

Implementation of Government Authority of Semarang City On State Land Tenure (Case Study in Kebonharjo village of Tanjung Mas)

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Abstract. The purpose of this study was to: 1). To analyze the implementation of government authority Semarang to State land tenure. 2). To analyze the weaknesses of the implementation of government authority Semarang to State land tenure. 3). To analyze the solutions of the weaknesses of the implementation of government authority Semarang to State land tenure. This research uses empirical research with the sociological approach. Collecting data using primary legal materials and secondary data were collected through observation, interviews and studies of legal documents. Data analysis is done qualitatively, what respondents expressed orally or in writing, and their actual behavior are researched and studied as a part of the whole.

Based on the results penelitian, then obtained some results conclusions; (1). Implementation of Semarang city government authority does not comply with the authority is in this regard is the acquisition of state land that the land is basically controlled by or under control of juridical by PT. KAI and an asset of Ministry of Finance. (2). Weaknesses of implementation of government authority Semarang toward mastery of state land that is; *First* an error in exercising authority and policies implemented by the previous Mayor with the Chief Daop IV Semarang. Both lack of legal certainty over the ownership rights to the land, so that their certificates canceled citizens of the State Administrative Court which considered disabled Semarang administration. Thirdly absence of justice and legal protection against their certificates of citizens, so that between PT. KAI and residents to date on the status of each claim ownership of the land. (3). The solution of the weaknesses that arise in the implementation of government authority Semarang toward mastery of state land that is; Semarang city government first sought mediation between citizens and PT. KAI. Both governments Semarang to seek their compensation from PT. KAI to citizens affected. Semarang three governments seeking their relocation and providing temporary shelter for residents.

Keywords: Implementation; Government Authority; State Land.

1. Introduction

Land has a very important meaning for human life because human life depends largely on the ground. Land needed by the human individual as both a place of settlement, their livelihood, and as a final resting place. For government and private entities, the land is needed in order to achieve national development that will benefit people's lives. Human need for land is a fundamental requirement and an absolute².

How to achieve what the ideals of the nation and state, then for allocation, use and supply of earth, water and air space for various purposes of life of the people and the state needs to be a plan that is the general plan (national planning) covering the entire

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² Dwi Heny Ratnawati, *Pelaksanaan Akta Pelepasan Hak Sebagai Alas Hak Untuk Mengajukan Permohonan Peralihan Dan Perubahan Hak Guna Bangunan Yang Jangka Waktunya Telah Berakhir Di Kabupaten Brebes*, Jurnal Akta Vo. 5, No.1 (2018), url: jurnal.unissula.ac.id/index.php/akta/article/view/2554, p. 247

territory of Indonesia then broken down into specific plans (regional planning) of every province³. With the planning, the use of the land will be made in a guided and organized to be utilized as much as possible for the state and the people.

Land as a basic right of every person, its existence is guaranteed in the Constitution of the Republic of Indonesia Of 1945. In Article 33 paragraph (3) of the Constitution of the Republic of Indonesia Of 1945, stated that "earth and water and natural resources contained therein controlled by the State and used for the greatest prosperity of the people"⁴. This means that by mastering the earth, water, and natural resources by the State, even distribution of the results of the management of land, water, and natural resources will be achieved. Then the land management foundation legally regulated in Law Number 5 of 1960 on Basic Regulation of Agrarian (UUPA/BAL) as an interpretation of Article 33 paragraph (3) of the Constitution of the Republic of Indonesia Of 1945. With the entry into force fundamental changes BAL the Agrarian law in Indonesia, especially in the field of land law, which we call the law of the land, which among governments and the public is also known as the law of Agrarian⁵.

Act No. 5 of 1960 on Basic Regulation of Agrarian (BAL) Article 2 (2) describes the Right to Control of the State, authorize the⁶ :

- a. Arranging and conducting allocation, use, supply and maintenance of earth, water, and space Indonesia.
- b. Determine and regulate legal relations between people with the earth, the water, and the space.
- c. Determine and regulate legal relations between the people and the legal acts concerning the earth, water, and the space.

The contents of the above article states that the State's Rights did not put the State as owner of the land, but the granting of authority to the State as the supreme organization of the Indonesian nation. It was none other than intended to achieve the greatest prosperity of the people.

