

OWNERSHIP RIGHTS TRANSFER OF OFFICIAL RESIDENCE LAND

Bintang Ulya Kharisma
Universitas PGRI Madiun
bintangulyakharisma@gmail.com

Abstract

In a legal state, land has a very important role in human life. It can determine the existence and the sustainability of legal actions. In its development, the government or private sector companies provide Official Residences to their employees, or what may be called a state house. Based on the law, the Official Residence is a building owned by the state, and functions as a residence or a dwelling. It serves as a developmental facility for families and supports the job implementation of officials and/or government employees. The humans' need for land as a place of dwelling may cause conflicts regarding the provision of the Official Residence. The method used in this research is the juridical-normative method. It uses secondary data. The ownership rights transfer of the Official Residence to private sectors may happen without violation of the constitution, as it is regulated in the Presidential Decree No. 11 of 2008 which states that the tenant may own the Official Residence with some conditions. For example, the house must be an Official Residence Group III. The rightful tenant must file a request to its related Department. Then, the tenant and the related department create a Lease Agreement. After the tenant settles the debt, he/she may own the house.

Keywords : *Official Residence, Transfer of Land Rights, Lease Agreement*

A. INTRODUCTION

There is a strong relation between human beings and land. This cannot be separated from where the human beings live, stay, and work, so that they may live their lives. Land is one of the natural resources which is very close to the rights of individuals, where each individual need that land in order to fulfill his/her basic needs, for example to build a place of sanctuary, to manage it and create income, etc.¹

Because there is a strong connection between human beings and land, and because of the wide land area in Indonesia, there needs to be a special regulation to regulate this relation. This is because there tends to be problems which lead to conflicts regarding land and humans. This has happened since a long time ago, and is

¹ Ali Ahmad Chomzah, *Hukum Pertanahan*, (Jakarta, Prestasi Pustaka, 2002), hal. 1

still going on until now. The main legal basis of land management in Indonesia is Article 33 clause (3) of the 1945 Constitution, which states that:

“Land, water, natural resources, and what is contained in it is under the control of the state, and is used maximally for the welfare of the people.”

The interest of the Indonesian people regarding land, water, natural resources, and other branches of vital production is transformed into the interest of the state so long as the aim is to achieve welfare for the people. Then, the constitutional stipulations on the rights to control the state is stated in all the constitutional regulations in Indonesia.² In the legal sense, Wantijk Saleh stated that land has a crucial role in the life of the human beings. This is because it may determine the existence and the sustainability of the legal relations and actions, both individually and socially, as it may bring impact to others.³ In its development, human beings choose their place of residence which is close to where they work. Some governmental institutions and private businesses give privilege to some of their employees in the form of a state house or an official residence. The employees may stay there and it is proximate to the institution or the office where they work in. The state house or in which will be referred to official residence hereafter, is built on a state land. The resident is given a Land Right in the form of Usage Rights or Management Rights by the state.

There are some definitions regarding the State Land according to some constitutional regulations, which are described as follows:

- a. According to the Republic of Indonesia’s Governmental Decree No. 8 of 1953 regarding the Management of State Land Article 1 letter a, “The state land is a land which is fully controlled by the state.”
- b. According to the Republic of Indonesia’s Governmental Decree No. 24 of 1997 regarding the Land Registration Article 1 number 3, the State Land or the land which is directly controlled by the state is the land which cannot be owned with a right of land.

² Afifah Kusumadaru, *PERKEMBANGAN HAK NEGARA ATAS TANAH: HAK MENGUASAI ATAU HAK MEMILIKI?*

³ K. Wantijk Saleh, 1982, *Hak anda atas tanah*, Ghalia Indonesia, Jakarta. Hal.7.

Then, the Presidential Decree No. 11 of 2008 regarding the Procedures of procurement, status determination, status transfer, and right transfer of the official residence states that what is meant by the Official Residence is a building which is owned by the state and functions as a residence, or a dwelling, and is a facility of family development and also to support the job implementation of officials and/or Government Employees. Meanwhile, according to the Decree of the Ministry of National Education No. 76 of 2008 regarding the Management of the Official Residence in the Environment of the National Education Department, the Official Residence is a building owned by the state, which functions as a residence or a dwelling, and is a facility of family development, and also to support the job implementation of officials and/or Government Employees. There are three groups of Official Residences, which are as follows:

1. Official Residence Group I is the Official Residence which is used by officials with certain positions and because of the positions' character, they must stay in that house. The usage right of that house is limited, and may be used so long as the official still hold that position.
2. Official Residence Group II is the Official Residence which has a non-separable connection with an institution and is only provided to be used by the state officials. If the state officials do not work anymore or are retired, the house is given back to the state.
3. Official Residence Group III is the Official Residence which is not part of Group I and Group II, and may be sold to the residents.

