

# 13 Legal Certainty In Granting Land Rights To Traditional Coastal Communities (Case Study In Bintan Regency, Riau Islands Province)

*by Ika Novi*

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# LEGAL CERTAINTY IN GRANTING LAND RIGHTS TO TRADITIONAL COASTAL COMMUNITIES (Case study in Bintan Regency, Riau Islands Province)

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## ABSTRACT

Management of agrarian resources in coastal areas currently still remains problematic and has not been able to realize reform assets or access to reform. On the other hand, the enactment of the Law on the management of coastal areas and small islands tends to be slower than other laws and regulations, even though national regulatory efforts on coastal issues have been carried out by the government. The research objectives to be achieved in this research include regulating legal certainty for granting land rights, implementing law enforcement for granting land rights and identifying and knowing the obstacles faced in efforts to realize legal protection and certainty of land rights for traditional communities in coastal areas. This research was carried out in Kawal Pantai Village and Tembeling Tanjung Village. The research uses an empirical legal approach, descriptive qualitative analysis techniques. The results of the research explain that legal certainty arrangements for granting land rights to traditional communities in coastal marine areas are carried out through the issuance of certificates of use rights for plots of land used as a means of residence after obtaining approval from the Ministry of Maritime Affairs and Fisheries. The implementation of law enforcement on granting land rights to traditional communities in coastal areas is carried out by the Ministry of ATR/BPN through the PTSL certification program with priority for land plots located within the coastline as well as certification through the agrarian reform program which is implemented through the Agrarian Reform Task Force. Obstacles faced in providing legal certainty of land rights for traditional communities in coastal areas include: 1) There has been no updating of regional map data, causing some of the land plots submitted for certificates to still have the status of being in forest areas. 2) The granting of land rights has only been carried out to residential interests, so that residents who run micro-businesses where they live have not been targeted by the certification program either through the Complete Systematic Land Registration program or through the GTRA platform.

**Keyword:** Agrarian, Land Rights, Coastal Areas, Legal Certainty

## 1. BACKGROUND

Indonesia is an archipelago that physically consists of 17,500 islands, with a total coastline length of 81,000 km and a sea area of 70 per cent of the total area of Indonesia. As a group of islands stretching from Sabang to Merauke, Indonesia is rich in natural resources and its territory is an interface between terrestrial and marine ecosystems. As a constitutional state, where the Constitution is the philosophical basis of national law, existing regulations should not contradict the Constitution. Regulations should not contradict local wisdom, which in most cases is the main source of livelihood. For example, along the coast of the Riau Islands, various local cultures and traditions still exist (and continue to grow and develop). And the Indonesian Constitution respects the existence of these cultures.

The management of agricultural resources still leaves problems where the exploitation of agricultural resources in various regions, especially in the Riau Islands Province, is not in line with the prosperity of the people. In fact, these regulations have led to many cases of damage to the national economy, the people's economy and the environment, as well as violent conflicts resulting in human rights violations. The consequences are not only food insecurity and vulnerability to disasters, but also the risk of separation from the territory of the Unitary State of the Republic of Indonesia (NKRI). Poverty affects 32 per cent of the 16.42 million people living in 8,090 coastal villages.) Another trigger for this condition is that the development of comprehensive laws and regulations

governing the management of coastal areas and small islands tends to be slower than other laws and regulations, such as those governing land, plantations, forestry, mining, waters and fisheries.

Empirical evidence that can be revealed includes the content of HP-3 there is no legal certainty in granting land rights for traditional communities in the coastal sea area of Bintan Regency, Riau Islands Province, because the existing legal provisions actually sharpen the conflict over the revocation of the rights of coastal communities in accessing resources both on the surface of the sea, water bodies and under the seabed. Therefore, it is necessary to conduct an empirical legal study that examines the efforts to provide legal certainty in granting land rights to coastal communities, the course of protection and legal certainty of coastal water use rights by formulating the problem, namely, How is the regulation of legal certainty in granting land rights and the implementation of law enforcement for traditional communities in the coastal sea area?

## 2. LITERATURE REVIEW

In his book, he writes that there are three basic values in law, namely legal security, where legal security is discussed from a juridical point of view, legal justice, where legal justice is discussed from a philosophical point of view, as justice is equal rights for all people who have affairs in the realm of the court, and legal expediency, where legal expediency is discussed from a utilitarian point of view.

Socio-historically, the problem of legal security arises together with the capitalist system of economic production. Unlike the previous system of production, the latter is based on efficiency calculations. Everything has to be calculated clearly and precisely: how many goods will be produced, what are the costs and what is the selling price.

