

# Legal Protection of The Community Over the Control of Coastal Land in The Perspective of National Agrarian Law (Study in Jatirejo Village of Pasuruan Regency)

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**Abstract.** A coastal region is an area that forms a boundary between land and ocean that can extend toward land and the sea with varying areas, depending on topographic conditions, destinations, and specific program needs. The control of coastal land to the people of Jatirejo Village of Pasuruan Regency who has occupied and used the land has been going on for approximately 25 years. Given the importance of land for survival, it is necessary to regulate and implement legal protection of people living on the coast, so that planning, supervision, utilization, and control of coastal resources by the rules of National Agrarian law are needed. The land occupied by the coastal community is state land that lacks attention and maintenance from the government so that it is used as a fish market, the establishment of huts, and houses by coastal communities for generations to date. For the people of Jatirejo Village, this can cause legal problems someday if not immediately handled wisely, namely by considering the principles of certainty, expediency, and protection.

**Keywords:** Coastal Areas; Coastal Communities; Legal Protection

## 1 Introduction

The land is not only a place to live for humans. Nevertheless, the land also provides continuous resources and will not run out, from benefits to natural resources that can meet the needs of human life. Humans cannot be separated from the land because the relationship between humans and the land is a relationship that continues until the end of life. Therefore, the importance of land for human life either directly or indirectly, always requires land. Land is necessary for human life and people will always trying to master it. To manage land, it is necessary to control and use it reasonably according to its potential and to preserve the environment.

Common mistakes found in the construction field of many buildings on state land with the context of lack of land due to the increasing number of residents in the local area. In addition, the lack of Human Resources (HR) in terms of insight into the right to control the land ownership should carry out previous permits to the authorities. However, it is rare for those who understand permits to live on state land.

As is well known, one of the legal problems in the community which is still unresolved is the coastal community in Jatirejo Village, Pasuruan Regency. The people in Jatirejo Village, Pasuruan Regency, live and make a living by adapting to their surrounding environment; most of their livelihood is a fisherman. Land tenure in the coastal area in Jatirejo Village, Pasuruan Regency, has been developed for personal use, which is used as a residence. The building erected on the coast is a residence that has been inhabited for decades and has been passed down from generation to generation.

There is land control in the coastal area by local people who do not have a clear legal status, and the building only stands based on being close to their source of livelihood. The community's construction of buildings and huts carried out on the coast has been going on for decades. The coastal area is very intensively used for human productivity activities. In plain view, the use of space in coastal areas is getting out of control, and there seems to be omission by the authorities even though this has violated the applicable legal provisions, except that it can only be granted for defense and security, harbor piers, towers to guard the safety of beach visitors, residences for indigenous peoples or community members who have lived in those places for generations, and powerhouse.

Referring to Article 16 of Law Number 1 of 2014, it is stated that everyone who uses space from part of coastal waters and uses part of small islands permanently is required to have a permit. Based on this regulation, coastal communities who use the space and coastal waters should be issued a location permit or other rights status under the applicable legal rules.

In controlling land in this coastal area, the community does not have a clear legal status. They build buildings only on the ground from their family generations so that the houses they build on the coastal land are illegal, and the control of this land will one day be questioned because it can cause legal problems or disputes. After all, there is no legal force for that reason. So that if at any time there is an eviction from the Government of the houses built on the coast, the community cannot do anything because they do not have strong evidence and arguments to defend the houses they built on the coast.

Various activities carried out by coastal communities both socially and economically are routine activities daily as a fisherman to fulfill their food and clothing needs. Areas that lack attention from the local government to the lack of understanding of the rule of law to the community regarding the applicable legal rules. Coastal areas are controlled by the state, which means that they should also be intended for the public, so regular and orderly management is needed. Therefore, it is necessary to coordinate the planning, supervision, utilization, and control of coastal resources carried out by the Regional Government to improve the community's quality and welfare.

