

REGULATIONS ON THE OWNERSHIP OF LAND AND BUILDINGS IN INDONESIA

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Abstract: Before applicable Agrarian Law no. 5/1960, Indonesia apply two legal system in trouble land, namely based on *Adat Law (Hukum Adat)* and Civil Code (*KUH Perdata*). After applicable the Agrarian Law, Civil Code books part II still remain in force to the extent of land ownership as a motionless object (*benda tak bergerak*). Status of land ownership are divided into : property rights/*Hak Milik* (article 20 Agrarian Law), *Hak Guna Usaha* (article 28 Agrarian Law), *Hak Guna Bangunan* (article 35 Agrarian Law) and *Hak Pakai* (article 41 Agrarian Law). On article 19 Agrarian Law, explained that registration of land held by the Government of the Republic of Indonesia through the national land Agency and the task execution registration is done by the Head Office of the land in these areas, where the land registry implementation conducted by the head of Office assisted by land deed official (*Pejabat Pembuat Akta Tanah/PPAT*) and other officials who are assigned to perform a particular activity. According to article 21 paragraph (1) Agrarian Law, who can do the registration of property rights over land are citizens of Indonesia, as well as legal entities such as banks, government agencies and religious charities.

Keywords: Land and Building, Agrarian Law No.5/1960 (*Undang-Undang Pokok Agraria/UUPA*), Civil Code (*Kitab Undang-Undang Hukum Perdata/ Burgerlijk Wetboek*), Government Regulation.

Abstrak: Sebelum berlaku UU Agraria no. 5/1960, Indonesia menerapkan dua sistem hukum dalam masalah tanah, yaitu berdasarkan Hukum Adat dan KUH Perdata. Setelah berlaku Undang-Undang Agraria, buku-buku Pedoman Sipil pasal II masih berlaku sampai batas kepemilikan tanah sebagai objek bergerak (benda tidak bergerak). Status kepemilikan tanah dibagi menjadi: hak kepemilikan / Hak Milik (pasal 20 UU Agraria), Hak Guna Usaha (pasal 28 UU Agraria), Hak Guna Bangunan (pasal 35 UU Agraria) dan Hak Pakai (pasal 41 UU Agraria). Pada pasal 19 UU Agraria, dijelaskan bahwa pendaftaran tanah yang dimiliki oleh Pemerintah

Republik Indonesia melalui Badan Pertanahan Nasional dan pelaksanaan tugas registrasi dilakukan oleh Kepala Kantor Pertanahan di wilayah ini, dimana pelaksanaan pendaftaran tanah dilakukan oleh Kepala Kantor dibantu pejabat tanah (Pejabat Pembuat Akta Tanah / PPAT) dan pejabat lainnya yang ditugaskan untuk melakukan kegiatan tertentu. Menurut pasal 21 ayat (1) UU Agraria, yang dapat melakukan pendaftaran hak kepemilikan atas tanah adalah warga negara Indonesia, serta badan hukum seperti bank, instansi pemerintah dan badan amal keagamaan.

Kata kunci: Land and Building, Agrarian Law No.5/1960 (*Undang-Undang Pokok Agraria/UUPA*), Civil Code (*Kitab Undang-Undang Hukum Perdata/Burgerlijk Wetboek*), Government Regulation.

INTRODUCTION

On September 24, 1960, the Government of the Republic of Indonesia issued regulation on the utilization of the land so as not to give rise to disputes in the community known as the Agrarian Law No. 5/1960 (*Undang-Undang Pokok Agraria No. 5 tahun 1960/UUPA*).

Before applicable Agrarian Law no. 5/1960, Indonesia apply two legal system in trouble land, namely based on *Adat Law (Hukum Adat)* and Civil Code (*KUH Perdata*). After applicable the Agrarian Law, Civil Code books part II still remain in force to the extent of land ownership as a motionless object (*benda tak bergerak*).

This article having a view to know the land ownership status in Indonesia according Agrarian Law No. 5/1960 (*Undang - Undang Pokok Agraria No. 5 tahun 1960/UUPA*) for individuals or business entities who were law.

