

Stagnancy of Land Use Arrangement Former Cultivation Rights (Case Study of BPN Makassar)

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ABSTRACT

Land issues still cause problems especially in terms of usage rights that are discharged, the allocation is still limited to the obsolete concept that is still applied today, while the increasingly complex needs for the development of the suitability and more appropriate. This study formulates the extent to which the city of Makassar in reorganizing this concession as its purpose-built sustainably and sustainable future. This study uses empirical juridical and legal research supported by the results of observation. The results of this study describe the efforts undertaken by the government in this case BPN Makassar City seem less innovative so that the impact on potential obstacles of regional development and running haltingly.

Keywords: *stagnancy, landreform, hgu (cultivation rights)*

INTRODUCTION

The land is the most important part for human natural resources, and therefore the land is also a source of life for human beings,¹ in addition to being a dwelling land can also be used to find income from the yields grown from the land in other terms can be used as the economic value.² The existence of the economic value of the soil so many occurrences of friction-friction arising from the land,³ whether for who is entitled to occupy the land in the sense of residence or for other activities.

Land is no longer simply seen as an agrarian problem that has been identified as mere agriculture, but has developed both the benefits and its usefulness so that the increasingly complex negative impacts, even the land often cause shocks in the community and the spreading in the implementation of development, the country ideally immediately set precisely

¹ Djanggih, H., & Salle, S. (2017). Aspek Hukum Pengadaan Tanah bagi Pelaksanaan Pembangunan untuk Kepentingan Umum. *Pandecta: Research Law Journal*, 12(2). DOI: <https://doi.org/10.15294/pandecta.v12i2.11677>

² Syarief, E. (2012). *Menuntaskan Sengketa Tanah Melalui Pengadilan Khusus Pertanahan*. Kepustakaan Populer Gramedia. hal, 51

³ Bahkan begitu besarnya nilai ekonomis tanah sehingga dapat menimbulkan konflik berkempanjangan seperti di Israel dalam memperebutkan lahan Palestina sejak Tahun 1948. lihat: Syarief, E. (2012). *Menuntaskan Sengketa Tanah Melalui Pengadilan Khusus Pertanahan*. Kepustakaan Populer Gramedia. hal,2

in order to overcome the problem of poverty, population unevenness, the geographical position of Indonesia, centralization of development, and the impact of abandoned land.⁴

Human dependence is so great on the land, both for the needs of settlements and as a source of livelihood, while the stock of land is very limited both amount and extent fixed⁵ and not increase in all dimensions of human needs. The imbalance between the quantity and area of land available and the increasing need for use causes the land to have a very important meaning, so that 2 state intervention through its apparatus in the land law is an absolute.

Unbalanced between the supply of land and the need for the soil, has caused many problems in many ways. Legal security in Indonesia contains pre-emptive elements as effort to prevent conflict ...,⁶ the statement indicates the existence of an effort with a legal certainty approach through this study presents the solution of the problem, also in overcoming the land problem, and supported by the statement that every human being would want the protection and guarantee of legal certainty.⁷

Law No. 5/1960 on Agrarian Mainstream (UUPA) on the definition of state land is found in Government Regulation No. 8 of 1953 (L.N. 1953, No. 14, T.L.N. No. 362), and in the Government Regulation the state land is interpreted as land occupied full by country.⁸ The substance of this country's land notion is that the lands are indeed free of the inherent rights on the land, whether western rights or customary rights (*vrij landsdomein*). The issuance of UUPA which states the notion of State land is asserted not fully controlled but is a land which is directly controlled by the State then gives meaning that the country is constructed not as the land owner.

The State as a people's power organization acting as the governing body, which is authorized in the following terms:

1. Organize and maintain allotment, use, inventory and maintenance;
2. Determine and regulate the rights that may belong to (part of) the earth, water and space;

⁴ Rahmi, E. (2010). Eksistensi Hak Pengelolaan Atas Tanah (HPL) dan Realitas Pembangunan Indonesia. *Jurnal Dinamika Hukum*, 10(3), 339-348.

⁵ Djanggih, H., & Salle, S. (2018). Aspek Hukum Pengadaan Tanah bagi Pelaksanaan Pembangunan untuk Kepentingan Umum. *Pandecta: Research Law Journal*, 12(2).

⁶ Aswari, A., Pasamai, S., Qomar, N., & Abbas, I. (2017). Legal Security On Cellphone Trading Through Electronic Media In Indonesia. *Jurnal Dinamika Hukum*, 17(2), 181-187.

⁷ Rahman, S., & Passamai, S. (2017). Regional Government Functions In Land Procurement For Development For Public Interest. *ADRI International Journal Of Law and Social Science*, 1(1), 10-17.