Article 2 (4) BAL affirms that the right to control the State on the ground in the implementation may be delegated to the regions and the autonomous communities customary law than necessary and does not conflict with national interests according to the provisions of Government Regulation. Under the provisions of Article 2 (4) of the BAL, the State the right to control over land in its implementation can be devolved to local government. The delegation of authority granted by the State to the Regional Government merely required and not contrary to the national interest, which will be regulated by the Government.

Implicitly it can be said that the basis of the provisions of Article 2 (4) BAL, land affairs is the authority that are centrally implemented by the Central Government. However, if the necessary authority in the field of land that are centralized in implementation can be devolved to local government. Local government can not carry out the affairs of the area of land that no delegation of authority granted by the Central Government. The exercise of authority in the field of land that are centralized by the Central Government in order to realize one objective of the establishment, namely the creation of unitary (unification) law.

The increasing development and population increase, so does the need for land. Rising demand for land inversely with very limited land supply. It certainly can cause a variety

³ Wayan Suandra, *Hukum Pertanahan Indonesia*, Jakarta : Rineka Cipta, 1991, p. 4.

⁴ Constitution of the Republic of Indonesia of 1945.

⁵ Boedi Harsono, *Hukum Agraria Indonesia Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*, Jakarta : Djambatan, 2008, p. 1.

⁶ Act No. 5 of 1960 on Basic Regulation of Agrarian (BAL).

of problems in the field of land. The origins of the land is one key to resolve land issues one by one. The origins of this is necessary to find out where parcels of land owned by individuals, legal entities, as well as land owned by the government. By explained the origin of the right to land owned by it can be seen clearly if one issues arise on the same plot.

Semarang government authority related to the control of state land and then the convening of certification of land rights project en masse cause problems related to the legal certainty of the continuity of land ownership rights that occurred in the Kebonharjo village of Tanjung Mas, Semarang. The problem arises related to the reactivation project of railway lines Tawang Station-Port of Tanjung Emas, PT. KAI planning to do curbing land in Kebonharjo village of Tanjung Mas Semarang, then in this case the citizens Kebonharjo objections. Residents refused against their evictions carried out by PT. KAI. Residents Kebonharjo found dikuasi land now is no longer the right of PT. KAI because it can be said PT. KAI has abandoned the land.

Based on that, the people feel entitled to land ownership for all this time the land has been used as a residence for citizens of decades and generations. Even Kebonharjo residents have to pay land and building tax on land and buildings they occupy and most of the land and the building has been getting proof of ownership. While PT. KAI assume that the land occupied by the residents of his and should be maintained due to hold on *grondkaart* which is a soil map of the Dutch colonial era⁷.

See the above mentioned fact prompted the authors to raise the issue with the title as follows: Implementation Of Government Authority Of Semarang City On State Land Tenure (Case Study in Kebonharjo village of Tanjung Mas)

From the above description of the background issues arise following the implementation of government authority How Semarang toward mastery of state land?; How weaknesses of the implementation of government authority Semarang toward mastery of state land?; and how the solution of implementation weaknesses Semarang government authority to state land ownership?

Research methods

This study using sociological juridical approach. This study uses qualitative analysis is a research method that produces descriptive data analytical, expressed by the respondent in writing or orally and real behavior, who researched and studied as a whole,⁸ means the data obtained and compiled systematically, then analyzed qualitatively in order to obtain clarity of the issues to be discussed. In this study used data sources are divided into two: Primary Data and Secondary Data

Collecting data in this study conducted by observation and interviews to the parties concerned in this case regarding the implementation of government authority of semarang city on state land tenure and see references from books and previous studies as well as the provisions of the legislation in force then perform the data processing.

Technical analysis of the data in this study using three (3) data acquisition procedures, including: data reduction, Presentation of Data (data display), and Conclusions / Verification (conclusion drowing / verifying)⁹.

⁷<https://nasional.tempo.co/read/772844/bpn-minta-pt-kai-buktikan-kepemilikan-lahan-di-kebonharjo>. accessed on 24 April 2019, at. 14:52 pm.

⁸Rony Hanitjio Soemitro, *Metodologi Penulisan Hukum*, Jakarta : Ghalia Indonesia, 1983, p. 93

⁹H.B Sutopo, *Motodologi Penelitian Hukum Bagian II*, Surabaya : UNS Press, 1998, p. 8

2. Results And Discussion

2.1. Implementation of Government Authority of Semarang City Against the State Land Tenure.

The government's authority to regulate the area of land under Article 33 paragraph (3) of the Constitution of the Republic of Indonesia Of 1945 which states that: "the earth, water, and natural riches contained therein controlled by the State to be utilized for the welfare of the people ".

