



THE ROLE OF PPAT IN PROVIDING SOCIAL AND PUBLIC FACILITIES FOR SEPARATION OF LAND RIGHTS CERTIFICATES

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Abstract: The obligation to hand over public facilities (fasum) and social facilities (fasos) by developers to local governments has been regulated through regulations from the central government. Beginning with the enactment of Law no.26 of 2007 on Spatial Planning, which was followed by Government Regulation (PP) No. 15 of 2010 concerning the Implementation of Spatial Planning, and in the City of Tangerang, PPAT has not involved PPAT in the formation of Regional Regulations for the City of Tangerang, thus causing new problems. This research uses descriptive socio-legal which is strengthened by prescriptive interpretation analysis, which is a method of finding law by interpreting/interpreting/prescriptive and writing based on secondary data and conducting interviews. The results of this study indicate that licensing in the administration of local government can be developed as one of the authorities of local governments whose implementation is reflected in the legal actions of regional heads, both on the basis of laws and regulations and in responding to the principles of good governance. The obligation to hand over public facilities (fasum) and social facilities (fasos) by developers to local governments has been regulated through regulations from the central government and in Tangerang City has not involved PPAT in the formation of Tangerang City Regional Regulations, so that in Tangerang the local regulations seem not to be implemented, causing various new problems.

Keywords: PPAT, Social Services, Land Certificate.

INTRODUCTION

Land is a basic need for every human being, and the rapid development of this population can cause land to be scarce and limited. The land is also a very vulnerable thing and has the potential to trigger a social crisis. (Hasan, 2009) The legal community is a unit with the land it occupies, there is a very close relationship, a relationship that originates from a religious-magical view. This close and religious-magical relationship causes the legal community to acquire and control the land, make use of the land, collect products from the plants that live on the land, and also hunt the animals that live there. The legal community's rights to this land are called land rights or Ulayat rights. (Bushar, 2011) The provisions of Article 19 paragraph (1) of the UUPA are directed at the government to carry out registration of land throughout the territory of the Republic of Indonesia with the aim of guaranteeing legal certainty for holders of land rights according to the provisions in Government Regulation Number 24 of 1997 concerning Land Registration. (Mertakusumo, 2012)

The authority of the Official for Making Land Deeds is to produce evidence regarding certain legal actions regarding land rights and ownership rights to Flats Units which will be used as the basis for registration or separation so that in carrying out land registration activities, the Land Office absolutely requires data which must be presented in the form deed that can only be made by the Land Deed Official. (Parangin, 2014) However, the opposite situation can occur and often occurs, where state authorities use law as a tool to suppress society so that people can be

driven to where the state authorities want them to be. (Nazaruddin Lathif, 2017)

Social change in relation to the legal sector is one of the important studies of the Sociology of Law discipline. The relationship between social change and the legal sector is an interactional relationship, in the sense that there is an effect of social change on changes in the legal sector while on the other hand legal changes also affect social change. Legal changes that can affect social change are in line with one of the functions of law, namely the function of law as a means of social change or a means of social engineering. (Munir Fuady, 2011)

In a country, in terms of changes in law, there are two kinds of laws, namely laws that tend to be changed and laws that tend to be conservative. Family or individual property laws are everywhere conservative laws and are rarely changed. On the other hand, many fields of business law, state administration, and state administration are laws that tend to change according to the wishes and developments in society. (Munir Fuady, 2011)

Roscoe Pound is one of the legal experts with the Sociological Jurisprudence wing who directs his attention more to "Legal Reality" rather than the position and function of law in society. The reality of law is basically the will of the public, so it is not just law in the sense of law in books. Sociological Jurisprudence demonstrates a careful compromise between written law as a requirement of the legal community for the creation of legal certainty (positivism law) and living law as a form of appreciation for the important role of society in law

formation and legal orientation. (Munir Fuady, 2013)

In the theory of social change, Roscoe Pound has an opinion regarding law which emphasizes law on discipline with his theory, namely: "*Law as a tool of social engineering*" (That law is a tool for updating or engineering society). To be able to fulfill its role Roscoe Pound then makes a classification of the interests that must be protected by the law itself, namely as Public Interest, Public Interest, and Private Interest. (Andro, 2017).