Modern law follows the times, which strongly support the needs of the new capitalist economic system. Redbruch, in his thesis, speaks of the ideals of law (*idea des rechtes*), which are contained in the three basic values, namely justice (*gerechtigheit*), expediency (*zwekmaeszigkeit*) and legal certainty (*rechtssicherheit*). The three fundamental values are not always in a harmonious relationship, but rather in conflict and contradiction with each other. Legal certainty and expediency must not conflict with justice, nor must legal certainty conflict with expediency.

Placing the theory of legal objectives that include legal certainty, justice and expediency which will be further explained in a table consisting of classical and modern theories.

Table 1.2 Grand Western Theory

Classic Theory	Ethical Theory	The purpose of law is solely to realise justice.
	Utility Theory	The purpose of law is solely to realise utility.
	Legalistic Theory	The purpose of law is solely to realise legal certainty.
Modern Theory	Default Priority Theory	1. fairness 2. expediency 3. legal certainty
	Case Prioritisation	The objectives of the law include justice-benefit-law certainty, in order of priority, according to the case at hand and to be solved.

The purpose of the law includes justice-benefit-legal-certainty, in order of priority, according to the case at hand and to be solved. Contrary to the Western theory, the Eastern nations still use their original legal culture, which only emphasises the theory of legal objectives "justice is harmony and harmony is peace".

Enforcement of the law according to Sudarto, namely "the implementation of the law by law enforcement officers and by every interested person in accordance with their respective powers and in accordance with the applicable laws". The purpose of the law includes justice-benefit-legal certainty, in order of priority, according to the case at hand and to be solved.

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### 3. METHODOLOGY

This research uses qualitative research methods. This research is a type of empirical legal research, namely legal research using a field research approach by seeing and observing what is happening in the field, the application of these regulations in practice in society based on evidence obtained from the field. The research was conducted in Bintan Regency, Riau Islands Province, including Kawal Village, Gunung Kijang District, Bintan Regency and Tembeling Tanjung Village, Teluk Bintan District, Bintan Regency.

Data collection techniques used by researchers include In-depth Interviews, Observation and Documentation. Data analysis in this study was carried out with descriptive qualitative analysis, what is meant by descriptive is to clearly describe the actual situation regarding the facts and characteristics of a particular population.

### 4. DISCUSSION

#### a. Legal Certainty Arrangements for Granting Land Rights to Traditional Communities in the Coastal Sea Region

The regulation of legal certainty in the granting of land rights for traditional communities in coastal areas is related to the institutions that carry out, position and authority, legal provisions and forms of service and the objectives to be achieved. Land services are the authority of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency. And in certain areas, other recommendations are needed which are the authority of regions such as the Ministry of Maritime Affairs and Fisheries or the Ministry of Environment and Forestry at the regional level. In connection with these land services, the implementation of land services to coastal communities is carried out by the District/City Land Office.

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- 1) Pay attention to the sustainability of people's lives and livelihoods;
- 2) Respecting the interests of other parties carrying out activities or utilization of the surrounding space;
- 3) Conducting activities in an environmentally friendly manner;
- 4) Preserving the marine ecosystem and rehabilitating damaged resources;
- 5) Maintaining the life and migration path of marine biota;
- 6) Providing access or shelter to anyone in emergency conditions;
- 7) Involving and empowering the community around the activity site;
- 8) Dismantle buildings and installations at sea when the validity period has expired and business activities are no longer continued;
- 9) Avoid causing social conflict;
- 10) Avoid causing disturbance to the implementation of security and safety interests and paying attention to national interests.

In connection with the mention of ulayat rights in the Basic Agrarian Law, which essentially means the recognition of the right, the ulayat rights will be considered as long as they still exist in the legal community concerned. For example, in the granting of a land right (such as a hak guna-usaha), the relevant community will be heard and given recognition to the party who is entitled as the holder of the ulayat right.

The principle of integration means that all institutional elements, in accordance with their authority, have the same understanding and move together in integrated marine and coastal space management. This includes planning, utilization, control, supervision, and monitoring. This is also known as Integrated Coastal Zone Management (ICZM) which contains elements that are directly or indirectly interconnected. There is integration of land and ocean components in the target area, both in space and time, forming a dynamic, multidisciplinary process to encourage sustainable coastal area management. The legal guidance in the granting of water area land rights covers the entire cycle of information gathering, planning, decision-making, management, and implementation monitoring. ICZM are based on cross-sector coordination to assess community goals in a particular coastal area and take action to achieve those goals.

