

Ownership Status of Land Rights from Reclamation Results by Foreign Legal Subject

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Abstract: *Rapid population growth that did not accompany by an increase of land area can lead to a big problem in a long term, such as high land prices. Hence reclamation need to be done so it can help people to have a land with affordable price. However, reclamation can't be done without following terms and conditions by the government. This writing made so we can know who is eligible to do the reclamation, what type of law subject can do reclamation. The writings use normative-juridical research approach and qualitative-juridical analysis method. By following all legal requirements person and entities law subject can do the reclamation, both local and foreign legal subject.*

Keywords: *land rights, reclamation, ownership, foreign, legal subject*

Abstrak: Pertumbuhan penduduk yang cepat yang tidak diiringi dengan peningkatan luas lahan dapat menimbulkan masalah besar dalam jangka panjang, seperti mahalnya harga tanah. Oleh karena itu reklamasi perlu dilakukan agar dapat membantu masyarakat untuk memiliki tanah dengan harga yang terjangkau. Namun, reklamasi tidak bisa dilakukan tanpa mengikuti syarat dan ketentuan dari pemerintah. Tulisan ini dibuat agar kita dapat mengetahui siapa saja yang berhak melakukan reklamasi, subjek hukum apa saja yang dapat melakukan reklamasi. Penulisan ini menggunakan pendekatan penelitian yuridis normatif dan metode analisis yuridis kualitatif. Dengan mengikuti semua persyaratan hukum subjek hukum orang dan badan dapat melakukan reklamasi, baik subjek hukum lokal maupun asing.

Kata Kunci: hak atas tanah, reklamasi, kepemilikan, asing, subjek hukum

Introduction

Land is a basic human need which is one of the primary needs to support human life itself. From the land, humans can build a place to live as a shelter, survive and continue their life. The state also realizes that land is a very important element in people's lives and needs special attention. Therefore, Article 33 paragraph (3) of the 1945 Constitution (UUD 45) stipulates that the earth, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. Land is so crucial for human life that the state must participate in regulating this in order to create prosperity for society.

Article 33 paragraph (3) of the 1945 Constitution regulates that the state is the party that controls the land, but not necessarily the state is also the party that owns or controls the land. To own or control land, people can apply for land rights to the state or the party that owns or controls the land. Regulations regarding land rights are regulated in Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA). Land rights consist of ownership rights, business use rights, building use rights, use rights, rental rights, land clearing rights, forest product rights and other rights. Each land right has different characteristics, such as the period for which the right is granted, the designation of the land, the subject of the land right and so on.

As the population continues to grow, the need for land also increases, while the amount of land available does not increase. The population in Indonesia in 1980 was

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approximately 147 million people, while in 2022 the population is estimated to have reached 275 million people. The significant increase in population combined with the amount of land that does not increase will cause land scarcity which ultimately results in high land prices far above what the community can afford. The scarcity of available land and the high price of land can threaten the level of welfare of people in the lower classes who have a decent place to live.

One of the way to overcome community problems regarding limited land is to carry out reclamation. Based on Article 1 number 23 of Law Number 1 of 2014 concerning Amendments to Law Number 27 of 2007 concerning Management of Coastal Areas and Small Islands (UU 1 of 2014), the definition of reclamation is an activity carried out by everyone in order to improve Land resources are viewed from an environmental and socio-economic perspective by backfilling, drying land or drainage. Basically, the aim of reclamation is to create new land, whether for residential, commercial, industrial and other purposes. From an urban planning perspective, reclamation can also be categorized as one of the steps for city expansion.

In Indonesia, reclamation has been carried out since the time of President Soeharto in 1995. This was confirmed by the enactment of Presidential Decree Number 52 of 19995 concerning North Coast Reclamation and Regional Regulation Number 8 of 1995. This plan was then continued by President Susilo Bambang Yudhoyono with the issuance of Presidential Regulation Number 122 of 2012 concerning reclamation in coastal areas and small islands. However, the long journey of efforts to develop the reclamation project stopped in the era of Governor Anies Baswedan with the revocation of the construction permit on 26 September 2018 based on verification by the Jakarta North Coast Reclamation Management Coordinating Board which was formed through Governor Regulation Number 58 of 2014. Of the plan, only 17 islands will be built. 4 islands which were finally completed.