MAIN PROBLEM

Based on the problem mentioned above, it is necessary to have a solution that is not only carried out with practical thoughts but requires a normative analysis that can be set forth in scientific writing. Therefore the problems that will be discussed in this article are:

1. What is the role of the PPAT in the Handover of Public Facilities for Social Services from the Developer to the South Tangerang City Government based on the South Tangerang City Mayor Regulation Number 26 of 2015 concerning Procedures for Handing Over Housing Infrastructure, Facilities, and Utilities?
2. What factors influence the PPAT in handing over Public and Social Facilities to the City Government of Tangerang Selatan?

METHOD OF RESEARCH

The type of research used in this research is normative legal research. There are several approaches to legal research, and with these approaches, researchers will obtain information

from various aspects regarding the issues being sought or solved. (Irwansyah, 2020)

Through a research approach, the researcher will obtain information from various aspects regarding the issue being studied. (Marzuki, 2013) The research approach used is a statute approach and a case approach.

The sources of legal materials in this study consist of primary legal materials and secondary legal materials. Then the data in the form of legal materials that have been obtained are presented in the form of narrative text, and descriptions arranged in a systematic, logical, and rational manner. In the sense that all the data obtained will be linked to one another according to the subject matter under study so that it forms a unified whole.

RESEARCH RESULT AND DISCUSSION

1. The Role Of The PPAT In The Handover Of Public Facilities And Social Facilities From Development To The South Tangerang City Government Based On The South Tangerang City Mayor Regulation Number 26 Of 2015 Concerning Procedures For Handing Housing Infrastructure And Utilities

The government in its function as an organization in its activities must have goals to be achieved, and in order to achieve these goals, its activities are outlined in the form of plans. The goals of the State of Indonesia as stated in the opening paragraph 4 of the 1945 Constitution, indicate that Indonesia is a legal state that adheres to the concept of a

welfare state or the concept of a welfare state. (Hasni, 2008)

In the City of Tangerang, the social and social facilities in the housing area must be handed over to the Government, this aims to ensure the continuity of the maintenance and management of social and social facilities. However, until now many housing developers have not submitted their facilities and infrastructure to the Tangerang City Government. even though the City of Tangerang already has a regional regulation that regulates the distribution of pharmaceuticals and social services.

As of 2009 until now, it has been recorded that only one developer has submitted its faculties, that is, originally there were 85 developers who had submitted the faum-fasos, now there are 86 developers. Meanwhile, the number of developers in Tangerang is around 190. This proves that the municipal government has not done anything for developers who have not submitted their social and social facilities. For four years, only one developer has submitted his public and social facilities.

In accordance with Permendagri No. 9 of 2009 above in article 11 paragraph 1 and article 2, it is stated that the local government asks the developer to hand over housing and settlement infrastructure, facilities and utilities. The delivery period is no later than 1 (one) year after the maintenance period and according to the site plan approved by the local government. In the delivery of infrastructure facilities, facilities and utilities in accordance with Article 1 point (3) can be done in stages (if the plan is carried out in stages) and carried out all at once if the

development plan is carried out not in stages.

After the delivery of social facilities and public facilities by the developer to the Regional Government, the developer is no longer responsible for their maintenance. Full responsibility has shifted to the Regional Government and housing residents. In accordance with Article 22 paragraph 1, paragraph 2 and paragraph 3 it is stated that the Regional Government can cooperate with developers, private business entities and/or the community in managing infrastructure, facilities and utilities. In the case of this collaboration, the person in charge is the manager/developer. Therefore, developers are allowed to provide these social facilities and public facilities without incurring significant losses. The developer is only obliged to hand over mature land to the Regional Government, then the Regional Government will appoint the relevant Office to carry out the construction of the facilities. However, sometimes problems arise when there is no match between the developer's promises to prospective occupants and the housing marketing strategy. This problem causes the developer to not carry out the transfer of social facilities and public facilities to the local government which results in opportunities for developers or third parties to abuse the facilities. (Primary, 2013)

The Tangerang City Government has difficulty handling it. The developer has not handed over public facilities and social services to the Government of Tangerang City, which has had a negative impact on the community and also the government. For the community it is the lack of

maintenance of social and social services or turning them into other uses, while for the Tangerang City Government it is the loss of trust from the community because the Tangerang City Government cannot guarantee the provision and maintenance of public facilities. Another consequence is the loss of government assets with reduced regional revenues.

