



Legal Certainty of Land Rights After an Earthquake Disaster (Study of Regulation of the Head of BPN Number 6 of 2010 Concerning Disaster Management and Restoration of Community Rights in Land Assets in Disaster Areas in the Village of Gala KLU)

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Abstract

This study aims to determine and analyze the Implementation of the Head of BPN Regulation No. 6 of 2010 concerning Disaster Management and the restoration of community rights to land assets in the disaster area in the village of KLU Galaa, knowing and analyzing the resolution of disputes over land rights in the aftermath of the earthquake, and for find out and analyze the legal certainty of land rights in the aftermath of the earthquake in the KLU Gala Desa. This study uses an empirical normative method, with a conceptual approach, a statutory approach, and a sociological approach. The results of this study are the First, Implementation of Law No. 6 of 2010 Concerning Disaster Management and restoration of community rights to land assets in the disaster area in the village of KLU Penggala not running. The post-disaster land rights dispute resolution that occurred in the village of Penggala KLU was settled by community consultation. The existence of BPN as an Institution in resolving land cases does not perform its role properly. BPN and / or the KLU Land Office have never come down to the people of the village of Menggala after the earthquake disaster. The MKD formed by the village also did not perform its role properly. MKD never went down to the people of the village of Menggala to resolve existing disputes. Third, the legal certainty of land rights in the aftermath of an earthquake that occurred in the village of Penggala KLU cannot be granted or guaranteed by law. This happened because most of the people of Gala KLala Village did not have land title certificates. In addition, certainty in the form of physical data on the land in the KLU Gala Village is also unresolved which is the main thing in the registration of rights.

Keywords: *Post-Disaster Land Rights; Implementation; Legal Certainty*

A. Introduction

Basic regulations regarding land are regulated in Article 33 paragraph (3) of the 1945 Constitution, which is subsequently regulated in the Basic Agrarian Law, namely Law Number 5 of 1960. Among the main objectives of the establishment of the Basic Agrarian Law (UUPA) i.e. laying the foundations to provide legal certainty regarding land rights. The intended legal certainty includes: certainty regarding the legal subject to land (a person or legal entity); certainty regarding the location, boundary, size / area of land or certainty regarding the object of rights; and certainty regarding the status of land rights which form the basis of relations between land and people / legal entities.¹

The certainty of the object and subject of rights is very necessary in the legal traffic regarding land rights, so that in most countries the government operates a system of openness / announcements regarding land rights or publicity systems. Publicity means the principle by which everyone can know all rights to land and all legal actions regarding land.²

The existence of legal certainty is expected to provide protection and security for the community. The certainty of law in question is a certificate of land rights. A certificate of land rights can be obtained after registering and this is in accordance with Article 4 of Government Regulation Number 24 of 1997 concerning Land Registration.

"Land registration is a series of activities carried out by the Government continuously, continuously and regularly, including the collection, processing, bookkeeping, and presentation and maintenance of physical and juridical data, in the form of maps and lists, regarding land parcels and units. flats, including the granting of proof of rights to plots of land for which there are rights and ownership rights over the unit of flats and certain rights which burden it "³

However, prior to the coming into effect of the LoGA, there is evidence of tenure rights on land such as Girik, Letter C, Pipil, Petok D and others which according to the LoGA must be converted or registered an application for ownership of the land in order to obtain Land Rights at the land agency in call with a certificate. If it has not been converted, then to become strong evidence will not be perfect, and other evidence is needed.

Related to land issues, in Indonesia land issues are very complex, complicated and sensitive. This happens because land is a basic need related to economic, social, cultural, and political. One of the land problems that occur is the land problem that results from natural disasters such as earthquakes. Earthquake natural disasters occurred in West Nusa Tenggara Province at the end of 2018. Particularly in North Lombok Regency Penggala Village Kecamatan Kecamatan which is the epicenter of the earthquake and has a great impact on the area of land tenure and / or ownership and this relates to the certainty of land area which leads to land certificates or other proof of land tenure.

In the Head of BPN Regulation No. 6 of 2010 concerning Disaster Management and Restoration of Community Rights in Land Assets in Disaster Areas, what is handled by BPN is handling land rights that already have certificates and are in the process of registering certificates. As stated in Article 17 to Article 22 concerning the Arrangement of Land Archives, Regulation of the Head of BPN Number 6 of 2010.

Especially in the village of Menggala, what happened was the stage of the community that was still in the process of registration, namely the certificate of the PRONA (National Agrarian Orientation

¹ Rosnidar sembinging, *Hukum Pertanahan Adat*, Cet I, Rajawali Pers, Depok, 2017, hal 48

² M. Arba, *Hukum Agraria Indonesia*, Sinar Grafika, Jakarta, 2017, hal. 153

³ Indonesia, *Undang-Undang tentang Pendaftaran Tanah*, Undang-Undang Nomor 24 Tahun 1997, Pasal 1 ayat (1)

Project) program, which until now there was no certainty when it would be issued. PRONA is a series of mass land ownership activities in an area, village / kelurahan administration or other designation or parts thereof.⁴ The purpose of Prona is to provide the first time land registration service with a simple, easy, fast, and inexpensive process in the context of accelerating land registration throughout Indonesia to ensure legal certainty of land rights.⁵

In addition, in the village of Menggala the majority of the community does not have a certificate, they only have proof of ownership of land rights and have a SPPT PBB which is still paid every year. And this is what causes conflict in the village of Menggala because there is no certainty of land rights.

