

Analysis of land control for market center allocation for public interest in Karo District (Case study of MARI decision number 5054 K/ Pdt/ 2022)

Isna Lewi Tarigan, Elvira Fitriyani Pakpahan, Kartina Pakpahan

Department of Law, PUI PT Business Law and E-commerce, Universitas Prima Indonesia, Indonesia

Abstract

With the increasing population on earth, the human need for land is also increasing. However, it becomes a big problem when the increase in land is not directly proportional to the increase in the population on earth. The increasingly limited availability of land makes the value of land higher and causes many conflicts in the land sector, including those related to land rights. Land control will be a problem when land registration is carried out and the Land Owner does not have any written legal basis. However, the fact that the person concerned has controlled and cultivated the land is the only evidence that is owned. The purpose of this study is to analyze how the Law regulates land control for public interest with a case study that occurred in Tigabinanga Village, Karo Regency (MA Decision No. 5054 K / Pdt / 2022). This study uses two types of research, namely normative legal research and case study research and is descriptive. The theory in this study uses the Theory of Justice and the Theory of Legal Certainty. From the research results, it was concluded that when the Applicant cannot show the legal basis with authentic evidence, then Physical Control of the land requested for more than 20 (twenty) years continuously as evidenced by a Physical Control Certificate issued by the Village Head/Lurah becomes a consideration in the Land Registration process, this is as regulated in the provisions of Article 24 paragraph (2) of Government Regulation Number 24 of 1997 concerning Land Registration.

Keywords: Land ownership, public interest, market

Introduction

With the increasing population on the face of the earth, the human need for land is also increasing, whether as a place to live, a place to find a source of life/income, or other uses that are very much needed by humans. However, it becomes a big problem when the increase in land is not directly proportional to the increase in the population on the face of the earth. The increasingly limited availability of land makes the value of land higher and causes many horizontal conflicts in the land sector. Horizontal conflict in the land sector is a process of interaction between two (or more) parties, each of whom is fighting for their interests over the same object. The emergence of legal disputes about land begins with a complaint by one party (person/agency) containing objections and demands for land rights, both regarding the status of the land or the priority of its ownership, with the hope of obtaining an administrative settlement in accordance with the provisions of applicable regulations ^[1].

In addition, Land Conflict is also defined as a land dispute between individuals, groups, groups, organizations, legal entities, or institutions that have a tendency or have had a broad socio-political impact ^[2].

Land conflicts that occur in society arise in various forms. The parties involved in the conflict resolution process are not few, both the state and civil society institutions such as non-governmental organizations (NGOs). However, the dispute resolution process often reaches a dead end, making the conflict even more protracted ^[3]. Some causes of land conflicts include:

1. Frequently changing boundaries;
2. Unequal distribution of inheritance;
3. Lack of certainty of land rights;
4. Increasing need for land;
5. Overlapping regulations;

6. Inadequate regulations;
7. Overlapping justice;
8. Complicated settlement and bureaucracy;
9. High economic value;

No different from other regions in Indonesia, Karo Regency is also not free from land conflicts, whether between communities, between communities and companies, between companies and the Government or between communities and the Government. However, there is 1 (one) case that has occurred in Karo Regency related to this land conflict, where the reason for the judge's consideration in his decision was land control in good faith for the public interest, although at the first level and the Appeal the Panel of Judges prioritized rights based on inheritance. Karo Regency is indeed known as an area with customary law with a patrilineal kinship system. The patrilineal kinship system places the male child as the main heir, while the matrilineal kinship system, then the female heir controls the assets, and the male child gets a smaller share ^[4].

Method

This research writing uses 2 (two) types of research, namely normative legal research type and case study research type and is descriptive.

The normative legal research type is research conducted by reviewing applicable laws and regulations and applied to a particular legal problem and Case Study.

According to Terry Hutchinson as quoted by Peter Mahmud Marzuki defines that normative or doctrinal law is research that provides a systematic explanation of the rules governing a particular legal category, analyzes the relationship between regulations, explains areas of difficulty and may predict development for the future ^[5]. Research is also known as library research or document study because

this research is conducted or aimed only at written regulations or other legal materials ^[6].

