

THE PROBLEMS AND CONCEPTS OF THE LAND MANAGEMENT RIGHTS IMPROVEMENT IN BATAM CITY

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ABSTRACT: This study has two purposes. First, to know about the basic concept of land management rights in Batam City in terms of improving people's welfare. Second, knowing about improving the quality of land management rights in Batam City. The method in this study uses empirical legal research. The types of data used are primary data and secondary data. The primary data are from interviews with the public community, government officer of Batam City, BP Batam, the District, and also Subdistrict offices; and from observations in the old village of Tanjung Uma and the old village of Nongsa. The secondary data are from the 1945 Constitution and Law Number 5 of 1960 concerning Agrarian Principles. Based on the results of the study, the Implementation of Land Management Rights in Batam is problematic after the Reform phase with the enactment of Law No. 22 of 1999 on Local Government or Regional Autonomy Law, Law No. 53 of 1999 on The Establishment of Batam city and the Batam Mayor Decree No. 105 of 2004 on The Establishment of 37 Old Village Points. Then, the Central Government and the Regional Government of the Riau Islands Province as well as the Batam City Government and BP Batam are suggested to immediately restructure the land policy regulations in Batam and synchronize land policies, so that Batam people can obtain certainty of land rights as guarantees for their welfare in the future.

Keywords: Management Rights Land; Community Welfare.

ABSTRAK: Penelitian ini memiliki dua tujuan. Pertama, untuk mengetahui konsep dasar hak pengelolaan tanah di Kota Batam dalam rangka peningkatan kesejahteraan masyarakat. Kedua, mengetahui tentang peningkatan kualitas hak pengelolaan tanah di Kota Batam. Metode dalam penelitian ini menggunakan penelitian hukum empiris. Jenis data yang digunakan adalah data primer dan data sekunder. Data primer diperoleh dari wawancara dengan masyarakat, aparat Pemerintah Kota Batam, BP Batam, Kecamatan, dan juga kantor Kecamatan; dan dari observasi di desa lama Tanjung Uma dan desa lama Nongsa. Data sekunder berasal dari UUD 1945 dan Undang-Undang Nomor 5 Tahun 1960 tentang Pokok-pokok Agraria. Berdasarkan hasil penelitian, Pelaksanaan Hak Pengelolaan Tanah di Batam bermasalah setelah fase Reformasi dengan berlakunya Undang-Undang Nomor 22 Tahun 1999 tentang Pemerintah Daerah atau Undang-Undang Otonomi Daerah, Undang-Undang Nomor 53 Tahun 1999 tentang Pembentukan Kota Batam dan Keputusan Walikota Batam No. 105 Tahun 2004 tentang Penetapan 37 Titik Kampung Lama. Kemudian, Pemerintah Pusat dan Pemerintah Daerah Provinsi Kepulauan Riau serta Pemerintah Kota Batam dan BP Batam disarankan untuk segera merestrukturisasi peraturan kebijakan pertanahan di

Batam dan sinkronisasi kebijakan pertanahan, sehingga masyarakat Batam dapat memperoleh kepastian hak atas tanah. sebagai jaminan kesejahteraan mereka di masa depan.

Kata kunci: Hak Pengelolaan Tanah; Kesejahteraan Masyarakat.

INTRODUCTION

Development is a conscious effort of the community to achieve their welfare is a natural thing done by the community to achieve their welfare.¹The National Development Goals have been described in the fourth paragraph of the Preamble is: *to form a government of the Republic of Indonesia which protects the entire Indonesian nation and all Indonesian bloodlines and to promote the general welfare, educate the nation's life and participate in carrying out world order based on independence, eternal peace and For social justice, the independence of Indonesia was formulated in the Constitution of the Republic of Indonesia which was formed in a structure of the Republic of Indonesia which was sovereign by the people based on the belief in One God, just and civilized humanity, Indonesian Unity and Democracy led by wisdom/representation. and realizing one social justice for all Indonesian people*.²

The need for land today is increasing in line with the increase in population and the increase in other needs related to land.³ In a juridical sense according to the Land or Agrarian Law (UUPA), the land is the surface of the earth, while land rights are rights to the earth's surface which are limited, two-dimensional in length and width.⁴

The land is a basic human need as well as a symbol of the welfare of the community if its ownership or rights are guaranteed by a legal certainty (*rechtsvaardigheid*). The Land right becomes the trigger, cause, and controller of change in national and international communities. The land is an agrarian resource that contains 2 (two) main aspects, namely: aspects of ownership and control, and aspects of use and utilization.⁵

The government's authority in regulating the land sector, especially in

¹ Yenny Yorisca, "Sustainable Legal Development: Efforts to Achieve Sustainable National Development", Indonesian Legislation Journal, Volume 17, Number 1 2020, Page 1.

² The fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia (UUD 1945) concerning National Development Goals.

³ Ulfiah Hasanah, "Land Ownership Status Resulting from Hakbarat Conversion Based on Law no. 5 of 1960 concerning Basic Regulations on Agrarian Principles associated with PP No. 24 of 1997 concerning Land

Registration", Journal of Legal Studies, Volume 3 Number 1, Page 1.

⁴ I Dewa Ayu Widyani, Elly Pandingan, "Legal Analysis of Land Rights as Debt Security Encumbered with Mortgage Rights, Tora Law Journal, Volume 1 Number 2 August 2015, page 147.