There is a gap between Regulation of the Head of BPN Number 6 of 2010 concerning Disaster Management and Restoration of Community Rights in Land Assets in the Region. Disasters with conditions in the community ie BPN have never gone down or socialization to the community related to what needs to be done to obtain legal certainty over land rights, either providing replacement certificates for those who have previously obtained certificates or certainty related to PRONA program certificates. In addition, the problem that occurs in the village of Menggala is that most of the people do not have certificates, only have SPPT PBB obtained a long time ago. And in the Head of BPN Regulation number 6 of 2010 does not accommodate this. As a result of the absence of a solution from the National Land Agency and the absence of rules that accommodate the problem, what happens is a conflict between communities relating to unclear land area boundaries and resulting in more buildings than before the earthquake.

Based on these problems, the author is interested in reviewing and examining a thesis entitled Legal Certainty of Land Rights in the Aftermath of the Earthquake (Study of the Head of BPN Regulation No. 6 of 2010 concerning Disaster Management and Restoration of Community Rights in Land Assets in Disaster Areas in the Gala Village of KLU).

B. Research Methods

This type of research used in this paper is empirical normative legal research. The approach used in this research is the Conceptual Approach (Conceptual Approach), Statutory Approach, and Sociological Approach.

C. Results and Discussion

1. Implementation of Regulation of the Head of BPN Number 6 of 2010 Concerning Disaster Management and Restoration of Community Rights in Land Assets in Disaster Areas in the Gala Village of KLU

Regulation of the Head of BPN Number 6 of 2010 concerning Disaster Management and Restoration of Community Rights in Land Assets in Disaster Areas

In connection with disaster management, especially regarding land issues, the National Land Agency issued a Decree of the Head of BPN Number 6 of 2010 concerning Disaster Management and

⁴ Indonesia, *Peraturan Menteri Agraria dan Tata Ruang/Badan Pertanahan Nasional tentang Program Nasional Agraria (PRONA)*, Nomor 4 Tahun 2015, Pasal 1 ayat (1)

⁵ Indonesia, *Peraturan Menteri Agraria dan Tata Ruang/Badan Pertanahan Nasional tentang Program Nasional Agraria (PRONA)*, Nomor 4 Tahun 2015, Pasal 2 ayat (1)

Restoration of Community Rights in Land Assets in Disaster Areas. This regulation is the only National Land Agency regulation that can be used in resolving land disputes and / or conflicts after a disaster occurs. The purpose and objective of the issuance of this regulation is as a guideline for the National Land Agency of the Republic of Indonesia in the context of handling disasters and returning community rights over land assets in the affected area.⁶ With the aim of anticipating the impact of disasters early on, taking action quickly and precisely at the time of the disaster and restoring infrastructure and facilities, land records and restoring community rights to land in the disaster area and reactivating land services.⁷

In the Head of BPN Regulation No. 6 of 2010 concerning Disaster Management and Restoration of Community Rights in Land Assets in Disaster Areas, explains that Disasters in the Field of Land are disasters caused by events or a series of natural or non-natural events that result in damage to infrastructure, facilities, damaged or destroyed land records supporting land services and certificates of land rights.⁸

With natural disasters, a disaster emergency response is needed by the National Land Agency. Emergency response in question is a series of activities carried out immediately at the time of a disaster to address the adverse effects caused, which include rescue and evacuation of victims, property, fulfillment of basic needs, protection, refugee management, rescue, and restoration of infrastructure, facilities and land archive.

In Article 6 paragraph (1) of the Regulation of the Head of BPN Number 6 of 2010 concerning Disaster Management and Restoration of Community Rights in Land Assets in Disaster Areas explains that disaster emergency response in the field of land includes the following activities: (a) rescue and evacuation of victims and property ; (b) prevention of distribution of disaster impacts; (c) data collection on damage caused by disasters; (d) meeting basic needs; (e) protection and management of the extended family of the National Land Agency of the Republic of Indonesia and surrounding communities affected by the disaster; and (f) prepare an emergency office if the office building is heavily damaged.

In Article 6 paragraph (1) letter c, namely data collection on damage due to disaster is one of the important things that must be done by the National Land Agency. The intended data collection is data on disaster damage including physical data and juridical data.

Physical data and juridical data are the main things in registering land rights in the form of certificates to obtain legal certainty. This means that if the community does not have physical and / or juridical data, the registration process for land rights cannot be carried out.

