

The Policy on the Expansion of Working Area of Land Deed Officials in the Region of Aceh

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ABSTRACT: This research which study about the policy on the expansion of working area of land deed officials in the region of Aceh explains about the concept of legal certainty on the land objects made by land deed officials (PPAT) outside their domicile. The approach applied in this research is the approach or legal research methods of juridical normative or library research by identifying and analyzing the principles, theories, legal concepts that is implicitly mentioned in policies issued by the government, especially regarding the policy on the expansion of working area of land deed officials in the region of Aceh, by collecting secondary data for further use as a media analysis based on purposive sampling techniques, the discussion of research object is conducted based on certain approach. The results of this research indicate that the basic value of legal certainty in its practice today is not attached to PP No. 24 of 2016, particularly in Article 12 paragraph (1) concerning the working area of PPAT. The basic value of legal expediency is a value that determines whether the law has worked effectively or not in the community. Contrary to the theory of basic values of law expressed by the thinker from the iron curtain country, Gustav Radbruch who said that "The essence of the theory of basic legal values (*fundamental value of the law theory*) is that there is a value of certainty and legal expediency as objective or direction to be achieved or to be reached". This study applies a descriptive analysis type, by collecting secondary data in the form of theory and concept collected from books, literature, legislation, journals, and other scientific works. These data will then be used as knife of analysis in conducting research, by analyzing the data that have been collected to be examined with the object of study carried out with a particular consideration, namely the policy on the Expansion of Working Area of land deed officials in the region of Aceh

Keyword: Land Certificate, Legal Certainty, PPAT, Working area

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I. INTRODUCTION

PPAT acts as a public official determined by BPN with the main duties and functions as well as the authority to carry out public services in specific fields. The legal basis governing PPAT in detail is contained in the provisions in the form of PP No. 24 of 2016 concerning the regulation of the position of PPAT.

Main duties and functions as well as authority of PPAT are stipulated in Article 2 of Perka BPN No. 1 of 2006, as follows:

1. Main duties and functions of PPAT are to carry out part of the land registration activities by making a certificate as the evidence that certain legal action has been carried out regarding land rights or right of ownership of flats or apartment units that will be used as a basis for registering the changes of land registration data resulting from that legal action.

2. The legal action consists of sale and purchase; barter; grant (hibah); merger; collective rights; the granting of right to use building (HGB) / the right to use (HP) on land of the right of ownership; granting of the mortgage right; the granting of power of attorney to provide mortgage right.

Land deed officials (PPAT) have an important role related to their task of carrying out some of the land registration actions. Thus, the accuracy and correctness of the information contained in the deed that they compiled certainly guarantee the granting of protection for people's land rights. As a result, in addition to being responsible for the certainty and correctness of the contents of the deed, PPAT also requires to submit the deed and other documents (warkah) to the land office within 7 days of signing the deed.¹

Working area of PPAT is the same working area with Land Office of the regency/municipality of level II region. In accordance with the mandate of this provision, jurisdiction of PPAT is in the regency / city area. This provision was revised and declared no longer valid, according to the mandate of Article 12 paragraph (1)

¹Mohd. Yamien Lubies, *Land Registration*, Raja Grafindo Persada, Jakarta, 2011, p. 153.

government regulation (PP) Number 24 of 2016 which stipulates that the jurisdiction of PPAT consists of I provincial area.

Registration is an official record of property ownership. Land Registration in Nusantara region is carried out by the National Land Agency (BPN), including registering property ownership in the Land Register, which is the official ownership register for property.

Many people assume that all properties are listed but there are various reasons why that is not the problem. The main reason for unregistered property is because there have been no transactions such as sale or mortgage on that property since registration became mandatory in its territory. Thus, some people might live on unregistered property, if they haven't moved from their house (or mortgaged their current house again).

Property registration as a whole will provide various kinds of advantages, some of them as formulated as follows:

1. The process of the transfer on land rights make it easier to buy and to sell the property;
2. providing the evidence of ownership; and
3. Helping to protect the property from fraud

Comprehensive registration makes sale and purchase of the house become simple, it is because of the factor such as all information that is needed for the delivery will be in one place. It means that it is easier to check who owns the property and there is more transparency about who owns what.

