

## ANALYSIS OF LAND CERTIFICATES ISSUED BY THE VILLAGE HEAD AGAINST LAND OBJECTS FORMERLY OWNED BY CUSTOMS IN KUPANG REGENCY, NTT

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### **Abstract**

In the implementation of the registration of land rights to former customary property, one of the documents needed in the registration is a Land Certificate issued by the Village Head. In terms of granting land certificates, sometimes problems arise in the community. Where the provision of the letter is not in accordance with the ownership or physical control of the former customary land controlled by the community. For example, the land area is not suitable and sometimes the letter is not given to people who are entitled to receive a land certificate, as proof of land ownership or control of land that was previously owned by adat. This study uses a type of empirical juridical research with a research location in Kabupaten Kupang, NTT, regarding the analysis of land certificates issued by the village head. The population and sample used purposive sampling technique with the types and sources of data obtained from primary data and secondary data. The technique of collecting Legal Materials uses Field Research. Furthermore, the collected legal materials are then analyzed qualitatively descriptively. Land Certificate issued by the Village Head The Village Head is a valid evidence. The Village Head is given a direct mandate by law to issue a Land Certificate in accordance with the location of the former customary land object owned by the community for various purposes, for example for registration of Property Rights certificates to the National Land Agency (BPN) according to Circular No. 9/SE /VI/2013 concerning Certificate of Ex-Indigenous Land. In addition, for the purpose of buying and selling land based on Government Regulation Number 24 of 1997 concerning Land Registration. As well as proof of the temporary ownership rights for the former customary land object if the community has not had time to register it with the National Land Agency. For the purpose of buying and selling or transferring rights to former customary land, the legal force of a land certificate issued by the Village Head, in the event that this land sale and purchase transaction is based on Government Regulation Number 24 of 1997 concerning Land Registration, will have more legal force if it is known by the The sub-district head as the official making the land deed, with a legal basis based on the Elucidation of Article 7 paragraph (2) and Article 39 paragraph (1) letter (b) number (1) and number (2) Government Regulation Number 24 of 1997 can be categorized as the basis for the rights proposed as completeness of the requirements for the application for land rights.

**Keywords:** Village Head, Former Customary Land, notes description land

## INTRODUCTION

Land is a place to live, a place for humans to carry out daily activities and also a source of livelihood for farmers in rural areas throughout Indonesia. Because of the importance of the meaning of land for the Indonesian people, many people are trying to have rights to the land so that it can be used as a place to build a residence, a place to grow crops, a place to do business by building a house for business or even transfer the rights to the land through a Transaction.

Land has become a necessity where everyone needs it, this encourages everyone to be able to own and control the land they need.<sup>1</sup> Land registration is carried out to ensure legal certainty of land rights, as mandated in Article 19 of the Basic Agrarian Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA), the Government is obliged to carry out land registration throughout Indonesia and requires land rights holders to register their land.

Soil has a very important role in human life. Every aspect of human life requires land. Humans need plots of land for the purpose of finding a source of livelihood, for the purpose of establishing a place to live, for the purpose of establishing public facilities, for setting up educational institutions, health institutions, for market areas, for building offices either government and private agencies, to build public roads, places to build bridges, seaports and airports, even after death humans still need a piece of land for the burial area.

Land is one of the objects of Agrarian Law. In Indonesia, prior to the enactment of the Basic Agrarian Law, there was dualism in agrarian law, even pluralism in agrarian law. On the one hand, customary agrarian law applies to the indigenous Indonesian population (indigenous), which has various forms, on the other hand, western civil agrarian law applies to population groups who submit to western civil law, which has many levels. In addition to the application of customary law and western civil law on land, according to Supriadi, in his book *Agrarian Law*, "The Swapraja Government also creates laws on land that apply in its area, such as the Sultan's grant. With the existence of three regulations regarding land rights, a 'pluralistic' land rights exist in Indonesia.

Likewise with land rights, there are land rights based on customary agrarian law, and there are also land rights based on western civil agrarian law. Meanwhile, the Sultan's grant land is considered the same as Indonesian land rights with customary land rights. In reality, as customary law is unwritten, land rights based on customary law in the control of their owners are not supported by written evidence. Unlike the case with land rights based on western civil law, from the beginning the ownership by the owner must be registered at the cadastral office and then written evidence of the land rights in question is issued.

Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that the State recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with community development and the principles of the Unitary State of the Republic of Indonesia, which are regulated in law. law.

Soerjono Soekanto said that customary law communities according to their basic structure are divided into two groups, namely based on genealogical ties and based on territory (territorial). Then from the perspective of its form, there are customary law communities that stand alone, become part of a higher customary law or consist of several lower customary law communities, and are an association of several equal customary law communities. Furthermore, it can be said that each of these forms of customary law communities can be referred to as customary law communities that live, are stratified, and in series.

in a formal juridical manner, the existence of ulayat rights is enshrined in the provisions of Article 3 and Article 5 of the LoGA. The provisions of Article 3 of the BAL stipulates that in view of the provisions in Articles 1 and 2, the implementation of customary rights and similar rights of customary law communities, as long as in reality they still exist, must be in such a way that it is in accordance with the national and state interests, which is based on national unity and may not conflict with other higher laws and regulations.

While the provisions of Article 5 of the UUPA, namely the agrarian law that applies to earth, water and space is customary law, as long as it does not conflict with the law. with the national and state interests, which are based on national unity, with Indonesian socialism as well as with the regulations contained in this law with other laws and regulations, all by taking into account the elements that rely on religious law.

Ex-customary land is land rights that were born based on local customary processes such as yasan rights, andrabeni rights, rights to druwe desa, pesini, sultan grants and so on which since September 24, 1960 have been converted into property rights but have not been registered.

Conversion of land rights is a change in land rights that existed before the enactment of Law no. 5 of 1960 concerning the Basic Regulations on Agrarian Principles (UUPA) was changed to land rights determined according to the LoGA, in connection with the enactment of the LoGA. Its implementation is regulated in the Minister of Agrarian Regulation No. 2 of 1960 concerning the Implementation of Several Provisions of the LoGA.

In the practice of everyday people's lives on land issues in Indonesia, there are still many lands that have not been registered or have no certificates, but have been owned by community members with evidence of a land certificate issued by the village head. These unregistered lands are generally found in rural areas where land ownership rights are only proven by a land certificate issued by the village head.

In Kupang Regency, East Nusa Tenggara itself, there are many former customary lands owned by local people. Of the many ex-customary lands, some have been converted or registered as property rights at the local land office, and there are still many community members who have not registered. If you want to be registered as property rights to land, one of the conditions that exist according to the provisions of Government Regulation no. 24 of 1997 concerning Land Registration is a land certificate issued by the village head where the land object is located. The letter also serves as proof of ownership of an object of land that was previously owned by adat which had not been registered by the owner. In other words, a land certificate is a temporary certificate before being registered with the Land Office.

In terms of granting land certificates, sometimes problems arise in the community. Where the provision of the letter is not in accordance with the ownership or physical control of the former customary land controlled by the community. For example, the land area is not suitable and sometimes the letter is not given to people who are entitled to receive a land certificate, as proof of land ownership or control of land that was previously owned by adat.

Based on the above description of the implementation of the provision of land certificates carried out by the Village Head, problems often occur in the community, especially regarding the granting of overlapping land certificates, causing disputes over ownership of the land rights. Therefore, this study will discuss further about how the actual legal position of the Land Certificate issued by the Village Head and its legality against Land Objects of Former Customary Ownership in Kupang Regency, NTT.

## **METHOD**

This study uses a type of empirical juridical research with a research location in Kupang Regency, NTT, regarding the Analysis of Land Certificates issued by the Village Head on Land Objects that are Formerly Owned by Customs in Kupang Regency, NTT. Population and sample using purposive sampling technique with the types and sources of data obtained from primary data and secondary data. The technique of collecting Legal Materials uses Field Research. Furthermore, the legal materials collected were then analyzed descriptively qualitatively.

## **ANALYSIS**

Customary land and customary law communities have a very close relationship with one another. In indigenous peoples, a sense of kinship is prioritized. The principle of kinship contains justice, wisdom, togetherness, equality, mutual cooperation, tolerance, and responsibility in the life of society, nation and state.

