



Land Management Rights on State Land by Local Governments

Erikson Sihotang

Faculty of Law, Mahendradatta University, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v7i9.1888>

Abstract

Land is an essential part of human life. On the land there are various rights that arise, including ownership rights, building use rights, cultivation rights and usage rights. Besides land that already has land rights on it, there is also land without rights on it which is called State land. This paper will examine the legal problems that arise over State land which is claimed by regional governments as regional assets. The method used in this writing is through a doctrinal / law approach where the law is conceptualized as statutory regulations. The results of the analysis show that the regional government cannot automatically say that State land is land controlled by the regional government through management rights, but the regional government must apply to the national land agency to have rights over State land.

Keywords: *State Land; Land Management Rights; Regional Government Assets*

Introduction

1. Background

Soil is something that always attracts attention because land is a source of life besides water. In this life there is no human being who does not need land, let alone countries that are still agrarian. Land is the main problem faced by countries whose economic livelihoods are supported by the agricultural sector. Indonesia as a country, most of its people still rely on their economy in the land sector. There are many businesses related to land, both individual and communal.

Land within the scope of land law (agrarian) is land ownership, and land tenure in this case is divided into two aspects, namely juridical and physical aspects. The juridical aspect means that land control is based on a right which is protected by law and generally gives the right holder the authority to physically control the land.¹ However, physical land tenure is not always attached to the party who controls the land legally. The right holder who controls juridically has the authority to manage and use the land according to the nature and designation of the land.

The Basic Agrarian Law is the juridical foundation for the implementation of land issues in Indonesia. Rights to land according to the provisions of the national land law (UUPA) can be in the form

¹ Budi Harsono, 2005, *Sejarah Pembentukan Undang-Undang pokok Agraria, Isi dan Pelaksanaannya*, Djambatan, Jakarta, h. 23.

of property rights, land use rights, building use rights, and usage rights. Besides these land rights which are regulated by the UUPA, it is known as land management rights (HPL). According to Maria SW Sumardjono, land management rights are not rights over land but are part of the State's Right to Control (HMN) which part of the authority is delegated to the HPL holder. The UUPA does not explicitly regulate this management right.

Starting from the occurrence of a dispute between the local government and several shop owners, where the shop owner has occupied the land where the shop has been established for more than 20 years and without any party disturbing the existence of the land along with the shop that stands on it. However, along with the desire of the local government to make buildings in the shopping area equal parts of each other according to the regional features. Some shop owners did not have the expense of remodeling their shops, so the local government applied for land management rights with the national land agency. As a result of the actions of the local government, shop owners felt that they had been treated unlawfully by the local government who thought that State land was local government land so that they automatically had the right to manage the land.

2. Formulation of the problem

Based on the description above, the problem in this research is whether State land (land that does not have a land title) is automatically a regional government asset so that it directly has land management rights over the State land?

3. Goals and usage

The purpose of this research is to find out, understand, examine, and analyze the ownership of State land or land on which no rights are attached.

The uses of this research are: (a) for the development of science, this research is expected to be useful in developing science, especially land law; and (b) for practice, it is hoped that this research will provide benefits for legal certainty of state land ownership.

Literature Review

Mastery and ownership of land will receive legal protection if it is based on a right to land. Article 4 of the UUPA stipulates that on the basis of the Right to Control the State can grant various rights over the surface of the earth which are called land (land rights) to individuals and legal entities (as legal subjects) to be used and utilized in accordance with the designation of their rights, so that they can be used. provide prosperity and welfare for right holders, their families and the surrounding community.

The definition of state land is essential, the development of the notion of state land has occurred since the Dutch colonial era until the independence era. During the Dutch colonial period it was known as domein land or domein principle, which can be seen in Agrarisch Besluit Stb. No. 1870 Article 1 AB 1870 explains; "*Behoudens opvolging van de tweede en derde bepaling der voormelde wet, blijft het beginsel gehandhaafd, dat alle grond, waarop niet door anderen regt van eigendom wordt bewezen, domein van de Staat is*" (Without prejudice to Article 2 and 3 Agrarisch Wet, the principle remains to be maintained that all land which other parties cannot prove to be eigendom rights is the domein (property) of the state."

According to Boedi Djatmiko Hadiatmodjo, whereas at the juridical level there are two categories of State land as seen from their origin: (1) State land originating from land where there is no right to land attached to it or is known as free State land; and (2) State land originating from land which previously had rights, for some reason or a certain legal act becomes State land. Former western land rights, land with certain land rights that have expired, land that is deprived of rights, land that has been released voluntarily by the owner.

