

Legal Review of Dualism in the Regulation of Release of Land Rights by Notaries and Sub-district Heads

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Abstract. *Land ownership rights are legal rights or powers held by a person or an entity over a piece of land to use, control, and enjoy the land. It is determined for private parties or companies that wish to have land rights, the land ownership status that will be used for commercial development is required to experience degradation of rights, namely a decrease in land status that can be done in various ways, one of which is the release of rights followed by an application for new rights. Examining the problem of this dualism of regulation, the author uses a normative research method with a legislative approach, a conceptual approach, and an analytical approach. Using secondary data sources from primary, secondary, and tertiary legal materials. The data collection method is carried out by literature study. The data analysis method uses a prescriptive method. The results of the study show that both officials, namely the Notary and the Sub-district Head appointed in the process of releasing land rights, both receive the authority in the form of attribution. However, the authority of the SPPHT according to the normative hierarchy is the authority of the Notary which cannot be replaced. In order to achieve legal objectives, the government grants the authority to issue one of them by the Sub-district Head. The existence of dualism brings benefits of convenience for people who live in areas not yet reached by Notaries, but there are also shortcomings, namely disharmony of regulations and inconsistencies in the mechanism for preparing documents. Both legal products in the form of a deed of release of rights made by a Notary and a statement of release made by the Sub-district Head both have legal force, are valid, and bind the parties.*

Keywords: Authority; Land; Ownership; Rights.

1. Introduction

Basic Agrarian Law (UUPA) Number 5 of 1960 is a very important legal regulation in the history of Indonesian agrarian law. UUPA has the main objective to regulate and formulate the basic principles in the agrarian sector,

namely the law governing land rights, land use, and utilization of natural resources in Indonesia. In essence, the objectives of the Basic Agrarian Law are:¹

1. laying the foundations for the formulation of national agrarian law, which will be a tool to bring prosperity, happiness and justice to the State and the people, especially farmers, within the framework of a just and prosperous society;
2. laying the foundations for achieving unity and simplicity in land law;
3. lay the foundations for providing legal certainty regarding land rights for the people as a whole

The purpose of the UUPA is the implementation or manifestation of the provisions of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states "The land, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people." Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia is the constitutional basis for the establishment of national legal policy and land law. This law mandates that the state has control over the land, water and natural resources in its territory, and these resources must be used for the greatest prosperity of all Indonesian citizens.²

Oloan Sitorus and Nomadyawati are of the opinion that the state's authority in the land sector as stated in Article 2 paragraph (2) of the UUPA is a delegation of state responsibility to regulate, control, and supervise the use of customary land, which is considered a legitimate national asset. The state's right to control can be understood as a transfer of public authority from the rights of the nation. Therefore, its power is only public.³As long as it is necessary and does not interfere with national interests as stated in government laws and regulations, the state can delegate authority or control over land to autonomous regions (regional governments) and communities regulated by customary law.⁴

Land is a very important factor in the life of a society, especially for the Indonesian people, where Indonesia is included in the most populous countries in the world based on real-time data from the World Population Review as of Wednesday (8/2/2023). Indonesia is ranked fourth with a population of 276,639,440 people.⁵Of course, with such a large population,

¹Explanation of Law Number 5 of 1960 concerning Basic Agrarian Principles

²Urip Santoso, 2015, *Acquisition of Land Rights*, Prenamedia Group, Jakarta, p.1. (Hereinafter abbreviated as Santoso, Urip I)

³Oloan Sitorus and Nomadyawati, 1994, *Land Rights and Condominiums*, Dasamedia Utama, Jakarta, p.7.

⁴Urip Santoso I, *Op. cit.*, p. 14.

⁵Ulfa Arieza, "10 Countries with the Most Populations in the World 2023, Is Indonesia Among Them?" <https://travel.kompas.com/read/2023/02/08/213300427/10-negara-dengan-penbesar-di-dunia-2023-apa-ada-indonesia-?page=all> accessed on October 7, 2023 at 09.00 WIB.

land is the main need of the Indonesian people in their main interests, namely as a place to live. In addition to land as a place to live, land is also used as one of the commodities for business or investment assets, so it can be ascertained the importance of land ownership, especially for the Indonesian people.

Land ownership rights are legal rights or powers held by a person or an entity over a piece of land to use, control, and enjoy the land, which in its acquisition involves several processes and certain requirements to be able to own it. In general, there are various types of land ownership rights, such as management rights, building use rights, business use rights, and land ownership rights.

Land ownership rights are regulated in detail in the Basic Agrarian Law, as stated in articles 20 to 27. In land use, land ownership provides greater freedom and control to its owner compared to other types of property rights. Land ownership rights are granted to certain legal entities appointed by the government or to individual residents of Indonesia. As long as the landowner is still alive, he has the right to ownership rights that can be inherited by his heirs upon his death, provided that the heirs meet the requirements.

