

LEGAL CERTAINTY FOR LAND WITHOUT LAND TITLE CERTIFICATE: THE WAY FORWARD

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Abstract

The existence of regional autonomy, the government is given authority to administer and manage its assets for the realization of the function of regional autonomy. In the context of administering state/regional property, especially for land as regional asset, it is important to consider the document of land title. The regional government must have a certificate of land rights behalf of the regional government. Land title certificate to regional property is a guarantee of legal certainty regarding the control and ownership of land title. Therefore, if there is no certificate of land title, then the legal status of local government control over lands claimed as regional assets does not have binding legal force in the sense that local governments must be prepared to face disputes over land claimed as regional assets. The guarantee of regional property for land consisting of three aspects, namely administrative, physical, and legal. Administrative guarantee include recording, bookkeeping, inventorying, reporting and storing of documents. Physical guarantee of regional property is carried out in order to prevent a decline in the function of property, a decrease in the number of property and loss of property. Meanwhile, legal guarantee is carried out by completing proof of ownership status. Legal guarantee of regional property in the form of land is carried out with the intention that the land assets are complete in the form of letters of proof of ownership of rights or proof of ownership such as certificates of land title and valid data regarding the ownership of land.

Keywords: Administration, Land, Legal Protection, Property.

1. INTRODUCTION

Nowadays, through the regional autonomy, the government is given authority to administer and manage its assets for the realization of the function of regional autonomy. One of them is land administration as a regional asset.¹ Historically, administration of state/regional property was first regulated by Government Regulation No. 6 of 2006 concerning Management of state/regional property. This regulation has been amended and finally is regulated by the Government Regulation No. 27 of 2014 as revised by Government Regulation No. 28 of 2020 concerning amendments to the Government Regulation No. 27 of 2014 concerning Administration of state/regional property.

The regulation on the administration of state/regional property is regulated regarding the administration of state and regional property. Administration is a series of activities that include bookkeeping, inventory, and reporting of state and regional property in accordance with the provisions of the legislation. Specifically, the administration of state and regional property is divided into bookkeeping, inventory and reporting, and it also includes state and regional property in the form of land.

In the context of administration of state/regional property, especially for state and regional property in the form of land, what needs to be considered is the document of ownership (land title). Thus, regardless of the form of the property, property that are claimed as state and regional property by the government must have legal documents. Particularly for land, the government or local government must have a certificate of land title on behalf of the Government.²

Technically, the administration of regional property is stipulated that the submission of an application for determination of the status of the use of regional property must be accompanied by a document which for regional property in the form of land must have a certificate of land title as the document. Thus, land that is claimed as regional property must have a certificate of land title on behalf of the local government to be included in the list of asset inventories.

The fact, there are still several land that are claimed as state/regional property that do not have certificates of land title on behalf the Government of the Republic of Indonesia/regional government concerned. The government of South Sulawesi, for example, claims to have assets of 1,037 plots of land with 363 plots that have not been certified.³

Even worse, the regional government of Makassar claims to have assets of 4,100 that have not been certified.⁴ It raises the question that what is the basis for the local government to claim that a plot of land is regional property or asset?

Unclear ownership of land title that are claimed as regional property or assets certainly has the potential to cause conflicts with other parties, especially if the local government does not exercise physical control of the land. In the context of administering regional property, this research will focus on analyzing legal certainty over land that does not have a certificate of land title on behalf the local government which is claimed as regional property or assets.

2. METHODOLOGY

This research is legal research. It is conducted to generate arguments, theories or new concepts as prescriptions in solving legal problems at hand. This research was conducted in a normative juridical manner.⁵ This legal research was carried out using several approaches, namely statute and conceptual approaches. The collection of legal materials is carried out using the literature study.

