

The Legal Analysis of Decision No. 19 / Pdt.G / 1994 / Pn.Maros about Cancellation Of The Property Rights In Maros Country

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Abstract: *The purpose of this research is to know how Judge Judge Consideration in Decision Number 19 / PDT.G / 1994 / PN.MAROS concerning Revocation of Land Ownership, and to know What Factors Affect the Abolition of Land Ownership. This research method is empirical law research, namely research on the implementation of legal rules regarding the pembataoah rights on land. the case approach is used in this study by analyzing court decisions,*

Keyword: *The Legal Analysis, The Property Rights*

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I. INTRODUCTION

The scope of agrarian land is part of the earth. The land intended here does not govern the land in all its aspects, but only regulates one aspect of it, namely the land in the juridical sense that is called right. Land as part of the earth mentioned in Article 4 paragraph (1) of the Loga, namely "On the basis of the right of control of the state as referred to in Article 2 specified the existence of various rights to the surface of the earth, called the land, which can be given to and possessed by persons, both alone and together with other persons and legal bodies".

The right of the Indonesian nation to the land has a communal character, meaning that all the land in the territory of the Republic of Indonesia is a land with the people of Indonesia, which has united as the Indonesian Nation (Article 1 paragraph (1) of BAL). It also has a religious nature, meaning that all the land in the territory of the Republic of Indonesia is a gift of God Almighty (Article 1 Paragraph (2) UUPA). The relationship between the Indonesian nation is eternal, meaning that the relationship between the Indonesian nation with the land will take place uninterrupted forever. The eternal nature means that as long as the people of Indonesia are still united as the Nation of Indonesia and as long as the common ground is still there, under no circumstances is there any power that will be able to decide or abolish the relationship (Article 1 paragraph (3) of BAL).

The right of the Indonesian nation to land is the parent of other land tenure rights, implies that all other land tenure rights are derived from the right of the Indonesian Nation to the land and that the existence of any tenure rights does not exclude its existence Rights of the Indonesian Nation over land. The notion of "mastery" can be used in a physical sense, also in a juridical sense. Also private and public aspect aspect. Authority in the juridical sense is a rights-based tenure, protected by law and generally authorizes the right holder to physically control the land in question. There is a juridical mastery, even though it gives authority to control the physical property of the land, in fact its physical fulfillment is carried out by the other party. The juridical and physical tenure of this land is used in the private aspect.

There is a public jurisdiction that is public aspect of land ownership as mentioned in Article 33 paragraph (3) of the 1945 Constitution and Article 2 UUPA. The tenure of the land contains a series of authority obligations, and / or prohibitions for the holder of his right to do anything about the land in question. Anything that is allowed, compulsory, or prohibited to do, constitutes the content of the controlling right that becomes the criterion or benchmark of the distinction between land tenure rights stipulated in the Land Law. The purpose of land management in UUPA is to provide legal certainty for the landowner and to provide legal certainty, a land registration mechanism in all of Indonesia which is regulated in Article 3 of Government Regulation no. 24 of 1997 on Land Registry.

Article 1 of Government Regulation no. 24 of 1997 on Land Registry, provides a definition of land registration. Land registration is a continuous, continuous and regular series of activities undertaken by the Government, including collection, processing, bookkeeping and presentation and maintenance of physical data and juridical data, in the form of maps and lists, on the plots of land and units of houses stacking, including the provision of a certificate of proof of rights to the parcels of land.

The purpose of land registration in PP. 24 of 1997 is to provide legal certainty and legal protection, to provide information to the parties concerned and the implementation of the orderly administration of land. Article 4 PP. 24/1997 further asserts that "to provide certainty and legal protection as referred to in Article 3 letter a to the holder of the rights concerned shall be granted certificate of right to land." So it can be said that efforts to realize certainty on land rights are implemented, among others by issuance of a document that has the perfect legal power of land title certificate.

