



The Effectiveness of Subdistrict Head as the Temporary Land Deed Official in the District of Banuhampu and Ampek Angkek, the Regency of Agam

Fizlian Azmi; Yuslim; Frenadin Adegustara

Faculty of Law, Andalas University, Padang, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v6i3.915>

Abstract

Nowadays, the questions arise regarding to the appointment of subdistrict head as the Temporary Land Deed Official. Land Deed Official is a special position and it needs good guidance on the officers who become Land Deed Official. The aim of this writing is to know and to research the law effectiveness done by the Subdistrict Head as the Temporary Land Deed Official and the problems faced by the Subdistrict Head in his role as the Temporary Land Deed Official in the proses of land registration. The approach method that will be used in this research is judicial empirical approach method. The specification of this research is analytical descriptive. The sampling method used is purposive sampling. The research result shows that the Subdistrict Head as the Temporary Land Deed Official is still not useful for the community in Agam Regency especially in the District of Ampek Angkek and Banuhampu. Besides, there will be absolutely obstacles faced by the Subdistrict head in running his duties as the Temporary Land Deed Official followed by his main duties which are as the head of district where the district head runs his duties and responsibilities.

Keywords: Subdistrict Head; Temporary Land Deed Official

Introduction

Subdistrict Head is one of the organizations in Indonesian's governance system which is the staff of Municipal Police heading for the district. However, by the development of the social community followed by the reformation stream as well as the regulations that set it, then with Law Number 22 of 1999 regrading Local Governance, the definition of Subdistrict Head is not he head of a region but as the local government working unit in the region as the implementation element of local government.

In the present time, there have been many duties had by a subdistrict head. It can be seen from the land registration in a district. There are several communities asking and seeking for information in the district office to know how to manage the land registration. It is because land and people are inseparable elements. It can be proven that land is the human's need that is very fundamental and significant in the human life, so that in doing the activities and some types of his activities, human is always related to land. Therefore, to gain significant advantages for welfare and prosperity, Indonesia nation must be able to use and utilize the land resources wisely.

This land registration is highly essential to be done by the land right holder for the sake of law certainty. In doing this land registration, it is trusted to the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency which performs the government duties in land nationally, regionally, and sectorally, as mentioned in Article 5 Government Regulation Number 24 of 1997, regarding Land Registration which mentions that: "Land Registration is done by National Land Agency (now Ministry of Agrarian Affairs and Spatial Planning/National Land Agency).

Regarding to the appointment of the Subdistrict Head as the Temporary Land Deed Official, it is set in Government Regulation Number 37 of 1998, regarding the Regulation of Land Deed Official Position, mentioned in Article 5 sub-section (3) stating "To serve the community in making Land Deed Official certificate in the area which does not have enough Land Deed Official yet, or to serve the particular community group in making particular Land Deed Official Certificate, the Minister can appoint the following officials as the Temporary Land Deed Official or the Special Land Deed Official, Subdistrict Head or Village Head to serve the certificate making in the region which does not have enough Land Deed Official yet as the Temporary Land Deed Official.

Subdistrict Head as one of the Temporary Land Deed Official Officials has similar and same role as the Notary Land Deed Official. It means that a Subdistrict Head who becomes the Temporary Land Deed Official must refer to similar regulation with the Land Deed Official generally which is referring to the Government Regulation Number 37 of 1998 regarding Land Deed Official Official.

Subdistrict Head has same responsibilities as the Land Deed Official generally as well as runs his main duties as the local government working unit in the region as the implementation element of local governance. The role of Subdistrict head as the Temporary Land Deed Official is done if the proposal has been sent and appointment has been done. In terms of appointing Subdistrict head as the Temporary Land Deed Official in certain area, it is done by the Head of Regency/Municipal Land Agency.' Nowadays, the questions arise by appointing the Subdistrict Head as the Temporary Land Deed Official. Temporary Land Deed Official is the special position and needs enough guidance on the officials that become the Land Deed Official. The Subdistrict Head as the Temporary Land Deed Official may come to the question whether he can run his duties as the Land Deed Official, as expected by the community.

