

# Status of Land Rights Post Liquefaction

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## ABSTRACT

Land problems that arose after the liquefaction natural disaster that occurred in the cities of Palu, Sigi and Donggala, Central Sulawesi on September 28, 2018 were damaged and the loss of land administrative boundaries which resulted in many victims of natural disasters having difficulty obtaining legal certainty and protection against land ownership rights. The purpose of this study is to find out how the status of land rights in the liquefaction location is, whether due to liquefaction the land is destroyed or not and what legal remedies are being taken by the government in dealing with the impact of the liquefaction. This writing uses an empirical juridical method. The results of this study are the status of the land is still attached and does not necessarily disappear due to liquefaction and is still recognized by the local BPN, it's just that it can't be used anymore because it's in a disaster-prone zone (ZRB). Liquefaction only makes the boundaries of a plot of land unclear but does not destroy the plot of land (physically there is still land or buildings on it). Furthermore, the legal action taken by the Central Sulawesi Provincial Government in collaboration with the Ministry of Agrarian Affairs and Spatial Planning/Head of the National Land Agency (Ministry of ATR/BPN) and implemented by the Head of the Central Sulawesi BPN Regional Office is the implementation of land acquisition for the public interest using abandoned land in Sulawesi. Central in the context of relocating communities affected by disasters. Land acquisition is carried out for the construction of Permanent Residential (Huntau) for victims of the earthquake, tsunami and liquefaction Liquefaction only makes the boundaries of a plot of land unclear but does not destroy the plot of land (physically there is still land or buildings on it). Furthermore, the legal action taken by the Central Sulawesi Provincial Government in collaboration with the Ministry of Agrarian Affairs and Spatial Planning/Head of the National Land Agency (Ministry of ATR/BPN) and implemented by the Head of the Central Sulawesi BPN Regional Office is the implementation of land acquisition for the public interest using abandoned land in Sulawesi. Central in the context of relocating disaster-affected communities. Land acquisition is carried out for the construction of Permanent Residential (Huntau) for victims of the earthquake, tsunami and liquefaction Liquefaction only makes the boundaries of a plot of land unclear but does not destroy the plot of land (physically there is still land or buildings on it). Furthermore, the legal action taken by the Central Sulawesi Provincial Government in collaboration with the Ministry of Agrarian Affairs and Spatial Planning/Head of the National Land Agency (Ministry of ATR/BPN) and implemented by the Head of the Central Sulawesi BPN Regional Office is the implementation of land acquisition for the public interest using abandoned land in Sulawesi. Central in the context of relocating disaster-affected communities. Land acquisition is carried out for the construction of Permanent Residential (Huntau) for victims of the earthquake, tsunami and liquefaction The legal remedy taken by the Central Sulawesi Provincial Government in collaboration with the Ministry of Agrarian Affairs and Spatial Planning/Head of the National Land Agency (Ministry of ATR/BPN) and implemented by the Head of the Central Sulawesi BPN Regional Office is the implementation of land acquisition for the public interest by using abandoned land in Central Sulawesi in framework of relocation of disaster-affected communities. Land acquisition is carried out for the construction of Permanent Residential (Huntau) for victims of the earthquake, tsunami and liquefaction The legal remedy taken by the Central Sulawesi Provincial Government in collaboration with the Ministry of Agrarian Affairs and Spatial Planning/Head of the National Land Agency (Ministry of ATR/BPN) and implemented by the Head of the Central Sulawesi BPN Regional Office is the implementation of land acquisition for the public interest using abandoned land in Central Sulawesi in the framework of relocating disaster-affected communities. Land acquisition is carried out for the construction of Permanent Residential (Huntau) for victims of the earthquake, tsunami and liquefaction

**Keywords:** Natural disasters; Land rights; Liquefaction; Hammer – Sigi

## 1. INTRODUCTION

The problem of land is a problem that is quite complex and requires a long time to solve [1]. Therefore, it can be explained that the land issue is a problem that is quite complex and very sensitive, because it involves various aspects of life that are social, economic, political, psychological and so on, but must also pay attention to various other aspects of life in order to solve these problems. does not develop into an anxiety that can disrupt the stability of society [2].

