Vol. 6, No. 2, February 2025
E-ISSN: 2723 - 6692
P-ISSN: 2723 - 6595
http://jiss.publikasiindonesia.id/

Unilateral Beach Reclamation Land in Relation to the Decision of the DKI Jakarta High Court Number 129/PDT/2022/PT DKI

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KEYWORDS
Beach Reclamation; Land Rights; Legal Regulation

ABSTRACT
Coastal reclamation is a land management strategy aimed at increasing the socio-economic and environmental benefits of coastal areas. However, it often leads to legal conflicts concerning land ownership, particularly when such reclamations are carried out without appropriate permits. This research aims to analyze the legal status of land rights for parties who carry out coastal reclamation by reviewing the DKI Jakarta High Court Decision Number 129/PDT/2022/PT DKI. The method used is a normative juridical approach by analyzing relevant laws and court decisions. The results show that reclaimed land is state land whose management is subject to strict regulations. In the case studied, PT Pelayaran Menaratama Samudra Indah was proven to have carried out reclamation without a valid permit, so it was declared unlawful by the DKI Jakarta High Court. In conclusion, any form of reclamation must comply with applicable regulations so as not to cause legal implications for the perpetrators and the surrounding community.

Introduction

Land is an important aspect of life, and is the main foundation of all activities carried out by humans. The importance of land for humans makes land a valuable asset for the life of every human being. This is because in addition to being a necessity, land can also provide economic benefits for landowners. The explosion of population in an area, making land that is only an inch becomes very valuable, so that conflicts of interest often arise due to land issues. The relationship between land and humans is very close in the past, present and future. From the time humans are born until they die, land cannot be separated from them, so it can be said that until whenever humans will continue to relate to land, and will ultimately have implications for the need for land.

One of the main factors in the increasing demand for land is the rapid development in almost all parts of Indonesia. Increased development does not only occur in big cities, but also in territorially small areas, but rapid population growth. This is due to the existence of regulations that provide regional flexibility to carry out development independently, so that local governments are expected to be able to think about development operational steps in an appropriate, efficient manner.

Development is an effort carried out by all components of the nation in order to achieve state goals. State development provides justice and improves the welfare of the people. To achieve these goals, humans carry out various life activities by utilizing natural resources.

In this activity, changes are often made to ecosystems and natural resources. Ecosystem changes that occur, for example, the loss of coral reefs which results in the loss of fish around the coast, and eventually, fishermen will become more difficult to obtain fish. In addition, life activities to improve living standards, from the point of view of land use, mean changes in land use. For example, changes in agricultural land use to non-agricultural land use. Such changes in land use, in urban areas, especially cities that have narrow areas, will cause their own problems, especially in the arrangement of urban areas. This problem becomes more serious in big cities that experience rapid growth rates. This happens because land as the main support for development activities is limited, while the need for infrastructure development for residential areas, industries and other commercial places is unlimited. To overcome this, cities that have a narrow area need to develop the area (Hasni, 2010: 357).

For cities located in coastal areas, one of the ways out chosen to develop the city is by reclaiming coastal waters. Coastal reclamation is an activity carried out in order to increase the benefits of land resources from an environmental and socio-economic point of view by filling, draining land or drainage (Patittingi, 2012). This generally occurs in large cities in coastal areas with a high population.

Coastal reclamation is the conversion of a coastal area into a land area. The provision of coastal reclamation is generally carried out to turn an area that was previously not considered economically into an area that has economic benefits. Reclaimed areas are usually used for agriculture, settlements, industry, shops or businesses and tourist attractions[1]. In addition, sometimes reclamation is also used for conservation purposes, fisheries cultivation, marine and so on. For the region, the provision of coastal reclamation can also provide a space for the local government to increase its local revenue from the land that appears as a result of coastal reclamation (Hasni, 2010: 352).

To carry out beach reclamation, there are many rules that must be considered so as not to cause damage or pollution that can harm someone or related parties. Legal relations between the community, individuals or legal entities as legal subjects with such land in reality have also long been going on in small islands as a more specific part of Indonesian territory. The legal relationship occurs due to various factors, both from economic, ecological, socio-cultural, and political factors (Patittingi, 2012).

There is an example of a case related to beach reclamation land in Tarahan Village, Katibung Sub-district, South Lampung Regency between Yetty Harlisa and PT Tanjung Selaki and the South Lampung Regency Defense Office regarding the Recognition of Land Rights. PT Tanjung Selaki seems to have carried out hoarding activities, even though 79 of the 82 HGBs are not hoarding or beach reclamation but hilly land containing stones and from the stones on the hill, excavation activities are then carried out which should be suspected that there is also no C excavation permit, stones from the hills are then stockpiled on the beach which are then made SHGB No. 64, 65 and 66 which are carried out ILLEGALLY. because the permit has died by itself.

The objectives of this research are as follows: To know and understand the legal status of land rights by the party conducting coastal reclamation. To find out and the acquisition of land rights by the party carrying out coastal reclamation in connection with Decision Number 129/PDT/2022/PT DKI.

Research Methods

This research uses the following methods:

Research Specifications

This research is descriptive analytical, namely describing the applicable laws and regulations associated with positive legal theories related to the problem under study (Soemitro, 2010). This research describes facts, subject matter, and secondary data from relevant literature studies, particularly regarding unilateral coastal reclamation land in relation to Tanjung Karang High Court Decision Number 129/PDT/2022/PT DKI. Analysis is conducted based on legislation, theory, and positive legal practice to answer research problems.

Research Phase

This research was conducted with *library research.* The library research was conducted in order to obtain and collect secondary data that has to do with the object of research, which consists of:

a. Primary legal materials, namely binding legal materials (Ishaq, 2017), which consist of:
   1) Constitution of the Republic of Indonesia Year 1945.
   2) Basic Agrarian Law.
   3) Law No. 1/2014 on the Management of Coastal Areas and Small Islands.
   4) Presidential Regulation Number 122 Year 2012.
   5) Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number 25/Permen-Kp/2019 concerning Permits for the Implementation of Reclamation in Coastal Areas and Small Presidential Islands.
   6) Decision of the Tanjung Karang High Court Number 129/PDT/2022/PT DKI.
b. Secondary legal materials, namely legal materials that provide explanations of primary legal materials (Ishaq, 2017), namely in the form of doctrines, theories, opinions or results of scientific works contained in books, legal journals and the internet related to research.

