

Land Status of The Community of Kampung Tua In Batam City After The Birth of Agrarian Law

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Abstract. Land registration in Batam only started in the 1990s. Land certification in the authority area began with the birth of the Management Rights (HPL) held by BP Batam. The exclusion of the existence of old villages in the formation of the Batam Authority, is evident in the granting of HPL to the Batam Authority by the Government as stated in the Decree of the Minister of Home Affairs No. 43 of 1977. The granting of HPL to the Batam Authority in this Decree is possible on locations that are not yet clear and clean, if there is community land that is still controlled/cultivated or owned with certain rights on the land area that has been issued with an HPL Decree, only given the option to receive compensation. The purpose of this study is to analyze: 1) a legal review of the status of land ownership of old villages in Batam City according to Agrarian Law. 2) Legal protection of land ownership rights in the Old Village community of Batam City after the Agrarian Law. This type of research is normative legal research. The approach method in this research is case study approach and legislation approach. The type and source of data in this study are secondary data. Data analysis is an activity in research in the form of conducting a study of the results of data processing. The results of this study are According to Article 3 of the UUPA, there is a statement of recognition regarding the existence of customary rights of customary law communities as long as they still exist in reality, meaning that if in reality they do not exist, then the customary rights will not be revived, and no new customary rights will be created. Customary rights are allowed to continue to be regulated by each customary law community. Old villages, or customary law communities, have a special place in the UUPA (Basic Agrarian Law). The UUPA recognizes the existence of customary law communities and their customary rights, as long as they still exist and do not conflict with national interests.

Keywords: Agrarian Law; Batam City; Land; Old Village.

1. Introduction

Customary law in Indonesia has a unique nature and pattern that is different from other laws. Customary law is pragmatic realism, which means that customary law is able to meet the needs of society that are functionally religious so that customary law fulfills a social function/social justice.¹Batam is an industrial and trade city that has developed much more than the surrounding areas in the Riau Islands. Through the form of regional management of the Authority, Batam has become a developed and modern city. A condition that is very different when the island was first developed in the early 1970s. The land developed for industry and trade is State Land controlled and managed by the Batam Area Management Agency / Authority Agency (BP Batam). Land registration in Batam only began in the 1990s. Land certification in the authority area began with the birth of the Management Rights (HPL) held by BP Batam.

Relocation of residents became a common occurrence. Land registration also developed due to the relocation, which was previously for the development of industrial and trade areas, land certification was also carried out in the new settlement resulting from the relocation of Kampung Tua. In the certification, the application files of Kampung Tua residents needed to be accompanied by recommendations from the Batam Business Agency as the basis for the land registration application. At that time, land measurement in Kampung Tua was carried out by the Army for the benefit of the Authority. It turned out that the land acquisition work until now still left trauma in the community due to coercion and inadequate compensation.

Since the issuance of Law Number 59 of 1999 concerning the Establishment of Batam City which is based on Law Number 22 of 1999 concerning Regional Government, the Batam Authority in developing the Batam Island area must cooperate with the Batam City Government. To facilitate the development of Batam Island which is designated as a national economic driver, in Presidential Decree No. 41 of 1973 and Decree of the Minister of Home Affairs Number 43 of 1977 concerning Management and Use of Land in the Batam Island Industrial Area (Kepmendagri No. 43 of 1977) it is stated that all land areas on Batam Island and other surrounding islands are given HPL (Land Management Rights) to the Batam Authority. According to Batam City Regional Regulation No. 2 of 2004 concerning the Batam City Spatial Planning Plan for 2004-2014 which includes the definition of an old village.

