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Indonesian Land Rights for Individual Limited Companies

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Abstract

The subject of individual limited companies' (ILC's) land rights in the Republic of Indonesia is complicated and contentious, owing to the country's complicated land tenure structure. This problem develops as a result of the distinct legal structure that controls land ownership, having a focus on individual as well as community rights. Furthermore, the growing demand for business and industrial property has prompted concerns regarding how these legal rights are granted and secured for limited enterprises. The primary goal of this research is to extensively investigate and examine Indonesia's legislation and rules regarding land rights as they pertain to individual limited companies. For this legal research, the data was gathered from different primary as well as secondary sources and content analysis was done. The current study used the normative research approach to collect data. It has been observed that ILCs' land rights in Indonesia are principally controlled via the Agrarian Law, which recognizes several land titles as well as tenure types, notably Hak Guna Usaha (HGU) for business reasons. According to the findings, getting HGU for restricted enterprises might be a complicated procedure that necessitates compliance with certain legislation and plans for land use at the national and regional levels. Nevertheless, Indonesia's ownership system is extremely complicated, with legislation differing at the national, provincial, as well as municipal levels. This variation makes it difficult to present a full investigation that incorporates all regional subtleties and specificities, thus reducing the findings' universality.

Keywords: Land Rights; Indonesia; Individual Limited Companies (ILCs); Basic Agrarian Law (UUPA)

1. Introduction

Indonesia is the nation with the highest Muslim population in the world, home to 13% of all Muslims (Briassoulis, 2011). The 1945 Constitution of the Republic of Indonesia stated that the land shall be controlled by the state and shall be used for the prosperity of all people due to the status of land as the property of God based on the interpretation of "land tenure" mentioned more than 20 times in the Holy Quran, one of the main sources of Islamic law. Although the government has complete control over

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the land, it awards fiefs to landowners who have contributed to society by paying the land tax and nurturing the agricultural areas (Khan, 2001). To ensure a sustainable management of the natural resources, the state and Indigenous people have long governed Indonesia's statutory system of land tenure arrangements. However, as a result of the conflict between these conventional arrangements and the government's approval of private company land control, particularly in rural and remote areas during the New Order (1967–1998) and part of the reformation era (2005–2014), conflict over land or other natural resources has increased (Riggs et al., 2016).

While the relationship between humans and land has always been dynamic, change in that relationship is one of the most significant impacts on the creation of land administration systems to organize all the areas of Indonesia (Akinola, 2018). The Preamble of the 1945 Constitution's fourth paragraph declares that in order to enhance public welfare and promote the intellectual life of the populace, the Republic of Indonesia's new government must defend all Indonesians and their entire native country. The protection of the nation and the homeland for the welfare of the people is emphasized in two of the four aims of the establishment of the Republic of Indonesia (Boone, 2019). While the government has a state-administered mandate to organize any lands for the welfare of society, the fifth principle of Pancasila, the fundamental philosophical system of Indonesia, declares social justice for all people. With the power to tax and finance it, the Indonesian government has a difficult time gaining access to the lands needed for the huge infrastructure development in all regions (Roestamy et al., 2022). For instance, the Special Capital Territory (DKI) Jakarta government still has to overcome numerous challenges to build affordable housing for the citizens of Jakarta city in order to provide a better service and adhere to the Pancasila principles because the practice of corruption has existed for 50 years in the provision of infrastructure services.

