

# Optimization of Land Use in Development of Sustainable Tourism

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**Abstract.** Land use is one of the rights owned by individuals/groups of people or legal entities that have land rights according to Law of the Republic of Indonesia Number 5 of 1960 concerning Basic Regulations of Agrarian Principles (*UU No. 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria/UUPA*). Land rights regulated by UUPA include Right of Ownership, Right of Exploitation, Right to Build, Right to Use, and Right to Rent for Buildings. It is often found in community practice, considering that not all holders of land rights can use their land optimally, while they need funds, then they take shortcuts, namely land for sale (sell off). Even though Articles 10, 24, 35, 41 and 53 of the UUPA allow a person who has rights on land but is unable to use it himself, it is permissible to cooperate with other parties with an agreement on the imposition of rights or a cooperation of agreement on land use. Of course, the format depends on the type of land, agriculture or non-agriculture. One of the collaborative use of non-agricultural land is the Build Operate Transfer agreement, in addition to the agreement to impose other land rights.

**Keywords:** Agreement, Imposing rights, Land use, Build Operate Transfer.

## 1 Introduction

Based on data from the Statistics Indonesia (Badan Pusat Statistik/BPS), the number of poor people in Indonesia from 2006 to March 2018 continues to decline each year, from 39.30 million (17.75%) to 25.95 million (9.82%) . The decline in the number of poor people is expected to be offset by an improvement in the ratio of land mastery and ownership. Gini ratio shows the level of inequality in land mastery and ownership in Indonesia.

The smaller gini ratio, the smaller the gap. This means that the level of equity in land mastery and ownership is getting better. In September 2018, gini ratio of land tenure to nearing 0.58. While in the 1983-2003 period from 0.5 rose to 0.72. The 2003-2013 period from 0.72 fell to 0.68. This means that from the period 2003-2018 inequality of land tenure has decreased, the level of equity is getting better. It would be better if the gini ratio could approach the value of 0, meaning that there was no inequality at all. With a position of 0.58 in September 2018, it means that only about 1% of the population controls 59% of agrarian, land and space resources. This is still in the category of high inequality, because it is still above 0.5.

Given the imbalance of land tenure and ownership is still high, it is highly expected that the use of land in the Spatial Plan and Investment for the Development of Sustainable Tourism

in Bali is done wisely. The wise understanding of land use here is not to let the land (residents/community, village, local government) switch ownership to other parties who want to invest in tourism. It is hoped that there will be a synergy between landowners and tourism investors. Investors do not have to be landowners (with Right of Ownership or HGB) but have enough synergy (making land use agreements) with landowners. In this way, the inequality of land ownership can be reduced along with the decline in the number of poor people in Indonesia, especially in Bali.

Based on BPS Bali data in September 2018, agricultural business in a broad sense turned out to be still the second largest contributor to Gross Regional Domestic Product (GRDP) with a contribution of 14.35% in 2017. Nevertheless, the contribution of the agricultural business sector to the Balinese economy continues to experience the decline. The contribution of this business sector to GRDP recorded a decline from 17% in 2010, to 13.95% in the second quarter of 2018. The decline in the contribution of the agricultural sector to the Balinese economy is inseparable from the decline in the workforce working in the agricultural sector and the decrease in land area of agriculture, which is mainly rice fields.

The decline in the area of agricultural land is understandable considering that foreign tourists visit Bali more than 40% of total visits to Indonesia. The arrival of foreign tourist to Bali in the last 5 years has increased quite rapidly, recorded from 3.3 million people in 2013 to 5.7 million foreign tourists in 2017. In percentage terms, foreign tourist visits increased by 15, 62% from 2016 to 2017. The increasing number of foreign tourist visits will have an impact on the availability of infrastructures, such as hotels and restaurants. Construction of hotels and restaurants is not possible without space/land. So, it is understandable if there is a conversion from agricultural land to non-one.

The BPS data from Bali did not mention the growth of hotels and restaurants, but if it's calculated from banking activities, channeling deposits in the form of bank loans reached 82 trillion rupiahs. According to the type of use, the largest total loans are used for working capital and consumption loans, while those used for investment are still relatively small at only 21.77%. Most bank loans are channeled to the Hotel and Restaurant Trade sector, the percentage of which is more than 40%. This means that from year to year there will be a growth in the number of hotels and restaurants that use land as medium. So that the need for land increases as well as the increase in the transfer of land rights and/or the land use from agriculture to non-agriculture. It could also be an increase in the use of agricultural land for tourism business activities, in the form of agro-tourism.

Land needs for tourism business actually do not have to be fulfilled by buying and selling rights. UUPA and its implementing regulations have provided the means, namely land use agreements. So, investors who need land do not have to force themselves to buy, and those who have rights to land do not have to sell it. Especially if the land is the only property of the community as a support for his life.

The problem is what kind of agreement on the imposition of rights and cooperation on land use to optimize land use in the development of tourism in Bali based on the prevailing laws and regulations?

