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RESEARCH ARTICLE

TRANSFER OF LAND FUNCTION FOR TOURISM DEVELOPMENT: A CRITICAL THOUGHT FOR INDONESIA

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ABSTRACT

The purpose of this study is to examine this paper regarding the transfer of functions of rules regarding building use rights contained in the main agrarian law and Government Regulation No. 40 of 1996, in line with the principles of sustainable tourism development. The research method used is a type of normative legal research, which departs from an empty norm, with a statutory approach, a comparative approach and a conceptual approach. The legal materials for this research are sourced from primary legal materials, secondary legal materials and tertiary legal materials. The result of this research is that there is a legal vacuum in regulating ownership of rights to build, in the future there will be restrictions on ownership of rights to build by legal entities, because to ensure the principle of justice and equal opportunities for other legal entities.

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INTRODUCTION

Land is one of the symbols of wealth or power for the community by owning a large area of land, sociologically, a person is placed on a social status in a social strata. So important is the meaning of land for the community that the government takes part in regulating the designation and use of land in an equitable manner. Land is also a very important factor in the life of a society, especially in Indonesian society, where most of the Indonesian people whose large population depend on land.¹ Ideas or thoughts regarding land also continue to develop in accordance with the dynamics of community life and also as an impact of developments in the political, economic and socio-cultural fields of the Indonesian people. Various problems and new ideas emerged in the category of land rights, namely regarding the regulation of Building Use Rights (HGB). The regulation regarding Building Use Rights is contained in Article 35 to Article 40 of the Basic Agrarian Law hereinafter referred to as UUPA and furthermore it is regulated in more detail regarding Building Use Rights regulated in Government Regulation Number 40 of 1996 concerning Business Use Rights (HGU), Building Use Rights (HGB) and Use Rights over land hereinafter referred to as PP No. 4 of 1996.

In the meaning contained in article 35 of the UUPA, it implies that the Building Use Right is the right to establish and own a building on land that does not belong to it and has a certain period of time under its control. Based on the state's right to control over land, the right to land is born. This is as stated in Article 4 paragraph (1) UUPA. The state based on the right to control has the authority to determine various rights to the surface of the earth and land rights that can be given to and owned by an Indonesian citizen, a foreign citizen domiciled in Indonesia, a legal entity established under Indonesian law and domiciled in Indonesia, a foreign legal entity that has a representative in Indonesia. Furthermore, from the aspect of land origin, it is divided into two groups, namely land rights that are primary in nature and rights to land that are secondary in nature. Building use rights are included in both. Land rights that are primary in nature, namely land rights originating from the state and land rights that are secondary in nature, namely rights to land originating from other parties. The types of rights are Building Use Rights over management land and Building Use Rights over private land.

Article 37 UUPA stipulates that Building Use Rights can come from land controlled by the state and land owned by other people. Further provisions stipulated in Article 21 PP No. 40/1996 add that the origin of land use rights for buildings can be granted with building use rights, namely state land, land with management rights and land with ownership rights. Article 36 paragraph 1 UUPA in conjunction with Article 19 PP Number 40 Year 1996 which stipulates that those who can have Building Use Rights are Indonesian citizens and legal

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¹ Boedi Harsono, 2007, *Hukum Agraria Indonesia; Himpunan Peraturan-Peraturan Tanah*, Cetakan ke-18 (Revisi) Djambatan, Jakarta, h. 95.

entities established according to Indonesian law and domiciled in Indonesia. Article 20 paragraph (2) UUPA in conjunction with Article 20 PP 40 emphasizes that for holders of Building Use Rights who do not meet the requirements as the subject of Building Use Rights, within one year they are obliged to give up their rights and transfer the rights to other parties who meet the requirements as subjects. Building rights. In the event that within one (1) time the said right is not released or transferred to another party, the Building Use Right is deemed null and void due to law. Based on article 31 PP No. 40/1996, Building Use Rights have a social function, namely where it is determined that in geographical or environmental conditions or other causes land use rights for buildings due to their location can confine or close yards or other land parcels from public traffic or the way of water, the holder of the Building Use Right is obliged to provide access to the way out or the passage of water or other facilities for the enclosed yard or plot of land. The regulation of Article 32 of Government Regulation Number 40 Year 1996 also applies that the holder of Building Use Rights has the right to control and use the land to build a building for a certain period of time and own the building for his personal or business needs as well as to transfer the right to another party. Building use rights can also be used as collateral for debt with a bond attached. Abolition of Building Use Rights.

Building Use Rights can also be multiplied or transferred in accordance with the provisions of Article 35 paragraph (3) UUPA in conjunction with Article 34 paragraph (1) Government Regulation Number 40 Year 1996 stipulates that Building Use Rights can be transferred and transferred to other parties. The meaning shifts that the Building Use Right is transferred from the right holder to another party due to a legal incident, namely the Building Use Right is transferred due to the inheritance process. Furthermore, where a Building Use Right is transferred from the right holder to another party due to a legal act. Legal action is an act that has legal consequences. The provisions of Article 34 paragraph (2) Government Regulation Number 40 Year 1996 stipulate various types of transfer of Building Use Rights, namely buying and selling, exchange of capital, transfer of capital, grants, and inheritance. Sale and purchase, exchange, participation in capital and grants constitute transferable building use rights. Inheritance is a transfer of Building Use Rights in the form of a switch. Transition to Building Use Rights due to sale and purchase, except for auction, exchange, participation in capital and grants can be made by deed made by the official land deed maker (PPAT). Furthermore, the transfer of Building Use Rights due to auction is proven by an auction report made by the official of the auction office and the transfer of Building Use Rights because inheritance is proven by a will or certificate of inheritance made by an authorized agency.

