



(MUDIMA)



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

Yudha Tri Dharma Iswara^{1*}, Hanif Nur Widhiyanti², Novitasari Dian Ph³

Magister Kenotarian, Fakultas Hukum, Universitas Brawijaya, Malang

Corresponding Author: Yudha Tri Dharma Iswara triyudha46@gmail.com

ARTICLE INFO

Keywords: Legal Certainty, Time Limits, Leases, Foreign Citizens

Received : 2 April

Revised : 20 April

Accepted : 21 May

©2023 Iswara, Widhiyanti, Dian: This is an open-access article distributed under the terms of the [Creative Commons Atribusi 4.0 Internasional](https://creativecommons.org/licenses/by/4.0/).



ABSTRACT

In Indonesia, regulations have been issued that guarantee certainty over land in Indonesia, one of which is Law Number 5 of 1960 concerning the Basic Agrarian Law, which was subsequently reduced using Government Regulation Number 10 of 1961 concerning Land Registration and replaced with Government Regulation Number 24 of 1997 Concerning Land Registration, Foreign Citizens who have an interest in investing in Indonesia do a lot of land lease agreements, especially in Bali, because the term of a lease in Indonesia is not specifically regulated, law smuggling often occurs where a lease agreement has a long term, even indicating a lease for lifetime. Therefore the importance of a legal certainty regarding the lease term is regulated in a statutory regulation, so that in determining the term in the lease agreement it still has a decency and fairness in its implementation. The research method in this writing uses normative juridical law research with a statutory approach, legal concept approach and case approach. In this thesis, the author discusses two legal issues related to legal certainty regarding the time limit for leasing private land in Indonesia for foreign nationals and the legal consequences arising from the ambiguity of legal norms regarding arrangements related to the time limit for leasing private land in Indonesia. The results of the research show that in terms of determining legal certainty related to the lease term for now, it can use or be based on the principle of decency in Article 1339 Kuperdata. The consequences that arise when a lease agreement has a time limit indicating a living well lease is a non-existent legal act

INTRODUCTION

The island of Bali is one of the tourism areas and also the level of mobility for foreigners is very high, besides 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.

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.

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 the time being has not been regulated, so that land owners 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 because the time limit for leasing land and/or land and buildings in the UUPA or other regulations does not clearly regulate (vague norms), so that landowners consider leasing with foreigners with a long time limit has no legal effect.

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 term or even indicates a lease agreement for lifetime.

From the problems mentioned above, the facts have occurred in such a way, namely a lease agreement that can be said to be indicated for lifetime, in Supreme Court Decision Number: 2785 K/Pdt/2011, dated 16 (sixteen) May 2012 (two thousand and twelve), where in the decision it indicates a lifetime lease, which is the initial lease for a period of 15 (fifteen) years, followed by an automatic extension, free and without compensation, for each next 20 (twenty) year period until the second party die.

In these studies, especially regarding legal certainty control for Indonesian citizens over land in Indonesia, based on studies discussed so far, the level of authenticity of this study can be proven, but there are studies related to the time limit of ownership or control over land rights for foreigners with a different perspective different, as in previous research from ANAK AGUNG RATIH SARASWATI, Faculty of Law, Udayana University, Denpasar (Journal on 2021) by tittle ROLE NOTARY PUBLIC IN DETERMINE PERIOD LEASE TIME LEASE LAND TO INHABITANT FOREIGN COUNTRY, what differentiates between the originality of the first

and this research is related to views in determining the lease period for foreigners, where in the first originality refers to the provisions of Article 1548 of the Civil Code which states that a lease is an agreement, with which the parties one binds himself to give to the party that other enjoyment of an item during a certain time and with the payment of a price, which the party said later it was agreed upon, whereas in this study it did not only refer to Article 1548 of the Civil Code only, but refers to norms other laws as well as the elements of the agreement and an internal principle agreement.

Then what makes the difference is the second problem on This research is to describe the role of a notary in determine the term of land lease against foreigners while in This study discusses the legal impact arising from leasing land for foreigners whose time limit indicates a lease for lifetime.

METHODS

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. 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.

RESULTS AND DISCUSSION

a. Legal certainty on the time limit for leasing of ownership land in indonesia for foreign national

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 way. 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 issuance of this Law is expected to overhaul Indonesia's agrarian system which was previously dualism and individualism caused by certain conditions, the adjustment is basic or fundamental, because both regarding the structure of its legal instruments, regarding the underlying conception, as well as its content, which is stated in the UUPA must be in accordance with the interests of the Indonesian people and meet the needs according to the demands 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 unity and simplicity in land law;
3. Laying the foundations for providing legal certainty regarding land rights for the people as a whole.

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. Right to Cultivate;
3. Right to Build;
4. Right to Use.

For foreign nationals in Indonesia, the law provides arrangements regarding land tenure that can be controlled by rights, one of which is the lease 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, in this case the agreement regulates the legal relationship between foreign nationals 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 right is a form of legal relationship in a lease agreement to lease a house/building that already exists on a piece of land to be occupied without mastery over the land rights.

