

Government's Waiver of Land In The Land Registration Process

Amiruddin¹, Suhaimi², Zahratul Idami³

¹ Law Faculty, Syiah Kuala University, Banda Aceh, Indonesia

² Law Faculty, Syiah Kuala University, Banda Aceh, Indonesia

³ Law Faculty, Syiah Kuala University, Banda Aceh, Indonesia

Abstract : Based on article 6 The Agrarian Code of Law confirms that all rights to land have social functions. The explanation of article 6 specifies, the right to any land that exists on a person, it is not justified that the land will be used (or not used) solely for his personal interest, especially if it raises harm to society. The use of land must be adjusted to the circumstances and the nature of its rights, to the benefit of the welfare and happiness that has or is beneficial to the society and the country, but in that case the provision does not mean that the individual interest will be urged at all by the public interest (community). Principles of Agrarian Law take note of personal interests as well. The interests of the Community and the individual interests must be offset to each other, eventually achieving the goal of prosperity, fairness and happiness for the whole people. Then the implementation of indemnity and waiver as referred to in article 42 paragraph (1), ownership or right of land of the right party shall be removed and the proof of rights is deemed invalid and its land to be directly controlled by the state. One of the problems concerning the release of land rights for the public interest without indemnification that was terminated by Banda Aceh District Court in Decision No. 53/Pdt. G/2017/PN Bna. The Banda Aceh District Court which examines and breaks the civil lawsuit at the first level, has dropped the verdict as follows in the case of the lawsuit. The method of writing this research using empirical research types, the data source used in this research was obtained based on literature research and field research, then the data that has been collected, further analyzed using qualitative method. The results showed that the constraints and efforts undertaken by the Government against the release of land in the land registration process were, government policy factor on taxation obligations in land registration activities, less understanding of the function and usability of the certificate, Community assumption Factor is required costly to carry out land registration, the assumption Factor takes a long time in the management of the certificate, the presumption of land rights earthen factor has been very strong, and the system of negative publications containing positive elements. Overcoming the barriers in the implementation of sporadic land registration for the community on the cost of considerable land registration, the government seeks to minimize the amount of liabilities to be paid by only applying the price of land to the value of selling tax object.

Keywords: Waiver Of Land, Government, and Land Registration Process.

Date of Submission: 06-07-2020

Date of Acceptance: 20-07-2020

I. INTRODUCTION

Land has an important role in the life and life of people including infrastructure in the field of industry, housing, and roads (Abdurrahman, 1983). In addition, the land is a settlement place of most of mankind. Hence land is a major contributing factor to the life and welfare of society. Land function is not only limited to the needs of housing, but also the place to grow the social, political, and cultural of one person or community (Erwiningsih, 2009).

In the life of the Land of mankind has an important meaning, for the people of Indonesia who are land agrarian country is a very important dependent place economically (Marbun, Yogyakarta). The development of human needs against the land never ends with the growth of the population so that the country as the largest organization has the task and responsibility in regulating the use and utilization of land for the prosperity of people.

In today's development, there is a problem that the land is a source of conflict, especially if the government needs land owned by residents for development purposes, while the community needs land as a source of livelihood so the problem of land rights in the liberation and revocation of land rights become a fairly complicated issue in the development of legal science today (Sutedi, 2008). Land, similarly, the earth and the water and space on it are part of the wealth of the nation and in the public domain belongs with the nation that is national wealth and is woven in a relationship that is lasting with the nation of Indonesia, this is the essence of Law No. 5 of 1960 concerning the basic rules of Agrarian fundamentals hereinafter called UUPA Article 6

asserted that all rights to land have social The explanation of article 6 specifies, "The right to any land that is in a person, is not justified that the land will be used (or not used) solely for his personal interests, especially if it raises harm to society. The use of land must be adjusted to the circumstances and the nature of its rights, to the benefit of the welfare and happiness that has or is beneficial to the society and the country, but in that case the provision does not mean that the individual interest will be urged at all by the public interest (community). Principles of Agrarian Law take note of personal interests as well. The interests of the Community and the interests of the individual must compensate each other, until the goal will be achieved for the purpose of prosperity, fairness and happiness for the whole people. "

