BEACH RECLAMATION IN THE PETUANAN AREA OF THE CUSTOMARY LAW COMMUNITY IN AMBON CITY (OVERVIEW OF PERMITS AND OWNERSHIP RIGHTS)

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ABSTRACT

The implementation of reclamation is based on permits from the government and local governments in accordance with their respective authorities. Meanwhile, the control over reclaimed land is by the State. However, the licensing and control of reclaimed land in the customary law community's petuanan area must pay attention to the petuanan rights of the customary law community unit (KMHA), so it is necessary to involve KMHA in the licensing process and ownership rights.

Keywords: Reclamation, Petuanan Area, Customary Law.

INTRODUCTIONS

Indonesia is an archipelagic country, with an area of 7.81 million km2 consisting of 2.01 million km2 of land, 3.25 million km2 of ocean, and 2.55 million km2 of the Exclusive Economic Zone (EEZ). Given that Indonesia's marine area is wider than the land area, coastal and marine resources have very important potential, because coastal and oceanic areas provide a variety of natural resources, both biological and non-biological, of high economic and ecological value (Adrianto, 2021).

With its character as an archipelago, it has an impact on the implementation of development which also includes coastal and marine areas. In addition, the increasing population growth and the need for residential settlements make development in coastal, coastal and marine areas unavoidable. One of the impacts of development in coastal and coastal areas is the provision of new land or land for development.

Efforts to change coastal areas into new land are known as coastal reclamation activities (Santoso, 2015). Article 1 number 23 of Law no. 27 of 2007 concerning the Management of Coastal Areas and Small Islands that reclamation is an activity carried out by people in order to increase the benefits of land resources from an environmental and socio-economic point of view by way of backfilling, drying of land or drainage.

According to Wei Wang, Hui Liu, Yongqi Li, and Jilan Su (2014) that Reclamation is one potential solution for the increasing demand of new land for living and development. This illustrates that the existence of reclamation is one of the potential solutions to provide new land or land to live and build.

The implementation of reclamation is based on permits from the government and local governments in accordance with their respective authorities. Article 15 of the Presidential Regulation of the Republic of Indonesia Number 122 of 2012 concerning Reclamation in Coastal Areas and Small Islands (Presidential Regulation Reclamation) stipulates that the Government, regional governments, and everyone who will carry out reclamation must have a location permit

and a permit for the implementation of reclamation. In relation to reclamation in the regions, according to Article 16 paragraph (4) of the Presidential Regulation on reclamation, it stipulates that the Governor and regents/mayors grant location permits and permits for the implementation of reclamation within the territory in accordance with their respective authorities and reclamation activities at fishing ports are managed by the regional government. Meanwhile, the control of reclaimed land according to Article 12 of Government Regulation No. 16 of 2004 concerning Land Use states that land originating from land arising or the result of reclamation in coastal waters, tides, swamps, lakes, and former rivers is controlled directly by the State.

There are several studies related to land reclamation including: Urip Santoso (2015) with the title Acquisition of Land Rights Derived from Beach Reclamation, the result of the study is that the status of land rights obtained by private companies originating from coastal reclamation is Building Use Rights or Use Rights. The status of land rights obtained by the Regency/City Government is Right to Use or Right to Management. The status of land rights obtained by private companies in collaboration with the Regency/City Government is the Right to Build or the Right to Use the Land Right to Management, as well as the rights to land originating from coastal reclamation obtained through a Government stipulation in the form of a Decree on the Granting of Rights, namely the party carrying out the reclamation. the coast submits an application for granting rights to state land to the Head of the National Land Agency of the Republic of Indonesia.

Fitra Yudha Indrias Leksmana (2021) with a study of the legal status of land rights resulting from coastal reclamation found that the status of land rights resulting from reclamation is in the control of the state aimed at the greatest prosperity of the people, but for those who assist in the reclamation process, it is given a priority to apply for land rights with limitations only on Hak Guna Usaha and Hak Guna Bangunan. Regarding the procedure, it is the same as the procedure for granting the application for Hak Guna Usaha and Hak Guna Bangunan.

Cici Widyawati, Dera and Emilia, Kontesa and Hamdani, Ma'akir (2021), Legal Status of Land Rights from Coastal Reclamation Based on Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, the results of this study indicate that the status of land resulting from coastal reclamation is state land which cannot be traded, but can only be applied for land rights. . Land rights resulting from coastal reclamation can be given to parties who carry out reclamation by being given the status of Management Rights (HPL), Building Use Rights (HGB) on state land, and Land Use Rights.

