

Juridic Analysis Of The Overlapping Ground Problem Resulting From The Difference In Measurement (Research Study For A Free Trade Company And Batam Free Port)

Fadhilah Muhamad Noor¹, Darwis Anatami², Dahlan³,
Erniyanti⁴, Soerya Respationo⁵

¹⁻⁵ Postgraduate of Law Studies Program, Faculty of Law, Universitas Batam, Indonesia
Korespondensi Penulis : fadhilahmuhamadn@gmail.com

Abstract The earth is the most susceptible object to the issue, the many issues taking place today are due to the varying issues of society, one of which is the overlapping (overlapping) of the land as to the possession of the land floor. The study was done with the purpose of learning about the overlapping land disputes (overlapping) and the encountered obstacles and solutions in the offices of the free trade and Batam free port bodies. The study employs a sociological juxtaposition approach, the is approaches through current legal research, and links with existing facts in society, with analytical research specifications, as to the issues encountered in overlapping (overlapping) lands in the offices of the free trade and Batam free port bodies. In this study, the authors used primary types of data through interviews and field observations supported by secondary data of qualitative library studies. The study indicated that the settlement of land rights issues by mediating in the Office of the Free Trade Company and Batam Free Port had been consistent with the provision of a settlement of the problem carried out by the Office of the Free Trade and the Batam free port. As for the problem at hand, it is the absence of the parties involved and the good faith of the parties involved. As to overlapping (overlapping) ground (overlapping) as a result of loss of land/patent or a measurable system difference, the management of the free trade area and the Batam free port provided the problem with a revised image setting (PL) or a ground reduction reduction with a compulsory annual return on ground space (UWT).

Keywords: Land Dispute, Settlement, Mediation

Introduction

Land law in Indonesia is based on tenure rights and various tenure rights over land, the basis of which is the rights as an Indonesian nation. Land disputes occur because land has a critical position, which can prove the independence and sovereignty of its owner. In the regulation of land, State intervention is sometimes needed. Still, the State only needs to intervene if the community has been able to resolve its problems or interests and if it does not conflict with the ownership of other parties¹.

Land management in this context means a series of activities that include planning, allocating, monitoring, and evaluating a Management Rights land, a right to control the State whose implementation authority is delegated to the holder. In this case, the holder is the Batam Concession Agency². Therefore, the Batam Concession Agency (BP) is appointed to allocate land or transfer part of the Batam Concession Agency (BP) Management Rights land to land users to be used according to predetermined designations.

¹ Adrian Sutendi, *Peralihan Hak Atas Tanah Dan Pendaftarannya*, Jakarta: Sinar Grafika, 2007, Hal. 20.

² Peraturan Kepala Badan Pengusahaan Kawasan Perdagangan Bebas dan Pelabuhan Bebas Batam Nomor 3 Tahun 2020, Pasal 1 butir 1 tentang Penyelenggaraan Pengelolaan Lahan.

The choice of dispute resolution can be done with 2 (two) processes. The first is the dispute resolution process through litigation in the court, and the second is the dispute resolution process through cooperation (cooperative) outside the court. The lack of public knowledge about the law in Indonesia and the difficulty of the legal process in Indonesia, especially the settlement of overlapping land problems, makes people not know how the implementation of the settlement of overlapping land problems caused by differences in measurement.

Bp Batam with the National Land Agency may be a reference for legal actors to provide input to the parties or the public, mainly when the settlement of overlapping land issues occurred due to differences in measurement.

Research Methods

The type of research used is Normative Law research and empirical law. Primary data is obtained through field research, such as interviews with the parties concerned, namely the Land Issues Handling Section of BP Batam. The research location taken in this research is the Land Problems Handling Section of BP Batam. The population in this study is the whole problem contained in the Land Management Section of BP Batam related to overlapping land caused by differences in measurement. The sample in this research is the Land Issues Handling Section of the Free Trade Zone and Free Port of Batam. After the data is collected, poured into the form of logical and systematic description, and then analyzed to obtain clarity of problem-solving, deductive conclusions are drawn.

