THE ROLE OF LAND REGISTRY OFFICE OF NORTH BENGKULU REGENCY ON SURVEILLANCE OF CONVEYANCE OF RIGHTS OF FARMLAND FROM FARMER TO CIVIL SERVANT

By:

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ABSTRACT

The Republic of Indonesia is an agrarian country, but many farms are owned by non-farmers. Farm ownership of farmland is getting less and less. Farms are sold to non-farmers, especially to Civil Servants. Therefore, this study aimed to determine the Land Registry Office of North Bengkulu Regency on Surveillance of Conveyance of Rights of farmland purchased by civil servants from farmers. This study is an empirical law study that records the legal phenomenon of regulations applied in society which focuses on the study of descriptive legal sociology. The result showed that the certificate of Conveyance of rights of farmland sold by farmers to Civil Servants in Padang Jaya Village was enacted by the temporary Land Titles Registrar (PPATS). PPATS in making the certificate of Conveyance of rights of farmland never made a statement Letter as it is regulated in Article No. 99 point (1) of the Regulation of the State Minister of Agrarian Affairs/Head of National Land Agency No. 3 of 1997 regarding to a statement letter of not to be a holder of land titles in excess of the maximum provisions of the land title and not to be a holder of absentee land title (guntai). In the absence of statement letter-, farmland owned and controlled by Civil Servants has a maximum excess. From this study it can be concluded that the Ministry of Agrarian and Spatial Planning must strengthen the digital system of land services to prevent directly ownership of land owned by communities that violate the provisions of legislation, especially the control and ownership of farmland controlled and owned by Civil Servants. It is right that farmland shall be owned by farmers not by non-farmers.

Keywords: Farmland, Farmers, Civil Servants, Conveyance Rights, and Land Ownership.
A. Introduction

1. Background

Since the colonial era, agricultural development has always been the government's attention. During the Dutch colonial period, agricultural development was apparently implemented through cultivation system (Cultuurstelsel) which continued as the implementation of the Ethical Policy. During the reign of Bung Karno, agricultural development started with Kasimo Plan, Indonesian Welfare Plan (RKI), Rice Plant Center, and Commando of Prosperity Movement Operation (KOGM). In the government of President Suharto, agricultural development is placed as the focal point of economic development. Agricultural development efforts were also continued by the administration of President B.J. Habibie through GEMA PALAGUNG (Independent Movement Rice plant, Soybean and Corn) and in the era of President SoesiloBambangYudhoyono it was affirmed through the declaration of Revitalization of Agriculture, Fisheries and Forestry.

Likewise in the government of President Joko Widodo who prioritizes for Indonesia to achieve food sovereignty, namely food security through local / domestic production, the development efforts in the agricultural sector are not able to raise the welfare of farmers as it is mandated in the preamble of the 1945 Constitution to protect all the people of Indonesia and all the independence and the land that has been struggled for, and to improve public welfare, to educate the life of the people. this means that the state is mandated to protect and prosper the life of the Indonesian people, including farmers as the majority of Indonesia's population. Do not let only certain groups of people monopolize farmlands.

According to UsepSetiawan edited by Sediono M. P. Tjondronegoro and GunawanWiradi:

Based on the comparison of four results of Agriculture Census, it is known that the average land tenure by farmers in Indonesia continues to decline, from 1.05 hectares (1963) to 0.99 hectares (1973), then decreases to 0.90 hectares (1983) and became 0.81 hectares (1993). The 1993 Agriculture Census results show that 21.2 million households in rural areas, 70% of those rely on agriculture.¹

¹S. M. P. Tjondronegoro and Gunawan Wiradi, Dua Abad Penguasaan Tanah Pola Penguasaan Tanah Pertanian di Jawa dari Masa ke Masa, Yayasan Obor Indonesia, Jakarta, 2008, PP. 404 - 405
Besides, according to Herawan Sauni:

As a quick overview and with reference to the agriculture census data of 2013 it shows that there are 26.14 million Agricultural Households controlling on average of only 0.89 hectares of farmland. Within ten years since the 2003 agriculture census, there has been an increase in land tenure on average of 0.41 hectares, but the extent is still far from the ideal of 2-hectare.²

Based on the data, it is illustrated that farmland tenure by farmers since the UUPA is enacted until now, is smaller and far from ideal aspired by this nation to increase prosperity for the farmers through their farmland.