In the implementation of ulayat rights, it is explained in Article 3 of the Basic Agrarian Law (UUPA) that, as long as the facts still exist, the second is in accordance with national and state interests, the third is not contrary to higher laws and regulations. The signs that need to be seen to determine the existence of customary rights include 3 elements, namely;

- a. Elements of indigenous peoples, namely the existence of a group of people who still feel bound by their customary law order as joint citizens of a certain legal alliance, who recognize and apply the provisions of the alliance in their daily lives.
- b. The element of territory, namely the existence of certain ulayat lands which become the living environment of the citizens of the legal alliance and the place where they take their daily needs, and
- c. The element of the relationship between the community and its territory, namely the existence of a customary law order regarding the management, control and use of their ulayat land which is still valid and obeyed by the citizens of the legal alliance.

After the existence of customary land is no longer recognized, then the land will automatically change its status to Former Customary Land. Ex-customary land is land rights that were born based on local customary processes such as yasan rights, andrabeni rights, rights to druwe desa, pesini, sultan grants and so on which since September 24, 1960 have been converted into property rights but have not been registered.

Kupang Regency is one of the regencies in East Nusa Tenggara which has quite a lot of indigenous groups. Among them are the indigenous peoples of Helong, Amfoang, Amarasi, Pubabu and many other indigenous groups whose existence still exists today. With the passage of time and the development of an increasingly advanced era, indigenous peoples in these areas gradually began to fade their traditional traditions and culture. It is undeniable that there are several community groups who have started to leave their traditional habits and are starting to leave the customary system they hold.

The above causes the land or lands that they have been occupying and working on it are no longer included in the system or order of customary law that was previously adopted. The land finally changed its status to Ex-Customary Land and was no longer under the control of customary law community groups.

In the stage of registration of ex-customary land, various regions in Indonesia have their own differences in terms of proof of land ownership. For example, in Java there are those who call it Girik, in parts of Sumatra it is called Kohir and there are many more mentions of land ownership certificates belonging to customs such as Persil, Patok D, Letter C, Surat Ijo and others. Especially in East Nusa Tenggara, a Land Certificate is used as proof of ownership of a land object owned.

Land certificates are written evidence under the hand whose proof strength is not as strong as an authentic deed, but because the land certificates are letters categorized as rights or juridical data on land which are used as requirements for completing the requirements for land rights applications as regulated in the provisions land law, the land certificate is a very important document in the process of issuing a certificate of land rights.

The legal force of a land certificate issued by the Village Head in a land sale and purchase transaction based on Government Regulation Number 24 of 1997 concerning Land Registration, has legal force if it is known by the Camat as the official making the land deed, with a legal basis based on the Elucidation of Article 7 paragraph (2) and Article 39 paragraph (1) letter b number (1) and number (2) of Government Regulation Number 24 of 1997 can be categorized as the basis for the rights submitted as a complete requirement for land rights applications.

In an interview with the East Kupang sub-district head, Mr. Deny Tadu at his office, he explained that many land certificates were made without the sub-district signature or knowledge of the local Camat. In other words, the community only makes a certificate in the village or sub-district according to the location of the land object they own without being forwarded to the sub-district. According to him, this is one of the factors in the occurrence of disputes in the community regarding the legal ownership of ex-customary land due to the lack of seriousness of the parties involved or knowing the issuance of land certificates.

In the process of issuing a land certificate, according to the Head of Pukdale Village, Oktavianus Lesiangi, in an interview conducted at the village office, he said that the issuance carried out so far was in accordance with the correct procedure. The thing that causes frequent land disputes is caused by the unclear factor of traditional leaders or former local customary heads who are not clear in determining land objects for the people in the area.

The provisions of Article 7 paragraph (2) of Government Regulation Number 24 of 1997 concerning Land Registration states that, For villages in remote areas, the Minister may appoint a Temporary PPAT. In the explanation of Article 7 paragraph (2) of Government Regulation Number 24 of 1997 concerning Land Registration, it is stated that, the provisions of Article 7 paragraph (2) of Government Regulation Number 24 of 1997 concerning Land Registration are intended to facilitate the people in remote areas where there is no PPAT. to carry out legal actions regarding land. Those appointed as Temporary PPAT are Government Officials who control the conditions of the area concerned, namely the Village Head.