Data collection which is part of the Emergency Response conducted by the National Land Agency is immediate, especially after the issuance of Presidential Instruction No. 5 of 2018 concerning the acceleration of Post-Earthquake Rehabilitation and Reconstruction in West Lombok District, North Lombok Regency, Central Lombok Regency, East Lombok Regency, Kota Mataram and Affected Areas in West Nusa Tenggara Province.

According to Article 17, the structuring of land records referred to in Article 11 letter c includes repair of damaged documents, replacement of lost or damaged documents and rearrangement of records.

⁶Perkaban, *Peraturan Kepala BPN Nomor 6 Tahun 2010 tentang Penanganan Bencana Dan Pengembalian Hak-Hak masyarakat Atas Aset Tanah Di Wilayah Bencana*, Perkaban No 6 Tahun 2010, Pasal 2

⁷ Perkaban, *Peraturan Kepala BPN Nomor 6 Tahun 2010 tentang Penanganan Bencana Dan Pengembalian Hak-Hak masyarakat Atas Aset Tanah Di Wilayah Bencana*, Perkaban No 6 Tahun 2010, Pasal 3

⁸ Perkaban, *Peraturan Kepala BPN Nomor 6 Tahun 2010 tentang Penanganan Bencana Dan Pengembalian Hak-Hak masyarakat Atas Aset Tanah Di Wilayah Bencana*, Perkaban No 6 Tahun 2010, Pasal 1 ayat (1)

This is the only *sousi* in the Head of BPN Regulation No. 6 of 2010 concerning Disaster Management and Restoration of Community Rights in Land Assets in Disaster Areas to regain legal certainty of land rights.

In the Regulation of the Head of BPN Number 6 of 2010 concerning Disaster Management and Restoration of Community Rights in Land Assets in Disaster Areas, if associated with the task of returning rights to land assets in the disaster area by the National Land Agency. The thing done is:

- a. appeals to the public to assist efforts to recover archives by submitting photocopies of certificates and or other documents to the local Land Office by showing the original certificates;
- b. for people who are in the process of service at the office land so as to return a photocopy of proof of submission of documents or other documents needed to complete the service process; and
- c. for people affected by the disaster so that they experience damage or loss of certificate of land rights so immediately report to the relevant land office.⁹

Based on this Article, it can be seen that the National Land Agency only appeals. Which, according to the Big Indonesian Dictionary, appeals means calls, calls, and invitations. However, appeals without a movement will not be effective, meaning that without a movement the community will not be clear about the regulation.¹⁰ The National Land Agency, which is the Main Agency in land affairs, must conduct a minimum of information dissemination related to applicable regulations, especially in the case of post-disaster emergency response.

Implications of Regulation of the Head of BPN Number 6 of 2010 concerning Disaster Management and Restoration of Community Rights in Land Assets in Disaster Areas

Related to Article 6 letter c, namely data collection on damage due to disaster. The duty of the BPN is to record data relating to damage or loss of certificate of land rights held by the community, data collection or inventory related to damage or loss of land records in the land office and loss or damage to land documents that are still in the registration process, this is in accordance with provisions of Article 8 of the Head of BPN Regulation No. 6 of 2010 concerning Disaster Management and Restoration of Community Rights in Land Assets in Disaster Areas.

However, what happened in the community, especially in the village of Menggala, Pemenang District, North Lombok Regency, was that there were people who were in the process of making certificates through the PRONA (National Agrarian Orientation Project) program, meaning that the certificates had not been received by the community.

Based on the results of interviews of researchers with the village secretary, Harjono and LINMAS (Protection of the Community) of the village of Menyala namely Hafiz on Sunday, June 21, 2020 that there were some communities that had not received the PRONA certificate and now due to the earthquake disaster, the area of land was lost. And to determine a definite boundary of land, they don't know it. And this has led to conflict several times, and its resolution by deliberation using only filling without strong evidence. Conflicts over land parcels that have occurred several times in the community are also recognized by Johaidi, Rehans, H. Mahsun, Mrs. Habibah, Ms. Musniati who are residents of the West menggala hamlet, Mengga Village, Pemenang District, North Lombok Regency.

Based on the Regulation of the Head of BPN Number 6 of 2010 that the public must make a request related to the loss or damage of land documents. However, people do not know that. According to

⁹ Perkaban, *Peraturan Kepala BPN Nomor 6 Tahun 2010 tentang Penanganan Bencana Dan Pengembalian Hak-Hak masyarakat Atas Aset Tanah Di Wilayah Bencana*, Peraturan Kepala BPN Nomor 6 Tahun 2010 tentang, Pasal 8 huruf 6

¹⁰ KBBI.Web.id Diakses Hari Minggu, 12 Juli 2020 Pukul 16.00 Wita

the results of interviews with several residents such as Johaidi, Rehans, Habibah, Musniati, Hamlet Heads, including Sekdes and Linmas that BPN never went directly to the field or the village of Menggala after the disaster, there was no socialization related to the Regulation of the Head of BPN Number 6 of 2010 and not there was a socialization related to Permen Number 12 Year 2019 concerning Land Consolidation. Which, based on the results of interviews with BPN that the solution that can be given after an earthquake is land consolidation.

