



Analysis Of Land Registration Arrangements as An Effort for Legal Certainty on The Utilization of Underground

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Abstract. The use and utilization of underground space have become a necessity, especially in the field of property development, such as malls, apartments, hotels, and shopping centers, as well as in infrastructure, especially transportation. There are various problems related to the use and utilization of the underground in the community, especially in the case of the use of the underground caused by the development of the business sector which clashes with the limited land area. This happens in big cities in Indonesia. Through this background, the researcher wants to map and analyze the permits for the use of underground and juridical issues regarding the use of underground, so that the regulation on the registration of underground is expected to be suitable for its purpose, namely as an effort to legal certainty from the use of underground. This type of research is normative legal research, using statutory and conceptual approaches. The legal materials used in this research are primary legal materials and secondary legal materials, which are collected through document studies. The collected legal materials were then analyzed qualitatively. The results of this study later revealed that by registering the underground a permit to use the underground would be obtained which would bring legal certainty to the applicant for the rights of the underground in question. However, positive regulations or laws regarding the use and utilization of underground have not been evenly distributed in all major cities in Indonesia, such as Bandung, Yogyakarta, Semarang, Surabaya, Makassar, Medan, and other regions. Through the Draft Law on Land in 2019, it is hoped that it will cover the absence of regulation.

Keywords: Usage, Utilization, Underground, Registration. First Section

1 Introduction

The use of underground is not only limited to transportation facilities but also other things. Can be taken as an example in Finland since 1896 has previously used underground space in that country for subway tunnels, the underground is also used for hydroelectric power generator tunnels, tunnels for transferring raw water, tunnels for regular vehicles, and recreational facilities for the public interest[1]. The use of

underground space can provide a better choice of development in areas that are certainly limited in terms of land, where if underground economic, social, and cultural facilities such as subways, underground roads, underground water storage and distribution, underground rainwater and sewage treatment plants, underground power generation and distribution, underground cultural and entertainment facilities, underground parking, underground residences, underground offices and underground factories that have been well planned will allow the use of the area more efficient above ground [2]. The orientation for the use of underground tends to optimize soil resources and maximize functions for land use. Indonesia, before the construction of the MRT (Mass Rapid Transit/Integrated Moda Raya) in Jakarta, had also taken advantage of the existence of underground, especially in urban areas such as Block M Mall Jakarta, for shopping centers and Karebosi Link Makassar located in Makassar, which is also a shopping center, as well as the underground parking area of the shopping center. The main factor affecting and complicating the development of these underground is to ensure sustainability (sustainability) which starts from the stage before planning and construction begins, during construction, as well as after construction. At each of these stages, it is greatly influenced by various considerations in terms of developing dungeons. There are important aspects that require extra consideration, including geological, engineering, safety, and psychological aspects, legal and administrative considerations, as well as economics[3].

There are various legal issues in the use of this underground, one of the legal issues related to the use of the underground is the ownership of the underground, of course, related to the registration of rights to use the underground. The 2019 Land Law Draft contains arrangements for land rights, one of which arises from the legal relationship between the right holder and the underground space to control, own, use, and utilize, as well as maintain cellar.

Land rights can be granted to individuals or individuals who are Indonesian citizens. Rights to this land can also be controlled by foreign parties or foreign citizens, of course with the provisions that apply in Indonesia while still taking into account the national values held by Indonesia. The subjects of control over land rights are basically individuals and legal entities. What is meant by land rights is surface land only. This is because what is discussed about land or agrarian regulations is narrowly related to the surface of the earth. Therefore, the current regulations only regulate surface land and do not regulate underground spaces. However, if the use and utilization of land is different between the use of land on the surface of the earth and the use of land above ground or underground, then this becomes the authority of the holder of rights to land on the surface of the earth and cannot extend to his control, regarding rights control over the land. According to Sudikno Mertokusumo [4] rights are divided into two types, namely absolute rights and relative rights. Absolute rights give the holder the authority to do or not do something, which basically can be done by anyone and involves everyone. If there is an absolute right for someone, then other people should respect and not disturb him. In absolute rights, third parties have an interest in knowing their

existence, thus requiring publicity. In contrast to relative rights which are rights that contain the authority to demand rights that only a person has against certain people so that they only apply to certain people. Absolute rights consist of absolute rights that are material and those that are not material. According to Salmond, as quoted by Satjipto Raharjo [5], the term right is usually interpreted in a narrow sense and a broad meaning. Rights in the narrow sense are always correlated with obligations. The construction of buildings, both those located above and those in the underground (body of the earth), must meet cumulative requirements such as administrative requirements which include land rights and licensing aspects. About land rights, before the construction of a building, land rights must be ascertained in advance, both in terms of the type or type of rights, as well as the subject and certainty of the area and boundaries of the land. Likewise, if the building is built or erected below the surface of the earth (the body of the earth), of course, the same requirements are required as for the construction of buildings that are above the ground, namely that there are rights that legally give authority to construct, own and use underground.

