

LEGAL PROTECTION FOR EX - BUILDING RIGHTS TITLE OWNER WHOSE PERIOD EXPIRES (CASE STUDY OF BUILDING RIGHTS TITLE NO. 380 KEDUNGLUMBU VILLAGE IN PASARKLIWON DISTRICT OF SURAKARTA)

Eviani Hari Nurwati

ABSTRACT

Vastenburg fortress was built in 1745. The Right to Use No. 23 was issued, which is divided into The Right to Use No. 29 and 28. It is divided into nine, of which one of them is Building Right Title No. 380 about the determination of cultural heritage so the period of validity cannot be extended. This research aims to analysis civil relation and legal protection of ex-Building Rights Title No. 380 in Kedunglumbu Village, Surakarta. The research uses legal normative research. It is prescriptive with legislation approach. It used secondary data. This research aims to comprehend and analyze the legal protection to the ex-Building Rights Title No. 380 owner in Kedunglumbu Village, Surakarta. The research finds out Building Rights Title owner will lost his land right but not for the building and other things on top of it, as long as the State land ex-Building Rights Title owner still can use the land as its function. This study shows that the Building Rights Title of which the period of validity expired, the land of it will be back become state land. The legal protection of it cannot be extended on account of the Regional Regulation No. 1/ 2012 about Regional Spatial Planning and The Ministry of Cultural and Tourism Regulation No. PM.57/PW.007/ MKP/2010. However, the building on top of it should be compensated eligibly as suggested on the Law. The Area of Vastenburg fortress is Cultural heritage so that Building Rights Title cannot be extended because are not fulfilled the requirements on Government Ordinance No. 40 of 1996 and Ministry of Agrarian / KBPN No. 9 of 1999 regulation. In conclusion, the ex-Building Rights Title No. 380 owner cannot extend the period yet but still own priority rights.

Key words: Building Rights Title extension; Legal Protection; Cultural Heritage

INTRODUCTION

Act No. 5 of 1960 on the subject of Agrarian Basic Regulation which later known as Agrarian Principal Law is the first Law establishing Authority of the State concept. Article 33 of the 1945 Constitution states that earth, water and natural wealth are controlled by the state and used as much as possible for people's prosperity. This provision is the constitution ground rule of Agrarian Principal Law establishment and formulation. There are two fundamentals of the article. Firstly, that the state interferes in controlling the natural resources as production tool is accepted since the beginning. Secondly, that regulation as much as possible aims for people's prosperity. Article 2 verse (1) of Agrarian Principal Law states that earth, water, space and natural resource contained in it are at the highest stage controlled by the State as organization of people's power.

Moreover, verse (2) defines that the Authority of the State including Article 1 Verse (1) gives the authority to:

- a. Organize and maintain the allocation, use, supply and maintenance the earth, water and space.
- b. Define and determine the legal association among human with earth, water, and space.
- c. Define and determine the legal relationship between people and legal action regarding to earth, water, and space.

The general explanation of Agrarian Principal Law objective as follow:

- a. Allocate the basics national agrarian legal formulation as tool to achieve prosperity, contentment and justice for the country and peasantry for the fair and prosperous people;
- b. Allocate the basics for holding the unity and simplicity of land law;
- c. Allocate the basics in favor of giving legal certainty regarding the land rights for the whole people. Land as part of earth surface is a field unit that has a certain border. On the top of the it, there is land right owned by individual or legal entity (Florianus SP Sangsun , 2007, p. 5)

Land is a distinctive thing. It's the most important in customary law. Djuhaendah Hasan (1996) states that someone cannot live without land because he works and lives his daily life above the land. His foods are also planted in it. When he dies later, he will be buried in it (80-81). Besides, land is a sensitive issue that can trigger social crisis (1).

As stated on Article 1 Verse (3) of Agrarian Principal Law, the association among Indonesian nation with earth, water and space are socially religious and eternal. This eternal association shows that as Indonesian people unite being Indonesian nation and as earth, water and space of Indonesia were lasting, it is then cannot be disconnected at all.

According to Article 16 Verse (1) of Agrarian Principal Law, the rights of the land can be identified as Freehold Title, Cultivation Rights Title, Building Rights Title, Exploitation Rights and the other rights which will be established along with the law and the temporary rights as pointed out on Article 53.

