

Juridical Analysis of the Role of Local Government, Land Office and Notary-PPAT in the Implementation of Land Registration of Indigenous Communities Around the Forest Area to Strengthen People's Sovereignty (Research Study on Land Office in Tanjung Pinang City)

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ABSTRACT

Our National Agrarian Law recognizes the customary rights of customary law communities. As stated in Article 3 of Law Number 5 of 1960 concerning Basic Agrarian Regulations, in order to prevent disputes arising over land, it is necessary to guarantee legal certainty of land rights. With the formulation of the problem: What are the Legal Arrangements, Implementation, Obstacles and Solutions to the role of the local government, land office and Notary-PPAT in carrying out the registration of indigenous peoples' lands around forest areas to uphold people's sovereignty? This type of research is normative in nature to obtain secondary data supported by empirical legal research to obtain primary data. For grand theory using legal certainty theory by John Austin, middle theory using responsive legal theory by Philippe Nonet and Philip Selznick, applied theory using happiness theory by Jeremy Bentham. The results of the study concluded that the land of indigenous peoples around the forest area had not been registered by the local government. To overcome these problems, it is necessary to reform the law in the land sector, especially regarding registration of customary land and protection of communal land, in order to create legal certainty in society, and to strengthen people's sovereignty.

Keyword : Land Registration, Customary Rights, Ministry of People's Sovereignty.

INTRODUCTION

With the existence of the Basic Agrarian Law which was followed up by Government Regulation 24 of 1997 concerning Land Registration, it is no longer possible to issue rights which are subject to the Civil Code or which will be subject to local customary law, unless it is explained that these rights is a customary right. Given the importance of registration of customary land rights as proof of legal ownership of land rights in accordance with Articles 23, 32 and 38 of the Basic Agrarian Law, an obligation is given to registering customary land, especially customary ownership rights.

According to the provisions of Article 31 (Paragraph 1) and (Paragraph 2) of Government Regulation Number 24 of 1997, a certificate is issued on behalf of the holder of the relevant land rights in accordance with the physical data and juridical data registered in the land book, if:

1. In the land book there is no record regarding incomplete juridical data or there is no record regarding physical data and juridical data held;
2. In the land book there are records as mentioned above, but these records have been deleted.

Ulayat land is a parcel of land on which there are customary rights of a particular indigenous people. Ulayat rights are authorities, which according to customary law are owned by customary law communities over certain areas which are the environment of their citizens. One of the authorities intended is to allow the community to take advantage of natural resources, of course in this case it includes taking advantage of the existence of the customary land in the jurisdiction of customary law communities, where the whole utilization activity is intended to continue their survival.

The element of joint ownership is civil in nature but does not mean ownership rights in the juridical sense of "common land of all the people who have united to become the Indonesian Nation". The element of the task of authority is public in nature "to regulate and lead the control and use of the land that is owned". This is reflected in the state's right to control over land. The definition of the state's right to control over land is "juridical control regulated in Article 2 of the Basic Agrarian Law does not give physical control". This also applies to land designated as forest areas. Even though forestry is regulated by Law Number 41 of 1999 concerning Forestry, hereinafter referred to as the Forestry Law.

The Forestry Law only gives forest tenure authority to the state to regulate, administer, matters relating to forests and forest products, determine the status of forest areas and regulate legal subjects with forests and forest products by respecting the rights of indigenous and tribal peoples, this is reflected in Article 4 Forestry Law. The regulation outlines that the government has the authority to regulate, administer, determine forest areas and determine the legal relationship between legal subjects and forests. Parties who do not have a permit to use forest areas, including controlling land in forest areas, are not allowed to use forests. Forest area land ownership should be under the Ministry of Forestry, but in reality there is land control in forest areas controlled by the community. The community considers that land tenure is based on customary law.

The land issue is a very complex matter because it concerns the sector of people's lives, the large number of people, the need for land also increases, even though the area of land in the territory of the Indonesian state that can be controlled by the community is very limited, while the number of people who need land is increasing .

