



Conflict on Issuance of Land Certificates in Conservation Area: Legal Responsibility of BPN

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Abstract. Land Conflicts can occur due to practices of eliminating local people's recognition (rights) to land and the natural resources that accompany it, which can be caused by differences in maps owned by the Ministry of Forestry and the Environment with maps owned by the National Land Agency so that there are certificates of ownership that have been issued that are included in the national park area. The research method used is normative legal research, namely legal research conducted by examining library materials or secondary data from government and private agencies, reports of existing study results, and other relevant sources. This research concludes that the issuance of land title certificates by the BPN is a legal act in the field of State Administration. Any attempt to certify the same land can be immediately known and prevented by the BPN. Before or after determining a conservation area on community-owned land, the government first conducts an inventory of the rights in the region, which aims to collect land owned by the community in the conservation area whose legal status will be determined and provide a solution. Suppose a certificate's physical data and legal data can be proven legally/legally flawed or incorrect. In that case, it will be canceled by a decision of the State Administrative Court. The responsibility of the BPN for certificates that have been canceled by the State Administrative Court, which has legal force, must be followed up to revoke or cancel the certificate.

Keywords: Conservation Area, Land Ownership Certificate, National Land Agency.

1. INTRODUCTION

Forests, besides mining and the sea, are a natural resource widely explored to support the Indonesian economy. In Indonesia, forests are included as objects of agrarian Law. (SRM Saleh et al., 2022). Good forest governance is expected to present forest functions effectively and sustainably. The sustainability of forest functions requires a pattern of utilization that takes into account the availability of forest areas, distribution, and caution about its use for development purposes outside the forestry sector. (Muhdar et al., 2015).

Rawa Aopa Watumoha National Park was established in 1980 with the designation of the area as a forest reserve for nature reserves based on the letter of the Minister of Agriculture No. 22/Ment/III/1980 than in 1990 through the Decree of the Minister of Forestry No. 756/KPTS-II/1990 dated December 17, 1990 it was confirmed as a conservation area of Rawa Aopa Watumohai National Park (TNRAW)

Robert Siberian explained that initially, the TNRAW area was regulated in: (Siburian, 2011)

The TNRAW area consists of 4 ecosystems: Mangrove Forest, Savanna, Lowland Forest and Swamp. TNRAW management is divided into 3 (three) zones. First, the Core Zone as a very sensitive and sensitive area based on the criteria in the ecological sensitivity map. Its area reaches 43,351 ha at 0-975 meters above sea level with a slope variation of 0 - <40% representing four types of ecosystems. Second, the Jungle Zone as a zone that requires protection and preservation efforts as well as a transition zone between the core zone and the utilization zone and/or other zones. Natural processes remain a priority in this zone, but human activities within certain limits are still permitted. Its area reaches 49,034 ha at an altitude of 0 - 700 meters above sea level with a slope variation of 0 - 40% in 3 ecosystems: lowland forests, savannas and swamps. Third, the Utilization Zone is an area that has the potential for interesting natural phenomena, is physically and biologically less sensitive, and is utilized for the development of physical facilities and infrastructure for natural tourism accommodation and TN management. Its area reaches 10,326 ha at an altitude of between 0 - 700 meters above sea level with a slope variation of 0 - 30% and is located in 4 types of TNRAW ecosystems. The following are Other Zones, namely zones that are rehabilitated forest areas with an area of 2,483 ha.

This zoning determination was initially carried out unilaterally by the government based on Government Regulation Number 68 of 1998 concerning Nature Reserve Areas and Nature Conservation Areas, in Article 30 paragraph (2) which stipulates that the management of national parks is based on a zoning system.

The procedure for the confirmation of conservation forest areas initially referred to the Decree of the Minister of Forestry Number 399/KPTS-II/1990 concerning guidelines for forest confirmation, as amended by the Decree of the Minister of Forestry Number 634/KPTS-II/1996, then the Decree of the Minister of Forestry Number 32/KPTS-II/2001 concerning criteria and standards for the confirmation of forest areas. Since it was issued. The procedure for the confirmation of conservation forest areas initially referred to the Decree of the Minister of Forestry Number 399/KPTS-II/1990 concerning guidelines for forest confirmation, as amended by the Decree of the Minister of Forestry Number 634/KPTS-II/1996, then the Decree of the Minister of Forestry Number 32/KPTS-II/2001 concerning criteria and standards for the confirmation of forest areas. Since Permenhut Number 50 of 2011 was issued concerning the confirmation of forest areas, the previous regulations have been declared invalid.

