



Initial Land Registration based on Basic Rights of Forest Cutting in Batanghari Regency Jambi Province

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Abstract

This study discusses the procedures for initial land registration based on the basic rights of forest cutting in Batanghari Regency Jambi Province. This research employs an empirical juridical approach. The results of the study found that: 1) Article 19 paragraph 2 of Law No. 5 of 1960 in conjunction with Article 24 of Government Regulation No. 24 of 1997 concerning Land Registration states that registering land requires proof of ownership of the land. If there is no proof of ownership, it is sufficient to prove it with a statement of physical mastery of the plot of land plus information from the local community as stipulated in article 60 paragraph (3) and (4) Regulation of the Minister of Agrarian Affairs No. 3 of 1997 concerning Implementing Regulation of Government Regulation No. 24 of 1997 concerning Land Registration. The basic rights used in the registration of land originating from regulations on forest cutting is made by the village head where the land is located, based on the identity and direct statement of the land owner, accompanied by the signatures of 2 (two) witnesses referred to in accordance with the applicable laws and regulations.

Keywords: *Initial Land Registration; Basic Rights; Forest Cutting*

Introduction

As a country that has an agrarian background, land is something that has a very important value in the lives of people in Indonesia. Land functions as a place where people live and provide livelihood for them (Soekanto & Soleman, 2001). Land is a major supporting factor in people's lives and well-being. The function of land is not only limited to the needs of a place to live but also the place for growth and development of the socio-political and cultural aspects of a person or the community (Hermawan et al., 2016).

There are many ways that someone does to get land. In the current national development, the role of land for meeting various needs will increase as a place to live or for business activities. In this connection, the need for support in the form of legal certainty in the land sector will also increase (Sibuea, 2016). The most important thing in granting legal guarantees in the land sector requires the availability of written, complete and clear legal instruments.

The Unitary State of the Republic of Indonesia, based on the 1945 Constitution, is a constitutional state which guarantees and protects the rights of citizens, including citizens' rights to obtain, have and own land rights by providing legal certainty through land registration activities (Mujiburohman, 2018). The legal certainty of land rights, especially regarding land ownership and control, will provide clarity regarding the person or legal entity that holds the right to land, as well as certainty regarding the location, boundaries, extent and so forth. The legal certainty has a very large meaning, especially in relation to regional development planning, supervision of land ownership, and land use.

Land registration is intended to realize an orderly administration and orderly law (Silviana, 2012). Implementation of land registration will produce a final product in the form of a certificate as proof of ownership of land rights. Article 19 paragraph (2) of the Basic Agrarian Law states that land registration includes: 1) measurement, mapping and accounting of land, 2) registration of land rights and their transfer, 3) granting proof of rights, which acts as a strong proof. As explained above, based on article 19 paragraph (2) point c, in order to register land at the Land Office, it requires the basic rights as the basis for land control. It aims to find out whether prospective rights holders who will register land are really legal subjects who are entitled to the land.

However, in its implementation, it is not always necessary that the conditions required to take care of the registration of land rights can be fulfilled by prospective rights holders, especially in the themes raised by this author. There are times when prospective right holders have absolutely no basis of control or basic rights to the land they have mastered. It is what happened in the initial land registration at Land Office of Batanghari Regency Jambi Province.

There are many acquisitions of land rights in Batanghari Regency derived from the results of forest cutting and has been cultivated and cultivated by the community concerned for years. In the past, in the Batanghari Regency area in particular, if someone wanted to control a land, that person had to clear the forest first. Since the forest is so vast and not tilled by anyone, one can just open the forest in accordance with his wishes. Meanwhile, at that time, the government allowed the action because it assumed that it was for the lives of the residents around it. Thus, most of the land originating from the forest cutting does not/ do not yet have any documents and documents that can be used as a basis for control or basic right to be registered at the Land Office where the relevant land is located.¹

Based on the background description above, the authors are interested in conducting a study with the title: Initial Land Registration based on the Basic Rights of Forest Cutting in Batanghari Regency Jambi Province.

