Vol. 17 No. 2 2021

YURISDIKSI

Jurnal Wacana Hukum dan Sains

Universitas Merdeka Surabaya

Due To The Law On The Purchase of Land Rights That Have Not Been Certified If Bound By The Government Ah City of Surabaya (Case Study Number: 678 K/PID.SUS/2019 Jo 87/Pid.Sus/TPK/2018/PN.Sby

Abror Prima Putra, Moh.Saleh

Faculty of law, Narotama University Surabaya

E-mail: abrorputra24@gmail.com

ABSTRACT

The immovable property belongs to the state while related to administration, the control of the institution is used with the term "in beheer" or "in control" where this can be evidence that the land parcel is under the control of a certain institution, and certain institutions are said to have a budget which appears from the government to finance the maintenance of the land parcels. Land is state or regional property, if this land is purchased or obtained at the expense of the APBN/APBD, or the land comes from other legitimate acquisitions, for example obtained through a grant/contribution, obtained as law or obtained based on court decisions that have legally binding. The purpose of being published is for the benefit of the right holder based on physical data and juridical data as registered in the land book. Meanwhile, uncertified land is land that does not have valid proof as a strong means of evidence regarding the physical data and juridical data contained.

Keywords: Property, Soil, Legislation, and Certificate

1. INTRODUCTION

In Roman law, there is an adage which states that Cojus est solum, ejus est usque ad cuelum, which has the meaning that whoever owns a piece of land thus also owns everything above the surface of the land to the sky and everything else. that is in the ground. Every government agency or institution and / or which has been granted control of rights by the State with the task it carries out certainly requires a parcel of land, either for the construction of an office building or for its operational activities, land parcels which are obtained directly by the Government or from the purchase of a resident (Kahfi, 2016).

In Staatsblad 1911 Number 110 in conjunction with Staatsblad 1940 Number 430 is regulated with regard to property, buildings and military fields (Yustianti & Roesli, 2018). Where the land parcels are classified into the term is lands- onroerende goederen, which means permanent property or immovable property belonging to the State, whereas in relation to the administrative order, the control of the agency is used with the term in beheer or "in control" where this can be evidence that the land parcel is under the control of a certain institution, and that particular

institution has a visible budget from the government to finance the maintenance of the land parcel (Marzuki, 2005).

The notion of in beheer has developed or been broadly developed in relation to its definition, resulting in consequences, namely confusion in the field of legal order between government agencies and agencies that hold or are appointed by the Government or even often conflict with the interests of the people in general, which finally published Government Regulation No. 8 of 1958 concerning State Land Control. If we pay attention to Law Number 16 of 1960 concerning the Establishment of large urban areas within the Provinces of East Java, Central Java, West Java and in the Special Region of Jogjakarta, there is not a single article that obliges large cities as designated in Article 1. This Law is to immediately register land designated by the agency as belonging to that agency or at least controlled by an agency or institution in the local National Land Agency, therefore there is a legal vacuum in this Law, so it can be concluded that the implementation of land registration activities is an obligation. from the government which aims to guarantee legal certainty which is rechtscadaster in nature, meaning that it is for the purposes of land registration only and only questions what rights and who owns it, not for other interests such as taxation (Novi Ratnawati, 2018).

Furthermore, if the Prevailing Laws described above collide with Government Regulation Number 24 of 1997 concerning Land Registration, especially in Article 24 paragraph (2) of the Government Regulation of 1997 which more or less regulates namely people who are in good faith and openly for 20 (two) twenty) years or more consecutively physically controlling land and buildings which is strengthened by the testimony of people who are trusted and not questioned by the community, this can be a legal vacuum that causes us all to become a dilemma when the Agencies or Institutions or big cities that have appointed by Law Number 16 of 1950 does not carry out its obligations immediately on land objects to be registered with the Local Land Agency as mandated by Article 9 paragraph (3) of the Regulation of the Minister of Agrarian Affairs Number 9 of 1965 but on the other hand there are people or Indonesian citizens who have taken control of the land or object te For more than 20 (twenty) years in good faith and in the process of ownership of rights in the Local Land Agency and have obtained physical data in the form of field maps and are traded on the basis of sale and purchase is a field map which is one of the conditions for obtaining ownership rights which as we know together with the application for rights, one of the conditions is to fulfill both physical and juridical data and the person is found guilty or has fulfilled the Corruption Crime because it is deemed to have traded State Assets against the law as regulated in Article 2 and Article 3 of the Law Corruption Crime (A'yun, 2014).

