

Status of Rights on Community Land in The Settlement of Coastal Areas of The Kamboja Village

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Abstract—Utilization of coastal area as the development program of Tanjungpinang City as the capital city of Riau Islands Province, especially coastal area settlement of Kamboja Subdistrict of West Tanjungpinang, feared effect to the surrounding environment. Gradual changes in the environment will have a direct or indirect impact on aquatic biota. This condition can also occur in the coastal settlements of Kamboja Village, West Tanjungpinang District, which is one of the urban villages which have high population density and have various forms of business on land and sea. The purpose of this study is to find out the government's implications for the settlement of people in the coastal area of Kamboja Village, West Tanjungpinang Subdistrict, which has no land certificate, and to identify the reason why people do not have the land certificate in the coastal area of Kamboja Village, West Tanjungpinang District.

Keywords—coastal areas; settlements; land rights certificates

I. INTRODUCTION

Tanjungpinang City was formed on June 21st, 2001 by Law no. 5 Year 2001, on the Establishment of Tanjungpinang City. Tanjungpinang is the capital of Riau Islands Province in charge of 4 sub-districts; (1) Bukit Bestari Subdistrict, (2) East Tanjungpinang District, (3) Tanjungpinang Kota District, and (4) West Tanjungpinang District. The total area reaches 239.5 km² (23,950 Ha) consisting of 131.54 km² of land and 107.96 km² of the ocean. In Tanjungpinang, the use of coastal areas for the development, especially coastal areas of the Kamboja Village, West Tanjungpinang District, is feared to bring negative impacts. It is because of settlements that do not have certificates as a legal basis.

Basically, the certificate is served as legal protection for community-owned-object on land, however, in the Kamboja Village, preliminary observations shown that only some communities had proof of ownership settlements. The rights for community to land is obtained and legalized by the state, in requirements, they must fulfill the applicable provisions for inherent power over the land, accompanied by obligations that determined by law, and the rights of land acquisition distinguished in two ways. First, the acquisition in original which is the original acquisition, such as opening the land with occupation, and second, the derivative acquisition which is the acquisition caused by the juridical transfer of rights, such as buying and selling. Related to this, Gustav Radbruch shows that law should stands for 3 values of identity, such as: (1) Principle of legal certainty (*rechmatigheid*), this Principle is considered by Juridicial point., (2) Principle of legal justice (*gerechtigheit*), this Principle is considered by Philosophy point, where justice has the same rights for all people in front of the court, and (3) Principle of Legal benefit (*zwechatigheid*) or (*doelmatigheid*) or (utility).

According to Utrecht, legal certainty contains two senses. First, the existence of general rules that make individuals know what actions may or may not be done. Second, in the form of legal security for individuals from government arbitrariness, because of the general rules, individuals know what the State may charge or do to individuals. With an element of legal certainty, the community will know the clarity of rights and the obligations according to the law. Without legal certainty, people are unable to know what action should they do, unable to know whether their actions wrong or rights and unable to know whether their actions legal or not.

Associated with legal certainty in the field of land law, the purpose of the Basic Agrarian Law Number 5 of 1960 is: (1) To lay the foundations for the preparation of national agrarian law, (2) to be the basis for realizing unity and simplicity in land law and (3) become the basis for realizing legal certainty regarding land rights for all Indonesian people. It means that legal certainty in the field of land law, rights-holders must obtain legal certainty regarding their rights and clear instructions of the government.

Land-rights-holders obtain legal certainty by conducting land certification. The purpose of the land rights legal certainty is to provide legal protection to the holders of land rights, and the certainty of the object, namely its location, boundaries and extent and whether the building exists or not, and also the plants on it. To provide guarantees of legal certainty in the field of land, first of all, it requires the availability of a complete and clearly written legal instrument that is carried out consistently, by the contents of its provisions.

The land certificate is important for the holder to proof of land rights. On the other hand, the owner who has strong evidence with a clear status will be guaranteed legal certainty, so that, it will be easier to prove that the land and property belong to the owner. Unfortunately, some of the communities in the Kamboja Village coastal areas, due to lack of government socialization, do not know the full benefits of land certification and do not have the certainty of land rights. As stated in UUPA and PP No. 24 of 1997, that to guarantee legal certainty of land ownership, the land must be registered. Based on findings, the beginning of the field in the coastal residential area of Kamboja, is also still residents who own land with tax-reinforcement-form only as evidence .