Amri Ubaidillah (2018) with the research title of Land Reclamation Control without Land Rights: A Case Study in Taddan Village, Camplong District, Sampang Regency. The results of the study show that the legal consequences that occur on reclamation without the basis of land rights are, first, legal subjects cannot control the reclaimed land. The two legal subjects may not construct buildings on reclaimed land without land rights. The three buildings erected on reclaimed land without rights can be evicted without compensation. The four reclaimed lands must be registered in the land register at BPN as state land.

Some of the results of these studies only explain that the implementation of reclamation must be with the permission of the government and local governments, control of the land resulting from reclamation is controlled by the State and the legal consequences of the reclamation carried out. These various studies do not discuss reclamation in the territory controlled by the customary law community unit (MHA). The problem is that the legal provisions on reclamation do not regulate the process of granting permits and ownership rights if the location of the reclaimed land is in the area of control of the customary law community unit.

A review of this needs to be carried out in view of the recognition and constitutional protection in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) of the customary law community unit (KMHA) along with their traditional rights, including ulayat rights in land and at sea. This is related to reclamation activities in Ambon City, Maluku Province, because it has an area with an archipelagic character and there are 22 (twenty-two) traditional villages called Negeri. The existence of most of these countries is located in coastal areas so that reclamation activities cannot be avoided in development and regional development activities, both for the benefit of building public facilities and for personal interests in the form of building houses in coastal and coastal areas.

Based on this, the purpose of this study is to find out and analyze the process of granting permits and ownership rights if the location of reclaimed land is in the control area of customary law community units.

RESEARCH METHOD

The research method used is normative juridical, using a statutory approach and a conceptual approach, with a view to finding solutions to the problems studied.

RESULTS AND DISCUSSION

Customary Rights of Indigenous Peoples

The explanation of Article 18 of the 1945 Constitution of the Republic of Indonesia (before the amendment) states that "In the territory of the State of Indonesia there are approximately 250 "Zelfbesturende landschappen" and "Volksgemeenschappen", such as villages in Java and Bali, Nagari in Minangkabau, hamlets and clans. In Palembang, and so on. This shows that the State provides respect, recognition and protection for the existence of indigenous peoples. In the amendment to the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) the existence of customary law community units is still given recognition and guarantees for their existence and their traditional rights, Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that the State recognizes and respects these units. Customary law community units and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law.

According to Van Vollenhoven, the customary law community (fellowship) is a legal community that refers to human units that have an orderly structure, a fixed area, rulers or administrators, and have assets, both tangible assets (land, inheritance, etc.)) as well as intangible assets (royal titles) (Zain, 2015).

Article 5 paragraph (2) of the Regulation of the Minister of Home Affairs Number 52 of 2014 concerning Guidelines for Recognition and Protection of Indigenous Law Communities stipulates that the identification of KMHA is to meet the following elements:

1. the history of the Indigenous Law Community;
2. Indigenous territory;
3. customary law;
4. assets and/or customary objects; and
5. customary government institutions/systems

According to Maria Sumardjono (2021), the criteria for determining whether or not customary rights exist in relation to the existence of these customary rights are:

1. The existence of customary law communities that meet certain characteristics as the subject of customary rights,
2. The existence of land/region with certain boundaries as lebensraum (living space) which is the object of ulayat rights;
3. The existence of the authority of customary law communities to take certain actions related to land, other natural resources and legal actions.

Regarding customary territories, according to Article 26 paragraph (1) of the United Nations Declaration on the Rights of Indigenous Peoples, it is stated that indigenous peoples have rights to lands, territories and resources that are traditionally owned or occupied or otherwise occupied by customary lands. lands, territories and resources that have been used or acquired (Abdurrahman, 2015).

Van Vollenhoven (2017) provides a technical term for the right of alliance with the term "beschikkingrecht" while the land which is its territory is called "Beschikkingkring". This term into Indonesian is translated into ulayat rights or lordship rights, while the term bechikking kring "is translated into ulayat environment". According to Djaren Saragih, for this ulayat environment each region of Indonesia has different terms, for example: In Ambon it is called "patuanan", in Kalimantan it is called "panyampeto", in Java it is called "wewengkon", in Bali it is called "prabumian pajar", in Bolang Mongondow it is called "tatbuan", in Angkola it is called "torluk", in South Sulawesi it is called "Limpo", in Buru it is called "nuru", in Lombok it is called "paer", in Minangkabau it is called "ulayat", in Batak it is called "golat.