⁸ Erwiningsih, W. (2009). Pelaksanaan Pengaturan Hak Menguasai Negara atas Tanah Menurut UUD 1945. *Jurnal Hukum IUS QUIA IUSTUM*, 16.

3. Determine and regulate the legal relationships between persons and legal acts concerning the earth, water, and space.

The aim is to realize what is outlined in Article 33 Paragraph (3) of the 1945 Constitution, that the earth, water, and natural resources contained therein, whose control is assigned to the State of the Republic of Indonesia shall be used for the greatest prosperity of the people, abandoned, meaning deliberately left in a state not utilized, because such things will harm the community and again hamper the development of the government continues to strive as the reality there are still many Right to Effort (HGU) is still temporary in Makassar and requires the concept of arrangement returns that suit the needs of the community to be more appropriate.

UUPA Article 28 paragraph (1) states that the Right to Use Enterprises is the right to cultivate land directly controlled by the state within a certain period of time as set forth in Article 29 for agricultural, fishery, or livestock enterprises. Based on this understanding, HGU is a right granted by the state to certain legal subjects with certain conditions also to manage and cultivate state lands with an orientation as already described in the LoGA. The right of the Indonesian nation in the control of the land actually has a common element that is civil and element of the task of authority is public.⁹

The legal debate always arises when the HGU in Indonesia in which regulate agriculture, fishery and livestock ends, it is related to legal issues also arise socio-economic problems of people who depend on agriculture, fisheries and livestock, in addition to agriculture, fisheries, and animal husbandry in addition to being the centers of economic growth for the country is also a center of poverty for the community and high coefficient index figures. Poverty and social inequality that then make the root of land disputes happen everywhere. Land disputes will not occur if social justice requirements can be met by the state as mandated by Pancasila and the 1945 Constitution, or at least the existing social inequality narrows.

Based on the above background, the study of "Stagnation of Land Use Arrangement Forms (Case Study of BPN Makassar)" formed a formulation of the problem which, if clearly according to the factors that determine the process of division of former land of HGU needs to be rearranged, then what is the extent of the rearrangement made by the BPN Kota Makassar in the designation and distribution of former HGU land?

⁹ Unsur kepunyaan dalam pelaksanaannya bersifat abadi dan tidak memerlukan campur tangan kekuasaan public, namun unsur tugas kewenangan yang bersifat public dan tidak dapat dilaksanakan sendiri oleh masyarakat, oleh karena itu dalam pelaksanaannya diserahkan kepada negara sebagai organisasi tertinggi dalam kekuasaan. Lihat: Lakburlawal, M. A. (2016). Akses Keadilan Bagi Masyarakat Adat Dalam Penyelesaian Sengketa Tanah Ulayat Yang Diberikan Hak Guna Usaha. *Jurnal Hukum Acara Perdata ADHAPER*, 2(1), 59-75.

METHOD

This research was conducted at the Office of the National Land Agency (BPN) of Makassar City with a legal research approach mix legal research that aims to describe the law in social context juridical plus the use of participatory observation techniques that also describe the method of observation in the HGU problem where researchers position themselves as participants others are being observed. This review sees the need for legal review of the re-arrangement, designation and distribution of former rights of land to secure land tenure law, and it is practical to be able to provide an understanding of legal review of the re-arrangement, designation and distribution of ex- to the community as well as provide the concept of thinking to develop the re-arrangement of former HGU in addition to efforts that have been made so far for maximum utilization.

ANALYSIS AND DISCUSSION

Condition of Landreform and Distribution of Used Land HGU of Business in Makassar

The extension of HGU regulated in Article 28 to Article 34 of the UUPA is further described in Government Regulation No. 40/1996 on Right of Use, Right to Use and Land Use Right hereinafter referred to as PP No. 40 Year 1996.¹⁰ Holders of HGU have the right to control and use the land they own to carry on business in agriculture, plantation and animal husbandry. In order to support the business, the HGU holders are entitled to control and use other natural resources located on the land, taking into account the prevailing provisions and interests of the surrounding community, which are held to meet the needs of modern society today.¹¹

The extension of HGU is a form of success in carrying out the optimal function of the right holder or the owner of the right of effort, this success is certainly a benchmark that HGU is a right that can functionally provide space for legal subjects to be able to jointly invest in the field agriculture, plantation, and animal husbandry. Thus, this is certainly a means and infrastructure in the effort of natural resources development and become a means of infrastructure support in the future.

The reason why the Makassar City Cards permit the extension of the right to operate because it is considered to be able to improve the quality and quantity of production in running the business in a sustainable way. This is surely a form of restructuring and distribution of

¹⁰ Mahadewi, A. A. I. D. (2013). Pengaturan Prosedur Pembatalan Sertipikat Hak Atas Tanah yang Merupakan Barang Milik Negara. *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, 2(3).

