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Legal Protection for Indonesian Citizens on Ownership of Land Right to Use by Foreign Citizens: Case Study in Indonesia

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Abstract

The need for land in Indonesia is growing from time to time which causes changes in land and spatial planning. It is seen that there is a need for planning so that it does not become a conflict because of the availability of land due to the increasing proportion of population growth. Development is a place for humans to carry out various activities, one of which is the use of land by Foreign Citizens in Indonesia who are given the status of Use Rights on land with Ownership Rights. Utilization of land rights by foreign nationals is regulated in Government Regulation Number 103 of 2015, Ownership of Residential Houses or Occupancy for Foreigners Domiciled in Indonesia, as stated in Article 6. Namely, foreign citizens are granted use rights within a period. The author tries to analyze some of the problems contained in the ownership status of the use of rights related to the period and the value of the benefits of the land that are expected in the future Indonesian citizens to obtain justice and legal certainty related to the status of the land they claim.

1. Introduction

Land in Indonesia is an immovable natural resource and one of the basic human needs of the Indonesian state that must be maintained and preserved. Its management must be in line with the Constitution of the Republic of Indonesia following the provisions in Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states: "Earth, water and natural resources contained therein are controlled by the State and used for the greatest prosperity of the people." There are several things to be achieved in land use, namely (Philip et al., 1983): 1. Economic benefits, 2. Environmental benefits, 3. Socio-cultural benefits.

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It is hoped that the use of land will provide prosperity and welfare for the people of Indonesia; besides that, it is hoped that there will be equitable distribution of justice and legal certainty in utilizing the potential of land resources from the current generation to future generations. Various legal efforts for land use have been carried out by making several regulations or legal regulations to protect the rights of Indonesian citizens, such as: First, the 1945 Constitution of the Republic of Indonesia Article 33 Paragraph 3. Second, the Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles Article 9. Third, Government Regulation Number: 103 of 2015 concerning Ownership of Residential or Residential Houses by Foreigners Domiciled in Indonesia.

The three regulations are considered effective enough to protect Indonesian citizens by the government as the regulator. However, these regulations are considered ineffective in providing justice and legal certainty. Currently, Indonesian citizens still do not understand and understand the impact of the Right to Use status on land with Hak Milik, which foreign citizens use in utilizing land owned by Indonesian citizens.

Concerning this condition, legal politics is deemed necessary to form a new regulation that provides a sense of justice and legal certainty over land owned by Indonesian citizens. Based on the provisions in Article 6 of Government Regulation Number 30 of 2015 concerning Ownership of Residential Houses or Occupancy by Foreigners Domiciled in Indonesia, Foreign Citizens are given 30 years. Then it can be extended for 20 years, then it can be renewed again for 30 years, this which is analyzed gives a value of injustice because the period is quite long. The benefits for the children and grandchildren of Indonesian citizens who hold land rights cannot be felt.

Normatively, other legal problems arise at the time of signing the Right of Use agreement deed on Hak Milik land, which can be made in 3 classifications of agreements signed in 3 consecutive days which contain:

- In the signing of the Deed of Agreement on Land Right to Use Right on Owned Land, it was first made before the Land Deed Making Officer (PPAT). For example, on October 10, 2020, the agreement lasted for 30 years ending on October 10, 2050.
- In the signing of the second Deed of Land Use Rights Agreement on Freehold Land, it was made before the Land Deed Making Officer (PPAT) followed by the signing on October 11, 2020, the contents of the agreement contained an extension of the period lasting for 20 years starting on October 11, 2050, until October 11, 2070.
- In the signing of the second Deed of Land Use Rights Agreement on Freehold Land, it was made before the Land Deed Making Officer (PPAT) followed by the signing on October 12, 2020, the contents of the agreement contained renewal of a period of 30 years starting on October 12, 2070, until October 12, 2100.

This is very risky and very dangerous for the generations/descendants of Indonesian citizens who own the land recorded in the land certificate because they do not know the main contents of the agreement made before the Land Deed Making Officer (PPAT) if their parents, who are listed on the name on the certificate die and archives of evidence of land certificates owned must be proven to the court if there is a legal problem between the heirs and the foreign citizen.

The principle of legal protection for Indonesian citizens over the ownership of land with usufructuary rights by foreign citizens in Indonesia is similar to the principle of protection in "In principle, the protection of consumers aims for development, to develop human beings as a whole to create a just and equitable." society both materially and spiritually, and to improve the welfare of all people in a country" (Rumiartha et al., 2020, p. 55).

The provision of legal certainty in the land sector requires the availability of written, complete, and clear legal instruments that are carried out consistently following the spirit and content of the

provisions (Kuswanto et al., 2017, p. 73). The authors try to analyze the ownership of *Hak Guna Hak Milik* land by foreign citizens, which is quite concerning. This can be a reference for the Central Government and the House of Representatives as the law drafters; they are required to immediately issue clear regulations or legal rules that can protect the rights of Indonesian citizens. And the government is required to be able to act following the theory of justice, legal certainty, legal reform, and the theory of the role of the state by applying the principle of nationality, the principle of nationality and the principle of guaranteeing legal certainty and legal protection following the 1945 Constitution.

