

# Tanah Pusaka in the Perspective of Indonesian Land Law

Wandi Arifin<sup>1</sup>, Aprila Niravita<sup>2</sup>

{onedarifin@gmail.com<sup>1</sup>, niravitanugroho<sup>2</sup>}

Faculty of Law, Universitas Negeri Semarang (UNNES), Semarang,  
Indonesia<sup>1,2</sup>

**Abstract.** Tanah pusaka is the name of an agricultural land with no man's status in Depok and Tegalsari villages. Tanah pusaka has not been legally classified, so research on tanah pusaka in Indonesian land law is important. The research approach used is a qualitative research approach with empirical juridical research. The results of the study show that: (i) tanah pusaka has the proper status as state land because the status of no man's land is included in the classification of state land; (ii) tanah pusaka is attached by DPAT in the form of letter c village, but neither conversion nor land registration is carried out so that legally the tanah pusaka is classified as state land; (ii) tanah pusaka is not cultivated by the DPAT holder, so that legally it becomes abandoned land and the legal relationship between the DPAT holder and the land is nullified.

**Keywords:** Tanah Pusaka, The Status of Tanah Tanah Pusaka, The Position of Tanah Pusaka.

## 1 Introduction

Land as a means used by humans in carrying out their activities is very valuable. As the population increases, land becomes more valuable. Based on data until 25 of April 2022 released by Worldometer, there are 278.752.361 inhabitants of Indonesia. This number when compared to the population in 2021 has increased, where based on data released by the Kemendagri through the Ditjen Dukcapil on 30 of December 2021, it shows that in the second semester of 2021 the total population of Indonesia in 2021 is 273.879.750 [1]. Apart from population growth, rapid economic growth in urban areas also causes land prices to increase [2]. The value of land in society is closely related to various aspects, one of which is the economic aspect. In the economic aspect, land can be used as a source of livelihood for farming communities. Reporting from Radar Tegal, the Central Statistics Agency stated that there were around 33.4 million farmers engaged in all commodities in the agricultural sector in Indonesia in 2020 [3].

Not all farmers in Indonesia own agricultural land or work on their own agricultural land. Reporting from Kompas, in 2016 there were about 28 million farmers whose status did not own

land [4]. Therefore, in order for farmers who do not own their own land to remain productive, in Indonesia, various agricultural land tenure systems are known as follows:

- 1) Ownership of agricultural land by pawning, in the General Elucidation number (9) a Perppu No. 56/1960, it is explained that pawning is the control of land (agricultural land) belonging to other people arising from the owner of the land (agricultural land). ) has debt money on the basis of a "land mortgage" agreement. As long as the debt has not been paid in full, the land remains in the control of the person who lent the money. During that time, the results of the land (agricultural land) become the right of the lender of the money in full and are considered as interest on the debt. However, in some areas the yield of land (agricultural land) is not only used as interest but also in installments.
- 2) Control of agricultural land with profit sharing, in Article 1 point c of UU No. 2/1960 it is explained that profit sharing is an agreement held between land owners (agricultural land) and cultivators. Where on the basis of the agreement the cultivator is allowed to carry out agricultural business on the owner's land, with the distribution of the results between the two parties
- 3) Ownership of agricultural land by lease is land tenure that arises due to a lease agreement between the land owner and the lessee. Thus, the tenant is allowed to reside, inhabit, or work on the leased land. The tenant has an obligation to pay a certain amount of rent every month, year, or every harvest. Payment can also be made in advance for a certain period of time so that after the time runs out, the land returns to the owner [5]

Several types of agricultural land tenure above were born from an agreement between the land owner and the land cultivator, where the cultivated land is owned by the owner of the land. In addition to land rights, there are also farmers in Indonesia who cultivate land that is not related to land rights or land owned by the state. Like the residents of Depok Village and Tegalsari Village who worked on tanah pusaka in Depok and Tegalsari Villages, Kandeman District, Batang Regency.

