



Legal Position of Land Rights in the form of an Enclave

Leidy W. Palempung^(✉) and Henry Lumenta

Law Studies Program, Faculty of Social Science and Law, Universitas Negeri Manado,
Manado, Indonesia

leidypalempung@unima.ac.id

Abstract. The purpose of the UUPA itself, is to serve as the basis for the preparation of the national Agrarian Law with the aim of fighting for all matters relating to the welfare of the community, especially those who work as farmers in order to have a decent and prosperous life. To ensure legal certainty according to UUPA, the government holds land registration throughout the territory of the Republic of Indonesia according to the provisions regulated by government regulations. What is the legal position of the enclave land rights holder, and how is the Enclave land's role in issuing certificates to have a selling value? The research that the researcher is doing uses a normative legal research and legal research in the literature.

Keywords: Settlement · Dispute · Enclave

1 Introduction

The provision of legal certainty guarantees in the field of land requires the availability of a written, complete and clear legal apparatus carried out consistently by its content and provisions. In addition, in the face of concrete cases, it is also necessary to carry out land registration, which makes it possible for land rights holders to prove their rights to the land they control easily.

The purpose of the UUPA itself, is to serve as the basis for the preparation of the national Agrarian Law with the aim of fighting for all matters relating to the welfare of the community, especially those who work as farmers in order to have a decent and prosperous life.

To ensure legal certainty according to UUPA, the government holds land registration throughout the territory of the Republic of Indonesia according to the provisions regulated by government regulations. Registration basically covers the whole process until the issuance of land certificates as well as measurement, mapping and other processing in accordance with the existing bureaucracy.

This land registration is basically to provide clear information and have legal certainty regarding certain land ownership so that it is also expected to minimize land conflicts related to land disputes and even prevent the existence of land mafia which undermines community lands where people are so ignorant about the law.

The problem arises when the registered plot of land is in the form of an Enclave. A piece of land is in the form of an enclave, in the sense that the piece of land is surrounded by land belonging to the other party. The term enclave or enclave is a country/part of a country surrounded by the territory of another country.

The owner of the enclave-shaped plot of land does not have access to go in and out of his plot of land because land owned by others covers it. Article 667 of the Civil Code states that “The owner of a piece of land or yard located between the lands of others in such a way that it has no way out to the public road or public waters, has the right to sue the owners of his neighboring yards to be given way out for him for the benefit of the land or yard with the obligation to pay compensation, balanced with the resulting losses”. In other words, if the owner of a plot of land in the form of an Enclave is unable to pay compensation for the access road to be provided, forever the land plot will be isolated, and the right to manage and control his plot of land as if it were considered wiped out.

The legal position requires legal regulation efforts in legislation made by authoritative and authoritative parties so that these rules have juridical aspects that can guarantee certainty that the law functions as a regulation that must be obeyed. Legal certainty can provide benefits and a sense of justice to each land rights holder. If legal certainty is associated with legal justice, it will often not align with each other.

Regarding legal certainty, which is basically a concrete matter based on existing facts and rules, but often does not fight for or fulfill the principle of legal justice, this certainly involves the conscience of law enforcers in processing and deciding a legal case. Even so, legal justice must also meet legal certainty so that its application can be consistent in accordance with existing laws and regulations.

Problem Formulation.

1. What is the legal position of the holder of land rights in the form of an Enclave?
2. How is the Enclave land's position in issuing certificates to have a selling value?

2 Method

The type of research used in this research is normative legal research or library research. Data in research According to the kind of research, normative legal research such as primary, secondary, and tertiary legal materials. The data sources are as follows:

1. Primary legal materials
 - Consists of aspects of government policy:
 - 1) Basic Agrarian Law (UUPA)
 - 2) Presidential Regulation
2. Secondary legal materials
 - Namely legal materials that provide explanations for primary legal materials, including legal books (Agrarian Law). The books in question are books on land
3. Tertiary legal materials
 - Namely legal materials that provide instructions and explanations as support in primary and secondary legal materials, such as legal dictionaries.

Data collection is carried out through literature study activities and document studies.

3 Results and Discussion

The legal position of the holder of rights to land in the form of an Enclave.

The status of land ownership becomes written evidence that has received legal recognition. All land rights are recorded in the form of certificates issued by the National Defense Agency (BPN). BPN issues duplicate to landowners to prevent future risks, such as lost, burned, or double certificates.

In Indonesia, land ownership status is regulated in the Basic Agrarian Law (UUPA) No. 5 of 1960 concerning Agrarian Principles [1].

