

Notary Disclaimer Of Coastal Lands On The Development Of Legal Resort

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Abstract. *This study aims to analyze the regulation of coastal land, the role of the notary in the release of coastal land rights to resort development bodied laws and What are the constraints and solutions in the relinquishment of coastal land titles to resort development who are legally incorporated in Wakatobi Regency, Southeast Sulawesi Province. This study uses an empirical juridical approach, the types and sources of data in this study are primary data and secondary data as well as tertiary data, legal materials and data obtained through literature studies and field surveys with study and interview collection tools, Wakatobi district research area, analysis techniques. data based on qualitative analysis. System The zoning for Wakatobi National Park refers to the Minister of Forestry Regulation Number: P.56 / Menhut-II / 2006 dated 29 August 2006 regarding the Guidelines for National Park Zoning. For the involvement of the Notary, it is not only to help the process of making the deeds of the Waiver of Rights or APH also cares about the waiver process carried out by the parties who are its clients and are willing to provide guidance / advice and legal consultation related to the waiver of rights or problems land in general and it is also known that there is a lack of socialization to the community regarding the zoning system in effect in Wakatobi Regency.*

Keywords: Disclaimer; Coastal Lands; Development; Resort.

1. Introduction

Coastal land is part of the coast, which connects land and sea, where the coastal area is an area that is very important for the provision of goods and services for community needs and is an essential component in the sustainability of community life, especially in the process of exploiting natural resources in the ocean, must go through coastal area, so that the coastal area has a fairly important role for the welfare of the community.

Coastal areas in the form of a sea are controlled by the State where the status of the land from State Land becomes land with rights to permits granted by the Regional Government, so that land appears which of course is controlled or owned by a person, group of people including indigenous peoples, legal entities and which have not been regulated in a legal relationship based on laws and regulations. The legal relationship with land in the form of land rights gives the authority to use the land according to the nature and purpose of its rights based on its supply, allocation, use and maintenance.¹

Southeast Sulawesi as a subsystem of Region E cannot be separated from the other development areas, with the increasingly saturated tourism consumer market caused by the lack of recognition of natural potential as a tourist attraction, it is necessary to seek a new theme as a tourist attraction, namely humane and environmentally friendly

¹Hasni. (2010). *Hukum Penetaan Ruang dan Penatagunaan Tanah*. Jakarta: Rajawali Persada. p. 73

tourism. Wakatobi Regency is a marine conservation area which has an area of 1,390,000 ha which was designated as a national park on July 30, 1996 based on the Decree of the Minister of Forestry Number 393 / Kpts-VI / 1996.²

Land Deeds made by Notaries are valid and have binding legal force as authentic deeds, because notary land deeds fulfill the elements as authentic deeds, and the Notary itself according to the Law on Notary Position, is authorized to make it.³ The legislation regulating the management of coastal areas in Indonesia is Act No. 27 of 2007 concerning Management of Coastal Areas and Small Islands⁴. In it, it contains the concession rights of coastal waters. In 2011, the Constitutional Court stated that the right to exploit coastal waters is contrary to the 1945 Constitution of the Republic of Indonesia. It is feared that this right will result in the territorial waters of the coast being controlled by large investors, so that traditional fishermen who have depended their lives on coastal resources will be eliminated.⁵

Based on the description above, the scope of this research can be formulated as follows: How is the arrangement of coastal land in Wakatobi Regency, Southeast Sulawesi Province? What is the role of the notary in the release of coastal land rights to the construction of a resort? incorporated in Wakatobi Regency, Southeast Sulawesi Province? What are the constraints and solutions in the release of coastal land titles to resort development who are legally incorporated in Wakatobi Regency, Southeast Sulawesi Province?

2. Methods

The type of research that researchers use in this research is empirical juridical legal research.⁶ The research specification used in this research is descriptive analytical. This primary data was obtained by conducting field research by conducting interviews, namely a way to obtain information by directly asking respondents who had previously determined. Secondary data can be in the form of legal materials and legal documents including legal cases which become the basis for research in order to answer problems and research objectives.

