

Granting of Ownership Rights to Shophouses Following the Issue of Regulation of The Minister of Agrarian and Spatial Planning/Head of The National Land Agency of The Republic of Indonesia number 18 of 2021

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ABSTRACT

In the past, shophouses were not eligible for ownership rights as they were primarily designated for commercial purposes, whereas ownership rights were exclusively granted for residential properties. Nevertheless, during its evolution, shophouses can also serve as dwellings. This is deemed to be inconsistent with the philosophical underpinnings of property rights, which are solely intended for domestic use. The subject addressed in this article pertains to two main aspects: the characteristics of property rights in Indonesia and the characteristics of property rights specifically related to shop houses. The research methodology employed in this work involves legal research utilizing statutory and conceptual approaches. The findings in this article are primary. Property rights in Indonesia are characterized as hereditary, with the highest level of strength and comprehensiveness. Furthermore, ownership of shophouses can be established through property rights, subject to the following conditions: obtaining permission to use the land and building for both residential and commercial purposes, having valid or expired Building Use Rights or Use Rights, and/or having the rights holder's name registered alive or deceased.

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1. INTRODUCTION

The Indonesian land law is a self-contained legal framework governing land ownership and use. The implementation of the UUPA involved the repeal of various laws inherited from the Dutch, such as the *Agrarische Wet*, *Domeinverklaring*, and *Koninklijk Besluit*, as well as Book II of the Indonesian Civil Code in relation to matters concerning land, water, and natural resources, with the exception of the regulations regarding mortgages.

The implementation of the Basic Agrarian Law (UUPA) has brought about substantial transformations in the land tenure and management system in Indonesia [1] UUPA embodies the inherent autonomy of the Indonesian people in governing their own territory, as the connection between the earth, water, land, and space and the Indonesian people is a perpetual bond. The concept of agrarian understanding can be interpreted in both a limited and comprehensive sense.

The term "agrarian" pertains to land in a limited sense, specifically land that is used solely for agricultural purposes [2] The term "earth" in UUPA encompasses not only the surface of the earth, but also the entirety of its body, extending below the surface and underwater. The definition of water in Indonesian territory encompasses both in land waters and seas, including the space above the ground and water [3], in a comprehensive sense.

Law Number 5 of 1960, often known as UUPA, imposes restrictions on land ownership rights. These restrictions can be categorised into two distinct perspectives: the subject and the object. From a subject perspective, the ownership of land is subject to certain constraints as outlined in Article 21 of the UUPA. These limitations pertain to the legal subjects who are eligible to own land. Only individuals who hold Indonesian citizenship are eligible to have property rights, as determined by the government. Foreigners who acquire property rights through inheritance without a will or through marriage, as well as Indonesian citizens who lose their citizenship after the implementation

of this law, are required to surrender those rights within one year of acquiring them or losing their citizenship. If the property right is released after this specified duration, it is legally extinguished and the land is transferred to the State, as long as there are other parties with encumbrances on the land. Furthermore, an individual who possesses both Indonesian and foreign citizenship is prohibited from owning land with property rights.

There is a further constraint on property ownership, specifically on the objects that can be subject to property rights, which are restricted in their variety. The property rights that can be obtained are residential homes, as stated in the Decree of the Minister of State for Agrarian Affairs/Head of the National Land Agency Number 6 of 1998. The operational implementation of this decree is regulated in the Circular Letter of the Minister of State for Agrarian Affairs/Head of the National Land Agency Number 500-3460 dated 18 September 1998, which provides further instructions regarding the granting of ownership rights to land for residential homes.

Shophouses in contemporary society have transformed to fulfil both commercial and residential functions. Consequently, there is now a demand for explicitness about the ownership rights of shophouses, which were historically exclusively intended for commercial purposes. Nevertheless, the recent enactment of Regulation Number 18 of 2021 by the Minister of Agrarian and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia has brought about a noteworthy advancement in the process of awarding ownership rights to shophouses. This law acknowledges the dynamic characteristics of shophouses and underscores the necessity of granting ownership rights to individuals who use these buildings for both residential and commercial purposes. The legislation stipulates specific criteria for acquiring ownership rights for shophouses.

One of the disregarded limitations that underwent modifications was associated with the constraints on seeking ownership

rights for shop houses. The restriction has been lifted according to Regulation 9/2020 issued by the Minister of Agrarian Affairs/Head of the National Land Agency of the Republic of Indonesia. This regulation allows Indonesian citizens who own building use rights and use rights for residential, shop house and office house purposes to request ownership rights. Article 94 of Regulation 18/2021 further confirms this permission, stating that the article aims to provide the broadest possible opportunity for ownership. The comprehensive demand for an augmentation in building utilization privileges and utilization privileges over shophouses and residential houses transforms into property rights.