⁵ Rosmidah, "Ownership of Land Rights in Indonesia", Journal of Legal Studies, Volume 6 Number 3 (2013), Page 67.

legal traffic and land use is based on the provisions of Article 2 Paragraph (2) of the UUPA, namely in terms of the authority to regulate and carry out the designation, use, supply and maintenance of land, including determining and regulating legal relations between people with land and also determines and regulates legal relations between people and legal actions concerning land.⁶

The types of land rights have been regulated in the Basic Agrarian Law including Ownership Rights, Building Use Rights, Business Use Rights, and Use Rights. Land Management Rights are not explicitly regulated in the Basic Agrarian Law. However, in practice, land management rights have become a land policy based on the Minister of Agrarian Regulation No. 9 of 1965 concerning the Implementation of Conversion of Right to Carry Control over State Land and Provisions on Further Policy. And Article I number 3 of the Regulation of the Minister of Agrarian Affairs / Head of the Land Agency No. 9 of 1999 concerning Procedures for Granting and Cancellation of Land Rights on State Land and Management Rights which mentioned management right is the control rights of the state whose

implementation authority is partially delegated to the holder.

Land Management Rights in Batam have been in effect since the issuance of Presidential Decree No. 41 of 1973 concerning Batam Island Industrial Area. Based on Article 6 paragraph (2) letter a, the entire land area on the island of Batam is handed over with management rights to the Chairman of the Batam Island Industrial Development Authority.⁷ In Article 6 and Article 7 of Presidential Decree No. 41 of 1973 concerning the Establishment of the Batam Island Industrial Area, it has also been explained that the authority in the rights and obligations of the Batam Island Industrial Area Development Authority is in the form of using part of the land to develop the Batam Island industrial area, conducting land planning, handing over part of the land to a third party, receiving income compensation and annual obligatory money. To carry out the land management in the industrial area of Batam Island, the government issued a Decree of the Minister of Home Affairs (Kepmdagri) No. 43 of 1977 concerning the Management and Use of Land in the Industrial Area of Batam Island. In number 3 of the Minister of

⁶ Indri Hadisiswati, "Legal Certainty and Legal Protection of Land Rights", AHKAM Journal, Volume 2, Number 1, July 2014, page 119.

⁷ Article 6 Paragraph 2 letter a Presidential Decree No. 41 of 1973 concerning Batam Island

Industrial Area: The entire land area on the island Batam was handed over with management rights to the Chairman of the Batam Island Industrial Development Agency.

Home Affairs Decree No. 43 of 1977 on Land Management and Use in the Batam Island Industrial Area it has been explained that when on the land that has been granted with the management rights, there are still tana, buildings, and plants owned by the community, then the payment of compensation must be completed before first by the recipient of the right.

Agrarian in terms of government administration and agrarian in the Basic Agrarian Law.⁸ In this case, the issuance of the Decree of the Minister of Home Affairs (Kepmendagri) No. 43 of 1977 concerning the Management and Use of Land in the Batam Industrial Area is as a guide for the completion of land administration by the recipient of the management right so that the right is truly valid in accordance with the provisions of the applicable land laws.

The land with management rights is used for their interests by the right holders and some are used by other parties with the approval of the management rights holders.⁹ The Right of Management is not a right to land but a respite from the right of control from the state (PP Number 40 of 1996)

Chapter III Article 6 and Article 7 of Presidential Decree (Keppres) Number 41 of 1973 concerning Batam Island Industrial Area. Following up on Article 6 paragraph (2) letter b. Matters relating to land management in the industrial area of Batam Island in the framework of the provisions referred to in paragraph (1) of this article shall be further regulated by the Minister of Home Affairs in accordance with the prevailing laws and regulations in the agrarian sector, the government shall issue Decree of the Minister of Home Affairs No. 43 of 1977 concerning the Management and Use of Land in the Industrial Area of Batam Island. The contents of the Decree of the Minister of Home Affairs Number 43 of 1977.

With all its advantages and disadvantages, the Batam Authority as the only non-governmental body has carried out all its rights and obligations to develop the industrial area of Batam Island from 1970 to 2007 after the establishment of the Batam Free Trade Area and Free Port Concession Agency (BP Batam). Batam Free Trade Area and Free Port Concession Agency (BP Batam) is a central government

⁸ Boedi Harsono: Indonesian Agrarian Law Univ Trisakti, Distinguishes Agrarian Law in three points of view, namely agrarian law in the general sense, agrarian law in the point of view of government administration and agrarian law based on the basic agrarian law.

⁹ Urip Santoso, "The Existence of Management Rights in National Land Law", *Journal of the Legal pulpit*, Volume 24, Number 2, June 2012, page 278.

agency/institution established based on Government Regulation (PP) of the Republic of Indonesia Number 46 of 2007 with the task and authority to carry out the management and development of the Batam Island Industrial area. In chapter II Transitional Rules.