The Building Rights Title is distinctively regulated from Article 35 to Article 40 on Agrarian Principal Law. Along with Article 35 Verse (1), the Building Rights Title is a right to build and own a building of which the land owned by other people in the period of 30 years maximally. In addition, the Verse (2) defines that as the owner of the rights appeal and regarding the requirement and condition of the buildings, the period can be extended for 20 years maximally. These rights have a certain period of time which can be obliterated. If the period is extended, then the rights are continuing as before. According to Article 25 Verse (1) Jo Article 22 Verse (1) & (2) of Government Ordinance No. 40 of 1996, the Building Rights Title of which the period can be extended is enclosed by Right of State Land and the Rights of Management. The Building Rights Title period extension application is regulated as the following:

1. Government Ordinance No. 40 of 1996 on the subject of Cultivation Rights Title, Building Rights Title, Rights to Use the Land.
2. Agrarian Government Ministerial Regulation/ Head of National Land Agency No. 9 Regulation 1999 on the subject of the Rights of State Land and Rights of Management granting and obliteration procedure.

Article 27 Verse (1) of Government Ordinance No. 40 of 1996, explains that the Building Rights Title extension can be applied two years at the latest before its period ends. Meanwhile on Article 41 of Agrarian Government Ministerial Regulation/ Head of National Land Agency No. 9 Regulation 1999 on the subject of the Rights of State Land and Rights of Management granting and obliteration procedure states that the extension application is submitted by the rights owner in two years before the period end.

Because of the two difference provisions as the legal basis regarding to the Building Rights Title extension application submission can affects the legal certainty. It may lead into different interpretation and implication practically. Significantly, the Building Rights Titles No.380 is 3.210 m².

As counted for 20 years, Building Rights Titles will end at 29th June, 2012. The owner of the Rights will apply the rights extension, but the condition becomes different because;

1. Nusantara Cultural Heritage Guardian Community aspires not to extent the Building Rights Title.
2. There is the Cultural Heritage location settlement based on Minister of Cultural and Tourism Regulation No.PM.57/PW.007/MKP/2010 Jo Law No. 5 of 1992 Jo Law No. 11 of 2010
3. Letter from Director of Archeological Heritage from Directorate General of History and Archeology, Cultural and Tourism Department No. UM.001/1316/DIR.IV/SP/28.IX/2009 Date 28-09-2009 regarding Permit Building License and Hotel Mall around near cultural heritage, Benteng Vastenburg
4. The spatial conversion into cultural heritage area corresponding the Regional Regulations, City and Spatial Planning of Surakarta in 2011-2031.

RESEARCH METHOD

This is legal research is normative research which studies legal as norm. It is done by studying literature and the other related secondary data. This research is prescriptive, meaning this research aims for obtaining suggestion concerning what should be done to solve certain problems (SoerJono Soekanto, 2006, p. 10). At the same time Peter Mahmud Marzuki (2011) says that legal studies should go into legal purpose, justice values, regulation validity, concepts and norms (22).

This research uses Statute and Case approach. The Statute approach is done by examining all the law and regulation concerning the legal issue being handled. On the other hand, the Case approach is done by examining cases related with the issue being handled.

The data used in this research is secondary data. It is data or fact indirectly used by someone. The data were obtained through legislation, report, paper, document, books, doctrine, literature material, files and other related written sources regarding the Building Rights Title No. 380, Benteng Vastenburg Expiry Completion.

The technique of data collecting used in this research is literature study. This technique is done by collecting legislation, document, and other literature materials related the issue. The data were clarified by Head of land Management Section and Head of Section for Land Rights and Registration, the officials of National Land Agency on Surakarta.

Philipus M. HadJon on Peter Mahmud Marzuki displays deduction method as the syllogism taught by Aristotle. The use of deduction method is originated from general statement or major premise. The specific statement or minor premise is submitted later. Afterward, conclusion is drawn from both premises. Moreover, legal syllogism is not simple as the traditional one (Peter Mahmud Marzuki, 2011, p. 47). This research uses deductive logic of which the method start with explaining the general thing then drawing it into a more specific conclusion. Through syllogism process, it will be obtained conclusion (conclusio) namely positive law in concreto regarding Legal Protection for Building Rights Title owner of which the period were end (case study of Building Rights Title No.380 in Kedunglumbu Village, Pasarkliwon District, Surakarta)

DISCUSSION

Legal protection secures human right which is corrupted by other people and also protects society so that they are able to obtain every right given by the Law. In other words, legal protection is any effort required to be done by law enforcement officer in providing safe feeling both in mind and physically from trouble and threat of other any party.

