be apply in something situation concrete . More Jan Michiel Otto continued to explain that the more Good a rule of law works , then the more tall level certainty law real . On the contrary when a country is not own system working law _ in a manner autonomous , then small level too certainty law . Regardless from any (developing) country to be focus study , then government nor public will quick return face to face with question tree such as : to what extent or at what level What can found certainty law real .

From explanation elements certainty law above , is known _ there is a number of point important For analyze problem related with in part discussion this , ie about There is or nope rule law related gift right responsibility , return process Name in right on ground , cancellation certificate right on ground , as well as the body or institution that has authority in publish certificate right on land nor cancel certificate right on ground .

Related gift right responsibility , is known from description before , on the law positive in Indonesia, rights dependent arranged in Constitution Number 4 of 1996 concerning Mortgage Rights , where related right dependent covers deed gift right mortgage and Mortgage Certificate , where _ based on Article 1 point 5 of the Law Number 4 of 1996 concerning Mortgage , " Deed Granting Mortgage Rights is PPAT deed containing granting of Mortgage Rights to creditor certain as guarantee For repayment accounts receivable ." As for the Mortgage Certificate issued by the Land Office based on provision Article 14 paragraph 1 of the Law Number 4 of 1996 concerning Mortgage , which states that , " As sign proof existence of Mortgage , Land Office publish Mortgage certificate _ in accordance with applicable laws and regulations . "

In case dispute in the field land in Indonesia basically there are two institutions competent court _ For examine , try and decide matter , where if there is dispute ownership right on land , then the agency/ institution proper judiciary _ For examine , try and decide case is Justice general , meanwhile For problem exists disabled administration nor deed oppose law in publishing certificate right on ground , then body or institution proper judiciary _ examine , try and decide case is State Administrative Court , matters outside authority state administrative court to be authority Justice general For get it done , from second institution Justice the often used at the same time and the decision was sometimes not in line , difference decision the no can interpreted that one _ among them nothing wrong, but both of them walk in accordance with their respective functions ,

the state administrative court assesses publishing object dispute based on formal procedural (object assessment is action TUN officials), meanwhile Justice general evaluate substance until to truth material (object assessment is connection law people with land).

The State Administrative Court is one competent court in Indonesia For handle dispute related with decision state administration officials in the field land , besides Justice general . Based on Constitution Number 5 of 1986 as has been amended by law Number 9 of 2004 concerning State Administrative Court (which has renewed by law Number 51 of 2009 concerning Justice State Administrative Court), State Administrative Court was held For face possibility emergence clash interests , disputes , or dispute between agencies or State Administrative Officer with inhabitant society . Constitution Justice State Administration give 2 types method settlement dispute State Administration ie effort administration to solve Still in environment administration government Alone as well as through lawsuit to State Administrative Court (later abbreviated become PTUN). Power environmental justice _ State Administrative Court in Constitution Justice State Administration carried out by the State Administrative Court and the State Administrative High Court culminating in the Supreme Court . State Administrative High Court basically is court level of appeal against disputes that have decided by the State Administrative Court , unless in dispute authority judge between State Administrative Courts in the regions the law as well as dispute against him has used effort administrative . The procedural law used in the State Administrative Court has equality with procedural law used in the Court General For case Civil , with differences in which State Administrative Court Judges play a role more active in the trial process To use obtain truth material and not like in case lawsuit civil , lawsuit State Administration No means postpone implemented something Disputed State Administrative Decisions .

In State Administrative Court , someone can submit lawsuit to policy trusted government _ has harm individual and or society . subject or there are 2 parties to a lawsuit in the State Administrative Court , namely , parties plaintiff , that is somebody or Civil Law Entities who feel interests harmed with issuance of a State Administrative Decree (KTUN) by the Agency or State Administrative Officers , as well Party Defendant , namely the Agency or State Administrative Officials who issue Decisions based on existing authority _ to him or delegated _ to him . In Invite Invite Number 9 of 2004 concerning Change on Constitution Number 5 of 1986 concerning State Administrative Court (Amendment State Administrative Court Act), parties third No can Again do intervene and enter to in something dispute State Administration .

Basically , ownership disputes are the jurisdiction of the District Court where the Defendant is domiciled or where the object of the dispute is located (Article 118 HIR), even though the dispute is related to the product of a State Administrative Officer . If the National Land Agency as Co-Defendant in a district court decision that has permanent legal force (*inkracht*) does not implement the contents of the civil case's district court decision, then the negligent act of such State Administrative officials can become the object of dispute from the jurisdiction of the State Administrative Court itself .

The difference is in the object of the case, the object of the case at the State Administrative Court is clear in Article 1 number 3 jo. Article 3 of Law Number 5 of 1985 is a State Administrative Decree. State Administrative Decisions can be canceled if they are flawed and or contrary to the applicable laws and regulations and contrary to the general principles of good governance. The legal requirements for State Administrative Decisions are on authority, substance, procedures. If there is a defect in the authority, substance and procedure for issuing a State Administrative decision, the State Administration decision is invalid and can be cancelled. Whereas in the District Court, it is generally known that there are 2 types of lawsuits if there are civil disputes, namely default and unlawful acts (PMH). In civil disputes in district courts, the object is not directly on the certificate, but on actions that cause harm to other parties by the appearance of the certificate,

meaning that the focus is on the actions of the party against the law which is used as the basis for issuing the certificate.