Land Consolidation is a policy of restructuring the ownership, ownership, use and utilization of land and space in accordance with the spatial plan and efforts to provide land for the public interest in order to improve the quality of the environment and preserve natural resources by involving the active participation of the community.¹¹ However, the land consolidation undertaken by the National Land Agency did not go as expected or was not approved by the community. And according to the Head of the North Lombok Regency Land Office that land consolidation is a policy which means it is not binding. If the community does not agree with the land consolidation activities, the Land Office can not do anything. The planned land consolidation undertaken by BPN occurred in several areas such as in Jenggal, Montong and others, but this did not occur in the village of Penggala.

In addition, the main problem after the earthquake disaster in the village of Menggala is that most people do not have certificates. Not only are land documents lost to the people who are in the registration process, but they do not have a certificate at all, they only have the UN SPPT, AJB, which was obtained from the inheritance of old parents. As happened with Mr. Johaidi and Rehans.

Based on the results of the interview of researchers on Sunday, June 21, 2020, the informants named Johaidi and Rehans who are residents of the West menggala hamlet, that when the cleanup occurred, Johaidi and Rehans were not in place and there was no notification of cleaning. As a result of the lack of notification, without the knowledge of Johaidi and Rehans, the government placed or shifted the remnants of the post earthquake building towards the land owned by Johaidi and Rehans where the position or location of the land was lower or lower than the asphalt of the highway and other people's houses. From the results of the interview, it is known that Johaidi and Rehans do not have a certificate of ownership rights to the land, he only has the SPPT PBB as proof of land tenure by paying taxes obtained from the parents' inheritance. Johaidi does not have a certificate so he does not have legal certainty of land ownership.

In addition, he said that his land has an area of 3 acres. Which where the land area has no clear boundaries according to researchers. This happened as a result of the accumulation of post-earthquake building remnants. In addition, he acknowledged that some of his parcels of land were taken by his brother who owned the land and house right next to him. Previously the land and house of his brother were not as large and as large as now or not as large and as large as before the earthquake. And it is also known that Johaidi and Rehas's brothers do not have land title certificates. He only has the SPPT PBB.

The above is one example of a shift in the location of the boundaries of land owned by residents. In addition, the location and boundaries of Johaidi and Rehans' land parcels also experienced a shift. The shift can be seen from the boundaries of land plots now owned by Johaidi and Rehans leading or approaching the former river that is not used anymore. And this causes a lack of land area owned.

To determine the land parcels in accordance with the original, evidence or documents that have an explanation of the correct parcels of land are needed. However, because Johaidi and Rehans do not have certificates, to determine the extent of the land area only uses filling. In addition, the SPPT PBB owned is

¹¹ Permen, Peraturan Menteri Agraria dan Tata Ruang/Kepala BPN tentang Konsolidasi Tanah, Nomor 12 Tahun 2019, Pasal 4, tentang konsolidasi tanah

not used as a benchmark in determining land area. In addition, the taking of land owned by Johaidi and Rehans by his brother, then affects the boundary area of the original land area of his.

In addition, the Head of Mengga Barat Hamlet, Pak Amrullah, on Wednesday, March 12, 2020, explained that after the disaster, almost half of the people lost the SPPT PBB. And to determine the extent of land parcels is difficult. They only use filling. And this was also justified by the Head of the Winner District, Suharman. And the resolution of the problem above is not regulated in the Regulation of the Head of BPN Number 6 of 2010. It means that the Regulation of the Head of BPN Number 6 of 2010 does not accommodate land problems in the community.

According to the Head of the Land Office of North Lombok Regency, Regulation of the Head of BPN Number 6 of 2010 concerning Disaster Management and Restoration of Community Rights in Land Assets in Disaster Areas is not possible. In the Perkaban, the priority is the lost or damaged land records or documents, while the North Lombok Regency land office did not suffer such severe damage resulting in community land records or documents being lost.

Regarding the archives of the land, the Head of the Land Office also said that the archives will be available when the community has registered their land rights or who already have land rights certificates. However, specifically in North Lombok Regency, what happened was that most of the people did not have certificates. As for those who already have a certificate or who are in the process of registration, according to Sudarman Tono Wiryo, to their knowledge, there has been damage, but to date the Land Office has not received a report or a request for the issuance of a replacement certificate.

Related to land disputes and conflicts that occur in the village of Menggala that is not having a certificate, the North Lombok District Land Office cannot do anything. Because according to the Head of the Land Office and subsection in the field of maintenance of land rights data and development of PPAT that the Land Office will go down or participate in resolving land disputes and conflicts when the community has a certificate or is already in the process of registering a certificate of land rights.

Based on the problem or conflict above, namely the loss of land parcels due to the cleansing of the remains of buildings with heavy construction equipment, if examined with the theory of legal usefulness, namely Utilitarianism Flow, it is not appropriate.

