



## **Legal certainty on the claimed land as a forest area in the neighborhood of the Batulapisi district of Gowa**

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### **Abstract**

This study examines the implications of land registration after the release of forest areas in the Batu Lapisi neighborhood in Malino Village, Tinggi Moncong District, Gowa Regency. The research conducted is empirical research. Empirical research examines law in action. Thus, the empirical world is *das sein* (what is the reality. Data analysis is descriptive by providing an overview of what should be done about these legal problems. The results show that the implementation of land registration which is claimed as a forest area in the Batu lapisi Dalam environment) Kelurahan Malino was implemented based on the recognition of old rights in the form of Ipeda evidence in 1976, then the National Agrarian Operations Project program in 1991 and finally the release of forest areas based on the Decree of the Minister of Environment and Forestry No. 362 / MENLHK / SETJEN / PLA.0/ 5 / 2019 with the method of land registration for the first time sporadically. Implications of land registration after area release is carried out under the authority of the Ministry of Environment and Forestry of the Republic of Indonesia which issues land parcels based on the Spatial Review scheme of conservation forest areas by issuing them a Decree of the Minister of Environment and Forestry No.362/MENLHK/SETJEN/PLA.0/5/2019, then the minister determines the people who receive the Blue SK as the basis for registering land rights. After that, the Gowa Regency BPN carried out the administrative process of sporadic land registration based on the Blue Decree from the Minister of Environment and Forestry as well as evidence of physical control from the lurah or village head. If the land to be registered borders a forest area, a clarification or recommendation must be requested from the Regional 7 Makassar Forest Area Consolidation Center (BPKH).

**Keywords:** Legal Certainty, Rights, Land, Forests, Environment

### **A. Introduction**

The fortification of the forest is regulated in Articles 14 to 16 of the Act No. 41 of 1999 and Article 7 of the Law No. 5 of 1967 on the Provisions of Forest Trees, which reads: The establishment of forest areas is based on a general plan of fortifications of the forests, for further use as a basis of arbitration in establishing protected forest, productive forest, natural shelter forest, and tourist forest.

The change and development of a country's agricultural and agraric law, including the establishment of its administration into an integrated national system, is determined by its basic legal philosophy, foundations, doctrines and ownership of its land. An understanding of the philosophy, foundations and doctrines of Roman law is very helpful in understanding the nature and teachings of agricultural law in modern States including Indonesia.<sup>1</sup> The State has absolute authority and authority to act as the absolute owner of the land. However, the State's ownership is not regulated by the property law (Jus

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<sup>1</sup> Endriatmo Soetarto, *Filosofi, Asas, Ajaran, Teori Hukum Pertanahan, dan Agraria*, STPN Press, Yogyakarta, 2019. Hal. 11



Proprietatis) because the property laws only regulate the ownership of land owned by people as the personal property of the law, that is, citizens.<sup>2</sup>

The authority and authority of the State as the supreme landowner, due to its legal status, leads to the State having the right to regulate and restrict the absolute right of use of property by legal persons or citizens. In article 4 of the Act No. 5 of 1960 on Agrarian Trees, it is stipulated that on the basis of the right of sovereignty of the State is determined by the existence of various rights on the surface of the earth, the so-called land, which can be given to and possessed by people, either alone or in conjunction with others and the legal bodies. The state's ownership of the land in the entire territory of the Republic of Indonesia is the source of the rights of the Indonesian people as listed in article 2 paragraph (2) of the UUPA. From the provisions in the UPA, it can be seen that the State grants the rights to the land to individuals or legal entities (subjects of rights) even guarantees, recognizes the protection of these rights for the purposes of exploitation by the people of their lives and cannot be taken arbitrarily by anyone.<sup>3</sup>

In granting land rights under Act No. 5 of 1960 on Agrarian Trees, Articles 19, 23, 32 and 38 require legal and personal legal bodies or citizens of the state to register their land. So that ownership of land can be registered as property rights, building rights, business rights, use rights.

The issuance of certificates of land rights is the fulfilment of one of the main purposes of the UUPA, namely to provide legal certainty regarding the rights to land for all Indonesian citizens. This is as set out in the provisions of Article 19, paragraph (1) of UUPAs No. 5 of 1960. In order to guarantee the security of law by the government, land registration is conducted throughout the territory of the Republic of Indonesia according to provisions - provisions regulated by government regulations.

The acquisition of the right to land in practice suffered many obstacles, both in terms of the registration of rights and the status of the land acquired by the community in particular the people who inhabit the land claimed as a forest area that suffer a considerable obstacle in the terms of registration rights. Land for society has a central

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<sup>2</sup> *Ibid.* hal 19

<sup>3</sup> Sri Susyanti Nur, *Aspek Hukum Pendaftaran Tanah Bekas Milik Asing Sebagai Aset Pemerintah daerah Jurnal Hasanuddin Law Review, Vol.1 No.1, April 2015, Hal.91*



position, both as a productive resource and as a place of settlement. Therefore, the issue of land registration is still frequent. One of them is land registration in the forest.<sup>4</sup>

Particularly in the land registration in forest areas, in Article 2 of Presidential Decree No. 88 of 2017 on the completion of land ownership in forest area states: the government carries out the termination of the ownership of land that is controlled and used by the parties. The same is explained in Article 4, paragraph 1, of Presidential Decree No. 88 of 2017 concerning the completion of land possession in forest areas, namely: Land possession as referred to in Article 2 must meet the criteria: The land has been physically possessed by the party in good faith and openly, the land is not interfered with the claim; and the land area is recognized and justified by the customary law community or the head of the village/family concerned and confirmed by a testimony of a reliable person.

