

Erection of buildings in the coastal border area on land that has been issued land rights certificate

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Abstract

According to Law Number 26 of 2007, land use must be in accordance with the regional spatial plan (RTRW). However, buildings were still found in the coastal border area that were not in accordance with these provisions. This study aims to analyze the reasons for the existence of buildings in coastal border areas, analyze legal protection for land rights holders and buildings located in coastal border areas, and analyze the status of existing buildings in coastal border areas. This type of research is a normative empirical research, using a legislative approach, a conceptual approach, and a legal sociology approach. Data were collected through literature research and field research by interviewing respondents and informants. The data obtained is compiled and analyzed qualitatively. The results of the study show that the reason for the existence of the community is because they do not know that Ruyung Village is included in the area where buildings are not allowed to be erected based on the Qanun of Aceh Besar Regency No. 4 of 2013. The granting of land rights and the establishment of buildings on the coastal border of Ruyung Village occurred before the boundary rules and prohibitions on coastal boundaries were issued, so the government needs to provide legal protection by considering the interests of the community. Land ownership and the erection of buildings on the coastal border of Ruyung Village already existed before the regulation was enforced. Although there is no legal clarity yet, the building is legal and residents have full rights to its use. The Aceh Besar government is advised to socialize Qanun RTRW, provide legal certainty for the land of Ruyung Village residents before the coastal boundary rules take effect, and bring order and education to the use of coastal border areas.

Keywords: Coastal boundaries, land rights, building erection

Introduction

Land is an inseparable part of human life. However, land use must be adjusted to the circumstances and nature of the rights to benefit the welfare of the community. In Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, it is stated that "The earth, water, and natural resources contained therein are controlled by the State and used to the maximum extent possible for the prosperity of the people"^[1].

One form of realization of Article 33 paragraph (3) of the 1945 Constitution is as stated in Article 2 paragraph 2 of Law Number 5 of 1960 concerning the Basic Regulation of Agrarian Principles (hereinafter referred to as the UUPA), namely the State is authorized to organize and regulate the use, designation, supply and maintenance of earth, water and space. Furthermore, in Article 14 of the UUPA, it is explained that in order to achieve what is the nation's ideals, the government makes a general plan regarding the supply, designation, and use of earth, water and space for various interests of the people and the State^[2].

The general plan made by the government covers all regions of Indonesia and local governments are given the authority to regulate the inventory, designation, and use of land in accordance with the conditions of their respective regions through Regional Regulations. Therefore, in order for the use and utilization of land to be realized optimally, it must be adjusted to the Regional Spatial Plan (hereinafter referred to as RTRW) as mandated in Law Number 26 of 2007 concerning Spatial Planning^[3].

Indonesian land law regulates the use of land according to its designation, including coastal areas. The establishment of buildings on the coast border must comply with Law No. 27 of 2007, because this area functions to prevent abrasion and

maintain the preservation of the beach. Therefore, the determination of coastal boundaries is indispensable to prevent violations^[4].

The regulation of coastal boundaries is listed in Presidential Regulation No. 51 of 2016, which defines coastal boundaries as land at least 100 meters from the highest tide point towards land, adjusted to the physical condition of the beach. Provincial, regency, and city governments that have coastal areas are required to establish boundaries in their respective regional spatial planning regulations. This determination is important to prevent the use of land that is not in accordance with the rules and to maintain the ecological function of coastal areas.

Article 4 of Presidential Decree No. 51/2016 states that the purpose of determining coastal boundaries is as follows:

1. Sustainability and resources in coastal areas and small islands;
2. The life of people in coastal areas and small islands from the threat of natural disasters;
3. Allocation of space for public access through the beach; and
4. Space allocation for water and sewage drains.

In addition, the coastal border area is also included in the protected area whose preservation must be maintained. This is as contained in Article 13 of the Presidential Decree of the Republic of Indonesia Number 32 of 1990 concerning Protected Areas which states that "The protection of coastal boundaries is carried out to protect coastal areas from activities that interfere with the preservation of beach functions". Therefore, land use in coastal border areas must be supervised in such a way. But unfortunately, there is still abuse of land use in coastal border areas such as what happened in Ruyung Village, Aceh Besar Regency.

Article 10 of Government Regulation No. 16 of 2004 concerning Land Management stipulates that the holder of Land Rights is obliged to use his land in accordance with the Regional Spatial Plan (RT/RW), and violations of this provision can be subject to sanctions. In the context of coastal border areas, land use must refer to RT/RW which includes planning, utilization, preservation, and control of space for the realization of optimal, sustainable, balanced, and harmonious utilization for the prosperity of the people [5].

