

Rights to Oloran Land (aanslibbing) in Ujungpangkah District, Gresik Regency Prespective of Traditional Land Law in National Land Law System

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Abstract

The control of oloran land rights (aanslibbing) in the community of Ujung Pangkah Subdistrict, Gresik Regency, East Java Province from the past until now has led to the conception of customary land ownership, which is hereditary based on customary law that applies in the community, namely obtained a seal letter from the Village Head p. This resulted in local regulation (self regulation) as customary land law, with the principle that oloran land is customary land that does not have a conceptual arrangement that is recognized and respected by the state as state land.

This research is a normative research aimed at providing answers to the legal vacuum that regulates the granting of oloran land rights originating from customary law by using a statutory approach and a conceptual approach.

The results of this study found that the UUPA which regulates national land law provides land recognition for oloran land (aanslibbing) which is sourced from customary land law as state land which can be applied for rights by using the provisions in the Regulation of the Head of BPN Number 9 of 1999 by giving the first rights in the form of Ownership Rights, Use Rights and Building Use Rights.

I. Introduction

As a coastal area in the north of the island of Java which is the estuary of the Bengawan Solo river, Ujungpangkah Subdistrict, Gresik Regency, every year its land area often increases due to soil deposition on the shoreline to become a new land, by local residents the new land is known as oloran land or ordinary. Also known as aanslibbing, the land has economic value that can be used in ponds, rice fields or other economic interests.

The ownership of the *oloran* land that arises on the shores of the Bengawan Solo river creates potential legal problems with mutual claims of ownership status by the local community, assuming the ownership rights to the land are based on the land boundary at the end as the owner and other assumptions in the form of granting rights by the Village Head. local people, or even claiming each other by assuming that they are the rulers of the land when the residents first marked the boundaries on the seafront or the banks of a solo river.

The control of *oloran* land rights (*aanslibbing*) by the community from the past until now has led to the conception of customary land ownership, which is hereditary based on customary law prevailing in the community, this has resulted in local regulation (self regulation) as customary land law, with the principle of that *oloran* land is customary land that does not have a conceptualized arrangement that is recognized and respected by the state. Emerging land (*Oloran* land) becomes the locus of social conflict that is both latent and manifest amidst the uncertainty of legal knowledge at the grassroots level regarding who has the rights to the arisen land.¹

The phenomenon of legal problems arising from the control of the *oloran* land in addition to the person who controls it for the first time can also continue to the heirs with the assumption that whoever controls the *oloran* land for the first time can transfer his rights either through the process of inheritance, grant or sale. buy, even though the basis for the control of the *oloran* land has not yet received legal certainty.

Since before the enactment of the Basic Agrarian Law (UUPA) the *oloran* land tenure system in Ujungpangkah District was based on customary customs by using the full legality of the Village Head (official) who issued a legal product in the form of a seal letter containing a certificate or approval of the letter holder as a cultivator. Then armed with the seal, the cultivators manage the *oloran* land into ponds and apply it from generation to generation. Based on satellite data, the *oloran* land in Ujung Pangkah covers an area of 4644.98 hectares with the use of the pond land being 43,240 hectares (36% of the total land area in Gresik Regency), followed by agriculture covering an area of 42,790 hectares (35% of the total land), built-up land covering an area of 12,024 hectares, while for coastal land use occurs along 140 km of coastline.²

The national land law system anticipates legal problems that arise from the new land or *oloran* land, including based on Government Regulation Number 16 of 2004 concerning Land Administration and Circular Letter of the State Minister of Agrarian Affairs/Head of the National Land Agency Number:

¹ Muhibbin, Patterns of Land Tenure and Ownership Emerging (*aanslibbing*) on the North Coast of the Java Sea, International Journal of Social and Local Economic Governance (IJLEG) Vo. 1 (1) 2015

² Yoppie Christian, et al, Agrarian irregularities 'Tanah Timbul' (*aanslibbing*) and landscape change in the Ujung Pangkah Coast of Gresik, East Java. Journal of Bhumi, Agrarian and Land Vol.5 No. November 2, 2019. <https://doi.org/10.31292/jb.v5i2.374>

310-1293 of 1996, land Oloran or land that arises, whether that occurs due to natural processes or the result of reclamation, is land that is directly controlled by the state, the meaning of the right to control the state contains collective rights and joint rights in the use of land for individuals, communities and the state to realize the prosperity of the community.³

The Basic Agrarian Law (UUPA) gives the meaning of state control not as the owner of the land, but giving the right authority to the state, as the power organization of the Indonesian nation, so that from this meaning the state can grant various rights to individuals and legal entities with grant the right to use and utilize the land with a mechanism regulated by the Ministry of Agrarian Affairs and Spatial Planning of the Republic of Indonesia.

