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OWNERSHIP OF LAND REGULATION FOR FOREIGN CITIZENS IN INDONESIA

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Land use has a very important role in modern life, such as the role for housing, plantation business, agricultural business, mining business and so on. In this regard, problems often arise in Indonesia related to the illegal ownership of land or control over it by foreign citizens. Law No 5 of 1960 concerning Basic Regulations on Agrarian Principles contains the main points of the Indonesian National Land Law, serves as a guide in regulating issues related to land issues. This study uses normative legal research, namely analysing Law No 5 of 1960 in Article 21 Paragraph 1, which states that only Indonesian citizens have property rights over land while foreign citizens may not have property rights. The results of the study indicate that there is a need for special legal rules for foreign nationals who have lived for a long time in Indonesia related to ownership of land ownership rights.

Keywords: arrangement, land use, property rights, foreign citizen, Indonesia.

РЕГУЛИРОВАНИЕ ПРАВА СОБСТВЕННОСТИ ИНОСТРАННЫХ ГРАЖДАН НА ЗЕМЛЮ В ИНДОНЕЗИИ

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Землепользование играет очень важную роль в современной жизни, например, в строительстве жилья, плантационном, сельскохозяйственном, горнодобывающем бизнесе и так далее. В связи с этим в Индонезии часто возникают проблемы, связанные с незаконным владением землей или ее использованием иностранными гражданами. Закон № 5 от 1960 года регулирует земельные отношения, содержит основные положения индонезийского национального земельного законодательства и служит руководством при урегулировании споров, связанных с земельными вопросами. Данная статья представляет собой нормативно-правовое исследование, а именно анализ пункта 1 статьи 21 Закона № 5 от 1960 года, в котором говорится, что только

граждане Индонезии имеют право собственности на землю, в то время как иностранные граждане могут не иметь имущественных прав. Результаты исследования указывают на то, что существует необходимость в реализации специальных правовых норм, связанных с приобретением права собственности на землю иностранными гражданами, долгое время проживающими в Индонезии.

Ключевые слова: обустройство, землепользование, имущественные права, иностранный гражданин, Индонезия.

Introduction

Land use has a very important role in modern life such as the role for housing, plantation business, agricultural business, mining business and others. Some of the problems that often occur in Indonesian society are unequal ownership or control over land, land tenure without a permit, problems related to land acquisition for development purposes who are entitled or their proxies. Land law politics is a government policy in the field aimed at the designation and use of the ruler or landowner, the designation of land use to ensure legal protection and improve welfare and encourage economic activities through the enactment of the land law and its Implementing Regulations. The regulations regarding land in Indonesia have been stated in Law No 5 of 1960 concerning the Basic Regulations on Agrarian Principles (UUPA) [1], which contains the main points of the Indonesian National Land Law. Indonesia's population growth is increasing so rapidly every year, the community's need for land also increases. Many people make land as an investment because land prices are increasing. Land law politics will answer questions about what goals are to be achieved, what will be done with the existing land, and what means will be used.

Land for human life has a very important position. This is because almost all aspects of life, especially for the Indonesian people, cannot be separated from the existence of land, which cannot only be seen from the economic aspect, but includes all their lives and livelihoods. Land has multiple values, so the term homeland and bloodshed are used by the Indonesian people to describe the territory of the country

by describing an area dominated by land, water and sovereign land [9, p. 2]. Human beings, as well as being the main factor in every development activity [7, p. 27] land acquisition for development in the public interest is a classic problem that always raises disputes in society [8, p. 415]. Article 1 point 6 of the Presidential Regulation No 65 of 2006 concerning Land Procurement for the Implementation of Development in the Public Interest states that the relinquishment or surrender of land rights is an activity to release the legal relationship between the holder and the land they control by providing compensation on the basis of deliberation [4, p. 113].