The provisions concerning the rights of indigenous peoples to the right to the land they own have been very clearly listed in the Act No. 5 of 1960 on Agrarian Trees, later referred to as the UUPA and Government Decree No. 88 of 2017. Therefore, the establishment of land rights to the people who inhabit forests is a rather complicated controversy. As experienced by a farmer named Rasyid who lives and gardens in the forest area in the Batulapisi Environment in the Malino Kelurahan District of Tinggimoncong District of Gowa, who since birth has lived in Batulopisi deep to this day has not yet owned the right to the land in which it is located. In addition to Rasyid there are still many communities that live in Batulapisi Environment in Kelurahan Malino Prefecture High Moncong district of Gowa who are also lucky with Rasyids.<sup>5</sup>

The land use of the people in the Stone Lapisi neighborhood in the Malino district of Gowa, which has been down the road for more than 70 years to settle and use the land for agriculture and planting, is confused by the difficulty of obtaining legal certainty over the land they administer. The people of Batulapisi deep down to this day still expect clarity and the granting of rights to the land that they live on and that they use. According to the provisions of Article 5 (1) of Presidential Regulation No. 88 of 2017 on the completion of land management in forest areas.

Rasyid and the community inhabiting the area have been working to issue the certificate of rights to the land. But so far, it has not been granted the right to the land

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<sup>4</sup> Ni Luh Ariningsih Sari, 2020, *Pengakuan Dan Perlindungan Hukum Terhadap Masyarakat Hukum Adat (Dalam Perspektif Negara Hukum) Jurnal Ganec Suara Vol. 14 No.1. hlm.64.*

<sup>5</sup> Keterangan masyarakat di lingkungan batulapisi dalam kelurahan malino kecamatan tinggimoncong kabupaten gowa bernama Rasyid.



inhabited and used by the community. Of course this is also a controversy about the status of the people's land. Therefore, the government through the National Farming Agency can carry out land control by providing protection of citizens' rights on land. It therefore refers to UUPA No. 5 of 1960 and Presidential Decree No. 88 of 2017 on the completion of land management in forest areas enabling communities in the area of Stone Lapsi in the Malino district of Tinggimoncong District of Gowa to obtain the right to land.

Article 6 of the Agrarian Tree Act states that all rights to the land have a social function, so that in its entirety it means a recognition of the individual interest, social interest and the general interest of the land. The social function on the land gives the authority to the owner of the right to use the ownership of land within the limits prescribed by law, taking into account the interests of the people and the state.<sup>6</sup>

## **B. Research Method**

The method of research in the law itself is useful to acquire true knowledge of the objects under consideration by passing through a series of true stages according to their respective fields of expertise (intersubjective), so that the findings of the results of the researchers can be recognized by their science (wetenschappelijkheid), can be traced by others who have an interest in new things (nieuwmoet zijn).<sup>7</sup> Empirical research studies law in action so empirical the world is *das sein*.<sup>8</sup> It consists of primary data and secondary data.<sup>9</sup> The data obtained as the basis for this research is then analyzed using the method of qualitative analysis, which is a method of analysis that is performed by describing phenomena or facts derived from the results of the research, based on the data received, both primary and secondary data. Analysis of the final data by giving conclusions and suggestions about what should be done on the legal issue.

## **C. Results and Discussion**

### **1. Implementation of Land Registration claimed as a Forest Area in the Stone Lapsi Environment in the Malino District of Moncong District of Gowa.**

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<sup>6</sup> Trina Rejekiningsih. Asas Fungsi Sosial Hak Atas Tanah Pada Negara Hukum (Suatu Tinjauan Dari Teori, Yuridis Dan Penerapannya Di Indonesia), *Yustisia Jurnal Hukum*, Vol.5 No.2. Agustus 2016. Hal. 322

<sup>7</sup> Elza Qorina Pangestika, Implikasi Keputusan Presiden Nomor 12 Tahun 2020 terhadap Perjanjian Kerja dan Kontrak Bisnis di PT Bahana Mitra Pratama, *Journal on Education*, Vol. 3 No. 4 Agustus 2021. Hal. 702 diakses dari <https://jonedu.org/index.php/joe/article/view/6086>

<sup>8</sup> Ali, Achmad, Wiwie Heryan, 2015, *Menjelajahi Kajian Empiris Terhadap Hukum Cet ke-3*, Kencana: Jakarta. Hal.2

<sup>9</sup> Irwansyah, 2020, *Penelitian Hukum: Pilihan Metode dan Praktik Penulisan Artikel Cet Ke-1*, Mirra Buana Media: Yogyakarta. Hlm.84.