Based on the Circular of the Minister of Forestry Number SE.1/Menhut-II/2013 issued on 16 July 2013 it states that "the release of customary forest from state forest areas can only be carried out by the Ministry of Forestry if there is approval from the local government". This circular letter is considered by legal experts as an effort to maintain state control over customary forests. Apart from that, juridically, there is a legal flaw that the Minister of Forestry through the circular letter does not have the authority to delete words in the law because the legislator only has this authority. forest.

This regulation requires the community to provide official evidence (written) regarding land claims. This regulation shows that the logic of forest control by the state which is declared unilaterally to have the spirit of "verklaring domain" is in fact still being followed by the Ministry of Forestry. In fact, unilateral control of customary land with this kind of system has been declared a violation of the constitution by the Constitutional Court through Decision Number 35/PUU-X/2012MK. These regulations make it difficult for indigenous peoples to obtain constitutional rights over their territories. In short, the regulation is contrary to the spirit contained in the Constitutional Court Decision.

Based on the description of the background, the authors feel interested in discussing more deeply in a scientific work in the form of a thesis with the title "Juridical Analysis of the Role of Local Government, Land Office and Notary-PPAT on the Implementation of Land Registration of Customary Law Communities Around Forest Areas to Strengthen People's Sovereignty (Research Study) at the Tanjungpinang City Land Office)".

LITERATURE SOURCE

Literature sources are one of the right sources or references to be used as references related to the topics or titles that are made. In essence, literary sources play a very important role in conducting analysis of some of the main issues that will be discussed in this journal. For this reason, the authors chose literature sources derived from field studies to obtain primary data and library research to obtain secondary data. In essence, secondary data consists of primary legal materials, secondary legal materials, and tertiary legal materials.

METHODOLOGY AND TYPES OF RESEARCH

In general, the research method is defined as a scientific activity that is planned, structured, systematic and has specific goals, both practical and theoretical. The use of the right methodology is expected to be able to account for the nature of science in an effort to find esoteric truth. Based on the explanation above and integrated with the construction of the problem formulation in this journal, the type of research used is normative legal research conducted by examining literature or secondary data. The legal research is supported by empirical legal research. This empirical legal research has its starting point on primary data obtained directly from the results of direct interviews by conducting field research. For the theoretical basis that serves as an analytical knife to dissect all constructions of the researched problem formulation, among others:

1. First, the writer uses John Austin's grand theory, namely the theory of "Legal Certainty". According to John Austin that the state through a legitimate government whose leader of the government has been given the authority by the people to be leaders and govern.

2. The two authors use the "Responsive legal theory" proposed by Philippe Nonet and Philip Selznick as Middle Theory. According to Philippe Nonet and Philip Selznick, there are three important parts of the concept of responsive law, emphasized in the concept which pays special attention to several variables in the process of forming laws and regulations.

3. Third, to support the theories mentioned above, the author uses Jeremy Bentham's theory "theory utilitarianism" as an Applied Theory. This theory explains that the good and bad of the law must be measured by the good and bad consequences produced by law enforcers.

PROBLEM FORMULATION CONSTRUCTION

Based on the description of the background above, the researcher can formulate the problem to be studied, including the following:

1. What are the legal arrangements regarding the role of the local government, land office and Notary-PPAT in implementing the registration of indigenous peoples' lands around forest areas to uphold people's sovereignty?
2. What is the implementation of the role of the local government, land office and Notary-PPAT in implementing the registration of indigenous peoples' lands around forest areas to uphold people's sovereignty?
3. What factors are the obstacles/obstacles as well as solutions to the role of the local government, land office and Notary-PPAT in implementing the registration of indigenous peoples' lands around forest areas to uphold people's sovereignty?

DISCUSSION

LEGAL ARRANGEMENT OF THE ROLE OF LOCAL GOVERNMENT, LAND OFFICE AND NOTARY-PPAT FOR THE IMPLEMENTATION OF LAND REGISTRATION OF CUSTOMARY LAW COMMUNITIES AROUND FOREST AREAS TO STRENGTHEN PEOPLE'S SOVEREIGNTY

a. Regulating the City Government's Role in Land Registration

Land control by the state is a form of state responsibility in the welfare of the people through the utilization of agrarian resources. The concept is carried out to distribute agrarian resources more fairly so that there is equity in their utilization. Article 18 B paragraph (2) of the 1945 Constitution contains provisions regarding recognition and respect for customary rights which states that the State recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with community development and the principles of the Unitary State of the Republic of Indonesia, regulated by law.

