European Journal of Humanities and Educational Advancements (EJHEA)
Available Online at: https://www.scholarzest.com
Vol. 2 No. 1, January 2021,
ISSN: 2660-5589

LEGAL PROTECTION OF STATE OWNERSHIP OF LAND AND BUILDINGS FUNCTIONED FOR PUBLIC INTEREST DUE TO LAWS OF OTHER PARTIES

Happyta Putri Na'imatul Jannah,
Dhody AR. Widjajaatmadja
Departement of Notary
Postgraduate Program of Jayabaya University Indonesia
happytaputri@gmail.com

Article history:

Received: December 7th 2020
Accepted: December 30th 2020
Published: January 14th 2021

Abstract:

The government is obliged to manage and secure State Property (BMN) in accordance with their respective authorities, to create administrative order, physical order and legal order. Law Number 1 of 2004 concerning State Treasury and Government Regulation Number 27 of 2014 concerning State / Regional Property Management stipulates that BMN in the form of land must be certified on behalf of the Government of the Republic of Indonesia or the relevant Regional Government. Article 32 of Government Regulation Number 24 of 1997 concerning Land Registration stipulates that a certificate is a strong means of evidence regarding the physical data and juridical data contained in it, and the power period of the certificate can be challenged is 5 (five) years. The problems discussed in this research are regarding the implementation of BMN ownership arrangements in the form of land and buildings as well as legal protection for BMN in the form of land and buildings that are used for public interest whose ownership is being sued by other parties.

The approach method used in this research is normative juridical supported by empirically. The research specification used in this research is descriptive analysis. The data used are secondary data consisting of primary and secondary legal materials. The data were analyzed using qualitative juridical methods. The framework for analyzing this research uses legal certainty theory and legal protection theory.

The results of the author's research indicate that the management of government assets in the form of land and buildings which constitute BMN has actually been completely regulated in various kinds of laws and regulations. However, this cannot guarantee legal certainty and cannot provide optimal legal protection for right holders (certificate owners). The author takes 2 (two) cases as a reference. First, PT. Hasrat Tata Jaya (HTJ), who sued the ownership of a plot of land used as the Faculty of Law, University of Riau based on a Certificate of Compensation (SKGR). Second, the heirs of the late. Minata Aliredja sued the ownership of a plot of land used as the Agency for Research and Development of Agricultural Biotechnology and Genetic Resources under the SPPT-PBB. In the implementation in the community, the Compensation Certificate (SKGR) and SPPT-PBB can be more recognized as proof of ownership of land rights by the Panel of Judges rather than the Right to Use Certificate on behalf of the BMN user agency.

Keywords: Legal Protection, State Property, Land and Buildings

1.INTRODUCTION

The constitution stipulates that Indonesia is a constitutional state, the 1945 Constitution in its opening in paragraph II, also emphasizes one of the objectives of the state, namely to create a just and prosperous society. To create a just and prosperous society can be carried out in many ways in various fields. However, for the Republic of Indonesia, whose people are still agrarian in style, the earth as one of the gifts of God Almighty has a very important function to realize these just and prosperous ideals.

Based on Article 2 of the Basic Agrarian Law (UUPA) stipulates that the provisions of Article 33 paragraph (3) of the 1945 Constitution, that the earth, water and space, including the natural resources contained therein are at the

highest level controlled by the state, as the power organization of all the people. The right to control of this state gives the authority to regulate and administer the designation, use, supply and maintenance of the earth, water and space; regulate and determine the legal relationships between people and earth, water and space; as well as regulating and determining legal relationships between people and legal actions concerning the earth, water and space. This authority is emphasized in paragraph (3), which is used to achieve the greatest possible prosperity of the people, in the sense of happiness, prosperity and independence in society and an Indonesian constitutional state that is independent, sovereign, just and prosperous.

Indonesia is not only a rule of law, but also an agrarian country, whose people are spread across from Sabang to Merauke, and also have a wide variety of diversity, so land issues do not only occur between members of the community or bodies. However, it can also occur between citizens and the state as the executor of the authority to control the state over land. So it is not only property rights over individual or corporate land that can be disputed, but also state / regional property which is also known as BMN / D, can become objects of dispute by community members or agencies.

State Property (BMN) is all goods purchased or obtained at the expense of the State Budget (APBN) or originating from other legitimate acquisitions. Meanwhile, Regional Property (BMD) is all goods purchased or obtained at the expense of the Regional Budget (APBD) and other legal acquisitions. State / Regional Property includes goods purchased with APBD or APBN, apart from grants, donations, agreements / contracts, court decisions that have been has permanent legal force and can be obtained based on other provisions in accordance with statutory regulations.

State assets are divided into three sub-categories, namely State Property that is self-managed by the government, state assets that are separated and managed by other parties, as well as assets controlled by the state in the form of potential assets related to earth, water, air and natural resources contained therein which are controlled. by the state as the highest organization. The government is obliged to safeguard State Property in accordance with their respective authorities, for the creation of an administrative, physical and legal order.

The government strives to create an orderly administration and support orderly management of BMN / D so that all BMN / D must be properly recorded. BMN / D management is carried out based on functional principles, legal certainty, transparency, efficiency, accountability and certainty of value. BMN / D management includes: planning needs and budgeting, procurement, use, utilization, security and maintenance, assessment, transfer, destruction, elimination, administration, and guidance, supervision and control.

