J. Andy Hartanto
Narotama University, Surabaya, Indonesia

LEGAL STATUS OF OLORAN LAND IN INDONESIAN LAND LAW SYSTEM

The land law had not regulated the ownership structure of muddy land (oloran land) clearly. It only stipulated that oloran land is the State Land as stipulated in the Circular Letter of Minister of Agrarian Affairs/ National Land Agency of No. 410-1293. Oloran land tenure in Indonesia required legal certainty, whereas, on the other hand, the existence of Indonesian land law was still pluralistic. The number of land in Indonesia with still unclear legal status of ownership could cause social vulnerability, if it was not handled wisely considering the principle of certainty and expediency.

Keywords: legal status, oloran land, Indonesian land law system, National Land Agency.

INTRODUCTION

Land is one of the most important natural resources for human life. Human and land relationships are more than just a place to live, but also providing a useful natural wealth for human life. The management of land must be regulated in the legislation in order not to cause harm in the future.

Land in Indonesia has been regulated in Law No. 5 of 1960 on the Basic Regulation of Agrarian Principles (hereinafter referred as UUPA). According to Article 2 Paragraph (2) of UUPA, the State as the power organization of Indonesia has a right to control earth, water, space and natural resources contained on it.

Generally, land can be divided into two, namely land rights and state land. Land of rights is a land owned by a right of land in accordance with applicable laws and regulations, while state land is land that is not owned by an individual or a legal entity with a right of land in accordance with applicable provisions.

The unclear amount of land in Indonesia is the cause of conflict in the community, as the conflict raises, it causes a dispute. The land dispute involves various parties either between a particular government agency with the community, and community with the community itself. A land that triggers conflicts in Indonesian society is the emergence of muddy land or *oloran* land. People want to make *oloran* land as their property, build a building on it and certified it, while *oloran* land is state land.

Oloran land is a new land formed naturally by sediment of river or coast around the estuary. The *oloran* ground is formed through a fairly long process. The formation of *oloran* land begins along with the abrasion of sea water. Due to abrasion, the mud and sand that are exposed to the abrasion drifted into the river mouth and settled there. As time goes by, the mud and sand deposits grow larger and wider, then create a new land. The new landmass causes the coastal boundaries to increase the conversion of the marine dimra into the land dimension. The new land is then grown by mangrove forests but some are not grown by any vegetation depending on the level of salinity and physical conditions in the area.

The *oloran* land is a new potential of natural resource for farming in Indonesia, however, the emergence of oloran land could cause a community ownership of the land*(aanslibbing)*. The process of *aanslibbing* through the evolutionary process occurs at the beginning of the existence of no man's land (*res nullius*). The government is aware that the land issues need to be addressed immediately. Without handling the problem comprehensively and as soon as possible, it is difficult for Indonesian to rebuild a healthy social, economic and political life.

Initially, *oloran* land is used individually, for example, used as ponds, houses, and others. However, over time, the use of such individuals evolves into the use of groups or communities for example as a village area, aquaculture area, and others. As narrowing land in urban areas, many developers begin to change over this *oloran* land area for housing, services, or recreation areas. People around *oloran* land begin to take the initiative to certificate the land to the government and then sell it to the developer because the selling price is considered high enough. Nowadays, it is found many housings and other built areas in *oloran* land.

The problem of the unclear status of *oloran* land is a basic problem in *oloran* land management. According to the Circular of the Minister of Agrarian Affairs / KaBPN Number 410-1293 Year 1996 about

Control of Land Status Arise and Land Reclamation, *oloran* is a state land. However, the legal basis is less powerful because it is only a circular letter. Therefore, today many communities and developers have land certificates in the area and built the area.

This research aims to theoretically discuss legal certainty over the existing *oloran* land in Indonesia, specifically to know, analyze, and describe the legal status of *oloran* land and the ownership of *oloran* land.