The obligation to hand over public facilities (fanum) and social facilities (fasos) by developers to local governments has been regulated through regulations from the central government. Beginning with the enactment of Law No. 26 of 2007 concerning Spatial Planning, which was followed by Government Regulation (PP) No. 15 of 2010 concerning Implementation of Spatial Planning and Permandagri No. 9 of 2009 concerning Guidelines for Submission of Housing and Settlement Utility Infrastructure in the Regions (replacement of Permendagri No 1/1987), and in the City of Tangerang PPAT has not been involved in the formation of the Regional Regulations of the City of Tangerang, so in Tangerang the regional regulations are as if tiger empong, as evidenced by the many developers who have not submitted their forums and fasoms, giving rise to new problems.

Roscoe Pound's Theory of Law as a Tool of Social Engineering is intended to discuss the interrelationships between various aspects, processes, political institutions and concurrent and legal activities (production, investment, price formation, trade, consumption, etc.). The role of the government in the legal system over any regulations is

still very much needed where the production of public commodities that form the basis of pecha tera is carried out by the government, especially in situations like today where legal issues are increasingly complex and not all existing problems can be solved by the market. The only institution capable of solving it is the government which has the power to make regulations, implement and impose certain sanctions.

Social and social welfare development activities are one of the Tangerang City Government's efforts to make Tangerang a viable city with an environmental perspective. Not all of this is borne by the Municipal Government of Tangerang. Through the housing and settlement program, the City Government is assisted by economic actors, in this case housing developers.

But before Tangerang had its own regional regulation that regulates community and social services, the Tangerang City Government seemed not to be serious about implementing Permendagri No. 1 of 1987. This was shown by the many old developers who wanted to hand over their public facilities and social services but the Tangerang City Government refused to accept them for reasons waiting for housing construction to be completed 100% first. In addition, there are problems with old developers disbanding due to various reasons, such as the company going bankrupt, without the handover of faum and social services to the city government, so residents are charged with maintenance. For new developers who have not physically submitted the minutes because they are still in the early stages of development, so new

developers hand over social and social facilities only administratively.

Law as a tool of social engineering is a theory put forward by Roscoe Pound, which means law as a tool for renewal in society, in this term law is expected to play a role in changing social values in society. The theory of social change in relation to the legal sector is one of the major theories in legal science. The relationship between social change and the legal sector is an interactional relationship, in the sense that there is an effect of social change on changes in the legal sector, while on the other hand, legal changes also affect social change. Legal changes that can affect social change are in line with one of the functions of law, namely the function of law as a means of social change, or a means of engineering society (social engineering). The opinions outlined regarding the formulations and classifications in Roscoe Pound's social engineering can be likened to that law is regarded as an engineer in expressing the basics of reform in society and driving where society will be directed and how society should be regulated. Thus, the law functions as a tool to regulate and manage society.

As for what supports or supports legal theory that can engineer society (law as a social engineering tool) put forward by Roscoe Pound is the theory of the effectiveness and validity of law where according to Hans Kelsen, when talking about legal effectiveness, it also talks about legal validity. Legal validity means that legal norms are binding, that people must act according to what is required by legal norms, that people must obey and apply legal norms. The effectiveness of the law means that

people actually act according to the legal norms as they have to do, that the norms are really applied and obeyed.

Roscoe Pound's Theory of Law as a Tool of Social Engineering is a study in which it uses a social perspective to understand political issues which shows the mutual influence between political phenomena and economic phenomena. However, political actors, in this case the municipal government, have influenced housing developers to delay their handover. This is because when viewed from an economic perspective, the delivery of public facilities and social services will burden the budget for maintenance.