By seeing the duties he runs, there is one of three types of this Land Deed Official that becomes the Land Deed Official only for temporary. It can be seen on the remote area, the far distance between one village and other villages or the difficulty of trip from one area to other area in a district so that the area is lack of or not having Land Deed Official. To make it easy and to reduce the significant cost spent by the community when they will process deed of land right transfer or in registering their land, then Temporary Land Deed Official in the area is appointed. This temporary Land Deed Official is Subdistrict Head of Village Head.

Research Method

The approach method used in this law research is empirical approach method or in other words it is called normative empirical.¹ Regarding to the normative research used, the writer also does it by researching laws, regulations, legal theories, and opinions of the famous law bachelors that are the secondary data, then related to the real condition in the practice of land registration in the field, and studying the problems found in the field and how the legal certainty towards the parties in the process of land registration done by Subdistrict Head as the Temporary Land Title Registrar in Agam Regency.²

¹Empirical normative law research (*applied law research*) is the law research regarding to the treatment or the implementation of normative law provision (codification, laws or contracts) based on in action in every particular legal events happening in the community. The in action implementation is empirical fact and is useful to achieve the goals that have been determined by the Country or by the parties in the contract. The in action implementation is expected to be applied perfectly if the formula of its normative law provision is clear, strict, and complete."

² Marzuki, Mahmud. *Penelitian Hukum: Edisi Revisi*. Prenada Media, 2017.

According to the Government Regulation Number 37 of 1998joPMNA/ Head of National Land Agency Number 1 of 1998, and the Regulation of Agrarian Affairs Minister Number 1 of 2006.

The population in this research is Subdistrict Head that is according to Government Regulation Number 37 of 1998, can take place as the Temporary Land Deed Official in the region of Agam Regency in which when conducting this research, they have been appointed as the the Temporary Land Deed Official namely the Subdistrict Head of Banuhampu and Camat Ampek Angkek. Besides, for sampling, the writer does it to the Subdistrict Head as the Temporary Land Deed Official which is researching 2 (two) Subdistrict Heads who have been appointed as the Temporary Land Deed Official in Agam Regency (Subdistrict Head of Banuhampu and Ampek Angkek) in Agam Regency.

The supporting instrument in this research is question lists, field notes, and tape recording. The field data collection will be done by doing interview with the 1 (one) party Land Office of Agam Regency, 1 (one) Notary as the Land Deed Official, Subdistrict Head of Banuhampu and Ampek Angkek in Agam Regency, both structurally and unstructurally. The structured interview is done by referring to the question lists that has been prepared by the researcher, while the unstructured interview is done without referring to the question lists. It is expected that it can be improved as in line with the answers from the interviewee and the situation at that moment.

The data analysis is done qualitatively which is the obtained data are then arranged systematically, and analyzed qualitatively to find the problem clarity. The meaning of analysis here is as an explanation and interpretation logically and systematically.³ Logical systematically shows deductive-inductive way of thinking and follows the procedure in the writing of scientific report. The Qualitative Data Analysis is a research way that gains analysis descriptive data that is what is stated by the respondents in written forms or oral forms and also their real behaviors are researched and studied as a unity.⁴

Research Results and Discussion

To know the law effectiveness of Subdistrict Head as the the Temporary Land Deed Official in the District of Banuhampu, Regency of Agam, the writer conducts a survey to the field by interviewing the Subdistrict Head of Banuhampu, Regency of Agam and Subdistrict Head of Ampek Angkek in Regency of Agam. Afterwards, the writer finds out whether the Subdistrict Head of Banuhampu and Ampek Angkek is effective or not based on the theory of legal effectiveness expressed by Soerjono Soekanto stating that the effectiveness of a law based on 5 (five) factors namely:

- a. Law functions for justice, certainty, and advantage. Here, the Subdistrict Head of Banuhampu and Ampek Angkek have fulfilled this element which is by the presence of Subdistrict Head as the Temporary Land Deed Official in Banuhampu and Ampek Angkek, it can help the community in managing land right transfer deed. It is very advantageous for community because it can be easy to manage right land transfer deed. The community can manage right land transfer deed to the Notary/ the Land Deed Official or to the Subdistrict Head in their district.
- b. Law Enforcing Factor in which the Subdistrict Head of Banuhampu and Ampek Angkek have been running their duties as the Subdistrict Head and the Temporary Land Deed Official based on what they have got during guidance to be the Temporary Land Deed Official. Therefore, their professionalism is demanded as Subdistrict Head in running their responsibilities as the Subdistrict Head as well as the Temporary Land Deed Official. Probable the stigma is there in the community whether the Subdistrict Head is able to run his responsibilities although the community themselves

³ Maxwell, Joseph A. "Designing a qualitative study." *The SAGE handbook of applied social research methods 2* (2008): 214-253.

⁴Soerjono. Soekanto and Sri Mamudji, *Normative Law Research: A Short Review*, Jakarta. Raja Grafindo Persada 4th Printing. 1995.p.s12

expect the best quality so that the community is satisfied and trusts the Subdistrict Head to manage the land right transfer deed in the Subdistrict of Banuhampu and Ampek Angkek.

- c. Facilities and Its Supporting Facilities Factor is the most important factor for this district of head in running his responsibilities as the Temporary Land Deed Official. Therefore, facilities also determine the performance of a subdistrict head in Banuhampu and Ampek Angkek ini. If the facilities are completed and usable, automatically the Subdistrict Head can run their duties and responsibilities well.
- d. Community Factor is the most essential factor for the subdistrict head of Banuhampu and Ampek Angkek as the Temporary Land Deed Official. Besides, because in its practice, the Subdistrict Head must confirm to the community that the district office has been able to be used to manage land right transfer deed because the cost difference between Subdistrict Head and Notary is there. It can be seen that there have been many communities of Ampek Angkek who manage the land right transfer deed to the Subdistrict Head of Ampek Angkek. This subdistrict head of Ampek Angkek has issued deeds of 14 (fourteen) land right transfer deed. However, there is still difference in the District of Banuhampu; the Subdistrict Head now never issues land right transfer deed since the writer conducts the research until now. However, the previous Subdistrict Head who is also a Temporary Land Titles has issued land right transfer deed of 12 (twenty) deeds. According to the writer, probably the community does not know that the present subdistrict head also takes place as the Temporary Land Deed Official. It happens because of the lack of socialization done by the Subdistrict Head to the community of Banuhampu.
- e. Culture Factor, is the factor that tends to the customary values happening in the middle of community so that a law runs actively. In this case, most of community has trusted the Subdistrict Head to make land right transfer deed in the district of Ampek Angkek and Banuhampu. It happens because of the presense of value harmony and sociological approach between community and subdistrict head in the district so that the community considers that the Subdistrict Head is able to do and issue land right transfer deed.

District of Banuhampu is one of 16 districts in the Regency of Agam. There are 7 (seven) Cosutomary Regions in Banuhampu District consisting of Customary *Pakan Sinayan*, Customary *Sungai Tanang*, Customary *Padang Lua*, Customary *Cingkariang*, *Ladang Laweh*, *Taluak IV Suku* and Customary *Kubang Putiah*. The number of land registration or asset legalization in Banuhampu District is of 6.290 plots, with the data as follows: Customary *Pakan Sinayan*, 627 plot, Customary *Sungai Tanang*, 141 plots, Customary *Padang Lua*, 697 plots, Customary *Cingkariang*, 67 plots, *Ladang Laweh*, 1.281 plots, *Taluak IV Suku*, 1.319 plots, and Customary *Kubang Putiah*, 2158 plots.

1. *The Duties Performance of Subdistrict Head as Temporary Land Deed Official*

a. *The Deed Made by Subdistrict Head of Banuhampu*

The existence of Banuhampu Subdistrict Head as the Temporary Land Deed Official in land service in terms of deeds making in 2016 and 2017 consists of 12 (twenty) deeds. From these data, it is obtained that the community has used the service of Subdistrict Head as the Temporary Land Deed Official although the number is not that much or optimum.

