

Policy for Setting Maximum Limits for Individual Ownership of Non-Agricultural Property Rights Based on Justice Values

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Abstract. *This research aims to determine and analyze the application of the maximum limit of individual ownership of non-agricultural land ownership rights in Subang Regency, based on the value of justice, and to find out and analyze the monitoring efforts carried out by the National Land Agency regarding the maximum limit of non-agricultural land ownership rights in Subang Regency National Land Agency Office. The research approach method used in the thesis is a sociological juridical approach. Specifications This research uses analytical descriptive research. The type and data used in this research are primary data which includes the 1945 Constitution; Act No. 5 of 1960 concerning Basic Regulations on Agrarian Principles; Civil Code Law. As well as secondary data containing books and other supporting documents. Data collection using interview techniques and study of documents or library materials. The data analysis method used in analyzing data is data triangulation. Sugiyono stated that data triangulation is defined as a data collection technique and existing data sources.*

Keywords: *Justice; Limits; Maximum; Policies; Values.*

1. Introduction

The Unitary State of the Republic of Indonesia, based on the 1945 Constitution, is a legal state that provides guarantees and protection for the rights of citizens, including the rights of citizens to obtain, own and enjoy property rights.¹Property rights are very important for humans to be able to carry out their lives in the world. The higher the value of ownership rights to an object, the higher the appreciation given to that object.

¹Adrian Sutedi, 2008, Transfer of Land Rights and Registration, Sinar Graphics, Jakarta, p.1.

Land is one of the most valuable possessions for mankind, as well as the Indonesian nation.² Basically, all land belongs to Allah SWT who created the earth and everything in it is used for the benefit of humans. Land is part of human property, the existence of land is a gift from Allah SWT.

According to traditional thought in customary law, land is believed to be "communalistic-religious" or religio-magical, meaning that all land in this world is always connected with belief in the supernatural, because land is seen and believed to be a gift from supernatural powers (God Who Almighty). Because of this, the teachings of the ancestors of the past put pressure on humans to have character traits that are in accordance with the properties of the land, such as: patience, steadfast/strong stance, standing for all time and enduring in all situations.³

In this case, the holder of Management Rights, apart from being authorized to use the Management Rights land for the purposes of carrying out his business, the right holder is also authorized to hand over parts of the Management Rights land to a third party with certain conditions, both regarding the designation, use and regarding the term, time and finances in accordance with applicable laws and regulations.⁴

Land registration which aims to provide legal certainty is known as Rechts Cadaster/Legal Cadaster. The guarantee of legal certainty that is intended to be realized in land registration includes certainty about the status of the rights being registered, certainty about the subject of the right, and certainty about the object of the right. The opposite of land registration which aims at Rechts Cadaster, is Fiscal Cadaster, namely land registration which aims to determine who is obliged to pay tax on land. This land registration produces a letter of proof of payment of land tax, which is now known as a tax notification letter for land and building tax payable.⁵

Providing legal certainty regarding land rights for the people as a whole is one of the main objectives of the Basic Agrarian Law (UUPA) which is no longer negotiable, so the law instructs the government to carry out land registration

²Ibid. p. 7.

³Ibid, Mohammad Muhibbin, p. 62

⁴Mochamad Elmo Sidiq, March 2018, Asep Sunarsa, Amin Purnawan, The Role of Notaries in Land Procurement Transactions for Sekadu Regency Government Office Complex Development Locations, Jurnal Deeds, Vol. 5, no. 1. p. 236

⁵Urip Santoso. 2014, Registration and Transfer of Land Rights. Cet. IV. Kencana Prenadamedia Group, Jakarta, p. 2.

throughout Indonesia which is *rechtkadaster* means which aims to guarantee legal certainty and certainty of rights.⁶

On the other hand, individual ownership is a right that is respected and protected in Islam except within the boundaries of other individual rights and the general benefit, therefore ownership rights are not group, but what is true is that ownership rights have a social function as well as they also have an individual nature. . In other words, Islam does not actually prohibit individual ownership absolutely, but it also does not free it and allow it without limits. Allah SWT says: "O you who believe, do not devour each other's wealth in a false (unrighteous) way, except in trade that takes place on the basis of mutual consent between you."⁷

Regarding the validity and legality of property rights, two principles are known, firstly "*Nemo plus juris transfere potest quam ipse habet*" meaning that no one can transfer or give something to another person that exceeds his or her rights or what he has. Second, the principle of "*Nemo sibi ipse causam possessionis mutare postest*", meaning that no one can change for himself or his own interests the purpose of using his objects.⁸

Article 33 of the 1945 Constitution confirms that the earth, water and natural resources contained therein are controlled by the state and used as much as possible for the welfare of the people.