The people in Jatirejo Village can be categorized as traditional communities because they have lived for generations in some geographic regions because of ties that come from ancestors, a close relationship with natural resources, and traditional fisheries whose traditional rights are still recognized in carrying out fishing activities, as well as the routine activity of painting the bottom of the boat once a week which is carried out in mutual cooperation and if any of them earn quite a lot of fish catches, they are divided among their neighbors.

The provision of certainty regarding the determination of land tenure rights for them is crucial because the use of coastal areas is carried out with the objectives of the UUPA as stated in Article 19 paragraph 1 of the UUPA and Government Regulation Number 24 of 1997 concerning Land Registration. Land registration aims to provide legal certainty and legal protection to land users so that their rights are registered and can easily be proven as legal rights holders as evidenced by proof of ownership in the form of certificates.

The obligation of a state is not only limited to protecting land ownership. However, it can be implemented to ensure that the land has been distributed relatively to be enjoyed by the community as well. In distributing the land, the people of Jatirejo Village still lack direction from the local government. The management of coastal land is still managed based on their customs, even though every land managed by the Indonesian people has specific permits that applicable laws must apply. The form of legal certainty that is still floating in Jatirejo Village regarding the legal status of coastal land is the type of rights attached to the subject and object of land rights.

As one of the legal issues, it is fascinating to study the legal protection of the community over the control of coastal land and the efforts that the community can make to obtain tenure rights and protection following national agrarian law.

## **2 Research Method**

The type of research used in this research is empirical juridical research. Empirical juridical research is a type of research that examines the effectiveness of the law in society. The empirical legal research method is a legal research method that examines the legal provisions that apply in the community or what happens in the community by finding facts that are used as research data. Then the data is analyzed to identify problems that ultimately lead to problem-solving.

The purpose of this empirical juridical research is to find out the clarity regarding the process of occurrence and regarding the process of working the law in the community related to the process of land tenure on the coast by the community, how the status of land rights on the coast are used as settlements by the community to ensure legal certainty, and how the legal protection for the people who control it.

To acquire the data was done by using primary data and secondary data. How to obtain primary data is done by dept interview and observation. Meanwhile, secondary data was obtained through literature and document studies. The data collected from the primary and secondary data research results are then reviewed, compiled, processed, and described to be used as the basis for analyzing the findings of this study.

## **3 Results and Discussion**

### *3.1. The Process of Land Acquisition in the Coastal Area as Settlement by the Community of Jatirejo Village, Pasuruan Regency*

The occurrence of the land tenure process started from the activities of the community, the majority of whom worked as fishermen who caught fish in the seacoast of Jatirejo Village, Pasuruan Regency, and carried out fish buying and selling transactions directly on the shores of the beach, then gradually the community built small huts for shelter and selling fish until ended up building houses as a place to live from generation to generation to this day.

Previously, the Headman of Jatirejo Village had provided a unique market for the local community, which was also located in Jatirejo Village, located on the west side of the coast, which was used as a new object for the current fish market, where the local community commonly referred to the market that had been provided previously as the tinduan market. Fishing is an activity to obtain fish in waters that are not in a state of being cultivated by any means or method, including activities using ships or loading, transporting, storing, cooling, handling, processing and/or preserving them.

Local people are reluctant to make fish buying and selling transactions in the tinduan market because it is far from consumer interest. Consumers are more interested in buying fish directly close to the beach near the port on the coast. Besides that, the place is more open, spacious, and close to the coast. So as starting from there, people prefer to transact in coastal areas only. Gradually with the increasing number of consumers who buy fish in the coastal area, the local people make the coastal object as a fish market. It starts with building small huts to houses that are used as residences.

The condition of the beach that used to be clean and beautiful is now a garbage bin piled up and scattered, resulting in a change in the primary color of the seawater to brown. The quality of the environment is dirty and littered with garbage causing pollution to water and air. By seeing the very concerning condition, there are several things that the community can do to reduce the waste problem on the coast of Jatirejo Village:

- a. Raise awareness and concern for the environment.
- b. Provide trash cans in every house with a minimum of 2 (two) types of trash cans, namely organic and non-organic waste.
- c. Make a communal work schedule for cleaning the village in terms of weekly cleaning in Jatirejo village.
- d. Reduce the use of plastic bags.
- e. Incessant counseling from the village head or the environmental service.