Basically, according to Forestry Ministerial Regulation Number 50 of 2011, to be designated as a conservation forest area, 3 primary stages must be passed, namely: Designation by Ministerial Decree, Boundary determination, consisting of the implementation of boundary determination and the preparation of forest area boundary determination minutes signed by the boundary determination committee or authorized official,

determination by ministerial decree.

UU no. 41 of 1999 concerning Forestry in Article 4 paragraph (1) states, "All forests throughout the territory of the Republic of Indonesia, including the natural wealth contained therein, are controlled by the State for the greatest prosperity of the people." This statement is also known as the concept of State control rights (HMN), which states that control of forests by the State gives the government the authority to regulate and manage everything related to forests, forest areas and forest products. Determine the status of certain areas as forest areas or forest areas as non-forest areas, regulate and determine legal relationships between people and forests, and regulate legal acts regarding forestry [Article 4 paragraph (2) of Law no. 41 of 1999].

Deforestation and other activities that reduce and destroy forests will significantly contribute to depreciation. Forests play a role as absorbers of carbon dioxide, accelerating global warming and endangering the livelihoods of dozens of millions of public customs. The influence that has discussed nature is detrimental and threatening the existence of humans in the future. Therefore, to overcome the problem, there is a need to make an effort after determining the impact (Idrus et al., 2024).

Legal protection for forest areas needs to be improved, in addition to accommodating the resolution of conflicts that often occur. Factors that influence the effectiveness of law enforcement in protecting forest areas. These factors include: (Wahid et al., 2015)

- a. In this case, the legal factors are limited to the Law.
- b. Law enforcement factors, namely the parties who form and implement the Law
- c. Factors of facilities or infrastructure that support law enforcement.
- d. Social factors, namely the environment in which the Law applies or is implemented.
- e. Cultural factors, namely as a result of work, creations, and feelings that are based on human will in social life.

The state is given the authority to regulate land rights in the territory of Indonesia, one of which is regulating control of forest areas and national parks based on Law Number 41 of 1999 concerning Forestry Article 4 paragraph (1) of Government Regulation Number 6 of 2007 "Concerning Forestry and Preparation of Forest Management Plans (Supriyadi, 2013). The increasing population of Indonesian society has influenced the rapid growth of development, so the need for land is increasing while the provision of land to meet the community's needs is limited. This has resulted in the emergence of conflicts over national park areas caused by differences in perception between national park area managers, in this case, the Ministry of Forestry and the Environment and the National Land Agency, so that unilateral claims occur.

The granting of land title certificates is a manifestation of one of the main objectives of the UUPA, namely, to guarantee legal certainty regarding land rights for all Indonesian people. This is as stated in the provisions of Article 19 paragraph (1) of UUPA No. 5 of 1960, which states that in order to guarantee legal certainty, the government will conduct land registration throughout the territory of the Republic of Indonesia according to the provisions regulated by government regulations.

Registration of land rights is, of course, in practice through coordination between institutions, both the Regional Government and the Central Government. Specifically for the registration of former forest land or land released from forest areas, each state institution's role is to carry out its duties, namely between the National Land Agency and the Ministry of Environment of the Republic of Indonesia. In carrying out good coordination, understanding each role is needed, which depends on the method or mechanism in releasing forest areas to land registration. In addition, good coordination between institutions can avoid bureaucratic efficiency in the land registration. (Wahid et al., 2015).

The acquisition of the right to land in practice suffers from many obstacles, both in terms of the registration of rights and the status of the land acquired by the community in particular, the people who inhabit the land claimed as a forest area that suffers a considerable obstacle in terms of registration rights (Pide & Nur, 2022). Land for the community has a central position, both as a production resource and as a place of settlement. Therefore, land registration issues often still occur. one of them is land registration in forest areas (Sari, 2020).

