

The Regulation On Subject To A Property Rights Of A Land According To Agrarian Law (UUPA)

Bambang Sudiarto

Universitas Krisnadwipayana
Email : bambangsudiarto25@gmail.com

ABSTRACT

The law regarding agrarian has undergone many changes. The debate regarding the status of land ownership still needs a lot of study. Therefore, this research is interesting to do in order to find out the subject of a land ownership by virtue of the agrarian law (UUPA). This study using a normative juridical approach and uses an analytical descriptive in writing the data by describing the secondary data so that it is factual, accurate, and systematic. The source of this research comes from statutory regulations, the existence of decisions that have the court basis then analysed using a qualitative way. The result describes that the agrarian law stipulated a legal principle under article number 21 stating that only Indonesian citizen who is able to have the rights over the land property, regardless whether they are men or women are placed in the equal position. In addition, it does not differentiate the group population. Nevertheless, through the authority possessed by the Government as the owner of the right to control the State, it can determine that certain legal entities which undertake social, religious and educational efforts can have property rights over a land.

Keywords: *The Subject Of Ownership Rights; Agrarian Law (UUPA); Land Ownership.*

INTRODUCTION

Since the Law of the Republic of Indonesia Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, ratified and promulgated on the 24th of 1960, by the President of the Republic of Indonesia SOEKARNO and by the State Secretary of Tamzil, published in the State Gazette in 1960 Number 104, published in State Supplementary Gazette of 1960 Number 2043, (hereinafter written and read the LoGA), in the land or agrarian sector, the changes have occurred.¹ The changes as the result of an enactment of the agrarian law (UUPA), so that the legal principles that regulated under the provisions which contains of the land field or agrarian is no longer applicable, as stated under the preamble which decides the retracted of:

1. "AgrarischeWet"(Staatsblad1870No.55)containedinsection51of"WetopdeStaatsinrichting van Nederlands Indie" (Staatsblad 1925 No. 447) as well as various other decisions in the paragraphs contained in the related article;
2. a. "Agrarisch Besluit" (Staatsblad 1870 No. 118) states that in it contains the contents of article 1 regarding "Domeinverklaring";
 b. Staatsblad 1875No.119Astates that it contains the contents of article 1 regarding "Algemene Domeinverklaring";
 c. Staatsblad 1874 No. 94f states that it contains the contents of article 1 regarding "Domeinverklaring for Sumatra";

¹ Indonesia, P. R., & Indonesia, P. R. (1960). *Undang-undang no. 5 tahun 1960 tentang peraturan dasar pokok-pokok agraria* (Vol. 144). Ganung Lawu.

- d. Staatsblad 1877 No. 55 states that it contains the contents of article 1 regarding “Domeinverklaring for the residency of Menado”;
- e. Staatsblad 1888 No. 58 which states that it contains the contents of article 1 regarding “Domeinverklaring for residentie Zuider en Oosterafdeling van Borneo”;
3. Koninklijk Besluit dated April 16, 1872 No. 29 (Staatsblad 1872 No. 117) and several implementing regulations that follows it;
4. The Indonesian Civil Code, which is included in the second book, contains a discussion of the earth, water sources and their use, as well as the various assets that surround them, without including provisions involving a hypotheek during the validity period at the time of the Law is enacted; It is a law that does not differentiate between men and women in land ownership although in the Civil Code women are still considered incompetent when carrying out a legal activity independently.²

In addition, with the ratification and promulgation of the LoGA, in the land sector, the legal rules stipulated in the LoGA will apply.³ Resulting in the following legal consequences.

1. Revoke and invalidate the rules of land law that are stipulated and regulated under the legal rules of the other laws and regulations, as stated at the preamble of the LoGA.
2. Revoke and invalidate the legal rules regarding the procedures for buying and selling and transferring ownership of property rights to a land as regulated and stipulated under Article 616 and Article 620 of the Civil Code. And as a replacement, the legal rules stipulated and regulated in the Government regulation of a Land Registration apply.

In the sequence of laws and regulations stipulated and regulated in Decree of the People's Consultative Assembly of the Republic of Indonesia (TAP MPR RI) Number III/MPR RI/2003 concerning Sources of Law and the Order of Legislation, the law is one form among other forms of Legislation. The law in the order of laws and regulations are placed at serial number 3 (three) after the 1945 Constitution and TAP MPR RI. This is because and contains the following purposes:

1. As stipulated and regulated under Article 3 of the TAP MPR RI Number III/MPR RI/2000, it is determined that the law is made by the House of Representatives together with the President to implement the 1945 Constitution and its amendments as well as the TAP MPR RI.
2. For this reason, the law is binding on all Indonesian citizens.
3. For this reason, the law is binding on the legislation in a lower form.
4. For this reason, the new law can take effect effectively as stipulated and instructed through Article 3 of the TAP MPR RI Number III/MPR/2000, which functions to carry out legal orders that have been through stipulations in government regulations.

The implementing regulation of the legal principles which stipulated and regulated under the agrarian law in the field of a land today, have been promulgated and enforced on two government regulations which are⁴:

1. Government Regulation of the Republic of Indonesia Number 10 of 1961 concerning Land Registration, enacted and promulgated on the same date 23 March 1961, by the President of the Republic of Indonesia Soekarno and State Secretary Mohd. Ichsan. (hereinafter written and read PP Land Registration 1961).
2. Government Regulation on Land Registration 1961 after being valid for 36 years was amended by Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land

² Bandiyah, I., & Rosando, A. F. (2017). Kepemilikan Hak Atas Tanah Warga Negara Indonesia Yang Melaksanakan Perkawinan Campuran. *DiH: Jurnal Ilmu Hukum*, 13(25), p. 105-123.

