

Validity for Ownership of the Floating Houses on the Coast

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ABSTRACT

Indonesia is Maritime nation. The number of a small island is one of the diversity possessed by Indonesia beside the diversity of culture and ethnicity. Indonesians who live in coastel areas in their daily lives can not be separated from their dependence on coastal resources due to the livelihoods of their inhabitants who depend on the sea. Their livelihood is sourced from the sea, so they choose to live in coastal areas. The potential and diverse natural resources in coastal areas become an attraction for the community to meet their daily needs, so that coastal settlements are formed that vary according to the level of community life.

The increasing number of Indonesian people living in coastal areas is their reason to build floating houses in the coastal area where these floating houses are a place to live and gather a family. The house is a place where all family members stay and do activities that become daily routine. Based on the wisdom and customs of the surroundings, the floating houses, which generally belong to fishing communities, were established on their own initiative. So that its establishment is not based on permission from the government, and does not have the basis of rights like houses in general on the mainland according to the Law of the Republic of Indonesia Number 28 Year 2009 concerning Regional Taxes and Regional Levies Article 1 paragraph (39). The existence of a legal vacuum regarding floating houses causes community unrest towards the legitimacy of the floating houses themselves when in fact the indigenous people themselves have built floating houses long before the Basic Agrarian Law was made.

Keywords: *floating houses, coast, maritime rights*

1. INTRODUCTION

Indonesia is a maritime country which consists of small islands and has a large diversity of ethnic, traditional and cultural diversity and abundant natural resources. In Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states that, "The earth, water and natural resources contained therein are controlled by the state and used as much as possible for the prosperity of the people". The state's right to control gives the state first rank in the management of natural resources, including water, for the greatest prosperity of the people. The legal relationship between the state and land gives birth to the right to control land by the state, the relationship between customary law communities and their customary land gives birth to customary rights, and the combination of individual and land gives birth to individual rights over land. [1]. The customary rights of indigenous and tribal peoples to water resources remain recognized as long as the reality still exists and has been confirmed by local regulations. However, the absence of lexspecialist legal regulations concerning aquatic agrarian affairs has so far caused the exercise of the state's right to control to a maximum.

According to the provisions in the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 17 Year 2016 concerning Land Management in Coastal Areas and Small Islands, Coastal waters are seas bordering land that covers waters as far as 12 (twelve) miles the sea measured from the coastline, the waters connecting the coast and islands, estuaries, bays, shallow waters, brackish marshes and lagoons. In Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia, it states that: "Every person has the right to live in prosperity physically and mentally, to live, and to have a good living environment and to obtain health services". Home as a place to live has an important role so that the fulfillment of a place to live is a basic need for every human being, which will continue to exist and develop in accordance with the cycle of human life.

Floating houses themselves are of two types, namely, a floating house that uses a supporting pole that is planted on land that is permanent or cannot move and a floating house that uses a floating system on the water without using a buffer system and can move at any time according to the owner's wishes. The floating house on Bangkoan Beach which is also a cluster of beaches in the village of Tasikmadu, Watulimo District, Trenggalek, East Java is a floating house that uses drums as a floating system and uses an anchor as a buffer for the floating house so it does

not move but can be lifted at any time. and can move places because it is not permanently placed, then for example a floating house using a supporting pole planted on the ground is the Bajoe Floating House, Wakatobi Regency.

The term of floating house has never been previously regulated in the Law, Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 17 of 2016 concerning Land Management in Coastal Areas and Small Islands mentioning the building is a physical form of construction work that is fused with their domicile, both for residential or residential, religious activities, business activities, social activities, culture, and special activities. Based on the wisdom and customs of the surrounding area, the floating houses, which generally belong to the fishing communities, were established on their own initiative. So that its establishment is not based on permission from the government, and does not have the basis of rights like houses in general on the mainland.

2. LEGALITY OF FLOATING HOUSES

Based on the background and to limit the scope of this discussion, the research problem is formulated as follows: What is the validity of ownership of floating houses in the coastal area?