Based on the explanation of article 6 The Constitution can be concluded that in the possession of the person is contained the rights of the community (Parlindungan, 1994). If article 6 of the Constitution is examined, there are some things that can be viewed as the nature of the social function of land rights which are intended as a fundamental affirmation of the limitation of individual freedoms. The nature of social functions include (Yusriadi, 2010):

- a. "The use of land must correspond to the state of its soil, the nature, and the purpose of granting its rights so that according to the UUPA land that is abandoned is contrary to social function;
- b. The use of land must conform to the plans set by the Government;
- c. If the general interest requires the individual interest to be in the case of loss, then it should be given compensation;
- d. Ground is not a trading commodity goods so it is not allowed to make land as a speculation object. "

In possession of land then there must be a right mat first. Likewise, the State should have a fundamental right to master and utilize the land, so that the country has the authority to regulate land allocation with the aim of the prosperity of people (Soermihardjo, 2009).

The validity of the implementation of the takeover of Land is based on an agreement between a land rights holder or the master of it with a party that will acquire land or in need of land. In the process of the acquisition of land rights by material law is the legal agreement in the civil law. This means that for the good of the legal action the takeover shall apply among other conditions which have been prescribed in the law of the Agreement. The rights and obligations of the parties, including the legal protections available to each of them (Amrullah, 2006).

Sustainable development is a standard that is not only demonstrated for environmental protection, but also for the policy of development means in the provision, use, enhancement of natural resources and economic enhancement, needs to be aware of the importance of preservation of environmental functions, equality of inter-generational degrees, awareness of the rights and obligations of the Community, prevention of development that is destructive and not responsible for the environment and the obligation to participate in the continuing development of every community layer (Hardjasoemantri, 1999).

The authorities and the right to use the land are any person or legal entity granted land rights by the State evidenced by the certificate or any other letter/permit specified in the Act. Any use of land that is based on land rights in an act against the law. Act against the Law is an act that infringes the subjective rights of another person or as opposed to a legal obligation of the author himself who has been governed by the law.

In other words against the law is interpreted as resisting legislation. In addition to the act of violating the law, it also violates the public interest, the decency of morality and because it causes harm to others. In addition, people who commit actions against the law must have mistakes either intentionally or negligent, there must also be losses incurred. In the sense that the losses caused by acts against the law can be both material and immaterial losses and there is a causality relationship or cause of consequence between deed and effect. At the time of the implementation of the indemnity and waiver as referred to in article 42 paragraph (1), the ownership or right of land of the appropriate party shall be removed and the proof of right is deemed invalid and its land to be directly controlled by the state.

In addition to the land registration process as outlined above, the waiver of land rights may also occur voluntarily by the owner. This is contained in article 27 of The Constitution stating that one of the causes of property of land shall be if submitted voluntarily by the owner. In this case if the government needs land for the implementation of development, it could be that the government acquired or controlled the land if the owner voluntarily handed over and reported the right to his lands.

In the case of government action requires land controlled or community owned, because here concerned 2 (two) interests are government interests that are faced with the public interest. On the one hand, the government or in this case as the ruler, must implement development to improve the welfare of the people or for the sake of the country and its people as one form of the distribution of the opposition. While the community is the provision of facilities to implement such development because the people or society have the land needed as a form of implementation of development (Sumardjono, 2001).

The waiver on land is the first step taken in the process of establishing a building permit. But this way is not always productive, and has a high selling value so that there is often a dialogue or a considerable

deliberation between the Government with the owner of the land. In particular regarding without indemnification, the waiver of land can only be made through without compensation in the basis of deliberation. Deliberation here is interpreted as a process or activity of hearing each other with the attitude of each other's opinions and desires that are based on volunteerism between the rights holders on land and the need for land, to get an agreement on the form and magnitude. Deliberations are carried out directly between land rights holders and government agencies that require land (Sayekti, 2000).

In addition to the above, it explains that the waiver of any land that exists in a person, it can not be justified that the land will be used or not used solely for his personal interests, especially if it raises losses for the wider community (Safik, 2006). In the sense that the land not only for the rights holders on the land but also for the Indonesian nation entirely, with the consequence that the use of rights to a plot of soil should also pay attention to the public interest. But that does not mean that one's interests are urged by the interests of the community or country, and between the two interests must be balanced (Limbong, 2011).

