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LEGAL PROTECTION FOR INDIGENOUS PEOPLE IN LAND DISPUTE WITH CORPORATION

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ABSTRACT:

Some factors are the cause of lacking existence of the land of indigenous people, which is the poor implementation of government regulation that aims to protect the rights of indigenous people or *adat* law community. The approaches employed in this study were three kinds, which are statute approach, conceptual approach, and case approach. The objective of this study is to find out, decipher and analyze the existence of indigenous people in government law and the dispute resolution of *adat* land of Samin community after the enactment of Supreme Court Decision No.99 PK/TUN/2016. Since the result of this study was based on Supreme Court Decision MA No.99 PK/TUN/2016, the rights of indigenous people are still protected. The judges protect the right of indigenous people by terminating the Decree of Central Java Governor Number 660.1/17 Year 2012. For the purpose of land registration, sale/purchase transaction of land ownership evidenced with Letter C Citation can be verified with a deed made by the authorized PPAT (land-deed official).

INTRODUCTION

Indonesia is a country with a diverse variety of culture, which makes it unique for the richness of the culture. One of the factors that makes Indonesia viewed as such was the presence of indigenous people which many people identify as *masyarakat adat*. In Indonesia, indigenous people always maintains a good relationship with other indigenous people in other regions, even with the natural

resources they possess that are deemed to have a historical and spiritual relationship with the people.

The term of indigenous people or *adat* law was first introduced by Cornelius Van Vollenhoven. Ter Haar as the disciple of Cornelius Van Vollenhoven further explored about *adat* law community. Ter Haar defines *adat* law community as such, “*Adat* law community is a group of people who regularly settle in a certain area, have their own power, and have their own wealth in the form of tangible and intangible objects, where members of the unit each experience life in society as a natural thing according to nature nature and none of the members has a mind or has a tendency to break bonds.” (Alting, 2010).

According to Soepomo, Cornelius Van Vollenhoven in his oration on 2 October 1901 stated that “That in order to know the law, it is especially important to investigate at the time and when and in which regions the nature and composition of the legal fellowship bodies where the persons controlled by the law live daily (Setiady, 2008)”. Referring to that line of argumentation, Soepomo gave his personal opinion that: “The description of the fellowship bodies must not be based on something dogmatic, but must be based on the real life of the community concerned (Soekanto, 2015).” What is meant by growing or leaving is to break free from the bond forever.

According to Law No. 39/1999 concerning human rights, protection is a form of defense of human rights. Because every human has the same rights and obligations, that means everyone is entitled to have the right to protection (Prakoso and Setyaningati, 2018). According to Fifik Wirayani, the right of *adat* law community is “an economic, social, cultural right protected by international covenant on human rights,” (Wirayani, 2009); hence, the rights of *adat* law community must be protected by the prevailing regulations in Indonesia.

The objective of this study is to analyze the verification of sale/purchase transaction of land ownership evidenced with Letter C Citation made by PPAT AND examine the land registration evidenced with Letter C Citation in systematic land registration.

This study is expected to gain some knowledge on the verification of sale/purchase of land ownership evidenced with Letter C Citation as well as legal remedies that can be attempted by the land buyer with Letter C Citation so that he can get the land certificate.

RESEARCH METHOD

This study is legal study. Legal study is a process of finding legal rules, legal principles, and legal doctrines in order to address the legal issues at hand. This study is a normative legal study, which is the validity of the sale and purchase of land ownership that is evidenced with Letter C Citation (Marzuki, 2010). The primary legal sources in this study were the 1945 Constitution, Law No. 5 of 1960 concerning Basic Agrarian Principles, Government Regulation No. 24 of 1997 concerning Land Registration, Regulation of the Minister of Agrarian

Affairs / Head of the National Land Agency No. 3 of 1997 concerning Provisions for Implementing Government Regulation No. 24 of 1997 concerning Land Registration..

Verification of The Sale/Purchase of Land with Rights to Ownership Evidenced with Letter C Citation

In the case of sale/purchase transaction of land ownership evidenced with Letter C Citation that happened before the enactment of Government Law No .24/1997, the land buyer who intends to register the land he bought to district/city land office does not have to prove with deed made by the authorized PPAT (land-deed official). In other words, the sale/purchase transaction can be verified with private deed made by the local chief of village. On the other hand, if the transaction occurred after the enforcement of Government Law No.24 Year 1997 and the buyer intends to register the land he bought to district/city land office, the registration must be verified authorized by PPAT, as stipulated in Article 37 section (1) Government Regulation Number 24 Year 1997 (Urip Santoso, 2019). Article 37 section (1) of Government Regulation Number 24 Year 1997 stipulates that, “A transfer of a land right or an apartment ownership right resulting from a sale/purchase transaction, from an exchange, from a grant, from incorporation into a company, or from any other legal act effecting such a transfer with the exception of an auction can be registered only if it is evidenced with a deed made by the authorized PPAT in line with the applicable regulations.”.