Coastal boundaries are areas that have special spatial arrangements and are included in the category of protected areas. The granting of land rights in this area is only allowed for certain purposes. This is affirmed in Circular Letter Number 4/SE-100. PG.01.01/II/2022 concerning Land Management Policy in Protected Areas, which states that coastal boundaries are part of protected areas.

Land registration in protected areas is given with restrictions and obligations in the form of RRR (Right, Restriction, and Responsibility) recorded in the land book and certificate. Rightholders are prohibited from erecting buildings that interfere with conservation functions, damage natural resources, alter landscapes and ecosystems, and interfere with environmental functions. They are also required to maintain the soil, maintain fertility, prevent damage, and preserve the environment, including maintaining the conservation function of water body boundaries. Land use must be in accordance with the function of the area in the regional spatial plan and comply with the provisions of applicable laws and regulations.

The circular is in line with Article 10 of Government Regulation No. 16 of 2004, which emphasizes that land administration can only be completed if the holder of his right or power of attorney uses and utilizes the land in accordance with the Regional Spatial Plan (RT/RW). If these provisions are not met, sanctions will be imposed in accordance with the applicable laws and regulations. This shows the importance of matching land use with spatial planning, especially in protected areas such as coastal borders.

Based on the applicable provisions, a person can still have land rights in the coastal border area, but with certain conditions. Every land certificate in this area is required to include all seven points of limitation and obligation (RRR) in the instruction column. If any of these points are not met, then the right to the land cannot be granted. The types of rights that can be granted in the coastal border area are limited to Property Rights and Right of Use, provided that it is not allowed to erect buildings on the land.

Aceh has a large coastal border area due to its geographical location which is directly adjacent to the sea. As a region with a special autonomy status, Aceh has the authority to regulate its own government, including in the management of regional spatial planning. Aceh Besar Regency, which is directly adjacent to Banda Aceh City and the coastal area, has an area of about 2,969.00 km². The regulation of coastal boundaries in the Aceh

Region is regulated in the Aceh Qanun No. 19 of 2013 concerning the Aceh Regional Spatial Plan for 2013-2033. Meanwhile, special arrangements for Aceh Besar Regency are listed in the Qanun of Aceh Besar Regency No. 4 of 2013 concerning the Spatial Plan of Aceh Besar Regency for 2012-2032.

Based on Article 26 paragraph (1) letter a of the Qanun of Aceh Besar Regency No. 4 of 2013, the coastal border area is categorized as a local protection area. Paragraph (2) states that the area of the coastal border area in Aceh Besar reaches 2,392.36 hectares. With this area, this area should be optimally utilized by the government and the community. However, the reality is that many residents have not used the land in the coastal border area in accordance with the applicable functions and rules.

In fact, the coastal border area in Aceh Besar Regency is not only used as a place to live, but also as a business area. Although the government has carried out control in accordance with applicable regulations, misuse of land use in this area is still frequent. One example is in Ruyung Village, Mesjid Raya District, where several plots of land included in the coastal border area have been controlled by the community and even given land rights, even though the area should be protected from such activities.

But in reality, the issuance of several land rights certificates in the coastal border area had been carried out before the existence of regulations governing the coastal border in the area. This condition is the basis for the people of Ruyung Village to dare to build buildings and run businesses in the area, because they feel that they have a valid legal basis in the form of a land certificate issued by the local land office.

Research Method

The type of research used in this study is empirical normative, namely legal research conducted by examining literature materials or secondary data. While empirical legal research is research that examines and analyzes the legal behavior of individuals or society in relation to law [6]. And using a legislative approach, a conceptual approach, and a legal sociology approach. Data sources were obtained from primary and secondary materials, and data collection techniques through literature research and field research. Data analysis uses descriptive analytics, the data that has been obtained from the results of this research is compiled and analyzed, then the data is described descriptively to obtain a picture that can be understood clearly and directed to answer the problem being researched [7].

Results and Discussions

a. Erection of Buildings in Coastal Border Areas

Land problems are complex and multisectoral. The solution that can be done is to provide legal certainty to landowners and optimize their use according to the ability of the land, through planning, administration, control arrangements, management of rights, as well as measurement, mapping, and land registration so that its use is balanced. The imbalance between the availability and need of land raises various problems, so it is necessary to regulate land tenure and use. During the Old Order period, through the UUPA, nationalization of former colonial land and fair redistribution to the people were carried out through the land reform program.