¹¹ Ginting, D. (2011). Reformasi hukum tanah dalam rangka perlindungan hak atas tanah perorangan dan penanam modal dalam bidang agrobisnis. *Jurnal Hukum Ius Quia Iustum*, 18(1), 63-82.

former land of HGU by Kantah Kota Makassar although in this case it has not been designated as former HGU because the extension is still done again. The period of twenty-five years may be a measure of the restructuring that is also carried out by the Makassar City Census as required by the applicable Laws, through the arrangements made by extending the tenure of the right, so that this policy certainly helps in the development of the source natural resources of Makassar City that exist in a maximum and sustainable, and reduce the potential for conflict.¹²

The related transition of HGU shall be registered at the Makassar City Land Office if the transition is made through sale and purchase (except auction), exchange, participation in capital and grant, it must be done by the deed of the land deed, while the transfer of rights made through the sale and purchase by auction must be proven by auction report, but if the transfer of right to the business is due to inheritance, it must be proven by a will or inheritance certificate. Conflict in society often occurs because of legal inconsistency and also weak law enforcement. Weakening of the land administration system is the impact of various factors, including: (a) legal awareness of the community,¹³ (b) High administrative costs, (c) the passive authority to administer the administrative system.

The transition of HGU is certainly a form of change to the rights or status of a right itself, this transfer is inseparable from the change of rights to land rights to make the land more manageable properly, but this is not as easy as turning the palm of the hand because this HGU is the right given by the government through the agency BPN Makassar City to be managed destined just for the agriculture and plantation. This is certainly not in accordance with the expectations for each holder of HGU so that sometimes the optimal form to be done re-arrangement of land allocation and the former HGU land is considered less precise. Further efforts undertaken by BPN Makassar City that is changed to the right use of the building or the right of management because it can guarantee a right to land to make the land is not a land abandoned or land with no use or non-productive again, although the effort went smoothly but the right further management becomes ambiguous as happens in the Makassar City square

¹² Bandingkan dengan berbagai permasalahan Agraria Selama ini, Lihat: S. Syahyuti. Peran Strategis Departemen Pertanian Terhadap Reforma Agraria Di Indonesia Dalam Konteks Otonomi Daerah. Pusat Penelitian dan Pengembangan Sosial Ekonomi Pertanian.

¹³ Urgensi legalitas formal kepemilikan tanah masih rendah oleh masyarakat, teori efektivitas hukum, lihat: Yudho, W., & Tjandrasari, H. (2017). Efektivitas Hukum Dalam Masyarakat. *Jurnal Hukum & Pembangunan*, 17(1), 57-63.

(Karebosi) under which there is a right to use the basement that has the potential to inhibit the continuity of various aspects of life to be sustainable.^{14 15}

Back to the issue of the transfer of rights, of course, talking about the rights of land in the Basic Law of Article 2 paragraph (2) letter (a) states that the regulation of the implementation and the use of real maintenance is also the right of the State, and the right of the State of course that right has been granted to legal entities as well as individuals is deemed capable and able to perform maintenance and designation of HGU in order to optimize the land so that formerly HGU land can still be rearranged by the transfer of rights itself, but it should be emphasized that as long as it does not cause things that can hinder the orientation of the arrangement / management back.

The transfer of rights is deemed to be more prosperous for the land because with the transfer of rights to the land, it is certainly more open space in the re-allocation of land, it is of course more common to determine the former land of HGU can be done reordering, in the HGU we only often encounter that the land can only optimized by way of agriculture, fisheries and plantation. So many companies that when having this HGU has expired and also has been done extension then after that to be able to do the rearrangement is usually by the transfer of rights to the right to use the building and or management rights of course this is a new step in the arrangement and designation of land used HGU itself, for example as applied to Karebosi Link Kota Makassar.

Each transition with this other right as in Makassar City must be re-registered at the local land office, so registration is intended as a form of strong proof. The transition of HGU in the framework of designation and distribution of former HGU able to guarantee the right of land is more optimal, so that it will no longer be able to find the previous land is the former HGU land into abandoned land, unusable land, and land dispute. Therefore, in order to guarantee the land can not function properly, the transfer of land rights is deemed able to answer the issue so that when the right of the land is transferred its right it can be rearranged one of them with the transfer of right to use the building so that it certainly can be done the establishment of the building, which in which the building will be able to guarantee the designation and re-

¹⁴ Rengki Irawan Putra Wahyudi, Penerapan Hak Guna Ruang bawah Tanah Sebagai lembaga baru Hak Atas Tanah Dalam perspektif Perkembangan Hukum Tanah Nasional Indonesia, (Tinjauan Yuridis Hak Atas Tanah – Ruang Bawah Tanah di Kawasan Karebosi Link di Kota Makassar), Tesis, Fakultas Hukum, Magister kenotariatan, Universitas Indonesia, 2012

¹⁵ Qamar, N., Mustamin, H., & Aswari, A. (2017). Local Wisdom Culture of Bugis-Makassar in Legal Perspective. ADRI International Journal Of Law and Social Science, 1(1), 35-41.

arrangement of HGU which has been done in some places in Makassar City, as well as land management rights that occurred in Hertasing Square and Karebosi field during the day.

