



Registration of Transfer of Joint Ownership of Land Rights After Divorce

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ABSTRACT

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The maintenance of land registration data has been regulated in statutory regulations, among others regulating the transfer of land rights that occur by law in the form of inheritance. Of all the HAT transfer registrations, there is no regulation regarding the registration of the land rights transfer jointly owned by the divorced husband and wife. A husband and wife bought a plot of land and registered it in the husband's name, then they divorced and agreed that the land would become part of the wife. The question arises what are the effects of divorce on assets and how is the procedure for registering the transfer of land rights between husband and wife who are divorced from land rights belonging to them together? Thus, this study aims to discuss the effects of divorce on assets and to find out how to register the transfer of land rights between husband and wife who are divorced. This type of normative legal research, with primary, secondary and tertiary legal materials, uses statutory and case approaches. Legal material is analyzed by legal analogy construction with deductive thinking method. The results obtained show that first the wife's name is recorded in the certificate, then an APHB is made by the Land Deed Officials and registered at the Land Office so that the certificate is written in the name of the wife.

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1. INTRODUCTION

Legal certainty is obtained through statutory regulations that are still valid (positive law) and regarding land registration is regulated in Article 19 paragraph (1) of Law Number 5 of 1960 concerning Basic Agrarian Regulations, which determines:

"In order to ensure legal certainty by the Government, land registration is carried out throughout the territory of the Republic of Indonesia according to the provisions stipulated by Government Regulations."

Regarding land registration it is regulated in Government Regulation Number 24 of 1997 concerning Land Registration (PP No. 24 of 1997) which is stipulated in Article 37 paragraph (1), that the transfer of land rights and ownership rights to apartment units except through an auction can only be opened if proven by a deed drawn up by the Land Deed Officials. Furthermore, Article 38 paragraph (2) determines: The form, content and method of making Land Deed Officials deeds are

regulated by the Minister.

The Ministerial Regulation referred to is the Regulation of the State Minister for 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 (PMNA/KBPN No. 3 of 1997) as amended by Regulation of the Head of the National Land Agency Number 8 of 2012 (Perkaban No. 8 of 2012), which was amended again by the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 7 of 2019 concerning the Second Amendment to the Regulation of the Minister of State Agraria/Head of the National Land Agency Number 3 of 1997 regarding Provisions for Implementation of Government Regulation Number 24 of 1997 concerning Land Registration (Permen ATR/KBPN No. 7 of 2019) and finally amended by Regulation of

the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 16 of 2021 concerning Amendments to the Three Regulations of the Minister of State Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Provisions for Implementing Government Regulation Number 24 of 1997 concerning Land Registration (Permen ATR/KBPN No. 16 Th 2021). Regarding the forms of deeds used by the Land Deed Officials, it is regulated in Article 96 Perkaban No. 8 of 2012, namely: sale and purchase, swaps, grants, settlements into companies, exchanges, distribution of joint rights, granting mortgage rights, granting building use rights / usufructuary rights over private land, and power of attorney imposing mortgage rights. In the Perkaban there are no provisions governing the deed that must be made on land that is jointly owned by the husband and wife after the breakup of the marriage due to divorce.

A husband and wife have been married for ten years, and five years ago they bought land wrapped in the husband's name (the land certificate is written on the name), for one reason or another they divorced. After the legal divorce, they came to the Land Deed Officials to transfer the land rights mentioned above to the wife's name. The question arises: what should the land deed officials do with this problem? To answer this, it is necessary to examine the effects of marriage and divorce on assets, and the procedures for registering land, so that answers can be obtained regarding what deed must be made in the cases of husband and wife mentioned above. Appe, et al (2021) discuss the legal protection of the wife's rights to land as a dowry in marriage. Agraida (2022) discusses the juridical analysis of the settlement of gono gini assets through a mediation process. Putri & Tamsil (2012) which discusses the Supreme Court decision No. 3180 K/PDT/2019 regarding the sale and purchase of joint assets that have not been shared before the officials making the temporary land deeds (land deed officials). Based on this explanation, this study aims to discuss the consequences of divorce on assets and to find out how to register HAT transition between husband and wife who are divorced. The delivery of the promissory note does not transfer the rights proven by the document.