One of the problems concerning the release of land rights for the public interest without indemnification that was terminated by Banda Aceh District Court in Decision No. 53/Pdt. G/2017/PN Bna. The Banda Aceh District Court which examines and breaks the civil lawsuit at the first level, has dropped the verdict as follows in the case of the lawsuit.

Therefore, in consideration of the law, considering that the defendant's lawlessness I filed an exception which is in fact the following: the plaintiff does not have the capacity/right to file a lawsuit as the plaintiff has no basis for the lawsuit. The plaintiff in his suit at its core was harmed due to the land area of 1,700 m² which the plaintiff had belonged to, but based on the date of statement letter/release of land on 22 August 2008 the plaintiff had waive the land of 1,700 m² into a land directly ruled by the state. Due to the land waiver of 1,700 m² has been valid and has been recorded in proprietary certificate number: 23 dated 19 August 1982 then the plaintiff is not entitled to the land area of 1,700 m². Because the plaintiff is no longer entitled to a land area of 1,700 m², then the plaintiff is no longer entitled to a land area of 1,700 m², then the plaintiff does not have the capacity/right to file a lawsuit.

Based on a series of problematics of the case, there is a waiver on the ground by the government and not in damages. From the explanation above, the author is interested in studying and analyzing and lifting in a research thesis proposal titled "Government's Waiver of land in the land registration process".

Based on the background outlined above, then the author draws several problems are limited as follows, what are the constraints and efforts made by the Government against the waiver on land in the process of land registration.

This research uses the type of empirical research this research is done to obtain primary data and discover the truth using methods of thinking deductive and critical correctness of correspondents and the truth of fact used to perform the deduction and testing the truth of the correspondent is a sophisticated fact, analyzing the problem is done by combining the legal materials that are secondary data with primary data obtained in the field is reviewing the prevailing legal provisions and the actual circumstances , with the intention to know and find the facts and data needed, after the data needed to accumulate, then proceed to identify the problem which eventually leads to the resolution of the analytic prescriptive problem.

The data sources used in this study were obtained based on literature research and field research. Field research is conducted by collecting primary data, as a primary data source and secondary data as supporting data. Primary data is derived from interviews with respondents and informant as well as the parties that are directly or indirectly linked to the government's waiver of land in the land registration process, while secondary data is explained from the study of some relevant laws on the investigated issues, to obtain the conception of theories or doctrines, opinions or conceptual thinking and prior research, which relate to the research study object.

II. LITERATURE REVIEW

The waiver on land is the activity of releasing the legal relationship between the land rights holder and the land to which it is mastered by giving compensation on the basis of deliberation. The release of this land can only be done on the basis of approval and agreement from the right of the rights holder regarding the technique of implementation and about the large and form of damages that will be given to the soil. The waiver on land is the activity of releasing the legal relationship between the land rights holder and the land to which it is mastered by giving compensation on the basis of deliberation. The release of this land can only be done on the basis of approval and agreement from the right of the rights holder regarding the technique of implementation and about the large and form of damages that will be given to the soil.

This waiver is not only done for public interest but also for the private sector. Concerning the lands that are waived and indemnified are the lands that have had something right under law number. 5 years 1960 (UUPA) and the lands of indigenous law communities. The damages given to the parties who have waive such

rights are either money, substitute land or resettlement. Waiver is a form of land procurement activities that apply the principle of respect for land rights.

A. Land Procurement for Development Implementation

The need for land development provides the opportunity to make land procurement for various projects both for public use and for the benefit of private/business, both in small and large scale. Because the land available is no longer adequate, so to support those interests that become objects are the land of good rights that are owned by the individual, legal entity and customary legal community.

The procurement of land for various interests often pose conflicts or problems in the implementation, this is caused by the gap between Des Sollen as contained in the prevailing regulation of abuse, with Des Sein in the form of reality that occurs in the field (Sumardjono, 2001).