It can be seen not from the present subdistrict head that the writer interview but the writer sees it based on institutional view. Accidentally when the writer conducts the research towards the Subdistrict Head of Banuhampu, he just runs his duties or is just appointed as the Temporary Land Deed Official a month ago. Until the research runs, there is still no community who manages the land right transfer deed to the district office of Banuhampu in this Agam Regency.

In the district of Banuhampu in the regency of Agam, the duties of Subdistrict Head as the Temporary Land Deed Official are not that different from a Notary/ a Land Deed Official generally.

However, there is still a significant difference like a Notary or a Land Deed Official generally in the Regency of Agam in which they can make a deed related to the coverage in Agam Regency entirely as long as their working region is in Agam Regency.

Subdistrict Head in Banuhampu District, Agam Regency, who works as the Temporary Land Deed Official has been appointed by the Head of National Land Agency in Agam Regency; the Subdistrict Head is only able to make the deed in the area of Banuhampu. If there is a deed management in the district that is in the other areas of Agam Regency, he is not allowed and not able to make land right transfer deed in the area.

It means that the Subdistrict Head working as the Temporary Land Deed Official in Banuhampu District, Agam Regency is only allowed to make land right transfer deed in his district only. It is different from a Notary or a Land Deed Official in Agam Regency that can make a deed as long as his working area is in Agam Regency although in different districts.

To know the law effectiveness of Subdistrict Head as the Temporary Land Deed Official in Banuhampu District in Agam Regency, the writer has conducted survey to the field by interviewing the Subdistrict Head of Banuhampu in Agam Regency. He stated that the presence of Subdistrict Head as the Temporary Land Deed Official can be stated not effective yet. It is proven by the lack of community of Banuhampu District who does land right transfer deed.

b. The Deed Made by the Subdistrict Head of Ampek Angkek

In the district of Ampek Angkek, regency of Agam, the period from 2016 to 2017, the Subdistrict Head has issued 14 land right transfer deeds. In the District of Ampek Angkek, the community has used the service of Subdistrict Head as the Temporary Land Deed Official to manage land right transfer deed.

After the writer conducts interview with some communities who manage land right transfer deeds, information is obtained that the community who manages it to the Subdistrict Head as the Temporary Land Deed Official is caused by they have good social relationship with the Subdistrict Head compared to the Notary/Land Deed Official working in the area of Ampek Angkek tersebut. Besides, the other thing that becomes the reason of the community in managing land right transfer deed to the Subdistrict Head is because the cost which is cheaper than in the Notary/the Land Deed Official. Subdistrict Head is the governmental element (Civil Servant) that automatically has received good income/standard salary monthly, different from the Notary and Land Deed Official. Therefore, it can be seen that by having good salary and the community's social closeness to the Subdistrict Head, the cost that will be paid to manage the land right transfer deed is not that expensive.

From this research result, after conducting some survey that the writer does by coming to the field to the community who manages the land right title deed, the writer finds the answer that the community is willing to manage the land right transfer deed to the Subdistrict Head as the Temporary Land Deed Official because the community knows that the Subdistrict Head has obtained guidance to be the Temporary Land Deed Official.

The community here believes in the Subdistrict Head in terms of managing land right transfer deed. This factor is also supported by the presence of tight social relation with the district head in Banuhampu and Ampek Angkek Subdistrict compared to the Notary and the Land Deed Official in the area of Ampek Angkek.

The other thing that becomes the reason for the community to manage the land right transfer deed to the Subdistrict Head is because of cost factor. The subdistrict head that is the governmental institution automatically has good salary every month. Hence, it can be seen that by having good salary and the community's social closeness to the Subdistrict Head, the cost that will be paid to manage the land right transfer deed is not that expensive.