Meanwhile, case study research is a qualitative research method that is carried out by focusing on a particular object. The goal is to uncover the reality behind the phenomenon, which may not be visible.

According to Suharsimi Arikunto, a case study is an approach that is carried out intensively, in-depth and in-depth towards certain symptoms.

The definition of a case study according to Basuki is a form of research or study of a problem that has a specific nature, can be carried out either with a qualitative or quantitative approach, with targets of individuals or groups, even the wider community ^[7]. Meanwhile, Stake added that the emphasis of the case study is to maximize understanding of the case being studied and not to obtain generalizations, the case can be complex or simple and the time to study can be short or long, depending on the time to concentrate.

Material

1. Type of Research Material

This study uses secondary data collection. Secondary data sources are data obtained from existing legal materials, both from private and public library materials. From the perspective of binding power, secondary data can be classified into:

a. Primary Legal Materials

Primary legal materials are materials whose contents are binding because they are issued by the government whose sources have been regulated and are optionally binding, such as laws and regulations, jurisprudence and treaties. In this study, the primary legal materials used are:

- Laws;
- Government Regulations;
- Presidential Regulations;
- Ministerial Regulations;
- Supreme Court Decisions; and
- Court Decisions.

b. Secondary Legal Materials

Secondary Legal Materials are materials that provide explanations regarding primary law such as: scientific textbooks by influential legal experts, research results, and other provisions that are directly related to the object of study. They can also be in the form of legal journals, legal research reports, legal scientific articles, seminar materials, and so on.

c. Tertiary Legal Materials

Tertiary Legal Materials are supporting legal materials that provide guidance and explanations for primary legal materials and secondary legal entities such as: newspapers, magazines, journals, legal dictionaries, Indonesian language dictionaries, and other related sources.

2. Data Collection Techniques

Data collection is carried out by means of literature study. Literature study is obtained by reviewing and studying primary legal materials Land Registration.

Furthermore, reading literature, scientific articles, magazines, books and other materials related to the problem being studied and by using documentation methods in order to obtain complete materials, which are carried out by searching, inventorying and studying laws and regulations,

doctrines, and other secondary data, related to the focus of the problem.

3. Data Analysis

The data analysis used is a qualitative approach analysis of secondary data. The descriptive includes the content and structure of positive law, namely an activity carried out by the Researcher to determine the content or meaning of the legal rules used as references in resolving legal problems that are the object of study in this Thesis.

Results and Discussion

Land rights control often causes conflicts both vertically and horizontally. Conflicts related to land rights control can be caused by several factors including: changes in people's mindsets, and changes in the meaning of the concept of control towards ownership. In addition, changes in the economic value of the land itself which are increasing are also one of the factors causing land conflicts. The significant increase in economic value/land sales value occurs in urban areas due to the increasing population which has an impact on the increasing need for land, especially for housing, and places to conduct various business ventures.

One of the important and very basic tasks in land management is land registration. Therefore, there are many provisions of laws and regulations that regulate its implementation.

To maintain a just society, there must be legal certainty. Therefore, the state must be able to control public order through the implementation of legal regulations. This is in line with the provisions of Article 19 of Law Number 5 of 1960 concerning the Basic Agrarian Law which emphasizes that the Government must register land throughout the territory of the Unitary State of the Republic of Indonesia in accordance with the provisions in order to ensure legal certainty. Land registration includes:

- a. Measurement, mapping and bookkeeping of land plots;
- b. Registration and transfer of land rights; and
- c. Presenting legally binding documentation that serves as substantive evidence.

Land registration is regulated by Government Regulation Number 24 of 1997 concerning Land Registration, and the acceleration of the implementation of complete land registration is regulated by the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of BPN Number 35 of 2016 concerning the Acceleration of the Implementation of Complete Systematic Land Registration, which was ratified on November 9, 2016. This Complete Systematic Land Registration (in Indonesia it is known as PTSL) is identical to the National Agrarian Project (in Indonesia it is known as Prona). Between these two programs have similarities, namely the land certification program. Only the Prona Program is different because it covers several villages in one district that can be served in one budget line.