³ Panjaitan, H. (2014). *Kumpulan Kaidah-Kaidah Hukum Putusan MARI Tahun 1953-2008 Berdasarkan Penggolongannya* (No. 259). Prenada Media Group.

⁴ Santoso, U., & SH, M. (2017). *Hukum Agraria: Kajian Komprehensif*. Prenada Media.

Registration, enacted and enacted into legislation which also coincided on July 8, 1997, by the President of the Republic of Indonesia, Suharto and promulgated by the Minister of State Secretary State of the Republic of Indonesia Moerdiono, contained in the State Gazette of the Republic of Indonesia Number 3696, Supplement to the State Gazette of the Republic of Indonesia 59, (hereinafter written and read PP Land Registration).

Both of the Government Regulations of the Republic of Indonesia in the field of Land or Agrarian Affairs do not apply simultaneously, but one Government Regulation is ratified and promulgated to replace the other Government Regulation which don't support the development. As stated at the considering preamble of the government regulation of 1997 on land registration "that the Government Regulation Number 10 of 1961 concerning Land Registration considers to no longer fully support the result on national development achievement, so that it is need to be improved". Therefore, until 2019 the Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land Registration, which is a Government Regulation that was ratified and recently promulgated as the Implementing Regulation of the LoGA.

The LoGA contains 5 (five) books, 58 (fifty-eight) articles, 9 (nine) Romance articles, 12 (twelve) sections and 4 (four) chapters. Regarding property rights, it is regulated in Chapter II concerning land rights, Land, Water and Space as well as Land Registration, Part I to Part XII, starting from Article 16 to Article 51 of the BAL. And the legal principles of property rights are stipulated and regulated in Part III starting from Article 20 to Article 27 of the LoGA, about 8 (eight) articles.

It seems clear that it can be read and known from the legal rules stipulated and regulated in Chapter II of the agrarian law which regulates the rights of land ownership, ownership of water and space and also land registration. Therefore, in the articles that contain and regulate the legal principles of land rights, the word on land is not rewritten⁵. Instead, it is enough to write the word rights that can be imposed on the land, such as the legal rules that stipulate and determine the formulation of property rights that are imposed on the land contained under Article 20 of the UUPA, only written with property rights. While the land is not written again after the word right.⁶ However, because the agrarian law (UUPA) as an act, which among others stipulates and contains legal rules, one of which is about land so even though the word for land is not written after the word rights, it is still considered written down, so even if the word property is written, it is meant as property rights of a land.⁷

.klbhmngmtynu6j8'triihtioo7i6,86jIn the legal science, the word right is always placed in pairs and side by side with the word obligation. Other than that, the written of the word "rights" is always placed in pairs and side by side with the word property which is charged and attached to the objects, tangible objects, or those that are included in the category of movable objects or immovable objects, including a land which is legally included in the category of immovable objects Or intangible object.⁸

The rights that are imposed and attached to objects are known as material rights.⁹ While the rights that are owned and attached to people are known as individual rights. Thus, it can be seen that both material rights and individual rights are always bound and related to people. Starting from some of these problems, it is necessary to have a regulation on land registration,

⁵ Trovani, C. (2021). Hak Ahli Waris Berkewarganegaraan Asing Terhadap Harta Warisan Berupa Tanah Hak Milik Dari Pewaris Berkewarganegaraan Indonesia. *Indonesian Notary*, 3(1).

⁶ Juliadi, K. R., & Surata, I. G. (2015). KEDUDUKAN WARGA NEGARA ASING TERHADAP HAK MILIK ATAS TANAH DI KANTOR PERTANAHAN KABUPATEN BULELENG. *Kertha Widya*, 3(2).

⁷ Bandiyah, I., & Rosando, A. F. (2017). Kepemilikan Hak Atas Tanah Warga Negara Indonesia Yang Melaksanakan Perkawinan Campuran. *DiH: Jurnal Ilmu Hukum*, 13(25), p. 105-123.

⁸ Susanto, N. A. (2014). Dimensi Aksiologis Dari Putusan Kasus "St". *Jurnal Yudisial*, 7(3). p. 213-235.

⁹ Bandiyah, I., & Rosando, A. F. (2017). Kepemilikan Hak Atas Tanah Warga Negara Indonesia Yang Melaksanakan Perkawinan Campuran. *DiH: Jurnal Ilmu Hukum*, 13(25), p. 105-123.

where the purpose of the registration itself is to guarantee legal certainty for the object and subject to the transfer of rights.¹⁰

The law placed people as a legal subject, which means the legal rules that contain and regulate the rights are included in the scope of personal law (*Persoonlijkrecht*) also known as private law (Civil Law)¹¹. As known, civil law is a law that regulates people, relationship between people and the consequences that comes from the relationship between people to the parties who commit act which causes legal consequences in the form of legal relation in the form of an engagement. The rules of civil law that are stipulated and regulate regarding people and their rights and obligations as legal subject, legal actions and legal relations between people as legal subject, object as legal object, including material rights, individual rights and evidence and expiration are contained in the Civil Code.¹² This is because both material rights and individual rights will always bind and relate to people.

As known under the Civil Law, regarding rights are divided into 2 (two) types, as follows:¹³

1. *Zakelijke rechten* (rights to objects) is rights to object that *zakelijke* which means that they apply to everyone. Which called as an absolute right.
2. *Persoonlijke rechten* (individual rights) is the right to an object (object) which only applies to certain other people. Which called as a relative right.

concerning the distribution of rights under the civil law, other expert express their opinion that rights under the civil law is known as civil rights which can hold absolute power includeing¹⁴:

1. The right to property (*Zakelijkrecht*), as stipulated under book II of the Civil Code.
2. The right to personality (*Persoonlijkheidsrecht*), including two forms of:
 - a. Rights to self-sourced, some examples that can be taken are: right to a name, right to an honor, right to ownership and, right to marry.
 - b. Rights that comes from other people, which arises through the family legal ties between husband and wife, between parents and children, between guardians and children.