Reclamation cannot be accomplished without careful planning, there are many provisions and stages that must be carried out first to be able to carry out reclamation. Examples of provisions include legal subjects who can carry out reclamation, individuals or corporations, then the citizenship status of these legal subjects, Indonesian citizens or foreign nationals who can carry out reclamation. Therefore, in this article we will discuss whether foreign legal subjects can carry out reclamation activities. Based on the above background, an article will be written on the issue of whether foreign legal subjects can carry out reclamation activities

Research Methods

This research uses a normative juridical approach method so that it focuses on finding answers to the core problem by collecting secondary data, analyzing the data and reaching conclusions based on data on the core problem. The secondary data that will be used in this research are mostly statutory regulations, including Law Number 1 of 2014, Government Regulation Number 16 of 2004, Government Regulation Number 18 of 2021 and others to get answers regarding the core problem. The analytical method used in this research is qualitative juridical with a legal syllogism analysis tool which is built deductively, namely from general to specific. This research will start by explaining what reclamation is and the rights related to reclamation, then examine more specifically the legal subjects who have the right to carry out reclamation.

Result and Discussion

Reclamation in coastal areas and small islands in Indonesia will be relatively increasingly needed in the future to meet space needs that arise due to economic growth

and rising sea levels¹. Before large-scale reclamation was carried out in 1995, in 1980 small-scale reclamation was carried out in Ambon, especially in the Mardika Beach area. Apart from that, there is also reclamation in the North Jakarta area, namely Ancol, Pluit and Pantai Indah Kapuk. In the 1980-1990 era, relatively much reclamation was recorded in various cities in Indonesia, including Manado, Makassar, Ternate, Surabaya, Tangerang and Denpasar². The first regulations governing reclamation at the level of law only existed in 2007, namely Law Number 27 of 2007 concerning Management of Coastal Areas and Small Islands which has now been amended by Law Number 1 of 2014 concerning Amendments to Law Number 27 2007 concerning Management of Coastal Areas and Small Islands. Before 2007 there were only regulations regarding certain reclamation activities such as Presidential Regulation Number 73 of 1995 concerning the Reclamation of Kapuk Naga Beach, Tangerang. Apart from that, there is Minister of Public Works Regulation Number 40/PRT/M/2007 concerning Guidelines for Spatial Planning for Coastal Reclamation Areas.

Reclamation must be carried out carefully because it can have a negative impact on the environment and life around it. For example, the reclamation of Serangan Island in the east of Denpasar City has become an issue due to significant environmental damage. The reclamation attack caused the waves to rise and turn to hit Pudut Island in Benoa Bay, so that Pudut Island became smaller due to abrasion³. Law Number 27 of 2007 emphasizes reclamation activities that pay attention to economic aspects, social aspects and environmental aspects. Article 34 of Law Number 27 of 2007 along with its implementing regulations in Article 30 of Presidential Regulation Number 122 of 2012 regulates that reclamation is obliged to maintain and pay attention:

1. Sustainability of people's lives and livelihoods;
To maintain sustainability and community livelihoods, reclamation must provide them with access to the coast, maintain livelihoods originating from marine and fisheries, provide compensation and empower affected communities;
2. Balance between the interests of utilization and the interests of preserving the function of the coastal environment and small islands;
To achieve this balance, reclamation must minimize impacts on oceanography, bathymetry, coastal balance, water quality and not degrade coastal ecosystems; And
3. Technical requirements for taking, dredging and stockpiling material in reclamation, namely:
 - a. Does not cause environmental pollution, damage ecosystems, mud explosions, mud waves, coastal disasters and destroy the sustainability of people's lives and livelihoods;
 - b. Using predominantly sand as soil material and does not contain dangerous and toxic materials;
 - c. Methods for collecting embankment material on land can be used:
 1. Blasting for rock materials; and/or
 2. Mechanical equipment for rock and soil materials
 - d. The method of dredging landfill material in waters is carried out using ships according to the type and density of the material; And
 - e. The material stockpiling method is carried out by:
 1. Transport the material by dump truck, pour it at the reclamation site, spread it with a bulldozer and level it with a grader, then compact it to the material source location on land;