The Government Regulation (PP) Number 46 of 2007 concerning the Batam Free Trade Area and Port Concession Agency¹⁰ is an undeniable verbal mechanism, as the basis for all policies and or control as well as management of what is the right of the Batam Authority over land on the island of Batam as well as what is the right of the Batam City Government with the status of Regional Autonomy to further become the rights and authorities of BP Batam. This of course will be very contrary to Law Number 22 of 1999 concerning Regional Government (Regional Autonomy which has subsequently undergone several changes, the last of which has become Law Number 23 of 2014 concerning Regional Government.¹¹(Regional autonomy). Sourced from the spirit of Regional Autonomy in accordance with the Law on Regional Government mentioned

above, Law Number 53 of 1999 concerning the Establishment of Batam City and several Regency Cities was born in Riau Province. Article 1 of Law Number 53 of 1999 letter a) Region is an autonomous region as referred to in Article 1 letter I of Law Number 22 of 1999 concerning Regional Government. Letter b) Batam Municipality is as referred to in Government Regulation Number 34 of 1983 concerning the Establishment of Batam Municipality in the province of Riau Province level I. Article 10 of Law Number 53 of 1999 Paragraph (1) of Batam City¹². Paragraph (2) Batam City as referred to in paragraph (1) is organized and determined to be an area which includes: Batu Ampar District, Nongsa District, Galang District, Sungai Beduk District, Bulang District, Behind Padang District, Sekupang District, and Lubuk Baja District.

The spirit of Regional Autonomy, which is based on Law Number 22 of 1999 concerning Regional Government, has given new enthusiasm to local communities, to fight for their rights based on the delegation of authority which was originally the domain of the

¹⁰Article 6 Government Regulation (PP) No 46 of 2007 concerning Free Trade Areas and Free Ports of Batam Island: All assets and authorities of the Batam Island Industrial Area Development Authority are the rights and powers of BP Batam.

¹¹ Law No. 22 of 1999 concerning Regional Government: As the basis for the creation of division and the formation of Batam City with the spirit of Regional Autonomy.

¹² Law No. 53 of 1999 concerning the Establishment of Batam City

Central Government, which was transformed into the authority of the Regional Government. Likewise in the case of the election of the Regional Head (mayor), the Regional community is given the opportunity to vote and be elected directly to become the Mayor of Batam. Unfortunately, the problem of land management on Batam Island has become a problem for the implementation of land management rights on Batam Island. The uncontrolled population of Batam island, due to population growth and massive urbanization in 2000, is the effect of the development of Batam Island as an industrial area, thus giving rise to competition in the need for land as a place to live and the need for land for New Industrial (investment) areas. As a result of the competence to meet land needs, new social problems arise which are always being asked by the Batam community regarding the Legal Position of Land Management Rights on Batam Island. Another thing that happened was that there were several regulatory provisions issued by the government that gave rise to a decision that was granting ownership rights to land on the island of Batam and later the decision to grant ownership rights to the land was annulled by a new official of BP Batam, so that arise to legal uncertainty over land on

Batam island, both community land that has never been paid by the Batam Authority and community land that has been granted property rights but will be downgraded back to The Right to Build by BP Batam.

Therefore, there are 2 (two) problems in this research. First, How is the basic concept of Land Management Rights in Batam to improve the welfare of the people of Batam through the provision of certainty of rights to land that has been controlled by the public community for generations? Second, How is the Land Management Right in Batam and the current authority to improve the quality of land management right governance?

METHOD

The method in this study uses empirical legal research. The types of data used are primary data and secondary data. The primary data are from interviews with the public community, government officer of Batam City, BP Batam, the District, and also Subdistrict offices; and from observations in the old village of Tanjung Uma and the old village of Nongsa. The secondary data are from the 1945 Constitution and Law Number 5 of 1960 concerning Agrarian Principles.

RESULTS AND DISCUSSION

1. Land Management Condition in Batam City

The implementation of land management rights on the island of Batam based on Presidential Decree No. 41 of 1973 concerning the Batam Island Industrial Area is part of the power and authority of the state to regulate the designation and use of land on Batam Island. Although in the Basic Agrarian Law is not explained in the Minister of Agrarian Regulation No. 5 of 1965 concerning Conversion of Right of Tenure to State Land and several other regulations of the Minister of Agrarian Affairs explicitly regarding the status and position of Land Management Rights, but and/or Government Regulations, Presidential Decrees can be used as a legal standing for policy regulation, implementation of land management rights. Land Management Rights are a system of land tenure rights that are granted or granted a right for their business purposes, but this is not the main goal, because the main goal is how the land is handed over to other parties.

In the use of the land where the right holder is given part of the authority of the state.¹³

Land Management Rights are the delegation of some authority as well as state control over land that has been granted a right.¹⁴ Taking into account that land is part of the livelihood of many people, so that land management rights should be regulated clearly in the provisions of the legislation to provide a more concrete legal certainty.¹⁵ The Government must put Land Management Rights in legal products at the level of law.

The Convention of United Nations / ILO Convention No. 169 of 1986 states that tribes and indigenous peoples are a group of people who have historical traces with the community before entering the invasion (colonial) period that developed in their area, considers themselves different from other communities, which are now in their area or not part of that community.¹⁶ Batam Island was explicitly known to the international world in 1828 when the

¹³Kartini Soedjendro: Land Rights Engagement Agreement (2001) Pustaka Jakarta "Land management rights are a system of rights that have been assigned for business purposes, but that is not the main goal because the main objective is that land that has been granted management rights can be handed over to other parties who are part of the state's authority.

¹⁴ LP3DI Journal of Legal Affairs, Researcher Sulasi Rongiyati entitled "Benefits of Land Processing Rights by third parties.

¹⁵ Journal of the pulpit of Gajah Mada University Researcher Urip Santoso entitled "The Existence of Processing Rights in the National Land Law.