The definition of an old village is "a group of houses that function as a residential environment for the original residents of Batam City when Batam began to be built, which contain historical values, local culture, and/or religion that are maintained and preserved. Historically, before the development of Batam Island as a mainstay of the country's economy, there was actually an existing village,

¹A. Suriyaman Masturi Pide, 2014, Customary Law Past, Present, and Future, Prenadamedia Group, Jakarta, p. 11

called the Old Village. The village still exists today, which generally has proof of land ownership based on old letters, village footprints.²

Land control rights, the right holder has the authority, obligation, and/or prohibition to do anything regarding the land he holds. What is permissible, obligatory, or prohibited from being carried out is the content of the right of ownership, which functions as a criterion or benchmark that differentiates the rights of ownership of land regulated in the Land Law. State ownership of land is one of the rights of ownership of land regulated in Article 2 paragraph (2) of Law Number 5 of 1960.

Based on Presidential Decree No. 41 of 1973 in conjunction with Ministerial Decree No. 43 of 1977, it is stated that all land areas on Batam Island and other surrounding islands have previously been granted Land Management Rights to the Batam Authority, followed by the transfer of Batam Authority assets to BP. Batam as stated in Article 4 of Government Regulation No. 46 of 2007 which also includes HPL as referred to in Presidential Decree No. 41 of 1973 in conjunction with Ministerial Decree No. 43 of 1977, including the Perkampungan Tua area. Based on the authority of the Land Management Rights, the holder of the Land Management Rights also has the authority to plan the designation and use of the land in question, use the land for the purposes of carrying out his business, and hand over part of the land to a third party.

Based on Presidential Regulation No. 87 of 2011 concerning the Spatial Planning of Batam, Bintan, and Karimun, a spatial pattern plan for the Batam area was also made, as a basis for issuing principle permits, land allocation for third parties, and a basis for carrying out reclamation which did not contain anything about the existence of old villages. This then had implications for the substance of different legal products in relation to Old Villages issued by BP. Batam and those issued by the Batam City Government, especially regarding land allocation and coastal reclamation. Based on the background of the problem, the researcher conducted a study entitled "Land Status of the Old Village Community in Batam City After the Birth of Law Number 5 of 196 concerning Basic Agrarian Principles"

2. Research Methods

The type of research used in this thesis is Normative Legal research. Research that has the object of study regarding legal rules or regulations.³ The approach methods used in this research are case study approach and statute approach. Case study approach is an in-depth qualitative research approach regarding groups of individuals, institutions, and so on within a certain period of time.⁴

²Elita Rahmi, 2010, Existence of Land Management Rights (HPL) and the Reality of Indonesian Development, Journal of Legal Dynamics Vol.10 No.3, page 6

³Mukti Fajar ND & Yulianto Achmad, 2010, Dualism of Normative Legal Research and Empirical Law, Pustaka Pelajar, Yogyakarta. p. 34

⁴Eko Sugiarto, 2015, Compiling Qualitative Research Proposals: Thesis and Dissertation, Suaka Media, Yogyakarta, p. 12

Types and sources of data come from secondary data. The data collection method in this study is by using literature review techniques (study document). The Data Analysis Method used is Descriptive Analytical, research that attempts to explain the solution to existing problems based on data, so it also presents data, analyzes and interprets it.⁵ Data analysis is an activity in research which involves conducting a study of the results of data processing.⁶

3. Results and Discussion

3.1. Legal Review Regarding Land Ownership Status of Kampung Tua Batam City According to Agrarian Law

In terms of granting ownership rights, then the land that has been released from the Land Management Rights of the Batam Business Agency becomes state land. The relocated old village community is given priority rights to submit an application for the granting of land ownership rights on the land. Article 9 of PMA/K BPN No. 9 of 1999 emphasizes that an application for the granting of land ownership rights is submitted in written form containing the applicant's information and information regarding the land. The applicant's information consists of name, age, nationality, place of residence and occupation as well as information regarding his/her wife/husband and children who are still his/her dependents. Information regarding the land includes legal data and physical data, legal data for the relocated old village community is a letter of release of Land Management Rights by the Batam Business Agency, while physical data includes the location and boundaries and area, type of land (agricultural/non-agricultural), and the status of the land, namely state land. The granting of land ownership rights is carried out by the National Land Agency, through the Regional Office or the Batam City Land Office. The decision letter granting ownership rights to the land is the basis for issuing the certificate.⁷