3. RESULTS AND DISCUSSION

3.1. Legal certainty for land without land title certificate that are claimed as state and regional property

Regional property is one of the important elements in the administration of government and services to the community. Management of regional assets must be handled properly so that these assets can become initial capital for regional governments to develop and consider their financial capabilities. Assets that are under local government management must be based on good management so that recorded assets are taken into consideration.⁶

To support good governance, the management of regional property must be carried out properly starting from planning and budgeting based on regulatory guidelines and statutory provisions so that regional property is carried out according to achievements.

Hence, regional property is all goods purchased or obtained at the expense of the regional budget or other legitimate acquisitions. Muhammad Ilham Arisaputra⁷ explained that:

Basically, natural resources are important assets owned by a country. These natural resources, include land and natural resources such as soil fertility, forest, mining, garden, and marine which greatly affect the industrial growth of a country, especially in terms of providing raw materials for production. With abundant natural resources and high potential, it will greatly support the economic development of a country. Economic development is efforts to improve the standard of living and welfare of a nation which is often measured by the level of real income per capita. However, the existing natural resources are not processed by nature, but human resources are needed to process these natural resources.

State/regional property is generally termed as assets. State/regional assets are divided into several types as specified in the Regulation of the Minister of Finance No. 171/PMK.05/2007 concerning Central Government Financial Accounting and Reporting Systems, namely:⁸

1. *Current assets.* Current assets referred to in the meaning of the state/regional property are inventories. Inventories are current assets in the form of goods or equipment intended to support government operational activities, and goods intended to be sold and/or delivered in the framework of public service.
2. *Fixed assets.* Fixed assets are tangible assets that have a useful life of more than 12 (twelve) months to be used in government activities or utilized by the general public. Fixed assets referred to in the sense of state/regional property are land, buildings and structures, equipment and machinery, roads, irrigation, and networks.
3. *Other assets.* Other assets referred to in the sense of state/regional property are fixed assets which are discontinued from active use by the government so that they do not meet the definition of fixed assets and must be transferred to other assets according to their carrying value.
4. *Historical assets.* Historical assets referred to in the sense of state/regional property are fixed assets that have a legal determination as historical assets due to cultural, environmental and historical interests.

All types of assets mentioned above are required to be managed and utilized in the context of public services to the community. However, there are many issues related to state or regional assets in the form of land, such as: *the first*, government land that already has land rights (*land title*), but the land is controlled without rights by the community; *the second*, government land with a certificate that is physically controlled by the community who also has a certificate of ownership; *the third*, government land that has been certified and controlled by the government but claimed by the community as customary land.

Local government assets in the form of land are lands controlled by local government agencies where this government-owned land is included in the class of private land and is an asset whose physical control is with the relevant government agency, but whose juridical control is with the Minister of Finance. Land rights originate from the state's right to control over land where the state based on the right of ownership it has the authority to determine various rights over the surface of the earth, which are called land rights that can be given to and owned by people who are Indonesian citizens or foreigners who domiciled in Indonesia and legal entities, namely private and public legal entities or legal entities established under Indonesian law and domiciled in Indonesia and foreign legal entities that have representatives in Indonesia.

Land is a very vital government asset in government operations and services to the community. Land assets are most difficult assets to manage. This is because there are many kinds of government-owned land with various use statuses, so that there is a lot of interest in land owned by the government or regional governments.⁹ Land assets of the regional government are one of the objects of land registration and control and management are given to local government agencies with rights to use and rights to manage in accordance with the Regulation of the State Minister for Agrarian Affairs No. 9 of 1965. Therefore, the government as the holder of land rights has the same obligations as other rights holders, such as individuals and legal entities, in the right to use and manage land according to the nature of the purpose for which it is allocated.

Based on the construction of the law, it is clear that normatively all land which is property or assets of the state and regions is required to be certified. The regulation of the Minister of Domestic Affairs No. 19 of 2016 also stipulates a basic norm which can be interpreted that all regional assets must be certified. This can be seen, for example, that in order to determine the status of the use of regional property in the form of land, one of the documents that must be completed is a photocopy of the certificate of land rights (land title), which of course on behalf the local government. However, there are exceptions for regional asset land that have not been certified.

