LAW OF THE REPUBLIC OF INDONESIA
NUMBER 5 OF 1960
ON
BASIC AGRARIAN PRINCIPLES

PRESIDENT OF THE REPUBLIC OF INDONESIA

Considering : a. that in the State of the Republic of Indonesia of which the structure of the people including its economy is primarily of agrarian nature, the land, water and airspace as the gifts of the Almighty God have very important functions in the development of a just and prosperous society;

b. that the effective agrarian law was developed partly on the basis of the purposes and principles of the colonial government and partly out the influences of the said government and is, therefore, in contrast with the people's and State's interests in the completion of the current national revolution and in the implementation of overall development;

c. that the said agrarian law is dualistic in nature, given that *adat* (customary) law is also effective in addition to the former, which is based on the western law;

d. that to the indigenous people, the colonial agrarian law does not guarantee any legal certainty;

Opining : 1. that in line with what is described in the consideration above, it is deemed necessary to establish a national agrarian law which is based on agrarian *adat* law, that is simple and guarantees the legal certainty for all

Indonesian people without neglecting the elements which hinge on religious law;

2. that the national agrarian law must open up possibilities for the land, water, and airspace to carry out its functions as meant above, must be consistent with the interests of the Indonesian people, and fulfills on a timely basis the existing needs in all agrarian-related matters;
3. that the national agrarian law must bring into reality the spiritual principles of the State namely Belief in the One and Only God, Humanity, Nationalism, Democracy, and Social Justice, as well as the ideals of the Nation as laid down in the Preamble of the Constitution;
4. that the national agrarian law must also be the implementation of the 5 July 1959 Presidential Decree, the provisions of article 33 of the Constitution, and of the Political Manifesto of the Republic of Indonesia, as asserted in the Presidential Address on 17 August 1960, which obliges the State to regulate the land ownership and to manage the land use to ensure that all existing land within the territory under the sovereignty of the Nation will be used, either on an individual basis or on a *gotong royong* (mutual assistance) basis, to bring about the upmost prosperity for all the people;
5. that in connection with all that has been described above, it is deemed necessary to lay the necessary principles and to develop new basic provisions in the form of a Law which serves as a foundation for the development of the said national agrarian law;

Having noted : The proposal of the Provisional Supreme Advisory Board of the Republic of Indonesia No. 1/Kpts/Sd/II/60 on the Restructuring of Land Rights and Land Use;

Observing :

a. the 5 July 1959 Presidential Decree;
b. Article 33 of the Constitution;
c. Presidential Decree No. 1 of 1960 (State Gazette of 1960 No. 10) on Political Manifesto of the Republic of Indonesia

dated 17 August 1959 as the state's policy guidelines, and Presidential Mandate dated 17 August 1960;

d. Article 5 in conjunction to Article 20 of the Constitution;

With the approval of the Gotong Royong House of Representatives

HAS DECIDED:

By revoking :

1. *Agrarische Wet (*Staatsblad 1870 No. 55*)* [Agrarian Act (State Gazette No. 1870-55)] as contained in article 51 of *Wet op de Staatsinrichting van Nederlands Indie (*Staatsblad 1925 No. 447*)* [Act re Arrangements of Nederlands East Indies] and the provisions contained in the other sections of the said article;
2. a. *Domeinverklaring* (Declaration of the State as Owner of Land) as meant in article 1 of *Agrarisch Besluit (*Staatsblad 1870 No. 118*)* [Agrarian Decree (State Gazette No. 1870-118);
   b. Algemene Domeinverklaring (General *Domeinverklaring*) as meant in Staatsblad 1875 No. 119A (State Gazette No. 1875-119A);
   c. Domeinverklaring untuk Sumatera (*Domeinverklaring* for Sumatra) as meant in article 1 of Staatsblad 1874 No. 94f (State Gazette No. 1874-94f);
   d. Domeinverklaring untuk Keresidenan Menado (*Domeinverklaring* for the Regency of Manado) as meant in article 1 of *S. 1877-55* (State Gazette 1877-55);
   d. Domeinverklaring untuk Residentie Zuilder en Oosterafdeling van Borneo (Domeinverklaring for the Regencies in the Southern and Eastern Parts of Kalimantan) as meant in article 1 of Staatsblad 1888 No.58 (State Gazette No. 1888-58);
3. *Koninklijk Besluit* (Decree of the Dutch Kingdom) dated 16 April 1972 [Staatsblad 1872 No. 117 (State Gazette No. 1872-117)] and its implementing regulations;
4. Book Two of the Civil Code of the Republic of Indonesia insofar as it pertains to soil, water, and the natural resources contained therein, to the exclusion of the provisions concerning *hypotheek* which are still effective at the time this Law comes into effect;

To enact : LAW ON BASIC AGRARIAN PRINCIPLES.

ONE

CHAPTER I
BASIC PRINCIPLES AND PROVISIONS

Article 1

(1) The entire territory of Indonesia is the totality of the motherland of the whole Indonesian people who are united as the Indonesian nation.
(2) All the land, water, and airspace, including the natural resources contained therein, which exist within the territory of the Republic of Indonesia as gifts from the One and Only God, are the Indonesian nation's land, water, and airspace and constitute the nation's wealth.
(3) The relationship of the Indonesian nation to the land, water, and airspace as referred to in section (2) of this article is eternal.
(4) What is meant by land includes not only the surface of the land but also the mass existing thereunder and the mass existing under the water.
(5) What is meant by water includes not only the water found inland but also the water existing in the seas within the territory of Indonesia.
(6) What is meant by airspace is the space over the land and water as referred to in sections (4) and (5) of this article.

Article 2

(1) On the basis of the provisions contained in Article 33 section (3) of the Constitution and of the matters as referred to in article 1, the land, water, and airspace, including the natural resources contained therein, are at the highest hierarchical level controlled by the State in its capacity as the whole people's organization of powers.
(2) The State's right of control as referred to in section (1) of this article confers the authority:
    a. to regulate and administer the allocation, use, supply, and maintenance of the land, water, and airspace;

b. to determine and regulate legal relationships between people and the land, water, and airspace;

c. to determine and regulate legal relationships among people as well as legal acts concerning the land, water, and airspace.

(3) The authority which are derived from the State's right of control as referred to in section (2) of this article is used to achieve the utmost prosperity in terms of democracy, welfare, and freedom for the society and legal State of Indonesia which is independent, sovereign, just, and prosperous.

(4) The authority to implement the State's right of control referred to above may be delegated, as required, and provided that it is not contrary to the national interest, to Autonomous Regions and to *adat* law communities under the provisions of Government Regulation.

Article 3

In view of the provisions of articles 1 and 2, the implementation of the *ulayat* rights and other similar rights of *adat* law communities, as long as such communities in reality still exist, must be such that it is consistent with the national interest and the State's interest and must not contradict the other Laws and regulations of higher levels.

Article 4

(1) On the basis of the State's right of control as referred to in article 2, it is necessary to determine the types of rights to the surface of earth, which is called *tanah* (land), that can be granted to, and held by, persons, either individually, jointly with others as well as legal entities.

(2) The land rights as referred to in section (1) of this article confers authority to use the land in question as well as the mass of the earth and the water existing under its surface and the space above it to a point which is essentially required to allow for the fulfillment of the interests that are directly related to the use of the land in

question, such a point being within the limits imposed by this Law and by other higher-level legislation.

(3) In addition to the land rights as referred to in section (1) of this article, there are to be determined water and air rights.

Article 5

The agrarian law applicable to the land, water, and airspace is *ada*t law as far as is not contrary to the national's interest and the State's interest, which are based on national unity, to Indonesian socialism, to the provisions stipulated in this Law, nor to other legislation, all with due regard to elements which are based on religious law.

Article 6

All land rights have social function.

Article 7

To prevent the public interest from being harmed, excessive land ownership and possession is forbidden.

Article 8

On the basis of the State's right of control as referred to in article 2, the acquisition of the natural resources which are contained in the land, water, and airspace is to be regulated.

Article 9

(1) Only Indonesian citizens can have the most complete relationship with the land, water, and airspace, within the limits stipulated in the provisions of articles 1 and 2.

(2) Every Indonesian citizen, both men and women, has an equal opportunity to acquire a land right and to obtain the benefits and yields thereof for themselves or for their family.

Article 10

(1) Every individual and legal entity which holds a right to agricultural land is in principle obligated to actively cultivate the land or work on it by themselves while avoiding any methods of human exploitation.
(2) The implementation of the provision of section (1) of this article is to be regulated further by legislation.
(3) Exemptions from the principle as referred to in section (1) is to be regulated by legislation.