The earthquake, tsunami and liquefaction natural disaster that occurred in Palu, Sigi and Donggala (Pasigala) Central Sulawesi on Friday, September 28, 2018 at 18.02:44 WITA, was one of the most phenomenal natural disasters. The natural disaster devastated Tadulako's earth. In addition to causing many casualties, damage to infrastructure, even the civilization of society has also become paralyzed. As a result, people lose their homes and everything they have on the ground. This is because houses and land moved and collapsed due to the liquefaction process of the 7.4 SR earthquake subsidence.

As a result of this liquefaction, the boundaries of the land become moving and even disappear because the soil turns into mud making it difficult to trace. Likewise, the boundaries of the land become increasingly difficult to trace, especially after cleaning and repairing using heavy equipment. Then a problem arises, namely the destruction and loss of administrative boundaries of land which have resulted in many victims of natural disasters having difficulty obtaining legal certainty and protection of land ownership rights.

The destruction of land boundaries and the loss of evidence of land ownership (certificates) due to natural disasters raises complex problems in the field of structuring and rediscovering the identity of property rights. Many of the victims of natural disasters whose land titles were also lost in the mud at the time of the disaster. In addition to the destruction of the certificate, another problem faced by the certificate holder is the loss of the certificate whose whereabouts are not known so that it is very detrimental to the owner of land rights. In addition, the relevant agencies that had copies and archives of documents on community land ownership rights were also destroyed and lost because their offices were also affected by the disaster.

Based on the background of the problem above then the author identifies the problem to be studied is about What is the status of land rights in the location of liquefaction and what legal efforts are being taken by the Government in dealing with the impact of the liquefaction.

## 2. RESEARCH METHODS

The research method in this writing is empirical juridical law research. Empirical juridical research

method means analyzing a problem by combining primary, secondary and tertiary legal materials (which are secondary data) with primary data through interviews and observations obtained directly from data sources at the research location, namely: Palu City National Land Agency (BPN).

## 3. DISCUSSION

### *3.1 Status of Land Rights Located at the Liquefaction Location*

Land rights are rights that are private in nature, namely rights that give authority to both individual rights holders, groups of people simultaneously and legal entities [3].<sup>1</sup> Basically, the purpose of using land is to fulfill 2 (two) types of needs, namely for cultivation and a place to build something [4].

The legal status of land rights, basically the legal status of land rights which gives authority to people who have the right to use and benefit from the land. The hallmark of this right is that the party has the right to use and benefit from the land that has been entitled. Land rights are the control of rights over the outer part of the earth and give authority to the holder of the right to use the intended land along with the part of the earth and water and the scope of the space above it [5].

The abolition of land ownership rights is regulated in Article 27 of Law Number 5 of 1960 concerning Basic Agrarian Principles or better known as the Basic Agrarian Law (UUPA) which states that [6] :

Property rights are deleted if:

- a) The land falls to the state:

Due to the revocation of rights under Article 18; Due to voluntary surrender by the owner; For being abandoned; Because of the provisions of Article 21 paragraph (3) and Article 26 paragraph (2).

- b) The land is destroyed.

As a result of the destruction of the land, the legal relationship between the subject of rights and the object of land rights is also separated. If a disaster occurs in an area and causes a plot of land to be destroyed, a person's land rights to that plot of land will be erased or lost. However, if the disaster that occurs only makes the boundaries of a plot of land unclear and does not destroy the plot of land (physically there is still land or buildings on it), then a person's land rights to that plot of land do not automatically disappear. If the land affected by the disaster is not destroyed, it means that there are still ways that the victim can try to reorganize the boundaries of his land [7].

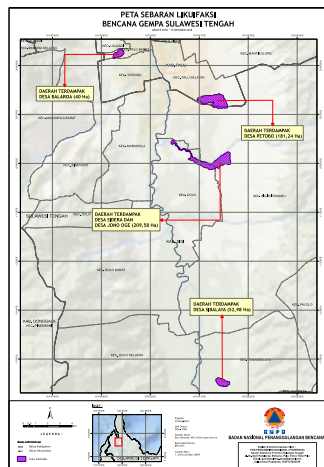
This is in line with the statement from Fitriani, SH, M.Ap, Head of the Sub-Section for Government Land Utilization and Land Valuation of the National Land Agency of Palu City which stated that the status of

land rights at the liquefaction location BPN is still recognized by BPN, it's just that until now, with various existing obstacles, it has not yet been reconstructed in its fields. But the consequence is the land that is at the liquefaction site cannot be reused because between use and ownership is separate, meaning the status of land rights that exist at the liquefaction site still got owned by the victim whose land is in the liquefaction location and is recognized by the local BPN, it's just that it can't be used anymore because it's in a disaster-prone zone (ZRB).

