The Right to Manage Emergent Land on the Riverbank

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Management rights over emergent land on the banks of the Batanghari River Watershed in Penyengat Rendah District, Jambi City have been practiced by the local community for generations without formal ownership as of this study. This article examines the legality of land tenure under Indonesian law and the rights to manage land emerging along the Batanghari riverbanks, aiming to advise the local government on the crucial need for legal recognition of these rights. Utilizing an empirical research method involving direct community engagement, the study finds that community management of this land is driven by longstanding residency and utilization, the scarcity of available land for agriculture in Jambi City supporting the local economy, high land prices, and historical reliance on riverbank land use. Despite continuous management, these activities lack permanent legal status as outlined in Article 16, Paragraph (1) of the Basic Agrarian Law.

A. Introduction

Soil and land utilization must be carefully carried out as they accommodate various human needs such as shelter, clothing, food and energy sources that support human life. All living beings depend on soil which provides water, air and nutrients, as well as the house of soil organisms and human.¹

Land supports the life of humans and other living beings. In Indonesian context, land has been vital for the national development of the nation and for improving the community welfare. Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia and Article 2 paragraph (1) of the UUPA states that the state as the owner of the land, but a grant of authority is given to the state as the highest organization in Indonesia to manage the resources within to support the community welfare, national unity, independence and the rule of law.

The concept of emergent land refers to land formed naturally, distinguishing it from reclaimed land created through human activities. Emergent land arises due to the shrinkage of the sea coast, creating new land classified as state land, as no ownership rights have been assigned to it.

Law No. 5 of 1960 on Basic Agrarian Principles (hereinafter referred to as UUPA) as legality on land does not provide specific provisions governing emergent land. The government then issued regulations on emergent land through the Circular Letter of the Minister of Agrarian Affairs No. 410-1293 of 1996 on the Issuance of Status of formed land and Reclaimed Land, and Regulation of the Minister of Agrarian Affairs and Spatial Planning No. 17 of 2016 on Land Administration in coastal areas and Small Islands. In addition, Government Regulation No. 16/2004 on Land Stewardship explains that land originating from formed land is directly controlled by the state.

Unfortunately, some people have control upon most of the emergent land despite the fact that emergent land is state’s property. The utilization of emergent land is essential for community survival, as seen along the Batanghari River. The newly formed land have significant potential and economic value, which local residents can explore for agriculture, fish ponds, and construction. Emergent land offers incentives by generating community income.

The illegal management and utilization of emergent land have been passed through generations among the local riverside community as they believe that emergent land is an extension of their property. Consequently, this has led to ambiguous status regarding the ownership and processing of emergent land. This research addresses the management rights of emergent

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6 Hermit, Herman, (2004), *How To Obtain Land Certificates Of Property Rights, State Land And Local Government Land, Theory And Practice Of Land Registration In Indonesia*, CV.Mandar Maju, Bandung.
land along riverbanks, focusing specifically on the Batanghari River in Penyengat Rendah Village, Telanaipura District, Jambi City.7

In this empirical legal research or socio legal research, the objects of the research included the provisions and applicability or implementation of normative legal provisions (laws and regulations, literature reviews and other sources) in action / in abstracto to every legal event that occurs in society (in concreto).8 In this descriptive research, aspects related to the application of the law in society. Including 9 various community behaviors that arise from the system were analyzed.10

This research employed a juridical-sociological approach, examining the legal rules governing society. Based on the aforementioned issues, this article presents the management rights of emergent land along the banks of the Batanghari River based on the laws and regulations.

B. Discussion
1. Validity of Land Tenure under Indonesian Land Law

_Undang-Undang Pokok Agraria (UUPA) or the Basic Agrarian Law serves as the_ legal basis and an important pillar in land policy in Indonesia. This regulation brings a major change in the law by replacing the concept of domain status over the state with the concept of rights based on state authority, as stated in Article 2, paragraph 1. As stipulated by Article 33 paragraph (3) of the Basic Law, the earth, water, space, and all natural resources contained therein are, at the highest level, controlled by the State as a representation of the power owned by all the people.11

The need for legal certainty over land rights, particularly regarding ownership and control, has positive implications by providing clear information about individuals or legal entities that hold these rights. Additionally, it ensures certainty regarding the location, area, boundaries, and other aspects of the land. Legal certainty is strategically important for regional development planning and monitoring land ownership and use.