Utilitarianism which has the view that the purpose of law is to benefit as many people as possible. Utilization here is defined as happiness (happines), so that the evaluation of good or bad or fair or not a law depends on whether the law gives happiness to humans or not. Cleaning the remains of buildings that do not consider the existing risks. And government knowledge regarding the absence of certificates for most people causes harm to society. The difficulty of determining the correct boundary area is a new problem in society. And this problem will most likely continue to occur in the next few years if the community does not yet have a land title certificate.

Regarding the lack of certificates held by the people of North Lombok Regency, especially the village of Menggala, Mr. Camat Pemenang, Mr. Suharman, responded by saying that the community was still influenced by the rural or village mindset. That is, the community does not think too much about the possibility of disputes especially relating to land in the future. They just think, every problem can be resolved by deliberation without prolonged conflict to the court or litigation.

2. Settlement of Earthquake Disputes over Earthquakes in the Aftermath of the Earthquake that Occurred in the Gala Village of KLU

Settlement of Land Rights Disputes by Krame Village Assembly Council (MKD) Barat Barat North Lombok Regency

The Krame Village Assembly (MKD) is a village dispute resolution agency. The basis for the establishment of the MKD is North Lombok Regent Regulation Number 20 of 2017 concerning Guidelines for Village Krame Assembly (Regional News of North Lombok Regency 2017). In the Decree of the Head of the Village Winner West Winner District North Lombok Regency Article 4, explaining the purpose of the Village Krame Assembly (MKD), namely: (a) Fostering harmony among villagers; (b) Maintaining peace; and (c) Deal with disputes in the village.

With the main task of helping the village government in facilitating dispute resolution.¹² In carrying out its main objectives, the Krame Village Assembly (MKD) functions as:

- a. Facilitating mediation of disputes that occur in village communities;
- b. Develop coordination and cooperation between village institutions and village government in saving and preserving cultural values that grow and develop in the village; and
- c. Document and inventory the values and norms developed or developed in the community.¹³

In general, this is consistent with what is happening in the community. In addition, based on the results of interviews with the Chairperson of the West Krame Village Council (MKD) Winner West who also played the role of the Chairman of the North Lombok District MKD explained that the Village Krame Assembly (MKD) is a dispute resolution institution in the village that is very instrumental in reducing the number of disputes or cases that exist at the village level so as not to go to trial or court (litigation). This was done to help the government as well as to help the public not to incur large costs.¹⁴ And Mr. Muhaidi also explained that the main principle in dispute resolution is consensus agreement and has the final results in the form of minutes and / or peace letters. And that was also said by the Secretary of the MKD, Mochammad Sa'i, on Wednesday, July 15, 2020.

A similar statement was also stated by the Head of North Lombok Regency District Head, Suharman, who said that the level or number of incidents in the community was very large but the role of the Krame Village Assembly was extraordinary so that it could suppress the number of cases in the community so that they would not go to court or litigation.¹⁵ According to the Chairman of the MKD, the most types of disputes that occur in the community are land disputes related to inheritance. In general, many people in the village of Pemenang Barat do not have certificates of land rights, so the settlement is based on the filing and statements of witnesses in the surrounding land.

In 2018 to be exact in August, the people of West Nusa Tenggara Province experienced a disaster, namely an earthquake. As a result of the disaster, the Chairman of the MKD said that the entire community, especially those in the village of Pemenang Barat carried out displacement of about three to four months. The evacuation occurred because the village of Pemenang Barat was one of the places that became the center of the earthquake. The center is sourced from the village of Penggala which is now definitively becoming the village of Menggala.

¹² Keputusan Kepala Desa Pemenang Barat KLU tentang Pembentukan MKD Nomor 16 Tahun 2017MKD Pasal 5

¹³ Humaidi, Ketua MKD, PAsl 6 MKD

¹⁴ Humaidi, Ketua MKD, Wawancara Hari Minggu, 6 Juli 2020 Pukul 10.00 Wita

¹⁵ Suharman, Camat Pemenang, Wawancara HARI Rabu 25 Juni 2020, Pukul 16.00 Wita

At the time of the earthquake disaster, previously the village of Menggala was a preparatory village that had a mother village, namely Pemenang Barat Village. In the aftermath of the earthquake, according to the chairman of the West Winner MKD, that almost all areas that were included in the area of Pemenang Barat Village were badly damaged until the government took the initiative to clean up the remains of the building. As a result of cleaning up the remains of the building, the chairman of the MKD explained that many land disputes occurred, especially related to the extent of land parcels. Disputes that occur in the community relate to citizens who have land rights certificates and residents who do not have land rights certificates.

For people whose land parcels are lost but have certificates of land rights, the settlement mechanism is to follow the land parcels in the certificate. However, if the parcels of land are lost and do not have certificates or other land documents, the mechanism used is consultation with the summoning of witnesses, namely people who are around the land or who know the history of the land until it ends with the making of an official report in the form of Deed Peace.

The mechanism of dispute resolution by the Krame Village Assembly (MKD) is based on reports from the community both in writing and orally. Resolution of the dispute by the MKD was resolved at the Pemenang Barat Village Office. However, if it cannot be resolved, the MKD prepares a Minutes and recommends the parties to the dispute to take formal legal proceedings (litigation).

