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The authority of notary in relinquishing land use rights within the government

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Abstract

The purpose of this study is to analyze the regulation of land use rights relinquishing in the government environment and to analyze the authority of notaries in the implementation of land use rights relinquishing in the government environment. The research method that used in this paper is normative legal research and the writing of this paper use statutory approach dan conceptual approach. This study shows that the relinquishing of land use rights in government environment is further regulated in article 49 paragraph (3) of Government Regulation No. 18 of 2021 which shows that the BAL judicially give rights to the government as subject of rights to use rights to state land and use rights to manage land. The authority of Notary in the implementation of relinquishing land of use rights it can seen from their duties and function, the notary is tasked with exercising some of the authority of the government. The Notary, Sub-District, or Head of Land Office is a general official who has the authority to carry out the release of use rights to land. Notary's position in this case as a general official who is the only authority to make authentic deeds.

Keywords: Notary authority, relinquishing, land use

1. Introduction

The Indonesian National Agrarian Law, which is a tool to bring prosperity “happiness and justice to the state and the peasant people, lays the foundations for unity and simplicity in land law and lays the foundations for providing legal certainty regarding land rights for the people as a whole”. This is in line with the provisions of Article 33 paragraph (3) of the 1945 Indonesian Constitution which states that:

“Earth, water and natural resources contained therein are controlled by the state and used to the greatest extent for the prosperity of the people”.

According on the article it mean that “The State as an organization of power that regulates legal relations between people and legal acts concerning earth, water and space in Indonesia is obliged to pay attention to various interests regarding the control and use of land rights”.

Each and every land on the Republic of Indonesia's territory comes within the state's authority to govern, including any lands that do not currently or have ever been subject to individual rights. Lands that are directly owned by the State are those that have not been individually registered under the Basic Agricultural Law (BAL). These clauses can be construed as designating the government as the owner of all natural resources located on the earth's surface as well as underground (including land) within the Republic of Indonesia^[1]. In this case, land controlled by the state does not necessarily become property rights but can also be used other functions such as use rights, building use rights and management rights.

Article 41 of the BAL states “that right of use is the right to use and/or collect proceeds from land directly controlled by the State or land owned by another person, which gives the authority and obligation specified in the decision of its grant by the official authorized to grant it or in an agreement with the owner of the land, which is not a lease agreement or land cultivation agreement”. Furthermore, Article 42 of the BAL states that “those who can have the right to use are Indonesian citizens, foreigners domiciled in Indonesia, legal entities established under Indonesian law and domiciled in Indonesia foreign legal entities that have representation in Indonesia”.

In the mechanism of land acquisition for public interest, there are often conflicts caused by inaction with applicable laws and regulations, besides that the provision of compensation by the government that is not in accordance also becomes a conflict in the community^[2]. In this case, the act of transferring the right to buy and sell, rent, give, inherit, or exchange of land, as well as the release of land rights, are all manifestations of the legal relationship between people and land.

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The act must be described in the form of a deed that has been signed in front of a Notary and an official title deed certifier in order to provide the act legal certainty. An official deed signed in front of a notary public is used to effect waiver ^[3].

As a general official, a Notary is someone who has been given permission by the State to exercise some of the State's powers and duties in the legal system, particularly in the area of civil law for individuals who require authentic deeds as evidence of legal acts ^[4]. This is in accordance with what is mentioned in article 1 of the Notary Function Law. Furthermore, Article 15 of the Notary Function Law also mentions its authority where making deeds regarding land is also the authority of the notary.

In the perspective of public law, the state is the organization of office. Among these state offices are government posts, which are the object of state administrative law. The government is one of the subjects of law, and the government as an element of government administration which is the authority ^[5].

The land rights relinquishment is should be carried out by an authentic deed by notary this is in accordance with the provisions of "Article 60 of the Government Regulation of Republic Indonesia Number 18 of 2021 concerning Management Rights, Land Rights, Flats Units, and Land Registration (Government Regulation No. 18 of 2021)". Article 60 paragraph (5) of Government Regulation No. 18 of 2021 indicates that the release of use rights is made by and in the presence of officials who are authorized to carry out these legal acts. According to the explanation of Article 60 paragraph (5) of Government Regulation No. 18 of 2021, the parties referred to as "*authorized officials*" include notaries, sub-districts, or heads of Land Offices, but in this case it creates legal uncertainty considering that notary positions and government positions are not equal so that the notary's authority in this case needs to be studied more deeply. The blurring of norms in Government Regulation No. 18 of 2021 is related to the notary's position as an official authorized to release land use rights, providing a multi-interpretation understanding, so further research is needed through a paper entitled "The Authority of Notary in Relinquishing Land Use Rights Within the Government"

The problems examined in this research are first, how is the regulation of land use rights release in the government environment? Second, what is the authority of notaries in implementing the release of land use rights within the government? This study aims to analyze the regulation of land use rights release in the government environment and to analyze the authority of notaries in the implementation of land use rights release in the government environment.