From the explanation of Article 7 paragraph (2) of Government Regulation Number 24 of 1997 concerning Land Registration, it can be said that the land certificate issued by the village head which is used as the basis for the implementation of the sale and purchase of land rights has legal force if the implementation of the sale and purchase of land is known by the the village head as a government official who controls the conditions of the area concerned in remote rural areas. However, if in an area there is already a sub-district head appointed as PPAT or Temporary PPAT, then the implementation of the sale and purchase of land rights on the basis of a land certificate issued by the

village head will only have legality and legal force if the sale and purchase of land rights is known and signed by the sub-district head. as PPAT or Temporary PPAT appointed by the government.

The Head of the National Land Agency of the Republic of Indonesia issues Circular Letter No. 9/SE/VI/2013 concerning Certificates of Former Customary Land ("SE No. 9/SE/VI/2013"). SE No. 9/SE/VI/2013 was made in order to provide legal certainty for the format and material of the Certificate from the Village Head/Lurah as a complete application for registration of land rights that belonged to adat.

Currently, there are still many communities who do not have complete proof of land ownership or the evidence is no longer available. This makes it difficult for the community not to be able to apply for registration of land rights that belong to adat. Therefore, a Certificate from the Village Head/Lurah is needed as a certainty for ownership, control, use, utilization of a plot of land in accordance with the physical reality in the field, history of ownership, transfer or acquisition of land in accordance with the records in the village/kelurahan register book and information regarding whether or not there is a dispute over the land with other parties and is not a guarantee of a debt. Based on the things mentioned above, then SE No. 9/SE/VI/2013 is required.

Circular No. 9/SE/VI/2013 was made based on Law no. 5 of 1960 (UUPA), Government Regulation no. 24 of 1997 concerning Land Registration, Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency No. 3 of 1997 concerning Provisions for the Implementation of PP No. 24 of 1997 and the Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency No. 5 of 1999 concerning Guidelines for the Settlement of Indigenous Peoples' Ulayat Rights Issues. There are several things that are needed to complete the application for registration of rights to ex-customary land, including:

1. Subject of rights (owner);
2. Location, boundaries and land area;
3. Regarding the control, use, utilization of land;
4. History of ownership, transfer or acquisition of land;
5. Certainty is not an asset of the Government or other parties and is not included in the forest area;
6. Not being guaranteed a debt and not in dispute with other parties.

According to SE No. 9/SE/VI/2013, Certificate of Ex-Customary Land cannot be used as proof of land ownership on lands that do not meet the criteria of item 1 above, namely:

1. Article 24 paragraph (2) PP No. 24 of 1997, in the absence of written evidence, witness statements and/or statements in question which are confirmed by the Adjudication Committee in systematic land registration or by the Head of the Land Office in sporadic land registration, the bookkeeping of rights can be carried out based on the fact of ownership. the physical land parcel in question for 20 consecutive years or more by the applicant and his predecessors on condition that: the control is carried out in good faith and openly, the control is not disputed by the customary law community or the village/kelurahan concerned or other parties;
2. Article 4 paragraph (1) letter a Permen Agraria/Head of BPN No. 5/1999, control over land parcels including ulayat land as referred to in Article 2 by individuals and legal entities may be exercised by members of the customary law community concerned with the right control according to the provisions of the applicable customary law, which if desired by the right holder can be registered as a land right according to the UUPA;
3. Article 76 paragraph (3) of the Minister of Agrarian Affairs/Head of BPN No. 3 of 1997, in the event that there is no evidence of land ownership as referred to in paragraphs (1) and (2), the application must be accompanied by a statement from the applicant and a statement from the Village Head/Lurah.

Government Regulation No. 24 of 1997 concerning Land Registration in paragraph 2 of Article 24 regulates the verification of the old rights of an owner who wishes to register his land where the provisions of Article 24 read, among others:

1. For the purpose of registration of rights, land rights originating from the conversion of old rights are proven by evidence regarding the existence of such rights in the form of written evidence, information on sanctions and or statements in question which are sometimes confirmed by the adjudication committee in land registration. systematically or by the Head of the Land Office in sporadic land registration, it is considered sufficient to register rights, rights holders and the rights of other parties that burden him.

