



## THE MAXIMUM LIMIT OF LAND OWNERSHIP BY LEGAL ENTITIES BASED ON STATUTORY

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**Abstract-** Land is one of the essential elements related to human life. The proverb says, we were created from the ground and will return to the ground. Land issues in the community have influenced land conflicts, namely in the legal dimension, into the economic, political, social and defense and security dimensions. The government needs to establish policies in regulating land tenure as mandated by Law Number 5 of 1960 concerning Basic Agrarian Principles, Article 7 and Article 17. Land tenure can be classified into two legal subjects, namely individuals and legal entities. Regulations regarding land tenure by individual legal subjects have been regulated in detail, unlike land tenure by legal entities. The problem formulations of this research are how the maximum limit of land ownership by legal entities and how the Rights over land controlled by legal entities. In addition, this research aims to identify and understand the impact caused by over-limit control by legal entities. The method of this research is normative legal research and using several approaches such as legal approach and conceptual approach Therefore, the government's firmness in implementing the UUPA contained in articles 7 and 17 to establish policies in order to achieve optimization of land use for the welfare of the entire Indonesian nation and avoid prolonged conflicts.

**Keywords:** Land Ownership, Legal Entity, Maximum Limit, Regulation.

### I. INTRODUCTION

Land is an important element in the implementation of national development, every development activity carried out by the Government, private companies and the community cannot be separated from the land as a container for activities. Land is one of the natural resources needed by humans to meet their daily needs (Ikhwanasyah & Djumardin, 2018). The need for land is increasing along with the increase in development activities. The Central Bureau of Statistics (BPS) said that the area of rice fields continuously declines. Their records in 2018, the land area is only 7.1 million hectares, a decrease compared to 2017 which was still 7.75 million hectares (Wahyuni, 2018). However, there is an imbalance between the existing land supply and the need for land for development purposes. This imbalance is the availability of land which is limited in number and area, while the need for land is very large. Therefore, Limited amount of land to be used as a source of income and shelter, so people need to get a guarantee of legal certainty and legal protection of ownership rights to the land they own (Hidayat, 2016).

The increase in development activities requiring land, in the sense of controlling, owning, using, and transferring rights to land, so that an increase in the number of developments will also increase problems that have an impact on the land sector, which currently cannot be identified with agricultural land problems, but land problems. Which is already in such a way, concerning aspects and dimensions of human life, which include economic, legal, socio-cultural, political, and defense and security dimensions. Therefore, Indonesia needs a legal basis governing agricultural land to be controlled and organized.

According to Satjipto Rahardjo Dasar hukum adalah unsur yang penting dan pokok dari peraturan hukum (Tunardy, 2021).

According to Article 1 of Law Number 5 of 1960 concerning Basic Agrarian Regulations, the scope of agrarian is the earth's surface, and the body of the earth underneath it as well as those under water. The surface of the earth as part of the earth is also called land. The land referred to is not regulated in all aspects, but only regulates one of them, namely land in the juridical sense called land tenure rights. The notion of mastery can be used in a physical sense as well as in a juridical sense. There is control on a private aspect and a public aspect. Control in a juridical sense is control based on rights protected by law and generally gives the right holder the authority to physically control the land that is held, for example the land owner uses or takes advantage of the land that is held, not handed over to other parties (Santoso, 2005: 75).

Considering the importance of land issues nationally, the President also formed the State Minister for Agrarian Affairs in the VI Development Cabinet, by Presidential Decree No. 44/1994. This State Minister for Agrarian Affairs also serves as Head of the National Land Agency. As mandated by the 1945 Constitution of the Republic of Indonesia Article 33 Paragraph (3) which states that, "The land, water and natural resources contained therein are controlled by the State and are used maximally for the prosperity of the people." In line with this, the national policy in the land sector is stipulated in the MPR RI Decree Number II / MPR / 1998 concerning State Policy Guidelines (GBHN), which outlines that:

"The use of control and arrangement of land tenure by the state is directed towards realizing social justice for all Indonesian people. Control of land by the state, in accordance with the purpose of its use, needs to pay attention to the interests of the wider community and not cause land disputes. Arrangement of land use is carried out based on a regional spatial plan to realize the prosperity of the people by taking into account people's rights to land, social functions of land rights, the maximum limit of land ownership, especially agricultural land, including various other measures to prevent concentration of land tenure and neglect of land. Arrangement of control and use of land for large-scale development that supports national and regional development efforts is carried out by taking into account political, social, defense and security aspects and environmental preservation. Arrangement of control and use of land through land redistribution or land consolidation activities accompanied by the provision of certainty over land rights is directed at supporting and accelerating regional development, poverty alleviation and preventing gaps in land tenure"

