

POSSESSION RIGHTS OVER RECLAIMED LAND: A LEGAL ANALYSIS OF FOREIGN LEGAL ENTITIES OWNERSHIP STATUS

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Abstract: Rapid population growth without a corresponding increase in land availability can lead to issues such as a significant long-term rise in land prices. Reclamation emerges as an option to assist communities in obtaining land at affordable prices. However, the implementation of reclamation must adhere to the terms and regulations set by the government, including provisions related to foreign legal entities intending to engage in reclamation activities. This article employs a normative juridical approach and juridical analysis methods. The findings indicate that foreign legal entities can undertake reclamation activities by legal requirements governing individual and corporate legal entities, whether local or foreign, provided they have obtained reclamation permits. Foreign legal entities are allowed to have land rights in the reclaimed area, but the land status is in the form of usage rights and lease rights after obtaining permission from the government. In conclusion, implementing reclamation by foreign legal entities necessitates compliance with applicable regulations and requirements to ensure the sustainability and success of these activities.

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Pertumbuhan penduduk yang cepat tanpa disertai peningkatan luas lahan dapat menimbulkan masalah, seperti kenaikan harga tanah yang signifikan dalam jangka panjang. Reklamasi menjadi opsi untuk membantu masyarakat memperoleh tanah dengan harga terjangkau. Namun, pelaksanaan reklamasi harus mematuhi syarat dan ketentuan pemerintah, termasuk ketentuan terkait subjek hukum asing yang ingin melakukan kegiatan reklamasi. Artikel ini menggunakan pendekatan yuridis normatif dan metode analisis yuridis. Hasil kajian menunjukkan bahwa subjek hukum asing dapat melakukan reklamasi sesuai dengan persyaratan hukum yang mengatur subjek hukum baik perorangan maupun badan hukum, baik lokal maupun asing, asalkan telah memperoleh izin reklamasi. Untuk subjek hukum asing, diperbolehkan memiliki hak atas tanah reklamasi, namun status tanahnya berupa hak pakai dan hak sewa setelah mendapatkan izin dari pemerintah. Kesimpulannya, penerapan reklamasi oleh subjek hukum asing memerlukan ketaatan terhadap regulasi dan persyaratan yang berlaku untuk memastikan keberlanjutan dan keberhasilan kegiatan tersebut.

Keywords: Reclamation; land rights; legal subjects.

INTRODUCTION

Land is a basic human need which is one of the primary needs to support human life itself. From the land man can build a dwelling for him to occupy as a shelter, survive and continue his life. The state also realizes that land is a very important element in people's lives and needs special attention. Therefore, Article 33 paragraph (3) of the 1945 Constitution stipulates that the earth, water, and natural resources contained therein are

controlled by the state and used for the greatest prosperity of the people. So crucial is the land for human life that the state must participate in regulating it to create prosperity for all people.

Article 33 paragraph (3) of the 1945 Constitution stipulates that the state as the party that controls the land, but not necessarily the state as well as the party that owns or controls the land. To own or control land, communities can apply for land rights to the state or parties who own or control land. Regulation related to land rights is regulated in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles. Land rights consist of property rights, business use rights, building use rights, use rights, rental rights, land clearing rights, forest product collection rights and other rights. Each land right has different characteristics, such as the period of time the right is granted, the allocation of land, the subject of land rights and others.

Often with population growth that is increasing more and more, the need for land also increases, while the amount of land that exists does not increase. The population in Indonesia in 1980 was approximately 147 million people, while in 2022 the population is estimated to have reached 275 million people. A significant increase in population coupled with the amount of land that does not increase will cause land scarcity which ultimately has an impact on high land prices far above the ability of the community. The scarcity of available land and high land prices can threaten the welfare level of people in the lower class to have a decent place to live.

One way to overcome community problems with limited land is to reclaim. Based on Article 1 number 23 of Law Number 1 of 2014 concerning

Amendments to Law Number 27 of 2007 concerning Management of Coastal Areas and Small Islands, the definition of reclamation is an activity carried out by everyone to increase land resources from an environmental and socio-economic point of view by reclamation, land drainage or drainage. Basically, the purpose of reclamation is to create new land, be it for residential, commercial, industrial, and other purposes. In the view of urban planning, reclamation can also be categorized as one of the steps to expand the city.