Yet, in its implementation, there are often cases which emerge regarding the eviction of some lecturers from housing complexes in some universities. It makes the families of the lecturers confused and disappointed as they feel that they have stayed in that house for a long time. They have fulfilled their obligations such as paying rent, paying taxes, and they refer to the decrees of former rectors. As what is mentioned by some news published by Tempo.co on July 23, 2009,⁴

⁴ "Mantan Dosen UPI Terancam Diusir dari Rumah Dinas" . Diterbitkan oleh Tempo.co pada Kamis, 23 Juli 2009

“Maruli Situmeang, one of the attorneys of the ex-lecturers stated that the IKIP ex-lecturers has given the attorney to the Posbakum-DPC IKADIN Bandung in the case similar to Alwi’s in which there are 38 people. They live in official residences based on some Rector Decrees which have been issued at least since 1978 until 1986. “Based on these decrees, the residents are permitted to stay in those official residences until they die, including the widow and the widower,” said Maruli.

Or in the case of the University of Gajah Mada’s Faculty of Engineering lecturer, who stated that,⁵

“We have a house certificate, we have paid tax since a long time ago, and it has been legalized by the Sleman Court,” said Pradipto, who has stayed in house No. 2 of the Lecturer Housing Complex of University of Gajah Mada’s Faculty of Engineering.

From the two cases above, it is evident that there is a vacuum of law for certain periods which results to legal uncertainty for both parties.

B. RESEARCH METHODS

The type of legal method used to analyze legal issues in this research is the juridical-normative research method. It is a study on legal principles, legal concepts as positive norms. The data used to answer the legal issue research problem identification in this research are secondary data through literature review.

C. DISCUSSION

The eviction of lecturer families by the University of Education Indonesia (Universitas Pendidikan Indonesia/UPI) to lecturer families does not actually violate the Decree of the Ministry of National Education No. 76 of 2008, as in the seventh article of that regulation, it is stated that the right for residence may end because of:

- a. retirement;

⁵ “Eksekusi 4 Rumah Dinas Dosen UGM Dibatalkan . Diterbitkan oleh Republica.co.id pada Kamis 27 Oct 2011

- b. death;
- c. mutation outside of the area or to other institutions;
- d. resignation due to their own will;
- e. dismissal from work both with honor or without;
- f. handing over the usage rights to the Department; or
- g. the license of residence is revoked.

The resident may propose a transfer of the Official Residence Ownership Rights. What is meant by the official residence ownership rights is that every sale of Official Residence Group III which stands by itself and/or in the form of a flat cluster with or without the land to the residents are in the form of lease. Because of that, the residents must make sure that the Official Residence in which they live in is included as an Official Residence Group III. Because, it is the only group in which the status becomes the Right of Ownership. Yet, there are other two criteria which makes it impossible to get the Rights transferred in an Official Residence Group III:

- 1. The Official Residence Group III is still in a dispute, or
- 2. The Official Residence Group III is in the form of a flat, which does not yet have a resident association.

The transfer of the Official Residence status to the Right of Ownership is regulated on Article 17 of the Decree of the Ministry of National Education No. 76 of 2008, which states that:

- (1) The transfer of rights of an Official Residence Group III is in the power of the Ministry of General Labor.
- (2) The proposal for the transfer of rights of an Official Residence Group III is given by the rightful resident to the Ministry of General Labor, with a copy given to the Minister.
- (3) The proposal for the transfer of rights of an Official Residence Group III as mentioned in clause (2) must obtain legalization from the General Secretary of the Department in the name of the Minister.
- (4) The price of the transferred Official Residence Group III and its land is determined as at least 90% (ninety percent) of the normal market price and which does not bring loss to the state.

In Article 17 clause 1, it is stated that the rights transfer of the Official Residence is in the power of the Ministry of General Labor. Because of that, the Decree of the Ministry of Labor No. 22 of 2008 must be fulfilled. Requirements of the residents who may propose the rights transfer of the Official Residence are regulated in the Decree of the Ministry of Labor No. 22 of 2008.