CONCLUSION

BPN Kota Makassar still has not applied new concept in doing HGU rearrangement, it is based on arrangement by using old concept that still considered more appropriate to fulfill requirement of society of Makassar city in short term. The former land of HGU needs to be carried out a more innovative arrangement and prevent stagnation which aims to minimize the neglect of land and / or land so that the land is expected to become an important part in the life of the community, therefore the restructuring of ex-right land is needed in addition to raising the level people's lives can also be an income for the state. The stagnation of government efforts has many adverse effects not only for the people but also for the state, since the land that should be able to function optimally even becomes something that can not be functioned is certainly bad because the land should be a valuable item and its function. Arrangement of the land should be able to be more optimal to create and grow the economic activities that exist in the vicinity, and the government through the authorized officials namely BPN Makassar City should be careful in responding and reviewing matters related to the reorganization of the designation and the distribution of the former land of the right to operate, so that the target is right to the public or public interest so that the function of the land becomes optimal.

REFERENCE

- Aswari, A., Pasamai, S., Qamar, N., & Abbas, I. (2017). Legal Security On Cellphone Trading Through Electronic Media In Indonesia. *Jurnal Dinamika Hukum*, 17(2), 181-187.
- Djanggih, H., & Salle, S. (2018). Aspek Hukum Pengadaan Tanah bagi Pelaksanaan Pembangunan untuk Kepentingan Umum. *Pandecta: Research Law Journal*, 12(2).
- Erwiningsih, W. (2009). Pelaksanaan Pengaturan Hak Menguasai Negara atas Tanah Menurut UUD 1945. *Jurnal Hukum IUS QUIA IUSTUM*, 16.
- Ginting, D. (2011). Reformasi hukum tanah dalam rangka perlindungan hak atas tanah perorangan dan penanam modal dalam bidang agrobisnis. *Jurnal Hukum Ius Quia Iustum*, 18(1), 63-82.

- Lakburlawal, M. A. (2016). Akses Keadilan Bagi Masyarakat Adat Dalam Penyelesaian Sengketa Tanah Ulayat Yang Diberikan Hak Guna Usaha. *Jurnal Hukum Acara Perdata ADHAPER*, 2(1), 59-75.
- Mahadewi, A. A. I. D. (2013). Pengaturan Prosedur Pembatalan Sertipikat Hak Atas Tanah yang Merupakan Barang Milik Negara. *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, 2(3).
- Qamar, N., Mustamin, H., & Aswari, A. (2017). Local Wisdom Culture of Bugis-Makassar in Legal Perspective. *ADRI International Journal Of Law and Social Science*, 1(1), 35-41.
- Rahman, S., & Passamai, S. (2017). Regional Government Functions In Land Procurement For Development For Public Interest. *ADRI International Journal Of Law and Social Science*, 1(1), 10-17.
- Rahmi, E. (2010). Eksistensi Hak Pengelolaan Atas Tanah (HPL) dan Realitas Pembangunan Indonesia. *Jurnal Dinamika Hukum*, 10(3), 339-348.
- Rengki Irawan Putra Wahyudi, (2012) Penerapan Hak Guna Ruang bawah Tanah Sebagai lembaga baru Hak Atas Tanah Dalam perspektif Perkembangan Hukum Tanah Nasional Indonesia, (Tinjauan Yuridis Hak Atas Tanah – Ruang Bawah Tanah di Kawasan Karebosi Link di Kota Makassar), Tesis, Fakultas Hukum, Magister kenotariatan, Universitas Indonesia.
- S. Syahyuti. Peran Strategis Departemen Pertanian Terhadap Reforma Agraria Di Indonesia Dalam Konteks Otonomi Daerah. Pusat Penelitian dan Pengembangan Sosial Ekonomi Pertanian.
- Syarief, E. (2012). Menuntaskan Sengketa Tanah Melalui Pengadilan Khusus Pertanahan. Kepustakaan Populer Gramedia.
- Yudho, W., & Tjandrasari, H. (2017). Efektivitas Hukum Dalam Masyarakat. *Jurnal Hukum & Pembangunan*, 17(1), 57-63.