¹⁶United Nations / ILO Convention No. 169 of 1986: Tribes and indigenous peoples are a group of people who have historical ties to society before entering the period of invasion/colonization that developed in their area. They consider themselves different from other communities that currently exist in their area or not from their community.

London Treaty agreement or the agreement on the division of colonies between the British Government and the Dutch Government was stated. Although previously we knew the long history of the Riau Lingga kingdom in the Malay lands from Sumatra to Singapore and northern Malaysia, Klantan. This means that this fact can describe the island of Batam since the first defeat is not an uninhabited island. But it has developed a civilization from generation to generation. The original Malay tribe is the Sakai tribe, a small group of people who live on the move on a boat.

The results of the researcher's interview with a Batam community leader in Nongsa on November 2nd, 2017, Raja Kasim said, "Before the entry of the Batam Authority on Batam Island in the 1970s, the land in Batam had rights to three (3) parts. namely 1) Land controlled by the *theonghoa cukong* which was used to plant rubber/or Chinese rubber plantation land as far as Raja Kasim understood this land had a Dutch grant with a very large number of use rights status. 2) Land which according to the government is Protected Forest. 3) The land in the community settlements for living and gardening is small because according to Raja Kasim, the Malays have always thought about their needs and their lives at sea, so the land problem is

not so much thought about by the native Malays of Batam.

According to Raja Kasim, when the Batam Island Industrial Area Development Authority entered Batam in the 1970s and began to control the land in Batam, in the early 1970s and 1980s, there were no problems with the indigenous people of Batam. Because at that time there was still a lot of vacant land from the former rubber plantations of Cukong Theonghoa, and a lot of land around the beach was empty. However, from 1990 to 2000, there was already friction between the community and the Batam Authority. This could happen because at that time the development of investment on the island of Batam was progressing. The need for strategic land in Batam for investment purposes is increasing. Finally, the Batam Authority began to penetrate to control the land that was controlled by the community for generations More clearly, King Kasim said that he still remembers very well around 1991 and 1992, land that has been controlled by the community for generations was forcibly taken by the Batam Authority using intimidation from the apparatus, for people who do not want to accept compensation at low

prices will be suppressed and intimidated.¹⁷

The community of Monggak village, Rempang Gate sub-district, Rempang district felt the same way. According to one of the community leaders when interviewed by researchers on June 10, 2019, Mr. Suryadi is a fisherman. According to Mr. Sur, (as Mr. Suryadi is called) Monggak is the village of the lord that existed before the city of Batam. In the past, Monggak Village was part of the Bintan administrative area. And even based on the graves of our ancestors that exist today, this village has existed since the days of the Riau Lingga kingdom. The beginning of the entry of the Batam Authority in Monggak was around the 1980s. At that time, they came and gathered the people, including me, to attend. The Batam Authority said that they would manage the coastal land from the shore to the inland only 500 meters. For coastal land that has been controlled by the Batam Authority, it will not interfere. In fact, according to Mr. Sur, "a few months after the meeting, a company entered Monggak and then measured the

land for land fish farming, until the community gardens were taken. When the community questioned their rights, the Batam Authority made payments for community land at a very low price and without any offer to the community. Then, the land inhabited by the people of Monggak village does not have any documents. When the community is going to take care of the certificate of land ownership, he said they must first report it to the Batam Authority. So that until now the public community only holds a certificate of land tenure from the subdistrict head.¹⁸

When the researcher made direct observations to the Monggak village, based on the results of direct observations, Monggak village was a small Malay ethnic community with a population of fewer than 500 people. The shape of the house and their life is still the hallmark of building a house right on the beach, characterized by a house on stilts. Some old houses are probably hundreds of years old. There is a mango plant whose tree circle is 1 to 3 meters and according to local people who are

¹⁷ The results of an interview with Mr. Raja Kasim, a community leader, Nongsa. On November 2, 2017, the status of land in Batam before the entry of the Batam Authority was divided into 3 parts. There was an attempt by the Batam Authority to take land that had been controlled by the community for generations by force by the Batam Authority by using the Security Apparatus.

¹⁸ The results of the researcher's interview with the community leaders of Monggak, Rempang Gate Village, Rempang Subdistrict, "Monggak Village has existed since the era of the Riau Lingga kingdom which until now the community's land has not received any rights to their land.

over 60 years old, before he was born the mango tree already exists and is already big. There are also old graves that are hundreds of years old, according to Monggak community leaders. For the people of Monggak, they are a different community from the people of the city. With the current development of the city of Batam, according to the people of Monggak village, they feel they are not part of the development, because until now they do not have any rights to the land inherited by their ancestors. This is certainly not in line with Article 2 Paragraph (3) of Law Number 5 of 1960 concerning Agrarian Principles which explains that the authority originating from the state's right to control in paragraph (2) of this article is used for the greatest prosperity of the people. and the welfare of the Indonesian people in a state of law. The land management rights in Batam do not provide guarantees of welfare and guarantees of legal certainty over land that has been controlled by the community for generations. Land management rights prioritize investment interests and sacrifice community interests. This can be seen from TEMPO's report on October 23, 2013

that thousands of residents of Tanjung Uma protested to BP Batam, because according to the community the land that had been controlled by them for generations, was secretly given by BP Batam to a private company. This makes residents feel disadvantaged and conduct demonstrations because they feel that their land has not been compensated.¹⁹ and *Tribun Daily News* on September 19, 2016 reported that the residents of Tanjung Uma returned to protest at the BP Batam office because the land had been handed over by BP Batam to private investors without making any compensation payments to the people who felt they had the rights to the land.²⁰

When the researcher conducted an interview with BP Batam's Public Relation on February 15, 2018 about "the certainty of community land rights that have been controlled for generations in the city of Batam," BP Batam's public relations officer briefly explained that BP Batam only continues all land policies that have been implemented by the Authority. Batam. The issue of Management Rights, according to BP Batam, is final, the state has given these rights to the Batam authorities and

¹⁹ News Tempo October 23, 2013 : Thousands of residents of Tanjung Uma protest to BP Batam because the land that has been controlled for generations has been handed over by BP Batam to a private company without the residents' knowledge.