In order to acquire ownership of land, interested parties have several options available to them. These include acquiring rights, surrendering rights, revoking rights, and then applying for new rights. Legal acts involving the transfer of rights to goods, both movable and immovable, are called transfers of rights, sometimes also referred to as transfers of ownership. Legal transactions involving the transfer of immovable property related to land include activities such as buying, selling, donating, trading, and dividing joint property, as well as receiving income from corporations or firms.⁶

Private parties or companies seeking land rights for commercial development need to experience degradation of rights, namely the loss of ownership status over the land. The transfer of Land Ownership Rights to other ownership statuses (HGB, HGU, Right to Use, Management Rights, etc.) can occur when a person or a legal entity is interested in constructing a building that functions as a place for business or commercial activities on the land, so that a process of degradation of land rights occurs.

The Certificate of Ownership must be changed to Building Use Rights or other degraded land rights, and the owner must have a Deed of Release of Land Rights or a Statement of Release of Land Rights (SPPHT). This document is needed to release the previous land status, especially Ownership Rights, before registering the new land status according to its designation.

⁶John Salindeho, 1987, *Land Problems in Development*, Sinar Grafika, Jakarta, p.37.

Release of Rights is the voluntary termination of the legal association between the holder of Management Rights or Land Rights and the land under his control, so that the land is designated as State Land or Customary Land.⁷ Relinquishment of land rights occurs when an individual or legal entity wants to acquire land. In this process, compensation is given to people who waive their rights after careful consideration and discussion. However, the transfer of these rights does not necessarily give the compensation provider the status of holder of land rights. The released land will be transferred to the state and then allocated to individuals who provide compensation.⁸

The process of releasing land rights requires the issuance of a Statement of Release of Land Rights (SPPHT) which is regulated in the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the BPN RI Number 18 of 2021. This regulation outlines the procedures for determining management rights and land rights, in Article 183 paragraph (4) it is stated "Release of Land Rights or Management Rights as referred to in paragraph (1) is stated in the form of a statement of release of Land Rights or Management Rights by the rights holder."

Article (1) in question reads as follows, "The release of Land Rights or Management Rights to become State Land is acknowledged by the authorized official by submitting the relevant Land Rights or Management Rights certificate to the Land Office." Furthermore, it is explained in Article (3) that "The authorized official as referred to in Article (1) includes a Notary, Sub-district Head or Head of the Land Office."

With the instructions in the regulation regarding authorized officials, two of which are Notaries and Sub-district Heads, it shows that the making of SPPHT can not only be done by Notaries, but can also be issued by Sub-district Heads. The authority of these two officials is each strengthened by Law and Government Regulation, which is felt to be able to cause dualism in the applicable law.

Notaries are authorized to make authentic deeds for any agreement, deed, or provision required by law, regulation, or desired by the interested party, as referred to in Article 15 paragraph 1 of Law Number 2 of 2014 of the Republic of Indonesia, which amends Law Number 30 of 2004 concerning the Position of Notary. It is their duty to verify the accurate date of the Deed, store it, provide an official copy, and copy it for use in citations. Except for officials and other persons appointed by the Constitution, this power does not apply.

⁷Article 1 number 19, Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 18 of 2021 concerning Procedures for Determining Management Rights and Land Rights

⁸Suwito, 2023, Legal Certainty of the Elimination of State Assets (Release of Rights to State Land Formerly Eigendom Verponding), Jakad Media Publishing, Surabaya, p. 176.

Based on Government Regulation of the Republic of Indonesia Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998, the Minister has the authority to appoint Sub-district Heads or Village Heads as Temporary PPATs in areas that lack Land Deed Makers. . The existence of this article shows that in addition to being the organizer and administrative person in the region, the Sub-district Head also plays a role as a Temporary PPAT to handle tasks in the land sector. This makes the authority of the Sub-district Head to issue SPPHT under a valid legal umbrella, although limited by the clause "in areas where there are not enough PPATs." In addition to issuing SPPHTs, the Sub-district Head also has the authority to assist in land registration activities and transfer of land rights in small areas. With the existence of PPATS, the community will still be served regarding land registration even though there are not enough PPATs in their area, with the applicable terms and conditions in accordance with applicable laws and regulations.

2. Research Methods

The type of legal research used in this research is normative legal research, namely legal research that places law as a building block of a system of norms. This study uses several approaches, the first is the statute approach. The second approach is the conceptual approach method. The third approach is the analytical approach method. The type of data used in this study uses secondary data. Namely from indirect sources, obtained from an organization or individual from another party who has previously collected or processed it. Includes official documents, books, and research results in the form of reports. In this case, the object of research studied is the regulations and authority in making a Statement/Deed of Release of Land Rights.

3. Results and Discussion

3.1. Advantages and Disadvantages of Dualism in the Regulation of Release of Rights On Land By Notary And By Sub-district Head

Release of rights is an act of terminating the legal relationship between the holder of Management Rights or Land Rights and the land under his control, so that the land is designated as State Land or Customary Land.⁹The process of releasing rights is present because of the existence of material requirements for the legal subject of ownership of rights. Among these legal subjects are legal entities in the form of private companies. The activity of acquiring land by private companies on land rights is known as land acquisition for private interests. Companies can obtain the land they need in two ways: transfer of land rights through sale and purchase, or release of land rights.

