
RIGHTS OF THE LAND IN THE TRANSITION OF CULTURAL HERITAGE BUILDING

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ABSTRACT

Cultural heritage buildings are valuable cultural relics of the Indonesian nation. In the transfer of land rights, there are buildings that function as cultural heritage, often conflicts or disputes occur. The rights to land that contain cultural heritage buildings in transferring the regulations that govern it. However, there is a conflict or dispute in the transfer of land rights on which there are cultural heritage buildings, the authors raise the issue of how to resolve disputes over the transfer of land rights where there are buildings with cultural heritage status. To analyze the research, the author uses a type of juridical normative research. The conclusions in this paper include the settlement of disputes over the transfer of land rights on which the building has a cultural heritage status through litigation, namely courts and non-litigation (outside court) routes, namely arbitration, conciliation, mediation, and expert assessment.

Keywords: Dispute, Transfer of Land Rights, Cultural Conservation

INTRODUCTION

There is Article 1 point 3 of Law Number 11 of 2010 concerning Cultural Conservation, hereinafter referred to as the "Cultural Conservation Law", Cultural heritage buildings are things made of nature/man-made which are arranged both with walls/no walls and roofs. Meanwhile, Article 12 paragraph (1) of the Cultural Conservation Law states that cultural heritage in the form of objects, buildings, structures/sites can be owned by everyone as long as it does not eliminate its social function and follows the applicable laws and regulations.

Article 33 paragraph (2) of the Cultural Conservation Law is regulated which everyone can own individually after a stipulation is made, with such a stipulation, it must be recorded in the national cultural heritage register in the form of a certificate and ownership which is legal evidence.

In the provisions of Article 12 paragraph (1) of the Cultural Conservation Law, it is stated that buildings with cultural heritage status are an inseparable part of land control over land rights, which cannot be done arbitrarily because they are limited to legal ownership. The social function of the cultural heritage building must be considered by the owner of the land right.

Having a cultural heritage can be transferred to the owner or to the government as regulated in Article 16 paragraph (3) of the Cultural Conservation Law. As in Article 17 paragraph (1) of the Cultural Conservation Law, according to the author, a cultural heritage building at the national, provincial/city level cannot be transferred without the permission of the minister, governor, or mayor/regent. But in reality the land owners or other parties who intentionally transfer the ownership of land above the Cultural Conservation, they transfer without or have not obtained permission from the local government in accordance with the level of the Cultural Conservation, because it is not balanced with the regulations regarding this matter. This creates a conflict or dispute. There are so many cases of land disputes. These disputes occur between individuals and governments, individuals between individuals, individuals between legal entities, or governments between governments.

The author will be raising in this writing is regarding LAND RIGHTS IN THE TRANSITION OF CULTURAL HERITAGE BUILDING.

RESEARCH METHODS.

The type of research in writing is normative juridical, with library materials and through a case study approach Sunggono (2013). The author is very interested in raising the issue of how to resolve disputes over the transfer of land rights in which there are cultural heritage buildings.

DISCUSSION

Disputes over land rights include buildings whose cultural heritage in the transfer of land often causes conflicts or disputes. This is due to the ignorance of the community in transferring their land

rights there are cultural heritage buildings. In this case the author raises this issue in this journal. Preservation of national cultural heritage is the preservation of culture and national pride and national identity through history, science, and culture, with other objectives related to the promotion of national culture in the national interest. The 1945 Constitution, hereinafter referred to as the Constitution, in article 32 paragraph (1) that in developing the country's cultural values in the midst of world civilization, promote and maintain national culture.

According to Article 1 paragraph (1) of the Cultural Conservation Law, cultural heritage is a relic in the form of objects, buildings, structures, sites and areas that must be preserved both on land/in water which are very useful and valuable for science, history, education, religion. / culture that has been established. Government Regulation of the Republic of Indonesia Number 38 of 2007 concerning the Division of Government Affairs, Between the Government, Provincial Government, and Regency / City Government, Article 7 paragraph (2) local governments are obliged to preserve, maintain and protect in maintaining cultural potential regulated by the government area.

As referred to in Article 1 point 3 of the Law on Cultural Conservation, Cultural Conservation Buildings are built structures made of natural objects or man-made objects to meet the needs of walled and/non-walled spaces, and roofs. Meanwhile, Article 12 paragraph (1) of the Cultural Conservation Law states that cultural heritage in the form of objects, buildings, structures/sites can be owned by everyone as long as it does not eliminate its social function and follows the applicable laws and regulations. It is regulated in Article 33 paragraph (2) of the Cultural Conservation Law which each person can own individually after a stipulation is made, with such a stipulation, it must be recorded in the national cultural heritage register in the form of a certificate and ownership as a legal evidence.

Cultural heritage buildings can only stand on land with individual land rights. Land rights can be exercised with the rights regulated in Law Number 5 of 1960 concerning the Basic Agrarian Law, hereinafter referred to as the LoGA. Basically, the principle of horizontal segregation has its own consequences for the separation of land and buildings, because the owners of land and buildings are the owners of cultural heritage buildings. Buildings with cultural heritage status that cannot be separated from land owners, which cannot be done arbitrarily because they are limited to legal ownership, are contained in Article 12 paragraph (1) of the Cultural Conservation Law. The social function of the building in relation to cultural heritage must be considered by the land rights owner.