The legal protection as suggested on Article 18 of Agrarian Basic Law mention that for the necessity of nation and state and also its people, rights of the land can be revoked by compensating it eligibly as suggested by the Laws.

According to Ministry of Cultural and Tourism Regulation No. PM.57/PW.007/ MKP/2010 at 22nd June, 2010 and Regional Regulation of Surakarta No. 1 of Year 2012 on Chapter XIV the transitional provision point 2.3 mentions that for those who already constructed the building and dreadfully adapting the function of the area as the Law state, the license of it which has been already issued can be revoked and the loss from the revocation will get eligible compensation.

The regulation on the subject of Civil Rights towards the Building Rights Title is explained on Article 19 to 38. Although the period of time is over, as long as the building, plant, and the other things on top of land were still needed, the Civil Rights is still attached, not lost or end at the ex- rights owner . In order to break the civil law association, the compensation is given to ex-rights owner. On the other hand, if the building, plant, and the other things on top of land were no longer needed, then the ex-rights owner has no civil rights of it. The land is automatically own by the State. The ex-rights owner is authorized to deconstruct the building and things on the top of the land, then hand the land and plant over the State. The ex-rights owner does not get compensation; even he is the one who pay the cost of deconstructing process. Regarding the building, plant, and other things were not needed because of the spatial regulation, change in design or because of other provisions. (Dian Aries Mujiburohman, 2016, p. 9)

Article 20 of Government Ordinance No. 40 of 1996 states that the owner of Building Rights Title who no longer qualified, as stated on Article 19, for one year period of time he should hand over the rights to the other qualified party. If he does not, then that Rights were deleted. It is in line with Article 35 Verse (2) of Agrarian Principal Law which suggests: "As the rights owner requests and the need and the building conditions, the period of time on the Verse (1) can be extended 20 years maximally"(T. Keizerina Devi, 2006, p. 4).

The obligation of Building Rights Title owner, were regulated on Article 30 of Government Ordinance No. 40 of 1996 namely:

1. Paying the income of which the nominal and the payment system were determined on the decision of granting his rights.
2. Maintaining the land and its building and preserving the environment.
3. Handing over the land to the State, the Rights of Management owner or the Rights of Ownership after Building Rights Title were deleted.
4. Handing over the Building Rights Title certificate that has been deleted to the Head of National Land Agency (Abdul R. Salian, Hermansyah, dan Ahmad Jalis, 2005, p. 25).

The legal basis of the Building Rights Title period extension were Government Ordinance No. 16 of 2004 on the subject of land stewardship; Government Ordinance No. 40 of 1996 about Cultivation Rights Title, Building Rights Title, and Rights to Use the Land; Agrarian Government Ministerial Regulation/ Head of National Land Agency No. 9 Regulation 1999 on the subject of the Rights of State Land and Rights of Management granting and obliteration procedure.

The land stewardship policies were held toward plot of lands of which the rights were both registered or not. The State land is land directly controlled by the State whether it is not ulayat land or ulayat land of traditional law society in accordance with the provisions of prevailing laws and regulations. Once the Regional Spatial Planning determination done, the land administration settlement is implemented if the land rights owner or his spokesperson fulfills the land use requirement. If the requirements were not fulfilled, sanction in accordance with the prevailing laws and regulation will be given to the laths owner.

Government Ordinance No. 40 of 1996 about Cultivation Rights Title, Building Rights Title, and Rights to Use the Land contains Article 26. It is states that the land rights can be extended or renew if it fulfills some requirements as follow:

- a. The land is used well as it condition, characteristic and purpose of the rights provision.
- b. The requirements of rights provision were well fulfilled by rights owner.
- c. The right owner is qualified as land rights owner as stated on Article 19.
- d. The land is consistent with the Regional Spatial Planning.

The Building Rights Title extension and renewal were given as the land rights owner application. As a result, before its implementation it is done the evaluation whether the land use consistent or not with the first regulation agreed in the beginning. In addition it should in line with Regional Spatial Planning.