The UUPA is the juridical foundation and an important milestone in Indonesia's land politics. Legal certainty on land rights provides clarity about who is the holder of rights (subject of rights) as well as the location, boundaries, area, and status of the land. The fact that the existence of the land is fixed. While the population is increasing, so the management of land resources by the government must be

very wise. The authority over land resource management lies with the state administrator (government).

Coastal boundaries are part of the coastal area regulated in Presidential Regulation No. 51 of 2016. Local governments are obliged to set coastal boundaries in the RTRW. This determination is important to prevent the possession and use of land that is not in accordance with the rules. According to Government Regulation No. 16 of 2004, holders of Land Rights are obliged to use the land according to the spatial plan, and if violated, they will be sanctioned according to applicable regulations.

The coastal border area is a protected area with special spatial arrangements, and the granting of land rights in this area is only allowed under certain conditions. However, in Ruyung Village, Mesjid Raya District, Aceh Besar, there is a building that has been standing for a long time in the coastal border area, before the enactment of Qanun No. 4 of 2013. The Qanun stated that Ruyung Village is a coastal border area, so there is no permission to grant land rights or the erection of buildings there because it is contrary to the RTRW.

Based on the interview, Mrs. AW as the owner of SHM No. 18 stated that she had occupied and built on the land since 2002, and obtained a certificate in 2007 through the PTSL Program. After the tsunami, he again built a semi-permanent house. He was not aware of the existence of Qanun No. 4 of 2013 which designated Ruyung Village as a coastal border area, because there had never been socialization from the Aceh Besar Regency Government or BPN^[8].

The 2022 Circular Letter concerning Land Management in Protected Areas stipulates that coastal boundaries are protected areas. Land registration in this area is accompanied by restrictions and obligations (RRR: Right, Restriction, and Responsibility) recorded in the land book and certificates. Right holders are prohibited from damaging the environment, erecting buildings that interfere with conservation functions, and are obliged to maintain sustainability and utilize land in accordance with spatial planning and laws and regulations.

Legal certainty for people who live in protected areas such as coastal borders has been provided by the state in the form of land rights regulated in laws and regulations, the Local Regional Spatial Plan and the Circular Letter of Land Registration Policy in Protected Areas.

b. Legal Protection of Land and Building Rights Holders in Coastal Border Areas

Land has an important role in human life, so the desire to own it often leads to legal consequences, disputes, and even disputes, including conflicts over land boundaries and property rights in society. Land is a vital need for humans, both during life and after death, so it is an important matter handled by BPN. Land problems are becoming a staple as the need for land continues to increase as the population grows. This encourages people to acquire land through legal buying and selling or other means outside of legal procedures^[9].

A land title certificate is strong written evidence, as long as its physical and juridical data correspond to the survey deed and land book, unless proven otherwise in court. This certificate aims to provide certainty and legal protection related to the types of rights, subjects, and land objects for rights holders. Rapid population growth and

development have triggered an increase in land conflicts, especially due to land limitations in big cities. The coastal area is widely used for economic activities such as industry, tourism, and settlements, even though this area has a distinctive ecosystem that is vulnerable to change and needs to be preserved because it is important for the lives of coastal communities.

The use of coastal areas by humans often overlaps, thereby reducing the health of the ecosystem and threatening the function of the beach as a habitat and protector of land infrastructure. Coastal border areas need to be designated as an effort to maintain their sustainability and protection functions. The determination is based on the characteristics and functions of the beach, and its management must prioritize environmental sustainability while still paying attention to the principle of justice.

The determination of coastal boundary areas is one of the efforts to protect the water-bordering zone to reduce short-term and long-term losses. Therefore, the determination of coastal boundaries must consider the period of time that will be built in the coastal area.

Presidential Decree No. 51 of 2016 regulates the boundaries of coastal borders. Article 1 paragraph (2) states that the coastal boundary is land along the shore with a width of at least 100 meters from the highest tide point towards land, adjusted to the shape and physical condition of the beach. Each coastal district must have regulations regarding coastal border areas to prevent land use that is not in accordance with the allocation. As a protected area, the granting of land rights on the coastal border is only allowed under certain conditions.

Aceh has a large coastal border area because it is located directly adjacent to the sea. Aceh Besar Regency as a coastal area in Aceh Province regulates coastal boundaries through Qanun Aceh No. 19 of 2013 and Qanun of Aceh Besar Regency No. 4 of 2013. Article 26 paragraph (1) letter a of the Qanun of Aceh Besar Regency No. 4/2013 states that the coastal border is a local protection area. The area of this area reaches 2,392.36 hectares and should be optimally utilized by the government and the community.

