



Legal Study on The Role of The Government of The City of Batam in Distributing Land Perspective Welfare State

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Abstract

Legal Studies on the Role of the Batam City Government in Distributing Land from the Welfare State Perspective. The purpose of this study is to examine the role of the Batam City government in distributing land in the Batam City area. Based on the formulation of the problem in compiling this research, the type of research used is normative or doctrinal legal research. Normative or doctrinal legal research is a legal research method that uses secondary data sources or by examining existing library materials. The nature of this research is descriptive analytical research. Analytical descriptive research is a form of research aimed at describing existing phenomena, both natural phenomena and man-made phenomena. Land problems in Batam City are like tangled threads that never end and are resolved, causing dissatisfaction in the people of Batam City. In the midst of the difficulty of access to adequate housing, while the need for housing is increasingly inevitable, finally a shortcut to establish a residence on State land that is not intended for settlement is the choice taken by some Batam people.

Keyword: Legal Study, Government City of Batam, Perspective Welfare State

1. Introduction

For the Indonesian people, land is a gift from God Almighty and at the same time a national wealth, which is reflected in the relationship between the Indonesian people and the land is an eternal and eternal relationship. Most of the people depend on the land for their life and livelihood, especially in agriculture. Land in an agrarian society has a very important position so that it must be considered and used for the greatest prosperity of the people, both individually and in mutual cooperation. It is stated in Article 33 paragraph (3) of the 1945 Constitution that: "Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people".

Indonesia is an agrarian country that depends on the life of its people on land. For the people of Indonesia, land is a source of life with a very important value. The importance of land for human life is because human life cannot be separated from land at all. Humans live on land and obtain food by utilizing the land.

Land is a place to live, where humans carry out daily activities even after death, land is still needed. Land is also an object that is unique in its nature, needed by many people, but the number does not increase. Culturally there is an inseparable inner relationship between land and humans. In connection with the above, it is clear that the pattern of land tenure cannot be separated from the problems of farmers and their standard of living. Lack of land to be used as arable land is a major problem in an agrarian society.

This unequal condition of land ownership and control has encouraged the determination of the nation's founders to organize the agrarian structure through statutory policies to lift the people and poverty due to the injustice of people's access to land. Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, known as the Basic Agrarian Law (UUPA) is the main source of all policies to manage land issues and increase production, standard of living and social welfare of the community as mandated in Article 33 of the Law. 1945 Constitution.

As a source of legal order, the UUPA is a national land law that contains the basic principles and provisions, but considering its nature as a basic regulation, only the principles and outline questions of agrarian reform include overhauling the structure of Indonesian land law. as well as the development of national land law, as well as the principles and provisions of land reform which constitute an overhaul in land tenure and legal relations as well as requirements in land tenure.

Based on the provisions of the UUPA, a land reform law is issued which aims to organize land tenure arrangements and increase the income and welfare of the people, especially small farmers in a fair and equitable manner, so that there are opportunities to develop themselves and achieve prosperity as part of national development to create a just and prosperous society. based on Pancasila.

Land reform is one of the means to improve the lives of the peasants and therefore the main objectives to be achieved include economic goals, socio-political goals and psychological mental. The economic objectives to be achieved are to improve the socio-economic conditions of the people by strengthening property rights and providing social functions to property rights, as well as improving national production, especially the agricultural sector to increase people's income and standard of living.

Meanwhile, the political goal is to end the landlord system (private land) and to end extensive land ownership (maximum excess) and to make a fair distribution of the livelihoods of the peasants in the form of land with the intention that there is a fair distribution. The psychological mental goal is to increase the enthusiasm for work for sharecroppers by providing certainty of rights regarding land ownership, as well as improving the working relationship between landowners and cultivators.

To implement this goal, the government has implemented Land reform in a narrow sense, one of which is land redistribution project activities. Land redistribution is the division of lands controlled by the state and has been confirmed to be the object of land reform given to smallholders who have met the requirements of Government Regulation no. 224 of 1961. With the aim of improving the socio-economic conditions of the people by conducting a fair and equitable distribution of land for the livelihood of the peasants

in the form of land, so that with this distribution a fair and equitable distribution of results can be achieved.