After the issuance of the UUPA, there was a fundamental change to the arrangement of Agrarian law in Indonesia, the Right to Control over State land was converted through the Minister of Agrarian Regulation No.9 of 1965 concerning the Implementation of Conversion of Tenure Rights over State Land and Provisions regarding Further Policies. Through this Regulation of the Minister of Agrarian Affairs, Control Rights are converted into two (2) types of rights, namely: (1) As long as the land is only used for the interests of the agency itself, it is converted to Right of Use as long as it is used; and (2) In addition to being used for the agency's own interests, the said land is also intended to be granted with a right to a third party, the control right is converted into a Management Right (HPL) which lasts as long as the land is used for that purpose by the agency. concerned.

Research Methods

Research is conducted through normative legal research, by reviewing and analyzing statutory regulations or other legal materials related to the Authority of Traditional Villages in dispute resolution in village communities.

This legal research is carried out through a statutory approach, and a conceptual approach.² The statutory approach is carried out by reviewing statutory regulations by means of interpretation, reasoning and legal argumentation, while the conceptual approach uses concepts related to land management rights.

This normative legal research uses secondary data or data obtained through library materials, so that the data collection method is carried out by searching for relevant libraries, either through libraries or online journal databases. Secondary data collection used in this research is focused on: (a) primary legal materials, in the form of laws and regulations related to the research theme; and (b) secondary legal materials, in the form of reference books and journals related to research themes and further elaborating on primary legal materials.

Results and Discussion

Based on Article 1 point 3 of Government Regulation Number 24 of 1997 concerning Land Registration, "State land or land directly controlled by the State is land that does not have any land rights". In juridical terms, the phrase "directly controlled by the State", according to Government Regulation Number 24 of 1997 concerning Land Registration, the meaning of State Land refers to the Basic Agrarian Law, where the State is not the owner of the land, but as the land owner who has the authority to administer regulations., and stewardship.

Broad autonomy authority is the freedom of the regions to run government which includes the authority of all areas of government, EXCEPT: (a) Authority in the field of politics and foreign affairs; (b) Defense and security; (c) Monetary and fiscal; (d) Religion, and (e) Authority in other fields which will be stipulated by a Government Regulation.

² Peter Mahmud Marzuki, 2007, *Penelitian Hukum*, Fajar Interpratama Offset, Jakarta, h. 93-95.

Authorities in other fields, among others, are regarding land (land rights). The implementation of the conversion and/or authority rests with the Head of the Land Registration Office (Article 1 of Government Regulation No.10 of 1961 concerning Land Registration, JO Article 3 of the Regulation of the Minister of Agrarian Affairs No.9 of 1965 concerning the Implementation of Converting Tenure Rights over State Land and its Provisions concerning Further Policies, JO Minister of Home Affairs Regulation No. 1 of 1966 concerning Registration of Use Rights and Management Rights).

The statutory regulation regarding the authority to grant rights over State land is regulated in several statutory regulations. Minister of Agrarian Decree No. SK. 112/Ka/61, concerning the Division of Duties of Agrarian Authorities; enacted on April 1, 1961, retroactive from May 1, 1960. With the enactment of this regulation, revoked the Decree dated October 22, 1959, No. SK/495/Ka/59, which was improved by Decree dated May 4, 1960, No. SK/599/Ka/60. Decree of the Minister of Agriculture and Agrarian Affairs dated 12 September 1962, No. SK. XIII / 17 / Ka / 1962, regarding the appointment of officials referred to in Article 14 of PP No. 221/1962. This provision regulates the authority to grant ownership rights to land distributed in the framework of Landreform. Decree of the Minister of Agriculture and Agrarian Affairs dated July 21, 1967, No. SK 4/Ka, regarding amendments to the Decree of the Minister of Agrarian Affairs No. SK. 112/Ka/61. This provision is an arrangement regarding the authority to grant usage rights which deviates from the provisions stipulated by the Decree of the Minister of Agrarian Affairs No. SK. 112/ka/61. Decree of the Deputy Minister of the Head of the Ministry of Agrarian Affairs dated July 1, 1966, No. SK. 45/Depag/66, regarding the division of agrarian duties and authorities in relation to the granting of rights and authority over land. With the enforcement of this Regulation, the regulatory authority regulated in Ministerial Decree No. SK. 112/Ka/1961; Agrarian Minister Decree No. SK. XIII/5/ Ka; Decree of the Minister of Agriculture and Agrarian Affairs No. SK. 4/ Ka; Minister of Agrarian Decree No. SK. 336 / Ka; and Minister of Agrarian Decree No. SK. 3/Ka/1962, as long as it is regulated in this regulation is revoked or does not apply. PMDN NO. I TAHUN 1967 Concerning the division of agrarian duties and authorities; jo. Regulation of the minister Domestic NO. 88 of 1972 concerning the Organizational Structure and Work Procedures of the Provincial Agrarian Directorate and District / Municipal Sub-Directorate of Agrarian Affairs. With this regulation in effect, the Minister of Agrarian Decree No. SK 112/Ka/1961 and Decree of the Deputy Minister for the Head of the Department of Agrarian Affairs No. Sk 45/Depag/1966 was revoked. PMDN No. 6 of 1972, concerning Delegation of Authority to Grant Rights to Land.