From the provisions of Article 33 it can be stated, First, natural resources are the collective rights of all the people, and in the sense of collective rights there are two recognized rights, namely group rights and individual rights. Second, the state's authority over natural resources is limited to the authority arrangement. Regulation by the state is needed when there is concern that without state intervention there will be injustice in access to the acquisition and use of natural resources by the community.⁹The state does not need to intervene if the community has been able to resolve its own problems or interests and that this does not conflict with the interests or interests of other parties.

The question arises regarding regulations regarding restrictions on land ownership that can be controlled by an individual or legal entity considering that currently the number of residents in Indonesia continues to increase, while the available land is fixed/does not increase which can then trigger land disputes

⁶Mhd. Yamin Lubis, Abd. Rahim Lubis, 2008, *Land Registration Law*, MandarGo ahead, Cet. 1, Bandung, p. 4.

⁷See Qur'an Surah An-Nisa verse 29

⁸Ridwan Halim, 2001, *Bendera Pulpit of Indonesian Legal Philosophy and Its Pragmatization (An Empirical Juridical Analysis)*, Angky Pelitas Studywas, Jakarta, p. 170-171.

⁹Adrian Sutedi, 2008, *Contesting Land Rights and Their Registration*, Sinar Graphic, Jakarta, p. 20.

because there is no regulation. clear regarding the maximum limit of ownership of non-agricultural land rights.

The definition of maximum limit is the maximum limit of land ownership, whether agricultural land, non-agricultural land, by a person or people whose livelihood is one family together, whether they own it alone or belong to someone else, it is jointly owned by someone else.¹⁰

Article 7 of the UUPA stipulates that in order not to harm the public, land ownership and control that exceeds the limits is not permitted. Based on these provisions, ownership and control of land by a person is limited. There are restrictions on ownership or control of this land so that social inequality does not occur and so that this land does not arise, so that social inequality does not occur and so that abandoned land does not arise. Thus, so that abandoned land does not arise, land owners are required to actively work or cultivate their own land. To implement the provisions of Article 7 of the UUPA, it is necessary to determine the maximum limit of land ownership by a person or his family.

The main provisions regarding the determination of maximum land ownership limits are regulated in Article 17 paragraphs (1) and (2) of the UUPA. Article 17 paragraph (1) of the UUPA determines that bearing in mind the provisions in Article 7, to achieve the objectives referred to in Article 2 paragraph (3), the maximum and/or minimum area of land that may be owned with the rights mentioned in Article 16 of the UUPA by individuals or Legal Entity, while Article 17 paragraph (2) UUPA determines that the determination of the maximum limit in paragraph (1) of this Article will be carried out by statutory regulations within a short time. The implementation of Article 17 paragraph (2) of the UUPA is regulated in Act No. 56/Prp/1960 concerning Determination of Agricultural Land Area.

Regarding the provisions on the maximum limit of ownership rights to non-agricultural land, the author is of the opinion that there are no regulations that specifically regulate it. So far, the maximum limit for ownership of non-agricultural land for housing is the Decree of the Minister of Agrarian Affairs/Head of the Land Office No. 6 of 1998 concerning the Granting of Ownership Rights to Land for Residential Homes in article 4 states that a person who submits an application must provide a statement namely that by acquiring the requested land the person concerned will have ownership rights to land for residential homes in no more than 5 (five) plots. all of which cover an area of no more than 5,000 (five thousand) m².

¹⁰Adityo Ariwibow, "A Glance at the Minimum and Maximum Limits of Agricultural Land Ownership" Source: <https://adityowirawibowo.wordpress.com/2012/12/17/a-glance-about-limits-and-minimum-ownership-of-agricultural-land/>, accessed on February 14, 2023

Is it in accordance with the provisions of the Decree of the Minister of Agrarian Affairs/Head of the Land Office No. 6 of 1998 can be used as a reference for the maximum limit of ownership of non-agricultural land.