Sulaeman, Land Redistribution of Land Reform Objects and Its Problems, Scientific Journal of the Land Agency, 1993. p. 1-2.

Anonymous, Directorate of Land Tenure Arrangements, Work Procedures for Land Tenure Development Projects, Jakarta, 1996, p. 56.

<http://www.pasberita.com/2014/09/jokowi-diingatkan-saat-konflik-lahan-di.html>

The land redistribution program has been implemented in various regions in Indonesia, including in Kibing Village, BatuAji Sub-district, which is one of the 64 sub-districts in the Batam City area, based on Regional Regulation No. 2 of 2006 concerning the changes and formation of Sub-Districts and Sub-Districts in the Batam City Region, is a division of the TibanAsri Village, Sekupang District.

The President of the Republic of Indonesia (Jokowi) was asked to pay attention to the issue of land conflicts, especially those that occurred in Batam City, Riau Islands. Jokowi must know that the Batam area is directly adjacent to Singapore and Malaysia. The accumulation of land disputes in Batam will explode. The government should pay special attention to this area. Land problems can damage the wheels of government as experienced by President SBY. SBY, for example, was proven to have broken his promise to give 1 million hectares of land to poor people, failed to resolve land disputes between communities, and failed to resolve land disputes between communities and entrepreneurs.

As many as 70 percent of land cases in Batam are cases of encroachment and development of protected forests or conversion forests. Latas was built by the Batam city government and the private sector into housing, shops, offices and malls," explained Suspendi who was accompanied by the Executive Director of Jokowi Watch, Tigor Doris S. will not be a burden on his government. The potential for land unrest is increasingly being triggered by the attitude of the state apparatus in Batam, starting from the village head, sub-district head, mayor and governor as well as the DPRD and the Batam City National Land Agency office who deliberately silence the problems of land conflicts that occur.

<http://www.pasberita.com/2014/09/jokowi-diingatkan-saat-konflik-lahan-di.html>
diakes 20 September 2020 Ibid.

From the description above, it can be seen that land redistribution is essentially to provide access to land ownership for farmers in order to improve their standard of living. But in reality, land issues continue to develop following developments that occur in society. The pattern of land use in supporting the wheels of development will experience a shift according to developments in each sector. The existence of land does not increase, while the human need for land has increased. In line with the growth and development in society, the issue of land is a cross-sectoral problem.

The rapid development progress carried out so far by the Batam City Government and the Batam Authority/BP Batam has had a positive and negative impact on various aspects of people's lives, especially in the economic field. The rapid progress of Batam

City also has an impact on the high number of immigrants who participate in trying their luck to get a more decent personal life compared to their original area.

The total population of Kibing Village as of December 2011 was 28,304 people consisting of Male: 13,200, Female: 15,104 with the number of Heads of Family (KK) as many as: 8,301 KK, spread over several housing estates and illegal houses. The main problem faced by the Kibing Village is the impact of the high flow of migration into the Kibing Village area which results in inadequate services, provision of public facilities, social facilities, economic facilities and other facilities.

Another problem is the continued growth and development of problem houses (Ruli), illegal kiosks (kili), flooding, high crime rates, increasing unemployment, and so on. The area of Kibing Village is 14,530 Ha. Kibing Village borders: North side: TibanBaru Village, Sekupang District, South: Tembesi Village, Sagulung District, East: MukaKuning Village, Sagulung District, West: Buliang Village, BatuAji District and Tanjung Riau Village, Sekupang District

JhonSalihendo, *Humans, Land Rights, and Law*, Sinar Graphic, Jakarta, 1994, p. 10

Lutfi Ibrahim Nasoetion, *Rethinking Land Reform In Indonesia*, BhumiBakti, 1995. p. 38.

http://www.academia.edu/11566540/BAB_III_Faktor_Yang_Menkarena_Sengketa_Pertanahan_antara_Cosmas_Usman_dan_Otorita_Batam accessed on 20 September 2020

crime, increasing unemployment, and so on. The area of Kibing Village is 14,530 Ha. Kibing Village borders: North side: TibanBaru Village, Sekupang District, South: Tembesi Village, Sagulung District, East: MukaKuning Village, Sagulung District, West: Buliang Village, BatuAji District and Tanjung Riau Village, Sekupang District

So based on the above, it is very interesting to study both *das sollen* and *das sein* (law in book and law in action) the implementation of land redistribution that has been carried out in Batam City. In terms of achieving the goals of land redistribution itself and the reality that is happening in today's society.