Result and Discussion

Legal Regulation of Land Rights

Discussing land rights in Indonesia cannot be separated from Law No. 5 of 1960 (UUPA) because, formally, it is the UUPA that has provided the legal basis for the existence of various land rights in Indonesia today. According to the UUPA system, the highest right to land as one of the elements of earth, water, space, and natural wealth contained therein is the right of the Indonesian people.³

Land rights in Indonesia are dual. On the one hand, it is based on customary law, and on the other, it is based on Western law. Land based on customary law is called Indonesian land rights, for example, ulayat land, owned land, business land, gogolan land, bent land, and

³ Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria

others. Land-based on Western law is called Western land rights, for example, eigendom, refract land, postal land, etc. This situation does not provide legal certainty for people's rights to land. According to Article 16, in conjunction with Article 53 of the UUPA, the types of rights to land are ownership rights, business use rights, building use rights (HGB), use rights, rental rights, land clearing rights, forest produce rights, lien rights. , profit-sharing business rights, boarding rights, and agricultural land rental rights.

Property rights, according to Article 20 paragraph (1) of the UUPA, are hereditary, strongest, and most entire rights that a person can have over land by considering the provisions of Article 6. The use of proprietary land by non-owners is limited and regulated in Article 24 of the UUPA. According to Article 28 paragraph (1) of the UUPA, Cultivation Rights are the right to cultivate land directly controlled by the state within the period by the regulations in Article 29 of the UUPA for agricultural, fishing, or livestock companies. Government Regulation No. 40 of 1996 added the use of plantation companies.⁴ HGU is granted for an extended period according to the provisions of Article 29 UUPA; HGU is granted for a maximum period of 25 years, and for companies that require a more extended period, it can be granted for a maximum of 35 years.⁵

Article 35 of the UUPA defines building use rights (HGB), namely the right to construct and own buildings on land that is not one's own, with a maximum period of 30 years and can be extended for a maximum of 20 years.⁶ Those with building use rights are the same as business use rights, namely Indonesian citizens and legal entities established according to Indonesian law domiciled in Indonesia. According to Article 41 paragraph (1) UUPA, what is meant by right of use is the right to use and collect the proceeds from land controlled directly by the state or land owned by another person, which gives authority and obligations specified in the decision to grant it by the official authorized to grant it. , or in an agreement with the land owner, which is not a rental or land management agreement, anything that does not conflict with the spirit and provisions of the UUP.⁷

The right to rent for buildings according to Article 44 paragraph (1) UUPA is that a person or legal entity has the right to rent land if he has the right to use someone else's land for building purposes by paying the owner a certain amount of money as rent. Leasehold rights for buildings are the rights of a person or legal entity to construct and own a building on land

⁴ Urip Santoso, *Op. Cit.*, hlm. 101.

⁵ Pasal 29 Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria

⁶ Urip Santoso, *Op. Cit.*, Hal. 101.

⁷ Moh. Hatta, *Op. Cit.* Hal. 14.

belonging to another person by paying a certain amount of money for a certain period by the agreement between the land owner and the land lessee.⁸

Customary rights are rights to land that are not regulated in the UUPA. Customary rights are the highest rights to land owned by a legal association (village, tribe) to ensure the orderly use/utilization of land. Customary rights are rights owned by a legal association (village, tribe), where members of the community (legal association) have the right to control land, the implementation of which is regulated by the head of the association (tribal head/head of the village concerned)." The subject of customary law is the customary law community that inhabits a particular area. Based on the explanation, customary law communities can be divided into two groups, namely territorial customary law communities and genealogical customary law communities.

Pengaturan Hukum Penyelesaian Masalah/Sengketa Pertanahan

The definition of land dispute is formulated in Article 1 of the Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency Number 1 of 1999 concerning Procedures for Settlement of Land Disputes. Land disputes can take the form of administrative disputes, civil disputes, criminal disputes related to ownership, transactions, registration, guarantees, utilization, cultivation, and customary rights disputes. A land dispute has, of course, not just one subject but more than one, be it between individuals, groups, organizations, or even large institutions such as State-Owned Enterprises (BUMN). The legal status between the subject of the dispute and the land that is the object of the dispute can be owner, mortgage holder, buyer, assignee, tenant, manager, cultivator, and so on. Meanwhile, the subjects of land disputes include land owned by individuals or legal entities, state or regional government asset land, customary and ulayat land, ex-Western suitable land, national right land, plantation land, and other types of ownership.