Article 2 of the Basic Agrarian Law (BAL) is an implementation of the rules of Article 33 paragraph (3) of the Constitution of the Republic of Indonesia Of 1945 described the sense right resource control by the State.

In this study will discuss the government's authority Semarang toward mastery of state land. Wewenang is the right of an official or agency to take the necessary measures so that duties and responsibilities can be performed well.

The emergence of this case can not be separated from their land disputes between citizens Kebonharjo with PT. KAI is happening around the month of May 2016, originated from the railroad reactivation plan Tawang Station-Port of Tanjung Emas. Trails are built to transfer container transport from road to railway. Under the agreement then the PT. KAI will to perform an audit in the area of the old railroad that will be re-enabled the Kebonharjo village located in Tanjung Mas, Semarang.

Kebonharjo residents objected, they refused their pengggusuran conducted by PT. KAI, citizens feel aggrieved because reactivation of rail projects are owned by residents of the demolition of dozens of homes without going through court execution. Residents Kebonharjo found¹⁰ land held today is no longer the right of PT. KAI because it can be said PT. KAI has abandoned the land.

Kebonharjo citizens feel entitled to land ownership for all this time the land has been used as a residence for citizens of decades and generations¹¹. Even residents have to pay land and building tax (PBB) over land and buildings they occupy and most of the land and the building has been mandapatkan proof of land ownership in the form of a valid certificate¹². Meanwhile, PT. KAI assume that the land occupied by the residents of his and should be maintained due to hold on *grondkaart* which is a soil map of the Dutch colonial era.

Rejection of citizens Kebonharjo on eviction and demolition on the grounds that citizens have inhabited house stands on land occupied during more than 40 years, located in Kebonharjo village of Tanjung Mas District of Semarang Utara, Semarang and over inhabited the house that there was no disruption of anyone. Land and buildings occupied by residents acquired hereditary. The house belongs to the residents, some land already has a Certificate of Land Ownership (SHM) and there is not yet certified¹³.

Reason PT. KAI to retain their assets land and the right to conduct the demolition of buildings on the land, which is that the land is an asset of PT. KAI as set out and described in Grondkaart Number W 17286 1962 Map Land in emplacement: Semarang, Kemijen, Semarang Tawang and Semarang Harbor Cross Semarang - Yogyakarta

¹⁰Interview with Hartono, residents Kebonharjo, Ex. Tanjung Mas, Semarang, dated May 3, 2019.

¹¹ Interview with Rizal, residents Kebonharjo, Ex. Tanjung Mas, Semarang dated May 3, 2019.

¹²Interview with Suparjo, residents Kebonharjo, Ex. Tanjung Mas, Semarang dated May 3, 2019.

¹³ Interview with Zaenuddin, residents Kebonharjo, Ex. Tanjung Mas, Kota dated May 3 2019.Semarang.

Former Eigendom *Verponding* No. 69 according Measure Letter (*Metbrief*) No. 877 dated July 28, 1853 and according to Land Rights Deed No. 236 dated June 22, 1864 was recorded in the name of "*De nederland Spoorweg Indische Maatschappij NV* (NIS). Land owned by PT. KAI until now never relinquished its rights to anyone and is still listed as assets / fixed assets of PT. KAI. By virtue of the Finance Minister cq Director General of State Enterprises No. S-11 / MK.16 / 1994 dated January 24, 1995 to the Minister of Agrarian / BPN that the lands described in *Grondkaart* basically the state assets as Assets PERUMKA now PT. KAI. Ground against PT. KAI is not issued land certificates on behalf of another party if there is no approval from the Minister of Finance¹⁴.

Semarang government authority related to state land ownership certification of the project were then convening of mass land rights associated with the case raises new legal issues, namely the lack of legal certainty of the right to ownership of land owned by citizens Kebonharjo,

Like what the head of PT. KAI Daop IV Semarang, Tri Andika Putranto, does not deny the issuance of Certificate of land Property Rights in Kebonharjo Village of Tanjung Mas District of Semarang Utara, by the National Land Agency (BPN) Semarang. But the process of issuance of Certificate of Property Rights should be traced its history, related to the underlying background transfer of the assets and the issuance of the Certificate of Property Rights.

