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Status and Control of Land by TNI for Defense Purposes

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Abstract: Land tenure for national defense functions by the TNI is a mandate of legislation to secure and maintain the land used physically, administratively, and juridically. Land for the function of national defense is a basic thing needed by a country in exercising its sovereignty, although in reality the status in its control and management often experiences problems that are not resolved. Based on the recapitulation of the Ministry of Defense's land data, there are 337,331 hectares owned by the Ministry of Defense and all organizational units of the TNI Headquarters, and of the total area, around 27,010 hectares have not been certified, while 201,014 hectares of land are still experiencing ownership status problems and have the potential to cause agrarian conflicts and cases with the community and business entities claiming to be the owners of land tenure that functions as defense land. This can occur because the evidence owned by the TNI as the basis for control is not recognized by the authorized official as valid evidence, resulting in differences in perceptions of ownership recognition between the ATR / BPN ministry and the Ministry of Defense. The different systems in recognizing the status of the land resulted in the State Property assets causing ambiguity about the status in its control and management, this caused uncertainty, uselessness, and injustice in law. To answer these problems, the author uses research methods, as for what is used is doctrinal legal research (Doctrinal research). The results of the study that the old evidence of TNI ownership obtained during the Dutch or Japanese military aggression does not mean removing the status of TNI control and management even though it has not been registered with the defense office to be certified. The Basic Agrarian Law does not specifically regulate TNI lands obtained historically for the benefit of national defense, but that does not mean eliminating the status of the land as land for the benefit of national defense, so it is necessary to establish special rules or regulations and apply the use of the Lex Specialist Systematic principle in civil law to regulate interests related to national defense in defense regulations, and treasury regulations, as well as Land regulations.

Keywords: Tenure Status, TNI Land, National Defense

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1. Introduction

State defense land used by the state defense apparatus, namely the TNI, is land used to defend the Unitary State of the Republic of Indonesia against external and domestic threats, because in the TNI control land there are various infrastructure facilities to support operational activities and to prepare the TNI in maintaining sovereignty. Without a defense area in a country, it will not be able to maintain its existence, because the defense and security of a country in its manifestation cannot be separated from the function of the defense area used by the military in this case the TNI.

The TNI is regulated in Law of the Republic of Indonesia Number 34 of 2004 concerning the Indonesian National Army Article 7 Paragraph (1) outlines that the TNI's Main Duties are to uphold the sovereignty of the state, maintain the territorial integrity of the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia (Armawi, 2019), and protect the entire

nation and all Indonesian blood from threats and disturbances to the integrity of the nation and state.

The TNI as the guardian of state sovereignty in safeguarding national interests (Abidin, 2019: 15), can run of course need land to be able to carry out its duties and functions in a territory, while the land used by the TNI is included as a state asset which is often referred to as State Property, the use of which has been regulated in Law Number 17 of 2003 concerning State Finance and Law Number 1 of 2004 concerning State Treasury.

The acquisition of land of a state institution historically before the establishment of State Property regulations is still considered a State Property asset if it is legally obtained by an institution or ministry, Control and utilization of State Property assets is a form of management and control of state asset land to be organized administratively, physically and legally.

In order for the implementation of State Property governance for the land of the national defense area to be effective, arrangements are needed regarding the use and management of State Property in the Ministry of Defense and the Indonesian National Army based on Government Regulation of the Republic of Indonesia Number 28 of 2020 concerning Amendments to Government Regulation Number 27 of 2014 concerning Management of State / Regional Property (Article 3 of PP No. 28/2020). The status of state assets in the form of land needs to be controlled and secured physically, administratively, legally with the aim of making it easier for the owner or user of the land rights to secure the land, so as to reduce conflicts or disputes that may occur in the future.

Even though the lands used by the TNI are included in the inventory as State Property, the TNI always makes efforts to register the lands used to obtain certificates (Article 95-98 PP No. 18/2021), for legal ownership and as strong proof of ownership (Adzini, 2019: 1207). As for efforts to launch these activities, the Ministry of Defense and the Ministry of ATR / BPN carry out cooperation as outlined in a memorandum of understanding or MoU (Memorandum of Understanding) Number: MoU / 1/III/2017 and Number 5 /KB/2017 dated March 30, 2017 concerning Accelerating the Certification and Handling of Land Asset Problems of the Ministry of Defense of the Republic of Indonesia / Indonesian National Army. The memorandum of understanding was continued with MoU (Memorandum of Understanding) Number: 12/SKB-KH.03.01/III/2023 and KB/3/III/2023 dated March 3, 2023 concerning Synergy of Tasks and functions in the fields of Agrarian / Land, Spatial Planning and Defense. However, regarding the last MoU until now there has been no follow-up regarding the cooperation agreement related to the memorandum of understanding.