The importance of land for humans as individuals and the state as the highest community organization is constitutionally regulated in Article 33 paragraph (3) of the 1945 Constitution, which states that "earth, water and natural resources contained therein are controlled by the state and used as much as possible for the prosperity of the people". As a follow-up to this, Law No 5 of 1960 concerning Basic Agrarian Regulations, hereinafter better known as UUPA, was issued. The main objectives of the UUPA are:

1. Laying the foundations for the preparation of national agrarian law, which is a tool to bring prosperity, happiness and justice to the state and the people, especially the people in the framework of a just and prosperous society.

2. Laying the foundations for unity and simplicity in land law.

3. Laying the foundations to provide legal certainty regarding land rights for the whole people [9, p. 52].

The existence of the UUPA is designed to end the plurality of legal institutions that regulate the land sector and wants to create a national land law system, by making customary law as the basis. Even though the UUPA uses the term agrarian, but the substance of the regulation is more related to land law as the main legal area of agrarian law. Therefore, in order to achieve prosperity and welfare of the people, the utilization and use of land, which is part of natural resources, must be carried out wisely and it management is left to the state. Law No 5 of 1960 ideologically has a very close relationship with the Indonesian peasants. This is because since the enactment of the UUPA, formally juridical there is a very strong desire to function

national agrarian law as a "tool" to bring prosperity, happiness and justice to the state and farming community in the framework of a just and prosperous society. Because in people's lives, especially in the regions, in rural areas, land is a very important factor of production, as land is one of the sources of their life and livelihood, in addition, customary lands are often associated with cosmic-magical-religious values. This relationship is not only between individuals and the land, but also between a group of community members of a customary law alliance in relation to ulayat rights. For Indonesia, as an agricultural country, the existence of land has a very important function for the prosperity and welfare of its people.

The state, in this case the government, is given the authority to have the right to regulate the designation and use of land, including the regulation of legal actions as legal relationships between individuals or legal entities and the land and then further regulated in the UUPA and other laws and regulations. The Basic Agrarian Law regulates the determination of land rights for both Indonesians and foreigners. Indonesian citizens can be granted various land rights in the form of ownership rights, building use rights, cultivation rights and use rights, but foreigners can only be granted use rights.

In relation to this A.P. Parlindungan says: "The Basic Agrarian Law emphasizes that we have closed the door to open ownership, meaning that only Indonesian citizens without discrimination between fellow Indonesian citizens and the same sex have the right to have land rights (Article 9 of the UUPA)" [12, p. 44].

So that in terms of land ownership with Hak Milik, it can only be owned by Indonesians, and the UUPA has closed the possibility for foreigners to have ownership rights on land in Indonesia. The implementation of the principle of Nationality in the UUPA, besides being normatively affirmed in Article 9 paragraph (1) as above, is also implicitly implied in the provisions of Article 21 and Article 26 of the UUPA, which also regulates the impact or legal consequences due to foreigners obtaining land rights that are not use rights. With the development of modern times, relations between humans are not only in the national scope but also include international relations where people residing in a country are not only

Indonesian citizens but also foreign nationals. If they have lived in Indonesia for a long time and have contributed to the Indonesian state, there needs to be special attention to these foreign nationals by giving them ownership rights to the land they occupy, not only the right to use it.

Methodology

In this study the authors use a normative juridical approach and the type of legal study is comprehensive analytical on primary legal materials, secondary legal materials, and tertiary legal materials. The results of the research and discussion are described in a complete, detailed, clear and systematic way as a scientific work. Normative legal research examines laws that are conceptualized as norms or rules that apply in society, and become a reference for everyone's behaviour. The applicable legal norms are in the form of written positive legal norms formed by statutory institutions (the constitution), codification, laws, government regulations, and so on and written legal norms formed by judicial institutions (judge made law), as well as artificial written law, interested parties (contracts, legal documents, legal reports, legal records and draft laws) [10, p. 52].