On Article 44 of Agrarian Government Ministerial Regulation/ Head of National Land Agency No. 9 Regulation 1999 on the subject of the Rights of State Land and Rights of Management granting and obliteration procedure, states the Building Rights Title period extension application of which the land were used for residence will be granted by the officials if:

- a. The land still used for residence as the purpose of the rights provision or were used by the rights owner for necessity that consistent with the Regional Spatial Planning.
- b. The requirement of rights provisions were well fulfilled by the rights owner.
- c. The rights owner is still qualified as Building Rights Title owner.

On the other hand, the Building Rights Title period extension application of which the land was used for another necessity will be granted by the officials if:

- a. The land used is consistent with the purpose of the rights provisions or valid Regional Spatial planning when the period extension was applied. However, it can be granted before the extension applied, but the rights owner agree to adjust the land used with the Regional Spatial planning.
- b. The requirements of rights provision is still well fulfilled by the rights owner.
- c. The rights owner is still qualified as Building Rights Title owner.

Base on Government Ordinance No. 16 of 2004 on the subject of land stewardship, Article 10 Verse (1), as mean on Article 6 after the Regional Spatial planning determination, the land administration were done if the rights owner or his representative fulfills the requirement of land use which consistent with Regional Spatial planning.

Lately, it is issued a letter which dates on 09-04-2012 No.593.5/1.267 by the Mayor of Surakarta regarding the reaction for Building Rights Title extension. It states that to process the extension application in National Land Agency of Surakarta there are some points should be consider, as follow:

1. Act No. 11 of 2010 on the subject of Cultural Heritage.
2. Minister of Cultural and Tourism Regulation No. PM.57/PW.007/MKP/2010 establishes Vastenburg Fortress as cultural heritage area.
3. The Regional Regulation Program and Regional Spatial Planning of Surakarta in 2011-2031.

The Government Ordinance No. 40 1996 defines that those who have access to own Building Rights Title were Indonesian citizen and Legal entities which is appropriately established with Indonesian Law and located in Indonesia.

Based on the requirements above, the subject of Building Rights Title is Indonesian citizen and Indonesian legal entity which is located in Indonesia. If foreign legal entity wants to obtain these rights, it requires two aspects; it should appropriately establish with Indonesian Law and located in Indonesia. As a result, Indonesian citizen is the only one who has access to obtain Building Rights Title. On the other words, the requirements occupy Nationality principles, so that those who are not Indonesian citizen just only have rights as states on Letter (b) on the Article above. If someone or a legal entity were not qualified as the rights owner, then he or that legal entity during one year was authorized to hand over the Building Rights Title to other people or legal entity that qualified.

According to Article 32 of Government Ordinance No. 40 of 1996, the rights owner have rights to control and use the land for a certain period of time, to construct and own the building for personal necessity or his work, and to hand over the rights and put upon the Bail rights to another party (Urip Santoso, 2012, p.113-114). As Article 32 of Government Ordinance No. 40 of 1996 prevailed, the rights owner obtains his ownership rights entirely. However, because of the process of Building Rights Title extension were fulfilled the requirements, the owner of Building Rights title No. 380, Vastenburg fortress, do not achieve the rights as mentioned above.

The National Land Agency of Surakarta has received a copy of legal opinion from State Attorney of Surakarta, which is addressed to and requested by the Mayor of Surakarta, regarding some points as follows:

- In relation to Article 26 Government Ordinance 40/ 1996 Letter d, can be extended/ renewed if it still relevant with Regional Spatial and Area planning of Surakarta.
- In relation to Article 44 Letter a, PMNA/KBPN 9/1999, if the land is used as the current authorized Regional Spatial and Area planning of Surakarta or the applicant agree to adjust the current authorized spatial
- In relation to Article 38 Verse 1 Local Regulation 1/2012 on the subject of RTRW Surakarta area, the Vastenburg fortress is Cultural Heritage Area that belong to Building Rights Title No. 380.
- In relation to Minister of Cultural and Tourism Regulation No.PM.57/PW claimed Vastenburg fortress as Cultural Heritage, forbid the deviating use such as construct or add building around the area, and those who have rights to give rights extension/ renewal are Nusantara Cultural Heritage Guardian Community that can be delegated to Regional Office.

When the Building Rights Title owner applying for extension, National Land Agency should accept and grant it if the rights owner does not break the prohibition toward the Cultural Heritage. This requirement also legitimates for the next rights receiver if there is transition. If this action happens, it will break the Civil Rights of the owner and his Human Rights. In addition it will prohibit the rights extension/ renewal application through letter as stated on Article 48 of Head of National Land Agency Regulation 9/1999, which states about the land domination and things on top of it, the obligation to protect the land before it is handed over.

