

The Legal Impact of Communal Land Registration For The Indigenous People of Lombok West Nusa Tenggara

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Abstract. The regulation of Minister of Agrarian and Spatial Planning Regulation No. 10 of 2016 arrange that customary law communities can submit applications for communal land determination to the Regional Head. The study was conducted using the Socio Legal method qualitatively. Based on research results in Lombok, West Nusa Tenggara is no longer known for customary rights because it has become a Village Land. Now there are indigenous peoples' communal lands that have been privately included in the National System for Complete Systematic Land Registration held by the government. The legal consequences of the registration of communal land in Lombok, West Nusa Tenggara, will give guarantee legal protection and legal certainty to land rights holders from conflicts between members of indigenous peoples regarding land tenure and certificates can be used as debt guarantees.

Keywords: registration, communal land, indigenous peoples, Lombok.

1 Introduction

Land in human life has a very important meaning, because it functions as a place to live for humans and a source of livelihood to make a living in meeting the basic needs of the family. Every person who controls a piece of land with land rights on it requires legal certainty on his land, including: (a) Legal certainty covered the subject of legal rights to land (person/legal entity); (b) Certainty covered the location, boundary, measure/size of land or certainty regarding the object of rights; (c) types/kinds of land rights, which form the basis of the legal relationship between land and people/legal entities. Judging from the aspect of legal categorization, the referred data can be classified in 3 (three) categories, namely concerning the subject of rights, the object of rights and the legal relationship between the object and the subject of that right. The granting of legal certainty regarding land rights is done by registering for the land.

Land registration includes measurement of land ownership and bookkeeping, the transfer of these rights and admit certificates of rights, registration of land rights, as the real evidence. Land registration is an obligation for the government and those who are entitled to the land. So that with the registration of land, right holders can easily prove the rights to the land under their control.

Indigenous people existed before Indonesian Republic was formed and its existences recognition regulated in Article 18 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, as a result of the first amendment, stating that “The State recognizes and respects the customary law community units along with their traditional rights as long as they are still alive and in accordance with the development of the community and the principles of the Unitary State of the Republic of Indonesia, which are regulated in the Law“. The provisions are strengthened by the provisions of Article 28 I paragraph (3) of the 1945 Constitution that ”Traditional cultural and community identities are respected in accordance with the development of time and civilization. Whereas the provisions of Article 3 of Land Law states that the implementation of customary rights and similar rights of peoples, as long as in reality they still exist, must be such that they are in accordance with national and state interests, which are based on national unity and may not be contrary to other laws and regulations that are higher. Thus based on the constitution of the 1945 Constitution of the Republic of Indonesia and the Land Law as the basis for national land law, the land rights of the indigenous people are recognized. Thus based on Article 3 of the Land Law, indigenous people can have land rights.

Minister of Agrarian and Spatial Planning Regulation No. 10 of 2016 in Article 5 paragraph (1) arranged that indigenous peoples can submit applications for the determination of communal rights over land to the Regent/Mayor or Governor. The request was submitted by the head of customary or community representative who is in a certain area.

2. Theoretical Framework

Research related to the registration of comunal land indigenous people will be analyzed with three components of the legal system by Lawrence M. Friedman consisting of components “structure, substance, and culture”. The structural components are the parts that move in a mechanism, for example in implementing a land registration policy. Substance components are actual results issued by the legal system and include unwritten legal norms. While the culture component is the values and attitudes that bind the legal system together and produce a form of law enforcement in the culture of society as a whole.

3. Problems and Objectives

From the background of the problems mentioned above, the scope of the main problems in this study are : (1) How is the registration of communal land of the indigenous people of Lombok, West Nusa Tenggara? (2) What are the legal consequences of the communal land registration of the indigenous people of Lombok, West Nusa Tenggara ?

4. Research Method

The study uses the constructivist paradigm with the Socio Legal method. According to Satjipto Rahardjo, that “with social science methods and theories about law to help researchers conduct analysis”. This study uses qualitative research methods which are expected to find hidden meanings behind objects and subjects to be studied [1]. According to Zamroni, a

qualitative research method approach is carried out to understand the law in the context of the community [2].