The Head of Jatirejo Village, Pasuruan Regency, Mr. Ainul Yaqin, emphasized that he had given warnings and appeals to the local community to carry out fish buying and selling transactions at Tinduan Market, but none of the people responded. The community is increasingly ignoring it by building huts houses on the coast. The purpose of the Village Head is to give this appeal so that the local community can maintain the cleanliness of the coastal environment.

The form of the Village Head's efforts by socializing and giving warnings to the community has not resulted in and changed the state of the coastal environment to date. Fundamentally, land tenure on the coast must follow applicable regulations so that land tenure does not cause negative things in the future. Like the pollution of waste piled up on the coast, it causes continuous abrasion of seawater. With the control of land by the residents, it is natural that the regulation and maintenance by the local government is even more stringent, considering the increasing population growth and the need for more and more land. Therefore, for lands for which there are no rights arrangements, such as from the subject and object of land ownership, it is necessary to regulate the land tenure by the coastal communities in detail.

The control of the land on the coast by residents of Jatirejo Village, Pasuruan Regency, is still controlled by the state directly and absolutely. Because from interviews that have been conducted with the Village Head, Mr. Ainul Yaqin, he emphasized that until now, there has been no action from the Regional Government or other agencies in the maintenance of the coastal land. The power to maintain coastal land makes residents who already live in the village use the coastal land as a fish market, the construction of huts, the construction of houses which continues to this day.

As regulated in Article 2 of the Government Regulation in replacement of Law Number 51 of 1960 concerning the prohibition of using land without the proper permission or proxy, namely". It is forbidden to use land without the rightful permit or legal proxy." The form of control over coastal land carried out by the people of Jatirejo Village can be said to be a violation even though they did not know without paying attention to and caring about licensing to the ownership of the authorities. However, the residents of Jatirejo Village are not entirely wrong in this case because the land has not been maintained and allocated for a long time from the

authorities who are entitled to the land or the government so that the residents Jatirejo Village use the land.

The low level of human resources makes people blind to the applicable legal rules because the law regulates, coerces, and protects. If the three characteristics do not go hand in hand, it will trigger legal consequences in society. It is regulatory because, with a rule in the form of orders and prohibitions, it is hoped that discipline and order can be created in people's lives.

It is coercive because the law has the authority to force the public to comply by applying strict sanctions for those who violate the rules. The purpose of this sanction is to deter violators from violations that have been violated. Then the last one is protective because it was formed to protect and guarantee the local community's rights. It is appropriate for the law to protect all Indonesian people with no discrimination before the law.

If no regulations govern the coastal land already occupied by the people of Jatirejo Village, then the land becomes the right to control the state. The control of this land will one day be questioned because it can cause problems and legal disputes. After all, there is no legal force for the control. According to the researchers' observations, the land area in Jatirejo Village, Pasuruan Regency, is getting narrower, marked by the density of residential areas with public road access.

From the data in the office of the Jatirejo Village Head, which was shown to the author, population growth continues to increase from year to year. The availability of land for settlement will continue to increase. From the data that the author got, there were 11 hamlets in Jatirejo Village, Lekok District, Pasuruan Regency, including: Dusun Pengaletan, Dusun Payangan, Dusun Morngelen, Dusun Lampean, Dusun Tegalan, Dusun Ujung Gunung, Dusun Asem Rajeh, Dusun Paras Gempal, Dusun Batu Putih, Dusun Padekan, Dusun Mimbo.