Broadly known there are 2 (two) types of land procurement, first land procurement for the benefit of the government consisting of public interest, while the second procurement of land for private interest covering commercial interests and non-commercial or non-social. According to article 1 Figure 1 Presidential Decree 55/1993 referred to the procurement of land is any activity to obtain land by giving compensation to the land. So it can be concluded that the procurement of land is done by giving compensation to the land that is entitled, not in any other way than the compensation.

While according to article 1 of 3 Presidential Decree number 36 year 2005 procurement of land is any activity to obtain land by means of giving compensation to the release or surrender of land, buildings, plants and objects relating to the land or with the revocation of land rights.

Thus, it can be concluded that the land procurement according to Regulation No. 36 year 2005 can be done in addition to providing compensation is also possible by means of revocation of land rights. This means that there is an element of imposition of will to the revocation of land rights for the land needed in the implementation of development for the public interest.

B. Land Procurement for Public Interest

Before Presidential decree number. 55 The year 1993 is set, there is no clear definition of the common interest of the raw. It can simply mean that the public interest can be said for the need, needs or interests of the crowd or broad objectives. Nevertheless the formulation is too general and there is no limit (Limbong O. S., 2004). According to John Selindeho, the general interest is to include the interests of the nation and state as well as the common interests of the people, taking into account the social, political, psychological and hankamnas aspects of national development principles by observing national resilience and archipelago insight (Salindheo, 1988).

Pursuant to article 1 number 1 Presidential decree. 55 The year 1993 with the general interest is the interest of all walks of life, hereinafter in article 5 Presidential Decree No. 55 year 1993 stated that development for public interest is limited to the development activities undertaken and subsequently owned by the government and not used to seek profit.

Thus in Presidential decree number. 55 years 1993 It is clear that the public interest does not pay attention to the mere benefit, but also strictly restricts its implementation in the development of public interest. In UUPA and law number. 20 years 1961 is done in the sense of its designation namely for the benefit of the nation and state, the common interests of the people and the interests of development. Therefore, it can be concluded that the general interest is that the interest must fulfill its designation and should be perceived benefits in the sense can be felt overall by the community as a whole and or directly.

C. Land Procurement Legal Basis

Before the enforcement of Presidential decree No. 55/1993, on the procurement of land for the public interest, then the juridical foundation used in the procurement of land is the regulation of the Minister of Home Affairs No. 15 of 1975 on the provisions on Ordinances of land Liberation (PMDN No. 15/1975). Implementation of land procurement in PMDN number. 15 years 1975 in the procurement of land known terms of land liberation, which means to release a legal relationship that is between the holder/ruler over the land by giving compensation. While in article 1 point 2 Presidential Decree number. 55 The year 1993 states that, "the waiver or submission of rights is an activity of releasing the legal relationship between the land rights holder and the land to which it is mastered by giving compensation on the basis of deliberation".

Then for deliberation it is governed in item 5 (five) stating that, deliberation is a process or activity of hearing each other, with the attitude of each other to receive opinions and desires based on the volunteerism between the parties rights to land and the parties who need the land to get an agreement on the form and magnitude of damages "(Limbong O. S., 2004).

After the validity of Presidential decree. 55 years 1993 the term is changed to a waiver of land rights. Therefore, the terms of the material law of the implementation of the waiver or the waiver of land is essentially the same as the liberation of the Land of civil law. In other words that the validity or unenforceability of the

release or submission of land rights as a means of procurement of land is determined whether there is no agreement between the parties which means the validity of the legal action in question, among others the terms of the provisions of the agreement stipulated in article 1320 KUHcivil.

The difference is only in the internal aspects-the administration of land acquisition in general based on the number of PMDN. 15 years 1975, while the release or submission of land rights based on the number presidential decree. 55 year 1993. Legally Kedudukan Presidential decree number. 55 The year 1993 is the same as PMDN number. 15 years 1975, namely as a regulation in the procurement of land for development for the public interest in which it governs the provisions on the ordinances to obtain land and competent authorities in such matters.

According to Boedi Harsono, because of the presidential decree number. 55 The year 1993 is an internal-administration rule, so it does not bind the party that has the land even there is a formulation that gives such an impression, and because it is not a law, then it can not be imposed on the party that has land. Therefore, it cannot be enforced, so as a consequence of the state's administrative decision to settle the unwillingness of the rights of the Landlord is not a final decision/final.