Data in this study were obtained through activities of observation, interviews, interpretation of documents and personal experience. According to Sanafiah Faisal [3], qualitative research methods, types and methods of observation are used as a type of observation that starts from the way of descriptive work, then observations focus and ultimately observations are selected. The researcher is the main instrument because the researcher himself directly participates in observing data collection. In-depth interviews are conducted with open-ended questions but may closed questions will be carried out, especially for informants who have a lot of information but there are obstacles in elaborating the information.

In addition to utilizing documentation and observation, data collection is mainly done through interviews with respondents. Data collection activities include, first looking for primary data and then secondary data. Secondary data is data that has been collected and systematized by other parties [4].

Techniques for finding primary data, conducted through interviews in a free/open or unstructured manner directly with the respondents encountered, were deemed important to provide data in this study. Although there are statistical data obtained through secondary data and integrated interviews, this research is more field research using a *verstehen* or hermeneutic approach. Based on interviews and observational findings, it is then discussed in depth both with the informants/respondents and with key informants [5].

5. Communal Land Rights Registration for Indigenous Peoples in Lombok West Nusa Tenggara

The indigenous people of Lombok, West Nusa Tenggara, the majority of the population is muslim. Influential figures are the village head and customary leader whose task is to lead all the traditional ceremonies carried out by the Lombok West Nusa Tenggara indigenous people.

The indigenous people of Lombok, West Nusa Tenggara depend their lives on agricultural produce from forests that have been planted for their basic needs. The government makes policies in the field of land in the customary law community. In this case *beschikingsrecht* with the right to control or use the land according to Van Vollenhoven that is functioning inside and out for the common good. In the life of indigenous peoples there are individual or individual rights to the land referred to in current regulations as communal land.

In the context of the tenure of customary land rights based on Land Law, it can be seen in Article 2 paragraph (4), which states that "The controlling right of the State can be empowered to *swantantra* areas and indigenous peoples, merely necessary and not in conflict with National interests, according to Government Regulations". Whereas Article 3 of the Land Law states that "... the exercise of customary rights and similar rights of indigenous and tribal peoples insofar as in reality they must still be such that they are in accordance with National and State interests, which are based on national unity and must not conflict with higher laws and regulations". In Article 22 paragraph (1) "Occurrence of ownership rights according to customary law is regulated by Government Regulations".

The communal land of the indigenous people of Lombok, West Nusa Tenggara, was privately attached to the National Complete Perfect Land Registration Program (or *Prona PTSL*) held by the government. The communal land rights are non-transferable (*onvervreemdbaarheid*). The magical-religious value of the indigenous people of Lombok, West Nusa Tenggara, which makes the principle strongly applicable among them. However, even

though communal land has been in the name of an individual by a member of an indigenous community, the right-holder still must require the village head's permission to transfer his rights. In the customary environment of West Nusa Tenggara Lombok, the control of land rights is carried out by the customary head and the village head. Thus, the tenure of indigenous peoples' land rights in Lombok, West Nusa Tenggara, has been progressing with the individual community's communal land certification. This happens because of the times. Individual communal rights in the indigenous people in Ngadisari Village resulted in the loss of customary rights in Ngadisari Village because they had blended into 'tanah kas desa' (village government land). In the context of communal land registration in the adat community of Lombok, West Nusa Tenggara, it is held based on Government Regulation Number 24 of 1997 concerning Land Registration, which states that the object of Land Registration is (1) Plots of land that are owned with Ownership Rights, Business Use Rights, Building Use Rights and Use Rights, (2) Land Management Rights, (3) Waqaf Land; (4) Proprietary Rights in Flat Units; (5) Mortgage Rights (6) State Land.

Before the communal land of the indigenous people of Lombok in West Nusa Tenggara is certified, it is first carried out definitively according to adat and the communal land is divided before being registered. Then asked for a land certificate at the Ngadisari village office signed by the Village Head, so that there was an individualization process of individual communal land ownership rights by members of the Lombok West Nusa Tenggara indigenous community.

Communal land in the name of the person is registered by accommodating local wisdom in the form of a prohibition to sell the land to outside parties of the indigenous people of Lombok, West Nusa Tenggara. The manifestation of local wisdom in the registration of the land is the existence of an underhand agreement between the members of the Lombok Nusa Tenggara Barat indigenous community who will obtain a communal land certificate in his name with the Village Head and is known to Customary Head and witness.