Currently, within the Ministry of Defense or TNI, despite the existence of a Memorandum of Understanding as mentioned above, it does not result in the acceptance or recognition of evidence of the TNI's historical acquisition. The implication of the non-recognition of TNI land that occurs is that land and or buildings used for national defense are controlled by civilians, private companies, and even local governments, this happens because the TNI does not have status in land tenure even though the land is for the benefit of national defense but cannot be recognized because the land has not been certified.

Basically, TNI control certainly has several letters that can be said to be indications of control, but in terms of documents and letters are indeed closed and not all defense data can be opened just like that, this is always a problem in TNI land tenure for defense purposes. As for some of the evidence submitted in the management and form of TNI control, among others:

1) Decree of the Chief of Staff of the War Force Number 023/P/KSAP/50 dated May 25, 1950.
2) Central War Ruler Regulation Number 02/PEPERPU/1950 dated January 25, 1959.
3) Regulation of the Chief of Staff of the Air Force Number 36/PEPERPU/AU 58 dated October 15, 1958.
4) Minutes of the Handover of the Dutch Zeni Chief to the RIS Army dated June 7, 1950.
5) Letter of Building Terr VI/Tandjung Pura Number 0202/AI/HM/GIBT6/55 dated February 11, 1955.

The evidence of control has not been recognized by the authorities in the issuance of proof of ownership and states that it cannot be used as a basis for control of land that has been used as a national defense area. as if that old evidence cannot be used as evidence of land tenure instructions.

The problem of assets managed and controlled by the TNI in the interests of the national defense area there are many problems in this case the land to be certified has several obstacles in juridical recognition, and not only juridical recognition but physical control also often gets problems that result in the absence of legal certainty for control and management. Communities and private business entities always claim that they have rights over the national defense land by using the excuse that they have occupied the land for a long time and some have been issued certificates of ownership. The weak point of agrarian law rules to overcome conflicts from the lands used by the TNI results in no legal certainty, while the purpose of the defense area to achieve the noble ideals of the Republic of Indonesia.

2. Problem Formulation

This writing has two problems, among others:

(1) What is the status of TNI land for national defense in financial law and agrarian law regulations?

(2) What is the history of land tenure by the TNI in the acquisition of land for national defense purposes?

3. Methodology

The This research is a doctrinal legal research. In this research, the approaches used are statutory approach, historical approach, conceptual approach. The object of this research is the legal rules relating to disputes, conflicts and land issues within the Indonesian National Army. The results of this research will be presented in the form of qualitative analysis which will then be drawn conclusions to obtain more specific findings.

4. Discussion

4.1 Land Tenure Status Under State Financial Law

To manage natural resources for defense forces, it is necessary to establish an area, this is regulated in government regulations which state that part or all of Indonesia's territory can be used for the purposes of organizing a national defense area, both in peacetime and in times of war (Article 3 paragraph (1) PP No. 68/2014).

TNI's orientation in the national defense area, namely to maintain unity, security, and stability, is the basis for playing a role in national development, with very heterogeneous geographical, social, and cultural conditions, because Indonesia is vulnerable to threats of instability and disintegration (Mariana, 2006).

Areas for defense that are used for the benefit of the state are specifically regulated in Article 1 point 3 of PP 68/2014, which states that the national defense area, hereinafter referred to as the defense area, is an area designated to maintain the sovereignty of the state, the territorial integrity of the Unitary State of the Republic of Indonesia and the safety of the entire nation from threats and disturbances to the integrity of the nation and state (Article 1 Point 3 PP No. 68/2014). The purpose of the state defense area above is reaffirmed in Article 6 of PP No.68/2014, which states that what is meant by the defense area is:

a) Military or chivalry bases;

b) Military training areas;

c) Military installations;

d) Test areas for military equipment and military weapons;

e) Storage areas for explosive and other dangerous goods

f) Disposal areas for ammunition and other hazardous defense equipment;

g) National vital objects that are strategic in nature;

h) and or air defense interests.