It can be seen in article 21 Presidential decree number. 55 year 1993 stating that if the rights holder on land does not accept the decision set by the governor, while the site of development can not be transferred elsewhere, then proposed by the revocation of land rights.

Moreover, Presidential decree number. 55 year 1993 is a refinement of the previous rule of PMDN number. 15 years 1975 who have a deficiency or weakness, especially those concerning the parties who can do land exemption, the basis of the calculation of damages based on the basic price, the absence of final settlement in the event of a dispute dalam pembebasan land, in particular concerning the not achieving agreement on the giving of damages.

Therefore, the status of Presidential decree. 55 The year 1993 is the same as PMDN number. 15 years 1975 as a formal legal basis in the release or submission of land rights which at the time of PMDN No. 15/1975 is called land exemption. But with the time of Presidential decree No. 55/1993 then replaced with a new regulation with the aim of finding a way to minimize the potential conflicts that may arise in the implementation of land procurement according to Preside Regulation (Perpres) Number 36 year 2005 concerning land procurement for the implementation of general development Jo Perprs No. 65/2006.

III. THE CONSTRAINTS AND EFFORTS MADE BY THE GOVERNMENT ON THE WAIVER OF LAND IN THE LAND REGISTRATION PROCESS

Every provision of land rights is not without the right to encounter obstacles or constraints therefore with government efforts in realizing the act of the Land Order chess as a form of wisdom set by the Government in the process of the mandate of the main agrarian Law (UUPA), in the processes of granting management rights there are several obstacles encountered. In the process of application of the main constraints faced is about evidence/letters of evidence that is the basis of the law of governance/acquisition of land from the applicant Agency for Management rights to the land that is requested.

The obstacles that occurred in the implementation of land registration namely, as follows (Abdullah, 2020):

A. Government policy factor on taxation obligations in land registration activities.

There is a policy from the government in the law No. 21 year 1997 Jo Act No. 20 year 2000 on BPHTB (Land and building rights) with the determination if the value of land object acquisition is greater then taxed, otherwise when the value of land object acquisition is smaller then it is not taxable.

B. Less understanding of the function and usefulness of certificates

People in general do not understand the function and usefulness of certificates, this is backed by the public to get accurate information about land registration. Because of the lack of accurate information and easy to understand the public about land registration, will affect the public awareness to register its land. Then the public assumption that the certificate of land rights only viewed from economic value only, such as:

1. The assumption that the certificate is only needed to raise the price of the field as compensation from the cost of certificate management to the land Office, while the community assumes that the economical price of a land is assessed based on the area and quality of the land.
2. The certificate assumption is only required when there is a need to apply for a loan at the bank as a guarantee of giving credit that will serve as the object of rights.

C. Community assumption factor required costly to implement land registration

In the case of land registration in the city of Banda Aceh notwithstanding there is a land registration tariff for each vertex of land registration activities in accordance with PP No. 46 year 2002 but in practice both the land party and the government at the level of the district/smallest such as village head, Lurah, Camat in case of issuing the right mat carrying out the quoting outside the applicable provisions.

D. Assumption Factor takes a long time in the management of certificates

People's assumption to take care of land rights certificate takes a long time. As revealed from one of the communities that have registered its soil sporadic individuals are known for the duration of the certificate generation is faster 3 or 4 months and at most 8 months even there is until 1 new year is completed.

E. Factor of the right land rights assumption has been very strong

Based on the results of the study, the society that lacks the function and usefulness of certificates, some think that the land that has been registered is meaningful if the land is already letters (Letters of the name and anyone who publish it) as long as the creation with the government agency means the land is already registered and is a tool of proof of strong rights, especially to the land obtained from the public Whereas all the land that belongs to today society has been assigned the Earth Tax and the building (PBB) is in order to fulfill and increase the state's income.

In the negative system, if people as the subject of their name rights are already listed in the Land book, the rights are still allowed to be denied throughout the objection giving the tool quite powerful evidence. This negative system has a weakness that the government does not guarantee the truth of the contents of the general lists held in the registration of rights.