The same thing was stated by the District Head of Pemenang District. He said that land disputes relating to the loss of land parcels occurred in the aftermath of the earthquake and cleaning up the remains of buildings by the government. This is complicated because most people do not have certificates of land rights. He said that, community awareness of the importance of ownership of land rights in the form of certificates was very lacking. And the lack of socialization by the National Land Agency regarding the importance of certificates is also rare.

Settlement of land disputes resolved by the Village Krame Council (MKD) generally occurs in several areas in West Winner, but due to the nature of the report in advance, not all land disputes in the West Winner Village are resolved by MKD. One of the areas where land disputes have not been resolved by the MKD is the Dusun Menyala which is now the village of Penggala.

Based on the interview of researchers with the Secretary of the village of Menggala, Harjono, he said that the mechanism for resolving land disputes in the village of Menggala is through deliberation. And the meeting was resolved by the community itself in a peaceful manner but there was no official report. Deliberation based on filling. The importance of the minutes is that it is a proof of peace by the disputing community and at the same time a guarantee that problems occur in the future. Although the guarantees provided do not provide strong legal certainty such as land title certificates.

This was also expressed by the local community, that the mechanism for resolving land disputes in the aftermath of the earthquake was a deliberation between residents without the involvement of BPN and / or MKD as the dispute resolution agency.

Settlement of Land Rights Disputes by the National Land Agency (BPN) of North Lombok Regency

Based on the results of interviews with researchers along with the head of the North Lombok Regency Land Office, Dahniar Mukhlis, the land problems that occurred in North Lombok Regency after the earthquake were very numerous. Especially about the extent of land parcels lost until there is land shift. It was also acknowledged by Sudarman Tono Wiryo (the field of maintaining land rights data and the development of PPAT) that the land shift that occurred had a wide impact on the community. Like the land that was previously a house yard, shifted towards the public road. And the only solution given is land

consolidation.¹⁶ In general, all areas in North Lombok Regency that have land disputes and conflicts are resolved through land consolidation. Land Consolidation is a policy of restructuring the ownership, ownership, use and utilization of land and space in accordance with the spatial plan and efforts to provide land for the public interest in order to improve the quality of the environment and preserve natural resources by involving the active participation of the community.¹⁷ However, the land consolidation undertaken by the National Land Agency did not go as expected or was not approved by the community, and according to the Head of the Land Office of North Lombok Regency that land consolidation is a policy which means it is not binding. If the community does not agree with the land consolidation activities, the Land Office can not do anything.

In addition, the solution in the form of land consolidation provided by the National Land Agency or the North Lombok Regency Land Office is to resolve disputes and conflicts based on their own initiative or the ministry's initiative.¹⁸ Based on the results of interviews with researchers together with the Secretary of the village of Menyala, Harjono,¹⁹ that the National Land Agency or the Head of the North Lombok District Land Office never went to the field or met the community after the earthquake. Not only the solution in the form of land consolidation, but the solution in the form of a certificate of replacement has never been carried out or there is no socialization of the Regulation of the Head of BPN Number 6 of 2010 concerning Disaster Management and Restoration of Community Rights on Land Assets in Disaster Areas,²⁰ it is also directed by several communities such as Johaidi, Rehans, H. Mahsun, Mrs. Habibah, Mrs. Musniati, and LINMAS of Penggala Village.

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Regarding the archives of the land, the Head of the Land Office also said that the archives will be available when the community has registered their land rights or who already have land rights certificates. However, specifically in North Lombok Regency, what happened was that most of the people did not have certificates. As for those who already have a certificate or who are in the process of registration, according to Sudarman Tono Wiryo, to their knowledge, there has been damage, but to date the Land Office has not received a report or a request for the issuance of a replacement certificate.

Related to land disputes and conflicts that occur in the village of Menggala that is not having a certificate, the North Lombok District Land Office cannot do anything. Because according to the Head of the Land Office and subsection in the field of maintenance of land rights data and development of PPAT that the Land Office will go down or participate in resolving land disputes and conflicts when the community has a certificate or is already in the process of registering a certificate of land rights.

When viewed from the theory of the usefulness of the law, namely Utilitarianism, which has the view that the purpose of law is to benefit as many people as possible. Utilization here is defined as happiness (happines), so that the evaluation of good or bad or fair or not a law depends on whether the law gives happiness to humans or not. Thus it means that every preparation of legal products (laws and

¹⁶ Dahniah Mukhlis dan Sudarman Tono Wiryo, Katua Kantor Pertanahan KLU dan Pembinaan PPAT, Wawancara Hari Senin, 22 Juni 2020 pukul 15.00 wita

¹⁷ Permen, Peraturan Menteri Agraria dan Tata Ruang/Kepala BPN tentang Konsolidasi Tanah, Nomor 12 Tahun 2019, Pasal 4, tentang konsolidasi tanah