From several rows of types of defense areas referred to above are the types of areas needed for a national defense, facilities and infrastructure are a major factor in the implementation of national defense by the TNI as the main component.

TNI as a tool and the main component of national defense has the characteristics of an area that is confidential, restricted area, and there is a Prohibited Area, and some areas are vital objects in a defense area for military areas. The land used by the TNI is a State Property land asset.

The acquisition of state property includes two categories, namely (i) APBN Procurement; and (ii) Other legal acquisitions (Mumpuni, 2021). Law No. 17 of 2003 concerning State Finance and Law No. 1 of 2004 concerning the state treasury have stipulated officials who have the authority to utilize State Property. based on these laws and regulations, State Property land assets are managed by the State Property manager, namely the Minister of Finance as the State General Treasurer (Article 4 of PP No. 28/2020); and the Minister / Head of the Ministry of Finance.

Land tenure of State Property uses two forms of control, namely physical control and juridical control. In physically controlling the land, the authority and responsibility lie with the goods user or the power of goods user. Goods users or the power of goods users are physically, administratively, and legally responsible for using the land in carrying out government duties (Amiri, 2020: 41).

Juridical control is control based on rights that authorize agencies to control physically, in this case, the right base is given in the form of the base of the Right of Use and Management Rights. Article 49 paragraph (1) of Law Number 1 of 2004 concerning State Treasury states that land controlled by Government agencies both centrally and regionally must be certified in the name of the Government of the Republic of Indonesia.

Law No. 1 of 2004 concerning State Treasury regulates land management, which includes the Goods User and / or the Power of Goods User must manage and organize State / Regional Property that is in their control as well as possible, and in this management as long as it is used for the implementation of tasks and functions, it cannot be transferred (Article 46 of Law No. 1/2004).

Regarding the management of defense areas based on State Property regulations, land tenure in State Financial Law is not solely used for the purposes of carrying out the duties and functions of government agencies. State Finance Law starts from the perspective that land controlled by government agencies is property. TNI agency land is part of state property that must be managed and accounted for according to state financial administration. The acquisition process is a manifestation of the rights and obligations of the state/region that are charged to state/regional finances or derived from other legal acquisitions, so that it can be owned by the state/region (Supriyadi, 2010: 177).

The main principle of the use of state defense land in the State Financial Law is limited only to the implementation of the duties and functions of the Ministry/Agency or regional apparatus work unit (Article 22 paragraph (1) and paragraph (2) of PP No. 27/2014). The use of the land is self-administered and managed by the Goods User/Power of Goods User, which is the party from the Ministry of Defense or the TNI itself. State Financial Law, apart from being used for the purposes of carrying out its duties and functions, land controlled by government agencies can be utilized by other parties and can also be transferred (Diroya, 2020: 125).

Another fundamental thing that is regulated by the State Treasury Law is to put the position that the TNI as the right holder. In terms of granting the term land certificate that will be recorded on behalf of the Government of the Republic of Indonesia, this is always interpreted with legal entities, because property rights can only be given to legal subjects. In this case, legal science has outlined that the bearer of rights and obligations is a person (natuurlijk persoon) and legal entity (rechtspersoon) (Parlindungan,1991:537).

4.2 TNI Tenure Status Based on Agrarian Law

Land used as a defense function is certainly required to have legality that has juridical power, to obtain the juridical power of land in the Indonesian legal system, the land must be registered to obtain juridical recognition in the form of a certificate as stipulated in the Basic Agrarian Law (Rivaldi, 2020: 123).

Land registration on state defense land is one of the efforts aimed at realizing legal certainty in the land sector. Registration is an activity that is carried out continuously and regularly, in the form of collecting certain information about the object of a land located in an area that has a purpose to be processed, stored, and presented to fulfill the implementation of land registration (Sumarja, 2009: 16).

Land registration in Indonesia is generally regulated using Government Regulation Number 10 of 1961 concerning Land Registration which was later revoked by Government Regulation Number 24 of 1997 concerning Land Registration and amended by Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flat Housing Units, and Land Registration. The Government Regulation provides an explanation that land registration is a series of activities that are carried out continuously, continuously, and also regularly (PP No. 24/1997 jo. PP No. 18/2020). The land registration activities consist of collection, processing, bookkeeping, and presentation activities. In the Government Regulation on Land Registration, there are 2 (two) stages of land registration in Indonesia, the first of which is the maintenance of land data and the first land registration. Then there are 2 (two) types of land registration implementation for the first time, namely systematic land registration and sporadic land registration. Sporadic land registration is a land registration activity by the owner of a land plot that has not been registered, while systematic registration is carried out simultaneously by the government on a land plot that has not been registered.

