

ABSTRACT

The earthquake and tsunami disaster that hit Aceh on December 24, 2004 had destroyed most of the records and files on land ownership. The disaster had created difficulties and brought about various conflicts in land administration and ownership. This dissertation aims to examine the procedure and legality of registration and the responsibility of the state in the protection of land ownership in the post tsunami era.

The research revealed general problems relating to the protection of ownership of land post-tsunami, which include antinomy of law and improper actions of land registration officers. The antinomy of law and improper acts of land registration officers had victimised affected parties, as some of their actions were in fact criminal in nature. The entitling mechanism through registration included the issuance of ownership certificates. Unfortunately there were also new certificates which were not consistent with the certificates issued before tsunami. Furthermore, the process is in conflict with the *syariah* law, the colonial traditional land registration system and the mortgage law. The writer wishes to show the weaknesses of the system that is used and to suggest a process of land ownership registration that is in accordance with the proper interpretation of the law

ABSTRAK

Bencana gempa bumi dan tsunami bertarih 24 Disember 2004 yang melanda dalam wilayah provinsi Nanggroe Aceh Darussalam, telah hampir memusnahkan atau merosakkan semua yang berkaitan dengan fail-fail rekod buku pentadbiran hakmilik tanah. Bencana itu telah mewujudkan kesukaran-kesukaran dan keadaan ketidaktentuan yang terus menggalakkan konflik-konflik dalam pelbagai pentadbiran tanah dan pemilikan. Disertasi ini bertujuan untuk memeriksa prosedur dan kesahan pendaftaran dan pertanggungjawapan negara dalam perlindungan pemilikan tanah selepas tsunami.

Penyelidikan ini mendedahkan masalah-masalah berhubungkait perlindungan hakmilik tanah selepas tsunami, yang termasuk antinomi undang-undang dan tindakan-tindakan viktimisasi oleh pentadbir tanah mahupun pihak-pihak terlibat menyebabkan telah menjadikan mangsa parti-parti yang terbabit adakalanya menyebabkan berlaku tindakan jenayah. Mekanisme bermilik tanah secara pendaftaran yang termasuk pengeluaran sijil hakmilik telah membawa ketakpastian undang-undang. Malangnya terdapat sijil-sijil baru tidak konsisten dengan sijil-sijil yang dikeluarkan sebelum tsunami. Tambahan pula, proses itu adalah bercanggahan dengan undang-undang syariah, pentadbiran tanah secara tradisional semasa zaman kolonial dan undang-undang hak tanggungan (gadai janji). Harapan-harapan penulis bagi menunjukkan kelemahan-kelemahan sistem itu adalah untuk mencadangkan satu proses pendaftaran pemilikan tanah berpatuhan, bersesuaian dan selaras tafsiran undang-undang.