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Analysis of Land Law Related to the Development of Tourism Sites in Traditional Land

Muhammad Fatah Bachtiar[1], Dimas Firmansyah Yudi Pranata[2], Kezia Inggreani[3]
[1,2,3]*Master of Notary, Universitas Jember, Indonesia*
muhammadfatah50@gmail.com, dumpsrn@gmail.com, keziakwa17@gmail.com

Abstract

The land is considered an important position in customary law because of its nature and facts. The change in land function certainly proves that there is still a conflict of interest in land tenure and other people who want to use customary village land for tourism purposes. This research is a qualitative descriptive study where the researcher uses secondary qualitative data and describes it descriptively to find answers to research questions. Based on the results and discussion, it can be found that customary land is controlled by certain customary law communities in various parts of Indonesia. The Basic Agrarian Law, also known as the UUPA, has been passed, which codifies customary land law. The provision of legal certainty over land rights is a manifestation of the role of the government and local governments in regulating human relations with the land. The National Agrarian Law came into force on September 24, 1960, after the UUPA was published and ratified as Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA). Article 2 paragraph (3) of Law Number 5 of 1960 (UUPA) states that the right to control the state can only be exercised over autonomous regions and customary law communities if necessary and does not conflict with national interests and in accordance with government regulations.

Keywords
land law; customary land law; UUPA

I. Introduction

Indonesia is very famous for its tourism to foreign countries. Traditions, culture, local wisdom, and natural beauty invite both domestic and international tourists. Tourism has become a dependency that certainly has positive and negative impacts that cannot be separated. Not only that, too many accommodation facilities in Indonesia cause tourists to have many choices so that not all accommodations get maximum benefits. The intense competition also occurs between accommodation facilities. Based on data from the Tourism Office, it can be seen that the development of accommodation facilities development continues to increase every year but is not balanced with the growth in the number of tourist visits in Indonesia. Hard thinking on marketing strategies must also be carried out to remain competitive and be able to reap maximum profits.

Then the next problem is that tourism causes a lot of lands to be used for accommodation development. It is a problem between humans and the environment. Every year, the need for land continues to increase, including the need for tourism development.

More and more restaurants, inns or hotels, housing, and art shops have been built, which has led to a lot of land conversion in some tourism areas. Some areas even had their land taken forcibly for the benefit of investors. This caused the local indigenous people to refuse. For example, what happened in Sigapiton Village, Ajibata District, Toba Samosir, North Sumatra. Hundreds of Sigapiton indigenous people protested by using banners. This refusal was made so that the Lake Toba Authority Management (BPODT) would not forcibly take customary land. This land will be used as a road to construct Lake Toba tourism facilities.

Human life and customary law communities are inseparable units. The land is very important for humans and indigenous peoples because it provides a foothold, a place to earn a living, and a final resting place when humans die. Therefore, the function and meaning of customary law that exists and develops in Indonesian society must be reinterpreted in the development of national law. Because indigenous peoples still have wisdom in enforcing applicable rules to regulate their lives fairly and conscientiously in everyday life.

The land is considered an important position in customary law because of its nature and facts. Land, by its very nature, the land is the only form of wealth that, despite its circumstances, maintains its value and sometimes even increases it. Therefore, it functions as a place to live, a source of income, a place where residents (customary law communities) will be buried, and a place for ancestral spirits to provide protection to their citizens.

The change in land function certainly proves that there is still a conflict of interest in land tenure and also among other people who want to use customary village land for tourism purposes. This incident occurred due to the weakness of land law which regulates customary law. In this regard, the author is interested in analyzing land law related to developing tourist attractions on customary land.

II. Research Methods

This research is a qualitative descriptive study where the researcher uses secondary qualitative data and describes it descriptively to find answers to research questions. Qualitative descriptive research is often used to analyze events, phenomena, or social circumstances. In this case, the researcher also uses empirical legal research where the author will examine the transfer of rights and customary village lands based on land law more deeply. The data used is secondary data, where data is obtained from previous journals, newspapers or other reliable sources of information.

III. Discussion

3.1 Customary Land Law

Customary land is controlled by certain customary law communities in various parts of Indonesia. The land is land with customary rights based on certain customary laws according to PMNA No. 5 of 1999. Customary land, on the other hand, is protected by law. Individuals, communities, and groups, including community groups with other community groups, often experience conflict because of the existence of customary land (Syukur, 2020).

Each region has its own set of customary sources, which causes customary land law to vary from region to region. The law governing land rights in each area is called customary land law. In Indonesia, customary land law is still widely used in land transactions. The national agrarian law regulated in the Law of the Republic of Indonesia Number 5 of 1960 concerning "Basic Agrarian Regulations" also applies to the application of customary land law in each region (Butarbutar, 2019).