Research Problem

Based on the background description above, the main research problem formulation includes: Why can the basic right of forest cutting be used as the basic right for Land Registration at Land Office of Batanghari Regency Jambi Province? What is the process of making the basic rights of forest cutting as the basic right for initial land registration in Batanghari Regency Jambi Province? What is the initial land registration process based on the basic rights of forest cutting at Land Office of Batanghari Regency Jambi Province?

¹ Results of discussion and question and answer with Mr. Subagiono, SH, Section Head for the Application for Individual Rights of the Regional Office of the Jambi Province National Land Agency on October 20, 2015.

Research Methodology

Research Type

Based on the formulation of the problem and research objectives, for the writing of this thesis, this research uses an empirical juridical approach in which the research looks at the positive legal aspects and also sees the application or practice in the field (Soerjono & Mamudji, 1995).

Research Approach

This is a descriptive analytical study. It is a form of research that aims to describe the applicable laws and regulations (statute approach) that are associated with legal theories and the practice of implementing positive law, which relates to the problems examined in this thesis. This research will conduct an analysis to the descriptive stage of land registration originating from the results of forest cutting at Land Office of Batanghari Regency.

Research Design

Based on the research type, the data contained in this study were obtained through field research that is field research which was then added to the data from the research library.

Discussion

Rationale for Basic Rights of Forest Cutting Can Be Made the Basic Rights of Land Registration at Land Office of Batanghari Regency Jambi Province

In this life, there is no human who does not need land, especially agrarian countries. In addition, there is no human who does not need a home. Therefore, land issues are still the main problem faced by countries whose economic livelihoods are still supported by the agricultural sector.

The right of control of land contains a series of authority, obligations, and or prohibitions for the holder of his right to do something about the land which is his/her right. It is permissible, mandatory, or forbidden to do, which constitutes the content of the tenure right which becomes the criterion or the benchmarks to differentiate between the tenure rights regulated in the land law. Through control of land, a person must have evidence of ownership of the land he/she controls.

Evidence of land rights is regulated in article 19 paragraph 2 of Law No. 5 of 1960 which states that “the granting of proof of rights documents serves as a strong means of proof”. Strong means that as long as there is no other evidence that proves its untruth, the data presented in the land book and registration map must be accepted as correct data (Harsono, 2003).

The lack of proof of ownership of land is one of the causes of the lack of registration of land rights. Another thing that is also the cause is the lack of public knowledge about the importance of proof of ownership of land rights. For the process of making certificates, they must have complete documents for the land they own. However, in reality, the lands owned by rural communities were owned for generations from their ancestors. Thus, their land ownership papers are very minimal and some even do not own them at all.

For communities whose basic tenure and/or proof of land ownership is incomplete or have no basis of ownership and/or proof of land ownership, specifically land originating from forest cutting in Batanghari Regency, a policy is made for verification by attaching:

1. Statement of Physical Mastery to Plots of Land (Sporadic)

Declaration of physical mastery of a plot of land (sporadic) is a letter containing a statement from the land owner about the land owned by the person concerned. This sporadic was made in good faith from the person concerned. The good faith in question is proven by three conditions:² a) there is no objection from other parties for the held land/ not in dispute; b) excluding government/ regional/ village government assets; c) not including forest area.

In addition, in the sporadic, the land owner also gave a statement that the land had been controlled for at least 20 consecutive years since it was first owned by the land owner. This is as stated in Article 24 of Government Regulation No. 24 of 1997 namely: "For the purpose of land registration, land rights originating from the conversion of old rights are evidenced by evidence supporting the existence of such rights in the form of written evidence, information on sanctions and or statements in question which are considered to be sufficient to register rights, rights holders and parties others are burdening it. In the event that no or no more complete means of proof are available, the evidence can be carried out based on the possession of the relevant physical mastery of the land for 20 years or more consecutively by the registration applicant and its predecessors."