To transfer a claim in the name, a deed for the transfer of receivables in the name, commonly referred to as a cession deed in

doctrine and jurisprudence, is required. Through cession, ownership rights are transferred, and with the creation of the cession deed, the transfer (levering) of the rights in the name is completed. The receivables referred to in Article 613 of the Civil Code are the right to claim arising from the legal relationship of borrowing and lending money from the credit facility provided by a bank as the creditor to its debtor. These receivables or claims arising from borrowing and lending money or from the provision of bank credit facilities can be assigned to a third party through cession.

According to Prof. Dr. Kholidin, SH, M. Hum, CN, cession is not technically considered a form of collateral, but in banking practice, it is included as one of the new forms of collateral. In the banking sector, cession is regarded as a way to transfer collateral goods to settle certain debts, such as deposits, savings, and third-party claims. For example, a bank provides a loan to a customer (debtor) with a deposit certificate as collateral, accompanied by an authorization letter for withdrawal. If the debtor fails to repay the loan as agreed, the bank can liquidate the deposit certificate to settle the debtor's debt along with the interest.

Prof. Kholidin believes that treating cession as a new form of collateral is not right, because a cession is actually a transfer of bills, the procedure for which has been regulated by law. Yangin (2016) discuss about the legal analysis of the transfer of receivables (cession) to third parties according to article 613 of the civil code. Hamier (2022) discuss about the legal protection of debtors in the transfer of receivables (Cession) to third parties without notification to debtors on household load credit (KPR). Padmasari (2012) discuss about legal protection for parties in the transfer of receivables (Cession) through a notary deed. Tenritata (2022) discuss about legal certainty related to the transfer of receivables (Cession) in the practice of home ownership credit judging from the civil code. The purpose of this research is to determine the forms of debt transfer.

2. RESEARCH METHOD

This research is a normative legal research, specifically examining the registration of land rights jointly owned by husband and wife after a divorce. Because it is normative legal research, primary, secondary and tertiary legal materials are used, using a statutory approach. Legal material is analyzed using statutory

interpretation, with a deductive thinking method.

3. RESULTS AND DISCUSSION

3.1. Consequences of Divorce on Assets

3.1.1 Dissolution of marriage due to divorce
According to the Ministry of National Education (2008), divorce means separation or division, or a matter of divorce between husband and wife. According to Charlie Rudyat, divorce in Dutch is called *gescheiden* is the termination of a husband and wife relationship with all its legal consequences (Rudyat, 2013). In this case, divorce means dissolution of marriage and divorce means matters or matters relating to the dissolution of marriage (Poerwadarminta, 1999).

Concerning the breakup of a marriage, it is regulated in Article 38 of the UUP, as follows:

Marriages can break up because:

1. death,
2. divorce and
3. on the decision of the Court.

Regarding the dissolution of a marriage, it is also regulated in Article 199 of the Civil Code, as follows:

The marriage broke up.

- 1e. Because of death;
- 2e. Due to the absence of the husband or wife, for ten years, followed by the wife/husband's new marriage in accordance with the provisions in the fifth part of chapter eighteen;
- 3e. Because the Judge's decision after the separation of tables and beds and the recording of the statement of dissolution of marriage in that decision in the register of civil records, in accordance with the provisions of the second part of this chapter;
- 4e. Because divorce is in accordance with the provisions in the third part of this chapter.

Thus, what is meant by the dissolution of a marriage due to divorce in this case is the dissolution of a marriage due to divorce as stipulated in Article 38 letter b UUP.

3.1.2 Position of joint property after divorce

After the breakup of a marriage due to divorce, legal consequences arise for the family's assets. According to Hilman Hadikusuma (2003):

If the breakup of the marriage is due to divorce, then the consequences for the marital assets are as follows:

- a. the property of the husband or wife returns to the party who brought it into the marriage.
- b. the husband or wife's own income

assets return to those who produce them.

- c. livelihood assets and gifts during the wedding ceremony are divided between the husband and wife according to the local community's sense of justice.