The research method that can be used in legal research is normative legal research, namely legal research to find the rule of law, legal principles, and legal doctrines to answer the legal issues at hand. Normative legal research is conducted to look for solutions to existing legal issues. The results of this study are to provide knowledge about what should be the formulation of the proposed problem. Normative legal research only examines existing legal norms, without seeing its practice in the field (law in action or *ius constituendum*). According to Peter Mahmud Marzuki "the function of legal research is to find something effective and useful in expressing ideas. In such a case, as is the case with correspondence truth theory, problems of value or something which does not provide outward benefits do not become a study of this truth theory

3. RELATIONSHIP OF COASTAL AREAS WITH CUSTOMARY LAW COMMUNITIES

All provinces in Indonesia have coastal areas, so Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 17 Year 2016 Regarding Land Arrangement in Coastal Areas and Small Islands also regulates the authority to manage and utilize coastal areas and small islands. . If observed, it turns out that most of the laws and regulations do not guarantee legal certainty for indigenous peoples who live in floating houses in coastal areas, according to Article 13 of the Minister of

Agrarian and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 17 Year 2016 Concerning Land Arrangement In the Coastal Areas and Small Islands which states that the meaning of the building is:[2]

"The physical form of the results of construction work that is integrated with the place of domicile, partly or wholly above and / or / in land and / or water, wich functions as a place for humans to carry out their activities, both for residential or residential, religious activities, business activities, social, cultural and special activities."

Then in Article 8 paragraph (d) states that the granting of land rights cannot be granted to a floating building. In this case it is understood that a building or floating house that uses a floating system or buildings that are not attached to the land are not regulated in the Act.

Based on the reality and experience that occurs, it turns out that indigenous people in coastal areas also reside in floating houses which cannot be categorized as buildings because the current law does not regulate floating houses that do not settle on land and can move around. In fact, in reality, indigenous people living in coastal areas also live in floating houses that use a floating system, for example, a floating house in Bangkoan Beach, Tasik Madu Village, Watulimo District, Trenggalek.

Legality of Floating Houses

One of the questions that is often asked by the community related to floating houses is the issue of legality related to Building Permit, ownership and how the process is when traded. The legality of a residential or floating settlement will have an impact on important aspects related to housing finance. General requirements regarding the planning and design of residential buildings are regulated in Government Regulation Number 14 of 2016 concerning Housing and Settlements. In general, house construction must meet technical, administrative, spatial and ecological requirements. Technically, a floating building must also meet the reliability requirements of buildings like other buildings in general that refer to the Building Law, which meet the safety, security, health and comfort requirements. Specifically the technical requirements regarding floating buildings can be arranged in certain more specific rules.

In Article 65 Government Regulation No. 14 of 2016 concerning the Implementation of Housing and Settlements themselves are still oriented to the land, namely land as a means of providing housing. While the reality on the ground Indonesia has many settlements that develop on the water because it is related to culture and customs such as traditional settlements in Sumatra, Kalimantan and Sulawesi. Regulation of the Minister of Public Works and Public Housing Number 02 / PRT / M / 2016 concerning Quality Improvement of Slum Housing and Slum Settlements includes housing and settlements on water as one of the typologies of housing and settlements. The legal product that is highly related to residential or floating settlements on water is the Regulation of the Minister of Agrarian Affairs and Spatial Planning Number 17 of 2016 concerning Management of Coastal Areas and Small Islands. In Article 5, it states about the granting of land rights to coastal areas. With regard to dwellings or

settlements, the granting of land rights can be given to the residence of the customary law community or community members for generations. However, land rights cannot be granted to floating buildings Article 8. This may be an obstacle in developing the concept of floating housing as an alternative in the provision of housing, including for example the arrangement of slum areas on water.

The current law does not provide clear and concrete regulations regarding the control of territorial waters over floating houses. The absence of clear regulations specifically regulating floating houses has made the territorial control of floating houses increasingly unclear. The absence of clear arrangements can also impact on people freely building floating houses and controlling territorial waters without any restrictions. Besides the absence of zoning in coastal waters, this is due to the absence of regulations that specifically regulate floating houses, so zoning is needed for the existence of the floating houses as a means of control so that future conflict do not occur of cause problems. Moreover, there are no rules and restrictions regarding the construction of floating houses, so that in the future there will be more floating houses established by the community because there are no specific rules or conditions for the construction of floating houses so that people can easily build floating houses and control coastal waters. As a result, the control of coastal waters is increasingly out of control and is a common property without control / control so that anyone who can freely build a floating house and control the coastal waters.[3]