Several legal factors at the root of land disputes that often occur recently include Overlapping Regulations, Insufficient Regulations, Overlapping Judiciaries, Convolutd Settlements, and Bureaucracy. Apart from legal factors, land conflicts are also caused by several non-legal factors, namely⁹: Overlapping Land Users, Higher Land Prices, Increasing Public Awareness of Land, Fixed Land, But Population Continues to Increase, Poverty.

In general, the available dispute resolution media can be classified into two forms, namely through court and out-of-court dispute resolution, often referred to as alternative

⁸ *Ibid.*, Hal. 130.

⁹ *Ibid.*, Hal. 70.

dispute resolution Alternative Dispute Resolution (ADR). Forms of dispute resolution can be grouped into three main groups, namely those carried out by one party, those carried out only by the parties involved in the dispute, and those involving third parties. Another form of dispute resolution carried out by disputing parties is negotiation. This dispute resolution model is called a resolution to produce a decision or agreement without interference or assistance from a third party. Usually, the solution to this model is based on something other than existing regulations, but instead on rules they create themselves.

Mediation is an effort to resolve disputes between parties by mutual agreement through a mediator who is neutral and does not make decisions or conclusions for the parties but supports the facilitator. Regulations regarding mediation are determined in the provisions of Article 6, paragraph (3), Paragraph (4), and Paragraph (5) of Law No. 30 of 1999. The provisions regarding mediation as regulated in Article 6 paragraph (3) of Law Number 30 of 1999 are a process of activity as a continuation of failed negotiations carried out by the parties according to the provisions of Article 6 paragraph (2) of Law No. 30 of 1999. 30 of 1999. According to the formulation of Article 6 paragraph (3) of Law no. 30 of 1999 states that upon written agreement, the parties have disputes or differences of opinion resolved through the assistance of one or more expert advisors or a mediator.¹⁰ If a resolution through mediation between the disputing parties cannot be achieved, then the settlement must go through court. In reality, in this case, there are still many cases piling up in court and needing to be resolved. In situations like this, mediation is a good choice in resolving disputes because it is considered more effective.

Implementation of Management Rights by the Batam Free Trade Zone and Free Port Concession Agency

The term "management rights" was mentioned for the first time in Minister of Agrarian Regulation Number 9 of 1965, which regulates the Implementation of Conversion of Controlling Rights over State Land and Subsequent Policies (from now on referred to as PMA No. 9/1965). The authority granted by management rights has been regulated by several regulations, including PMA No. 9/1965, Article 6 Paragraph (1) PMA No. 9/1965 stipulates that management rights give the holder the authority to¹¹: Plan the designation and use of the land; Use the land to carry out their duties; Hand over parts of the land to third parties with

¹⁰ Undang-undang Republik Indonesia Nomor 30 Tahun 1990 tentang Arbitase dan Alternatif Penyelesaian Sengketa. Pasal 6 ayat (1).

¹¹ *Ibid*, Hal. 89

usage rights for 6 (6) years; Receive income/compensation money and annual mandatory money.

The authority contained in Management Rights formulated by Article 6 Paragraph (1) PMA No 9/1965 is reiterated by Article 28 of Minister of Home Affairs Regulation Number 5 of 1973 (from now on referred to as Permendagri No 5/1973). However, this formulation was changed by Article 3 of the Minister of Home Affairs Regulation number 5 of 1974, which states that by changing as necessary the provisions in PMA No. 9/1965, management rights contain the authority to ¹² : Plan the designation and use of the land concerned; Use the land for business purposes; Handing over parts of the land to a third party according to the conditions determined by the company holding the rights, which includes aspects of its designation, use, period and finances, provided that the granting of land rights to the third party concerned is carried out by an official - authorized officials, by applicable laws and regulations.

Those who can be holders of Management Rights according to Article 67 paragraph (1) of Minister of Religion/KBPN No 9/1999 concerning Procedures for Granting and Cancellation of State Land Rights and Management Rights are Government Agencies, including Regional Government; State-Owned Enterprises (BUMN); Regional Owned Enterprises (BUMD); PT. Persero; Authority Body; Other government legal entities appointed by the Government. In Paragraph (2), it is stated that Legal Entities, as referred to in Paragraph (1), can be given management rights as long as they are by their primary duties and functions relating to land management.

