p-ISSN: 2654-3419, e-ISSN : 2654-3311

JUSTICIABELEN
Jurnal Hukum
Journal homepage: http://journal.umg.ac.id/index.php/justiciabelen/index

Juridical analysis of land rights according to UPPA in Indonesia

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Keywords :

Juridical analysis, Land Rights, UUPA

ABSTRACT

The right of ownership is already known in customary law, which is as a result of the development of control and exploitation or use as communal land intensively and continuously by individual citizens of customary law communities holders of communal rights. This study uses normative juridical methods, while the results of this study manganalisis that property rights are basically reserved exclusively for Indonesian citizens who are single citizens, which is used as cultivated land or to build something on it. In accordance with the nature of the Bal (basic agrarian law or UUPA), property rights are determined not limited to the validity period, can be transferred and transferred and can also be burdened with mortgage rights. Use rights with the designation HGU & HGB do not contain emotional psychological, such as property rights. The relationship of the right holder with the land being valued is merely a straightforward relationship, that is, simply to enable the right holder to use it to meet certain needs. The right to use non-property rights is also known in customary law. various needs for land, then to make it easier to recognize the designation, the right to use it in accordance with the typical designation of each land is named a different designation, namely the right to use the land to cultivate, the right to build to build something on it. In the Bal both rights are limited in validity and can be granted other than Indonesian citizens and Indonesian legal entities. Hak Pakai is given the specificity of the nature or designation of the use of its land, or on consideration of the point of use of its land that cannot be granted with HM, HGU and HGB, hence the name Hak Pakai. There are also temporary land rights. It is said that it is temporary, which means that at some time these rights as legal institutions will no longer exist, since they are considered incompatible with the principles of HTN.

1. Introduction

Starting from the provisions of Article 19 paragraph 1 of law no. 5 of 1960, concerning the basic agrarian law, which hereinafter can also be referred to by the abbreviation UUPA, states that in order to ensure legal certainty by the government, land registration is held throughout the territory of the Republic of Indonesia according to provisions regulated by government regulations. A year later issued Government Regulation No. 10 of 1961, on Land Registration, and declared effective March 23, 1961.

After, valid 36 years of PP No. 10 of 1961 is seen as no longer able to fully support the achievement of more tangible results in national development, so improvements need to be made.

Improvement is also on the basis of the same regulation, namely Government Regulation No. 24 of 1997, on Land Registration. With the entry into force of this regulation, PP No. 10 of 1961 was declared no longer valid. However, the provisions of the transitional article states that all legislation as implementing PP No. 10 of 1961 that has existed is still valid, as long as it does not conflict or be changed or replaced based on this PP.

Unless otherwise stated, the rights listed and other matters generated in the land registration activities under the provisions of PP no. 10 of 1961 remains valid as a result of land registration according to this PP.

The purpose of land registration is to:

a. Provide legal certainty and legal protection to the holder of the rights to a land plot, apartment units and other rights registered in order to easily prove himself as the holder of the rights in question (note Article 19 of the Bal);
b. Providing information to interested parties including the government in order to easily obtain the necessary data in conducting laws on land plots and units of flats that have been registered;
c. The orderly implementation of land administration, then to the holder of land rights in question is given a certificate of Land Rights (Article 4), while to carry out the function of information, data relating to the physical and juridical aspects of land plots that have been registered, open to the public. In terms of achieving the objective of orderly land administration, then every field or unit flats, including the transition, encumbrance and abolition of land rights and property rights on the unit flats, shall be registered.

The types of Land Registry consist of :

a. Fiscal Cadastre

If the purpose of registration is to determine the extent to which a person's land can be determined, the amount owed to the state is called a tax and the purpose of registration is called a Fiscal Cadastre. Land registration for the purposes of tax collection on lands of western rights is called European Vervonding,

for Lands of customary property rights in the gemeente region is called Indonesian vervonding, which is outside the gemeente region is called landrente or land tax.

The basis for determining the object of taxation is the status of the land as a land of western rights subject to European vervonding, and land of customary property rights, subject to Indonesian vervonding or land tax (girik/pipil/plot). The owner of the property is the owner of the property, even if the owner of the property asks for it. This is in accordance with the principle of inter-group Land Law.

The imposition of tax on customary property rights is carried out by issuing an imposition letter which is known among the people as petuk, pipil and girik which functions as an imposition letter and a sign of tax payment, among the people it is applied as proof of ownership of the land in question.