Since access to land and other natural resources is a component of the economic, social, and cultural rights guaranteed by the constitution, it is impossible to separate the large number of land conflicts that have occurred to date from the state's inadequate protection of these rights (Dhiaulhaq & McCarthy, 2020). Because they do not all have verified land under their control, the people's position is deteriorating. Even though there is a certificate, the fact that it was granted by an official body (in this example, BPN) does not necessarily mean there won't be issues. The Basic Agrarian Law, also known as UUPA (Basic Agrarian Law), which is based on Article 33 paragraph (3) of the 1945 Constitution, was passed in 1960 and has actually been the main source of land policy in Indonesia for a very long time (Thamrin et al., 2021). This reinforced by laws pertaining to land registration that have been passed, including Government Regulation of the Republic of Indonesia Number 24 of 1997 regarding Land Registration. Land Registration is defined in the Republic of Indonesia's government regulation as a series of activities carried out by the government continuously, continuously, and regularly, including the collection, processing, display, and maintenance of real data and juridical data, in the form of visualizations and lists, regarding fields and parcels of land (Resosudarmo et al., 2019).

This study's main goal is to thoroughly explore and analyze Indonesia's laws and regulations governing land rights as they apply to individual limited businesses. In example, enterprises in sectors like manufacturing, real estate, and agriculture rely

heavily on land as a key asset. Increased investment, new job creation, and economic growth in Indonesia may result from bettering and defining land rights for individual limited enterprises. Its potential to aid in the economic development of the nation justifies this study.

2. Literature Review

Beyond national borders and cultural settings, land rights for individual limited businesses have been a topic of concern on a worldwide scale. The topic of land tenure and ownership for enterprises has received a lot of attention in global academic and policy discourse. As a crucial element of sustainable growth and economic development, land rights for enterprises have grown in importance (Brondizio et al., 2021). According to Özkazanç-Pan and Pullen (2020), the degree to which individual limited firms can get and acquire property rights has a major impact on their ability to make investments, operate effectively, and remain in business over the long run. In sectors like agriculture, forestry, mining, and real estate development that depend on land resources, this feature is very important. The land management paradigm, which views land tenure, valuation, usage, and development as integral parts of the ubiquitous and vital duties carried out by organized societies, serves as the cornerstone of contemporary theories of land administration (Williamson et al., 2019). According to this paradigm, each nation implements its national land policy objectives by utilizing a range of land and resource management strategies and methods. Every jurisdiction has its own definition of what constitutes land administration within the context of these management strategies and instruments, but the fundamental components cadasters or parcel maps and registration systems remain the same. However, it is understood that they form only a small portion of a society's land management systems. These components are the focus of contemporary land administration.

Modern land administration theory is based on the land management paradigm, in which land ownership, valuation, usage, and development are viewed holistically as fundamental and pervasive tasks conducted by organized societies. The intricate interaction between formal legal frameworks and traditional or informal land tenure systems is a recurrent issue in international literature. The study's findings (Al Hakim et al., 2021) showed that the Batam City National Land Agency has successfully implemented the legal provisions governing its duties in the registration of land rights in order to provide the people of Batam City with legal certainty. Due to the imbalance of power with the Batam Concession Agency, who holds the rights to administer the land in Batam City, there are still challenges for them to overcome in conducting their tasks, including the registration of land rights in Batam City. Therefore, it is anticipated that the solution will include specific restrictions in this area to ensure that Batam City's land registration process complies with legal requirements. In India, the term "land records" refers to a broad category of documents that may also include Records of Rights (RoRs), Tenancy and Crop Inspection Registers, Mutation Registers, Disputed Cases Registers, etc. (Thakur et al., 2020). But this study has good conclusions but little mention of the specific difficulties the agency experienced; more precise information would support the argument.

Additionally, land records contain topographical details about each parcel of land, such as its boundary, size, and soil type, as well as economic data pertaining to irrigation and crops (Bal, 2017). In the process of land titling, which is a type of land reform, people and families receive official property rights for land that they had previously utilized informally or in accordance with customary land tenure. The Government of India introduced the National Land Record Modernization Program (NLRMP) with the goal of creating a modern, thorough, and transparent land records management system in the nation that ensures guaranteed, conclusive land titling of the immovable properties (Jonnalagadda, Stock, & Misquitta, 2021). Property rights arrangements are the results of historical evolutionary change routes that are unique to territorial jurisdictions in China (Kan, 2021). In contrast to popular belief, ideas regarding political structure, economic relationships, and social norms are what give rise to property rights. The High Court of Australia issued "the biggest native title ruling affecting Aboriginal ownership of the land in decades". The decision might "trigger compensation applications from many of the hundreds of native title holder groups throughout Australia, which could amount to billions of dollars," according to attorneys for mining firms (Wadi, 2019).