Approach Method

The approach used is normative juridical, which examines the application of rules or norms in positive law (Ibrahim, 2008). This research is conducted by tracing, reviewing, and analyzing secondary data, including primary, secondary, and tertiary legal materials related to research problems. This approach is based on the rules of law and applicable laws and regulations and their application in positive law.

Data Collection Technique

This research was conducted using data collection techniques through *library research.* Data collection techniques with literature studies in this study were carried out by tracing, collecting, classifying, and systematically recording all secondary data obtained, in the form of primary legal materials, secondary legal materials and tertiary legal materials that are relevant to support this research, both through searching library materials and internet media.

Data Analysis

The data analysis method used in this research is normative qualitative method. Qualitative analysis because this research is an analysis of data derived from statements, expressions and information without using concepts that are measured / stated with numbers or mathematical / statistical formulations, where the discussion and research results are described in words based on

the data obtained in order to determine the relationship between the data obtained with the problems raised in this study. While normative analysis because this research is based on existing laws and regulations as positive legal norms.

Results and Discussions

Legal Status of Land Rights by Parties Conducting Beach Reclamation

Land rights as one of the tenure rights over land are regulated in Law Number 5 of 1960 concerning Basic Agrarian Principles, LNRI 1960 No. 104 - TLNRI No. 2043, which was promulgated on September 24, 1960. This law is better known as the Basic Agrarian Law (UUPA). The date of promulgation of UUPA marked the birth (formation) of the National Land Law, which revoked (declared inapplicable) the Colonial Land Law that was dualistic in nature and did not guarantee legal certainty for the Indonesian people.

The purpose of the promulgation of the UUPA is stated in the General Elucidation of the UUPA, namely: First, to lay the foundations for the preparation of a National Agrarian Law, which will be a tool to bring prosperity, happiness, and justice to the state and the people, especially the peasantry, in the framework of a just and prosperous society. Second, to lay the foundations for unity and simplicity in Land Law, and Third, to lay the foundations for providing legal certainty regarding land rights for the people as a whole.

Efforts that can be made to realize the objectives of the UUPA, namely prosperity, happiness, and justice for farmers can be realized if farmers have sufficient agricultural land. Unity of Land Law can be realized if there is only 1 (one) Land Law regulated in the UUPA and its implementing regulations. Simplicity of Land Law can be realized if the Land Law is easily understood by the people of Indonesia. Guarantee of legal certainty regarding land rights can be realized if a rechtscadaster land registration is held.

Land rights originate from the state's right to control the land. This is emphasized in Article 4 paragraph (1) of the UUPA, which states that on the basis of the right to control, the state determines various kinds of rights over the surface of the earth, called land, which can be given to people either alone or together with other people and legal entities. On the basis of the right to control, the state determines the kinds of rights over the surface of the earth or rights over land, which can be granted to persons either alone or jointly with others who are Indonesian citizens or foreigners domiciled in Indonesia, legal entities established under Indonesian law and domiciled in Indonesia, or foreign legal entities that have representatives in Indonesia.

The state's right to control is stipulated in Article 2 paragraph (1) of UUPA, which states that the state as the organization of the power of all the people at the highest level controls the earth, water, and airspace, including the natural resources contained therein. Article 2 paragraph (2) of the UUPA stipulates that based on the right to control, the state has the authority, namely: First, to regulate and organize the allocation, use, supply, and maintenance of the earth, water, and space. Second, to determine and regulate legal relationships between people and the earth, water, and airspace; and Third, to determine and regulate legal relationships between people and legal acts concerning the earth, water, and airspace.

Article 4 paragraph (1) of the UUPA stipulates that surface land rights are the same as land rights. However, the UUPA does not provide an understanding of what is meant by land rights. Harsono (2003) states that land rights are rights over a certain portion of the earth's surface, which is bounded, two-dimensional with length and width.1 Maria S.W. Sumardjono states that land rights are defined as rights over the earth's surface that authorize the holder to use the relevant land along with the body of the earth, water, and the space above it.2 There is a similarity in the

understanding of land rights put forward by Boedi Harsono and Maria S.W. Sumardjono, namely that land rights are rights to the surface of the earth. The definition of land rights put forward by Boedi Harsono and Maria S.W. Sumardjono has a difference, namely according to Boedi Harsono, in land rights there is a measure of length and width, while according to Maria S.W. Sumardjono, land rights are defined as rights to the surface of the earth.

According to S.W. Sumardjono, land rights confer upon the right holder the authority to utilize the land in question, inclusive of the earth, water, and space above it. Urip Santoso further elaborates that land rights are rights that authorize the right holder to use and/or benefit from the land that is dihaki. The term "use" is understood to imply the use of land for the construction of buildings, while the term "take advantage" is interpreted to refer to the use of land for agricultural, fisheries, livestock, and plantations purposes.

The legal framework governing land rights in Indonesia is delineated in Article 4, paragraph (2) of the UUPA, which stipulates the prerogative to utilize the concerned land, encompassing the earth's body, space, and the space above it, for the This entitlement is contingent upon the utilization of the land being in alignment with the parameters established by this Law and other higher legal regulations.According to Soedikno Mertokusumo, the authority wielded by land rights holders over their land is categorized into two distinct categories: First, the general authority to use the land, including the body of the earth and the space above it, as needed for interests directly related to the use of the land within the limits according to this Law and other higher legal regulations.Second, special authority is defined as the right granted to the holder of a land right to utilize their land in accordance with the specific characteristics of that land right. To illustrate, Hak Milik confers the prerogative for agricultural endeavors and/or the erection of structures, while Hak Guna Bangunan sanctions the exclusive utilization of land for the construction of edifices.Moreover, Hak Guna Bangunan authorizes the employment of land for agricultural, fisheries, livestock, and plantation pursuits.