It is possible to control communal land parcels by individuals, both residents and non-customers of customary law communities and legal entities. If customary law community members who control land parcels according to applicable customary law wish, their land rights can be registered according to the provisions of the BAL. For government agencies, legal entities, or individuals who are not members of the customary law community

concerned, control of land parcels with land rights according to the provisions of the BAL can only be granted after the land is released by the customary law community or by its citizens in accordance with customary law provisions and procedures. Ulayat land parcels that have been controlled by individuals or legal entities with certain rights according to the UUPA, or by government agencies, legal entities, individuals obtained according to the procedures that were in effect before the issuance of regional regulations, then the implementation of ulayat rights by the legal community custom is no longer valid. This is intended to provide legal certainty to rights holders or those who acquire land and legally control it. Acquisition is legal if it fulfills material requirements, namely obtained in good faith according to the method agreed upon by the parties, and formal requirements, namely carried out according to the provisions and procedures of the applicable laws and regulations

b. The Role of the Land Agency Office in Land Registration

Land registration throughout the territory of the Republic of Indonesia is carried out by the Indonesian government, in order to regulate the legal relationship between subjects and objects of land parcels. In order to guarantee legal certainty, the government will conduct land registration throughout the territory of the Republic of Indonesia according to the provisions stipulated by government regulations. This is contained in Article 19 paragraph (1) of the UUPA. The implementation of land registration is an instruction given to the government, in this case the National Land Agency, whose implementation lies with the Land Office.

In accordance with the provisions of Article 19 of the Basic Agrarian Law, the organizer of land registration is the government, in this case the National Land Agency. Meanwhile, the Implementation of Land Registration is the Head of the Land Office. In carrying out his duties, the Head of the Land Office is assisted by the Land Deed Making Officer (PPAT) and other officials assigned to carry out certain activities according to PP No. 24 of 1997 and other relevant laws and regulations. For example, drawing up of Provisional PPAT deeds, drawing up of Waqf Pledge Deeds, drafting of a Power of Attorney for Imposing Mortgage Rights (SKMHT) by Notaries, drawing up of Minutes of Auction by Auction Officials, and adjudication in Systematic Land Registration by the Adjudication Committee.

Based on the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 18 of 2019 concerning Procedures for Administering Ulayat Land of Customary Law Community Units, Implementation of Ulayat Rights of Customary Law Community Units over land in its territory as long as it still exists, is carried out by Community Unity According to local customary law, if it meets certain criteria it includes elements of: a) community and customary law institutions; b) the area where the Ulayat Right takes place; c) the relationship, linkage, and dependence of the Customary Law Community Unit with its territory; and d) the authority to jointly regulate the use of land in the area of the customary law community unit concerned, based on customary law that is still valid and obeyed by the community .

Implementation of Community Unitary Ulayat Rights Customary law does not apply to land parcels which at the time of stipulation: were already owned by individuals or legal entities with certain land rights; or b. which have been obtained or released by government agencies, legal entities or individuals in accordance with the provisions of laws and regulations.

Therefore, a form of land registration is required that will be carried out by BPN RI to recognize and protect the land rights of indigenous peoples over their customary and/or customary forest areas. Some of the ideas that have emerged in proposing the recognition of communal land rights include: (1) granting land rights with individual characteristics through the form of certificates, or ratification of a "semi-formal" system of proof of community ownership; (2) provide management rights, management permits, or land use agreements; (3) giving collective ownership or usage rights over land to indigenous peoples; (4) provide recognition of Ulayat Rights (beschikkingrecht).

Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 18 of 2021 concerning Procedures for Determining Management Rights and Land Rights. and/or underground space to control, own, use, and utilize, as well as maintain land, above ground space, and/or underground space. Prior to submitting an application for Management Rights or Land Rights, the Applicant must obtain and control the requested land in accordance with the provisions of laws and regulations as evidenced by the Physical Data and Juridical Data of the land parcel originating from State Land; b. Land Rights; and/or c. state forest area. State land can originate from land stipulated by law or government stipulation; b. Land Reclamation; c. embossed ground; d. land originating from the relinquishment or transfer of rights; e. land originating from forest area release; f. Wasteland; g. Land Rights whose term has expired and no Extension and/or Renewal has been requested; h. Land Rights whose term has ended and due to Central Government policies cannot be extended and/or renewed; and i. land which had previously been classified as State Land. Realizing that the recognition system in Indonesian law is full of obstacles, the various options above have advantages and disadvantages. In addition, the only known form of "legalization" of community land rights by the state is

manifested in the form of "recognition" and "grant", both of which are still vague in nature when confronted with various concepts of community land rights.

c. The Role of Notary -PPAT in Land Registration

Land Deed Making Officials (PPAT) according to article 1 paragraph (1) PP number 37 of 1998 are Public Officials who are authorized to make authentic deeds regarding certain legal actions regarding Land Rights or Ownership Rights over Flats Units. PP No. 37 of 1988 also contains temporary PPAT and special PPAT. A temporary PPAT is a government official appointed because of his position. To carry out the tasks of the PPAT and make deeds in areas where there is not enough PPAT, in this case the sub-district head is appointed. A special PPAT is an official of the National Land Agency who is appointed because of his position to carry out PPAT duties by making certain PPAT deeds, specifically in the context of implementing certain government programs or tasks.

In order to carry out these basic tasks, Article 3 PP No. 37 of 1998 states that the Land Deed Making Official is given the authority to make Authentic Deeds for the 8 (eight) types of legal actions referred to above. Thus it can be concluded that the Official for Making Land Deeds only has the authority to make the 8 (eight) types of deeds mentioned above, outside of the 8 (eight) types of deeds the PPAT is not authorized to make them so it is impossible for the PPAT to be asked to make deed outside the 8 (eight) types the deed.

The purpose of land registration is regulated in Article 19 of the Basic Agrarian Law, namely that land registration is carried out in the framework of guaranteeing legal certainty in the land sector, as in outline has been stated in the introduction. The purpose of land registration as stated in Article 3 of Government Regulation Number 24 of 1997 is:

a. To provide legal certainty and legal protection to rights holders over a parcel of land for an apartment unit and other registered rights so that they can easily prove themselves as the holder of the rights in question.

b. To provide information to interested parties, including the government, so that they can easily obtain the necessary data in carrying out legal actions regarding registered land parcels and apartment units.

c. To carry out orderly land administration. The proper implementation of land registration is the basis and embodiment of orderly administration in the land sector to achieve such administrative order in every plot of land and apartment unit intended for transfer, encumbrance and write-off must be registered..

In the context of land registration, the Government determines officials specifically who are given the authority to make authentic deeds. Irwan Soerdjo argues that there are 3 (three) essential elements in order to fulfill the formal requirements of an authentic deed, namely first in the form determined by law. Both are made by and in the presence of a General Official. And the three deed made by or before the authorized Public Official for that purpose and at the place where the deed was made.

IMPLEMENTATION OF THE ROLE OF LOCAL GOVERNMENT, LAND OFFICE AND NOTARY-PPAT FOR THE IMPLEMENTATION OF LAND REGISTRATION OF INDIGENOUS PEOPLES AROUND FOREST AREAS TO STRENGTHEN

a. City Government in Indigenous Peoples' Land Registration.

UUPA recognizes the existence of customary rights, which is the basis for the issuance of Regulation of the Minister of Agrarian Affairs/Head of BPN Number 5 of 1999 concerning Guidelines for the Settlement of Customary Law Community Rights. The regulation of the Minister of Agrarian Affairs regulates the criteria for whether or not the customary rights of indigenous peoples exist. In this case, the ulayat land is not issued a certificate. In the weighing part of the Ministerial Regulation it is stated that Indonesia's national land law recognizes the existence of customary rights and similar rights from customary law communities, as long as in reality they still exist, as meant in the provisions of Article 3 of the UUPA that in reality at this time in many areas there are still lands land within the customary law community whose management, control and use are based on provisions of local customary law and are recognized by members of the customary law community concerned as their customary land; that recently in various regions various problems have arisen regarding said ulayat right, both regarding its existence and land tenure;