Population of Indonesia, based on the 2010 Census of Central Bureau of Statistics or BPS data quoted from the Center of Agricultural Data and Information Ministry of Agriculture, reached to 237,641,326 inhabitants³. In addition, according to Projected Population of Indonesia in 2035 the population will continue to grow to 305,652,400 inhabitants⁴. While the population of Indonesia as a farmer was 38,882,134 people⁵ of the total number of labor force in Indonesia of 110,808,154 people⁶ or 35.09% of the population of Indonesia aged more than 15 years old who work in agriculture and non-agricultural sector in 2012.

The regulation of economic and natural resource issues in Indonesia has been regulated in the 1945 Constitution. It can be seen in Article 33 of the 1945 Constitution as the following:

1. The economy shall be organized as a common endeavor based upon the principles of the family system.
2. Sectors of production which are important for the country and affect the life of the people shall be under the powers of the State.
3. The land, the waters and the natural resources within shall be under the powers of the State and shall be used to the greatest benefit of the people.
4. The organization of the national economy shall be conducted on the basis of economic democracy upholding the principles of togetherness, efficiency


Ibid P. 6
with justice, continuity, environmental perspective, self-sufficiency, and keeping a balance in the progress and unity of the national economy.

5. Further provisions relating to the implementation of this article shall be regulated by law.

Based on these provisions it is seen that in order to improve the prosperity of the people, government hold a very important role. State intervention in the affairs of the people's welfare as the provision indicates that the constitution adopted welfare state system that is covering the whole human development, both material and spiritual prosperity. This also indicates that economic problems arise, not only economic monopolies based on market mechanisms solely but it also requires the role of the state, especially those related to the areas that affect the life of the people. Particularly regarding to the development of agrarian law in the 1945 Constitution, it is regulated in Article 33 paragraph (3) which states:

The land, the waters and the natural resources within shall be under the powers of the State and shall be used to the greatest benefit of the people

The word "shall be used" contains an order to the state to use for the greatest prosperity of the people. The article is further elaborated in Article 2 point (2) and point (3) of Law No. 5 of 1960 concerning on Basic Agrarian Principles Regulation or also known as Basic Agrarian Law abbreviated (UUPA), especially in terms of "state-controlled" which empowers the state to:

1. to regulate and administer the allocation, use, supply, and maintenance of the earth, water, and airspace;
2. to determine and regulate legal relationships between people and the earth, water, and airspace;
3. to determine and regulate legal relationships among people as well as legal acts concerning the earth, water, and airspace.

While the authority should be used to achieve the greatest prosperity of the people in the sense of nationality, prosperity and independence under the state of Indonesia which shall be independent, united, sovereign, just and prosperous.

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7Soetrisno PH, KapitaSelektiaEkonomi Indonesia, Andi Offset, Yogyakarta, 1992, P. 165
8WinahyuErwiningsih, HakMenguasai Negara atas Tanah, Total Media, Yogyakarta, 2009, P. 3
Since its enactment in 1960, UUPA occupies a strategic position within the Indonesian national legal system. If it is thoroughly studied there are nine principles which serve as the basis for achieving the objectives of the implementation of the UUPA. The nine basic principles are:

1. Principle of land unity
2. Principle of the state controlling land
3. Principle of nationality
4. Principle of equality of fellow citizens of Indonesia
5. Principle of customary rights
6. Principle of social functions of land rights
7. Principle of structure arrangement of land tenure and ownership
8. Principle of land stewardship
9. The principle of legal certainty

Specifically, the seventh principle regarding to structure arrangement of land tenure and ownership is proposed to achieve a just and prosperous society based on Pancasila. It is also known as Agrarian Reform Indonesia which includes 5 programs "Panca Program", namely:

1. Renewal of Agrarian Law, through the unification of the law with national conception and the provision of legal certainty guarantee;
2. The abolition of foreign rights and colonial concessions on land;
3. Termination of gradual feudal exploitation;
4. Redesigning of ownership and land tenure and legal relations related to land concession to achieve equal prosperity and justice;
5. Planning of inventories and allotments of the earth, water and natural resources contained therein and its use in accordance to plan, carrying capacity and capabilities

The five programs are generally known as the Land Reform Program whereas specifically Land Reform is defined in the fourth program according to BoediHarsono.