Furthermore, the regulation regarding Building Use Rights also regulates the abolition of Building Use Rights as regulated in Article 35 PP Number 40 Year 1996, namely:

First, the Building Use Right is canceled due to the expiration of the period as stipulated in the decision to grant or extend it or in the grant agreement;

Second, the rights of the authorized official who hold the Management Rights or Ownership Rights holders can be canceled before the period ends because:

- J The rights holder's obligations are not fulfilled and or the provisions referred to in Article 30, Article 31, Article 32 of Government Regulation Number 40 Year 1996 are not fulfilled.
- J The terms or obligations contained in the agreement to grant Building Use Rights between the holder of the Building Use Rights and the holder of the Ownership Rights or the management land use agreement are not fulfilled.
- J Court decisions that have permanent legal force.
- J Third, land use rights that have been released voluntarily by the right holder before the end of the period.
- J The fourth is revoked, abandoned, the land is destroyed, because the holder of the Building Use Right does not meet the requirements as the subject of the Building Use Right holder.

In this paper, we will review the regulation of Building Use Rights contained in UUPA, PP No. 40 and its future existence. It also discussed the maximum amount of unregulated HGB land under control and the lack of institutions that monitor the sustainable use and allocation of land and how to ensure the use of land used in tourism development in line with the principles of sustainable tourism development.

Thus, the juridical problem in this study is an empty norm (Lemteen van normen). Based on the background above, therefore, two legal problems raised in this article are as follows: (1) How is legal regulation in the presence of legal vacuum in limiting ownership of building use rights, and (2) How can restrictions on ownership of building use rights by legal entities be guarantee the principle of justice and equal opportunities for other legal entities?

METHODOLOGY

This research is normative legal research, which shows the absence of norm on the existence of a legal vacuum in limiting ownership of building use rights. Legal materials are collected through the documentation study method, namely by recording matters related to the problems being researched found on the primary, secondary, and tertiary legal materials. To easily facilitate discussion of the problems, the primary legal materials are systematically identified as follow:

The collection is based on a hierarchy of Laws and Regulations by starting to look for norms at the level of the constitution, ratified international conventions, laws, and subordinate legislation of the laws; It should be noted whether the rules still apply as positive law; It is necessary to collect rules that do not have the force to apply in terms of research that uses a historical approach; It is necessary to differentiate between *lex specialist* and *lex generale* in terms of identification at the statutory level; It is necessary to collect Laws and Regulations that have a relationship with the main issue^{2 3}.

² I Made Pasek Diantha, 2016, *Metode Penelitian Hukum Normatif dengan Justifikasi Teori hukum*, Prenada Media, Jakarta, p. 149-150

³ Dharmawan, NKS.,Kasih, DPD., Dewi, AAAA., Kurniawan, IGA, Pranajaya, MD., Resen, GMSK,Sutrisni, NKE., 2019, Protecting Balinese Culinary Innovation through Patent Law, *International Journal of Innovation, Creativity and Change*, IX (10), p. 116-126

RESULT AND DISCUSSION

Criticizing the Basic Agrarian Law and Government Regulation Number 40 of 1996:

Since 1978, land issues related to its regulation have become increasingly crucial, while the legal rules for resolving ownership and control of building land and preventing or at least minimizing the possibility of using building land that exceeds the reasonable limit have not been sufficient. Economic growth and the increase in the economic value of land have resulted in a sharpening of the social gap between those who have access that allows control of land allocated for buildings that exceeds the limits of reasonableness and those who most need land for building but are in a disadvantageous position. If this is ignored, it will become a problem in the future in the land sector, especially in granting Building Use Rights.

The provision of granting Building Use Rights to investors is indeed made easier to grant, with the aim of increasing investment and creating the widest possible job opportunities for the community. A similar sentiment was expressed by Arie Sukanti Hutagalung who criticized the government's policy of extending land rights in order to increase investment. Attempts to invite investors are not by extending land rights at once. The ease with which the requirements for granting Building Use Rights to investors will not guarantee an increase in the investment climate in Indonesia, this actually creates an obstacle to continuous supervision.