Land Conflict is a condition resulting from competition or actions of two or more parties (subjects) regarding one or several plots of land (objects) primarily related to the status of control, management, and ownership rights. The beginning of land conflict is generally triggered by a situation where one or more people or groups of people show practices to eliminate the recognition (rights) of other people or groups of people regarding the contested plot of land.

In addition, land conflicts occur due to practices of eliminating local people's recognition (rights) to land and the natural resources that accompany it, which are carried out by other parties, both government and private agencies. This threatens the sustainability of their lives.

Land conflicts have hit not only urban communities but also rural communities. For villagers in the past, during the New Order regime, the conflict was marked by the use of violence against residents who controlled land that never received attention from the government at that time. However, in the recent reform era, attention to this problem has increased, where the conflict has reached a backlash from local residents to directly take back their confiscated lands (Pide, 2022).

The community conflict that occurred in the national park area occurred because of differences in the maps held by the Ministry of Forestry and the Environment and the maps held by the National Land Agency, so there were certificates of ownership that had been issued that were included in the national park area, so that the community that had controlled the land and had certificates of ownership that were included in the area could not

carry out legal actions against the land object, either by pledging it or transferring it to another party.

The community as a legal subject has registered land rights as regulated in Government Regulation No. 24 of 1997 and has fulfilled the requirements that have been set to obtain land rights, then the community has a certificate of land ownership rights issued by the authorized agency in this case the National Land Agency as strong evidence, however the community cannot take legal action against their land, cannot sell or impose mortgage rights because the land object owned by the community is included in the national park area.

The certificate of ownership is the strongest and most complete certificate and has legal certainty from the government, however, the certificate of ownership issued by the National Land Agency cannot provide legal certainty because the certificate is included in the National Park Area. This is problematic because the community holding the certificate does not get legal certainty over the rights to the land they control and own. The government in this case as a policy maker is not present and provides a solution to the conflict that occurs between land owners and national park conservation managers. the granting of Certificates of Ownership to the community as a form of government recognition of the certainty and legal protection of land rights holders, therefore there needs to be a solution, because in the process of issuing land rights certificates by the National Land Agency, it must go through several stages and procedures starting from planning, registration, measurement, mapping and issuance of certificates of ownership. The community needs certainty and legal protection for the land that they have controlled materially, namely occupying the land for decades and formally with the issuance of a certificate of ownership of the land they have occupied. the need for the government's role to resolve this conflict by bringing together the community, the Ministry of Forestry and Environment and the National Land Agency to sit together to resolve the dispute while still referring to the applicable laws and regulations. The community is concerned about the difficulty of registering land rights due to the unclear boundaries of the forest area (Pide, 2017) .

The community should have full rights to land, as stated in the provisions of the UUPA on Property Rights, and to prove that they have proof of rights to the land, they already have a valid certificate issued by the National Land Agency, and their rights should be protected by the state, if their land rights are revoked, they will be given compensation.

The resolution of this dispute should not only focus on compensation but there must be another formulation in the dispute resolution process, this is related to the benefits that will be received by the community as well as a sense of legal certainty and justice resulting from the lack of coordination between the Ministry authorized to grant Land Rights and the Ministry authorized to preserve the National Park Area.

2. RESEARCH METHODS

The research method used is normative judicial research, namely legal research conducted by examining library materials or secondary data sourced from government and private agencies, reports of existing study results and other relevant sources . The research approach used in this study is the Statute Approach , *namely* an approach carried out by examining all laws and regulations related to the legal issues being studied.

3. RESEARCH RESULTS AND DISCUSSION

3.1. Certificate of Ownership in Conservation Areas

Indonesia has a conservation area covering an area of 27.14 million hectares, which is divided into 552 conservation area management units. Details of conservation area management units include: 214 nature reserves, 79 wildlife sanctuaries, nature tourism parks, forest parks, hunting parks, national parks, and areas that still have the status of nature reserve areas (KSA)/nature conservation areas (KPA). In addition, until 2017, 12 institutional units of essential ecosystem areas (KEE) have been formed, consisting of 6 biodiversity parks, 2 mangrove KEEs, and 4 wildlife corridor KEEs (Prayitno, 2020) .