The certification of the communal land of the indigenous people of Lombok, West Nusa Tenggara, into private property is held based on Minister of Home Affairs Regulation No.52 of 2014 and must be determined in advance by the Regional Head. Subsequently the communal land was registered in accordance with the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 10 of 2016. In this regulation, customary rights to land are known as communal rights to land, namely joint ownership of land. Certain areas are forest or plantation areas.

Determining communal rights over customary law community lands and communities in certain areas is also regulated. Article 5 paragraph (1) regulates that customary law communities or communities within a certain area submit applications for the determination of communal land for customary law communities to Regents/Mayors or Governors.

An application for the determination of the communal land of the indigenous people of Lombok, West Nusa Tenggara is submitted by the Customary Head within a certain area to the Regional Head by completing the requirements including the history of the customary law community and the history of the land issued by the Ngadisari village office; photocopy of the traditional leader's identity card; a statement from the Village Head.

After receiving the request, the Regional Head forms a Land Acquisition, Ownership, Use and Utilization Inventory Team to determine the existence of the indigenous people of Lombok, West Nusa Tenggara.

The members of the Lombok Nusa Tenggara Barat indigenous community who wish to register their land must first make an application to the customary head and the village head to be registered or certified. Whereas the land registration process is carried out by the Land Agency with the release of communal rights based on a letter of customary release as the basis

for evidence of ownership rights of indigenous peoples. Relinquishment of adat as a condition of obtaining affirmation of rights/recognition of rights in the issuance of certificates of communal land rights on behalf of individuals, namely members of the Lombok Nusa Tenggara Barat indigenous people (interview with the General Section Head of the Lombok Land Agency).

During the process of relinquishing the customary rights, it was carried out in a customary manner by the customary leader in the presence of the village head and the land release letter was signed by the village head as a witness. After the traditional ceremony is completed, the land is registered through the National Land Registration Program with the letter of release of the land as a proof of rights accompanied by the documents needed, a declaration letter, a statement of physical mastery of the plot of land, a community identification card, family card and others (interview with Village Head).

Based on the research results of the process of registering land originating from customary land in the West Nusa Tenggara Lombok region carried out by the Lombok Land Agency referring to the provisions of the Minister of Agrarian Regulation/Head of the National Land Agency Number 3 of 1997 concerning the Implementation of Government Regulation Number 24 of 1997 about Land Registration. The registration of communal land for the indigenous people of Lombok, West Nusa Tenggara is done individually.

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Procedure for registering communal land for indigenous peoples of Lombok, West Nusa Tenggara individually, including :

1. The land owner submits the application for land registration to the Head of Lombok Land Agency by attaching a letter of waiver from the customary leader signed by the witness of the head of the village, a photocopy of the landowner's identity card that is still valid, the original history of the land to be registered (certified) issued by the village office, original statement of physical mastery of the plot of land, a photocopy of the Land and Building Tax Form of the last year the land to be registered.
2. Measurement of land parcels to be registered by the measuring officer of the district/city land agency whose working area covers the location of the relevant land. Measurements are made in the context of making a soil measuring image to be registered. Minutes of measurement of land parcels are signed by the applicant, the owner of the adjacent land, and the Village Head.
3. Juridical data collection and research on land parcels and determination of boundaries in the form of evidence documents is carried out by the Head of the Land Measurement and Registration Section at the Lombok Land Office.
4. Announcement of physical data and juridical data, and ratification. Physical data and juridical data of land parcels and maps of land parcels concerned are announced at the Lombok Land Agency and Village Hall for 60 (sixty) days. At the end of the announcement period, the local Village Head signs a letter introducing the announcement of physical and juridical.
5. Bookkeeping rights and certificate issuance by the Lombok Land Agency.

According to the author, in the Land Law, as a National Land Law, it does not regulate communal land of individual indigenous people but customary rights are regulated.

Communal land is not an object of land registration and indigenous peoples are not subject to land rights laws governed by the Land Law. Land Law only provides mechanisms for registering customary lands through conversion institutions, namely the adjustment of old land rights to land rights as stated in the Land Law, which are property rights, business rights, building rights, and use rights for Indonesian citizens and legal entities domiciled in Indonesia and according to Indonesian law. However, it should be understood that the mechanism of conversion of land rights means changing the relevant land entity, which was originally a customary land recognized as land rights in Article 3 of the Land Law to land rights as stipulated in the Land Law as long as it still exists. Thus, communal land is not one of the land rights regulated in the Land Law that can be registered.