Regarding the registration of land in Indonesia aims to ensure legal certainty on the plot of land that has been registered. The land registration system adopted in Indonesia, which is a negative system with a positive tendency to provide strong evidence is not an absolute necessity to annul the mistakes that may occur in the land registration process, also provide facilities in the form of cancellation of land rights which is then regulated in the Regulation of the Minister of Agrarian Affairs / Agency National Land No. 11 of 2016 on the Settlement of Land Cases. The cancellation of a right to a land is the cancellation of a right because the recipient of the right does not meet the requirements set forth in the decision on the granting of rights or there is a mistake in the assignment of granting of the rights concerned. But the cancellation of land rights is essentially a cancellation of the land and / or certificate of right to land so that the land returns its status to state land. The cancellation of land rights may be due to an administrative flaw in the issuance of a decree granting land rights or to carrying out a court decision with permanent legal force.

Amar a court ruling containing an order to annul the land title administratively should be followed up by the government. In this case the National Land Agency issued a Decree of Cancellation, a Decree on the granting of land rights which immediately canceled the right to land. Some causes such as problems in the land dispute issues of inherited land, land boundaries, overlapping of ownership, rights to land disputes that originate from errors in the process of land rights. However, in reality the National Land Agency has rarely issued a Decree on Cancellation of the Land Rights Decision Letter when the court's decision on the cancellation of certificates is relatively high. It also generates many pros and cons between rights-holders, who usually justifies any means to get their rights either in a way that is not desirable.

One example of the usual problem is the question of the cancellation of land rights. In the case of cancellation of land rights related to the issue of judicial competence in the cause of difficulty in identifying the material jurisdiction of the lawsuit because it is usually a combination of civil aspects with the administrative aspects of the state. As for civil aspects when associated with wanprestasi, compensation, and others. While the administrative aspects of the state if there is a disability in the decision of government or administrative. But there is also a criminal aspect in case of incursions or counterfeits. But the concern is the cancellation of land rights due to civil rulings.

In the Civil Code the land is classified under private law. But in reality, the land arrangements closely with government interference. This can be seen in the main legislation which is the foundation of the regulation of land law in Indonesia, among others Article 33 paragraph (3) of the 1945 Constitution, Article 2 ayaat (1) BAL and its implementing regulations. In practice, the land problem is not only done through the District Court (PN), but also through the State Administrative Court (PTUN), even not infrequently the land issue penetrated into the criminal law because in the matter contained criminal elements. Each National Land Agency in carrying out the authority of handling land issues is based on the prevailing regulations.

II. FORMULATION OF THE PROBLEM

Based on the background that the author has described, then the problem can be formulated as follows, how is Judge Judge Consideration in Decision Number 19 / PDT.G / 1994 / PN.MAROS on Cancellation of Land Ownership? And What Factors Affect the Abolition of Land Ownership?

III. THEORETICAL BASIS

1. The concept of the State of Law

The legal state is a translation of the term *rechstaat* or rule of law. *Rechstaat* itself can be said as a form of juridical formulation and the idea of constitutionalism. Therefore, the constitution and the state (law) are two inseparable institutions. Simply put, the intention of a state law is a state that the administration of its government on the basis of its law. Within the government and other institutions in carrying out any action must also be on the ground by law, the power to run the government must also be based on the rule of law (supremacy of law) and aims to organize law order. (Mustafa Kamal Pasha, 2003).

The law-based state places law as supreme so there is a rule of law supremacy. The supremacy of the law should not ignore the three basic ideas of law that is justice, benefit and certainty.

The state of law that emerged in the nineteenth century was a state of law in the strict sense or formal state of law. In the previous explanation it has been argued that the state of law is a translation of the term Rule of Law or *Rechstaat*. The term *Rechstaat* is given by Continental European lawyers while the term Rule of Law is given by Anglo Saxon lawyers.

The *Rechtsstaat* concept seeks protection for human rights through independent judiciary institutionalization. In the concept of *rechtsstaat* there is an administrative judicial institution which is an independent judicial environment. But Anglo Saxon lawyers do not know the state of law or *rechtsstaat*, but know or embrace what is called "The Rule of Law" or government by law or government of judiciary.

A.V. Dices of Anglo Saxon lawyers provide the following elements of rule of law:

1. Ensure human rights / society by law.
2. The same position before the law (equality before the law) either for officials or ordinary people.
3. The rule of law, the absence of arbitrary power in the sense that a person may only be punished if found unlawful.