In this study, the sampling used non-random sampling technique, because the type used was purposive sampling method⁷, namely sampling was done by taking subjects based

²<http://www.wakatobikab.go.id>. Accessed on 19 May 2014

³<http://notary-herman.blogspot.com>. Accessed on 21 May 2014

⁴ Jaya, Hendro K., & Purnawan, Amin. (2020). Review Of The Implementation Process Of Completion Of Juridical Code Violations Of Notary In Kendari. *JURNAL AKTA*: Vol.7, No. 2, 169-176. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/7881>

⁵ Nofita S., Putri, Chalim, Munsharif A., & Setyawati. (2020). Legal Protection Against Substitute Notary in Semarang Based on Act No. 2 of 2014 Amendment Act No. 30 of 2004 concerning Notary. *JURNAL AKTA*: Vol.7, No. 2, 195-200. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/7901>

⁶ Waluyo, Bambang. (1991). *Penelitian Hukum dalam Praktek*. Jakarta: Sinar Grafika. p. 14-15.

⁷ Widyawati, & Handoko, Widhi. (2018). The Notary Role / PPAT in Improving Legal Awareness Society to Perform Registration Rights to Land Based on Government Regulation No. 24 of 1997 on Land Registration. *JURNAL AKTA*: Vol. 5, No. 4, 975-980. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/4127>

on certain objectives. The non-random sampling technique is preferred for reasons of limited time, energy and cost based on certain objectives that meet the requirements.

Data analysis is the final step in a writing activity. Data analysis was carried out in a descriptive qualitative manner, meaning that it describes the data in a quality manner in the form of regular, sequential, logical, non-overlapping, and effective sentences so as to facilitate data interpretation and understand the results of the analysis.⁸ In data analysis, the author uses qualitative methods, meaning that all data obtained are analyzed in their entirety so that there is a systematic and factual picture. From the results of the analysis and interpretation, the authors draw conclusions to answer this legal issue⁹.

3. Results and Discussion

3.1. Regulation of Coastal Land in Wakatobi Regency, Southeast Sulawesi Province

The Wakatobi Islands area has an area of ± 1,390,000 hectares which is designated as a National Park based on the Minister of Forestry Decree No. 393 / Kpts-VI / 1996, dated July 30, 1996 and has been determined based on the Minister of Forestry Decree Number 7651 / Kpts-II / 2002, dated August 19, 2002, consisting of 4 (four) large islands, namely Wangi-Wangi Island, Kaledupa Island, Pulau Tomia and Binongko Island in the administrative area of Wakatobi Regency, Southeast Sulawesi Province. A National Park is a natural conservation area that has an original ecosystem, managed by a Zoning System which is used for the purposes of research, science, education, cultivation support, tourism and recreation (Act No. 5 of 1990 concerning Conservation of Living Natural Resources and Their Ecosystems).¹⁰

Regional development policies around the area are not solely a policy of Wakatobi National Park, but in every decision making is coordinated and consulted with other related development sectors such as in the field of tourism, for example, integrated resort development between these sectors is absolutely necessary to increase utilization development. potential natural resources of Wakatobi District National Park, as well as improving the process of regional development and community welfare without neglecting aspects of conservation of living natural resources and their ecosystems.¹¹

The enactment of Act No. 32 of 2004 concerning Regional Government, has increased the awareness of local governments and the community to share authority and responsibility between local and central governments. The spirit of implementing this Law also concerns the management of natural resources, which so far has been felt to have paid little attention to the interests of the region and the community. In its development, in 2003 through Act No. 29 of 2003, Wakatobi Regency was formed as a

⁸Surachmad, Winarmo. (1973). *Data dan Teknik Research*. Bandung: Tarsito. p. 27.

⁹ Ferdianti, M. Indah Verena., Purnawan, Amin., & Soegiyanto. (2019). Setting the Effectiveness of Law Position and Code Notary to the Quality of Performance. *JURNAL AKTA*: Vol. 6, No. 4, 797-804. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/7887>

¹⁰ Regional Regulation Number 12 of 2012 concerning the 2012–2032 Wakatobi Regional Spatial Plan.

¹¹ Interview with Mr. La Tarima, Tourism Office of Wakatobi Regency on 21 August 2014

division of Buton Regency. The location and area of this new district is exactly the same as the location and area of the Wakatobi National Park.