Based on the above explanation, the writer was interested to analyze the legal status of *oloran* land in Indonesia. The object of this study is focused on regulating ownership of *oloran* land.

RESEARCH METHOD

Research is basically a planned activity carried out with scientific methods aimed at obtaining new data to prove the truth or untruth of a symptom or hypothesis.

This legal research was normative research, namely legal research conducted by examining library materials or secondary legal materials as material support of primary legal materials in the form of legislation.

The approach used in this study was the approach of the Act (statute approach). It is an approach taken by reviewing all laws and regulations related to the issue of law being addressed. Conceptual approach is an approach that moved from the perspective – views and doctrines that are developed in the science of law. Case approach is an approach done by examining cases related to the issues and has become a decision that has permanent legal force.

The source of the law used in this study was primary law, namely the authoritative source of law, meaning that the legal material has authority, consisting of legislation, official records or treatises.

This study used legislation as primary legal material and secondary law sources. Primary law sources namely the 1945 Constitution of the State of the Republic of Indonesia, Law No. 5 of 1960 on the Basic Agrarian Regulations, and Local Regulation of Surabaya No. 3 of 2007 on Surabaya Spatial Plan. Secondary sources of law included all publications about law that were not official documents. Publications on this law included textbooks, theses, legal dissertations, legal dictionaries, comments on court decisions as well as legal opinions from experts published through journals, magazines or the internet.

DISCUSSION

1. 1. Legal Certainty or Legal Validity of *Oloran* Land

The term *oloran* land in English is called deltaber or channelbar, while in the Dutch language is called *aanslibbing*, and while in the Indonesian language itself is called the growing land or arising land. The term arising land in various regions has different titles for example in Ujung Pangkah, Gresik, it is called as *oloran* land, in Yogyakarta, it is called as*wedikengser* (Mudjiono, 1997: 82), while in Surakarta, it is called as *bokongan* or *asean* land, in Banyumas, it is called as *semen* land, while outside Java as stated by Boedi Harsono (1971: 80) called it as *lidah* land while Roestandi (1962: 71) called it as *tanah pembawa lumpur* (mud carrier land).

Many experts provide the definition of arising land, according to Suhanan Yosuan, arising land is a clump of soil arising in the sea or on the edge of the sea, such as the emergence of Mount Krakatau, the islands in the middle of the sea, such as *Pulau Seribu* or edge of beaches. The emergence of the land is caused by the influence of earth's shift in the natural sciences, or sediment of mud on the edge of beach that gradually became embossed land.

Arising land or *Aanslibbing* occurs due to several factors that affect each other. According to Widiyanto (in the Journal of Laws of UNDIP Vol.XIV) the formation of arising land occurs due to natural processes and human assistance. Nature has a big role in supporting the occurrence of arising land. Natural factors have a very large role in the long period enough because in this process, it occurs erosion of land in the upstream area that will carry water flow into the downstream region. Then the weakened water flow will occur in the downstream deposition. Human action factor is a supportive factor for natural processes in the formation of arising land, because human actions can accelerate the occurrence of arising land by making real good efforts for example planting plants or trees in the lowlands that arising due to the sediment function to hold river flow surrounding area thus the sediment becomes strong and the river flow will slowly move and erode the land on the other side. Person who wants to own it only tries to do an action that can arise the land such as hoarding some plant species that can accelerate the arising land.

Arising land tenure by society today is based on customary law that has been done for generations. According to (Effendi Warin, 1991: 242) "On the basis of customary law, property rights can occur due to

the growth of land by the river and on the seafront. The growth of this land creates a new soil called "Tongue land". The tongue of this land usually belongs to the owner of the bordde land. Thus there is property rights through that raising land.

The Supreme Court of Decision Number: 3948 K / Pdt / 1999 argues that arising land or adhesive / delta land in customary law becomes the property of the landowner of the border land, if it occurs by nature.