In Indonesia itself, reclamation has begun since the time of President Suharto in 1995. This was confirmed by the enactment of Presidential Decree Number 52 of 1995 concerning North Coast Reclamation and Regional Regulation Number 8 of 1995. The plan was then continued by President Susilo Bambang Yudhoyono with the issuance of Presidential Regulation Number 122 of 2012 concerning reclamation in coastal areas and small islands. However, the long journey of efforts to build reclamation projects stopped in the era of Governor Anies Baswedan with the revocation of the development permit on September 26, 2018 based on the verification of the North Coast Jakarta Reclamation Management Coordinating Board established through Governor Regulation Number 58 of 2014. Of the planned 17 islands to be built, only 4 islands were eventually completed.

Reclamation cannot be done without careful planning, many provisions and stages must be done first to be able to carry out reclamation. Examples of provisions such as legal subjects who can carry out reclamation, individuals, or corporations, then the citizenship status of those legal subjects, Indonesian citizens or foreign nationals who can carry out reclamation.

Therefore, in this article, we will discuss whether foreign legal subjects can carry out reclamation activities.

The legal status of foreign entities' ownership of reclaimed land is complex, influenced by political, economic, human rights, and national security factors (Qin 2020b). In Indonesia, foreign nationals are granted proprietary rights to apartment units, but not the land underneath, to encourage investment (Solehuiddin 2022). The theoretical challenges and justifications of foreign land ownership are also discussed, calling for an integrated system that balances national treatment, public policy protection, and globalization (Qin 2020a). The concept of property rights by squatting is also relevant, highlighting the potential for adverse possession statutes to impact ownership rights (Baker et al. 2001). Changes in ownership are affected by the foreign affiliate's relatedness with its parent's sector (Driffield, Mickiewicz, and Temouri 2016). Foreign-invested enterprises have the same scope of land use rights as Vietnamese enterprises (Khanh 2020).

Of all the literature described above, none of the references are the same as what the author proposes. Therefore, this study deserves to be discussed further. Based on the above background, this article reviews about Foreign Legal Subjects Can Carry Out Reclamation Activities.

METHODS

This research uses a normative juridical approach method so that it focuses on finding answers to the core of the problem by collecting secondary data, analyzing the data, and obtaining conclusions based on data on the core of the problem. The secondary data that will be used in this study are mostly laws and regulations, including Law Number 1 of 2014, Government

Regulation Number 16 of 2004, Government Regulation Number 18 of 2021 and others to get answers about the core of the problem. The analytical method used in this study is qualitative juridical with legal syllogism analysis tools that are built deductively, namely from general to specific. In this study, it will start from explaining what reclamation is and the rights related to reclamation, then examine more specifically the legal subjects who have the right to reclaim.

RESULT AND DISCUSSION

Reclamation in coastal areas and small islands in Indonesia is relatively increasingly needed in the future to meet space needs that arise due to economic growth and sea level rise (Gultom, Widodo, and Untung Puguh 2019). Before the implementation of major reclamation was carried out in 1995, in 1980 small-scale reclamation had been carried out in Ambon, especially in the Mardika Beach area. In addition, there is also reclamation in the north Jakarta area, namely Ancol, Pluit and Pantai Indah Kapuk. In the era of 1980-1990 recorded relatively many reclamations carried out in various cities in Indonesia including, Manado, Makassar, Ternate, Surabaya, Tangerang and Denpasar (Kalalo 2009). The first regulation governing reclamation at the legal level only existed in 2007, namely Law Number 27 of 2007 concerning the Management of Coastal Areas and Small Islands which has now been amended by Law Number 1 of 2014 concerning Amendments to Law Number 27 of 2007 concerning Management of Coastal Areas and Small Islands. Before 2007 there were only regulations related to certain reclamation activities such as Presidential Regulation Number 73 of 1995 concerning the Reclamation of Kapuk Naga Beach

Tangerang. In addition, there is a Regulation of the Minister of Public Works Number 40/PRT/M/2007 concerning Guidelines for Spatial Planning of Coastal Reclamation Areas.