(1) Requirements of residents who may propose the rights transfer of an Official Residence Group III are as follows:

a. Government employee:

1. has worked for at least 10 (ten) years;
2. owns a valid Residence Permit;
3. has not bought or obtained any land/house facilities from the state based on the constitutional regulations which apply.

b. Retired government employee:

1. receives pensions from the state;
2. owns a valid Residence Permit;
3. has not bought or obtained any land/house facilities from the state based on the constitutional regulations which apply.

c. Widow/widower of a government employee:

1. still has the right to receive retirement benefits from the state, in which:
 - a) the deceased husband/wife has worked for the government for at least 10 (ten) years; or
 - b) the work period of the deceased husband/wife, added with the period in which he/she becomes widow/widower equals to at least 10 (ten) years.
2. owns a valid Residence Permit;
3. has not bought or obtained any land/house facilities from the state based on the constitutional regulations which apply.

d. Widow/widower of war veterans, in which his/her husband/wife was determined as a hero based on the constitutional regulations which apply:

1. still has the right to receive retirement benefits from the state, in which:
2. owns a valid Residence Permit;
3. has not bought or obtained any land/house facilities from the state based on the constitutional regulations which apply.

e. State official or widow/widower of a state official:

1. still has the right to receive retirement benefits from the state, in which:
2. owns a valid Residence Permit;
3. has not bought or obtained any land/house facilities from the state based on the constitutional regulations which apply.

(2) If the residents of the Official Residence as mentioned in clause (1) die, thus the proposal for rights transfer of the Official Residence may be given by their legitimate child.

(3) If the employee/resident mentioned in clause (2) dies without children, the Official Residence will be given back to the State.

The rights transfer of an Official Residence from the State's Control to the Residents may happen through a Lease Agreement, not a Trade Agreement. This may be seen from the stipulations of the Presidential Decree No. 11/2008 Article 14 clause (1).

“The minister or state official who is appointed to undergo the Ownership Rights Transfer of the Official Residence and has signed the Official Residence Group III lease agreement letter in the name of the Republic of Indonesia’s government.”

This regulation on the Lease Agreement is mentioned in Article 1 of the Decree of the Ministry of Trade and Cooperatives No. 34/KP/II/1980 which states that the lease (hire purchase) is the renting and buying of goods, where the seller undergoes good sales by calculating every payment given by the buyer as a repayment of the goods' price which has been agreed upon and is bound by an agreement.⁶ Then, the rights of that item is transferred from the seller to the buyer after the total amount has been payed by the buyer to the seller. In the lease agreement, the ownership status of the item may only be transferred from the landlord to the tenant after the total amount has been fully paid.

Then, the appointed Minister or state official gives the decree of the house ownership transfer of rights and the land ownership transfer of rights which stands by itself or which is in the form of a flat to the residents who have fully paid the price of

⁶ keputusan Menteri Perdagangan dan Koperasi Nomor 34/KP/II/1980

that house and that land according to the lease agreement. The resident who has received the decree of the house ownership transfer of rights and the land ownership transfer of rights which stands by itself or which is in the form of a flat must propose the rights to receive a certificate of the land ownership rights to the Land Office based on the stipulations of the constitutional regulations. Then, the Minister submits the list of the Official Residence Group III in which its house and land ownership rights has been transferred to the Ministry of Finance, so that it may be eliminated from the list of things owned by the state.

D. CLOSING

1. Conclusion

The Official Residence transfer of rights may be carried out, but only for that which is included in the Official Residence Group III. It must not be in a dispute and must not be in the form of a flat which does not yet have an association of residence. The proposal for Official Residence Right transfer may be submitted by the legal subjects which are regulated in the constitution, such as: A Government Official, the wife/husband and/or children of the aforementioned person. The Official Residence transfer of rights may be carried out through a lease agreement, not a trade agreement. In a lease agreement, the buyer pays installments for a certain period of time, the minimum is 5 years, and the maximum is 20. After the total amount has been paid, the Ministry of General Labor will submit the decree of the house and land rights transfer so that the residents may submit the proposal of rights to obtain the land ownership rights to the local Land Office.

2. Suggestions

There should be an announcement or a socialization to the residents of the official residences regarding the classifications of these state houses. This is because not all residents understand these classifications. The residents of these state houses should understand their rights and obligations. So, if they wish, there may be the transfer of rights of that official residence from the landlord to the tenant. They may come to an agreement, thus there is legal certainty between them. Then, the decrees of the former university officials' regulations regarding the official residences should be revoked. They must now follow the constitutional regulations which currently apply.

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