

# The Obstacles of Land Registration of Local Government Assets in Aceh Province, Indonesia

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This paper aims to scrutinise the obstacles faced by the local government in registering land owned by the local government in the land office as government assets. This study applies legal empirical methods by using a qualitative approach. Data required for this study consists of primary and secondary data. Primary data was obtained through field research and secondary data was obtained through library research. All collected data was analysed by using qualitative analysis. The results show that administratively all land owned by the local government as government assets have been recorded in the inventory book, but they have not been registered yet in the land office. The recording of land assets is carried out by identifying all plots of land. The inventory book contains a goods inventory that can be accessed by all interested parties. Because most land assets are not registered yet in land office yet, many plots of land are still uncertified. The Obstacles faced by the local government in registering land in the land office include a lack of proof of land acquisition owned by the local government and land ownership disputes with a third party. It is suggested that the local government should keep proof of land acquisition from the sellers and settle any land dispute with the third party to obtain legal certainty of land ownership.

**Key words:** *Obstacles, land registration, local government, assets.*

## Introduction

The local government as a legal subject has a right to land in accordance with its designation. In Article 16 paragraph (1) Law Number 5 year 1960 concerning Basic Agrarian Law provides various types of land rights, namely (a) property rights, (b) management rights, (c) building rights, (d) usage rights, (e) leasing rights, (f) land clearing rights, (g) the right to collect forest

products, (h) other rights that will be stipulated by law as well as temporary rights referred to in article 53.

Furthermore, in Article 53 paragraph (1) it is stated that the rights are temporary as referred to in article 16 paragraph (1) letter h, namely sharing rights and leasing rights. Rights are regulated to limited characteristics that contradict the law and the rights are sought to be erased in a short time. Out of various types of main rights, which is permitted to the local government, is usage rights.

In Basic Agrarian Law, the local government is subject to certain land from various land rights as specified in Article 16 paragraph (1) and Article 53 paragraph (1) of the Basic Agrarian Law Number 5 year 1960. More specifics are mentioned in Article 39 of Government Regulation Number 40 year 1996 concerning Land Use Rights, Building and Land Use Rights. This Government Regulation determines that usage rights can be owned by the Local Government. In addition, local governments can also own land with the status of Management Rights as stipulated in the Regulation of Ministry of Agrarian Affairs Number 9 year 1965 concerning the Implementation of Conversion of State Land Rights, and Regulation of the Head of National Land Agency Number 9 Year 1999 concerning Procedures for Granting and Revoking Rights. Although local governments can own land with the status of Usage Rights and Management Rights, it may raise a new problem in terms of land ownership because part of land management rights may be given to third parties (Herinawati, 2020).

To guarantee legal certainty of land status owned by local governments, registration needs to be done at the District/City Land Office (Sastro, 2020). This is expressly determined in Article 42 of Government Regulation Number 27 year 2014 concerning the Management of State/Local Property, which basically states that the manager of the goods, the user of the goods and/or the power of the user of the goods are obliged to secure the goods under their control. These safeguards include administrative safeguards, physical safeguards and legal safeguards.

Legal safeguards are implemented through the registration of land assets in the land office. In this regard, Article 296 of the Regulation of the Minister of Home Affairs Number 19 year 2016 concerning the Guidelines for the Management of Local Owned Property states that the Property Manager, Property User and/or Property User Authority is required to register the property belonging to the region under their control. The results of the implementation of land registration are issued certificates that serve as a strong verification tool as land assets under their control.

However, the facts show that in Banda Aceh there 87 parcels plots of land out of 295 plots or 41.83% o are not certified. In Aceh Barat Daya District, 520 plots of land out of 591 plots or 87.97% are uncertified. The same condition also occurs in Pidie District by which 796 plots

out of 920 plots or 86.52% of land are uncertified. Overall, 72.24% of land in these three sites are uncertified. This fact shows that the land assets owned by local governments do not have the guarantee of legal certainty, even though these assets are generally obtained through appropriate land acquisition processes.

## Literature Review

Article 2 paragraph (2) of Basic Agrarian Law Number 5 year 1960 states that the rights given state authorises the state to: (a) regulate and carry out the designation, use, supply and maintenance of the earth, water and space; (b) determine and regulate legal relations between people and the earth, water and space; (c) determine and regulate legal relations between people and legal actions concerning earth, water and space. Furthermore, paragraph (4) states that the right to control from the state can be empowered by specific areas and customary law communities as long as it has no conflict with national interests based on the provisions of Government Regulations.