Tri Andika Putranto explained that the leadership era mayor of Semarang, Sukawi Sutarip, precisely in 2000, the release of the assets of PT. KAI by Chief Daop IV (at that time), Diding Sukaryat, the mayor of Semarang through mass land titling project. On the basis of (a decision by the Daop IV) that, Semarang State Land Board then dared to issue a certificate of Land Ownership Rights. He said that in fact the head Daop not authorized release of assets belonging to the State Owned Enterprises (SOEs). Transfer of the assets can only be done by the authorities, in this case the Ministry of Finance. Basic issuance of Certificate of land Property Rights in Kebonharjo village of Tanjung Mas just signatures Sukawi Sutarip Mayor with the Chief Daop IV at the time, Diding Sukaryat¹⁵.

According Setiajidi¹⁶, Before the advent of the lawsuit PT. KAI to citizens, the National Land Agency has the authority in the administration of land registration in Indonesia in order to create legal certainty as a mandate and the Constitution and the Basic Agrarian Law (BAL) but this does not mean that efforts to create legal certainty is solely the responsibility of National Land Agency (BPN). Legal certainty of land title certificates can not be removed from the process and mechanism of issuance of the certificate included in this is the truth of the subject and to be given the right and the validity and correctness of basic documents such rights certificate issuance.

From the foregoing description has mentioned that the basic publishing rights to the land from the ground state is a document in the form of information from local government which in this case is the village of Tanjung Mas, that the land is not the land used to belong to indigenous, captions history of the land to determine mastery in a row for 20 (twenty) years and a description of control of land by the applicant's rights.

¹⁴ <http://daerah.sindonews.com/read/1327790/22/pt-kai-daop-4-semarang-amankan-semua-aset-yang-digunakan-warga-1-1533436027>, Accessed on May 4, 2019, at. 11:30 pm

¹⁵ <http://jateng.tribunnews.com/2016/04/14/pt-kai-malah-seret-bpn-dan-sebut-sebut-mantan-wali-kota-semarang-sukawi-sutarip>. TRIBUNJATENG.COM/Cetak/14 April 2016). accessed on February 2, 2019, street vendors. At 15:30 pm

¹⁶ Interview with Dispute Section Chief, Conflict, and Case BPN Semarang dated 16 April 2019

The third document is a document issued by the local government in this case in the village and sub-district government so that it can be said that the documents issued by the local government through the devices at the level of villages / wards and district¹⁷. Careless caution in publishing these documents can cause problems and even cases that are listed in the footnotes.

2.2. Implementation weaknesses of Semarang City Government Authority Against the State Land Tenure

From the results of research by the author related to implementation weaknesses of Semarang city government authority to the control of state land, the authors found some facts related to the pelaksanaan weakness;

First An error in exercising authority and policies implemented by the previous Mayor with the Chief Daop IV Semarang, which then conducted the process of disposing of land and then followed by the certification program in Kebonharjo mass.

Each implementation of the authority followed by policies and decisions should first be studied and researched. If there is no legal and historical study of the locations to be used for the certification program of mass impressed Semarang City government decisions and policies with the feeling and the (emotional) shortly. In fact the policy of the state land control, followed by the certification program of mass located in the Bandarharjo Village raises legal issues. With the carelessness of these policies are then disadvantaged communities.

Second legal uncertainty over land ownership, so the certificate owned by residents of the Village of Tanjung Mas canceled Kebonharjo State Administrative Court which considered disabled Semarang administration.

Related to the legal certainty of land ownership, the government of Semarang recognize the legitimacy of the status of ownership rights of citizens Kebonharjo, that the certificate is validly issued by the National Land Agency (BPN) of Semarang who has issued a certificate in accordance with the correct procedure¹⁸.

But the upside to the PT. KAI continue berupanya concerned that the certificate issued by the National Land Agency (BPN) through efforts to release the land rights to do the certification through the state land petition rated defect administration and legally flawed because the land petitioned located on plots of land owned by PT. KAI.

Furthermore, that the issuance of the certificate only based on the release of assets by Chief Daop IV then the mayor of Semarang and Head Daop not have the authority release state-owned assets. Transfer of the assets can only be done by the authorities in this case is the Ministry of Finance¹⁹. Therefore PT. KAI suing the National Land Agency (BPN) Semarang that issued the certificate to the State Administrative Court Semarang.

2.3. Solutions of weaknesses in implementation of Government Authority of Semarang City Against the State Land Tenure.

With the above-mentioned weaknesses in the execution of government authority Semarang on the state procurement of land, the authors conducted interviews with

¹⁷According to Mr Yuwono Triatmoko Bandarharjo Lurah, SH, in the request for state land ownership, Village just make Affidavit of Physical and Statement Any dispute which is then signed headman and subsequently signed by the District Head North Semarang.