In colonial times land tenure and ownership was so unbalanced that most Indonesians did not own land. The commoners only serve as agricultural laborers so that the life of the people of Indonesia became very poor. With the enactment of the basic principles and programs above it was aimed to achieve justice and maximum prosperity of the people. Justice, particularly for those whose source of livelihood, depends on agricultural production and/or

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9Ilyas Ismail, Konsepsi Hak Garap Atas Tanah, Citapustaka Media Perintis, Bandung, 2011, Hlm 24
10BoediHarsono, Hukum Agraria Indonesia-Sejarah Pembentukan Undang-Undang Pokok Agraria Isi dan Pelaksanaannya, Publisher: Djambatan, Jakarta, 1999, P.3
natural resources therefore human life cannot be separated from the
land as one important production factor in supporting the human
activities in the earth considering its three characteristics. First, land is an
asset that is not affected by impairment and time factor. Second, the land is an asset that is physically
not increased. And third, the land is a long-term investment\(^\text{11}\).

One of land reform program in Indonesia is the obligation to work
and cultivate his own land by himself based on Article 10 point
(1) of UUPA, as follows:

Every individual and corporate body which holds a right to farmland is
in principle obliged to actively till the land or work on it themselves
while avoiding any methods of human exploitation.

Article 8 of Government
Regulation in Lieu of Law Number
56 of 1960 states that the
government stipulates that each
farmer household owns a minimum
of 2 hectares of farmland, both for
paddy fields and dry land. In
relation to this stipulation, farmers
are prohibited from selling,
distributing or separating existing
land resulting the owners have land of
less than 2 (two) hectares. This
prohibition regulation was aimed to
ensure each farmer household have
enough land and the availability of
sufficient farmland will increase
agricultural productivity and to meet
food sustainability as well as to
improve the welfare of farmers.

To implement the mandate of
UUPA, Article 3 point (1) of
Government Regulation number 224
of 1961 junto Government
Regulation number 41 of 1964
specifies as follows:

Owners of farmland residing
outside the sub district where
the land is located, within 6
months shall conveyance the
right to his land to another
person in the sub-district
where the land is located or
move to the sub-district of the
location of the land.

Subsequently Article 3 point d
of Government Regulation No. 224
of 1961 junto Government
Regulation No. 41 of 1964
determines:

It is prohibited to perform all
forms of transferring new rights
upon the farmland resulting the
owner of the land concerned
having a plot of land outside the
Sub-district in which he / she
resides.

The fact is that nowadays
many farmlands are sold by farmers.

\(^{11}\)Budi Santoso, *Profit BerlipatDenganInvestasi Tanah danRumahPanduanBerinvestasi Yang takPernahMat* , PT Elex Media Komputindo,
Jakarta, 2008, P. 8
to outsiders, this is because the price of agricultural commodities is not stable even in the urban areas quite a lot of farmers sell their cultivated land due to the increasing necessities of life then they become the labor in their former the land\textsuperscript{12}. Referring to Article 3 point (4) of Government Regulation number 224 of 1961, absentee farmland ownership does not apply to those who are performing state duties such as civil servants. This way is used by civil servants to buy the farmland as an investment resulting the land to be unproductive and tends to be abandoned. This happens as a result where the civil servants are not settled or are on duty in the district or sub district adjacent to the land. However ideally the purchase of the land includes the obligation to take care of the land moved from the seller to the buyer. The obligation related to actively cultivate the land by preventing the extortion methods considering the consequence of the provisions of Article 10 point (1) of UUPA that the farmland should not be left abandoned so that its existence becomes unbenefficial and damaged whereas under the provisions of Article 15 of the UUPA states that:

\begin{quote}
Maintaining the land, including increasing its fertility and preventing the damage is the responsibility of each person, legal entity or institution that have legal relationship with the land, with the regard to the economically weak party.
\end{quote}