In terms of their provenance, land rights can be categorized into two distinct groups: primary and secondary.Primary land rights are those originating from state-owned land, encompassing Hak Milik, Hak Guna Usaha, Hak Guna Bangunan, and Hak Pakai on state land. Secondary land rights, by contrast, are derived from the land rights of other parties. These secondary land rights encompass a wide range of entitlements, including, but not limited to, Cultivation Rights on Managed Land, Cultivation Rights on Owned Land, Use Rights on Managed Land, Use Rights on Owned Land, Lease Rights for Buildings, Pawn Rights, Production Sharing Rights, Hitchhiking Rights, and Agricultural Land Lease Rights.

The acquisition of land rights by individuals or legal entities can be achieved through two distinct mechanisms.First, land rights are acquired for the first time through a Government Determination, or due to the provisions of the Law (confirmation of conversion).Land rights derived from Government Stipulations encompass property rights originating from state land, business use rights, building use rights on state land, building use rights on management rights land, use rights on state land, and use rights on management rights land. The acquisition of land rights through the provisions of the Law (confirmation of conversion) encompasses property rights originating from the conversion of former customary land.The acquisition of land rights occurs from land owned or controlled by other parties through the transfer of land rights. This transfer can occur through various means, including sale and purchase, exchange, grants, inclusion in company capital (inbreng), and auctions. Additionally, the acquisition of land rights can also occur through transfer in the form of inheritance.

There are 4 (four) ways of acquiring land rights that are regulated in the laws and regulations, namely: First, government stipulation. Acquisition of land rights originating from state land or Management Rights through a Government Determination in the form of a Decree on Granting Rights. Second, the provisions of the law (confirmation of conversion). The acquisition of land rights occurs due to the provisions of the Law through an application for confirmation of conversion originating from former customary land. Third, the transfer of rights, the acquisition of land rights occurs in the form of transfer through inheritance, and in the form of transfer through sale and purchase, exchange, grants, inclusion in company capital (inbreng), and auctions. Fourth, the granting of rights. The acquisition of Building Rights Title or Use Rights on Freehold land is evidenced by a Deed of Granting Building Rights Title or Use Rights on Freehold land made by a Land Deed Official (PPAT).

Land rights are held by persons and legal entities. The following individuals and legal entities are considered subjects of land rights:First, individuals, including Indonesian citizens and foreigners domiciled in Indonesia. Secondly, legal entities encompass State Institutions, Ministries, Non-Ministerial Government Institutions, Authority Bodies, Provincial Governments, Regency/City Governments, Village Governments, State-Owned Enterprises, Regional-Owned Enterprises, Religious Bodies, Social Bodies, Foreign Legal Entities Having Representatives in Indonesia, Limited Liability Companies, Representatives of Foreign Countries, and Representatives of International Bodies.

Aspects of land use or utilization dictate the classification of land rights into two categories:First, land rights intended for the construction of buildings, including residential houses, shop houses, office houses, flats (apartments), hospitals, shops, offices, factories, warehouses, hotels, markets/plazas/malls, educational buildings, sports buildings, meeting buildings, worship buildings, terminals, ports, and airports. The second category encompasses land rights intended for non-building purposes, including agriculture, fisheries, livestock, and plantations.

Based on the aspect of the tenure period of land rights, land rights are divided into 3 (three) types, namely: First, land rights without a certain period of time. Land rights without a certain period of time, namely Hak Milik. Second, land rights with a certain period of time. Land rights with a certain period of time are Hak Guna Usaha, Hak Guna Bangunan, Hak Pakai which is private, and Hak Sewa Untuk Bangunan. Third, land rights that are valid as long as the land is used for the performance of its duties. Land rights that are valid as long as the land is used for the performance of its duties, are the Right of Use controlled by State Institutions, Ministries, Non-Ministerial Government Institutions, Provincial Governments, Regency/City Governments, Village Governments, Authority Bodies, State-Owned Enterprises, Regionally-Owned Enterprises, Religious Bodies, Social Bodies, Representatives of Foreign Countries, and Representatives of International Bodies.

To carry out development activities, land is needed as a container for its activities. Land obtained by development actors can come from coastal reclamation. Land acquired through coastal reclamation can be for public and/or commercial purposes. Parties that take the initiative to conduct coastal reclamation are: First, private companies. If the coastal reclamation initiative comes from a private company in the form of a Limited Liability Company (PT), then all coastal reclamation activities are carried out by the private company. Second, district/city governments. If the coastal reclamation initiative comes from the District/City Government, then all coastal reclamation activities are carried out by the District/City Government. Third, State-Owned Enterprises (SOEs). If the coastal reclamation initiative comes from a State-Owned Enterprise in the form of a Company (PT Persero), then all coastal reclamation activities are carried out by the Company (PT Persero).

Fourth, cooperation between private companies and district/city governments. If the coastal reclamation initiative comes from cooperation between a private company in the form of a Limited Liability Company (PT) and the District/City Government, then all coastal reclamation activities can be carried out by the Limited Liability Company (PT) on the basis of an agreement with the District/City Government.Fifth, cooperation between State-Owned Enterprises and private companies. If the coastal reclamation initiative comes from cooperation between a private company in the form of a Limited Liability Company (PT) and a State-Owned Enterprise, then all coastal reclamation activities can be carried out by the Limited Liability Company (PT) on the basis of an agreement with the State-Owned Enterprise.