The power to control the land granted by the central government to local governments can be seen as a logical consequence in the form of a unitary state (Husni, 2019). In this matter, Andi Kasmawati (2012) states that the conception of a unitary state is a basic principle in the administration of government, because in addition to strengthening the national government it also provides a stimulus for the region to articulate all its interests, through delegation/transfer of authority from the central government to the local government. Based on these provisions, it shows that the authority of the state as the holder of the controlling right is public and that authority can be authorised to the regions or customary law communities (Ginting, 2019). In addition to having public authority as mentioned in Article 2 paragraph (2) of Basic Agrarian Law, local governments can also have certain land rights.

The assertiveness of the state authority as the holder of controlling rights is important when bearing in mind that the state is the recipient of the Indonesian nation's power, and is responsible for the welfare of its people as mandated by Article 33 paragraph (3) of the 1945 Constitution, which says that the state has the authority and responsibility to realise the welfare of the people (Ismail, 2011). Authority inherent in the local government supplies the rights to make decisions, and govern or delegate responsibility to other parties (Setiawan & Djatmiko, 2008).

Urip Santoso (2012) states that the rights to control the land include usage rights and management rights. Usage rights and management rights can be obtained by local governments through the affirmation of transfers originating from control of rights over state land, or through granting rights originating from state land and as proof of their rights. These land rights can be issued certificates by National Land Agency through the Land registration process. Legally this

land registration is not only to guarantee legal certainty but also as a condition for the birth of land rights granted by the State (Lubis & Lubis, 2008).

Land is categorised as a fixed asset because it is an tangible good that has benefits over twelve months and are intended for use in government or general public activities (Supriyadi, 2020). Land as a local government asset is an important element in the administration of government services to the community and it must be managed properly by taking into account the principles of land management assets which includes: functional principle, principle of legal certainty, principle of transparency, principle of accountability (Waloejo, 2010). In Appendix II of Government Regulation No. 24 of 2005 concerning Government Accounting Standards, it is stated that land is recognised as a local asset if it meets certain requirements, namely: (1) acquisition is intended to be used for the implementation of government operational activities, (2) evidence of legal acquisition, and (3) registered as local government assets.

## **Research Methods**

The specification of this study is empirical legal research which seeks to describe and analyse secondary and primary data regarding land registration of local government assets in Aceh Province. The data source for this research was obtained from library research and field research. Library research was carried out first and field research was carried out later. Literature materials were examined in the form of statutory provisions, the views of experts and related research results. Data obtained in field research was related to documents and information regarding land assets owned by the local government.

Literature review was carried out by scrutinising and examining legal materials (primary, secondary and tertiary legal material) both in physical and electronic form. Field data was obtained through *in-depth interviews* with the stakeholders, and it was also done through document tracking. Data collected from both library and field researches was analysed by using a statutory and conceptual approach. The legislative approach was carried out on the results of research that have been regulated in the provisions of legislation; while the conceptual approach was carried out on the results of research that have not been yet been regulated in the provisions of the legislation.

## **Results and Discussion**

### ***Implementation of Land Registration***

Based on Article 3 paragraph (2) Government Regulation (hereinafter referred to as GR) Number 27 year 2014 mentions that the management of state/local property includes: (a) planning and budgeting; (b) procurement; (c) use; (d) utilisation; (e) security and maintenance;

(f) assessment; (g) alienation; (h) annihilation; (i) deletion; (j) administration; and (k) development, supervision and control.

Furthermore, in Article 8 paragraph (1) GR Number 27, year 2014 it is stated that the head of the local apparatus unit is the user of locally owned goods. In paragraph (2) letter e, it is stated that the user of the goods belonging to the region is authorised and responsible for securing and maintaining the goods belonging to the area under their control.

In addition, Article 42 paragraph (1) GR Number 27, year 2014 states that the manager of the goods, the user of the goods and/or the authority of the user of the goods are obliged to secure the goods belonging to the state/region which is under their control. Paragraph (2) states that securing state/local property as referred to in paragraph (1) includes administrative security, physical security and legal security and this security is obtained through land registration in the land office.

The results of the study shows that administrative safeguards have been done more than physical safeguards and legal safeguards. This is indicated by the recording of land belonging to the region in the goods inventory book. The number of land parcels that have been recorded in the goods inventory book at the research location are as listed in Table 1.