Various provision regarding personality rights are stipulated on the Book I of Civil Code, while Civil Rights which considers to have a relative nature are rights that arises from the background resulting from legal allusions originating from agreements or from statutory provisions which are then called *Persoonlijkrecht*. This is generally stipulated on the Book III of the Civil Code. These rights can only be displayed and defended against intermediaries engaged in the legal field.

The owner of the rights imposed on or rights to objects or material rights is called the subject of rights. While the rights that are imposed and attached to a person whose writing and placement are always juxtaposed with obligations and arise because of the position of the person who is placed as a legal subject, often known as individual rights.

The word of “land” has the meaning above ground, it is not interpreted as being plugged in, planted, placed on the relevant stretch of land, as generally occurred on the case with objects that are plugged in and placed on the ground, trees and plants are planted on the ground. This is because the rights are invisible and cannot be touched, but the attachment can only be felt when given by another party by carrying out the obligations which imposed on him.

¹⁰ Tejaningsih, T. (2016). *Perlindungan Hukum Terhadap Kreditor Separatis Dalam Pengurusan dan Pembereasan Harta Pailit* (Doctoral dissertation, Universitas Islam Indonesia).

¹¹ Agustina, S. (2015). *Implementasi Asas Lex Specialis Derogat Legi Generali Dalam Sistem Peradilan Pidana*. *Masalah-Masalah Hukum*, 44(4), p. 503-510.

¹² Utomo, P. (2020). *Hubungan Hukum Dan Tanggungjawab Antara Para Pihak Dalam Penyelenggaraan Platform Peer To Peer Lending KTA Kilat Dalam Perspektif Hukum Positif* (Doctoral dissertation, Universitas Muhammadiyah Malang).

¹³ Setiawan, R., Fatimah, D. D. S., & Slamet, C. (2012). *Perancangan Sistem Pakar untuk Pembagian Waris Menurut Hukum Islam (Fara'id)*. *Jurnal Algoritma*, 9(1), 1-8. Bintoro, R. W. (2010). *Aspek hukum zonasi pasar tradisional dan pasar modern*. *Jurnal Dinamika Hukum*, 10(3), p. 349-363.

¹⁴

(“TRANSFER OF RIGHTS TO INSPIRED LAND,” 2014). So that the rights of a land as the rights attached to a land that is encumbered with rights on it, whether temporary, limited in time or for as long as the land encumbered with the relevant rights has not been destroyed or still exists, as stipulated in Article 16 of the LoGA.

The rights of a land including the category of material rights which is not different from other materials rights that can be imposed on other objects as legal objects. Material rights can be judged by people as legal subjects, the holder of material rights is known as the subject of material rights. Regarding the land ownership rights, it is determined, regulated from Article 20 to Article 27 of the LoGA, in total of 8 articles. Among these articles, the legal rules that contain the formulation of the meaning of property rights are stipulated under Article 20 of the LoGA, specifying that:

(1) Property rights are hereditary, strongest and fullest as the rights that people can have on land, according to the provisions under article 6.

(2) Ownership rights can be transferred and transferred to other parties.

Then the formulation of the legal rules stipulated and regulated under Article 21 of the LoGA determines that:

(1) Only Indonesian citizens is able to have the property rights.

(2) The Government determines legal entities that is able to have the ownership rights and so the requirements.

(3) The foreigner, who after the enactment of this Law acquire property rights due to inheritance without a will or mixing of assets because of marriage, as well as Indonesian citizen who have property rights and after the enactment of this Law if he loses the citizenship obliged to relinquish the rights within a period of time of one year from the acquisition of the right or loss of citizenship. If after this period of time the right of ownership is released, then the right is nullified by law and the land falls to the State, provided that the rights of the other party that burdens it continue to exist.

(4) As long as a person besides his Indonesian citizenship has foreign citizenship, he cannot own a land with property rights and for him the provisions in paragraph (3) of this article is applied.

According to the description of the articles above, it can be known and stated that “the right of property to land is a right to an object which is an absolute right to an object, where the right provide direct power over an object and can be defended against anyone.”

Other than that, it can be identified and stated that the subject or owner of land ownership rights according to Article 21 of the agrarian law who can have property rights is only Indonesian citizens and the Government determines legal entities that can have property rights and their conditions. The legal rules stipulated and regulated in the article, if read at a glance, appear clear, not so if they are read slowly and then examined carefully, they will find meaning that give rise to perceptions that are not in line with the formulation of the sound of the article. For this reason, it is quite interesting to write about the subject of land ownership rights according to the LoGA.

METHOD

This study uses a normative juridical approach. This is based on the laying down of the law as a systematic norm which contains the rules of the legislation, decisions that comes from the courts, the existence of agreements, and ownership of related doctrines or teachings. In this approach, a study is carried out related to theories, concepts, legal principles, statutory regulations, legal rules related to the law of the subject of property rights that have been applied with related regulations.

The data approach in this study uses analytical descriptive by describing the secondary data so that it is factual, accurate, and systematic.¹⁵ Another purpose through this description is to describe the description of the subject of property rights. The data collection in this study uses the literature study method in order to obtain secondary data by collecting materials through books, regulations or conventions, journals, and articles that are continuous with the main issues in the law being discussed. After the data is collected, it is then carried out by using qualitative analysis that comes from writing or expressions.