Results and discussion

The policy of the Dutch Colonial government in regulating land issues in Indonesia

During the colonial period of the Dutch East Indies, land rights in Indonesia were grouped into three types of rights, namely:

1. Indonesian original rights, namely land rights according to customary law.

2. Western rights, namely land rights according to Western Law, laws brought by the Dutch East Indies government to Indonesia together with European Law. In this case, the Dutch East Indies government enforced the principle of concordance by applying the rules that apply in Indonesia.

3. Rights to regional land over which there is still control from the local kingdom, for example Yogyakarta, Surakarta, East Sumatra and other autonomous regions.

Book II Burgerlijk Wetboek (BW) regulates the types of land rights that can be owned by individuals or legal entities, including regulating the contents of the rights in question and the legal relationship between the rights holders and the land they control [q.v.: 13]. This shows that the land law covered by the BW tends to be civil in nature. In addition, the BW also contains provisions governing administrative matters, which contain the policies of the Dutch East Indies government regarding the granting of land rights in Indonesia. However, the provisions governing the above matters are based on the land law of the Dutch government, namely:

1. Agrarische Wet, which is a law made by the Dutch government which was promulgated in 1870 and is an addition to Article 62 of the Regering Reglement (RR), a type of the Constitution for the Dutch East Indies, which was enacted in 1854 and later changed to Indische Staatregering (IS) in 1925, where Article 62 RR becomes Article 51 IS [q.v.: 5].

2. Agrarische Besluit, namely the decision of the King of the Netherlands to implement Agrarische Wet. This regulation is a statement that forms the basis for the authority to grant rights to all parcels of land that cannot be proven as the eigendom of other parties, which are state domains. The Agrarische Besluit 1870 only applies to Java and Madura, while for other regions it is stipulated in the besluit issued at a later date.

3. Provisions made by local control (swapraja) created according to the provisions of self-government, such as land rights in effect in D.I. Yogyakarta and Grant Sultan, Gront Controleur, Grand Deli Maatscheppij and concession rights in East Sumatra [q.v.: 13].

During the reign of the Dutch East Indies all grants of land rights related to western rights had complete land data with registered cadastral maps. This can still be seen in a number of areas in Indonesia, for example in D.I. Yogyakarta, where the land maps are still well preserved and preserved.

During the Japanese government through Article 10 Osamu Serei No. 4 of 1944, the rules regarding land ownership and control are more intended for Japanese citizens, foreigners, Japanese legal entities and Indonesian legal entities. However,

since the enactment of the Law on the Japanese Occupation Army Forces in 1992, there has been cultivation and occupation of plantation and forestry lands for the benefit of Japan, so that this condition makes it difficult to use and utilize the land by the indigenous population. This condition ended in 1945, when Japan surrendered to the allies.

Before the Basic Agrarian Law (UUPA) was enacted, the applicable land law in Indonesia was still the land law inherited by the Dutch East Indies government. At this time, the philosophy of land law adopted was that earth, water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. This philosophy was still valid until the UUPA was enacted namely on September 24, 1960.

Although the colonial government applied agrarian politics that was different from the previous period, the effect on the community was relatively the same, because in practice the colonial government used the power of the previous feudal elite, namely the regents and their assistants with the same work pattern. In the era of the forced cultivation system (1830-1870), farmers were required to plant export commodities that had to be sold to the government at a predetermined price. This forced cultivation is basically a union between the compulsory surrender system and the land tax system, where taxes are paid in kind (harvests).