This regulatory change generates conflict as it contradicts the fundamental principles of land ownership rights, which primarily serve the purpose of providing a dwelling for individuals. The provision of housing is considered a fundamental human need, second only to food and clothing. Therefore, allocating land for commercial purposes, such as a shophouse, is deemed inappropriate in this context. In addition to residential homes, ownership rights cannot be awarded as per the Decree of the Minister of State for Agrarian Affairs/Head of the National Land Agency Number 6 of 1998. Undoubtedly, this decision contravenes the concept of justice, which stipulates that any individual who consents to the planning and utilisation of land should be able to apply for an expansion of land rights.

The problem formulation in this paper encompasses two aspects: firstly, the examination of property rights features in Indonesia; and secondly, the analysis of ownership rights characteristics pertaining to shop houses. The primary study goals of this article are to examine the attributes of property rights in Indonesia and to analyse the attributes of property rights specifically pertaining to shop houses.

2. Key Attributes of Ownership Rights in Indonesia

A certificate is the outcome of the process of registering land, specifically a sequence of actions that culminate in the issuance of a certificate of title that is legally recognised as a valid form of evidence. A land title certificate serves as irrefutable evidence of legal ownership of land. A certificate is a document that contains a duplicate of the land book and measurement letter (for systematic land registration) or a visual representation of the situation (for sporadic land registration). These components are combined and the format is defined by the minister [4].

The government has implemented a standardised system for land registration activities. These activities involve receiving applications from individuals or entities, processing them, and issuing proof of rights (certificate). The registration data is then recorded and maintained in the land book [5]. Therefore, it can be asserted that when a land right is registered, the land possesses a certificate serving as evidence of the right. The purpose of the certificate is to authenticate the ownership rights to a specific piece of land and identify the individual who holds such rights. The evidence can be observed from the empirical and legal information documented in the certificate. Physical data encompasses details about the geographical position, boundaries, and size of the registered land plot, along with information about the structure and its upper components. On the other hand, juridical data comprises information about the legal standing of the registered land plot, its owners, and the rights of other parties, including the rights associated with the land plot. additional rights that impose a burden on him.

The issuance of this land certificate will subsequently ensure legal assurance and safeguard the rights of the landholder. Land rights refer to the legal authority granted to an individual to have control and use of a certain piece of land [6]. In the context of civil law, a

certificate serves as compelling and irrefutable evidence. A certificate of strong evidence is a document that contains both physical and juridical data that hold evidentiary power.

Individuals are granted and possess land through the rights stipulated in the Basic Law on Agraria (UUPA), for the purpose of use or utilization [7]. Ownership rights refer to the legal entitlements that grant individuals the authority to use or benefit from the land they possess. The term "use" denotes the use of ownership rights to land for the construction of various structures, such as residential residences, retail stores, hotels, corporate offices, and industrial facilities. The term "utilize" denotes the use of property rights to land for activities such as agriculture, fishing, animal rearing, and plantation, rather than solely for constructing structures. Property rights, as defined by Law 5/1960, encompass rights pertaining to property that serve a societal purpose, similar to other rights. According to Article 6 of Law 5/1960, ownership rights over land should not only benefit the owner but also be advantageous for others or the public interest, if required. [8]. These property rights must not disrupt public order and interests.

The authority vested in ownership rights bears a striking resemblance to the authority exercised by the state as a governing entity in granting land rights to its residents, as property rights holders possess the ability to lease their land rights to external parties, among other possibilities. In addition to its strength and comprehensiveness, land ownership rights possess the characteristic of hereditary transferability, allowing the right holder to pass them on to their descendants. Attributing this feature does not imply that the right is an absolute, boundless, and inviolable entitlement. The right to *eigendom*, as per its original definition, is upheld. Property rights, being both hereditary and robust, can be transferred through various methods such as sale and purchase, exchange, agreement, release, auction, grant, or any other mutually agreed means. The specific mechanism for

transferring these rights will be determined in a manner that consistently ensures the certainty of land ownership.

The right to control refers to a legal relationship where one has authority and ownership over an object, allowing them to use or utilize it for their own benefit. The word "right to control" refers to the authority to exercise physical supervision or control over the objects that one is in charge of. One aspect of the right to control is the authority to protect its rights against those who attempt to undermine it [9].

According to UUPA article 20, paragraph (1), ownership rights over land are inherited and considered the most powerful and comprehensive rights that individuals can possess. This is subject to the conditions outlined in article 6 of UUPA. This paragraph highlights the emphasis placed on property rights by the UUPA. It asserts that property rights are the most powerful rights an individual can possess in relation to land. Another defining feature of this property right is its status as the most comprehensive and unrestricted right. The provision in the *Burgerlijk Wetboek* (BW) that establishes property rights as the strongest and most comprehensive must not be misconstrued as absolute and inviolable. This attribute would directly contradict the established and societal legal nature of each individual right.

The social role of property rights is determined by the provisions outlined in Article 6 of the UUPA. Thus, this ownership entitlement can be regarded as completely unrestricted and sacrosanct. When comparing property rights to other rights, it is evident that property rights are the most robust and comprehensive rights that an individual can possess. This property right is also heritable, meaning it can be passed down through generations [10].

