

Legal Certainty of Lease Rights for Foreign Citizens of Ownership Land in Indonesia

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Abstract

Introduction: In Indonesia, regulations have been issued that guarantee certainty over land in Indonesia, one of which is Law Number 5 of 1960 concerning Basic Agrarian Law, which was subsequently derived using Government Regulation Number 10 of 1961 concerning Land Registration and replaced by Government Regulation Number 24 of 1997 concerning Land Registration, Foreign nationals who have an interest in investing in Indonesia do not have a few lease agreements to lease land, especially in Bali, lease agreements in general regulations are regulated in Article 1548 of the Civil Code but because the lease period in Indonesia is not specifically regulated, So there is often a legal smuggling where a lease agreement has a long term, even indicating a lease for life. Therefore, the importance of legal certainty regarding the lease period is regulated in a law and regulation, so that in determining the period in the lease agreement still has a propriety and fairness in its implementation.

Purposes of the Research: namely regarding the time limit for leasing for foreigners on land in Indonesia which needs a special regulation that is clearer and more detailed.

Methods of the Research: The research method in this writing uses normative juridical legal research with a statutory approach, legal concept approach and case approach. In this thesis, the author discusses two legal issues related to legal certainty of lease time limits on freehold land in Indonesia for Foreign Nationals and legal consequences arising from the blurring of legal norms regarding arrangements related to lease time limits for freehold land in Indonesia.

Results of the Research: The results showed that in terms of determining legal certainty related to the lease period for now, we can look for determining indicators regarding time limits. The consequences that arise when a lease agreement has a time limit that indicates a live well lease is a Non-Existent legal act.

Keywords: Legal Certainty; Time Limits; Leases.

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INTRODUCTION

The island of Bali is one of the tourism areas and also the level of mobility towards foreigners is very high, in addition to that foreigners who come to Bali more to invest as a business opportunity for them which is obtained from its tourism attractiveness, so that civil law relations arise between foreigners and residents. in Bali, one of which is leasing, both in the form of land only and also land and buildings, because foreigners cannot own land in Indonesia with the status of freehold land, because of the prohibition based on the legal rules that apply in Indonesia, namely provisions Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia and Article 2 of the UUPA.

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Foreigners can only own land in the territory of Indonesia with one land status between the Right to Use and the Right to Lease, as stipulated in Article 55 paragraph (2) of the UUPA, so that the Nationality Principle cannot be said to be too standard for its application, or in terms of mastery of rights. on land in the territory of Indonesia which is likely to be able to assist in the framework of development on a national scale even though foreign relations with land are different from the relationship between Indonesian citizens and land who have a full relationship. That foreigners can only have usage rights and lease rights over land in Indonesia, as long as the interests of Indonesian citizens are not disturbed, and that land ownership by that person is required by the government in the context of the Indonesian economy.¹

Article 45 of the UUPA also emphasizes that foreign nationals can control land in Indonesia with the status of lease rights, where the article states that those who can own land lease rights are: 1) Indonesian Citizen; 2) Foreigners domiciled in Indonesia; 3) Legal entities established according to Indonesian law and domiciled in Indonesia; 4) Foreign legal entities that have representatives in Indonesia.

From the background above, a legal issue arises which will be discussed in this study, namely related to the certainty of a time limit for leasing land by foreigners which for now has not been regulated, so that landowners and foreigners with their agreement can have a legal leasing relationship with a free period. such as 30 (thirty) or even over 50 (fifty) years, therefore it will indicate a lease period that is almost the same as a lifetime, this is due to the time limit for land and/or land and building leases in the UUPA and other regulations do not regulate clearly (obscure norms), so landowners think that leasing with foreigners with long time limits has no legal impact.

In the legal issues mentioned above, a problem arises, namely regarding the time limit for leasing for foreigners on land in Indonesia which needs a special regulation that is clearer and more detailed, so that in its application in the community it can make a basis for making decisions and providing boundaries. Boundaries that provide proper legal certainty, thus there will no longer be a legal action, especially in the context of a lease that has a very long period of time or even indicates a lease agreement for life.