Article 9 of UUPA emphasizes the significance of legality where (1) only Indonesian citizens can have a full ownership of the earth, water and airspace, within the limits of the provisions of Articles 1 and 2. (2) Every Indonesian citizen regardless of gender has the same opportunity to obtain a right to land and to benefit from the results, both for themselves and their families.

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7 Boedi Harsono, _Indonesian Agrarian Law, History of UUPA Formation and Its Implementation_, (Jakarta: Djambatan, 2008). p 23
9 Bambang Sugono, _Legal Research Methods_, (Jakarta: RajaGrafindo Persada, 2002). p 89
Therefore, only Indonesian citizens are allowed to own land. Article 20 paragraph (1) of UUPA defines the right of ownership as the strongest and most comprehensive form of property right that individuals can hold over land, emphasizing its hereditary nature, in accordance with Article 6. The term “hereditary” shows that the right of ownership over land can remains as long as the owner is still alive. If the owner dies, the right of ownership is passed down to the qualified heirs.

In Indonesia, issues persist regarding the status of land ownership, particularly concerning emergent land in riverside areas. Residents have occupied these lands for decades, driven partly by the desire to acquire or use land without the high costs associated with urban areas. Customary law and cultural influences also play a significant role, prioritizing local residents' rights to use emergent land, especially those adjacent to their own properties.12

The process of obtaining land rights for emergent land (aanslibbing) is fundamentally similar to applying for state land in general, where applications are submitted to the relevant Land Office. However, in practice, the granting of land rights, especially for emergent land formed by sedimentation (silt), involves specific conditions that must be met for the application to be accepted.

The two types of emergent land include land arising from newly-formed deposits and land arising from old deposits. "Land arising from new deposits" refers to newly emerged land that is still developing, which shape and area may change. Conversely, "land arising from old deposits" denotes land the that has been stable for a longer period with consistent shape and area over time.13

There is a distinction between land arising from old deposits and land arising from young deposits in terms of obtaining property rights. For land arising from old deposits, individuals who have utilized or worked on this land are generally considered qualified to obtain property rights. Legally, land arising from old deposits is located beyond the river boundary line established under Article 8(a) of the Regulation of the Minister of Public Works Number 63/PRT/1993, which sets this boundary 10 meters from the edge of the river.

In contrast, land arising from young deposits, which is closer to the river border and part of the riverbed, does not automatically grant property rights to those who control it.14 Before applying for rights, residents in these areas must obtain permission and approval from the Regional Head. This approval

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14 Op Cit p. 7300
involves reviewing or determining a new riverbank boundary to legally define the emergent land as part of the established river boundary line.

2. Right to Manage Land Appears on the Riverbank

A river is defined as a natural or artificial waterway or container, forming a network of water flow from upstream to the estuary, with its boundaries delineated by lines on the right and left sides. A river boundary line serves as a virtual boundary established to protect the river. Riparian land along the banks of the Batanghari River consists of land formed through sedimentation or deposits on the riverbanks. This land results from the accumulation of mud, soil, and sand carried by the river's flow and settling, commonly referred to as alluvium or sedimentation (aanslibbing).

The emergence of land along riverbanks can be attributed to four main factors: excessive sediment load in the river, obstruction of river flow, natural widening of the river, and cessation of river flow. In terms of land tenure in riparian areas, such lands are generally considered state-owned and should ideally be designated as conservation areas. Conservation areas serve the critical function of protecting watersheds from potential threats.