The implementation of reclamation must be carried out carefully because it can have a negative impact on the environment and surrounding life. For example, the reclamation of Serangan Island in the east of Denpasar City has become an issue due to severe environmental damage. Reclamation Serangan caused the waves to rise and turn against Pudut Island in Benoa Bay, so that Pudut Island shrank due to abrasion (Ayu Kade Galuh 2016). Law Number 27 of 2007 emphasizes reclamation activities that pay attention to economic, social, and environmental aspects. Article 34 of Law Number 27 of 2007 along with its implementing regulations in Article 30 of Presidential Regulation Number 122 of 2012 stipulates that reclamation must maintain and pay attention to the sustainability of community life and livelihood, the balance between the interests of utilization and the interests of preserving the functions of the coastal environment and small islands and the technical requirements of retrieval, dredging and stockpiling materials in reclamation.

Sustainability of life is necessary to maintain the sustainability and livelihood of the community, so reclamation must provide access to the community to the coast, maintain livelihoods sourced from marine and fisheries, compensate and empower affected communities. A balance between the interests of utilization and the interests of preserving the functions of the coastal environment and small islands is needed to achieve this balance, reclamation must minimize the impact of oceanography,

bathymetry, coastal balance, water quality and not degrade coastal ecosystems; and technical requirements for extracting, dredging and stockpiling materials in reclamation by not causing environmental pollution, damaging ecosystems, mud explosions, mud waves, coastal disasters and killing the sustainability of people's lives and livelihoods, using soil materials predominantly sand and not containing hazardous and toxic materials.

In addition, in Article 14 paragraph (1) of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 17 of 2016 concerning Land Arrangement in Coastal Areas and Small Islands, it is regulated regarding the provisions for granting land rights to reclaimed land, namely fulfilling the provisions of permits from the government and local governments, accompanied by environmental documents from relevant government institutions, its use and utilization in accordance with the direction of its designation in the provincial or district/city spatial plan or zoning plan of coastal areas and small islands; maintaining the sustainability of the lives and livelihoods of fishermen and communities; maintain a balance between the interests of utilization and the interests of preserving the functions of the coastal environment and small islands; and meet the technical requirements of material picking, dredging and stockpiling.

Reclaimed land as referred to above includes artificial seacoasts, artificial riverbanks, artificial lake banks and artificial islands. Artificial ecosystems are ecosystems created by humans (Sitanggang and Yulistiana 2015:159). For example, rice fields, gardens, reservoirs and aquariums, the constituent components of the ecosystem can be divided into two types,

namely biotic components, which are part of an ecosystem consisting of living things and abiotic components, which are part of an ecosystem consisting of non-living things.

The implementation of reclamation cannot be done without finding out more about the status of the reclaimed land, who is the legal subject who can be the owner of the reclaimed land. Article 12 of Government Regulation Number 16 of 2004 concerning Land Stewardship states that: "land derived from arising land or the result of reclamation in coastal waters, tides, swamps, lakes and former rivers is directly controlled by the state".

Then, based on the Explanation of Article 12 of Government Regulation Number 16 of 2004 concerning Land Stewardship, it is stated that reclamation is the backfilling of water areas to expand land space, the use and utilization of land must be in accordance with the Regional Spatial Plan. Article 1 point 1 of Government Regulation Number 26 of 2008 concerning National Spatial Plan provides a definition of national spatial plan is the direction of policies and strategies for the utilization of state territorial space.