The state has issued many regulations regarding the method of obtaining, managing, utilizing and eliminating state property. Law Number 17 of 2003 concerning State Finance (State Finance Law) regulates that the President as the Head of Government holds the power to manage state finances and is empowered by the Minister of Finance as fiscal manager and the Government Representative in the ownership of separated state assets. This is reaffirmed in Law Number 1 of 2004 concerning State Treasury (State Treasury Law) and Government Regulation Number 27 of 2014 concerning State / Regional Property Management (BMN / D Management Law), that the Minister of Finance is the State General Treasurer, and acting as the State Property Manager.

The regulation also stipulates that State / Regional Property (BMN / D) in the form of land must be certified on behalf of the Government of the Republic of Indonesia / the Regional Government concerned. And any party that causes losses to the state or region, resulting from negligence, abuse or violation of the law on the management of State / Regional Property, may be subject to administrative sanctions and / or criminal sanctions in accordance with the provisions of the legislation.

The certification of state property in the form of land is also in line with the provisions for land registration based on Government Regulation Number 24 of 1997 concerning Land Registration. Land registration is a series of activities carried out by the Government continuously, continuously and regularly including collection, management, bookkeeping and presentation of data and maintenance of physical data and juridical data, in the form of maps and lists, regarding land parcels and apartment units, including the issuance of certificates of proof of their rights for land parcels for which there are already rights and ownership rights to apartment units as well as certain rights that impose them.

The purpose of land registration is, first, to provide legal certainty and legal protection to the holder of a land parcel, apartment unit, and other registered rights so that they can easily prove themselves as the holder of the rights concerned. Second, to provide information to interested parties, including the government, so that they can easily obtain the data needed to carry out legal actions regarding registered land parcels and apartment units. Third, to maintain an orderly land administration.

The management of State / Regional Property has been fully regulated as described above, but based on the empirical data that the author obtained, there are still parties who are suing state-owned land. As is the case in the city of Pekanbaru, Riau, where the private sector is suing for the ownership rights of State / Regional Property in the form of land used for public educational facilities (Riau University). This almost cost the state up to Rp. 36,981,000,000, - (thirty six billion nine hundred eighty one million rupiah).

The State / Regional Revenue and Expenditure Budget was saved by the Supreme Court Judgment on Review of the Supreme Court Number 349 PK / Pdt / 2017 on 18 July 2018. This decision is a Judgment of Review of the Decision of the Pekanbaru District Court Number 159 / Pdt.Bth / 2015 / PN Pbr March 10, 2016.

The object of the dispute in this case is a plot of land with an area of 8,875 m2 which is part of the Certificate of Use Rights (SHP) Number 15 / Simpang Baru, an area of 100.4 ha in the name of the Ministry of National

Education on June 20, 2002 and has been registered as State Property according to the Register. Number 023.04.09.415092.000.KD whose management authority rests with Ministry of Finance. The object of the dispute was obtained using the 1986 State Budget based on the Liberation on January 17, 1986, January 21, 1986, and January 25, 1986 which was carried out by the Kampar Level II Regional Land Acquisition Committee which was formed based on the Decree of the Governor of the Tk. I Riau dated August 28, 1985 Number 595 / VIII / 1985, and the Minister of Finance Decree Number 379 / KM.6 / 2012 has been issued regarding the Stipulation of the Status of Use of State Property at the Ministry of Education and Culture on December 28, 2012.

The object of the dispute is then recognized as ownership by PT. Hasrat Tata Jaya which according to his statement was purchased from the residents, namely the heir of the late Sihi, Roduiya, with a Certificate of Compensation (SKGR) signed by the Head of Simpang Baru Village under Register Number 346/593-KSB / IX / 2005 dated 20 September 2005 covering an area of 15,128 m2.

The next case that the writer found was between the Ministry of Finance, in this case the Director General of State Assets (DJKN) against the late heirs. Minata Aliredja. The object of the dispute in the case is state property in the form of land with a Certificate of Use Rights (SHP) Number 2 / Bojong Pondok Terong according to the situation picture number 6262/1985 dated October 30, 1985, covering an area of 22,870 m2 recorded on behalf of the Indonesian Ministry of Agriculture, Agricultural Research and Development Agency cq . Bogor Food Crops Research Institute. Strengthened by the decision of the Bandung State Administrative Court Number 27 / G / 2000 / PTUN.BDG dated 6 November 2000 jo Number 95 / B / 2001 / PT.TUN.JKT dated 27 August 2001 jo Number 40K / TUN / 2002 dated 10 February 2006 which has permanent legal force. The state-owned goods have been registered in the Goods Identity Card with Register Number 2.01.01.04.001.3.

Some of the state property in the form of land was acknowledged by Defendants I to VII (the heirs of the late Minata Aliredja) based on evidence of SPPT PBB 2001-2006 covering an area of 4671 m2. Since 1986, the land has been used by the Indonesian government cq. Ministry of Agriculture of the Republic of Indonesia cq. Research and Development Agency for Biotechnology and Agricultural Genetic Resources to carry out their duties and functions. The Depok City Regional Revenue Service has issued a Tax Object Number (NOP) against the object of the dispute with SPPT-PBB Number 32.78.002.008.023.269.0, SPPT-PBB Number 32.78.002.008.023.270.0 for the land which is state property.