METHODS OF THE RESEARCH

The method in this study uses a type of normative juridical research where this type of research can be interpreted as a scientific procedure to find the truth based on the scientific logic of law both in terms of normative.² Using a statutory approach, legal concept approach and case approach to find out how long the term of a lease agreement is regulated and its arrangements within the community itself. By collecting legal materials from primary legal sources, namely laws and regulations related to the regulation of leasing legal acts, then secondary sources of legal materials, namely books, texts, journals and legal cases. The analysis technique used is in the form of Interpretive Techniques where this technique uses types of interpretation in legal science such as grammatical, systematic, theological and contextual interpretations, then the Evaluative Technique is an assessment technique contained in primary and secondary materials.

¹ Hasan Wargakusumah, *Hukum Agraria*, Gramedia Pusaka Utama, Jakarta, 2010, p.33.

² Johnny Ibrahim, *Teori dan Metode Penelitian Hukum Normatif*, Bayumedia, Malang, 2012, p. 57

RESULTS AND DISCUSSION

A. Legal certainty on the time limit for leasing of ownership land in Indonesia for foreign nationals

Basically certainty is a matter (state) that is certain, both regarding provisions and stipulations which essentially have certain and fair elements, to be used as a guideline so that it gives birth to an order, therefore an order must support a necessity so that it is considered reasonable, so that later the law can be carried out according to its proper function for the sake of certainty and justice, because a certainty itself can only be answered normatively not but answered in a sociological way³.

The policy (politics) of agrarian law (land law) is guided by Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which emphasizes that the purpose of controlling land, water and the natural resources contained therein by the state is to achieve the maximum possible the great prosperity of the people. The Basic Agrarian Law Number 5 of 1960 hereinafter referred to as the UUPA was promulgated on September 24, 1960, where the UUPA was based on Pancasila and Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, the birth of this Law is expected to be able to overhauling the Indonesian agrarian system which was previously dualism and individualism caused by certain conditions, this adjustment is basic or fundamental, because both regarding the structure of its legal instruments, regarding the underlying conception, as well as its content, what is stated in the UUPA must be in accordance with the interests of the Indonesian people and meet the needs of the times.

In general explanation I of the UUPA it is stated that there are 3 (three) main objectives namely: 1) laying the foundations for drafting national agrarian law which will be a tool to bring prosperity, happiness and justice to the State and the people, especially the peasant people, in the framework of a just and prosperous society; 2) laying the foundations for establishing unity and simplicity in land law; 3) laying the foundations for providing legal certainty regarding land rights for the people as a whole.⁴ The community's interest in land rights policies is the guarantee of protection of individual rights to land, in the UUPA this matter stipulates several primary land rights, namely: 1) Right of Ownership; 2) Cultivation Rights; 3) Building Right; 4) Usufructuary Rights.

For foreign nationals in Indonesia, the law provides arrangements regarding land tenure that can be controlled by rights, one of which is the rental right for buildings (Article 44 UUPA), land tenure by foreign nationals is often carried out with an instrument in the form of an agreement. , In the provisions of the Civil Code, hereinafter referred to as the Civil Code, namely in Article 1313 it states that an agreement is an act by which one or more people bind themselves to one or more people,⁵ in this case the agreement regulates the legal relationship between foreign citizens and Indonesians as stipulated in Book III of the Civil Code, in a legal relationship agreement each party has reciprocal rights and obligations, one party has the right to demand something from the other party, and the other party others are obliged to comply with these demands, and vice versa. The intended lease

³ Dominikus Rato, *Filsafat Hukum Mencari: Memahami dan Memahami Hukum*, Laksbang Pressindo, Yogyakarta, 2010, p. 59.