Legal Arrangement of Management Rights

Management Rights are a reality of development in Indonesia, where society is very heterogeneous, and the land structure is very varied. On the juridical issue of Management Rights in national land law, there are differences of opinion among experts regarding the legal position of Management Rights. Some argue that Management Rights are the state's right to control land. Apart from that, other opinions state that Management Rights are land rights.¹³

Management Rights are regulated explicitly in Paragraph 2 of Article 136 to Article 147 of Law No. 11 of 2020. As a further elaboration of the provisions of these articles, the Government has issued Government Regulation of the Republic of Indonesia No. 18 of 2021 concerning Management Rights, Land Rights, Flats, and Land Registration (PP No. 18 of

¹² *Ibid*, Hal. 89

¹³ *Ibid*.

2021). Management Rights are the right to control the state. The definition of "controlled by the state" in Article 33 of the 1945 Constitution contains a higher or broader meaning than ownership in the civil law conception. Suppose "controlled by the state" is only interpreted as ownership in the civil (private) sense. In that case, the thing referred to will not be sufficient to use that control to achieve the goal of "greater prosperity of the people."

Based on Article 4 and Article 10, paragraph (1) PP No. 18 of 2021 stipulates that Management Rights can originate from State Land and Ulayat Land determined by ministerial decree. The granting of management rights is given to state land with a decision to grant rights to state land.¹⁴ State Land includes Land designated by Law or Government Decree, Reclamation of land, Soil arises; Land originating from the release/surrender of rights; Land originating from the release of forest areas, Abandoned Land; Land rights whose term has expired and no extension and renewal has been requested; Land rights whose term has expired and due to Central Government policy cannot be extended; and Land which from the beginning had the status of State Land.

Management Rights are removed because (1) the Minister cancels the rights due to administrative defects or a court decision that has obtained permanent legal force. (2) Released voluntarily by the rights holder; Released for public purposes; Revoked by law; Granted ownership rights; Designated as abandoned land; or Designated as Destroyed Land. The abolition of State Land Management Rights results in Land becoming State Land, or by the court decision; State land requires restructuring of use, utilization, and ownership, which then becomes the authority of the Minister. The removal of Management Rights on Ulayat Land results in the land returning to the control of customary law communities.¹⁵

Implementation of Settlement of Overlapping Land Problems by the Batam Free Trade Zone and Free Port Concession Agency

Regarding complaints from the public regarding the problem of overlapping land that occurred in BP Batam's working area, BP Batam, Based on Article 151 of the Regulation of the Head of the Batam Free Trade Zone and Free Port Concession Agency Number 15 of 2021 concerning Amendments to the Regulation of the Head of the Free Trade Area and Free Port Concession Agency Batam Number 19 of 2019 concerning Organizational Structure and Work Procedures of Work Units Under Members within the Free Trade Zone and Free Port

¹⁴ Pasal 137 ayat (3) UU No. 11 Tahun 2020

¹⁵ Pasal 15 PP No. 18 Tahun 2021

Concession Agency. Batam has a Section for Handling Land Issues, a Subdirectorate of Land Legality that has the task of preparing coordinating materials and data and document management in solving land problems. The Land Problem Handling Section, in carrying out its duties regarding overlapping land issues, prioritizes resolving problems through a non-litigation process or resolving problems through mediation between the parties.¹⁶

By resolving problems through a mediation or Non-Litigation process between the parties with BP Batam as a mediator and facilitator in the process of resolving overlapping land issues, BP Batam usually provides the following resolution options:

1. Revise the Location Determination Drawing (PL) without reducing the area of the latest land allocation or land allocation that does not yet contain buildings if one of the problem objects has already undergone development;
2. Reducing the area of land allocation with annual mandatory refunds (UWT) for the lost land area, then revisions will be made to the Location Determination Drawing (PL) by the agreement in the mediation process between the parties and BP Batam as mediator and facilitator.