**Table 1:** Number of Land Plots Recorded in Inventory Book

| No.   | District/City   | Number of Land Plots |
|-------|-----------------|----------------------|
| 1.    | Banda Aceh      | 295                  |
| 2.    | Aceh Barat Daya | 591                  |
| 3.    | Pidie           | 920                  |
| Total |                 | 1,806                |

**Source:** Field research (2018).

Table-1 above shows the number land plots that have been recorded in the Inventory Book owned by the local government. These recorded lands might have potential losses if these lands are not issued land ownership certificates by the Land Office. This loss might be in form of a land ownership conflict with the third party. Among the District/City mentioned in Table-1, Pidie District has much land with 920 plots and Aceh Barat Daya District holds the second rank with 581 plots, and Banda Aceh City holds 295 plots of land. Unfortunately, not all land owned by the local government as mentioned in Table-1 have been issued certificates by the Land Office. Only 403 out of the total 1,806 plots of land (22.35%) have been issued

certificates by Land Office. Details of certified land that have been issued land ownership certificates are shown in Table 2.

**Table 2:** Number of Certified Land that Have Been Issued Certificates

| No.    | District/City   | Number of Land Plots | Total Area (M2) |
|--------|-----------------|----------------------|-----------------|
| 1.     | Banda Aceh      | 208                  | 873,267.00      |
| 2.     | Aceh Barat Daya | 71                   | 222,457.12      |
| 3.     | Pidie           | 124                  | 517,378.00      |
| Number |                 | 403                  | 1,613,102.12    |

**Source:** Field research (2018)

Table 2 shows that the plots of land that have been issued certificates by the Land Office are as follows: 208 plots of land in Banda Aceh, 124 plots of land in Pidie, and 71 plots of land in Aceh Barat Daya District. This means that there are 87 (41.83%) plots of land in Banda Aceh which are uncertified. In Aceh Barat Daya District, 520 plots of land out of 591 plots of land (87.97%) are uncertified and, in Pidie District, 796 plots out of 920 plots of land (86.52%) are uncertified. For the three research sites, 72.24% of land is still uncertified.

Legally, in Article 299 paragraph (3) of the Minister of Home Affairs Regulation Number 19, year 2016 concerning Management of Local Property, it is stated that administrative safeguards are carried out by collecting, recording, storing and administering documents in an orderly and secure manner of land ownership. The details of which include: a. complete proof of ownership and/or keep the land certificate; b. make goods into an identity book; c. carry out an inventory/census of local property once every 5 years and report the results; and d. record in the list of goods the manager, user of goods, and power of attorney.

The results of various documents are recorded regarding land data. It comprises both physical data and juridical data. Physical data is related to the location of boundaries and area, while juridical data is related to the status of rights and the basis of acquisition. The data is contained in the Goods Inventory Book. This book is made by each user or user authority and the recapitulation is made by the goods manager carried out by the work unit or as part of the authority in the field of assets.

In the recapitulation, it can be seen whether a parcel of land has a certificate or not. Besides, in the Goods Inventory Book, administrative safeguards are carried out in the form of Local Property Reports and in the form of Maps of the location of Land and Building Assets. In the

event that the land has been certified, the certificate is stored in a safe deposit box in the work unit or the part that deals with assets, while the user just holds a copy.

For land parcels that have not been certified, the documents needed to be submitted and prepared for submission of a certificate application. Related to this matter, Halimatussakdiah (2018) states that currently Aceh Barat Daya's Financial Board as a work unit in the field of assets has limited capacity in securing the administration as indicated in the Inventory Book.

In Article 299, paragraph (1) of the Minister of Home Affairs Regulation Number 19, year 2016 concerning the Management of Local Property, it is stated that physical security is carried out, among others, by building boundary fences, installing land ownership signs and guarding. In this regard, Safrizal (2018) states that physical security is mainly carried out on fields that have not been used by local governments to carry out the main tasks of local government. The unused land includes paddy land that is used by residents for agriculture on a rental basis. The boundary markers have been installed on these fields.

Besides, there are also land and shop buildings which are utilised by residents on the basis of rent in Pidie District, where physical security is not secured as stipulated in Article 299 paragraph (1) of the Minister of Home Affairs Regulation Number 19 year 2016 because it is deemed to be sufficient with a rental agreement being made. The rental agreement is made between the local government and the citizens (Azhari, 2018). Regarding legal safeguards as referred to in Article 299 paragraph (4) of the Minister of Home Affairs Regulation Number 19, year 2016, it is carried out on land which has no certificate yet, or on the land which has a certificate but not in the name of the local government.