Based on the above background, the authors write this paper with the title *Legal Studies on the Role of the Batam City Government in Distributing Welfare State Perspective Land*. The purpose of this study is to examine the role of the Batam City government in distributing land in the Batam City area

2. Research Method

Based on the formulation of the problem in compiling this research, the type of research used is normative or doctrinal legal research. Normative or doctrinal legal research is a legal research method that uses secondary data sources or by examining existing library materials. The nature of this research is descriptive analytical research. Analytical descriptive research is a form of research aimed at describing existing phenomena, both natural phenomena and man-made phenomena. Analytical descriptive research is research that seeks to describe and interpret something, for example existing conditions or relationships, developing opinions, ongoing processes, consequences or effects that occur, or about ongoing trends and then analyzed and conclusions are drawn.

Johny Ibrahim, Theory and Methodology of Normative Legal Research, Bayumedia, Surabaya: 2008, p. 295. SoerjonoSoekanto, Introduction to Legal Research, UI:Press, Jakarta: 1986, p. 3 BambangSunggono, Legal Research Methodology, RajaGrafindoPersada, Jakarta: 2003, p. 115

3. Results and Discussion

3.1 The Role of Batam City Government in Distributing Land in Welfare State Perspective

Geographically, Batam Island, which is known as the Batam City area, has a very strategic location, namely the international service line with a distance of 12.5 nautical miles from Singapore. The Batam Island area contains more than 400 (four hundred) islands and 329 (three hundred and twenty-nine) islands of which have been named, including the outermost islands in the national border area, which are bordered by:

North side: Singapore

East: Bintan and Tanjung Pinang Regencies

South side: Lingga Regency

West :Karimun Regency

In accordance with Presidential Decree No. 41/1973, Batam Island was designated as an industrial area work environment supported by the Batam Island Industrial Area Development Authority or better known as the Batam Authority Agency (BOB) as the driving force for Batam's development. Along with the rapid development of Batam Island, in the 1980s, based on Government Regulation No. 34/1983, the Batam sub-district, which is part of the Riau Islands district, was upgraded to Batam Municipality which has the task of carrying out government and community administration and supporting development carried out. Batam Authority.

Determination of the status of Batam Island as an industrial zone through Presidential Decree Number 41 of 1973 concerning Batam Island Industrial Area not only made changes in the pattern of policies in the industrial sector, but also in the land sector. With the change in status, land policy became the authority of the Batam Island Industrial Area Development Authority, which was called the Batam Authority, and has now changed to a Free Trade Zone (FTZ) based on Government Regulation No. 2 of 2009, with the granting of management rights. The main objective is that the land in question is made available for use by other parties who need it. Part of the land with management rights can be given to other parties with ownership rights, building use rights, or use rights. The grant is made by an authorized official of the National Land Agency, at the suggestion of the relevant management right holder.

[http://skpd.batamkota.go.id/tatakota/files/2010/03/PROFIL-RUSUN BATAM.p](http://skpd.batamkota.go.id/tatakota/files/2010/03/PROFIL-RUSUN_BATAM.p)
Accessed 19 September 2020 Ibid.

Management rights are registered and certificates are issued as proof of their rights. In 1983, Batam Island became an administrative city based on Government Regulation No. 34/1983 with 3 (three) sub-districts (kecamatan), namely Behind Padang, West Batam, and East Batam.

The swift demands for regional autonomy and the story of the softening of centralized power have prompted changes in the history of government in Batam. October 4, 1999 which became the momentum of change for the City of Batam. The area which was originally an administrative city government with the uniqueness of being a special industrial area was determined to be an autonomous government through Law 53 of 1999 concerning the Establishment of Pelalawan Regency, RokanHulu Regency, RokanHilir Regency, Siak Regency, Karimun Regency, Natuna Regency, KuantanSingingiRegency , and Batam City.