The purpose of establishing the UUPA is to formulate implementing regulations for the UUPA for the implementation of land registration in all areas of the Republic of Indonesia with the hope that land administration is organized to ensure legal certainty of land rights as well as evidence for interested parties to easily prove their rights to the land they own (Ramadhani, 2019). One of the government policies in the land sector is land reform. Harsono (1989) stated that land reform in the narrow sense is a series of actions within the framework of Agrarian Reform. Land reform includes reforms regarding land ownership and control as well as legal relationships related to land tenure (Harsono, 1989: 329). The definition of land reform according to the UUPA includes a broad definition or can be called Agrarian Reform, covering three main problems, namely:

- a. Remodeling and rebuilding the system of ownership and control over land. The aim is to prohibit the existence of groot grond bezit, land ownership that exceeds the limit, because doing so would be detrimental to the public interest. This principle is stated in Articles 7, 10, and 17 of the UUPA;
- b. Reform and re-establishment of the land use system or so-called landuse planning, the basics are listed in Articles 14 and 15 of the UUPA;
- c. Abolition of Colonial Agrarian Law and development of National Agrarian Law. (Mustafa, 1988: 27)

Furthermore, the discussion will focus on the first point regarding the limits of control over land. Limitation of control over land is regulated in order to avoid over-limit land ownership because this could be detrimental to the public interest. As regulated in articles 7, 10 and 17, namely:

"Article 7"

In order not to harm the public interest, excessive land ownership and control is prohibited.

“Article 10”

- (1) Every individual and legal entity that has a right to agricultural land, in principle, is obliged to actively work or cultivate it himself, by preventing extortion methods.
- (2) The implementation of the provisions in paragraph 1 will be further regulated by legislation.
- (3) Exceptions to the principle stated in paragraph 1 of this article are regulated in statutory regulations.

“Article 17”

- (1) By keeping in mind, the provisions in Article 7, in order to achieve the objectives referred to in Article 2 paragraph 3, the maximum and / or minimum area of land which can be owned by one of the rights mentioned in Article 16 is regulated by a family or legal entity.
- (2) The determination of the maximum limit referred to in paragraph 1 of this article is carried out by means of laws and regulations in a short time.
- (3) Land which is an excess of the maximum limit referred to in paragraph 2 of this article is taken by the Government with compensation, to be subsequently distributed to the people who need it according to the provisions in the Government Regulation.
- (4) The achievement of the minimum limit as meant in paragraph 1 of this article, which will be stipulated by statutory regulations, is carried out gradually.

Then further regulation regarding the maximum limit of land tenure is regulated in Law Number 56 / Prp / 1960 concerning the Determination of Agricultural Land Areas. Furthermore, it is regulated by the Regulation of the Minister of Agrarian and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 18 of 2016 concerning Control of Control of Agricultural Land. Article 3 of the Ministerial Regulation states,

“Article 3”

- (1) The extent of control and ownership of agricultural land needs to be limited in order to achieve equal distribution of community welfare.
- (2) The limitation of control and ownership of agricultural land as referred to in paragraph (1) shall apply to:
  - a. Individually, and
  - b. Legal entity
- (3) Limitation of agricultural land ownership for individuals as intended in paragraph (2) letter a with the following conditions:
  - a. not dense, around 20 (twenty) hectares;
  - b. less dense, around 12 (twelve) hectares;
  - c. quite dense, around 9 (nine) hectares or
  - d. Very dense, around 6 (six) hectares.
- (4) Limitation of agricultural land ownership for legal entities in accordance with the decree granting rights.”

From the above statutory provisions, it can be concluded that the importance of regulating the limits of control over land for the public interest and the welfare of the people. This research aims to identify and understand the impact caused by over-limit control by legal entities. However, from the implementing regulations as stipulated in the Regulation of the Minister of Agrarian Affairs Number 18 of 2016 concerning Control of Control over Agricultural Land, the limitation of control over land by individuals is regulated in a very detailed manner, in contrast to control over land by legal entities which is only regulated based on a decree granting rights.