The lack of firmness and attention from the local government makes an area lack spatial use management and control over the use of space, thus making the land a state land that is not given much attention. Utilization of space is an effort to realize the spatial structure and pattern following the zoning plan through the preparation and implementation of programs and financing. Control of space utilization is an effort to realize an orderly spatial arrangement by the zoning plan that has been determined.

### *3.2 Status of Right to Coastal Land in Jatirejo Village, Pasuruan Regency which is used as Settlement in the Coastal Area to Ensure Legal Certainty*

The status of coastal land rights in Jatirejo Village does not yet have, or there is no land rights status for the people who occupy it until now. The community has used the land for about 25 years from generation to generation. According to the Head of Jatirejo Village, Mr Ainul Yaqin, there has been no follow up from the government regarding the status of land rights or maintenance from the authorities regarding coastal land. Considering the condition of the abandoned or slum coastal environment, it is evidence that the authorities pay little attention to and maintain the coastal land.

The regulation of the control and use of land in coastal areas refers to the regulation of control and use of land in general, namely for the government's and the people's interests. The Jatirejo Village refers to the people's interests used as a fish market, the establishment of small huts and houses used by coastal communities without any proper legal form from the government.

From a positive legal point of view, the current state of the coast in Jatirejo Village can be categorized as land rights to control the state, which lacks allocation or special attention from the government, causing consequences for waste pollution from local community activities. As public property, state-owned land is not attached to a land right, not waqf land, not ulayat land

and/or is not an asset of state property/regional property. Suppose the coastal community of Jatirejo Village wants to control the object of land rights on the coast legally. In that case, they should apply rights to the local National Land Agency Office.

Article 9 Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 9 of 1999 concerning Procedures for Granting and Canceling State Land Rights and Management Rights:

- 1) Application for Ownership of State Land shall be submitted on a trellis.
- 2) Application for Ownership as referred to in paragraph 1 contains:
  1. Information regarding the applicant:
    - a. If the individual: name, age, nationality, place of residence, and occupation as well as information regarding his wife/husband and children who are still dependents.
    - b. If a legal entity: name, domicile, deed or regulations of its establishment, date and number of the decision letter for its ratification by the competent authority regarding its appointment as a legal entity that can have property rights based on the provisions of the applicable laws and regulations.
  2. Information regarding the land, which includes juridical data and physical data:
    - a. The basis of control or the basis of the rights can be in the form of certificates, girik, land plots, letters of evidence of relinquishment of rights and settlement of land and houses and or land that have been given from the Government, court decisions, PPAT deed, deed of relinquishment of rights, and letters of evidence of acquisition of other lands;
    - b. Location, boundaries and extent (if there is a measurement letter or situation drawing, state the date and number);
    - c. Soil type (agricultural/non-agricultural)
    - d. Land-use plan;
    - e. The status of the land (titled land or state land);
  3. Others:

Information regarding the number of plots, area and status of the lands owned by the applicant, including the land parcels being requested and other information, deemed necessary.

The application for ownership rights, as referred to in article 9 paragraph 1, is accompanied by:

- 1) Regarding individuals
  - a. If individual: photocopy of proof of identity, proof of citizenship of the Republic of Indonesia;
  - b. If a legal entity: a photocopy of the certificate of its establishment and a copy of the decision on its appointment by the provisions of the applicable laws and regulations.
- 2) Regarding the land:
  - a. Juridical data: certificates, girik, land plots, letters of evidence of relinquishment of rights and settlement of land and houses and or land that have been purchased from the Government, PPAT, deed of release of rights, court decisions, and other letters of evidence of land acquisition;
  - b. Physical data: letter of measurement, situation drawing and IMB, if any;
  - c. Other letters deemed necessary.
- 3) The applicant's statement letter regarding the number of plots, area and status of the lands already owned by the applicant, including the land parcels being requested, according to the sample of attachment 3.