The term pusaka land is used by the residents of Depok and Tegalsari villages for unoccupied agricultural land that they have worked on for decades. In Indonesia, Tanah pusaka is not specifically and clearly regulated in its national land law. Even the legal position and classification of tanah pusaka is still a question to this day, so studying the position of tanah pusaka in the applicable land law in Indonesia is important so that the position of tanah pusaka from the point of view of Indonesian national land law can be classified.

## **2 Method**

The research approach used in this study is a qualitative research approach that focuses on scientific research activities through the description and understanding of the observed social phenomena. Understanding is not only from the perspective of the researcher because understanding the phenomena and facts studied from the perspective of the subject under study is also important [6]. In this study, the type of research used is empirical juridical research, namely legal research that analyzes the application of law in the reality of society, legal institutions, community groups, and individuals in society, with a focus on the behavior of legal institutions and organizations, communities and individuals in relation to the enactment or application of law [7].

### **3 Results and Discussion**

#### **3.1 Status of Tanah pusaka in Depok and Tegalsari Villages**

Ex land pusaka is the name attached to agricultural land with the status of no man's land located in Depok Village and Tegalsari Village, Kandeman District, Batang Regency. The tanah pusaka of Depok Village are scattered in several locations. Based on the Depok Village block map, the tanah pusaka are located in Block 3, Block 4, Block 7, Block 8, Block 9, Block 10, Block 11, Block 12, Block 13, Block 14, Block 15, Block 16, Block 17, Block 18, Block 19, Block 20 with large  $\pm 204$  hectare. Meanwhile, the tanah pusaka of Tegalsari Village is in one area or block located in Hamlet of Bleder to Hamlet of Punangan with extensive  $\pm 60$  hectares, based on the DHKP PP Depok village, the tanah pusaka of Depok Village consists of more than 700 plots of land and based on the sysmiop map of Tegalsari Village, the tanah pusaka Tegalsari village consists of 283 plots of land.

Conceptually, no man's land is defined as land that has no owner or a land that is not owned with a land right. Land with such status is legally included in the definition of state land as the definition of state land in Article 1 number 2 of PP No. 18/2021. Where in the regulation state land is defined as land that is not attached with a land right, and is not ulayat land, is not waqf land, and is not state property/regional property. According to Harsono, the term state land appears in the practice of land administration, where the control is carried out by the land authority. Whereas in the Basic Agrarian Law, the term used for state land is land that is directly controlled by the state [8].

The right to control the state in the UUPA is regulated in Article 2, which in paragraph (2) states that the right to control the state authorizes the state to: (i) administer and provide supplies, allocation, use, and maintenance of earth, water and land space; (ii) administer and establish legal relations between earth, water and space and people; and (iii) administering and establishing legal relationships between legal actions related to earth, water and space and people. Then in paragraph (3) it is stated that the authority is used to achieve the greatest prosperity of the people. It is further stated in paragraph (4) that the exercise of the right to control the state can be delegated to customary law communities and autonomous regions as long as it is needed and does not conflict with national interests. The right to control the state as regulated in Article 2 of the UUPA itself arises on the basis of the provisions contained in Article 33 paragraph (3) of the UUD 1945 which states that the state controls the use of the earth, water, and natural resources contained therein for the greatest prosperity of the people.

#### **3.2 Ownership of Tanah pusaka in Depok and Tegalsari Villages**

Ownership of the tanah pusaka in Depok Village and Tegalsari Village is divided into two types of mastery, that are:

##### **1. Administrative Mastery**

Based on the records in the book of letter c, it is known that the tanah pusaka in Depok Village was administratively registered in the name of Muh Nur. H. a Rachmadi in Letter C Book of Depok Village in 1940/1949, where Muh Nur. H is the name of the Depok Village Head and Rachmadi is the Depok Village Secretary who served at that time. Based on the results of the records in the village

letter c book that the tanah pusaka in Tegalsari Village was administratively registered in the name of Djojokaryo a Dardjo in the Letter C Book of Tegalsari Village in 1940-1949, where Djojokaryo was the name of the Tegalsari Village Head and Dardjo was the Tegalsari Village Secretary who served at that time.