In land law, the term “ulayat rights” is often heard. In Article 3 of the UUPA, “ulayat rights and rights similar to it” is fully explained. Customary law communities, as long as they exist, must be carried out in accordance with national and state interests, based on national unity, and must not conflict with other laws and regulations (Nasir, 2018).

According to Article 1 of the Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency No. 5 Customary Law Community Land, ulayat land is a piece of land on which there are ulayat rights of a certain customary law community (National, 1997). According to this definition, there is a reciprocal relationship between ulayat lands where ulayat rights exist. In determining whether a plot of land is included in the category of customary rights or not. According to Kurnia Warman in his book Agrarian Law in Corrections, according to Kurnia Warman, the conditions that customary rights must fulfil in Article 3 of the UUPA are as follows:

1) As long as the customary law community exists. According to the explanation of article 67 paragraph (1) of Law Number 41 of 1999 concerning Forestry, "a customary law community is recognized if it fulfils the following elements in reality: The community still exists as an association (rechtsgemeenschap), there is an institution in the form of customary rulers, there are unique customary law areas, there are legal institutions and instruments, especially customary courts that are still adhered to, and forest products are still collected around forest areas to meet daily needs (Indonesia, 1999).
2) State and in accordance with national interests.
3) Does not conflict with other laws or regulations. Elements of indigenous peoples, territories, and community relations with the territory are used to determine customary rights.

3.2 Analysis of Customary Land Law in Land Law

The Basic Agrarian Law, also known as the UUPA, has been passed, codifying customary land law. Customary law is the main source of the formulation of the UUPA because it provides the necessary materials for the development of national land law. The national customary land law is based on customary land law, as stated in the preamble or opinion of the UUPA.

It can be seen that government laws and regulations effectively deal with all issues related to customary land law. Therefore, customary land law serves as the main source of material, which is then used to construct the UUPA. The explanation in the paragraph of the UUPA emphasizes that the customary law referred to in the UUPA is "customary law that has been perfected and adapted to the interests of the people in a modern state and in international relations, and adapted to Indonesian socialism", so that land law becomes the main source of national agrarian law. In Indonesia, there is a construction of customary law that is used.

Land disputes arise as a result of community claims, complaints and objections. Land disputes and conflicts are complex and multidimensional problems (Isnaini, 2020). Currently, development and population growth are happening very fast. In various aspects of economic activity, such as the need for roads, housing, office buildings, trade centers, and tourism sites, additional land is needed (Karina, 2021). The availability of natural resources is one of the keys to economic growth in an area (Shah, M. et al. 2020). In general, land area has a direct effect on production, if land area increases, it will automatically increase production (Hasibuan, 2020). In general, defence cases can be divided into legal and conflict of interest. A dispute is a disagreement between two or more parties over their perception of a common interest or property right, which can have legal consequences for both parties. At the same time, land disputes are disputes between two or more people who have the same interest in the legal status of one or more land objects, which can cause legal consequences for parties who have a common interest in land parcels.

There are several cases of customary land disputes between parties who want to develop tourism in the area and local villagers. Local governments cannot optimize land and tourism management strategies in accordance with Law Number 23 of 2014 concerning Regional Government because land arrangements are based on Agrarian Law Number 5 of 1960 concerning Agrarian Principles, which emphasizes that land affairs are state affairs. Therefore, central government can only be transferred to the regions (Verawati, 2020).

The relationship of authority between the centre and the regions is closely related, among others, to how the division of government affairs or how regional household affairs are determined, according to Law Number 23 of 2014 concerning Regional Government (Hsb, 2019). Each region can explore the potential that can be developed, thus enabling the acceleration of the development of each region. The trade sector, service sector, agricultural sector, tourism sector, and others are some sectors that can be developed.

3.3 Relations between Land Law, Customary Law, and Tourism

The problem raised is how local governments carry out strategies by using two types of authority between land management and tourism as the development of destinations in natural areas, with the existence of these two powers through Law Number 10 of 2009 concerning Tourism.

The provision of legal certainty over land rights is a manifestation of the role of the government and local governments in regulating human relations with the land. The National Agrarian Law came into force on September 24, 1960, after the UUPA was published and ratified as Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA). Article 2 paragraph (3) of Law Number 5 of 1960 (UUPA) states that the right to control the state can only be exercised over autonomous regions and customary law communities if necessary and does not conflict with national interests and in accordance with government regulations (Hasanah, 2019) .

For the welfare of the people, the government has realized the importance of legal certainty regarding the ownership of land rights. Therefore, article 19 of the UUPA states, among other things, that the government conducts land registration throughout the territory of the Unitary State of the Republic of Indonesia to ensure legal certainty. As a result, the delegation of authority from the state to exercise land tenure rights is medebewind, meaning that everything will be done according to its needs and, of course, not at the expense of national interests.

Furthermore, attachment letter J and attachment letter Z of Law Number 23 of 2014 concerning Regional Government which gives authority to regional governments to manage tourism strategic areas and land acquisition, show that legal certainty comes from implementation through local government authority policies in determining the location of land for public interest in the context of management. Each local government is responsible for ensuring legal certainty as intended.