ANALYSIS AND DISCUSSION

The word “Subject” according to the Indonesian Dictionary only formulated with the meaning of “subject”, while, according to the law dictionary the word of “subject” formulated with the meaning of “principal, actor, party”. In addition, the word subject is also interpreted as “1. the subject of discussion, the subject of discussion; 2. The part of the clause that marks what the speaker said; Subject of the sentence; 3. Perpetrators; 4. Subjects; 5. People, places, or objects that are observed in the context of tailing as targets”.

According to the General Explanation II number (1) of the LoGA, it is explained, concerning the contact between the nation and the earth, water and space, it does not mean that individual property rights over (part of) the earth are no longer possible. It has been stated above that the relationship is a kind of customary rights relationship, so it does not mean a property relationship. In the context of customary rights, it is known that there is individual property rights. It should be emphasized that the new agrarian law also recognize property rights that can be owned by a person, either alone or together with other people over part of the Indonesian earth (article 4 to article 20). Meanwhile, only the surface of the earth, which is called land, can be claimed by someone.

As stated in the description above, the legal rules regarding property rights to land are stipulated, regulated and contained under Article 20 to Article 27 of the LoGA, a total of 8 articles. Among these articles, one of them contains legal rules regarding the ownership of property rights as stipulated in Article 21 of the LoGA which stipulates:

- (1) Only people with Indonesian citizenship can be declared to have property rights.
- (2) Some legal entities are determined by the Government that have property rights and the conditions that surround them;
- (3) Foreign nationals who have property rights to inheritance without a will or the occurrence of marriages involving the mixing of assets, as well as people with citizenship who have ownership rights after the enactment of the law and lose their citizenship must relinquish that right within a period of one year from the date of obtaining the right. or loss of that nationality. If the stipulated period has passed, then the right must be abolished because the law and the land belongs to the State, provided that the rights of the other party that burdens it continue to exist.
- (4) If a person has dual citizenship other than his Indonesian citizenship, he may not own land with property rights and he has the applicable provisions under paragraph (3) of this article.

It seems clear that it can be read that the legal rules under Article 21 of the LoGA have stipulated the subject who can have the ownership rights to a land, through the distinction into 2 (two) groups, as follows:

As Stipulated in the Act.

¹⁵ Diantha, I. M. P., & SH, M. (2017). *Hukum Pidana Internasional: dalam dinamika pengadilan pidana internasional*. Prenada Media.

The legal rules regulated in Article 21 paragraph 1 of the LoGA have firmly stipulated “only Indonesian citizens can have property rights. According to Elucidation II number 5 of the agrarian law states that in accordance with the nationality principle under Article 1, according to Article 9 yo Article 21 paragraph 1 only Indonesian citizens can have ownership rights to land.”

By virtue of the description above, it can be seen that the stipulation of the legal rules “only Indonesian citizens can have ownership rights to land” the stipulation and placement is not carried out suddenly, but it is bound and related to the legal rules. known as the principle of nationality which is stipulated in the following articles:

- a. Paragraph I of the Preamble of the 1945 Constitution of the Republic of Indonesia stated that independence is the right of all nations and therefore, colonialism in the world must be abolished, because it is not in accordance with humanity and justice.
- b. Paragraph IV of the Preamble to the 1945 Constitution of the Republic of Indonesia states that after that to form a Government of the State of Indonesia which protect the entire Indonesian nation and the entire homeland of Indonesia and to promote public welfare, educate the nation's life, and participate in carrying out world order based on freedom, eternal peace and justice. socially, then the Indonesian National Independence is drawn up in a Constitution of the State of Indonesia, which is formed in a structure of the Republic of Indonesia which is sovereign by the people based on: Belief in the One and Only God, just and civilized humanity, Indonesian Unity, and Democracy led by by wisdom in deliberation/representation, as well as by realizing a social justice for all Indonesian people.
- c. Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that the earth and water and the natural resources contained therein are controlled by the State and used for the greatest prosperity of the people.

Article 1 of the LoGA stipulates:

The entire territory of Indonesia is the unity of the homeland of all Indonesian people who are united as the Indonesian nation.

The whole earth, water and space, including the natural resources contained therein within the territory of the Republic of Indonesia, as a gift from God Almighty which are the earth, water and space of the Indonesian nation and constitute national wealth.

The relationship between the Indonesian people and the earth, water and space as referred to paragraph (2) of this article is an eternal relationship.

Understanding the earth, in addition to the surface of the earth, including the body of the earth below it and under water.

In terms of water, it includes both inland waters and seas in the Indonesian territory.

What is meant by outer space is the space above the earth and water as referred to in paragraphs (4) and (5) of this article.

Article 9 of the LoGA stipulates:

Only Indonesian citizens can have a full relationship with the earth, water and space, within the limits of the provisions of articles 1 and 2.

Every Indonesian citizen, both male and female, has the same opportunity to obtain land rights and to benefit from the results, both for himself and his family.

Referring to the formulation of the sound of the articles above, it can be stated that who can own (subject) property rights over the BAL land, as follows:

The UUPA only distinguishes Indonesian citizens from foreign nationals.

The UUPA does not distinguish between men and women, but places them in the same position, both of whom may own or become the subject of property rights over land.

The LoGA does not recognize the division of population groups as regulated in Article 163 paragraph (1) IS states “if the provisions of this law, in general regulations and local regulations, in the rules, police and administrative regulations, there are differences between European groups, Indigenous and Foreign East”.