While the PTSL program is limited to only one village for one budget line.

In general, the document requirements that must be met by the Applicant in issuing a land ownership certificate include: an application form that has been filled out and signed by the applicant or his/her attorney on a sufficient stamp, there is a Power of Attorney in the case of being authorized, attaching a photocopy of the applicant's/holder's

identity and the identity of the recipient of the rights and the attorney in the case of being authorized that has been adjusted to the original by the officer, attaching original proof of acquisition of land/rights base, original proof of release of rights and settlement of land and house (Group III House) or house purchased from the government, attaching a photocopy of the current year's property tax that has been adjusted to the original by the counter officer, submission of proof of SSB and proof of payment of income money (at the time of registration of rights), attaching a photocopy of the current year's SPPT and PBB that has been adjusted to the original by the counter officer, submission of proof of SSB (BPHTB) and proof of payment of income money (at the time of registration of rights).

However, in practice, many acquisitions of rights to a plot of land in ancient times were not done in writing. Whether the acquisition of rights is through sale and purchase, grant or others. This is an obstacle in the present day when everything is written down. Especially when the land problem has entered the realm of court where the proof is mostly based on written evidence. In the past, written administration was considered not too important, because it was enough with just confessions. But it is different from today, where everything must be written.

When the Applicant cannot show the legal basis with authentic evidence, then Physical Control of the land requested for more than 20 (twenty) years continuously which can be proven by a Physical Control Certificate issued by the Village Head/Lurah becomes a consideration in the process of Registering Rights for a plot of Land, as has been regulated in the provisions of Article 24 paragraph (2) of PP Number 24 of 1997 concerning Land Registration which emphasizes that "in the event that the means of proof as referred to in paragraph (1) are not or are no longer available in full, the registration of rights can be carried out based on the fact of physical control of the land plot in question for 20 (twenty) years or more consecutively by the applicant for registration and his predecessor"^[8].

These provisions are the legal basis for ownership/control of land that does not yet have a certificate. In the provisions of Article 24 of PP Number 24 of 1997, it is stipulated that physical control for 20 (twenty) years must be consecutive and in good faith. The word good faith in these provisions can be interpreted as meaning that he is the owner of the land and not the land belonging to someone else. In practice, this statement of physical control of the land is issued/issued by the village government in the form of a certificate of physical control over a plot of land. Physical control means actually controlling, using, and utilizing the land physically, for example by planting, building, or using the land for other purposes. Legally recognized physical control usually must meet certain requirements, such as:

- **Existence:** The land must be in real physical control.
- **Time:** Physical control must take place continuously and for a certain period of time (at least 20 years).
- **Good Faith:** Physical control must be carried out in good faith, meaning not because of wrong or illegitimate control.

In line with the spirit of the Provisions of Article 24 paragraph (2) of PP Number 24 of 1997, the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency also issued/issued a Letter to support the acceleration of land registration through the Letter of the

Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 1756/15.1/IV/2016 dated April 14, 2016 concerning Instructions for the Implementation of Community Land Registration.

That the Karo Regency Government has several fixed assets in the form of land located in the Tigabinanga District, Karo Regency. One of them is a plot of land measuring 9,590 m² which has been physically controlled by the Karo Regency Government since 1952 continuously with good faith which is designated and used as a Pekan/Market to conduct buying and selling which is solely used for the benefit and welfare of the people/community of Karo Regency, especially the Community in Tigabinanga and its surroundings.

As the highest legitimacy and legality in the ownership of rights to a plot of land, there is a certificate issued for the plot of land. For the 9,590 m² land used as the center of Tigabinanga Market, a Certificate of Use Rights Number 3 dated March 10, 2017 has been issued in the name of the Karo Regency Government issued by the Karo Regency Land Office.