## Registration of land for the first time in the neighborhood Batulapisi Dalam

Tinggimoncong district is a high land area in Gowa district that has an area of 142.87 hectares with a forest area of 29.583 hectares while Batulapisi Inner Environment that is located in the Malino Exit has a total area of  $\pm 665$  hectares. The land area of Batulopisi Inne Environment includes community settlements, agricultural land, protected forest area and forest area Conservation. As the population of the Batulapisi neighborhood increases, according to the Malino census data for 2019, there are 395 heads of family residing in Batulopisi neighbourhood, consisting of 245 heads in RW 01 and 150 heads at RW 02. Initially, the settled community had occupied the land claimed as a forest area in the downward range of only RW 01. The former parents who lived in the batulapisi neighborhood inside this had existed before 1945.<sup>10</sup> Although the number of communities that have settled in the batulapisi neighborhood is not as large as it is now, but the machinery has been engaged in agricultural activities. In particular, in RW 01, almost all communities have the right to a certificate of ownership issued by the National Farming Agency of Gowa District.<sup>11</sup> However, the ownership of the land in RW 01 is not fully equal, some of the people of RW 01, who have not yet had the right to the difficulties to make the land registration because the land they possess is claimed into the forest area. The people are authorized with difficulty to do the registration of the rights to the land due to the unclear boundaries of the forest..<sup>12</sup>

In effect SK.434/Menhut-II/2009 on 23 July 2009 designated part of Batulapisi Environment in entry as a nature conservation and conservation area so that a community that has possessed and used land can not make registration of land rights. 30 respondents in the Batulapisi In neighborhood were interviewed, 24 respondents of whom have not yet been registered on the land because they are declared to be land conservation areas. Where 24 of the respondents who do not have the land rights that they possess, 8 respondents have tried to apply for registration but can not be served by the BPN of Gowa district on the grounds that the land that will be registered for the right to land is in the forest conservation area. And the other 16 respondents have never applied for land registration for the land they own. It's because of the cost limitations and the lack of knowledge of the system of land registration applications.

The provisions of guarantees of legal certainty have been listed in the general explanation of the Law of the Republic of Indonesia No. 5 of 1960 on the Basic Regulations of Agrarian Trees (hereinafter referred to as UUPA).<sup>13</sup>

"Because for the indigenous peoples the agricultural laws of the colonization do not guarantee legal certainty, then there is a need for a new agricultural law that is national, which will replace the law in force today that no longer applies dualism, which is simple and which guarantees the security of law for the entire Indonesian people." The confidence that exists between the people and the government and between the peoples. It has been demonstrated

<sup>10</sup> Wawancara dengan Kepala Lingkungan Batulapisi Dalam Kelurahan Malino (Bundu Daeng Beta) 6 september 2021

<sup>11</sup> *Ibid.*

<sup>12</sup> Pide, A.Suriyaman Mustari, 2017, *Hukum Adat Dabulu, Kini, dan Akan Datang Cet.3*, Kencana: Jakarta. Hlm.32.

<sup>13</sup> Irwansyah, 2017, *Teori Hukum Kumpulan Bahan Bacaan, Fakultas Hukum Unbas*, Makassar. Hlm.65.



that at present in RW 01 Batulapisi Environment there is a conflict of land ownership between the local community and government agencies, as well as between investors and investors.

Implementation in the implementation of the current land registration can be done after the removal of part of the Batulapisi Inner area from the forest area of conservation under SK.362 / MENLHK /SETJEN /PLA.0/5/2019 about the change of the allocation of forest area to non-forest area of  $\pm 91.337$  Ha (nine thousand three hundred thirty seven hectares) and the change in the function of the area of forest covering  $\pm 84.032$  Ha (eighty-four thousand thirty-two hectares), and the designation of non-Forest area to forest area  $\pm 1.838$ .Ha (one thousand eight hundred and thirty and eight hectars) in the province of South Sulawesi. After the area is removed from the forest area (enclave) will be implemented by the method of land registration sporadically. BPN district of Gowa will carry out measurement of land fields sporadically. Measurement of the land field is the process of determination of the boundary of one or more fields of land based on the application of the right holder or the potential new right holder which is located bordered or scattered in a village or village in order to register the land sporadic.<sup>14</sup>

In the land registration sporadically consists of two activities: <sup>15</sup>

1) Fornt Office Activities

Fornt Office activities include information services, administrative activities, fornt office activities such as checking documents or files, making receipts of files or application documents and loading details of costs. Back Office Activities

Back office activities are divided into several sections namely administrative activities, field activities and processing of physical and jurisdictional data.

- a) Administrative Activities
- b) Field Activities
- c) Processing of physical and jurisdictional data

Land registration sporadically is not independent of the active role performed by the claimant on the right to land. Often times in land registration Sporadically found various obstacles especially experienced by the community in the Batulapisi Environment in Kelurahan Malino. As for the obstacles faced by society among others :

- a. Lack of public knowledge about land certification.
- b. The cost of carrying out expensive land registration.
- c. It's not clear whether the land status is in the forest area or not..