Based on Article 4 paragraph (2) of PMA/ K BPN No. 9 of 1999 concerning Procedures for Granting Rights to State Land and Management Rights, if the rights to the land granted are in the form of Building Use Rights, then the applicant, in this case the old village community that was relocated, must show a land use agreement from the Batam Business Agency. Batam as the holder of Land Management Rights. The procedure for granting Building Use Rights is not much different from submitting an application for granting land ownership rights as explained.⁸

Based on Presidential Decree No. 41 of 1973 in conjunction with Minister of Home Affairs Decree No. 43 of 1977, which states that all land areas on Batam Island and other surrounding islands have previously been granted Land

⁵Narbuko & Achmadi, 2009, Research Methodology, PT. Bumi Aksara, Jakarta, p.44.

⁶Mukti Fajar & Yulianto Achmad, Op Cit, p.183

⁷Ibid, p. 710

⁸Nur Hadiyati, 2019, Understanding the Problems of Land Management Rights in Batam City in the Context of Determining Batam as a Special Economic Zone, Journal of the Faculty of Law, Islamic University of Malang, Vol 2, Number 1, page 243

Management Rights to the Batam Authority.⁹ then followed by the transfer of assets of the Batam Authority to the Batam Business Agency as stated in Article 4 of Government Regulation No. 46 of 2007, which also includes Land Management Rights as referred to in Presidential Decree No. 41 of 1973 in conjunction with Home Affairs Decree No. 43 of 1977 which includes the Perkampungan Tua area.

In its development, the implementation of Presidential Decree Number 41 of 1973 above often causes problems and even agrarian conflicts. The conflict is essentially the disagreement of the fishing community with the central government's policy of handing over land management rights in Batam City and its surroundings (meaning also including the villages they have occupied) to the Batam Business Agency. For the fishing community, granting management rights over the entire Batam City area to the Batam Business Agency is an unwise policy. This is because the determination of the management rights does not have any positive impact on the community at all, on the contrary, it is very detrimental to them.¹⁰

This happens because according to the laws and regulations, for land that is given management rights to the Batam Business Agency, its designation and use cannot be arbitrary, everything must have the permission of the Batam Business Agency. In its implementation, unilateral actions taken by the Batam Business Agency in allocating land often cause problems.¹¹ For example, when the Batam Business Agency allocates land to investors/developers in a large size without first consulting with the community who have lived and occupied the area for decades. This action by the Batam Business Agency has caused disapproval from the community and in some cases has caused conflicts that have led to clashes, for example between the community and developers.¹²

Based on the authority of the Land Management Rights, the holder of the Land Management Rights also has the authority to plan the allocation and use of the land in question, use the land for the purposes of carrying out his business, and hand over part of the land to a third party, then based on Presidential Regulation No. 87 of 2011 concerning the Spatial Planning of Batam, Bintan, and Karimun, a spatial pattern plan for the Batam area was also made, as a basis for issuing principle permits, land allocation for third parties, and a basis for carrying out reclamation which does not contain anything about the existence of old villages. Based on the Presidential Regulation, the entire Sub-district area, which in Regional Regulation No. 2 of 2004 of Batam City is designated as an old village area, as a cultural heritage area, in this Presidential Regulation is designated as

⁹Ibid

¹⁰Nabila Annisa Fauzain, 2023, Land Dispute Conflict Between the Rempang Indigenous Community and BP Batam Regarding the Development of Rempang Eco City, Wara Sains Journal of Law and Human Rights, Vol. 02, No. 11, p.1085

¹¹Ibid

¹²Ibid, p. 1088

an Industrial area, tourism area, center for trading goods and services, and transportation center.