⁹Article 1 number 19, Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 18 of 2021 concerning Procedures for Determining Management Rights and Land Rights

Acquisition of land rights for a company or legal entity can be done by obtaining the right to use the land. The release of rights can occur after a consensus is reached through discussion regarding the specific form and value of compensation. After the parties reach an agreement, the rights holder will document the agreement in the form of a notarial deed. The act of releasing land rights does not immediately result in the transfer of rights to the corporation. On the contrary, the land rights are void and the land becomes state property. Furthermore, the company or legal entity can re-apply for land rights based on its requirements. Private companies seeking land for specific development purposes must be guided by the guidelines contained in the Regency/City Spatial Planning Plan (RTRW), as mandated in the Regency/City Regional Regulation.

It is very unlikely that private companies can use land that is under direct state control to meet their development needs. Almost all land used by companies is privately owned or controlled by the community, corporations, or local governments. After conducting a survey on the land designated for building, the company must obtain a location permit. The company submits the location permit to the Regent/Mayor through the Head of the local Regency/City Land Office. The local Regent/Mayor signs the location permit decision letter.

The process of releasing land rights requires the issuance of a Statement of Release of Land Rights (SPPHT) which is regulated by the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 18 of 2021. In accordance with Article 183 Paragraph (4) of this Regulation, the release of land rights or management rights as referred to in paragraph (1) must be stated through an official letter stating the release of said rights by the rights holder.

The first article states that the authorized official acknowledges the release of land rights or management rights by providing a certificate of land rights or management rights in question to the Land Office. Article (3) provides additional explanation that what is meant by "authorized official" as referred to in paragraph (1) includes Notaries, Sub-district Heads, and Heads of Land Offices.

Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the BPN RI Number 18 of 2021 entitled "Procedures for the Management of HPL and Land Rights" is a regulation that is the implementation of Government Regulation (PP) Number 18 of 2021. This latest regulation regulates HPL, land rights, apartment units, and land registration. The inclusion of instructions in this regulation relating to authorized officials, namely Notaries and Sub-district Heads, shows that the preparation of SPPHT is not limited to Notaries alone, but can also be carried out by Sub-district Heads. These two authorities are each based on laws and government regulations.

The authority of a Notary is regulated in Law of the Republic of Indonesia Number 2 of 2014 concerning amendments to Law Number 30 of 2004 which

regulates the role of a Notary and his/her authority to make legally binding deeds. Meanwhile, the sub-district head is given authority in accordance with the provisions of Government Regulation (PP) Number 37 of 1998 concerning the regulation of the position of Land Deed Making Officer, namely as a Temporary PPAT. In essence, the statement of release of land rights and the deed of release of rights have the same purpose in providing evidence of the transfer of land rights. The only difference lies in the authority responsible for its creation and physical form.

The Sub-district Head is authorized to make a Statement of Release of Land Rights, as stated in Article 131 paragraph (3) of the Regulation of the Minister of State for Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 3 of 1997. This regulation, also known as the Regulation of the Minister of ATR/BPN Number 3 of 1997, regulates the procedures for registering the release of land rights and ownership rights to apartment units if the rights holder voluntarily surrenders his rights. This registration is carried out by the Head of the Land Office after receiving a request from the interested party, accompanied by the necessary documents.

- (1) A notarial deed stating the release of said rights by the relevant holder, or
- (2) A statement from the rights holder made before and attested by the sub-district head of the land in question, stating the release of said rights, or
- (3) A statement from the rights holder, made before and attested by the Head of the Land Office, stating the release of said rights.

If the release of rights is made through an authentic deed, it becomes the responsibility of the Notary, as stated in Article 1 number 1 of Law Number 2 of 2014. This law defines a Notary as a public official who has the authority to make authentic deeds. other actions and authorities as determined by law. According to Article 1868 of the Civil Code, an authentic deed is a document made in a certain format according to law, either by or before a public official who has the necessary authority, at the place of its creation.¹⁰

By including provisions that mandate registration of the release of rights, this guarantees legal certainty regarding the status of the land and ownership of the land. According to the provisions contained in this article, an application for release of rights accompanied by a statement of release of rights made by the sub-district head, and a deed of release of rights made by a notary deed, both have the authority to be used as a basis for registering the revocation of land rights at the National Land Agency office. Although the deed of release of rights is in the form of a notary deed, the process of releasing rights cannot be separated from the role of the Land Deed Making Officer (PPAT). This is because, according to Article 2 paragraph (1) of Government Regulation Number 37 of

¹⁰See Article 1868 of the Civil Code

1998 concerning the Regulations on the Position of Land Deed Making Officers, PPAT is expressly responsible for carrying out certain land registration activities.

3.2. Advantages of Dualism in Arranging Land Rights Release Letters by Notaries and Sub-district Heads

Batang Regency is one of the areas in Central Java located in the north of Java Island. The population reaches 773,138 people with an area of 788.65 km², with a population distribution of 980 people/km².¹¹ Until 2024, there are 48 notaries registered in Batang Regency with 15 sub-districts.