Article 11

(1) Legal relationships between people, including legal entities, and the land, water, and airspace and the authorities derived therefrom are to be regulated to achieve the purpose as referred to in section (3) of Article 2 and that excessive control of other people's lives and occupations is prevented.
(2) Differences in social conditions and the legal needs of societal groups, wherever necessary, are taken into account by providing guaranteed protection for the interests of the economically weaker groups, provided that this is not contrary to the national interest.

Article 12

(1) All joint enterprises in the area of agrarian affairs are to be based on the common interest within the framework of the national interest and are to be undertaken in the form of cooperatives or other methods of *gotong royong*.
(2) The state can, in cooperation with other parties, undertake enterprises in the area of agrarian affairs.

Article 13

(1) The Government seeks to regulate enterprises in agrarian affairs in such a way that these enterprises can improve the people's production and prosperity as referred to in section (3) of article 2 and ensure a standard of living which measures up with human dignity for every Indonesian citizen and his or her family.

(2) The Government prevents any enterprises of private-monopolistic nature by organizations and individuals in the area of agrarian affairs.

(3) Any monopolistic enterprises by the Government in the area of agrarian affairs can only be implemented by a Law.

(4) The Government seeks to advance social certainty and security, including the field of labor affairs, through enterprises in agrarian affairs.

Article 14

(1) In view of the provisions as referred to in sections (2) and (3) of article 2, section (2) of article 9, and sections (1) and (2) of article 10, the Government, within the context of Indonesian socialism, devises a general plan concerning the supply, allocation, and use of the land, water, and airspace as well as the natural resources contained therein:
   a. for the State's purposes;
   b. for worship and other religious purposes in line with the principle of Belief in the One and Only God;
   c. for the purposes related to the development of public-life centers, socio-cultural centers, and other forms of prosperity;
   b. for the purposes related to the development of agricultural production, animal husbandry, and fishery, and the likes; and
   c. for the purposes related to the development of industry, transmigration, and mining.

(2) On the basis of the general plan as referred to in section (1) of this article and in line with the relevant regulations, Local Governments regulate the supply, allocation, and use of the land, water, and airspace in their respective areas by taking into consideration their respective local circumstances.

(3) The Regional Regulations as referred to in section (2) of this article will not come into effect until they have been

legalized by the President for regional regulations of Level I, by the Governor for regional regulations of Level II, and by the Regent or Mayor for regional regulations of Level III.

Article 15

It is the duty of every individual, legal entity, or institution which has a legal relationship with land to take care of the land, to improve its fertility, and to prevent it from damage by taking into consideration the interests of the financially incapable party.

CHAPTER II
LAND, WATER, AND AIRSPACE RIGHTS AND LAND REGISTRATION

Part I
General Provisions

Article 16

(1) The land rights as referred to in section (1) of Article 4 are:
   a. right of ownership,
   b. right to cultivate,
   c. right to build,
   b. right to use,
   c. leasehold rights,
   d. right of land clearing,
   e. right to collect forest products,
   f. rights other than those mentioned above which will be stipulated by a Law and rights of provisional nature which are mentioned in Article 53.

(2) The water and airspace rights as referred to in section (3) of Article 4 are:
   a. right to use water;
   b. aquaculture and fishing rights; and
   c. rights to use airspace.

Article 17

(1) In view of the provisions contained in Article 7, the objective as referred to in section 3 of Article 2 is achieved by regulating the maximum and/or minimum limits on the area of land which can be held by a family or a legal entity under one of the rights mentioned in Article 16.
(2) The maximum limits as referred to in section 1 of this article are stipulated by legislation in the near future.
(3) Lands in excess of the limits as referred to in section (2) of this article are taken by the Government with compensation provided and are subsequently redistributed to the people who need land in accordance with the provisions of a Government Regulation.
(4) The achievement of the minimum limits as referred to in section (1) of this article, which will be stipulated by legislation, is implemented in a staged manner.

Article 18

In the interests of the public as well as of the nation and of the State and in the collective interests of the people, land rights can be revoked by providing appropriate compensation and in accordance with the procedure which is regulated by a Law.

Part II

Land Registration

Article 19

(1) The Government implements the land registration throughout the whole territory of the Republic of Indonesia to guarantee legal certainty in accordance with provisions that are stipulated by a Government Regulation.
(2) The registration as referred to in section (1) of this article includes:
    a. surveying, mapping, and recording of land in a book;
    b. registration of land rights and of transfers of the rights;

c. granting of documentary instruments of evidence of right, which serve as strong instruments of evidence.

(3) Land registration is to be implemented by taking into account the condition of the State and of the society, the needs for socio-economic movements, and the possibility of implementing it, according to the Minister of Agrarian Affairs' considerations.

(4) The fees pertaining to the land registration as referred to in section (1) are regulated by a Government Regulation with a provision exempting the financially incapable from the said fees.

Part III
Right of Ownership

Article 20

(1) A right of ownership is the inheritable right, the strongest and fullest right on land which one can hold, subject to the provision contained in Article 6.

(2) A right of ownership can be transferrable to other parties.

Article 21

(1) Only Indonesian citizens can have a right of ownership.

(2) The Government determines which legal entities can have a right of ownership and the conditions thereof.

(3) A foreigner who, following the entry into force of this Law, acquires a right of ownership by way of inheritance without a will or by way of joint ownership of property resulting from marriage and an Indonesian citizen holding a right of ownership who, following the entry into force of this Law, loses Indonesian citizenship is obligated to relinquish that right within one year following the date the right of ownership is acquired in the case of the former or following the date upon which Indonesian citizenship is lost in the case of the latter. If following the expiry of the time periods, the rights is not relinquished, then the right is nullified for the sake of law and the land

falls to the State with the provision that the rights of other parties which encumber the lands remain in existence.

(4) As long as someone with Indonesian citizenship concurrently holds foreign citizenship, he or she cannot have land with the status of a right of ownership, and to him or her the provision of section (3) of this article will apply.

Article 22

(1) The creation of right of ownership according to *adat* law is to be regulated by Government Regulation.

(2) In addition to the method as referred to in section (1) of this article, right of ownership can come into existence by way of:

a. a determination of the Government in accordance with the manner and conditions stipulated in a Government Regulation, and

b. the provisions of a Law.

Article 23

(1) Right of ownership, every transfer affecting right of ownership, the nullification of a right of ownership, and the encumbering of a right of ownership with other rights must be registered in accordance with the provisions as referred to in article 19.

(2) The registration as referred to in section (1) serves as a strong instrument of evidence concerning the nullification of right of ownership and concerning the validity of the transfers and encumbrances affecting the rights.

Article 24

The use of land with the right of ownership by a party other than its owner is to be limited and regulated by legislation.

Article 25

Right of ownership can be used as debt collateral by encumbering it with mortgage rights.

Article 26

(1) The sale and purchase, exchange, gifting, bequest by a will, grant under *adat* and other acts which are intended to transfer right of ownership and the control of such acts are to be regulated by a Government Regulation.

(2) Every sale and purchase, exchange, gift, and bequest by a will and every other act which are intended to either directly or indirectly transfer right of ownership to a foreigner or to a person of Indonesian citizenship who concurrently holds foreign citizenship or to a legal entity other than those stipulated by the Government in line with section (2) of article 21 is nullified for the sake of law and the land in question goes to the State with the understanding that any other parties' rights which encumber the land remains in existence and that all the payments which the owner of the land may have received cannot be reclaimed.

Article 27

Right of ownership is nullified if:

a. the land owned by the State:
   1. because revocation the rights based on article 18;
   2. because of a voluntary conveyancing by the owner;
   3. because land has been abandoned;
   4. because of the provisions of section (3) of article 21 and section (2) of article 26;

b. the land vanishes.

Part IV

Right to Cultivate

Article 28

(1) A right to cultivate is a right to work on land directly controlled by the State for a period of time as referred to in article 29 which for use by an agricultural, fisheries or animal husbandry company.

(2) A right to cultivate is to be granted on land whose area is at least 5 hectares, with the provision that, in the case if the area of the land is 25 hectares or more must adopt adequate capital investment and good corporate management techniques in accordance with times.

(3) A right to cultivate can be transferrable to another party.

Article 29

(1) A right to cultivate can be granted for a term of at most 25 years.

(2) For a company which requires more time, it can be granted a right to cultivate with a term of at most 35 years.

(3) Upon request of the right holder and having regard to the circumstances of the company, the terms of a right to cultivate as referred to in sections (1) and (2) of this article can be extended for at most 25 years.

Article 30

(1) Those who may obtain a right to cultivate are:
   a. Indonesian citizens;
   b. legal entities established under Indonesian law and domiciled in Indonesia.