It appears in the provisions under Article 163 IS clearly stated the word “if the provisions in this law”. It shows that before the article has been determined and regulated in advance as the previous article Article 131 IS states:

Civil law and commercial law, criminal law, civil procedural law and criminal procedural law, are regulated by Ordinance or codified.

Give instructions to (the maker of the ordinance) what conditions must be considered, if making an ordinance that contains civil law and commercial law (civil law).

Contains instructions regarding criminal law, civil and criminal procedural law.

The possibility is opened for non-European groups according to the provisions of a separate ordinance to submit to western civil law.

The ordinances referred to in this article do not apply by themselves in certain areas.

Which applies as civil law for the Indigenous and Foreign Eastern groups, as long as and as long as what is in effect at the time this article comes into effect (Article 131 IS) has not been replaced with the ordinance referred to in paragraph 2 b of article 131.

according to the article above, it can be seen that the European class must apply the laws that forces in Netherlands which are included in the fields of Civil law and Commercial Law (paragraph 2 sub a). The verse also has the intensity of the verse which has the principle of concordant. While paragraph 2 sub b states that for people who come from native Indonesian and also foreign east, the provisions that are required in European law through the field of civil law and commercial law can be implemented if they really need and want it. Indonesia is a country that is rich in culture, human resources and abundant natural resources, this does not rule out the possibility for other nations to own land or businesses in Indonesia.¹⁶

European group

Based on article 163 paragraph (2) IS, which mentions as the European group, as follows:

1. People with Dutch citizenship;
2. People with European citizenship;
3. Citizens originating from Japan;
4. People who come from other countries whose family law is the same as the Dutch family law, especially the principle of monogamy.
5. Their descendants mentioned above.

Indigenous Group

Based on article 163 paragraph (2) IS, which belongs to the European group, as follows:

1. Native Indonesian;
2. Those who originally belonged to other groups, then assimilated themselves into the original Indonesians.

Foreign Easterners

Based on article 163 paragraph (2) IS, which belong to the Foreign East group, as follows:

1. Chinese Foreign Eastern Group (China);
2. Foreign Easterners are not Chinese

¹⁶ Jayanti, V., & Wita, I. N. HAK WARGA NEGARA ASING ATAS PENGUASAAN TANAH DI INDONESIA.

According to article 163 paragraph 2, the Chinese Indonesian people are those who have migrated from China for a long time or periodically. Chinese society has an exclusive role in the eyes of westerners, they are famous for their strength in maintaining tradition. Chinese immigrants are people who first came to Indonesia before the arrival of the Dutch colonials. Hokkin from the province of Funan were immigrants who first came from the southern mainland and then they lived in Batavia. This movement was followed by the arrival of the Hakko people from Kwantung. The Punto people of Konton, the Hakko people of Swatau and the Haifoeng or Hailan people of Hounan.

According to Article 131 IS, the Chinese community is a group regulated under civil law. In fact, the compliance with the provisions contained in the Criminal Code has not been followed immediately, one of which is the rules regarding inheritance as regulated on the Book II of the Civil Code.

Legal rules that contain matters that can have ownership rights to land as stipulated in Article 21 of the BAL without distinguishing between population groups in line with the legal rules stipulated under the Law of the Republic of Indonesia Number 62 of 1958 concerning Citizenship of the Republic of Indonesia, was ratified in July 29, 1958 by the President of the Republic of Indonesia Soekarno, and promulgated on August 1, 1958 by the Minister of Justice of the Republic of Indonesia GA Maengkom (hereinafter written and read the Citizenship Law), stipulates that:

Citizens of the Republic of Indonesia are:

1. Those who since the proclamation of August 17, 1945 have been Indonesian citizens based on the legislation and agreements;
2. Those who are before 18 years of age or before deciding to marry have a family law with their father and this relationship starts from the existence of a familial relationship between the two;
3. Those whose father died 300 days after birth and whose father is an Indonesian citizen;
4. Those who at birth have a mother who is an Indonesian citizen and does not have a family relationship with the father;
5. Those who from birth have a father whose nationality is not clearly known and whose mother is an Indonesian citizen;
6. Children born within the territory of the Unitary State of the Republic of Indonesia and whose parents are not clearly known;
7. Children found in the territory of Indonesia and it is not known with certainty the whereabouts of their parents;
8. Children born in Indonesia with both parents whose nationality is unknown;
9. A child who at birth does not receive citizenship from his father or mother;
10. Those who acquire citizenship under the Rules of Law.

The law was later amended by the Law of the Republic of Indonesia Number 16 of 2012 concerning Citizenship of the Republic of Indonesia, ratified on July 12, 2006 by the President of the Republic of Indonesia, Susilo Bambang Yudhoyono, and promulgated on August 1, 2006 by the Minister of Law and Human Rights of the Republic of Indonesia. Indonesia Hamid Awaludin (hereinafter written and read the Citizenship Law), determines that Indonesian citizen are:

1. Those who become Indonesian citizens based on statutory regulations or agreements with the government of the republic of Indonesia with other countries prior to the enactment of this law have become Indonesian citizens;
2. Babies born from legal marriages where the father and mother are Indonesian citizens;

3. Babies born to a father who is an Indonesian citizen and a mother who is a foreign national;
4. Babies born to mothers with the status of Indonesian citizens and foreign fathers;
5. Babies born from legal marriages where the mother is an Indonesian citizen while the father is stateless and does not provide citizenship;
6. A baby born from a legal marriage within a grace period of 300 days whose father who is an Indonesian citizen dies;
7. Babies born outside of legal marriages come from mothers who are Indonesian citizens;
8. Babies born outside of legal marriages come from foreign mothers and are recognized by fathers who are Indonesian citizens as their children before the age of 18 years or not yet married;
9. Babies who do not have parents with definite citizenship and are born in the territory of Indonesia;
10. Babies found in the territory of Indonesia whose parents are not known;
11. Babies born without a father and mother with clear nationalities or whose whereabouts are not known to both parents;
12. a child born outside the territory of the Republic of Indonesia from a father and mother who are Indonesian citizens who due to the provisions of the country where the child was born give citizenship to the child concerned;
13. child of a father or mother whose citizenship application has been granted, then the father or mother dies before taking the oath or swearing allegiance