The reasons the government has not given sanctions to housing developers who have not handed over their social and social services, namely: first, the government is constrained by imposing sanctions because there are developers who do not operate directly, there is the handover of public and social facilities to the city government. Developers close their companies without notification to the package with various tools, such as companies that have gone bankrupt or housing units that have been sold, this makes it difficult for the City government to impose sanctions, secondly, the Tangerang City Government is not serious in carrying out the regulations for the transfer of public facilities and social services. This is proven by the facts on the ground, until now there are still many old housing developers who have not handed over their public facilities and social services and have not been subject to sanctions. Even though there are already many occupancy rates and the construction

has exceeded the requirements to hand over public facilities and social services.

The Tangerang City Government is also seen as allowing housing developers to have their own estate management. Where estate management is the management formed by the developer to provide services to residents, one of the services is the maintenance of public facilities and social facilities in the housing by charging maintenance fees to residents, and one of the services is the maintenance of residents. The effectiveness of estate management makes the City government let the housing take care of its own facilities and infrastructure. This is evidenced by the large number of housing estates that have their own estate management and have not submitted their social and social services, but there has been no firm action from the city government. The granting of development permits by the City government to the old developers at the new location, while the developer has not completed the matter of handing over the public facilities and social services to the City government at the old location.

This can be explained using Roscon Pound's Theory of Law as a Tool of Social Engineering which analyzes the processes and institutions in which economic and political elite groups try to influence decisions to allocate productive resources for the benefit of these groups. Often the principles of economic decision-making conflict with political decision-making because of the interests involved

2. Factors Influencing PPAT in Handing Over Public Facilities

and Social Facilities to the City Government of South Tangerang

Article 15 paragraph (2) letter of Law no. 2 of 2014 concerning Amendments to Law no. 30 of 2004 concerning the Position of Notary states that a Notary has the authority to make Deeds relating to land. This provision is in line with the sound of Article 7 paragraph (1) of Government Regulation Number 37 of 1998 which states that a PPAT can hold concurrent positions as a Notary, Consultant, or Legal Advisor.

The existence of the PPAT in assisting the duties of the Head of the Defense Agency and the Tangerang City Government has no responsibility in any way. The maker of the Land Deed has an exclusive position, no one can order or prohibit making a deed.

Recognizing the important function and role of PPAT as a gateway in making the separation of master certificates related to land rights for the benefit of social and public facilities based on the transfer of rights, the principle of accuracy becomes very important for PPATs in carrying out their functions as General Officials who assist the Land Office and the Tangerang City Government. In the process of certifying land rights that are used as social facilities and public facilities, the PPAT must play an active role in examining the correctness of land data based on evidence of rights brought by the claimant/developer.

The PPAT's position as a public official carries the consequence that the deed made by the PPAT is treated as an authentic deed. The PPAT deed serves as evidence that certain legal actions have been taken regarding the separation of the master certificate

related to land rights for the benefit of social and public facilities. The strength of proof of the PPAT deed is the strength of perfect proof that no other supporting evidence is needed. (Bachtiar, 2012)

The description above shows that the importance of the PPAT in applying the principle of legal certainty is because the PPAT is a General Official who assists the Head of the Land Office in the certification process in the event of a HAT separation. The PPAT deed is the basis for making a certificate by the Land Office, if the deed is not guaranteed for its accuracy it will result in an error in the certificate. Errors in the certificate will eliminate the function of the certificate as proof of ownership that has legal certainty.

Land disputes that are brought to court often do not provide a solution, instead, they create new problems. This is because the Judge's decision cannot always fulfill a sense of justice. There are many reasons, including 1) not all judges understand land law in depth; 2) lack of evidence submitted due to poor administration at the Kelurahan or subdistrict, or related agency levels, 3) not all trial witnesses were able to testify; 4) during the field trial, the witnesses often could not show the object of the dispute with certainty, which resulted in the NO (Net Ontvankelijk Verlaard) decision or the claim is unacceptable.

The authority to assign PPAT is in the hands of the Land Office and IPPAT as professional organizations, BPN in providing guidance is more to the socialization of new regulations while the role of IPPAT in this case is to supervise the implementation of the IPPAT Code of Ethics.

Several obstacles to the ineffectiveness of supervision of

PPAT, both by the Land Office and IPPAT, are 1) the problem of insufficient funds provided by the Land Office or dues of IPPAT members for operational supervision; 2) time constraints owned by the Land Office and the IPPAT Supervisory Council. In general, these inspectors have more priority activities, both as civil servants at the Land Office, as well as teachers/lecturers, as PPAT; 3) lack of spirit in conducting supervision so that there is no specific target for this supervisory function.