The land is known to have limited properties, therefore there is the development of the city which leads to a trend of vertical development. This trend is also the development model today and in the future, this can become a necessity for development considering that land is limited and does not increase. Developments that are carried out vertically are currently commonly found in big cities, both in the construction of housing and commercial areas, in this case also including the development of transportation facilities. This development has also been described in the previous section. This latest model of transportation has changed the lifestyle of the Indonesian people, from initially using private vehicles and then switching to using mass transportation modes such as Mass Rapid Transit (MRT), LRT, and Commuter Line. We can see several models of space utilization, both upstairs and *underground*, in several big *cities*, such as Jakarta and Makassar[6].

Crossing bridges that function as shops such as at Pondok Indah Mall, *Skybridge* Tanah Abang Market, Glodok, ITC Mangga Dua; In several shopping centers in Jakarta, there are quite a lot of pedestrian bridges between shopping centers as shops. This of course needs to be given a legal basis for the use and utilization of pedestrian bridges as shops.

Flyover Antasari-Blok M and Kampung Melayu-Tanah Abang (Casablanca). Although many parties protest that the flyover construction policy will only add to congestion, the government will still build flyovers at several points to break down congestion. Flyovers are roads that are built not on the same level as they fly to avoid areas/areas that always face traffic congestion problems, bypassing railroad crossings to improve traffic safety and efficiency. Flyovers are freeway equipment to overcome obstacles due to intersection conflicts, through difficult slum areas, or swampy areas.

MRT Mass Rapid Transit (MRT) means transportation that can transport large numbers of passengers promptly. MRT, LRT, or Jakarta light rail transit (LRT), is an integrated cross-rail mass transportation mode. Transit Oriented Development (TOD) which utilizes land at the station, such as currently in the process of building a mahata apartment at Tanjung Barat station, and TOD which is being built at the MRT station.

It is contained in the proposed Land Bill in Article 39 paragraph (1) that land that is in the above and/or underground space can be given land rights. The explanation also mentions the meaning of space above and space below, that what is meant by "soil that is in the space above" includes fields that are formed based on human effort or technological engineering such as bridges, railroads, and flyovers.

2 Result and Discussion

2.1 Granting of Land Rights in the Upstairs and/or Underground

In the Land Bill in Article 39 the Granting of Different Land Rights as referred to in paragraph (4), the rights to use are in the form of:

Building Use Rights on the underground; or

Right to Use in the underground. The authority of each right as referred to in paragraph (5) applies *mutatis-mundis* with the authority contained in the Land Rights following the provisions of the laws and regulations.

There are exceptions to land rights that will be given to underground space, namely in business activities in the fields of oil and gas, minerals and coal as well as new and renewable energy. Then there is also a regulation in paragraph (8) that further Provisions regarding the use of land in the above-ground space and/or underground space as referred to in paragraphs (1) to paragraph (6) will be further regulated by Presidential Regulation. This concept was eventually continued in the drafting of the Job Creation Law, that in the use and utilization of land in the above-ground and underground space, HGB or usage rights can be granted. However, there is a view that special arrangements or institutions are needed that regulate the use and utilization of above and below-ground space, so that they cannot be treated the same as granting land rights on the surface of the earth.

There are differences of opinion regarding the arrangement of the mainland rights for the underground. While the construction of underground and above-ground continues, of course, it still requires regulations that can become the legal basis for granting rights. Arrangements regarding the depth limit for underground are also contained in the Regulation of the Minister of Public Works No. 2 of 2014 concerning Guidelines for Utilization of Space in the Earth (RDB), that shallow RDB is at a depth of 0 (zero) to 30 (thirty) meters below the ground surface, while deep RDB is at a depth

of more than 30 (thirty)) meters below ground level[6]. This regulation is also currently in the process of being revised according to the actual conditions at this time.

Land as the main factor of production must be under state control, land is controlled by the state, meaning it does not have to be owned by the state, the state has the right to control land through the function of the state to regulate and manage (regulate and control)[7]. The management of natural resources is carried out and attempted by the state solely for the sake of the prosperity and welfare of the people, that goal is the responsibility of the state as a consequence of controlling water, the earth, and everything in it, this is also a guarantee and a form of protection for the greatest prosperity of the people and general welfare and social justice for all Indonesian people[7].