Referring to the sound formulation of the rules stipulated and regulated in the articles of the Citizenship Law above, it can be seen that the Unitary State of the Republic of Indonesia since the ratification and promulgation of the Citizenship Law in 1958, only recognizes Indonesian citizens without distinguishing between population groups. Then it is clarified by the stipulation of legal rules governing the ownership of property rights over land in Article 21 of the LoGA. Next, the Presidium of the Ampera Cabinet has issued Instruction No. 31/U/IN/12/1966 to the Minister of Justice of the Republic of Indonesia and Civil Registry Offices (*Burgelijke stand*) throughout Indonesia to:

1. Starting December 27, 1966, it did not use the classifications of the Indonesian population based on Article 131 IS (*Eropeanen, Vreemde Oostelingen, Inlanders*) at civil registry offices throughout Indonesia.
2. Henceforth, civil registry offices throughout Indonesia are open to residents throughout Indonesia and foreigners.

Referring to the description above, it can be stated that the Unitary State of the Republic of Indonesia since the Citizenship Law of the Republic of Indonesia 62 of 1958 has not classified its population anymore, but differentiated into Indonesian Citizens and Foreign Citizens.

Government Determination

It has been stipulated in the legal rules of Article 21 of the LoGA which regulated the ownership of property rights on the land above, it clearly and unequivocally determines the parties who can own land ownership rights which divided into 2 (two) types, as follows:

1. Stipulated and stated clearly and unequivocally in the legal rules regulated in the article, only Indonesian citizens can own land ownership rights, and;

2. Stipulated in the legal rules regulated in the article, it is stated clearly and unequivocally mandates the Government as the owner of the right to control the State to determine legal entities that can have property rights over a land.

The legal rules stipulated in Article 21 of the BAL is not the legal rules that arise and determined suddenly and have no attachment and connection with the legal rules that have been stipulated and regulated in the previous articles, but as the implementation of the mandate. The legal rules that have been established and regulated in the previous articles including the following:

Article 1 of the LoGA stipulates:

1. The entire territory of Indonesia is interpreted more broadly, not only in terms of land area, but also in one unit of the homeland and all the people of Indonesia, which is called the Indonesian nation.
2. National Wealth is all the gifts of God Almighty as well as earth and space within the scope of the territory of the Republic of Indonesia
3. The relationship between Indonesia's natural wealth and the Indonesian nation is eternal.
4. Earth's natural wealth includes water and components in the earth.
5. The water referred to in the UUPA includes inland waters and Indonesian seas.
6. What is meant by outer space is the components above the earth's surface and water as referred to in paragraphs (4) and (5) of this article.

Article 9 of the LoGA stipulates:

1. Only those who are determined as Indonesian citizens who have a relationship with Indonesia's wealth (earth, water and space as stipulated in articles 1 and 2).
2. All Indonesian citizens regardless of gender have the same opportunity to obtain land rights and use the results for themselves and their families.

By virtue of General Elucidation II Basics of National Agrarian Law stated that (1) First of all, the national basis is laid down under Article 1 paragraph 1, which states that the entire expanse of the Indonesian state is a unified whole as of the people and the homeland united as the Indonesian nation. Meanwhile, the essence of article 1 paragraph 2 relating to national wealth is all of Indonesia's natural wealth which has been bestowed by God Almighty within the scope of the territory of the unitary state of the Republic of Indonesia. This indicates that all sons and daughters of Indonesia have the right to Indonesia's natural wealth for the fruits of the struggle for independence, with this natural wealth is not an absolute right by the owner. This is also applies to all regions and islands which are not absolute rights of the original population but also the rights of all Indonesian people.

Based on the formulation of the sound of the articles and explanations above, it can be concluded as follows:

1. Earth, water and space throughout the territory of the Unitary State of the Republic of Indonesia, including the natural resources contained therein, are gifts from God Almighty to the Indonesian Nation that must be properly maintained.
2. Earth, water and space throughout the territory of the Unitary State of the Republic of Indonesia are the unity of the homeland of all the people of Indonesia, who are united as the Indonesian nation.
3. Earth, water and space throughout the territory of the Unitary State of the Republic of Indonesia constitute a unified whole of all the Indonesian people as the national wealth of the Indonesian Nation.
4. Earth, water and space throughout the territory of the Unitary State of the Republic of Indonesia have a legal and lasting relationship with the Indonesian nation which has fought

for its independence. However, every citizen as the people of Indonesia is still given the opportunity to own land ownership rights.

5. Earth, water and space throughout the territory of the Unitary State of the Republic of Indonesia are the rights of the Indonesian people as a whole to become the rights of the Indonesian people, including land in the region and island, not solely the rights of the indigenous people of the region or island. concerned only.
6. Based on the formulation of the sound of the articles and explanations, it is known as the principle of nationality. The legal rules that stipulate and regulate the ownership of property rights on land are relatively precise, because property rights to land are the strongest and most complete hereditary rights, among land rights.
7. The principle of nationality in the UUPA still has a relationship and attachment to the Proclamation of the Independence of the Indonesian Nation, the Preamble to the Constitution of the Republic of Indonesia and the Basics and Objectives of the Unitary State of the Republic of Indonesia.
8. Spiritual principles, national agrarian law is required to be the embodiment of spiritual principles, the State and the ideals of the Nation, namely Belief in One Supreme God, Humanity, Nationality, Democracy and Social Justice and in particular must be the implementation of the provisions in article 33 of the Law. The Basics and Outlines of the State's Policy.
9. Lands throughout the territory of the Unitary State of the Republic of Indonesia are cultivated and managed and utilized to realize welfare for their families, which are an inseparable and inseparable part with the aim of realizing social justice for all Indonesian people.