In Jambi City, particularly in Penyengat Rendah Subdistrict, residents have been cultivating crops on the banks of the Batanghari River without legal authorization. This agricultural activity occurs during periods when the river water recedes. The growing occupation of this emergent land is driven by the shrinking availability of land in urban areas due to population growth. To address this situation, management of emergent/state land would require granting rights to those who manage it. This includes rights such as cultivation rights, building use rights, or general land use rights on emergent/state land.

Based on interviews with local communities who have been farming on emergent land for generations, these activities are considered hereditary practices passed down since their grandmothers' time. This cultural habit arises from repeated human actions over time.

According to Article 12 of Government Regulation No. 16/2004 on Land Stewardship, emergent land refers to land naturally or artificially formed through deposition in rivers, lakes, beaches, or emergent islands. The community utilizes this emergent land primarily for agriculture. In terms of

15 Ibid., Art. 1 number (10)
16 Article 1 point (1) Regulation of the Minister of Public Works and Public Housing of the Republic of Indonesia Number 28 / PRT / M / 2015 concerning the Determination of River Boundary Lines and Lake Boundary Lines.
17 Riza Indria, "Efforts to Resolve Land Disputes Arising between Mojo Village and Pesantren Village, Ulujami District, Pemalan Regency" (Diponegoro University, 2003). p. 20
land use and management, the utilization of emergent land must comply with the Regional Spatial Plan (RTRW) and should not disrupt natural functions, ecosystems, or alter the landscape. While the Basic Agrarian Law (UUPA) does not explicitly address emergent land, it implicitly covers it within its scope concerning land, water, and space. Under UUPA regulations, emergent land is directly controlled by the state. Therefore, individuals seeking to manage emergent land must obtain permission from authorized government officials, such as the Jambi City National Land Agency (BPN).

State land can be categorized into two types: free state land and non-free state land. Free state land is directly controlled by the state ruler, where no individual or entity has prior ownership rights, including emergent land formed naturally. The Basic Agrarian Law (UUPA) emphasizes the social function of land, suggesting that land arising along riverbanks can be granted rights if not previously regulated. Applicants for land rights may receive these rights prior to the establishment of Regional Regulations.

Interviews conducted revealed several reasons why the community utilizes emergent land along the Batanghari River: first, the longstanding tradition of using this land for generations; second, the scarcity of available land in Jambi City for farming, which supports the local economy; third, high land prices in urban areas; and fourth, the established cultural practice of using emergent land.

Regarding river boundary lines, regulations are stipulated in the Regulation of the Minister of Public Works and Public Housing of the Republic of Indonesia Number 28/PRT/M/2015. Article 5, Paragraph (1) determines boundary lines on unembanked rivers in urban areas, as referred to in Article 4, Paragraph (2), Letter (a);

a. At least 10 (ten) meters from the left and right banks of the river trough along the river channel, in the event that the river depth is less than or equal to 3 (three) meters
b. At least 15 (fifteen) meters from the left and right banks of the riverbed along the river channel, in the event that the river depth is more than 3 (three) meters up to 20 (twenty) meters; and
c. At least 30 (thirty) meters from the left and right banks of the riverbed along the river channel, in the event that the river depth is more than 20 (twenty) meters.

Based on the article’s content, emergent land in urban areas without embankments maintains a specific distance from both the river’s edge and highway boundary lines. The determination of these river boundary lines falls under the authority of state officials, regulated by Article 13. In Jambi City, particularly in the Penyengat Rendah sub-district, land use along riparian areas adheres to Article 22(1) (e), ensuring activities such as vegetable crop

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20 Op., Cit. p. 54
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cultivation do not disrupt river functions within the Batanghari River watershed.

Interviews with residents reveal varying levels of awareness regarding the status of land rights they control. While some are unaware, they continue agricultural activities on these lands passed down through generations. This communal use implies a collective understanding of acquisition rights rather than legal implications. State intervention is necessary to address issues arising from community-managed emergent land, clarifying legal consequences and potentially categorizing such lands as communal due to longstanding community control.

Hendra Sukarman and Wildan Sany Prasetiya mentioned that the *ulayat* rights of customary law communities are valid if the following elements are fulfilled.