According to Budi Harsono (2003), ulayat rights are owned by customary law communities to obtain the right to control all lands within their alliance area, utilize the land, collect the results of the plants that live on the land, and hunt for animals that live in the area. There, which are called ulayat rights or ulayat rights, the objects of ulayat rights are:

1. Land;
2. Water, which means water;
3. Plants that live in the area of customary rights;
4. Animals that live freely in the area of customary rights.

Budi Harsono's view shows that the customary rights of indigenous peoples are also found in the territorial waters. The term ulayat rights in the Maluku region is known as petuanan rights. Roberth Kurniawan Ruslak Hammar (2009) states that generally traditional villages on the island of Ambon-lease are known as the land, and are located in coastal and coastal areas. This makes the coastal and coastal areas also part of the country's petuanan. According to Ziwar Efendi (1987), the Ambon-Lease Island area in the Maluku province is an archipelago characterized by an archipelago, so the land tenure area on Ambon-Lease Island also includes the beach in front of the country, namely sea water where the seabed is still visible in the form of sand. white to the point where the seabed can no longer be seen (dark in color).

A. Wahyono (2000) states that the boundary of the marine petuanan area is an imaginary line drawn from the landward boundary straight towards the sea which is imaginary so that it tends to be subjective and flexible, namely in the form of an area around a specified place. Meanwhile, the boundary between the village sea petuanan (village-owned sea) and the public property (public property) or the common property (common property) which the Maluku people

call the free sea is an imaginary line that lies between the shallow sea and the deep sea, according to Ziwar effendi (1987) is known by the people of Maluku as the sea where the seabed is still visible, which is white (the seabed is still visible), the sea is not visible at the bottom of the ocean, and has changed color to blue (dark).

Authority Granting Permits for Reclamation in the Territory of Customary Law Communities

Ambon City is located on the island of Ambon, which is located south of Seram Island and borders the Banda Sea. The existence of Ambon City is geographically surrounded by the sea, with the main characteristics of Ambon Island being mountains with lowlands on the coast and there is a bay that divides Ambon Island, namely Ambon Bay. The administrative area of the city of Ambon is 377 Km2 or 2/5 of the area of Ambon Island which consists of a land area of 359.45 Km2 and an ocean area of 17.55 Km2 with a coastline of 98 Km.

Ambon City has an area consisting mostly of hilly and sloping areas, 73% of the land area can be classified as hilly to steep slopes, with a slope of above 20%. Meanwhile, 17% of other land areas can be classified as flat or sloping with a slope of less than 20%.

With these conditions, it has an impact on the limitation of ideal land for the effectiveness of development in Ambon City; meanwhile the need for land is very large along with the increase in development activities carried out so that there is an imbalance between the land supply and the need for land for building activities. The solution to the need for land for development activities is to change the coastal area into a new land known as coastal reclamation activities (Santoso, 2015).

In relation to the implementation of reclamation, the authority to grant reclamation permits in coastal areas is regulated in Presidential Regulation Number 122 of 2012 concerning Reclamation in Coastal Areas and Small Islands and Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number 25/Permen-Kp/2019 concerning Implementation Permits Reclamation in Coastal Areas and Small Islands.

Article 1 number 5 of the Law of the Republic of Indonesia Number 30 of 2014 concerning Government Administration states that Authority is the right of a Government Agency and/or Official or other state administrator to take decisions and/or actions in the administration of government.

Authority (bevoegdheid) as a concept of public law is legal power (rechsmacht). In connection with the formation of besluit (government decisions) must be based on an authority. In other words, government decisions by authorized institutions/organs must be based on authority that has clearly been regulated and stipulated in the applicable legal rules (Deliarnoor, 2017).

In relation to the authority to grant reclamation permits, Article 16 (1) of Presidential Regulation Number 122 of 2012 concerning Reclamation in Coastal Areas and Small Islands stipulates that in order to obtain location permits and permits for the implementation of reclamation, the Government, regional governments and everyone must first first submit an application to the Minister, governor, or regent/mayor.

Article 6 paragraph (1) Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number 25/Permen-Kp/2019 concerning Permits for Implementation of Reclamation in Coastal Areas and Small Islands states that the Minister is authorized to issue Permits for Implementation of Reclamation on:

1. Certain National Strategic Areas;
2. Coastal waters within the National Strategic Area;
3. Cross-provincial Reclamation activities;
4. Reclamation activities at Fishery Ports managed by the Ministry;
5. Reclamation activities for National Vital Objects in accordance with the provisions of laws and regulations;
6. Reclamation activities for national strategic projects in accordance with the provisions of laws and regulations; and
7. National water conservation area.