(2) A person or legal entity that hold a right to cultivate and no longer fulfills the conditions referred to in section (1) of this article is obligated to relinquish the right to cultivate in question or to transfer it to other parties which fulfill the conditions. This provision also applies to parties who acquire a right to cultivate if they do not fulfill the requirements. If the right to cultivate is not relinquished or transferred within the period of time, it is nullified for the sake of law, with the provision that any other parties' rights will be considered, in accordance with the provisions stipulated in a Government Regulation.

Article 31

A right to cultivate is created by a decision by the Government.

Article 32

(1) A right to cultivate, including the conditions attaching to its grant, every transfer of such a right, and the nullification of such a right must be registered in accordance with the provisions as referred to in Article 9.

(2) The registration as referred to in section (1) serves as a strong instrument of proof concerning the transfer and nullification of a right to cultivate, except in the case if such a right is nullified because its term has expired.

Article 33

A right to cultivate can be used as debt collateral by encumbering it with mortgage rights.

Article 34

A right to cultivate is nullified because:

a. the term has expired;
b. it is terminated before its term has expired because a certain condition is not fulfilled;
c. it is relinquished by the holder before its term has expired;
d. it is revoked in the interests of the public;
e. the land has been abandoned;
f. the land has vanished;
g. the provisions in section (2) of article 30.

Part V

Right to Build

Article 35

(1) A right to build is a right to construct and possess buildings on land which is not their own for a period of at most 30 years.

(2) Upon request of the right holder and in view of the needs and of the condition of the buildings, the term as referred to in section (1) can be extended for at most 20 years.

(3) A right to build is transferrable to another party.

Article 36

(1) Those eligible for a right to build of structures are as follows:
   a. Indonesian citizens, and
   b. legal entities established under Indonesian law and domiciled in Indonesia.

(2) A person or legal entity that holds a right to build but no longer fulfills to the conditions that are mentioned in section (1) of this article is obligated to relinquish the right of use of structures in question or to transfer it to another party that is eligible for such a right within one year. This provision applies also to parties who obtain a right to build if they do not fulfill the said conditions. If the right to build in question is not relinquished or transferred within the said period of time, it will be nullified for the sake of law, with the provision that any other parties' rights will be considered, in accordance with the provisions stipulated in a Government Regulation.

Article 37

A right to build comes into existence:

a. because of a determination by the Government in case of land directly controlled by the State;
b. because of an authentic agreement between the relevant land owner and the party who will acquire the right to build with the purpose of giving rise to the intended right in the case of land having the status of a right of ownership.

Article 38

(1) A right to build, including the conditions of the granting of the right, every transfer concerning the right, and the nullification of the right must be registered in accordance with the provisions as referred to in article 19.

(2) The registration as referred to in section 1 serves as a strong instrument of evidence concerning the nullification of a right to build and the validity of the transfer of the

right, except in the case if such a right is nullified because its term has expired.

Article 39

A right to build can be used as debt collateral by encumbering it with mortgage rights.

Article 40

A right to build is nullified because:

a. its term has expired;
b. it is terminated before its term has expired because a certain condition is not fulfilled;
c. it is relinquished by the right holder before the expiry of its term;
d. it is revoked for the public interest;
e. the land has been abandoned;
f. the land has vanished;
g. of the provisions of section (2) of Article 36.

Part VI

Right to Use

Article 41

(1) A right to use is a right to use, and/or to collect products from land directly controlled by the State or land owned by another individual which grants authority and obligations as determined in the relevant right-granting decree by the official who is authorized to grant it or as determined in the agreement with the owner of the land, where the agreement is not a land lease agreement or land exploitation agreement, given that everything is possible as long as it does not contradict the spirit and provisions of this Law.

(2) A right to use can be granted:

a. for a definite term or for as long as the land is used for a specific purpose; and

b. for free, for a certain payment, or for any kind of service.

(3) The granting of a right to use cannot be entailed with conditions which contain elements of exploitation.

Article 42

Those eligible for a right to use are:

a. Indonesian citizens,
b. foreign citizens domiciled in Indonesia;
c. legal entities established under Indonesian law and domiciled in Indonesia, and
d. foreign legal entities having representation in Indonesia.

Article 43

(1) In the case of land directly controlled by the State, a right to use can be transferred to another party only with the approval of the authorized official.

(2) A right to use on land with right of ownership can be transferred to another party only in the case if such a transfer is possible under the relevant agreement.

Part VII

Leasehold Rights for Buildings

Article 44

(1) An individual or a legal entity has leasehold rights of land they are entitled to using land owned by another party for purposes related to structures by paying to the land owner a certain sum of money as a rent.

(2) The payment of the rent can be made
   a. once or on a certain-interval basis;
   b. either before or after the use of the land.

(3) An agreement on land lease as referred to in this article may not be accompanied by conditions which contain elements of exploitation.

Article 45

Those eligible for leasehold rights on land are as follows:

a. Indonesian citizens,
b. foreign citizens domiciled in Indonesia;
c. legal entities established under Indonesian law and domiciled in Indonesia, and
d. foreign legal entities having representatives in Indonesia.

Part VIII

Right of Land Clearing and
Right to Collect Forest Products

Article 46

(1) A right of land clearing and a right to collect forest products can be acquired only by Indonesian citizens and regulated by a Government Regulation.
(2) Using a right to collect forest products legally does not by itself entitled to right of ownership on the land in question.

Part IX

Right to Use Water and Aquaculture and Fishing Rights

Article 47

(1) A right to use water is a right to obtain water for a certain purpose and/or to flow water above another person's land.
(2) A right to use water and aquaculture and fishing rights are regulated by a Government Regulation.

Part X

Air Rights

Article 48

(1) Air rights provide its holder with the power to use the energy and other elements existing in the airspace for the implementation of efforts at maintaining and developing

the productivity of the land, water, and natural resources contained therein and for other purposes related to such efforts.

(2) Air rights is regulated by a Government Regulation.

Part XI
Land Rights for Religious and Social Functions

Article 49

(1) Right of ownership to land held by religious and social bodies is recognized and protected for as long as such rights are used for purposes related to religious and social activities. Such bodies are to be assured of acquiring enough land to build structures and to implement their activities in the area of religious and social affairs.

(2) For worship and other religious purposes as referred to in Article 14, land directly controlled by the State can be granted with the status of a right to use.

(3) The waqf of land with a right of ownership is protected and regulated by a Government Regulation.

Part XII
Miscellaneous Provisions

Article 50

(1) Further provisions regarding the right of ownership are regulated by a Law.

(2) Further provisions regarding the right to cultivate, right to build, right to use, and leasehold rights of buildings are regulated by legislation.

Article 51

The mortgage rights which can encumber right of ownership, right to cultivate, and right to build as referred to in Articles 25, 33, and 39 are regulated by a Law.

CHAPTER III
CRIMINAL PROVISIONS

Article 52

(1) Any person intentionally violates the provisions of article 15 is subject to imprisonment for a maximum of three (3) months and/or with a fine for a maximum of Rp 10,000.

(2) The Government Regulations and legislation as referred to in articles 19, 22, 24, 26, section (1), 46, 47, 48, 49 section (3), and 50 section (2) can be the basis impose sanctions against their provisions' violators with imprisonment for maximum of three (3) months and/or a fine maximum of Rp10,000.

(3) The criminal acts as referred to in sections (1) and (2) of this article are violation.

CHAPTER IV
TRANSITIONAL PROVISIONS

Article 53

(1) The provisional rights as referred to in article 16 section (1) point (h) are a right of security, right of production-sharing endeavor, right of transient occupancy, and leasehold rights of agricultural land, and they are regulated in order to put restrictions on their characteristics which contradict this Law while efforts are made to nullify the existence of such rights within a short time.

(2) The provisions of sections (2) and (3) are applicable to the regulations as referred in section (1) of this article.

Article 54

In connection with the provisions as referred to in articles 21 and 26 of this Law, an individual of Indonesian citizenship and, concurrently, of Chinese citizenship who has made a declaration of relinquishing his or her Chinese citizenship and whose declaration of relinquishing his or her Chinese

citizenship has been legalized under the prevailing legislation is regarded as having only Indonesian citizenship as referred to in article 21section (1).

Article 55

(1) The foreign rights which, under the provisions of articles I, II, II, IV, and V concerning conversion, are converted into a right to cultivate and right to build is only temporarily valid for the remaining terms of the rights in question, which at most 20 years.

(2) The possibility for the granting of a right to cultivate and right to build to legal entities whose capital is partly or wholly foreign is open only if it is deemed necessary to grant such rights to such corporate bodies in the light of Law which regulates *pembangunan nasional semesta berencana* (holistic well-planned national development).