In this case, customary law considers the existence of automatic mastery of the arising land adjacent to his land. The occurrence of land rights according to the customary law is also accommodated in Article 22 paragraph (1) of UUPA: "Occurrence of property rights according to customary law is regulated by Government Regulation". The article clearly states the occurrence of property rights under customary law. At the end of the aforementioned Article stipulates that the arrangement should be with Government Arrangement. However, the Government Regulation on customary property rights until now has not been issued, therefore in this case we again refer to Article 5 UUPA which states that our national land law is customary law. A proprietary right in the customary legal order that property rights cannot accidentally happen, property rights arise if there is tenure in the form of the right to use continuously and then the owner use it for business and maintenance it.

In this case, the person who owns adjacent land to the arising land directly has the priority right to work on it, if he wants to work on and manage the new land, he simply informs the residents who own the land adjacent to it. The purpose of this notice is to ensure that they (both parties) know clearly the boundaries of the land that is part of the land. Therefore, there would not be disputes between two sides of the border. The ordinance that is usually done by the citizens (the parties concerned) before utilizing the land is to provide border signs, such as bamboo or wooden placing on the four corners of arising land, that is by pulling straight from the plot of his own land, either from the right or left side of the boundary of the plot.

As the perception of peoples in general, according to the local community, the opening of new land is one way of land tenure, that is, if a vacant land that does not have its owner, such as village forest, is cultivated by a man and then the land will be his own.

It is known that Book II (two) Civil Code known as *Burgerlijk Wetboek* concerning on material such as earth, water and natural resources contained therein, had been abolished after the enactment of UUPA. Arrangements on arising land nowadays are based on the right to control the State. Generally, according to legislation, arising land is a free State land which has no right through the land. Therefore the State has direct control over arising land. However, there is currently no detailed regulation on arising land as outlined in the form of legislation that: The State's control over arising land has clearly been regulated in the 1945 Constitution Article 33 paragraph (3), since arising land is the State land, but arising land has not been granted its right by the State, it means that every citizen of the country / people of Indonesia may be granted rights to arising land by the state, if the intended community has been working on or not yet working on arising land. The granting rights by the State over the control of arising land is the right to use, the right to build, and the right to claim.

Tenure of arising land has not been explicitly regulated in UUPA "If there is a conflict between customary law and legislation that legislation contains provisions that are coercive and contrary to customary law, then legislation will defeat customary law. But generally, customary law can override the complementary provisions of legislation. Arising land ownership according to customary law may occur as long as it meets the criteria in customary law itself. This will be able to provide legal certainty for the community holder of property rights acquired under the provisions of customary law. According to Sudikno Mertokusumo (2010: 141) that to rule out the provisions of the law that is complimentary.

In accordance, on May 6, 1999 the Minister of Agrarian Affairs/ Head of the National Land Agency affirmed that the status of land emerged by issuing a circular letter no. 410-1293 on Control of Land Status and Reclamation Land. Point 3 states that: "The soils arise naturally such as delta, coastal land, lake / lake, river bank deposits, arising islands and other naturally occurring soils declared as lands directly controlled by the State. Then on the status of arising land or reclamation results in coastal areas, tidal, swamp, dau and former river directly controlled by the State. "So that it can be seen that in the Law of the National Land, arising land is directly controlled by the State. Therefore any person who will control the arising land must obtain prior permission from the authorized government that is National Land Agency.

2. *Is Oloran* Land able to be Owned as Land Rights or Not.

Regarding the occurrence of Property Rights stipulated in Article 22 of the Law, it provides that: "The occurrence of ownership according to customary law is regulated by Government Regulation Article 3

of UUPAS which states that referring to the provisions of Articles 1 and 2 of the implementation of customary rights and similar rights of indigenous and tribal peoples, as they still exist, shall be in accordance with the interests of the National and State, based on the unity of the nation and shall not be contrary to the law and other higher regulations".