This settlement option is usually agreed upon by the parties for problems caused by the loss of land stakes/boundaries or problems caused by differences in projection systems. The process of resolving overlapping land issues can be completed through a mediation process, and a resolution will never be found until the Litigation/Judicial process.¹⁷

Conclusion

1. Efforts to resolve the problem of overlapping land can be taken in 2 ways; the first is by resolving the problem/dispute through a Non-Litigation process using mediation as regulated in the provisions of Article 6 paragraph (3), paragraph (4) and paragraph (5) Law no. 30 of 1999. The provisions regarding mediation as regulated in Article 6 paragraph (3) of Law Number 30 of 1999 are a process of activity as a continuation of failed negotiations carried out by the parties according to the provisions of Article 6 paragraph (2) of Law No. 30 of 1999. 30 of 1999. According to the formulation of Article 6 paragraph (3) of Law no. 30 of 1999, upon written agreement, the parties have disputes or differences of opinion resolved through the assistance of one or more expert advisors or a mediator. The final way

¹⁶ Hasil Wawancara dengan Bapak Desniko Garfiosa, selaku Kepala Seksi Penanganan Masalah Pertanahan BP Batam, dilakukan pada tanggal 31 Agustus 2023, pukul 15:00 WIB.

¹⁷ Hasil Wawancara dengan Bapak Desniko Garfiosa, selaku Kepala Seksi Penanganan Masalah Pertanahan BP Batam, dilakukan pada tanggal 31 Agustus 2023, pukul 15:00 WIB.

to be done if deliberation between the parties cannot be achieved is by resolving the problem/dispute through the Judicial process (Litigation).

2. Implementation of resolution of land problems that occur in the working area of the Batam Free Trade Area and Free Port Concession Agency by Article 151 of the Regulation of the Head of the Batam Free Trade Area and Free Port Concession Agency Number 15 of 2021. In handling land overlapping problems that occur, the Problem Handling Section of Land Affairs prioritizes problem resolution through a Non-Litigation process or problem resolution through mediation between the parties.
3. Awareness of land allocation recipients in maintaining land stakes/boundaries to further fence them so that land boundaries are clear and immediately utilize the land by the land's designation. There are different projection systems in measurements carried out by the Batam Free Trade Zone and Free Port Concession Agency with the National Land Agency, a factor in the emergence of overlapping land problems in Batam. Although resolving the problem of overlapping land through a mediation process between the parties carried out by the Batam Free Trade Zone and Free Port Concession Agency is a solution that can be implemented in resolving this problem, there is a need for awareness among land allocation recipients in carrying out fencing so that land boundaries are clear and immediately making use of it. The land is the designation of the land, and there needs to be an agreement between the Batam Free Trade and Free Port Management Agency and the National Land Agency in determining the measurement process projection system so that the problem of overlapping land in Batam is reduced.

Reference

- Abdurahman, *Kedudukan Hukum adat dalam Perundang-Undangan Agraria Indonesia*, Jakarta: Akademik Presindo, 1992
- Achmad Sodiki, *Politik Hukum Agraria*, Konstitusi Press (Konpress), Jakarta, 2013
- Adrian Sutendi, *Peralihan Hak Atas Tanah Dan Pendaftarannya*, Jakarta: Sinar Grafika, 2007, Hal. 20.
- Bahder Johan Nasution, *Metode Penelitian Ilmu Hukum*, Mandar Maju, Bandung, 2018
- Boedi Harsono, *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-undang Pokok Agraria, Isi dan Pelaksanaannya*, Universitas Trisakti, 2016.
- Cst Kansil, Christine, S.T Kansil, Engeliën R, Palandeng dan Godlieb N Mamahit, *Kamus Istilah Hukum*, Jakarta, 2009.
- Darwin Ginting, *Hukum Kepemilikan Atas tanah Bidang Agribisnis*, Bogor: Ghalia Indonesia, 2010.