Granting of Land Management Rights to the entire area of Batam Island and the surrounding islands, causes the Land Office to be unable to issue certificates of land ownership rights over Land Management Rights. Land rights certificates will only be given to legal subjects who obtain land rights over Land Management Rights of the Batam Business Agency, in the form of Building Use Rights or Management Rights. In the empirical order, although the Batam City Government has issued a Regional Regulation on Neighborhood Associations/Residents Associations of Batam City, land allocation is still carried out by the Batam Business Agency. Batam City refers to the Neighborhood Associations/Residents Associations in Presidential Regulation No. 87 of 2011. What can be followed up by the Land Office in the land registration process is the land rights granted by the Batam Business Agency. Batam City over Land Management Rights of the Batam Business Agency. The party who obtains land rights over the Land Management Rights has an obligation to pay the Land Authority Compulsory Fee (UWTO) to the Batam Business Agency.¹³

3.2. Legal Protection of Land Ownership Rights in the Old Village Community of Batam City After the Birth of Agrarian Law

Legal protection for private ownership is stated in the Second Amendment to the 1945 Constitution of the Republic of Indonesia, namely in Article 28A, 28H Paragraph (4), and Article 29J Paragraph (2). Therefore, it is the obligation of the state as the holder of the highest authority in the land sector, to provide legal protection for land ownership rights. Along with the existence of social and cultural values attached to land, legal protection for land ownership rights is also intended for the people collectively and the people as a group of people who are the beneficiaries of the results of the utilization of natural resources through the management and exploitation of natural resources, and are the main parties in obtaining general welfare as regulated in the Preamble to the 1945 Constitution of the Republic of Indonesia and regulated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia.

The development of Batam Island as a Free Port and Free Trade Area is a pilot project as well as a real manifestation of the government's obsession in realizing economic growth. On the one hand, this project can be said to be a success, as evidenced by the fact that in 1998, when Southeast Asian countries experienced the worst monetary crisis in history, Batam still showed a money turnover ratio and economic growth above average. The importance of Batam's position integrated with the Indonesian economy, especially international trade, was also

¹³Dira Azelia Rustandi, 2024, Legal Review of the Authority of the Batam City Government and Business Agency Regarding the Management of Batam City Land Related to the Granting of Ownership Rights Above Management Rights, Journal of Law, Social and Humanities, Vol.2 No. 10, Page 25

seen in 2007, when the country's economy was sluggish, the status of Batam Island was increased from a Bonded warehouse to a Free Trade Zone.¹⁴

But on the other hand, it has had an impact on the Perkampungan Tua community, which de facto, has controlled the land since the 1900s, or almost a century before the establishment of Batam Island which started from the Pertamina logistics base to the Free Port and Free Trade Area and the establishment of the Batam Authority which was later changed to the Batam Business Agency. The 1998 reform gave birth to an agrarian reform agenda, to review various policy implementations, especially through the State's Right to Control in accordance with its true meaning based on the values outlined in Law Number 5 of 1960 concerning Basic Agrarian Principles.¹⁵

Based on the concept Right to Control the State as stated in Article 2 paragraph (2) of Law Number 5 of 1960 concerning Basic Agrarian Regulations, the main domain of granting land rights is to establish legal relations between legal subjects and land, by prioritizing substance rather than mere formality. This is a manifestation of the implementation of Law Number 5 of 1960 concerning Basic Agrarian Regulations, namely that legal protection efforts for citizens are carried out first, before being faced with globalization and economic liberalization as an effort to spur economic growth. However, as we know, economic growth became the obsession of the New Order regime government which was in power since 1968 or 8 (eight) years after the enactment of Law Number 5 of 1960 concerning Basic Agrarian Regulations, so that the program for granting land rights that had been planned was hampered and stopped for 32 (thirty two) years. This was also followed by an authoritarian government, the implication of which was that policy making was non-participatory.¹⁶

Decision on granting Land Management Rights with a certificate are two different administrative legal acts, the decision to grant a certificate Land Management Rights is the legal standing for the issuance of the certificate. Thus, the period of lawsuit against the decision letter granting land rights is subject to the provisions of Article 55 of Law No. 55 of 2009 concerning State Administrative Courts, namely 90 (ninety) days after the decision is issued. The domain of the limitation period of 5 (five) years as the time span for filing a lawsuit is the existence of a certificate that appears to be related to a civil lawsuit, not a State Administrative Decision as explained.¹⁷

The passing of the time period for conducting an executive review as explained above does not mean that the "door" to returning the land rights of the old village community that has been "seized" by the state has been tightly closed.