The granting of autonomous status to Batam is also in accordance with the will of Law Number 2 of 1999 concerning Regional Government, so that Batam has the authority to regulate and manage the interests of the local community. The implementation of regional autonomy through Law Number 22 of 1999 concerning Regional Government which was later refined again by Law Number 32 of 2004, which gave enormous powers to each region to regulate its own household affairs.

¹*Ibid.*

¹*Ibid.*

¹ Arie

The Batam City Government exercises authority in the land sector through the Land Office based on Article 2 of Presidential Decree Number 34 of 2003 concerning National Policy in the Land Sector which states the share of government authority in the land sector which is carried out by the district/city government which is further elaborated in the Decree of the Head of National Land Affairs Number 2 of 2003 concerning Norms and Standards of Mechanisms for the Management of Government authorities in the Land Sector implemented by Regency/City Governments. These powers include:

- a. Regulation, land tenure and spatial planning.
 - 1) Granting location permits;
 - 2) Organizing land acquisition for development purposes;
 - 3) Settlement of arable land disputes;
 - 4) Settlement of compensation and land compensation issues for development;
 - 5) Determination of the subject and object of land redistribution and compensation for maximum excess land and absentee land;
 - 6) Determination and resolution of ulayat land issues;
 - 7) Utilization and settlement of vacant land;
 - 8) Granting permission to clear land;
 - 9) Regency/city land use planning.
- b. Other matters related to land.
 - 1) determination of the value of the object of land and building tax;
 - 2) building permit;
 - 3) business permit;
 - 4) investment-related nuisance laws;
 - 5) determination of the basic building coefficients and building floor coefficients;

6) ready-to-build environment and ready-to-build area (Law No. 4/1992 on Settlement Housing jo. Government Regulation No. 80/1999).

ArieSukantiHutagalung, and Markus Gunawan, Government Authority in the Field of Land Affairs, RajawaliPers, Jakarta, 2008, p. 172 Ibid, p. 176

In connection with the existence of management rights owned by the Batam Authority over all land on Batam Island, the authority of the Batam City Government which is held by the Land Service based on Presidential Decree Number 34 of 2003 concerning National Policy in the Land Sector in this case the location permit is not valid.

Based on the Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 2 of 1999 concerning Location Permits in Article 2 Paragraph (2) d, it is stated that a location permit is not required and is considered to be owned by the company concerned in the event that the land to be acquired comes from the authority or agency the organizer of the development of an area in accordance with the spatial plan of the development area. However, other authorities apart from granting the location permit can still be exercised by the Batam City Government.

Previously, the Batam Authority involved the Batam City Government in carrying out government and development tasks, now the Batam City Government has been mandated to involve the Batam Authority. In the preamble to Law Number 53 of 1999 it is also stated that the development of Batam Municipality cannot be separated from the existence of the Batam Authority as the manager of Batam Island industry.

Land problems that continue to occur in Batam City are like tangled threads that never end and are resolved, causing dissatisfaction in Batam society in particular. In the midst of the difficulty of access to adequate housing, while the need for housing is increasingly inevitable, finally a shortcut to establish a residence on State land that is not intended for settlement is the choice taken by some Batam people. This is supported by the weak supervision carried out by the Government, resulting in the emergence of illegal houses, without any effort to contain them.

Another problem that is developing at this time is the community's demand for certificates that cannot be pledged to the Bank, because it is located above a protected forest area and the slow issuance of community land certificates because there is no certainty about the status of the land.

Based on the Decree of the Chairman of the Batam Authority Number 003/UMKPTS/III/86 concerning Implementation Guidelines (JUKLAK) regarding the transfer of parts of the land area on Batam Island to third parties in Article 5 as follows:

"Beyond the industrial sector, some land areas on Batam Island can also be allocated for industrial development in particular and then the economy in general, by prioritizing businesses in the fields of services, housing, tourism, agriculture, animal husbandry, and fisheries (swamps)".

Markus Gunawan, Regional Government Authority in the Land Sector Based on Law Number 32 Year 2004 concerning Regional Government (Analysis of Land Authority Between Batam City Government and Batam Island Industrial Development Authority), Thesis, Faculty of Law, Master of Notary, Depok, 2007, p. 79.