2. RESEARCH METHODS

In completing the writing of scientific papers so that they are more directed and can be scientifically accountable, normative juridical research methods are used. Normative juridical research means research is carried out or aimed at statutory regulations and other legal materials by reading and studying materials from conventions, laws and regulations, printed media, or from electronic media which according to the author is related to the title of the Thesis.

In this study, researchers used three methods ncluding legislative approaches, conceptual approaches, and case approaches.

Statute approach

The legislative approach is done by reviewing all laws and regulations related to the legal issues that are being addressed. A legislative approach is needed to further study the legal certainty regarding the requirements and / or obligations of the City Government to be carried out by the City Government of the Cities which has been appointed by the Minister of Home Affairs in Law No. 16 of 1950. In this study, the law- The invitation used is Law No. 5 of 1960 jo Law No. 16 of 1950 jo Regulation of the Minister of Agrarian Affairs Number 9 of 1965 jo Government Regulation Number 24 of 1997.

Conceptual approach

The conceptual approach evolved from the views and doctrines that developed in the science of law. Studying the views and doctrines in the science of law, researchers will find ideas that give birth to legal understandings, legal concepts, and legal principles relevant to the issues encountered. In the conceptual approach, new concepts or theories will be found in accordance with the purpose of this research which is to find legal certainty about the requirements and / or obligations of the City Government that must be done by the City Government that has been appointed by the Minister of Home Affairs in Law Number 16 1950. The formulation of the problem will then be analyzed with existing concepts and theories. In this study, the theories and concepts used include the theory of legal certainty, the concept of National Land Law, and the theory of responsibility.

Case approach

Using the case approach, then what the researcher needs to understand is the decidendi ratio, which is the legal reasons used by the judge to reach his decision. According to Goodheart, the decidendi ratio can be found by considering the nature of the material. The case approach does not refer to the dictates of the court's decision, but to the decidend ratio. In this study, the case approach used is in Surabaya District Court Decision Number 87 / Pid.Sus / TPK / 2018 / PN.Sby. In that decision, the researcher will use the decidend ratio or legal reasons the judge decides to test the application material for the researcher to use in analyzing the legal issues in this study.

3. RESULTS AND DISCUSSION

Researchers are looking for research references in the form of a thesis that discusses the Land Law of the Republic of Indonesia. Of the many searches for similar research titles and researchers are also looking for measuring tools to measure the originality of research. Researchers found several similar titles and measuring instruments used by researchers. Siti Prihatin Yulianti's thesis entitled "Implementation of Systematic Land Registration and Its Effect on Land Order (Study in Serdang Urban Village, Central Jakarta)", which analyzes the implementation of systematic land registration and its influence on land order in Serdang Village, Central Jakarta.

Siti Prihatin Yulianti's research is different from research written by researchers, where the difference lies in the issues raised where the researcher in this case conducts research on the legal consequences of buying and selling land that is not immediately registered with the National Land Agency while Siti Prihatin Yulianti's thesis examines the implementation of land registration and influence on land order. Then, Siti Prihatin Yulianti's Thesis specifically examines the Serdang area of Central Jakarta, while the researcher describes it as broader and / or not based on one area only, but specifically in Law Number 16 of 1950 concerning Regional Termination of Large Cities in the Environment East Java, Central Java, West Java and Within the Special Region of Djogjakarta.

Erpinka Aprini's thesis entitled "Legal Certainty of Land Rights Certificate in Relation to the Provisions of Article 32 paragraph (2) of Government Regulation Number 24 of 1997 concerning Land Registration", analyzes the objectives for land registration as Government Regulation Number 24 of 1997 is to obtain legal certainty and to find out the theoretical opinion regarding legal certainty guarantees regarding certificates.

Erpinka Aprini's thesis is different from what was researched by the researcher, where the difference lies in the terms of the Laws and Regulations which will be presented in research where the Erpinka Thesis specifically uses Government Regulation Number 24 of 1997 in solving problems in the field of land registration, while researchers do not only use Government Regulation Number 24 of 1997 but also using the Prevailing Laws in addition to relating to land registration there are also obligations for large cities appointed by the Minister of Home Affairs to immediately carry out Land Registration to the local land agency as based on Law Number 1 2004 concerning the State Treasury, Government Regulation Number 27 of 2014, Minister of Agrarian Regulation Number 9 of 196, and regulations related to the importance of land registration.