In its development, various kinds of lease agreements arose, one of which was the lease agreement for a plot of land, a lease agreement for a plot of land in general will be used as a place to establish a business or a residence by the lessee, with this simple starting point causing a lease on a plot of land. land is developing very rapidly, besides being practical and affordable, the function of leasing 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 leased 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 lease from the lessee or strictly speaking the lease is automatically void, and otherwise the lessee cannot demand replacement of goods or compensation from the lease (Article 1553 of the Civil Code)”.

Leasing by foreigners in Indonesia raises many new legal problems, including other hidden indications when a foreigner makes a lease 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 lease 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 contained 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 for the ownership of land 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, In addition, the Indonesian government has also issued a new regulation, namely Government Regulation Number 18 of 2021, which 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 of setting a time limit for a lease by making the principle of decency the basis for granting a time period, then for now the lease can be said to have obtained legal certainty and becomes a perfect lease agreement because it does not leave out 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 lease 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 lease 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 causes 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 also 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 lease 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

Mechanism of control over land rights, especially property rights in Indonesia for Foreign Citizens can only be done wrong One of them is by entering into a good lease agreement in the form of a plot of land, even including the building has been established on it as it turns out from Article 45 of Law Number 5 of 1960, basically every agreement has elements in its agreement instrument, in terms of

the lease agreement is one of the most important instruments namely the essential elements in the lease agreement which One of the essential elements is the lease term rent it yourself. so in providing a certainty law in the lease agreement that is by using one of which is the principle of decency contained in Article 1339 Civil Code by correlating it with regulations mastery of land rights for foreign nationals with term specified time so that it will provide certainty reasonable, clear and fair law for the parties.

Lease Agreement Renting Freehold Land Without Time Limit Between Indonesian Citizens and Foreign Citizens in Indonesia's positive law has violated the provisions of its legal requirements an agreement as in Article 1320, if a the agreement has violated the objective requirements regarding a cause lawful because of an agreement made based on a cause If it is not true and violates the provisions of the laws and regulations, it will make the agreement invalid. The lease agreement can be said to be invalid because does not meet the legal requirements of an agreement because it has violates the objective requirements of Article 1320 of the Civil Code. It is a non-existent legal act, namely an act which does not fulfill one or all of the elements of a (certain) legal action, so that this agreement is deemed to have never existed or null and void. If the conditions regarding a certain thing and a because the lawful (objective conditions) are not met, then in a the agreement will become null and void or in other words the rental agreement from the beginning was deemed non-existent or never created.

REFERENCES

Basrah Lubih, Rent and Discussion of Cases, USU Faculty of Law Lectures, Medan, 1993.

Boedi Harsono, Agrarian Law, History of the Formation of the UUPA, Contents and Implementation, Volume 1, Djangan, Jakarta, 2008.

Dominikus Rato, Searching for Legal Philosophy: Understanding and Understanding Law, Laksbang Pressindo, Yogyakarta, 2010

Soedharyo Soimin, Civil Code, Sinar Graphic, Jakarta, 2006.

Hasan Wargakusumah, Agrarian Law, PT. Gramedia Pusaka Utama, Jakarta, 2010.

Johnny Ibrahim, Theory and Methods of Normative Legal Research, Bayumedia, Malang, 2012.

Maria S.W Sumardjono, Land Policy, Between Regulation and Implementation, Kompas, Jakarta, 2009.

Anak Agung Ratih Saraswasti, The Role of Notaries in Determining Term Lease Time to Rent Land Against Foreign Citizens, Volume 6, No.2, Udayana University, Denpasar, 2021.

The 1945 Constitution of the Republic of Indonesia, Amendment IV. Civil Code, translated by Soedharyo Soimin.

Law Number 5 of 1960 concerning Basic Basic Regulations Agrarian Affairs (State Gazette Number 104 of 1960).

Law Number 16 of 1985 concerning Flats (Gazette State of 1985 Number 75).

Law Number 9 of 1992 concerning Immigration (Gazette State Gazette of the Republic of Indonesia Year 1992 Number 63, Additional State Gazette Number 3474).

Law Number 4 of 1996 concerning Mortgage Rights on Land Along with Objects Related to Land (Gates State Number 42 of 1996).

Law Number 12 of 2006 concerning Republican Citizenship Indonesia (State Gazette of 2006 No. 63).

Law Number 25 of 2007 concerning Investment (State Gazette of 2007 Number 67).

Government Regulation Number 18 of 2021 concerning Management Rights, Rights Land, Apartment Units, and Land Registration.

Government Regulation Number 40 of 1996 concerning Cultivation Rights, Rights Use of Buildings and Land Use Rights.

Government Regulation Number 41 of 1996 concerning Home Ownership Residential Or Residential Places By Foreign Citizens Who Domiciled in Indonesia.

Government Regulation Number 24 of 1997 concerning Land Registration.