The author believes that the control of coastal waters over floating houses should have the right to control by the fishing community. This is seen as important for the protection and legal certainty of the local fishing community in achieving community welfare and maintaining the existence of community groups, namely floating fishing communities and maintaining local wisdom values. Therefore, a legal concept in the form of "Right to Control over Water (HPA)" is deemed necessary to be made as a special policy to protect fishing communities in ensuring the establishment of floating houses to control coastal waters. The HPA in question is the right granted to local parish communities to control in groups of coastal waters that have a certain period of 10 years and are extended and renewed. After the term ends, the relevant agency giving the HPA will evaluate whether it is feasible to be extended and / or worth renewing, making it easier for the local government to do the arrangement and control.[4]

1.4 Building Land Tax of Floating Houses

Administratively taxation (PBB), a floating house cannot be classified as a house building in general. we refer to arrangements regarding the United Nations. Regarding the United Nations, we can see the arrangement in Law Number 12 of 1985 concerning Land and Building Tax as amended by Law Number 12 of 1994 and Law Number 28 of 2009 concerning Regional Taxes and Regional Levies. We assume the Floating House has nothing to do with plantations, forestry and mining. Then the UN provisions that are used in connection with the discussion of floating

houses are Law Number 28 of 2009. This is because Law Number 12 of 1985 jo. Law Number 12 of 1994 is used for the United Nations Plantation, Forestry and Mining (P3) sector, while Law Number 28 of 2009 is used for the Rural and Urban sectors (P2).[5] According to Law Number 28 of 2009 in article 37, Rural and Urban Building Land Tax is a tax on land and / or buildings owned, controlled and / or utilized by individuals or entities, except for areas used for plantation, forestry business activities. and mining. What is meant by Earth in Article 38 of Law Number 28 Year 2009 is the surface of the earth which includes land and inland waters and sea areas in regencies / cities. While the definition of building according to the Law of the Republic of Indonesia Number 28 Year 2009 concerning Regional Taxes and Regional Levies, that the building is a technical construction that is planted or permanently attached to the land and / or inland and / or sea waters.

Looking at the above provisions, it is clear that if the aforementioned floating houses of technical construction are planted or permanently attached to the waters, they become the object of the United Nations. However, if the floating house is like a moving ship, then it is not affected by the United Nations. Of course if a floating house cannot be classified as a building according to this Law it will also imply that a floating house cannot be classified as a settlement because it is not a residential building. However, the authors argue that the floating house can be classified as a settlement from the functional point of view and the pattern of residence. Therefore, regarding the floating house tax, it must be revisited how to make the floating house. If the construction is planted in waters and is permanent, then it becomes the object of the United Nations.

4. CONCLUSIONS

Based on the results of the discussion above, conclusion can be formulated namely;

In accordance with the mandate in the LoGA it is implicit that a land under water can be held by a right. In determining land rights in the area, it must pay attention to Law Number 26 of 2007 concerning Spatial Planning and Government Regulation Number 26 of 2008 concerning National Spatial Planning, so that there is continuity and harmony in the regulation. Because there is no law that explicitly regulates floating houses, causing legal uncertainty, the authors assume that floating houses are still recognized as long as the floating houses are established by indigenous peoples because customary law is also a source of law in the Drafting of Laws . In accordance with Article 39 of Law Number Law Number 28 of 2009 concerning Regional Taxes and Regional Levies that a building is a technical construction that is permanently attached to land and / or inland and / or sea waters. From the above definition it is clear that the floating house is not included in the category of building

because the floating house is not permanently attached to the land and / or waters but uses a floating system that at any time can move according to the owner's wishes. Therefore, to clarify the Land Tax of a floating building, it must be seen first how the construction of the building if the building is permanently attached to the land and / or waters is subject to the United Nations, and vice versa if the floating house is not permanently attached, then it is not subject to the PBB

3.2 Recommendations

Based on the results of the discussion above, the following recommendations can be formulated; It is hoped that the government will revise Article 39 of Law Number 28 Year 2009 concerning Regional Taxes and Regional Contributions. So that the floating house that uses the floating system is guaranteed legal certainty.

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