The status of land rights that can be granted to parties conducting coastal reclamation is as follows:First, a private company in the form of a Limited Liability Company (PT). If the party conducting the coastal reclamation is a private company in the form of a Limited Liability Company (PT), then the land rights that can be obtained are in the form of Hak Guna Bangunan or Hak Pakai. The UUPA and Government Regulation No. 40/1996 on Cultivation Rights, Building Rights, and Land Use Rights underscore that a Limited Liability Company (PT), as a legal entity established under Indonesian law and domiciled in Indonesia, is entitled to exercise control over land with the status of Building Rights or Use Rights. In the event that the land right acquired is a Building Rights Title, the period of control is initially for a maximum period of 30 (thirty) years, extendable for a maximum period of 20 (twenty) years, and renewable for a maximum period of 30 (thirty) years. Conversely, if the land right obtained is a Hak Pakai, the initial tenure period is for a maximum of 25 (twenty-five) years, extendable for a maximum of 20 (twenty) years, and renewable for a maximum of 25 (twenty-five) years. Second, the Regency/City Government. If the party conducting the coastal reclamation is the district/municipal government, the land rights obtained are Hak Pakai or Hak Pengelolaan. The UUPA, Government Regulation No. 40/1996, and Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency No. 9/1999 on the Procedures for Granting and Cancellation of Land Rights and Management Rights stipulate that district/municipal governments can control land with the status of Hak Pakai. In Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency No. 9 of 1999, it is emphasized that district/municipal governments can control land with the status of management rights. If the status of the land rights obtained by the District/City Government is in the form of Hak Pakai, then the period of control is valid as long as the Hak Pakai land is used for the purposes of carrying out its duties and its authority is only to use the Hak Pakai land for the purposes of carrying out its duties. If the status of land rights obtained by the Regency / City Government is in the form of Management Rights, the tenure period applies as long as the Management Rights land is used for the purposes of carrying out its duties and its authority can hand over parts of the Management Rights land to third parties and or cooperate with third parties. Third, State-Owned Enterprises. If the party carrying out coastal reclamation is a State-Owned Enterprise, then the land rights obtained are Hak Pakai or Hak Pengelolaan. The UUPA, Government Regulation No. 40 of 1996, and Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency No. 9 of 1999 affirm that State-Owned Enterprises as legal entities established under Indonesian law and domiciled in Indonesia can control land with the status of Hak Pakai. In the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency No. 9 of 1999, it is emphasized that State-Owned Enterprises can control land with the status of Management Rights. If the status of land rights obtained by a State-Owned Enterprise is in the form of Hak Pakai, then the period of control is valid as long as the Hak Pakai land is used for the purposes of carrying out its duties and its authority is only to use the Hak Pakai land for the purposes of carrying out its duties. If the

status of land rights obtained by the State-Owned Enterprise is in the form of a Management Right, then the period of control is valid as long as the Management Right land is used for the purposes of carrying out its duties and its authority can hand over parts of the Management Right land to third parties and or cooperate with third parties. Fourth, cooperation between a Limited Liability Company and the Regency/City Government. If the party carrying out coastal reclamation is a collaboration between a Limited Liability Company and the Regency/City Government, then the land rights obtained initially are Management Rights on behalf of the Regency/City Government. Subsequently, a Land Use Agreement (PPT) is made between the Limited Liability Company and the Regency/City Government evidenced by a notarial deed, the contents of which are that the Limited Liability Company will obtain Building Rights Title derived from the Management Rights land on behalf of the Regency/City Government. Acquisition of Building Rights Title on Management Rights land through a Government Determination in the form of a Decree on Granting Rights (SKPH) issued by the Head of the Regency / City Land Office. Building Rights of Use on land.

The acquisition of Management Rights by a Limited Liability Company, initially for a duration of 30 (thirty) years, can be extended for an additional 20 (twenty) years, and subsequently renewed for a maximum period of 30 (thirty) years.The extension of the period and renewal of the Building Rights Title on Management Rights land can be executed subsequent to obtaining written approval from the Management Rights holder. Fifth, in instances where a Limited Liability Company engages in a joint venture with a State-Owned Enterprise for coastal reclamation projects, the land rights initially obtained by the Limited Liability Company are classified as Management Rights on behalf of the State-Owned Enterprise. A Land Use Agreement (PPT) is then executed between the Limited Liability Company and the State-Owned Enterprise, as evidenced by a notarial deed. The contents of this deed stipulate that the Limited Liability Company will obtain Building Rights Title originating from the Management Rights land on behalf of the State-Owned Enterprise. The acquisition of Building Rights Title on Management Rights land is facilitated through a Government Determination in the form of a Decree on Granting Rights (SKPH) issued by the Head of the Regency/City Land Office. The building rights of use on management rights land obtained by a limited liability company can be extended for a maximum period of 20 years, renewable for an additional 30 years. This extension and renewal can be carried out after obtaining written approval from the management rights holder..

Coastal communities are communities that live in coastal areas. In Law No. 27/2007 on the Management of Coastal Areas and Small Islands, the definition of coastal communities has a special meaning, therefore, the word "community" used in this Law, according to Article 1 point 32 is "a community consisting of Indigenous Peoples and Local Communities living in Coastal Areas and Small Islands."

Reclamation principally presents new land in areas that were previously river or sea waters, the reclaimed land is referred to as reclaimed land or landfill. Reclamation is allowed to be carried out by law for the purpose of increasing the benefits of land resources based on environmental and socio-economic considerations by means of backfilling, land draining or drainage. This area can be used as a residential area, tourist attraction and commercial area, because with the existence of this large land area it can be utilized for human activities both for living, tourism and commerce.

The principle of environmental sustainability is the main parameter for assessing the carrying capacity of the environment. It is important to pay attention to this as a good spatial arrangement in order to avoid the negative impacts of the reclamation and the vulnerability of natural disasters.

Efficiency and synchronization of spatial utilization in the context of implementing various good spatial planning activities must also be supported by spatial regulations that are in the same direction, so that there is no overlap in policy and management. This conflict of interest often collides between the authority of the central government, provincial government and district / city government so that the application of integrated and comprehensive policy is needed.

Juridically and constitutionally the 1945 Constitution Article 3 Paragraph 3 states that land in Indonesia is under state control so that the state has administrative authority. This authority functions as a distributor of land to the community in the form of building rights, property rights and so on. in Indonesia to obtain land rights according to procedures and rules determined by law.

The definition of Reclamation is defined in Article 12 of Government Regulation No. 16/2004 on Land Stewardship as "the filling in of water areas to expand land space, the use and utilization of which must be in accordance with the Regional Spatial Plan". (Perda No 8, 1995).

Law No. 26/2007 on Spatial Planning does not mention reclaimed land. The concept of reclamation is contained in Law No. 24 of 1992 concerning Spatial Planning which has been replaced by Law No. 26 of 2007 concerning spatial planning, but there is no clear mention of the ownership of reclaimed areas. (https://kkp.go.id/djprl/bpsplpadang/page/260-regulasi) This legal vacuum presents legal problems both between the government, law enforcement communities and investors. The main reference is of course to the acquisition of land regulated by the UUPA.

