

August 29th 2018

THE 4th INTERNATIONAL AND CALL FOR PAPER

Legal Construction and Development in Comparative Study
The Role of Indigenous and Global Community in Constructing National Law

IMAM AS SYAFEI BUILDING
Faculty of Law, Sultan Agung Islamic University
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

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THE 4th INTERNATIONAL AND CALL FOR PAPERS

"Legal Construction and Development In Comparative Study"
The Role of Indigenous and Global Community in Constructing National Law

29-30 August 2018

IMAM AS SYAFEI BUILDING
Faculty of Law, Sultan Agung Islamic University
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

INVITED SPEAKERS :

1. Prof. Henning Glaser
Thammasat University, Thailand
2. Dr. Hilaire Tegnau, LL.M.
Faculty of Law, Sorbonne University
3. Prof. Shimada Yuzuru
Nagoya University, Japan
4. Prof. Dr. Topo Santoso, S.H., M.H.
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Jl. Raya Kaligawe Km. 4 PO. BOX.1054 Telp. (024) 6583584

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AND CALL FOR PAPER**

“Legal Construction and Development in Comparative study (The Role of Indigenous and Global Community in Constructing National Law)”

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PREFACE

Assalamu'alaikum, Wr. Wb

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: **Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, HilaireTegnan, Ph.D from Sorbone University, Prof. Topo Santoso From Indonesian University, and Dr. Sri Endah Wahyuningsih, S.H., M.H from Sultan Agung Islamic University.**

This was our fourth International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner in the concerned field to be discussed as guidelines to exchange and talk about views on the most important recent on Legal Construction and Development focusing on The Role of Indigenous and Global Community in Constructing National Law happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

See you in our fifth International and call for paper next year.

Wassalamualaikum, Wr. Wb

Semarang, August 31th 2018

Chairman of the Committee,



Dr. Anis Mashdurohatun, S.H., M.Hum
NIDN : 06-02105-7002

GREETING FROM THE DEAN OF FACULTY OF LAW

As-salamu'alaikum Wr. Wb.

Thank to Allah is an absolute act that we must say after conducting the International Conference and Call for Paper by theme : “Legal Construction and Development in Comparative study (The Role of Indigenous and Global Community in Constructing National Law)” which was held by Faculty of Law Sultan Agung Islamic University (UNISSULA) Semarang, on August 29th 2018.

This conference tried to reviews different theories of legal development focusing on The Role of Indigenous and Global Community in Constructing National Law in order to highlight their similarities and differences. In the field of law, the substance of the discussion does not lie in 'whether the law is traditional because of the heritage of the past or not', but on the meaning of justice contained in the law. Often in discussing legal matters, we are caught up in the understanding of law in a procedural sense, not a law in a substantive sense-that satisfies the sense of justice. So it is not realized, there is a reduction of the meaning of the law substantively (which meets the sense of justice) becomes law procedurally. Especially when human life enters the era of globalization characterized by modern, as well as loaded with contemporary challenges and issues.

Globalization, in general people understand it is a process in the life of mankind to a society that covers the whole globe. This process is possible and facilitated by advances in technology, especially communication and transportation technology. Such understanding is not much different from the understanding of globalization as a process that refers to "a single interdependent world in which capital, technology, people, ideas, and cultural influences flow across borders". With such understanding, we are gradually going to live in a one world where individuals, groups and nations become more interdependent. In the global human society there will be patterns of social relationships that are different from before. And that too is a portrait of social life not found before.

Therefore, to discuss more about legal construction and development, Faculty of Law, Sultan Agung Islamic University was confidence to conduct a conference by the theme “Legal Construction and Development in Comparative study (The Role of Indigenous and Global Community in Constructing National Law)” focusing on the development of law in both developed and developing countries and its role in shaping a good future.

Finally, we thank to the presenters, article senders, and comittee who had contributed in this event, so that this international seminar ran well.

Wassalamu'alaikum Wr. Wb.