The principle of spirituality, is a principle related to spirituality or mysticism. This principle is related to the statement of the Indonesian nation which is contained in:

1. Paragraph III of the Preamble to the 1945 Constitution of the Republic of Indonesia states that it is by the grace of Allah Almighty and motivated by a noble desire to live a free national life, the Indonesian people hereby declare their independence.
2. Paragraph IV of the Preamble to the 1945 Constitution of the Republic of Indonesia states, ... which is formed in a structure of the Republic of Indonesia which is sovereign by the people based on: Belief in the One and Only God, just and civilized humanity, Indonesian unity, and democracy led by wisdom. in deliberation/representation, as well as by realizing a social justice for all Indonesian people.
3. According to the author, the adoption and application of the spirituality principle in the LoGA is very appropriate, considering that it was the Indonesian people who fought and succeeded in expelling the invaders from the land of Indonesia, so that the independence of the Indonesian nation was obtained. As evident from the Proclamation of Independence uttered by the two single Indonesian Nation Soekarno and Hatta, on August 17, 1945, as follows:

We, the Indonesian people, hereby declare the independence of Indonesia.

Matters concerning the transfer of power and others are carried out carefully and in the shortest possible time.

Jakarta, August 17, 1945

On behalf of the Indonesian people

Soekarno-Hatta.

The term nation is defined by 1. Unity of people who share their lineage, customs, language and history and have their own rule; 2. Groups of humans, animals, or plants that have the

same origin and the same or the same characteristic characteristics; 3. Kinds, types; 4. Position (descendants) noble (sublime); 5. Fetal sex; 6. A group of people who are usually bound by the unity of language and culture in a general sense and who usually have a certain area on earth; 7. Classification in Biology after class and before order .

It is clear that in the formulation of the meaning of nation as mentions in the Indonesian Dictionary, it is intended as a unity of people in an area known as the people or citizens of a government based on religion such as the Vatican or based on law, democracy and so on. Including the State of Indonesia, its citizens are called the Indonesian nation which in carrying out the struggle for the liberation of their nation is always based on and cannot be separated and separated from their spiritual teachings, so that until independence is obtained and in fulfilling their independence they are always and cannot be separated and separated from each other. spiritual basis.

As known, humans are the most perfect creatures among other Allah's creatures (Ministry of Religion, 2007). This is because humans were created consisting of elements, body or body, soul and spirit. Meanwhile, other created beings were created without body, body and soul but without reason, only based on their instincts. So that humans are able to understand and carry out the obligations imposed on themselves as creatures who serve Allah SWT as their creator while carrying out life and life on Earth. If humans have carried out their obligations, Allah SWT will give them their rights. Spirit is the business of Allah SWT as its Creator.

Hence, the owner of the land ownership rights individually, is also recognized in Islam as stated in the word of Allah SWT in the Surah Al Baqarah (QS II: 188) And don't take property as others in your path with the right road and (don't) you bring the day's (affairs) to the judge, so you can use it for other people's hrt by (doing) sin, if you understand.

Based on the hadith of Sa'id bin Zaid that the Messenger of Allah SAW said, whoever takes an inch from the earth with injustice, Allah will surely tie him with him (with the earth he took) on the Day of Judgment from 7 earths (that is, he is forced to take the earth he took from it). as far as seven earths to Mahsyar).

While the principle of nationality, is a principle related to the struggle to liberate the Indonesian nation from all colonialists. This principle is related to the statement of the Indonesian people, as follows:

1. The Proclamation of Independence uttered by the two single Indonesian Nation Soekarno and Hatta, on August 17, 1945, is as follows:

We, the Indonesian people, hereby declare the independence of Indonesia.

Matters concerning the transfer of power and others are carried out carefully and in the shortest possible time.

Jakarta, August 17, 1945

On behalf of the Indonesian people
Soekarno-Hatta.

2. The first paragraph of the Preamble of the 1945 Constitution of the Republic of Indonesia stated that the independence is the right of all nations and because of that, colonialism in the world must be abolished, because it is not in accordance with humanity and justice.

3. Paragraph II of the Preamble to the 1945 Constitution of the Republic of Indonesia, and the struggle for the Indonesian independence movement has arrived at a happy moment to safely and safely deliver the Indonesian people to the front gate of the independence of the State of Indonesia, which is independent, united, sovereign, just and prosperous.

4. Then from that to form a Government of the State of Indonesia that protects the entire Indonesian nation and the entire homeland of Indonesia and to promote public welfare, educate the nation's life, and participate in carrying out world order based on independence, eternal

peace and social justice, the Indonesian National Independence was drawn up. in a Constitution of the State of Indonesia, which is formed in a structure of the Republic of Indonesia which is sovereign by the people based on: Belief in the One and Only God, just and civilized humanity, Indonesian Unity, and Democracy led by wisdom in deliberation/representation, and by realizing a social justice for all Indonesian people.