¹ Iqbal Suhaemi Gultom, Puguh Wahyu Widodo, Untung, *Reklamasi di Indonesia*, Direktorat Jasa Kelautan, Direktorat Jenderal Pengelolaan Ruang Laut, Kementerian Kelautan dan Perikanan, 2019, 4

² Kalalo, FP, 2009, Implikasi Hukum Kebijakan Reklamasi Pantai dan Laut di Indonesia

³ I Gusti Agung Ayu Kade Galuh, Media Sosial Sebagai Gerakan Bali Tolak Reklamasi, *Jurnal Ilmu Komunikasi*, Volume 13, Nomor 1, Juni 2016, 75

2. Transporting the material by ship, spreading it by spraying layer by layer and compacting it to the source location of the material in the waters; And
3. Using sand bags and silt barricades to prevent pollution of the marine environment

Apart from that, Article 14 paragraph (1) of the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency Number 17 of 2016 concerning Land Management in Coastal Areas and Small Islands regulates the provisions for granting land rights to reclaimed land, namely:

1. Fulfill licensing requirements from the government and regional government;
2. Equipped with environmental documents from relevant government agencies;
3. The use and utilization is in accordance with the directions for its designation in the provincial or district/city spatial planning plan or the zoning plan for coastal areas and small islands;
4. Maintain the sustainability of the lives and livelihoods of fishermen and the community;
5. Maintain a balance between the interests of utilization and the interests of preserving the function of the coastal environment and small islands; And
6. Fulfill technical requirements for material retrieval, dredging and stockpiling.

The reclaimed land as referred to above includes artificial sea shores, artificial river banks, artificial lake shores and artificial islands. Artificial ecosystems are ecosystems created by humans. For example, rice fields, gardens, reservoirs and aquariums, the components that make up an ecosystem can be divided into two types, namely biotic components, namely parts of an ecosystem consisting of living things and abiotic components, namely parts of an ecosystem consisting of non-living things.

Reclamation cannot be carried out without finding out more about the status of the reclaimed land, and who the legal subjects can be the owners of the reclaimed land. Article 12 of Government Regulation Number 16 of 2004 concerning Land Use Management states that:

"Land originating from emergent land or the result of reclamation in coastal waters, tidal waters, swamps, lakes and former rivers is controlled directly by the state".

Then, based on the Explanation to Article 12 of Government Regulation Number 16 of 2004 concerning Land Use Management, it is stated that reclamation is the filling in of water areas in order to expand land space, the use and utilization of the land must be in accordance with the Regional Spatial Planning Plan. Article 1 number 1 Government Regulation Number 26 of 2008 concerning National Regional Spatial Planning provides a definition of national regional spatial planning as a policy direction and strategy for utilizing the country's territorial space.

Article 1 paragraph (2) of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flat Units and Land Registration explains that state land is land that is not attached to any land rights, not waqf land, not ulayat land and /or is not an asset belonging to the state/regional property. State land shows a certain legal relationship status between the object and the subject, which in this context is more about the relationship of ownership or ownership between the subject and the object⁴.

Circular Letter to the National Land Agency Number 410-1293 of 1996 concerning Controlling the Status of Agrarian Land and Reclamation Land also emphasizes that reclaimed land is land controlled by the state and its regulation is carried out by the State Minister for Agrarian Affairs / Head of the National Land Agency. The party carrying out the reclamation may be given first priority in submitting an application for rights to the reclaimed land. Article 1 letter a Government Regulation Number 8 of 1953 concerning

⁴ Dayat Limbong, Tanah Negara, Tanah terlantar dan Penertibannya, Jurnal *Mercatoria* Volume 10, Nomor 1, Juni 2017, 3

Control of State Land states that land that is fully controlled by the state is called state land. From the provisions above, it is clear that the control status of reclaimed land rests with the state. The scope of state land includes:

1. Land that is surrendered voluntarily by the owner;
2. Land rights whose term has expired and not been extended;
3. Land whose rights holder dies without heirs;
4. Abandoned lands; And
5. Land taken for public purposes⁵.