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According to Salim, Wulan, and Pinuji (2021), lack of access to knowledge on the PPTKH policy in Indonesia results from information not being disseminated effectively and systems supporting community meetings and discussions with government actors, academics and researchers, and activists and scholars not being well-developed. The community was successfully able to compile documentation to submit to an Inventory and Verification (Inver) team of Land Tenure in State. In order to give communities the tools and resources they need to comprehend the difficulties of recognizing land tenure and be empowered to suggest such mechanisms on their own, more cooperative work will be required moving forward within the context of community assistance and capacity building. A Certificate of Ownership, known as Sertifikat Hak Milik (SHM) in Indonesian, is used to establish land ownership, which has the strongest legal standing. While this is going on, the land titling procedure is frequently intricate and drawn out, and because of the handling of many documents by government organizations, certain organized people engage in fraud (Thamrin et al., 2021). The Indonesian legal system does not provide absolute certainty of rights; as a result, even after receiving a letter confirming their ownership of a plot of property, other parties may still file a lawsuit against the owner, contesting their ownership claim (Sidabutar, 2023). Roestamy et al. (2022) argued that to meet the demand for lands in metropolitan areas for a variety of uses or commercial purposes, it is vital that Indonesia establish a land bank institution. A five-story residential building can be built while saving more than 50% of the revenue needed to build affordable home for LIP, according to an analysis of landless housing costs in the Jabodetabek area.

3. Research Method

Since the current research study intends to investigate the Indonesian land rights for individual limited companies, the qualitative research technique was employed in this study. In the current study, an inductive research technique was used. This method is appropriate for this study's qualitative character. Furthermore, the current

study used the normative research approach to collect data. In legal studies, the normative research approach is the most often used. For the current study, data was gathered from both primary as well as secondary sources. Various laws, rules, and other legal documents were used as primary sources for the study. However, the secondary sources that were used to obtain data for this study were journal articles, books, literature, chapters of books, and others. West Law, JSTOR, Lexis, Wiley Online, and other online databases were used to acquire the necessary data. As a result, it is a legal research study that is primarily concerned with the Indonesian land rights for individual limited companies. The data acquired from a range of legitimate sources was analyzed using the content analysis approach in the research. This approach gave a thorough examination of a phenomena. According to Selvi (2019), content analysis is widely employed by qualitative researchers as a powerful analytical tool for the analysis of secondary data. Moreover, the data acquired from secondary sources served as input for the content analysis, and the conclusions were formed based on the outcomes of this data's content analysis.

4. Results

4.1. Legal Framework of Land Ownership in Indonesia

In Indonesia, the ownership of land is controlled by a convoluted legal system comprised 30 several laws, rules, and judicial precedents (Zainuddin, 2021). Indonesia's 1945 Constitution serves as the foundation for the country's property ownership legislation (Fahmi & Armia, 2022). Article 33 in the Constitution acknowledges that natural resources as well as land are within the sovereignty of the country and must be utilized to the greatest extent possible for the sake of the citizens. Furthermore, The UUPA, or Basic Agrarian Law Number 5/1960, is the foundation of Indonesia's ownership of land legislation. It addresses a number of issues, notably rights for land use, land tenure, redistribution of land, and land conflicts (Hidayanti, Koswara, & Gunawan, 2021). Indonesia respects the significance of Indigenous tribes' traditional land rights. The UUPA along with numerous regional legislation safeguard these rights, recognizing the historical relationship between indigenous groups and the land of their ancestors (Maria, 2018). The property registration process in Indonesia is established by Land Registration Law Number 24/1997. It requires landowners to register their ownership rights in the National Land Agency (BPN). Registration aids in the establishment of legal title and the resolution of land disputes (Richard et al., 2018). Moreover, In Indonesia, land ownership may commence in the shape of Hak Milik under the UUPA, regarded as the highest degree of property ownership, offering complete and unfettered rights (Butar-Butar & Turisno, 2022). Foreign persons and corporations, on the other hand, are typically not permitted to possess Hak Milik, but only in certain conditions (Mahendra & Yustiawan, 2023).