RESEARCH METHOD

The writing of this article is the kind of research juridical normative, which is to draw the principles of law which aims to seek for truth scientific theoretically with respect to issues discussed. Research juridical normative called also research doctrinal law.

RESULTS

Status of Land

Status of land ownership are divided into: property rights/*Hak Milik* (article 20 Agrarian Law), *Hak Guna Usaha* (article 28 Agrarian Law), *Hak Guna Bangunan* (article 35 Agrarian Law) and *Hak Pakai* (article 41 Agrarian Law). According to article 20 paragraph (1) Agrarian Law, property rights (*Hak Milik/HM*) is a hereditary right, strongest and most people can have full over the land. Property rights can only be owned by citizens of Indonesia. Then, according to article 28, paragraph (1) the Agrarian Law, which is meant by the *Hak Guna Usaha (HGU)* is the right to cultivate land owned by the State, within such time as such in article 29, for agriculture, fisheries, or ranch. According to article 35, paragraph (1) Agrarian Law, *Hak Guna Bangunan (HGB)* is Building the right to form and to have buildings on land that is not his own time period of not longer than 30 (thirty) years. HGB can be owned by Indonesia Citizens and legal entities established under the laws of Indonesia and domiciled in Indonesia. Article 41, paragraph (1) Agrarian Law also set about *Hak Pakai (HP)*, namely the rights to use and/or glean results from land ruled directly by the State or land belonging to another person who gave the authority and duties specified in the decision by the competent authority granting it or in agreement with the owner of the land, which is not a tenancy agreement or Treaty of tillage. Any land rights have social functions, which means that the Government of the Republic of Indonesia can take over ownership of the land if it is important for the interests of the community a lot, for example:

for the construction of highways, bridges, parks and others.

Registration of Land

According to Government Regulation No. 24/1997, registration of land is a series of activities conducted by the Government continuously, sustained and regular basis, includes the collection, processing, bookkeeping, maintenance and presentation of data on physical and juridical data, in the form of a map and a list of areas of land and flats units, including the giving of due proof of license plate for the fields of an existing land rights and ownership rights over units of flats as well as certain rights that bog it down.

On article 19 Agrarian Law, explained that registration of land held by the Government of the Republic of Indonesia through the national land Agency and the task execution registration is done by the Head Office of the land in these areas, where the land registry implementation conducted by the head of office assisted by land deed official (*Pejabat Pembuat Akta Tanah/PPAT*) and other officials who are assigned to perform a particular activity. According to article 21 paragraph (1) Agrarian Law, who can do the registration of property rights over land are citizens of Indonesia, as well as legal entities such as banks, government agencies and religious charities, so that is not a citizen of Indonesia must release the land are property rights for a period of not longer than 1 (one) year.

The purpose of the land register at the national land Agency is to provide peace and legal certainty for owners of land rights in terms of land area of object (an object of rights), legal certainty over the subjects of rights (the rights of subjects), and legal certainty over rights to the land types.

It likewise affirmed in part consideration of law No. 25/2009 about the Public Service states that the State is obliged to serve every citizen and resident to meet the basic needs and rights within the framework of the public service which is a mandate of the Constitution of the

Republic of Indonesia in 1945, namely to build up public confidence public services. The function of the land registry is to get a strong proof of the law of the land deeds are legitimate. Evidence that the certificate is referred to therein mentioned the existence of a legal deed and the names of its owners now receive or obtain rights of passage.

Land Registry Object

According to article 9 of the Government Regulation No. 24/1997 there were six plots of land that could serve as the object of registration of land, i.e. :

1. Property rights/*Hak Milik* (article 20 Agrarian Law), *Hak Guna Usaha* (article 28 Agrarian Law), *Hak Guna Bangunan* (article 35 Agrarian Law) and *Hak Pakai* (article 41 Agrarian Law);
2. *Tanah hak pengelolaan*;
3. Waqf land;
4. Property rights against units of flats;
5. *Hak tanggungan*; and
6. State land.

