

## Allotment Settings and Individual Land Right Linked to Land Act Viewed from Consistency Principles

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### ABSTRACT

*Article 2 paragraph (2) letter (a) of Land Act, among others, states that the State has the authority to regulate land use in the entire territory of the Republic of Indonesia, Article 2 paragraph (2) letter (b) of Land Act declares that the State has authority to regulate legal relations between people with existing land around the Homeland, by providing Land Right for the person / legal entity referred to in Article 16 paragraph (1) Land Act. From the Land Act provisions, it can be seen that, the designation and administration of Land Right are set separately. Associated with it, two important formulation of the problem can be designed, namely: 1) How are the designation and individual Land Right governed by Land Act? 2) How is individual Land Right regulated by Land Act when viewed from the principle of consistency? This study uses statutory, concepts, and analytical approach, with the legal material in the form of Land Act, books and dictionaries. Conclusions obtained: a) Land Act authorizes the State to regulate the allotment of land publically, based on Land Act, the State also authorizes to offer Land Right individually to the subject of rights (privately concerned), b) the offer of Land Right and Right of user set forth in Land Act has fulfilled the principle of consistency because it only regulates individual Land Right, while granting the Leasehold and Buildings Rights do not meet the principles of consistency, because in addition to providing individual Land Right it also regulates land use.*

**Keywords:** Land Act, allotment, land rights, consistency

### INTRODUCTION

Earth and water and the natural riches contained therein shall be controlled by the State and shall be used for public welfare. Similarly, specified in Article 33 paragraph (3) of the Constitution of the Republic of Indonesia Year 1945, hereinafter referred to as the 1945 Constitution. Observing the norm, it is clear that in relation to the earth, water and air space, including natural resources contained therein, the state as the organization of the highest power throughout the people of Indonesia, acting in the capacity as the attorney and officer of the Indonesian nation (Boedi Harsono, 2008: 232). The authority of the State in the controlling system is of a delegation of Nations duty, of which is purely public (Boedi Harsono, 2008: 268).

Based on the provisions of Article 33 paragraph (3) of the 1945 Constitution, it was determined that state authority to regulate land within the territory of the Republic of Indonesia (Republic of Indonesia), as stipulated in Article 2 paragraph (2) of Law No. 5 of 1960 on Principles of Land Regulation (LN. 1960-104, TLN. 2043), hereinafter referred to as Land Act, as follows:

- (2) The right to control referred to in paragraph (1) of this article gives the authority to:
  - a. Arrange and conduct allocation, use, supply and maintenance of earth, water and the space.

- b. Determine and regulate legal relations between the people with the earth, water and air space.
- c. Determine and regulate legal relations between persons and legal actions regarding the earth, air and space.

State authority called the Master of the State Rights is in Article 2 paragraph (2) Land Act contains just about managing, administering, and organizing ,and it does not contain the authority to supervise. Furthermore, the Constitutional Court of the Republic of Indonesia to the number 001-021-022/PUU-1/2003 Case Decision, the State has the authority to decide which is called *regelendaad* (setting), *bestuursdaad* (takingcare), *beherensdaad* (managing), and *toezichthoudensdaad* (supervising) (Achmad Sodiki, 2013: 253-254). Thus the State has the authority to regulate, administer, manage and supervise the whole earth; water and air space, including the natural resources exist within the territory of Indonesia Republic.

According to Article 4 paragraph (1) of Land Act, the land surface is called the earth, so the earth setting in Article 2 paragraph (2) of Land Act also includes the regulatory on the ground. Furthermore in each regulation contains the words 'earth, water and air space, it also includes natural resources contained in it', then the words in this article will be replaced with the word 'land'.

Article 2 paragraph (2) letters (a) Land Act determines the State has the authority to regulate and organize the allocation, use, and maintenance of soil inventory. Object of study in this paper only covers the authority of the State to regulate and organize land use only, while others do not become the object of study in this paper.

Article 2 paragraph (2) letter (b) of Land Act determines that the State has authorities to determine legal relations between persons with soil, then Land Act in Article 4 paragraph (1) determine the kinds of land rights that can given to and owned by the people (the subject of rights). After the subject has the right of land rights, under Article 4 paragraph (2), subject to the right of the authorities to use land for the purpose directly related to the use of the land.