⁴ Boedi Harsono, *Hukum Agraria, Sejarah Pembentukan UUPA, Isi Dan Pelaksanaannya*, Jilid 1, Djambatan, Jakarta, 2008, p.219.

⁵ Soedharyo Soimin, *Kitab Undang-Undang Hukum Perdata*, Sinar Grafika, Jakarta, 2006, p, 311.

right is a form of legal relationship in a lease agreement to rent a house/building that already exists on a piece of land to be occupied without mastery over the land rights.⁶

In its development, various types of lease agreements arose, one of which is the lease agreement for a plot of land, a lease agreement for a plot of land will generally be used as a place to establish a business or a residence by the tenant, with this simple starting point causing the lease of a plot land is developing very rapidly, besides being practical and affordable, the function of renting a plot of vacant land is being able to set up a business desired by the lessee without requiring the approval of the land owner and that is only temporary as long as the construction of the building does not violate the provisions of laws and regulations.

The regulations regarding leasing, apply to all types of leasing, regarding all types of goods, both movable and immovable property that use a certain time or that do not use a certain time, because an agreement is an event where a person promises to another person or where two people promise each other to do something. According to Article 1549 of the Civil Code, all types of goods, both immovable and movable, can be leased. Basrah Lubis argued that:

"If the object being rented is destroyed during the lease due to overmacht, the lease agreement is null and void, and the lessee is not entitled to compensation, either the object in whole or in part. Whatever the statement, the cancellation of the agreement does not need to be requested for a statement and the risk of the destruction of the leased object as a whole is the party that leases it (the owner of the rights to the object) and cannot ask or demand payment of rent from the lessee or strictly speaking the rent is automatically void, and otherwise the lessee cannot demand replacement of goods or compensation from the lessee (Article 1553 of the Civil Code)."⁷

Leasing by foreigners in Indonesia raises many new legal problems, including other hidden indications when a foreigner enters into a rental agreement with a period limit that exceeds the principle of decency in Indonesia, because Law No. 5 of 1960 does not regulate the period for which leasing and in other general rules. In terms of determining a reasonable rental period and providing clear and fair legal certainty for both the lessee and the lessor the parties can make the principle of decency where the principle is stated in Article 1339 of the Civil Code, this principle relates to the provisions regarding the contents of the agreement required by propriety based on the nature of the agreement, the principle of decency here will be linked or correlated with a regulation that has a time limit on land ownership rights in Indonesia, one example is Article 29 of the UUPA where Cultivation Rights are granted for a maximum period of 25 years or a maximum of 35 years and can be extended for a maximum period of 25 years, then in Article 35 of the UUPA where Building Use Rights can be granted for a period of 30 years and can be extended for a maximum of 20 years, besides that the Indonesian government has also issued the latest regulation, namely Government Regulation Number 18 of 2021, where in Article 52 paragraph (1) provides a usage right for a maximum period of 30 years and can be renewed for a maximum of 30 years. If the land owner provides an understanding in providing a time limit for the lease by making the principle of decency the basis for granting a time period,

⁶ Maria S.W Sumardjono, *Kebijakan Pertanahan, Antara Regulasi Dan Implementasi*, Kompas, Jakarta, 2009, p.171.

⁷ Basrah Lubih, *Sewa Menyewa Dan Pembahasan Kasus*, Diklat Kuliah FH USU, Medan, 1993, p.43.

then for now the lease can be said to have obtained a legal certainty and becomes a perfect lease agreement because it does not leave an important element, namely an essential element of the lease agreement.

B. Legal Consequences Arising From The Obscurity of Legal Norms Regarding Arrangements Related To The Time Limit For Leasing Ownership Land In Indonesia

The main purpose of law is to create an orderly social order, to create order and balance. By achieving order in society, it is hoped that the interests of society will be protected. To achieve these legal objectives, the law must be able to divide what is the right and which is the obligation of citizens, divide authority, and regulate how to resolve legal issues and maintain legal certainty.

