

Juridic Review on Land Tenure That Creates Proprietary Rights

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Abstract. Soil has a very important role for human life. Everyone will try to get land and try to fight for it to fulfill their needs and maintain the life and ecosystem of their group. However, until now only a small part of the land in all regions of this country has been registered, as well as the coverage has not been evenly distributed to all corners of villages that are far from the bustle of the city where the domicile of the institution entrusted with the task of administering land registration is. Many land cases occur because the land certificate holder does not control the land. The land is deliberately neglected so that other people control and cultivate it. For years it has been going on without any complaints from the rights holders. Within a certain time, limit, the party who controls the physical land can register as a right holder in accordance with the conditions stipulated in the legislation. This study aims to determine the factors that cause the emergence of new land rights and legal standing for certificate holders for new rights who do not control the physical land. This study uses a normative legal research method, namely research that is focused on examining the application of the rules or norms in the applicable positive law. The results of this study, namely a person can get ownership rights to land if he occupies a land for 20 (twenty) consecutive years if the control and use of the land in question is carried out in real and in good faith and the right holder or certificate holder for the right. a new owner who has never controlled the land and in fact there are other parties who have passed down from generation to generation and continuously for many years, the certificate can be declared legally invalid. Not controlling or working the land for many years can result in the loss of land rights.

Keywords: Land tenure, new land rights

1 Introduction

Soil has a very important role for human life. Everyone will try to get land and try to fight for it to fulfill their needs and maintain the life and ecosystem of their group.[1] Due to the rapid increase in population and increasing development in our country, the need for land is felt to be increasing and urgent, while land supplies are increasingly narrow and difficult to own, so it is not impossible if land prices increase from time to time. The imbalance between the supply of land and the need for land can lead to various land disputes. [2]

In order to avoid conflicts of interest between individuals and community groups in the context of meeting the need for land, the government as the executor of state power has a role in accordance with the government's authority to regulate and carry out the designation, use,

supply and maintenance of land including regulating legal relations and actions. - legal actions between individuals or groups of people with land. [3]

The right of the state to regulate is called the right to control the state. This arrangement is used to prevent the tendency of people who want to own larger and wider land. [4] Without the right from the state to regulate the allocation and ownership of land, everyone will surely compete to own more existing land. Article 19 paragraph (1) of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, hereinafter referred to as UUPA states that to ensure legal certainty by the government, land registration is carried out throughout the territory of the Republic of Indonesia according to the provisions stipulated by Government Regulations. This provision is the legal basis for the government to carry out land registration throughout the territory of the Republic of Indonesia.

The definition of land registration according to Article 1 point 1 of Government Regulation Number 24 of 1997 concerning Land Registration, hereinafter referred to as Government Regulation Number 24/1997 is Land registration is a series of activities carried out by the government continuously, continuously and regularly including collection, management, bookkeeping and presentation and maintenance of physical data and juridical data, in the form of maps and lists, regarding land parcels and apartment units, including the issuance of certificates of proof of rights for land parcels that already have rights and ownership rights to flat units as well as other rights. certain rights that encumber him.

Registration of a land is very important, because by registering the land, a person can find out information relating to the land, such as: things owned, land area, location of land to whether the land is encumbered with mortgage rights or not. The registration of land rights or land rights is carried out based on the provisions of the UUPA and Government Regulation Number 24/1997 [5]. The obligation of the right holder to register his land is intended to provide legal certainty for the right holder. Due to the registration of each transfer, deletion and encumbrance, registration for the first time or due to conversion or encumbrance there will be many legal complications if it is not registered, moreover the registration is strong evidence for the rights holder.

However, until now only a small part of the land in all regions of this country has been registered, and the coverage has not been evenly distributed to all corners of the villages far from the bustle of the city where the domicile of the institution entrusted with the task of administering land registration is [6]. Registration of land rights is based on formal evidence and material evidence. Letters are classified as formal evidence. However, the letter evidence alone is not entirely strong to prove the existence of land rights. For a right to be perfect, it must meet material evidence in the form of physical control of the land. Holders of title certificates without controlling the physical land for many years, legally their rights can be canceled because the status of the land becomes abandoned land. According to the UUPA, abandoned land is one of the reasons for the abolition of land rights. Meanwhile, someone who controls the physical land for many years and continuously in good faith can submit an application to be granted new rights to the land.