Throughout the practice, applications regarding Building Use Rights in Bali are mostly controlled by legal entities in the form of Limited Liability Companies, with the aim of improving the investment climate, especially in the context of tourism development in Bali. In this situation, investors are very vulnerable to monopolizing the application for Building Use Rights. On the other hand, the absence of restrictions on the maximum area of the application for Building Use Rights is a problem in itself. Nothing in the provisions of the articles in the UUPA or PP Number 40 of 1996 regulates the limitation of the maximum amount of land attached to the Right to Build. According to the author, in the absence of this regulation there is a norm vacuum in the regulation of restrictions on building use rights. If it is traced more deeply in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which is used as the basis for the LoGA which provides the possibility for the state to grant rights to land to individuals or legal entities as needed. Based on the provisions of land tenure that exceeds the fairness limit, it is contrary to the principle of land reform aimed at realizing social justice in the form of land tenure as described by Article 7 and Article 17 of the UUPA. The conditions presented above have of course changed and this situation is deemed necessary to be addressed, and of course this is contained in various MPR decrees beginning with the TAP MPR RI No. IV / MPR / 1978 which regulates the need for provisions to restructure land use and control in order to achieve social justice. The same thing is also stated in the TAP MPR RI No. II / MPR / 1988 and the latest provisions in the TAP MPR RI II MPR 1993 explicitly mention the importance of a land limitation. Arrangement of land use needs to take into account people's rights to land, social functions of land rights, maximum limits of agricultural and urban land ownership and prevent neglect of land, including various efforts to prevent concentration of control that are detrimental to the interests of the people.

Restrictions on Building Use Rights Ownership for the Creation of Just Tourism Development:

Land is also the existence of the sovereignty of the Republic of Indonesia with its people through the principle of Nationality, reflected in article 21 of the Basic Agrarian Law, only Indonesian citizens are allowed to have property rights, land use rights and building use, while foreign citizens only use rights. In order for the control and use of land to continue to function socially and not to harm the public interest, according to the mandate of Article 7 and Article 17 of the UUPA, on December 29, 1960, the Sukarno government issued a Government Regulation in Lieu of Law number 56 of 1960, which was later stipulated as Law (hereinafter referred to as Law number 56 prp 1960).

However, in the UUPA 1960, the maximum limit of ownership is individual property, namely a maximum of 20 hectares for one family. However, no maximum limits have been set for Business Use Rights, Building Use Rights, and Use Rights. Here is a big problem. First, there is the problem of inequality in land ownership. Most of the land was in the hands of a few people. No longer landlords, but big business owners (capitalists) who live in the agribusiness sector. Second, land ownership by farmers, who are the pillars of national food production, is actually decreasing. Most of Indonesia's farmers are smallholders with an average land ownership of 0.3 hectares. In fact, there are 28 million farmers who are landless farmers. This condition is of course not in accordance with the spirit of Pancasila and the ideals of the Constitution (Article 33 UUD 1945), namely paragraph (1) reads; The economy is structured as a joint effort based on the principle of kinship, paragraph (2); Production branches which are important to the State and which affect the livelihoods of the public shall be controlled by the State, paragraph (3) states; The land, water and natural resources contained therein are controlled by the State and used for the greatest prosperity of the people, paragraph (4). The national economy shall be carried out based on economic democracy with the principles of togetherness, justice efficiency, sustainability, environmental insight, independence, and by maintaining balance of progress and national economic unity and paragraph (5); Further provisions regarding the implementation of this article are regulated in law.

Agrarian reform has become part of the 2017 Government Work Plan in Presidential Decree No. 45/2016 on May 16 2016. There are 5 Priority Programs related to Agrarian Reform, namely:

- 1) Strengthening Regulatory Framework and Settlement of Agrarian Conflicts.
- 2) Arrangement of Land Control and Ownership of the Object of Agrarian Reform
- 3) Legal certainty and legality of land objects of agrarian reform
- 4) Community Empowerment in the Use of Utilization and Production of Land for the Object of Agrarian Reform.
- 5) Institutional for implementing central and regional agrarian reform.

First, agrarianism is expected to be able to stop economic liberalization by allowing corporations to control vast amounts of land. If the allotment of land serves only for business interests, not for the interests of the people, the agrarian reform that is promoted will lose its meaning, which eliminates the right of farmers to access agrarian resources, especially land.

Second, limiting individual land ownership and limiting the area of land tenure (Hak Guna Usaha) for the business sector, both in the agricultural, forestry, mining and other sectors. It is no longer possible for millions of hectares of land to be controlled by only a handful of business groups. Building use rights may not be granted on productive agricultural land. This is to prevent the narrowing of agricultural land due to pressure from development and business.⁴ The regulation related to restriction of land ownership is the Regulation of the Minister of Agrarian Affairs Number 2 of 1999 concerning location permits, the period for granting location permits for companies is limited according to the area of land to be acquired. For a land area of up to 25 hectares, the period given is 1 year, while for land areas of 25-50 hectares, the period is 2 years, and a period of 3 years is given for land areas of more than 50 hectares. Acquisition of land must be completed by the location permit holder within that period, if the company is unable to complete it within the given period, land acquisition can no longer be carried out.

The Ministerial Regulation also limits the total area of land to which companies can have rights. The land area permitted to be acquired by the company and other companies in the same group is determined as follows:

- J For housing and settlement development businesses in one province with an area of 400 hectares or 4,000 hectares throughout Indonesia. Meanwhile, for hotel resort areas in one province, 200 hectares or 4,000 hectares are permitted throughout Indonesia.
- J For industrial estates in one province covering an area of 400 hectares or 4,000 hectares throughout Indonesia.