In the National land law structure, all land and other natural resources are controlled by the State, therefore it can be concluded that the State is the Object and Land as the Subject of the National land law structure in the Republic of Indonesia. Furthermore, the definition of State Land

as in Government Regulation Number 24 of 1997 concerning Land Registration is: "State land or land directly controlled by the state is land which does not belong to any land rights."

Based on this, it can be concluded that State Land on which no land rights are placed can be granted and owned by individuals or legal entities. According to Boedi Harsono in his book entitled "Indonesian Agrarian Law, the History of the Establishment of the Basic Agrarian Law, its contents and implementation." Land in a juridical sense is the surface of the earth, which includes the surface of the earth that is under water, including sea water.

As it is generally known that land can be divided into two (two), namely:

a. Rights land is land that has been owned with a land title with the status of State Land where a right can be requested for certain interests.
b. State land is land directly controlled by the state. Immediately controlled, meaning, there is no other party on the land. According to Maria S.W Soemardjono in her book entitled "Land in the Perspective of Economic, Social and Cultural Rights", land which is directly controlled by the State is also called free State land.

State land can also be divided into two types, namely:

a. Free state land is state land that is directly under the control of the state, on this land there is no single right that is owned by parties other than the state. Free State land can be directly requested by us to the State / Government through a procedure that is shorter than the procedure for non-free state land.
b. Non-free state land is state land that has not been boarded by other parties, for example, namely: “State land on which there is a Management right owned by the Regional or Municipal Government, Perum Perumnas, Pertamina, Bulog, Special Authority Agency. and other government agencies whose entire capital or uniforms are owned by the Government and / or Local Government "

State land that can be requested to become private land can be in the form of:

a. State land that is still empty or pure, state land which is directly controlled and has not been encumbered with any rights.
b. State land originating from the expired Western Conversion of Rights.
c. Rights land whose status is improved.
d. Titled land whose status is reduced by relinquishment of rights.

Whereas the granting of Rights to State Land according to the Regulation of the State Minister for Agrarian Affairs or the Head of the National Land Agency Number 9 of 1999 concerning Procedures for Granting and Cancellation of Rights to State Land and Management Rights.

State land can be applied for by any person in good faith, where the position of a person in good faith, for more than 20 (twenty) years physically controls a plot of land (and buildings) according to Government Regulation Number 4 of 1997, which is physically controlled is land. , not the building. Furthermore, Article 24 of Government Regulation Number 24 of 1997 paragraph (1), namely:

(1) For the purposes of registering old rights (ha to land originating from conversion of old rights), evidence of the existence of these rights shall be proven in the form of:

- Written evidence;
- Statement of witnesses and or;
- The statement in question whose validity level by the Adjudication Committee for systematic land registration or by the Head of the Land Office in sporadic land registration, is deemed sufficient to register the rights, rights holders and rights of other parties who burden it.

(1) In the case of no or no longer complete evidence tools as referred to in paragraph (1), the bookkeeping of rights can be carried out based on: "The fact that the physical control over the land parcels concerned has been held for 20 (twenty) years or more consecutively. participate by the applicant for registration and the preliminary introduction ", provided that:

a. The control is exercised in good faith and openly by the person concerned as having the right to the land, and is strengthened by the testimony of a reliable person;

b. The control, both before and during the announcement as referred to in Article 26, is not questioned by the customary law community or the village / kelurahan concerned or other parties.

Furthermore, based on Article 24 paragraph (2) Government Regulation Number 24 of 1977 stipulates that people who have good intentions and consecutively control physically of land and buildings, which are strengthened by the testimony of people who are trusted and are not questioned by the surrounding community. bookkeeping rights where it can be concluded that the party who controls the physical land and buildings can submit proof of ownership due to the existence of Article 24 paragraph (2) of Government Regulation Number 24 of 1997, where the party who controls the physical land and buildings can submit a request regarding the issuance of a proof of ownership.