2.FRAMEWORK

The framework of thought in writing this thesis is the writer of analysis using legal theory. Legal theory in English is called theory of law, while in Dutch it is called rechtstheorie. Meuwissen defines legal theory as being in a higher order of abstraction than law. Legal theory embodies the transition to legal philosophy, reflecting on the objects and methods of various forms of legal science. Because of that, legal theory can be viewed as a kind of philosophy of science from the science of law.

The framework that the writer will use in this research is the theory of legal certainty and theory of legal protection. Regarding the aspect of legal certainty, Gustav Radbruch argues that there are 4 (four) basic things related to the meaning of legal certainty. First, that law is positive, namely law. Second, that the law is based on established facts or laws. Third, facts or facts must be formulated clearly so as to avoid confusion in meaning as well as being easy to implement. Fourth, positive law must not be easily changed. (Salim, 2015).

According to Gustav Radbruch, the theory of legal certainty is useful for the author to analyze the problem formulation, namely the application of ownership arrangements in the form of land and buildings. The many regulations regarding the management of state-owned goods that are actually stipulated to provide certainty and security for state-owned goods which are government assets have been fulfilled and implemented optimally or not. (Amirudin and Zainal Asikin, 2015)

The theory of legal protection that the writer uses in this thesis is the theory of legal protection according to Phillipus M. Hadjon, that legal protection for the people is a government action that is preventive and respressive. Preventive legal protection aims to prevent disputes, while responsive protection aims to resolve disputes.

Legal protection according to Philipus M. Hadjon's theory (1987) is indeed legal protection for the people against arbitrary government actions, which are divided into efforts to prevent disputes and efforts to resolve disputes. According to the author, this legal theory is not only intended to protect the people directly, but can also be used to protect the people indirectly through legal protection for products produced by the government, in this case, certificates. In this study, government agencies that own land assets with usage rights certificates and buildings that are actually used for public purposes are sued for their ownership on the basis of SKGR and STTP-PBB.

3.RESEARCH METHODS

The research conducted by this writer is legal research. Legal research or legal research has a very important role in this framework for the development of legal science and reveal the factors that cause problems related to law. From the results of this study, it can be seen the factors causing and how to solve the problem under study. Peter Mahmud Marzuki argues that legal research is a process to find legal rules and legal doctrines in order to answer legal issues at hand.

3.1Research Approach

The approach in legal research is divided into 2 (two) types, namely:

a. The normative juridical approach, which is a legal research that emphasizes secondary data by studying and examining positive legal principles from literature data, legal comparisons, as well as elements and other factors related to the object of research. Normative research seeks to study and explore and seek answers about what should be in each problem.
b. The empirical juridical approach is legal research that aims to determine how far a law works in society. The benchmarks of this legal research are legal phenomena in society or social facts contained in society. Regarding the work of law in society, it can be assessed from the level of effectiveness, the level of legal compliance, the role of legal institutions or institutions in law enforcement, implementation of legal rules, the influence of legal rules on certain social problems or vice versa, the influence of legal social problems on legal rules.

Referring to the research method, the approach method used in this research is normative juridical supported by empirical juridical, namely research that still emphasizes secondary data accompanied by sampling empirical data as practical implementation in the field. The research activities carried out by the author are library research activities as well as taking practical examples in the field, because this research does not only study library material. Research on practices carried out in the field is useful for analyzing whether the objectives of law and legal protection have been achieved. Juridically normative will study legal principles and various kinds of relevant laws and regulations to answer questions in the formulation of problems in this research related to the application of law and legal protection against government assets in the form of land and buildings as state property whose ownership is being sued by another party. (Bahder Johan Nasution, 2008).

Through the support of empirical juridical data, this thesis research also conducts interviews with related agencies, in this case the BMN Management Bureau and Procurement Ministry of Finance. This is to examine directly the legal protection that can be provided for the security of government assets, especially in the form of land and buildings that are used for public purposes.

3.2Research Specifications

The research specification used in this research is descriptive analysis, which describes the facts in detail about the object of research so that problems arise in the form of a mismatch between applicable regulations and practices that occur in the field, then try to analyze and find a way out of a problem. According to Bambang Sunggono, the descriptive specification of this analysis describes, describes or reveals things related to the object of research to be discussed or analyzed according to science and theories or the author's own opinion, to then conclude. In this study, the authors describe the various regulations that apply and describe the law in a particular place, then link it to legal theories in the framework of thought. The application of positive law is then linked and linked to the issue of legal protection and application of state property in the form of land and buildings that are used for public purposes due to claims from other parties.