Many land cases occur because the land certificate holder does not control the land. The land is deliberately neglected so that other people control and cultivate it. For years it has been going on without any complaints from the rights holders. Within a certain time, limit, the party who controls the physical land can register as a right holder in accordance with the conditions stipulated in the legislation[7].

This study aims to determine the factors that cause the emergence of new land rights and legal standing for certificate holders for new rights who do not control the physical land. The results of this study, namely a person can get ownership rights to land if he occupies a land for

20 (twenty) consecutive years if the control and use of the land in question is carried out in real and in good faith and the right holder or certificate holder for the right. a new owner who has never controlled the land and in fact there are other parties who have passed down from generation to generation and continuously for many years, the certificate can be declared legally invalid. Not controlling or working the land for many years can result in the loss of land rights.

2 Research Methods

Methods This research uses research methods that are normative law research using normative case studies in the form of products of legal behavior, for example reviewing laws. The subject of the study is the law which is conceptualized as a norm or rule that applies in society and becomes a reference for everyone's behavior. So that normative legal research focuses on an inventory of positive law, legal principles and doctrines, legal findings in cases in concreto, legal systems, synchronization levels, legal comparisons and legal history. In connection with the above, this normative legal research uses sources of legal materials in the form of:

Primary legal materials are legal sources that have absolute legal facts related to issues that describe the core of the discussion in normative legal research. Such as the 1945 Constitution, Government Regulations, Pancasila, and others. Secondary legal materials are publications related to legal materials that have a supporting function if the data in primary legal sources are inadequate, such as legal literature, research, legal journals and so on.[8]

3 Results and Discussion

Factors Causing New Land Rights

Article 24 paragraph (2) of Government Regulation Number 24 of 1997 concerning Land Registration confirms that a person who controls the physical land for a period of 20 (twenty) years can continuously register himself as the holder of the right to the land. The article reads:

"In the event that there are no or no complete evidence tools as referred to in paragraph (1), proof of rights can be carried out based on the fact of physical possession of the land parcel in question for 20 (twenty) years or more in a row by the registration applicant. and its predecessors, provided that:

- a. the control is carried out in good faith and openly by the person concerned as having the right to the land, and is strengthened by the testimony of a person who can be trusted;
- b. the control both before and during the announcement as referred to in Article 26 is not disputed by the customary law community or the village/kelurahan concerned or other parties."

This provision provides a way out if the right holder cannot provide proof of ownership, either in the form of written evidence or in other forms that can be trusted. In such case, the bookkeeping of rights can be carried out not based on proof of ownership but based on evidence of physical possession that has been carried out by the applicant and his predecessor. Bookkeeping of rights according to this paragraph must meet the following requirements [9]

- a. that the control and use of the land in question is carried out in real and in good faith for 20 (twenty) years or more in a row;
- b. that the reality of the control and use of the land so far is not contested and therefore considered recognized and justified by the customary law community of the village/kelurahan concerned;

- c. that they are corroborated by the testimonies of people who can be trusted;
- d. that the other party has been given the opportunity to file an objection through an announcement;
- e. that research has also been carried out on the truth of the things mentioned above;
- f. that finally the conclusion regarding the status of the land and the holder of its rights is stated in a decision in the form of recognition of the right in question by the Adjudication Committee in systematic land registration and by the Head of the Land Office in sporadic land registration.

The purpose of physical control in good faith and openly is physical control that is not based on deceit and lies, where the person who controls the physical land has never received a complaint or disturbance or lawsuit from any party during the period mentioned above. If there is, then this Article cannot be used as a basis for granting new rights. The legal position of physical land tenure becomes very important so that rights holders are encouraged to manage, manage, and utilize their land. The regulation implicitly aims to make lands productive and have economic value for rights holders and benefit the general public. [10]

Rights holders who for years have left or have not used their land rights are legally considered to have left their rights. This was confirmed in several Jurisprudence of the Supreme Court of the Republic of Indonesia, including: [11]