As stated in Article 1570 of the Civil Code it reads "if the lease is made expressly, the lease ends by law, if the specified time has passed, without the need for notification for that". And Article 1571 of the Criminal Code reads that "if the lease is carried out in an unspoken manner, the lease does not expire at an unspecified time, if the other party wishes to terminate the lease, by paying attention to the grace period required according to local customs". The validity of a rental agreement must meet the general requirements for the validity of an agreement as regulated in Article 1320 of the Civil Code and the requirements. The validity of a rental agreement must meet the general requirements for the validity of an agreement as regulated in Article 1320 of the Civil Code and requirements.

The agreement, if one of the conditions is not fulfilled by one of the parties, can result in cancellation. The legal consequences of an annulment are in principle the same as an agreement null and void, revocable or non-existent, that is, the three of them result in the legal action becoming invalid or the legal action having no legal consequences. The reasons for annulment are also regulated concretely in articles 1446 to 1456 of the Civil Code and are supplemented by Jurisprudence and Doctrine as other legal sources, while the causes for annulment are an inability to act, a person is considered incapable of acting if he is not yet 21 years old and not married, 21 years old but dark-eyed, memory-sick, imbecile or spendthrift.

This lease agreement without a time limit does not comply with Article 1339 of the Civil Code, where the parties are not only bound by what is expressly agreed to in the agreement, but are also bound by propriety, custom and law. The term of land use which is forever/indefinite is contrary to the principle of decency in society. Lease agreements are basically subject to the principle of consensuality, namely the principle that basically agreements and engagements arise from the moment an agreement is reached.

From the description above, it can be concluded that the legal consequences arising from the obscurity of legal norms for land lease arrangements, especially property rights in Indonesia for foreigners, lease agreements without a time limit do not fulfill the elements that must be met in a lease agreement, namely for a certain time. This agreement is invalid because it does not meet the legal requirements of a lease agreement. The essentialia part of an agreement is the part of the agreement that must exist. If such part does not exist, it is not a named agreement intended by the parties. In the lease agreement, which is an essential part of the agreement of the parties, the object of the lease, the term of the lease, and the rental fee. The essentialia part of an agreement embodies the complete form of an

agreement, if this is not fulfilled, then the demands for fulfilling the agreement cannot be accepted. This is a non-existent legal action, namely an act that does not fulfill one or all of the elements of a (certain) legal action. Therefore, this agreement is deemed to have never existed and has no legal consequences.

CONCLUSION

The way to provide legal certainty regarding the time limit for leasing of private land in Indonesia for foreign nationals is by looking for determining indicators regarding the time limit contained in 1548 of the Civil Code which is the legal basis for a leasing because the article mentions "for a certain time". Determination of the indicators The time limit can be used with a mechanism, namely correlating the determination of the time period to be stipulated in the lease agreement with the rules for use rights in Government Regulation Number 52 paragraph (3) because the acquisition of Use Rights is also based on an agreement as well as leases based on by an agreement too. So that this can also prevent legal smuggling over ownership of land rights in Indonesia, as well as minimize indications of a lease agreement for life, then a limit in determining the time period is very important so that legal certainty can be upheld in the agreement itself, and can provide a reasonable, clear and fair law for the parties. The legal consequences arising from the obscurity of legal norms regarding arrangements related to the time limit for leasing land owned by private property in Indonesia, namely that it can make an agreement null and void, in line with that, Catherine Elliot and Frances Quinn stated void contracts are agreements that create no legal obligations and for which no remedy will be given,⁸ because the lease term is entered into a lawful cause, so an agreement must be made based on objectives that do not conflict with applicable law and are prohibited by law or social norms, a cause that is lawful is one of the objective conditions in an agreement and if the objective conditions are not met then the agreement becomes null and void (null and void), this can also be said to be a non-existent legal action, namely a situation where an act does not fulfill one or all of the elements of a (certain) legal action.

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