

Transfer of Land Rights in Company Entry (Inbreng) at the South Jakarta City Land Office

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Abstract

This study aims to understand the phenomenon known as inbreng, which refers to the practice of transferring land rights as income within a firm. The corporation is structured as a limited liability company. The land is the purpose of the company's operations in this scenario. By using a juridical-normative method and statutory and conceptual approach, as well as through a literature review of secondary data, this research found that when it comes to a firm, the procedure of transferring land rights as income can be extremely lengthy and involves multiple steps. Starting from reducing land rights if the land status is private property, based on holding a GMS related to land acquisition, then through appraisal, paying taxes, followed by making a Company Entry Deed by Land Titles Registrar (LTR), ending with the land registration process at the South Jakarta Land Office. So far, the implementation of the transfer of land rights at the South Jakarta Land Office has been carried out in accordance with applicable procedures and regulations.

Keywords: Inbreng, land transfer, limited liability company.



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Introduction

Land is a gift from God (ALLAH), a natural resource that society can use. As an object used to carry out various activities, land is a means of supporting life and realizing community welfare.¹ As an agrarian society in the development process, land ownership rights have become very important for Indonesia's state, nation, and people. However, the limited availability of land is proportional to the need for land that must be met.²

As the highest level power organization, the State can grant land to individuals or legal entities with rights based on needs in accordance with their intended use, such as property rights, business use rights, building use rights, and other rights.³ Ownership rights to land can be transferred due to a legal event, such as marriage or death, or other legal events that occur based on the mutual will of the parties whose aim is to transfer ownership rights to land, such as buying and selling, giving or exchanging.⁴

According to juridical law, land rights are transferred in writing with a deed made by an authorized official and then registered at the Regency/City Office. This procedure for transferring rights requires complete formal and material requirements for the legality of transferring land rights.⁵ In terms of transferring land rights, registration of the transfer of rights must be carried out which must be proven by a deed made by an authorized official, namely the Land Deed Making Officer (PPAT) as written in Article 37 Paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration. that the transfer of land rights and ownership rights to apartment units through sale and purchase, exchange, grant, entry into a company and other legal acts of transfer of rights, except the transfer of rights through auction can only be registered if proven by a deed made by the authorized PPAT according to provisions of applicable laws and regulations.⁶

A Limited Liability Company is a legal entity formed from a capital partnership established based on an agreement to run a business with authorized capital, which is divided into shares per the regulations stipulated in Law Number 40 of 2007 concerning Limited Liability Companies. The word "limited" in the context of a limited liability company refers to the responsibility of shareholders, which is limited to the nominal shares owned.⁷

The company aims to make a profit, so it must carry out business activities continuously. To carry out business activities, a large amount of capital is required. Capital is an essential element in carrying out business activities, and it can be obtained from share capital deposits. Article 34 of Law Number 40 of 2007 concerning Limited Liability Companies states that share capital

¹ Nuriyanto Nuriyanto, "Urgensi Reforma Agraria; Menuju Penataan Penggunaan Tanah Yang Berkeadilan Sosial," *Jurnal Rontal Keilmuan Pancasila Dan Kewarganegaraan* 6, no. 1 (April 14, 2020): 29–45, <https://doi.org/10.29100/JR.V6I1.1551>.

² Adrian Sutedi, *Peralihan Hak Atas Tanah Dan Pendaftarannya* (Jakarta: Sinar Grafika, 2013).

³ Reny Kusumawardani, *Peralihan Hak Milik Atas Tanah Melalui Pemasukan Tanah Dalam Perusahaan Di Kota Padang* (Padang: Universitas Andalas, 2016).

⁴ Kartini Muljadi and Gunawan Widjaja, *Hak-Hak Atas Tanah* (Jakarta: Kencana, 2004).

⁵ Kusumawardani, *Peralihan Hak Milik Atas Tanah Melalui Pemasukan Tanah Dalam Perusahaan Di Kota Padang*.

⁶ Christiana Sri Murni, "Peralihan Hak Atas Tanah Tanpa Sertifikat," *Lex Librum : Jurnal Ilmu Hukum* 4, no. 2 (2018): 680–92, <https://doi.org/10.46839/LLJIH.V4I2.108>.