The imposition and acceptance of taxes by the government, the people interpret as the recognition of taxpayers ' rights to the land concerned by the government. In connection with the above attitudes and assumptions, people have not felt safe, as long as petuk/pipil/ girik land tax he bought has not been replaced with a new one in his name.

After, the entry into force of the Bal, from 1961 there were no more lands that, according to its provisions, could be subject to the European Fiscal Cadastre. Fiscal Cadastre Indonesia and landrente / land tax. The three land taxes since 1961 have been replaced by new levies with the name of the Regional Development line (IPEDA). It was then replaced with a new tax called the land and Building Tax (PBB) with law no. 12 of 1985.

b. Land Information System

There is also a land registry intended for the benefit of the government in order to utilize certain land plots, for example as a strategic location for the Ministry of Defense to defend the country's security from attacks by other countries. It could also be necessary for the Government (Ministry of Agriculture) for the benefit of planting plants in the procurement of medicines and certain crops. Such a land registry is called a Land Information System (LIS). This kind of land registration is only owned by developed countries, while Indonesia has not achieved it.

c. Legal Cadastre (Juridical Cadastre)

This type of land registration is intended to ensure legal certainty for the holder of the right to his land plot. This type of registration is intended in the provisions of Article 19 paragraph 1 of the Bal, which states that to ensure legal certainty by the government, land registration is held throughout the territory of Indonesia according to government regulations. The government regulation referred to for the first time is PP 10/1961, later replaced by PP 24/1997.

Land registration is a series of activities carried out by the government on an ongoing

basis on a regular basis, including the collection, processing, bookkeeping and presentation and maintenance of physical data and juridical data in the form of maps and lists of land plots and flats units including the provision of letters and evidence for existing land plots and property rights over flats units as well as certain burdensome Rights (Article 1 (1) PP 24/1997).

The implementation of land registration is carried out by the government for the benefit of the people in order to guarantee legal certainty in the land sector. Physical data collection activities, yes, the rights to be registered, can be carried out by the private sector, as long as the results are authorized by the authorized registration officer because they will be used as evidence data.

The word "series of activities" indicates the existence of various activities in which once started there will be nothing else, sequentially becoming one unit. Regarding the word" continuous " indicates to the implementation of activities there is an end, meaning that after the data collected is always maintained and will always be adjusted to changes that occur in the future to remain in accordance with the last state.

The word "regular" means that every activity must be based on the prevailing laws and regulations because the results will be evidence according to the law.

The Data collected include two kinds, namely: 1) physical data about the land: location, boundaries, extent of buildings and plants on it; 2) juridical data about the rights: what is the name of the rights, who holds the rights, whether or not there are rights of other parties.

The term land registration gives the impression that the main object of registration is land, from the collection to the presentation of data. However, the fact is that from the collection to the presentation of the juridical data, it is not the land that is registered with the land rights that determine its legal status and other rights that burden the rights in question.

In the land registry that uses the registration of deeds system, it is not the rights that are registered but the deeds, that is, the documents that prove the creation of the rights in question.

According to the provisions of Article 19 paragraph 3 of the Bal "Land registration is organized taking into account the state and society, the needs of socio-economic traffic and the possibility of its implementation at the discretion of the Minister of Agrarian affairs". Under that provision, land registration is not mandatory. Land registration in order to ensure legal certainty, is there no need for legal certainty in rural areas? Regarding legal certainty, both rural and urban areas are basically the same regarding legal certainty. Therefore, one of the purposes of land registration is so that third parties can find out who holds the rights to the land, where the

boundaries are. This knowledge has been known by third parties in rural communities. Therefore, there is no need for mandatory land registration, unlike the case with urban communities.

Except that, of course, there is another consideration of the Minister of Agrarian Affairs to organize land registration in all regions of Indonesia, namely considering the financial capacity of the state. For this reason, it is considered necessary to give priority to land, especially economic traffic, which is more rapid.

There is an opinion stating that registration is mandatory based on explanation IV of Bal by quoting "must be registered, as follows: in accordance with its purpose will provide legal certainty, then the registration is required for the rights holders concerned. If it is not required then the holding of a bright Land Registry will require a lot of energy, tools and costs, it will have no meaning at all".

Based on the above background, the focus of this study is the juridical analysis of land rights according to UPPA in Indonesia.