The land registration is carried out using the principles of simple, affordable, up-to-date, open, and safe, this is regulated in Government Regulation Number 24 of 1997, in every land registration must implement these principles which include (i) simple principles; (ii) safe principles; (iii) up-to-date principles; (iv) open principles, but in practice there are still many lands that are not certified due to obstacles to the status of evidence such as land owned by the TNI.

Certification of State Property in the form of land is carried out with the aim of securing state property in legal aspects. Certification of BMN in the form of land is carried out in a tripartite manner between the Ministry of Finance as the Goods Manager, the Ministry of ATR / BPN as the agency authorized to issue certificates, and other Ministries / Institutions as Goods Users. Certification of BMN in the form of land is a form of legal BMN security to complete and strengthen the ownership status of BMN in the form of land.

In Law Number 1 Year 2004 concerning State Treasury Article 49 states that State Property in the form of land controlled by the Central Government must be certified in the name of the government of the Republic of Indonesia / local government concerned.

The implementation of certification of State Owned Goods aims to secure State Owned Goods in the form of state land, especially lands used for the function of defense activities in this case, providing legal certainty regarding State Owned Goods in the form of land so that there are no disputes between the community and the government, providing legal protection to holders of Land Rights so that they are not lost to parties who are not entitled to have them, and also as an effort to implement the achievement of orderly BMN administration.

The certificate issued is a proof of right that serves as a strong evidentiary tool regarding the physical data and juridical data contained therein, as long as the physical data and juridical data are in accordance with the data contained in the relevant measurement certificate and land book. This means that as long as it cannot be proven otherwise, the physical data and juridical data contained therein must be accepted as correct.

4.3 Evidence of National Defense

The system used by the UUPA has never addressed lands used in Defense and Security activities that have been used since before independence. Until now, the provisions that apply without registration and legal ownership are considered non-existent, and as long as the landowner cannot prove the acquisition of the land, the land cannot be recognized as ownership.

In addition, the validity of the transfer of rights can not only be proven by proof of rights issued by the Land Registration Agency, but also by other means of proof (Sumarjono, 2006: 183). The negative publication stelsel in the land registration system contains weaknesses because the principle adopted in land registration opens the opportunity to deny the validity of the name mentioned in the certificate of land rights (Sumardjono, 1982: 25). This principle is clearly set out in the provisions of Article 19 paragraph (2) letter c, which states that "The provision of documents evidencing rights shall serve as strong evidence". It is also stipulated in Article 32 paragraph (1) of Government Regulation No. 24 of 1997 that "A certificate is a certificate of proof of rights that serves as a strong evidentiary tool regarding physical data and juridical data as a strong evidentiary tool regarding physical data and juridical data in accordance with the data contained in the measurement certificate and land book of the right concerned". This means that the law only guarantees the proof of ownership rights to a person. The law does not give ownership rights, so it is often considered that it still does not protect the owner.

As if the proof of right only confirms a person with his property (land), in addition to land registration it should give rights to a person must also confirm him as the holder of existing rights. Defense area land is needed for defense purposes, in order to avoid conflict with other national development functions (PP No. 68/2014).

Seeing the importance of the aspects of structuring or managing land for the TNI as a defense function in a country, this requires a privilege (previlage), currently the land used for national defense purposes, especially those owned by the TNI which is historically controlled, has many problems, but is constrained by the validity and availability of evidence of control. All rules governing land for national defense have never discussed the status or juridical data or physical data of lands that were historically controlled by the TNI, instead the rules only discuss the concept of temporary use but not the principal related to the status of land that has been taken over or used by the TNI. Physical data and juridical data should be a supporting unity in the land that is traced with the historical side related to the TNI.

Problems in the control of military areas owned by the TNI are related to the recognition of evidence of control, management, ownership and use, precisely at this time military lands cannot be used for military defense purposes but are transferred for the benefit of parties both private parties, the general public, legal entities, and local governments. As a result, TNI areas that have been designated as military areas are not well managed.

As a result of not recognizing the evidence of rights owned by the TNI by the authorized official, there are many weaknesses in the control of TNI areas aimed at national defense. Another impact is that the land that has been designated as defense is occupied by the community and used as a place of business, residence, and agricultural activities.