Ownership Rights possess three fundamental attributes: inherited, strongest, and fulfilled. Hereditary refers to the perpetual transfer of land ownership rights to the heirs of the deceased individual who fits the criteria. The term "strongest" refers to the condition where the ownership of this land is

permanent and legally protected from any challenges by other parties. In addition, the term fulfilled signifies that the individual possessing the Right of Property possesses extensive power, including the ability to transfer, pledge, lease, and grant rights to new land [11].

Attributes of Ownership Rights for Shophouses

Shophouse structures in Indonesia have been in existence since the colonial era and are characterised by their blend of residential and commercial services. At first, the Chinese population in Indonesia had a scarcity of land available for trading. In order to meet their requirements for both living and trading, they devised the idea of shophouse housing.

The Chinese settlements in the northern coast of Java can be traced back to the seventeenth century when there was a massive migration of Chinese diaspora to Java [12]. The migration motives of the Chinese in the seventeenth century were influenced by various factors, including economic opportunities and political stability. The presence of Chinese communities in the northern coast of Java has contributed to the cultural diversity and economic activities in the region.

The ownership of shophouses in Indonesia involves multiple dimensions, such as the significance of the physical structure, the well-being of occupants, and the cultural assimilation. Zahrah et al. (2021) investigate the significance of the physical surroundings on the well-being of individuals living in store houses in Medan, Indonesia. Their research offers valuable insights into the viewpoint and encounters of individuals residing in shop houses, elucidating the importance of property ownership in altering the lives of occupants.

In addition, Zahrah (2020) examines the well-being of female inhabitants residing in shophouses in Medan, Indonesia. The study examines the impact of appreciation and casual contacts on the well-being of women residing in shophouses. Gaining insight into the experiences and obstacles

encountered by women in shophouses enhances our full comprehension of property ownership dynamics within this particular setting.

Examines the architectural structure of shophouses, which emerged as a consequence of cultural assimilation by immigrants. This study explores the historical and cultural background of shophouses in Indonesia, offering valuable insights into the importance of these structures and their ownership in the nation.

As per Article 149 paragraph (2) of Regulation 18/2021 by the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia, a home office is defined as a single residence that serves as both a living space and a workplace. Typically, the bottom level is designated for commercial purposes, while the floor above is utilised as a residential space. This arrangement optimises productivity and spatial organisation by separating work-related activities from the living area.

The regulation governing the granting of ownership rights to land for shophouses is outlined in Article 145 letter an of Ministerial Decree ATR/Head of BPN 18/2021. To obtain these rights, one must submit an application to the Land Office in the relevant area, along with the necessary documents. Following this, the Head of the Land Office will issue a decision confirming the granting of ownership rights to the land. According to BPN Decree 1399/2022 and Article 149 of Ministerial Decree ATR/Head of BPN 18/2021, it is specified that ownership rights of shophouses, which come from building use rights (HGB) or use rights (Hak Pakai), are not included in an apartment unit that belongs to an individual Indonesian citizen with an area of up to 120 m². Upon request, these rights will be revoked and returned to the previous right holder with Ownership Rights. The additional conditions include: the land and building must have legal authorization for both residential and commercial use, such as operating a shop; the Building Use Rights or Use Rights must either

still be valid or have expired; the rights must be held by either a living person or a deceased individual.

Ownership rights for shophouses are not granted to all properties. There are specific provisions that limit eligibility. These provisions state that ownership rights are only granted to shophouses that are not part of an apartment unit and are owned by an individual Indonesian citizen. The shophouse must have an area of up to 120 m². Additionally, the land and building must be allowed to be used for both residential and commercial purposes, specifically as a shop. This is outlined in the Second. It can be inferred that providing residential dwelling does not contradict the ideology of property rights.

Shophouses can now serve as residences, so it would be unjust if shophouses used for living do not have the same ownership rights as regular houses. In this scenario, the government is deemed unjust if it fails to optimise profits and prioritises social welfare.

3. METHODS

Statute approach and conceptual research methodologies were employed in this study to analyze the key attributes of property rights in Indonesia and specifically related to shophouses. The data sources consist of main legal resources, including statutory regulations, as well as secondary legal materials, such as books and journals/articles obtained using library research methods,

which provide further insights into writing-related topics.

4. RESULTS AND DISCUSSION

Property rights in Indonesia are characterised as hereditary, with the highest degree of strength and comprehensiveness. According to the theory of legal evolution in Indonesia, ownership of shophouses can be considered as property rights if certain conditions are met. These conditions include obtaining permission to use the land and building for both residential and commercial purposes, having valid or expired Building Use Rights or Use Rights, and/or having the rights holder's name registered alive or deceased. To make progress towards establishing legal rights, it is imperative to address certain issues pertaining to ownership of this shophouse. These include the duration of residency, the legal status of the individual residing in the shophouse (referred to as an occupier), and the provision of evidence of residency.

Here are some crucial recommendations to enhance this journal: The individuals in question who reside in the shophouse, inhabitants, require distinct and unambiguous legal clarity. It is vital to document the residents because the person registered as the owner may not be the same as the person living in the shophouse with or without such of an agreement made binding or not between both parties. This might create confusion over the legal foundation for granting ownership rights to the shophouse.

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