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PROBLEMS OF THE MAXIMUM LIMIT OF LAND TENURE IN INDONESIA

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Abstract

This article aims to examine the rules relating to the maximum limit of land tenure in Indonesia. In line with this, normative legal research on the problem was carried out. To find bright spots, review the laws and regulations as well as expert perspectives. So as to get the conclusion that although there are already rules governing the maximum limit of agricultural land tenure, its implementation is still not optimal and cannot be carried out properly. Agricultural lands are currently unjustly divided, piling up only in certain communities that have access that allows itself to own land of an area that exceeds the limit. And on building land, there are still no rules that regulate the maximum limit except for the land where the dwelling is located.

Keywords: Land, Land Tenure, Maximum Limit

INTRODUCTION

Land and human life are an inseparable whole.(Sitepu, 2016) For example, in establishing a place to live for shelter and survival requires land in its construction.(Arifin & Ibrahim, 2015) In addition, there are still many land functions that are closely related to human survival, one of which is in terms of the economy.(Haris, 2009)

Judging that land is an important thing, then this requires regulations that regulate the whole thing, one of which is related to land ownership.(Arisaputra, 2013) Given the fixed land area while population growth continues to grow and the need for land ownership is increasing. It is feared that there will be many problems if there are no clear rules.(Kharisma, 2018)

To overcome this, Law Number 5 of 1960 concerning the Basic Regulation of Agrarian Principles or known as the Basic Agrarian Law was born as a form of implementation of the provisions of the 1945 Constitution in article 33 Paragraph (3):(Arba, 2021) *"The earth, water and natural wealth contained therein are controlled by the state and used for the greatest prosperity of the people."*

This law was born not without reason, but in order to regulate or regulate related to land ownership in Indonesia. (Syarief, 2014) Because in reality, there are still many people who own land on a large scale. Of course this resulted in economic inequality between the landowner and other communities. So since the promulgation of this rule, in the mandate of article 17 of the Basic Agrarian Law of 1960, land owned in excess of the ownership limit will be taken away by the state which is then distributed to people who do not own land or who own but on a very small scale, and the State will provide compensation for the land it takes to the landowner. This is in line with one of the main objectives of the Agrarian Law so that it is prohibited to own land that exceeds the limit as regulated by article 7 of the Basic Agrarian Law of 1960. (Ismail, 2012)

Due to the importance of limiting land ownership, Law Number 56 prp of 1960 or often known as the *Landreform* Law was formed. However, in Undang-Undang this new set the limit on the area of agricultural land that a person can have. (Rosalia, 2016) Meanwhile, restrictions on building land that also need to be regulated by ownership limits will be regulated by a Government Regulation which unfortunately has not been present until now.

Even so, it turns out that the application of the maximum limit to land ownership that has been regulated in the above Law cannot be carried out properly. Agricultural lands are currently unharmoniously divided, piling up only in certain communities that have access that allows themselves to own land of an area that exceeds the limit. (Muharam, 2015) Based on this, it is important to review the provisions related to the maximum limit of land tenure in Indonesia.

RESEARCH METHODS

The type of research used in this article is normative legal research or also called doctrinal legal research, which is research that provides a systematic explanation of the rules that govern a certain category of laws. (Ali, 2021) A data source consists of both primary and secondary data sources. A primary data source is a data source obtained directly from a source. While on secondary data, research data is obtained indirectly or through intermediaries (recorded by other parties). Secondary legal data are further

differentiated into primary and secondary legal materials. Primary legal materials include legislation, official records, or judges' decisions. And for secondary legal materials are any legal publications that are not official documents.

In this study, what was used was a secondary data source. Where the author uses both of the existing legal materials, namely primary and secondary legal materials. The primary legal material is the Laws and Regulations relating to the Limitation of Land Tenure in Indonesia such as the Agrarian Law, *the Landreform Law*. While the secondary legal materials are electronic books as well as legal journals.

RESULT AND DISCUSSION

The ground is a plain on the surface of the earth that cannot be separated from human life. Land has many uses including to build a place to live so that humans can survive as well as to support the economy. Article 33 Paragraph (3) of the 1945 Constitution states about land:

"The earth, water and natural wealth contained therein are controlled by the state and used for the greatest prosperity of the people."

It is made clear in chapter 1 Paragraph (4) that what belongs to the earth is one of the surfaces of the earth which we can interpret as land.