3.3Data Sources

This research is a normative juridical research that is supported by empirical, namely research that still emphasizes secondary data accompanied by sampling empirical data as an implementation practice in the field. Secondary data consists of primary legal materials and secondary legal materials as follows:

a. Primary Legal Materials

Primary legal materials are legal materials that are authoritative in nature, meaning they have authority. Primary legal materials consist of statutory regulations, official records or minutes of the making of statutory regulations and judges' decisions. The primary legal materials to be used in this research are:

1) the 1945 Constitution;
2) Civil Code;
3) Law No. 5/1960 concerning Basic Agrarian Regulations;
4) Law Number 17 of 2003 concerning State Finance;
5) Law Number 1 of 2004 concerning State Treasury;
6) Law Number 2 of 2012 concerning Land Acquisition for Development for Public Interest.
7) Government Regulation Number 27 of 2014 concerning State / Regional Property Management;
8) Presidential Regulation Number 71 of 2012 concerning Implementation of Land Acquisition for Development for Public Interest in conjunction with Presidential Regulation Number 148 of 2015 concerning the Fourth Amendment of Presidential Regulation Number 71 of 2012.
9) Regulation of the Minister of Finance Number 83 / PMK.06 / 2016 concerning Procedures for Implementing and Eliminating State Property.
10) Supreme Court Decision Number 349 PK / Pdt / 2017.
11) Decision of the Supreme Court Number 1645 K / Pdt / 2017.

b. Secondary Legal Materials

Secondary legal materials are in the form of all publications about the law that are not official documents. Publications on law include text books, legal dictionaries, legal journals, and commentaries on court decisions. Secondary legal materials that will be used in this research include:

1) Boedi Harsono, Indonesian Agrarian Law: History of the Formation of Basic Agrarian Laws, Content and Implementation (Volume 1), Trisakti University, Jakarta, 2015.
2) Bachtiar Effendi, Land Registration in Indonesia, Alumni, Bandung, 1993.

3) Gunanegara, State Administration Law, Sale and Purchase and Land Acquisition (History of the Establishment of Indonesian Land Acquisition Law), Tatanusa, 2016.
4) Herman Hermit, How to Obtain a Land Certificate: Freehold Land, State Land, Local Government Land, and Transfer of Name (Theory and Practice of Land Registration in Indonesia), Mandar Maju, Bandung, 2009.
5) A.P. Parlindungan, Land Registration in Indonesia, Mandar Maju, Bandung, 2009.

3.4Data Collection Techniques

The way to obtain data in this research is to conduct a study of library materials in the form of legal literature and statutory regulations. The study of this library material is mainly related to the management of state property and ownership of land rights by the state. In addition, the authors also added data collection from the interview process to the Ministry of Finance, in this case the BMN and Procurement Management Bureau.

3.5Data Analysis Methods

Data analysis is defined as the process of organizing and sorting data into patterns, categories and basic description units so that themes can be found and work hypotheses can be formulated as suggested by the data. Data analysis can be classified into 2 (two) types, namely qualitative analysis and quantitative analysis. Quantitative analysis is data analysis based on calculations or numbers or quantities. For example using statistical numbers. Meanwhile, qualitative analysis is data analysis that does not use numbers, but rather provides worded descriptions of findings, therefore prioritizing data quality / quality, not quantity of data.

In this study, after the data was collected, the authors conducted an analysis using a qualitative juridical method, which is closely related to the type of research categorized as normative juridical legal research with a more abstract-theoretical approach. This means that all data are arranged systematically and completely and then analyzed in the form of descriptions. The author analyzes data from the results of a literature study that is devoted to the management of state property and ownership of state land rights as well as the interviews obtained, which are then described systematically.

3.6Research Location

The locations used by the author to conduct this research are the Jayabaya University library, the Tarumanegara University library, the University of Indonesia library and the Ministry of Finance.

4.RESEARCH RESULTS AND DISCUSSION

A. Application of Legal Rules for Ownership of State Property in the Form of Land and Buildings and Their Utilization for Public Interest

Land which is state property or government asset, whether certified or uncertified, is a state asset land. There are 2 (two) terms that are almost similar but have different meanings and legal consequences, namely state land and state-owned land. State-owned land is state-owned property in the form of land purchased or obtained at the expense of the State Budget or other legally acquired assets. Meanwhile, state land is the status of land that is regulated in UUPA, which means land that is directly controlled by the state, both in original and derivative terms.

The notion of state land is often misinterpreted or confused with government land, this is due to the difficulty in distinguishing the two. Misunderstanding between the state and the government can understood because the state is an abstract meaning, while the government is something concrete. However, juridically there are real differences between the state and the government. The state is an agency (lichaam), while the government is an organ of the state (orgaan). The state's actions as a public legal entity (publiek rechtspersoon) are carried out by the government as an organ of the state (organ of state).

Land which is state property can only be certified by the government with the right subject to the "Government of the Republic of Indonesia". For the private sector or the private sector, they cannot certify land as state assets, if it does not permit the Minister of Finance or an appointed official. The National Land Agency (BPN) is prohibited from carrying out a certificate or issuing a certificate of land rights to the private sector if the person concerned cannot prove the license from the Minister of Finance or an official appointed by the President or by law.

The right to control state lands based on the Regulation of the Minister of Agrarian Affairs Number 9 of 1965 concerning the Implementation of Converting Ownership of State Land and Provisions regarding Policies Furthermore, in conjunction with the Regulation of the Minister of Agrarian Affairs Number 1 of 1966 concerning Registration of Use Rights and Management Rights, it is stated that:

1. As long as the state land granted to various departments, directorates and autonomous regions which is used for the purposes of the main tasks and functions of the agency itself is converted into use rights.
2. If the state land is not only used for the interests of the agencies themselves, but is also intended to be granted with a third party rights, then the tenure rights are converted into management rights.