Permen-KP No.25 of 2019 concerning Permits for the Implementation of Reclamation in Coastal Areas and Small Islands explained that the implementation of reclamation in the coastal / sea area pays attention to access rights and guarantees to coastal communities such as relocation of settlements and compensation for coastal communities.

The application and granting of land rights for coastal and marine reclamation in Indonesia has very specific legal characteristics. The Agrarian Reform Program (Landreform) is not only an overhaul of the structure of land tenure, but also an overhaul of human relations with land, human relations with humans. To reorganize the structure of ownership, control, use and utilization of land in accordance with the principle of land for justice and people's welfare (Salam, 2006).

Based on the results of normative research conducted by the author, it is found that there are various forms of application and granting of rights to reclaimed land. Seeing from some areas in Indonesia that are very potential as tourist attractions, especially coastal areas, there has also been a reclamation projection but for a company not for tourism, empowering the sustainability of coastal communities is highly protected just like relocating public roads or other public interests, coastal and marine reclamation must be for the public interest and is usually based on the initiative of the local government for the advancement of tourism in the area.

Benefits of Reclamation:

a) Reclaimed land can alleviate the problem of overcrowding or utilize the land for other economic fields.
b) Land conversion damaged by mining activities.
c) Reduce the destructive effects of erosion as the safety construction has been prepared to be as strong as possible to withstand the waves of the sea.
d) Preventing sea flooding for areas located at elevations below sea level.
e) Reorganize to green spaces around beaches and tourism

Human rights that are universally recognized by countries around the world present a consequence for each state to provide protection for each individual for their natural rights or also called human rights. This consequence is the responsibility of the state towards international agreements that have been agreed upon together or also known as the principle of facta sunt

servanda. The implementation is that the concept of law in a country must include protection of these natural human rights to provide legal certainty, justice and benefit. This concept is also called the concept of the rule of law conveyed by friederich julius stahl, a German jurist with his famous concept called Rechtstaats.

The content of human rights towards coastal communities or fishermen is based on human rights treaties in the International Covenant on Economic, Social and Cultural Rights which emphasizes the obligation for the government to ensure that its people have the opportunity to enjoy the benefits of these economic, social and cultural rights.

This concept of justice can be seen in Aristotle's thought that "we must consider not only what form of government is best but also what is possible and most easily achieved by all". More specifically, in Nicomachean Ethics, Aristotle emphasized that justice is the core of legal philosophy, as law can only be placed in an order of justice (Bryan A. Garner (ed.), 1999).

Aristotle's thought was continued by Jhon Rawls, that "justice as fairness begins with one of the most general choices that people can make together, namely with the choice of the first principle of the conception of justice that governs further criticism and reform of institutions. So, after choosing a conception of justice, we can assume that they choose a constitution and laws to enforce the law, all in accordance with the previously agreed principles of justice, and when the purpose of law is perceived as the ideal of law, then law is justice manifested in the doctrines of nature and religion and justice is the goal of law that applies absolutely in the midst of a society that continues to develop along with the development of human civilization" (Carl Joachim Friedrich. 2008).

Indonesia is known as a maritime country because the land area is smaller than the ocean area. This is not in line with the development of the Indonesian nation which is growing in terms of population. As it is also known that the ocean is not a natural medium for human activities, this has led to a buildup of activities on Indonesian land so that it is increasingly at a saturation point of density.

The existence of a large sea area is used as a means to break down the saturation of the mainland area to break down the density of the mainland area. So we can see that the utilization of the sea area is more just an expansion of land development that no longer has space. As a result, there is inorganic engineering of sea functions through reclamation processes. This expansion causes the management of marine natural resources that are organically very abundant to not be maximized. It needs to be reminded again that this artificial engineering will result in new behavior for nature so that humans must be more responsive to the old changes that will occur. Of course, the ones who are most directly harmed are the coastline communities or fishermen.

This can be seen in the community's right to the environment in coastal reclamation areas, where the right to enjoy coastal and marine wealth is diminished due to the destruction of coral reefs and the loss of fish that previously inhabited the area. The catches of fishermen are decreasing, which is detrimental to the opinions of traditional fishermen.

The policies that are made should be beneficial for many people. Bentham with the general principles of the utilitarian approach to the area of law, said "that man will act in such a way that he gets the greatest possible pleasure and suppresses the least possible suffering". The standard of ethical judgment used here is whether an action produces happiness. Bentham calls it The Greatest Happiness For The Greatest Number, which is the goal of a law that is an application of utilitarian values. This means that the benefits are seen from the happiness felt by many people. The government should also pay attention to the interests of coastal communities, not just the interests of investors (65 National Conference).

According to the author, after looking at several regulations regarding reclamation and land rights in Indonesia, it turns out that the policy on land rights affected by reclamation is the same as the policy for widening roads and other public interests, so that the community will later be given compensation or relocation of settlements with new land prepared by the perpetrator or implementer of the reclamation, of course with an agreement between the parties and on condition that the implementation of reclamation must fulfill its implementation permit which refers to certain regulations that have regulated it.

The laws and regulations related to the acquisition of land from coastal reclamation are Law No. 5 of 1960 on Basic Agrarian Regulations, Law No. 26 of 2007 on Spatial Planning, Law No. 27 of 2007 on Management of Coastal Areas and Small Islands, Law No. 23 of 2014 on Regional Government, Government Regulation No. 40 of 1996 on Business Use Rights, Building Use Rights, and Land Use Rights, Government Regulation No. 24 of 1997 on Land Registration, Government Regulation No. 16.

2004 on Land Stewardship, Government Regulation No. 38 of 2007 on the Division of Government Affairs between the Government, Provincial Government, and Regency/City Government, Presidential Decree No. 34 of 2003 on National Policy in the Land Sector, Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency No. 9 of 1999 on Location Permits, Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency No. 9 of 1999, and Regulation of the Head of the National Land Agency No. 2 of 2013 on the Delegation of Authority to Grant Land Rights and Land Registration Activities.