## **Alas Land Registration Rights in the Neighborhood Batulapisi Dalam**

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<sup>14</sup> Peraturan Menteri Negara Agraria / Kepala Badan Pertanahan Nasional Republik Indonesia Nomor 7 Tahun 2019 tentang perubahan kedua atas Peraturan Menteri Negara Agraria/Kepala Badan Pertanahan Nasional Republik Indonesia Nomor 3 tahun 1997 tentang ketentuan pelaskana peraturan pemerintah nomor 24 tahun 1997 tentang pendaftaran tanah.

<sup>15</sup> Wawancara dengan pejabat fungsional penata kadastral kasubsi pengukuran dan pemetaan kadastral Badan Pertanahan Kabupaten Gowa, (Priyo Sudarso) 15 September 2021



The registration in the Batulapisi Environment in Kelurahan Malino district of Tinggimoncong must be based on proof of ownership of the old rights, the declaration of the ownership for the land to be registered for the first time as well as the proceeds of the sale. As is known before the entry into force of the UUPA, two devices of the law of the indigenous land and the other are the sources of the western law or the so-called western land law. Because of the application of the agricultural law of a national nature (UUPA) then against the lands with western right as well as the land with the right of inheritance to be able to enter into the system of UUPA by the method of settlement of the conversion institution. In the implementation of the conversion there are three (3) ways in the land registration, i.e.:<sup>16</sup>

- a) Converted to property when the property has existed since the entry into force of the UUPA.
- b) Assertion for land subject to adar law but not listed in the conversion provisions as land that can be converted to a land right under the provisions of the UUPA, but such land must be recognised as land of inheritance.
- c) who has the right to the land which is no longer in possession, or where there is no sign of possession..

In the way Malino did with some basic transitions among others :

- 1) Recognition of the possession of old rights
- 2) Heirs
- 3) Buy and sell.
- 4) SK Minister of the Environment and Forestry.

Land registration in the Batulapisi Environment in the Malino Farmhouse in the field is based on four types of legal basis ranging from the recognition of old rights, inheritance, sale and sale and based on the SK of the Minister of Environment and Forestry of RI which issued and named the recipient of the Blue SK for land registration. The author sees the problem that has arisen in society to this day is the greatest difficulty of entrepreneurs in carrying out land registration and transfer for land – land that has no basis of right and either of inheritance, sale and registration of land for the first time or recognition of rights. A means of proof in making land registration one of them is the Village Register (Letter C) it is marked with proof of payment of Land Tax and Buildings that have been owned by the community Batulapisi Inner Environment even for land claimed as a forest area.

### **The process of land registration sporadically in the BPN district of Gowa.**

The National Agriculture Agency of the Gowa District in carrying out its duties and authority in registering land is not apart from the provisions that have been regulated in the

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<sup>16</sup> Wawancara dengan pejabat fungsional penata kadastral kasubsi pengukuran dan pemetaan kadastral Badan Pertanahan Kabupaten Gowa, (Priyo Sudarso) 15 September 2021



Presidential Regulation No. 24 of 1997 concerning land registration. Land registration must be based on a simple, safe, affordable, proprietary and open basis.<sup>17</sup>

Land fields of the community in the Batulapisi Environment in Kelurahan Malino district of Tinggimoncong until now have not been registered in the land registration book.<sup>18</sup> Therefore, in the Batulapisi Environment in the Malino Malurahan land registration fields are carried out for the first time. This means that the land and the right holders are first recorded in the register of registration, either as first owners (from the beginning of ownership, for example, from the opening of the forest) or as last owners. (misalnya tanah diperoleh karena pembelian, hibah dan sebagainya).<sup>19</sup>

Registration of the right to land in the Batulapisi neighborhood in the malino complexion of the current high-rise can be done. Government through the Ministry of the Environment and Forests of the Republic of Indonesia in Decision of the Minister of Environment, Forests and Life of the Republik of Indonesia No. SK.362/MENLHK/SETJEN/ PLA.0/5/2019 concerning the change in the allocation of forest area to non-forest area of  $\pm 91,337$  Ha (nine hundred one thousand three hundred thirty seven hectares) and the change of the functioning area of forest of  $\leq 84.032$  Ha (eighty-four thousand thirty two hectares), and the designation of non-Forest area to forest area  $\pm 1,838$  Ha (one thousand eight hundred and thirty-eight hectars) in the province of South Sulawesi. has released the inner battalion environment from the conservation forest area.<sup>20</sup>

In case a village/family has not been established as a land registration territory systematically as referred to in paragraph (2), its registration is carried out through the registration of land sporadically.

The Gowa District National Agriculture Agency in accommodating land registration sporadically has provided the necessary blanko. In addition to the blank prepared by the national land administration of the district of gowa, the applicant who wishes to apply for land rights must attach a requirement.