State land controlled by the state can be granted land rights to legal subjects who apply for land rights over said state land. Article 2 paragraph (1) of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats and Land Registration regulates that state land or land directly controlled by the state is all plots of land in the territory of the Unitary State of the Republic of Indonesia which are not owned by with a right by another party. Then in Article 2 paragraph (2) Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flat Units and Land Registration regulates that state land as referred to in paragraph (1) by the state can be given to individuals or legal entities by a land right in accordance with its purpose and needs or providing it with management rights. State land as referred to in paragraph (1) of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flat Units and Land Registration includes:

1. Land stipulated by Law or Government Regulation;
2. Land reclamation;
3. Land arises;
4. Land originating from the release/surrender of rights;
5. Land originating from the release of forest areas;
6. Abandoned land;
7. Land rights whose term has expired and no extension and/or renewal is requested;
8. Land rights whose term has expired and due to Central Government policy cannot be extended; And
9. Land that has originally had the status of state land.

Article 2 paragraph (1) of the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency Number 18 of 2021 concerning Procedures for Determining Management Rights and Land Rights regulates that the determination of Management Rights and Land Rights is in the form of granting Ownership Rights, Cultivation Rights, Building Use Rights and Use Rights on State Land or Management Rights are exercised by the minister. The granting of these rights is expressed in the form of decisions given individually or collectively/generally. The Minister can delegate the authority to grant individual rights or grant rights collectively to the Head of the Regional Office, Head of the Land Office or appointed official. When applying for land rights, an applicant must control the land requested as proven by physical data and juridical data. Physical data is data regarding the location, boundaries and area of land parcels, while juridical data is information regarding the legal status of land parcels, rights holders and other burdens that burden them.⁶ In the event that there is an application for land rights, a land inspection will be carried out by a land inspection committee or land research team or an appointed officer.

⁵ Maria S. W. Sumardjono, *Kebijakan Pertanahan Antara Regulasi dan Implementasi*, Jakarta: Kompas, 2001, 62.

⁶ Urip Santoso, *Pendaftaran dan Peralihan Hak atas Tanah*, Jakarta: Kencana Prenamedia Grup, 2010, 14

Furthermore, Article 17 paragraph (1) of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats and Land Registration confirms that reclaimed land can be granted Management Rights and/or Land Rights provided that a reclamation permit has been obtained. Then, Article 15 of Presidential Regulation Number 122 of 2012 concerning Reclamation in Coastal Areas and Small Islands states that the government, regional government and every person who will carry out reclamation must have a location permit and a permit to carry out reclamation. The definition of a reclamation implementation permit can be seen from Article 1 number 24 of the Minister of Maritime Affairs and Fisheries Regulation Number 25/PERMEN-KP/2019 concerning Reclamation Implementation Permits in Coastal Areas and Small Islands, namely permits issued to carry out reclamation activities or construction. The reclamation implementation permit is granted for five years and can be extended for a maximum of five years.⁷

Article 16 paragraph (1) of Presidential Regulation Number 122 of 2012 concerning Reclamation in Coastal Areas and Small Islands confirms that to obtain a location permit and permit to carry out reclamation, the government, regional government and every person must first submit an application to the minister, governor or regent/mayor. The Minister grants location permits and permits to carry out reclamation in certain national strategic areas, cross-provincial reclamation activities and reclamation activities at fishing ports managed by the government. Governors and regents/mayors grant location permits and permits to carry out reclamation in areas according to their authority and reclamation activities at fishing ports managed by regional governments.

Article 17 paragraph (2) and paragraph (3) of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flat Units and Land Registration regulates:

1. Regarding reclamation permits granted to central government agencies, state-owned enterprises/regional-owned enterprises, state-owned legal entities/regionally-owned legal entities, land bank entities, legal entities appointed by the central government, reclaimed land as intended in paragraph (1) granted management rights or rights to land by considering the conditions as a subject of rights.
2. Reclamation permits are given to legal entities or individuals, reclaimed land as intended in paragraph (1) is given land rights and/or management rights with the provisions:
 - a. For reclamation permit holders, land rights/land rights are given above management rights.
 - b. For the central government or regional government that grants a reclamation permit, management rights are granted, based on an agreement between the party that received the reclamation permit and the central government or regional government and taking into account spatial planning provisions.