Comprehensive list will make the delivery simpler, faster and cheaper because all necessary information will be at the Land Registration Offices (BPN) that are online or in the network and are available to be seen by everyone. If the land is not registered, then the land registration officer must obtain the deed from the client or mortgage lender and inspect it, all of which requires time and money. There will always be several plots of land in which the owner is difficult to identify, that is why land registration aims to achieve "comprehensive" registration rather than "total".

In the middle of 2016, the Government officially issued PP Number 24 of 2016 replacing the previous regulation, however it is not abolished, it is only amended and added. There are some substances that have been changed, one of which is the expansion of working area of PPAT. PPAT has a domicile in the Regency / City in the Province which is part of its jurisdiction.

However, in its practice, PP Number 24 of 2016 does not apply effectively, especially in terms of the scope of working area of PPAT. The proof is that working area of PPAT that should be in province, but until now the regulation cannot be used. Thus, it still now refers to the previous regulation namely PP No. 37 of 1998 which explains that the jurisdiction of PPAT is only limited to regency / municipality.

The temporary impact due to the stipulation of PP No. 24 of 2016 has caused pros and cons among PPAT regarding the substance of working area of PPAT namely, a livelihood for PPAT as this jurisdiction expands. On the other hand, for PPAT which is still "new", that will even narrow the chance to seize opportunities by the increasing mobility of "old" PPAT with their clients and cronies. Regarding the recent issuance of PP No. 24 of 2016, it is seen that there are various kinds of problems will be found in the implementation and application process of this provision, especially in Serambi Mekkah (Aceh). By the existence of the aforementioned problems, thus the researcher considers this interesting to be researched, by taking the title, "the Policy on the Expansion of Working Area of land deed officials in the region of Aceh"

II. RESEARCH METHOD

This study applies a type of juridical-normative research, by collecting secondary data in the form of theories and concepts that are collected from books, literature, legislation, journals, and other scientific works. These data will then be used as a knife of analysis in conducting research, based on a purposive sampling approach, namely the analysis of the object of study is carried out with a particular consideration that is the policy on the Expansion of Working Area of land deed officials in the region of Aceh. Identifying and analyzing the principles, theories, legal concepts that is implicitly mentioned in policies issued by the government, especially regarding the policy on the expansion of working area of land deed officials in the region of Aceh, by collecting the secondary data.

III. DISCUSSION

I. The legal certainty on Land Objects made by Land Deed Officials (PPAT) outside Their Domicile.

"Certainty", etymologically (grammar) comes from English namely "certain" which means definite, or "certainty". In legal references, related to the term of legal certainty, it is often used with the term "certainty law". *Certainty is something that certain: a fact about there is no doubt.*² Hans Kelsen argued that there must be the aspect of "should" or *das sollen* so that the Regulations that is made must be absolutely clear and if it has been

²Hasan Saadyli, *An English-Indonesian Dictionary*, Pustaka Gramed, Depok, 2007, p. 103.

approved by the government then the regulation should be able to be applied in practice as it should, because it is included in legal certainty.³

Based on the findings obtained during the research period, the initial priority of land registration is to register each land with rights of ownership that can be used for housing and development in areas that need the greatest housing in 2020. This will make it easy to identify where there may be extra land of the right of ownership that can be available for housing development.

Even though the initial focus is to register all of the community-owned land in order to encourage housing development, we have a long-term goal. After achieving comprehensive land registration, this will make the construction of house and the purchase of house simpler, less time consuming, and affordable cost for all levels of society.

The way to achieve comprehensive land registration is actually not an easy matter at all. However, our digital team, Data, and Technology still continue to explore in the lab on how the land registration functions in the future. A device that creates pilot digital register for a small number of properties that is fully machine-readable and can be updated instantly. By using the sophisticated technology and by making the most important information for citizens and companies which is increasingly available, this technology conceptualizes how people can buy, rent, sell, finance, build and manage the property easily.