The potential for conflict in conservation begins with the establishment of conservation areas and the practice of managing their zoning systems . *First*, in the context of the view that humans are considered unfriendly to the environment/nature, the determination of an area as a conservation area requires that the area must be "sterile" from human activity. For example, in the creation of conservation areas, this is done through *enclosure* and *dispossession* mechanisms accompanied by violent actions to control the environment and resources. The existence of an exclusion process is a significant potential for conflict. Second, conservation management with the implementation of a zoning system emphasizes that conservation results in conflict because there are restrictions on livelihoods and marginalization of fishermen, such as through a zoning system that closes access to fishing grounds *for* fishermen. This zoning system regulates activities that are permitted, allowed and prohibited which result in restrictions on access for local communities. In practice, the determination of conservation and the implementation of the zoning system resembles the territorialization process. In general, the zoning system is intended to determine prohibited zones and zones that can be utilized. In general, the zoning system consists of a core zone, utilization zone and other zones. (Mahmud et al., 2016) .

In accordance with Government Regulation Number 5 of 1990 concerning Conservation of Natural Resources and Ecosystems, contained in Article 1 paragraph 2, what is meant by protection of residential fixed assets is the management of Residential Fixed Assets whose use has been completed in a commendable manner to ensure the harmony of their supply while following and working on the nature of their variations and values.

TNRAW is one of the important conservation areas in Indonesia. This area is unique because of the complete types of ecosystems ranging from highland forest ecosystems, lowland forest ecosystems, savanna ecosystems,

and mangrove ecosystems. The complexity of the ecosystem in this area has made TNRAW a unique area and has a vital function for human life around it. The many potentials of TNRAW on the one hand will provide vital benefits, on the other hand, the enormous potential will be a source of problems. Problems that may occur in TNRAW can be natural resource problems, socio-economic, socio-cultural, and institutional problems. The problems that occur in TNRAW in general are illegal logging, encroachment, and land buying and selling (Syaf et al., 2022).

The pattern of community land ownership in the Rawa Aopa Watumoha National Park area is carried out through land claims and land buying and selling processes. The community buys land from other people who previously claimed the land as theirs before the establishment of the Rawa Aopa Watumoha National Park. There are also land claims made by the community in the name of customary rights, especially for lands overgrown with sago which are geographically located in the Rawa Aopa Watumoha National Park area. Land claims and ownership can also be in the form of land purchases by the community to build houses, as happened in Pombeyoha Village, Ladongi District. In addition, land claims and ownership can also occur due to agricultural cultivation activities, both for rice fields and plantation crops (oil palm and cocoa). (Syaf et al., 2022).

Conflict arises as a difference in perception regarding differences in interests, where one party feels that another party has a negative influence on him. Or when one party feels that his interests have had a negative influence on the other party. Every difference in perspective is a potential conflict that arises if not handled properly will turn into an open conflict (Setiawan, 2022).

Land conflicts do not only occur in the size of the land but also in the legality or ownership of documents related to the object in question. For example, in one land object there are two proofs of ownership, where each of these legalities causes problems and causes losses to one party. In addition, there is also the problem of ownership of only one land certificate and often causes social problems in the community such as claims of ownership of the object by other parties.

The legal consequences of the management of certified land rights related to the change of designation to forestry conservation are: having a legal land ownership certificate, with proof of the certificate. Legally, the existence of customary lands is firmly recognized by Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA). Legal recognition of customary lands in Law Number 5 of 1960 concerning Basic Agrarian Regulations does not provide sufficient explanation of the position of customary lands, especially when associated with the status of rights and the subjects who control them. The issue of the status of rights of customary lands arises when associated with the types of land rights recognized in Law Number 5 of 1960 concerning Basic Agrarian Regulations, because the status of rights of customary lands is very dependent on the subjects who control the land as determined in the conversion provisions of Law Number 5 of 1960 concerning Basic Agrarian Regulations (Sriwidodo et al., 2023).

Based on the provisions of the conversion, customary lands that will be converted into ownership rights are exempted if the owner does not meet the requirements as stipulated in Article 21 of Law Number 5 of 1960 concerning Basic Agrarian Principles. For example, for foreigners or those with dual citizenship or legal entities appointed as holders of ownership rights. So the status of the rights of the land is dependent on the requirements of the subject. The land is converted into ownership rights if the subject meets the requirements as a subject of ownership rights, while if it does not meet the requirements, the customary land rights are converted into building use rights or business use rights. For customary lands that are individually controlled and managed by each krama desa pekraman, many have been converted or certificates have been sought, resulting in all of these lands having the status of individual ownership rights, where the land will later be considered as land that is free and free from relations with the customary village (Sriwidodo et al., 2023).