If you read carefully part of letter c above, there is a clause 'divided between husband and wife according to a sense of justice'. A sense of justice will be achieved if rights and obligations are received equally, meaning that everyone will get rights in accordance with the obligations he has carried out. Based on this idea, assets and gifts during the wedding ceremony are divided equally between the husband and wife, or divided by the husband and wife in half.

According to Article 97 of the Compilation of Islamic Law contained in Presidential Instruction No. 1 of 1991, determines:

Divorced widows or widowers each have the right to half of the joint property as long as it is not specified otherwise in the marriage agreement.

Article 128 of the first paragraph of the Civil Code determines:

"After the dissolution of the union, the assets of the union are divided in half between the husband and wife, or between their respective heirs, regardless of which party the goods were obtained from".

From all of this, both customary law, Islamic law and civil law determine that after the dissolution of a marriage, the joint property is divided in half between the husband and wife.

3.2. Land Registration

3.2.1 Maintenance of Land Registration Data
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 parcels and housing units. flats, including the issuance of certificates of proof of title for land parcels that already have rights and ownership rights to flats units as well as certain rights that burden them. Thus, determined Article 1 point 1 PP No. 24 of 1997. Furthermore, Article 2 determines that the principles of land registration are: simple, safe, affordable, up-to-date and open. Regarding the objectives regulated in Article 3, namely to

provide legal certainty, provide information, and to carry out orderly land administration.

The implementation of land registration includes land registration activities for the first time and maintenance of land registration data (Article 11 PP 24 of 1997). Land registration for the first time is a land registration activity carried out on land objects that have not been registered, while maintenance of land registration data is a land registration activity to adjust physical and juridical data in registration maps, land registers, name lists, measurement letters, land books, and certificate with subsequent changes. Thus, determined Article 1 number 9 and number 12 PP No. 24 of 1997.

Land that has not been registered means land that has not been certified, while land that has been registered is land that has been certified. The object of this research is the land whose certificate is written in the husband's name, meaning land that has been certified.

Considering that the object of this research is land that has been certified, it is part of the maintenance of land registration data regulated in Article 36 PP No. 24 of 1997 as follows:

- (1) Maintenance of land registration data is carried out if there is a change in the physical data or juridical data of registered land registration objects.
- (2) The rights holder concerned is obligated to register the changes as referred to in paragraph (1) to the Land Office.

Changes to physical data as well as juridical data according to the provisions above must be registered at the Land Office. Physical data is information regarding the location, boundaries and area of registered land parcels and apartment units, including information regarding the existence of buildings or parts of buildings on them (Article 1 number 6 PP No. 24 of 1997), while juridical data is information regarding legal status plots of land and apartment units that are registered, the rights holders and the rights of other parties and other burdens that burden them (Article 1 number 7 PP 24 of 1997). Thus if what has changed is the location, boundaries and area of the land parcel, then it is a change in physical data, whereas if what has changed is for example the owner (originally belonging to one person became owned by two people, or originally owned by person A became owned by person B), then what changes is the juridical data.

Changes in juridical data including due to transfer of rights except through an auction can

only be registered if proven by a land deed officials, but in certain circumstances the Head of the Land Office can register transfers of rights over land parcels of ownership carried out between individual Indonesian citizens as evidenced by a deed that was not made land deed officials, thus determined Article 37 paragraph (1) and (2) PP 24 of 1997, Article 38 paragraph (2) stipulates: The form, content and method of making LAND DEED OFFICIALS deeds are regulated by the Minister.

The provisions in Article 37 above are regarding the transfer of land rights that occur due to legal actions, or commonly called legal events that occur due to certain legal actions. In addition, PP No. 24 of 1997 also regulates registration procedures that cause changes in juridical data due to legal events that occur by law, namely in terms of inheritance, as regulated in Article 42, as follows:

- (1) For the registration of the transfer of rights due to inheritance regarding land parcels with registered rights and ownership rights to apartment units as required according to the provisions referred to in Article 36, it must be submitted by those who receive the land rights or ownership rights to the apartment units that are concerned as inheritance to the Land Office, certificate of rights concerned, death certificate of the person whose name is recorded as the holder of the right and proof of being the heir.
- (2) If the land parcels which are inherited are registered, the documents referred to in Article 39 paragraph (1) letter b must also be submitted.
- (3) If the recipient of the inheritance consists of one person, the registration of the transfer of rights is carried out to that person based on a letter of evidence as an heir as referred to in paragraph (1).
- (4) If the recipient of the inheritance is more than one person and at the time the transfer of rights is registered accompanied by a deed of distribution of inheritance which contains information that the right to land or the right to ownership of a certain apartment unit belongs to a certain recipient of the inheritance, the registration of the transfer of rights to land or rights the ownership of the apartment unit is carried out to the recipient of the inheritance concerned based on the certificate of proof of inheritance and the deed of distribution of inheritance.
- (5) Inheritance in the form of land rights or ownership rights to flats which according to the deed of distribution of inheritance must be shared jointly between several inheritors or when the inheritance distribution deed has not been registered, the transfer of rights is registered to the

heirs who are entitled as their joint rights based on certificate of proof as an heir and/or deed of distribution of the inheritance.

From this provision it can be observed that to register the transfer of rights due to inheritance, it is sufficient to be equipped with a letter of proof as an expert or commonly called a certificate of inheritance. With the provision that if the heir is only one person, the registration is carried out on that person, if the heirs are more than one person and will be divided according to their respective rights, then what is attached besides the certificate of inheritance is also the deed of inheritance distribution. With the provisions of paragraph (5) above, it means that administratively, all heirs are registered in advance, so that the names of all heirs are listed on the certificate, so that according to civil law and administrative law, the land is joint property of all heirs. After that it is divided (the physical data changes) and the juridical data also changes according to their respective parts based on the deed of inheritance distribution (Budiono, 2016). Based on the provisions of Article 42 paragraph (5) PP No. 24 of 1997, to carry out the division of jointly owned land, the HAT certificate must first include the names of all parties who will divide it, then a deed of distribution of joint rights is drawn up in accordance with the rights of each share listed in the deed.

Based on the description above, it can be observed that for heirs consisting of more than one person and they intend to share the inheritance, there are two legal events, the first is a legal event that occurs by law (inheritance) and the second is a legal event that occurs due to a legal act. certain (shared rights) (Satrio, 1992). The distribution of joint rights is an agreement that occurs based on the agreement of the heirs. This agreement based on the agreement of the heirs is a certain legal action.

3.2.2 Registration of Transfer of Land Rights Due to Divorce

Given the provisions of Article 38 paragraph (2) PP No. 24 of 1997 which stipulates that the form, content and method of making PPAT deeds are regulated by the Minister, PMNA/KBPN No. 3 of 1997, as amended by Perkaban No. 8 of 2012. The provisions related to this research are contained in Article 94 paragraph (2) letter b and letter g PMNA/KBPN No. 3 of 1997, namely the transfer of rights due to inheritance and distribution of joint rights.

The transfer of rights due to inheritance is registered at the Land Office by attaching the letters as stipulated in Article 111 paragraph (1)

letter c of Permen ATR/KBPN No. 16 of 2021, namely a letter of proof as heirs, with the provision that if the heirs are more than one person and there is no distribution of inheritance, then the registration is carried out for the heirs as joint ownership {Article 111 paragraph (4)}, while regarding the distribution of rights jointly registered with the Land Office based on: Court decision or decision of the judge/chairman of the Court or deed regarding the distribution of inheritance {paragraph (2)}, the deed of inheritance distribution can be drawn up in the form of a private deed by all heirs witnessed by two witnesses or by notarial deed {paragraph (3)}, but also PPAT deed specified in Article 95 paragraph (1) letter e PMNA/KBPN NO. 3 of 1997 in the form of Deed of Distribution of Joint Rights in the form stipulated in Article 96 paragraph (1) letter e Perkaban No. 8 of 2012 in the form of a Deed of Sharing of Joint Rights in conjunction with paragraph (4) in which the PPAT conducts the preparation and drawing up of the deed, with the sanctions as stipulated in paragraph (5) "The Head of the Land Office refuses the registration of a PPAT deed that does not comply with the provisions stipulated in paragraph (1))".