### 3.2 Legal Efforts Taken By The Government In Dealing With The Impact of Liquefaction

Liquefaction disaster is a disaster that is considered a new disaster in Indonesia. The impact of this disaster also caused problems ranging from loss of life to material losses suffered by disaster victims in the form of damage to buildings, shifting of buildings and land belonging to residents and even many buildings that were lost in the mud. So the post-disaster victims who lost their buildings and land need shelter for them to live in, either temporarily or permanently.

The area affected is very large. The National Disaster Management Agency (BNPB) summarizes this phenomenon in a map of the liquefaction distribution of the Central Sulawesi earthquake [8]. The map contains only 4 (four) areas, namely:



**Figure 1.** Map of Central Sulawesi Earthquake Liquefaction Distribution

Source: National Disaster Management Agency (BNPB)

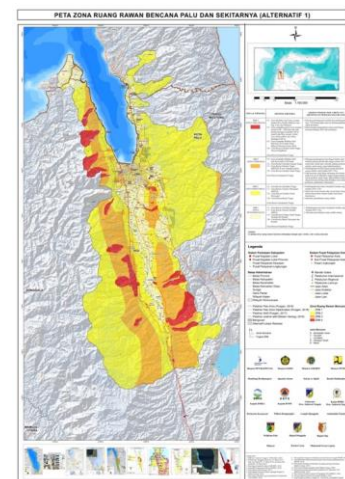
The first step to make improvements is the implementation of Land Procurement which was carried out in Palu City in the context of relocation disaster-affected communities. The Palu City Government in collaboration with the Ministry of Agrarian and Spatial Planning/Head of the National Land Agency (Ministry of ATR/BPN) will use abandoned land in Central

Sulawesi to relocate disaster victims. Relocation is an action to rearrange settlements around disaster-prone areas with the aim of minimizing victims if a disaster recurs in the future. Relocation is defined as the process by which a community's housing, assets and public infrastructure are rebuilt in another location.

The relocation was carried out by utilizing several lands originating from the control and utilization of abandoned lands which were certified with Building Use Rights (HGB), Business Use Rights (HGU), Use Rights and Management Rights. The land is abandoned because it has expired or has not been used. The utilization of this abandoned land is in accordance with Article 2 of Government Regulation Number 11 of 2010 concerning Control and Utilization of Abandoned Land, namely:

*“Abandoned land is land that has been granted rights by the state in the form of Ownership Rights, Cultivation Rights, Building Use Rights, Use Rights and Management Rights, or basic control over land that is not cultivated, is not used, or is not utilized in accordance with the circumstances or the nature and nature of the land. the purpose of granting rights or the basis of their control so that the status of the land becomes state land again”.*

Before determining which area will be used as land for relocation, the Palu City Government has considering the potential, conditions, problems, prospects of an area and the various challenges faced, including paying attention to disaster-prone areas. The Palu City Government has currently divided the zoning of the Palu City and Surrounding Disaster-Prone Spaces through the Disaster-Prone Zone Map (ZRB).



**Figure 2.** Map of Palu and Surrounding Disaster-Prone Zones

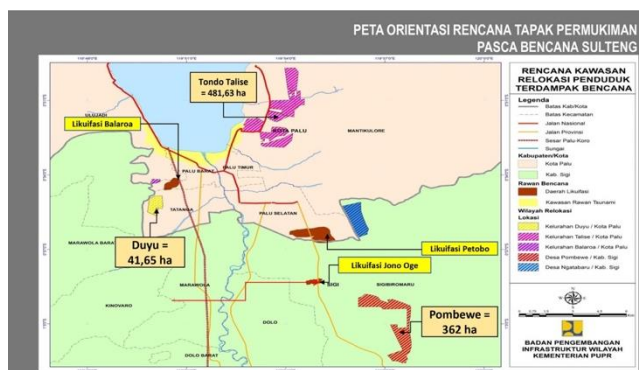
Source: Palu City BNPB 2019

Based on the Zone and Typology, the ZRB map is divided into 4 Zones, namely ZRB4 (Forbidden Zone)

which is red, ZRB3 (Restricted Zone) which is dark yellow, ZRB2 (Conditional Zone) which is yellow and ZRB1 (Development Zone) which is light yellow.