From the data obtained by the author, a total of 33 Notaries are domiciled in Batang District, 4 Notaries are domiciled in Limpung District, 4 Notaries are domiciled in Warungasem District, 2 Notaries in Bandar District, 1 Notary in Wonotunggal District, 1 Notary in Tersono District, 1 Notary in Gringsing District, 1 Notary in Blado District, 1 Notary in Bawang District, and 1 Notary in Subah District.¹²

From the data above, we can conclude that the distribution of Notaries in Batang Regency is not even. Most Notaries are located in the city center, namely in Batang District, while the others are only spread across 9 districts with a smaller number of formations. So that there are 5 districts that are completely unreachable by Notaries, namely Pecalungan District, Banyuputih District, Kandeman District, Reban District, and Tulis District.

The benefits of the dualism approach to the regulation of the Land Rights Release Statement Letter (SPPHT) by both Notaries and Sub-district Heads are evaluated through the perspective of the norm hierarchy theory. This theory considers the hierarchical position of regulations that appoint Notaries as officials authorized to make authentic deeds, as stated in Article 1 number 1 of the Republic of Indonesia Law Number 2 of 2014, an amendment to Law Number 30 of 2004 concerning the Position of Notaries. In contrast, the regulation on the appointment of Sub-district Heads as Temporary Land Deed Making Officials (PPATS) is stated in Article 5 paragraph (3) letter a. Government Regulation (PP) Number 37 of 1998 which regulates regulations for officials involved in making land deeds, highlights the differences in hierarchy between the Law (UU) and Government Regulation (PP).

Legally, according to the interpretation of Article 7 paragraph (2) of Law Number 12 of 2011 concerning the Formation of Legislation, hierarchy is the classification of various types of legislation based on the principle that lower regulations may

¹¹https://id.wikipedia.org/wiki/Daftar_kecamatan_dan_kelurahan_di_Kabupaten_Batang#:~:text=Kabupaten%20Batang%20consisting%20from%202015,distribution%20population%20980%20jiwa%2Fkm%C2%B2.

¹²Data was obtained from the Notary/PPAT of Batang Regency, Wawan Darma Septiawan, SH, M.Kn.

not conflict with higher legislation and regulations.¹³ Based on Article 7 paragraph (1) of Law Number 12 of 2011, the hierarchy of statutory regulations in Indonesia is as follows:

1. The 1945 Constitution of the Republic of Indonesia;
2. Decree of the People's Consultative Assembly;
3. Law/Government Regulation in Lieu of Law;
4. Government regulations;
5. Presidential decree;
6. Provincial Regional Regulations; and Regency/City Regional Regulations

According to the legal order, UU (UU) has a higher position compared to PP (Government Regulation). Therefore, according to the theory of norm hierarchy, lower norms are derived, applied, and based on higher norms. The laws and regulations below must always be in harmony and in accordance with the regulations above so that there is no conflict. The division of authority between Notaries and Sub-district Heads through the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the BPN RI Number 18 of 2021 which regulates the procedures for determining management rights and land rights in connection with the issuance of SPPHT, has sparked debate regarding conflicts of authority, despite the fact that the regulation has different content and substance. Amiroeddin Sjarif emphasized that laws made by higher authorities have a higher status. The principle of *lex specialist derogat lex generalis* states that special laws take precedence over general laws. Likewise, the principle of *lex posterior derogate lex priori* states that the law that applies later replaces the law that applied previously. The authority of a Notary to issue a Deed of Release of Land Rights is further strengthened because it is regulated in the Law on the Position of Notary.

Max Weber stated that, "In legal authority, legitimacy is based on a belief in reason, and laws are obeyed because they have been enacted by proper procedures."¹⁴In legal jurisprudence, the legitimacy of an action depends on the trust placed in logical thinking, and compliance with the law is guaranteed by the proper implementation of established protocols. This shows that the validity of all the powers of a Notary depends on his compliance with the relevant laws and regulations, especially the laws and regulations. Specific references to this matter are found in Article 15 paragraphs (1), (2), and (3) of the Law on Amendments to the UUJN which is the jurisdiction of Notaries. This article explains that Notaries have the authority to make original deeds in a broad sense. There are several limitations to this authority:

¹³Cit.

¹⁴Max Weber, 2008, *Mastering Public Administration*, QC Press, Washington, p. 32.

- a. Provided that no other officials are excluded as regulated in law;
- b. Concerning acts that must be carried out or authorized to produce legally valid documents as required by statutory regulations or requested by the person concerned;
- c. As long as it concerns the legal entity for whose benefit the deed was made.