What is meant by State losses is explained in Article 1 number 15 of Law Number 15 of 2006 concerning the Supreme Audit Agency (“BPK Law”) which states: “State / regional losses are shortages of money, securities, and goods, which real and definite numbers as a result of acts against the law, whether deliberately or negligently. "

In Chapter 1 Number 22 of Law Number 1 Year 2004 concerning State Treasury (“State Treasury Law”): “State / Regional Losses are shortages of money, securities, and goods, which are real and definite as a result of acts against the law. on purpose or negligence. "Whereas as well as

explained in the Elucidation of Article 32 paragraph (1) of Law Number 31 of 1999 concerning Eradication of Corruption Crimes ("Law 31/1999"): "What is meant by" in fact there has been a loss to state finances "is a loss that has already been obtained. the amount is calculated based on the findings of the authorized agency or appointed public accountant. "

If we pay close attention, it is very clear that the State has suffered losses because the object of the a quo Dispute is still in civil law efforts to determine its ownership, so it is very unethical in the prosecutor's claim that Defendant Soendari has met the Element of State losses.

Whereas it turned out that the Surabaya Inspectorate to assess the amount of losses suffered was only as if using the sale and purchase price between Defendant Soendari and Witness Indra Permata Kesuma, which was Rp. 2,106,000,000, - (two billion one hundred and six million rupiah) whereas according to witness Drs. Siswo Sujanto, DEA, an agency for calculating state losses, must use a special method but when the inspectorate witness is brought to trial only uses the sale and purchase price between Defendant Soendari and Witness Indra Permata Kesuma, this really makes us have a big question mark, namely "if only based on price sale and purchase between Defendant Soendari and Witness Indra Permata Kesuma what if the 254 Kenjeran land in Surabaya turned out to be the selling price of Rp. 3,000,000,000 (three billion rupiah) then how much would the State lose? And who is responsible for the State's shortcomings? "

Whereas this is very contradictory to the principle of criminal law, namely the principle of legal certainty (rechtszekerheid) in which a person should not be punished with uncertain state losses. Furthermore, in the phrase regarding State losses which at both the first level and the level of cassation, the panel of judges who examined and decided this case stated that the Defendant had been proven to have committed an act detrimental to the State, but the author is of another opinion where there is a term rather than criminal law, namely one element is not fulfilled as charged or demanded by the Public Prosecutor, it cannot be said to be a criminal act, one of the elements which according to the author does not belong to the element of a criminal act is the element of "everyone", That in the doctrine of criminal law the term "actus non est. reus, nisi mens sit rea "or in English translated according to Wilson:" an act is not a criminal in the absence of a guilty mind "(Willian Wilson, Criminal Law: Doctrine and Theory, London: Logman, 2003, 67). The meaning is "an act cannot be said to be criminal if there is no evil will in it". On the one hand, the mens rea doctrine is a necessity in a criminal act, and on the other hand it also emphasizes that to be held accountable for a person for committing a criminal act, is very much determined by the presence of mens rea in that person. Thus it means that the fault lies in the intention of the maker, whether intentional, deliberately conscious of certainty, or deliberately conscious of possibility. Based on the facts in the trial of the plot of land transfer from Defendant Soendari with witness Indra Permata Kesuma, are as follows:

a. Free State land based on the letter of the National Land Agency Number 195 / 300-3580 / II / 2011 dated February 22, 2011, which basically explains that the land on Jalan Kenjeran 254, Surabaya can be categorized as unregistered land which means that the Surabaya City Government also does not have any legal basis. over Kenjeran 254, Surabaya;
b. That the Defendant Soendari carried out the sale and purchase also did not contradict the applicable law, namely by using the field map where this field map was a condition for the issuance of a land right and was known by witness Indra Permata Kesuma who was the buyer of land and buildings on Jalan Kenjeran Surabaya who later agree on this matter;
c. Whereas in the midst of the buying and selling process, the Surabaya City Government suddenly and forcibly installed a plank stating that the land and buildings on Jalan Kenjeran 254 are assets of the Surabaya City Government;

From the legal facts, Defendant Soendari clearly did not have an evil will / mens rea because Defendant Soendari was sure that the Map of the Fields that Defendant Soendari was holding according to Article 39 paragraph (1) letter b PP No. 24/1997, even though the land had not been registered (did not have a certificate or only based on the map of the field) which means that it does not contradict the prevailing Legislation, besides that it is also evident that this cannot be imposed on the Defendant because on the one hand the City Government does not actually register with the Surabaya City National Land Agency so that it can be said to be State land so that can be requested by every person entitled in good faith to the land.