The legal term of a “person” is used as a legal subject, the owner of the right and burdened with obligations. Legal subjects are defined by the authors, as follows:

1. The legal subject is “the holder or bearer of rights and obligations”.
2. Other writers express their opinions about the formulation of legal subjects in 3 (three) kinds of formulations as follows:
3. Legal subject is something that according to law has the right/authority to carry out legal actions or who has the right and ability to act in law.
4. Legal subject is something that supports rights which according to law has the authority/power to act as supporters of rights (Rechtsbevoegdheid).
5. Legal subjects are everything that according to the law has rights and obligations.
6. Legal subjects are formulated with the meaning of everything that can obtain rights and obligations from the law.
7. The legal subject is every supporter of the rights and obligations in legal traffic.
8. The legal subject is the bearer of rights and can be delegated obligations.
9. The subject of law is “the holder of rights and obligations”.
10. The legal subject is “every creature authorized to own, obtain and use rights and obligations in legal traffic”.
11. Legal subjects are “supporters of rights and burdened with obligations”.

As legal subjects, people can own property rights to objects that may be owned by legal subjects, including land which is categorized as immovable objects. So that in the legal rules stipulated in Article 21 of the LoGA, only Indonesian citizens can have ownership rights over land.

Even so, in the legal ownership of land rights, it has also been stipulated by giving authority to the Government in the form of a mandate to determine legal entities that are deemed necessary to be given ownership of land ownership rights. The said authority is based on the State’s right to control land owned by the Government as the organizer and management of the State.

Rights to control the State, the legal rules are stipulated and contained under Article 2 of the Agrarian law, determines that;

1. On the basis of the provisions under Article 33 paragraph (3) of the Constitution and the matters referred to Article 1, the earth, water and space, including the natural resources contained therein, are at the highest level controlled by the State, as an organization of all power. people.
2. The State’s right to control as referred to in paragraph (1) of this article authorizes:
 - a. regulate and administer the designation, use, supply and maintenance of the earth, water and space;
 - b. determine and regulate legal relations between people and the earth, water and space,
 - c. determine and regulate legal relations between people and legal actions concerning earth, water and space.
3. The authority derived from the state’s right to control in paragraph (2) of this article is used to achieve the greatest prosperity of the people, in the sense of happiness, prosperity and

independence in society and the Indonesian legal state which is independent, sovereign, just and prosperous.

4. The state's right of control above can be exercised to autonomous regions and customary law communities, only as necessary and not in conflict with national interests, according to the provisions of Government Regulations.

It seems clear that it can be read and known in the legal rules stipulated in the article above, the right to control the State is owned by the Government as the organizer and manager of the State, acting as the ruler of the land. It is more appropriate if the State, as the organization of power of the entire people (the nation) acts as the Ruling Body. The government's authority stemming from the right to control the state, regulate and administer the designation, use, supply and maintenance of earth, water and space, including land, is directed at achieving the goal of achieving great prosperity for the people in order to achieve the goal of creating a sovereign, just, and equitable society. Prosperous. Therefore, it has the authority and power to choose and determine legal entities that can have ownership rights over land.

The authority and power possessed by the Government based on the right to control the State are not given in the broadest possible way, but in a limited manner. So that it cannot be used arbitrarily to stipulate that every legal entity has the authority over land ownership rights, as stipulated in the legal rules contained in Article 49, determining:

1. Land ownership rights of religious and social bodies as long as they are used for business in the religious and social fields are recognized and protected. These agencies are also guaranteed to obtain sufficient land for their buildings and businesses in the religious and social fields.
2. For purposes of worship and other sacred purposes as referred to in Article 14, land which is directly controlled by the State with usufructuary rights may be granted.
3. Endowment of owned land is protected and regulated by Government Regulation.

The legal rules stipulated and contained in Article 49 of the LoGA are a form of exception to the basic principles of prohibiting legal entities from owning property rights to land, which are stipulated by law. Therefore, with the existence of these legal rules, certain legal entities based on the authority, power and through the determination of the Government, it is possible to hold property rights on land.

Determination of legal entities that have ownership rights to land is not done arbitrarily, but is based on:

1. In accordance with the purpose of the UUPA as a law in written form, in the form of a law, of course in its manufacture it has been based on Pancasila as the basis of the State and is aimed at achieving people's prosperity and achieving social justice for all Indonesian people.
2. Understanding of meeting the needs of the community which is closely related to the understanding of religious, social, and economic related relations. For this reason, not all legal entities can be said to have the same property rights on land, but only as far as moving legal entities that cover the scope of social and religious fields selected through article 49 which has a role in bodies that also have related property rights. land ownership. However, in the period of time that land is still needed, the effort that is driven lies in the social and religious fields. Through rights that do not directly intersect, the field can be considered as part of a legal entity that is classified as ordinary.
3. The prohibition against legal entities to have ownership rights to land is based on the consideration that the agency does not require ownership rights to land, but it is sufficient with other rights, it's just that guarantees are still needed that can meet special needs or rights of cultivation, rights the use of the building, the right of use is based on articles 28,

35, and 41. Based on this, prevention efforts are related to the provisions regarding the maximum limit of land owned in the article of property rights (article 17).

4. It is clear that legal entities that can have ownership rights to land are legal entities which in their management and management are not carried out to seek and obtain mere profits, but for the interests of the Indonesian nation in realizing its goal of achieving a just and prosperous society throughout the territory of the Unitary State of the Republic of Indonesia.

CONCLUSION

The Agrarian Law (UUPA) has established legal rules which mentions under Article 21, stated that only Indonesian citizen can have the property rights over a land, without distinguishing between men and women who are placed on an equal position. In addition, it does not differentiate from which population group. However, through the authority possessed by the Government as the owner of the right to control the State, it is possible to determine that certain legal entities operating in the social, religious and educational fields through the property rights of a land.

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