Administration is a series of activities that include bookkeeping, inventory, and reporting of state/regional property in accordance with the provisions of the legislation. Bookkeeping is the activity of registering and recording the regional property into the list of goods in the *property user authority, property user or property manager* according to the classification and coding of goods. Then, inventory is an activity to collect data, record, and report the results of data collection. And also reporting is a series of activities for compiling and submitting data and information carried out by the *supporting goods manager, user goods manager or managing goods manager* who conducts bookkeeping, inventory, and reporting to the *goods user authority, goods users or goods managers*.

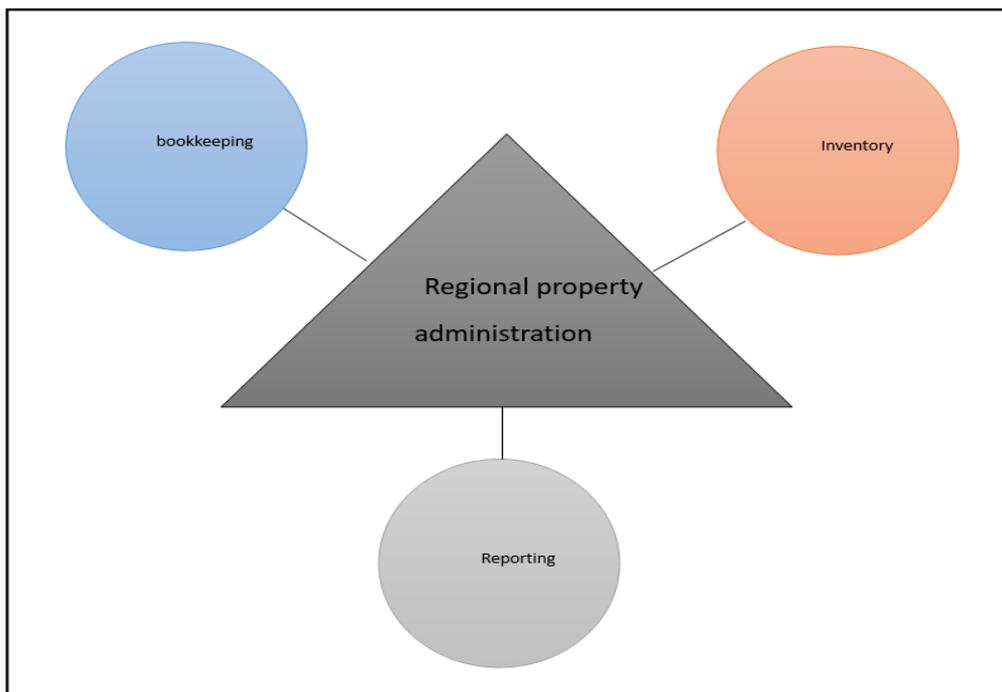


Figure 1: Activities of the regional property administration

As showed above (Figure 1), it is clear that land is classified as a fixed asset, fixed in nature, it is also clear that guaranteeing assets in the form of land is very necessary. In addition to its fixed nature, land also has a fairly high economic value so that it becomes an object that is contested by legal subjects. For this reason, the government through Government Regulation No. 24 of 1997 concerning land registration wants all lands controlled by legal subjects to be certified to obtain proof of ownership in the form of certificates of land rights (land title). This is no exception for regional property. Having a land title certificate for all regional property in the form of land can minimize rights disputes involving local governments.

For regional assets in the form of certified land, the regional government has rights in the form of Land Management Rights or Use Rights. For land that has been certified, the regional government does not need to worry because with the certificate of land rights, the law through statutory regulations has guaranteed legal certainty as well as legal guarantee.¹⁰ Even so, there are still certified regional assets that are still the object of dispute in court. The guarantee of legal certainty in question is that all data contained in the certificate of land rights must be considered correct by all parties, unless it can be proven otherwise. In other words, the principle of valid presumption applies and the principle of proof is reversed where parties who deny the truth of the contents of the certificate are required to prove the contents of the certificate of land rights in question are untrue. The problem is for regional land assets that do not yet have land rights certificates, both for regional assets that have rights or those with physical possession only. Normatively, such conditions do not guarantee legal certainty over local government control over lands that are claimed as regional assets. In fact, from the results of

the research, it was found that local governments sometimes consider that if a land has been registered as regional property in the asset inventory register book, then this has provided legal certainty for the land. Even though normatively, this still opens the possibility for disputes so that there is no guarantee of security for regional land assets.