2. Research Methods

The research approach used in this thesis is a sociological juridical research method. Sociological juridical research emphasizes research that aims to obtain legal knowledge empirically by going directly into the object.¹¹ Sociological juridical research is legal research using secondary data as initial data, which is then continued with primary data in the field or on society.

3. Results and Discussion

3.1. Why is the application of the maximum limit for individual ownership of non-agricultural land ownership rights in Subang Regency not based on the value of justice?

Nowadays the problems faced in the land sector are not decreasing, but on the contrary are increasing with complexity. Cases of ownership and control of non-agricultural land by an individual or legal entity that exceed the maximum limit prove that in the formation of statutory regulations which are the implementing regulations of the UUPA in generally not equipped with thorough thought regarding the implementing regulations. If this gap is left for too long, it will certainly give rise to injustice and uncertainty in land law.

Communities and legal entities with strong economies are free to buy land for investment considering that the need for land is increasing, while land is not increasing, making land prices very difficult to control. Land prices are increasingly unaffordable, making small communities increasingly marginalized. The result of this situation can make small communities increasingly marginalized. The result of this situation can create social jealousy which can increase the number of conflicts in the land sector.

Ironically, land which is generally obtained through buying and selling or expert processing of fertile agricultural land is a source of livelihood for the community, most of whom make their living as farmers. This problem will continue if the Government through its policies does not immediately control non-agricultural land ownership that exceeds the Land Rights ownership limit and is not immediately realized.

¹¹Soejono, Soekanto, 2005, Introduction to Legal Research, University of Indonesia Press, Jakarta, p. 72.

Based on the results of the research, Dedi Juhatin as Staff of the Transfer of Rights Section at the National Land Agency Office, Subang Regency, West Java, said that regarding the ownership of rights to non-agricultural land, currently it is still not regulated in statutory regulations, what is regulated in non-agricultural land is regarding houses. There remain no more than 5 (five) plots, all of which cover an area of no more than 5,000 (five thousand) M2 in accordance with the Decree of the Minister of State for Agrarian Affairs/KBPN No. 6 of 1998 concerning Granting Ownership Rights to Land for Residential Homes.

Dedi Juhatin continued to explain that in responding to the problem of non-agricultural land ownership that exceeds boundaries, especially in Subang Regency, West Java Province, by some people and companies who have more capital to reap profits by investing in the land sector, to overcome this problem, currently the Office The National Land Agency in Subang Regency will carry out monitoring and supervision activities on land owned by the community in terms of agricultural land and no more than 5 (five) plots of land for residential use. According to Dedi Juhatin,

Based on the description above, the author can analyze that basically the scope of problems in the land sector and the phenomenon of inequality that occurs between control and ownership of land is increasing and has an impact on increasing poverty and unemployment in rural areas, which of course cannot be separated from land policy, which of course cannot be separated from land policy that only focuses on increasing productivity which leads to economic growth. Meanwhile, the management of production assets is neglected, which results in marginalized communities being increasingly neglected and losing access to land. This condition gives rise to agrarian conflict in the form of land disputes at the farmer household level, increasing large-scale land acquisition, unplanned land use conversion,

As a rare limitation, the granting of ownership rights to residential land originating from State land is limited as intended in Article 4 of KBPN Decree Number 6 of 1998, if you pay attention to the provisions regulated in KBPN Decree Number 6 of 1998 with Decree Number 59/DDA/ 1970, then KBPN Decree Number 6 of 1998 is no better than Decree Number 59/DDA/1970 because both still have opportunities for monopoly on non-agricultural freehold land.

Based on the results of the interviews described above, it can be concluded that the supervisory and control function within the National Land Agency in Subang Regency, West Java Province is still proven to be very weak and not proactive, although in general it remains within the UUPA corridor, but it must be remembered that it requires statutory regulations. -additional legislation for its implementation. It takes creative efforts from all levels of National Land Agency

officers to be able to carry out the supervisory function as mandated in the UUPA as long as there are no more complete and comprehensive regulations from the Government and the elite ranks of the National Land Agency bureaucracy. Especially to anticipate the ownership of non-agricultural land rights that exceed the maximum limit which in reality is often violated.