6. Legal Impacts of Communal Land Registration for The Indigenous People of Lombok, West Nusa Tenggara

The communal land registration of the indigenous people of Lombok, West Nusa Tenggara, in accordance with article 9 of the Land Law, can guarantee legal certainty of land rights to the fullest if they meet the requirements, namely:

- a. Land Registration maps that are made prove the boundaries of the land parcels specified therein as legal boundaries. This requirement relates to the issue of Land Registry with the power of evidence.
- b. Public registrations held in the context of registering rights prove that the rights holders registered therein are legal rights holders.
- c. Each land title and its transfer are listed in a public register, so the lists provide a complete picture that matches the actual state of the land rights.

Land registration aims to provide legal certainty to holders of land rights. By registering customary land based on the applicable land policy will get a certificate of ownership and ownership of land in the form of a certificate of land rights which is a strong evidence for holders of land rights.

Land tenure as evidenced by written evidence can also be referred to as a basis for rights. The basis of rights is interpreted as evidence of legal jurisdiction over land. Based on the provisions of Government Regulation Number 24 of 1997 and Regulation of the State Minister of Agrarian/Head of National Land Agency Number 3 of 1997 Concerning the Implementation Provisions of Government Regulation Number 24 of 1997 Concerning Land Registration, the basis for such rights is in the form of strong evidence that guarantees legal certainty and legal protection for holders their rights are called land title certificates.

The legal consequences of registration of land rights as stipulated in Article 3 paragraph (1) of Government Regulation no. 24 of 1997, not only provides legal certainty guarantees, also provides legal protection to holders of land rights. The certificate of Communal Rights issued to the Lombok West Nusa Tenggara indigenous people is a form of recognition of the rights of indigenous peoples even though the certificate above is called one person. As a result of the communal rights of the indigenous people of Lombok, West Nusa Tenggara is certified, it will get legal certainty over land ownership. Land certificates can also be used as collateral for debts such as land rights as stipulated in the Land Law. Moreover, the certificate is in the name of the personal name of a member of an indigenous community with the status of ownership rights.

The status of the customary land of the indigenous people of Lombok, West Nusa Tenggara, which was originally the common right of indigenous peoples, became the property of individuals. According to Regulation of the State Minister of Agrarian/Head of National Land

Agency No. 10 of 2016, due to the law the granting of individual communal rights certificates can provide legal protection for customary law communities and can reduce conflicts between members of indigenous peoples and third parties.

According to the author, based on Article 16 of the Land Law on communal land it is not land rights regulated in the Indonesian Land Law. In the provisions of Article 9 Government Regulation number 24 of 1997, communal land is also not an object of land registration.

7. Conclusion

The control of the land rights of the indigenous people of Lombok, West Nusa Tenggara, by the Village Head and the Customary Head, however, many are now individually certified at the National Complete Perfect Land Registration Program held by the government. The communal land rights are non-transferable (*onvervreemdbaarheid*). The magical-religious value of the indigenous people of Lombok in West Nusa Tenggara that makes the principle apply strongly between them. Even though the communal land has been named individually by members of the customary community, the holder of the right must still require the village head's permission to transfer his rights later. In the traditional environment of Lombok, West Nusa Tenggara, the control of his land rights is carried out by the customary head and the village head. Thus, the mastery of the land of the indigenous people of Lombok, West Nusa Tenggara, has experienced development with the existence of an individual communal land certification, this is due to the development of the times. Individual communal rights in the indigenous people of Lombok in West Nusa Tenggara result in the loss of customary rights because they have been mixed into village land.

The legal consequences of land registration not only guarantee legal certainty, but also provide legal protection to holders of land rights [6]. This also applies to the communal land certificate of members of the Lombok West Nusa Tenggara indigenous community. Due to the legal rights of the indigenous people of Lombok, West Nusa Tenggara is registered as a communal land of individual members of the indigenous people of Lombok, West Nusa Tenggara, the land can be used as collateral for debt, such as land rights as stipulated in the Land Law.

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