F. Julius Sthal and Imanuel Kant from European Continental lawyers gave *Rechtsstaat* characteristics as follows:

1. Human rights.
2. Administrative courts in dispute.
3. Governing under the rules.
4. Separation or distribution of power to guarantee the basic human rights known *Trias Politicus*.

In addition to the formulation of the characteristics of the rule of law as mentioned above there are also various opinions about the characteristics of the legal state put forward by other experts.

According to Prof. DR. Sudargo Gautama, SH discloses 3 characteristics or elements of the rule of law, namely:

- a. There are restrictions on the strength of the state against individuals. That is, the state can not be arbitrary, state action is limited by law, the individual has the right to the state or the people have the right to the ruler.
- b. Origin of legality. This means that every action of the state must be based on the law that has been held in advance which must be obeyed also by the government or apparatus.
- c. Separation of powers. Aiming for the right of human rights is protected is the separation of powers, namely the body that makes the legislation to implement and try to be separated from each other not in one hand.

3. Theory and Principle of Legal Certainty

According to Kelsen, law is a system of norms. Norm is a statement that emphasizes the "should" or *das sollen* aspect, by including some rules about what to do. Norms are deliberative human products and actions. Laws that contain general rules serve as guidelines for individuals behaving in a society, both in relation to their fellow individuals and in relation to society. These rules become the limits for society in burdening or taking action against individuals. The existence of such rules and the implementation of these rules give rise to legal certainty.

According to Gustav Radbruch, the law must contain 3 (three) identity values, namely as follows:

1. The principle of legal certainty (*rechtmaticheid*). This principle looks from a juridical standpoint.
2. Legal justice principle (*gerechtigheid*). This principle looks from a philosophical point of view, where justice is a common right for everyone before the court.
3. The principle of legal benefit (*zwechmatigheid* or *doelmatigheid* or utility).

Legal objectives that are close to realistic are legal certainty and legal benefit. The positivists place greater emphasis on legal certainty, whereas the functionality gives priority to the benefit of the law, and if it can be said that "*summum ius, summa injuria, summa lex, summa crux*" which means that harsh laws can harm, except justice that can help, even though justice is not the sole legal objective but the most substantive purpose of law is justice.

According Utrecht, legal certainty contains two meanings, namely first the existence of a general rule to make the individual know what deeds that may or may not be done, and the second form of legal security for individuals from the abuse of the government because with the existence of a general rule that individuals can know anything that may be charged or done by the State against individuals.

Understanding the principle of legal certainty is a guarantee that a law must be run in a good and proper way. Certainty is essentially the main purpose of the law. If the law does not exist then the law will lose its identity and meaning. If the law has no identity then the law is no longer in use as a guideline of one's behavior.

The existence of the principle of legal certainty within a country causes the regulatory effort in a legislation set by the government. the applicable legal system consists of rules that are not based on a momentary decision. Understanding the principle of legal certainty in the administration of the state is a concept to ensure the language of the law on the run well so as not to cause harm to anyone, the law should be a guide, protect and protect the community from various crimes or harassment in individuals or groups.

In the principle of legal certainty there should be no conflicting law, the law must be made with a formula that can be understood by the general public. Thus, the definition of the principle of legal certainty and justice is the law applies not retroactively so as not to damage the integrity of the existing system. Understanding the principle of legal certainty is also associated with the existence of regulations and their implementation. Legal certainty will lead people to be positive to the law of the country that has been

determined, with the principle of legal certainty, the community can be more calm and will not experience losses due to violations of the law of others.

IV. DISCUSSION

1. Review of Court Judgment

The judge's ruling or commonly referred to by the court's verdict is a matter of greatest interest to the parties in dispute to settle the dispute, with the judge's verdict obtaining legal certainty and justice in their case facing. It can be concluded that a judge's verdict is a statement made in writing by a judge as the State Official authorized for it to be pronounced before the court in accordance with the existing legislation which becomes the law of the parties containing a command to a party in order to commit an act or so do not do an act that must be obeyed.