In accordance with the latest regulations described in Law Number 11 of 2020 on Job Creation of spatial and land clusters, to implement the UUCK, the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) drafted five Government Regulations. The Government Regulations are:

- 1) Government Regulation No. 18/2021 on Management Rights, Land Rights, and Land Registration.
- 2) GR No. 19/2021 on the Implementation of Land Acquisition for Development in the Public Interest.
- 3) GR No. 21/2021 on Spatial Planning.
- 4) GR No. 43/2021 on the Settlement of Discrepancies in Spatial Planning, Forest Areas, Licenses, and/or Land Rights.
- 5) GR No. 64/2021 on Land Bank Agency.

The five derivative regulations are interrelated with each other, and the main purpose of preparation is to support better management of natural resources. For example, if you read and understand PP 21/2021 on Spatial Planning, the contents of the regulation can be a reference in granting land rights regulated in PP 18/2021. Meanwhile, GR 20/2021 is used to control and regulate the granting of land rights with sanctions in the form of the designation of abandoned land as an object for land banks in GR 64/2021.

The land certification programme implemented by the Ministry of ATR/BPN through the land office is a tangible manifestation of efforts to provide asset legality in the form of community buildings/settlements located on water, which previously had not been regulated according to land regulations by the local government. The granting of permits was only in the form of control of land plots by the Village Head and local village government, and there was no legality given implicitly and explicitly before the enactment of Government Regulation No. 18 of 2021 concerning Management Rights, Land Rights and Land Registration. Policy transformation into asset legality in the form of land rights certificates was done in accordance with the location and area of land controlled.

Not only non-permanent buildings erected by residents, as in the coastal area of Kawal Pantai, Gunung Kijang Subdistrict, but also numerous permanent buildings have been constructed by the provincial government through a programme to enhance the quality of housing for the community. This involves refurbishing uninhabitable houses, along with providing road access and public facilities for the community, as done in Tembeling Tanjung Village, Teluk Bintan Subdistrict.

The current condition that explains the existence of the Riau Islands Provincial Government and the Ministry of PUPR programmes in improving the quality of livable houses in coastal residential areas in Tembeling Tanjung Village, Teluk Bintan Sub-district was confirmed by the technical team of the Bintan Regency Land Office which became the Coordination Team for the Implementation of Social Rehabilitation of Uninhabitable Houses (RS-RTLH). The RS-RTLH programme was implemented starting in 2013 with the target achievement of the Bintan Regency Government in distributing the BS-RTLH Programme until 2024 to build at least 2,600 units.

The implementation of coastal area arrangements related to granting rights for traditional communities refers to the regulations that become the reference for the Land Office, namely the Job Creation Law and the Regulation of the Minister of ATR / Head of BPN which explains that the granting of land rights in coastal areas can only be given for existing buildings, among others: buildings used for security defence, ports or docks, safety guard towers, residences of indigenous peoples or members of the community who have traditionally resided in that place and power plants.

In a legal review, Land Rights are described as rights and obligations arising from legal relationships between rights holders and land, space above land, and/or space below land to control, own, use, and utilise the land concerned, including the space below land, water, and space above it just needed for interests that are directly or indirectly related to its use.

Limitations in Granting Rights to Buildings/Houses on Waters Settlements/houses on waters and activities to utilise sea space must also pay attention to sustainability and maintain the existing/living ecosystem on the surface and underwater space. Given that in the process of granting rights to buildings / houses above coastal waters there is still no uniformity in the procedures or types of rights granted, it is necessary to regulate further through a collective agreement.

Legal protection of land rights is issued in the form of legality of land ownership in the form of land rights certificates with the status of Right of Use for 30 years and can be extended as long as it meets the requirements. In detail, the form of legal protection of land rights for coastal communities by looking at the continuation of the law in the previous agrarian arrangement can be seen in the table below.

**Table 2 Status of land rights**

Periode	Granting Land Rights
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Periode	Granting Land Rights
Before the enactment of GR 43/2021	<ul style="list-style-type: none"> <li>a. a. Most do not have recognised land rights</li> <li>b. b. A small part of the determination of ownership rights on land rights issued in the water area before the enactment of PP 43/2021 is declared to remain valid</li> </ul>
After the enactment of PP 43/2021 on the elaboration of Law No. 11/2020 on Job Creation spatial and land cluster	<ul style="list-style-type: none"> <li>a. a. Suitability of marine space utilisation activities recommended by the Ministry of Marine Affairs and Fisheries</li> <li>b. b. Communities that have utilised space in the water area can be granted land rights based on permits issued by the Ministry of Maritime Affairs and Fisheries</li> <li>c. c. Determination of the status of the Right to Use</li> <li>d. d. The validity period is 30 years</li> </ul>

There is a discrepancy in the implementation of the previous regulation, so it refers to Government Regulation Number 43 of 2021 Article 17 concerning Settlement of Discrepancies, Spatial Planning, Forest Areas, Permits and/or Land Rights so that people who have utilised space in water areas in accordance with the requirements and principles of benefit and environmental sustainability can be granted land rights based on permits issued by the Ministry of Maritime Affairs and Fisheries. Land rights issued in water areas before the enactment of GR 43/2021 are declared to remain valid with the obligation of the Land Rights Holder to provide space and access to fishermen, fish farmers, salt farmers, and shipping safety.