Ownership of cultural heritage can be transferred to other people or to the state as regulated in Article 16 paragraph (3) of the Cultural Conservation Law. As in Article 17 paragraph (1) of the Cultural Conservation Law, according to the author, a cultural heritage building at the national, provincial/city level cannot be transferred without the permission of the minister, governor, or mayor/regent. If the land owner or other owners wish to transfer ownership of the land with a cultural heritage, they do so without prior permission from the local government of the cultural heritage, because it is not in accordance with applicable regulations.

In Government Regulation Number 10 of 1961 concerning Land Registration as amended by Government Regulation No. 24 of 1997 concerning Land Registration, also regulates the transfer of land rights. In Article 37 paragraph (1) PP No. 24/97 the author analyzes that ownership rights to flats can be transferred by buying and selling, exchanging, grants, income in the company, unless the rights are transferred by auction, it must be proven and registered with the PPAT deed in accordance with applicable regulations. The transfer of land rights is carried out at the National Defense Agency (BPN).

The transfer of land rights is the transfer of rights / transfer of land ownership starting from the property of a person or group of people to another community. The transfer can be done through the exchange/transfer of land. Legal transfers with the intention of transferring land rights to other people forever, the legal entity must meet the requirements of the owner of the land rights. Quoting from Hartanto's book "Land Ownership" that the transfer of land rights above the building with the status of a reserve sometimes runs into conflicts or disputes. For disputes that occur, there must be a settlement method that must be taken so that the dispute can be resolved. Hartono (2018) In resolving the dispute can be reached through, among others:

1. The litigation way is through the courts.
Either appeal or cassation in relation to land disputes decided by the court. It seems that a better understanding of the substance of the problem in relation to the underlying concepts is needed, without wanting to generalize. That way, the decisions taken can truly provide justice and legal certainty and help those who seek justice.
2. The non-litigation way.
Namely outside the court, said in the Syafrida's journal said that through this settlement it can be settled out of court based on good faith to seek approval, useful by applying the principle of "simple, fast, low cost", which in the form of, among others;

1. Arbitration;

Quoted from the Istijhab journal entitled settlement of land disputes after the enactment

of the Basic Agrarian Law, arbitration as a method of settlement outside of litigation is taken by disputants by treating the provisions in certain clauses after the conflict occurs. Arbitration arrangements are regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.

2. Negotiation;

Negotiation is an alternative dispute resolution that does not involve a third party and is only resolved by the disputing or disputing party, quoted from the Syafrida's journal.

3. Mediation;

Resolving conflicts that are objective and neutral from the other side works with the disputing parties to help find a conflict resolution that satisfies both parties, in the journal Sri of Puspatanigrum.

4. Conciliation;

As stated by Tris Widodo in a journal entitled Conciliation Settlement in the Settlement of Industrial Relations Disputes according to Law no. 2 of 2004, Settlement through conciliation (conciliation) is carried out by bringing together the disputing parties to be resolved amicably through mediating individuals/many people/entities through one person/many people/organizations.

5. Expert Assessment.

For something relevant according to his field of expertise, said by Siti Yuniarti with the title Variety and Alternative Forms of Dispute Resolution.

The examples cases taken by the author in this writing is about disputes that occur include the status of ownership of land and buildings on which there is a cultural heritage a dispute occurs, one of which is the Jami Al Ma'mur Mosque located in Cikini, Menteng, Central Jakarta. There is a dispute between the Jami Mosque Al Ma'mur Cikini with Coningent Emma Ziekenus against the transfer of ownership of the land on which there is a mosque building which is a national cultural heritage. mediation, where in resolving the dispute there is a third party, namely national figures who participate in resolving disputes between the two disputing parties and finally the dispute or dispute can be resolved.

Another case is that there is a dispute over ownership of the object of land and buildings on which there is a Cultural Conservation, namely the Tri Ratna Temple has transferred land and building rights to another party, namely Moe Irwan with the temple management. Where there is a lawsuit against the object of dispute over land and building ownership in the form The Tri Ratna Vihara Building is designated by the DKI Jakarta Government as a Cultural Conservation in the category of "Historic Buildings and Monuments" in the DKI Jakarta area which is protected by law according to the Decree of the Governor of the Special Capital Region of Jakarta No. CB. 11/1/12/72 dated January 10, 1972. This case was resolved through litigation, namely the courts in resolving disputes. Dispute resolution is taken from the first level court, appeals to cassation. So that there is satisfaction for the disputing parties and there is legal certainty that is accepted by the disputing parties.

Another case is a dispute between the DKI Jakarta Provincial Government and PT MAS, a lawsuit from PT MAS suing Anies for the issuance of Governor's Decree No. 292 of 2018 concerning the Determination of the Location of the Petukangan Ammunition Warehouse as a Cultural Conservation Site. The location of the Ammunition Warehouse as referred to in the Governor's Decree is located in Petukangan, Rawa Terate, Cakung District, East Jakarta. The issue is the provision of cultural sites, which only took effect from 9 February 2018 between PT MAS and the DKI Provincial Government, on land owned by PT MAS. Against the dispute that occurred between PT. MAS and the DKI Provincial Government in resolving disputes through litigation, namely through the Court in resolving disputes between the two disputing parties. So, this dispute can occur between individuals with individuals, individuals with legal entities, or individuals between governments. In resolving the dispute, it can be taken in accordance with the wishes of the disputing parties

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