Under these provisions it is hoped that the weak economic class does not become poorer because the rights to the land are transferred to civil servants. The transfer of land from farmers to civil servants tends to the trend where the land is cultivated by other people (farm laborers). Landowners only occasionally come to see the condition of their farmland.

According to Herawan Sauni there has been a change of land function as one of the main factors of production into an investment asset\textsuperscript{13}. Farmland owned by Civil Servants only as a form of investment at any time will be sold if the price of land higher instead of to increase the productivity of agricultural products. Finally, the purpose of the country to prosper farmers is increasingly distant

\textsuperscript{12}Sitanala Arsyad and Ernan Rustiadi, \textit{Penyelamatan Tanah, Air, dan Lingkungan}, Kerjasama Crespent Press dan Yayasan Obor Indonesia, Jakarta, 2008, P. 85

\textsuperscript{13}Herawan Sauni, \textit{Op. Cit.}, P. 2
because the ownership of farmland is owned by non-landowners. If this keeps happening then over time the farmlands will become exhausted, switched function, abandoned and not worked maximally because they are owned by non-farmers.

In Article 3 point (4) of Government Regulation number 224 of 1961 there are exceptions to civil servants who are allowed to own absentee land but the exemption applies after retirement. Within one year after retirement civil servant is obliged to move to the sub-district where the farmland is located or transfer his ownership of the land to another resident in the sub-district as stated in Article 3b point (1) of Government Regulation Number 41 of 1964. But in reality this provision is never implemented. If this is not quickly overcome by the government then over time the right of farmlands will be switched to non-farmers, so there will be many farmers who become non-landowners but tiller farmers (tunakisma) whose lives rely on the share coming from the landowner. Finally the ideals of the Indonesian nation to protect and prosper Indonesian people, especially farmers will be difficult to be realized, especially in the District of Padang Jaya, North Bengkulu Regency.

Regarding to the background above the author proposes to conduct research with the title "The Role of Land Registry Office of North Bengkulu Regency on Surveillance of Conveyance of Rights of Farmland from Farmer to Civil Servant"

2. **Identification of the Problems**

The formulation of the issues to be discussed in this journal is how was the Role of Land Registry Office of North Bengkulu Regency on Surveillance of Conveyance of Rights of Farmland from Farmer to Civil Servant?

**B. RESEARCH METHODS**

According to SoerjonoSoekanto legal research is a scientific activity, which is based on methods, systematic and specific rationale that aims to study one or more symptoms of a particular law, by analyzing it. Besides, it is also held in-depth examination of the legal facts and then seek a solution to the problems arising in the relevant symptoms.14

Based on the formulation of the problem above and the explanations,

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14SoerjonoSoekanto, Introduction to Legal Research, UI-Press, Jakarta, 2014, P. 43
this research is an empirical legal research that records the legal phenomenon as it is based on the study of the legal workings in society which focuses on the study of the legal sociology using a descriptive empirical approach.\(^\text{15}\)

The data analysis used in this research is qualitative data analysis method that produces descriptive data-analytical.\(^\text{16}\) The meaning of descriptive-analytic is examined what is stated by the respondent orally or in writing as well as with real behavior. From this signification by Lexy J Moleong stated that the qualitative research is research that aims to understand the phenomenon of that experienced by research subjects.\(^\text{17}\)

The data collected from the interviews and documents are collected and separated by type, the results of sorting the data have been collected further to be analysis.