The determination of the area of agricultural land that must be owned by a person is regulated in Article 1 Paragraph (1) Government Regulation in Lieu of Law Number 56 Year 1960 as stated as follows: "A person or persons who together constitute a family are only allowed to control land agriculture, whether its own or that of other people, whose total area does not exceed the maximum limit as stipulated in paragraph (2) of this Article". By taking into account the population, area, and other factors. Although only certain legal entities can obtain ownership rights to land, it does not mean that other legal entities such as private companies, cooperatives, foundations and other legal entities (other than those stipulated in Government Regulation Number 38 Year 1963) do not get recognition of land. These legal entities continue to obtain their rights, namely Business Use Rights (HGU), Building Use Rights (HGB), and Use Rights. In the 1960 Basic Agrarian Law (UUPA), land is declared a social function and must not harm the public interest. Therefore, the highest control over the earth, water and space is in the hands of the State, as a representation of the public interest. Also in the UUPA 1960, land is a marker of the existence of the sovereignty of the Republic of Indonesia and its people (the principle of nationality). Because of this, only Indonesians / Indonesian citizens can own land (UUPA 1960 Article 21). This applies to Property Rights, Business Use Rights, Building Use Rights. Meanwhile, foreign citizens / foreigners may only access the Right to Use.

The government must have the courage to repeal all laws that provide a red carpet for the liberalization of the agrarian sector, which removes the right of farmers to access agrarian resources, especially land. Second, limiting individual land ownership and limiting the area of land tenure (HGU) for the business sector, both in the agricultural, forestry, mining, and other sectors. It is no longer possible for millions of hectares of land to be controlled by only a handful of business groups. Investment in the agricultural sector should be encouraged more in the processing industry. Apart from encouraging domestic industrialization, employment, it can also increase the market for domestic agricultural products. Land tenure covering an area of more than 25 hectares must be in accordance with the spirit of the UUPA, namely "using proper capital investment and good corporate techniques, in accordance with the times". Land owned by unemployed individuals must be subject to progressive tax, while idle HGU land must be returned to the State and become the Object Land for Agrarian Reform or Social Forestry. The granting of HGB should not be on productive agricultural land, this is to prevent the narrowing of agricultural land due to pressure from development and business.

The essence of state supervision is meant that the State really guarantees the achievement of the goals of the prosperity of all people and equal distribution of land ownership and also shows that the State is above all groups. If the Draft Work Creation Law regulates the period of time for Business Use Rights and Building Use Rights for business activities of 90 years and 80 years, it means that the State has relinquished its control over the period of time and has placed future generations of this Nation bound to the policies of the current generation. The relinquishment of control also complements the relinquishment of State control over the maximum limit of ownership of each right for large-scale business activities as well as the ineffective land use intensity and productivity.

It can be seen that there is no guideline that regulates the number of ownership of Building Use Rights so that the author can mention the absence of norms. In fact, if seen from the history, the formation of the UUPA spirit is for welfare and there is no land control for a group of people who are regulated regarding land reform. Meanwhile, Regulation of the Head of BPN RI Number 2 of 2013 only regulates the authority of the Head of BPN in the Land Office to grant Land Rights, especially in Article 4, which reads "The Head of the Land Office makes decisions regarding:

- J Grant of Building Use Rights for individuals on land with an area of not more than 3,000 m² (three thousand square meters).
- J Grant of Building Use Rights for Legal Entities over land with an area of not more than 20,000 m² (twenty thousand square meters)
- J Grant of HGB over HPL land

Article 9 states that "The Head of the Regional Office of BPN makes decisions regarding:

- J Granting of Building Use Rights for individuals on land with an area of more than 3,000 m² (three thousand square meters) and not more than 10,000 m² (ten thousand square meters).
- J Grant of Building Use Rights for Legal Entities over land with an area of more than 20,000 m² (twenty thousand

⁴<http://www.berdikarionline.com/perlunya-pembatasan-penguasaan-tanah-oleh-korporasi/> diakses pada tanggal 2 Juni 2020

square meters) and not more than 150,000 m² (one hundred and fifty square meters).

This means that Regulation Number 2 of 2013 only regulates the authority of the Head of the Land Agency through the Land Office, the number of Building Use Rights that can be granted by the Head of the Land Office and the Head of the Regional Office of the National Land Agency. This regulation does not regulate the maximum number of building use rights a PT. So that there is no control by the State over the control of land rights, especially building use rights. Building use rights holders hoard land tenure by hiding behind the ownership of building use rights which can control acres of land. What is worse is that control of the land does not use the land obtained according to its function, it can cause abandoned land. The most basic thing is that even though the land is controlled by a legal entity, but after the land is controlled or stockpiled in a large amount, they are not utilized according to its function. The spirit of the Basic Agrarian Law to regulate control and boundaries of land ownership is needed.

Based on what has been regulated, the restrictions are not only on land ownership but also control over land which has a broad range of meaning, which includes control based on a right or control based on a power which in fact gives the authority to carry out legal actions as befits a person have rights. If it departs from the government paradigm that seeks to make arrangements regarding land ownership and land tenure, it is highly correlated with the essence of this research, namely that there must be a regulation on the maximum area limitation of control over Building Use Rights. What is important is how the right criteria are in regulating the restrictions on building use rights. The opinion conveyed by Maria Sumarjono is determined based on the strategic value of a region for development and areas where development activities have not been / are not intensive.