Agus Setyadi Hadisusilo, Comparison of Law on the Acquisition of Land Rights for Foreigners in Indonesia, Especially on Batam Island with Foreigners in Malaysia, Thesis, Diponegoro University, Semarang, 2009, p. 171

This article states that the transfer of land area to a third party in this case a developer/developer engaged in housing and settlements may enter into an agreement with the Batam Authority. However, the problems that arise in the problems that occur in Batam City at this time are the regulations issued by the Batam Authority as the holder of management rights and the holder of power over Batam Island in the end not in line with the provisions in the Batam City National Land Agency (BPN) Office. This raises problems such as the number of green areas and forest areas that are in accordance with City/Region Spatial Planning which are violated by giving permits to third parties issued by the Batam Authority. So it is necessary to apply the KISS principle (Coordination, Integration, Synchronization and Simplification) between regulations issued by the Central Government carried out by the National Land Agency (BPN) of Batam City and regulations issued by the Batam Authority as the holder of management rights in carrying out their respective authorities where necessary. equate the mission that the main role of government institutions is to serve the interests of the people. Thus, whatever the role that is under their authority, each party must be oriented to facilitate and facilitate the public interest.

Regulations issued by the Batam Authority as the holder of management rights with the existing provisions at the Batam City National Land Agency (BPN) office are not in line, for example:

- a. The number of green areas that have been built by housing or shops by developers who have received permission from the Batam Authority so that the Regional Spatial Plan determined by the Batam City Land Agency is violated, because green areas actually cannot be used or given to developers to build.
- b. The forest area which the Batam Authority gives to developers for protected forest is regulated in the Presidential Decree of the Republic of Indonesia Number 23 of 1990 that in the framework of the policy of developing a pattern of housing construction, which was originally a forest area. The Batam Authority does not pay attention to what problems will arise due to the misuse of its authority in making decisions to allocate land in Batam City. Regarding the management of the space, it is necessary to establish a protected area that provides direction for legal entities and individuals in planning and implementing development.

What happened was that in 2006 housing certificates owned by the community could still be applied for and accepted by the Bank, but conditions began to change in August 2008. There are about 200 hectares of residential land in Batam which turns out to be protected forest areas. More ironically, the developer did not know that the land under cultivation was located in a protected forest area, so this problem was revealed later. This is what causes chaos where the community and developers feel disadvantaged because there is no legal certainty regarding the clarity of land status. So it is only natural that land disputes are still developing and widespread in the community due to the

absence of evidence of rights to ownership of the land and/or it is considered difficult for the community to go through the process to obtain this evidence.

The demands of the community include:

- a. Asking the Batam City National Land Agency to immediately change the certificate from building use rights to property rights.
- b. Requesting the relevant agencies to immediately follow up on the status of the land which has been said to be a tourism forest or protected forest, so that it is immediately legalized as land according to its designation without any overlapping regulations.
- c. Requesting the Batam City National Land Agency to immediately determine the status of the certificate held properly, in this case, can be pledged as collateral to the bank.

75http://www.tribunbatam.co.id/index.php?option=com_content&task=view&id=37457&Itemid=1054, accessed on 5 September 2020, 22:10 WIB Ibid.

The purpose of law is not only justice, but also certainty and expediency. Fulfillment of justice in a statutory regulation is not enough because it still requires legal certainty requirements. Legal certainty will be achieved if a regulation is clearly formulated, so that it does not lead to different interpretations overlapping between existing regulations, both vertically and horizontally. Realizing a good legal system will be a difficult thing if the substance of the rules that underlie it there are confusion due to the lack of synchronization of existing rules.

The regulation of land use on Batam Island and the surrounding islands occurs dualism, namely that which is carried out by the Batam Authority based on the granting of Management Rights which in its provisions gives the authority to plan the designation and use of the land, and is also carried out by the Batam City Government based on City Regional Regulations. Batam Number 20 of 2001 in conjunction with Number 2 of 2004, despite the fact that the regulation on land use has not been fully implemented in the field in accordance with the RTRW of Batam City, both by the government and by the community. And also the absence of synchronization of regulations and data between the Batam Authority and the Batam City Forestry Department regarding the status of land on the island of Batam. So that the problem of overlapping due to the authority of each Batam City government agency continues to this day.