Along with the development of the government's overall development policies and programmes, since 2016 the government has begun to arrange coastal areas so that there is harmony between the survival and livelihood of the community and the preservation of the marine ecosystem below. In the long term, to balance environmental, economic, social, cultural and recreational objectives, all within the limits set by natural dynamics. Integrated in the policy of regulating, controlling, managing and utilising coastal areas refers to the integration of objectives as well as the integration of the various instruments needed to achieve these objectives. This means the integration of all relevant policy areas, sectors and administrative levels.

For communities living on the coast, the granting of land rights over the land on which they live is a good policy and provides benefits because their existence becomes legally protected through proof of ownership of land rights certificates so that they can avoid the risk of conflict over assets that have been built as a place to live. The land right that can be granted is a right of use with a period of 30 years and can be renewed as long as it fulfils the specified requirements. Although there have never been agrarian conflicts in residential areas in coastal areas, policies to mitigate and minimise the occurrence of agrarian conflicts have been regulated in the derivatives of the Job Creation Law in the spatial and land cluster, specifically in Article 17 of Government Regulation Number 43 of 2021 concerning Settlement of Discrepancies, Spatial Planning, Forest Areas, Permits and/or Land Rights.

The form of protection for land rights applied after the Job Creation Law and previous legal provisions can be clarified in relation to differences prior to the implementation of relevant legal provisions, with reference to Government Regulation Number 43 of 2021. Settlement of discrepancies between RTRWP and/or RTRWK with forest areas as referred to in paragraph (1) letter b is carried out with the confirmation of forest areas, by the minister who carries out government affairs in the forestry sector within a maximum period of 18 (eighteen) months after the discrepancy between RTRWP and/or RTRWK with forest areas is determined by the minister. Land Rights Holders are obliged to provide space and access to fishermen, fish farmers, salt farmers, and shipping safety.

#### **b. Implementation of Law Enforcement on the Granting of Land Rights for Traditional Communities in the Coastal Sea Region**

The birth of the law on coastal utilization cannot be done just like that. Of course, considering the nature of agrarian law that applies dualism, namely with the enactment of regulations from customary law in addition to regulations from and based on Western law. The current Agrarian Law, which should be one of the important tools for building a just and prosperous society, turns out to be the opposite, in many cases it is an obstacle to the achievement of the nation's ideals.

The results of the research reveal that land tenure controlled by coastal communities in Bintan Regency and Riau Islands Province is generally obtained from generation to generation, which is state land that was cultivated and controlled previously by their ancestors.

Based on lineage. Such control continues to occur from generation to generation until now.

The control and use of land by anyone and for any purpose should have a basis of rights. The absence of a right to the land means that the land is illegal. Illegal land tenure can be interpreted as physical land tenure without a legal basis, also known as land tenure without the permission of the rightful owner.

Facing these problems, the state is represented by the Ministry of ATR/BPN or the Head of the National Land Agency, the Ministry of Maritime Affairs and Fisheries, and the Regional Government. The government has formed a task force that aims to accelerate the goals of agrarian reform, leading to the improvement of people's welfare. The establishment of the Task Force is to ensure that the implementation of Agrarian Reform, as stipulated in Presidential Regulation No. 86/2018, runs effectively and achieves its goals in accordance with applicable laws and regulations, particularly those related to asset structuring and policies directed at expanding the objects and subjects of land redistribution recipients. This is achieved through the policy of organizing the Agrarian Reform Task Force (GTRA) at both the central level and, especially with respect to GTRA institutions, at the provincial and regency/city levels.

The granting of land rights in coastal and water areas includes the application of rights, obligations and prohibitions in order to provide rights to the community of rights holders which include:

Rights related to Registration and Security of Title,

- 1) Rights are granted in the form of rights that have a period of time;
- 2) Preceded by KKPR/KKPRL licensing;
- 3) If property rights can be granted in the form of communal shared ownership.