The criteria used are as follows:⁵

-) Determine certain area limits in the control of building rights, for example 5000 M2 for strategic areas and 10,000 M2 for strategic areas 10,000 M2 for other regions.
-) Determining the boundary of a certain area without determining the plot of land.

The second opinion conveyed seems more relevant given the possibility of determining the area of Building Use Rights which is regulated by the relevant regional government for various uses. This limitation applies to individuals and legal entities. This limitation will be easier to apply to individuals than to legal entities because legal restrictions require a consideration based on the type and volume of business carried out so that there will be variations. In my opinion, the writer needs implementation instructions or technical instructions to support it.

Principles in Regulating Building Use Rights: Referring to Maria Sumarjono's opinion, there are two alternative approaches to choose from in dealing with this problem. The first approach is juridical in that it will be subject to direct sanctions for violations of predetermined prohibitions.

The second approach is an approach by imposing direct sanctions. For parties who have controlled the Building Use Rights land as large as the maximum limit, they are still given leeway to control the land beyond the existing limit with sanctions that are indirectly applied in the form of the following:

Tax Imposition: Taxes on land can be used as a policy instrument to encourage the use of land according to its designation or address land speculation issues. Accordingly, any land tenure attached to a Building Use Right that exceeds the maximum limit may be taxed at an effective, progressive rate.

Abandoned land rights that have been abandoned: Within a specified period of time, the land which the rights holder has not utilized in accordance with its nature and purpose, the land will be declared as abandoned land which will become the basis for the abolition of said land rights and subsequently designated as state land. Looking at these two approaches, what is more relevant to use is the approach of imposing sanctions indirectly and in the form of income for the government and for the progressive tax that is applied. Based on this, the supporting facilities for implementing regulations regarding restrictions on ownership and control of Building Use Rights still need to be improved. Things that need special attention are the obligations to register Building Use Rights. Supervision of violations of the maximum limit of building land area will become a difficult matter if the Building Use Rights land has not been registered in certain circumstances.

For the government to carry out systematic and gradual land registration, support is needed because in the future, with an orderly and systematic administration of land control that exceeds the maximum limit or is not used in accordance with its designation, it will be easily detected. Furthermore, related to the regulation of abandoned land, it needs to be realized in the form of regulations. In many cases, abandoned land use rights for buildings actually lie in the absence of preventive supervision. BPN will supervise land with Building Use Rights status after the land has been neglected for a long time. So it is important that the meaning of elaborating abandoned building use rights is as follows:⁶

-) The definition of not being processed / utilized within a certain period of time means the extent to which a business that has been carried out by the right holder is deemed to have met the requirements for processing / utilization based on the provisions concerning spatial planning or business administration and other relevant technical provisions;
-) The institution that will be tasked with examining the existence of abandoned land according to the type of land rights
-) Considerations / reasons that can be accepted as an exception to the act of abandoning land because of the absence of intention from the right holder
-) The mechanism for determining the land is abandoned.

Land control that exceeds the limit is also possible through the granting of power, so it is time for the provision and use of

⁵ Maria S.W. Sumardjono, 2009, *Tanah Dalam Persepektif Hak Ekonomi, Sosial dan Budaya*, Jakarta, Kompas Media, ya hlm. 13-14.

⁶ Peraturan Pemerintah Republik Indonesia Nomor 11 Tahun 2010 tentang Penertiban Dan Pendayagunaan Tanah Terlantar.

power in the land sector to be realized, but in this case what needs to be prohibited is the granting of power which is essentially the transfer of rights over land in matters that cause a violation of ownership / absentee control of land and the maximum limit of ownership / control of land as well as matters which are intrinsically intended as violations of law and accompanied by sanctions. Based on the description above, it is very necessary to have an approach to regulating the maximum limitation of tenure rights over Building Use Rights land. Efforts to regulate abandoned land are substantial matters that must be given equal attention. Regulations regarding limiting the maximum number and regulations regarding preventive supervision before the occurrence of abandonment of land is intended so that this does not happen again and the use of Building Use Rights can be utilized as well as possible.

The Concept of Sustainable or Unsustainable Tourism Development?: Sustainable development is a translation of the word sustainable development which is very popular which is widely used in western countries. The concept of sustainable development is defined as development that is shown to meet the needs of the present generation without sacrificing future generations to meet their own needs. Based on this definition, it contains two key concepts, namely the priority of meeting the essential needs of the population and the limited ability of the environment to meet the needs of present and future generations. In sustainable development, there are three main pillars that become the focus of development, namely social, economic and environmental.⁷ The concept of sustainable development considers socially and culturally reasonable needs and creates different consumption standards within environmental limits.