One of the interesting things about Wakatobi Regency itself is that the zoning of Wakatobi National Park is determined based on:¹²

- a. Potential natural resources and their ecosystems;
- b. Level of interaction with local communities;
- c. The interest of the effectiveness of the management of the Wakatobi National Park must be done.

Apart from the three bases for zoning aforementioned, there are 3 important things to consider in determining / dividing zoning, namely:

- a. Zone type required;
- b. Area of each zone;
- c. Location / zone location.

Description of zoning for Wakatobi National Park refers to Permenhut Number: P.56 / Menhut-II / 2006 dated August 29, 2006 concerning National Park Zoning Guidelines, which in its implementation involves interested parties, namely fishing communities / resource users, non-governmental organizations, fisheries entrepreneurs. and tourism as well as elements of local government.

3.2. The Role of Notaries in Releasing Coastal Land Ownership Rights to Resort Development Ba legal entity in Wakatobi Regency, Southeast Sulawesi Province

The legal basis for a Notary in making a deed regarding the release of land rights is that the release of land rights is carried out on a letter or deed made before a Notary which states that the right holder in question has relinquished his land rights. The deed or letter in question is generally entitled the Deed of Waiving Rights or APH. APH is sometimes known as a Letter of Release of Rights or SPH. APH must be made in front of a notary so that the power of proof is perfect compared to if it was made under hand. Relinquishment of title to land can be carried out by deed which states that the rights in question have been released by the right holder, notarized or underhand, namely by means of Article 131 of the Regulation of the State Minister for Agrarian Affairs / Head of the National Land Agency Number 3 of 1997 concerning Provisions for Implementing Government Regulation Number 24 of 1997:

- a. Notarial Deed which states that the holder concerned is releasing the right to land (in this case Ownership Rights);
- b. A certificate from the right holder stating that the right holder in question releases the right to land (in this case the Ownership Rights) drawn up in front and witnessed by the sub-district head where the land is located;
- c. A certificate from the right holder stating that the right holder in question is releasing the right to land (in this case the Ownership Rights) drawn up in front of and witnessed by the Head of the local Land Office.

¹² Interview with Mr. Rahmat, Head of the Spatial Planning Department of the Public Works, Spatial Planning and Industry Office of Wakatobi Regency on August 5, 2014

The notary who is in charge of providing services in the process of making deeds regarding the release of title to land and is responsible for the authenticity of the deeds he makes.

Indonesia is a country of law. The principle of a rule of law is to guarantee certainty, order and protection of the law based on truth and justice. Legal certainty, order and protection requires evidence that can clearly determine the rights and obligations of a person as a legal subject in society. Authentic deeds as strong evidence have an important role in every legal relationship in various aspects of community life. The need for written evidence in the form of authentic deeds is increasing in line with the growing demands for legal certainty in various social economic relations. Through an authentic deed that clearly defines the rights and obligations of the parties, it is hoped that it can guarantee legal certainty and at the same time avoid disputes.

In the role of a notary in a law state is as a legal servant who is authorized by the state. Authentic deeds are one of the important instruments that are functionally related to the judicial process. Notary is a position that carries out its profession in providing legal services to the community.¹³

The deed is deliberately made to be used as evidence about a legal event and signed by an interested party and a notary public, this means that the deed is made as evidence that serves to ensure a legal event with the aim of avoiding disputes, so the deed must be made in such a way so that what is wanted can be known easily from the deed made by the notary.

The consideration that it is necessary to put it in the form of an authentic deed is to guarantee legal certainty in order to protect the parties. A deed that has authentic character, then the deed will have the power of evidence, so that this is a guarantee for the parties that the actions or statements presented provide real evidence.