As in Article 21 Paragraph (1) of Law Number 53 of 1999 concerning the Establishment of Batam City, which states that with the formation of Batam City as an Autonomous Region, the Batam City Government in the administration of government and development in its area includes the Batam Authority, for that it is necessary to regulate a working relationship between the Batam City Government and the Batam Authority with government regulations to avoid overlapping in the administration and development of Batam City. The working relationship is regulated no later than one year or 12 (twelve) months after the inauguration of Batam City as an autonomous region. During the process of waiting for the government regulation, there were often frictions and clashes in the field in applying the authority of each institution. Tension after tension

arose between the Batam City Government and the Batam Authority, but the government regulations governing working relations remained unpublished.

¹*Ibid.*

Two regional management institutions that are at odds with each other to confuse investors/developers, are willing to cooperate through a memorandum of understanding regarding the rights and authorities of the Batam city government and the Batam Authority Agency. The functions and powers of these two institutions overlap with each other after regional autonomy was enacted. The Batam Authority Agency is not willing to relinquish its authority while the local government of Batam city insists that it has the right and authority to manage Batam. The Central Government itself has not yet issued a law or government regulation that regulates the duties and authorities of the Batam Authority Agency and the Batam local government in managing this area. Therefore, the MOU between the Batam local government and the Batam Authority is seen as an important breakthrough, which regulates land, licensing, infrastructure, community services, tourism and so on.

This overlapping issue cannot be resolved directly because there must be a law that regulates the working relationship between the Batam city government and the Batam Authority Agency. But so far there is no such law. So as long as laws or government regulations have not been issued, the working relationship between the two institutions will not be perfect, even though there is an MOU, it will be more perfect if there are regulations from the central government. Because there is no guarantee of legal certainty and protection, there will be symptoms of control and exploitation of land parcels by certain parties that are not in accordance with legal provisions, such as occupation or claiming of a plot of land by a person/group of people who are not necessarily entitled to the right to land. the land in question, illegal occupations and overlapping rights and allotment of land rights.

¹ Arie Sukanti Hutagalung, dan Markus Gunawan, *Op.Cit.*, hlm. 190

4. Conclusion

Land problems in Batam City are like tangled threads that never end and are resolved, causing dissatisfaction in the people of Batam City. In the midst of the difficulty of access to adequate housing, while the need for housing is increasingly inevitable, finally a shortcut to establish a residence on State land that is not intended for settlement is the choice taken by some Batam people. This is supported by the weak supervision carried out by the Government, resulting in the emergence of illegal houses, without any effort to contain them. The development of population and the expansion of residential land has created a dispute over authority between the Concession Agency and the Batam City Government, particularly regarding the expansion and registration of community land rights in conflict with the authorities/investors. Disputes arise due to dualism of authority and differences in perception of regulations. The Concession Board is of the opinion that based on Government Regulation Number 46 of 2007, Presidential Decree Number 41 of 1973, and Decree of the Minister of Home Affairs Number 43 of 1977 concerning Management and Use of Land in the Industrial Area of Batam Island, as well

as Government Regulation Number 6 of 2011 concerning Financial Management in The Batam Free Trade Area and Free Port Concession Agency has given authority (rights) to the Batam Authority (now the Concession Agency) including to levy the UWTO on the land applied for by the applicant for the use of land reclamation on Batam Island.

Likewise, Law Number 36 Year 2000 stipulates that the provision of fiscal incentives can only be carried out in free trade areas and free ports which can only be carried out by the Concession Agency. Thus, to obtain these rights, the land resulting from the reclamation of the coast on Batam Island is a management right on the land of the Concession Agency which is included in the working area of the Batam Authority Agency.

Based on the results of the study above, the problem of land registration and land distribution in Batam City is something that needs to be considered more seriously by the central and regional government of Batam city itself. Therefore, the author will put forward some suggestions, namely:

- a. there must be harmonization of laws and regulations (in this case a regional regulation) that regulates land issues in Batam City with regulations issued by the Batam authority
- b. there must be socialization of land registration procedures to the public carried out by the Batam City government and the Batam City National Land Agency so that people know the procedures and procedures for land registration in Batam City
- c. There must be a limit for people who want to own land in Batam City so that there is no overlapping ownership rights in the community.

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