There were several previous studies with similar topics, however, this study can be said original as studies conducted by: (1) Widia Lestari, Kurnia Warman and Beatrix Benni published on a journal in 2019 entitled "*Release of Land Rights for Development through Notarial Deed in Padang City*" concentrated on the subject of how land rights are released for development in the city of Padang using a notarial deed ^[6]. and (2) Sastri Hasnur Pratiwi, Azmi Fendri, and Beatrix Benni published on a journal in 2019 entitled "*Authority and Position of Notary Deed in the Land Sector*" focused on the meaning of the deed which as pertaining to land that has been granted to a notary ^[7] meanwhile, this study focuses on the regulation of the release of land use rights and the authority of notaries in

the implementation of the release of land use rights within the government

2. Methods

The research method used in this research is normative legal research. Legal research in writing journal articles as scientific works using normative legal methods aims to obtain scientific results and scientific truth. Normative legal research is research by reviewing documents by collecting data with the literature study method and collecting journal materials with a description method by looking at problems that are happening in society. Descriptive analytical techniques are used in this study to analyze answers to research problems ^[8]. The writing of this journal uses a statutory approach and a concept approach that is related to the legal issues studied ^[9]. The collection of legal materials in writing this journal article uses literature study techniques, legal materials used for primary and secondary legal materials.

3. Results and Discussion

3.1 Arrangements for Relinquishment of Land Use Rights in Government Environments

The right to control the state over land contains the authority to regulate, administer and supervise the acquisition and use of land. The emergence of the right to control the state comes from the realization of rights and obligations to land in the context of state life based on the principle of the pattern of human relations with land which contains human rights and obligations towards themselves and their communities in a balanced manner. One of the principles in land law is the principle of being controlled by the State and the principle of social functions such as the right of use.

In BAL the Right to Use is regulated in "Articles 41 to Article 43 which are further regulated in Government Regulation Number 40 of 1996 concerning Business Use Rights, Building Use Rights and Land Use Rights Articles 41 to Article 58". In Article 41 paragraph (1) of the BAL it is defined that "Right of Use is the right to use and/or collect proceeds from land directly controlled by the State or land owned by others, which gives the authority and obligation specified in the decision granting it by the official authorized to grant it or in an agreement with the owner of the land, which is not a lease agreement or land processing agreement". Everything of origin does not contradict the soul and provisions of the law ^[10].

Individuals or legal entities can hold or control land rights. Citizens of Indonesia or foreigners with a domicile in Indonesia are the only people who can possess or manage land rights. Private, public, Indonesian, or foreign legal entities with representation in Indonesia are all examples of legal entities that have the ability to hold or manage land rights. The Regional Government or the Central Government are two legal authorities that have the power to regulate land rights ^[11].

Land tenure rights that can be controlled by local governments and the Central Government are use rights and management rights. Right of use as a right of tenure over land originating from the right to control the state has legal characteristics that are different from land tenure rights as referred to in Article 16 of the BAL.

The regulation in BAL only states that "the subject of the right to use is a legal entity established under Indonesian law and domiciled in Indonesia". If studied further,

regarding the position of the Central Government and Regional Governments as parties that can have the right to use in Article 49 paragraph (3) of Government Regulation No. 18 of 2021 states that:

"The right to use as long as it is used as intended is given to Central Government and Local Government agencies".

This shows that the regulation of land law in Indonesia juridically gives rights to the Government as subjects of the right to use rights to state land as well as use rights to management land. Further arrangements regarding the release of land use rights are regulated in Article 60 paragraph (4) of Government Regulation No. 18 of 2021 which states:

"The right of use during use can only be released to qualified parties".

The release of the right to use as referred to in paragraph (4) can be understood that the party to the release of the right to use, namely the Regional Government and the Right to Use that has been released will be used as the purpose of the release.

3.2 Authority of a Notary in Executing Relinquishment of Land Use Rights in Government Environments

According to Article 1 point 1 of Notary Function Law states that a "Notary is a general official who is authorized to make authentic deeds and other authorities as referred to in the law". Judging from their duties and positions, notaries are tasked with exercising some of the authority of the government. In this case, the notary is a general official but not a government employees^[12]. Therefore based on Article 1 number 1 of Law No. 2 of 2014 it can be understood that Notaries are public officials who are a personification of the law of truth, justice and even a guarantee of legal certainty for the community.

Based on the Notary Function Law as a General Officer mandated by Law to make an actual authentic deed^[13]. Therefore the Notary Function Law as the notary's duties and authority are only to make a deed, legalize the deed under hand, make a *grosse* deed and have the right to issue a copy or derivative of the deed to the party concerned^[14].