If the evidence of ownership of the above-mentioned land is incomplete or nonexistent, then the proof of the ownership on the land may be made by other evidence with the claimant's statement and a credible testimony of at least two witnesses from a neighborhood that has no family relationship with the applicant. A family relationship means a family relationship either vertically or horizontally. The witness stated that the land in question was the real owner of the land. in the case of proof of land ownership as referred to in paragraph 2 of article 23 of Government Regulation No. 24 of 1997 on land registration:<sup>21</sup>

<sup>17</sup> Rizka Fitri Ana, Muki Wicaksono, Auviar R. Wicaksana, Riche Deswita, *Antara Ulayat Adat dan Hutan Nagari : Sebuah Kebijaksanaan Perhutanan Sosial di Minangkabau*, *Jurnal Antropologi: isu-isu sosial budaya*, Vol.20 No.2, Desember 2018. Hlm.54.

<sup>18</sup> Wawancara dengan pejabat fungsional penata kadastral kasubsi pengukuran dan pemetaan kadastral Badan Pertanahan Kabupaten Gowa, (Priyo Sudarso) 15 September 2021

<sup>19</sup> Atang Suryana, A.Suriyaman M.Pide, Kahar Lahae, 2021, *Pelepasan Hak Atas Tanah Masyarakat Adat Suku Hatam : Tantangan dan Perkembangan Kontemporer*, *Jurnal Al-Azhar Islamic Law Review*, Vol.3 No.1. hlm.34.

<sup>20</sup> Sri Susyanti Nur, 2015, *Pola Penguasaan Dan Pemanfaatan Wilayah Perairan Pesisir Secara Turun-Temurun Oleh Suku Bajo. Prosiding Seminar Nasional Multi Disiplin Ilmu Unisbank (Sendi\_u)*. hlm.11

<sup>21</sup> Jandy M. Kasakeyan, *Kajian Yuridis Hak-Hak Masyarakat Adat Terhadap Pemanfaatan Tanah-Tanah Pasini Di Minabasa*, *Jurnal Lex Et Societatis*, Vol. VII. No.4, April 2019. Hlm.44.



In the event that the means of proof referred to in paragraph (1) are not or are no longer fully available, proof of the right may be made on the basis of a statement of physical possession of the land in question for 20 (twenty) years or more in a row by the applicant for registration and prior pre-registration provided :<sup>22</sup>

1. It was done in good faith, and openly, by those who were in possession of the land, and confirmed by the testimony of faithful men.;
2. Such possession, either before or during the incarceration as referred to in article 26, shall not be challenged by the community of indigenous law or by the village/village concerned or by any other party.

Applications on land should be joined with :<sup>23</sup>

- a) Letter of declaration of application stating the following:
    - 1) that the applicant has possessed the land in question for twenty years or more in succession, or that he has acquired possession of it from the other party or parties who have owned it, until the period of possession between the claimant and his predecessor is twenty or more years.;
    - 2) That the possession of the land is done with good ducks ;
    - 3) The possession of the land has never been interfered with the claim, thanks to the arena is deemed to be recognized and justified by the community of customary law or the village / municipality concerned. ;
    - 4) The field is now not in dispute. ;
    - 5) If the statement contains things that do not conform to the truth, the signer is willing to be charged before the trial in criminal or civil proceedings in order to give false testimony..
  - b) Declaration of the village head and at least two witnesses whose testimony is credible, because of his functions as a local customary elder and/or long-established resident in the village/the landlord concerned has no family relationship with the applicant until the second degree in either vertical or horizontal proximity that permits the application statement in the letter of service statement.
2. Implications of registration of land after liberation of forest areas in the environment of stone layers in the Malino district of High Moncong District of Gowa.

### **Authority of the Ministry of the Environment and Forestry**

The legal protection of forest areas needs to be enhanced, as well as accommodating the frequent settlement of conflicts. Factors affecting the effectiveness of law enforcement in protecting forest areas..<sup>24</sup>

- a) Its own legal factors, in this case, are limited to the Law.
- b) The law enforcement factor, i.e. the parties that form or enforce the law

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<sup>22</sup> Cornelia Junita Welerubun, *Perlindungan Hukum Hak Atas Tanah Ulayat Masyarakat Hukum Adat di Kabupaten Maluku Tenggara. Jurnal Media Hukum dan Peradilan, Vol.5 No.1, Mei 2019. Hlm.56.*

<sup>23</sup> *Ibid.*

<sup>24</sup> Wahid, A.M Yunus, Naswar Bohari, Achmad, *Penegakan Hukum Lingkungan di Sektor Kehutanan (Studi Kawasan Hutan Lindung di Kabupate Sinjai, Sulawesi Selatan)*, Jurnal Hasanuddin Law Review, Vol.1 No.1, 2015. Hal 71



- c) Factors of means or facilities that support law enforcement.
- d) A community factor, that is, the environment in which the law applies or is enforced.
- e) Cultural factors, that is, as a result of the work, creation, and taste based on the human flesh in the social life..