Although the coastal border area in Aceh Besar is quite large, the local community has not used it properly. Land in protected areas can be given ownership if it is owned by generations with complete juridical evidence and the results of field verification. However, the granting of rights must still consider the function of the area. Circular Letter Number 4/SE-100. PG.01.01/II/2022 states that land rights in coastal border areas can still be granted if certain criteria are met. These rights can be canceled if the holder violates the provisions of 3R (right, restriction, and responsibility). The type of rights is adjusted to land use, and must be in accordance with the applicable regional spatial plan.

According to the Legal Protection Theory, the state is obliged to protect human rights as well as the rights and obligations arising in legal relations between citizens. As a country of law, Indonesia is obliged to provide legal protection to land rights holders. Satjipto Rahardjo stated that legal protection is an effort to provide protection for the rights of those who are harmed, so that people can enjoy their legal rights. The law must function not only adaptive and flexible, but also predictive and anticipatory, and side with the weak groups for the achievement of social justice.

The rights to land and community buildings that have been certified should receive state protection. Regulations

regarding coastal border areas must be implemented responsibly by all parties, so that violations do not occur.

Law enforcement needs to be carried out without ignoring the rights of the community as land rights holders. The granting of land rights and the establishment of buildings in the coastal border area of Ruyung Village had occurred before there was a regulation prohibiting it. Therefore, the local government should provide legal protection to the community, because the issuance of regulations must also consider the interests of the people. The control carried out by the government needs to be followed by solutions for land rights holders to continue to obtain legal protection and certainty.

c. Status of Existing Buildings in the Coastal Boundary Area

Most coastal communities utilize coastal areas for residence, industry, tourism, and public interest. Provincial governments that have coastal border areas are obliged to set their boundaries in regional regulations on spatial planning, so that tourism potential along the coast can be managed properly as capital for regional development and improving community welfare.

Beaches have an important function for human life so their sustainability needs to be maintained. Because coastal areas are vulnerable to natural changes and human activities, spatial planning is crucial. In this case, the government has a policy of land use supervision, one of which is through the issuance of Building Permits (IMB) and building approvals by the district/city government.

Regulations regarding buildings are currently listed in Law Number 6 of 2023 concerning the Stipulation of Perppu Number 2 of 2022 concerning Job Creation into Law. Previously, this provision was regulated in Law Number 11 of 2020 concerning Job Creation, which is a refinement of Law Number 28 of 2002 concerning Buildings. In Law 28/2002, the term Building Permit (IMB) is known, but after the enactment of the Job Creation Law, the term was changed to Building Approval (PBG). In accordance with Article 36A paragraph (1) of Law 6/2023, the construction of buildings can only be carried out after obtaining PBG as referred to in Article 35 paragraph (1).

Building Approval (PBG) is a permit granted to building owners to erect, alter, expand, reduce, or maintain buildings in accordance with applicable technical standards. Based on Article 8 paragraph (1) of Government Regulation Number 16 of 2021, buildings must be erected in locations that are in accordance with the provisions of the Detailed Spatial Plan (RDTR). This adjustment is important to create order and efficiency in the use of space, including the regulation of coastal border areas.

Based on an interview with Ivan Yoserizal, the rules regarding the coastal border area are actually quite clear, namely that no buildings are allowed within 100 meters of the coastline. However, this rule does not apply absolutely. There are exceptions, such as in tourist areas, where the erection of buildings is still allowed at a distance of 12–15 meters from the coastline. This permit is only granted if the building has existed before or if the establishment is carried out after the existence of rules, it must be accompanied by an official permit and in accordance with applicable regulations.

In practice, there are still many people who do not understand the importance of licensing, especially related to

the use of space. In fact, the use of spatial planning is an important instrument in planning, implementing, and supervising regional growth, especially in environmental management and protection. The Regional Government together with related agencies, including the Public Works and Spatial Planning Office, have an important role in regulating the use of space in the coastal border area and issuing building permits

The problem of building erection in the coastal area of Ruyung Village arose due to changes in the landscape that changed the status of land from private property to coastal border area, thus causing uncertainty about the legal status of land and buildings in the area. Although the government has carried out control, the reality is that many community buildings existed before the rules regarding Building Permits (IMB) and Building Approvals (PBG) were enforced. Based on the results of observations, the area was previously not a coastal border area, and residents' lands were acquired for generations, but due to geographical changes, the area was later designated as a coastal border by the Aceh Besar Regency Government.

Regarding the case in Ruyung Village, the Head of the Aceh Besar PUPR Office stated that to ensure the legality of building permits in the area, it is necessary to know exactly where the building is located. However, it is likely that the buildings there do not have a Building Permit (IMB) or Building Approval (PBG), considering that the building has been standing for a long time before the IMB rules were enforced and long before the provisions regarding PBG were regulated in 2021.