Analysis of civil cases in District Court DECISION NO. 19 / PDT.G / 1994 / PN.MAROS, the authors concluded that judging from the sitting of the case with the judge's consideration that the transfer of ownership of land in this case is a form of transfer of ownership rights can be transferred means the transfer of ownership of land from the owner to the party other due to a legal event. With the death of the land owner, the property rights are legally transferred to the heirs as long as the heirs qualify as subjects of property rights. The transfer of ownership rights to certified land must be registered with the local Regency Land Office by attaching the death certificate of the land owner made by the competent authority, the Certificate of the Inheritance made by the authorized official, the proof of the identity of the heirs, the land certificate concerned. The purpose of the registration of the transfer of ownership of the land is to be recorded in the land book and change the name of the right holder of the landowner to the heirs. This is in accordance with Article 42 of Government Regulation No. 24/1997 on Land Registration.

The facts found that the alteration of property rights committed by the Defendant is a contributing factor that resulted in the cancellation of the Plaintiffs by filing a petition to the Court due to unlawful acts and a permanent legal court decision arises. The Defendant during the transfer of the name of the certificate's right on behalf of the Defendant (Suwarjito) without the consent of the heirs. Inheritance Certificate submitted to PPAT is made with. Unlawful acts unnoticed by the parties. The transfer of title of property rights to land by PPAT as it is known to have the following conditions: (a) Application Letter (b) Original title of land title (c) Certificate of death from the authorized (d) Certificate of heirs from the authorized (e) Photocopy Identity card of the heirs (f) Copy of identity card or identity of the authorized attorney accompanied by a power of attorney if the petition is authorized (g) Photocopy of SPPT-PBB current year (h) Proof of repayment of BPHTB is payable.

2. Legal Protection For Holders of Good Licensed Land Rights Certificates

The certificate is a strong certificate of right but the certificate is not the only certificate of title holder but there is yet another proof of ownership that is able to prove the invalidity of the land certificate. The power of proving land title certificates is proved in court by verifying the validity of ownership of rights over which the land certificate is issued based on written evidence and witness testimony such as what has been filed by the Plaintiffs and the defendant in the hearing.

Land registration activities are conducted with the aim of ensuring the law and certainty of land rights. Implementation of land registration makes it easier for the parties to know the status or legal position of the particular land it faces, its location, its area and its boundaries, who owns and what burdens are there on the land. A goodwill is necessary to initiate the enforcement of land registration as a process that ends with the issuance of a certificate on behalf of the holder of the land right for the purpose of verifying his / her right. Land registration conducted to provide protection and legal guarantees for holders of land title certificates recorded in the land books of the Defendant (Suwarjito). Therefore, Plaintiffs may demand the return of the land title certificate which refers to our negative publication system.

If it is associated with land registration we have a negative publication system, if the person as the subject of his or her name has been registered in a land book, his right may still be denied as long as the denials can provide sufficiently strong evidence. Registration rights are held with public lists. The register of a person on the public register as the rights holder has not proven that person as the right holder. Thus the true rights holder can always claim his re-assigned right without his knowledge.

Basically, the ownership of land ownership certificate which is not based on the good faith of the Defendant has no legal protection and legal certainty provided by the state after the land registration process and the emergence of land title certificate as the protection provided in Article 32 paragraph (2) Government Regulation No. 24/1997 states if after a period of five years after the issuance of the certificate, the land certificate can not be challenged anymore, so it will be relatively more legal and legal protection for the certificate holder.

V. CONCLUSION

1. The right of the Indonesian nation to land is the parent of other land tenure rights, implies that all other land tenure rights are derived from the right of the Indonesian Nation to the land and that the existence of any tenure rights does not the existence of the Right of the Indonesian Nation to the land. Land tenure rights subsequently regulated in the LoGA which aims to provide legal certainty for landowners and to provide legal certainty, a land registration mechanism in all of Indonesia which is regulated in Article 3 of Government Regulation Number 24 Year 1997 regarding Land Registry.
2. Legal protection granted to holders of land ownership certificates of good faith is not given to holders of land title certificates under Article 32 of Government Regulation No. 24/1997 guarantees and legal protection may be granted to holders of certificates of good ownership in their control and non-existent others who feel they have rights.

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