¹⁸ Suharman, Camat Pemenang, Wawancara Hari Rabu 25 Juni 2020, Pukul 16.00 Wita

¹⁹ Harjono, Sekretaris Desa Menggala, Wawancara Hari Minggu, 21 Juni 2020 Pukul 16.00 Wita

²⁰ Permen, *Kepala BPN Perkaban Nomor 6 Tahun 2010 tentang Penanganan Bencana Dan Pengembalian Hak-Hak masyarakat Atas Aset Tanah Di Wilayah Bencana,*

regulations) should always pay attention to the legal goal of giving as much happiness as possible to the community. Based on this theory, if viewed from the Head of BPN Regulation No. 6 of 2010 concerning Disaster Management and Restoration of Community Rights in Land Assets in Disaster Areas, it is clearly not given any happiness because problems in the community cannot be resolved by the regulation. However, if it is seen that Presidential Regulation Number 20 Year 2015 concerning the National Land Agency Article 3 explains the duties of BPN, namely:

- a. formulation and stipulation of policies in the field of land;
- b. formulation and implementation of policies in the areas of surveying, measuring, and mapping;
- c. formulation and implementation of policies in the fields of determining land rights, land registration, and community empowerment;
- d. formulation and implementation of policies in the field of regulation, structuring and controlling land policies;
- e. formulation and implementation of policies in the field of land acquisition;
- f. formulation and implementation of policies in the field of control and handling of land disputes and cases;
- g. supervision of the implementation of tasks within the BPN;
- h. carrying out coordination of tasks, coaching, and providing administrative support to all organizational units within the BPN;
- i. implementation of data management of sustainable agricultural land information and information in the field of land;
- j. implementation of research and development in the field of land; and
- k. implementation of human resource development in the land sector

Based on this task, the Land Office or National Land Agency should establish a special policy for people who do not have land certificates. So that land disputes and conflicts that occur in the village of Menggala can be resolved by the BPN, with the ultimate goal of the community to obtain legal certainty.

Legal Certainty of Rights to Land After the Earthquake Disaster that Happened in the village of Gala KLU

Publicity system or publication in land registration is affirmed in Government Regulation Number 24 of 1997 concerning Land Registration, namely that land registration is carried out in order to provide legal certainty in the field of land and that the system of publication is a negative system, but which contains a positive element, because it will produce a letter - proof of rights which are valid as a means of proof, as stated in Article 19 paragraph (2) letter c, Article 23 paragraph (2), Article 32 paragraph (2) and Article 38 paragraph (2) UUPA.²¹

In Article 32 paragraph (2) Government Regulation Number 24 of 1997 concerning Land Registration, reads:

In the case of a plot of land that has been legally issued a certificate of the name of the person or legal entity that acquires the land in good faith and actually controls it, then other parties who feel they have ownership of the land will no longer be able to demand the implementation of that right within 5 (five) years since the issuance of the certificate has not submitted objections in writing to the certificate holder and the Head of the Land Office who are concerned or have not filed a lawsuit to the Court regarding land control or the issuance of the certificate.

²¹ Urip Santoso, Pendaftaran tanah dan Peralihan Hak Atas Tanah, Edisi I, 2010, Kencana, Jakarta hal 269

Pursuant to this Article, certificates as proof of rights are valid as absolute proofs if they are fulfilled cumulatively, namely; a certificate is legally issued, a certificate is in the name of a person or legal entity, land rights are obtained in good faith, the rights to the land are controlled in reality, and the certificate is 5 (five) years old.²² With the strength of proof that is strong with an absolute proof of evidence, legal certainty guarantees from certificates can be obtained by the public. The legal certainty is expected to provide security for the community, and this is one of the rights possessed by humans. The right to security is one of the rights regulated and guaranteed in Law Number 39 of 1999 concerning Human Rights (HAM).²³ As is known, in addition to human rights there are human rights obligations, which in our people's lives should receive attention first in their implementation. We must fulfill obligations first, then claim rights.²⁴ This means that to obtain legal certainty, the community must register land and this is in accordance with Article 4 of Government Regulation Number 24 of 1997 concerning Land Registration.

"Land registration is a series of activities carried out by the Government continuously, continuously and regularly, including the collection, processing, bookkeeping, and presentation and maintenance of physical and juridical data, in the form of maps and lists, regarding land parcels and units. flats, including the granting of proof of rights to plots of land for which there are rights and ownership rights over the unit of flats and certain rights which burden it "²⁵

In principle, land registration activities carried out by the National Land Agency (BPN) include the first land registration activities (Initial Registration), namely systematic and sporadic and data maintenance activities available (maintenance). In the Initial Registration activity, there are three main activities, namely the physical field (cadastral technical), the judicial field, and the issuance of proof of rights documents. Whereas the data maintenance system is carried out if there is a change in the physical and juridical data of the land registration object that has been registered.²⁶

In connection with physical data in the form of land parcels, specifically in the village of Menggala, Pemenang District, North Lombok Regency is problematic. This happened due to cleaning up the remnants of the building after the earthquake which resulted in the loss of land parcels. And this was also acknowledged by the Chairman of the Village Krame Assembly, Humaidi, the Head of Pemenang District Head, Suharman, the Secretary of the Gala Village, Harjono, and several villagers Johaidi, Ms. Rohans, H. Mahsun, Mrs. Habibah, and Mrs. Musniati. And this was also justified by the Head of the North Lombok Regency Land Office, Dahniar Mukhlis and Sudarman Tono Wiryo (the field of maintaining land rights data and building PPAT) that almost all locations that had cleared the remnants of buildings by heavy equipment had lost the boundaries of the land area.