Article 19 of the UUPA and Government Regulation Number 24 of 1997 concerning Land Registration stipulate that all land parcels in the territory of Indonesia must be registered. However, in this case the author has a different view and agrees with Dr. Gunanegara in his book Agrarian Criminal Law. His legal opinion is that not all objects of land registration are objects of land rights. Registered land is land that legally, based on statutory regulations, can be granted a certificate of land title. Not all objects of land registration automatically become objects of land rights when there are prohibitions from sectoral laws.

One of the requirements for the application for land rights is that the land being applied for is not land as Government Assets on State / Regional Property. The State Treasury Law states that state / regional property cannot

be applied for land rights by the private sector (private), except for permits. Permit in this context is that there must be a permit for the removal of state property from an authorized official, such as the Minister of Finance for State-Owned Property Institutions / Ministries, the Governor for goods belonging to the province, the Governor / Mayor for property belonging to the Regency / City.

Issuing a certificate of land rights to the private on land assets of State / Regional Property without a write-off permit, whether intentionally or unintentionally, is detrimental to the state. Abolition will be carried out if there is a transfer of ownership due to transfer or due to a court decision, destruction, serious damage, loss, shrinkage, evaporation, melting, expiration, unproductive, and force majeure. Private groups who wish to own land belonging to the State / Region are required to submit a request for release and write-off to the competent official. After receiving a letter of write-off of state assets, becoming the basis for the rights, then submitting an application for a land title certificate to the local BPN that the land is located. The abolition of State / Regional Property must be in the form of a Decree (beschikking), not an ordinary letter let alone just a disposition.

Legal certainty is one of the goals of law according to Gustav Radbruch which can also be said to be part of the effort to achieve justice. The real form of legal certainty is the implementation or enforcement of a rule of law against an action regardless of who commits it. With a guarantee of legal certainty, everyone can predict what will be experienced if they take certain legal actions.

Based on the theory of legal certainty presented by Gustav Radbruch, the author analyzes legal certainty on the application of legal rules for ownership of state property in the form of land and buildings and their use for public interests. The public interest is the interest of the nation, state and society which must be realized by the government and used as much as possible for the prosperity of the people.

The government is obliged to guarantee the availability of land for public interest. Land for public use is used for development:

1. Land and national security.
2. Public roads, toll roads, tunnels, railways, train stations, and railway operating facilities.
3. Reservoirs, dams, weirs, irrigation, drinking water channels, sewerage and sanitation, and other irrigation structures.
4. Ports, airports and terminals.
5. Oil, gas and geothermal infrastructure.
6. Generating, transmission, substation, grid and distribution of electric power.
7. Government telecommunications and informatics networks.
8. Landfills and waste processing.
9. Government / Local Government Hospitals.
10. Public safety facilities.
11. Public burial places of the Government / Local Government.
12. Social facilities, public facilities, and public green open spaces.
13. Nature reserve and cultural heritage.
14. Government / Regional / Village Government Offices.
15. Arrangement of urban slum settlements and / or land consolidation, as well as housing for low-income people with rental status.
16. Educational infrastructure or government / regional government schools.
17. Government / Regional Government sports infrastructure.
18. Public markets and public parking lots.

Based on the case reference that the author uses as a reference, the first is state-owned land with a Certificate of Use Rights on behalf of the Ministry of National Education and is used as the Faculty of Law at the University of Riau. The second case is state-owned land with a Certificate of Use Rights on behalf of the Indonesian Ministry of Agriculture, Agricultural Research and Development Agency, in this case the Bogor Food Crops Research Institute, and is used as the Agency for Research and Development of Agricultural Biotechnology and Genetic Resources to carry out its duties and functions. Both are land and buildings of state assets whose ownership is being sued by other parties, in this case private / private.

Gustav Radbruch stated 4 (four) basic things related to the meaning of legal certainty, namely:

1. First, that law is positive, meaning that positive law is legislation.

In a more concrete form, law is seen as all prescriptions (norms) which are represented in the form of legislation A law that is the work of a legislative body, is also called the Latin term "ius constitutum" or "ius positivum" which is used as a standard of behavior for citizens of a nation. Because the norms of law are "general-abstract", so that in academia it is known as law in abstacto. There is also a positive legal concept other than in the form of law (material meaning), namely law as a judicial product, called judge made law in the tradition of adhering to the common law system or jurisprudence (the Netherlands), jurisprudence (in Indonesia) which is a collection of court decisions which is also called in concreto. The holder of the judicial power is the legal power that determines whether a fact and / or regulation is legal or not, along with the legal consequences.

Based on the author's description of each of the fundamental elements of legal certainty according to Gustav Radbruch, the author argues that even though the rules regarding the management of state property are complete and clear in terms of the utilization and security of government assets. However, it does not guarantee optimal legal

certainty of ownership of rights. The application of the management of state property, especially in the form of land and buildings, is still not optimal. According to the author's opinion, the panel of judges, which in their decision did not consider state losses due to claims of land rights against state assets based on evidence which according to the law is not proof of ownership of land rights, have misunderstood and interpreted the law. This has an impact on not creating legal certainty.