Based on the definition given by the United Nations World Tourism Organization (UNWTO) sustainable tourism is "Tourism that fully takes into account the present and future economic, social and environmental impacts, responding to the needs of visitors, industry (tourism), the environment and the host community". Tourism is positioned as one of the mainstay sectors of Indonesia's sustainable development program. At present and in the future tourism is expected to provide the largest contribution to increasing foreign exchange and community welfare. In order to support this, efforts should be made to support the people's welfare and prosperity.⁸ With regard to the benefits provided in the development of community welfare, development is also one of the triggers for environmental destruction during tourism development activities that require the provision of land in building tourism infrastructure. There are many cases that in the construction of hotels, villas and resorts that will destroy beaches, seas, forests and the conversion of other productive agricultural land functions and the emergence of various other negative impacts caused by tourism development activities such as changes in local cultural values due to the entry of culture, foreigners.⁹ In connection with the land requirements in tourism development which are carried out by both foreign and local investors, it raises various problems. One of the most important and the focus of the study is related to the conversion of land functions

to support tourism development. Tenure and land ownership in Bali in particular is still experiencing imbalances. This has become a polemic in itself because the land is not used wisely according to its allotment in spatial and territorial planning and investment in the framework of sustainable tourism development. The meaning of wisdom here is to use the land so that it belongs to the population, community, village and local government not to transfer ownership to the tourism investors who aim to monopolize it. Investors do not have to be the owner of the land (with ownership rights or building use rights) simply by means of a land use agreement with the land owner. This aims to reduce inequality in land ownership or control in Bali in particular.¹⁰ Based on data collection at BPS Bali in 2018 agricultural business in a broad sense still contributed the second largest Gross Regional Domestic Product (GRDP) with a contribution of 14.35%. On the other hand, agricultural business does not have a significant effect on the Balinese economy and tends to decline. The decline in the contribution of the agricultural business sector to the Balinese economy cannot be separated from the decrease in the number of employment in the agricultural sector and coupled with the decrease in agricultural land area, namely rice fields.

Referring to BPS Bali data, it does not mention in detail the number of hotel and restaurant developments, but if you use the analogy logic of high tourist growth, there will be a demand for massive infrastructure development. The increase in the amount of land use from year to year will increase because hotel construction requires land as its main means. The increasing need for land will result in the transfer of land rights and / or an increase in land use from agriculture to non-agriculture. The need for land does not always have to be fulfilled by buying and selling or granting Building Use Rights. LoGA regulations have provided other means of land use. In my opinion, the provision of Building Use Rights is not given easily to investors, it aims to anticipate land tenure monopoly. Especially if the parcel of land is the only property owned by the community as a passenger for their life.

Is it Fair to Arrange Building Use Rights in Bali Tourism Development?: As a progressive law, the LoGA is intended as an instrument that creates an advanced change in society in the economic sector through structuring land ownership structures, which on the one hand leads to progressive social change in the economic sector through structuring land ownership structures, which on the one hand leads to changes in agriculture and industry that are increasingly advanced, but do not ignore justice in the sense of creating equal distribution of land ownership. As a prismatic law, the principles of the UUPA are translated into 2 groups of social values, namely modern and traditional according to the plurality of Indonesian society. The social function of land rights and restrictions on the area of land that can be owned by everyone as a deterrent so that land ownership does not lead to absolute ownership and accumulation of land ownership in a handful of people or legal entities (Article 6 and Article 7 in conjunction with Article 17 UUPA) with absentee land ownership prohibition, and prevention of domination of land control by companies with the obligation to carry out business activities in the agricultural and industrial sectors with monopoly prohibitions.

⁷ Muhammad Iilham Arisaputra, 2015, *Reforma Agraria di Indonesia*, Jakarta, Sinar Grafika, hlm. 253.

⁸ Joko Tri Haryanto, "Model Pengembangan Ekowisata Dalam Mendukung Kemandirian Ekonomi Daerah Studi Kasus Provinsi DIY", *Kawistara*, Vol. 4, No. 3, Desember 2014, hlm. 271-286.

⁹ *Ibid.*

¹⁰ FX Sumarja, "Optimalisasi Pemanfaatan Tanah Dalam Pengembangan Pariwisata Berkelanjutan" diakses dalam laman http://repository.lppm.unila.ac.id/9158/1/Naskah_Bali_Optimalisasi_pemanfaatan_tanah_30_Okt_2018.pdf, Pada Tanggal 17 Juni 2020.

The spirit of prismatic law contained in the UUPA has not been fully implemented until now. Data from the Central Statistics Agency shows that the number of tourist arrivals to Bali has experienced a significant growth from the total tourist visits in 2015 of 4,001,835, 2016 as many as 4,927,937, 2017 as many as 5,697,739, in 2018 as many as 6,070,473, In 2019, there were 6,275,210. This shows that Bali is still the Primadona of Tourism in Indonesia and even in Asia. This is the reason investors are eyeing Bali as a place to invest by building accommodation in Bali. The number of accommodations in Bali continues to increase, from 2015 to 2019 there has been a doubling of the number of star hotels, from 281 to 507. You can imagine the island of Bali, which covers an area of 5,780 km², spread over nearly 4,419 star and non-star accommodation. This does not include the types of tourism businesses in other fields such as tourism attractions, tourism areas, travel services, food and beverage services, entertainment and recreation, meeting services, leisure tours and spas in accordance with Article 14 of the Tourism Law. All of these efforts are supporting tourism activities for the implementation of tourism activities.