⁷ Niru Anita Sinaga, "HAL-HAL POKOK PENDIRIAN PERSEROAN TERBATAS DI INDONESIA," *JURNAL ILMIAH HUKUM DIRGANTARA* 8, no. 2 (November 27, 2018), <https://doi.org/10.35968/JH.V8I2.253>.

deposits can be made in money or other forms. Another form of capital contribution for shares is determined based on the fair value determined in accordance with market prices by experts who have no relationship with the company.⁸

Capital deposits in other forms can be in land and building objects. The importation of land and/or buildings into a company, in this case, a company (inbrenng), transfers land rights from an individual to a company. This rights transfer is a capital investment in shares taken from the company as the company's initial capital. As a result of the land transfer to the company, the land rights become the company's property.⁹

In practice, the land acquisition process does not all run in accordance with applicable legal provisions, as stipulated in the Law on Limited Liability Companies and Government Regulations on Land Registration. Conditions that do not comply with the provisions of this inbrenng then cause problems related to the status of ownership of land rights. Therefore, based on the above background, the author uses the background in this journal article titled " Transfer of Land Rights in Company Entry (Inbrenng) at the South Jakarta City Land Office."

METHOD

This research uses juridical-normative research, namely legal research carried out by examining library legal materials. So, this writing uses a legal approach and a conceptual approach with data sources consisting of primary legal materials, secondary legal materials, and tertiary legal materials. The technique for collecting legal materials used in this research is a literature study of legal materials from primary, secondary, and tertiary legal materials. Literature study collects legal materials, which is carried out through written legal materials by reviewing and studying books, statutory regulations, documents, archival reports, and other research results related to the legal problem or issue being studied. Apart from that, the author also confirmed with the South Jakarta City Land Office to obtain the required information and also conducted interviews with Mr. Agung Iriantoro, S.H., M.Kn., as PPAT, who has directly handled the land entry process in the company (inbrenng) and Mr. Rinto, S.H., as Coordinator of the Substance Group for Maintenance of Land Rights, Space and PPAT Development at the South Jakarta Land Office.

RESULT AND DISCUSSION

A limited liability company (from now on referred to as PT) is explained in Article 1 Paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies as a legal entity in the form of a capital partnership, which is established based on an agreement, by carrying out business activities with authorized capital divided into shares and fulfilling requirements that have been established by law and its implementing regulations.

In establishing a PT, it is known that there are several types of capital, namely core or authorized capital, idle capital, and paid-in capital. Core capital is the entire value or total of

⁸ Widya Harnisa, Nyulistiowati Suryanti, and Betty Rubiati, "STATUS HAK ATAS TANAH YANG DIJADIKAN MODAL PERSEROAN TERBATAS TANPA PENDAFTARAN PERALIHAN HAK ATAS TANAH," *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan* 1, no. 2 (June 29, 2018): 175-86.

⁹ Aini Halim, "Analisis Yuridis Pengenaan Bea Perolehan Hak Atas Tanah Dan Bangunan (Bphtb) Atas Inbrenng Pendirian Perseroan Terbatas," *Premise Law Journal* 14 (2015): 14136.

shares in establishing a PT based on the PT UUPT, which must be written and stated in the PT's Articles of Association. The company's core capital in the form of a PT requires it to be separated from the personal assets of the founder of the PT.¹⁰ A PT cannot be established if it does not meet the minimum capital requirements. This is intended so that when the PT is founded, it at least has capital.

In Article 7 paragraph (2) Law no. 40 of 2007 concerning PT states that in establishing a PT, each founder is obliged to take a share of shares when the PT is founded so that when the founders go to the notary to make a deed of establishment of the PT, each founder has taken a share of PT shares. Capital deposits made by PT founders use cash, but this does not rule out the possibility of capital deposits using other forms, such as objects/goods that can be valued in money and received by PT in real terms. This aims to provide capital to the PT and separate it from the personal wealth of the Company's founders. This other form of deposit is called "inbreng".¹¹ Land deposit or inbreng is the transfer of land rights to PT. This transfer is a form of capital participation in shares taken from the PT as the initial capital of the PT. In this way, this inbreng process has the legal consequence of making the land the property of the Company and making the shares equal to the land income compensation by the capital value of the land paid in.

Running a business in the form of a PT has its challenges, and it is not uncommon to experience various kinds of problems caused by many factors. Financial factors are not spared from the problems experienced by the PT. Regulations on PT capital are contained in Article 34 of Law No. 40 of 2007 as follows:

1. Payments for share capital can be made in money and/or other forms.
2. If the share capital payment is made in another form, as intended in paragraph (1), the valuation of the share capital payment is determined based on the fair value determined in accordance with market prices or by experts who are not affiliated with the Company.
3. The deposit of shares in the form of immovable objects must be announced in 1 (one) newspaper or more within 14 (fourteen) days after the deed of establishment is signed or after the GMS decides on the deposit of the shares.