In order to provide a solution to the phenomena and legal problems that occur on oloran land or arising land (aansbling) in Ujungpangkah District, Gresik Regency, East Java Province, the researchers took the title "Oloran Land Rights (aanslibbing) in Ujungpangkah District, Gresik Regency. National Land Law System"

2. Research Method

This research uses normative research, namely research to find a rule of law, legal principles, and legal doctrine⁴ which is expected to produce arguments, theories or new concepts as prescriptions in providing arguments to solve the problems at hand. This type of research is carried out on the legal vacuum that regulates oloran land in the Ujung Pangkah District, Gresik Regency, East Java Province. This study uses a statutory approach, namely to examine applicable laws and regulations, a conceptual approach, namely to seek scientific justification based on legal concepts derived from legal principles.

3. Results and Discussion

The applicable customary land law is a manifestation of the aspirations of the community that develops in the midst of society whose validity depends on the extent to which the community consistently adheres to the perception of the validity of the customary land law. ulayat rights, customary property rights, gogolan rights and the right to collect results or the right to enjoy, these rights when the UUPA is enacted are converted into property rights. Normatively, National Agrarian Law contains provisions based on customary law, western civil law and Islamic law, national agrarian law has a populist nature, namely

³Suyanto, Abolition of Land Rights, Due to the Custodianship of Changes in Land Procurement for Public Interest, Jakad Publishing, Surabaya, 2019, page 250.

⁴Peter Mahmud Marzuki, Legal Research, Kencana, Surabaya. 2011.

recognizing and respecting the nation's original culture (customary law) by prioritizing the role of the state which has the right to control the earth. ,

Land regulation in Indonesia is divided into state land and private land, the arrangement is the absolute responsibility of the state. State land is land that is directly controlled by the state, the meaning of directly controlled means that no other party controls the land, so it can be categorized as state land. building, use rights over state land, management rights as well as ulayat land and waqf land.

Although there is no legal regulation at the level of a Government Regulation specifically regarding *oloran* or *aanslibbing* land in Indonesia, it is only regulated at the level of the Circular Letter of the State Minister of Agrarian Affairs Number 410-1293 of 1996 concerning Controlling the Status of Emerging Land and in the Minister of Agrarian Affairs and Spatial Planning No. 17 of 2016 provides the definition of arising land is land that is naturally formed due to the deposition process of rivers, lakes, beaches and or islands and the control of the land is controlled by the state. 16 of 2004 concerning land use,

The pluralism of land law by adopting customary land law originating from *oloran* land has resulted in various conflicts ranging from administrative conflicts, civil conflicts or other personal conflicts caused by legal problems or other social problems in the community,⁵so that government institutions such as the National Land Agency (BPN) are required to be present to conduct a thorough inventory of the existing *oloran* land by providing legal certainty in the form of granting rights as state land and then ensuring that conflicts that occur in the midst of community interpretation whether using customary land law or not have been completed. only then distribute or give rights to the *oloran* land.

The settlement carried out by the BPN is absolutely necessary in order to end the perception of *oloran* land tenure that occurred in Ujung Pangkah District because the pattern of control and ownership of *oloran* land in the community is completely based on community culture that has local regulatory mechanisms in the community that apply and serves as a means to regulate the acquisition of land tenure traditionally by only using a seal letter from the village head.

If the *oloran* land is analogous to the right to open (and collect forest products), which is a right derived from customary law, then the granting of rights or distribution of rights to the *oloran* land is based on customary law, because according to the provisions of customary law, land status arises which appears along the coast, at the mouth of the river, is part of the communal land

⁵Bernhard Limbong, Land Conflict, Margareta Library, Jakarta 2012,

(ulayat) of the local community⁶so that the oloran land can be categorized as ulayat rights owned by the local village which directly controls the land. This control gives authority rights to ulayat rights holders in this case the Village Head to regulate the implementation and use of land for the benefit of their ulayat members. Customary rights are rights that are inherent as special competencies in customary law communities, in the form of authority/power to manage and regulate the land in its contents, with external and internal marketability.⁷

The regulation of customary law community units in the laws and regulations is still inconsistent and varied in various existing laws and regulations as well as in ongoing regulatory initiatives.⁸The shift in the concept of the customary law community unit as the lowest government unit by the Village Law by replacing it with the village concept has degraded the existing legal community unit as a special area referred to in the 1945 Constitution before the amendment.⁹The typology and benchmark of who is categorized as a customary law community unit is not yet clear, so that in relation to this the Constitutional Court affirms that based on Article 18B paragraph (2) of the 1945 Constitution, recognition and respect for customary law community units and their traditional rights must be based on the following conditions: conditions, namely as long as they are still alive, in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, and are regulated in law.