During the period of forced cultivation, there was an increase in exports of plantation commodities, especially coffee and sugar. However, the forced cultivation program has become an important factor responsible for underdevelopment and poverty in Indonesia. With forced cultivation, there was a transfer of economic surplus from Indonesia to the Netherlands and an increase in the “rural proletariat” [q.v.: 14]. Therefore, what happened during the colonial period was the domination and exploitation of the wealth of the colony for the benefit of the colonizers [q.v.: 3]. Along with the emergence of a political climate characterized by liberalism in the Netherlands, the private sector there demanded to be given the opportunity to open plantations in Indonesia. For this reason the Dutch government issued the Agararia Law of 1870 (Agrarische Wet) which allowed for a system of long-term leasing of

lands for plantations. This regulation is the basis for agrarian regulations in Indonesia, but is dualistic because for foreigners western law applies, and for Indonesian people customary law applies. Here it is possible to have absolute land (eigendom rights) including the right to lease it to other parties.

The purpose of the law is to provide broad opportunities for foreign private capital which has indeed succeeded brilliantly. However, the other goal, namely to protect and strengthen land rights for the native Indonesians, is far from being expected [q.v.: 3]. Moreover, the attitude of the kings and sultans both in Java and outside Java were tempted to give concessions to foreign private rulers.

The colonial government also implemented a land lease system policy to farmers, although it was less successful. This policy was based on the assumption, that the land belonged to the Dutch. This rental system is implemented in the hope that it will provide freedom and legal certainty as well as stimulate farmers to grow commercial crops. In addition, it is also hoped, that this policy can maintain the sustainability of government revenues. In the next stage, this rental system is directed to export purposes by inviting large private companies from the Netherlands.

The conclusion is that the colonial government had chosen the pattern of land tenure, leased or taxed, as an important instrument in advancing the agriculture and income of the colonial government. For farmers, the fate experienced by the implementation of agrarian politics during the Dutch government was not much different from agrarian politics during the kingdom. The farmer is still a cultivator with the obligation to hand over some of the results to the authorities.

Regulatory policy regarding land issues during the Independence Day of the Republic of Indonesia (Old Order and New Order period)

The Old Order period was marked by the birth of the Basic Agrarian Law No 5 of 1960. From this legal product, it can be seen that the government pays serious attention to the importance of agrarian issues as the main foundation in agricultural and rural development [18]. The ideal land reform activity had been carried out after the birth of this UUPA, but then failed because it was ridden by political content, especially by the Indonesian Communist Party (PKI).

In fact, the UUPA is against capitalism, which gave birth to colonialism and against socialism, whereby is considered to negate individual rights to land. The agrarian politics contained in the 1960 UUPA is populist politics, recognizing individual rights to land while still paying attention to "social functions". Through the principle of the right to control by the state, the government regulates that land can be used for the greatest prosperity of the people as stipulated in Article 33 of the 1945 Constitution.

During the New Order government, very little attention was paid to land reform. However, the government's efforts to privatize land were still carried out through a land certification program. In this period agricultural modernization with the green revolution program became a priority, while solving land problems was not handled systematically and consistently.

Agricultural development by introducing advanced and efficient technology on the one hand is able to overcome the problem of food shortages, but on the other hand, there are many negative impacts that arise. The green revolution program is believed to have caused socio-economic polarization, or at least an affirmation of stratification, and the expulsion of landless farmer groups from the countryside [q.v.: 16].

M. Amaluddin's research in Kendal, Central Java, concluded that changes in the land tenure system led to changes in the agricultural production system [q.v.: 2]. Prior to 1960, there were three types of communal land tenure rights, namely crook rights, banda desa rights, narawita rights; and one that is individual, namely property rights. The implementation of the UUPA in 1960 led to the conversion of land, which was originally based on customary (communal) law into property rights. The rights of the nawita, de facto belong to the individual, so that land sales are growing, the opportunities for the homeless to cultivate are reduced, and the mobility of tenure tends to be polarized. At the same time, the production system, which was originally based on traditional values, was replaced by a commercial production system. In a broader context, Y. Hayami and M. Kikuchi also found similarities in the impact of the green revolution in Indonesia and the Philippines [q.v.: 6]. Such a transformation

of the rural social system is also supported by the findings of G. Temple, who saw the evolution of Javanese villages from communal villages (1830-1870), followed by traditional villages (1870-1959), and finally commercial villages along with the era of the green revolution [15].