The Ratification of The Buying and Selling of Land and Building

At this time, regarding the implementation of the Agrarian Law, in particular the sale and land rights have been regulated in the Government Regulation No. 24/1997 about land registry and Government Regulation No. 37/1998 of *Pejabat Pembuat Akta Tanah (PPAT)* that a binding sale and land and valid building should be done in the presence of the competent authority, in which case this is a PPAT official his working area, which covers the area where the land use is, also still apply the provisions of sell and buy the article 1338 Civil Code regarding the Covenant, namely : *"All agreements are made legally valid as the rule for those who make it. An irrevocable agreement other than by agreement of both parties or for the reasons stated by the regulations is sufficient for that. An agreement should be implemented in good faith"*.

Suryawan, *et. al.* (2014) confirms, that any party that has made the Alliance cannot cancel the agreement for any reason unless

agreement is made there is evidence of *nötigung* (see on article 1323, Civil Code). In the agreement will be in writing the identity of the parties that make it and contains the rights and obligations of the parties, as well as evidence of the consent agreement, the object of the parties (see on article 1320, Civil Code). It further affirmed Suryawan, *et.al.* (2009) that the obligations of each party are known in the Civil Code as accomplishments listed in article 1234 Civil Code, which reads : "*Each alliance is to provide something, to do something or not to do something*". Achievement was based on an object that is the fulfillment of the law rather than the objective criteria referred to in article 1320 section (3) and (4) : "*.....(3) a certain thing; (4) a cause of a lawful*". Suryawan *et.al.* (2009) stating the opinion of Prof. Miriam (2001) that the agreed basis of committing yourself is essential from the Law of Treaties, that there is a "willingness from the parties" to conclude a mutual suicide have in common vision and mission in the conduct of business. These Agreements have the force of law by the parties pursuant to article 1320 Civil Code. Further defined in article 1458 Civil Code which reads : "*Buy and sell is considered to have taken place between the two sides as they have reached agreement on the goods and prices, even though the goods had not been delivered and the price has not been paid*", that means the deal have been going on between the two parties even though the goods have not been provided by the seller to the buyer and the buyer has not made any payments to the seller. After each party fulfills its obligations as referred to in section 1234 Civil Code regarding the fulfillment of the achievements, then *Akta Jual-Beli (AJB)* can be implemented by *Pejabat Pembuat Akta Tanah (PPAT)* that area of work includes the area where the land is sold. *Akta Jual - Beli (AJB)* made by the *Pejabat Pembuat Akta Tanah (PPAT)* is an authentic deed and in accordance with the regulations of the buy and sell land and buildings, which are ordered by article 1868 Civil Code : "*The Authentic Deed is a deed of that shape is determined by the laws*

and made by or in the presence of public servants of the ruling for it in a place where the deed he had made". According to article 1874 and article 1880, Civil Code, the *Akta Jual - Beli (AJB)* can also be made by the parties without *Pejabat Pembuat Akta Tanah (PPAT)*, however the new AJB has force of law against third parties if it has been labelled a statement dated from the notary public or employee of another, which is called Legalization (*Waarmerking*). There is a reason for many people not to make a deed under the hand because according to article 1875 refers to article 1871 Civil Code states that the *Akta di Bawah Tangan*, you would have to be the authentic deed but does not give a perfect evidence about what is contained in it because the mere word that is considered to be other than just what is spoken that there is a direct relationship with the contents of the deed. Thus, the parties usually prefer the authentic deed of sale-purchase of land and building problems.

CONCLUSION

Before applicable Agrarian Law no. 5/1960, Indonesia apply two legal system in trouble land, namely based on *Adat Law (Hukum Adat)* and Civil Code (*KUH Perdata*). After applicable the Agrarian Law, Civil Code books part II still remain in force to the extent of land ownership as a motionless object (*benda tak bergerak*).

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To carry out its mandate of Agrarian Law, specifically the right to buy and sell land has made Government Regulation No. 24/1997 on Land Registry and Government Regulation No. 37/1998 on the *Peraturan Jabatan Pembuat Akta Tanah* (PPAT) that binding of buy and sell land and valid building should be done in the presence of the competent authority, in which case this is a *Pejabat Pembuat Akta Tanah* (PPAT) his working area, which covers the area where the land is sold, is also still valid conditions of sell and buy the article 1338 Civil Code regarding the agreement.