3.2. Responsibilities of the National Land Agency (BPN)

The issuance of land title certificates by the Land Office is a legal act in the field of State Administration. In this context, the Land Office (State Administration officers) in carrying out their duties are guided by a set of implementing regulations. The issuance of land certificates has gone through a process determined by PP No. 24 of 1997, so the issuance of land title certificates by the Land Office is constitutive, namely a government administrative decision that has legal consequences. The legal consequences are that the state guarantees and protects the owner of the land certificate. Everyone is also obliged to respect the existence of this right, and this is in line with the principle of the Sovereignty of Law (Supremacy of Law) (Sriwidodo et al., 2023).

Ownership of a land title certificate provides legal certainty regarding the type of land title, the subject and object of the title become real, in addition the certificate also provides several benefits, namely reducing the possibility of disputes with other parties, and strengthening the bargaining position if the land title that has been certified is needed by another party for development purposes when compared to land that has not been certified and shortening the process of transfer and burdening of land titles. (Loway et al., 2024).

In principle, every plot of land has a single position in this hemisphere. No two plots of land have the same position. Thus, every plot of land that has been certified or registered with the National Land Agency (BPN) should receive protection against the same registration of the plot of land. This protection can be given if the location of each certificate for land issued is known with certainty on the face of the earth. Thus, any attempt to certify the same land can be immediately known and prevented by the National Land Agency (BPN). However, there is still certified land whose location is unknown due to the unavailability of maps. Whereas maps are information that describes the location of all plots of land on the surface of the earth (Maksum, 2006).

If a certificate issued is not mapped on a map due to the lack of facilities at that time, then the land area has the potential to have a double certificate. In the case of someone with convincing land evidence requesting the creation of a certificate at the National Land Agency, then there are no strong tools to prevent the birth of a double certificate (Maksum, 2006).

Before or after the establishment of a conservation area on community-owned land, the government must first conduct an inventory of the rights in the area, which aims to collect land owned by the community in the conservation area whose legal status will be determined and provide a solution so that in the conservation area there is no evidence of land ownership so that in the conservation area no more rights are found. By taking the preventive steps above, it aims to prove that in the conservation area there is no longer any ownership of land rights in the form of certificates, sporadic letters and SPPT tax payments, because the most important thing about the certificate is that it can provide legal standing as a strong means of proof to guarantee legal certainty for its holder (Rooy et al., 2021).

The evidentiary system in Indonesia uses a negative publication system with a positive tendency, meaning that a certificate is a strong evidence as long as the physical data and legal data contained therein are correct (Yasa & Bagiastra, 2021). From this understanding, it can be interpreted that if the physical data and legal data contained in a certificate can be proven to be legally/legally flawed or incorrect through a court decision or applicable laws and regulations, then the certificate can be canceled. Cancellation in Article 1 number 14 of the ATR/BPN Regulation Number 21 of 2020 is a decision that cancels a legal product due to administrative and/or legal defects in its issuance or to implement a court decision that has obtained permanent legal force.

Based on what has been explained previously, land title certificates are included in the KTUN, so that any lawsuit related to land certificates becomes the competence of the State Administrative Court (PTUN). So that certificates that have legal/juridical defects can be submitted for cancellation to the PTUN. BPN is the body responsible for the cancellation of certificates by PTUN due to errors or negligence committed in the certificate issuance process. In this regard, BPN's responsibility for certificates that have been canceled by PTUN which has legal force must be followed up to revoke or cancel the certificate. (TAP Saleh, 2023).

3.3. Collaboration and Conflict Resolution

Regulations on land ownership and use in conservation areas refer to regulations on land ownership and use in general, both for the interests of the government and the interests of the people. There are overlapping interests in land in conservation areas, in this case protected areas, so that there is no certainty of land rights due to coordination between land agencies and local governments and related agencies, as well as harmonization of regulations regarding community lands above conservation areas whose designation and use are regulated by the State for the public interest which is less than optimal, as a result the status of land rights becomes unclear. Local governments tend to issue regional regulations related to licensing to increase local revenue without paying attention to the Regional Spatial Plan which regulates the protection of protected areas so that they are preserved for future generations (Loway et al., 2024).