Conceptually, the records in the book of Letter C can be used as the basis for land tenure because the records are decisions/letters from authorized officials as regulated in Article 1 point 5 PP No. 20/2021, which states that a letter/decision issued by an authorized official can be the basis for land control over land. Where the decision/letter is used as the basis for utilizing, using, controlling, or acquiring land by a legal entity/person. In this case, the heirs of the Village Heads of Depok and Tegalsari have a legal basis for land control (administrative).

Administratively, letter c village is one form of DPAT or Basic Land Tenure as mentioned in Article 10 paragraph (9) Permen ATR/K BPN No. 20/2021. Where in Article 10 paragraph (9) it states that DPAT or Basic Land Tenure can be in the form of: (1) AJB of land that has been certified but has not been carried out behind the name; (2) AJB customary land rights that have not been certified; (3) occupancy permit; (4) auction minutes; (5) decision to release forest area; or (6) other evidence of mastery originating from an official who has the authority. Therefore, basically the heirs of the Village Heads of Depok and Tegalsari are the basic holders of land tenure.

Based on the results of the study, it was found that the heirs of the Depok Village Head and the Tegalsari Village Head's heirs did not or had not made any efforts to convert or register land until this data collection was carried out at 18 of May 2022. Meanwhile, based on the results of the study, administratively the parents of the heirs of the Village Head Depok and Tegalsari are listed in their respective Village Letter C as mentioned above. Therefore, conceptually, the act of not carrying out conversion efforts by the heirs of the Depok Village Head and the Tegalsari Village Head's heirs made the state directly control the land. In letter c as described in the results of the research above, it shows that the land was recorded in Letter C Village before the enactment of the UUPA, which then on 24 of September 1960 the UUPA was enacted. Where after the UUPA is enacted, every owner of the old land right is required to convert the old right to a new right until a predetermined grace period is on 24 of September 1980, in which case during the specified period of time there is still no attempt to convert then the state will directly control the land, as regulated in Article 2 of the Permen Agraria No. 2 of 1960 which stipulates that every Indonesian citizen who is a single citizen and owns land with *eigendom* rights within 6 months from 24 September 1960 is required to provide confirmation of his citizenship to the Land Registration Office.

Conceptually, conversion is not an automatic transfer of rights, but rather a transfer of rights through an application and registration to the Head of the Land Office. Therefore, land registration is the basis for the implementation of the conversion. According to AP Parlindungan, conversion is an adjustment of land rights that were previously subject to the old legal system to enter into the system

of land rights in the UUPA [9]. What is meant by land rights which used to be guided by the old legal system , namely land rights regulated in Indonesian Customary Law and Burgerlijk Wetboek (KUHPerdata in Indonesian language).

2. Physical mastery

Based on the results of the study, it is known that currently the tanah pusaka in Depok Village is physically controlled by the residents of Depok Village. Where the control is the result of the Depok Village Government's policy in the form of distributing tanah pusaka to residents, in which the division is carried out in 3 (three) stages, namely: (i) the first stage is the division of land under the name of bagean land where each resident get a share of a quarter hectare or 2500 m<sup>2</sup>; (ii) the second stage is divided into plots (lots) with the size per lot (lots) is 7 times 15; (iii) the third stage is also divided into plots (lots) with the size per lot (lots) is 7 times 15 in 2014. Therefore, currently every citizen who gets a share is required to pay land and building tax (PBB). The model for withdrawing land and building taxes (PBB) for tanah pusaka in Depok Village has also used several systems. The first is the coupon system, where residents who get a piece of land but have not yet received their SPPT PBB pay using a coupon and annually are asked or charged for taxes, but along the way this system is no longer enforced because there are many irregularities and irregularities such as not being paid. Second, the collection of land and building taxes using SPPT PBB, where residents use SPPT PBB as proof that they have paid taxes. In the Regulation of the Ditjen No. 34/PJ/2008 concerning the Form and Contents of SPPT PBB Article 1 explained that the Tax Return Payable or SPPT is a notification letter on the amount of PBB owed by the Directorate General of Taxes to the Taxpayer. In the SPPT PBB it is clearly written that the SPPT PBB is not proof of land ownership, this indicates that the SPPT PBB is only a notification letter for the amount of Land and Building Tax owed from the Directorate General of Taxes to taxpayers, not as proof of ownership.