Even so, based on the results of interviews with the Head of BMN Management and Procurement Bureau, government agencies are always trying to further improve the procedures for managing their assets. Including efforts to improve and improve in terms of utilization and administrative safeguards, physical security as well as legal protection of assets under their authority.

B. Legal Protection for Ownership of State Property in the Form of Land and Buildings that are Functioned for Public Interest due to Lawsuit by Other Parties

The principle of protection for the people against governmental acts rests on and originates from the concepts of recognition and protection of human rights which are directed at limiting and placing obligations on society towards their government. Legal protection is a protection of dignity, as well as recognition of human rights owned by legal subjects based on the legal provisions of arbitrariness or as a set of rules or rules that can be protected that can protect one thing from another.

The term legal protection theory comes from English, namely legal protection theory, while in Dutch it is called theorie van de wettelijke bercherming, and in German it is called theorie der rechtliche schutz. Grammatically, legal protection is a place of refuge, something (action) protects. To protect is to cause refuge, and to take refuge in one's own way includes: (1) placing oneself so as not to be seen, (2) hiding, (3) asking for help. Meanwhile, the definition of protecting includes: (1) covering so that it is not visible or invisible, (2) guarding, caring for or maintaining, (3) saving or providing assistance.

Philipus M. Hadjon argues that legal protection for the people consists of two types, namely preventive legal protection and repressive legal protection. The legal protection provided for the Indonesian people is an implementation of the principle of recognition and protection of human dignity which originates from Pancasila as the basis of the Indonesian state. Preventive legal protection aims to prevent disputes, while repressive legal protection aims to resolve disputes. Preventive legal protection means a lot to government action based on freedom of action, because governments are encouraged to be careful in their decision making.

In this preventive legal protection, legal subjects are given the opportunity to submit objections or opinions before a government decision takes a definitive form. In repressive legal protection, the handling of legal protection is carried out by the judiciary.

Legal protection according to Philipus M. Hadjon's theory is indeed legal protection for the people against arbitrary government actions, which are divided into efforts to prevent disputes and efforts to resolve disputes. According to the author, this legal theory is not only intended to protect the people directly, but can also be used to protect the people indirectly through legal protection for products produced by the government, one example is certificates. In this study, government agencies that own land with a Use Rights Certificate and buildings that are actually used for public purposes are sued for ownership on the basis of SKGR and STTP-PBB.

An execution order which was later replaced by a compensation payment in the amount of Rp. 36,981,000,000, - (thirty six billion nine hundred and eighty one million rupiah) which is charged to the APBN / APBD indirectly harms the people of Indonesia. This is because one of the sources of the APBN / APBD is taxes paid by the people. So that when it is related to the case example that the author uses as a reference for implementation in society, related to legal protection of state property, especially land and buildings, according to the author's opinion, legal protection has not been achieved.

In the following, the authors describe the reasons for not fulfilling the legal protection of state property in the form of land and buildings whose ownership is being sued by other parties. The following description is based on the type of legal protection according to Philipus M. Hadjon:

1. Preventive legal protection

As previously explained, this legal protection aims to prevent disputes. Judging from the objectives of this theory, this protection has not been achieved. This is because even though there is proof of legal ownership in the form of a certificate of use rights, there are still disputes in the community, namely on the basis of a Certificate of Compensation (SKGR) belonging to PT. HTJ obtained by buying a plot of land from the local community. It can be seen here that there is a lack of caution by government officials, in this case the village head, in issuing SKGRs, so that the SKGR issued overlaps with the Certificate of Use Rights that was issued earlier. Meanwhile in the second case this is also the case, namely the proof of payment of land and building tax is used as the basis for a lawsuit against the ownership of state assets in the form of land and buildings that are being used for public purposes.

2. Repressive legal protection

This legal protection aims to resolve disputes that occur in society, of course, in resolving disputes, it must be based on consideration of the positive laws that apply to the object of the problem. Legal protection for the people can be grouped into two bodies, namely courts within the scope of the General Courts and Government agencies which are administrative appeals institutions. The handling of legal protection for the people through government agencies which are administrative appeals institutions is an appeals institution against a government action by another party who feels aggrieved by the government's action.

In the author's opinion, repressive legal protection for state property in the form of land and buildings whose ownership is being sued by the other party has not met. This is because before the court session the Panel of Judges recognizes the Certificate of Compensation (SKGR), which according to positive law is not a strong proof of ownership of land rights, rather than a Certificate of Use Rights which according to positive law is recognized as a strong tool of proof for ownership. land rights. Against this recognition, various types of legal remedies have been made, both ordinary and extraordinary legal remedies.

It can be seen that the government seems very difficult to provide legal protection, even though formally it already has evidence that should be guaranteed legal certainty by the government itself. Not only that, even with the object of the dispute that has functioned as a public facility, in the form of the Faculty of Law, University of Riau, the Panel of Judges asked the government to pay compensation for PT. HTJ amounting to Rp. 36,981,000,000, - (thirty six billion nine hundred and eighty one million rupiah) which are budgeted through APBN or APBD. Although in the end the resistance was won at the level of legal reconsideration efforts. Likewise with the second case.