The lack of evidence of TNI's ownership control and management has caused many problems in the form of disputes, conflicts, and land cases that occur related to areas used for national defense. There are many accusations that the TNI seized lands occupied by the community without looking historically and evidence of control and management of the land. Any land used by the TNI is always associated with a pattern of violence (Repressive Approach), kidnapping, seizure, and abuse of power as a state institution (Wiratraman, 2005: 3). On the other hand, there are also parties who deliberately occupy TNI land, understanding that the land is TNI control land used as a military function task, but when it is about to be controlled to relocate the parties ask for compensation with the pretext of fulfilling Article 28C, Article 28D, Article 28G, and Article 28 H of the 1945 Constitution. Many of these incidents occur contrary to the provisions as contained in Law Number 51 Prp of 1960 (Overview of Case Decision Number 96/PUU-

XIV/2016), but due to the absence of recognition of evidence or legality of TNI ownership by authorized officials, it always ends in conflict in court.

Land owned by the Ministry of Defense and the TNI are all on average problematic with proof of control and have not been certified (Data from the Air Force Legal Service, 2019). These problems have not been counted with lands in conflict, disputes, and litigation with the TNI in court.

All of them are constrained in the problem of proof and the problem of the validity of evidence. Along with the times related to land registration and the recognition of evidence, that in ancient times was not as sophisticated as it is today (Articles 95-98 of Government Regulation No. 18/2021).

As a result of the TNI's weak evidence and the absence of specific recognition by the authorized official in the agrarian sector of the evidence or clues of evidence of ownership owned by the TNI, conflicts, disputes, and land cases often occur both with the community, private entities, legal entities, and local governments. This happens because many parties want to claim TNI's territorial lands so that they can be used for economic income-generating activities.

The existence of disputes, conflicts, and land cases has an impact on the quality of the TNI body in carrying out its main functions and duties as the main component in national defense, the fulfillment of the TNI's basic strength or Minimum Essential Force for TNI defense cannot be achieved (PP No. 18/2020). This happens because there is no area that can be used as a place to carry out military operations, lack of base facilities, and lack of areas to support activities in the military field.

The area used by the TNI must have special attention in its settlement, because of the many conflicts, disputes, and land cases that occur, complicated land problems are classified as serious cases, because the problems involve many parties, have complex legal dimensions, and/or have the potential to cause social, economic, political and security turmoil (Article 5 of the Regulation of the Minister of ATR / BPN No. 21/2020).

The weak point of agrarian regulations to overcome conflicts, disputes, and land cases against TNI lands results in no legal certainty of control and management of the area used by the TNI, as well as the loss of the purpose of defense itself considering that the purpose of the defense area is to achieve the noble ideals of the Republic of Indonesia, namely to protect all Indonesian spilled blood (4th paragraph in the Preamble of the 1945 Constitution). The Indonesian state, in achieving its national goals, should always try to risk everything to ensure that defense, security and prosperity are well implemented in order to maintain national interests (Hakim, 2016: 9). The state defense area used by the TNI has its own characteristics and features in its acquisition both in terms of history, control, and management, so that the specificity of land use should have special land regulations in agrarian-related regulations.

This is necessary due to the lack of juridical recognition and the lack of recognition of State Property lands by agencies and the public as they have been included in the State Financial Inventory as State Property. The difference in point of view in seeing the control and use of land by agencies raises legal issues both in terms of justice and expediency.

In the Treasury Law what is meant by State Property is all goods purchased or obtained at the expense of the State Budget or derived from other legal acquisitions. State Property originating from other legitimate acquisition includes (a) Goods obtained from grants / donations or the like; (b) Goods obtained as the implementation of agreements / contracts; (c) Goods obtained in accordance with statutory provisions; or (d) Goods obtained based on court decisions that have permanent legal force.

In Treasury Law, the state authorizes TNI agencies to utilize land in carrying out their duties and functions. In Treasury Law, the State can determine user status without first waiting for the issuance of a certificate on land that is managed and controlled. In this case, the control is sufficient by showing ownership instructions (Article 10 paragraph (8) of the Minister of Finance Regulation No.87/PMK.06/2016). Although in the State Treasury regulations, land controlled by the Central Government must be certified in the name of the Government of the Republic of Indonesia or the Regional Government. In the Joint

Regulation of the Minister of Finance and the head of BPN No. 186 / PMK.06 / 2009 and No. 24 of 2009 concerning the Certification of State Property in the Form of Land.