CONCLUSION

Based on the discussion and analysis of this research, then the conclusion is:

1. The Regional Government and the National Land Office (Tangerang) in making Regional Regulations related to Social and Public Facilities in Licensing as one of the instruments in regional government administration can be developed as one of the regional government authorities whose implementation is reflected in the attitude of the regional head's legal actions, both on the basis of statutory regulations -laws that form the basis, as well as within the framework of addressing the principles of good governance as a form of public responsibility.
2. The obligation to hand over public facilities (fasum) and social facilities (fasos) by developers to local governments has been regulated through regulations from the central government and in Tangerang City the PPAT has not been involved in the formation of Tangerang City Regional Regulations, so that in Tangerang the regional regulations seem not to be implemented, as evidenced by many developers

have not submitted their social and social services, giving rise to new problems.

REFERENCES

- [1]. Ali, Z. (2014). *Metode Penelitian Hukum*. Jakarta: Sinar Grafika.
- [2]. Bachtiar, E. (2012). *Kumpulan Tulisan tentang Hukum Tanah*. Bandung: Alumni.
- [3]. Bushar, M. (2011). *Pokok-Pokok Hukum Adat*. Jakarta: Pradnya Paramita.
- [4]. Fuady, Munir. (2011). *Sosiologi Hukum Kontemporer "interaksi Hukum, Kekuasaan, dan masyarakat"*, Jakarta: Kencana
- [5]. Fuady, Munir. (2013). *Teori-Teori Besar (Grand Theory) dalam hukum*. Jakarta: Kencana Prennamdeia Group
- [6]. Harsono, B. (2005). *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan pelaksanaanya*. Jakarta: Djambatan.
- [7]. Hasan, D. (2009). *Lembaga Jaminan Kebendaan bagi Tanah dan Benda Lain yang Melekat Pada Tanah dalam Konsepsi Penerapan Atas Pemisahan Horisontal*. Bandung: Citra Aditya Bakti.
- [8]. Hasni. (2008). *Hukum Penataan Ruang dan Penatagunaan Tanah Dalam Konteks UUPA-UUPR-UUPLH*. Jakarta: Raja Grafindo Persada.
- [9]. Lathif, Nazaruddin. (2017). *Teori Hukum Sebagai Sarana / alat Untuk Memperbaharui ataua Merekayasa Masyarakat*. *Jurnal Pakuan Law Review*, Vol 3 (No.1)
- [10]. Mertokusumo, S. (2012). *Hukum dan Politik Agraria*. Jakarta: Karunika Universitas Terbuka.
- [11]. Parangin, E. (2014). *Hukum Agraria Indonesia (Suatu Telaah dari Sudut Pandang Praktisi Hukum)*. Jakarta: Rajawali Press.
- [12]. Sadewa, Y. W. (2017). *Peran Ppat dalam Penyerahan Fasilitas Umum dan Fasilitas Sosial oleh Pengembang Perumahan Kepada Pemerintah Kota Semarang*. *Jurnal Akta*, Vol. 4(No. 2). [https://doi.org/10.30659/akta.4.2.158 - 161](https://doi.org/10.30659/akta.4.2.158-161)
- [13]. Sinaga, T. (2019). *Status Hukum Pemecahan Sertipikat Hak Atas Tanah Yang Sedang Terikat Hak Tanggungan*. *Jurnal Tunas Agraria*, Vol. 2(No. 1).
- [14]. Susilawati, Puspa; Djumadi Purwoadmojo. (2019) *Tanggung Jawab Pengembang Perumahan dalam Penyerahan Fasilitas Perumahan Kepada Pemerintah Kota Semarang*. *Jurnal Notarius*, Volume.12 No.2
- [15]. Syukur, A. T., & Hermawansyah, A. (2019). *Model Pelayanan Penyerahan Fasilitas Umum dan Fasilitas Sosial dari Pengembang Perumahan Ke Pemerintah*. *Jurnal Inovasi Dan Pelayanan Publik Makassar*, Vol. 1(No. 1).