As written above, in developing its business, PT can add capital by paying in share capital. This capital deposit can be made with money or in other forms other than money, which, in this case, is land. Including capital other than money in company income certainly has a different process from including capital with money. Suppose capital is paid in the form of land. In that case, the capital contribution assessment is determined based on fair value, with a value determined in accordance with market prices carried out by an appraiser who is not affiliated with the company.^{12s}

¹⁰ I Gusti Ayu Manik Maharani, Desak Gde Dwi Arini, and Luh Putu Suryani, "Pengaturan Jumlah Minimal Modal Dasar Pada Pendirian Perseroan Terbatas," *Jurnal Konstruksi Hukum* 1, no. 2 (October 28, 2020): 320–24, <https://doi.org/10.22225/JKH.2.1.2561.320-324>.

¹¹ Halim, "Analisis Yuridis Pengenaan Bea Perolehan Hak Atas Tanah Dan Bangunan (Bphtb) Atas Inbreng Pendirian Perseroan Terbatas."

¹² Harnisa, Suryanti, and Rubiati, "STATUS HAK ATAS TANAH YANG DIJADIKAN MODAL PERSEROAN TERBATAS TANPA PENDAFTARAN PERALIHAN HAK ATAS TANAH."

With the long process of turning land into investment capital, the role of the Land Deed Making Officer (from now on referred to as LTR) is not spared in this process. Article 1 Paragraph (1) of Government Regulation Number 37 of 1998 explains that LTR is a public official who is given the authority to make authentic deeds regarding certain legal acts regarding land rights or ownership rights to apartment units.

According to PPAT Dr. Agung Iriantoro, S.H., MH., the role of LTR is vital in the inbrenng process in limited liability companies, including:

1. LTR shall make a Deed relating to shareholder approval of the land acquisition process, either in the form of a Deed of Statement of Shareholders' Meeting Resolutions (PKR) or a Deed of Statement of Shareholders' Decisions (PKPS) taken outside the meeting which contains:
 - a. Inbrenng Approval
 - b. Approval of the number of share conversion results from the inbrenng
 - c. Changes in the composition and number of shares.
2. LTR's role is to do an inbrenng deed based on the results of the shareholder's decision, which is notarized before LTR (PKR and PKPS deed), then LTR registers it at the National Land Agency office to transfer the name to the name of the company.

In acquiring land, specific requirements must be met by the Owner of the land rights. The land acquisition requirements that need to be prepared include:

1. Land owner's consent to inbrenng, in the form of:
 - a. Owner's data and identity according to the certificate
 - b. Consent of husband and wife (if individual)
 - c. Company data and identity if the land is in the name of the Company.
2. Shareholder approval for land acquisition (notarized in the PPAT PKR/PKPS deed).
3. Freehold land must be reduced to Building Use Rights (HGB) or Business Use Rights (HGU).
4. Data and identity of the PT receiving the land transfer.
5. Inbrenng tax settlement process (BPHTB and Final Pph).
6. Signing of the Inbrenng Deed before LTR.
7. The land is not in dispute.

The land transfer process can be carried out from individual and legal entity land rights. It's just that if the land used for inbrenng is private property with proof of an Ownership Certificate, it must first go through a process of reducing the rights to become a Building Use Rights Certificate (SHGB) or a Business Use Rights Certificate (SHGU) after which the land inbrenng process will continue further. However, if the land is used in the name of a legal entity, there is no need for a reduction process because the legal entity is only entitled to Building Use Rights (HGB) or Business Use Rights (HGU).

The inbrenng process begins with the release of land rights, where an agreement is reached between the owner of the land rights, whether individual or legal entity and PT. Once the parties agree, a joint deed will be made by decreasing rights. If the reduction of rights has been completed, a Certificate of Ownership Rights (SHM) and Building Use Rights are created to create a deed of the merger so that the inbrenng can be carried out.

After the process of decreasing land rights has been completed (applies to land owned by individuals which have been transferred to Building Use Rights), if the land that will be used as

PT capital is already in the form of Building Use Rights or Business Use Rights, then the rights reduction process can be skipped, and go directly to land entry process in the company, the process is as follows:

1. Handover of land by the founder of PT
2. The land price is assessed by appraisal
3. Announcement in the newspaper
4. Pph and BPHTB payments
5. Making an Inbreng Deed before the LTR
6. Registration and Transfer of Name at the Local Land Office.

Based on the provisions of Article 19 of Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA), Jo. Article 3, letter a Government Regulation Number 24 of 1997 concerning Land Registration, states that land registration aims to:

- a. Providing legal certainty and protection to holders of rights to a plot of land, apartment units, and other registered rights so that they can easily prove they are holders of the rights in question.
- b. Providing information to interested parties, including the Government, so that it is easy to obtain the data needed to carry out legal actions regarding registered plots of land and apartment units
- c. Implementation of orderly land administration.