On the one hand this has a positive impact such as absorption of so many jobs and economic growth, but on the other hand there is so much land that must be prepared with the spread of so many businesses in the tourism sector. Such as the provision of accommodation (hotels) for tourism which requires thousands of hectares of land. Because in plain view, beautiful Bali with an agrarian area with a stretch of green rice fields, is now being replaced by a row of hotels and other tourism supporting facilities. The number of star and non-star hotels that continues to increase every year. In fact, this number exceeds the number of rooms required by Bali so that there is a tendency for excessive tourism development to occur. Agriculture, which is the foundation of Balinese life, must struggle to maintain its existence amidst the rush of tourism. Many rice fields, gardens or other green land have been eroded and replaced by hotels, villas and the like. The sad thing is that most of them do not belong to the Balinese people. In plain view, the luxury of tourism seems to make Bali with the tourism sector as a mainstay sector as if it will not be deterred economically. But this was not the case after the Covid 19 Pandemic hit the world at the end of 2019 and in Indonesia at the beginning of 2020 made tourism stop. This certainly made the Indonesian economy hit and especially Bali as a mainstay sector collapsed. Community welfare began to decline. Even Bali is starting to ask whether it is possible to still exist in the current situation which only relies on the tourism sector.

From the above description, it is ideal that tourism development should not overexploit natural resources excessively so that the objectives of tourism development are eliminated. It is inevitable to change the function of land from wetland to dry land, thousands of rice fields are lost every year. People are reluctant to become farmers and, unfortunately, they flock to sell their fields with a change in their lifestyle due to the impact of tourism. This is exploited by land contractors under the guise of investors who buy land through Building Use Rights in the form of a Legal Entity, in this case a Limited Liability Company. That is the need for building use rights arrangements as a foundation for companies in the tourism sector by regulating the Concept of Granting Building Use Rights for Tourism Development.

Conclusion

It was found that there was a legal vacuum that regulated the restrictions on ownership of building use rights. The existing regulations are not sufficient to fill the existing legal void. The idea is related to the limitation of ownership of Building Use Rights by legal entities, to ensure the implementation of the principle of justice and equal opportunities for other legal entities. In addition to avoiding monopoly by one legal entity which can have an impact on social and economic instability. This legal entity under the guise of an investor hoarding land and controlling unlimited land is a monopoly in the Agrarian Sector that is not in accordance with Article 7 of the UUPA.

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REFERENCES

A.Books

- Bahkrul Amal, 2017, *Pengantar Hukum Tanah Nasional, Sejarah Politik dan Perkembangannya*, Thafa Media Yogyakarta, Jakarta.
- Boedi Harsono, 2007, *Hukum Agraria Indonesia; Himpunan Peraturan-Peraturan Tanah*, Cetakan ke-18 (Revisi) Djambatan, Jakarta.
- H. Wira Franciska, 2016, *Kepastian Hukum Pemegang HAK GUNA BANGUNAN diatas HPL dalam Perjanjian Penjaminan Kredit Perbankan*, Alfabeta, Bandung.
- Made Pasek Diantha, I. 2016, *Metode Penelitian Hukum Normatif dengan Justifikasi Teori hukum*, Prenada Media, Jakarta
- Joko Tri Haryanto, 2014, *Model Pengembangan Ekowisata Dalam Mendukung Kemandirian Ekonomi Daerah Studi Kasus Provinsi DIY*, *Kawistara*, Vol. 4, Nomor 3, Daerah Istimewa Jogjakarta.
- Pasek Diantha, I Made, 2016, *Metodelogi Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum*, Prenada Media Group, Jakarta
- Maria S.W. Sumardjono, 2009, *Tanah Dalam Perspektif Hak Ekonomi, Sosial dan Budaya*, Jakarta, Kompas Media Nusantara, hlm. 11.
- Muhammad Iilham Arisaputra, 2015, *Reforma Agraria di Indonesia*, Jakarta, Sinar Grafika.
- Marzuki, Mahmud, Peter, 2016, *Penelitian Hukum*, PT Kharisma Putra, Jakarta
- Mustofa dan Suratman, 2013, *Penggunaan Hak Atas Tanah Untuk Industri*, Sinar Grafika, Jakarta.
- Notonegoro, 1972, *Politik Hukum dan Pembangunan Agraria di Indonesia*, CV Pantjuran Tudjuh, Jakarta.
- Nurhasan Ismail, 2018, *Hukum Agraria Dalam Tantangan Perubahan*, Setara Press, Malang.
- Salim HS dan Erlies Septiana Nurbani, 2014, *Penerapan Teori Hukum pada Peneliatian thesis dan Disertasi*, PT Rajagrafindo, Cetakan ketiga, Jakarta.