2. Methods

This study uses normative methods of Juridical, analyzing land rights according to UPPA, laying down the law as a system of building norms. The system of norms in question is about the principles, norms, rules of legal regulation, as well as doctrine (teachings). (Deasi. 2020)

3. Results and discussion

Among the rights of use there is a special nature, which not only contains the authority to use a certain piece of land that is owned, but also contains an emotional psychological relationship for the right holder with the land in question. Holders of rights as Indonesians who have not received the influence of Western thought and perceived the land as belonging to him, in the Bal land was given the name of property rights. (Sultan. 2016)

The name of the property that is not the original name of Indonesia, but the properties of the right to control the land called Hak Milik is already known in customary law, namely as a result of the development of control and exploitation or use as communal land intensively and continuously by individual citizens of customary law communities holders of communal rights.

Therefore, property rights are basically reserved exclusively for Indonesian citizens who are single citizens, which are used as cultivated land or to build something on it. In accordance with the nature of the Bal, property rights are determined not limited to the validity period, can be transferred and transferred and can also be burdened with mortgage rights. Article 20 of the Bal states that property rights are rights to land that are "strongest and fullest", which in the explanation of that article stated the intention to show that among the rights to land, property rights are "ter" (in the sense of most) strong and "ter" full, namely regarding the absence of

a time limit for land tenure and the wide scope of its use, which includes both to be cultivated or used as a place to build something.

Use rights with the designation HGU & HGB do not contain emotional psychological, such as property rights. The relationship of the right holder with the land being valued is merely a straightforward relationship, that is, simply to enable the right holder to use it to meet certain needs. The right to use non-property rights is also known in customary law. (Sultan. 2016)

In modern society, there are various needs for land, so to make it easier to recognize the designation, the right to use it in accordance with the typical designation of each land is named a different designation, namely the right to use the land to cultivate, the right to build something on it. In the Bal both rights are limited in validity and can be granted other than Indonesian citizens and Indonesian legal entities. Hak Pakai is given the specificity of the nature or designation of the use of its land, or on consideration of the point of use of its land that cannot be granted with HM, HGU and HGB, hence the name Hak Pakai.

There are also temporary land rights. It is said that it is temporary, which means that at some time these rights as legal institutions will no longer exist, since they are considered incompatible with the principles of HTN. For example, in agricultural enterprises there should be no " extortion."Land rights that allow extortion of one person or group by another person or group do not exist in HTN. Liens, sharecropping and lease rights for agricultural enterprises are potentially create a state of land tenure contrary to the principle as mentioned in Article 10 of the Bal. In addition, the revenue sharing agreement or lease B also potentially lead to a relationship that contains elements of extortion by the owner of the land against the parties working on the land or vice versa, as well as in the implementation of the land pledge. The right to ride was classified as temporary, as it was considered that it contained the rest of the feudal elements.

Based on this background, these rights cannot be removed at the same time when the Bal comes into force.

If it is abolished, it must be preceded and accompanied by various efforts that until now have not been fully carried out. For example, providing soft credit for those in need, expanding agricultural land areas, providing new jobs outside agriculture for citizens who do not have their own land. Waiting for that hope to come, then to limit the nature that is contrary to HTN, then do the arrangement for agricultural land with ACT no. 2 of 1960, concerning revenue sharing, and regulation of the return of mortgaged agricultural land in Article 7 of law no. 56 Prp of 1960, on "Determination of Agricultural Land Area" (Boedi Harsono, 2008: 291).

The following is an analysis of land rights

according to the Bal

Aspects	Legal basis	Subject	Term of time
Property Rights is a hereditary right	Bal Article 20-27; Article 50 paragraph (1), Article 56 and in the conversion provisions of articles I, II, and III.	Individuals (Article 21 paragraph 1 of the Bal); principle of citizenship and equality: can be owned by men and women (Article 9 of the Bupa); national principle: can only be owned by Indonesian citizens exception: agency (Article 21 paragraph 1 of the Bal); special principle: prohibition for dual citizenship to own property rights (Article 21 paragraph 4 of the UUPA); the principle that may bear property rights must be appointed by PP, namely PP 38/1963	Article 20 paragraph (Bal), that the period of validity is not subject to restrictions
Cultivation Rights	Articles 28-34; Article 50 52 and articles II, IV and VII of the conversion provisions. Both are regulated outside the Bal	Article 28 paragraph 1 of the Bal, who can have the right to cultivate is a citizen of Indonesia	Article 29 (1) HGU is granted for a maximum period of 25 years; (2) for the company at most 35 years. The minimum land area is 5 (five) hectares, while the maximum land area for individuals is 25 (twenty five) hectares
Building Use Rights	Bal articles 35-40; articles 50 yis 52, 55	Article 36, who can have the right to use the building is an Indonesian citizen and a legal entity established under Indonesian law	Term of 80 years, by the way can be granted and extended in advance at once for 50 years and can be renewed for 30 years
Right Of Use	UUPA Articles 41-43, Article 49 paragraph (1), Article 50 (2) Article 52	Article 42 Indonesian citizen, foreigner residing in Indonesia, legal entities established under Indonesian law and foreign legal entities having representation in Indonesia	Term of 25 years and can be extended for a maximum term of 20 years.
Management Rights	General explanation of	A legal entity established	unrestricted and accordin