2. *The Position of Subdistrict Head as the Temporary Land Deed Official in the Future*

After conducting a research on the Subdistrict Head as the temporary Land Deed Official in the District of Banuhampu and Ampek Angkek, it is seen some problems faced by the District Head so that it leads to the ineffectiveness of Subdistrict Head position as the temporary Land Deed Official. The most seen thing here is the lack of enthusiasm of community to manage the land right transfer deed to the Subdistrict Head. The community mostly do not know that the Subdistrict Head in Banuhampu and Ampek Angkek are able to make or issue land right transfer deed. Therefore, in the future, the position of Subdistrict Head as the temporary Land Deed Official will not run well or not in line with what is expected by the community and the subdistrict head.

The problems faced by the Subdistrict Head as the temporary Land Deed Official and the position of Subdistrict Head in the future.

a. Problems Faced by the Subdistrict Head as the Temporary Land Deed Official

In running his principle duties as the governance apparatus, the Subdistrict Head is demanded by the laws to provide optimum and serious service to community. It is also reating he community indiscriminatively. A subdistrict head not only is demanded to work during working hours, but also is demanded to provide service and monitor every activities and the development of community at days and nights no matter it is in a good weather or not.

Besides, since the Subdistrict Head takes place as a Temporary Land Deed Official, he is also demanded to provide services in making land right transfer deed. It means that the Subdistrict head must run two functions or duties at once that must be synergical to the duties he runs.

In performing duties as the Temporary Land Deed Official, his professionalism is judged as the Subdistrict Head. He must socialize and confirm as well as give understanding to the community in every chance that the management of land right transfer deed can be processed in the district office. The community must understand that they should not go far to visit the office of Notary/Land Deed Official.

Since the lack of socialization from the Subdistrict Head, they do not know that they can manage land right transfer deed in the district office. The socialization done by the District of Banuhampu recently is still less which is caused by the subdistrict head does not inform the society directly but the recent subdistrict head only informs it to the Customary Head.

The other problems faced by the Subdistrict Head of Banuhampu Regency of Agam is in terms of managing land right transfer deed seen from the community who mostly manages it to the office of Notary and Land Deed Official since one of the parties having transaction is the person who is from other areas, meaning that the other party is not the community of Banuhampu, Regency of Agam. This is what becomes the problem for the Subdistrict Head as the Temporary Land Deed Official in Banuhampu, Regency of Agam, because the party coming out of Banuhampu Subdistrict does not know that he also can manage the land right transfer deed in the district office.

1) Internal Problem

Things that become internal problems are as follows:

a) Educational Background Factor

Subdistrict Head commonly has educational background of some sciences, both from Governance Science Bachelor, Social Science Bachelor, Religion Science Bachelor, Dentistry Bachelor, Education Science Bachelor, Agriculture Science Bachelor, and others which are less having Law Bachelor.

b) Education and Training Factor

Subdistrict Head as the Temporary Land Deed Official to run his duties must follow training for about 3 or 4 days at maximum, so that it is not effective yet to understand all knowledge and skill both from technique of making and writing of deed and the background of contract law and taxation law;

c) Apparatus Responsible for Deed Management Factor

The person who makes a deed in the District Office is the staff who also works for other jobs because his working burdens are much so that he cannot be professional or focus on making deeds needed;

d) Main Duties and Additional Duties Factor

The Subdistrict Head or the assistant of making a deed is clearly as Civil Servant who also has other responsibilities so that working for Land Deed Official is the second responsibility.

2) External Problems

In addition, the external problems experienced by the Subdistrict Head are as follows:

- a) The community ignorance that the Subdistrict Head as the Land Deed Official who is also able to make a right transfer deed like a Notary/ Land Deed Official;
- b) The community opinion (in the mind of community) that managing land right transfer deed is easier than managing it through a Notary or a Land Deed Official;
- c) A Notary as the Land Deed Official is easier to be met because the number is quite many and present everywhere (many options) in the area of Agam Regency, while Subdistrict Head is only in a district;
- d) The office of Notary Land Deed Official is easier to be sought because it is in many strategic locations and places (considered far from the community's residence);
- e) The Subdistrict Head in the community mind stigma is the official in which he can be met under the permission of protocol officer, while the Notary/ the Land Deed Official is not a structural officer and is easier to be met.