Furthermore, paragraph (2) states that the Governor is authorized to issue a Reclamation Implementation Permit in sea waters no more than 12 (twelve) nautical miles measured from the coastline towards the open sea and/or towards the archipelagic waters.

Article 7 paragraph (1) Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number 25/Permen-Kp/2019 concerning Permits for Implementation of Reclamation in Coastal Areas and Small Islands states that Permits for Implementation of Reclamation issued by governors with an area of more than 100 (one hundred) hectares must obtain a recommendation from the Minister. paragraph (2): The recommendation as referred to in paragraph (1) is submitted by the governor to the Minister accompanied by the following requirements: a. certificate of location of Reclamation activities and location of material sources from the governor; b. master plan; c. feasibility study; and D. detailed design.

Related to the reclamation permit, several development activities in the coastal area of Ambon Bay that have been carried out by reclamation include:

1. The Mardika Market and its surroundings is a development arrangement on land that was stockpiled around 1970-1980, in the Sirimau sub-district and is in the Batu Merah state petuanan area (Suparji, 2018).
2. Reclamation for the construction of the Siloam Hospital in the tantui area of the Sirimau sub-district in 2019 which is part of the petulant territory of the Little Hatiwe Country.
3. Reclamation in front of the main military base of the Indonesian Navy (lantamal) and the Maritime Security Agency of the Republic of Indonesia in 2017 in Baguala sub-district which is in the petuanan area of Halong country.
4. Reclamation in the coastal area of Amahusu State for the construction of hotels and inns which is in the petuanan area of Amahusu and Nusaniwe.
5. Reclamation in the coastal area of Air Salobar Ambon as far as 15 meters in 2016 which is in the petuanan area of Amahusu Country.
6. In addition, there are various reclamations carried out by the community in the coastal areas of Galala Village, Halong Country, Lata Village, Lateri Village and Passo Country for the purpose of building houses.

This shows that reclamation activities also exist in the territory of the customary village, namely the country, this of course has implications for the position of the country in all activities that are in the territory of the state petuanan, which has an impact on the existence of tension between KMHA and the government in the form of conflict.

According to Suliman quoted by Alfonso Peter Castro and Erik Nielsen (2001) that "Resource conflicts can sometimes become severe and debilitating, resulting in violence, resource degradation, the undermining of livelihoods, and the uprooting of communities. If not addressed, such conflicts can threaten to unravel the entire fabric of society".

This shows that in the management and utilization of natural resources, it is very vulnerable to conflict which has an impact on weakening, resulting in violence, resource degradation, destroying livelihoods, and even eliminating the existence of the community, including the existence of KMHA. If not addressed, such conflicts can threaten the balance of life in society.

Article 103 of the Village Law states that the authority of a Traditional Village based on the right of origin as referred to in Article 19 letter a includes: a. governance arrangements and implementation based on the original structure; b. regulation and management of Ulayat or customary territory;

Thus, the regulation and management of Ulayat rights are the authority of the State, so that all activities carried out in the territory of the state, including reclamation, are part of the authority of the state. Based on this, the State also has the authority to grant reclamation permits carried out in the petuanan area.

Manuela Carneiro da Cunha and Mauro W. B. de Almeida (2000) state that "Indigenous land rights were declared "originary," a legal term that implies precedence and limits the state's role to recognize rather than granting rights". This explains that the right to customary land is an original right that requires the principle of primacy and recognition from the state, thus limiting the involvement of the state in granting rights to customary land.

According to Fifik Wiryani quoting Adiwilaga's view that customary rights are the rights of legal alliances to utilize natural resources located on land or at sea for the fulfillment of the interests of the legal alliance and its members, as well as for the interests of people outside the legal alliance, with conditions in the form of granting a permit (Wiryani, 2009).

Based on this, the coastal and marine areas of the customary village are owned and controlled by the customary village, so that the traditional village needs to be involved in reclamation activities in the coastal and coastal areas in its petuannya area. In this regard, according to Article 3 letter g of Law Number 27 of 2007 concerning Management of Coastal Areas and Small Islands (UU PWP-PPK 2007) that the management of Coastal Areas and Small Islands is based on community participation;

Elucidation of Article 3 of the 2007 PWP-PPK Law stipulates that the principle of community participation is intended to:

1. So that coastal communities and small islands have a role in planning, implementing, up to the stage of supervision and control;
2. Have open information to know government policies and have sufficient access to utilize coastal resources and small islands;
3. Ensure that there is a representation of the public's voice in the decision;
4. Utilize these resources fairly.