The UUPA further recognizes agricultural rights (Hak Guna Usaha) as well as usage rights (Hak Pakai). These rights enable individuals and corporations to utilize and cultivate land without really owning it. They are normally issued for set periods of time and are tied to specified terms and restrictions (Suartining & Djaja, 2023). Besides, the UUPA outlines the processes for acquiring as well as disposing of property, which include the standards for land registration. Land transactions

frequently need the presence of a public notary as well as making payments of different fees along with taxes (Roestamy & Martin, 2019). Also, property reform is an important element in Indonesia's property ownership structure. The state has the ability to acquire property for public use, and land distribution initiatives seek to offer land to poor farmers while also improving land tenure safety for vulnerable populations (Resosudarmo et al., 2019). Indonesia respects Indigenous people's traditional land rights. Through numerous policies and programs, notably the granting of documents of traditional title to land (Hak Ulayat), the state has taken steps to legalize these rights (Alden Wily, 2018).

4.2. Land Rights for Individual Limited Companies (ILCs) in Indonesia

ILC's land rights in Indonesia are controlled by a complicated legislative system which integrates land ownership requirements with prohibitions on foreign investment. These rules and regulations spell out the terms under which restricted corporations, such as those having foreign ownership, may acquire, utilize, and transmit land rights (Alden Wily, 2018). The Basic Agrarian Law of 1960 (UUPA) is the foundation of Indonesian land rights legislation, providing several sorts of land entitlements to limited corporations operating in the state. Among these are Hak Milik, or the Ownership Rights, that allow limited firms to buy land with complete ownership rights as well as control, despite the fact that ownership by foreigners is normally forbidden, except in tourism as well as development of real estate (Mujiburohman et al., 2023). Another right is Hak Guna Bangunan, which allows limited corporations, even those which are foreign-owned, to build and use structures on property held by others. This right usually has a maximum length of thirty years, having the option of renewing for a further twenty years. Companies may also look at Hak Guna Usaha, which grants them the right to develop and use land for cultivation or industrial uses for a period of twenty-five years that can be extended for a further twenty-five years (Fowler, 2022). Also, there is another right known as Hak Pakai, which allows businesses to utilize property for commercial, living, or industrial uses for a maximum of twenty-five years, with the potential of an extra twenty years extension (Suartining & Djaja, 2023).

Nonetheless, while pursuing ownership of land in Indonesia, foreign-owned enterprises must be aware of special constraints. In the case of Hak Milik, the foreign corporations, including limited businesses, are normally barred from obtaining this sort of property right unless a few exceptions are specified by government legislation. These exclusions often pertain to sectors like tourism as well as development of real estate, where restricted foreign ownership can be authorized under certain conditions (Kinseng et al., 2018). Foreign-owned enterprises can get Hak Guna Bangunan, which permits them to establish and utilize structures on property held by Indonesian persons or corporations. Despite the constraints, foreign-owned corporations can nevertheless traverse the Indonesian ownership of land setting by complying to these rules and investigating the many alternatives for acquiring property rights (Fowler, 2022).