The issuance of certificates carried out by the Land Office as proof of completion of land registration matters is intended to make it easier for the authorities over land rights to prove that both the person and the legal entity have legal rights to the land. According to Lubis, land title certificates are helpful as a means of proving and guaranteeing the existence of these rights.¹³

It is known that land rights that have been handed over to a company cannot become land ownership rights because the company's status as a legal entity is prohibited from controlling land with Ownership Rights status. For this reason, transferring the right to land income is not just a transfer of ownership. More than that, the land ownership rights under the company's control must reduce the ownership status to those of other land rights. As is known in Article 4 Paragraph 1, UUPA business entities (in this case, PT) can have land rights. Still, as a legal entity, PT is not included in the opportunity to have Ownership Rights but can be given Building Use Rights.¹⁴

The inbreng process is not free from obstacles that occur, which cause the inbreng process not to run smoothly and take longer – sourced from Notary and LTR Dr. Agung Iriantoro, S.H., M.H. and several LTRs who have directly handled the inbreng process revealed in interviews that including land as inbreng capital is not as easy as including capital in the form of money. With the market value of land constantly changing every year, the process is quite time-consuming; many stages must be gone through and involve related parties with costs that must be incurred

¹³ Lisnadia Nur Avivah, Sutaryono Sutaryono, and Dwi Wulan Titik Andari Andari, "Pentingnya Pendaftaran Tanah Untuk Pertama Kali Dalam Rangka Perlindungan Hukum Kepemilikan Sertifikat Tanah," *Tunas Agraria* 5, no. 3 (September 5, 2022): 197–210, <https://doi.org/10.31292/jta.v5i3.186>.

¹⁴ Idrus Maulana Chatib et al., "SERTIPIKAT HAK MILIK YANG DIAKUI SEBAGAI ASET PERSEROAN TERBATAS DAN MENJADI JAMINAN HUTANG," *Repertorium: Jurnal Ilmiah Hukum Kenotariatan* 0, no. 0 (November 29, 2019): 127–41, <https://doi.org/10.28946/RPT.V0I0.389>.

as payment for the services used, such as appraisal, Notary, and LTR fees to lower the title. Land and tax costs that must be incurred.

The condition of the land also changes. Suppose you previously had land rights in the form of ownership rights. In that case, they must be changed to building use rights (HGB) or business use rights (HGU), where land with building use rights certificates (SHGB) has a period of 30 (thirty)) Years, which can be extended for 20 (twenty) years, and land with a Business Use Rights Certificate (SHGU) with a period of 35 (thirty-five) with an extension period of 25 (twenty-five) years.

According to Mr. Rinto, S.H., the Coordinator of the Substance Group for the Maintenance of Rights to Land, Space and PPAT Development at the South Jakarta Land Office, in an interview, he explained several weaknesses in making the land an object of inbreng. There are several disadvantages to making land an object of company income, including:

- a. The marketability of land depends on location
- b. Land cannot be used as a permanent source of income
- c. There is a possibility that the KPT installments will be rejected
- d. Land investments are illiquid
- e. Risk of “occupation” of vacant land
- f. Legality issues related to initial documents
- g. Requires large capital
- h. Land investment is not for the short-term.

In the implementation of the inbreng process, obstacles often occur that hinder it, causing the transition process to tend to be long and complicated. In terms of the Land Office as a place for land registration, problems that often occur include:

1. Land boundaries. Many landowners often overstep the original boundaries, resulting in a mismatch between the original condition of the land and the existing information.
2. Cost. There are limited costs for the parties because the process is long and requires costs to pay for the services required during the inbreng process.

Because of this, quite a few parties who wanted to invest capital in the form of mudur land did not continue the inbreng process. Other obstacles experienced by LTR in the inbreng process were obstacles in obtaining location permits from the local government due to process requirements from the company that had not been met and obstacles that occurred during land registration at the South Jakarta Land Office in the form of obstacles in searching for land books at the Land Office which lacked human resources (HR), therefore, requires quite a long time for the transition process.

CONCLUSION

This research concludes that when it comes to a firm, the procedure of transferring land rights as income can be extremely lengthy and involves multiple steps. Starting from reducing land rights if the land status is private property, based on holding a GMS related to land acquisition, then through appraisal, paying taxes, followed by making a Company Entry Deed by Land Titles Registrar (LTR), ending with the land registration process at the South Jakarta Land Office. So far, the implementation of the transfer of land rights at the South Jakarta Land Office has been carried out in accordance with applicable procedures and regulations.

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