## **2 Method**

This study includes a study of doctrinal law because what is studied is the rule of law according to the doctrine of positivism flow in law. The rule of law in question is a provision that regulates the form of an agreement on the imposition of rights or cooperation in the use of land.

The legal material used is primary legal material, consists of laws and regulations related to the form of agreement on the imposition of rights or cooperation in land use:

- Law Number 5 of 1960 concerning Basic Agrarian Principles.
- Government Regulation Number 27 of 2014 concerning Management of State / Regional Property.
- Presidential Decree Number 23 of 1980 concerning Utilization of Land for Business Use Rights and Building Use Rights for Joint Ventures in the Context of Foreign Investment.
- Presidential Regulation Number 67 of 2005 jo. Presidential Regulation Number 13 of 2010 jo. Presidential Regulation Number 56 of 2011 jo. Presidential Regulation Number 66 of 2013 concerning Government Cooperation with Business Entities in the Provision of Infrastructure.
- Minister of Finance Decree Number 470 / KMK.01 / 1994 concerning procedures for the removal and utilization of State property/assets.
- Minister of Finance Decree Number 248 / KMK.04 / 1995 concerning the Treatment of Income Tax Against Parties Conducting Collaboration in the Form of Agreement to Build Up for Handover.
- Regulation of Minister of Finance Number 96 / PMK.06 / 2007 concerning Procedures for Implementing the Use, Utilization, Elimination and Transfer of State Property.
- Regulation of Minister of Finance Number 78 / PMK.06 / 2014 concerning Procedures for Implementing the Use of State Property.

The legal materials that have been collected and processed, is then to be analyzed. The process of the analysis is a prescriptive-analytical, namely by presenting and analyzing the content (structure) of applicable law, systematizing the law that is presented and analyzed, interpreted, and lodging applicable laws XE "D" .

### **3 Result and Discussion**

UUPA uses the term land rights and land use agreements in terms of optimizing the use of land owned by the subject of land rights. Optimization of land use can be done by any person or entity, both public and private (private) bodies in accordance with existing laws and regulations. In the view of the provisions of Article 23 paragraph (1) of UUPA that Right of Ownership of land (HM) can be the parent of other land rights, it is possible that HM is burdened with other land rights.

The imposition of HM with other land rights has been regulated in Article 44 of Government Regulation 24/1997 concerning land registration. The imposition of building use rights, use rights and lease rights for buildings for ownership rights can be registered if proven by an act made by PPAT. In fact, according to the provisions of Government Regulation 40/1996 concerning Land Cultivation Rights, Right to Build and Right to Use, the imposition of other rights on Property Rights must be registered in the Land Office.

Then based on the provisions of Article 10 UUPA, that every person and legal entity that has a right to agricultural land on the principle is obliged to work on it or actively work for it himself. Exceptions to these principles are regulated in laws and regulations. This means that the use of agricultural land can also be cooperated with third parties with land use agreements, for example, are distributed, mortgaged, leased (Article 53 UUPA), or burdened with use rights. Even then came out Presidential Decree Number. 23 of 1980 concerning Utilization of

Land for Business Use Rights and Building Use Rights for Joint Ventures in the Context of Foreign Investment.

The Presidential Decree was created to facilitate foreign investors to utilize HGU owned by Indonesian legal entities. Article 2 paragraph (1) and (2) of the Presidential Decree stipulates that HGU and HGB can only be given to Indonesian legal entities with national capital, which are then handed over to joint ventures through the Land Use Agreement as part of the Joint Venture Base Agreement. Through joint ventures, foreign capital legal entities can use HGU or HGB land owned by Indonesian legal entities.

Article 11 UUPA, affirms that the legal relationship between people, including legal entities with earth, water, and space as well as the authority that comes from legal relations will be regulated, to achieve the greatest prosperity of the people and prevent control over the lives and work of others overreaching. Article 24 UUPA, confirms that the use of land owned by non-owners is limited and regulated by legislation. Based on this, the rules which create the rules include:

- Law Number 20 of 2011 concerning Flats.
- Government Regulation Number 27 of 2014 concerning Management of State / Regional Property.
- Minister of Finance Decree Number 470 / KMK.01 / 1994 concerning Procedures for the Elimination and Use of State Property / Wealth.
- Head of National Land Authority Regulation Number 2 of 2013 concerning Delegation of Authority for Granting Land Rights and Land Registration Activities.
- Regulation of Minister of Finance Number 78 / PMK.06 / 2014 concerning Procedures for Implementing the Use of State Property.

The legislation opens up the possibility of land use by cooperating with third parties, for example in the form of Rent; Lease; Utilization Cooperation; Build-operate-transfer or Build-transfer-operate; or Infrastructure Provision Cooperation. Among the forms of utilization of State property/property belonging to the area (land) can also be used as a reference for individual landowners or private legal entities to utilize their land by cooperating with third parties, other than in the form of imposition of land rights mentioned above. This is proved by the issuance of Minister of Finance Decree Number 248 / KMK.04 / 1995 concerning the Treatment of Income Tax for Parties Collaborating in the Form of Agreement to Build-operate-transfer.