Efforts that lead toward legal certainty of land rights are contained in the provisions of the articles governing land registration, regulated in Article 19 of the UUPA, which is addressed to the government to carry out land registration throughout Indonesia. Which aims to ensure legal certainty of *Recht Kadaster*, to go towards providing certainty of land rights has been regulated in the UUPA, namely:

- 1) In an effort to guarantee land registration and legal certainty from the Indonesian government, this activity is held throughout the territory of Indonesia so that people's rights to the management of their lands can be properly accommodated
- 2) The registration referred to in article 1 covers the entire process of making land certificates as well as transferring ownership of the land such as measurement, mapping and so on. The provision of valid proof of rights is a powerful evidentiary tool.
- 3) This land registration also takes into account the socio-economic conditions of the Indonesian people as well as to ensure the rights of the community to their land ownership so that the procedures must be clear and the bureaucracy must also be fast and easily accessible to the public. The explanation of Article 2 of PP 24/1997 [1] specifies that the principle of land registration is:
 1. Simple principles
 2. The principle of being safe
 3. Affordable principle
 4. Cutting-edge principles
 5. Open principle,

Certainty of a person's rights Means that with registration, a person's rights become clear, for example, property rights, business use rights, building use rights or other rights.

As strong evidence, the certificate has the following benefits:

- a. Guarantee legal certainty because it can protect the certificate's owner against interference from other parties and avoid disputes with other parties.
- b. Make it easier to get credit with certified land as collateral
- c. With the measuring letter in the certificate, the land area is certain so that the determination of the Land and Building Tax (PBB) will be fairer.

The Land Certificate Article 32 PP 24/1997 [2] states that: The certificate is a sign of proof of valid rights if the physical and juridical data follow the data in the measuring letter and the concerned land rights book.

The position of the Enclave Land in the issuance of certificates in order to have a selling value.

The position of Enclave land has a fragile position if the position of the land does not get legal protection by obtaining roads. Where the enclave land is land domiciled in a place with a position in the area of land owned by others, the land has no attractive value to sell. Of course, it will reduce the selling price of the land.

If you want to get out of the enclave land, the owner must classify the land to be sold to the people who surround the land. In the end, the land will have a low selling price because people who do not own land in the area will certainly not buy or will not be interested in buying the land.

Article 667 of the Civil Code explains: that the owner of a piece of land or a land plot located between the lands of others in such a way that he has no way out until the public road or the public waters has the right to sue the owner of the neighboring yard, to be given way out for him for the benefit of his land or yard with the obligation to pay compensation balanced with the resulting losses.

Article 668 explains: that this exit must be made on the side of the land or the nearest crossing or public waters, but it is good to take from that which results in the least loss to the land allowed to be passed in Article 671 of the Civil Code explains: a path, a passage or a commonly owned passage of several neighbors, which is used for a joint exit, shall not be moved, tampered with or used for any other purpose of the purposes for which it has been set forth, except with the permission of all concerned.

As we often see everywhere, whether on social media, television, or maybe someone has experienced it or witnessed it directly where the law enforcement process must meet the principles of justice but must also be in line with the consistent application of legal certainty.

Legal justice must take precedence.

The rules of the Civil Code, of course, provide legal protection for the rights and position of enclave land so that people who own enclave land are given legal protection so that the land has legal force.

Based on the description of the provisions in article 667 and article 668, the owner of the enclave land has the right to sue the landowner to provide a way out through the landowner.

4 Conclusion

4.1 Conclusions

In UUPA, the enclave land has no legal force, but in the Civil Code, in particular, Article 667 of the Civil Code explains: that the owner of a piece of land or land located between other people's lands in such a way that he has no way out until the public road, or public waters have the right to sue the owner of the neighboring yard, to be given way out for him for the benefit of his land or yard with the obligation to pay balanced damages with the resulting losses.

The position of the enclave land has a deficient value if the position of the land does not receive legal protection. By obtaining a way where the land is based on the description of the provisions of the civil code article 667 and article 668, the owner of the enclave land has the right to sue the landowner around him to provide a way out through the land from the landowner to increase the price of the enclave Land.

4.2 Advice

To law enforcement, it is appropriate to pay attention to the rights of the people who own the enclave land so that the position of the enclave land is not consolidated and can use the land so that the community holding the rights to the enclave land has legal certainty.

To the community to fight for land rights, especially those in the form of enclaves following applicable laws and regulations, to have a selling value.

Acknowledgments. I would like to thank the Chancellor of the Manado State University, the Dean of the Faculty of Social Sciences and Law, the Chair of the Research and Community Service Institute, and the Konaspi 2022 committee, who have assisted in the publication of this article.

References

1. P. Negara, *Undang-undang no. 5 tahun 1960 tentang peraturan dasar pokok-pokok agraria*. Ganung Lawu, 1960.
2. P. M. S. W. Sumarjono, *Serangkum Aneka Masalah Hukum Agraria*. Andi Offset, 1982.

Open Access This chapter is licensed under the terms of the Creative Commons Attribution-NonCommercial 4.0 International License (<http://creativecommons.org/licenses/by-nc/4.0/>), which permits any noncommercial use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