The Basic Agrarian Law as state law that regulates national land, which accommodates the recognition of customary lands but does not always interpret the recognition of customary lands reflecting the laws that live and develop in the midst of society and are adopted and apply to these communities in their daily lives. -day, this is what gives rise to cultural gaps and even becomes a cultural conflict¹⁰ so that the conflict does not occur for a long time, the government regulation on the oloran land regulates it.

According to the provisions of the Minister of Agrarian Decree No. 410-1239 dated May 9, 1996, it is stated that lands that arise naturally such as shores,

⁶Erman Rajagukguk, Agrarian Law, patterns of land tenure and necessities of life, Chandra Pratama, 2005, Jakarta p. 30.

⁷Maria SW Sumardjono, Puspita A Series of Various Agrarian Law Problems, Andi Offset, 2003, Yogyakarta p. 54.

⁸Irfan Nur Rahman, et al. Juridical Basis for Legal Standing Units of Indigenous Law Community in the Process of Judicial Review at the Constitutional Court, Research and Study Center of the Secretariat General and Registrar of the Constitutional Court, Jakarta, 2011, page 11.

⁹Irfan Nur Rahman, et al, ibid p. 33.

¹⁰Soetandyo Wignjosoebroto, Paradigm Law, Methods and Dynamics of the Problem, ELSAM and HUMA, Jakarta 2022, page 306

lakes, river bank deposits, islands arise and other naturally arise lands are declared as land that is directly controlled by the state. Furthermore, the control/ownership and use shall be regulated by the State Minister of Agrarian Affairs/Head of the National Land Agency in accordance with the applicable laws and regulations, based on these provisions, even though the control of oloran land in Ujungpangkah District, Gresik Regency, East Java Province has obtained a seal letter from the local Village Head then Everyone who will control the arisen land must first obtain permission from the competent government, namely in this case the Gresik Regency National Land Office, because the status of the land according to agrarian law is state land.

State land or land controlled by the state in the LoGA only carries out three powers, namely First, to regulate and administer the designation, use, and supply and maintenance of land; Second, to determine and regulate legal relations between people and land; and Third, determine and regulate the relationship between people and legal actions regarding land¹¹, so that from the authority to control land by the state, customary law is still recognized in the UUPA

Oloran land or arisen land is land that is controlled by the state because the land has no rights to it at all, be it individuals, legal entities or the government, even though the land already has customary rights in the form of a seal from the village head, because the seal letter from the Village Head given as an embodiment of customary law that developed in the community of Ujungpangkah District, Gresik Regency, the status can only be used as initial evidence of control of the land. the item (land) is in his hands¹² by way of an application for rights to the National Land Office of Gresik Regency, which in general the rights granted to land arise (aanslibbing) only for three kinds of rights for the first registration, namely Ownership Rights, Use Rights and Building Use Rights.¹³

The granting of rights to oloran land or land arising in Ujung Pangkah District, Gresik Regency based on national land law, namely based on the Agrarian Regulation and Spatial Planning/Head of BPN No. 17 of 2016, the granting of such rights is necessary to ensure legal certainty regarding rights to

¹¹Lie Liem December, Management of Emerging Land (Aanslibbing) in Improving the Welfare of Indigenous Peoples, Jatiswara, Journal of the Faculty of Law, University of Mataram, Vol 33 No. 2 2018. <https://doi.org/10.29303/jatiswara.v33i2.166>

¹²Supriyadi, Legal Aspects of Regional Assets Land, Finding Justice, Benefit, and Certainty on the Existence of Regional Assets Land, Prestasi Pustaka, Jakarta 2010.

¹³Rabiatul Adawiyah, Legal Position of Ownership of Land Derived from the Process of Deposition of River Streams (Delta) in the Perspective of Land Law in Indonesia, NoLaJ, Master of Notary Journal, Faculty of Law, Lambung Mangkurat University, Vol 1 issue 1, January 2022

a land whose mechanism follows the provisions of the Regulation of the Head of the National Land Agency No. 9 of 1999 concerning Procedures for granting and canceling state land rights and management rights can be carried out by a decision to grant rights individually or collectively or in general.

4. Conclusion

Oloran Land Rights (aanslibbing) in Ujung Pangkah Sub-district, Gresik Regency is an emerging land on the lips of the Bengawan Solo river and the northern shore of Java Island whose control is based on customary law that develops in the community by using the Village Head's seal, the holder of the seal owns the Oloran land. even though oloran land is state land. The UUPA guarantees the validity of the customary land tenure by distributing the rights to the oloran land to the seal holders when registering land for the first time at the Gresik Regency Land Office.

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Legislation

1945 Constitution of the Republic of Indonesia

Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles.

Regulation of the Minister of Agrarian Affairs and Spatial Planning Number 17 of 2016.