According to Article 37 section (1) Government Regulation Number 24 Year 1997, sale/purchase transaction of land ownership right can be registered to district/city land office if it is evidenced with a deed made by the authorized PPAT. For the making of the deed of sale/purchase transaction of land right, the land right that is the object of the transaction must have a map of land parcel and land identification number (NIB) issued by the district/city land office. The land with right to ownership that is not evidenced with Letter C Citation without a map of land parcel and NIB cannot be issued of a deed made by the authorized PPAT.

According to Article 39 of Government Regulation Number 24 Year 1997 on Land Registration, PPAT can make a sale/purchase deed of the land right although there is no map of land parcel and NIB of the land that is the object of the transaction. Nevertheless, in land sale/purchase deed are the columns for map of land parcel and NIB, which means that the map of land parcel and NIB are required in the making of land sale/purchase deed as also stipulated in Regulation of the Minister of Agrarian Affairs/Head of National Land Agency No. 3 of 1997.

The deed of sale/purchase transaction of land right evidenced with Letter C Citation is not made by the chief of village, and instead, there is PPJB (sale and purchase commitment agreement) and SKB (letter of authorization to sell) by a notary.. The definition of PPJB as stated by R. Subekti is the agreement between seller and buyer before a sale/purchase transaction is carried out since there are

some conditions to be fulfilled for the transaction; for example, the deed is not made yet and ongoing or the full payment is not yet made (Subekti, 1987).

Bulk Land Registration of Land Signed Evidence of Citation Register Leter C

The definition of land registration in Article 1 Section 1 Government Regulation Number 24 Year 1997 as “a series of activities conducted by the Government on an ongoing basis and in an orderly manner which comprise the collection, processing, recording, presentation, and maintenance of physical and juridical data in the form of maps and registers concerning land parcels and apartments, including the issuance of right-evidencing documents for land parcels on which rights have been established and for apartment ownership rights as well as for the encumbrances thereon.”

Government Regulation Number 24 Year 1997 regulates 2 (two) forms of land registration, which are systematic and sporadic land registration. According to Article 1 Section 10 Government Regulation Number 24 Year 1997, systematic land registration is the activity of first-time land registration which is conducted simultaneously and which covers all unregistered land-registration objects existing in all or part of the territory of a village. On the other hand, sporadic land registration, based on Article 1 Section 11 Government Regulation Number 24 Year 1997, is the activity of first-time land registration which is conducted on one land-registration object or more in the territory of a village/kelurahan or in part thereof, either on an individual basis or on a mass basis.

Sporadic land registration is carried out by the head of district/city land office assisted by committee A. The role of committee A in sporadic land registration is to assist the head of district/city land office to carry out juridical data research and determination of boundaries of land parcel requested to be registered (certified) (Urip Santoso, 2019). Based on its initiative, sporadic land registration is requested by interested parties in land registration. The interested parties in land registration are: a. Land owner; b. Heir; c. Mortgage holder; d. The person who controls the land

The sporadic land registration can be done on individual or mass basis, that is, a person or group of people collectively takes the initiative to register the controlled land to the district/city land office. If sporadic land registration is on mass basis, a group of people who collectively register the land is represented by the coordinator who registers the land to the district/city land office. In sporadic land registration, there is no legal counsel regarding the importance of certificate/deed of land rights as proof of rights by the district/city land office. The involved parties on their own awareness register the land to the district/city land office because they feel the importance of land right deed/certificate as proof of rights.

There is no difference in sporadic land registration of land evidenced with Letter C Citations in terms of the procedure, for both individual and mass. What

differentiates the two is the official who signs the certificate/deed. In sporadic land registration that is on individual basis, the certificate is signed by the head of district / city land office, whereas in sporadic land registration on mass basis, the certificate is signed by the head of the land rights Section and land registration on behalf of the district/city land office.

CONCLUSION

For the purpose of land registration, sale/purchase transaction of land ownership evidenced with Letter C Citation can be verified with a deed by the authorized PPAT. PPAT official may turn down deed if the land with the status of right to ownership does not yet have NIB (land identification number) as the result of land measurement. Nevertheless, in land sale/purchase deed are the columns for map of land parcel and NIB, which means the map of land parcel and NIB of the land ownership that is the sale/purchase object are prerequisite in the making of land deed as also stipulated in government law. If the land with the status of right to ownership has no NIB, the ownership can be verified with PPJB (sale purchase commitment agreement) made by a notary.

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