- Gary Goodpaster, *Tinjauan terhadap penyelesaian Sengketa dalam Seri Dasar-dasar Hukum Ekonomi Arbitrase di Indonesia*, Jakarta : Ghalia Indonesia, 1995.
- Hilman syahril haq, *Mediasi komunitas sebagai alternative penyelesaian sengketa*.
- Idham, *Konsolidasi Tanah Perkotaan Guna Meneguhkan Kedaulatan Rakyat*, Alumni Bandung, 2004.
- Istijab, *Penyelesaian Sengketa Tanah Sesudah Berlakunya Undang-Undang Pokok Agraria*, dalam Widya Yuridika Jurnal Hukum, Volume 1, Nomor 1, Juni 2018.
- Jemmy Rumengan, Idham, *Metode Penelitian Kualitatif dan Kuantitatif*, Perdana Mulia Sarana, Bandung, 2015.
- Lawrence M. Friedman, *Sistem Hukum; Perspektif Ilmu Sosial (Tale Legal System; A Social Science Perspective)* Cetakan II, Bandung, Nusa Media, 2019.
- Maria S.W. Sumardjono, *Tanah dalam Perspektif Hak Ekonomi, Sosial dan Budaya*. Kompas, Jakarta, 2008.
- Maskur Hidayat, *Strategi & Taktik Mediasi Berdasarkan Perma No.1 Tahun 2016 Tentang Prosedur Mediasi Di Pengadilan*, PT Kharisma Putra Utama, Jakarta, 2016.
- Nurmaningsih amriani, *Mediasi alternatif Penyelesaian Sengketa Perdata Di Pengadilan*, PT. Raja Grafindo Persada: Jakarta, 2012.
- Ramli Zein, *Hak Pengelolaan Dalam Sistem UUPA*, Rineka Cipta, Jakarta, 1994.
- Sri Soedewi Masjchoen Sofwan, *Hukum Jaminan di Indonesia Pokok-pokok Hukum Jaminan dan Jaminan Perorangan*. Yogyakarta, Liberty Yogyakarta, 1980.
- Takdir Rahmadi, *Mediasi Penyelesaian Sengketa Melalui Pendekatan Mufakat*, Rajawali Pers, Jakarta, 2011.
- Urip Santoso, *Hukum Agraria Kajian Komprehensif*, Kencana Prenada Group, Cetakan ke-1, Jakarta, 2012.
- Undang-Undang Dasar Negara Republik Indonesia Tahun 1945
- Undang-Undang Republik Indonesia Nomor 5 Tahun 1996 tentang Peraturan Dasar Pokok-Pokok Agraria
- Pasal 1 Peraturan Menteri Negara Agraria/Kepala Badan Pertanahan Nasional Nomor 1 Tahun 1999 tentang Tatacara Penyelesaian Sengketa Pertanahan
- Pengganti Undang-Undang Nomor 56 Tahun 1960 tentang Penetapan Luas Tanah Pertanian
- Putusan Perkara Mahkamah Konstitusi Republik Indonesia Nomor 002/PUU-I/2003 mengenai Pengujian UU Nomor 22/2001 tentang Minyak dan Gas Bumi (hlm. 18-19).
- Undang-undang Republik Indonesia Nomor 30 Tahun 1990 tentang Arbitase dan Alternatif Penyelesaian Sengketa. Pasal 6 ayat (1).
- Keputusan Presiden Republik Indonesia Nomor 41 Tahun 1973 tentang Daerah Industri Pulau Batam
- Peraturan Kepala Badan Pengusahaan Kawasan Perdagangan Bebas dan Pelabuhan Bebas Batam Nomor 3 Tahun 2020 tentang Penyelenggaraan Pengelolaan Lahan.
- Keputusan Presiden Republik Indonesia Nomor 41 Tahun 1973 tentang Daerah Industri Pulau Batam Peraturan Kepala Badan Pengusahaan Kawasan Perdagangan Bebas dan Pelabuhan Bebas Batam Nomor 3 Tahun 2020 tentang Penyelenggaraan Pengelolaan Lahan. Peraturan Kepala Badan Pengusahaan Kawasan Perdagangan Bebas dan

Pelabuhan Bebas Batam Nomor 26 Tahun 2021 tentang Penyelenggaraan Pengelolaan Lahan.

Peraturan Pemerintah Nomor 41 Tahun 2021 tentang Penyelenggaraan Kawasan perdagangan Bebas dan Pelabuhan Bebas (Iembaran Negara RJpublik Indonesia Tahun 2021 Nomor 51, Tambahan Gmbaran Negara Republik Indonesia Nomor 6653);

Peraturan Kepala Badan Pengusahaan Kawasan Perdagangan Bebas dan Pelabuhan Bebas Batam Nomor 26 Tahun 2021 tentang Penyelenggaraan Pengelolaan Lahan.