

ASSET STATUS OF STATE-OWNED ENTERPRISES: MECHANISM OF LAND CONFLICT RESOLUTION IN COMMUNITY CONTROL

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Abstract:

Land control and ownership contain values that underlie the emergence of legal norms governing the control and ownership of land in which there are authority, rights and obligations as well as power. In juridical, land control and ownership is a legal perspective on land issues related to land control rights as a system that aims to protect and encourage values that are strongly embraced by the community. Type of the study is a normative-legal research by using statute, case, and comparative approaches. The results show that land status of State-Owned Enterprises is not a State asset because land control is based on transfer with State capital participation which is then followed up through abolition from the list of State-Owned goods. Legal means to resolve land conflicts of State-Owned Enterprises that controlled by the community are the first, legal harmonization between the laws and regulations that place the assets of State-Owned Enterprises as state assets and regulations that not as state assets.

Keywords: Land; Civil Rights; Land Conflict; State-Owned Enterprises

1. INTRODUCTION

Humans and land have an interrelated relationship in the history of human existence so that arrangement and regulation are needed, especially those related to control, designation, use, supply and maintenance. State as a power organization has an authority to make arrangements regarding human and land relations (Li, 2021). Conceptually, authority in relation to land tenure includes 2 (two) things, namely general and special authority. General authority is the holder of land rights who is authorized to use their land, for interests directly related to the use of the land in accordance with the provision stipulated in the legislation (Santoso, 2010). Meanwhile, special authority is the holder of land rights is authorized to use land according to the rights obtained from the land, such as property rights for the sake of agriculture and build buildings, building rights to build buildings and business use rights for the interests of agriculture, plantations, fisheries and husbandry.

Land control and ownership contain values that underlie the emergence of legal norms governing the control and ownership of land in which there are authority, rights and obligations as well as power (Patittingi, 2020). In juridical, land control and ownership is a legal perspective on land issues related to land control rights as a system that aims to protect and encourage values that are strongly embraced by the community. Meanwhile, from a sociological point of view, land control and ownership is authority to use land which is limited by the public interest, and the public interest considers individual interests. Therefore, from the point of view of these three aspects, it is the land control and ownership as an authority that

gives a person or group the right to manage land that has harmony in creating a relationship between humans and land in relation to land.

The non-fulfillment of this can trigger problems known as land conflicts such inequality or incompatibility related to land use, perceptions and conceptions of land, incompatibility of legal products that arise due to pragmatism and sectoral policies. This is in line with Collins et al (2013) that legal relations in land have the potential for cooperation and potential for conflict. Cooperation will occur if agrarian subject is willing and able to formulate an agreement regarding different interests and claims regarding access to agrarian objects. On the other hand, a conflict will occur if there is a conflict of interest between and between agrarian subjects or overlapping claims regarding agrarian objects (Wicaksono, 2008). Prolonged conflict between PT. PTPN IV with communities in several districts in South Sulawesi Province shows that until now there has not been found a conflict resolution mechanism that meets the principles of justice, legal certainty and benefits for the parties so as to keep land control in conflict areas with the aim of agrarian reform in Indonesia.

The legal substance that has been affirmed in the Basic Agrarian Law regarding the requirements for the abolition of land rights due to abandonment in reality is not capable of being the basis for resolving the conflict (Matuankotta et al, 2016). Government Regulation No. 10 of 2010 giving unique characteristics to the assets of State-Owned Enterprises further strengthens the position of State-Owned Enterprises in land control which can provide the potential for inequality to arise related to land tenure that deviates from the goal of land tenure in Indonesia as confirmed in the constitution, namely the greatest prosperity of the people (Sakai, 2002). The issue that emerged later was the inability of the existing legal substance, legal structure and legal culture to provide legal protection in land tenure in Indonesia, especially for land controlled by the community but became the assets of State-Owned Enterprises.

Another fact that has become a phenomenon related to the handling of land conflicts of State-Owned Enterprises assets is that the two known forms of land conflict resolution, namely litigation and non-litigation are cannot provide resolution with legal certainty. Conflict resolution through the courts as a last action that can be done by the community is the fact that it creates uncertainty. This can be seen from the decision of the Supreme Court No. 4008 K/PDT/2001 in the case of PT. Pelabuhan Indonesia I Belawan against Sakdymah and colleagues which cannot be implemented by the District Court of Medan because the object to be executed is State-Owned Enterprises asset. If the decision alone cannot be executed, it is difficult to expect legal certainty in resolving land conflicts through mediation. The issue that arises from this is the absence of a concept to resolve land conflicts over the assets of State-Owned Enterprises controlled by community so that researchers are interested in studying land conflicts over land assets of State and Regional-Owned Enterprises controlled by the community.