A. Land Rights

Based on the Law of Basic Agrarian Law (UUPA) No.5 of 1960 Article 16 paragraph (1), namely : Rights to land as referred to in Article 4 paragraph 1 consists of: property rights, rights to use, rights leases, rights to open land, rights to collect forest products and other rights that are not mentioned above which will be determined by law and temporary rights as mentioned in Article 53.

Law Number 5 of 1960 concerns Basic Agrarian Regulations which is well known as the Basic Agrarian Law / UUPA in Article 19 paragraph 1 states that to guarantee legal certainty by the government, land registration is implemented in the entire territory of the Republic of Indonesia according to the provisions stipulated in the Regulation of Government.

B. Coastal Areas

The coastal area is a meeting area between land and sea, with land boundaries cover parts of the land, both dry and submerged in water that is influenced by sea traits, such as sea winds, tides, seepage of sea water (intrusion). The coastal boundary to the sea includes the outermost part, or boundary of the continental shelf area, where natural processes still influence the characteristics of these waters on land, such as sedimentation and freshwater flow. Also, the processes caused by human activities on land such as deforestation and pollution.

According to the Law Number 1 of 2014 on Amendments to the Law Number 27 of 2007 on Management of Coastal Areas and Small Islands. Coastal Areas are transitional areas between terrestrial and marine ecosystems affected by changes in land and sea.

According to Soegiarto, the definition of the coastal area used in Indonesia is the meeting area between land and sea, towards the land of the coastal area covering the land, both dry and submerged in water. It is still influenced by sea characteristics such as tides, sea breezes, and water permeation salty. It includes parts of the sea that are still whether affected by natural processes on land, such as sedimentation and freshwater flow or caused by human activities on land, such as deforestation and pollution.

Beatley explains about coastal areas as transition areas between sea and mainland, towards land covering areas that are still affected by tidal sea water splashes and towards the sea covering continental exposure areas. The concept of coastal and oceanic areas on the science of regional development planning perspective is certainly different from marine science which is mainly oriented to the physical aspects. The definition developed from the physical aspect is not a functional definition, but a definition that is rigid and more physically oriented and also varies depending on the country.

C. Agrarian Minister Regulation Number 17 of 2016

Regulation of the Minister of Agrarian and Spatial Planning/ Head of the National Land Agency of the Republic of Indonesia Number 17 of 2016 on Land Management in Coastal Areas and Small Islands. The provisions of Article 4 read: Land Management in the Coastal Area is carried out by granting Land Rights to: (a) Beaches; and (b) Coastal waters measured from the coastline to the sea as far as the provincial sea boundary.

Furthermore, Article 5 paragraph (1) states that: The granting of land rights to the coast as referred to in Article 4 letter (a), can only be granted for buildings that are located in the coastal area, including: (a) buildings are used for defense and security; (b) Port or dock; (c) Tower safety guard for beach visitors; (d) Place of residence of customary law communities or community members who have been living in the place for generations; and (e) Electric power generation.

Article 8 relates to coastal areas that cannot be granted Land Rights, in the case of; (1) Buildings which are located outside the provincial sea boundaries; (2) exploration and/ or exploitation of petroleum, gas, mining, geothermal; (3) Installation of submarine cables, pipelines and other transmission networks; and (4) Floating buildings.

II. METHOD

The method of this study is normative juridical research and used descriptive analysis. Normative juridical research is legal research which is conducted by examining library materials, secondary data or library law research. The description is research that aims to describe systematically, factually and accurately.

Data sources used in this research are from primary data and secondary data :

1) *Primary data is data obtained directly from first sources related to the problem. Data Sources obtained by a direct-interview with:*

- a) Head of Tanjungpinang City BPN Land Law Section.
- b) Head of Land Affairs Infrastructure, BPN Tanjungpinang City.
- c) Head of Subdivision of Land Rights of BPN Tanjungpinang City.
- d) Kamboja Headman, West Tanjungpinang District.
- e) The Kamboja Village Community, West Tanjungpinang Subdistrict.

2) *Secondary Data is data on books and rules of law related as a complement to primary data.*

III. FINDING AND DISCUSSION

Tanjungpinang City is one of the cities that has population improvement in the era of regional autonomy, and makes more coastal settlements, especially Kamboja Villagers. The amount of coastal settlements in that area should make harmonious breakthrough with legislation. There are a lot of Kamboja Villagers do not have certificate of land rights and, someday, may impact to a conflict.