Based on the results of the study, it is known that currently the tanah pusaka in Tegalsari Village is physically cultivated by the residents of Tegalsari Village through a lease agreement between the cultivators and the Tegalsari Village Government. Where the village of Tegalsari rents out the ex land of pusaka which has been divided into 283 plots of land to residents as land cultivators with an annual rental system, but the cultivators are not required to pay taxes because the taxes are paid by the village. This rental system was born from an agreement between the village and the cultivators, in which the lease agreement was stated in a land lease certificate. This happened because the Tegalsari Village Government classified the tanah pusaka and the village treasury as not separate or as one unit.

Regulations regarding village treasury land in relation to wealth and sources of village income are regulated in Article 76 paragraph (1) of Law no. 6 of 2014, which states that village assets can be in the form of public baths, village-owned springs, village-owned forests, agricultural product auctions, fish auctions, village buildings, boat moorings, animal markets, village markets, ulayat land, village treasury lands, and other village assets. Then further mentioned

other village assets in Article 76 paragraph (2) of Law no. 6 of 2014, namely: village assets obtained from buying and selling charged to the APBN/APBD/APBDesa, from donations/grants or the like, from village cooperation, from contracts/agreements in accordance with the provisions, and other acquisitions of village assets. legitimate. Based on the District Regulation. rod No.

Regarding the management of village treasury land as one of the assets belonging to the village, its implementation must be based on various principles, namely the principle of certainty of economic value, the principle of accountability, the principle of effectiveness, the principle of efficiency, the principle of legal certainty, the principle of functional, the principle of openness, and the principle of public interest. with the aim of increasing village income and improving the welfare and standard of living of rural communities as described in Article 77 paragraphs (1) and (2) of Law No. 6 of 2014. In relation to the management system, the Village Consultative Body and the Village Head discuss the management system based on the procedures for managing village assets as regulated in a Government Regulation.

Batang Regency Regional Regulation No. 8 of 2015 Article 92 mentions various kinds of uses that can be made to village assets, namely in the form of rent, borrow and use, cooperation in utilization, build handover and build to hand over. As regulated in Article 93 paragraph (2) of the District Regulation. Trunk No. 8 of 2015, one type of utilization that can be carried out on village assets is by rent, utilization with a lease can be carried out through a lease agreement, the agreement at least contains: (i) the subject involved in the agreement as a party bound by the agreement; (ii) objects in the lease agreement; (iii) deadline of the agreement; (iv) the obligations and rights of each party; (v) the terms of the settlement chosen by the parties in the event of a dispute; (vi) provisions governing conditions beyond the control of the parties (*force majeure*); (vii) provisions governing the review of the implementation of the agreement.

Based on the results of the study, it is known that physically the tanah pusaka was not cultivated by the heirs or heirs of the Depok and Tegalsari Village Heads, but was cultivated by the residents of Depok Village and Tegalsari Village as a source of livelihood for decades. Conceptually, a land, be it management land, land rights or land obtained with the basis of land tenure (DPAT), if the right holder does not cultivate it, does not use it, does not use it, and does not maintain it intentionally, then the land is included in the definition of land. abandoned as regulated in Article 1 number (2) PP No. 20 of 2021 and is also included in the object of controlling abandoned land as regulated in Article 10 of Permen ATR/K BPN No. 20 Year 2021.

Because basically, the granting of land rights by the State to rights holders, conceptually the land must be able to be used, cultivated, utilized, and maintained properly with the aim of prospering the rights holders and for the welfare of the state, nation and society. The state when handing over rights to a person's legal entity, is always followed by various obligations as specified in the UUPA and the decree granting the rights. Therefore, abandonment of land carried out by the right holder is not allowed or prohibited.