2. METHODOLOGY

This research is a normative legal research. It serves to provide juridical arguments that can help if there is a void, ambiguity and conflict over norms (Irwansyah, 2021). The approach used is observation and interpretation, which makes these phenomena observable. The approach used is observation and interpretation, which makes these phenomena observable. This paper provides information on the latest trend in research (Yunus, 2020).

3. RESULTS AND DISCUSSION

3.1. Asset Status Of State-Owned Enterprises: Mechanism Of Land Conflict Resolution In Community Control

The presence of State-Owned Enterprises in Indonesia cannot be separated from the long history of state configuration and principles that have developed since the 20th century, namely at the time of the development of the welfare state which as a transition from the concept of rechtsstaat with the principle of nachtwacherstaat (night watch state) which applied the principle of staatsonthouding or restrictions on the role of the State and government in the political field developed in the least government is the best government and the principle of laissez faire, laissez aller in the economic field which prohibits the State and government from interfering in the economic life of the community.

This principle has had a negative impact on people's lives, namely misery. This reality triggers the development of the concept of welfare as an answer in which the government or the State is given position of being fully responsible for the welfare of the people. The principle used is staatsbemoeienis which requires the State and government to be actively involved in the economic and social life of the community in order to achieve general welfare (Kamal, 2010). The role of the government in efforts to promote the welfare of society is closely related to the four functions of the State that Friedmann once suggested, namely the State as a provider, a regulator, an entrepreneur, and an umpire. The presence of State-Owned Enterprises is a concretization of the State's function as entrepreneurs, which exercise activities in the economic field through State companies. So it can be said that the presence of State-Owned Enterprises is a means for the government or the State in realizing social welfare. Therefore, the implementation of government equity participation in State-Owned Enterprises is an integral part in achieving goals as justice and welfare State (Kim, 2019).

Utilization of State's assets through equity participation in State-Owned Enterprises is a form of government effort in providing the maximum benefit for the community in achieving social welfare so that when it is related with the theory of justice from John Rawls, capital participation is an effort to realize social justice with a populist dimension. The role of the State as a regulator of the use of assets in the form of land through equity participation is a form of state presence in order to regulate that land in Indonesia can truly realize the greatest prosperity of the people.

The separation of State's assets through equity participation in State-Owned Enterprises has implications for administrative changes in the control and ownership of land by the State and

shifts to State-Owned Enterprises and becomes the assets of State-Owned Enterprises and the position of the state in this case is shareholder with responsibility the amount of capital included through equity participation (Nurdin, 2014). The abolition of land that has become the object of capital participation from the list of State-Owned goods is a form of transfer of full authority from the State to State-Owned Enterprises to manage the land so that it can contribute to the achievement of development goals.

Asset legality of State-Owned Enterprises through the issuance of certificates of land rights by giving full rights to State-Owned Enterprises to become holders of land rights is one of the efforts to realize the goal of legal certainty in land control by State-Owned Enterprises. The position of State-Owned Enterprises as the holder of land rights gives rise to the same rights and obligations as the position of humans as rights holders, namely having rights and obligations in the ownership and control of land. The true nature of legal certainty lies in the strength of land rights certificates as proof of ownership, including in court, but legal certainty is negative which is essentially a relative legal certainty, with the understanding that legislation is guaranteed legal certainty as long as it is not proven otherwise.

In Indonesia, in a land law system, there are several land statuses, including customary land rights, Swapraja and ex. Swapraja lands and State land. The Basic Agrarian Law provides stipulations that land rights can be granted in order to provide legal certainty guarantees through land registration carried out on the Status of the land. In order to be granted a right, it must materially comply with the proper procedure for land registration and its utilization and use does not conflict with the National and Regional Spatial Plans regulated by laws and regulations. The discussion on land has developed from time to time and never ends (Ramadhani, 2012). This is in line with the increase in the human population as legal subjects, which causes the demand for land and its utilization to be higher, but inversely proportional to the amount of land availability which tends to be static.

The realization of a guarantee of legal certainty for land rights certificates is influenced by the certainty of legal subjects as holders of land rights (subjects of rights), because from the study of certainty the subject of this right will at least answer about who has a right (McLeod, 2005). Certainty of the subject has an important role in showing who has the right or not in the control, ownership and utilization of a plot of land. So to see in detail about the certainty of the subject of this right, the elements that are important to be investigated are related to the identity of the subject, domicile, occupation, citizenship and so on.