Article 56

As long as a Law on right of ownership as referred to in article 50 section (1) has not been established, the provisions of local *adat* law and other regulations concerning land rights which provide authority as meant in, or similar to those referred to in, article 20 apply, provided those provisions of local *adat* law and other regulations do not contradict the spirit and provisions of this Law.

Article 57

As long as a Law on mortgage rights as referred to in article 51 have not been established, the provisions concerning *hypotheek* as referred to in the Indonesian Civil Code and those concerning *Credietverband* (credit security) as meant in Staatsblad 1908-542 (State Gazette No. 1908-542), which has been amend to Staatsblad 1937-190 (State Gazette No. 1937-190), apply.

Article 58

As long as the implementing regulations of this Law have not been established, the regulations, both written and unwritten, regarding land, water, and natural resources therein and concerning land rights which already exist at the time this Law comes into force remain effective, provided that such regulations do not contradict the spirit and provisions of this Law and are given new interpretations in line with the spirit and provisions of this Law.

TWO

PROVISIONS ON CONVERSION

Article I

(1) A *hak eigendom* (right of ownership under Dutch Law) to land which already exists at the time this Law comes into effect becomes right of ownership except if the holder does not meet the criteria as referred to in article 21.

(2) A *hak eigendom* held by a Foreign Government which is used for purposes related to the residence of the Head of the Representative Delegation and to the embassy building, at the time this Law comes into effect, become a right to use as referred to in article 41 section (1), which will remain valid for as long as the land is used for purposes mentioned above.

(3) A *hak eigendom* held by a foreign citizen, by an Indonesian citizen who concurrently holds foreign citizenship, or by a legal entity which is not designated by the Government as referred to in article 21 section (2), at the time this Law comes into effect, become a right to build as referred to in article 35 section (1) with a term of 20 years.

(4) If the *hak eigendom* as referred to in section (1) of this article is encumbered with a *hak opstal* (right to build under Dutch Law) or *hak erfpacht* (right of long-term lease under Dutch Law), the *hak opstal* or *hak erfpacht* in question, at the time this Law comes into effect, becomes

a right to build as referred to in article 35 section (1) of this Law, which shall encumber the right of ownership in question for the remaining term of the *hak opstal* or *hak erfpacht*, which will not exceed 20 years.

(5) If the *hak eigendom* as referred to in section (3) of this article is encumbered with a *hak opstal* or *hak erfpacht*, the relationship between the holder of the *hak eigendom* and that of the *hak opstal* or *hak erftpacht* is to be settled on the basis of guidelines which are to be stipulated by the Minister of Agrarian Affairs.

(6) Such rights as *hypotheek*, *servituut*, *vruchtgebruik*, and others which are encumbering a *hak eigendom* shall continue encumbering right of ownership or right to build as referred to in sections (1) and (3) of this article while such rights become rights which are stipulated in this Law.

Article II

(1) Land rights providing their holders with powers as referred to in, or similar to those as referred in, article 20 section(1) --i.e. such land rights as *hak agrarisch eigendom*, *milik*, *yayasan*, *andarbeni*, *hak atas druwe, hak atas druwe desa*, *pesini*, *grant Sultan*, *landerijenbezitrecht*, *altijddurende erfpacht*, *hak-usaha atas bekas tanah partikelir*, and other land rights by any names which are to be subsequently confirmed by the Minister of Agrarian Affairs—which already exist at the time this Law comes into effect, at the time this Law comes into effect, become right of ownership as referred to in Article 20 section (1), except if the holder does not meet the criteria as referred to in article 21.

(2) If the land rights as referred to in section (1) are held by foreign citizens or by Indonesian citizens concurrently holding foreign citizenship or by legal entities which are not designated by the Government as referred to in article 21 section (2) becomes a right to cultivate or right to build, depending on what the land in question has been

allotted for, as are subsequently confirmed by the Minister of Agrarian Affairs.

Article III

(1) A *hak erfpacht* for a large-scale plantation company which already exists at the time this Law comes into effect shall, at the time this Law comes into effect, become a right to cultivate as referred to in article 28 section (1) for the remaining term of the *hak erfpacht* in question, which will not exceed 20 years.

(2) A *hak erfpacht* for a small-scale agricultural undertaking which already exists at the time this Law comes into effect shall, at the time this Law comes into effect, be nullified and be subsequently settled in accordance with the provisions which are to be stipulated by the Minister of Agrarian Affairs.

Article IV

(1) The holder of a *concessie* (concession) and a lease) for a large-scale plantation company, within one year following the coming into effect of this Law, must request to the Minister of Agrarian Affairs that the right in question be changed into a right to cultivate.

(2) If the holder of a *concessie* or of a *lease* fails to forward such a request within the said period of time, the *concessie* or *lease* in question is valid for the remaining part of its term, which will not exceed five years, upon the end of which the right in question is automatically become extinct.

(3) If the holder of a *concessie* or of a lease forwards a request as referred to in section (1) of this article but is not willing to accept the conditions stipulated by the Minister of Agrarian Affairs or the request is rejected by the Minister of Agrarian Affairs, the concessie or lease in question is valid for the remaining part of its term, which will not exceed five years, upon the end of which the right in question will automatically become extinct.

Article V

A *hak opstal* or *hak erfpacht* for a housing complex which already exists at the time this Law comes into effect, at the time this Law comes into effect, become a right to build as referred to in article 35 (1) for the remaining term of the *hak opstal* or *hak erfpacht* in question, which will not exceed 20 years.

Article VI

Land rights providing their holders with powers as referred to in, or similar to those as referred to in, article 14(1) --i.e. such land rights as *vrughgebruik, gebruik, grant controlleur, bruikleen, ganggam bauntuik, anggaduh, bengkok, lungguh, pituwas,* and other land rights by whatever names which are to be subsequently confirmed by the Minister of Agrarian Affairs-- which already exist at the time this Law comes into effect shall, at the time this Law comes into effect, become a right to use as referred to in article 41 section(1), which provides the holders with the same powers and obligations which they already have at the time this Law comes into effect, provided that such powers and obligations do not contradict the philosophy and provisions of this Law.

Article VII

(1) Such land rights as *gogolan*, *pekulen*, and *sanggan* which are permanent and which already exist when this Law comes into effect, at the time this Law comes into effect, become right of ownership as referred to in article 20 section (1).

(2) Such land rights as *gogolan*, *pekulen*, and *sanggan* which are provisional and which already exist when this Law comes into effect, at the time this Law comes into effect, become a right to use as referred to in article 41 section (1), which shall provide the holders with the same powers and obligations which they already have when this Law comes into effect.

(3) In the case of doubts as to whether a certain *gogolan*, *pekulen*, or *sanggan* is permanent or provisional, the Minister of Agrarian Affairs makes a decision.

Article VIII

(1) In the case of a right to build as referred to in article I section (3) and (4), article II section (2), and article V, the provisions as referred to in article 36 section (2) will apply.

(2) In the case of a right to cultivate as referred to in Article II section (2), article III section (1) and (2), and article IV(1), the provisions as referred in Article 30 section (2) will apply.

Article IX

Matters which are necessary for the implementation of the provisions contained in the articles above are further regulated by the Minister of Agrarian Affairs.

THREE

Changes in the structure of village administration which are to be made for the implementation of agrarian law reforms will be regulated separately.

FOUR

A. The rights and powers of land and water from *Swaprajas* (autonomous regions) or of former *Swaprajas* which still exist when this Law comes into effect are nullified and transfer to the State.

B. Matters related to the provision as as referred to in point A above are regulated further by a Government Regulation.

FIVE

This Law can be referred to as *Undang-Undang Pokok Agraria* (Basic Agrarian Law) and comes into force on the date of its promulgation.

In order that every person may know hereof, it is ordered to promulgate this Law by its placement in the State Gazette of the Republic of Indonesia.

Enacted in Jakarta
on 24 September 1960

President of the Republic of Indonesia,

signed

SUKARNO.

Promulgated
on 24 September 1960

State Secretary,

signed

TAMZIL.