²⁰ Daily News Tribune September 19, 2016 Residents of Tanjung Uma Return to Demo To BP Batam, the community feels that their land has not been compensated by the Authority / BP Batam but BP Batam has handed over their land to private entrepreneurs.

continued by BP Batam based on Presidential Decree No. 41 of 1973 concerning Batam Industrial Area.²¹

Law and power have a reciprocal relationship where law requires power for its implementation because without legal power it will be nothing but a social rule or mere suggestion, on the other hand power is determined by law. It is popularly said that law without power is wishful thinking and law as a tool of renewal in society means that law is a tool to maintain order in society. The function of the law is not only to maintain and survive what has been achieved, but the function of the law must of course be able to help the process of changing society itself. The use of law as a tool to make changes must be very careful, in order not to cause losses in society so that it must be considered in terms of sociology, anthropology, culture of society.,²²

The Monggak community and all other Batam natives are Malays who culturally respect and uphold the custom of deliberation to solve the problems. The Malay community is known for its respectful and obedient manners to leaders who can make decisions. If only the land problem in Batam could be

solved with a sociological approach, it would put forward deliberation to find a solution without harming anyone regarding the Implementation of Land Management Rights in Batam.

2. The Concept of Improvement of Land Management Right in Batam City

Presidential Decree No. 41/1973 concerning the Batam Island Industrial Area with all the authority to grant Land Management Rights throughout Batam Island to the Batam Island Industrial Estate Development Authority has direct juridical consequences for existing land rights on Batam Island. However, Presidential Decree No. 41 of 1973 concerning the Batam Island Industrial Area, particularly the policy on land was disturbed after the Indonesian nation entered the reformation period in 1997 . The spirit of reform occurs the Law No. 22 of 1999 concerning Regional Government or the Law on Regional Autonomy. One of the hopes fought in the Regional Autonomy Law is the struggle to get a level of authority that during the New Order becomes the authority of the central government is expected to be delegated to the regional community through the expansion of

²¹BP Batam Public Relations: interview on 15 February 2018 “BP Batam only implements land policies that have been implemented by the Batam Authority. The issue of Land Management

Rights is final based on Presidential Decree 41 of 1973 concerning Batam Industrial Area.

²²Prof. Mochtar Kusumaatmadja: in *The Theory of Development Law* by Otje Salman and Eddy Dumian Sonsep Legal Concept (2002) Bandung.

new regions with regional autonomy status.

Law No. 53 of 1999 concerning the Establishment of Batam City and several Municipal Districts in Riau Province with the spirit of Regional Autonomy directly makes the Batam City Government the ruler of a regional authority that must be recognized by the government. The Central Government already knows that the establishment of Batam City with regional autonomy status will potentially lead to policy dualism. These two policies are the authority of the Batam Authority / BP Batam after the issuance of PP No. 46 of 2007 concerning the Enforcement of Free Trade Areas and Free Ports of Batam and the Batam City Government with the authority of Regional Autonomy based on Law No. 22 of 1999 on Regional Government.

To avoid policy dualism, Article 21 of Law No. 53 of 1999 concerning the Establishment of Batam City and several city districts in Riau Province paragraphs (1,2,3) explicitly explains that in organizing the development of the Batam City Government with the spirit of regional autonomy involves the authority of the development of the industrial area of Batam island, the working relationship between the Batam City government and

the Batam Authority will be further regulated in a Government Regulation, the said government regulation will be issued no later than twelve months from the inauguration date of the city of Batam . But the fact is that until now the Mayor of Batam has changed several times or until now the Government Regulation promised by the Central Government as a liaison for policy synchronization between the Batam City government and BP Batam has not been issued.

Regional autonomy is the right to regulate and govern the region itself where this right is obtained from the central government. Autonomy is carried out with several rights to achieve the objectives, namely: 1) Improving government services to serve the basic needs of local people quickly and concisely, 2) Improving community welfare through the management of regional potentials, 3) Increasing regional competitiveness to be more creative in developing their regions. ²³

With the opinion that is part of the essence of the purpose of this Regional Autonomy Law, if we examine it in depth and compare it with the vision and mission of developing the industrial area of Batam Island, it will be very contradictory. This is because the Batam

²³ SAFRI SALEH: the basic concept of the Regional Autonomy Law (2007:107) CV Cipta Jakarta "The basic concept of the regional

autonomy law is the power delegated by the central government to regulate and develop its region.