Overcoming the barriers in the implementation of Sporadic land registration for the community on the cost of land registration considerable, the government seeks to minimize the amount of liabilities to be paid by only applying the price of land only to the NJOP. While the effort is done by the land Office by conducting a systematic land registration where this activity will ease the cost and rapid certificate issuance process in accordance with the stipulated time. In building high awareness in government society and Land Office in particular also socializing to the village community (Abdullah, 2020).

IV. CONCLUSION

The implementation of land registration office of Banda Aceh City can still be said to succeed in the form of appropriate land registration process or in accordance with the Law No. 5 year 1960 (UUPA) and other implementing regulations. Based on evidence of documents that the author obtained that is the legal material of land registration that has been done. It is hoped that the land Office continues to observe and overcome the obstacles in terms of soil registration in an increasingly better way, concerning the costs that will be incurred by the people who want to register their lands, because during this minimum benchmark or maximum limit on the costs incurred in the process of registration of land does not exist.

REFERENCES

- [1]. Abdurrahman. *Masalah Hak-Hak Atas Tanah dan Pembebasan Tanah di Indonesia*. Bandung : Alumni, 1983. p. 1.
- [2]. *Hak Menguasai Negara atas Tanah*. Erwiningsih, Wianahyu. Yogyakarta : s.n., 2009, Tesis, Universitas Islam Indonesia Fakultas Hukum Program Pascasarjana, pp. 1-100.
- [3]. Marbun, SF. Mahfud, Moh. *Pokok-Pokok Hukum Administrasi Negara*. 2009 : Liberty, Yogyakarta. p. 163.
- [4]. Sutedi, Adrian. *Implementasi Prinsip Kepentingan Umum Dalam Pengadaan Tanah Untuk Pembangunan*. Jakarta : Sinar Grafika, 2008. p. 45.
- [5]. Parlindungan, AP. *Bunga Rampai Hukum Agraria Serta Land Reform*. Bandung : Mandar Maju, 1994. p. 87.
- [6]. Yusriadi. , *Industrialisasi & Perubahan Fungsi Sosial Hak Milik Atas Tanah*. Yogyakarta : Genta Publishing, 2010. p. 32.
- [7]. Soermihardjo, Soedjarwo. *Mengkritis Undang-Undang Pokok Agraria Meratas Jalan Menuju Penataan Kembali Politik Agraria Nasional*. Jakarta : Cerdas Pustaka, 2009. p. 130.
- [8]. Amrullah, Afifuddin Manan. *Hak Pemilikan Atas Tanah, Forum Diskusi Terfokus Rekonstruksi dan Rehabilitasi di Aceh*. Banda Aceh : Fakultas Hukum Unsyiah, 2006. p. 14.
- [9]. Hardjasoemantri, Koesnadi. *Hukum Tata Lingkungan*. Yogyakarta : Gaja Mada University Press, 1999. pp. 18-19.
- [10]. Sumardjono, Maria S.W. *Kebijakan Pertanahan Antara Regulasi Dan Implementasi*. Jakarta : Kompas, 2001. p. 32.
- [11]. *Hukum Agraria Nasional*. Sayekti, Sri. Bandar Lampung : s.n., 2000, Universitas Lampung, p. 20.
- [12]. Safik, Akhmad. *Tanah Untuk Kepentingan Umum*. Jakarta : Lembaga Studi Hukum dan Ekonomi FHUI, 2006. p. 12.
- [13]. Limbong, Bernhard. *Pengadaan Tanah Untuk Pembangunan*. Jakarta : Margaretha Pustaka, 2011. p. 78.
- [14]. Limbong, Oloan Sitorus dan Dayat. *Pengadaan Tanah Untuk Kepentingan Umum*. Yogyakarta : Mitra Kebijakan Tanah Indonesia, 2004. p. 6.
- [15]. Salindheo, John. *Masalah Tanah Dalam Pembangunan Cetakan Kedua*. Jakarta : Sinar Grafika, 1988 . p. 40.
- [16]. Abdullah. *Pendaftaran Hak Atas Tanah*. [interv.] Masyarakat. Juni 19, 2020.

Amiruddin, et. al. "Government's Waiver Of Land In The Land Registration Process." *IOSR Journal of Humanities and Social Science (IOSR-JHSS)*, 25(7), 2020, pp. 25-30.