## II. METOHODS

The type of research carried out in writing this thesis is normative legal research in the form of doctrinal research. Normative legal research is used for analysis of statutory

regulations, jurisprudence, and contracts, while doctrinal research is used for analysis of legal principles, legal literature, views of highly qualified law scholars (doctrine), and comparative law (Marzuki, 2009: 104). There are several approaches used, including the legal approach (statue approach) and the conceptual approach (conceptual approach). The statute approach is done by reviewing all laws and regulations related to legal issues that are underway. (Marzuki, 2009: 93) In this study will be discussed, among others, Law Number 5 of 1960 and Regulation of the Minister of Agrarian Affairs Number 18 of 2016. The conceptual approach is carried out by using the views and concepts of several thinkers (experts) as well as the doctrines that have developed in legal science as a basis for this research in order to build a legal argumentation in solving legal issues is being researched (Marzuki, 2009: 93). This research will discuss among others land rights controlled by legal entities and laws and regulations that regulate the maximum limit of land tenure by legal entities.

### III. DISCUSSION

#### 3.1 Rights over land controlled by legal entities

The legal basis for the provision of land rights is regulated in Article 4 paragraph (1) of the UUPA, namely "On the basis of the state's right to control over land as referred to in Article 2 it is determined that there are various rights over the surface of the earth, which are called land, which can be given to and owned by persons, both individually and collectively with other persons and legal entities." Control and use of land can contain rights, obligations, authorities, and prohibitions for holders of rights over their land (Salim & Sujadi, 2019). Land rights derived from the state's right to control over land can be given to individuals, both Indonesian citizens and foreign nationals, a group of people collectively, and legal entities, both private and public legal entities. (Santoso, 2005: 89)

The authority that the holders of land rights have over their land are divided into two, namely:

a. General Authority

Holders of land rights have the authority to use the land, including the body of the earth and water above it, which is only necessary for the purposes directly related to the use of the land within the boundaries according to the UUPA and other higher legal regulations (Article 4 paragraph (2) UUPA).

b. Special Authority

Special authority, namely the holder of land rights has the authority to use the land according to the type of land rights, for example, the authority on Freehold land is for agricultural purposes and / or building construction, the authority on land with the Right to Use Building is to use the land only to establish and owning a building on land that does not belong to him, the authority over land with a Business Use Rights is to exploit the land only for the interests of companies in the agricultural, fishery, livestock, or plantation sectors.

Arrangements regarding the various rights to land that can be granted are regulated in Article 16 paragraph (1) of the UUPA, namely:

- a. Property rights
- b. Cultivation rights title
- c. Building rights title
- d. Right to Use Title
- e. Right to Rent of Building
- f. Land Clearing Rights
- g. Forestry Rights
- h. Other rights which are not included in the aforementioned rights which will be stipulated by law, as well as rights which are temporary in nature as mentioned in Article 53.

Based on the various rights mentioned above, not all of these rights can be controlled by a legal entity. Ownership rights are rights to land that cannot be controlled by legal entities in general because the legal subjects who can control Property Rights are only Indonesian citizens (Article 21 paragraph (1) UUPA) and legal entities that have been established by the

government (Article 21 paragraph (2) UUPA), namely banks established by the state (state banks), agricultural cooperatives, religious bodies, and social agencies. (Article 1 of Government Regulation Number 38 of 1963 concerning the Appointment of Legal Entities that Can Have Freehold Rights to Land).

The following is a brief explanation of the types of land rights that can be controlled by legal entities in general:

a. Cultivation Rights Title

Based on Article 28 paragraph (1) UUPA, what is meant by Cultivation Rights Title is the right to exploit land that is directly controlled by the state, within the period as referred to in Article 29, for agricultural, fishery, or livestock companies. Government Regulation Number 40 of 1996 concerning Cultivation Rights Title, Building Rights Title, and Land Clearing Rights added to the use of plantation companies.

Regarding the area of land Cultivation Rights Title for individuals, the minimum area is 5 hectares and the maximum area is 25 hectares. As for legal entities, the minimum area is 5 hectares and the maximum area is determined by the Head of the National Land Agency (Article 28 paragraph (2) UUPA in conjunction with Article 5 PP Number 40 Year 1996). (Santoso, 2005: 101)

b. Building Rights Title

The definition of Building Rights Title is contained in Article 35 of the UUPA, namely the right to construct and own buildings on land that is not his own, with a maximum period of 30 years and can be extended for a maximum period of 20 years. Regarding area, there are no regulations stipulated in statutory regulations.

c. Right to Use Title

According to Article 41 paragraph (1) of the UUPA, what is meant by the Right of Use is the right to use and/or collect proceeds from land controlled by the state or land owned by others, which gives the authority and obligations specified in the decision to grant it by the official authorized to grant it or in a land treatment agreement, everything of origin is not in conflict with the UUPA. The word "use" in Rights to Use Title refers to the notion that Rights to Use Title is used for the purpose of constructing a building, while the word "collecting results" in Rights to Use Title refers to the notion that Right to Use Title is used for purposes other than constructing buildings, for example agriculture, fisheries, livestock, and plantations. (Santoso, 2005) Regarding the area, there are no regulations that are regulated in statutory regulations.