Prohibitions on planning and supervising land use and land development include:

- 1) Confusing or closing public access is prohibited
- 2) Throwing land is prohibited
- 3) It is prohibited to damage natural resources and environmental sustainability

Obligations related to social commitment to the environment:

- 1) Maintain coastal and water functions;
- 2) Maintaining land, preventing damage and safeguarding;
- 3) Maintaining the preservation of aquatic ecosystems, coastal areas, communities, traditional fishermen, national interests and peaceful passage rights for foreign vessels.

The continuation of the implementation of agrarian reform to provide legal certainty for communities in settlements on waters is determined by a decree of the head of the district/city land office, with the area of the object used for budget planning assuming an area of 200 m<sup>2</sup> per field for a certification target of 2,500 fields. The commitment to the agrarian reform program in coastal areas is outlined in a cooperation agreement (PKS) between the Regional Office of the National Land Agency of Riau Islands Province and the Public Works, Spatial Planning and Land Office of Riau Islands Province Number: B/650/1/S-Perj/PUPP.6/2 023 and Number: 5/SKB21.UP.04.04/IV/2023 concerning a cooperation agreement for the land tenure of settlements on waters with the aim of realising synergies and optimisation in the implementation of Land Tenure Activities for Settlement Areas on Waters in the Riau Islands Province.

The application for registration of rights in the coastal area of Pasar Belakang Village, Sibolga Kota Subdistrict cannot be processed because the law has not yet provided more concrete arrangements, especially regarding the granting of types of settlement rights on the coastal border and above sea water. The provisions found through this research explain the legal provisions on the bases for granting rights to land tenure above sea level refer to the objectives of the program to accelerate the achievement of agrarian reform targets through the established task force for agrarian reform on the control and use of coastal areas. The mechanism for community participation is regulated in Presidential Regulation No. 86/2018 on Agrarian Reform, which states that

- 1) Access Arrangement as referred to in Article 5 paragraph (1) letter b shall be implemented based on clusters in order to increase economic scale, added value and encourage entrepreneurship of Agrarian Reform Subjects;
- 2) Access Arrangement as referred to in paragraph (1) includes:
  - a) social mapping
  - b) institutional capacity building
  - c) business assistance
  - d) skill enhancement
  - e) use of appropriate technology
  - f) business diversification
  - g) facilitation of access to capital

- h) facilitation of access to marketing (offiaker)
  - i) strengthening commodity databases and information; and/or
  - j) provision of supporting infrastructure
- 3) Access Arrangement as referred to in paragraph (1) shall be implemented with the following pattern:
- a) direct provision by the government;
  - b) cooperation between communities that have ownership rights certificates and legal entities through an equitable partnership programme; and/or
  - c) cooperation between community groups that have joint ownership rights and legal entities through the land as equity participation programme.

#### 4. CONCLUSIONS

Based on the results of the research and discussion, it can be concluded as follows.

- a. Legal certainty arrangements for granting land rights to traditional communities in coastal areas include: first, communities that have utilised space in the water area in accordance with the requirements and principles of benefit and environmental sustainability can be granted land rights based on permits issued by the Ministry of Maritime Affairs and Fisheries. Secondly, land parcels located within the coastline are subject to the same provisions and requirements as for the registration of land rights certificates for land parcels located on land. Land parcels located outside the coastline, in addition to applying the same provisions and requirements as the registration of land rights certificates on land parcels located on land, require recommendations for the utilisation of coastal waters from the Ministry of Maritime Affairs and Fisheries. Thirdly, the granting of land rights to buildings/residences in the form of a right of use for a predetermined period of time, applies to residents who use the land as a place to live, and if residents use it for commercial purposes then the provisions of applicable laws and regulations, related to reclamation permits, apply.
- b. The implementation of law enforcement on the granting of land rights for traditional communities in coastal areas is the implementation of policies by the government by establishing the Agrarian Reform Task Force institution which aims to realise and operationalise institutions that support the Agrarian Reform Programme so that it can effectively encourage the acceleration of the achievement of national targets, both related to asset reform (land legalisation and redistribution), as well as access reform, in this case the implementation of land rights through cross-sector coordination of ATR/BPN, the Ministry of Maritime Affairs and Fisheries and local governments as has been strengthened in order to provide certainty of the sustainability of people's lives and livelihoods.
- c. The obstacles faced, especially by the land office in providing legal certainty of land rights for traditional communities in coastal areas, include:
  - 1) there are still inconsistencies in the policies of institutions or local governments at all levels in implementing programmes for target groups of people who occupy water areas.
  - 2) the low socio-economic condition of the community, which impacts on their awareness and ability to access land services to obtain land rights.

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