Basically, the UUPA has determined the legal consequences for rights holders who abandon their land, namely by the abolition of the related land rights and the termination of legal relations. Where the land is expressly considered as a land that is directly controlled by the state. In the case of a land that has not been owned with a land right, but the basis for its control already exists. So in this case it is required that a land right be the basis for the use of the land

as regulated in the provisions of Article 4 in conjunction with Article 16 of UUPA. Therefore, legal entities/persons who have obtained the basis of control over land have an obligation to maintain and manage it properly, and are prohibited from abandoning their land. Besides that, The legal entity/person also has an obligation to submit an application to obtain land rights. In this case, if the legal entity/person abandons their land even though the legal entity/person has not obtained Land Rights, the legal relationship between the legal entity/person and the land will still be abolished and affirmation that the land will be directly controlled by the state. as regulated in the General Explanation of PP No. 20 Year 2021. as regulated in the General Explanation of PP No. 20 Year 2021. as regulated in the General Explanation of PP No. 20 Year 2021.

#### **4 Conclusion**

Based on the results of a review of the tanah pusaka in Depok Village and Tegalsari Village, Kandeman Subdistrict, Batang Regency from various perspectives, it can be concluded as follows: (i) from the point of view of land status, tanah pusaka in Depok Village and Tegalsari Village are domiciled as state land because the status of no man's land is included in the classification of state land which can be directly controlled by the state; (ii) from the point of view of administrative control, basically tanah pusaka are attached to the Basic Land Tenure (DPAT) in the form of village letter c, but in reality the basis of control is neither conversion nor registration of land so that legally the tanah pusaka directly become land that is controlled by the state; (iii) from the point of view of physical mastery, The tanah pusaka is not cultivated or controlled by the holder of the Basic Control of Land (DPAT), but is controlled by residents who have been going on for decades. Basis for Control of Land (DPAT) with land being deleted and directly controlled by the state.

#### **References**

- [1] Isabela, Monica Ayu Caesar: Jumlah Penduduk Indonesia 2022. Kompas. (2022).
- [2] Nursiyono, Joko Ade dan Dyah Makutaning Dewi: Determinan Harga Tanah di Indonesia Menggunakan Big Data (Studi Kasus: WWW.LAMUDI.CO.ID). Jurnal Pertanahan. pp. 136-145 (2021).
- [3] Radar Tegal: Jumlah Petani Hanya Tersisa 33,4 Juta Orang, Julukan Indonesia Negara Agraris Bisa Hilang. Radar Tegal. (2020).
- [4] Erdianto, Kristian dan Kriandi: KPA: 28 Juta Petani Tidak Punya Tanah Produksi Pertanian. Kompas. (2016).
- [5] Sidipurwanti, Eliana, dkk.: Penelitian Ketimpangan Penguasaan dan Pemilikan Tanah: Analisis di Tingkat Wilayah dan Rumah Tangga Petani. pp. 10-11. Pusat Penelitian dan Pengembangan Kementerian Agraria dan Tata Ruang/Badan Pertanahan Nasional. (2019).
- [6] Hardani, dkk.: Metode Penelitian Kualitatif dan Kuantitatif. pp. 39-40. Pustaka Ilmu, Yogyakarta (2020).
- [7] Muhaimin: Metode Penelitian Hukum. pp. 83. Mataran University Press, Mataram (2020).
- [8] Sembiring, Julius: Pengertian, Pengaturan, dan Permasalahan Tanah Negara Cetakan ke-2. pp. 3. Prenadamedia Group, Jakarta (2016).
- [9] Sanjaya, I Made Setiana, I Putu Gede Saputra dan Luh Putu Suryani: Akibat Hukum Konversi Hak Atas Tanah Berdasarkan Peraturan Pemerintah Nomor 24 Tahun 1997

Tentang Pendaftaran Tanah. Jurnal Analogi Hukum. pp. 282-287 (2021).