¹⁸ Interview with Head of Tanjung Mas village Drs. Margo Haryadi, MM, dated May 13, 2019

¹⁹ Tribune Java / Print / 15 April 2016

Drs. Margo Haryadi, MM, as the Head of Tanjung Mas, and Mr. Setiajid, as Head Section of Dispute, Conflict, and Case Land Agency (BPN) to Semarang to provide a range of solutions from the events of the execution of the government's authority to the procurement of Semarang on state land. As a solution to the abovementioned weaknesses are;

First Semarang city government to seek mediation between the citizens affected by PT. KAI, so that the case is resolved. But what happens on the mediation there is no meeting point, a solution and an agreement, so that the mediation led to a dead end. Each party insists on the right of ownership of the land under their control. So that this case led to the court that the claim made by PT. KAI to citizens Kebonharjo, With the hope of a strike to the decision of the court are valid, final and binding.

Second Semarang city government to seek their compensation from PT. KAI to the people affected, it is also the demands of the residents petitioned the courts to the Administrative Court of Semarang. Residents not only calls for compensation but replace profit, because in this case the loss felt by residents not only material but also immaterial.

Third Semarang city government seeking relocation and providing temporary shelter for residents affected, namely in flate /*rusunawa* Kudu and other government-owned *rusunawa* Semarang.

3. Closing

3.1 Conclusion

- Implementation of Semarang city government authority does not comply with the authority is in this regard is the acquisition of state land that the land is basically controlled by or under control of juridical by PT. KAI and an asset of Ministry of Finance. So, Semarang city government can not only control the land by creating a land mass the certification program for the benefit of the people. Soil release procedure is not in accordance with the functions possessed authority, in this case is the Head Daop IV PT. KAI then, because the Head Daop IV does not have the authority to release the assets of PT. KAI, and who has the authority to release the country's assets is the Minister of Finance. Semarang City Government in implementing authority in terms of land acquisition to the community organizing must examine first, not the origin of implementing the certification program of mass which ends many disadvantaged communities of the implementation of the program. The implementation process should be based on the redistribution of juridical and historical studies of land is right and proper and not just based on a political assessment which of course only for the sake of right.
- Weaknesses of implementation of government authority Semarang toward mastery of state land that is; The first error in exercising authority and policies implemented by the previous Mayor with the Chief Daop IV Semarang, which then conducted the process of disposing of land and then followed by the certification program of mass Kebonharjo Tanjung Mas village. Both lack of legal certainty over the ownership rights to the land, so that their certificates canceled citizens of the Administrative Court which considered disabled Semarang administration. Thirdly absence of justice and legal protection of the certificate in the possession of citizens, so that between PT. KAI and residents to date on the status of each claim ownership of the land.
- The solution of the weaknesses that arise in the implementation of Semarang city goverment authority toward mastery of state land that is; Semarang city

government first sought mediation between residents affected by PT. KAI, so that the case is resolved. But what happens on the mediation there is no meeting point, a solution and an agreement, so that the mediation led to a dead end. Each party insists on the right of ownership of the land under their control. So that this case led to the court that the claim made by PT. KAI to citizens Kebonharjo, with the hope of a strike to the decision of the court are valid, final and binding. Both governments Semarang to seek their compensation from PT. KAI to the people affected, it is also the demands of the residents petitioned the courts to the Court Semarang. Residents not only calls for compensation but replace profit, because in this case the loss felt by residents not only material but also immaterial. Semarang three governments seeking their relocation and providing temporary shelter for residents affected, namely in *rusunawa* Kudu and other government-owned *rusunawa* Semarang.

3.2 Suggestion

- For the government in this case the government of Semarang to be more careful in carrying out the functions of the authority associated with the control of state land and carry out a program of land acquisition for the benefit of the people, so that later do not have problems related to the legal certainty of land ownership rights and the conflict of interest land ownership.
- For the Land Office of Semarang in order to be more careful and cautious in carrying out land registration certification of the mass associated with the program, so that does not happen in the future lawsuit related to a lawsuit certificates issued.
- For the public to be more vigilant, thorough and meticulous in pengusahaan receive state land acquisition, because the precision of the understanding of the land controlled to minimize conflicts that will arise in the future that will cause a lot of material and immaterial losses.

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