STATE GAZETTE OF THE REPUBLIC OF INDONESIA OF 1960 NUMBER 104

Jakarta, 19 July 2021
Has been translated as an Official Translation
on behalf of Minister of Law and Human Rights
of the Republic of Indonesia
DIRECTOR GENERAL OF LEGISLATION,

signed

BENNY RIYANTO

Copy conforms to the original
Head of Legal Bureau,

Dr. Yagus Suyadi, S.H., M.Si.
NIP. 19630817 198503 1 005

ELUCIDATION OF LAW NUMBER 5 OF 1960 ON
BASIC AGRARIAN LAW

A. GENERAL ELUCIDATION

I. Objectives of Basic Agrarian Law

In the Republic of Indonesia, where the structure of the people's social and economic life is mainly agrarian, land, water, and space are seen as gifts from the Almighty God and have very important functions in the development of a just and prosperous society in line with our dream. Meanwhile, the currently applicable agrarian law, which should have served as one important instrument to develop a just and prosperous society, has in many cases provided an obstacle to achieve the dream. This has been caused primarily by the following:

a. that the currently applicable agrarian law was established partly *on* the basis of the purposes and fundamentals of the colonial government and partly under the influences of the said government and, as a result, it runs counter to the interests of the people and the State in implementing all-encompassing development in the context of finalizing the current national revolution;

b. that due to the colonial government's politics of law, the said agrarian law has a dualistic nature, by the enactment of the regulations based on *adat* law in addition to those derived from and based on western law and, by so doing, the said agrarian law has given rise to various inter-societal group issues which are not only difficult to handle but also contradictory to the idealized National unity;

c. that for the indigenous people, the colonial government's agrarian law does not guarantee legal certainty.

In line with the above view, it is necessary to have a new national agrarian law, which supplants the currently applicable agrarian law, which does not have a dualistic nature, which is simple, and which guarantees legal certainty for all Indonesian people.

The new agrarian law must enable land, water, and space to serve their functions as mentioned above, consistent with the interests of the people and of the State, and fulfill the needs of different eras in all aspects of agrarian affairs. Furthermore, the national agrarian law must materialize the State's spiritual principles and the Nation's dreams, namely the One and Only God, Humanitarianism, Nationalism, Democracy, and Social

Justice and, in particular, must implement the provisions of article 33 of the Constitution as well as those of the State Policy Guidelines as stated in the 17 August 1959 Political Manifesto of the Republic of Indonesia and re-asserted in the 17 August 1960 Presidential Address.

In line with the view that has been described above, the principles and underlying provisions of the new law need to be developed in the form of a law, which serves as a basis for the development of other regulations. The law is formally not different from other law in the sense that it is to be made by the Government upon approval of the *Dewan Perwakilan Rakyat* (the House of Representatives). However, due to its nature as a basis for the new agrarian law, the law should contain only the basic principles and issues in a broad outline and, therefore, it should be referred to as *Undang-Undang Pokok Agraria* (Basic Agrarian Law). The implementation of the Basic Agrarian Law will be regulated in laws, government regulations, and other forms of legislation. Thus, the objectives of Basic Agrarian Law are basically as follows:

a. to provide bases for the formulation of national agrarian law, which will be a tools of bringing prosperity, happiness, and justice to the State and the people, especially farmers, in the context of establishing a just and prosperous society;
b. to provide bases for the establishment of unity and simplicity in land law; and
c. to provide bases for the provision of legal certainty on land rights for all the people.

II. Bases for national agrarian law.

(1) The first basis, i.e. nationality, is provided in article 1 section (1), which says that “the entire territory of Indonesia is the totality of the motherland of all the Indonesian people, who are united as the Indonesian nation,” and in article 1 section (2), which says that “all the land, water, and airspace, including the natural resources contained therein, which exist within the territory of the Republic of Indonesia as gifts from the One and Only God, are the Indonesian nation’s land, water, and airspace and provide national wealth.”

This means that the soil, water, and airspace within the territory of the Republic of Indonesia, whose independence resulted from a struggle by the people as a whole, are the property of the Indonesian

nation and not simply that of their owners. Similarly, lands in regions and islands are not simply the property of the natives of the area or island in question. Therefore, the relationship of the Indonesian nation to Indonesia's land, water, and airspace is a kind of *ulayat* relationship enhanced to the uppermost level, namely the level which encompasses all the territory of the State.

The relationship of the nation to Indonesia's land, water, and airspace by nature is eternal (Article 1 section 3). This means that for as long as the Indonesian people who are united as the Indonesian nation still exists and for as long as Indonesia's land, water, and airspace still exist, not a single power will be able to, under any circumstances, break up or nullify that relationship. Thus, although Irian Barat (West Irian) --which constitutes part of Indonesia's land, water, and airspace-- is currently under the power of the colonizer, this part --under the provisions of this article-- also constitutes Indonesia's land, water, and airspace for the sake of law. The relationship of the nation to the land, water, and airspace as described above does not mean that individual right of ownership to (parts) of the soil are no longer possible. As has been mentioned above, the relationship is some kind of *hak ulayat* (ulayat right) relationship and, as such, it is not a *hubungan milik* (ownership relationship). In the context of *hak ulayat*, *individual* ownership rights are recognized. *Therefore, it can be asserted that the new agrarian law recognizes the existence of ownership rights* which can be held by individuals either on their own or in togetherness with other individuals to *parts* of the Indonesian land (article 4 in conjunction to article 20). Meanwhile, it is only the surface of the soil, which is referred to as *tanah* (land), which can be subject to individual rights.

In addition to the right of ownership, which is the hereditary, strongest, and fullest right that one can have to land, there have also been created such rights as right to cultivate, right to build, right to use, leasehold rights, and other rights which will be stipulated by way of other laws (article 4 in conjunction to article 16). How these rights relate to the nation's right [and the state's right] will be explained in number 2 below.

(2) The principle of "*domein*" (i.e. the principle of the state being the owner of land), which was used by the colonial government as a basis for agrarian legislation, is not recognized in the new agrarian law.

The principle of *domein* is contradictory to the Indonesian people's legal consciousness and to the principle of the State being independent and modern.

In view of the above, the principle of *domein* --which was confirmed in various statements of *domein*, e.g. Article 1 of *Agrarische Besluit* (S. 1870-118), S. 1875-119a, S. 1874-94f, and S. 1877-55, and S. 1888-58-- has been discarded and the various statements of domein have been revoked.

The Basic Agrarian Law is based on the position that in order to achieve what is stipulated in article 33 section (3) of the Constitution, therefore not necessary and not appropriate for the Indonesian nation and State to act as landowner. It is more appropriate for the State, in its capacity as the people's organization of power, to act as *Badan Penguasa* (Authority Body). From this perspective that the meaning of the provision of article 2 section (1), which says "the land, water, and airspace, including the natural resources contained therein, are at the highest level controlled by the State" should be seen. In consistence with the underlying position as described above, the term "controlled" in this article does not mean "owned" but, rather, it means that the State, in its capacity as the Indonesian people's organization of power, has been given the authority to do the following at the uppermost level:

a. to regulate and administer the allotment, use, appropriation, and maintenance of the land, water, and airspace;
b. to determine and regulate what rights can be held to (parts) of the land, water, and airspace; and
c. to determine and regulate the legal relationships between people and legal acts concerning land, water, and airspace.

All this is intended to bring the largest possible prosperity to the people in the context of establishing a just and prosperous society (article 2 section (2) and (3).

The State's power as meant above concerns all the soil, water, and airspace, including parts of them which are already possessed by individuals under certain rights. The state's power over land which is already possessed by an individual under a certain right is defined by the contents of the right in question, and this means that the State's power over the land in question ends at the point to which it gives the

individual in question authority to execute his right. The contents and limitations of the rights are stated in article 4 and the following rights as well as in the articles of CHAPTER II.

The State's power over land which is not possessed under a certain right by an individual or another party is broader and full. With reference to the objectives mentioned above, the State can grant such land to an individual or legal entity under a certain right, e.g. right of ownership, right to cultivate, right to build, or right to use according to the allotment or the need or grant it to a certain Authority Body [e.g. a Department, *Jawatan* (Service), or Autonomous Region] under a right of management for use by the latter to facilitate the implementation of its respective duties (Article 2 section 4). Meanwhile, the State's power over such land is also defined, more or less, by the *ulayat* rights law communities as long as the ulayat right in question, in reality, still exists. This will be elaborated in point number 3 below.

(3) In connection with the relationship of the nation to the land and water and with the State's power as meant in article 1 and article 2, certain provisions have been made available in article 3 and they are intended to place the right (i.e. *ulayat* rights) in its proper position in the current atmosphere of the nation-state. Article 3 stipulates that "the *implementation* of the ulayat rights and other similar rights of *adat* law communities --as long as such communities in reality still exist-- must be such that it is consistent with national interests and the State's interests on the basis of national unity and must not contradict the other Laws and regulations of higher levels."