The emergence of settlements in the coastal areas of the Kamboja Village, according to the Head of Land Affairs of Infrastructure Section of Tanjungpinang City, is that initially the community only makes *bagang* (a place to catch fish). The goal of this routine simply takes a place to rest and place the catch a few moments before going home, as a basis for their thinking to move domiciles. Finally, over time the *bagang* which used for fishing and resting places was slowly expanding, such as small kitchens, bedrooms and family rooms. Those rooms are enabled to make them feel more comfortable to settle there.

Based on an interview with the Head of the Kamboja Village, some people who are living there perceived that the Land Certificate was issued by the Lurah (headman) as a proof of legal ownership of land rights. Also, KambojaLurah stated that the Land Certificate which is issued by the Kelurahan (urban village) was limited to a statement the identity of the community use state land, land use, land area and boundaries, and years of land use. Vice versa, the definition of Land Certificate in Diana's perception, a person who lives in Kamboja Village coastal area. She stated that the Land Certificate is considered a common letter among the community and has the legal power to the rights to the land.

Rights of ownership is rights for the savor of functioning things freely and intend to be free in sovereignty, as long as it does not contradict the Law or general regulations, and does not interfere with the rights of others. The legal fact is that there are still many KambojaUrban communities assume that the evidence of their ownership, such as SKT and girik, is the evidence of ownership rights over the occupation settlements. Whereas, according to the convention the BAL, any evidence they have as an indication of settlement control, is highly recommended to be converted into rights - rights as determined by the government. Every Law enforced has a specific purpose. In this case, the LoGA is applied to provide legal certainty to community settlements, one of the Kamboja Village community settlements which is strengthened by the Agrarian Minister's Regulation No.17 of 2016 on Land Management in Coastal and Island Areas Small as a legal standing on settlements in coastal areas. It is because Kamboja Village is one of the densest coastal areas of settlement.

The Kamboja Village Head explained that some people in coastal areas have certificates as proof of land rights ownership and some of them do not. They only occupy the land by paying Land and Building Tax to the government. This was justified by Mrs. Juhainah that they (Juhainah, ed: author), even that was only partially, were only charged to pay the Land and Building Tax. In an effort to obtain legal certainty, regarding the rights to their land, she applied to issue a certificate of ownership to the village head.

Referring to the notion of property rights, property rights are the hereditary, strongest and most-fulfilling rights for people to own on their land, social-functioned land. The granting of this trait does not mean that the rights is an "absolute, unlimited and inviolable" rights as eigendom/ property rights according to its original meaning. Such properties are clearly contrary to the nature of customary law and the social function of each right. Hereditary means that land rights can continue as long as the owner is alive and if the owner dies, the property rights can be continued by the heirs, as long as they qualified. The strongest means that land ownership is stronger than other land rights, because it does not have a certain time limit. It is easy to maintain from other parties and is not easy to delete. The fullest means that the ownership rights to the land give authority to the owner as the most extensive compared to the other land rights.

Based on the interview, people in coastal areas Kamboja Village realize and truly knew that residential area they lives in is country land rights. Although they have been occupying the area for generations, whenever the government needs the land, they have to be ready to move. However, the field findings indicate that there were people who obtained the certificates in the coastal area of the Kamboja Village, as explained by Masnun Lasmana, he had raised the status of his land certificate to a title of ownership.

TABLE 1. RECAPITULATION OF ISSUANCE OF LAND RIGHTS CERTIFICATES KAMBOJA VILLAGE, WEST TANJUNGPINANG DISTRICT

No	Types of Rights	Fields Number	Broad (m ²)
1.	Rights of Ownership	1.206	244.841 m ²
2.	Building Rights	602	187.711 m ²
3.	Using Rights	402	73.336 m ²
4.	Waqf Rights	1	580 m ²
	Total	2.211	506.468 m ²

The table above explains that part of the lands owned by the community in the Kambojacoastal area is not a status of a property, but several other types of rights that are owned. Regarding especially to the land rights in coastal areas, the provisions of Article 8 of the Regulation of the Minister of Agrarian and Spatial Planning/ Head of the National Land Agency of the Republic of Indonesia Number 17 of 2016 on Land Management in Coastal and Small Islands, states that coastal areas cannot be a granted Land, in the case of: (a) buildings located outside the provincial sea boundaries, (b) exploration and/ or oil, gas, mining and geothermal exploitation installations, (c) subsea cable installations, pipelines and other transmission networks, and (d) floating buildings.