C. RESULTS AND DISCUSSION

Based on the Regulation of the Minister of Agrarian and Spatial Planning/ Head of National Land Agency of the Republic of Indonesia

Number 38 of 2016 regarding to the Organization and Regional Offices of the National Land Agency and Land Registry Office states that the Land Registry Office is a vertical institution under the Ministry of Agrarian and Spatial Planning / National Land Agency in the district / the city that is under and it’s responsible to the Minister of Agrarian and Spatial Planning / Head of National Land Agency through the Head Office of the National Land Agency. The Land Registry Office led by a Head Office consisting of:

1. Sub-Division of Administration;
2. Sub-Section of Land Infrastructure;
3. Sub-Section of Land Legal Relationship;
4. Sub-Section of Land Arrangement;
5. Sub-Section of Land Procurement and;
6. Sub-Section of Handling Problems and Land Control.

The Conveyance process of land rights are in Sub-Sections of Land Legal Relationship consists of three (3) Sub-Section namely:

1. Sub-Sections of the Land Rights Determination and Land Rights Society Empowerment;
2. Sub-Sections of Land Rights Registration;

\(^\text{15}\) Achmad Ali and WiwieHeryani, The Exploring of Empirical Study Toward Law, Kencana, Jakarta, in 2013, P. 7
\(^\text{16}\) Ibid, P. 250

For the Conveyance of Land Rights was in sub-section in-between, the imposition of Rights and Land Deed Official whereas the permit process conveyance of farmland located in the Sub-Section of Land Arrangement.

Although the basic principle of farmland tenure has been specified in Article 10 of UUPA is the principle of work or pursue their own rights over farmland actively by preventing means of extortion as well as article 17 of the UUPA which set the maximum limit of farmland that can be owned by one family who followed by Government Regulation in Lieu of Law No. 56 of 1960 Concerning Determination Land Agriculture and Article 99 paragraph (1) of the Regulation of the Minister of State for Agrarian Affairs / Head of National Land Agency Number 3 of 1997 About Term Implementation of Government Regulation No. 24 of 1997 on Land Registration mention that before the deed is made on the conveyance of land rights, the potential beneficiaries had to make a statement:

a. that concerned with the conveyance is not a land-rights holders who exceed the maximum provision of land ownership under the provisions of the legislation in force;

b. that concerned with the conveyance is not an absentee land-rights holders (gunta) under the provisions of the legislation in force;

c. that concerned to realize that if the declaration referred to in a and b are not correct then the excess soil or absentee land becomes the object of reform.

Although the above provisions are still in force today but the violation of these provisions is still happening. To address the conveyance of rights over farmland of farmers to non-farmers, especially the Civil Servants, so the Land Registry Office of North Bengkulu District has made several attempts namely:

1. Preventive efforts

The preventive efforts are an attempt by law or government apparatus in an effort to prevent the conveyance of rights over farmland to non-farmers. Such efforts are:

a. Counseling

According to Mr M. DediNovaldi18 as Head of Sub Division of Administration, that

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18 The interview result with Mr M. DediNovaldi, S.ST as Head of Sub-Division of Administration of Land Registry Office of North Bengkulu Regency On February 14th, 2018
the budget for routine extension activities in the Land Registry Office of North Bengkulu District was not available. So that outreach to the society activities are pasted on project activities for example *Prona* or following the extension activities existing integrated annually organized by the district government to the State Attorney of Argamakmur, then the Land Registry Office employee of North Bengkulu designated for such activities always convey that farmland should not be transferred from farmers to non-farmers because in the long term will lead to the narrowing of farmland owned by farmers.

With the absence of the budget, ultimately people do not know the prohibitions or licenses regarding to the conveyance of rights over farmland. With such ignorance then the ones that would be harmed are the landowners. Whereas the purpose of the Transferal government banned non-land rights to farmers with a view to protect the standard of living and prosperity of the farmers themselves. Do not let the farmers into agricultural laborers / tenants property that had been sold.

b. **Guidance to PPATS**

The authority contained in the Ministry of Agrarian and Spatial Planning in developing and overseeing *PPAT / PPATS* is the delegation authority cause in Article 33 of Government Regulation No. 37 of 1998 on the Regulation of Land Deed Official Position confirms that the guidance and supervision of Land Deed Official is done by the minister while in implementing regulation, namely Article 65 on Regulation of the National Land Agency Number 1 of 2006 concerning the Implementing Regulations of Government Regulation No. 37 of 1998 concerning Regulation of Land Deed Official states that the guidance and supervision of Land Deed Official is done by the Head of Agency, the Head of Regional Office and the Head of Office Land. This confirms the presence of a delegation of ministers to the Head of Agency, the Head of Regional Office and the Head of Office Land in
providing the guidance and supervision of PPAT/PPATS.