Legal dualism refers to the concept where there are two different legal systems in a country, usually separated into a general legal system and a special legal system. According to the norm hierarchy theory developed by Hans Kelsen, some of the advantages of legal dualism are as follows:

1. Compliance with the Highest Norm: With legal dualism, the two legal systems can operate independently, allowing them to focus on different aspects of law.
2. Cohesion and Consistency: Legal dualism can increase cohesion and consistency in a legal system. Specialized legal systems can be designed to handle specific cases more effectively, while general legal systems keep the overall legal system coherent and consistent.
3. Flexibility and Separation of Interests: With legal dualism, the state can be more flexible in dealing with various legal issues. Special legal systems can be tailored to the specific needs and conditions of a field or industry, while general legal systems maintain basic principles that apply universally.
4. Development and Innovation: With legal dualism, there is room for development and innovation in the legal system.

The main purpose of land registration as stated in Article 3 letter a of Law Number 24 of 1997 concerning Land Registration is to fulfill the mandate stated in Article 19 of the UUPA. The purpose of implementing land registration is to form a land information center. This will allow interested parties, including the Government, to easily access the data needed for legal processes related to registered land and apartment units. The implementation of efficient land registration is the basis and manifestation of the implementation of governance in the field of land management.

The existence of legal dualism that regulates the authority of Notaries and Sub-district Heads is viewed with the theory of legal objectives, in the issuance of SPPHT, the regulation directly appoints 3 authorized officials, namely Notaries, Sub-district Heads, and Head of the Land Office. The authority of the two positions is regulated in laws and government regulations that stipulate that the authority to implement the Deed of Release/Statement of Release of Land Rights is within the scope of attributive authority. According to Moh. Mahfud MD, if there are several laws that regulate the same subject matter, then the latest regulation must be enforced, even though it is not specifically stated that the previous regulation is no longer applicable.¹⁵In addition, regulations that are

¹⁵Moh. Mahfud MD, 2007, Building Legal Politics to Uphold the Constitution, LP3ES, Jakarta, p. 127.

more specific must take precedence over regulations that are more general.

Regarding the form or external framework of the legislation has been regulated in Law Number 12 of 2011 which is a positive law that must be obeyed and becomes a reference in the formation of legislation by every institution that forms legislation in Indonesia. Basically, every legislation can be recognized by looking at the regulatory framework as referred to in Law Number 12 of 2011 which includes

- A. TITLE
- B. OPENING
 - 1. Phrases With the Grace of God Almighty
 - 2. Position of Legislative Regulation Maker
 - 3. Considerations
 - 4. Legal basis
 - 5. Dictum
- C. TORSO
 - 1. General requirements
 - 2. Main Materials Arranged
 - 3. Criminal Provisions (if necessary)
 - 4. Transition Terms (if required)
 - 5. Closing
- D. CLOSING
- E. EXPLANATION (if needed)
- F. APPENDIX (if required)

When viewed from the aspect of utility which emphasizes that the law must be directed to achieve the greatest benefit or goodness for the community, the existence of dualism in the regulation of the release of land rights according to the author by evaluating based on the positive effects produced that the law is able to create social welfare, increase justice, minimize suffering or loss for individuals and society as a whole. Judging from the map of the uneven distribution of Notaries in Batang Regency, the Sub-district Head is considered to be able to facilitate people who live in areas that have not been reached by Notaries, namely in Pecalungan District, Banyuputih District, Kandeman District, Reban District, and Tulis District to help make SPPHT according to the location where the land object is located. So that with the existence of the Sub-district Head, it can facilitate the land registration administration system because it can reach more remote areas where there are no Notaries/PPATs.

In terms of cost, the making of SPPHT by the Sub-district Head or the making of a Deed of Release of Land Rights by a Notary has different regulations. For SPPHT made by the Sub-district Head, including in the administration of land documents

at the regional (village) level, the cost is based on Joint Decree Number 25/SKB/V/2017 of 2017 concerning Financing of Systematic Land Registration Preparation. Meanwhile, the amount of honorarium for making a deed of release by a Notary is regulated in Article 36 of Law Number 30 of 2004 concerning the Position of Notary (UUJN). Usually for the making of a Deed of Release by a Notary, the parties may then choose whether to simply make a deed of release or continue with the process of applying for new land rights by the PPAT. Therefore, of course, in terms of cost, it will be different because of the different services provided by the Sub-district Head and Notary.

Then in several regions, differences in related regulations were found regarding those who have authority over land management or administration, the impact of Article 15 paragraph (2) letter F UUJN which is felt to overlap with the authority of PPAT. That "Notaries who are not PPAT" may not make and submit land deeds. So with the dualism of this regulation, it can be a middle way by presenting the Sub-district Head as a Temporary PPAT to issue letters related to land, one of which is SPPHT even though there is already a Notary in the area.

2.1 Disadvantages of Dualism in the Regulation of Land Rights Release Letters by Notaries and Sub-district Heads

The direct appointment of authorized officials in the Regulation of the Minister of Agrarian Affairs regarding the issuance of a letter of release of land rights accompanied by the dualism of regulations that both support the authority of the two related institutions (Notary and Sub-district Head) with land affairs, can cause misunderstanding in the community regarding the applicable legal order (norm hierarchy). Both for the scientific field of the profession itself and the knowledge of the general public regarding the proper land administration system.