Bogor Declaration that was issued in Bogor, in 1996, with the main objective of this declaration was to outline the options that would be used to improve the registration system, especially in Asia and Pacific region. The experts at the meeting agreed that for the success of the registration system, adjudication, the land transfer and mutation surveys must be carried out in an efficient, safe and cost-effective manner, in supporting the formal land market. However, Bogor Declaration recognizes that even after the registration system is introduced, transactions can become unsafe if the rights on land are not handled adequately. Therefore, the possibility of the need to bridge the right gap will be implemented by "Western" based registration systems in developing countries and the rights that is owned and operated by people in communal or informal environments.

Because there are still informal and communal rights in developing countries, Bogor Declaration recognizes the need for "re-engineering" efforts in several countries. Among other factors, the "re-engineering" process is necessary to be carried out in order to clearly identify the limitation and what obligations that is related to every land package, and how information can be accessed by people.

Bogor Declaration also highlights informal aspects of land tenure, such as illegal resident on public or private land, occupation of land in the form of slum area and establishing communal land rights. Thus, apart from proposals on how to improve technical, legal, and organizational aspects, the "reengineering" process may not be effective if the informal-tenure aspect is not handled properly enough.

Regarding communal tenure, it can change differently when it is influenced by different land registration systems. The development of land registration system that is more appropriate for communal land tenure. In most other developing countries, the implementation of the formal land registration system is struggling and most people continue to get the access to resources through communal ownership.

According to current statistics, there is only about thirty percent of land in developing countries that is officially registered. Therefore, most of the people cannot obtain the benefit from the possibility of land registration.

Evaluation has also been carried out to find out about how and why the land registration system fulfills the proposed economic objectives. In most cases, land registration, especially individual registration, is promoted as a tool to increase economic growth and development. In certain circumstances, the land administration system is seen as a tool to facilitate an efficient land market and effective land use that can lead to sustainable development.

By considering that the majority of people in developing countries live in extreme poverty, then there is great interest in the international community to develop an appropriate registration system that might enable the poor to obtain some of the benefits of registration that are declared.

The principle of *lex posterior derogate legi priori* teaches that new regulations can replace old ones. However, this is not in accordance with that theory, because in fact, Government Regulation (PP) Number 37 of 1998 especially in Article 12 paragraph (1) concerning the working area of PPAT is currently still in use. The Government Regulation Number 24 of 2016 cannot be implemented as it should.

In accordance with the principle of *lex posterior derogate legi priori* that the Government Regulation Number 24 of 2016 cannot be implemented until now, so that inevitably the Government Regulation Number 24 of 2016 cannot be used and we still continue to use the Government Regulation Number 37 of 1998 and indeed with the occurrence of these conditions, the legal uncertainty also become questionable.

³Joeniarsoe Riedwan, *The policy on Public service*, Bina Cipta, Jakarta, 2008, p.138.

On the contrary, in its practice, Government Regulation Number 37 of 1998 is bound and applies within the community, even though Government Regulation Number 37 of 1998 has been revoked and replaced with Government Regulation Number 24 of 2016. However, on the contrary, the previous regulation is actually applied and is binding on the community so that the scope of the working area of PPAT was limited to the regency only.

The consequences that occur due to inefficiency of the Government Regulation Number 24 of 2016 occur in the scope of the community as well as in the PPAT itself, which means that the community does not get legal certainty that should be based on the theory of basic legal Values explained by Gustav which stated that legal certainty is included in the principles of the state of law.

The consequences arising from the Government Regulation Number 24 of 2016 are indeed big but if there are clients who currently try to process the sale and purchase of land by forcing a notary and PPAT to apply Article 12 Paragraph (1) of the Government Regulation Number 24 of 2016 then the PPAT can reject it, because it cannot yet be applied in practice. For PPAT who do the rejection of such matter, they cannot be subject to sanctions because there is no explanation regarding the imposition of sanctions against PPAT that rejects the client.

The cause of inefficiency of Article 12 paragraph (1) of the Government Regulation Number 24 of 2016 concerning the scope of the working area of PPAT because there may be some factors, according to the Notary Erlina that the cause of the inefficiency of Article 12 paragraph (1) is because maybe the government was too rushed in making the contents contained in the article and maybe it is also because there was no experts and PPAT that were involved at the time of making the regulation. Thus, they did not expect that Article 12 paragraph (1) turned out to be very difficult to implement because the online system (in the network/online) from the office of BPN itself had not been able to implement the working area of PPAT into one province.