- a. Jurisprudence of the Supreme Court of the Republic of Indonesia No. 295 K/Sip/1973 Dated December 9, 1975 which describes; "...they have let it pass until not less than 20 (twenty) years of Daeng Patappu's lifetime, a period long enough so that they can be considered to have abandoned their rights that may exist over the disputed land, while the Appealing Defendants can be deemed to have obtained ownership rights over the disputed fields".
- b. Jurisprudence of the Supreme Court of the Republic of Indonesia No. 329 K/Sip/1957 Dated September 24, 1958 affirmed; "A person who leaves the land as his right for 18 (eighteen) years to be controlled by another person is considered to have relinquished his right to the land (rechtsverwerking)".
- c. Jurisprudence of the Supreme Court of the Republic of Indonesia No. 783 K/Sip/1973 Dated January 29, 1976 confirmed; "If indeed the Appealed Plaintiffs are not entitled to the land, the fact that the Defendants have been waiting for so long (27 years) to demand the return of the land gives rise to a legal assumption that they have relinquished their rights (rechtsverwerking)"

"The consideration of the High Court justified by the Supreme Court of the Appealed Plaintiff who has occupied the land for a long time, without interference and acts as an honest owner (rechtshebende te goeder trouw) must be protected by law".

The legal rules of the Jurisprudence above strengthen the legal position of the act of physical possession over the years that:

- a. Rights holders who do not have physical control for many years are considered to have abandoned their rights;
- b. Rights holders who do not have physical control for many years are considered to have relinquished their land rights;
- c. Physical possession of land for many years is considered to have obtained ownership rights;
- d. Honest physical possession must be protected by law.

During this time, many lands were controlled but there was no underlying letter. The rule of law can be used as the basis for the State to give new rights to those who exercise physical control honestly. Sociologically, people who control land for many years are people who really

need land to live in. Day by day the need for land is getting more and more limited so that the law views land occupation in good faith and must be protected by law.

It is only natural that we manage land as well as possible so that its use can provide people's prosperity as mandated in Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states that: Earth, water and natural resources contained therein are controlled by State and used for the greatest prosperity of the people. Furthermore, in Article 2 Paragraph (1) of the LoGA, it is stated that: On the basis of the provisions in Article 33 Paragraph (3) of the Constitution and the matters referred to in Article 1, the earth, water and space, including the natural resources contained In it, at the highest level, it is controlled by the State, as an organization of power for the whole people.

It is emphasized that the word "controlled" in the article above does not mean "owned", but is an understanding, which authorizes the State, as the organization of power of the Indonesian nation at the highest level to provide regulation. The settings are:

- a. Regulate and implement the designation, use, supply and maintenance of the earth, water, and space;
- b. Determine and regulate legal relations between people and the earth, water and space;
- c. Determine and regulate legal relations between people and legal actions concerning earth, water and space.

Based on Presidential Regulation Number 63 of 2013 concerning the National Land Agency, this is the task of the National Land Agency which is mandated by the government through Article 2 of Presidential Regulation Number 63 of 2013 concerning the National Land Agency which states that: BPN RI has the task of carrying out government duties in the land sector nationally, regionally and sectorally in accordance with the provisions of the legislation.

Legal Position for Certificate Holders on New Rights Who Do not Have Physical Land Control

Government Regulations 24/1997 in Article 12 paragraph (1) describes an important point about the truth in compiling physical data or a description of the state of the land, which emphasizes that land registration activities for the first time include the collection and processing of physical data, proof of rights and bookkeeping, issuance of certificates, presentation of physical data and juridical data, and storage of general lists and documents. [12]

From this process, it can be interpreted that the actual condition of the soil must be explained in the measuring letter. If the physical land is controlled by another party, or managed by another party, or the right applicant does not control the physical land, this must be explained in the measurement letter. The existence of the person who controls it must be questioned; it is possible that the applicant for the rights is not the actual person who owns the land in question. Or the right holder appointed the wrong land object, this could happen. Because soil conditions can change.

Even though there is no ongoing dispute in the judiciary or other law enforcement agencies, the control by another party must be questioned and if there is no information regarding borrowing or leasing, it can be interpreted as a dispute. So that the registration of rights cannot be realized by issuing a certificate.

With the presence of another party who controls the land, it is sufficient to declare the land in disputed status. As referred to in Article 1 paragraph (2) Regulation of the Head of the National Land Agency of the Republic of Indonesia No. 3 of 2011 concerning the Management of the Assessment and Handling of Land Cases defines that "land disputes, hereinafter referred to as disputes, are land disputes between individuals, legal entities, or institutions that do not

have a broad socio-political impact." This article can be used as a benchmark, even though the dispute does not proceed in the judiciary, it can still be declared as a disputed land.