4.3. Challenges Faced by Individual Ltd Companies in Indonesia

ILCs in Indonesia face a slew of problems as they negotiate the complicated

economic climate of this vast island. The regulatory framework is a big issue for ILCs in Indonesia. Businesses in Indonesia face a complicated regulatory framework, with bureaucratic delays, licensing necessities, and variable legislation between regions and industries. Navigating this legislative minefield may be laborious and expensive, causing corporate operations as well as strategic investments to be delayed (Guild, 2020). Another significant issue for ILCs in Indonesia is corruption. Although Indonesia has taken steps to eliminate corruption, it is still a problem, especially at lower tiers of government alongside some corporate sectors. It can result in bribes and illegal payments, which can raise operating expenses while generating an insecure business climate (Nurhidayat & Kusumasari, 2018). Moreover, Infrastructure limitations provide a significant problem for Indonesian enterprises. While the government has made advances in building up infrastructure such as transportation networks as well as energy supplies, still significant gaps remain. Poor roadways, insufficient public transit, and inconsistencies in electricity supplies all impede company operations, particularly in distant areas (Salim & Negara, 2018).

Access to capital is another important barrier for ILCs. While the economic sector is expanding, access to financing remains difficult, especially for SMEs. Banks' lending standards may be stringent, and interest charges may be expensive. Companies frequently look towards alternative financing methods, such as peer-to-peer funding as well as venture capital, in order to meet their financial requirements (Sukumar et al., 2022). Furthermore, individual limited corporations in Indonesia have a particular problem due to cultural as well as linguistic diversity. Communication may be a challenge with more than 700 languages prevalent throughout the archipelago, especially when operations are expanded to other locations (Mailin, Dalimunthe, & Zein, 2023). In Indonesia, market rivalry is fierce, where both local and foreign businesses strive for market dominance. To really stand and obtain a competitive advantage, businesses must develop successful marketing tactics (Ellitan, 2020). Besides, sustainability and environmental concerns are becoming increasingly crucial for Indonesian enterprises. Companies are under increasing pressure to implement sustainable practices along with adhering to environmental standards as public knowledge of environmental concerns develops (Hermawan et al., 2018). Finally, individual limited corporations in Indonesia may be concerned about political and financial stability. The political environment of the country is turbulent, and economic strategies may shift in reaction to external circumstances (Jakob et al., 2020).

5. Recommendations

This study provides several recommendations for future research to fill in the knowledge gaps. Some of them are described below:

- Future research should look towards the simplification as well as harmonization of property rules at various tiers of government. Simplified procedures would not merely make land purchase easier for ILCs but would also minimize administrative costs and improve clarity in transactions involving land.
- Reforming the prohibitions on ownership of land by foreign organizations, including ILCs, should be considered in future research. Investigating strategies to reduce these constraints while protecting national interests might boost international investment and drive economic development.

- Future research should look on legal changes that focus on identifying and safeguarding Indigenous and regional groups' traditional land rights. Clear standards for recognizing these rights throughout land acquisition procedures can help to avoid conflicts and protect the interests of vulnerable groups.
- Research should be conducted to determine ways to speed the digitalization of land labeling procedures in order to eliminate delays and increase transparency. An updated, effective land titling mechanism would assist ILCs by supplying clear and safe land titles, minimizing corruption chances, and fostering trust in property transactions.
- Future studies should focus on improving anti-corruption mechanisms within the state's administration system. This entails strict implementation of current anti-corruption legislation as well as the creation of systems for reporting and dealing with corrupt acts that may influence ILCs during the acquisition of land.
- Future studies should focus on developing criteria for meaningful as well as considerate community participation throughout land acquisition procedures. These recommendations would assist ILCs in navigating the cultural along with social complexities of various locations and ensuring that local populations' interests and worries are addressed.
- Future research should draw a strategy of reviewing land regulations and laws on a regular basis to ensure that they remain appropriate and successful in handling changing land rights challenges. To capture multiple viewpoints, stakeholder engagement and involvement should be obtained during these evaluations.