3.3. Constraints and Resolutions in Releasing Coastal Land Ownership to Resort Development which is legal in Wakatobi Regency, Southeast Sulawesi Province

Constraints faced in relinquishing coastal land rights to the construction of resorts with legal status in Wakatobi Regency, Southeast Sulawesi Province. From the author's field research, there were several problems in the relinquishment of land ownership rights to the development of resorts that were legal entities in Wakatobi Regency, Southeast Sulawesi Province, namely:

- a. Knowledge of coastal land by a notary is not sufficient. Because the notary is one of the officials appointed to make a deed of agreement regarding the release of rights. For this reason, the Notary requires sufficient knowledge in matters of coastal land and what matters need to be contained in the deed of relinquishing the right;
- b. The number of parties who come to the notary, they do not understand how the process of releasing ownership rights over the land, so the notary must explain again to the parties who come to the notary;

¹³Interview with Inalis Veranica Ritonga, SH, M.Kn. Notary / PPAT in Wakatobi Regency on August 21, 2014

- c. Interviewers are afraid to come to a notary, because many of the parties think that they require relatively expensive funds;¹⁴
- d. Land ownership issues that are disputed in the community or the land is still owned by the family or in the sense that the coastal land is still inherited from the parents and has not been distributed to the heirs;¹⁵
- e. Lack of socialization from the local government to the area as a tourist zoning.

Solutions in the face of obstacles in the relinquishment of coastal land rights to the development of resorts with legal status in Wakatobi Regency, Southeast Sulawesi Province:

- a. For notaries, it is better if they are looking for sufficient provisions on soil science, especially coastal lands, because in the Wakatobi Regency area, this coastal land is very potential for developing resorts in the area. By asking a lot of questions to parties or agencies in charge of this matter;
- b. The number of parties who come to the notary, they do not understand about how the process of relinquishing ownership of the land, so the notary must explain again to the parties who come to the notary. After the notary explains at length about how the process of releasing property rights to the tappers and understands how the process of releasing the rights to the land is carried out, the notary makes a deed regarding the release of title to the land and maintains that there are no mistakes or problems with the deed he made;
- c. Interviewers are afraid to come to a notary, because many of the parties think that they need funds that are fairly expensive. For this reason, the notary must provide an explanation to the founders, that the notary in providing his services for the honorarium has been determined by UUJN and if the tappers are unable to pay the honorarium then based on UUJN Article 37 paragraph (1) UUJN that notaries in providing services to the public can be provided for free;¹⁶
- d. The issue of land ownership, according to the Secretary of Patuno Village, is that this problem is a common problem for the community in Patuno Village so that in the settlement process a family meeting is held led by the village head and community leaders in Patuno Village;¹⁷
- e. Lack of socialization from the local government to the area into zoning for tourism, this has been done by the Wakatobi Regency government by establishing a dance studio in Patuno Village for the purposes of welcoming local and foreign tourists who come to visit Patuno Village and collaborate with resorts in Patuno Village.

4. Closing

The regulation of coastal land in Wakatobi Regency, Southeast Sulawesi Province, namely by using a zoning system in accordance with Permenhut Number: P.56 / Menhut-II / 2006 dated August 29, 2006 concerning Guidelines for National Park Zoning.

¹⁴*Ibid*

¹⁵ Interview with Mr. Juhdin as the Secretary of Patuno Village on 28 August 2014

¹⁶ Interview with Inalis Veranica Ritonga, SH, M.Kn. Notary / PPAT in Wakatobi Regency on August 21, 2014

¹⁷ Interview with Mr. Juhdin. *Op.Cit*

The role of the notary in the release of land title to the coastal resort development incorporated in Wakatobi Regency, Southeast Sulawesi Province, in terms of making a deed of releasing land rights which is made in a letter or deed made before a Notary stating that the relevant rights holder has released his / her land rights. The deed or letter in question is generally entitled the Deed of Waiving Rights or APH. APH is sometimes known as a Letter of Release of Rights or SPH. APH must be made in front of a notary so that the power of proof is perfect compared to if it was made under hand. Many obstacles have been faced and good solutions have been made.

In order to create safe, comfortable and sustainable coastal areas, it is hoped that the Wakatobi Regency Government should issue a special regulation, namely a Regional Regulation which is in accordance with Act No. 27 of 2007 concerning Management of Coastal Areas and Small Islands Juncto Law. Number 1 of 2014 concerning Management of Coastal Areas and Small Islands which are adjusted to the conditions and conditions of Wakatobi Regency as one of the districts included in the National Marine Park and recommended that the notary before making the deed of relinquishing title to the notary must first understand and examine the validity of the documents brought by the parties before the Notary such as checking with the National Land Agency that the land to be relinquished is correct. -truly property of the tapper and not in a state of dispute.

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