The influencing factor is a dream in looking at the effectiveness of law enforcement in forest areas. Frequent conflicts in forest areas are usually the result of forest proliferation and land opening activities. One factor is the minimum amount of boundaries that provide information about the boundary of the forest, as well as the lack of public attention and participation related to the border of forest areas..<sup>25</sup>

Resolving the conflict in the forest area, the government in this respect has endeavoured one of them by issuing the Presidential Decree of the Republic of Indonesia No. 88 of 2017 on Land Administration in the Forest Area, becoming one of the government's programmes in resolving and providing legal protection for the rights of the people. :<sup>26</sup>

- 1) Extraction of land in forest areas through change of forest areas
- 2) Switch-changing forest area
- 3) Provide access to forest management through social forestry programmes, or
- 4) Doing resettlement

PP 88 Year 2017 on solving the problem of forest areas already dominated and used by existing communities. For example, for the agricultural activities of communities such as meadows and shrubs, settlement of public facilities and social facilities, agriculture of dry land which is the main source of livelihoods of local communities.<sup>27</sup> In practice, the agrarian conflict resolution scheme in PP 88 of 2017 is a policy scheme or a proposal specified by the central government to the local government or the implementing UPTD in the region. The central government in this case determines and decides the location by creating an indicative map. The indicative map itself is the allocation of forests for the provision of land resources of the agricultural reform objects..<sup>28</sup>

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<sup>25</sup> Aryo Suboro, *Peran Negara Dalam Menjaga Eksistensi Masyarakat Hukum Adat*. *Yuriska: Jurnal ilmiah* Vol 11 no.1, Februari 2019. Hlm.81.

<sup>26</sup> Arto Oktavianto, dkk, *Eksistensi Hak Ulayat Masyarakat Hukum adat Ngata Toro*, *Jurnal Jurisprudentie*, Vol 7, No 2, Desember 2020. Hlm.56.

<sup>27</sup> Wawancara dengan Kepala Seksi ISDHL BPKH Wilayah VII Makassar, (Suleman Patiung, S.Hut) 15 Januari 2022.

<sup>28</sup> Trina Rejekiningsih. *Asas Fungsi Sosial Hak Atas Tanah Pada Negara Hukum (Suatu Tinjauan Dari Teori, Yuridis Dan Penerapannya Di Indonesia)*, *Yustisia Jurnal Hukum*, Vol.5 No.2. Agustus 2016.. hlm.76.



In determining the forest area, the Ministry of Environment and Forestry of the Republic of Indonesia (KLHK) in this case still acknowledges the nature of forest areas established since the Dutch era or before Indonesia's independence, so that malino at present still has status as a forest area.<sup>29</sup> With the expansion of the Malino Plain, the addition of non-forest area continues to increase since 1965 to the present day. The forest area of the gowa district according to SK434/Menhut-II/2009 as of July 23, 2009 is 72,970 Ha, consisting of:

Addition of non-forest area or deforestation of forest area the last implemented in particular in the South Sulawesi Province is the eradication of forest areas with the publication of the Decree of the Minister of Environment and Forestry of the Republic of Indonesia No. SK.362 / MENLHK /SETJEN /PLA.0/5/2019 on the change of the allocation of the forest area to non-Forest area of  $\pm$  91.337 Ha (nine hundred one thousand three hundred thirty seven hectares) and the change in the functioning of the area of the forests  $\pm$  84.032 Ha (eighty-four thousand thirty two hectares), and the designation of non - forest areas to forest area of extent  $\pm$  1.838.Ha (one thousand eight hundred and thirty eight acres) in the province of South Swaziland.The publication of SK No. 362 / MENLHK

NO	KAWASAN HUTAN	LUAS (HA)
1	Hutan Produksi Terbatas	20.330
2	Hutan Produksi	23.825
3	Hutan Lindung	24.911
4	Hutan Konservasi taman Wisata Alam	3.309
5	Hutan Konservasi Suaka Margasatwa	40
6	Hutan konservasi Taman Buru	480

/SETJEN /PLA.0/5/2019, also becomes a revision of the forestry setting in the eleventh province of South Sulawesi is SK.434/Menhut-II/2009. In the decree of the Minister, the previous 768 hectares of conservation forest area was set to 416 hectares, while the previous 294 hectares were set to 277 hectares. So the discharge of forest areas,

especially conservation forests and production forests, was limited to other areas of use (apl) which was 46% for conservation wood from the original area and 6% for limited production forest..

Deforestation in the Southern Sulawesi province is carried out using the Method of Space Management Review (RTRW). The mechanism of deforestations is followed by SK. 362 / MENLHK /SETJEN /PLA.0/5/2019. The Forestry Development Mechanism using the RTRW Review Method refers to the provisions of Article 39 of the Regulations of the Minister of Environment and Forestry No. 7 of 2021 concerning forest planning, changes in provision and changes in the function of forest areas as well as the use of forest area.