Government regulations governing land registration do state that certificates are strong evidence of ownership of rights. However, this is not absolute. A land certificate is a tool of relative legal protection for the holder of land rights, meaning that if it can be proven otherwise by the more entitled, then the certificate can be canceled through a court decision. However, this is done with due observance of other sectoral laws, in this case the State Treasury Law which does not allow private applications for land rights over state / regional property without permission from the authorized official.

The consideration of the Panel of Judges from the first level to a review which is so complex and requires great effort shows that the real legal protection has not been achieved optimally. This means that the granting of a certificate of use rights as a government effort to guarantee legal certainty for owners of land rights has not been able to create optimal legal protection from the government itself.

However, based on the results of interviews with the Ministry of Finance as a state institution, in this case through the BMN and Procurement Management Bureau, it was stated that it had made optimal efforts related to securing state property in the form of land and buildings. This can be seen from the rough data at the time of the interview, namely So far, problems related to claims for ownership of government assets from other parties have always been resolved and the case has been won by the Ministry of Finance. Moreover, starting in 2017, namely since the existence of a separate Advocacy Bureau.

In its application, when there is a dispute over ownership of state / regional property by another party, if the agency using the goods cannot win the case, the Ministry of Finance, in this case DJKN, will take part in taking legal action. This is one of the legal protection measures, in this case to carry out the obligation to safeguard state / regional property, namely the Ministry of Finance as the State Treasurer who is also the Manager of State Property. Based on the case, the authors found that the legal remedies taken were ordinary legal remedies and extraordinary legal remedies. Extraordinary legal action, in this case a third party resistance or derden verzet, is carried out if the Ministry of Finance is not included as a party to the lawsuit.

5.CONCLUSION

Based on the descriptions in the previous chapters, the authors draw the following conclusions:

1. BMN management has been regulated in various laws and regulations. Land assets of government which are BMN cannot be applied for by private / private parties unless the permission of the authorized official. The government also regulates that other parties can contest ownership of land that is certified for a maximum of 5 (five) years after the issuance of the certificate. However, its application has not been able to provide legal certainty. This is evident from government land assets that have been certified using Hak Pakai for more than 5 (five) years are still being sued by private parties.
2. Legal protection for the ownership of BMN in the form of land and buildings that are functioned for the public interest has not been achieved. Lawsuits against government assets that are certified with Right to Use for more than 5 (five) years by private / private parties on the basis of SKGR and STTP-PBB are evidence of not achieving legal protection for certificates issued by the government.

6.SUGGESTIONS

Based on the conclusions that have been described, the authors provide the following suggestions:

1. The author suggests that every government asset in the form of land must be registered immediately in order to obtain a land title certificate. In addition, every user of goods should carry out the administration of BMN which includes bookkeeping, inventory and reporting in a neat and routine manner. Especially for the Property Manager who is directly responsible for asset administration, they should be more careful in handling BMN land and building assets, not only administratively, but also physically checking them.
2. Physical, administrative and legal safeguards for BMN, especially land and buildings that are used for public purposes must be improved. In addition, the Lurah or Camat who have the authority to issue a Compensation Certificate (SKGR) must check the data and physical land, so that the SKGR issued is not wrong, let alone overlap with the certificate issued by the National Land Agency. The Camat and Lurah should educate the public that after obtaining an SKGR, they must immediately register their land with the BPN in order to obtain a land title certificate.