The purpose of the state over land, as stated in Article 2 paragraph (3) of the Basic Agrarian Law, is used to achieve the greatest prosperity of the people in the sense of nationality, welfare, and independence in society and an independent, sovereign, just and prosperous Indonesian legal state and regulated in Article 33 paragraph (3) of the constitution, namely the earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. With this aim, the rights to use rights over property rights that occur in the Province of Bali, in particular, are a problem that has been and is occurring and will continue until the government is finally able to find and stipulate a formulation of new legal regulations that are capable of creating legal certainty. It is hoped that there will be justice which is the desire of every Indonesian citizen.

2. Materials and Methods

The writing method in this research is normative to determine the relationship between law and society and the factors that influence the implementation of law in society as primary legal material. The second secondary legal material is obtained through a literature study. This research specification analyzes the applicable law related to positive law on the main research problem. Identification, classification, and validation are based on primary and secondary legal materials. Legal materials are analyzed, and the results are presented in the form of scientific writing.

3. Results

The theory of justice was chosen as the first theory to analyze the granting of the term of the Right to Use Land with Ownership Rights in Government Regulation Number 103 of 2015. (Manullang E.fernando M, 2007). The term justice (iustitia) comes from the word "fair," which means impartial, impartial, siding with the right, proper, not arbitrary, and contains a demand that people treat each other according to their rights and obligations, treat them indiscriminately or with favoritism, all people are treated equally according to their rights and obligations.

According to Aristotle, the purpose of the law is justice, and the content of the law is determined by ethical awareness of what is said to be fair and what is said to be unfair. Hans Kelsen argues for justice as a subjective value judgment. Although a just order is considered an order is not the happiness of every individual, but the greatest happiness for as many individuals as possible in the sense of the group, namely the fulfillment of certain needs, which rulers or lawmakers consider as needs, such as the needs of clothing, food, and boards.

The theory of legal certainty was chosen as the second theory to analyze the period of use rights originating from property rights that have fulfilled a sense of justice for Indonesian citizens for the granting of rights to foreign citizens in obtaining that period. Certainty has the meaning of provisions and stipulations. In contrast, if the word certainty is combined with the word law to become legal certainty, it means the legal instruments of a country that can guarantee the rights and obligations of every citizen. Legal certainty (rechtzekerheid) guarantees community members that the law will be applied correctly. and fair (Abdul Ghofur Anshori, 2006). Concerning certainty and benefit, according

to Gustav Radbruch, there are two kinds of legal certainty, namely legal certainty by law and legal certainty in or from law.

Legal certainty because the law gives other legal tasks, namely legal justice, and the law must remain useful. Meanwhile, legal certainty in law is achieved if the law is as much as possible in the law. Laws are made based on rechtwerkerlijkheid (true legal conditions), and in the law, there are no terms that can be interpreted in different ways. Legal certainty, in this sense, is in line with dogmatic juridical teachings, which are based on positivist schools of thought that look at the law as independent and autonomous and only a collection of rules (Budianto, A., 2011). Adherents of this school believe that the law's purpose is nothing but to guarantee the realization of legal certainty.

Legal certainty is realized by law only to make general legal rules. The general nature of legal rules proves that law does not aim to achieve justice or benefit but is solely for certainty. Certainty is needed to realize the principle of equality before the law without discrimination (Moh. Mahfud MD, 2009)

4. Conclusion

This legal certainty theory is used to examine the reflection of Article 33 paragraph (4) of the 1945 Constitution of the Republic of Indonesia, which states that the national economy is organized based on economic democracy with the principles of togetherness, efficiency, justice, sustainability, environmental insight, independence, and by maintaining a balance of progress and national economic unity. This article is reflected in Article 42 of the Basic Agrarian Law and Government Regulation Number 103 of 2015. In addition, it is also used to examine the legal concepts that are used as the basis for these regulations.

As described above, the purpose of the law is to guarantee legal certainty. Analysis of Article 42 of the Basic Agrarian Law and Government Regulation Number 103 of 2015 is urgently needed to explore the ownership of housing units for foreigners in depth. In addition, a legal analysis was carried out on extending usage rights for foreign nationals. According to this legal certainty theory, the general nature of the Basic Agrarian Law proves that the law aims to create certainty, justice, or benefit. Meanwhile, Government Regulation Number 103 of 2015 aims not to achieve justice and benefit but solely for the benefit of foreigners. Thus, this government regulation is a regulation that aims to create legal certainty (not justice and benefit) for Indonesian citizens.

Legal certainty will guarantee that if a person performs a behavior following applicable legal provisions, on the contrary, without legal certainty, a person does not have definite provisions for behavior. Therefore, Gustav Radbruch believes that legal certainty is one of the objectives of the law. Furthermore, there are 4 (four) bases for legal certainty, namely:

1. That the law is positive, meaning that the positive law is legislation;
2. That the law is based on facts, meaning that it is based on reality;
3. That the facts must be formulated in a clear manner to avoid mistakes in meaning, as well as be easy to implement; and
4. Positive law should not change.

In interpreting the value of legal certainty, the aspect that must also be considered is that this value closely correlates with positive legal instruments and the state's role in actualizing it into positive law. In this case, the value contained in Article 42 of the Basic Agrarian Law closely correlates with Government Regulation Number 103 of 2015 as a positive law in Indonesia. The concept of the rule of law, in addition to covering the welfare state, is now also moving towards the inclusion of provisions for the protection of human rights in a country's written constitution. Moving on from the

elements of the rule of law mentioned above, in addition to aiming for the community's welfare, it also realizes social justice.

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