Complications due to the implementation of dualism of regulations cause variations in the preparation of land rights release letters between the deed of release of rights made by a Notary and the release letter made by the Sub-district Head. This makes it difficult to synchronize and be consistent in the preparation of SPPHT nationally. The existence of legal dualism makes it difficult for the public to determine whether to use the services of a Notary or Sub-district Head to prepare a release of rights letter.

Endang Sumiarmi argues that synchronization is an assessment of the suitability and coherence of legal rules hierarchically, namely between higher and lower laws in the positive legal system. Synchronization of legal regulations often gives rise to conflicts regarding the suitability of certain legal requirements for certain cases. Therefore, law enforcement officers must prioritize compliance with the principles governing the implementation of laws and regulations. Peter Mahmud Marzuki, in the harmonization of laws and regulations, there is a principle called *lex superior derogate legi inferiori*. This principle states that if there is a difference of opinion between laws and regulations that are lower in hierarchy,

then the lower laws and regulations must be set aside.

Purnadi Purbacaraka and Soerjono Soekanto argue that disharmony in legal regulations can occur due to various reasons. These include policy conflicts between central government agencies, differences in policies issued by the Central Government and Regional Governments, ambiguous formulations of statutory provisions that are open to different interpretations, and clashes of authority between government agencies due to unclear divisions of authority.¹⁶

When viewed using the principle of justice, the dualism of authority between Notaries and Sub-district Heads in the land sector with significant differences in education levels and knowledge is considered more detrimental to the profession of a Notary. The requirements to become a notary are contained in Article 2 to Article 7 of the Republic of Indonesia Law Number 30 of 2004 concerning the Position of Notary. Among them are age limit requirements, education requirements, internship experience requirements, and other requirements that must be met by individuals before being legally appointed to serve as a Notary.

According to Government Regulation Number 19 of 2008 concerning Sub-districts, Article 24 states that "Sub-district heads are appointed by the Regent/Mayor upon the recommendation of the district/city regional secretary from civil servants, who have mastered technical knowledge of government and meet the requirements in accordance with laws and regulations." Article 25 adds that it must be proven with a diploma/bachelor's degree in government and have served in a village/sub-district/district for at least 2 years. Then Article 26 states that there is a requirement to follow technical government education which is proven by a certificate. Although the requirements to become a sub-district head have been stated in laws and regulations, in reality it is often found that the appointment of a sub-district head is only based on relations and recommendations from the regional secretary, without considering other requirements.

From the differences in requirements to become a Notary and a Sub-district Head described above, the author is of the opinion that it can cause an imbalance in the knowledge possessed by individuals holding these positions. Not only that, the existence of the same authority in making SPPHT makes the profession of Notary seen as the same as the Sub-district Head who is also tasked with assisting in the administration of land registration in remote areas. Misperception is feared not only for the current generation but also for future generations if it is not accompanied by an explanation in the articles of the regulation. Although the issuance of SPPHT is both legal in the eyes of the law, it can be dangerous for Sub-district Heads who issue SPPHT without being

¹⁶Purnadi Purbacaraka & Soerjono Soekanto, 1979, *Legislation and Jurisprudence*, Alumni, Bandung, pp. 15-19.

equipped with sufficient knowledge, later it can lead to lawsuits between the parties due to negligence either in the process of identifying land objects or in the process of issuing SPPHT itself. So the deficiency of the legal dualism regarding the regulation of deeds or letters of release of land rights is in the knowledge possessed by the "authorized officials" appointed by the legislation itself.

3.3. Legal Consequences of Dualism in the Regulation of Land Rights Release Letters by Notaries and Sub-district Heads?

The existence of a norm hierarchy system that applies in Indonesia, as stated in Law Number 12 of 2011, makes the Law have a stronger position than Government Regulations. The appointment of the Sub-district Head as Temporary PPAT in Government Regulation Number 37 of 1998 concerning the Regulation of the Position of Land Deed Makers, in Article 5 paragraph (3) letter a, to manage land administration is actually limited by the phrase "in areas where there are not enough PPATs" should not interfere with the authority of Notaries or PPATs. However, currently there are still practices of Sub-district Heads as PPATs even though there are already PPATs in the area, for example in Batang Regency. Although it is stated that one of the authorities to make SPPHT is a Notary, in several areas Notaries who are not PPATs are not allowed to make deeds related to land, so that the presence of a Sub-district Head can help take over the role of making SPPHTs that cannot be made by Notaries who are not PPATs.

The uneven distribution of Notaries in rural areas requires the government to provide an option for sub-district heads to issue a statement of release of land rights. These statements have the same legal force as a deed of release of rights made by a Notary. This is in line with the direction of Article 19 paragraph (1) of Law Number 5 of 1960 or UUPA which mandates that the Government guarantee legal certainty by registering land throughout the territory of the Unitary State of the Republic of Indonesia, in accordance with government regulations. In addition, according to Article 23 paragraph (1) of UUPA, ownership rights, as well as all transfers, deletions, and other encumbrances of rights, must be registered in accordance with the provisions contained in Article 19 of UUPA.