Article 1 paragraph (2) of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats Units, and Land Registration explains that state land is land that is not attached to a land right, not waqf land, not customary land and/or is not an asset of state property/regional property. State land indicates a certain status of legal relationship between the object and its subject which in this context is more of a relationship of ownership or ownership between the subject and the object concerned (Limbong 2017:3). Circular Letter to the National Land

Agency Number 410-1293 of 1996 concerning the Control of the Status of Arising Land and Reclaimed Land also confirms that reclaimed land is land controlled by the state and the arrangement is carried out by the Minister of Agrarian State/Head of the National Land Agency. The party carrying out the reclamation can be given priority to apply for the right to the reclaimed land. Article 1 letter a of Government Regulation Number 8 of 1953 concerning the Tenure of State Lands states that land fully controlled by the state is called state land. From some of the provisions above, it is clearly known that the status of reclaimed land control is in the state. The scope of state land includes lands voluntarily surrendered by the owner, rights lands that expire and are not renewed, lands whose rightholders die without heirs, abandoned lands; and lands taken for public use (Sumardjono 2001:62).

State land that is controlled by the state can be granted land rights to legal subjects who apply for land rights to the country's land. Article 2 paragraph (1) of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats and Land Registration regulates that state land or land directly controlled by the state is all land parcels in the territory of the Unitary State of the Republic of Indonesia that are not owned with any rights by other parties. Then in Article 2 paragraph (2) of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats and Land Registration stipulates that state land as referred to in paragraph (1) by the state can give it to individuals or legal entities with a Land Right in accordance with its designation and needs or give it with Management Rights. State land as referred to in paragraph (1) of Government Regulation Number 18 of 2021 concerning Management

Rights, Land Rights, Flats and Land Registration includes land stipulated by Law or Government Regulation, reclaimed land, arising land, land derived from the release or transfer of rights, land originating from the release of forest areas, abandoned land, land rights that expire and are not requested for extension, land rights whose term expires and due to the policy of the Central Government cannot be extended, and land that from the beginning has the status of state land.

Article 2 paragraph (1) of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 18 of 2021 concerning Procedures for Determining Management Rights and Land Rights stipulates that the determination of Management Rights and the determination of Land Rights in the form of granting Property Rights, Business Use Rights, Building Use Rights and Use Rights on State Land or Management Rights are carried out by the minister. The granting of such rights is set forth in the form of decisions given individually or collectively/generally. The Minister may delegate the authority to grant rights individually or grant rights collectively to the Head of the Regional Office, Head of the Land Office, or a designated official. The applicant in applying for land rights must control the land requested as evidenced by physical data and juridical data. Physical data is information data about the location, boundaries and area of land parcels, while juridical data is information about the legal status of land parcels, rights holders and other burdens that burden them (Santoso 2010:14). If there is a request for land rights, a land inspection will be carried out by the land inspection committee or the land research team or appointed officer.

Furthermore, Article 17 paragraph (1) of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats and Land Registration confirms that reclaimed land can be granted Management Rights and/or Land Rights if it has obtained a reclamation permit. Then in Article 15 of Presidential Regulation Number 122 of 2012 concerning Reclamation in Coastal Areas and Small Islands states that the government, local governments, and everyone who will carry out reclamation must have a location permit and a permit for the implementation of reclamation. The definition of a permit for the implementation of reclamation is seen from Article 1 number 24 of the Regulation of the Minister of Marine Affairs and Fisheries Number 25/PERMEN-KP/2019 concerning Permits for the Implementation of Reclamation in Coastal Areas and Small Islands is a permit issued to carry out reclamation activities or construction. Reclamation implementation permits are granted for five years and can be extended for a maximum of five years (Bintari and Muara 2018). Article 16 paragraph (1) of Presidential Regulation Number 122 of 2012 concerning Reclamation in Coastal Areas and Small Islands confirms that to obtain location permits and reclamation implementation permits, the government, local governments and everyone must first apply to the minister, governor, or regent/mayor. The Minister grant's location permits and permits for the implementation of reclamation in certain national strategic areas, cross-provincial reclamation activities and reclamation activities at fishing ports managed by the government. The governor and regent/mayor provide location permits and permits for the implementation of reclamation within

the area according to their authority and reclamation activities at fishing ports managed by local governments.