A notary is "essentially an official from whom a person can obtain reliable advice. And everything that is written and determined is considered true" This implies that the notary is given and equipped with wide authority or power that is accessible to the public (*Openbaar gezag*). "As a public official, notaries are appointed by the government" and work for public interest services, although notaries are not civil servants who receive salaries from the government, notaries are retired by the government without receiving a pension from the government^[15].

Basically, the Notary Function should also provide justice that leads to harmony, harmony, balance, impartiality to the parties and also free from executive power. This actually confirms that the position as a Notary Public must be independent, in the sense of the word impartial to certain parties, so that Notary becomes a position of trust. Meanwhile, the authority of Notaries has been regulated in Article 15 paragraph (1) of Law No. 2 of 2014 stated that:

"Notaries are authorized to make authentic Deeds regarding all deeds, agreements, and determinations required by laws and regulations and/or desired by the interested person to be stated in authentic Deeds, guarantee the certainty of the date of making the Deed, provide grosse, copies and quotations of the Deed, all of that as long as the

making of the deed is not assigned or excluded to other officials stipulated by law".

Notaries provide legal certainty for the parties of the deed they make. Notaries also have other authorities as public officials, namely making authentic deeds in accordance with statutory regulations. In addition to the authority "Article 15 paragraph (2) letter (f) also explains the authority of Notaries to make deeds related to land. Where in Article 15 paragraph (2) letter (f) is quite clear about the authority of the Notary".

The formulation of "Article 15 paragraph (2) letter f of the Notary Office Law regarding the authority of Notaries in relation to land". The authority received/carried by a Notary through the Law certainly has some limitations. It is known that every authority is always limited by matter (*materiae*), region (*locus*), and time (*tempus*). At this time, the authority of Notaries is still limited by looking at the material or content in the provisions of "Article 15 paragraph (2) letter f of the Notary Position Law. It is understood that, this restriction is because there is another official who is authorized in making land deeds, namely the Land Deed Making Officer".

The Notary authority can be divided into 3 (three) types, namely:

1. Main authority the "Notary is authorized to make authentic deed, agreements and provision required by laws and regulation"
2. Certain authorities, namely Notaries can carry out certain legal actions, in this case Notaries can make deeds related to land.
3. Another authority, namely the authority of Notaries in a later determined manner is an authority that will be determined based on the rules of law that will come later (*Ius constituendum*).

The Central Government or Local Government as a legal subject with the right to use land can be seen according on the status of land that can be controlled. The government can control the right of use land. According to the BAL "right of use as part of the right of tenure over land in which there are authorities, obligations and prohibitions for the Central Government or Regional Government as a subject of law." Land controlled by the Central Government or Regional "Government if it has the status of Right of Use, then the authority over the land is to use the right of use land for the purposes of carrying out its duties." If the land with a right of use is no longer used for those reasons, the right of use is withdrawn, and the land becomes state property or directly under the jurisdiction of the state.

According to the Article 49 paragraph (3) of Government Regulation No. 18 of 2021, which can be interpreted that "the right to use as long as it is used as referred to in paragraph (1), namely Central Government Agencies, Regional Governments, Village Governments, Representatives of foreign countries and representatives of international bodies". Second, release without a period of time / for the purposes of Article 60 paragraph (3) of Government Regulation No. 18 of 2021, namely "the Right to Use as long as it is used cannot be used as debt security by being burdened with dependent rights, cannot be transferred, transferred to other parties or changed rights, cannot be guaranteed and transferred".

The release of the right to use land should be done by and in the presence of a designated official, and the Minister

should be informed. It is clear that a general official with the authority to carry out the release of use rights on property is “the notary, sub-district, or head of the land office. The Notary's position in this case is that of a general officer with the sole authority to create authentic deeds for all deeds, agreements, and decisions that the interested party needs to be stated in an authentic deed.” The Notary also ensures the “certainty of the date, maintains the original deed, and provides copies, *grosse*, and quotations, all so long as the creation of the deed is not also delegated or exempted to other officers or individuals.”

4. Conclusion

The result of this paper is the relinquishment of land use rights in the Government Environment is further regulated in Article 49 paragraph (3) of Government Regulation No. 18 of 2021 which shows that land law regulations juridically give rights to the Government as subjects of rights to use rights to state land and use rights to management land. Further arrangements regarding the release of use rights over Government land are regulated in Article 60 paragraph (4) of Government Regulation No 18 of 2021. Notary Authority in the Implementation of Release of Land Use Rights in the Government Environment is seen from their duties and positions, the notary is tasked with exercising some of the authority of the government. The release of use rights to land could be carried out by a general official such as a notary, sub-district, or head of land office. The notary's position in this case is that of a general official who has the exclusive authority to generate genuine documents for all agreements, determinations, and deeds that the interested party could demand.

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