Article 1458 Civil Code governing the deal has taken place between the two parties even though the goods have not been provided by the seller to the buyer and the buyer has not made any payments to the seller.

REFERENCES:

- Article 506 - article 508, Civil Code (*Kitab Undang - Undang Hukum Perdata/Burgerlijk Wetboek*)
 Amirudin and Zainal Asikin, *Pengantar Metodologi Penelitian Hukum*, Jakarta : PT. Raja Grafindo Persada, 2007, p. 13
 Article 20, Agrarian Law 5/1960 (*Undang-Undang No 5 tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria*)
 Article 28 paragraph (1), Agrarian Law 5/1960 (*Undang-Undang No 5 tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria/UUPA*)
 Article 35 paragraph (1), Agrarian Law 5/1960 (*Undang-Undang No 5 tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria/UUPA*)
 Article 41 paragraph (1), Agrarian Law 5/1960 (*Undang-Undang No 5 tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria/UUPA*)
 Article 6, Agrarian Law 5/1960 (*Undang-Undang No 5 tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria/UUPA*)

Government Regulation No. 24/1997 of Registration of Land

Article 19, Agrarian Law 5/1960 (*Undang-Undang No 5 tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria*)

Government Regulation No. 24/1997 of Registration of Land

Article 21 paragraph (1), Agrarian Law 5/1960 (*Undang-Undang No 5 tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria*)

Article 8 paragraph (1) point b, Peraturan Menteri Agraria/Kepala Badan Pertanahan Nasional No 9 tahun 1999 tentang Tata Cara Pemberian dan Pembatalan Hak atas Tanah Negara dan Hak Pengelolaan.

Ibid.

Article 19, Agrarian Law 5/1960 (*Undang-Undang No 5 tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria*)

The part of consideration of law No. 25/2009 about the Public Service

Djoko Prakoso, Budiman Adi Purwanto, *Eksistensi Prona Sebagai Pelaksanaan Mekanisme Fungsi Agraria*, Jakarta, Ghalia Indonesia, 1985

Article 9, Government Regulation No. 24/1997 of Registration of Land

Government Regulation No. 24/1997 of Registration of Land

Government Regulation No. 37/1998 of *Peraturan Jabatan Pembuat Akta Tanah (PPAT)*

Article 1338, Civil Code (*Kitab Undang - Undang Hukum Perdata/Burgerlijk Wetboek*)

Ian Nurpatricia Suryawan, Nurti Widayati, Jefri Lukito, *Wanprestasi Versus Perbuatan Melanggar Hukum Menurut Burgerlijk Wetboek*, Proceedings : Seminar Nasional Inovasi dan Tren 2014, Bekasi, 2014, p.2

Ibid.

Ian Nurpatricia Suryawan, P. C. Happy Dermawan, *Aspek Hukum Dalam Melakukan Perikatan*, Journal of Law : Globalisasi Hukum, Master of Law, Trisakti University Postgraduate Program, Vol.7, No.2, October, Jakarta, 2009, pp.44 - 63

Ibid.

Ibid.

Article 1458, Civil Code (*Kitab Undang - Undang Hukum Perdata/Burgerlijk Wetboek*)

Article 1234, Civil Code (*Kitab Undang - Undang Hukum Perdata/Burgerlijk Wetboek*)

Government Regulation No. 37/1998 of *Peraturan Jabatan Pembuat Akta Tanah (PPAT)*

Article 1868, Civil Code (*Kitab Undang - Undang Hukum Perdata/Burgerlijk Wetboek*)

Article 1874 and Article 1880, Civil Code (*Kitab Undang - Undang Hukum Perdata/Burgerlijk Wetboek*)

Article 1875 jo Article 1871, Civil Code (*Kitab Undang - Undang Hukum Perdata/Burgerlijk Wetboek*)

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