2. In the event that there are no or no longer available complete evidence as referred to in paragraph (1), the bookkeeping of rights may be carried out based on the fact that the applicant has the physical possession of a piece of land for 20 (twenty) years or more in a row. registration and other predecessors provided that:
  - a. The control is carried out in good faith and openly by the person concerned as having the right to the land, and is strengthened by the testimony of a person who can be trusted.
  - b. The control both before and during the announcement is not disputed by the customary law community or the village / kelurahan concerned or other parties.

From the provisions contained in Article 24 of Government Regulation no. 24 of 1997 concerning Land Registration mentioned above, it can be said that the person most entitled to apply for a certificate on land is the person who has legally owned the land and has controlled the physical land for 20 (twenty) years or more as evidenced by the existence of the testimony of witnesses who can be trusted, the truth and physical control are in good faith and are not disputed by the community or other parties.

## CONCLUSION

1. 1. Formerly Customary Land in Kupang Regency, East Nusa Tenggara, until now its existence is still quite a lot to be found. In Kupang district itself, there are many Indigenous community groups that have existed since time immemorial and their existence is recognized by the State. The development of the era that continues to advance and the increase in information technology that is growing rapidly is currently one of the factors causing the disappearance of local traditional culture. This makes the existence of existing indigenous groups begin to decrease and the community begins to leave the traditional system that was previously adopted because of the entry of cultural influences from outside. Finally, the land that was previously controlled by indigenous peoples, began to change its status to former customary lands controlled by people who were already bound by the local customary system. For the purpose of proof of ownership by community members in Kupang Regency who have ex-customary land, a Land Certificate issued by the local Village or Sub-District Office as Legal Proof of Ownership of Former Customary Land Objects can be made.
2. 2. Land Certificate issued by the Village Head The Village Head is Legal Evidence. The Village Head is given a direct mandate by law to issue a Land Certificate in accordance with the location of the former customary land object owned by the community for various purposes, for example for registration of Property Rights certificates to the National Land Agency (BPN) according to Circular No. 9/SE /VI/2013 concerning Certificate of Former Customary Land. In addition, for the purpose of buying and selling land based on Government Regulation Number 24 of 1997 concerning Land Registration. As well as proof of the temporary ownership rights for the former customary land object if the community has not had time to register it with the National Land Agency.
3. 3. The legal position of the village head in issuing land certificates has a legal basis in accordance with the provisions of Article 24 paragraph (2) PP No. 24 of 1997 concerning Land Registration which states that, "In respect of land parcels originating from old rights in order to be able to register their land rights at the Land Office, the village head has the authority to issue a land certificate as evidence in the land registration implementation to obtain land registration. certificate of land rights at the Land Office where the land is located. Besides, in the Minister of Home Affairs Regulation No. 6 of 1972 concerning Delegation of Authority for Granting Land Rights in the provisions of Article 11 states that the sub-district head may grant a permit for land clearing with an area of + 2 hectares by taking into account the considerations of the village head where the land is located.

## SUGGESTION

1. Every piece of land that has evidence of physical control in the form of a land certificate issued by the village head must be registered immediately at the land office where the land is located to obtain a certificate of land rights so as to ensure legal certainty for the holder of the land right. or the party who controls the physical land in accordance with the provisions of the applicable law.
2. For the Preparation of Land Certificates made by the Village Head based on the location of the Former Customary Land Objects, the local sub-district head should also know. Or in other words, it must be affixed with a signature from the sub-district as the party who knows the existence of the control of the ex-customary land by the community which will later be used for certain

interests of the holders of the land rights. With the presence of the Camat as a party who is aware of the making of a certificate by the Village Head, it will indirectly strengthen the legal aspect of the strength of the evidence of the land certificate made so as to minimize the occurrence of disputes that may arise in the future.

3. During the process of Issuing Land Certificates at the Village Office, Village Heads should require local trusted community leaders or former Customary Leaders to review and designate the location of the Land object to assist village officials in determining land stakes or boundaries. These community leaders or former Customary Heads should also be parties in the issuance of Land Certificates, because they are the ones who exactly know the history or history of the former customary lands for which Land Certificates will be made at the Village Office as proof of control over the land object.

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