Whereas there is a rule in Article 5 paragraph (1) of Law Number 16 Year 1950 which regulates, namely: "All property is either permanent or non-permanent goods and companies of the Big Cities mentioned in Article 1 prior to their establishment according to the Law. these belong to the big cities mentioned in article 1, which can then submit things to the regions under them. "

In Article 5 paragraph (1) of Law Number 16 of 1950 concerning the Establishment of Large City Areas within the Provinces of East Java, Central Java, West Java and Within the Special Region of Jogjakarta states this, however Law Number 16 of 1950 does not mention explicitly what are the obligations of big cities in relation to the goods owned by the big city. Thus in my opinion, from Article 5 paragraph (1) of Law Number 16 of 1950, it is only declarative in nature, not constitutional in nature, therefore to find out what the obligations of big cities are, it is necessary to consider other laws and regulations, which among them chronologically are:

a) Article 11 paragraph (1) PP No. 8/1953 concerning Control of State Lands states:

"Land purchased or which is freed from people's rights by a Ministry, Bureau or Regional Government for the implementation / implementation of its interests, becomes State land at the time of the purchase / acquisition, with the understanding that control of the land is by the Minister

of Home Affairs. will be submitted to the Ministry, Bureau or the Swatantra Region concerned, after receiving the news about the purchase / acquisition and allocation of the land. "

The above provisions stipulate that land purchased / acquired by the Swatantra Region becomes state land in terms of land tenure rights over state land, when it is handed over by the Minister of Home Affairs to the Swatantra Region concerned after receiving notification of the purchase of the land.b) Article 1 Regulation of the Minister of Agrarian Affairs No. 9/1965 Concerning the Implementation of Converting Ownership of State Land and Provisions concerning Policies Further states:

"The right to control over state land as referred to in Government Regulation no. 8 of 1953, which was granted to Departments, Directorates and Swatantra areas prior to the enactment of this Regulation as long as the land was only used for the interests of the institutions itself was converted into use rights, as referred to in the Basic Agrarian Law. which lasts as long as the land is used for that purpose by the agency concerned ".

The provisions above stipulate that the right to control over state land which is used for its own interests is converted into a use right.

c) Further in Article 9 paragraph (3) Minister of Agrarian Regulation No. 9/1965 states:

"If the rights mentioned in articles 1 and 2 have not been registered at the Land Registration Office, then the right holder concerned must come to the Land Registration Office concerned to register it using a questionnaire which for example will be determined separately."

a) Article 49 Paragraph (1) of Law 1/2004 on State Treasury states that:

"State / regional property in the form of land controlled by the Central / Regional Government must be certified on behalf of the government of the Republic of Indonesia / the relevant regional government."

The above provisions stipulate that state / regional property in the form of land must be certified in the name of the government.

b) Article 43 Paragraph (1) Government Regulation 27/2014 concerning Management of State Property states:

"State / Regional Property in the form of land must be certified on behalf of the Government of the Republic of Indonesia / the Regional Government concerned."

The above provision confirms that state / regional property in the form of land must be certified in the name of the government.

c) Article 302 Paragraph (1) Permendagri 19/2016 concerning Guidelines for Management of Regional Property states:

"The legal safeguard of land that does not have a certificate as referred to in Article 299 paragraph (4) letter a is carried out by:

a. if the property belonging to the region has been supported by the initial document of ownership, among others, in the form of:

• Letter C,

•deed of sale & purchase,

• grant certificate, or other equivalent document,

then the Property Manager / Property User and / or Property User shall immediately apply for the issuance of a certificate on behalf of the regional government to the National Land Agency / Regional Office of the local National Land Agency / local Land Office in accordance with the provisions of the legislation; and

b. if the regional property is not supported by ownership documents, the Property Manager / Property User and / or Property User Proxy will strive to obtain initial ownership documents such as land history. "

The above provision states that legal safeguarding of land that does not have a certificate is carried out by:

a. if the regional property has been supported by the initial document of ownership, the Property Manager / Property User and / or Property User Proxy shall immediately apply for the issuance of a certificate on behalf of the local government.

b. if the property belonging to the region is not supported by ownership documents, the Property Manager / Property User and / or Property User Proxy strive to obtain the initial ownership document

Thus, based on the consideration of the above provisions, we can know that there is an obligation that must be carried out by big cities to make land as assets of big cities in order to turn a plot of land into assets of big cities. Obligations

Furthermore, with regard to the obligations for big cities such as the obligation to know the existence of state land tenure rights, the obligation to know the conversion of state land tenure rights to Use Rights; The obligation to come to the local Land Agency office to register the Right to Use or the obligation to carry out legal security for uncertified land, basically the implementation of the process is carried out by coming to the local Land Agency Office by submitting land registration, then the land registration application process will go through land registration mechanism for the first time.