Pursuant to Article 4 paragraph (1) Land Act, determine the rights that can be held by the subject of rights in Article 16 paragraph (1). Land rights set forth in Article 16 paragraph (1) of this by Boedi Harsono called individual rights, which have civil aspect (Boedi Harsono, 2008: 24). The individual right on lands further in this paper are called individual land rights.

### **Land Allotment and Individual Land Right in Land Act**

#### ***Land Allotment in Land Act***

Authority to regulate the allotment of land owned by the State, so under the provisions of Article 2 paragraph (2) letters (a) Land Act. With the authority, the State entitled to define the existing land use in the Homeland. With the authority, the State shall also regulate the allotment of land in the Homeland. Authority to regulate land use is solely the domain of the public. Under the provisions of Article 2 paragraph (2) of the letters (a), hereinafter Land Act ordered the government to make an inventory of the general plan, zoning and land use.

Regulating land use means that the State has the authority to regulate and organize the land allotment, whether the land is intended for building or for a green open space, or for other purposes. The authority is only in the State and only the State has the right to determine the allotment of land, there is no other party who has or jointly has end the authority, unless designated by the State.

According to Bagir Manan in Suko Waluyo, in the statutory language authority is not equal to the power (*macht*). Power only describes the right to do or not do, while authority means the rights and obligations. The right shows the freedom to perform or not perform a certain action, or demand other parties to perform or not perform a certain action, while the obligation includes a requirement to perform or not perform a certain action (Suko Wiyono, 2004: 68).

Since the authority contains rights and obligations, then when the State practiced its right to regulate land use, the land use regulation must contain obligations of States in accordance with land control set out in Article 2 paragraph (3) of Land Act, which is used to reach for prosperity of the people.

### ***Individual Land Right Settings in Land Act***

Individual Land Right sourced from the provisions of Article 2 paragraph (2) letters (b) of Land Act, then Article 4 paragraph (1) authorizes the State to determine the kinds of Land Right, with the objectives as set out in Article 4 paragraph (2), namely authorizing to use the land in question merely required for the benefit of directly related to the use of the land.

Under these provisions, then Article 16 paragraph (1) determine the kinds of Land Right , namely: a) property rights, b) leasehold , c) Building rights, d) rights of use, e) rights of Rent, f) Open Land rights, g) the right to pick Forest Products, g) any other rights on land which are not included in these rights above will be set by the law and the temporary rights as mentioned in article 53.

Of the overall Land Rights, which will be discussed in this paper are only the first four rights, namely: 1) property rights, 2) leasehold, 3) Building rights and 4) rights of use while the others will not be discussed. The reason why the other rights were not included in the discussion because the leasehold is not the primary rights but secondary, because the lease can occur when an individual right has been prior at hand. For example, someone will lease the land, it will emerge the lease rights. So such a person must first have had a land right, then he can rent it to other parties. Open Land Rights and Forest Products gleaning rights are not land rights. In the rights of opening land the person does not have Land Right , but only has the right to open it, while the land itself has not become his property right. In the right Picking Forest Products is also not a Land Right, but only a right to levy a result of the forest, while the location where the forest located is not entitled.

Property Rights is regulated under Article 20 through Article 27 Land Act. Properties are hereditary right, the strongest and fullest Land Right people can own, and the switch can be transferred to another party and also can be used as collateral.

Property as the right of hereditary means, the property does not only apply to the current owners, but also apply to the offspring.

Property is the strongest right of, meaning the strongest Land Right compared with the other Land Right regulated in those mentioned in Land Act.

Property is the fullest right, meaning the most perfect Land Rights compared to other Land Right mentioned in Land Act.

Properties can be switched and routed, the meaning of the rights may be switched, Land Right can be switched by law, the transfer of property occurs solely because of the legal events without the need to perform legal acts, such as inheritance, property rights while transferable, meaning Land Right the property can be transferred through legal events that require certain legal action, such as sold, assigned, and others.

Property rights can be used as collateral, meaning that the property right owner can get some money as a debt to another party, without having lost the property rights for the rights holder.

Leasehold is regulated in Article 28 through Article 34 of Land ACT. Leasehold is seeking a current right of land directly controlled by the State for a period of twenty-five years or a maximum of thirty-five years and can be extended, in order to be used as agriculture cultivation, fisheries or livestock, it can be switched and transferred to another party and can also be used as collateral.