Considerations of the Ministry of the Environment and Forests of the Republic of Indonesia in determining forest areas are carried out carefully. Where in determining a forest area there is a certified land area, where it will be examined by satellite image whether the party concerned exists first or only after a territory has been designated as a forest land. When

<sup>29</sup> *Ibid.*



from the previous satellite image of the declaration of the parties concerned is true and has completed the document according to the rules, then will be released from the forest area..<sup>30</sup>

### **Role of the National Farming Agency of Gowa District**

The authority of the Gowa District Farming Authority in carrying out land registration in particular in the Batulapisi Environment in the Malino Landscape may be carried out when removing land fields in the forest area through changes in the boundaries of forest area or exchanging forests..<sup>31</sup> In order to legal certainty over the land belonging to the people, the Minister of the Environment and Forestry of the Republic of Indonesia removed the land controlled by the people from the forest area has been done. It is stipulated in the Decree of the Minister of Environment and Forestry of the Republic of Indonesia No. SK.362 / MENLHK / SETJEN / PLA.0/5/2019 concerning the change in the allocation of forest area to non-forest area of  $\pm 91,337$  Ha (nine hundred one thousand three hundred thirty-seven hectares) and the change of the functioning of the area of forest of  $\leq 84,032$  Ha (eighty-four thousand thirty two hectares), and the designation of non-Forest area to forest area  $\pm 1,838$  Ha (one thousand eight hundred three and thirty eight ha) in the province of South Sulawesi.

Through SK.362/MENLHK/SETJEN/PLA.0/5/2019, becomes the basis of the public in the realization of legal certainty by implementing the application for land registration to the Agriculture Agency of Gowa District. In accordance with Article 2 of the Presidential Regulations of the Republic of Indonesia No. 20 Year 2015 on the National Agriculture Agency, BPN has the duty to carry out governmental duties in the field of agriculture according to the provisions of the Legislative Provisions. .<sup>32</sup>

In this case, the role of the BPN of the Gowa District is only limited to conducting administrative activities in the land, full authority over the possession and use of land in the forest area is the responsibility of the Minister of Environment and Forestry of the Republic of Indonesia.

### **1. Coordination between BPN of Gowa District and Ministry of Environment and Forestry**

The registration of land rights, of course, in practice follows the coordination between the institutions of both the Regional Government and the Central Government. Specifically for land management of former forest areas or land released from forest areas is the role of each State institution in carrying out its tasks between the National Welfare Agency and the Ministry of the Environment of the Republic of Indonesia. In conducting good coordination is required understanding of the respective roles that depend on methods

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<sup>30</sup> *Ibid.*

<sup>31</sup> Wawancara dengan pejabat fungsional penata kadastral kasubsi pengukuran dan pemetaan kadastral Badan Pertanahan Kabupaten Gowa, (Priyo Sudarso) 15 September 2021

<sup>32</sup> *Ibid.*



or mechanisms in deforestation to land registration. Furthermore, good inter-agency coordination can reduce the bureaucratic efficiency of the land registration process.<sup>33</sup>

From the results of research obtained in the field in particular on the discharge of forest areas in Batulapisi Environment In Kelurahan Mlino department of Tinggimoncong using a mechanism based on the Space System Review scheme (RTRW).<sup>34</sup> Of course this affects the role and form of coordination between the National Agriculture Agency and the Ministry of Environment and Forestry. In the former land registration of forest areas through the Space System Review Scheme (RTRW), where land that has been removed from forest areas or other use areas (apl) has entered into the authority of the BPN of Gowa district to carry out its registration. The people who have acquired the SK Minister is SK Tora or commonly called SK. Blue which then became one of the bases and conditions for granting the right to the land by the Farming Agency of Gowa District. When in the registration of the area that is directly bounded with the forest area then the applicant registration on the land must attach clarification or recommendation issued by the forestry authority is the Forestry Area Monitoring Hall in this case BPKH of the region 7 makassar or Forestry Department of the Province of South Sulawesi.<sup>35</sup> Recommendations or clarifications are essential in order to meet the precautions of the BPN in the implementation of land registration. The BPKH of 7 Makassar territories will provide an overview and location of areas and non-forest areas that can be registered with the right to land. The procedure in giving clarification or recommendation is carried out by way of BPN or the community submitting an application to the BPN with attached proof of ownership and list of location coordinates.<sup>36</sup>

Meanwhile, prior to implementation of deforestation under SK.362/MENLHK/SETJEN/PLA.0/5/2019 and the community that did not obtain the blue SK, 8 respondents of the 30 respondents interviewed had made an application for land registration to BPN Gowa were asked to make an application in person to the forestry authorities. But the Chief of the Section of PKH BPKH Region VII Makassar Ribka Linggi L.L, S, Hut is of the opinion:<sup>37</sup>

The clarification or recommendation requested should be coordinated directly by the Gowa District Agriculture Agency to the BPKH of the 7th Makassar Region by attaching a list of applications for land rights that are either directly bordered or indicated to be in forestry collectively or in one region and coordination is running between the bureaucracy of the state institutions.

<sup>33</sup> A.M Yunus Wahid, Naswar Bohari, Achmad, *Pengakuan Hukum Lingkungan di Sektor Kebutuhan (Studi Kawasan Hutan Lindung di Kabupaten Sinjai, Sulawesi Selatan)*, *Jurnal Hasanuddin Law Review*, Vol.1 No.1, April 2015., Hlm.65.