Semarang, August 31th 2018

Dean,



Prof. Dr. Gunarto, SH, SE, Akt, M.Hum
NIDN.062004670

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THE ROLE OF PPAT IN PARTNERSHIP RULING OFFICERS OF HERITAGE LAND (PUTUSAN PA Sbr NO: 2594 / Pdt.G / 2015)

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ABSTRACT

This paper aims to find out the role of PPAT in making the Deed of Sharing of Joint Rights after the issuance of the decision, so that if anything related to inheritance disputes should not be resolved directly through the court mechanism, the heirs should first come to the PPAT office for consultation, so that the settlement mechanism is explained and a deed is made related to the distribution of inheritance according to the legal event. This research uses an empirical juridical approach.

Based on this method, the research resulted in basically (1) the mechanism for the distribution of inheritance according to the Decision of the Religious Court Sbr No.2594 / Pdt.G.2015 which contained the contents of returning and distributing the inheritance to each of the heirs, which subsequently occurred between the heirs to selling part of the inheritance to one of the heirs, then there is a need for legal action so that the heirs who get their rights can get legal certainty. Article 111 PMA number 3 of 1997, KHI articles 171-176, (2) The process of making APHB after the issuance of the P decision. ASbr No.2594 / Pdt.G.2015, Generally the same as the juridical reasons for making APHB which state that land which is an inheritance has not been registered must be attached with documents relating to inheritance in the registration process of its rights as referred to in Article 42 paragraph 2 PP.24 / 1997, Article 37 paragraph (1) PP 24/97, Article 136 PMA, (3) Constraints and solutions in making the Joint Rights Sharing Deed (APHB) there is still reluctance from the community to make an authentic deed of the Deed of Sharing Mutual Rights before PPAT Because the process of making it requires a long, complicated process and expensive, PPAT can provide legal counseling regarding the duties and roles of PPAT, land registration and the importance of the community to have land certificates so that the community can obtain legal protection and legal certainty over the land they own.

Keywords: Decision, PPAT, APHB

A. INTRODUCTION

The Unitary State of the Republic of Indonesia is a State which is based on the law, the existence, position, function, duties, responsibilities, authorities and responsibilities of the institutions, organs and / or equipment of the State are regulated by a law which refers to the Indonesian legal system and should not conflict with the ideals of the Proclamation as stated in the Preamble and the 1945 Constitution. According to the Indonesian legal system, the organs and / or equipment of the State which have the obligation to provide services to the public, one of which is the PPAT.

According to Article 1 of the Regulation of the Head of the National Land Agency Number 1 of 2006 states that PPAT is a public official who is given the authority to make authentic deeds regarding certain legal actions regarding land rights.¹

Inheritance assets according to Islamic inheritance law are shared assets less expenses incurred for the heir during illness and after death. For example, payment of debts, handling of bodies and funerals.

¹*Ketentuan Pelaksanaan Peraturan Pemerintah tentang Peraturan Jabatan Pejabat Pembuat Akta Tanah: Peraturan Kepala BPN No. 1 Tahun 2006*. 2007 (Jakarta: Media Makmur Majumandiri), p. 3.

Based on Article 42 paragraph 2 PP.24 / 1997, land which is an inheritance that has not been registered must be attached with documents relating to inheritance in the process of registering its rights. Inheritance law is a law that regulates the transfer of assets left by a person who dies and the consequences for his heirs.²

In connection with this issue of inheritance, there are many problems that occur in society such as inheritance which is controlled by one of the heirs.

As one example in Waruduwur Village, Mundu District, Cirebon Regency, there is a case of unilateral control over the inheritance of the late Sakrib bin Carseni, who died on May 20, 1984, leaving behind an inheritance in the form of a rice field covering an area of 7,480 m². However, after the death of the heir, the inheritance was controlled by the deceased's 2nd son named Darma, on the basis that he already had a list of principal stipulations and payment of Regional Income Contribution (IPEDA) No. 103 Astanajapura Subdistrict, Cirebon Regency in 1979 which had been named Darma, based on this, Darma assumed that he already had the basis of the inherited land rights and had the right to control the rights over the inherited land. Even though during his life the deceased had 10 children consisting of:

- a. Mrs. Tanira bint Sakrib
- b. Mrs. Warkeni bint Sakrib
- c. Mrs. Raniti binti Sakrib
- d. Mr. Carya bin Sakrib
- e. Mr. Suganda bin Sakrib
- f. Mrs. Kuresim bint Sakrib
- g. Mrs. Turini binti Sakrib
- h. Mr. Darma bin Sakrib
- i. Mr. Kadsari bin Sakrib
- j. Mrs. Kasiti bin Sakrib

Should be the heirs who should be entitled to the inheritance of the deceased. The other heirs did not realize the unilateral ownership over the inherited land because they thought that the inherited land was not the legacy of the late Sakrib, but belonged to Darma, because he felt that he had paid the IPEDA tax. the.