Then issued Regulation of the Minister of Agrarian Affairs / KBPN No. 3 of 1999, concerning the Delegation of Authority to Grant Rights to Land. The provisions of Article 2 of the Regulation of the Minister of Agrarian Affairs / KBPN No. 3 of 1999 stipulates that the authority to grant land rights individually and collectively, and the cancellation of the decision to grant land rights is delegated partly to the head of the BPN regional office or the Head of the Regency / City Land Office and the delegation of authority to affirm that the land to be granted with a right to land is State land. In the event that it is not specifically stipulated in the relevant article or paragraph, the delegation of powers stipulated in this regulation only includes the authority regarding the right to State land, part of which the controlling authority of the State is not delegated to another agency or agency with management rights.

The provisions of Article 67 paragraph (1) letter a of the Regulation of the State Minister for Agrarian Affairs / Head of the National Land Agency No. 9 of 1999 concerning Procedures for Granting and Cancellation of Rights to State Land and Management Rights, states that management rights can be granted to: (a) Government agencies including local governments; (b) State Owned Enterprises; (c) Regional Owned Enterprises; (d) PT. Persero; (e) Authority Agency; (f) Other government legal entities appointed by the government. Therefore, there are ways and conditions to apply for and / or get state land.

Furthermore, the provisions of Article 4 paragraph 1 of the Regulation of the State Minister for Agrarian Affairs/Head of the National Land Agency Number 9 of 1999 concerning Procedures for

Granting and Cancellation of Rights to State Land and Management Rights, which states: Before filing an Application for Rights, the Applicant must control the land being requested as evidenced by juridical data and physical data in accordance with the provisions of the applicable laws and regulations.

Based on the analysis of the regulations presented above, it can be seen that there are several conditions that must be met in proposing land management rights over State land, which based on the regulation of the minister of agrarianism can be submitted by the local government. Therefore, local government does not automatically represent the State which automatically owns and/or controls the state land. And to be able to apply for land management rights over State land, the regional government according to the provisions of Article 4 paragraph 1 of the Regulation of the State Minister for Agrarian Affairs / Head of the National Land Agency Number 9 of 1999 concerning Procedures for Granting and Cancellation of Rights to State Land and Management Rights, which states “Before filing an Application for Rights, the Petitioner must control the land being requested as evidenced by juridical data and physical data in accordance with the provisions of the prevailing laws and regulations”.

Conclusion

Regarding State Land, Local Government is not a direct representation of the State. There are Legislative Procedures and Requirements that must be met by local governments in order to obtain Rights to State Land. So that local governments cannot claim unilaterally that State land is property or regional assets because the State of Indonesia is a rule of law.

References

- Budi Harsono. 2005. *Sejarah Pembentukan Undang-Undang pokok Agraria, Isi dan Pelaksanaannya*, Djambatan, Jakarta.
- Boedi Djatmiko Hadiatmodjo. *Tanah Negara dan Wewenang Pemberian haknya*, Artikel, Jumal Keadilan Vol. 6, No.1, Year 2012.
- Maria SW Sumardjono. 2009. *Tanah dalam Perspektif Hak Ekonomi, Sosial dan Budaya*. Kompas, Jakarta.
- Peter Mahmud Marzuki. 2007. *Penelitian Hukum*. Fajar Interpratama Offset, Jakarta.

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).