### 3.2 Legislation Regulating the Maximum Limit of Land Ownership by Legal Entities

At the beginning of the formation of the UUPA, the regulation of land was limited to agrarian interests because most of the life of the Indonesian people rests on the agricultural sector. Likewise, with the regulation of maximum land tenure limits, the regulations made still specifically regulate control of agricultural land. The maximum limit of land tenure is regulated in Law Number 56 / Prp / 1960 concerning the Determination of Agricultural Land Areas. Furthermore, it is regulated by the Regulation of the Minister of Agrarian and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 18 of 2016 concerning Control of Control of Agricultural Land. Article 3 of the Ministerial Regulation states,

"Article 3

- (1) The extent of control and ownership of agricultural land needs to be limited in order to achieve equal distribution of community welfare.
- (2) The limitation of control and ownership of agricultural land as referred to in paragraph (1) shall apply to:
  - a. individuals; and
  - b. legal entity.
- (3) Limitation of agricultural land ownership for individuals as intended in paragraph (2) letter a with the following conditions:
  - a. not dense, a maximum area of 20 (twenty) hectares;

- b. less dense, a maximum area of 12 (twelve) hectares;
  - c. quite dense, with a maximum area of 9 (nine) hectares; or
  - d. very dense, with a maximum area of 6 (six) hectares.
- (4) Limitation of agricultural land ownership for legal entities in accordance with the decree granting rights.”

From the above statutory provisions, it can be said that the statement of the importance of regulating the limits of control over land in the public interest and the people's welfare. However, from the implementing regulations stipulated in the Regulation of the Minister of Agrarian Affairs 18 of 2016 concerning Control of Agricultural Land, the limits of control over land by individuals are regulated differently from control over land by legal entities that are regulated based on a decree granting their rights.

Meanwhile, as mandated by the UUPA which regulates the issue of Agrarian Reform or better known as the Land Reform policy, it calls for overhauling and rebuilding the system of ownership and control over land. The aim is to prohibit the existence of *groot grond bezit*, land ownership that exceeds the limit, because doing so would be detrimental to the public interest. This principle is stated in Articles 7, 10, and 17 of the UUPA which are not limited to the agricultural sector alone. However, until now there has been no regulation regarding the maximum area limit that can be controlled by legal entities outside the agricultural sector with more detailed provisions such as regulations regarding land tenure by individual legal subjects.

In this regulation, the limitation of control over land by individuals is regulated in such detail that it is different from the control over land by a legal entity which is only regulated based on a decree granting rights.

In addition, until now there has been no regulation regarding the maximum area limit that can be controlled by legal entities outside the agricultural sector with more detailed provisions such as regulations regarding land tenure by individual legal subjects. Because it is feared that the flaw in this regulation could lead to *groot grond bezit* which could harm the public interest and not in accordance with the ideals of Land Reform.

#### IV. CONCLUSION

As regulated in the GBHN, the use of control and arrangement of land tenure by the state is directed towards realizing social justice for all Indonesian people. One of the government policies in the land sector is *land reform*. *Land reform* includes reforms regarding land ownership and control as well as legal relationships related to land tenure. One of the main topics of discussion in the *Land Reform* is the overhaul and reconstruction of the land ownership and control system. The aim is to prohibit the existence of *groot grond bezit*, land ownership that exceeds the limit, because doing so will harm the public interest as regulated in Articles 7, 10 and 17 of the UUPA.

Further regulation regarding the maximum land tenure limit is regulated in Law Number 56 / Prp / 1960 concerning the Determination of Agricultural Land Areas. Furthermore, it is regulated by the Regulation of the Minister of Agrarian and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 18 of 2016 concerning Control of Agricultural Land. In this regulation, the limitation of control over land by individuals is regulated in such detail that it is different from the control over land by a legal entity which is only regulated based on a decree granting rights. This is due to the unclear law regarding the boundaries of land that can be owned by legal entities. For this reason, it is necessary to re-discuss the legal regulations regarding control of land rights by legal entities in order to avoid legal flaws and *groot grond bezit*.

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