1. There is still a group of people who are members of certain customary law community.
2. There is still an area that is the territory of the customary law community, which is realized as common property.
3. There is a customary ruler who is recognized by the members of the community, entrusted to execute customary rights in daily affairs.

The three elements are fulfilled by the people who cultivate emergent land because they belong to a customary law community that has resided in the area for generations.

The power and authority of the state to control in order to organize direct legal relations between the state and the earth, water and space as interpreted by Notonegoro, in Andi Bustamin Daeng Kunu involve three types of relationships as follows.

a. The state is considered a public entity and does not hold the same legal position as individuals. It functions as a collective entity representing public interests rather than individual rights.

b. When the state is treated as an object, it is seen similarly to individuals concerning rights over land and other resources. This perspective equates the state’s relationship with land to that of individual rights.

c. In its direct relationship with land and resources, the state acts not as an individual subject or owner, but as the embodiment of the entire populace. This concept views the state as inseparable from its people, serving as the foundation and guardian of national unity and interests.

The state's authority over land is solely for the benefit of its people, without inherent ownership rights. According to the UUPA (Basic Agrarian
Law 1960), the state, acting on behalf of all Indonesian citizens, is empowered to regulate land use to maximize public welfare.

Under UUPA, land arising naturally falls under state control, yet in Penyengat Rendah Sub-district, land emerges directly within the community for their management and utilization. As the land controlled and cultivated by the community in Penyengat Rendah Sub-district belongs to the local government, community members have the opportunity to apply for ownership rights to state land. The procedural steps are outlined as follows:

1. Preparing the necessary documents;
2. Creating and submitting an application letter;
3. Paying the registration fee; and
4. Receiving decision letter.23

Upon receiving the decree, a title deed for state land will be issued in the name of the applicant, referred to here as the heir. This petition may either be approved or rejected. The authority to grant ownership rights lies with the District/City BPN for agricultural land up to 2 hectares (20,000 m²), while the Provincial BPN handles agricultural land exceeding this area.

As emergent land can be utilized both juridically and physically, privately or publicly, the community must ensure the legal status of the emergent land is safeguarded by law. The government can authorize the community, holding rights to emergent land, to exercise physical control over what rightfully belongs to them. According to the UUPA, controlling land does not imply ownership, hence the community must apply for recognition of the land under Article 16, Paragraph (1) of the UUPA to establish legal standing.

Ensuring the legality of land ownership rights for those managing land along the banks of the Batang Hari River is crucial for the community's personal benefit and to prevent future disputes. This situation is exemplified in Karo Regency, Berastagi District, specifically in Tambak Lau Mulgap-I Village, commonly known as Jalan Trimurti Gang Asam. Jalan Trimurti Gang Asam serves as a public road and integral part of the transportation infrastructure that local residents depend on daily.

The legitimacy of land ownership rights is established through the possession of a certificate, which serves as authentic evidence and proof of rights. This certificate is a robust means of substantiating both physical and juridical data pertaining to land ownership, ensuring clarity and security for all stakeholders involved.

C. Conclusion

Community members in Jambi City, who have been utilizing and living on emergent lands (aanslibbing) across generations, face challenges due to the

23 Ibid., p. 61
scarcity of available land for farming activities and the high cost of land in the area. Ownership rights over emergent lands become legitimate only after individuals or citizens take specific actions such as opening and managing these lands. In practice, applications for land rights must be submitted to the Land Office responsible for the location of the emergent land. However, it is crucial to differentiate between young deposits (recently formed lands) and old deposits (long-established lands) during this process. Therefore, community members are required to obtain permission and approval from the Regional Head before applying for rights. This approval involves a review or determination of the new riverbank boundary to establish clear demarcations.

D. Suggestion

Based on the results of this analysis, people living along the banks of the Batanghari River in Jambi City have been utilizing the emergent land without having the legality of land rights to arrange property rights in accordance with Article 16 paragraph (1) of the UUPA and the Provincial Government. Therefore, the local Regency / City needs to issue regional regulations on the utilization of emergent land on the banks of Batanghari River.

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