The loss of parcels of land owned by the community and associated with the absence of certificates as a basis for determining the extent of parcels of land, the community is difficult to determine the actual extent of parcels.

In addition, the SPPT PBB as proof of land tenure owned by the community cannot be used as a benchmark, because not all communities who lose their land parcels have a SPPT PBB. Based on the results of interviews with researchers with the Head of the West Shepherd Hamlet that after the earthquake disaster, some people also experienced the loss of land documents including the SPPT UN. So to determine the extent of land parcels, the community used filling and was also recognized by the

²² Urip Santoso, *Perolehan Hak Atas Tanah*, Kencana, 2015 Cet I, Jakarta, hal 173

²³ Lalu Husni, *Hukum Hak Asasi Manusia*, PT. Indeks kelompok Gramedia Jakarta, 2009, Jakarta, hal 102,

²⁴ Darji Darmodiharjo dan Shidarta, *Pokok-Pokok Filsafat Hukum, Apa dan Bagaimana Filsafat Hukum Indonesia*, PT. Gramedia Pustaka Utama, 2006, Cetakan keenam, Jakarta, hal 168

²⁵ Indonesia, *Undang-Undang tentang Pendaftaran Tanah*, Peraturan Pemerintah Nomor 24 Tahun 1997, Pasal 1 ayat (1)

²⁶ Widhi Handoko, *Kebijakan Hukum Pertanahan Sebuah Refleksi Keadilan Hukum Progresif*, Cet. I, Thafa Media, Yogyakarta, 2014, hal 13

Chairman of the Village Krame Assembly, namely Humaidi, the District Head of Winners namely Suharman and the Secretary of the village of Menggala, Harjono. However, for people who still have UN SPPT such as Johaidi and Rehans also experience the same thing. To determine the extent of land parcels, it still uses filling because the land is shifting and it affects the residents' land that is around the land.

In connection with the physical data, the Government Regulation Number 24 of 1997 concerning Land Registration Article 32 paragraph (1) reads:

"A certificate is a proof of rights which acts as a strong proof of physical data and juridical data contained therein, as long as the physical data and juridical data are in accordance with the data contained in the relevant land certificate and land book"

Based on the sound of the Article, it can be seen that strong legal force will be obtained if the physical data and juridical data are correct or in accordance with the certificate. However, things happened in the village of Menggala, North Lombok Regency is different. Physical data which is the main requirement in land registration is lost. So, with the situation of the people of the village of Menggala above, to get a guarantee of legal certainty cannot be done or given. And if you want to get a guarantee of legal certainty, then the community must immediately register themselves with the National Land Agency / Land Office of North Lombok Regency.

Conclusions

Implementation of Regulation of the Head of BPN Number 6 of 2010 Concerning Disaster Management and restoration of community rights to land assets in the disaster area in the village of KLala Penggala is not running. This happens because in the Head of BPN Regulation No. 6 of 2010 only regulates the damage or loss of certificates in the community, damage or loss of land documents for those still in the registration process, as well as damage or loss of land records. While what happened in the village of Menggala is that there are people who are still in the registration process, but they are not aware of the process in the form of an application by filling out a form at the North Lombok District Land Office. This ignorance occurs because BPN has never come down directly to the community after the earthquake disaster or has never conducted socialization related to the existence of the Permit. In addition, the main problem that occurs in the community is that most people do not have certificates, they only have the UN SPPT obtained from the inheritance of parents, even after the earthquake disaster, some communities lost other land documents including the UN SPPT. However, Perkaban did not regulate it.

Settlement of disputes over land rights in the aftermath of the earthquake that occurred in the village of Penggala, North Lombok Regency, was settled by community consultation. The existence of the National Land Agency or the KLU Land Office as an Institution in resolving land cases does not perform its role properly. The National Land Agency or the KLU Land Office never went down to the people of the village of Menggala after the earthquake disaster. Emergency response that must be done after a disaster is not carried out by the BPN / KLU Land Office. In addition, the Village Krame Assembly (MKD) formed by the village also did not perform its role properly. MKD never went down to the people of the village of Menggala to resolve existing disputes.

The legal certainty of land rights in the aftermath of an earthquake that occurred in the village of Penggala, North Lombok Regency cannot be given or guaranteed by law. This happens because most of the people of the village of Menggala, North Lombok Regency do not have land title certificates. All rights to land can only be granted to people who have a certificate. In addition, certainty in the form of physical data on land in the village of Menggala, North Lombok Regency is also unresolved, which is the main thing in the registration of rights.

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