The existence of certificates of land rights to regional property is a guarantee of legal certainty regarding the control and ownership of land rights over regional assets. For this reason, if there is no certificate of land rights, then the law does not guarantee legal certainty in terms of mastery and ownership of rights for local governments and it has implications for their management and utilization. Land that has not been certified in general can be classified as Free State land (*anvrijlands*), as land that is directly controlled by the State and on that land, there are no rights belonging to other parties.

Thus, the legal status of local government control over lands claimed as regional assets does not have binding legal force in the sense that local governments must be prepared to face disputes over land claimed as regional assets. Even so, the existence of documents on rights or physical tenure is still recognized by laws and regulations as proof of land ownership which can be used as a basis for proving the existence of a legal relationship between land as a legal object and the regional government as its legal subject.

3.2. Guarantee of Regional Property in the Form of Land in Ensuring Guarantee and Legal Certainty in Its Management

In its development, the concept of governance always undergoes a paradigm transformation in the form of change. These changes are intended so that a local government can create good governance. The key to implementing state policies in the era of globalization is good governance. In the era of globalization in order to face the challenges ahead, it is necessary to develop a high commitment to apply noble values and principles of good governance in order to realize the ideals and goals of the country. One form of implementing the principles of good governance that is needed by society is the realization of an asset management system that is informative, adequate, accountable and transparent.

Regional assets are a main part of regional financial management. Management of regional assets/property requires special attention because there has been a relatively large increase in the value of regional assets/property from year to year.¹¹ For this reason, efforts are needed to protect regional property. The guarantee in question consisting of 3 (three) aspects, namely administrative guarantee, physical guarantee, and legal guarantee.

According to Suwanda¹² that “administrative guarantee includes recording, bookkeeping, inventory, reporting and storing of ownership documents”. So that administrative guarantee of regional assets in the form of land can be interpreted as recording, inventorying, bookkeeping, reporting and storing of land documents in an orderly and safe manner. In other words, administrative safeguards for land assets by completing proof of ownership such as building permits, minutes of handover, deed of sale and purchase, agreements and other supporting documents. Not only until the completion of proof of ownership, administrative guarantee also includes activities for storing proof of ownership documents and it is necessary to carry out

periodic inventories. Administrative guarantee as stipulated in the Regulation of the Minister of Domestic Affairs No. 19 of 2016 concerning Guidelines for the Management of Regional Property in article 299 are the activities of “collecting, recording, storing, and administering documents proof of land ownership in an orderly and safe manner.” Furthermore, administrative guarantee for regional assets in the form of land can be carried out with the following steps:

1. Recording, that administrative guarantee that inventories are recorded already in Asset SIM by system, the guarantee for land assets belonging to the regional government by agencies that are given authority emphasis on controlling documents or archives on land rights belonging to the regional government. This inventory aims to keep the assets belonging to the regions in an orderly administration and facilitate the supervision and control of goods.
2. Complementing proof of ownership of land certificates, that the process of completing proof of ownership of land certificates needs to pay attention to documents and archives on land rights belonging to the local government so that documents proving ownership of land that previously belonged to residents can be released into government-owned land assets.
3. Keep documents as proof of ownership, that in guarantying land assets administratively by the regional government, namely documents stored in a safe so that the evidence is maintained.