2.2 Differences regarding the conception of use and utilization of Underground

There is no legal certainty between subjects and objects in the underground and on the ground. The lack of clarity regarding the legal relationship between spatial use rights and land rights is important to study, to provide clarity regarding the inherent rights and authorities and the boundaries that will be regulated. Likewise, the regulation of legal relations with above-ground and underground space needs to be studied, so that clarity is obtained regarding the relationship between above-ground space and underground space, both regarding rights and obligations as well as subjects and objects.

The land rights referred to in paragraph (1) of this article give authority in the framework of using the land as well as for the body of the earth and water and the space above it, if necessary for interests that are directly related to the use of said land as long as it is within the limits according to this law (UUPA) and other higher legal regulations. (3) In addition to the land rights referred to in paragraph (1) of this Article, rights to water and space are also determined. The above phrase shows that land rights are only reserved for the surface of the earth. namely a certain part of the earth's surface which is a unit that is bounded and has two dimensions, namely with a certain length and width. Because the land that is owned and controlled cannot only be on the surface of the earth, then Article 4 is expanded but limited to the authority to use it [8]. If the use of land differs between the use of land on the surface of the earth and the use of land above the ground or in the underground, then the authority of the holder of land rights on the surface of the earth cannot extend to his control over the use of land in the above ground or underground. In the Job Creation Law, which has now been passed into law, the provisions in Article 146 paragraph (1) Land or space that is formed in the above and/or underground space and is used for certain activities can be given HGB, use rights or management rights, (2) The limit of land ownership on the space over land by the holder of land rights is given by the basic coefficient of the building, the coefficient of the building floor, and the spatial plan determined by the provisions of

laws and regulations. Furthermore, in paragraph (3) the limit of land ownership in the underground by the holder of land rights is given by the limit on the depth of utilization which is regulated by the provisions of laws and regulations. Then in paragraph (4) The use and utilization of land in the space above and/or underground by different right holders, can be given building use rights, usufructuary rights, or management rights. Further provisions regarding the use of land in the space above the land and/or space below the land are regulated by Presidential Regulation[6].

Law Number 26 of 2007 concerning Spatial Planning. Article 1 of the Spatial Planning Law states that the space in question is a container that encompasses both land space, sea space and air space, including space within the earth, which means underground space which is included as one complete unit. from a region. Where there is a place where humans and other creatures live, carry out activities, and maintain their survival. Continuing with Article 6 Paragraph (4), provincial and district/city spatial planning includes land space, sea space and air space, including space within the earth in accordance with the provisions of statutory regulations. This is what is called the regulation of regional spatial planning, whether provincial, city/district or even national.

Law Number 20 of 2011 concerning Flats. Law Number 20 of 2011 concerning Flats. This article does not explicitly address the use of underground space, but this article states that there is use of land for the construction of flats. This article turns out to be in Article 17 which states that flats can be built on land that has ownership rights, building use rights, or usufructuary rights over state land; and building use rights or usufructuary rights over land with management rights. Further regulations are contained in Article 22 which states that the provision of land for the construction of flats can be carried out through granting rights to land controlled directly by the state and land consolidation by the land owner.

Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest. Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest. This law also has a connection with the use of underground space. This is caused by land procurement for the public interest, meaning that land acquisition is carried out to achieve its objectives in the public interest. In this case it can be seen that the land acquisition in question is land acquisition for infrastructure projects whose aim is in the public or people's interest. In Article 1 Number 4 of the Law on Land Acquisition for Public Interest, what is meant by land acquisition objects, namely land, space above ground and below ground, buildings, plants, objects related to land, or other objects which can be assessed. The emphasis on understanding land acquisition objects is related to the use of underground space.

Regulation of the Governor of the Province of the Special Capital Region of Jakarta No. 167 of 2012 concerning underground regulates, among other things, the utilization, management, and exploitation of DKI Jakarta's underground. 1)

The underground is a space below the surface of the ground which is a place for humans to move. The use of the underground must be carried out following the Regional Spatial Planning, Detailed Spatial Planning, and Zoning Regulations as well as the Area Development Master Plan and Urban Design Guidelines at the location of the said space utilization activity. 2) In Article 4 Shallow underground, is a space below the surface of the ground up to a depth of 10 m (ten meters). Deep underground, namely the space below the surface of the ground from a depth of over 10 m (ten meters) up to the limit of technological mastery in the use of the underground or limits according to the provisions of laws and regulations[7].

Every business entity that will use the underground must first obtain a permit to use the underground from the Regional Government. A cellar utilization permit is a permit granted to be able to utilize a underground with a certain limit and area as a control over the use of a underground. Regional Government is the Governor and regional apparatus as elements of Regional Government administration.