Based on the definition/criteria for the Red Zone (Forbidden Zone), namely the post-earthquake massive liquefaction zone (such as the Petobo, Balaroa, Jono Oge and Sibalaya areas), the tsunami-prone coastal border zone, the Palu-Koro active fault border zone (0-10 meters) and high ground movement prone zone. The Dark Yellow Zone (Restricted Zone) is defined for the active Palu-Koro border zone (10-50 meters), very high liquefaction prone zone, high tsunami hazard zone outside the coastal border and high ground movement zone. The Yellow Zone (Conditional Zone) includes a high liquefaction prone zone, a medium tsunami prone zone, a medium ground movement prone zone, and a high flood prone zone. Meanwhile, the Yellow Light Zone (Development Zone) includes moderate liquefaction-prone zone, low tsunami-prone zone, very low and low landslide prone zones and medium and high flood prone zones. For all zones ZRB4, ZRB3, ZRB2 and ZRB1 are declared as High Earthquake Hazard Zones.

The areas used for relocation include Tondo Village, Talise Village and Duyu Village for affected areas in Palu City. As for the affected area in Sigi Regency, the relocation area is in Pombewe Village.



**Figure 3.** Map of the Relocation Area for Disaster Affected People

Source: Regional Infrastructure Development Agency, Ministry of PUPR

In the event of a disaster, the government is obliged to provide safe land for relocating its citizens. The agency that needs land is the Palu City Government, a land acquisition scheme is made. Because the areas affected by the disaster are 1 (one) Municipality and 2 (two) Regencies, namely Palu City, Sigi Regency and Donggala Regency, the location determination is made by the Governor of Central Sulawesi. Then the governor issued a letter Decree of the Governor of Central Sulawesi Province No. 369/516/DIS.BMPR-G.ST/2018 Dated 28 December 2018 concerning Determination of

Land Locations for Relocation of Disaster Recovery in Central Sulawesi Province.

The government prepares land for relocation through 2 (two) schemes, namely the first is a land acquisition scheme by the City Government by means of the City Government buying land for the Permanent Residential (Huntap) location and the second with a land preparation scheme using state lands that were ex-Hak Guna Usaha or Hak Guna Usaha. Building (HGB) or HGB land. Meanwhile, for Palu City, the Palu City Government uses the second option. The government utilizes state land or land that was ex-HGU and the use of the land is also supported by BPN/ATR whose management of the state land is handed over to Ministry of Public Works and Public Housing (PUPR) and National Disaster Management Agency (BNPB) to be used as a Huntap construction site for thousands of disaster survivors in Palu City.

Land to build Huntap provided by the Palu City Government based on Surat Decree of the Governor of Central Sulawesi Province No. 369/516/DIS.BMPR-G.ST/2018 Dated 28 December 2018 concerning Determination of Land Locations for Relocation of Disaster Recovery in Central Sulawesi Province reached 560.93 hectares of area which was allocated to 4 (four) locations, namely Mantikulore District covering an area of 481.63 hectares which was divided into Tondo Village in Palu City as much as 150 hectares and Talise Village in Palu City as much as 38.6 hectares, Tatanga District covering an area of 79.3 hectares of area in Duyu Village in Palu City and 362 hectares in Sigi Regency, including Pombewe Village covering an area of 201.12 hectares and Olobuju Village covering an area of 160.88 hectares.