From the above exposure, it can be concluded that the land is a plain on the surface of the earth which is very important for its existence in human life where its use is solely to achieve prosperity and welfare of the people.

One of the objectives of the establishment of the Basic Agrarian Law as the parent of national agrarian law is the achievement of the interests of the Indonesian people which include prosperity and welfare. One of the efforts in realizing this goal is contained in article 7 of the Basic Agrarian Law: *"In order not to harm the public interest, the ownership and control of land that exceeds the limit is not allowed."*

Which is then explained in article 17 of the Basic Agrarian Law that in order to achieve the greatest prosperity of the people, a maximum limit of land tenure owned by rights is set by the family or legal entity.

Due to the importance of limiting land ownership, it is further regulated in Law Number 56 Prp of 1960 concerning the Determination of the Area of agricultural land or often known as the *Landreform Law*. As for the population density of a territory, it determines the relation to the maximum limit of ownership of agricultural land. Of course, there is no maximum limit between areas where the percentage of population density is low and areas with a fairly high percentage of population density. (Arba, 2021)

According to the aforementioned law, a person/family is only allowed to own farmland with an area not exceeding 20 hectares. However, paying attention to the state of the area that is very special the maximum limit can be increased by at most 5 hectares (to 25 hectares) by the Minister of Agrarian Affairs.

Meanwhile, based on Article (3) and Article (4) of the Regulation of the Minister of Agrarian affairs and Spatial Planning / Head of the National Land Agency Number 18 of 2016 concerning Control of Agricultural Land Tenure, which successively contains the provisions for the limits of ownership of individual and legal entity agricultural land, it is displayed in the form of a table.

Individual	Categories of Residence	Maximum Area
	Not Dense	20 (Twenty) Hectares
	Less Dense	12 (Twelve) Hectares
	Quite Solid	9 (Nine) Hectares
	Very Dense	6 (Six) Hectares
Legal Entities	In accordance with the Decree granting its rights	

From the above provisions, it can be seen that the limit set out in Law No. 56 prp of 1960 is considered no longer in accordance with the current conditions where population growth increases so rapidly while the use of agricultural land that is other functions results in agricultural land continuing to decrease. Also the maximum area figure (20 hectares) is too large when compared to the average land ownership of farmers in Indonesia who only have less than 2 hectares or even do not have agricultural land. This will still result in

inequalities among communities. Landlords will still have the opportunity to cover more land than ordinary people or even deprived communities.

One of the main programmes of the *Landreform* Act is to prohibit the possession and possession of land in excess of the limits as set out in Section 7 Undang-Undang Pokok Agraria:

"In order not to harm the public interest, then the ownership and control of land that exceeds the limit is not allowed."

The restriction on land ownership in question is that in addition to agricultural land, it also applies to building land. It is explained in article 12 of Law Number 56 prp of 1960 that the determination of the maximum limit of land ownership for development (housing) and its subsequent implementation are further regulated by a Government Regulation. But unfortunately, the Government Regulation has not been present until now.

Even so, efforts to limit the maximum ownership of building land have been carried out with the enactment of the Regulation of the Minister of Agrarian Affairs Number 14 of 1961 concerning the Request and Granting of Permits for The Transfer of Land Rights, Regulation of the Director General of Agrarian Affairs Number 4 of 1968 concerning the Implementation of Permits for Transfer of Land Rights, and Regulation of the Minister of Home Affairs Number S of the Decree 59/DDA/1970 concerning Simplification of Land Transfer Permit Regulations, although the above regulations no longer apply based on Government Regulation No. 24 of 1997 concerning Land Registration.

The Decree of the Minister of Agrarian State/Head of the National Land Agency Number 06 of 1998 concerning the Granting of Property Rights to Land for Residential Houses makes it clear that the acquisition of property to land for residential houses by individuals is no more than 5 (Five) fields which in total cover 5000 m² (Five Thousand Square Meters). However, the Decree does not clarify with regard to restrictions on residential ownership by legal entities.

CONCLUSION

Regarding the maximum limit that has been set, including for agricultural land, it turns out that in its implementation it is still not optimal and cannot be carried out

properly. Agricultural lands are currently unjustly divided, piling up only in certain communities that have access that allows itself to own land of an area that exceeds the limit.

On building land, there are still no rules that regulate the maximum limit, except for the land where the dwelling is located. In fact, restrictions on the control of building land are as important as agricultural land for the time being, given the large amount of development along with the rapid growth of the population.

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