The assets acquired by the husband and wife during the marriage by law are joint assets even though they are registered in the name of only one of the parties and when the marriage breaks up due to divorce, the joint property by law ends. At the end of the joint property, they must then share it fairly, that is, it must be divided equally.

The division will be easy if the joint property is entirely in the form of cash, it will be difficult if the joint property is in the form of a piece of land whose certificate is written in the name of the husband, even though they agree that the land is part of the wife.

A plot of land acquired while the marriage is still ongoing and the marriage does not make a marriage agreement, even though the certificate is written in the name of the husband, according to the law the land is jointly owned by the husband and wife. Administratively, the land certificate is written in the name of the husband, but according to civil law, it is jointly owned by the husband and wife. After the divorce, the joint property also ends and must be divided in half by the husband and wife. In the distribution of joint assets, it has been agreed that one of the joint assets in the form of a plot of land becomes the right of the wife, even though the certificate is written in the name of the husband.

Article 42 PP 24 of 1997 concerning the transfer

of HAT due to inheritance, it is sufficient to prove it with a certificate of inheritance (legal events that occur by law) and Article 111 paragraph (1) letter c Permen ATR/KBPN No. 16 of 2021 concerning Applications for Registration of Transfer of HAT or Ownership Rights to Flat Units submitted by heirs or their proxies by attaching a letter of proof as heirs, after the certificate is written in the names of all heirs and the heirs will divide it, an APHB must be made in the form privately or made before a PPAT (a legal event that occurs due to certain legal actions). By using the legal expansion interpretation method, namely the definition of heirs is required and the husband and wife are considered as heirs so that they own goods or objects together. Based on the method of interpreting the extension of the law, it can be analyzed as follows: when a marriage is broken up due to divorce, then by law the joint property between the husband and wife ends. This means that the termination of joint property occurs by law and therefore registration can be used in a manner similar to that used in registering the transfer of rights due to inheritance, namely by attaching a certificate of inheritance, whereas in the case of a divorce the 'certificate of inheritance' is replaced with a Divorce Certificate. After registering the wife's name, the HAT certificate is written in the name of the husband and wife, then the APHB is made underhand or made before the PPAT.

In this regard, what can be done by husband and wife in terms of registering the transfer of rights to jointly owned land after the marriage is broken up due to divorce in the case of a written certificate in the name of the husband while they agree that the land is part of the wife, are:

1. Submit an application to the Head of the Land Office to register the wife's name on the HAT certificate by attaching, among other things, an application letter from the husband and wife concerned and a Divorce Certificate, so that the HAT certificate is written in the names of the husband and wife; Things like this can be done by the Head of the Land Office based on Article 37 paragraph (2) PP No. 24 of 1997, which determines:
"In certain circumstances as determined by the Minister, the Head of the Land Office can register the transfer of rights over a parcel of freehold land, which is carried out between individual Indonesian citizens as evidenced by a deed not drawn up by the PPAT but which according to the Head of the Land Office is deemed sufficient. to register the transfer of rights in question".

2. After the HAT certificate is written in the names of the husband and wife, so that the HAT, both civil law and administrative law, becomes joint property, then they make the APHB privately or ask the PPAT to make the APHB which contains the land which is distributed to and belongs to the person wife, then the APHB made privately or made before the PPAT is registered at the Land Office, and based on the APHB the Head of the Land Office then crosses out the names of the husband and wife who were previously recorded in the Land Book and their HAT Certificate, at the same time registering the wife's name in the Land Book and her HAT Certificate.

4. CONCLUSION

Based on the description above, the conclusion is the land acquired during the course of the marriage by law is joint property of the husband and wife even though the certificate is only registered in the name of the husband and the joint property by law ends when the marriage is dissolved/broken due to divorce. Registration of land rights whose certificate is written in the name of the husband but after the divorce is agreed to become the property of the wife can be done by first recording the wife's name in the certificate by:

1. Husband and wife jointly submit an application to the Head of the Land Office to register the wife's name on the HAT certificate, so that the HAT certificate is written in the names of the husband and wife.
2. After the HAT certificate is written in the name of the husband and wife, then the APHB is made before the PPAT and registered at the Land Office so that the certificate is written in the name of the wife only.

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