The occurrence of property rights according to customary law can be done by opening new land, for example, the clearing of *ulayat* land. The provisions will be further regulated by Government Regulation. Definition of Property is the hereditary, strongest and most fulfilling right which people can have on the land referring to the provisions of Article 6". The hereditary words mean that the property rights can be continuously passed down or inherited to their heredity, whereas the strongest and most complete words do not mean that the property rights are an absolute right. To obtain property there are 2 ways:

1. With the switch (switch or divert)

2. By means of the provisions of the law, among others: according to customary law, determination of local government and the Act.

The Great Indonesian Dictionary mentions the meaning of the land is the surface of the book or the top layer of the earth, the state of the earth where the surface of the earth given the boundaries of materials from the earth, the earth as something material.

Land reform is an attempt to deliberately overhaul and change the existing agrarian system with a view to improve the distribution of agricultural income, thus it could encourage rural development.

Based on the results, it could be seen that according to culture or custom law / customs that live in society, arising lands naturally are categorized as village land by the community, where the right to work on it and use it is prioritized to citizens who own border land of it. In this case, land tenure will only be recognized as legal ownership after the special action done by the party/ citizen concerned in opening and working on the arising land, that is by giving clear boundary mark without any questioning by any party. Further action that needs to be done by the concerned citizen is to pay compensation of income into the village treasury for the issuance of written evidence by local village officials related to the control of the land.

In the case of land tenure and land ownership, researchers have witnessed the role of various social groups or individuals in determining the direction of law development within the community. The role of customary law is not only limited to take initiative in law when other sources of law do not provide answers, in fact, customary law also has an important role in the issue of emerging legal applications.

In the case of property formation, John Locke argued that indeed God has created this earth to give to fellow human beings, so that the earth is done and welfare for everyone, no one has the privilege of both natural and animal products created on this earth everything is our common heritage, where to achieve prosperity there must be a way for these objects can be owned. In other words, the individual can reap the benefits concretely if he has the right to own it and his own work (Locke 1988: 290).

The concept of John Locke is famous for his theory of "individual labor" or "working theory". The same thing was also put forward by Van Setten Van der Meer (1979: 66) who said that the ownership of individual land was obtained by opening the ground. Thus it can be said that the right to rule the land begins and comes from one's work in opening up previously untapped land.

According to the author's opinion, by looking at the legal reality in Java, every person who opens an empty land or clear the forest is allowed to own the land ownership (*erfelijk indiviueel bezits recht*). This is in line with the concept of customary law in the acquisition of property rights to land, in line with the old theories, such as *occuptio*, nature, *invidual labro* theory of acquisition of property rights to land, from some theories above, from the present condition in acquiring property rights for local villagers (Ujung Pangkah), it is still possible as long as UUPA recognizes the existence of customary law. As explained in Article 5 of the UUPA that states "Agrarian law that applies to the earth, water and space in customary law as long as it is not contrary to the national interest and the state based on the unity of the nation, with Indonesian socialism as well as with the regulations contained in the Act....". From this article, it can be seen that the historical background and the preparation and basis of the drafting thinking of the UUPA indicates that this law is a law that is formed based on legal awareness of customary law community. This is emphasized in the general explanation of UUPA no. 1 that: "... As the people of Indonesia are most subject to custom, the new agrarian law shall be based also on the provisions of customary law, as the original law is perfected and adjust to the interests of the community.

The existence of customary law owned by the Javanese community in the acquisition of arising land or *oloran* land still has a place when we encounter in article 56 UUPA stating that: As long as the Law on

property rights as mentioned in article 51 paragraph 1 has not been formed, then the applicable law is provisions of local customary law. Article 5 of the LoGA implicitly does not affirm the legal doctrine which will be applied to the whole region. The indifference of Article 5 of the UUPA implicitly acknowledges the existence of legal pluralism, the customary law adopted by various indigenous and tribal peoples in Indonesia. The unresolvedness resulted in the written law (UUPA) faced with two circumstances, namely certainty and uncertainty, will further be confronted with questions and demands on the comparability of problems and this question will arise when faced with three interests, namely individual interests, customary law community and the state in performing its duties.