This provision first of all rests on the new agrarian law's recognition of the existence of *ulayat* rights. As may have been known, even if the *ulayat* right --in reality-- still exists, is still effective, and is taken into account in the making of court decisions, the said right has never been officially recognized in law. The lack of such recognition has resulted in the fact that during the period of colonization, the implementation of agrarian regulations frequently neglected the existence of *ulayat* rights. The fact that *ulayat* rights is mentioned in the Basic Agrarian Law basically means that the said right is recognized. Therefore, in principle, *ulayat* rights will be taken into consideration as long as the said right in reality still exists in the *adat*

law community in question. For example, in the granting of a land right (e.g., a right to cultivate), the relevant *adat* law community will first be heard and given some "*recognitie*" (recognition) to which they are entitled in their capacity as holder of the *ulayat* rights in question. On the other hand, however, it would not be justifiable for the relevant *adat* law community to block the granting of the right to cultivate in question on the pretext of their *ulayat* rights if the granting of the right to cultivate is indeed required in support of broader interests. Similarly, it would not be justifiable for a *adat* law community, on the pretext of their *ulayat* rights, to --for example-- reject a plan on clearing forests in a big way and on an on-going basis which is required to support the implementation of large-scale projects on the production of food and the relocation of people. Experience shows that in many cases, the development of regions is impeded by problems related to *ulayat* rights. This is what constitutes the second rational behind the provisions of Article 3 as mentioned above. The interests of a law community must be subordinated to the broader interests of the nation and of the State, and the implementation of the *ulayat* rights must also be consistent with the broader interests. It would not be justifiable for adat law community, in the current atmosphere of the nation-state, to stick with the contents and implementation of their *ulayat* rights on an absolute basis as if the *adat* law community in question were disengaged from other law communities and other regions in the context of the State as a unity. Such an attitude would clearly contradict the underlying principle mentioned in article 2 and would, in practice, have adverse impact on the implementation of great efforts in achieving prosperity for all the People.

However, as is clear from the description above, this does not mean that the interests of the law community in question will be totally disregarded.

(4) The fourth basis is provided in article 6, which says that "all land rights have social functions."

This means that whatever land right one has, it is not justifiable for the individual in question to use (or not to use) his land exclusively for his/her own interests, much less so if this disadvantages the people. Land use must be adjusted to the condition of the land in

question and to the nature of the land right in question so that it can improve the welfare and happiness of the owner as well as benefit the people and the State.

However, the said provision does not mean that the interests of an individual should be pushed completely aside by those of the public (the people). The Basic Agrarian Law also regards of individuals' interests. Public interests and individual interests must balance each other so that, in the end, the primary objectives can be achieved: prosperity, justice, and happiness for all the people (Article 2 section 3).

Due to its social functions, it is only appropriate that land must be well taken care of so as to improve its fertility and to prevent it from damage. The obligation to take care of land is imposed not only on the owner or the right holder but also on everyone, every legal entity, or every institution which has a legal relationship with the land in question (Article 15). In the implementation of this provision, the interests financially incapable people will be taken into consideration.

(5) In line with the principle of nationality as referred to in Article 1, Article 9 in conjunction to article 21 section (1) provides that only Indonesian citizens can have a right of ownership to land. Expatriates are prohibited from having a right of ownership (Article 26 section 2). Expatriates can only have a right of use to land of limited dimensions. Similarly, legal entities basically cannot have a right of ownership [Article 21 section (2)] on the consideration that legal entities do not need to have a right of ownership but another right will do for them as long as it is equipped with an adequate guarantee for the fulfillment of their specific requirements (e.g. right to cultivate, right to build, or right to use according to articles 28, article 35, and article 41). Thus, any efforts at avoiding the maximum limits on land ownership can be prevented (article 17).

Although legal entities basically cannot have a right of ownership to land, a certain "escape clause" has been made available which makes it possible for certain corporate bodies to have a right of ownership in view of the existence of public needs that are closely related to religious beliefs, social notions, and economic relations. This "escape clause" is adequate in that it enables the Government, in the event in which a certain legal entity requires a right of ownership to land, to

provide it with some dispensation by designating the legal entity in question as one eligible for a right of ownership to land (article 21 section 2). Legal entities dealing in social and religious affairs are designated as ones that can have a right of ownership to land (article 49), but they can have it only for as long as the land is used to support their activity in social and religious affairs. In matters that are not directly related to social and religious affairs, they are to be considered ordinary corporate bodies.

(6) Still in connection with the principle of nationality as meant above, it is provided in article 9 section (2) that "Every Indonesian citizen, both men and women, has an equal opportunity to acquire a land right and to obtain the benefits and yields thereof for themselves or for their family"

Meanwhile, it is necessary to provide protection for economically weak groups against economically strong citizens. In view of this, Article 26 section (1) stipulates that "The sale and purchase, exchange, gifting, bequest by a will, grant under customary and other Laws which are intended to transfer a right of ownership and the control of such Laws are to be regulated by a Government Regulation" It is this provision that will serve as an instrument to protect economically weak groups as meant above.

In this connection, it may also be necessary to note the provisions of Article 11 section (1), which are aimed at preventing the occurrence of excessive control of other people's living and jobs in agrarian-related business lines because such control contradicts the principle of humanity-based social justice. All joint enterprises in the area of agrarian affairs must be based on common interests which are consistent with national interests [Article 12 section (1)], and the Government is required to prevent the existence of any enterprises of private-monopolistic nature by organizations or individuals in the area of agrarian affairs (Article 13 section 2). However, it is not only monopolistic enterprises by the Private sector but also monopolistic enterprises by the Government which are to be prevented so that the people will not be disadvantaged. Therefore, any monopolistic enterprises by the Government in the area of agrarian affairs can be organized only by way of an act (Article 13 section 3).

(7) In article 10 sections (1) and (2), a principle is formulated which currently serves as a basis for changes that are taking place in the structure of land affairs nearly throughout the world, especially in countries which have been administering what is called “land reform” or “agrarian reform,” and the principle is that “agricultural land must be tilled or worked upon by the owner himself/herself.”

To ensure the achievement of this principle, certain provisions have to be made available. One is a provision concerning the minimum limits on land ownership by a farmer in order that he can earn enough income to enable him and his family to lead a decent life (article 13 in conjunction to article 17). Another one is a provision concerning the maximum limits on land that can be possessed under a right of ownership (article 17) in order that the accumulation of land in the hand of strong groups. In this connection, article 7 states a very important principle: that excessive land ownership and possession are forbidden because those harms public interests. Finally, the principle needs to be accompanied with a provision concerning the provision of credit, seeds, and other forms of assistance under soft conditions so that the land owner will not find himself/herself compelled to transfer the possession of his land to another party and to work in another walk of life.

Meanwhile, in view of the current structure of our agricultural community, it is necessary --at least for the time being-- to keep opportunities open for the use of agricultural land by parties other than the owners by way of lease, output sharing, *gadai* (pledge/pawn/security), and others. However, all this should be administered in line with other legal provisions and regulations so as to prevent oppression/exploitation of the weak by the strong (articles 24, 41, and 53). Thus, the use of land by way of lease, output sharing, *gadai*, and the likes should not be left to agreements made by interested parties on the basis of the principle of “free fight,” but the authorities will make provisions concerning the procedures and conditions so as to fulfill the principle of justice and to prevent “*exploitation de l’homme par l’homme*.” As an illustration, the provisions in Law No. 2 of 1960 on “Output Sharing Agreements” (State Gazette No. 2 of 1960) can be referred to in this regard.

The provisions of article 10 section (1) constitute a principle of which the implementation requires further regulations (section 2). In our current social structure, regulations concerning the implementation of the principle needs to give room for dispensations. As an illustration, a civil servant who has 1 (one) hectare or so of land to provide for him when he is already old and, due to his current job, cannot work on the land on his/her own must be allowed to keep having the land. In the meantime, he/she is allowed to hand over the land to another person for the latter to work upon on the basis of a lease, output sharing, or another agreement but, when he is no longer in the civil service as a result of, for example, retirement, he/she must actively work upon the land on his/her own (section 3).

(8) Finally, to achieve the nation's and State's dreams in agrarian affairs as mentioned above, it is necessary to make plans on the allotment, use, and supply of the land, water, and airspace in support of the various living interests of the people and the State. A National Plan must first be made, which covers all the territory of Indonesia, and -- subsequently-- it should be translated into regional plans, one for each of the regions (article 14). With such planning, land use can proceed in guided and orderly manners so that it can produce utmost benefits for the State and the people.

III. Bases for unity and simplicity of law.

The bases for the achievement of these objectives are obvious from the provisions contained in Chapter II.