The district head as PPATS is an important part in the land registration system in Indonesia, as a profession whose authorities are granted based on the delegation of authority from the National Land Agency, as well as the Land Registry Office of North Bengkulu providing the guidance and supervision of PPATS in North Bengkulu, the effort of those guidance and supervision, conducted with the aim of achieving the maximum implementation of the professional tasks of PPATS, as well as monitoring of PPATS do not violate the law in carrying out their duties, and to avoid the administrative sanctions. Therefore, annually is always done guidance to PPATS in North Bengkulu area but the guidance that done to PPATS according to Mr. Marsuwen\textsuperscript{19} not being maximal because the district head as the head of the area designated as PPATS often exposed to mutation by the Regent, so that the guidance is done in vain and start again from the beginning if the replacement of district head appointed to be PPATS back.

Therefore expected to the Head of North Bengkulu Regent not too frequent mutation of district head as the head of district area because it involves service to the public, especially land services in making deed conveyance of rights. Besides, it’s one of the causes that district head dislike to be designated as PPATS. If PPATS is not located in the sub district of the land location, the service will be performed by Notary as PPAT professional. This will be a burden to society because they have to come to the district capital as the location of the notary office which means the sellers and the buyers will leave their daily work just to take care of the right conveyance deed.

2. Repressive Effort

The repressive effort is an attempt by law or government officials in an effort to stop / abstain from applying for the conveyance of farmland rights to non-farmers. In the Land Registry Office of North

\textsuperscript{19} The interview result with Mr. Marsuwen, SH as the Section Head of Land Legal Relations of Land Registry Office of North Bengkulu Regency On February 14\textsuperscript{th}, 2018
Bengkulu Regency has made new efforts to absentee land. The absentee land application submitted to the land service counter was rejected by the service officers while for the other activities such as the land of maximum excess. The land sold by farmers to other than farmers had never been done due to ignorance of the service officers in the front office and back office.

D. CLOSING

1. Conclusion

The role of the Land Registry Office of North Bengkulu Regency in Controlling the Conveyance of the Farmland Rights Purchased by Civil Servants from Farmers through guidance and supervision to PPATS in order not to violate the law in conducting their duties in addition to doing counseling inserted in the project activities or follow the government activities of the North Bengkulu Regency in the context of integrated counseling. The most important is the digitization of land services using a computerized system so that any incoming request can be directly rejected if it violates regulations, especially regarding the ownership of farmland purchased by non-farmers especially the Civil Servants.

2. Suggestions

a. The farmers as sellers are expected not sell their farmland with or to other than farmers.

b. The Civil Servants as a buyer are expected not to buy the farmland if only for the object of land speculation that eventually the farmland become unkempt, displaced and lost its fertility. In addition to Civil Servant more focused to work in serving the society because the welfare of civil servants now have to meet minimum needs/ decent, especially in the Bengkulu Province.

c. The Ministry of Agrarian and Spatial Planning / National Land Agency should further strengthen the digital system in service to the society. One of them is by strengthening the Computerized System for Land Activity. The use of a single identity using an Electronic Identity Card should be more consistent. So that the maximum excess land owned by the Civil Servants will be quickly detected when the application goes to the land
service counter for entry into at the Land Registry Office. The inventory of the maximum excess land owned by Civil Servants should be immediately begun to be redistributed to the farmers by the Ministry of Agrarian and Spatial Planning to be an example of the society that as the state apparatus should be subject to the applicable laws in the Unitary State of the Republic of Indonesia.

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