4.4 History of TNI Land Tenure

In the past, when the Dutch came to colonize Indonesia, they brought unwritten and written laws. One of the written laws in the Agrarian sector, for example the Dutch sub-land sector imposes individual rights to land, namely eigendom rights, opstal rights, gebruik rights which are then spread in the colony, namely Indonesia, while before the Dutch colonized, Indonesia already had its own law, namely Customary Law and customary property rights, namely: gogolan rights, kebulan, and others. So that after the Dutch began to enforce and apply their innate laws, there was legal dualism in Indonesia and also dualism in the institution of individual rights, especially land rights. After Indonesia's independence, the government began to reform or reform the National Law, including in the Agrarian sector, especially the very complex land sector. Precisely on September 24, 1960, the Basic Agrarian Law was enacted. that the Agrarian Law that is still valid today is partly composed based on the objectives and joints of the colonial government and is also partly influenced by the colonial government.

After independence, in a state of war emergency, the state needed a lot of land for weapons bases and housing for the Indonesian National Army. The acquisition of land for these needs was carried out by the Indonesian National Army by occupying military bases formerly owned by the KNIL era, the Dutch Army, and the Japanese Army, while the takeover used the legal basis (Nurhajizah, 2013: 4).

1) Law of the Republic of Indonesia Number 74 of 1957 Concerning the Revocation of the "Regeling Po De Staat Van Oorlog En Beleg" and the Determination of a State of Danger. Article 36 states that the authorities in a state of war have the right to order the surrender of goods taken into their possession or used in the interests of security or defense and this power can be delegated to designated officials, in this case the Army at that time.

2) Presidential Decree of the Republic of Indonesia No. 225 of 1957 dated December 17, 1957 concerning the revocation of the "Staat van beleg" and the declaration of the entire territory of the Republic of Indonesia including all its territorial waters in a state of war according to the 1957 State of Danger Act in conjunction with Law No. 79 of 1957 concerning the ratification of the declaration of a state of war as had been done by Presidential Decree of the Republic of Indonesia No. 225 of 1957 dated December 17, 1957 (State Gazette of 1957 No. 170).

3) Circular Letter of the Ministry of Home Affairs of the Republic of Indonesia dated May 9, 1950 No. H/20/5/7 stating that "a piece of land was taken for the purpose of constructing a public building (office, school, etc.). The building has been erected and is still being used for the benefit of the state, in which case the return of rights is not possible due to the interests of the state".

4) War Force Decree No. 023/P/KSAP/ dated May 25, 1950 which states: "The airstrips, the buildings included in the airstrips, and the equipment located in the airstrips belong to the Air Force of the Republic of Indonesia".

5) Regulation of the Central War Authorities Number 02/PEPERPU/1950 dated January 25, 1959 concerning Amendments to the Regulations Concerning the Authority Over and Prohibition to Enter or Use Part of the Area of North Lampung Regency (Earth City) and the Area of Metro Regency of Lampung Prefecture in South Sumatra Province.

6) Regulation of the Chief of Staff of the Air Force Number 36/PEPERPU/AU 58 dated October 15, 1958 concerning Regulations Concerning the Authority Over and Prohibition to Enter or Use Part of the Area of North Lampung Regency (Kota Bumi) of Lampung Prefecture in the Province of South Sumatra.

7) Letter of the Minister of Home Affairs Director General of Agrarian Affairs No. 593/III/Agr dated January 7, 1983 concerning the Settlement of people's land taken by the Japanese government.

8) Letter of the Minister of Home Affairs Director General of Agrarian Affairs Number Agr. 40/25/13 dated May 13, 1953 concerning the Settlement of lands formerly taken by the Japanese resident government.

9) Instruction of the Governor of Lampung Level I Number Inst/011/B.IV/HK/88 dated September 17, 1988 concerning the Boundaries of the AURI Combat Training Center Area in the North Lampung Level II Regency.

10) Letter of the Ministry of Home Affairs of the Republic of Indonesia Number 593/4297/AGR dated June 28, 1984 concerning Land for the Air Force Training Center in Menggala District, North Lampung Regency.

11) Letter of the Governor of KDH Tk I Lampung Number AG.000/079/Bappeda/II/1987 dated February 13, 1987 concerning the Area of Puslatpur/Air Weapon Range of the Indonesian Air Force in Lampung.