6. Conclusion

Thus, in Indonesia, individual limited corporations' land rights are regulated by special rules and constraints. These corporations can buy land; however, they must follow current land ownership regulations, which frequently favor Indonesian residents and local groups. When pursuing ownership of land, foreign or restricted corporations must traverse a complicated legal structure that includes leasehold contracts and collaborations with local persons or groups. Ecological and land-use restrictions must be followed in order to establish and retain land rights. Proper diligence as well as legal advice are required for any corporation seeking to purchase property in Indonesia. Finally, understanding and complying to local property ownership legislation is critical for successfully acquiring and retaining ownership of land in the nation. Moreover, future studies should focus on developing criteria for meaningful as well as considerate community participation throughout land acquisition procedures.

4 7. Implications

The current study has been effective in providing many implications, which contribute to its overall usefulness. The following are some of the legal ramifications of this research:

• *Theoretical Implications*

This study has given ILCs of Indonesia significant insights regarding the legal problems of land rights. It has assisted in explaining and condensing the sophisticated

legal landscape, which was formerly overlooked in the legal literature, by investigating the extensive regulatory structure and the issues ILCs confront. The research has helped to better grasp the land ownership limitations enforced on foreign corporations, particularly Individual Limited Companies. It has clarified the actual ramifications of these constraints, providing a nuanced view of how they affect foreign investment, development of the economy, as well as national interests. The study emphasized the importance of traditional ownership of land in Indonesia's property ownership system. It has enriched the literature by regional and domestic community land ownership rights by underlining the significance of identifying and maintaining these rights, providing details about the issues in reconciling customary and official land claims.

- ***Practical Implications***

The findings have practical implications for encouraging greater use of corporate social responsibility among ILCs. The study has urged ILCs to emphasize the prosperity of domestic communities, comply to environmental regulations, and guarantee that their property acquisition initiatives have a good social impact by highlighting the significance of community participation and responsible development of land. This has led to concrete changes in ILC and Indigenous community interactions, establishing a more favorable atmosphere for cooperation along with mutual gain. In addition, the study has resulted in greater capacity development activities inside government departments and land management groups. These initiatives have resulted in a more competent and efficient personnel capable of implementing land legislation and rules, minimizing administrative delays, and allowing easier transactions on land for ILCs as well as other stakeholders.

- ***Policy-related Implications***

Policymakers have benefited from this study. It has shed light on the complexities of the Indonesian's land tenure structure, ²⁶ emphasizing the necessity for legislative as well as policy improvements. This study has a direct impact on the development of policies intended for simplifying land rules, recognizing traditional land rights, as well as expediting land titling procedures. These regulatory reforms are critical in establishing a more beneficial environment for investment for individual limited companies while also protecting the privileges of local populations. Furthermore, the study has sparked attempts to improve honesty, lower the risk of corruption, and encourage appropriate land acquisition, connecting government initiatives with global environmental goals.

8. Limitations

While this research has provided useful information, certain limitations must also be acknowledged. The land tenure framework in Indonesia is extremely complicated, with legislation differing at the national, provincial, as well as municipal levels. This variation makes it difficult to present a comprehensive investigation that incorporates all regional subtleties and specificities, thus reducing the findings' generalizability. The study's emphasis on specific locations may restrict its conclusions' scope. Land rights concerns can vary from region to region, and the findings may not accurately represent the full range of

challenges confronting ILCs in Indonesia. Data quality and availability might be limiting factors. Data on acquisitions of land, disputes, and transactions might not be easily available or accurate in some circumstances, thereby influencing the accuracy and quality of the study. Land rights concerns typically have a lengthy history. The study may not thoroughly investigate historical elements that contribute to land disputes or adequately represent the dynamic character of land issues through time. The findings of the research may not completely represent all important stakeholders' opinions, including local populations, tribes, as well as elected officials. A further comprehensive stakeholder analysis might give ILCs with a more comprehensive grasp of the difficulties and possibilities in property rights.

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