Reclamation is defined in Article 1, paragraph 23 of Law No. 27 of 2007 as an activity undertaken by individuals with the objective of enhancing the benefits of land resources from environmental and socio-economic perspectives through management, land draining, or drainage.Article 34 of Law No. 27 of 2007 further stipulates that: First, the reclamation of coastal areas and small islands is undertaken to enhance the benefits and added value of these regions in technical, environmental, and socio-economic dimensions.Second, the implementation of reclamation as delineated in paragraph (1) must adhere to the following principles: First, the sustainability of people's lives and livelihoods must be maintained and prioritized. Second, the balance between the interests of utilization and preservation of the functions of the coastal environment and small islands must be maintained. Third, technical requirements for material extraction, dredging, and stockpiling must be observed. Finally, the planning and implementation of reclamation shall be further regulated by Presidential Regulation.

Article 12 of Government Regulation No. 16 of 2004 states that land originating from arising land or reclamation results in coastal waters, tidal swamps, lakes, and former rivers are directly controlled by the state. The elucidation of Article 12 of Government Regulation No. 16 of 2004 states that emergent land is land that is formed naturally or artificially due to the process of deposition in rivers, lakes, beaches, and or emergent islands, and the control of the land is controlled by the state, while reclamation is the management of water areas to expand land space, the use and utilization of land must be in accordance with the Regional Spatial Plan (RTRW). Reclamation is an activity carried out by people in accordance with and based on the Regional Spatial Plan (RTRW) that has been determined through the management of water areas (beaches) to expand land space oriented towards public interests and or commercial interests.

Regulations governing the provision of reclaimed land are stipulated in Circulars of the Head of the National Land Agency No. 410-1293 dated May 9, 1996 and No. 440-325 dated November 9, 1996 concerning Procedures for the Provision of Non-Agricultural Land by means of Coastal Reclamation. The Circular of the Head of the National Land Agency states that the status of

reclaimed land is declared as land directly controlled by the state, while the party conducting the reclamation gets priority to apply for granting rights to the reclaimed land.

Law No. 26 of 2007 stipulates that development activities carried out by anyone must be in accordance with and based on the established Regional Spatial Plan (RTRW). Coastal reclamation activities must be in accordance with and based on the Regional Spatial Plan (RTRW) that has been stipulated in the form of District / City Regulations. If coastal reclamation activities are not in accordance with the established Regional Spatial Plan (RTRW), then the coastal reclamation activities should not be carried out. If coastal reclamation activities are not in accordance with the Regional Spatial Plan (RTRW) that has been established, then a review of the District/City Regional Regulation that establishes the Regional Spatial Plan (RTRW) should first be carried out.

The designation of new land space or new land derived from coastal reclamation carried out by the party conducting the reclamation is state land or land directly controlled by the state.The parties conducting the reclamation are given priority to obtain land rights through an application for granting rights on state land to the Head of the National Land Agency of the Republic of Indonesia through the Head of the Regency/City Land Office. The acquisition of land rights originating from state land is formalized through a Government Determination in the form of a Decree on Granting Rights (SKPH) issued by the Head of the National Land Agency of the Republic of Indonesia, or an official of the National Land Agency of the Republic of Indonesia who is given delegation of authority to grant land rights. The term "Government Stipulation" in the context of land rights acquisition refers to a decision to grant land rights issued by the Head of the National Land Agency of the Republic of Indonesia, or an official of the National Land Agency of the Republic of Indonesia who is delegated the authority to grant land rights.

According to Boedi Harsono, what is meant by state land or land directly controlled by the state is land that is not owned by any land rights.8 Arie S. Hutagalung states that state land is land that is still directly controlled by the state on which individual rights have not been granted to legal entities, individuals, including government agencies.9 State land or land directly controlled by the state is land on which there is no or has not been burdened with certain land rights or land on which there are no individual rights owned or controlled by individuals or legal entities. The definition of state land according to Article 1 point 3 of Government Regulation No.24 of 1997, is land that is not owned by a land right. The definition of state land according to Article 1 paragraph (2) of Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency No. 9 of 1999, is land controlled by the state as referred to in Law No. 5 of 1960 concerning Basic Agrarian Regulations.

Land that can be categorized as state land or land directly controlled by the state, are: (a) former western land rights for which no confirmation of conversion was submitted until September 24, 1980. (b) land rights whose right holders or right subjects no longer qualify as land right holders or land right subjects. (c) land rights which have been relinquished by the right holder in favor of another party.

(d) land rights revoked in the public interest. (e) land rights that are abandoned by their holders. (f) Cultivation Rights Title, Building Rights Title, or Pakai Rights which expire but are not extended by the right holder. (g) Cultivation Rights Title, Building Rights Title, or Pakai Rights Title that expire but are not renewed by the right holder. (h) A Hak Milik, Hak Guna Usaha, Hak Guna Bangunan, or Hak Pakai whose right holder dies and leaves no heirs.

Parties conducting coastal reclamation can obtain land rights through an application for granting state land rights to the Head of the National Land Agency of the Republic of Indonesia. The application for granting land rights is submitted to the Head of the National Land Agency of

the Republic of Indonesia through the Head of the Regency/City Land Office whose working area covers the location of the land concerned. If the application for granting land rights is granted, a Government Stipulation in the form of a Decree on Granting Rights (SKPH) is issued by the Head of the National Land Agency of the Republic of Indonesia, or an official of the National Land Agency of the Republic of Indonesia who is given delegation of authority to grant land rights.