The article stipulates that the government is required to exercise discretion in implementing land registration procedures. The purpose of this action is to ensure that everyone who has land rights has legal certainty in line with the purpose of the enactment of the Basic Agrarian Law. The ability of the sub-district head to issue a statement of release of land rights is a form of the state's obligation to comply with the provisions contained in the articles.

According to Article 15 paragraph (2) letter F of the Republic of Indonesia Law Number 2 of 2014 which amended Law Number 30 of 2004 concerning the

Position of Notary, it is stated that "Notaries have additional authority to make deeds related to land, in addition to the authority mentioned in paragraph (1)." Regarding the authority of a notary in making land deeds, his authority is included in the attributive authority because it comes directly from the law. Habib Adjie is of the opinion that the authority of a notary to make land deeds as referred to in Article 15 paragraph (2) letter F is a unique authority because of his involvement in certain legal acts. Notaries have the power to make a deed of property, as long as it is not a land deed that is the authority of the PPAT.

UUJN is enforced to be used as a guideline and basis for regulating notarial institutions, both government and other related institutions, especially for all Notaries in carrying out their duties in the midst of society.¹⁷In addition to being used as a guideline, UUJN was formed to minimize conflicts of interest between related parties by integrating, limiting, and protecting these interests.¹⁸

In accordance with Government Regulation of the Republic of Indonesia Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998, the Minister has the authority to appoint Sub-district Heads or Village Heads as Temporary PPATs in areas that lack land that meets the requirements. deed makers, as referred to in Article 5 paragraph (3) letter a. In addition to acting as organizers and administrators in the region, sub-district heads also act as temporary PPATs who handle land activities. The issuance of SPHT by sub-district heads is considered legally acceptable, although with the limitations stated in the sentence "in areas where there are insufficient PPATs". In addition to acting as sub-district heads, they also have the authority to facilitate land registration procedures and transfer of land ownership in remote areas. Although the number of PPATs in a particular area is limited, the community can still benefit from the presence of PPATs in terms of land registration, as long as they comply with the related terms and conditions determined by applicable laws and regulations.

Both notaries and sub-district heads have the same authority in making SPHT (Statement of Release of Land Rights) because they are directly appointed by the regulations. Therefore, both the deed of release made by the notary and the statement of release of land rights made by the sub-district head have the same legal force, as long as they are made according to the rules that have been determined and do not violate applicable legal provisions. So that the public does not need to worry about the validity of the deed of release made by the Notary or the statement made by the Sub-district Head because both have the same authority in issuing it. Kansil said that, "the purpose of law is to guarantee legal certainty in society, and is based on justice, namely the principles of justice

¹⁷Isis Ikhwanasyah & Indra Prayitno, 2019, Dualism of Position and Responsibility of Notaries in the National Legal System, *Jurnal Asy-Syari'ah* Vol. 21 No.2, p.165.

¹⁸Sajipto Raharjo, 2000, *Legal Science*, PT. Citra Aditya Bakti, Bandung, p. 53.

of that society."¹⁹

Regarding the authority of the Sub-district Head to issue a letter of release of land rights, this is in line with Article 7 paragraph (2) of Government Regulation Number 24 of 1997 concerning Land Registration which states that in remote settlements, the Minister has the authority to appoint Temporary PPAT. The parties authorized to become Temporary PPAT are determined in Article 5 paragraph (3) of Government Regulation Number 24 of 2016 which amends Government Regulation Number 37 of 1998 concerning the Regulation on the Position of Land Deed Making Officials (hereinafter referred to as PP Number 24). 1998 2016). This article basically regulates the issuance of PPAT deeds in locations where the number of PPATs is insufficient or for certain community groups that require certain PPAT deeds.

Indeed, the SPPHT made by the sub-district head is not included in the list of legal documents produced by the PPAT. The Deed of Release of Land Rights is often made by a Notary. The legal authority of a Notary to make land deeds is contained in Article 15 paragraph (2) letter f of Law Number 2 of 2014. Moreover, this clause is interpreted as valid as long as it does not conflict with the land deed which holds the highest authority of the PPAT. There is a discrepancy between laws and regulations, which results in:²⁰

1. There are differences in interpretation in its implementation;
2. The emergence of legal uncertainty;
3. Legislation is not implemented effectively and efficiently;
4. Legal dysfunction refers to a situation in which the law is unable to carry out its role effectively in providing standards of societal behavior, maintaining social control, resolving disputes, and
5. facilitate orderly social change.

Granting authority to the Sub-district Head to make SPPHT is one of the government's efforts to meet the needs of the community. SPPHT and Deed of Release of Rights, both made by a Notary, have the same legal weight and provide convincing evidence that a legal act of transferring land rights has occurred. The authority of the sub-district head to carry out land activities is mandated by special provisions in Law Number 23 of 2014 concerning Regional Government. These provisions, namely Article 11 paragraph (2), Article 12 paragraph (2) letter d, Article 224 paragraph (1), and Article 225, give authority to the sub-district head to carry out land administration activities as a regional apparatus under the auspices of the central government.