Authority 's vision is to develop investment by prioritizing the use of land for investment needs. Meanwhile, the basic human needs that must be met by the Batam City Government are the provision of land for the benefit of public infrastructure such as hospitals, schools, places of worship, and other public facilities. This has made the mayor of Batam, HM. Rudi, before being appointed as an exofficio official, the Chairman of BP Batam, stated that it is difficult for the Batam City Government to build. This is because land problems to build a health center Batam City Government must wait for permission from BP Batam for months. Even then, if BP Batam wants to allow it, otherwise the local government can't do much (Batam Pos dated February 25, 2016).²⁴

When the researcher conducted an interview with the Batam City Government Administration Staffs on April 20, 2018 about the imbalance of land policy on the island of Batam, they explained that the problem of what is called dualism of land policy in Batam is actually not necessarily all true. Regarding the difficulty of the Batam City

Government in obtaining land as a place for public facilities, it is true, but until now it can still be coordinated.²⁵

Improving the quality of governance of Land Management Rights in Batam must be returned in accordance with the main tasks and functions of government institution as well as the authorities established by the state and have been delegated part of the state's authority, such as the Batam Island Industrial Development Authority. Article 2 of Presidential Decree No. 41/1973 explicitly outlines the rights and authorities of the Batam Island Authority as the only Batam Island Industrial Area Development Agency, including the handover of a part of the land throughout the island of Batam to the chairman of the Batam Island Industrial Area Development Authority with Processing Rights. The rights and obligations of the Batam Authority have been further emphasized in Presidential Decree No. 112 of 2001 concerning the Rights and Obligations of the Batam Authority. The right of the Batam Authority is to use all of the land in the industrial area of Batam Island for the

²⁴ Mayor of Batam HM Rudi: daily Batam Pos dated February 22, 2016 "It is very difficult for the Batam City Government to build, this is because to build a public health center the city government must ask for permission from BP Batam, wait for years and even then if it is allowed.

²⁵Pemko Batam: the results of the interview on April 23, 2018 "about the dualism of the defense policy is not necessarily all true. There is a difficulty for the Batam Pomko to obtain land for public facilities. The community facilities do exist but can still be coordinated.

purposes of developing industrial areas on the island of Batam, to plan the allocation of a part of the land on the island of Batam, to hand over part of the land to a third party/investment and to receive compensation money and the annual mandatory fee for the Authority (UWTO).) whose amount is in accordance with the provisions of the applicable regulations. The obligation of the Batam Authority is to build infrastructure and public facilities in the industrial area of the island of Batam, to create comfort for investors who want to invest in the industrial area of the island of Batam, by providing services to be a facilitator to facilitate the licensing process through receiving all investment documents and submitting to the competent government and ensuring that the management does not experience any obstacles, and the obligation to report all work to the President of the Republic of Indonesia, the Minister of Finance of the Republic of Indonesia and the Minister of Industry of the Republic of Indonesia.

If we examine in depth the rights and obligations of the Batam Authority as regulated by Presidential Decree and the contents of Presidential Decree No. 112 of 2001, it is a reflection of the obligation of the state or central and regional governments to build public infrastructure and facilities for the public

community. The state's authority to plan land use in one area is known as the Regional Spatial Plan (RTRW) and the state's authority to receive taxes. So it can be concluded that the Batam Authority is an extension of the state for the development of industrial areas on the island of Batam. Regarding land management rights in the industrial area of Batam Island, the policy of the Batam Authority must be in accordance with state policy. Because the Batam Authority acts for and on behalf of state policy, then the policy of governance of land management rights in Batam island must be based on Article 2 paragraph (3) of Law No. 5 of 1960 on Agrarian Principal, "The authority derived from the right to control from the country's in paragraph (2) this article is used for the greatest prosperity of the people, in the sense of happiness, universality and independence in the society and the sovereign state of Indonesian law, Fair and prosperous."

There are facts based on the results of an interview with one of the property entrepreneurs in the Batam center area on May 21, 2019, the researcher got an explanation from a source of an entrepreneur who can be trusted after being tested by location observations. The businessman, whose name does not want to be mentioned, explained that

"the policy orientation of the Batam authorities is only with the motive of exploring the land in Batam as large as possible to get state income, as a result of this, it creates investment uncertainty in Batam because land prices skyrocket every year, Batam is difficult to compete with other countries. Other Southeast Asia such as Malaysia, Vietnam and Thailand are already developed. The thing that is very sad again is that the concept of the responsibility of the Batam authorities is to maintain the comfort of investment, but in fact " after the Batam authority received land compensation money from investors, and entrepreneurs were given a Certificate of Right to Build, every year the entrepreneur must pay again the authority's annual mandatory money (UWTO), if it is too late a few entrepreneurs build its location, appears the batam authority's wild house is no longer willing to be responsible, even though the land still belongs to the Batam authority only rents, In fact, all problems are assigned to the entrepreneur, the authority only acts as a landlord.