Furthermore Article 302 paragraph (1) of the Minister of Home Affairs Regulation Number year 2016 states that the legal security of uncertified land as referred to in Article 299 paragraph (4) is carried out:

- a. If the goods belonging to the region have been supported by initial documents of ownership, such as in the form of letter C, deed of sale, deed of grant, or other equivalent documents, the manager of the goods/user of the goods and/or the authority of the user of the goods can immediately submit an application for the issuance of certificates on behalf of the local government to the National Land Agency/Local Office in accordance with statutory provisions; and
- b. If the goods belonging to the region are not supported by ownership documents, the manager of the goods/user of the goods and/or the authority of the user of the goods endeavours to obtain initial documents of ownership such as land history.

When the legal security of land that has been certified but not yet in the name of the local government, it is carried out by means of the manager of the goods/users of the goods and/or the authority of the user of the goods immediately applying for a change in the name of the land title certificate to the local land office on behalf of the local government for land parcels that have been certified. Evidence in the form of such certificates is stored in the safe area of the Local Financial Management Agency as a work unit for managing goods while a copy of the good's user is stored. This is done in accordance with Article 44 of Government Regulation Number 27, year 2014 which states that proof of ownership of goods belonging to the state/region must be stored in an orderly and safe manner carried out by the Property Manager.

### ***Lack of Proof of Land Acquisition***

To be able to obtain a certificate of land rights in the name of the local government in the field that does not have a certificate yet, the local government as the holder of the rights must first submit an application for land rights to the head of the regency/city land office where the land concerned is located. After a decision letter granting the rights, registration of the rights is to be issued a certificate. The application must be attached with all documents required for it as specified in Government Regulation Number 24 of 1997 concerning Land Registration, Regulation of the Minister of State and Agriculture Number 3 of 1997 concerning Regulations for Implementing Government Regulation Number 24 year 1997, and Regulation of the Head of National Land Agency Number 1 year 2010 concerning Service Standards and Land Management.

In the provision of the law, it is stated that in the application form the rights must contain; (1) identity of the subject of rights, (2) area, location and use of the requested land, (3) statement of non-dispute, and (4) a statement of land being physically controlled. Besides having to contain these matters, the application must attach as well, inter alia; (1) determination of the location or a permit to designate land use, and (2) proof of land acquisition/rights base/statement from the asset manager.

The Government of Aceh Barat Daya District, based on Letter Number 031/973/2017 dated September 4, 2017, has submitted an application for the certification of land belonging to the District to the Head of National Land Agency Office. The request will be followed up if it has completed all requirements needed for it. If the statement is complete and the location of the land being requested is in the location of the implementation of the complete land registration, it will be carried out together with the land parcels that are in the same location (Arfath, 2018).

### ***Occurring of Land Dispute***

The implementation of land registration cannot proceed if the land is in dispute. Article 30 of Government Regulation Number 24, year 1997 states that, for the land under dispute, requests for physical and juridical data occur first; otherwise the process of certificate issuance is suspended until the dispute is over. Some land owned by the local government is undergoing litigation in court, including land located in Pidie District that is in dispute with local residents. The dispute occurred because the Pidie District government does not have sufficient proof of ownership rights while physical control is hold by local residents (Nurhayati, 2018).

In addition, one of the land parcels owned by the local government recorded in the Goods Inventory Book of Aceh Barat Daya District in 2017 is objected to by residents who feel entitled to the land. This objection was submitted on July 24, 2018 to the District Land Office. Aceh Barat Daya will examine first and call on the parties to examine the problem so that appropriate action can be taken (Arfath, 2018). Based on the description above it shows that even though the land assets have been recorded in the local government inventory book it cannot be followed up for certification if the land is still in dispute.

### **Conclusions**

The safeguarding of assets is carried out by cataloguing all plots of land which are in the possession of the manager of the goods, the user of the goods and the authority of the user of the goods. The results of inventory are contained in the goods inventory book which is available to each user of goods and a recapitulation is made by the Regency/City Government Work Unit authorised for this purpose. To be able to guarantee legal certainty over the land of local government assets that have been recorded in the inventory book, registration must be carried out in the land office. The safeguarding of assets has not been carried out fully. This indication is shown by the fact that there are still many parcels of land that have not been registered yet. The obstacles in the registration of land as local government assets include incomplete of proof of land acquisition by the local government and the occurrence of land disputes.



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