Leasehold is the right to cultivate the land directly controlled by the state, meaning that the leasehold holder only has the right to cultivate only those entitled to commercialize land, while the land itself is a land directly controlled by the State. The holders of leasehold land are not the owner, but just as those who cultivate the land.

Leasehold with the termed of twenty-five years or a maximum of thirty-five years and can be extended, meaning that leasehold is granted for a specific period and after ends, Land Right period may anyway be extended for a specified period of time. Giving a certain period means that the State can perform the controlling function of the provision of the right to cultivate the land directly controlled by the State.

Leasehold is granted for agriculture cultivation, fisheries or livestock, meaning that leasehold is given to be used as a fixed place of business, namely agriculture, fisheries or livestock. Leasehold in this case in addition to regulating Land Right also regulates the allotment of land, which is used for agriculture, fisheries or livestock. So Leasehold is not only regulates the private allotment but also regulates the allotment of land which is public. Private Individual Land Right regulates under Article 2 paragraph (2) letters (b) of Land Act, while the setting is public land designation set forth in Article 2 paragraph (2) letters (a) Land Act.

Leasehold can switch and be routed, the meaning of the Leasehold has right to switch, is that the Land Right can be switched by operation of law, namely the right to cultivate transition occurs solely because of the legal events without the need to take legal actions, such as inheritance, whereas Leasehold is transferable, meaning that Leasehold can be transferred through legal events that require certain legal action, for example sold, assigned, and others.

Building Rights set forth in Article 35 through Article 40 of Land Act. Building Rights is right to establish and have buildings on land which is not his own, with a maximum period of thirty years and can be extended to a maximum of twenty years, which can be switched and transferred to another party and can also be used as collateral.

Building Rights is right to establish and have buildings on land which is not his own, it means that the holder of Building Rights only owns the buildings stood on the land, while the land is not his. The holder of Building Rights is not as the owner of the land, but only as the owner of the building. Building Right in this case in addition to regulating Land Right also regulates the allotment of land, which is for the building. So Building Rights besides regulating private Land Right also regulates the allotment of land which is public. Private Individual Land Right is set forth under Article 2 paragraph (2) letters (b) of Land Act, while the setting of public land designation is set forth in Article 2 paragraph (2) letters (a) of Land Act.

Longest term of Building Right is thirty years and can be extended to a maximum of twenty years, and it means that the Building Right is granted for a certain period and after it ends, Land Right period may be extended for a specified period of time anyway. Giving a certain period this means that the State can perform the function of controlling the administration of

Building Right above the site, when the Building Right given above land directly controlled by the State.

Building Right can be switched and routed, it means that Building Right can be switched by operation of law, namely the transition Building Right occurs solely because of the legal events without the need to perform legal acts, such as inheritance, while the Building Right is transferable, meaning that the Building Right can be routed through the law events that requires certain legal action, such as sold, assigned, and others.

Building Right can be used as collateral, meaning that the Building Right can give the holder a sum of money as a debt to another party, in which situation the holder of Building Right doesn't lose his right.

Right to Use is set forth under Article 41 through Article 43 of Land Act. Rights to Use is the right to use and / or collect the products of land directly controlled by the State or the land owned by someone else, for a certain period or for the period the land is used for certain purposes.

Rights to use is the right to use the land directly controlled by the State or the land owned by someone else, it means the holders of rights are entitled to use only the land, while the land is controlled directly by the State or owned by others. So the holder of right to use is only entitled to use the land without ever becoming its owner.

Rights to Use is the right to levy the product of land directly controlled by the State or the land owned by someone else, it means the holders rights are only entitled to do the harvests of the land, while the land is controlled directly by the State or owned by someone else. So the holder of right to use is only entitled to levy the product without ever becoming its owner.

### **Individual Land Right sets forth in Land Act viewed from Consistency Principle**

As described above, the individual Land Right setting in Land act embodied in Article 2 paragraph (2) letters (b), hereinafter referred to in Article 4 paragraph (1) and further regulated in Article 16 paragraph (1).

State, under Article 2 paragraph (2) letters (b) of Land Act, authorizes to regulate legal relations between persons with soil. The intent of these provisions are described in the General figures II point (2) letters (b) of Land Act, the authority of the State as the organizational power of the Indonesian people at the highest level to determine and regulate the rights that may be owned to the land. The authority of the State in this case is called right to manage.