Problems arose when several parties claimed to be the heirs of the late Samel Sebayang and his wife, the late Terang Ate Br Sembiring, claiming that the land of the Tigabinanga Market Center (hereinafter referred to as the object of the case) belonged to their parents/grandparents (hereinafter referred to as the Heirs) which was inherited by their father, the late Alas Sebayang and the late Tukar Sebayang (children of the late Samel Sebayang). During the examination at the first level trial, there was not a single authentic evidence showing that the land object of the case belonged to and/or still belonged to the Plaintiff's family. On the other hand, the Karo Regency Government has held a Certificate of Use Rights Number 3 of 2017, dated March 10, 2017 issued by the National Land Agency/Karo Regency Land Office.

In its consideration, the Panel of Judges of the High Court, similar to the Panel of Judges of the first instance, ignored the Certificate of Right to Use Number 3 of 2017, dated March 10, 2017 owned by the Karo Regency Government, where the Certificate issued by the National Land Agency/Karo Regency Land Office is official and protected by Law. The certificate is the highest legitimacy and legality in ownership of rights to a plot of land. In its consideration, the Panel of Judges stated that the Certificate of Right to Use Number 3 of 2017, dated March 10, 2017 issued by the BPN is a legally flawed land certificate. Meanwhile, the Respondents, originally the Plaintiffs, clearly could not prove the basis of their rights in court, whether a sale, exchange, grant or other acquisition. Meanwhile, in Indonesian land law, it is known that land sales and purchases are carried out openly and in cash. The definition of a sale, exchange or grant according to customary law is a legal act that is clear and in cash^[9].

In its considerations, the Supreme Court actually has its own view in its Decision, including:

- That the control of the Defendants is proven to be used for the public interest, namely making a market or fruit market by building kiosks to be occupied by traders;
- That the disputed object since 2017 has been recorded as State Property based on the Certificate of Use Rights Number 3 with Measurement Letter Number 84/2017 dated January 18, 2017 registered in the name of the Karo Regency Government;

- Based on the above facts, it can be proven that the control of the disputed object by the Defendants has been carried out in good faith because it has been controlled continuously and used for the public interest, and the disputed object has been recorded as State Property, for that reason the control of the Defendants over the disputed object cannot be declared as an unlawful act;

Based on the above considerations, the legal considerations of the *Judex Facti* decision can no longer be maintained and must be canceled, by granting the cassation and trying it yourself, as in the decision below;

Adjusting

- Granting the cassation request from the Cassation Applicants: 1. The government of the republic of indonesia in jakarta cq the governor of north sumatra in medan cq the regent of karo regency, 2. the governor of north sumatra in medan cq the regent of karo regency cq the head of the market department of karo regency, mentioned;
- Canceling the Medan High Court Decision Number 144/Pdt/2021/PT MDN dated June 17, 2021 which upheld the Kabanjahe District Court Decision Number 94/Pdt.G/2019/PN Kbj dated October 6, 2020;

Judging by itself

In Exception

Rejecting Defendant I's exception

In the Main Case

- Rejecting the Plaintiffs' lawsuit in its entirety;
- Sentencing the Cassation Defendants to pay court costs at all levels of trial, which at the cassation level amounted to IDR 500,000.00 (five hundred thousand rupiah)^[10].

The Supreme Court's considerations in Decision Number 5054 K/Pdt/2022 have fulfilled the elements of the Theory of Justice, namely corrective justice, justice that aims to correct unfair events in the relationship between one person and another. According to the Researcher, the Supreme Court has correctly considered the legal facts during the examination at the first level and the Appellate level and has been correct in applying the law.

The Supreme Court's consideration in its Decision Number 5054 K/ Pdt/ 2022 which was decided and pronounced in an open session on February 8, 2023 was appropriate and fair. Physical control carried out by the Karo Regency Government in good faith for the public interest over a plot of land used as a place to sell/traditional market was the main consideration of the Panel of Judges at the Cassation Level.

Decision of the Supreme Court Number 5054 K/Pdt/2022 has fulfilled the sense of justice for the Karo Regency Government.