Officials of the National Land Agency of the Republic of Indonesia who are authorized to issue a Decree on Granting Rights (SKPH) on land originating from state land, namely: First, the Head of the Regency/City Land Office. Based on the provisions of Article 4 letter b of the Regulation of the Head of the National Land Agency of the Republic of Indonesia No. 2 of 2013, the Head of the Regency / City Land Office is authorized to grant Building Rights Title for legal entities on land with an area of not more than 20,000 m2 (twenty thousand square meters). Based on the provisions of Article 5 letter c of the Regulation of the Head of the National Land Agency of the Republic of Indonesia No. 2 of 2013, the Head of the District/Municipal Land Office is authorized to grant the Right of Use for private legal entities, BUMN/BUMD on non-agricultural land with an area not exceeding 20,000 m2 (twenty thousand square meters). Based on the provisions of Article 5 letter d of the Regulation of the Head of the National Land Agency of the Republic of Indonesia No. 2 of 2013, the Head of the District/City Land Office is authorized to grant the Right of Use for Central Government and Local Government assets. Second, the Head of the Provincial Land Agency Regional Office. Based on the provisions of Article 9 letter b of the Regulation of the Head of the National Land Agency of the Republic of Indonesia No. 2 of 2013, the Head of the Regional Office of the National Land Agency is authorized to grant Building Rights Title for legal entities on land with an area of more than 20,000 m2 (twenty thousand square meters) and not more than 150,000 m2 (one hundred and fifty thousand square meters). Third, the Head of the National Land Agency of the Republic of Indonesia. Based on the provisions of Article 13 of the Regulation of the Head of the National Land Agency of the Republic of Indonesia No. 2 of 2013, the Head of the National Land Agency of the Republic of Indonesia is authorized to grant Building Use Rights and Use Rights that are not delegated to the Head of the Provincial Regional Office of the National Land Agency or the Head of the Regency / City Land Office. Based on the provisions of Article 74 paragraph (3) of Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency No. 9 of 1999, the Head of the National Land Agency of the Republic of Indonesia is authorized to grant Management Rights.

Acquisition of Land Rights by Parties Conducting Beach Reclamation in Connection with Decision Number 96/PDT/2021/PT.TJK

In the context of coastal reclamation, the process of obtaining land rights entails the submission of an application for the grant of state land rights to the Head of the National Land Agency of the Republic of Indonesia. This application is then routed through the appropriate Head of the Regency/City Land Office, whose jurisdiction encompasses the specific location of the concerned land. In the event that the application for the aforementioned land rights is granted, a Government Stipulation in the form of a Decree on Granting Rights (SKPH) is issued by the Head of the National Land Agency of the Republic of Indonesia, or an official of the National Land Agency of the Republic of Indonesia who has been delegated the authority to grant land rights.

Meanwhile, the verdict No. 129/PDT/2022/PT DKI clearly states that PT Tanjung Selaki does not have a stockpiling license based on the available evidence:

That the term permit in the above provisions is limited to the reclamation location permit (from the First Respondent originally the First Defendant), while the permit for reclamation

implementation remains with the Minister of Transportation in this case the Second Respondent originally the Second Defendant.

That the first respondent is administratively responsible, while the technical responsibility and supervision and evaluation is the relevant regional agency, in this case the second respondent.

That based on Exhibit P-1.a, it is proven that the Plaintiff is the holder of a terminal management permit for its own use (TUKS) in accordance with the decision of the Minister of Transportation number KP444 of 2012 with the TUKS management area with the following coordinates:

- o 050.55'-27,4''LS/1060-06'12,7''BT
- o 050-55'-17,6''LS/1060-06'-12,7''BT
- o 050-55'-20,6''LS/1060-06'-14,5''BT
- o 050-55'-17,6''LS/1060-06'-13,9''BT

That in September 2018, the Appellant, originally the Defendant, carried out reclamation activities without a reclamation implementation permit in the coastal area of Margasari Village which violated the TUKS area of the Appellant, originally the Plaintiff, based on Exhibits P-1.b, P-1.c, Exhibit P-2.a, Exhibit P-4.a, and Exhibit P-4.b .

That in relation to the activities of the original Defendant, the original Plaintiff has warned the original Defendant several times to stop the backfilling activities that have entered the TUKS area of the original Plaintiff and also objected to the original Defendant II as the issuer of the management permit for the TUKS of the original Plaintiff as Exhibit P-2.b and Exhibit P-2.c as well as Exhibit P-3.a and Exhibit P-3.b .

That based on Exhibit P-5.b, it has been proven that the reclamation activities without a reclamation implementation permit carried out by the original Defendant had entered the TUKS area of the original Plaintiff, as evidenced by the re-plot by the original Defendant II on October 22, 2018 with the participation of the original Plaintiff, the original Defendant, the original Defendant I and the original Defendant II.

That Exhibit P-3.c proves the existence of an order from the second co-respondent to the second appellant to the original appellant.

Defendant to immediately stop the filling or reclamation of the coast of Margasari Village, as stated in letter number UM.003/29/6/KSOP/BTN.18 dated 1 October 2018 regarding the cessation of reclamation activities from the Ministry of Transportation, Directorate General of Sea Transportation, Office of Kesyahbandaran and Port Authority Class 1 Banten to PT Pelayaran menaratama Samudra Indah (the Appellant, originally the Defendant), which was followed by the suspension of the location permit of the Appellant, originally the Defendant by the Appellant, originally the Defendant I based on the decision letter of the Head of Banten Province's One-Stop Investment and Integrated Services Office number 570/991- DPMPTSP/2018 dated 22 November 2018 regarding the temporary suspension of the coastal reclamation location permit of PT Pelaratama Samudra Indah (the Appellant, originally the Defendant).
Menaratama Samudra Indah which is located in Margasari Village, this is also consistent with Exhibit T-3.

That based on Exhibit P-10.a, Exhibit P-10.b and Exhibit P-10.c, it has been stipulated and determined that the authority to issue permits for the implementation of coastal reclamation is the Ministry of Transportation (Incasu Turut Terbanding II semula Turut Defendant II) while Turut Terbanding I semula Turut Defendant I only issues reclamation location permits in Article 2 paragraph (1) of the Banten Governor Regulation clearly states that every person who will carry

out reclamation in coastal areas and small islands must have: a. location permit and b. reclamation implementation permit.

That based on Exhibit P-10.e, which is a companion to Law No. 17/2008, the reclamation must obtain a permit from the Minister of Transportation.

That likewise from Exhibit P-10.g proves that from Article 21 letter a of the Minister of Transportation Regulation number 125 of 2008 which reads "Reclamation work activities must obtain approval from the Minister".

That based on Exhibit P-6.b, it has been proven that the application of the original Defendant to obtain a reclamation implementation permit was addressed to the original Defendant I, to which the original Defendant I replied and informed that the authority to issue a reclamation implementation permit for PT Menaratama Samudra Indah was the original Defendant II, not the original Defendant I, to which the essence was that the application could not be processed and approved.