Government Regulation Number 41 of 2007, specifically Article 17, stipulates that a sub-district is a designated area where the sub-district head carries out

¹⁹CST Kansil, 1993, Introduction to Indonesian Law and Legal System, Balai Pustaka, Jakarta, p.40.

²⁰Zakki Saleh, 2018, Implications of Dualism of RPJMD Provisions According to Legislation Linked to the Principle of Legal Certainty, Jurnal Aktualita Vol. 1 No. 2, p. 377.

duties as part of the administrative apparatus in the district and city areas. Land activities are mandatory government affairs and are not related to basic services at the district and city levels. Furthermore, the attachment to Government Regulation Number 38 of 2007 concerning the Division of Responsibilities for Government Affairs between the Central Government, Provincial Governments, and District/City Regional Governments provides complete specifications regarding the authority to manage the land sector of the district/city government. This authority covers nine different sub-sectors:

1. Location permit field;
2. Field of land procurement for public interest;
3. Field of land dispute resolution;
4. Area of resolving land compensation and compensation issues for development;
5. Field of determining the subject and object of land redistribution and compensation for maximum excess land and absentee land;
6. Field of customary land determination;
7. Field of utilization and resolution of vacant land problems;
8. Land clearing permit field;
9. Land use planning field;

Legal certainty is a fundamental idea that ensures that laws are clearly and explicitly established in a country. The sub-district head's statement regarding the release of land rights confirms that in areas where there is no Notary, the sub-district head has the authority to make a statement of release of land rights. This authority is equivalent to that of a public official, as stated in Article 131 paragraph (3) of the Regulation of the Minister of ATR KPBN Number 3 of 1997 and Article 5 paragraph (3) of PP Number 24 of 2016. This guarantees legal protection to all parties involved in land release activities. Legal protection is an effort by the government to align the various interests of society, ensure that there is no conflict and allow individuals to fully exercise their legal rights. To achieve justice, order, legal protection, and legal certainty in the regulations of the notary institution, Sudikno Mertokusumo emphasized that the purpose of the law is to create public order. This, in turn, protects human interests and facilitates the realization of societal goals. The law realizes this by providing limitations on the rights and obligations between individuals, dividing authority, prioritizing the resolution of legal problems, and upholding legal certainty.²¹

²¹Sudikno Mertokusumo, 2003, *Understanding Law: An Introduction*, Liberty, Yogyakarta, p. 61.

The validity of the SPPHT made by the Sub-district Head has valid and binding legal force because it is a form of attribution authority, namely being directly appointed by statutory regulations. To fulfill his obligations, the sub-district head who acts as a temporary PPAT is required to take an oath of office. These requirements are stated in Article 15 paragraph (1) and Article 18 paragraph (1) of PP Number 37 of 1998 concerning regulations governing officials responsible for making land deeds. Sub-district heads known as PPATS must follow technical guidance on land education and training organized by the BPN RI. This training can be carried out in collaboration with the PPAT professional organization to improve skills and knowledge in fulfilling his responsibilities. After completion, the sub-district head can be appointed as a Temporary PPAT by the Head of the National Land Agency of the Republic of Indonesia. In addition, Temporary PPATs are also responsible for supervising the process, methods, and procedures in making land deeds. The issuance of land rights by Temporary PPATs must comply with applicable statutory regulations. If this is not done, the Temporary PPAT must be held legally responsible and will be subject to prosecution in accordance with applicable provisions and regulations.

3. Conclusion

The disadvantage of the dualism of the regulation is the emergence of disharmony and inconsistency in each region when making deeds or letters of release of rights because it ignores or eliminates old legal regulations, thus creating legal uncertainty, so that synchronization and harmonization of regulations nationally are difficult to realize. In addition, it is feared that the competence of the Sub-district Head as a PPATS is inadequate compared to Notaries who have more mastery of the material on making authentic words. The lack of education and training of Sub-district Heads as PPATS can cause errors in making SPPHT which will later result in disputes. In addition, it is stipulated in PP Number 37 of 1998 that the Limitation of PPATS is only for areas where there is no PPAT. This can cause misperception among the community and officials themselves regarding the authority of Notaries/PPATs and Sub-district Heads. In practice, there are still many Sub-district Heads who serve as PPATS even though there are already Notaries/PPATs in the area. The legal consequences arising from the dualism of the above regulations are that although the UUJN is in a higher hierarchy than the Regulation of the Land Deed Making Official (which is the basis for the authority of the Temporary PPAT), both products, namely the Deed of Release of Land Rights made by a Notary and the Statement of Release of Land Rights made by the Sub-district Head, are equally legally binding, valid, and binding because the authority of both is attribution authority (directly designated in statutory regulations) aimed at fulfilling the principles in the objectives of the law, namely justice, benefit, and legal certainty, although the legal products produced have different drafting mechanisms between the Deed of Release of Land Rights issued by a Notary and the Letter of Release of Land Rights issued by the Sub-district Head.

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