2. Statement of Village Elders

Statement of village elders is a policy made by the Head of Land Office of Batanghari Regency in the form of a statement containing statements from people considered to be elders in the village regarding the correctness of data related to ownership of a plot of land that usually originates from the forest cutting. The policy was made because there was no concrete basic form of rights or proof of ownership for land originating from forest cutting made by the land owner, or issued by the local village head which could be used as proof of ownership of the land obtained from forest cutting.³

This is certainly carried out on a clear basis. As mentioned in article 60 numbers (3) and (4) Regulation of the Minister of Agrarian Affairs No. 3 of 1997 concerning implementing provisions of Government Regulation No. 24 of 1997 concerning land registration as follows: "(3) If the proof of ownership of a plot of land as meant in paragraph (2) is incomplete or non-existent, the proof of title to the plots of land can be carried out with other evidence accompanied by the relevant statement and credible information of at least 2 (two) witnesses from the local community who do not have family relations with the person concerned up to the second degree both in vertical and horizontal kinship stating that the person concerned is the true owner of the plot of land. (4) To assess the veracity of the witnesses' information or the relevant information, as referred to in paragraph (3), the adjudication committee may:

1. looking for additional information from the community around the plot of land that can be used to strengthen the testimony or information regarding the proof of ownership of the land;
2. request additional information from the community as referred to in letter a which is expected to know the history of ownership of the plot of land by looking at the age and duration of residence in the area.

² Results of an interview with the Head of Legal Relations Section of the Batanghari Regency Land Office, Mr. M. Desrizal.

³ Results of an interview with the Head of Legal Relations Section of the Batanghari Regency Land Office, Mr. M. Desrizal on October 18, 2018.

3. look at the condition of the plot of land in its location to find out whether the person concerned physically controls the land or is used by other parties with the permission of the person concerned, and besides, can assess the buildings and plants that are on the plot of land that might be used as a guide to prove one's ownership over that parcel of land."

Based on the article above, if proof of ownership of a piece of land is incomplete or nonexistent, proof is sufficient to make a statement from the owner concerned. However, if the statement is still in doubt, the adjudication committee/ land inspector committee of the Land Office can seek additional information from the community by looking at the age and duration of residence in the area. With this article in mind, Land Office of Batanghari Regency made a policy to include the village elders' statement as the basic rights which strengthened the sporadic made by the landowners concerned.

The Process of Making the Basic Right to Forest Cutting as the Basis for Initial Land Registration in Batanghari Regency of Jambi Province

1. Statement of Physical Mastery of Plot of Land (Sporadic)

This sporadic can be used as a basis for the right to register land for land that has no proof of ownership at all in Batanghari Regency. In this case, specifically land originating from forest cutting. In Batanghari Regency, land which was previously obtained from forest cutting does have a letter or special permit issued by any party to prove that the land was indeed obtained from forest cutting results. Thus, to register the land in the future, the land owner does not have any proof of ownership required to register the land at the local land office.

Therefore, legislation allows landowners who do not have written proof of ownership to make a statement of physical control of the sporadic land as stated in article 60 number (3) and (4) Regulation of the Minister of Agrarian Affairs No. 3 of 1997 above.

In Batanghari Regency, sporadic is made/ issued by village officials where the land is located. To make this letter, the land owner only needs to come to the village office with a Identity Card or other valid identity and provide information about the land he/she controls. Usually, the village office has a letter format that is usually used to make sporadic. The village official will only fill in the existing format with data on the subject and object of the land in accordance with the identity and information provided by the land owner. After the data is complete, the sporadic is signed by the land owner (signature on a stamp) with 2 (two) witnesses in accordance with the applicable laws and regulations and the relevant village head.⁴

Based on the results of an interview with Mr. Khairul Anwar, SH, who is the former Head of the Legal Relations Section of the Batanghari Regency Land Office, there is no specific format in making this sporadic. The important thing is that the contents are clear about who controls the land, which land is intended, borders on what is clear, the history of the possession, and so on. The role of the village head in making sporadic is actually only as a village official who helps residents to simplify the land registration process. Considering that sporadic is basically a statement from the relevant land owner, the sporadic should be made by the land owner as mentioned in article 60 number (3) of the State Minister of Agrarian Regulation No. 3 of 1997. However, to simplify and reduce community mistakes in making sporadic which will be used to register land in the land office later, a policy is set so that sporadic made by the village head of course it remains based on direct information from the relevant land owner. Because all the truth of the data included in the sporadic remains the full responsibility of the land owner who made

⁴ The results of an interview with Mr. Busmarudin, Head of Buluh Kasab Village, on 3 October 2017.

the statement. In addition, the policy is inseparable from the role of the village head who is demanded to know all the ins and outs of all residents and the condition of the land in the village.