12) Minutes of the Handover of the Dutch Chief of Zeni to the RIS Army dated June 7, 1950 (Army) Handover of Military Buildings.

13) Letter of Terr VI/Tandjung Pura Building Number 0202/AI/HM/GIBT6/55 dated February 11, 1955 concerning the Construction and Military Field in Tarakan.

14) Lands under the control of the Dutch Army (KNIL), Dutch-Owned Companies which under Law No. 86 of 1958 concerning Nationalization, these lands were transferred to one of the Government Agencies.

Most of these are lands that are controlled on the basis of the above laws. Land tenure by the Indonesian National Army, which is quite a lot, among others, comes from the former Dutch East Indies Military (KNIL), or the occupation of the Japanese army and former foreign / Chinese land and buildings in the form of lands designated for defense / military during a war emergency (Nurhajizah, 2013: 5). So that the land and buildings that have been abandoned by their owners are controlled by the TNI until now. So that the purpose of the above regulation is the basis for the authority of the Indonesian National Army (TNI) in carrying out occupation in a state of war at that time.

Of the 14 (fourteen) legal bases and rules, until now they have not been accommodated in the Basic Agrarian Law as a form of recognition of TNI land obtained historically, even though the legal bases and rules were formed in emergency conditions which turned into land used in fulfilling the Minimum Essential Force for the TNI.

The legal basis owned by the TNI in land tenure is also a legal product officially issued by the state, but these basics cannot be used as evidence of land registration because the evidence owned by the TNI is considered not to meet the requirements as evidence as specified in the UUPA.

The Regulation of the Minister of Agrarian Affairs states, among other things, that the State Land Tenure as referred to in Government Regulation No. 8/1953 which has been granted to Departments, Directorates and Autonomous Regions, as long as the State lands are used for the benefit of the agencies themselves, shall be converted into Hak Pakai. However, if the possession of the land is not only used for the benefit of the agencies themselves, but is also intended to be granted with a right to a third party, then the possession of the State Land mentioned above is converted into a Management Right.

Juridically, no one can lose rights easily, therefore after the enactment of the UUPA, it does not necessarily erase the rights of the holder of the old proof of rights, but also does not necessarily make the rights become registered, it still has to go through the registration process for the first time and if it is not registered, the position of the old proof of rights is only limited to indicating rights.

In practice, evidence of ownership from the TNI is still used as evidence to carry out legal actions, because the land has not been registered for the first time, so that the evidence of ownership owned is only evidence of old rights. The legal action of transferring rights with the old right base is accompanied by other

supporting evidence.

Similarly, the position of groundkaart as evidence of control of railway land in the Indonesian legislation system that applies based on the Letter of the Minister of Finance / Director General of BUMN Development to the Minister of Agrarian Affairs / National Defense Agency Number S-11 / MK.16 / 1994 dated 1995 concerning groundkaart can be used as evidence of control over railway land. Similarly, defense land obtained based on 14 legal bases should be able to be used as a settlement of defense land issues.

5. Conclusions

The status of land tenure by the TNI in the context of the function of national defense as State Property is a valid acquisition of land as TNI control if based on evidence of the legality of acquisition, while the legality of TNI land acquisition for defense purposes can be used as the basis for the reason for control. But until now, the problem is the inadequacy of regulations governing TNI lands acquired historically. The absence of such regulations has resulted in mutual claims to defense lands for economic and private interests. On the other hand, even though the TNI lands have received legal recognition in state financial law as State Property land assets, it does not necessarily mean that the land can be recognized by agrarian law as ownership of the TNI. The land is juridically and physically controlled by the TNI but in administrative or juridical recognition from agrarian officials is not necessarily accepted and not necessarily said to be the ownership of the TNI. As a result of the lack of legality and recognition of state property asset lands controlled by the TNI, the community, private parties, and local governments occupy lands for defense purposes. So that the regulatory vacuum is that even though the land is included in the State Property Inventory (IKN) as State Property does not necessarily result in the land being recognized for the legality of its ownership and issued a certificate as a form of juridical legality of the land.

Suggestion

There needs to be a special regulation in the form of a government regulation that can oversee the three agencies between the TNI, the Ministry of Agrarian Affairs, and the Ministry of Finance in resolving the problem of State Property assets, or regulations that can provide solutions for TNI lands or areas that have become disputes with the community, legal entities, or between the government itself.

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