Furthermore, for physical guarantee, this is done by considering the financial capacity of the local government and the condition of the land in question. This physical guarantee is carried out by:

- a. Put up land layout markings by build boundary fences
- b. Put up a sign of land ownership, and
- c. Guarding

According to Suwanda,¹³ physical guarantee for regional property is carried out in order to prevent a decline in the function of goods/property, a decrease in the number of goods/property and loss of goods/property. This can be interpreted that physical guarantee of regional assets in the form of land is carried out with the aim of preventing land degradation and decreasing land value, and so that all parties know that the land in question is land owned by the regional government.

The procedures for physical guarantee of regional assets in the form of land are as follows: First, put up land layout markings by build boundary fences, that physical guarantee in the regional government of Sleman regency has been made of boundary fences but not all, there is also put up land layout marking by build boundary markers, in its implementation also involves several related parties. Put up layout marking for regional assets are carried out as an effort to secure regional assets and to avoid disputes regarding land boundaries with landowners bordering local government-owned land.¹⁴ The second put up a sign of land ownership, that the putting of a sign of land ownership is very necessary with the intention that all parties know that the land in question is land belonging to the local government. In putting the boards,

important to put the quality of materials used so that they are not easily damaged and lost. Furthermore, guarding, after put up boundary and board signs, guarding is still being carried out at the land location so that there is no damage or loss of the place marks and board signs.

The next is legal guarantee. Legal guarantee is carried out by completing proof of ownership status, and carried out on (a) land that does not yet have a certificate and (b) land that already has a certificate but is not yet on behalf the local government. Legal guarantee for regional property in the form of land is carried out with the intention that the land assets have complete documents in the form of proof of ownership of rights or proof of ownership such as certificates of land rights and valid data regarding land ownership. This legal guarding is usually carried out when there are problems regarding the land assets, for example, there are claims from other parties against government-owned land. Therefore, the completeness of proof of ownership is very important to avoid any claims of government-owned land.

Legal guarantee by the regional government should be carried out with the aim of preventing disputes over regional property in the form of land. For this reason, local governments are required to certify land rights that are claimed as regional property.¹⁵ For this reason, juridically, the author can emphasize that the only proof of ownership of land rights is legally recognized. Documents in the form of deed of sale and purchase, title of land ownership, letter C, statement of waiver of land rights, letter from village head (if any), minutes of acceptance related to acquisition of goods, or other documents are only the basis for rights and are not proof of ownership of rights to land.

Certification of land assets over the regional government is basically to provide legal certainty and protection for land assets belonging to the regional government where the rights owned must be on the basis of legal mastery of rights so that it can be easily shown that the government is the owner of the land rights in question. If a problem occurs, guarantee through legal remedies for land with problems with other parties can be carried out by means of real evidence and based on law. Another important note is that all regional property in the form of land must be used optimally or actively, especially for the purposes of public services and for regional interests. This is a form of strengthening in the context of physical guarantee so that it is not claimed by other parties.

4. IMPLICATIONS AND RECOMMENDATIONS

The existence of certificates of land rights to regional-owned property is a guarantee of legal certainty to control and ownership of land rights over regional assets. For this reason, if there is no certificate of land rights, then the law does not guarantee legal certainty in terms of mastery and ownership of rights for regional governments and certainly it has implications for their management and utilization. Land that has not been certified in general can be classified as Free State land (*anvrijlands*) is land that is directly controlled by the State and on that land, there are no rights belonging to other parties.

Thus, the legal status of local government control over lands claimed as regional assets does not have binding legal force in the sense that local governments must be prepared to face disputes over land claimed as regional assets. Guaranteeing for regional property in the form of land consisting of 3 (three) aspects, namely administrative guarantee, physical guarantee, and legal guarantee. Administrative guarantee include recording, bookkeeping, inventory, reporting and storing of ownership documents. Physical guarantee of regional property is carried out in order to prevent a decline in the function of goods/property, a decrease in the number of goods/property and loss of goods/property. Legal guarantee of regional property in the form of land is carried out with the intention that the land assets are complete in the form of letters of proof of ownership of rights or proof of control such as certificates of land rights and valid data regarding land ownership.

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Declaration of Interest

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

Notes

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