2. *Statement of Village Elders*

Statement of village elders is a letter containing statements from people who are considered as elders in a village about ownership of a land that does not have proof of ownership in writing. This statement is a form of follow-up or application of article 60 number (4) of the Regulation of the Minister of Agrarian Affairs No. 3 of 1997 which states:

(4) To assess the truth of the witnesses' information or the relevant information, as referred to in paragraph (3), the adjudication committee may:

1. looking for additional information from the community around the plot of land that can be used to strengthen the testimony or information regarding the proof of ownership of the land;
2. request additional information from the community as referred to in letter a which is expected to know the history of ownership of the plot of land by looking at the age and duration of residence in the area.
3. look at the condition of the plot of land in its location to find out whether the person concerned physically controls the land or is used by other parties with the permission of the person concerned, and besides, assesses buildings and plants that are on the plot of land that might be used as a guide to prove one's ownership of that plot of land.

The article states that the land registration adjudication committee can search for or add information from other witnesses if the information in the sporadic is still in doubt. In other words, the statement is needed to strengthen or confirm the truth of the statement given by the land owner. So, based on the above article, the Batanghari Regency Land Office made a policy to include a statement from village elders as a basis for additional rights to register land originating from forest cutting in addition to sporadic.

The contents of the village elders' statement are not much different from sporadic. The letter still mentions the identity of the subject and object of the land in question about who owns the land, the area of land, the location of the land, and the history of land ownership. The difference only lies in who gives the statement. In sporadic, those who make statements are the direct landowners, while in the statement of village elders, those who give statements are the elders in the village.

Statement of village elders is made/ issued by the village head. As with the previous sporadic, there is no specific format for making this statement. What is important is that all data related to the identity of the subject and the object of the land are clearly listed in the letter. In addition, the role of the village head in this case is the same as the role of the village head in helping to make previous sporadic. The village head appoints at least 2 (two) people who are elders in his village to request information about the mentioned land object. After that, the statement is signed by the village elders and known by the village head.⁵

In the statement of the village elder, the age of the village elder who gave the statement must be considered. The elder who gives the statement must be a really old person because in terms of his age that we can judge whether it is true he/she is an elder who indeed has long lived in the area and knows the

⁵ The results of an interview with Mr. Busmarudin, Head of Buluh Kasab Village, on 3 October 2017.

condition/ history of the land.⁶ However, there are still requests for land registration that attach a statement of village elders with the age of the elders who are classified as young and sometimes even younger than the age of the land owner. This is certainly not allowed and must be corrected by the relevant landowners.

Initial Land Registration Process based on the Basic Right of Forest Cutting in Land Office of Batanghari Regency Jambi Province

The procedure for granting ownership rights in the Batanghari Regency Land Office is generally regulated in the Regulation of the Minister of Agrarian Affairs/ Head of the National Land Agency No. 9 of 1999 concerning Procedures for Granting and Cancellation of Ownership Rights of State Land and Management Rights. In addition to these regulations, the procedure for granting rights, especially individual property rights, also refers to the Head of National Land Agency Regulation No. 1 of 2010 concerning Standards of Service and Arrangement for the Land in conjunction with Regulation of the Minister of Agrarian Affairs and Spatial Planning/ Head of the National Land Agency No. 4 of 2017 concerning Ministry of Agriculture and Spatial Planning/ National Land Agency Service Standards.