(1) As has been explained above, our current agrarian law is dualistic in nature as it distinguishes between land rights based on *adat* law and those based on western law. Such a distinction rests on the provisions of Book II of the Indonesian Civil Code. UUPA (Basic Agrarian Law) seeks to do away with such a distinction and, wittingly, to create legal unity in line with the wish of the people, who live as one nation, and with economic interests.

Inevitably, the new agrarian law should be consistent with the legal awareness of the common people. Since most Indonesian people adhere to *adat* law, the new agrarian law will also be based on the provisions of *adat* law, which is the indigenous law, with the latter being improved and adjusted to the interests of the people of a

modern State which connects with the international community as well as to Indonesian socialism. As may have been understood, adat law --in its growth-- could not have been spared from the influences of the capitalistic politics of the colonizer and from those of the feudalistic *swapraja* (self-governing) communities.

(2) In the implementation of the unified law, Basic Agrarian Law does not keep a closed eye on the fact that there are differences in circumstances and in legal needs among different societal groups. In view of this, article 11 section (2) stipulates that "differences in circumstances within the society and in legal needs amongst societal groups shall --*where necessary*- be taken into account, provided that *this does not run counter to national interests*. What is meant by differences amongst different societal groups is such differences as, for example, those in legal needs between urban people and rural people and between economically strong people and economically weak people. Hence, article 11 section (2) subsequently provides that the interests of the economically weaker groups guaranteed.

(3) With the differences between *adat* law and western law having been discarded in the new agrarian law, the purpose of achieving simplicity of law will basically be achieved.

As has been explained earlier, in addition to right of ownership as the hereditary, strongest, and fullest right which one can have to land, the new agrarian law basically recognizes the existence of *adat*-based land rights as enumerated in article 16 section (1) point (d) to (g). Besides, in order to fulfill the needs which are beginning to become obvious in our society, the new agrarian law has created two new land rights, and they are right to cultivate, i.e., a right intended for companies dealing in agriculture, fishery, and animal husbandry) and right to build (right of use of structures, i.e., a right enabling one to build/have a building on someone else's land) [Article 16 section (1) point (b) and point (e)].

As for the rights which are already in existence at the time the new agrarian law comes into effect, all of them will be converted to any of the new rights stipulated in this law.

IV. Basis for establishing legal certainty.

That this law seeks to provide legal certainty concerning land rights is evident from the provisions in it which regulates *land registration*. articles 23, 32, 38 are meant for *land-right holders* and intended to enable them to obtain *legal certainty concerning their rights*. On the other hand, article 19 is meant to be an instruction for *the Government* that land registration in the nature of "*rechts-kadaster*" (legal cadastre) be administered throughout Indonesia in order to provide a *guarantee on legal certainty*.

The registration will be implemented by taking into account the interests and condition of the State and the people, the needs for socio-economic movements, and the possibilities open in terms of personnel and equipment. In view of this, the cadaster will be implemented first in cities and subsequently, on a gradual basis, throughout Indonesia.

In line with its purpose, namely to provide legal certainty, the registration is compulsory for every land-right holder. Otherwise, the implementation of land registration --which obviously requires manpower, equipment, and money in large quantity-- would be meaningless at all.

B. ELUCIDATION OF ARTICLE BY ARTICLE

Article 1

Elucidation has been given in General Elucidation II (point 1). In Basic Agrariam Law makes a distinction in meaning between "*bumi*" (soil, earth) and "*tanah*" as found in article 1section (3) and article 4 section (1). What is meant by *tanah* (land) is the surface of the land.

The concept of "land" and "water" has been broadened to include the airspace in view of the current technical advancements and of the future possibilities.

Article 2

Elucidation has been given in General Elucidation (II (point 2).

The provision of section 4 concerns the principles of autonomy and *medebewind* (co-governing; auxiliary assignment) in the implementation of regional administration. Agrarian affairs are by nature and in principle the duty of the Central Government (article 33 section 3 of the Constitution. Thus, the delegation of authority over the implementation of the State's right of control to land is a form of

medebewind. All will be implemented as required and in ways which may not contradict to the national interests. Authority over agrarian affairs can provide a source of income for the region in question.

Article 3.

The term "*ulayat* rights" and other similar rights means what in the literature on *adat* (customs) is referred to as "*beschikkingsrecht*."
For further elucidation, see General Elucidation (II point 3).

Article 4.

Elucidation is given in General Elucidation (II point 1).

Article 5.

This article asserts that *adat* law is used as a foundation for the new agrarian law. For further elucidation, see General Elucidation (III point 1).

Article 6

Not only right of ownership has social functions; all land rights do. This is elaborated on in General Elucidation (II point 4).

Article 7

This article confirms the principle which bans excessive land ownership and possession as has been elaborated on in General Elucidation (II point 7). As for the limitations, they are regulated in Article 17. The said principle knows no exceptions.

Article 8

Since according to the provision of article 4 section 2 provides that land rights entitle the holder only to the surface of the soil/land, the powers generated from land rights do not affect the natural resources found inside the land, water, and airspace. Hence, the taking of such natural resources requires separate regulations. The said provision serves as a basis for mining and other legislation.

Article 9

Section 1 has been elaborated on in General Elucidation (II point 5).

The provision of section 2 results from the provisions of article 1 section 2 and2.

Article 10

Elucidation is given in General Elucidation (II point 7). The phrase “in principle” refers to the likelihood of exceptions being made as illustrated in the General Elucidation. However, such exceptions need to be regulated by way of legislation (see the elucidation on article 7 for comparison). The use of land by a party other than its owner is allowed for by article 24, but such use is subject to limitations and is to be regulated.

Article 11

This article carries the principle of the economically weak having to be protected against the economically strong. The economically weak can be native Indonesian citizens and those of foreign origin, and the reverse is also true. See General Elucidation (III point 2.

Article 12

The provision of section 1 is related to that of article 11 section 1. The types of joint enterprises which are consistent with this provision are cooperatives and other forms of *gotong royong* (mutual assistance). The provision of section 2 allows for the creation of “joint enterprises” between the State and the private sector in the area of agrarian affairs. What meant by “other parties” are local governments, private businessmen with national capital, and with private companies with progressively “domestic capital.

Article 13.

Elucidation on sections 1, 2, and 3 is given in General Elucidation (II point 6).

The provision of section (4) concerns the implementation of the principle of humanity-driven social justice in the area of agrarian affairs.

Article 14

This article regulates the issue of planning on the supply, allotment, and use of the land, water, and airspace as has been described in General Elucidation (II point 8). In view of the future model of the State's economy, in which industry and mining will play important roles, planning should be conducted not only of agriculture but also of industry and mining (section (1) point d) and point (e)]. Such planning is intended not simply to provide land for agriculture, animal husbandry, fishery, industry, and mining but also to develop them. Regulations made by regional governments should be legalized within the context of General Plans made by the Central Government and in consistence with the Central Government's policies.

Article 15

Elucidation is given in General Elucidation ((II point (4). It is mandatory to take good care of land by maintaining it in ways that are common to respective regions and in consistence with directions provided by the relevant *Jawatan*s (offices/bureaus).

Article 16

This article concerns the implementation of the provision of article 4. In line with the principle stated in article 5, namely that national land law is based on *adat* law, the land and water rights stipulated in this article are also based on the systematics of *adat* law. Meanwhile, right to cultivate and right to build have been created to respond to the needs of modern society in the current era. It is necessary to assert that right to cultivate is not *hak erfpacht* (right of long-term lease) as stipulated in the Civil Code. Similarly, right to build is not *hak opstal* (right to construct a building). The *erfpacht* and *opstal* institutions have been eliminated with the revocation of the provisions contained in Book II of the Indonesian Civil Code.

Meanwhile, the *adat* rights which are by nature contradictory to the provisions of this law (article 7 and article 10) but which, due to the current social circumstances, cannot be discarded as yet, will be treated as temporary rights and will be regulated (section 1 point h in conjunction to article 53).

Article 17

The provisions of this article are the implementation of what is stipulated in article 7. The fixing of maximum limits on ownership will be shortly done by legislation. Land in excess of the maximum limits will not be confiscated but will be acquired by the Government with some indemnity. Such land will subsequently be re-distributed among the needy. Basically, the indemnity for such land --which has to be paid to the former owner-- is to be paid by those who receive it. However, since the recipients mostly cannot afford to pay the price of the land in a short time, the Government will make available some credit and make other efforts so that the former owner will not have to wait for too long before receiving the said indemnity.

The fixing of the minimum limits on ownership does not mean that those having less land than the minimum limits will be forced to relinquish their land. Rather, the fixing of such minimum limits is primarily intended to prevent land from further subdivision. In addition, efforts will be made --such as resettlement, large-scale land clearance off Java, and industrialization-- so that the minimum limits can be achieved on a gradual basis. What is meant by {family} is the husband, wife, and their unmarried children who are still their dependents, all of whom total around seven 7 persons. Either a man or a woman can be head of the family.