The results of this interview were then combined by researchers with interview sources (entrepreneurs) to observe the

location of the land that had been paid for to the Batam Authority and had obtained a Building Use Right certificate, but in fact the land with an area of approximately 2 hectares has been occupied by hundreds of residents' houses, by the people of Batam called the illegal houses (*Rumah Liar*/RULI) which is located in the heart of the city of Batam . The houses seem to have been built for several years because some of the houses are semi-permanent, with electricity and clean water facilities. This makes entrepreneurs ask whether the government legalizes houses built on other people's land? This makes entrepreneurs ask BP Batam not only to be oriented towards land exploration in Batam, but to think about the convenience of investing in Batam.²⁶

Article 6 of Government Regulation (PP) No 46 of 2007 concerning the Enforcement of Free Trade Areas and Free Ports of Batam explicitly mandates that all assets of the Batam Island Industrial Development Authority and its authorities are the assets and authorities of BP Batam. The legal consequence of Article 6 of PP No. 46 of 2007 is that all land and building assets as well as authority in the use and

²⁶ Results of an interview with an entrepreneur in Batam center on May 21, 2019 "BP Batam should think about the convenience of investing in Batam, don't always be oriented to land

exploration in Batam, as a result, Batam will not be able to compete with Malaysia, Vietnam, Thailand, which are already developed.

management of land in Batam have become the authority of BP Batam since the PP was issued.

The problem arises when the authority of BP Batam is mandated in article 6. PP No. 46 of 2007 on the Enactment of Free Trade Area and Batam Free Port in the form of the transfer of Batam authority assets into BP Batam assets and land governance authority in the industrial area of Batam island becomes the authority of BP Batam, contrary to Chapter V Article 9 paragraph (1) of Government Regulation (PP) No. 1 of 2000 concerning Free Trade Area and Free Port which stated free trade and free port has a function as a place to develop business ventures in the fields of trade, services, industry, mining and energy, transportation, maritime, and fisheries, post and telecommunications, banking, insurance, tourism and other business ventures. The function of the special area has also been regulated in Article 6 paragraph (2) of PP No. 1 of 2000 concerning Free Trade Areas and Free Ports namely: 1) Manufacture activities, design, engineering, sorting, initial inspection, examination, packing, packing of raw materials originating from home and abroad, repair or reconditioning services of machinery, quality improvement; 2) Provision and development of

infrastructure, water and water sources, transportation facilities and facilities, including advice on sea and airport transportation, buildings and power grids, postal and telecommunications, as well as infrastructure and other facilities.

On the provisions of Article 9 pp No. 1 of 2000 concerning free trade areas and free ports, it can be ascertained that legally the authority of BP Batam only includes the regulation of general policy and special policies in the free trade area and free port of Batam, in the form of providing transportation facilities, including sea, land and air transportation as well as the special task of overseeing the transportation of goods in free trade area and batam free port to gain state revenue and there is no relevance what so ever to BP Batam's authority to regulate land governance.

As a result of BP Batam in playing the role of landlord in the industrial area of Batam island, it is getting worse. Investors feel uneasy with land policies, there is no legal certainty over community land, and from year-to-year land prices have increased. One fact based on the daily news of Batam Pos Co.id on January 24, 2020: Head of BP Batam HM Rudi as well as Mayor of Batam said it was difficult for UWTO, if it was abolished it would paralyze BP Batam. Even so, Rudi promised to

continue to seek the abolition of the UWTO for people's land to be taken up to 200 meters, in accordance with the direction of the president²⁷. This shows that BP Batam has never carried out a policy reform to explore other sources of income from the strategic location of the Batam island industrial area as a new source of income apart from being a land broker. That the land policy should be left to an agency or institution that understands very well about land governance, and understands the meaning of the general policy on land and the land as a symbol of the welfare of the community.

The existence of a social function of land use means that land is not a trading commodity, even though it is possible that the land owned is sold if there is a need. land, but rather an effort to make it easier for industrial companies and housing development companies to obtain the required land²⁸. This indicates that land in the industrial area of Batam Island is not an object to be traded or commercialized, but land policies should be arranged in such a way as to facilitate investment. But in fact, BP Batam is very

difficult to get out of the circle of land commercialization.

In the context of synchronizing policies between the Batam City Government and BP Batam, the central government again issued Government Regulation (PP) No. 62 of 2019 concerning the second amendment to PP No. 46 of 2007 concerning Free Trade Areas and Free Ports of Batam. In the preamble / explanation of PP No. 62 of 2019 it is explained that the development and management of infrastructure related to public interests carried out by the Batam city government must be carried out based on joint planning with BP Batam. The joint planning is coordinated by the chairman of the Batam Free Trade Area and Free Port Council.

Even more clearly PP No. 62 of 2019 emphasizes that to eliminate the dualism of authority to manage the development of the Batam Island, the Batam Free Port and the Batam Mayor, it is necessary to stipulate that the Head of the Batam Free Trade Area and Free Port Concession Agency is held as Exofficio by the Batam Mayor so that the implementation of duties and will be more effective. The

²⁷H MUHAMAD RUDI : Batam Pos Co.Id . On February 21, 2019 it is difficult to abolish the WTO because without the WTO BP Batam will be paralyzed. However, we will continue to abolish the WTO for community land measuring 200 meters and below, in accordance with the mandate of the president.

²⁸ Prof, BOEDI SARJONO: Indonesian Agrarian Law Year 2012 Trisakti University "Land for industrial estates and residential development areas is not an object to be commercialized but a means to make it easier for entrepreneurs to obtain land facilities.

central government's explicit intention to appoint the Mayor of Batam as an ex-officio official of the Head of BP Batam is a good intention in the context of eliminating policy dualism in the city of Batam as an autonomous region in accordance with Law No. 53 of 1999 and BP Batam as a free trade area and free port based on PP No. 46 of 2007. Juridically, PP No. 62 of 2019 concerning the second amendment of PP No. 46 of 2007 concerning Free Trade Areas and Free Ports of Batam contradicts Article 23 of Law No. 39 of 2008 concerning State Ministries and Institutions which reads Ministries and state institutions are prohibited from holding concurrent positions as officials. other countries in accordance with statutory regulations, commissioners or directors of state-owned companies or private companies. There are also several provisions of other laws and regulations which have the intent and purpose that a state official is prohibited from holding concurrent positions to avoid conflicts of interest.