From this description, it can be seen that the district court has no authority to declare the certificate of land rights invalid and/or cancel the certificate of land rights, if the case involves issues of administrative defects in the issuance of certificates issued by the Land Office because this is the authority of the State Administrative Court. . In practice, to get around this, the parties in the petitum lawsuit usually ask the panel of judges to order the National Land Agency and or the Head of the Land Office to revoke and or cancel land rights.

So based on the description above, it can be seen that if the certificate issued on land or the certificate on mortgage rights issued by the Land Office is formally/procedurally flawed by the issuer of the land title certificate, namely the Land Office, then the dispute is the authority of the administrative court. state, but if the dispute is purely caused by an ownership dispute, the authority to examine the dispute is the authority of the district court.

In the case example, Decision Number 554 K/TUN/2020, which was previously decided by Decision Number 170/G/2019/PTUNJKT., and Decision Number 165/B/2020/PT. TUN. JKT. in this case it is known that there was a transfer of rights that was carried out without the consent of the actual owner, namely Rumeisa Suryodiningrat, where Rumeisa Suryodiningrat felt that she had never transferred her rights to Certificate No. 2828/Menteng to Adi Sasitawarih, but without the approval of Rumeisa Suryodiningrat, Adi Sasitawarih has reversed the name of Certificate No. 2828/Menteng on behalf of Adi Ssitawarih through a joint agreement dated November 24 2019 which was legalized by Notary Sumarindang, which stated that the plaintiffs agreed that the land and building on Jalan Teuku Cik Ditiro No. 58 Central Jakarta were intended for Adi Sasitawarih. However, the plaintiff never felt present before Notary Sumarindang, and signed the documents mentioned. Regarding the legal rules regarding the granting of mortgage rights, the process of transfer of title in land rights, as previously described, it is known that the legal rules regarding the granting of mortgage rights have provisions in Law Number 4 of 1996 concerning Mortgage Rights, the process of transferring names in land rights in particular regarding building use rights are clearly regulated in the provisions of Article 35 to Article 40 of Law Number 5 of 1960 concerning Agrarian Principles, while regarding the authority to issue certificates of land rights or cancel land rights certificates, it is regulated in Government Regulation Number 24 of 1997 concerning Land Registration which has been renewed by Government Regulation Number 18 of 2021, while the authority of the state administrative court in canceling land rights certificates also has provisions although not specifically stated, there are provisions in Article 1 point 5 and Article 47 of the Law Law Number 5 Years 1986 concerning the State Administrative Court which has been renewed by Law Number 51 of 2009 concerning the State Administrative Court. So that the cancellation of the HGB certificate No. 4343/Menteng in the name of Adi Ssitawarih based on Decision Number 554 K/TUN/2020 has legal certainty, but as a result legal certainty for Mortgage certificate No. 4190/2015 is also deleted and or lost due to the cancellation of HGB certificate No. 4343/Menteng on behalf of Adi Ssitawarih who is the object of collateral in the Mortgage certificate No. 4190/2015.

From this description it can be seen that the legal certainty over the Mortgage Granting Certificate whose object is declared null and void in a court decision, becomes deleted and or lost because the collateral object, namely land rights certificates in the form of building use rights certificates which are declared null and void, automatically has an impact on the invalidity of the certificate of encumbrance.

CONCLUSION

Consequence law diversion ownership right on land without agreement owner to Encumbered Building Use Right Certificate right responsibility by those who are not owner original , based on theory consequence law Soeroso can filed cancellation on certificate right To use building in the district court as well as in the state administrative court , and with it was cancelled certificate right To use building those by then will no result either validity certificate right binding liability _ Building use rights certificate such , because to object Building use rights certificate the stated No apply or No Once there .

Based on theory certainty Jan Michelle Otto's law , certainty law on Certificate Granting Mortgage Rights whose object stated null and void in decision court , be remove and or is lost Because object guarantee that is certificate right on land form certificate right To use specified building _ null and void , legally automatic impact on no validity certificate gift right dependent .

Suggestion

It is recommended that in the future , divide party office land , before publishing certificate gift right dependents , as well in a return process Name on certificate right on land which is object heir , to be sure do and publish come back Name certificate which is results from an inheritance process , to be sure especially formerly completeness documents , and authenticity documents that are return process _ Name through inheritance , as well ensure that desired land _ behind Name the certificate the To use avoid happening dispute nor cancellation to certificate that has behind Name such , as well to Certificate Granting Mortgage Rights issued by the Land Office .

It is recommended that the Notary and or PPAT as well before legalize related Joint Decrees inheritance as well as make deed gift right responsibility , so that also do checking to status object _ treasure inheritance the To use avoid happening adverse disputes _ party debtor , creditor nor party third still _ own right on status land _ unfinished inheritance _ divided .

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