Regarding the implementation of land tenure and ownership rights of arising or *oloran* land by the Government and the people of Indonesia, including the island of Java, there are two legal systems applied, namely state law (written law) and local community law (unwritten). Indonesian, including villagers, have used local law long before the establishment of UUPA (written law) as the basis for control and possession of arising land or *oloran* lands. However, in practice, the community (villagers) began in the 1980s, in addition, to use local law (unwritten) also using written law namely PP No. 224 / year 1961 and PP number 24 / year 1997 on land registration.

To balance or accommodate the interests of an individual, the society and the state in order to avoid a conflict of interest, it is necessary to review the background of the emergence of *oloran* land thus there is a balance among the three interests (individual, community and state). In fact, there is still legal pluralism in Indonesia in the field of land, especially related to arising land or *oloran* land. The form of legal pluralism is apparent in the field, there are two prevailing systems and the legal basis for the parties. The two legal systems are customary/ local (unwritten) and state (written) laws applied jointly and are used as a legal basis by interested parties in exercising control and ownership of arising land or *oloran* lands.

In this regard, A. Sodiki (1998: 6-7) stated that in the application of national law in dealing with customary law, it should still be ensured the source of life, belief, dignity and dignity of indigenous peoples in accordance with the right to Self Determination. The problem of unclear status of *oloran* land is a basic problem in *oloran* land management. So far, according to the Circular of the Minister of Agrarian Affairs / KaBPN Number 410-1293 Year1996 on Control of Land Status Arise and Land Reclamation. *Oloran* land is a state land. However, the legal basis is less powerful because it is only a circular letter. Therefore, today many communities and developers who have land ownership in the area.

Thus the recognition of customary rights (local communities) on land including property rights, bringing the consequences of person/ group rights is not taken in an arbitrary manner. In fact, according to the National Agrarian Law, oloran land is a state land and its usage is controlled and regulated by the state.

The way that can be taken to overcome the problem of unclear status is; 1). Strengthening the Circular of the Minister of Agrarian Affairs / KaBPN Number 410-1293 Year1996 on Controlling the Status of Arising Land and Reclamation Land on the status of *oloran* land as state land. Strengthening can be in a form of law strengthtening whose power is equivalent to UUPA 1960. A land that already has a certificate of property rights from the community should clear its status. The management device can be done by applying progressive tax or incentives if the concerned will return the status of the land into state land. 2). Strengthen the direction of utilization of *oloran* lands as costal conservation areas and deviant uses. Control can be done through regional regulations or zoning regulations..

CONCLUSION

It could be concluded that:

Oloran land known as deltaber or channelbar, while in Dutch called as *aanslibbing*, and in the Indonesian called as growing or arising land. The term arising land has different term among regions in Indonesia. *Oloran* lands are arising due to sedimentation, excluding land rights under UUPA Article 16 and Article 53. *Oloran* land is the land of the State which is owned by Local Government, in this case the Government of Surabaya. By Local Regulation no. 3/2007 amended by local government regulation 12/2014 designated as a conservation area. The right to work on *oloran* land could be given to local villagers based on Certificate of Recognition of rights issued by the local village head and known by the sub-district head. The right to work in the form of physical mastery with the authority to collect the results.

Oloran land could not be used as ownership because it is the State land whose designation for conservation but the right to work on can be owned by land reform program based on Law no. 56 / Prp / 1960 in the soil redistribution program. Subsequently, the systematic registration of land through the Prona, Pronada, Pronaswa, and then issued Certificate of Property to the former land of rights to work. Property

rights arise at the time of the Letter of Entitlement is registered. In principle, the step that must be taken to obtain land rights is applying for a right to the Head of the local Land Office. However, for the newly arising land, people had to obtain permission and approval from the Regional Head after a review of the boundary of the new river by a team or technical agency established by the local head.

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