	Section A II (2) BAL	under the laws of Indonesia and domiciled in Indonesia whose entire capital is owned by the government and / or local governments engaged in similar business activities with industry and ports	g to need
Rental Rights	Articles 44 and 45 of the UUPA	Indonesian citizens; foreigners domiciled in Indonesia; legal entities established under Indonesian law and domiciled in Indonesia; and foreign legal entities that have representatives in Indonesia	1) if used for building land, the law does not provide for restrictions; 2) if used for agricultural land is limited in area by law No. 56 in 1960. Land area by agreement of the landowner
Liens	Article 53 of the UUPA	Indonesian citizens mentioned in Article 9 paragraph (2) of the UUPA	for agricultural land is limited by law. 56 / Prp / 1960, while not building land.
Revenue Sharing Rights	Article 9 paragraph 2 of the rights of the Bal	WNI 1) parties dividing the proceeds: owner, tenant, holder I pledge; 2) who can be a tenant: Indonesian citizen	paddy land period of at least 3 years while for dry land at least 5 years
Right Of Carriage	Article 53 of the Bal	WNI	not fixed, depending on the owner of the land

Rights included in the right to secondary land. such as lease rights, liens, profit-sharing and hitchhiking rights, its nature is temporary, meaning that as an institution at some point will be abolished because basically agrarian law does not allow extortion. Especially for agricultural land, it is basically mandatory to work alone (Article 10 of the Bal).

The articles that mention the existence of land rights and their kinds in the Bal are Articles 4,

16 and 53. Article 4 paragraph (1) confirms that "on the basis of the right of control of the state as referred to in Article 2 determined the existence of various rights on the surface of the Earth, called land, which can be given to and owned by people, either alone or jointly with other people and legal entities".

Furthermore, paragraph (2) of the rights to land referred to in Paragraph 1 of this article authorizes the use of the land concerned, as well as the body of the Earth, and the water and the space on it are only necessary for the interests directly related to the use of the land within the limits according to this law and higher legal regulations". (Iwan P. 2016)

The land rights referred to in Article 4 above are specified in Article 16 Paragraph 1, namely: property rights, cultivation rights, building Rights, use rights, lease rights, land clearing rights, Forest Product Collection rights and other rights not included in the rights mentioned above to be stipulated by law, as well as temporary rights as referred to in Article 53. (Berlian. 2018)

Article 53 states that temporary rights are liens, sharecropping rights, hitchhiking rights and agricultural land lease rights are regulated to limit their properties that are contrary to this law and these rights are sought to be removed in a short time.(Ratna. 2018) the names of land rights in Articles 16 and 53, except liens, Production Sharing rights and hitchhiking Rights, which are the names of the Old rights institutions, which are still valid for the time being, besides all of them are the names of new institutions, which are not a continuation of the land rights institutions of the old land law, because they have been unified by the Bal since September 24, 1960, through the provisions of conversion or changed to one of the new rights of the National Land Law. (Cholil. 2015)

Thus property rights are not customary property rights or eigendom rights, cultivation rights are not erfpacht rights, Building use rights are not opstal Rights, use rights are not gebruik rights, as regulated in KUHPerd. This is the explanation of Article 16 of the UUPA. (Ulfia. 2019)

In essence, the use of land is only limited to two purposes, first: to be cultivated, such as agriculture, plantations, fisheries (ponds or farms); second: to be used as a place of development, such as to build buildings, roads, sports fields, ports, tourism and others. Because all rights to land are the right to use the land, then everything can be covered in the sense and with the name of the title of Use. Given the land allotment for modern society vary, then to facilitate its introduction, called the right to use with different designations, namely property rights, cultivation Rights, building rights and rights of Use. Based on this background, this study tries to describe the juridical analysis of land rights according to UPPA in Indonesia.

4. Conclusion

The name of the property that is not the

original name of Indonesia, but the properties of the right to control the land called Hak Milik is already known in customary law, namely as a result of the development of control and exploitation or use as communal land intensively and continuously by individual citizens of customary law communities holders of communal rights.

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