Seeing from the aspect of legality in the form of land rights certificates, in land registration for land controlled by a State-Owned Enterprise, the holder of the rights listed in the certificate is the Legal Entity of the State-Owned Enterprise. This is different from the registration of land rights for State's assets where the right holder is the government of the Republic of Indonesia. This difference clearly shows that the Status of land assets of State-Owned Enterprises is not land assets of the State. Furthermore, in terms of physical control over land where physical control is a determining factor in the relationship between land and the subject of its rights.

Based on the legal construction, it can be concluded that the Status of land assets of State-Owned Enterprises in terms of administrative, legality and physical control aspects are assets that are separate from State assets so that they are not included in the category of State assets and the assets of State-Owned Enterprises are not attach exceptions that apply to State assets so that the assets of the State-Owned Enterprises can be used as abandoned land subject and the assets of the State-Owned Enterprises can be confiscated by the court.

Conflict in the land sector is an undeniable condition that has occurred in various forms (Sumardjono, 2011). The characteristic of land issues to be categorized as conflict is when it has a tendency to have a broad impact or in the view of the researcher, the definition of conflict is a land dispute that involves many parties and has the potential to have a wide impact. Stephen P. Robbins argues that conflicts or disputes arise because there are antecedent conditions (Limbong, 2008). These conditions, which are also sources of conflict, consist of 3 (three) categories, namely communication, structure, and personal. Conflict is always centered on several main points, namely goals to be achieved, allocation of shared resources, decisions taken and the behavior of each party involved.

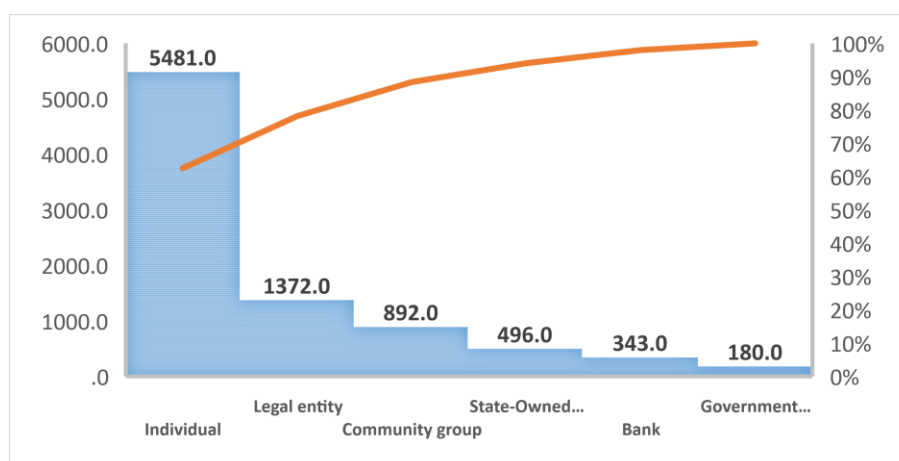
Land conflicts over land assets of State-Owned Enterprises in South Sulawesi Province have become a reality that has occurred for a long time and currently has not reached a settlement that can provide a major role in achieving legal objectives in the control and ownership of land. Many conflicts over land have occurred between the community and PTPN XIV in South Sulawesi. Some of the problems are:

1. **Conflict asset of PTPN XIV in Wajo regency.** Conflict asset of PTPN in Wajo regency occurred in HGU No. 00001/Wajo with main problem is overlapping location of PTPN XIV with UPT Bekkae covering an area of 795 Ha. The Head of the Land Office of Wajo stated that the settlement of the problem of PTPN XIV in Wajo had not reached a common ground because there were obstacles, including the number of subjects that had changed or changed hands so that there was difficulty in identifying land control at the location of PTPN XIV. The steps currently being taken are coordination with all stakeholders, including local governments, the Ministry of State-Owned Enterprises, the Ministry of Villages, Development of Underdeveloped Regions and Transmigration.
2. **Conflict asset of PTPN XIV in Jeneponto regency.** Conflict asset of PTPN in Jeneponto regency occurred in HGU No. 01 covering an area of 1601, 88 Ha.
3. **Conflict asset of PTPN XIV in Gowa regency.** Conflict asset of PTPN in Gowa regency covering an area of 1601.88 Ha with main problem of PTPN land control by the community. The Head of Land Office of Gowa regency explained that the problem of land asset of PTPN XIV become the object of a case.
4. **Conflict asset of PTPN in Enrekang regency.** Conflict asset of PTPN in Enrekang regency covering an area of 5.230 Ha with the problem of control and use of the land of the former HGU PTPN XIV by the community whose based on the Decree of the Regent of Enrekang and there was land control of the former HGU PTPN XIV by the government.