Whereas in the legal facts stated in the decision which is the basis for this thesis, there is evidence relating to Besluit van der Gementeraad 23 April 1926 Number 4276 which according to Gemeente van Soerabaya's statement decided to buy the land object of dispute from the owner of the disputed land from the land owner named Atminah alias Bok Mat for which compensation payments of 2,500 guilders have been made.

Then, whether to pay compensation in such a way that directly belongs to the Surabaya City Government, to obtain evidence proving that according to the physical data and juridical data, a certain plot of land is an asset of the Surabaya City Government, then the Surabaya City Government must register the Right to Use , as ordered in Article 9 paragraph (3) of the Regulation of the Minister of Agrarian Affairs Number 9 of 1965, by carrying out the obligations as ordered in Article 9 paragraph (3) of Regulation of the Minister of Agrarian Affairs Number 9 of 1965, the Head of the Surabaya Land Office should issue a certificate of Use Rights on behalf of the Surabaya City Government. In fact, the Surabaya City Government has fulfilled the order of Article 49 paragraph (1) of Law Number 1 of 2004 concerning State Treasury.

Whereas the author can explain first, namely based on Law 1/2004, PP. 27/2014, Permendagri No. 19/2016 which regulates, among other things, the security of state property in the form of land, states that land that is secured by the state / regions is land which is the property of the state or region.

When is land a state or regional property? Land is state or regional property, if the land is purchased or acquired at the expense of the APBN / APBD, or the land comes from other legal acquisitions,

or example obtained through a grant / donation; obtained as implementation of the agreement / contract; obtained in accordance with the provisions of statutory regulations; or; obtained based on a court decision which has permanent legal force.

Then there is the term State security with land that is certified and not yet certified, the author will explain that first the purpose of being published is for the benefit of the right holder based on physical data and juridical data as registered in the land book. Meanwhile, land that has not been certified is land that does not have a valid proof as a strong means of evidence regarding the physical data and juridical data contained therein. Based on Law 1/2004, PP 27/2014, Permendagri 19/2016, security of land which is state property is carried out through:

1) Physical Security

Physical security of the land is carried out by, among others:

a. put up a land layout mark by constructing a boundary fence;

b. put up land ownership signs; and

c. take care.

2) Administrative Security

Land administration security is carried out by:

a. collect, record, keep and administer land ownership documents in an orderly and safe manner.

b. take the following steps:

1. complete proof of ownership and / or keep the land certificate;

2. make goods identity cards;

3. carry out an inventory / census of regional property once every 5 (five) years and report the results; and

4. record in the Property Manager / Property User List / User Proxy.

3) Legal Safeguard.

Legal safeguards are carried out for:

a. Land that does not have a certificate;

Legal safeguards for land that do not have a certificate shall be carried out by:

(i) if the regional property has been supported by initial documents of ownership, among others in the form of Letter C, sale and purchase deed, grant certificate, or other equivalent documents, the Property Manager / Property User and / or Property User Proxy shall immediately apply for a certificate issuance. name of regional government to the National Land Agency / Regional Office of the local National Land Agency / local Land Office in accordance with the provisions of the legislation; and

(ii) if the regional property is not supported by ownership documents, the Property Manager / Property User and / or Property User Proxy will strive to obtain initial ownership documents such as land history.

b. Land that already has a certificate, but not in the name of the local government.

Legal security for land that has been certified but not in the name of the local government is carried out by means of the Property Manager / Property User and / or Property User Proxy immediately submitting an application for a change in the name of the land title certificate to the local Land Office to become the name of the local government.