¹⁴Public Relations of BP Batam, 2025, <https://bpbatam.go.id/peran-strategis-bp-batam-dalam-mendorong-pertumbuhan-ekonomi/>, accessed on May 04, 2025, 18.45

¹⁵Nur Hadiyati, Op Cit, p. 58

¹⁶Nur Hadiyati, Op Cit, p. 62

¹⁷Madaniyah Anugrah Murti, 2024, Legal Protection for the Traditional Law Community of Kampung Tua Pulau Rempang Against the Impact of the Rempang Eco-City Project in Batam City, Journal of Law, Vol 11, No 04, Page 345

Efforts to protect the legal rights of individual land ownership for the old village community can be done by repositioning the land ownership rights of the old village community and then followed by land registration.¹⁸

Legal protection for land ownership rights in the Old Village of Batam City after the birth of Agrarian Law is regulated in Law Number 5 of 1960 concerning Basic Agrarian Principles and local policies such as the Decree of the Mayor of Batam. Law Number 5 of 1960 concerning Basic Agrarian Principles recognizes customary rights, including customary rights, as long as they still exist and function. The Old Village is recognized and preserved through the Decree of the Mayor, which requires land rights holders to follow the registration process with recommendations Batam Business Agency.¹⁹

Legal protection for land that is in fact controlled by people before it is occupied Law Number 5 of 1960 concerning Basic Agrarian Principles is a concrete form of the right of ownership, through the land rights institution as stated in Article 16 of Law Number 5 of 1960 concerning Basic Agrarian Principles. Ownership of land rights for the old village community itself occurs because of the law, thus the decision to grant land rights by the state to land areas that have been removed from Land Management Rights Batam Business Agency declaratory in nature, which is then followed by the issuance of a certificate through the land registration mechanism as stated in Government Regulation No. 18 of 2021 concerning Land Registration.

4. Conclusion

The status of the existence of Kampung Tua is recognized by the Batam City Government and the Batam Business Agency. This is in line with the issuance of a Land Certificate by the Batam City National Land Agency with the approval of the Batam Business Agency as the party that has the management rights, but the Community whose land already has a certificate, the Batam Business Agency prohibits the sale and purchase of the Kampung Tua certificate, because the old village as one of the cultural heritages must be maintained its authenticity. Legal protection for land ownership rights in the Old Village of Batam City after the birth Law Number 5 of 1960 concerning Basic Agrarian Regulations is regulated in Law Number 5 of 1960 concerning Basic Agrarian Regulations and local policies such as the Decree of the Mayor of Batam. Law Number 5 of 1960 concerning Basic Agrarian Regulations recognizes customary rights, including customary rights, as long as they still exist and function. Old Villages are recognized and preserved through the Mayor's Decree, which requires land rights holders to follow the registration process with recommendations Batam Business Agency. It is necessary to hold a meeting with the old village community regarding the problem of land ownership rights in the old village, this is considered very important to prevent the occurrence of social conflicts that are increasingly widespread and have an impact on the investment climate in Batam.

¹⁸Ibid, p. 340

¹⁹Ibid, p. 355

Acceleration of the resolution of land ownership rights problems in the old village community can be done by increasing the intensity of deliberations between the Batam City Government, representatives of the old village community, and Batam Business Agency to build understanding, on the importance of Batam's function for national economic growth. It is hoped that by increasing the intensity of deliberations between these parties, it can accelerate efforts to inventory land areas controlled by the old village community.

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