Article 17 paragraph (2) and paragraph (3) of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats and Land Registration regulates regarding: In the event that reclamation permits are granted to central government agencies, state-owned enterprises/regional-owned enterprises, state-owned legal entities/regional-owned legal entities, land bank bodies, legal entities appointed by the central government, Reclaimed land as referred to in paragraph (1) is granted management rights or land rights by considering the conditions as subjects of rights; In the event that a reclamation permit is granted to a legal entity or individual, the reclaimed land as referred to in paragraph (1) is granted land rights and/or management rights provided that, for reclamation permit holders, land rights/land rights are granted above management rights and for the central government or local government that grants reclamation permits, management rights are granted, Based on an agreement between the party who obtained the reclamation permit with the central government or local government and considering spatial planning provisions.

If reclamation activities are carried out without a reclamation permit, the official authorized to grant the reclamation permit conducts technical and spatial research in accordance with the provisions of laws and regulations. If the research: has met the requirements, the reclaimed land becomes land directly controlled by the state and the subsequent use, utilization and ownership become the authority of the minister, not qualified, the reclaimed land can be returned to its original state by the party

carrying out the reclamation in accordance with the laws and regulations regarding reclamation permits.

From the explanation above, we can understand that reclamation is an activity to increase the resources of a land controlled by the state. Rights to reclaimed land controlled by the state can be granted to both individual legal subjects and corporate legal subjects by submitting an application by obtaining a reclamation permit first. An application for land rights to reclaimed land can not only be applied by legal subjects in Indonesia, but can also be applied by foreign legal subjects, both natural legal subjects and corporate legal subjects. There is no regulation or theory that specifically regulates what is a foreign legal subject, to understand a little about this we can see in Article 1 number 8 of Law Number 25 of 2007 concerning Capital Investment, that is, foreign capital is capital owned by foreign countries, foreign individuals, foreign business entities, foreign legal entities and / or Indonesian legal entities whose capital is partly or fully owned by foreign parties. From this provision it can be understood that, in the rights of the legal subject of the body, we can determine that the body can be called foreign by looking at the composition of the capital owned by the legal subject of the body. While in the case of legal subjects of natural persons, it can be done by looking at the nationality of the person.

Furthermore, according to Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, individual legal subjects and legal subjects of foreign entities can only obtain land rights in the form of use rights or lease rights. Right of use is the right to use and/or collect proceeds from land directly controlled by the state or land owned by others. Leasehold

rights are rights owned by a person or legal entity over land that authorizes the holder to use land owned by others for building purposes by paying the owner with a certain amount of rent. Then in Article 26A of Law Number 1 of 2014 concerning Amendments to Law Number 27 of 2007 concerning the Management of Coastal Areas and Small Islands confirms that the use of small islands and the use of surrounding waters in the context of foreign investment must obtain ministerial permission. Such investment must prioritize the national interest. The above-mentioned ministerial permission is granted to the applicant after getting a recommendation from the regent/or mayor. The permit must meet the following requirements: Legal entity in the form of a limited liability company, guaranteeing public access, no utilization by local communities, unpopulated, cooperating with Indonesian participants, gradually transferring shares to Indonesian participants, transferring technology; and pay attention to ecological, social and economic aspects of land area.

Reclamation efforts basically have a good goal, namely, to meet the needs of the community for land that is increasingly limited. However, the implementation of the reclamation must be carried out with high integrity and clear objectives without the intervention of parties only seeking profit. The government has provided terms and conditions to be able to carry out reclamation very strictly from planning to implementation because if not done carefully it will harm the surrounding environment. Therefore, it is very important for the government to only grant reclamation permits to parties who have integrity in carrying out reclamation, both Indonesian and foreign legal subjects.

CONCLUSION

The rapid growth of the population without a corresponding increase in available land has led to scarcity and a surge in land prices. Reclamation has emerged as a solution to address this issue. However, it must be conducted cautiously to avoid negative impacts on the environment and the surrounding communities. The government has established stringent regulations for those intending to undertake reclamation, including foreign legal entities. Reclaimed land is under state control, but rights can be granted to those who meet the criteria and have obtained reclamation permits. These rights can be extended to individual or corporate legal entities, both domestic and foreign. Foreign legal entities are permitted to hold rights over reclaimed land, but these are restricted to land use rights and leases, contingent upon obtaining government approval. Reclamation permits are a prerequisite for both domestic and foreign legal entities. [W]

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