The emergence of conflict will bring negative impacts that are detrimental to the parties involved. Therefore, an intervention effort is needed to resolve the problems that occur to the source or root of the problem, which in this case requires synergy from the BPN, Regional Government, and Ministry of Environment.

The intervention of the settlement is then often known as conflict resolution. Briefly, conflict resolution is defined as a mechanism through two approaches, namely adversarial with institutional intervention of the court and win-win solution either with or without facilitation of a third party (Diantoro, 2020).

Both approaches each have different characteristics in terms of fulfilling the interests of the parties. The settlement process through the court institution produces an agreement that is adversarial or contradictory, so that it has not been able to embrace common interests, and tends to give rise to new problems. Meanwhile, the settlement process outside the court which is a win-win solution, tends to produce a comprehensive settlement in togetherness and can still maintain good relations. This is because delays in the settlement process that are procedural and administrative in nature can be avoided. (National Land Agency, 2007).

In the context of resolving various problems in TNRAW through a mutually beneficial mechanism between the community and TNRAW, it is necessary to pay attention to existing facts and conditions such as settlements, plantations (mixed gardens), rice fields, educational facilities and infrastructure, health, economy, worship, sports, highways, farm roads, electricity networks and clean water in the Rawa Aopa Watumoha National Park. On the other hand, it is necessary to consider the function of the Rawa Aopa Watumoha National Park area which must continue to be protected and maintained. Both of these considerations are very important to be used as a basis for decision making by the Rawa Aopa Watumoha National Park through the Ministry of Environment and Forestry. A conflict management approach must be applied to resolve conflicts between stakeholders and prevent the development of conflicts in the future. Conflict management can be facilitated through adaptive joint management, but to date, knowledge about the application of adaptive joint management for conservation conflicts is still limited (Syaf et al., 2022).

The solutions offered must of course be in accordance with applicable laws and regulations such as Law Number 41 of 1999 concerning Forestry, Law Number 32 of 2009 concerning Environmental Protection and Management, Law 41 of 2009 concerning Sustainable Food Agricultural Land Protection, Law Number 26 of 2007 concerning Spatial Planning, Law Number 37 of 2014 concerning Soil and Water Conservation, Law Number 23 of 2014 concerning Regional Government, Law Number 17 of 2019 concerning Water Resources and

the Job Creation Law. In addition to the Law, it is also possible to use Government Regulations related to the Law, Government Regulation Number 21 of 2021 concerning the Implementation of Spatial Planning, Government Regulation Number 22 of 2021 concerning the Implementation of Environmental Protection and Management and Government Regulation Number 23 of 2021 concerning the Implementation of Forestry. All provisions of these laws and regulations are expected to be able to formulate the best solution to overcome potential community conflicts with the Rawa Aopa Watumoha National Park which have not been resolved properly (Syaf et al., 2022).

4. CONCLUSION

The potential for conflict in conservation begins with the establishment of conservation areas and the practice of managing their zoning systems. Conflicts over land do not only occur in terms of land size but also in terms of legality or ownership of documents related to the object in question. Based on the provisions of the conversion, customary lands that will be converted into property rights are exempted if the owner does not meet the requirements as determined. The issuance of land title certificates by the National Land Agency is constitutive. The issuance of land title certificates by the National Land Agency is a legal act in the field of State Administration. Any attempt to certify the same land can be immediately identified and prevented by the National Land Agency. Before or after the determination of a conservation area on community-owned land, the government must first conduct an inventory of the rights in the area, which aims to collect land owned by the community that is in the conservation area whose legal status will be determined and provide a solution. If the physical data and legal data contained in a certificate can be proven to be legally/judicially flawed or incorrect through a court decision or applicable laws and regulations, the certificate can be canceled. BPN is the body responsible for the cancellation of certificates by PTUN due to errors or negligence committed in the certificate issuance process. BPN's responsibility for certificates that have been canceled by PTUN which has legal force must be followed up to revoke or cancel the certificate.

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