Interestingly, based on the results of interviews in the field, Azhar stated that village officials and the community in Ruyung Village were not aware of the prohibition on the erection of buildings in the coastal border area because they had never received a circular or socialization from the government or related agencies regarding the status of their village as a coastal border area. In fact, in 2020 soil measurements were carried out in the PTSL certificate program in the area, but the surveying officer only verbally conveyed that land less than 100 meters from the coast should not be measured, without an official explanation or further socialization from the authorized agencies.

In addition, AW, one of the residents of Ruyung Village, admitted that he had had a property title certificate since 2007 which was obtained through the Systematic Certificate Registration Program by the BPN Adjudication Team. He explained that since 2002, during the conflict, he had occupied the land which was a gift from his parents and had built a semi-permanent house. After the tsunami disaster and the issuance of a new certificate in 2007, AW again erected a house building on the land to be occupied.

Buildings in Ruyung Village basically do not violate the rules of the coastal boundary because they existed before the area was designated as a coastal boundary through Qanun No. 4 of 2013. The community has long occupied and built in the area. The rules only prohibit the granting of property certificates at the coastal border, except for certain land that is allowed by BPN, but still without buildings on it.

Siti Rahmah stated that in a case like this, the government as a policymaker should not harm the community. Before setting the rules, it is necessary to observe field conditions so that the rights to land and buildings owned by the community are not harmed, so as not to cause losses and legal uncertainty.

If analyzed using the Theory of Rights according to Hohfeld, property ownership rights are not only limited to land ownership, but also include the authority to use them, including erecting buildings, determining the distance from the boundaries of the area, and the height of the building. However, this authority does not stand alone, as it still has to consider broader interests, such as spatial and Environmental provisions. In the Legal Dictionary, right is defined as the power or authority granted by law to the subject of law. Therefore, people in the area basically have the right to erect buildings, especially if they can prove their legal ownership of the land. Land ownership is also part of human rights that must be guaranteed and protected by the state.

Regulations are basically made to regulate, protect, and provide legal certainty for the community. The ideal law must contain all three in order to create a sense of security and justice. In the case of Ruyung Village, the community claimed to be unaware that their area had been designated as a coastal boundary area, while buildings and land ownership there existed long before the law was enacted. This means that the erection of the building is carried out on legally owned land. Therefore, it can be concluded that the establishment of buildings in the coastal border area of Ruyung Village is still legally legal, and the community still has the right to its use, even though there are no specific regulations governing the status of the buildings that have already been established.

To overcome this problem and implement the rules effectively and provide legal certainty for the community, it is necessary to coordinate between the relevant agencies, the government, and stakeholders. Socialization to the community is also very important in order to create a common understanding and solutions that benefit all parties. For people who already have certificates and erect buildings in coastal border areas, the state should provide legal protection, both through dispensation and proper relocation, so that the implementation of regulations does not harm the rights of the community that already existed.

Conclusion

Based on the results of the research, the main reason why people are still erecting buildings in the coastal border area of Ruyung Village, Aceh Besar Regency, is because of their ignorance that the area is included in the prohibited area for building construction. In fact, the prohibition has been regulated in the Qanun of Aceh Besar Regency No. 4 of 2013, even though the land they own has been recorded as a right to land.

The granting of land rights and the erection of buildings in the coastal border area of Ruyung Village has occurred long before the issuance of regulations regarding coastal boundaries and prohibitions on building erection in the area. Therefore, the local government should provide legal protection to the community, because in issuing a regulation, it is necessary to consider the conditions and interests of the community who have previously obtained legal rights.

Land ownership and building erection in the coastal border area of Ruyung Village occurred before the enactment of the regulation on coastal boundaries. Therefore, the erection of buildings in the area can be considered legitimate, and the local community has the right to utilize the building. However, until now there is no rule that expressly regulates

the legal status of buildings that have been established before the coastal boundary rules were enforced.

The Aceh Besar Regency Government is advised to socialize to the people of Ruyung Village regarding the Qanun of Aceh Besar Regency No. 4 of 2013 concerning the Regional Spatial Plan. In addition, the government and related agencies need to immediately formulate solutions and establish firm and clear rules to provide legal certainty on the existing land ownership status of communities before the coastal boundary rules were enforced. The government is also expected to be more decisive in dealing with the problem of building erection in coastal border areas, through steps to socialize spatial planning rules and regulate land use that is not in accordance with the provisions.

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