1. Application Requirements

a. Application Letter to the Head of Land Office (City/ Regency)

In accordance with the provisions of the Regulation of the Minister of Agrarian Affairs/ Head of the National Land Agency No. 9 of 1999, the application to obtain ownership rights must be made as follows: 1) application for ownership rights to state land is submitted in writing, 2) the application for ownership rights to state land contains:

- a) Information about the applicant contains the name, age, nationality, place of residence and occupation as well as information about the wife/ husband and children who are still dependent.
- b) Information about the land which includes juridical data and physical data: the basis of ownership or basis of rights can be in the form of certificates, land certificates, land lots, certificates of release of rights and repayment of land and houses and/or land that has been purchased from the government, court decisions, conveyancer deeds, deeds of release of rights, and documents of evidence other land acquisition. Location, boundaries and area (if there is a measurement letter or picture of the situation, specify the date and number). Soil type (agricultural/non-agricultural), land use plan, and land status (land rights or state land).

b. Statement that the Boundary Mark Has Been Posted

c. Statement Accepts Different Width and Different Limit

d. Another Statement

In addition to filling out the form above, the applicant must also attach other requirements in the form of: Personal identity or original identity card and photocopy of identity card which is legalized according to the original. Basic rights or proof of acquisition of the land (original). In the case of cutting down land originating from forest cutting, the basis for the rights attached is the sporadic physical control

⁶ Results of an interview with the Head of Legal Relations Section of the Batanghari Regency Land Office, Mr. M. Desrizal on October 18, 2018.

letter and the village elder's statement letter, which is signed complete with witnesses on the 6000 stamps. Photocopy of Land and Building Tax last year that has been matched to the original.

2. Application Steps

a. Application Counter (Counter I)

The files that have been filled out and attached in full are then submitted to Counter I or Service Counter assigned to provide information on land services and to receive and submit letters of a general and technical nature. At this counter, all completed files related to initial land registration were examined carefully.

b. Financial Counter (Counter II)

Counter II is counter that serves payments to all types of land services. This window will calculate the cost of a Non-Tax State Revenue in accordance with Minister of Agrarian Regulation and Spatial Planning/ National Land Agency No. 128 of 2015 concerning Types and Rates of Non-Tax State Revenues Applicable to the Ministry of Agrarian Affairs and Spatial Planning/ National Land Agency.

c. Land Infrastructure Section

After the financial counter, in the next process, the application file will be given to the land infrastructure section. The land infrastructure section is tasked with coordinating and carrying out basic measurements and mapping, cadastral measurement and mapping, as well as thematic surveys and mapping.⁷ Simply put, the land infrastructure section does everything related to the identification of land parcels and physical properties such as taking measurements to determine land area, checking land boundaries, checking the possibility of overlapping, issuing Land Plot Number, and printing map of plots of land.

d. Committee A

Examination, research and assessment by Committee A is carried out to obtain formal truth on physical data and juridical data in the context of granting of ownership rights, building rights, use rights over state land, management rights and applications for recognition of land rights. Regarding the material truth of the mark/ file submitted in the framework of application/ recognition of full rights is the responsibility of the applicant.⁸ Committee A has the duty to:⁹

- 1) Conduct examination of the completeness of the application documents for granting of ownership rights, building rights, use rights over state land, management rights, and applications for recognition of land rights;
- 2) Conduct research and studies on land status, land history and legal relationship between the requested land and the applicant and other interests;

⁷ Article 37 Regulation of the Minister of Agrarian Affairs and Spatial Planning/ National Land Agency No. 38 of 2016 concerning the Organization and Administration of Regional Offices of the National Land Agency and the Land Office.

⁸ Article 2 Head of National Defense Agency Regulation No. 7 of 2007.

⁹ Article 6 Head of National Defense Agency Regulation No. 7 of 2007.

- 3) Conduct research and physical inspection of the requested land regarding the control, use/ condition of the land and the boundaries of the requested land;
- 4) Gather information/ explanations from adjacent land owners;
- 5) Examine the suitability of the requested land use with the local Spatial Plan;
- 6) Make report results in the form of Report of Field Inspections;
- 7) Conduct hearings based on physical data and juridical data from the results of field inspections including other supporting data; and

e. Legal Relations Section

1) Issuance of Rights Decree

Decree on the granting of rights is issued based on data from the report of the Land Inspection Committee above. In this subsection, the output is the Decree of the Head of the Land Office which decides whether the land being applied for can be given ownership rights or not.