Thus, based on these provisions, indigenous village communities need to be involved in the planning, implementation process and even including supervision in the management or utilization of coastal and coastal areas including various policies related to the granting of coastal and coastal reclamation permits located in the customary law community's control area.

The Right to Reclaimed Land in the Territory of the Customary Law Community

Article 2 paragraph (1) of the Basic Agrarian Law (UUPA) states that: "based on the provisions of Article 33 paragraph (3) of the 1945 Constitution and the matters referred to in Article 1, the earth, water, and space, including wealth The nature contained therein is at the

highest level controlled by the state as an organization of power for the entire community. Based on these provisions, the State is given the power to regulate and manage land rights that are in the territory of the State, as regulated in Article 2 paragraph (2) of the BAL which states that the State's right to control as referred to in paragraph (1) of this article provides authority to:

1. Regulate and administer the designation, use, supply and maintenance of the earth, water and space;
2. Determine and regulate legal relations between people and the earth, water and space,
3. Determine and regulate legal relations between people and legal actions concerning earth, water and space.

Various types of land rights are regulated in Article 4 paragraph (1) of the UUPA which stipulates that on the basis of the right to control from the State, it is determined that there are various types of rights to the earth's surface, which are called land, which can be given to and owned by people, either alone or by themselves. As well as together with other people and legal entities. This shows that land rights are given to a person or persons or legal entities.

According to Article 4 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 17 of 2016 concerning Land Arrangement in Coastal Areas and Small Islands states that land management in coastal areas is carried out by granting land rights to:

1. Beach; and
2. Coastal waters measured from the coastline towards the sea to the extent of the provincial boundaries

Elucidation of UUPA Number II point 2 states that: The state can give land controlled by the state to a person or legal entity with a right according to its designation and needs, for example property rights, right to cultivate, right to build or right to use or give it under management to an agency. (Department, Bureau or Autonomous Region) (Arisaputra, 2015).

Article 12 of the Government Regulation of the Republic of Indonesia Number 16 of 2004 concerning Land Administration states that Land originating from land arising or the result of reclamation in coastal waters, tides, swamps, lakes, and former rivers is controlled directly by the State.

Based on the provisions, it can be seen that the status of new land (land) originating from reclamation on the coast or coast is State land or controlled by the State. According to Fitra Yudha Indrias Leksmana (2018) that the legal status of land rights gives authority to people who are entitled to use and benefit from the land.

Thus, the State is the party entitled to the reclaimed land so that it has the power to use and benefit from the land. Meanwhile, according to the Circular Letter of the Minister of State for Agrarian Affairs/Head of the National Land Agency Number 410-1293 in number 2 (two) it explains that reclaimed land is declared as land that has been controlled by the State, then anyone who carries out reclamation activities can be given a priority. The first is to submit an application for the rights to the land resulting from the reclamation.

Maria SW Sumardjono said that land rights controlled by the state must be limited by two things (trijono, 2015):

1. Restrictions by the 1945 Constitution.
2. That matters are regulated by the state by taking into account the customary rights in the area.

This shows that related to the right to reclaimed land controlled by the State, it can be limited by taking into account customary rights or petuanan rights. This can also be seen in the

view of Ziwar Efendi (1987) which states that there is a decision of the Maluku High Court dated November 7, 1979 No. 48/1979/Perdt/PT on disputes between community members and traditional villages related to control over coastal and marine areas, whether controlled by people living in coastal and coastal areas or controlled by traditional villages because they are part of the customary petuanan area. The decision of the Maluku high court stipulates that the meti or coastal and marine areas are the property of the customary village. However, for members of indigenous peoples residing in the meti or coastal areas, they are given the first right (naastingsrecht) to do business on the meti or coastal areas but not absolutely Ziwar Efendi (1987).

This shows that the coastal and marine areas belong to, and are under the control of the State (KMHA) so that all activities in the area must be with the permission of the head of the State government. Thus, reclaimed land in the State petuanan area in Ambon City can become the property of members of the community (State) who cultivate it as long as it gets approval or permission from the head of the state government.

CONCLUSION

Based on the results of the study, it can be seen that traditional villages need to be involved in the process of granting permits for coastal and coastal reclamation in the territory of customary law communities. Meanwhile, the right to reclaimed land in the State petuanan area in Ambon City can become the property of members of the community (State) who seek reclamation as long as it gets approval or permission from the head of the state government.

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