REFERENCES

1. Abdurrahman, H.M., Civil Procedure Law, Trisakti University, Jakarta.
2. Ali, Achmad, Revealing Legal Theory and Judicial Theory (Judicialprudence), Prenadamedia Group, Jakarta, 2015.
3. Amiq, H. Bachrul, Legal Aspects of Regional Financial Management Supervision in the Perspective of Clean State Administration¸ Laksbang Pressindo, Yogyakarta, 2010.
4. Amirudin and Zainal Asikin, Introduction to Legal Research Methods, Radja Grafindo Persada, Jakarta, 2004.
5. Atmasasmita, Romli, The Other Side of the Accountability of the KPK and Anti-Corruption Activists, Gramedia Pustaka Utama, Jakarta, 2016
6. Effendi, Bachtiar, Land Registration in Indonesia, Alumni, Bandung, 1993.
7. Gunanegara, State Administration Law, Sale and Purchase and Land Acquisition (History of the Establishment of Indonesian Land Acquisition Law), Tatanusa, Jakarta, 2016.
8. Gunanegara, Agrarian Criminal Law (Legal Logic of Granting Land Rights and Criminal Law Threats), Tatanusa, Jakarta, 2017.
9. _____, Getting to know Agrarian Law & Real Estate Law, Tatanusa, Jakarta, 2018.
10. Hadjon, Philipus M., Legal Protection for the People in Indonesia, Bina Ilmu, 1987.
11. Harsono, Boedi, Indonesian Agrarian Law: History of the Formation of Basic Agrarian Laws, Content and Implementation (Volume 1), Trisakti University, Jakarta, 2015.
12. Harahap, Krishna, Civil Procedure Law, Class Action and Arbitration and Alternatives, Gafitri, Bandung, 2003.
13. Hermit, Herman, How to Obtain a Land Certificate: Freehold Land, State Land, Local Government Land, and Transfer of Name (Theory and Practice of Land Registration in Indonesia), Mandar Maju, Bandung, 2009.
14. HS., Salim, Theory Development in Law, Rajawali Pers, Jakarta, 2010.
15. _____, Indonesian Civil Procedure Law, Cahaya Atma Pustaka, 2013.
16. I Dewa Gede Atmadja and I Nyoman Putu Budiartha, Legal Theories, Setara Pres, Malang, 2018.
17. Idris, Fahmi, Save State Money! With Correct State Financial Governance, Exposé, Jakarta, 2012.
18. Ilmar, Aminuddin, The Right to Control the State: In the Privatization of BUMN,
19. Kencana, Jakarta, 2012.
20. Kartini Mulyadi, Gunawan Widjaja, Asset Law Series: Land Rights, Prenada Media, Jakarta, 2004.
21. Kurniawan, Ardeno, Corruption in Indonesia: State Finance, Bureaucracy and Internal Control: Making Indonesia Free from Corruption, BPFE, Yogyakarta, 2016.
22. Lexy Meleong, Qualitative Research Methodology, Youth Rosdakarya, Bandung, 2010.
23. Limbong, Bernhard, Land Acquisition for Development, Margaretha Pustaka, 2012.
24. Lubis, M. Solly, Philosophy of Science and Research, Mandar Maju, Bandung, 1994.
25. Master of Notary, Postgraduate Program, Academic Guidelines and Guidelines for Thesis Writing, Jayabaya University, Jakarta, 2019.
26. Margono, Basic Concepts of State Property Management, Ministry of Finance of the Republic of Indonesia, 2016.
27. Marzuki, Peter Mahmud, Legal Research, PT. Kharisma Putra Utama, 2016.
28. _____, Introduction to Legal Studies, Prenada Media Group, Jakarta, 2009.
29. Mochtar Kusumaatmadja, B. Arief Sidharta, Introduction to Law: A First Introduction to the Scope of Applicability of Law (Book 1), Alumni, 2000.
30. Muhammad Yamin, Abdul Rahim Lubis, Revocation of Rights, Liberation and Land Acquisition, Mandar Maju, Bandung, 2011.
31. Nasution, Bahder Johan, Legal Research Methods, Mandar Maju, Bandung, 2008.
32. Narimawati, Umi, Qualitative and Quantitative Research Methodologies: Theory and Application, Agung Media, Bandung, 2008.
33. Nazir, M., Research Methods, Ghalia Indonesia, Jakarta, 2003.
34. Nurlinda, Ida, Principles of Agrarian Reform from a Legal Perspective,
35. Jakarta, Rajawali Pers, 2009.
36. Raharjo, Satjipto, Law Science, PT. Citra Aditya Bakti, 2000.
37. Rato, Dominikus, Philosophy of Law Seeking and Understanding Law, Laksbang Presindo, Yogyakarta, 2010.
38. Retnowulan Sutantio and Iskandar Oeripkartawinata, Civil Procedure Law in Theory and Practice, Mandar Maju, Bandung, 1995.
39. R. Soeroso, Introduction to Law, Sinar Grafika, 2013.
40. Salim HS. And Erlies Septiana Nurbani, Application of Legal Theory in Thesis and Dissertation Research, Rajawali Pers, Jakarta, 2017.
41. _____, Application of Legal Theory in Thesis and Dissertation Research (Second Book), Rajawali Pers, Jakarta, 2017.
42. Sembiring Julius, Definition, Regulation and Issues of State Land, Prenadamedia Group, Jakarta, 2018.
43. Soerjono Soekanto and Sri Mamudji, Normative Law Research, Raja Grafindo Persada, Jakarta, 2006.

44. _____, Several Legal Issues in the Framework of Development in Indonesia (A Sociological Review), University of Indonesia, Jakarta, 1999.
45. Sumardjono, Maria S.W., Land Policy between Regulation and Implementation, Jakarta 2001.
46. Sunggono, Bambang, Legal Research Methodology, Rajagrafindo Persada, Jakarta, 2003.
47. Sutedi, Adrian, Implementation of Public Interest Principles: In Land Acquisition for Development, Sinar Grafika, Jakarta, 2008.
48. Supriadi, Agrarian Law, Sinar Grafika, Jakarta, 2012.
49. Sutedi, Adrian, Transfer of Land Rights and Registration, Sinar Grafika, Jakarta, 2014.
50. Tehupeiory, Aartje, The Importance of Land Registration in Indonesia, Achieving Success, Jakarta, 2012.
51. Waloejo, Herri, Policy on the Elimination and Transfer of State Property (in the Perspective of State Financial Law), Mitra Wacana Media, Bogor, 2011.
52. _____, Use and Utilization of State Property, Mitra Wacana Media, Bogor, 2012.
53. Widjaja, Gunawan, Management of State Assets, Rajawali Press, Depok, 2002.
54. Wijito, Listiyarko, Security and Maintenance of State Property, Pusdiklat State Wealth and Financial Balance, 2016.