It should be understood that the area designated by the Governor's Decree is not the available area. The designation of the location is useful if there is land acquisition, it is like giving a maximum limit of land that can be acquired by the agency that requires land. So the land designation based on the Governor's Decree, which is 560.93 hectares of area, is not immediately available. This is stated in the Presidential Regulation of the Republic of Indonesia Number 71 of 2012 concerning the Implementation of Land Procurement for Development in the Public Interest as the implementation of Article 53 paragraph (3) and Article 59 of Law Number 2 of 2012 concerning Land Procurement for Development in the Public Interest. So, the determination of the location based on the Governor's Decree is only to show the locations that can be released. For example, when the Governor determined that the Location Determination was in Palu City, Tatanga District,

Furthermore, Huntap recipients will get a certificate new with a plot of land that has been adapted to the new spatial design of 150 square meters. So the total Huntap recipients hold 2 (two) certificates, namely



the old certificate located at the liquefaction disaster location and the new certificate located at the Huntap location. The certificate of land rights is in the form of a Certificate of Ownership (SHM) on behalf of the Huntap recipient which has been registered in the Palu Mayor's Decree Number 360/400/BPBD/2020 concerning Acceptance of Phase I Permanent Residential Assistance for Victims of Earthquake, Tsunami and Liquefaction Natural Disasters in Palu City at Tondo I Location, Tondo Village, Mantikulore District, Palu City. This is based on information from Fitriani, SH, M.Ap, Head of the Sub-Section for Government Land Utilization and Land Valuation of the National Land Agency of Palu City.

The issuance of a certificate as a strong means of proof will provide legal certainty to the right holder because the certificate includes juridical data and physical land data which are considered correct as long as there is no evidence to the contrary [9].

#### 4. CONCLUSION

The status of land rights located in the liquefaction disaster area does not automatically disappear. If a disaster occurs in an area and causes a plot of land to be destroyed, a person's land rights to that plot of land will be erased or lost. However, if the disaster that occurs only makes the boundaries of a plot of land unclear and does not destroy the plot of land (physically there is still land or buildings on it), then the rights of the holders of land rights are still attached and do not immediately disappear and the land it can still be owned and recognized by BPN, but it can no longer be used because it is located in a disaster-prone zone (ZRB).

Efforts made by The Central Sulawesi Provincial Government in collaboration with the Ministry of Agrarian Affairs and Spatial Planning/Head of the National Land Agency (Ministry of ATR/BPN) and implemented by the Head of the Central Sulawesi BPN Regional Office as Chair is with the implementation of land acquisition for the public interest using abandoned land in Central Sulawesi in the context of relocating disaster-affected communities. Land acquisition is carried out for the construction of permanent housing for victims of the earthquake, tsunami and liquefaction. The

relocation was carried out by utilizing several lands originating from the control and utilization of abandoned lands which were certified with Building Use Rights (HGB), Business Use Rights (HGU), Use Rights and Management Rights. The land is abandoned because it has expired or is no longer used.

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#### REFERENCES

- [1] Chairul Azmi. (2007). "Defense in Aceh is the Government's Unfinished Homework". Banda Aceh : Opinion. p.1
- [2] Abdurrahman. (1999). "Main Provisions on Agrarian, Forestry, Transmigration and Irrigation Issues". Bandung : Alumni. Thing. 13
- [3] Dwi Susiati and Sri Setiadji. (2020). "Legal Status of Property Rights on Abraded Land". Journal of the Pulpit of Justice Vol. 13(1): 98.
- [4] Sunaryo Basuki. (2007). "Points of National Land Law, First Part of the Directorate of Agrarian Law, Master of Notary Law and Land, Faculty of Law, University of Indonesia". Jakarta: University of Indonesia. Thing. 9
- [5] Maria SW Sumardjono. (2008). "Land in the Perspective of Economic, Social and Cultural Rights". Jakarta: Compass. p.128.
- [6] Soejono and Abdurrahman. (2003). "Land Registration Procedure". Jakarta: Rinneka Cipta. Thing. 86
- [7] Mirza Sheila Mamentu. (2017). "Legal Protection Against Land Rights Certificate Holders Related to Earthquake Natural Events according to Law Number 5 of 1960". Lex Privatum: Journal of the Faculty of Law, UNSRAT. Vol 5 (9): 16.
- [8] Data National Disaster Management Agency (BNPB)
- [9] Dian Ricky. (2019). "Legal Certainty of Ownership of the Tengger Indigenous Law Community". Journal of Jurist-Diction Universitas Airlangga Vol. 2(6):2070..