Minister of Finance Decree stipulates that Build-operate-transfer (*Bangun Guna Serah/BGS*) is a form of cooperation agreement carried out between holders of land rights with investors, stating that holders of land rights give the investor the right to construct buildings during the contract agreement period to deliver, and transfer ownership of the building to holders of land rights during the period of construction to expire.

Article 35 paragraph (1) UUPA regulates the definition of Right to Build (*Hak Guna Bangunan/HGB*), namely the right to establish and own a building on land that is not his own. This means that HGB other than on land controlled by the State can also be given to someone's land. This is confirmed in the provisions of Article 37 UUPA jo. Article 21 Government Relation 40/1996 which regulates the occurrence of HGB. HGB for State Land and Management Rights is granted by government decree (decree granting rights), while HGB on land owned is granted with an authentic agreement between the landowner and the party who will obtain HGB. Authentic agreements are the acts made by PPAT (Article 24 (1) Government Relation 40/1996) and the granting of these rights must be registered in the land office (Article 24 paragraph (2) Government Relation 40/1996 jo. Article 44 PP 24/1997 jo. Article 120 Permenag / Ka.BPN No. 3/1997).

Referring to the provisions of Article 41 paragraph (1) UUPA which regulates the understanding of the right to use, that the Right to Use can be given above HM. The imposition of usage rights on HM must be made a PPAT Act and must be registered in the Land Office. Given that the object of use rights over land can be agricultural and non-agricultural land, then the right to use rights over HM is not limited to HM in the form of non-agricultural land, but can also be agricultural land. The latter can be the entrance for farmers in Bali to invest in agro-tourism, or if they do not have capital and cannot afford to work on their own, they can cooperate with third parties, and they do not have to sell their land. The form of cooperation is the use of land by imposing usage rights on HM agricultural land.

While Article 44 paragraph (1) UUPA stipulates that the imposition of Lease Rights for Buildings on HM has no conditions in the form of a PPAT Act. The requirements for the charging agreement have only been granted a regulation in Article 44 Government Regulation 24/1997, namely an act must be made by the PPAT, and not mandatory but can be registered in the Land Office. Optimization of land use for individuals / groups of people or private legal entities in brief can be seen in table 1 below:

**Table 1.** Land Use Optimization Schemes for Individuals / Groups of People or Private Legal Entities

No.	Use of Rights	Form of Agreement	Type of Soil	Land rights/related to land rights	Required/can/ Not registered
1	Assignment of Property Rights	PPAT Act	Non-agriculture	Right to Build	Required
				Right of Use	Required
				Right to Rent for Buildings	Can
			Agriculture	Right of Use	Required
2	Cooperation on the Use of Property Rights	Known to the head of village	Agriculture	Pawn	Not registered
				Rent	Not registered
				Profit sharing	Not registered
		Written/oral	Non-agriculture	Stay	Not registered
PPAT Act?	Non-agriculture	Build-Operate-Transfer (BOT)	Not registered /?		
3	Cooperation on the Utilization of Right of Use & Right to Build	Authentic Act (PPAT/Notary ?)	Agriculture, Non-agriculture	Handover Agreement	Not registered /?

Land use with the scheme depicted in table 1 has long been initiated and encouraged by Maria SW Sumardjono, in her book Land Policy between Regulation and Implementation. That is one form of empowering holders of land rights, without losing their land.

Meanwhile, optimizing the use of land for public legal entities, as mentioned above, can be done in 6 (six) ways. The use of State Owned Property is carried out with private partners in addition to build-operate-transfer (*Bangun Guna Serah/BGS*), namely build-transfer-operate (*Bangun Serah Guna/BSG*), Leasing, Loan Use, Cooperation Utilization (*Kerja Sama Pemanfaatan/KSP*), and Infrastructure Supply Cooperation (KSPI). Of the six schemes, the most beneficial for public legal entities is to use the build-operate-transfer (BOT) scheme. Remember three things: **First**, in terms of the period of BGS/BSG, it does not exceed the propriety and legal certainty determined by UUPA. **Second**, the Government is quick to get technology transfer, because there is no extension of the period of utilization cooperation. In

collaboration with Kumugai Kigumi from Japan as the pioneer of BOT, with a 26-year management period, and a five-year construction period. **Third**, the government must provide funds to stimulate the private sector in infrastructure development, except the provision of land and facilities for licensing facilities.

## 4 Conclusion

The form of optimization of land use for the Development of Sustainable Tourism in Bali, which is most possible by avoiding the sale and purchase of land (transfer of land rights), are:

- 1) Private individuals/groups/legal entities use the HGB loading scheme, Right of Use, Right to Rent for Building non-agricultural land HM, and Right to Use for HM agricultural land, and can use the build-operate-transfer scheme.
- 2) For community legal entities, use the build-operate-transfer scheme.

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