3.2. What are the monitoring efforts carried out by the National Land Agency regarding the maximum limit of non-agricultural land ownership at the Subang Regency National Land Agency Office?

The National Land Agency is an extension of the Government as an element of the apparatus that occupies the front row to carry out Government work/tasks in the land sector. The National Land Agency is directly responsible to the President and carries out the Government's duties in the land sector nationally, regionally and regionally.

The National Land Agency is the nation's front guard in realizing the use, utilization and management of land for the greatest prosperity of the people, as well as justice and sustainability of the national and state social system of the Republic of Indonesia. This is certainly not easy, there are many obstacles and future challenges that must be faced, therefore the Land Agency must be able to develop and implement land politics and policies in accordance with the concept of agrarian reform as an effort to realize a shared order of life that relies on a people's economy, justice, democracy and participative.

Based on the research results, according to Dedi Juhatin, the monitoring efforts carried out by the National Land Agency regarding the maximum limit of non-agricultural freehold land ownership at the Subang Regency National Land Agency Office, to carry out legal actions in the transition of buying and selling/Grants/APHB, the PPAT/PPATS must attach a Statement Letter that does not exceed the maximum land ownership provisions, and the Subang Regency Land Office must also be active and take the initiative to update land use data throughout the region as basic data that can provide complete and actual information as material for land control, So far, the task given to the Land Office has only been to supervise case by case, namely supervision of the implementation of granting location permits to developers in accordance with the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 13 of 2021 concerning the implementation of space utilization activities and synchronization of utilization programs. room.

Dedi Juhatin explained that based on Article 16 paragraph 1, it regulates rights to other land, Ownership Rights, Cultivation Rights, Building Use Rights, Use Rights, and other rights mentioned in the article. Article 17 of the UUPA explains that

the maximum limitation on land ownership with a right contained in Article 16 of the UUPA will be determined by statutory regulations, if the maximum ownership limit exceeds it will be taken by the Government with compensation.¹²

The Subang Regency Land Office will impose sanctions on individuals or legal entities who are proven to have ownership of land rights beyond the legal entity whose ownership of land rights exceeds the maximum limit other than being taken and compensated by the government, however, in practice it is difficult to apply absentee ownership rules due to land rights. a person is restricted because the excess of the land parcel turns out to have been transferred to another person but has not been transferred to a second party and there has been no application for new rights.¹³

4. Conclusion

Regulatory Policy regarding the maximum limit of non-agricultural freehold land ownership at the National Defense Agency Office of Subang Regency, normatively it has not been regulated in statutory regulations regarding restrictions and supervision of land ownership, especially non-agricultural land, this has resulted in supervision and control within the Agency's institutions. National Land Affairs in West Java Province is proven to still be very weak and not proactive, even though in general it remains within the UUPA corridor, namely for residential houses no more than 5 plots, all of which cover an area of no more than 5,000 M2 in accordance with the Decree of the Minister of State for Agrarian Affairs/KBPN Number 6 of the Year 1998 concerning Granting Ownership Rights to Land for Residential Homes. Supervision efforts carried out by the National Land Agency regarding the maximum limit of ownership of non-agricultural land at the Subang Regency National Land Agency Office have not yet been normatively regulated. Supervision efforts that have been implemented or are planned for the future to anticipate ownership of land rights that extend beyond land boundaries often refer to the UUPA which has been proven to do little to protect the interests of the people. Various land cases that have occurred so far show that the current national land management system still requires improvement. Land law policies and land law regulations have often been improved, however, the results of implementation in the bureaucratic system and public services of the National Land Agency are still far from realizing the values of social justice.

¹²Dedi Juhatin, Interview, as Staff of the Transfer of Rights Section at the National Land Agency Office, Subang Regency - West Java, (Subang, 22 August 2023)

¹³Dedi Juhatin, Interview, as Staff of the Transfer of Rights Section at the National Land Agency Office, Subang Regency - West Java, (Subang, 22 August 2023)

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