In the event that reclamation activities are carried out without a reclamation permit, the official authorized to grant the reclamation permit shall carry out technical and spatial research in accordance with the provisions of statutory regulations. If the research:

1. Having fulfilled the requirements, the land resulting from reclamation becomes land directly controlled by the state and its subsequent use, use and ownership falls under the authority of the minister.

⁷ Antik Bintari, Talolo Muara, Manajemen Konflik Penyelesaian Kasus Reklamasi Pulau G Pantai Utara Jakarta, Cosmogov: Jurnal *Ilmu Pemerintahan*, Vol. 4, No. 1, April 2018, 126

2. If the requirements are not met, the land resulting from reclamation can be returned to its original condition by the party carrying out the reclamation in accordance with statutory regulations regarding reclamation permits.

From the explanation above, we can understand that reclamation is an activity to increase the resources of land controlled by the state. Rights to reclaimed land controlled by the state can be granted to both individual legal subjects and corporate legal subjects by submitting an application and obtaining a reclamation permit first. Applications for land rights to reclaimed land can not only be applied for by legal subjects in Indonesia, but can also be applied for by foreign legal subjects, both individual legal subjects and corporate legal subjects. There are no regulations or theories that specifically regulate what a foreign legal subject is. To understand this, we can look at Article 1 number 8 of Law Number 25 of 2007 concerning Investment, namely, foreign capital is capital owned by a foreign country, individual foreign citizens, foreign business entities, foreign legal entities and/or Indonesian legal entities whose capital is partly or wholly owned by foreign parties. From this provision it can be understood that, in terms of the rights of the legal subject of an entity, we can determine that the entity can be called foreign by looking at the composition of capital owned by the legal subject of the entity. Meanwhile, in the case of individual legal subjects, this can be done by looking at the person's nationality.

Furthermore, according to Law Number 5 of 1960 concerning Basic Agrarian Principles Regulations, individual legal subjects and foreign legal subjects can only obtain land rights in the form of use rights or lease rights. Usage rights are the right to use and/or collect products from land controlled directly by the state or land owned by another person. Rental rights are rights that a person or legal entity has over land which gives the holder the authority to use land belonging to another person for building purposes by paying the owner a certain amount of rent. Then in Article 26A of Law Number 1 of 2014 concerning Amendments to Law Number 27 of 2007 concerning Management of Coastal Areas and Small Islands, it is emphasized that the use of small islands and the use of surrounding waters for foreign investment must receive Minister's permission. This capital investment must prioritize national interests. The ministerial permission mentioned above is given to the applicant after receiving a recommendation from the regent/or mayor. The permit must meet the following requirements:

1. Legal entity in the form of a limited liability company;
2. Guarantee public access;
3. There has been no use by local communities;
4. Not populated;
5. Collaborate with Indonesian participants;
6. Transfer shares in stages to Indonesian participants;
7. Carrying out technology transfer; And
8. Pay attention to ecological, social and economic aspects of land area.

Conclusion

The increasingly rapid growth of society which is not accompanied by growth in the amount of land means that less and less land is available, which ultimately leads to high land prices. One way to overcome this is by carrying out reclamation. Reclamation must be carried out very carefully because if it is carried out carelessly it can damage the natural environment and the livelihoods of the people around the reclamation area. The government provides strict terms and conditions for parties wishing to carry out

reclamation. Reclamation land itself has the status of being controlled by the state, but is not owned by the state. The state can grant land rights to parties who apply to obtain land rights to the reclaimed land, whether they are legal subjects of individuals or legal subjects of corporate bodies. To obtain land rights to reclaimed land, the applicant must have obtained a reclamation permit. Not only Indonesian legal subjects, foreign legal subjects also have the right to have land rights over reclaimed land, but limited to use rights and rental rights after obtaining ministerial permission.

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