From this description, it can be concluded that changes in the land tenure system are closely related to the development of agricultural technology, the structure of the village economy, and in the end, it is also related to the social structure of rural communities. Therefore, as stated in M.P. Todaro, agricultural development must be integrated with rural development [q.v.: 17].

Regulatory policy regarding the rights of foreign citizens in land issues in Indonesia

Land law politics is a government policy in the field aimed at the designation and use of the ruler or landowner, the designation of land use to ensure legal protection and improve welfare and encourage economic activities through the enactment of the Land Law and its Implementing Regulations.

Some government regulations relating to land law in Indonesia are as follows:

1. Law No 5 of 1960 concerning Basic Agrarian Regulation.

2. Decree of the People's Consultative Assembly No 9 of 2001 concerning agrarian reform and natural resource management.

3. Decree of the President of the Republic of Indonesia No 34 of 2003 concerning policies National Land Agency in the land sector.

4. Presidential Regulation No 10 of 2006 concerning the National Land Agency.

5. Government Regulation No 38 of 2007 concerning division of affairs government between the government, regional government, province and regency/city regional government, which has just been established on 9 July 2007 namely Government Regulation No 46 of 2007.

6. Decree of the Head of the National Land Agency No 2 of 2003 concerning norms and standards of the mechanism for administering the government's authority in the land sector carried out by the city/regency government.

The politics of land law in Indonesia dates back to the colonial era before Indonesian independence. Indonesia became independent on August 17, 1945, but at that time, Indonesia did not have a land regulation. Therefore, the principle of concordance as regulated in Article II of the transitional provisions of the 1945 Constitution applies which reads: "All existing state bodies and regulations are still valid, as long as new ones have not been made according to this Constitution".

Indonesia issued Law No 5 of 1960 concerning Basic Regulations on Agrarian Principles on September 24, 1960, marked the birth of agrarian law in Indonesia.

Land law politics in the colonial era of the Dutch East Indies was aimed at providing benefits to the Dutch East Indies government. The Dutch East Indies government regulations contained in Agraricshe Wet, Agrarisch Besluit, had the aim of increasing the treasury of the Dutch East Indies government. Therefore, when Indonesia became independent, state land politics had a very different main goal, namely to achieve the greatest prosperity of the people.

The purpose of the UUPA as a means to achieve people's prosperity can be seen in the general explanation I of the UUPA:

1. Laying the foundations for the preparation of the National Agrarian Law, which will be a tool to bring prosperity, happiness and justice to the state and people, especially the peasants in the framework of a just and prosperous society.

2. Laying the foundations for unity and simplicity in land law.

3. Laying the foundations to provide legal certainty regarding land rights for the whole people

The UUPA makes policies that are used to increase people's prosperity, for example, it contains provisions for land reform as regulated in Articles 7, 10 and 17 of the UUPA. With the existence of this UUPA, there is a provision that those who own land that exceeds the limit are not allowed. The UUPA also makes a policy so that agricultural land can be actively cultivated by farmers. Therefore, there is a prohibition on absentee land ownership, namely agricultural land that is outside the sub-district area of the owner.

With the regulations in this UUPA it is hoped that the prosperity of the people will increase, especially the farmers will soon be achieved. Law No 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA) is also national in nature, that is it's made by Indonesian lawmakers, made in Indonesian and applies throughout Indonesia.

The substance or content of the UUPA must contain the following principles:

1. Based on customary land law.
2. Simple.
3. Ensure legal certainty.
4. Does not result in elements that rely on agrarian law.
5. Enable the earth, water, space, and the natural resources contained therein to function to create a just and prosperous society.
6. In accordance with the interests of the Indonesian people.
7. Meeting the needs of the Indonesian people regarding agrarian matters
8. Is the embodiment of Pancasila values.
9. It is the implementation of the outlines of state policy.
10. Implement the provisions of Article 33 of the 1945 Constitution.