Regulation of the Minister of Public Works Number 2 of 2014 concerning Guidelines for Space in the Earth. This regulation was made in the framework of overcoming the limitations of land on the Earth's surface, realizing the integration between activities, as well as maintaining and improving the quality of space and environmental sustainability, it is necessary to optimize the use of space in the Earth. Types and characteristics of space utilization within the earth for Buildings include 1. Warehouse buildings. 2. Parking space. 3. Buildings for service and commercial activities such as shops and stations. 4. Build buildings such as water reservoirs and security posts. 5. Buildings or structures in the field of defense and security include storage areas for military equipment and others.

Furthermore, it is also determined that if there is an additional outbreak in the incentive zone, then the skyline (skyline) is at most fifty percent of the outbreak determined in the plan. Comparison of Arrangement of Rights to Underground and Land in Other Countries In national land law, land and building owners may differ due to the principle of horizontal separation (horizontal scheiding). Separation of rights or objects that are firmly attached to the land with the rights. Land rights do not affect what is attached to the land or vice versa. However, according to customary law, if plants and buildings are not attached to the land then these objects have no value, so it is not possible for plants and buildings not to be on the ground. Logically, legal actions regarding land are possible, including buildings and plants on it, provided that the buildings and plants are physically an integral part of the land and belong to the owner of the land, and this intention is expressly stated in the deed containing the legal action. For example, if an apartment is built on a plot of land, the land owner can sell plots of airspace called airspace lots. Strata title grants joint ownership rights to a building complex consisting of exclusive rights to space as well as shared rights to shared space.

Therefore the space above it and the space below it (in the body of the earth) are not part of the land rights on the surface of the earth. The meaning of this phrase is that the holder of land rights on the surface of the earth does not have the right to be able to hand over the use of land for the space above the land and the space under the ground if it is not accompanied by the use of the land on the surface of the earth. This is excepted if the underground and above-ground space are needed for interests that are directly related to the use of the land. An example can be taken, namely the space or parking area associated with the building above it. This also applies to the space above the ground, it is only needed as a support for the existing building and is an integral part of the building structure on the surface of the earth. Furthermore, or in further terms, it can be interpreted that this is the authority of the state to grant rights to their land. Then the national land law recognizes the principle of horizontal separation concerning land and buildings on it. the principle of horizontal separation states that buildings and plants are not part of the land, this is different from basic access, where the buildings and plants that are on the ground are an integral part of the land.

The entry into force of the Job Creation Law provides a norm that the legal relationship between usufructuary rights, in this case, the rights to underground and space over land, with land rights continues to use land rights. So all nomenclature of legal institutions related to aboveground and underground space uses the existing nomenclature, so there are no new institutions. The nomenclature used is land rights in underground and above-ground spaces. Likewise, all forms of transition still use the PPAT deed. The granting of land rights to underground and land spaces regulated in government regulations is an omnibus at the level of implementing regulations, namely PP Number 40 of 1996, PP Number 24 of 1997, and PP Number 103 of 2015. The legal basis for regulating underground and spaces for land has been contained in the Job Creation Law and in the RPP for Management Rights and Land Rights, as well as the Draft Ministerial Regulation.

3 Conclusion

3.1 Underground Settings :

1. The use of space in the body of the earth that is needed is part of the authority originating from Land Rights for the main building. A double-story building can be built and owned individually separately from one another as stipulated in the Law on Flats. The land is shared land, while the foundation, roof, stairs, lifts, and walkways are shared parts. As well as the existence of shared objects such as places of worship, halls, parking, swimming pools, etc.
2. Buildings in space above the ground that are not part of the main building.
3. The existence of such buildings can be accommodated by available land rights. Its existence must have a physical relationship with the surface of the earth below, which is controlled by one of the existing land rights. The building is built on pillars.

The space above the ground between the pillars can be used for business premises or other purposes. The available HATs can accommodate buildings where part of the structure uses air space above the ground, by only requiring part of the earth's surface to place the supporting pillars, such as flyovers, pedestrian bridges, and elevated railroads. The land underneath can belong to the owner of the building itself which is controlled by HGB or Right to Use. HGB/Utilization Rights holders have the right to use the land including the airspace above it. The land underneath can also be controlled with Management Rights by the Regional Government.

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The author comprises four members where all are contributed to writing the article. Article writing is separated into numerous stages of research and writing that are completed in 2 (one) months. The author investigates related themes based on observations made in the field over many months. The writer offers the ideas in this scientific article based on observable data.

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