Further explanation in the provisions of Article 5 paragraph (1) of the Regulation of the Minister of Agrarian and Spatial Planning/ Head of the Republic of Indonesia National Land Agency Number 17 of 2016 on Land Arrangement in Coastal Areas and Small Islands, that the Granting of Land Rights on the coast, as referred to in Article 4 letter a, can only be given to the buildings that have to be located in the Coastal Area, including: first; buildings used for defense and security, second; port or dock, third; tower safety guard for beach visitors, fourth; place of residence of customary law communities or community members who have lived in the place for generations, and fifth; power plant.

Provisions of the Article 5 paragraph (1) letter (d) states that the Granting of Land Rights on the beach can only be given to buildings that have to be located in the Coastal Area. It is for the indigenous people or members the community who has been living for generations. It provides an opportunity for all the Kamboja Village people to register their land rights with all existing evidence.

Based on the findings of the field, Tax Returns or *Girik* is the only evidence of settlements of the Kambojacoastal areas. The two pieces of evidence can be used as evidence of ownership of land rights in the court despite the level of truth can only be proven in the court. However, according to the Head of the Land Law Section of BPN Tanjungpinang City, Manat Purba, the community as holders of land rights possessed the evidence in the form of *girik* as evidence of tax payments on their land, with the Basic Agrarian Law followed up through Government Regulation No. 10 of 1961 which was later replaced by Government Regulation Number 24 of 1997 on Land Registration.

It is no longer possible to issue rights subjected to the Civil Code or to local customary law, except to explain that these rights are rights custom. For this reason, the importance of registering ownership rights on customary land as proof of legal ownership of land rights, in accordance with Article 23, Article 32 and Article 38 of the Basic Agrarian Law. It is an obligation is given to register customary land, especially customary rights.

According to the Head of the Land Law Section of BPN Tanjungpinang City, a letter from the Director General of Taxation, May 27th,1993, No: SE-15/ PJ.G/1993 on the Prohibition of Issuance of *Girik*/ Petuk D/ Intention/ Information on Tax Objects (KP. PBB II), the area of the Land and Building Tax Service Office of Riau Islands Province, especially Tanjungpinang City, the *Girik* mutation has been abolished. This is due to the large number of problems in the community related to the evidence the ownership in the form of *girik* which is causing overlap and confusion or uncertainty about the land object. In addition, this was confirmed by the Supreme Court Decision of the Republic of Indonesia. No. 34/ K/ Sip/ 1960, February 19th 1960, stating that the letter of receipt/ *girik* (receipt of Land and Building Tax) is not a proof of land rights.

Referring to the opinion above, the provisions of Article 5 paragraph (1) letter d states that the Granting of Land Rights on the beach can only be given to buildings that have to be located in the Coastal Area. It is for the indigenous people or members the community who has been living for generations. It is contrary with the fact in the field where people are not allowed to register their land rights even though they have proof of ownership of land rights in the form of tax receipts and *girik*.

IV. CONCLUSION

In conclusion; 1) the Kelurahan (Urban Village officers) is limited to issue a Certificate of Land Rights as a form of the identity for the people who use or occupy state land. 2) Some people consider that the Certificate of Land Rights has the same the position with the certificate of ownership. 3) The community continues to carry out its obligations to pay the Land and Building Tax. 4) There are some people who want to change the ownership status of their land rights into certificates. 5) In fact, the provisions of Article 5 paragraph (1) letter d of the Regulation of the Minister of Agrarian and Spatial Planning/ Head of the National Land Agency of the Republic of Indonesia Number 17 of 2016 on Land Management in Coastal Areas and Small Islands states that the granting of land rights can only be given to the buildings that must be located on in the coastal area, which is for the residence of indigenous people or "community members who have been living in the place for generations" as evidenced by tax receipts and *girik*, cannot necessarily obtain certainty law on their land rights.

Based on the conclusions above, this research recommends as follow; First, there should be socialization related to the evidence of ownership of land rights owned by the coastal community of the Kamboja Village. Therefore, there will be no misperceptions in the society. Second, it is necessary to register land rights for people in the coastal areas of the Kamboja Village to proof the ownership of their land rights which are not in conflict with the laws and regulations whenever needed to be upgraded to a certificate of ownership. Third, it is necessary to intensively explain the provisions of Article 5 paragraph (1) letter d of Regulation of the Minister of Agrarian and Spatial Planning/ Head of the National Land Agency of the Republic of Indonesia Number 17 of 2016 on Land Management in Coastal Areas and Small Islands.

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