Registration of new rights absolutely must be free from disputes with anyone, and this is an emphasis so as not to cause legal problems in the future. If there is a dispute, the issuance of the certificate must be suspended until the dispute is declared resolved. For example, in showing land boundaries, the right applicant is burdened with designating land boundaries, if the right applicant has not controlled the land for years and there is also a change in the state of the land, how can he correctly indicate the boundaries? In accordance with Article 18 paragraph (1) of PP 24/1997, it is stated that "The determination of the boundaries of land parcels that are already owned with a right that has not been registered or which has been registered but there is no measurement letter/drawing of the situation or a letter of measurement/drawing of the existing situation is no longer appropriate. with the actual conditions carried out by the Adjudication Committee in systematic land registration or by the Head of the Land Office in sporadic land registration, based on the designation of boundaries by the holders of land rights in question and as much as possible approved by the holders of rights to adjacent lands. [13]

In addition, Government Regulation 24/1997 in Article 17 paragraph (2) emphasizes that "in determining the boundaries of land parcels for systematic land registration and sporadic land registration, efforts are made to arrange boundaries based on the agreement of the parties concerned". Even though the sentence "attempted" has an unequivocal connotation. But there must be an effort or effort to reach an agreement between the parties concerned in setting the boundaries. And the efforts taken must be measurable or actually exist. [14]

Responding to the boundary dispute which incidentally relates to physical data, the dispute is recorded in the land book, if the deliberation efforts do not find a solution, the objecting party is notified to file a lawsuit in court. This is as referred to in Article 30 paragraph (1) letter c of PP 24/1997 which states; "Those whose physical data and/or juridical data are disputed but no lawsuit is filed with the Court shall be recorded in the land book with a note regarding the existence of the dispute and the objecting party shall be notified by the Chair of the Adjudication Committee for systematic land registration or the Head of the Land Office for sporadic land registration. to file a lawsuit to the Court regarding the disputed data within 60 (sixty) days in systematic land registration and 90 (ninety) days in sporadic land registration calculated from the date of delivery of the notification". [15]

As long as there is no notification to file a lawsuit, the period in question cannot be enforced. As long as the dispute record has not been deleted or has not been resolved, the issuance of the certificate must be suspended in accordance with Article 31 paragraph (2) of the government regulation.

Likewise, the Land Deed Making Officer (PPAT) is required to refuse to make a deed if the object of the legal action concerned is in a dispute regarding the physical data and/or juridical data, in accordance with Article 39 paragraph (1) letter f of government regulation 24/1997. Returning to the issue of the right holder or the SHM holder, it turns out that the SHM has never controlled the land and in fact there are other parties who have passed down from generation to generation and continuously for years, the SHM can be declared legally invalid. And the transfer of SHM can also be categorized as a legal defect.

Moch. Isnaini argued that "a certificate of land rights is not the only absolute evidence, on the contrary it is only an initial piece of evidence which can be withdrawn at any time by another party who is proven to be more authoritative" [16]. Physical possession of land is very urgent in land ownership. This can be seen in Article 32 paragraph (2) of PP 24/1997 which contains; "In the event that a certificate of land has been issued legally in the name of the person or legal

entity that obtained the land in good faith and actually controls it,..." So even though a certificate of title has been issued, obviously the land must be under control the right holder

Not controlling or working the land for many years can result in the loss of land rights. as emphasized in the Elucidation of Article 32 paragraph (2) of PP 24/1997, in customary law if a person for a period of time leaves his land uncultivated, then the land is worked on by someone else who acquired it in good faith, then his right to reclaim the land is lost. The provisions in the LoGA that state the abolition of land rights due to neglect (Articles 27, 34 and 40 of the LoGA) are in accordance with this institution. [17]

The issuance of the SHM was suspected of having land mafia practices. How is it possible for a party who has never controlled the land to issue ownership rights for him? Then the certificate can be canceled by filing a lawsuit to the judiciary or submitting an application for cancellation to the competent Land Agency.

4 Conclusion

Based on the description of the results of research and discussion in this study, it can be concluded that a person can obtain ownership rights to land if he occupies a land for 20 (twenty) consecutive years if the control and use of the land in question is carried out in real and in good faith. good. The right holder or certificate holder for new rights who has never controlled the land and in fact there are other parties who have been passed down from generation to generation and continuously for years, the certificate can be declared legally invalid. And the transfer of the certificate can be categorized as a legal defect

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