As several conflicts mentioned above, the researcher observes that there are several forms of conflict of land assets of State-Owned Enterprises, namely: First, land ownership by the community for land that has been issued a certificate for State-Owned Enterprises; the second, the land control by the community which is the land of former State-Owned Enterprises; the third, land control by the community on land of State-Owned Enterprises that does not yet have a certificate.

Observing several theories of the causes of disputes associated with conflicts between State-Owned Enterprises and the community in South Sulawesi province, in general, this occurs due to inconsistent positions and different views on disputes by the disputing parties or included in the category of negotiation theory. The inconsistent position referred to in this case is the position of PTPN XIV which is a State-Owned Enterprise with the position of the community being in a weak position against State-Owned Enterprises.

Chart 1. Data on Disputes, Conflicts and Land Cases



Source: Ministry of Agrarian and Spatial Planning of the Republic of Indonesia, 2021

From the community's point of view, land whose rights have expired and are no longer extended become land that no longer has a legal relationship with the rights holder so that they can exercise control over the land. Meanwhile, from the point of view of the State-Owned Enterprises, the land that they have acquired, even though their rights have expired, remain under the control of the State-Owned Enterprises. The different views of the parties on the dispute that followed became more complicated because of the opinions of other parties which triggered greater difficulties in finding a settlement, such as the view that state-owned land is a state asset that cannot be released without the approval of the House of Representatives. People, land of State-Owned Enterprises is a state asset which can lead to criminal law implications if a transfer is made.

In the process of assessing land conflicts, the objectives to be achieved are to find out the factors causing the conflict. In addition, through this process, we can get an idea to resolve the

land conflict (Ayunita, 2020). To conduct an assessment, the first thing to do is research and analyze data on the current conflict. Based on the data from the analysis, the main issues in the conflict can be mapped. The result of the conflict map, of course, makes it easier to find the right format in the later stages of resolution. This assessment process is the result of a legal review of land conflicts based on juridical data, physical data and or other supporting data. The results of the study are then reviewed for the application of the law to produce recommendations for handling land conflicts. Conflicts over land in Indonesia occur from year to year, including conflicts over State-Owned Enterprises land. The following is data on disputes, conflicts and land cases in Indonesia for 2015-2020.

Asset control of land by State-Owned Enterprises is an integral part of the implementation and management of State-Owned Enterprises in an effort to achieve its objectives. Juridically, all forms of asset control in the form of land by State-Owned Enterprises are subject to laws and regulations in the land sector as well as laws and regulations relating to State-Owned Enterprises and laws and regulations relating to Limited Liability Companies.

In legal developments today, public finances are not only meant for the State's function to carry out the wishes and decisions of the government in real terms and implement the laws set by the government in the financial sector, but also extends to regular and continuous activities serving the needs of the government. And the public interest that creates and earns income (Simatupang, 2011). This last understanding of finance causes public finance to be interpreted as an architectural building consisting of state finances, regional finances, legal entity finances, and personal legal subject finances, each of which has a different legal character (*rechtcharacter*) and legal status (*rechtsstatues*), namely the more public, the wider the State's authority (*authority, gezag*), while the more private the less of State's authority.

In principle, protect state assets is a form of implementing State asset regulation in which the State under its authority takes direct action against the overall security of State assets with the intention that State assets can be perfectly regulated. Therefore, the regulation of State assets, especially State's land still requires the legal requirements stipulated in laws that are more comprehensive and factual, and partially regulated in scattered laws and regulations. In other words, the law is an important supporter of the regulation of state assets, especially good and integrated land. The position of government as a shareholder in State-Owned Enterprises in reality causes all assets of State-Owned Enterprises to become State assets. This can be seen in several laws and regulations that provide uniqueness and specificity to State-Owned Enterprises assets as well as other state assets, including State-Owned Enterprises assets that cannot be confiscated, cannot be declared as abandoned land and actions detrimental to State-Owned Enterprises are categorized as criminal acts of corruption.

4. IMPLICATIONS AND RECOMMENDATIONS

Land status of State-Owned Enterprises is not a State asset because land control is based on transfer with State capital participation which is then followed up through abolition from the list of State-Owned goods. Legal means to resolve land conflicts of State-Owned Enterprises that controlled by the community are the first, legal harmonization between the laws and

regulations that place the assets of State-Owned Enterprises as state assets and regulations that not as state assets; the second, the regulation of customary law as a means of conflict resolution, and the third through agrarian reform.

ACKNOWLEDGMENTS

The authors acknowledge all contributors involved in this study. The authors declare no conflict of interest and no research funds or grants received.

DECLARATION OF INTEREST

Authors declare there are no competing interests in this research and publication.

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