In the ministerial regulation it is regulated in Article 1 paragraph (1) that customary rights and similar rights of customary law communities (hereinafter referred to as customary rights), are the authority which according to customary law belongs to certain customary law communities over certain areas which are the living environment of their citizens to take advantage of natural resources, including land, in the territory, for their survival and life, which arise from an outward and inward relationship that is hereditary and uninterrupted between the customary law community and the area concerned. Ulayat land is the parcel of land on which there are customary rights of a certain customary law community.

b. The Role of the Land Agency Office in the Registration of Indigenous Peoples' Land Around Forest Areas

Recognition of the rights of indigenous peoples is an important thing that needs to be obtained for various purposes. For example, to reduce agrarian conflicts and preserve the environment, besides of course the rights of the people themselves. In this case, the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) continues to make efforts to register customary lands to protect the rights of indigenous peoples. The Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency stated that problems regarding land issues in society would continue to occur if overlapping regulations were not corrected. "This Land Law needs (to be revised). But, if only the Land Law is revised while the Forestry Law is not revised, then it won't work either," said Mr Sofyan Djalil gathered in Kompas.com.

c. The Role of Notary - PPAT in Land Registration of Indigenous Peoples Around Forest Areas

Ideally, land registration should cover all land areas in Indonesia. If all the land is registered, there is little possibility of conflict over land disputes. State boundaries including forest area land and private land will become clear so that boundary disputes can be avoided as early as possible, in order to create legal certainty and legal protection for rights holders over a parcel of land, and other registered rights. The land registration system adopted by the Basic Agrarian Law is a system of registration of titles, the proof of which is evident in the existence of a land book as a document containing juridical data and physical data that is collected and presented and issued a certificate as proof of registered rights. .

The Land Deed Making Officer must be authorized to draw up the deed relating to the place where the deed was drawn up; The official for making land deeds must be authorized to draw up deeds relating to the person for whom the deed is made; The Land Deed Making Official must be authorized at the time the deed is drawn up. In addition to this, the PPAT must do the following things before making the deed, namely in the process of checking both the identity and certificates and other documents that will be used as the basis for making the deed; request and use legal documents, especially certificates and proof of identity of the appearer to serve as the basis for making the deed; request proof of tax payment if the legal action is subject to tax, both PPh and BPHTB; do it according to what happened, both regarding the date and the statement of the appearer; make a deed using an official form issued by the National Land Agency; and finally read and explain the deed you made yourself. PPAT preparation before making a deed: Checking certificates at the Land Office, Attaching evidence of land rights/certificates, Attaching proof of payment of PBB, SSP, SSB, current year.

FACTORS OF BARRIERS OR OBSTACLES AND SOLUTIONS TO THE ROLE OF LOCAL GOVERNMENT, LAND OFFICE AND NOTARY-PPAT IN THE IMPLEMENTATION OF INDIGENOUS PEOPLES' LAND REGISTRATION AROUND FOREST AREAS TO STRENGTHEN PEOPLE'S SOVEREIGNTY

The Decree of the People's Consultative Assembly, namely Number IX/MPR/2001 concerning Agrarian Reform and Management of Natural Resources, has observed that "respect and uphold human rights" is one of the principles that must be upheld by state apparatus in handling agrarian disputes. By referring to this MPR Decree, the methods adopted by the state apparatus are of course tragic-ironic actions. Once again this can also show how inadequate our law implementation is, and how people who should be protected are always in a powerless position, always being blamed and victims. Unfortunately, in almost every land dispute case, the community's position is always weak or weakened. Communities often do not have legal documents proving their land ownership. The ability of the community to rely only on "historical ownership" where the land they own has been occupied and cultivated for generations. Registration of land rights is a guarantee from the state, and is an important instrument for the protection of landowners. Land registration is *rechtkadaster* in nature which includes the following activities: 1) measuring, mapping, and bookkeeping of land; 2) registration of those rights; 3) issuance of valid certificate of land rights as a strong means of proof.