<sup>34</sup> Elizabeth Arden Madonna, 2019, *Pelepasan Hak Masyarakat Hukum Adat Dalam Pengelolaan Hutan Di Indonesia*. *Jurnal Bina Hukum Lingkungan*, Vol 3, Nomor 2. Hlm.23.

<sup>35</sup> Wawancara dengan Pejabat Fungsional Penata Kadastral Kasubsi Pengukuran Dan Pemetaan Kadastral Badan Pertanahan Kabupaten Gowa, (Priyo Sudarso) 15 September 2021.

<sup>36</sup> Wawancara dengan Kepala Seksi ISDHL BPKH Wilayah VII Makassar, (Suleman Patiung, S.Hut) 15 Januari 2022.

<sup>37</sup> Ja Posman Napitu, 2007, *Pengelolaan Kawasan Konservasi*, *Artikel Sekolah Pasca Sarjana Universitas Gadjah Mada*, *Jogjakarta*., hlm.76.



Land certification is the agenda and responsibility of the National Farming Agency. Therefore, various obstacles arise from the administrative process of land registration. There are two dilemmas about this certification process, namely:<sup>38</sup>

The members of the National Agriculture Agency (BPN) believe that this slowdown is a consequence of the lack of participation of the landowners, while the people are blamed on the overwhelming bureaucracy of the national agricultural agency, which they believe is slow, the process is long and the cost is high. (mahal).

The main dilemma is that the substance is attractive and becomes a barrier to land certification.

The above obstacles are also consistent with what happened when the people in the Batulapisi Inner Environment were unable to apply for land registration. As a result of the interview with the respondents, there were eight respondents out of 30 respondents who have applied for registration of land rights. The obstacles include expensive costs and complicated bureaucratic processes due to the need to visit various government agencies ranging from the Ministry of Environment and Forestry to the Governor and Bupati regional governments. The authority of any government agency or agency has limits in the exercise of authority and role. As a result of this restriction, it is the applicant who has to actively file the application not only in one government agency but in the entire Government agency that has jurisdiction over the forest area and the allocation of the territory or the spatial system of the provinces and districts.

Land registration for the first time especially in Batulapisi neighborhoods is carried out gradually, with the presence of an application from the interested parties of the land to be registered. The BPN of Gowa District does not simply carry out its functions without paying attention to the policy that the government has established in this regard the Minister of Environment of the Republic of Indonesia. In carrying out its functions, the BPN must also play an active role in accommodating the policy of the authorized parties over the management and exploitation of forest areas.<sup>39</sup>

The coordination between the Gowa District Agriculture Agency and the Kawassan Forest Heating Hall of 7 Makassar Territory, showed in the registration of land rights in the Batulapisi Environment in Malino Kelurahan was seen from the administrative and bureaucratic process that was going on in chains. The BPN of Gowa district wishes that every bordered or indicated land be in the forest area to be registered, each claimant for the right to the land must take care of the recommendation letter issued by the forestry authorities. Meanwhile, the BPKH of the 7 Makassar district recommends that any application for land rights that belongs to the BPN of the Gowa district but is bordered or indicated is in the forest area so that the BPKH of Gowa District can group the land that requires clarification or recommendation from the forestry to be requested collectively and directly from the BPL of the gowa District to the BPKH.

<sup>38</sup> A.Suriyaman Mustari Pide, *Quo Vadis Pendaftaran Tanah*. (PUKAP, Makassar) 2008, Hal. 27

<sup>39</sup> Wawancara dengan pejabat fungsional penata kadastral kasubsi pengukuran dan pemetaan kadastral Badan Pertanahan Kabupaten Gowa, (Priyo Sudarso) 15 September 2021



#### **D. Conclusion**

1. Based on the discussion and analysis of the author's results on the claimed land rights as a forest area in the environment of Batulapisi in Kelurahan Malino district Tinggimoncong Gowa district, can be concluded some of the following rights: Implementation of the land registration claimed as forest areas in the Malino surroundings Batulopisi in kelurahan is carried out on the basis of the recognition of the old rights as evidence of Ipeda in 1976, then the National Agrarian Operation Project in 1991 and the last release of forest areas according to the decree of the Minister of Environment and Forestry No.362/LHK/ SETJEN/ PLA.0/ 5/ 2019 with the method of the registration of land for the first time sporadically.
2. Implications of land registration after the discharge of the area are carried out under the authority of the Ministry of Environment and Forestry of the Republic of Indonesia which issued the land fields based on the Scheme of Review of the Area Area of Conservation of Forests by issuing a letter of decision No.362/ MENLHK/ SETJEN/ PLA.0/ 5/ 2019 of the Minister to determine the communities that receive Blue SK as the basis for the registration of land rights. After that, the BPN of Gowa District conducted the process of adminisitation of land registration sporadically based on the Blue SK of the Minister of Environment and Forestry as well as proof of physical possession of the lurah or Head of the Village. When the land to be registered is bordered by the boundary of forest area, clarification or recommendation must be requested from the Forest Area Observation Hall (BPKH) of the 7th Region of Makassar.



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