That from the evidence of the Plaintiff's original Appellant as mentioned above, the Appellate Level Judges are of the opinion that the Plaintiff's original Appellant has succeeded in proving his argument that the Defendant did not have a reclamation implementation permit at the time of carrying out backfilling or reclamation activities that had entered the TUKS area of the Plaintiff's original Appellant so that such actions are a violation of the applicable laws and regulations:

a) The original Defendant has committed an illegal act. That based on the evidence described in objection ad.1 above, the implementation of reclamation carried out by the original Defendant which has exceeded/entered the TUKS area of the original Plaintiff and was carried out without a reclamation implementation permit from the Minister of Transportation (the original Defendant II) is an unlawful act, as stipulated in Article 1365 of the Civil Code, because it has proven to have violated the subjective rights of the original Plaintiff in the management of the TUKS to support rock mining activities and has been legally granted based on the Decree of the Minister of Transportation number 444/2012.
b) That Exhibit P-10.a, Exhibit P-10.b and Exhibit P-10.c have proven that the reclamation activities carried out by the Respondent were contrary to the legal obligations of the Respondent, which required the possession of a reclamation implementation permit from the Ministry of Transportation (the Second Respondent) before carrying out reclamation activities on the coast of Desar Margasari as stipulated in Article 2 paragraph (1) of Banten Governor Regulation number 46 of 2016 concerning procedures for issuing reclamation location permits and implementing reclamation in conjunction with Presidential Regulation number 122 of 2012 concerning reclamation in coastal areas and small islands.
c) That based on Exhibit P-10.d, Exhibit P-10.e, and Exhibit P-10.f, it is also evident that there are legal obligations that must be carried out by the Respondent before carrying out any filling or reclamation activities in coastal areas and small islands.
d) That Exhibit P-6.b proves that the Appellant, originally the Defendant, has committed an unlawful act by continuing to carry out activities to fill or reclaim the beach of Margasari Village even though it does not have a reclamation implementation permit because its application has been rejected by the Appellant, originally the Defendant I.
e) That Exhibit P-3.c proves that the 2nd Respondent, originally the 2nd Defendant, ordered the 2nd Respondent to immediately stop its reclamation activities, which was corroborated by

Exhibit T-3, which was followed up by the suspension of the 1st Respondent's reclamation location permit.

That the violation of the law of the Respondent originally Defendant is corroborated by the admission of the Respondent I originally Defendant II in his answer submitted in the trial on November 12, 2019 which is basically as follows:

a) That PT Pelayaran Menaratama Samudra Indah (the original Defendant) has carried out backfilling activities without having a permit to carry out coastal reclamation, these activities are only based on the location permit they have.
b) Article 20 paragraph (1) of the Regulation of the Minister of Maritime Affairs and Fisheries number 17/PERMEN/KP/2013 concerning reclamation licensing in coastal areas and small islands states that the extension of the reclamation location permit can be submitted 3 (three) months before the validity period of the reclamation location permit expires and it turns out that PT. Pelayaran Menaratama Samudra Indah (the original Defendant) never applied for an extension of its reclamation location permit until its validity period expired on February 17, 2019, thus PT. Pelayaran Menaratama Samudra Indah (the original Defendant) did not have a reclamation location permit from the Banten Provincial Government as of February 18, 2019.

Based on the evidence submitted by the Plaintiff's original Appellant as mentioned above, the Appellate Level Judges are of the opinion that the argument of the Plaintiff's original claim regarding the Defendant's original Appellant has committed an act against the law has been successfully proven so that therefore the objection Ad.2 of the Plaintiff's original Appellant can be accepted.

That it is necessary to know and understand that in Land Law concerning the Recognition of Land Rights must be supported by proof of legal ownership of the land. That what the Plaintiff says about the license is not proof of ownership. That it is possible that from the Permit, land rights such as HGU or HGB will arise, but it must be followed up with the making of the HGU or HGB on the land which according to the Plaintiff is the result of the fill or reclamation.

The essence of the decision 129/PDT/2022/PT DKI states:

a. Declare that the Defendant has committed an illegal act.
b. Declare that the actions of the Appellant, originally the Defendant, who carried out beach filling/reclamation located in Margasari Village, Puloampel Sub-District, Bojonegara, Serang Regency, Banten Province without a permit as long as it affects the TUKS area of the Appellant, originally the Plaintiff, are illegal with all legal consequences.
c. Declare invalid and legally unenforceable all the results of the act of filling/reclamation carried out by the Appellant originally Defendant to the extent that it exceeds the TUKS area of the Appellant originally Plaintiff on the beach located in Margasari Village, Puloampel Sub-District, Bojonegara, Serang Regency, Banten Province with all its legal consequences.
d. Declare as invalid and legally binding with all legal consequences any further actions or requests made or submitted by the original Defendant to either the second Defendant, the second Defendant, the third Defendant, or any other party in relation to the results of the beach filling or reclamation that has exceeded the area of the TUKS of the original Plaintiff

located in Margasari Village, Puloampel Sub-District, Bojonegara, Serang Regency, Banten Province that has been unlawfully carried out by the original Defendant.

e. Punish the Defendant to restore or restore the condition of the unauthorized filling or reclamation that has exceeded the TUKS area of the Plaintiff located in Margasari Village, Puloampel Sub-District, Bojonegara, Serang Regency, Banten Province, to its original condition prior to the unauthorized filling or reclamation by the Defendant within 3 days after this decision becomes final.
f. Punish the original Defendant to pay to the original Plaintiff material damages in the amount of Rp1,350,000,000 (one billion three hundred and five putuh million rupiah) immediately and at once.
g. Punish the first respondent, the second respondent, and the third respondent to comply with this decision.

Conclusion

After describing the results of the author's analysis in the previous chapters, this chapter will present the conclusions that can be drawn, as well as answers to the problem formulation. The following is the explanation: a) From the results of this research, it is concluded that the legal status of coastal reclamation land in Indonesia is the ownership of the Indonesian nation which is administratively managed by the state. The distribution authority owned by the state makes the state have the right to determine who is allowed to manage the reclaimed land. Submission to certain parties is submitted with certain rights by providing management rights, then given the right to build and property rights. b) According to the verdict number 129/PDT/2022/PT DKI, PT Pelayaran Menaratama Samudra Indah did not have a permit for reclamation activities and was proven to be against the law.

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