Article 18

This article constitutes a guarantee for the people concerning their land rights. Although right revocation is possible, it is subject to certain conditions, e.g., that it should be accompanied with some decent indemnity.

Article 19

Such land registration will be administered in simple, easy-to-understand ways and implemented by the relevant people (see General Elucidation IV).

Article 20

This article mentions the characteristics of right of ownership which make it different from other rights. Right of ownership is the “strongest and fullest” right which one can have to land. However, that right of ownership have such characteristics does not mean that

it is a land right with “absolute, unlimited, and indefeasible” like the right of *eigendom* (i.e. right of ownership under western law) in its true sense. These characteristics (“absolute, unlimited, and indefeasible”) are evidently contradictory to *adat* law and to the principle that every land right has social functions. The word “strongest and fullest” is used to distinguish the right (i.e., right of ownership) from right to cultivate and right to build, right to use, and other rights. It serves to show that amongst the rights which one can have to land, it is right of ownership which is the strongest and fullest.

Article 21

Sections 1 and 2 are elaborated on in General Elucidation (II point 5). In section 3, only two ways are mentioned of acquiring a right of ownership, given that other ways are forbidden by article 26 section 2. As for the methods of acquiring a right of ownership mentioned in this section, they are ways of obtaining a right without taking a positive Law which is purposefully aimed at making the right in question transfer.

It is only appropriate, therefore, that for as long as Indonesian citizens concurrently hold foreign citizenship, should be treated differently from other Indonesian citizens in terms of land ownership.

Article 22

One example of how a right of ownership comes into existence under *adat* law is land clearance. Ways of acquiring a right of ownership under *adat* law will be regulated so as to prevent the occurrence of things which disadvantage the interests of the public and the State.

Article 23

Elucidation is given in General Elucidation (point IV).

Article 24

This article serves as an exemption from the principle stated in Article 10. The forms of relationship between the owner and tiller/user include lease, output sharing, and right to build.

Article 25

Land with the status of a right of ownership which is encumbered

with a security title remains in the hand of the owner. if the owners require some cash, they can *menggadaikan* (i.e., pledge or pawn) the land --on a temporary basis-- in accordance with the provisions of article 53. In this regard, the land transfers to the holder of *hak gadai* (right of pledge).

Article 26

The provision of section (1) is described in General Elucidation (II point 6) as having the purpose of giving protection to economically weak groups. In this Basic Agrarian Law, distinction is made not between indigenous and non-indigenous citizens but between economically strong and weak groups. The economically strong can be Indigenous and non-indigenous citizens. Meanwhile, what section (2) says results from the provision in article 21 on who is non-eligible for land ownership.

Article 27

Land is abandoned when it is deliberately not used in line with its condition or with the nature and purpose of the right on it.

Article 28

This right is specially intended to enable companies dealing in agriculture, fishery, and animal husbandry to work on land which they do not own. It differs from right to use in that the former can be granted only for purposes related to agriculture, fishery, and animal husbandry and only on land of at least 5 hectares. Unlike a right of use, a right to cultivate can change hands and be transferred to another party and can be encumbered with a mortgage right. A right to cultivate cannot be granted to foreigners. As for legal entities operating with foreign capital, they can be granted with a right to cultivate only with reference to the limitations mentioned in article 55. To encourage in order to the use and exploitation of the land is conduct in unwell manner, because in this case, the right to cultivate can be revoked (article 34)

Article 29

Due to its characteristic and purpose, a right to cultivate is a right

with a limited term. A term of 25 or 35 years with a possibility for a 25-year extension is seen as adequate enough to the purposes related to the cultivation of plants with a long lifespan. The term of 35 years, for example, has been fixed in view of the lifespan of oil palms.

Article 30

Foreigners are not eligible for a right to cultivate. Legal entities which are eligible for a right to cultivate are those which have progressive national capital, be they indigenous or non-indigenous. As for legal entities operating with foreign capital, the possibility to grant them with a right to cultivate is open only if it is deemed necessary to do so in light of a Law which regulates *pembangunan nasional semesta berencana* (well-planned, all-encompassing national development) (article 55).

Articles 31 to 34.

Sufficiently clear. As for the provision of article 32, elucidation is explained in General Elucidation (point IV).

Article 35

Unlike right to cultivate, right to build has nothing to do with agricultural land. Because of this, a right to build can be granted not only on land possessed by the State but also on land owned by private individuals.

Article 36

See elucidation on article 30.

Articles 37 to 40

Sufficiently clear.. As for what is stipulated in article 38, it is already elaborated on in General Elucidation (point IV).

Articles 41 and 42

Right to use is the “collective definition” of the rights which are known in land law by different names, all of which --with slight differences due to differences in circumstances amongst regions-- provide the holder with powers as mentioned in this article. In the context of simplification as described in the General Elucidation, the new

agrarian law uses the same term to refer to these rights.

Foreign embassies can be granted with a right to use because this right can be valid for as long as the land is used for that purpose. Foreign individuals and foreign legal entities can be granted with a right of use due to limited powers provided.

Article 43

Sufficiently clear..

Articles 44 and 45

Since leasehold rights is right to use with special characteristics, it is treated separately. In view of the provision of article 10 section 1, Leasehold rights is available only for structures. Leasehold rights to agricultural land by nature is transient (article 16 in conjunction with article 53). The State cannot lease out land because the State does not own land.

Article 46

Right of land clearing and right to collect forest products are land rights under *adat* law. These rights need to be regulated by a Government Regulation in the interests of the public which are broader than the interests of the individual or law communities concerned.

Article 47

Right to use water and aquaculture and fishing rights are about water which does not exist on his/her own land. If water existing on one's own land, those rights are including in the content of right of ownership of land.

Right to use water is a right to obtain water from a river, canal, or spring which exists outside of his/her own land, so that matters include in the content of right of ownership of land.

Right to use water is a right to obtain water from a river, canal, or spring which exists outside of one's own land, e.g. for purposes related to the irrigation of one's own land, to household use, or to other uses. In many cases, the water which one requires needs to be

flowed in through land belonging to another person and, when it is no longer required, to be flowed out (disposed) through land belonging to another person. These persons are not supposed to block the land owner from flowing such water into and out of the latter's land through their respective land parcels.

Article 48

Air rights has been created in view of the current advancements in technology and of the possibilities that may be open in the future.

Article 49

To remove any doubt and skepticism, this article asserts that the new agrarian law will pay attention as required to matters related to worship and other religious purposes. See also article 5 and article 14 section (1) point (b).

Articles 50 and 51

This is a consequence to the fact that this Law contains only the fundamentals of the new agrarian law.

Article 52

To guarantee that the regulations and measures serving to implement Basic Agrarian Law are carried out in the best possible manners, the criminal sanctions stipulated in this Article are required.

Article 53

See elucidation on article 16.

Article 54

This article has been created in view of the provisions of articles 21 and 26. One who has declared his/her rejection of Chinese citizenship but whose rejection of Chinese citizenship has not been legalized when this Law comes into effect shall be subject to the Provisions concerning Conversion as meant in article I section 3, article II section 2, and Article VIII. However, when his/her rejection of Chinese citizenship has been legalized, a possibility is open for him/her to acquire a land right as one with single Indonesian citizenship. This

also applies to individuals as referred to in Article 12 of Government Regulation No. 20 of 1959, that is if no confirmation from the authorities has been obtained.

Article 55

See elucidation on article 30.

Section 1 refers to foreign capital which already exists, and section 2 to new foreign capital. As has been asserted in the elucidation on article 30, the granting of a new right under section 2 is possible only if it is deemed necessary to do so in light of an act which regulates *pembangunan nasional semesta berencana* (well-planned, all-encompassing national development).

Second: According to the provisions of this conversion, all the rights which have by now existed should become new rights under Basic Agrarian Law. The conversion of such rights into right to cultivate and right to build as mentioned in articles I, II, III, IV, and V shall proceed with reference to the general conditions as referred to in article 50 section 2 and to the special conditions, i.e., those related to the condition of the land in question as well as those enumerated in the right conversion deed in question, provided that this does not contradict the new regulation.

Third: The structure of the village administration needs to be revised to guarantee the best implementation of agrarian-law reform under this Law. The village administration will play a very important role.

Fourth: This provision is intended to remove rights which are feudalistic and are not in line with the provisions of this law.

SUPPLEMENT TO THE STATE GAZETTE NUMBER 2043

Copy conforms to the original
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