2) Registration of Decree

The next process is the Decree is registered so that the number of ownerships can be taken. Registration of this Decree is subject to a Non-Tax State Revenue fee of IDR 50,000 in accordance with Regulation of the Minister of Agrarian Affairs and Spatial Planning/ National Land Agency No. 128 of 2015.

3) Issuance of Certificates

After the Ownership Number is obtained, proceed with typing the certificate in the Land Rights Registration subsection. After it is typed completely, the certificate is signed by the head of the subdivision for registration of land rights, and the head of the land legal relations section. After that, it was signed and stamped by the head of office.

f. Product Submission Counter

After all procedures have been completed, the certificate is handed over to the product submission counter, which is tasked with delivering it to the applicant holding the certificate. To retrieve the certificate, the applicant brings proof of receipt given by the ticket window clerk when first applying for evidence. Then, the applicant also signs the receipt of the certificate that has been taken from the ticket window clerk as proof to the ticket window clerk that the certificate has been submitted to the owner.

Conclusion

The basic reason for the basic right of forest cutting can be used as the basis for land registration in Land Office of Batanghari Regency Jambi Province, referring to article 24 of Government Regulation No. 24 of 1997 concerning Land Registration where land registration requires written proof of ownership. However, if forest cutting does not have clear proof of ownership that can be used as a basis for one's ownership of the land, Minister of Agrarian Affairs Regulation No. 3 of 1997 concerning the implementation provisions of Government Regulation No. 24 of 1997 concerning land registration provides a solution for landowners who do not have proof of ownership at all by making a statement of physical control of land parcels with the provisions that have been set further. And to strengthen the statement of the statement, it was added to the statements of other parties as mentioned in article 60 number (3) and (4) of the Minister of Agrarian Affairs Regulation No. 3 of 1997.

The process of making the basis for the right of forest cutting as the basis for the initial land registration in the Batanghari Regency of Jambi Province is through the village head where the land is located which helps to make a statement of physical control of the plot of land and a statement of village elders. There is no specific format in making the two letters. The most important thing is that the two letters contain all information about the subject and object of the land, the history of land acquisition, location, area and boundaries of the plot of land, signed by 2 (two) witnesses, and are known by the village head where the land is located. What distinguishes the two is from the party giving the statement. In the sporadic, the one who gives the statement is the land owner directly, while in the statement of the village elder, the one giving the statement is the elder and indeed knows the condition and history of the land in the village due to the age and duration of his/her stay in the village.

The initial land registration process based on the basic rights of forest cutting at Land Office of Batanghari Regency Jambi Province begins with the applicant filling in the initial land registration application forms that have been provided, by attaching other specified conditions such as, copy of Identity Card and Family Card, Land and Building Tax, and basic original rights. Paying the fee for Non-Tax State Revenue according to statutory provisions. The measurement of the requested plot of land. Retrieval of Field Master Number, and Field Map Number. The process of drawing and printing maps of land plots and printing of textual and graphical measuring letters. Land inspection process by the Land Inspector Committee "A". Issuance of Decree on Granting of Proprietary Rights. Registration of Decree. Certificate Printing. Certificate Submission.

Suggestion

Based on the results of the research, the provision of integrated and continuous counseling/outreach needs to be increased to remind the community of the need for clear proof of ownership of the land they have controlled for years in order to obtain legal certainty. In addition, it is also necessary to increase the awareness of village officials to assist and facilitate citizens in matters of administration that are prerequisites for conducting initial land registration, as well as eliminating costs or fees that are not reasonable in managing the administration.

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Discussion and Interview

Subagiono, SH, Head of Section for the Application for Individual Rights of the Regional Office of the Jambi Province National Land Agency.

Khairul Anwar, SH, Former Head of Land Relations Section, Land Office of Batanghari Regency Jambi Province.

Muhammad Desrizal, Head of Land Relations Section, Land Office of Batanghari Regency Jambi Province.

Busmaruddin, Head of Buluh Kasab Village, Marosebo Ulu District, Batanghari Regency, Jambi Province.

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