Likewise with all notary public and PPAT, they also felt significant benefits from the inefficiency of Government Regulation Number 24 of 2016, especially in Article 12 paragraph (1) concerning the working area of PPAT because they should be able to increase their profits due to the existence of Government Regulation Number 24 of 2016, all notary public and PPAT should be able to get customers who are in the area close to the residence of the notary public and PPAT office, because most complaints from the community state that they become inconvenience with the Government Regulation Number 37 of 1998.

The reason is due to limitations in the working area of notary public and PPAT which is only limited to the regency. However, by the existence of the Government Regulation Number 24 of 2016 especially in the working area of PPAT which is expanded into one province, the community will be facilitated to carry out the process of sale and purchase of land and others without having to go to the area closest to the location of the land that is wanted to be processed, because the distance of working area has been expanded into one province. The cause of occurrence of the inefficient Government Regulation Number 24 of 2016 has resulted in several impacts and consequences that will be felt by the community as well as the notary public and PPAT.

The Government Regulation Number 24 of 2016 is difficult to apply directly in practice, because by applying the Government Regulation Number 24 of 2016 then BPN which was originally divided into several sections will become just one BPN because the scope of its territory has been expanded to become one province so that it is very impossible for BPN to apply this system currently.

Thus, an evaluation has also been carried out to find out how much the system which is succeeded or failed in fulfilling some of the benefits of registration, which included:

1. Improving the access to credit,
2. The development of the land market and
3. Increasing agricultural productivity.

However, in its current practice, the basic value of legal certainty is not attached to the government regulation (PP) especially in Article 12 paragraph (1) concerning the jurisdiction of PPAT. The basic value of legal expediency is a value that determines whether the law has worked effectively or not in a social community.⁴

The factors that cause the mandate of government regulation (PP) No. 24 of 2016 concerning the Expansion of Working Areas of PPAT have not yet been carried out those are, this Government Regulation can later be applied in the community environment but before it is implemented, the trials should have been carried out before the implementation, whether the expansion of the working area into one province can be applied directly, not like what we face today where the government certainly have not conducted the trials in the field directly for this policy, even though the government has already approved and issued the policy related to Article 12 paragraph (1).

⁴*Ibid*, p. 138.

The consequences that occur due to the inefficiency of government regulation Number 24 of 2016 that is mentioned above occurs in the scope of the community as well as in the PPAT itself, which is felt directly by the community because the potency of insecurity of interests and legal certainty, in carrying out land registration activities.

Such practice is also contrary to the value of law theory initiated by Gustav Radbruch, in which the theory contains the values of certainty and expediency. Certainty itself is the certainty of the implementation of laws or regulations in its practice and may not cause doubt and reason, so that it is transformed into a system of principles that do not clash with each other, eventually leading to deviations of norms.⁵

Implementation or application of the concept of *rechtsstaat* or rule of law theory that is ideal can be realized, only if the positive law of the Republic of Indonesia has guaranteed legal certainty for its people. That point deserves to be the requirement that is causal or interrelated between one another.

IV. CONCLUSION

The basic value of legal certainty in its current practice is not attached to PP Number 24 of 2016, especially in Article 12 paragraph (1) concerning the working area of PPAT. The basic value of legal expediency is a value that determines whether the law has been working effectively in society or not.

Contrary to the theory of basic values of law expressed by the scholar (thinker) from the iron curtain country, Gustav Radbruch, who said that “The essence of the theory of basic legal values (*fundamental value of the law theory*) is that there is a value of certainty and legal expediency as objective or direction to be achieved or to be reached”.

It is recommended to the government and related apparatus to pay attention to the principles, norms, principles of applicable law, for the realization of the legal objectives namely Certainty, Justice, and Legal expediency, because all legal provisions exist and apply in society for all these three expectations, considering that a legal rule must be in accordance with the social dynamics of society, not vice versa.

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