Journals and Articles

- Alit Puspadma, I Nyoman, 2013, Disertasi Perpanjangan Hak Guna Bangunan Oleh Perseroan Terbatas Menuju Investasi Yang Berkelanjutan Dan Menyejahterakan Rakyat (Kajian Terhadap Kepastian Hukum dan Keadilan, (Disertasi) Program Pascasarjana Universitas Brawijaya Malang.
- Dharmawan, NKS., Kasih, DPD., Dewi, AAAA., Kurniawan, IGA, Pranajaya, MD., Resen, GMSK, Sutrisni, NKE., 2019, Protecting Balinese Culinary Innovation through Patent Law, *International Journal of Innovation, Creativity and Change*, IX (10),
- Faiz, Pan Mohamad, 2012, *Teori Keadilan John Rawls*, Jurnal Konstitusi: Vol. 6. No. 1 Jakarta.
- Fattah, Damanhuri, 2013, *Teori Keadilan Menurut John Rawls*, Jurnal TAPIS Vol. 9. No. 2 Yogyakarta.
- Iman Koeswahyono, 2013, Jurnal IPTEK Pertanahan Pusat Penelitian Pengembangan Badan Pertanahan Nasional Republik Indonesia Volume 3.
- BPS Provinsi Bali, Buku Statistik Daerah Provinsi Bali 2018, hlm. 17; <http://www.balipost.com/news/2018/08/07/52345/Semester-I-2018,Ekonomi-Bali...html>
- Joko Tri Haryanto, "Model Pengembangan Ekowisata Dalam Mendukung Kemandirian Ekonomi Daerah Studi Kasus Provinsi DIY", *Kawistara*, Vol. 4, No. 3, Desember 2014
- Maria S.W. Sumardjono, 2009, *Tanah Dalam Persepektif Hak Ekonomi, Sosial dan Budaya*, Jakarta, Kompas Media

Laws and Regulations

- Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.
- Undang-Undang Pokok Agraria Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria, Pasal 35.
- Undang-Undang Nomor 7 Tahun 1992 sebagaimana telah diubah dengan Undang-Undang Nomor 10 Tahun 1998 tentang Perbankan.
- Undang-Undang Nomor 25 Tahun 2007 tentang Penanaman Modal.
- Undang-Undang Nomor 10 Tahun 2009 tentang Pariwisata.
- Undang-Undang Nomor 9 Tahun 2015 tentang Pemerintah daerah.
- Ketetapan MPR Republik Indonesia IX/ MPR/2001 Pembaharuan Agraria dan Pengelolaan Sumber Daya Alam Peraturan Pemerintah Nomor 16 Tahun 2004 tentang Penatagunaan Tanah.

- Peraturan pemerintah No 10 Tahun 1996 tentang Hak Guna Usaha, Hak Guna Bangunan, Hak Pakai atas Tanah.
- Peraturan Presiden Nomor 10 Tahun 2006 tentang Badan Pertanahan Nasional.
- Peraturan Menteri Agraria dan Tata Ruang / Kepala Badan Pertanahan Nasional Nomor 5 Tahun 2015 tentang izin lokasi.
- Peraturan Bank Indonesia Nomor 16/17/PBI/2014 tentang Transaksi Valuta Asing Terhadap Rupiah Antara Bank Dengan Pihak Asing.
- Peraturan Pemerintah Nomor 36 Tahun 1998 tentang Penertiban dan Pendayagunaan Tanah terlantar.
- Peraturan Pemerintah Nomor 40 Tahun 1996 tentang Hak Guna Usaha, Hak Guna Bangunan, dan Hak Pakai atas Tanah, Pasal 30.
- Surat Keputusan Kepala BPN Nomor 24 Tahun 2002 tentang Pelaksanaan Peraturan Pemerintah No 36 Tahun 1998 pembentukan tim penilaian terhadap tanah-tanah terlantar.
- Surat Edaran Nomor 2/SE.HT.02.01./VI/2019 Tentang Pemberian Hak Guna Bangunan Kepada CV.
- Peraturan Pemerintah Republik Indonesia Nomor 11 Tahun 2010 tentang Penertiban Dan Pendayagunaan Tanah Terlantar.

Papers

- Iman Koeswahyono, 2013, Jurnal IPTEK Pertanahan Pusat Penelitian dan Pengembangan Badan Pertanahan Nasional Republik Indonesia Volume 3.
- Achmad Sodiki, Kebijakan Sumber Daya Alam dan Implikasi Yuridis Pasca Tap MPR No IX/MPR/2001 dan Keppres No 34 Tahun 2003, makalah dalam seminar Nasional Eksistensi dan Kewenangan Badan Pertanahan Nasional Pasca Keppres No 34 Tahun 2003.

Web Sites

- <http://www.berdikarionline.com/perlunya-pembatasan-penguasaan-tanah-oleh-korporasi/> diakses pada tanggal 2 Juni 2020
- <http://www.berdikarionline.com/perlunya-pembatasan-penguasaan-tanah-oleh-korporasi/> diakses pada tanggal 2 Juni 2020
- FX Sumarja, "Optimalisasi Pemanfaatan Tanah Dalam Pengembangan Pariwisata Berkelanjutan" diakses dalam laman http://repository.lppm.unila.ac.id/9158/1/Naskah_Bali_Optimalisasi_pemanfaatan_tanah_30_Okt_2018.pdf, Pada Tanggal 17 Juni 2020.