Darma thought that the IPEDA evidence was proof of land ownership, even though the legal ownership evidence was recorded in Waruduwur Village, Mundu District, Cirebon Regency. In the form of proof of Letter C no. 169 in the name of Sakrib, which was discovered in 2013 after one of the grandchildren of ahlammrrhum Sakrib served as a village official.

Due to this incident, the other heirs attempted to obtain their inheritance rights by conducting deliberation or mediation in 2013, which was attended by each heir but the mediation process failed, finally the heirs sued Darmayang of unilaterally controlling the inherited land. by filing a lawsuit at the local Religious Court, namely the Sumber Religious Court, Cirebon Regency on 06 May 2015.

With the demand that the inherited land be immediately distributed to each of the other heirs in accordance with the provisions of the applicable laws and regulations, from the basis of the lawsuit, the Decision of the Religious Court was born. Source number: 2594 / Pdt.G / 2015 / PASbr. the content of the decision is to decide that the inherited land is returned and distributed to the heirs in accordance with their respective rights.

However, in fact, after the issuance of the Court's Decision, the heirs who received the inheritance as stated in the Decision, then they agreed to sell their share of inheritance to Darma (previously known as the unilateral ruler of the inherited land) assuming that the part of the land that was acquired was too high. small to cultivate a rice field.

To realize the process of selling part of the inheritance after the issuance of the Decision of the Religious Courts Source number: 2594 / Pdt.G / 2015 / PASbr, the author is of the opinion that a

²Ahmad Rhofiq, 2003, *Hukum Islam di Indonesia*, Raja Grafindo Persada, Jakarta, p. 355

Joint Rights Sharing Deed (APHB) should be made to the local PPAT office in order to obtain legal certainty over the land, in accordance with the provisions of Article 37 paragraph (1) PP 24/97 concerning Land Registration expressly states that every transfer of land rights must be proven by a deed from PPAT except the transfer of rights through auction, the legal action can then be registered at the Land Office.

Furthermore, in article 42 paragraph (4) PP 24/1997 states that in the case of the transfer of rights, it must also be accompanied by the making of a deed for the distribution of inheritance rights (Deed of Sharing of Rights in short APHB) ³

From the above background, the authors are interested in conducting research with the title "Ppat's Role in Case of Unilateral Control of Inheritance (PA Sbr. NO: 2594 / Pdt.G / 2015) " The formulation of the problem is as follows:

1. How is the mechanism for the distribution of inheritance assets based on the decision of the religious court from Cirebon Regency number 2594 / Pdt.G / 2015?
2. What is the process of making the Deed of Sharing Rights after the Religious Court Decision Number 2594 / Pdt.G / 2015 / PA.Sbr is issued?
3. What are the obstacles and solutions in making a Joint Rights Sharing Deed (APHB)?

B. DISCUSSION

1. Determining the inheritance portion of each heir based on the Decision of the Sumber Religion Court, Cirebon Regency Number: 2594 // Pdt.G / 2015, is as follows:

- 1) Mrs. Tanira binti sakrib received 1/14 of the portion
- 2) Mrs. Warken binti sakrib received 1/14 of the share
- 3) Mrs. Raniti binti sakrib received 1/14 of the share
- 4) Mr. Cary bin sakrib received 2/14 portions
- 5) Mr. Suganda bin sakrib received 2/14 portions
- 6) Mrs. Kuresim binti sakrib received 1/14 of the share
- 7) Mrs. Turini binti sakrib received 1/14 of the portion
- 8) Mr. Darma bin sakrib received 2/14 portions
- 9) Mr. Warmin bin Kadsari bin Sakrib got 2/5 of 2/14 parts
- 10) Mr. Tardi bin Kadsari bin Sakrib received 2/5 of 2/14 portions
- 11) Mrs. Wentr bin Kadsari bin Sakrib got 1/5 of 2/14 shares
- 12) Mr. Carmin bin Karja received 2/9 of 1/14 share
- 13) Mr. Suta bin Karja received 2/9 of 1/14 of the share
- 14) Mrs. Rusina binti Karja received 1/9 of the 1/14 portion
- 15) Mrs. Arti binti Karja gets 1/9 of 1/14 of the share
- 16) Mr. Wardi bin Karja received 2/9 of 1/14 of the share
- 17) Mrs. Desi binti Karja received 1/9 out of 1/14

According to Sangidin's opinion, the contents of the Decision already contain the entire subject matter of the inheritance case, which decides on the number of heirs, objects of inheritance, and the number of inheritance shares. ⁴

2. What is the process of making the Deed of Sharing Rights after the Religious Court Decision Number 2594 / Pdt.G / 2015 / PA.Sbr is issued?

Based on the provisions of the Regulation of the Minister of Agrarian Affairs Number 3 of 1997 which is the implementing regulation of PP 24/97 concerning Land Registration, the fourteenth section regarding the Sharing of Collective Rights, Article 136 which states that:

³*ibid*

⁴*Interview* Drs. Sangidin, SH., MH, Judge of the Sumber Religious Court, Cirebon Regency

If a land title or Ownership Right to a flat unit that was originally jointly owned by several people, becomes the property of one of the joint rights holders in the context of sharing joint rights, the application for registration of the certificate is submitted by the holder of the single right concerned or his attorney by attaching:

- a. Proof of letter C 169;
- b. Proof of identity of the heirs;
- c. A written power of attorney if the application for registration is not made by an interested right holder;
- d. Proof of payment of land and building rights acquisition fees as referred to in Law Number 21 of 1997, in the case of payable duties;
- e. Proof of payment of income tax as referred to in Government Regulation Number 48 of 1994 and Government Regulation Number 27 of 1996, in the event that the tax is payable.

3. Constraints and solutions for making a Joint Rights Sharing Deed (APHB)

There is still reluctance from the public to make Authentic deeds before PPAT because the process requires a long, complicated and expensive process. The Petitioner considers that in addition to complicated administrative requirements, the registration procedure for the transfer of rights that he obtained takes a long time with complicated requirements and the costs required to register the transfer of rights are not light. PAT for legal counseling on the duties and roles of PPAT, land registration and the importance of society to have a land certificate so that the community can obtain legal protection and legal certainty to do so.

C. CLOSING

1. Based on the Decision of the Religious Court of Sumber Kabupaten Cirebon Number: 2594 // Pdt.G / 2015 has determined the share of the inheritance according to their respective rights, then the heirs receive their share of inheritance, because of their small share then they agree to sell to Darma (previously mentioned as the unilateral ruler of the inherited land), so that for the payment by Darma to the other heirs witnessed and known by the Village Head, then the village head makes a report containing the release of rights and details of payment from the recipient of the Rights by each heir the. Then all the heirs come to the PPAT office to make an APHB by completing all the juridical requirements related to its creation, after obtaining an APHB,
2. In the process of making the Deeds for the Sharing of Joint Rights, sometimes they experience obstacles in the process of making them, including: There is still reluctance from the community to make Authentic deeds before PPAT because the process requires a long, complicated and expensive process. The Petitioner considers that in addition to the complicated administrative requirements, the registration procedure for the transfer of rights that he obtained takes a long time with complicated requirements and the costs required to register the transfer of rights are not light.
3. Whereas in the process of making the Deed of Sharing of Rights, if there is a party that does not want to sign the deed of manufacture, the Official for Making the Deed of Land does not want to legalize the deed. So that the process of making the deeds cannot be carried out, because the position of the deeds has not met the requirements, in other words the deed cannot be carried out or does not yet have validity. This is another case if there is falsification of signatures in the Deed making process, as long as the falsification can be proven against the falsification of the signature with evidence that sufficient, can sue in court, and if the evidence of falsification is proven at the trial, then the deed can be relegated to an underhand deed or become invalid.

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