The granting of rights from state land to property rights is regulated in the Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 9 of 1999 concerning Procedures for Granting and Canceling State Land Rights and Management Rights in Articles 8 to 10 which regulates the conditions applicable for property rights and articles 11 to 16 concerning procedures for granting property rights. The importance of synchronizing tasks, authorities, and tasks between sectors or institutions to communicate with each other and pay attention to the surrounding area properly allows the creation of clear regulations and the creation of a city or district spatial arrangement that is under the goals of this nation, namely by fostering harmony between coastal areas and villages, sub-districts, districts, and villages, district and provincial levels.

From the existing problems regarding the policy on the status of land rights, the Head of Jatirejo Village, Mr Ainul Yaqin, raised his hand about this issue because it was not the village head's authority in structuring the coastal area. The village head also had time to pay attention to the situation in the coastal area, namely by imposing a collection of fees for coastal maintenance considering the condition of the beach, which is gradually becoming a filthy garbage bin. However, the payment of the mandatory dues did not last long. Gradually, they returned to their habit of procrastinating on paying the dues until they were reluctant to pay the dues again. The purpose of the fee is to make the beach clean again and maintain the marine ecosystem.

The implementation of land registration in the territory of Indonesia has not been fully registered, such as in Jatirejo Village. Until now, in these coastal communities, the land they occupy does not have a clear ownership status of land rights. It is necessary to hold land registration by the local community because they are essentially entitled to ownership of land rights. Considering that, as previously explained, people who have occupied the land for generations are entitled to land rights in coastal areas.

So that if a decree granting land rights from the state has already been received, the local community can have rights to the land. The function of the decree granting land rights is as proof of ownership that a person has the right to a plot of land because to obtain the right to own or control land rights originating from state land, one must fulfill the requirements and obligations outlined in the decree.

Seeing the situation in the coastal area of Jatirejo Village, which is a slum with being flooded by many garbage bins in the environment. So, it is necessary to hold counseling, guidance, socialization, and the application of more stringent rules. There are no written and applicable rules regarding the cleanliness of the garbage scattered along the coast for Jatirejo Village.

This happens because of the lack of local regulations that are less strict and regular. The importance of spatial planning and land use management is needed to provide access to people who want to take advantage of coastal areas. Coastal area planning is a strategic problem because it is related to extensive natural processes and often goes beyond authority and the central government. The local government should cooperate with the central government in dealing with problems like this with the parties participating in the authority to maintain the sustainability and orderliness of the coastal area, authorized in:

- 1) Leading the administration of the Village Government;
- 2) Appoint and dismiss village officials;
- 3) Holding the power of financial management and State Assets;
- 4) Establish Village regulations;
- 5) Determine the Village Revenue and Expenditure Budget;
- 6) Fostering the life of the Hesa community;
- 7) Fostering peace and order in the Village community;

- 8) Fostering and improving the Village economy and integrating it in order to achieve a productive scale economy for the greatest prosperity of the Village community;
- 9) Develop Village income sources;
- 10) Propose and accept the delegation of part of the State's wealth in order to improve the welfare of the Village community;
- 11) Develop the socio-cultural life of the Village community;
- 12) Utilizing appropriate technology to coordinate participatory Village Development,
- 13) Representing the Village inside and outside the court or appointing a legal representative to represent it under the provisions of the Prevailing Laws.

### *3.3 Legal Protection for Communities Who Control Land on the Coastal Coast of Jatirejo Village, Pasuruan Regency*

Legal protection for the people of Jatirejo Village who have controlled the land on the coast in a formal legal manner does not yet exist. However, this protection occurs in the local community (sociological protection). As discussed in the previous discussion, the land that has been controlled and occupied by the local community so far does not yet have the status of land rights for the coastal community of Jatirejo Village, so there is still no legal protection for the local community.

There is a vacuum of legal protection from the local government for coastal communities against land tenure by people who have occupied it for approximately 25 years from generation to generation without any lawsuits and evictions from the government. Meanwhile, people who control it protect each other from one another, so that with this, the community indirectly already has its legal protection sociologically.