The norms of the Agrarian Law and its implementing regulations have not been synchronized with the Regional Government Law related to the regional government's authority regarding land, causing the central government's authority over land use to have not been optimally utilized by regional governments. It is one of the obstacles to the realization of activities or businesses that use the land to meet certain needs. So land use is a reflection of human activities carried out on land in an effort to meet their needs, and the nature of land use is a reflection of decisions made by people or legal entities that control and or own land in the form of a choice of type of activity or business in accordance with wants or needs. Therefore, land use is the result of human life which is influenced by natural (physical) conditions, and the socio-economic activities of the community in the area have not been carried out effectively and maximally.

The realization of providing legal certainty guarantees regarding land rights for all Indonesian people, especially in areas where policies will be given to be designated as tourist destinations, can be realized through efforts; namely, the availability of complete and clear written legal instruments that are consistently carried out in accordance with the needs and needs. The values of traditional content, cultural authenticity, and regional uniqueness that will become a tourist attraction as consideration for regional income in the context of improving the welfare of the community nationally will be accommodated by the aspirations of the community, local community, and norms.

As stated in Appendix I, letter J of Law Number 23 of 2014 concerning Regional Government, the central government's policy in the land sector states that the central government has the authority to acquire land for the public interest. Corridors that can be used as references in the use of this authority are based on improving community welfare, which can be in the form of business fields in an area, for example, special economic zones, technopolitical areas, industrial areas, and strategic tourism areas (Ismail, 2015).

The tourism industry is one of the businesses that can help local revenue growth, especially in supporting governance and development. To achieve this, the government must implement a tourism policy. However, to maximize the potential of natural resources, problems can arise which are rooted in the gaps in environmental conditions and social systems. As planners, implementers, and controllers of regional policies, local governments are expected to be able to analyze and map problems that arise in the community so that policies issued are in accordance with community needs and socio-cultural aspects.

3.4 Solutions for Development of Tourist Attractions in Indigenous Lands

Innovation, initiative, creativity, and regional economic development strategies are needed to maximize regional economic development efforts through tourism. As a result, in this era of competition, regions that have comparative and competitive advantages over other regions will be more successful in utilizing regional potentials more efficiently and effectively for the benefit of the community. An integrated policy strategy for the development of tourism objects (products) can be used to assist tourism development. The process of creating and sustaining various forms of persuasion communication programs for policy makers, the private sector, and community participation.

There are several things to do with this strategy, and the effect hierarchy created by Robert J. Lavidge and Gary A. Steiner can be used as a guide. The stages progress, starting with awareness, knowledge, liking, preference, belief, and finally buying. In this case, purchasing is a form of communication that encourages people to take the next step, namely visiting the tourism object that is being promoted (Lavidge & Steiner, 1961).

Harmonization aims to maintain the carrying capacity and capacity of the area so that it can be used as a support for the RTRW load. Spatial planning policies are implemented through spatial planning activities, where the spatial planning aspect with its products in the form of RTRW (RTRWN, Provincial RTRW, and Regency/City RTRW) becomes the reference for the use of space (and environmental natural resources). contained therein) and controlling the use of space, according to Law Number 26 of 2007.

Therefore, the RTRW must be structured to achieve three (three) general objectives: (1) efficiency, which refers to economic benefits in the sense that the use of space is directed towards the greatest prosperity of the people; (2) justice and public acceptability, in the sense that spatial planning must be an embodiment of justice and involve community participation, so that the community must accept the plans drawn up; (3) sustainability, where the use of space is directed to the greatest prosperity of the people; and (3) sustainability, where the use of space.

IV. Conclusion

Land is very important for humans and indigenous peoples because it provides a foothold, a place to earn a living, and a final resting place when humans die. There are several cases of customary land disputes between parties who want to develop tourism in the area and local villagers. Local governments cannot optimize land and tourism management strategies in accordance with Law Number 23 of 2014 concerning Regional Government because land arrangements are based on Agrarian Law Number 5 of 1960 concerning Agrarian Principles which emphasizes that land affairs are state affairs. Central government and can only be transferred to the regions. The norms of the Agrarian Law and its implementing regulations have not been synchronized with the Regional Government Law related to the regional government's authority regarding land, causing the central government's authority over land use to have not been optimally utilized by regional governments. The provision of legal certainty over land rights is a manifestation of the role of the government and local governments in regulating human relations with the land. The National Agrarian Law came into force on September 24, 1960, after the UUPA was published and ratified as Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA). Article 2 paragraph (3) of Law Number 5 of 1960 (UUPA) states that the right to control the state can only be exercised over autonomous regions and customary law communities if necessary and does not conflict with national interests and in accordance with government regulations. Several strategies are needed for tourism development solutions in customary lands, such as a hierarchy of effects.

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