The types of land rights that can be granted can be distinguished as regulated in Article 16 paragraph (1) of the UUPA, which is divided as follows:

1. Permanent land rights, namely land rights whose existence is still recognized and will not be abolished. Included in these permanent land rights are property rights, building rights, use rights, and use rights.

2. Temporary land rights are land rights whose existence within a certain time will be removed, considering that these rights contain elements of extortion. Such rights can be seen in Article 33 of the UUPA, namely profit-sharing business rights, agricultural land pledges, boarding rights, and rental rights on agricultural land.

3. Land rights to be determined by law. This kind of arrangement provides an opportunity for the emergence of new land rights which are sufficiently regulated in separate regulations without changing the UUPA.

The definition of property rights based on article 20 paragraph (1) of the UUPA states that property rights are hereditary rights, the strongest and most fulfilled, keeping in mind the provisions of Article 6 on it and the contents of the earth, as long as there are interests that are directly related to the use of the land.

Hereditary means that property rights do not only last for the life of the owner, but can be continued by his heirs if the owner dies. The strongest means that the term of ownership is not limited. This is different from the right to cultivate or the right to use the building, which has a limited period of time. The fullest means that the property rights give authority to the owner, which is the most extensive, when compared to his property rights. Property rights can be the parent of other rights, meaning that a landowner can give his land to other parties, such as rental rights, share profits, and mortgages [q.v.: 11].

Based on article 21 paragraph (1) of the UUPA only Indonesian citizens can have ownership rights over land. So in principle, only a single Indonesian citizen owns land with property rights. Legal entities may not own land with property rights, except those designated by Government Regulation. This can be seen in Article 21 paragraph (2) of the UUPA, which states that the government shall establish legal entities that can have property rights and the conditions.

Legal entities that can own land with property rights as mentioned in Article 21 paragraph (2) are determined in Government Regulation No 38 of 1963 as follows:

1. Banks established by the state.

2. Agricultural cooperative associations established under Law No 79 of 1958.

3. Religious bodies appointed by the Minister of Home Affairs after hearing the Minister of Religion.

4. Social agencies appointed by the Minister of Home Affairs after hearing the Minister of Social Affairs.

Right to use is the right to use and/or collect proceeds from land, which is directly controlled by the state, or land owned by another person who gives authority and obligations determined by the decision on granting it by the obligations specified in the decision or in the agreement with the land owner, which is not an agreement.

lease or land management agreement. Land that can be granted with usufructuary rights are among others: a) country land; b) management rights land; c) proprietary land.

The subject of right of use in article 39 of Government Regulation No 40 of 1996 it is stated that those who can have a right of use are: a) Indonesian citizen; b) Legal entity established according to law Indonesia and domiciled in Indonesia; c) Departments, non-departmental government agencies and regional governments; d) Religious and social bodies; e) Foreigner domiciled in Indonesia; f) Foreign legal entities that have representatives in Indonesia; g) Representatives of foreign countries and representatives of international bodies.

Conclusion

Legal politics regarding land regulation in Indonesia dates back to the colonial era before Indonesia's independence. Indonesia became independent on August 17, 1945, but at that time, the country did not have a land regulation. Therefore, the principle of concordance as regulated in Article II of the transitional provisions of the 1945 Constitution applies. Land law politics is a government policy in the field aimed at the designation and use of the ruler or landowner, the designation of land use to ensure legal protection, improve welfare and encourage economic activity. Through the enactment of the land law and its implementing regulations specifically aimed at Indonesian citizens. For foreign nationals, the basic agrarian law in Indonesia does not provide the opportunity to have ownership rights to land, which are allowed to only have temporary use rights. In the future this rule of law needs to be changed considering, that Indonesia is entering an era of globalization where the relationship between Indonesian citizens and foreign nationals is increasing and is mutually dependent on one another.

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