In order to get legal protection from the government, it is necessary to register land to have the status of land rights first from the National Land Agency. As for the efforts that can be made to obtain land tenure and legal protection of ownership of coastal land in Jatirejo Village, Pasuruan Regency, the community can apply for the Village Head. Through this application letter, the village head issues a letter of approval or a certificate as a cultivator/utilizer of the coastal land. The village head and the sub-district head apply to the regional land office. So that the regional land office can follow up the process of determining land rights to the provincial government, and the provincial government can follow up with the central government to determine land rights for the people of Jatirejo Village, Pasuruan Regency.

The land is legally favorable as the right to control the state. However, there is a lack of maintenance and attention regarding its maintenance. There is a buildup of garbage and the unorganized spatial structure of the Village and/or Regency. So it should be conditioned into a clean and allocated city or district structure, not even a coastal fish market area that is continuously allowed to occur until the local community controls it without having an unclear coastal land ownership status. From the survey carried out, it is clear that in Jatirejo Village, there has previously been provided with its market, which is commonly referred to by the local community as the Tinduan market.

Although in the Regulation of the Minister of Agrarian and Spatial Planning or the Head of the National Land Agency Number 17 of 2016 concerning land management in coastal areas and small islands, it is regulated that traditional legal communities can be granted land rights, but administrative arrangements are needed to the regional government and the agency. National Lands first for the issuance of the status of land rights so that no land tenure is still floating until now.

The impact if a formal permit is not immediately regulated, and if there is eviction by the state one day, the coastal communities who have erected huts and buildings cannot do anything



because they do not have evidence and strong arguments to defend the buildings, which they have established or do not have a certificate of ownership rights. The people of Jatirejo Village are categorized as traditional communities because the people of Jatirejo Village have worked as fishermen for generations and have lived in the area for decades.

In Article 2 of the Regional Regulation of East Java Province Number 1 of 2018 concerning Zoning Plans for Coastal Areas and Small Islands of East Java Province for 2018-2038, it is explained about:

- 1) The scope of regulation of RZWP3K includes:
  - a. Towards the land covers the boundaries of the sub-district administration in the coastal area,
  - b. Towards the sea as far as 12 (twelve) nautical miles measured from the coastline at high tide towards the high seas and/or towards the archipelagic waters.
- 2) The regulation of the coastal area as referred to in paragraph 1 letter a is carried out following the provisions in the provincial RTRW and/or the applicable Spatial Detail Plan.
- 3) The regulation of the coastal area as referred to in paragraph 1 letter a requires the sea area to comply with the provisions of the RZWP3K as regulated in this Regional Regulation.
- 4) If the coastline changes as referred to in paragraph 1 letter b naturally, the coastline used is the size of the coastline determined by the authorized institution/agencies following the provisions of the legislation.

Then for the period time and function of the RZWP3K East Java Province, namely:

- 1) RZWP3K is valid for 20 (twenty) years and can be reviewed every 5 (five) years.
- 2) The review of the RZWP3K can be carried out more than 1 (one) time in 5 (five) years if there is a change in the strategic environment in the form of:
  - a. Large-scale natural disasters stipulated by statutory regulations;
  - b. Changes to the country's territorial boundaries determined by the law and/or
  - c. Changes to regional boundaries determined by law.
- 3) Review and changes within 5 (five) years are carried out if there are changes in national policies and strategies that affect the use of provincial space.

#### **4 Closing**

Based on the description above, as a result of the research that has been carried out as described, the following conclusions can be drawn: 1) The occurrence of the land tenure process begins with the activities of the majority of people who work as fishermen who catch fish at sea in the Pasuruan Regency area and carry out direct fish buying and selling transactions. On the coast, the people gradually built small huts for shelter and sold fish until they built houses as a place to live. 2) The status of land rights on the coast of Jatirejo Village so far does not have, or there is no clear land rights status for the coastal communities. 3) Legal protection from the government for the people of Jatirejo Village who have controlled the land on the coast legally and formally does not yet exist, but this protection occurs in the local community (sociological protection).

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