Substantially the basic concept of establishing Batam Island Industrial Area is based on Presidential Decree No. 41 of 1973 concerning Batam Island Industrial Area which was then continued by BP Batam based on Government Regulation No. 46 of 2007 concerning Free Trade Area and Free Port of Batam. In terms of

land use, BP Batam will prioritize land in the Batam Island Industrial Area to meet the large investment needs, on the other hand, the establishment of Batam City based on Law No. 53 of 1999 concerning the Establishment of Batam City and several City Districts in Riau Province, to implement Law No. 22 1999 concerning Regional Government. The spirit of Regional Autonomy is an effort to fulfill the basic needs of the local community and optimize the management of regional potential to accelerate the welfare of the local community. The basic needs of local people are affordable housing or land to meet the needs of the community and have legal certainty. The spirit of regional autonomy also provides opportunities for local people to elect their regional heads. The Mayor of Batam who has been chosen by the Batam community must take full responsibility for the fulfillment of the community's basic needs for land with guaranteed legal certainty over the ownership of the land, so that the Batam community can enjoy the peace and prosperity of life in Batam.

Placing the Mayor of Batam as the ex-officio official of the Head of BP Batam will substantially not resolve the conflict of interest of the people of Batam City and BP Batam. This is because the two interests are regulated in the provisions of the law that must be

complied with. Placing all interests and management of land management in Batam in accordance with Article 2 paragraph (3) of Law No. 5 of 1960 which said the authority originating from the right to control from the state in paragraph (2) of this article is used to achieve the greatest prosperity of the people, in the sense of happiness, welfare and independence in the society of an independent, sovereign, just and prosperous Indonesian legal state. If only the provisions of this law were used as a guideline for land policy in Batam, then BP Batam as the holder of Management Rights must prioritize the interests of the whole community over other interests. The unification of vision and synchronization of land policies in Batam which is oriented towards achieving the greatest prosperity of the people of Batam is an important solution for improving the quality of land governance in Batam.

The basic problem of land policy dualism in Batam is part of the institutional ego-sector, both of them are regulated by statutory provisions. Law and power have a reciprocal relationship, where the law requires power in its implementation this is because without the power of law is nothing but a social

rule that is a mere recommendation, instead determined by limits by law, popularly in the legal bind without power is wishful thinking.²⁹ With this opinion it is very clear that land governance in Batam urgently needs synchronization and policy coordination in accordance with the authority. The implementation of Land Management Rights in Batam urgently requires the intervention of power to enforce land law that is actually true. The law will also set limits on institutional authority that has their respective roles in the industrial area of Batam Island. So that does not cause miss coordination between institutions in Batam.

CONCLUSION

The implementation of Land Management Rights in the industrial area of Batam Island has not been able to guarantee legal certainty over community land that has been controlled for generations so it does not provide a guarantee of welfare and prosperity for the people of Batam. Therefore, the central government and the Riau Islands Province government as well as the Batam city government must immediately restructure the policy instruments regarding the governance of

²⁹ Mochtar Kusumaatmadja (2002) *Konsep Hukum Pembangunan Nasional*: Bandung Alumni

Land Management Rights in Batam. Moreover, the occurrence of policy dualism in the Batam industrial area because of the existing authority in land management in Batam does not reflect a delegation of authority regulated by the provisions of the law but rather to the ego sectoral so that the practice of enforcing land management rights in Batam. Therefore, the government must immediately establish a non-departmental institution to manage all land assets inherited by the Batam Authority. BP Batam must be returned to its main task, the general policy of preparing infrastructure facilities in the free trade area and free port, and the task of BP Batam in the special policy of supervising the trade route of goods in the special area.

SUGGESTIONS

Several recommendations can be given. First, the Governor of the Riau Islands is expected to immediately take a policy on synchronizing land governance in Batam between BP Batam and the Batam City Government. Second, the Mayor of Batam is expected to be able to collect data on public community lands that have been controlled for generations, so that they can then coordinate with BPN to provide land rights as a guarantee of community welfare. Third, the Riau Islands

Provincial DPRD together with the Riau Islands Province Government are expected to be able to ask the President of the Republic of Indonesia to immediately issue a Government Regulation (PP) for the establishment of a non-departmental agency that functions to regulate land management in Batam, replace BP Batam which has a special task of developing free trade areas and free ports in accordance with applicable regulations. Fourth, the Batam City DPRD immediately coordinates with the Batam City Government to collect data on community lands that have been controlled for generations, to be submitted to the Batam City BPN to obtain certainty of public community land rights. Fifth, the National Land Agency can directly check the juridical data and physical data of land that has been owned by the community in Batam for generations to be able to grant rights in accordance with the provisions of applicable land regulations, as a form of the presence of a sense of justice in the society. Sixth, BP Batam can evaluate and coordinate with the Batam City Government regarding land management in Batam. Seventh, the academics can use the results of this research as a source of reading for further research in the context of deepening to provide input on

the quality of land governance in Batam to the Government.

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