Which for decades has controlled the land object of the case and has disbursed a lot of budget for the revitalization of the Market Center, and also the sense of justice for the Tigabinanga community and the surrounding community who earn a living to meet their families' needs on the land object of the case. In this case, the Supreme Court in its considerations saw that the principle of continuous physical control of land in good faith for the public interest is

important in determining who is the most entitled party to a plot of land when a dispute occurs. Moreover, these considerations are also strengthened by the issuance of the Certificate of Right to Use (SHP) Number 3 of 2017 for the disputed object, providing legal certainty for the plot of land that is the object of the case.

As regulated in Article 32 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration, a Certificate is proof of rights that is valid as a strong means of proof regarding the physical data and legal data contained therein, as long as the physical data and legal data are in accordance with the data in the measurement letter and the land book of the relevant rights. A certificate of land rights as written proof has many functions for its owner. The main function of a certificate is as strong evidence for anyone to be able to prove their rights to land if the name listed on the certificate is clear as the holder. In accordance with the purpose of land registration which is to guarantee legal certainty, a certificate will be issued to the entitled party as proof of their rights.

Conclusion

That when the Applicant cannot show the legal basis with authentic evidence, then Physical Control of the land requested for more than 20 (twenty) years continuously as evidenced by a Physical Control Certificate issued by the Village Head/Lurah becomes a consideration in the Land Registration process, this is as regulated in the provisions of Article 24 paragraph (2) of Government Regulation Number 24 of 1997 concerning Land Registration.

That the Certificate issued by the National Land Agency (BPN) is the highest legitimacy and legality in ownership of rights to a plot of land recognized by the State. Proof of legal ownership of land or buildings, with the highest and strongest legal force in Indonesia. The certificate issued by the National Land Agency (BPN) provides a guarantee of legal certainty to its owner, and ownership of the land is not limited by time.

That the many problems that occur in Indonesia, especially related to land ownership, are an indicator that land registration to provide a guarantee of legal certainty in Indonesia has not been implemented optimally.

References

1. Rusmadi Murad. *Penyelesaian Sengketa Hukum Atas Tanah*. Bandung: Alumni, Mandar Maju, 1991.
2. Peraturan Kepala Badan Pertanahan Nasional Republik Indonesia Nomor 3 Tahun 2011 tentang Pengelolaan Pengkajian dan Penanganan Kasus Pertanahan.
3. Bernhard Limbong. *Konflik Pertanahan*. Jakarta: Margareta Pustaka, 2012.
4. Jovina, Roswita Sitompul, Kartina Pakpahan. *Implementasi Penyelesaian Sengketa Tanah Adat di Mataram (STUDI PUTUSAN NOMOR: 2884 K/Pdt/2022)*. https://scholar.google.com/citations?view_op=view_citation&hl=id&user=lvqnMhwAAAAJ&cstart=20&page_size=80&citation_for_view=lvqnMhwAAAAJ:J_g5lZvAfSwC
5. Peter Mahmmud Marzuki. *Penelitian Hukum*. Jakarta: Kencana Prenada Media Group, 2011.
6. Soejono Soekanto, Sri Mamudji. *Penelitian Hukum Normatif*. Cetakan Ke-8. Jakarta: PT. Raja Grafindo Persada, 2004.

7. Dini Pramitha Susanti, Siti Mufattahah. Penerimaan diri pada istri pertama poligami yang tinggal dalam satu rumah.
<http://www.gunadarma.ac.id/library/articles/graduate/psycholog/2008/artikel.pdf>
8. Peraturan Pemerintah Republik Indonesia Nomor 24 Tahun 1997 tentang Pendaftaran Tanah.
9. Elvira Fitriyani Pakpahan. Tinjauan Yuridis Terhadap Sengketa Peralihan Hak atas Tanah dalam Kaitannya dengan Peraturan Pemerintah Nomor 24 Tahun 1997 (Studi Putusan Mahkamah Agung Nomor 416/K/Tun/2013).
https://scholar.google.com/citations?view_op=view_citation&hl=id&user=SBJn8LIAAAAJ&cstart=100&page_size=100&citation_for_view=SBJn8LIAAAAJ:hqOjcs7Dif8C
10. Decision of the Supreme Court of the Republic of Indonesia Number 5054 K/PDT/2022.