With regard to the provisions governing physical security as referred to in Article 299 paragraph (1) Permendagri 19/2016, in our opinion considering that there is no single provision regulating physical security that gives the authority to carry out eviction measures, so to prevent conflict between the party that will carry out physical security with other parties, the implementation of physical security of state / regional property in the form of land must consider whether or not other parties actually control the land to be secured or Article 299 paragraph (2) Permendagri 19/2016 must consider the condition of the land concerned. If on the land to be secured there is no other party who controls the land to be secured, then the security measures as referred to in Article 299 paragraph (1) Permendagri 19/2016 can be implemented. Conversely, if on the land to be secured there is another party who controls the land to be secured, then it is better if the security measures as referred to in Article 299 paragraph (1) Permendagri 19/2016 should not be implemented first. It is better if in this condition, the party that will carry out physical security shall apply for mediation to the government agency authorized in the land sector. If there is no

agreement on the outcome of the mediation between the parties, then the conflict resolution between the parties can be resolved through a judiciary.

In the case, it can be said that regarding the security of land owned by the city government using the basis of Permendagri Number 19 of 2016 in conjunction with Government Regulation Number 27 of 2014 even though it is related to physical security of state / regional property in the form of land carried out based on PP 27/2014 Jo Permendari 19/2016, There is no single provision that authorizes the party that will carry out security to take actions such as using the Pol PP line, using barbed wire, bamboo to block access to the house and building, and attacking the party's mentality.

CONCLUSION

Whereas the author does not agree with the decision of the panel of judges examining and deciding this case specifically in the a quo decision on page 19 which basically states that the land belongs to the Surabaya City Government because based on the author's explanation above, the author is of the opinion that the Surabaya City Government has made payments. compensation in the amount of 2,500 guilders but did not carry out the obligations according to the prevailing laws and regulations so that it must be clear that the land object of dispute is free state land which can be requested by any person in good faith. Considering that our Land Law adheres to the principle of horizontal separation, the principle of land and building ownership applies that who owns the land does not necessarily own the objects on it. This really depends on the evidence of ownership of the land and building.

Whereas it turns out that the responsibility of the Regional Government after the enactment of Law Number 16 of 1950 does not necessarily follow the Law but there is also the responsibility of the Surabaya City Government to carry out both administrative security which includes registration at the local National Land Agency Office. and physical, which includes one of them is securing early placements or maintenance of the land.

SUGGESTION

The panel of judges who examined and decided the case should have considered and looked at the comprehensive rules because it is clear that the land of the government in casu of the Surabaya City Government which has not been certified will become Free State Land which can be applied for by any person in good faith according to the laws and regulations. valid invitation.

The Surabaya City Government should have received the mandate as mandated by Law Number 16 of 1950 as a major city in Indonesia, then immediately safeguard the land of the object of dispute, both in administrative security related to land registration and physical security of land,

which means giving placards early on. which is then replaced periodically so as not to cause it as is the case above.

REFERENCES

A'yun, R. Q. (2014). The Problems of Expert Witness in Criminal Law. *Indon. L. Rev.*, *4*, 340.

Kahfi, S. (2016). Peralihan Pengelolaan Barang Milik Daerah Berupa Tanah dalam Penyelenggaraan Pendidikan Sma/smk di Provinsi Lampung. *Fiat Justisia: Jurnal Ilmu Hukum*, *10*(4), 681–696.

Kitab Undang-Undang Hukum Perdata.

Kitab Undang – Undang Hukum Pidana

Marzuki, P. M. (2005). *Penelitian Hukum*. Kencana.

Novi Ratnawati, D. G. R. F. (2018). UPAYA PENANGGULANGAN TERJADINYA PENIPUAN YANG DILAKUKAN BIRO PERJALANAN UMROH (Studi Kasus Kota Bandar Lampung). *JURNAL POENALE*.

Peraturan Menteri Agraria Nomor Nomor 9 Tahun 1965.

Peraturan Pemerintah Nomor 24 Tahun 19976.

Putusan Pengadilan Negeri Surabaya Nomor Nomor 87 / Pid.Sus / TPK / 2018 / PN.Sby *juncto* Kasasi

Undang-Undang Nomor 16 Tahun 1950

Undang-Undang Nomor

Undang – Undang Nomor 5 Tahun 1960.

Undang- Undang Tindak Pidana Korupsi undang – undang Nomor 20 Tahun 2001 tentang perubahan atas undang – undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi.

Yustianti, S., & Roesli, M. (2018). Bank Indonesia Policy in the National Banking Crisis Resolution. *YURISDIKSI: Jurnal Wacana Hukum Dan Sains*, *11*(1), 77–90.