Conclusion

Based on the width of area and the number of community in the District of Banuhampu and Ampek Angkek, it is proven that there is still less community who manages the land right transfer deed in these two districts. Like in the District of Banuhampu, since the appointment of the recent Subdistrict Head who also just works his duties never issue land right transfer deed. Besides, in the Subdistrict of Ampek Angkek, he only issues land right transfer deed for 14 (fourteen) deeds.

Hence, from the research result of this writing, it is stated that the Subdistrict Head of Banuhampu and Ampek Angkek indeed have fulfilled the element of law effectiveness expressed by Soerjono Soekanto; however in its practice, the Subdistrict Head of Banuhampu and Ampek Angkek are not effective yet in running their duties as the Temporary Land Deed Official.

Suggestion

The conclusion stating that the Subdistrict Head as the Temporary Land Deed Official in the District of Banuhampu and Ampek are not effective yet, therefore, according to the writer, the Subdistrict Head as the Temporary Land Deed Official is better to be removed because it is hampered by several factors that the writer has explained like the educational background of the subdistrict head and the officers working in making land right transfer deed.

Even if it will be maintained, the thing that must be done by the Subdistrict Head in the District of Banuhampu and Ampek Angkek, Regency of Agam, is by doing approach to the community both by socialization and by conducting a meeting in the district office to inform that making a land right transfer deed can be managed in the district office because the Subdistrict Head in Banuhampu Regency and Ampek Angkek Regency has followed guidance and several tests to fulfill the requirements needed as a Subdistrict Head working as the Temporary Land Deed Official. The writer expects that the Subdistrict Head as the Temporary Land Deed Official cooperates with the National Land Agency and the related institutions in order to socialize more frequent to the community especially to the region that still has less Notary or the Land Deed Official in accordance to the Article 1 sub-section 2 Government Regulation Number 34 of 1998 regarding Position of the Land Deed Official. The Subdistrict Head as the Temporary Land Deed Official can help the community in the management of land right transfer deed and the community can also use the function of Subdistrict Head efficiently as the Temporary Land Deed Official. In the future, the position of Subdistrict Head as the Temporary Land Deed Official can take place in the emptiness of the Land Deed Official in his administrative area. It also needs the importance of clarity regarding rights and authorities of Subdistrict Head as the Temporary Land Deed Official in order to have legal certainty to avoid problems raised in the future from the issuance of documents or deeds by the Subdistrict Head as the Temporary Land Deed Official.

References

Books

Soejono, Soekantodan Sri Mamudji, Normative Law Research: A Short Review, Raja Grafindo, Jakarta, 1995.

Marzuki, Mahmud. Penelitian Hukum: Edisi Revisi. Prenada Media, 2017.

Maxwell, Joseph A. "Designing a qualitative study." The SAGE handbook of applied social research methods 2. (2008): 214-253.

Laws & Regulations.

The 1945 Constitution of the Republic of Indonesia.

Law Number 5 of 1960 regarding Basic Agrarian Law;

Law Number 22 of 1999 regarding Local Governance;

Law Number 32 of 2004 regarding Local Governance;

Government Regulation Number 37 of 1998 regarding Position of Land Deed Official.

President's Decision Number 10 of 2001 regarding the Implementation of Local Authority in Land Sector.

The Regulation of Agrarian Affairs Minister/National Land Agency Number 3 of 1997 regarding.

Implementation of Government Regulation Number 24 of 1997 regarding Land Registration.

The Regulation of Agrarian Affairs Number 1 of 2006 regarding the Provision of Government Regulation.

Implementation Number 17 of 1996 regarding Regulation of Land Deed Official Position;

The Regulation of Agrarian Affairs Number 3 of 1997 regarding the Provision of Government Regulation Implementation Number 24 of 1997 regarding Land Registration.

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).