National Land Agency then, decides the qualified rights candidate. This action is more proper responding Building Rights Title No. 380 extension/ renewal application on Vastenburg fortress. Since Vastenburg fortress become Cultural Heritage, it have no

economical value anymore, the rights owner cannot employ his rights. The obligation to preserve cultural heritage things, sites and area cost a lot of money. It is a small possibility for private party, individual or legal entity to would like to receive small amount of compensation.

The only stakeholders that can manage this Building Rights title above is government either Central or Regional government of Surakarta. Because of the Government have higher bargaining positioned, refusing to compensate base on the agreement with ex-rights owner, refusing the price decided by Ministry of which the consideration of assessment done by assessor. The consideration were the absence of planning on State Budget or Regional Budget to give the compensation, so it will take a long time to be processed; expecting the land can be given voluntarily, or with the lowest price; paying attention to the condition and situation of Vasternburg fortress in the future-of course it will be an abandoned land for a long time. That matter cannot be happened. In fact, when the need of land is demanding, there are wide strategic lands left abandoned.

As Regional Regulation of Municipal Area II Surakarta No. 8 of 1993 on the subject of Municipal Spatial General Planning of Area II Surakarta in 1993-2013, that area was claimed for trading and service place. However, it changes because or Regional Regulation No. 1 of 2012 regarding the Regional Spatial General Planning of Surakarta in 2011- 2031. The Vasternburg fortress surroundings were claimed as protected and cultural heritage area.

Act No. 11 of 2010, Article 12 Verse 1, states that everyone can own and control cultural heritage things, building, structure of it and sites by preserving its social function as long it in line with this Act. Article 81, states that everyone is forbidden to change the function of cultural heritage site room or cultural heritage area whether it is national, province, district or city either the whole or part of it, except with permit of Ministry, Governor or Mayor.

Government Ordinance No. 40 of 1996, Article 2, which is claim about rights of constructing and owning a building for personal necessity or cannot be fulfilled because of the fact that Building Rights Title No. 380 Vasternburg fortress is not issued yet. Letter from Director of Archeological Heritage on 28th September, 2009 NO UM.001/1316/DIR, IV/ SP/28.IX/2009 have recommending the construction of shopping mall and hotel inside or around Vasternburg fortress.

CONCLUSION

Government Ordinance No. 40 of 1996, Article 32 Verse 1 about the domination and use of the land cannot be implemented. So it can be concluded that the protection and legal land status for Building Rights Title No. 380 owner, cannot obtain his full rights which is stated on Article 32 Government Ordinance No. 40 of 1996 because of some factors. The rights owner simply control over his land, extending Building Rights Title as Government Ordinance of Republic of Indonesia, No. 16 of 2004 about land stewardship, Government Ordinance No. 40 of 1996 about Cultivation Rights Title, Building Rights Title, and Rights to Use the Land and Agrarian Government Ministerial Regulation/ Head of National Land Agency No. 9 Regulation 1999 on the subject of the Rights of State Land and Rights of Management granting and obliteration procedure. However, regarding the changes or constructing a building cannot be implemented because it belongs to cultural heritages area. The Ministry of Cultural and Tourism Regulation No. PM.57/PW.007/ MKP/2010 talks about the buildings which is one of them is Vasternburg fortress as cultural heritages, sites and area of cultural heritage protected by the law.

The Article 18 of Agrarian Basic Law the Regulation of Ministry of Cultural and Tourism No. PM.57/PW.007/ MKP/2010 at 22nd June, 2010 and Regional Regulation of Surakarta No. 1 of Year 2012 on Chapter XIV the transitional provision point 2.3 affirm about the legal protection of ex-Building Right Title No. 380 owner who have right for the building on top of the land then the horizontal annulment of that building should be compensating eligibly as the Law above states.

The next Building Rights Title owner cannot apply permission to change the building because it belongs to cultural heritage area. So if he really needs the permission, he should apply it to Government of Surakarta City by attending social function aspects in order the cultural heritage area, Vasternburg fortress is keep preserved.

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Regional Regulation No. 1/ 2012 about Regional Spatial Planning of Surakarta in 2011-2031.

Eviani Hari Nurwati

Magister of Notary Students, Faculty of Law

Sebelas Maret University Surakarta

Email:evianihari@gmail.com