It is interpreted that before drawing up a deed, an Official for Making Land Deeds needs to examine whether administratively the plot of land meets the requirements for legal action before the Official for Making Land Deeds and is within its working area. In Government Regulation Number 24 of 1997 every transfer and encumbrance of land rights can only be registered if it is proven by the deed of the Land Deed Making Officer. With regard to the above, this principle puts forward the role of the Land Deed Making Officer (PPAT) which is very important because without a Land Deed Making Officer (PPAT) one can feel there is no proof of deed if there is a problem/dispute in the future.

With regard to information on incomplete soil data, it is also a trigger for significant obstacles. The incompleteness of this land data information is also an internal obstacle factor, because all the materials (raw materials) for the presentation of complete land data, originate from the unpreparedness of officials and staff at the local Regency/Municipal Land Office, of course this is no exception in the context of discussed in writing this thesis at the Tanjungpinang City Land Agency Office.

Related to the substance described in the section above, especially regarding the incompleteness of this land data information, simultaneously this situation can cause various negative impacts related to the provision of quality public services in the Agrarian-Land sector. One of the impacts that appears empirically in the field, especially for the City of Tanjungpinang, will be a slowdown in the implementation of the development of various business activities, whether those that are infrastructure development, service industry and trade. Relevant to the explanation previously explained, due to the incomplete information regarding land data, of course this will lead to other negative consequences, one of which is the birth and growth of land speculators. In the perspective of public services, namely the emergence of land speculators will certainly lead to a high cost economy for investors who wish to invest in Tanjungpinang City. If a quick and constructive solution is not immediately sought for this situation and situation, it will worsen the provision of public services in the Agrarian-Land sector, and this situation will simultaneously increase the emergence of conflicts and/or disputes in the land sector.

In line with the explanation above, especially with regard to incomplete land data information, for its preservation and of course it must be done in a fast and focused time, the government, in this case the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency of the Republic of Indonesia, must be proactive to take revolutionary actions to immediately fix all technological and information devices by using quality device specifications adapted to technological developments in the field of information and the latest/latest technology.

CONCLUSIONS AND RECOMMENDATIONS

1. CONCLUSIONS

Legal arrangements for land registration in East Tanjungpinang District, Tanjungpinang City have been carried out properly. With regard to the marking of the implementation of land registration activities in the form of Property Rights, Building Use Rights, Usage Rights, and Waqf Rights at the Notary Office and Land Deed Making Officer (PPAT) in Tanjungpinang City, it has been carried out according to the procedures in Government Regulation Number 37 of 1998 concerning Position Regulations. The Land Deed Making Officer whose duties the Land Deed Making Officer (PPAT) is to play a role and assist the community in the land registration process and seen also at the Office of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency of Tanjungpinang City is carried out according to the procedures and provisions in Government Regulation Number 24 Year 1997 concerning Land Registration and its implementing regulations, so as to minimize errors that occurred previously in the field. The implementation of the role of the Land Deed Making Officer (PPAT) in the perspective of land registration in Tanjungpinang Timur District, Tanjungpinang City, this can be seen in the process of registering land for indigenous peoples Forest areas have not been carried out by the Land Deed Making Official (PPAT) and the Office of the City National Land Agency Tanjung Pinang.

2. SUGESTION

The Regional Government of Tanjungpinang City, according to the suggestions of researchers, looks at the constraints and solutions, it is necessary to intensify the process for issuing regional regulations for the city of Tanjungpinang related to the protection of the customary rights of indigenous peoples and to carry out supervision and work mechanisms so that the use and use of land and increase human resources in the environment the city government, Notary Office and Land Deed Making Officer (PPAT) in Tanjungpinang City and the Office of the National Land Agency in Tanjungpinang City, according to the author's suggestion, should further improve their performance of duties to provide information to the community, especially indigenous peoples both regarding land registration information and providing For information on what conditions an applicant must have when applying for land registration, see Government Regulation Number 24 of 1997 concerning Land Registration. so that there are no obstacles in the application for land registration due to incomplete conditions and evidence by taking into account the Law on Land Registration.

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