Based on the right to manage, then Article 4 paragraph (1) of Land Act sets forth various Land Right that can be given to and owned by the people. Given the Land Right, then Article 4 paragraph (2) determines that Land Right holder is authorized to use the land in question merely required for the benefit directly related to the use of the land within the boundaries according to the Land Act and other higher legal regulations.

Pursuant to Article 4 paragraph (1) of Land Act, the subsequent land rights is specified in Article 16 paragraph (1) Land Act totaling of eight Land Right, and possibly much more because of Article 16 paragraph (1) letters (h) allowing it to happen. Of the eight kinds of Land Right specified in the Land Act, only the first four of Land Right are discussed, namely 1) the property right, 2) Leasehold, 3) the right for Building, and 4) the right to use.

Considering the settings in the individual Land Right in Land Act, namely Article 2 paragraph (2) letters (b) following General Explanation II figures (2) letters (b), Article 4

paragraph (1), and Article 16 paragraph (1) letters a, b, c, and d, then set out in these provisions merely regulate Land Right, and no other things mentioned except Land Right. Regarding authority gained for the holder in connection with the provision of Land Right, it is set forth in Article 4 paragraph (2) of land Act, namely to use the land in question for the benefit of Land Right which is directly related to the use of the land within the boundaries according to Land Act and other higher legal regulations. So the settings on individual Land Right only sets on the regulation of granting Land Right in order that holder of Land Right can use the land in question within the limits according to the Land Act and other higher legal provision, instead of other settings.

Arrangements regarding allotment of land set out in Article 2 paragraph (2) letters (a) of land Act, which is in the General Explanation of the second point (2) letters (a) determine, that the authority of the State as the organizational power of the Indonesian people at the highest level to regulate and organize the allocation, usage, inventory, and maintenance of soil.

Considering the provisions of Article 2 paragraph (2) letters (a) of Land Act following General Explanation II point (2) letter (a) it is clear that the State, based the right to control, is authorized to determine the designation of the entire land in the Republic Indonesia territory. Pursuant to the authority to determine the allotment of land, the State reserves the right to determine the land to be used as building area, green belt areas, and other areas. Determining a specific region as an area of buildings, green belt areas, or certain other areas are a public authority concerning all the people of Indonesia. Therefore, it should be arranged in the form of laws, and the appropriate legislation is the law on Spatial Planning.

After reading the above description, it can be concluded that the arrangement of the individual Land Right and regulation of land use is set separately, i.e. individual Land Right arrangements are set out in Article 2 paragraph (2) letters (b) in conjunction with Article 4 paragraph (1) in conjunction with Article 16 paragraph (1) and its use in Article 4 paragraph (2) of Land Act, whereas land use regulation is set forth in Article 2 paragraph (2) letters (a) of Land Act. Land Right only regulates legal relations between the land and private rights holders, so Land Right only the direct consequences to the holders of rights individually, while the public nature of land allotment result for all Indonesian people.

## **CONCLUSION**

1. Land Act authorizes the State as organizational power of the Indonesian people at the highest level to determine and regulate land use. Authority by Land Act is called right to control solely relating to public law. Pursuant to the authority to determine the allotment of land, the State reserves the right to determine the land to be used as building area, green belt areas, and other areas. Determining a specific region as an area of buildings, green belt areas, or certain other areas are a public authority concerning all the people of Indonesia. Therefore, it should be arranged in the form of laws, and appropriate legislation is the law on Spatial Planning.
2. Land Act authorizes the State as organizational power of the Indonesian people at the highest level to determine and regulate the rights to own on the land. So regulation on the settings on individual Land Right only regulates on granting certain rights to a person on the land, do not set anything else. As a result of the provision of the individual Land Right is granting authorize to the holder to be entitled to use the land in question merely required for the benefit of Land Right is directly related to the use of the land within the boundaries according to the Land

- Act and other higher legal regulations. This individual Land Right has private law aspect.
3. Setting the property right and rights to use in Land Act has fulfilled the principle of consistency, because property rights and rights to use only set on the individual Land Right and the authority acquired by the subject of land rights entitled to it.
    - a. Setting Leasehold and Buildings Right in Land Act in addition to regulate individual Land Right and the authority acquired by the subject of land rights which they are entitled, is also set on the land allotment.

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