

GOVERNMENT AUTHORITY IN DETERMINING MAXIMUM AND MINIMUM LIMIT OF AGRICULTURAL LAND OWNERSHIP AND ACQUISITION

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ABSTRACT

Article 1 paragraph (2) point 2 letter b of Act No. 56 Prp of 1960 on the Determination of Agricultural Land mentions that the acquisition and ownership of agricultural land in a quite congested area is set forth that: Each person may have the right to land with the maximum width for dry land of 9 hectares and/ or for wetland with the maximum width of 7.5 hectares. In addition, article 8 states that "the Government conducts the effort in order that every farmer and his family have agricultural land at least 2 (two) hectares". The rationale of the government authorities in setting the maximum and minimum limit of the acquisition and ownership of agricultural land is Act No. 5 of 1960, Act No. 56 Prp of 1960 and the Government Regulation (PP) No. 24 of 1960 as the realization of Article 33 paragraph (3) of the 1945 Constitution with the purpose of fair equalization to the sources of livelihood. The juridical consequences when violating the prohibition of the maximum and/ or minimum limit of the ownership will be sanctioned, and the land excess of the maximum limit will be taken by the state with no compensation, unless by the license of the Head of the Land Agency in terms of land stewardship.

Keywords: authority, maximum/ minimum limit, ownership, agricultural land

A. Introduction

On 24 September 1960, it was a very historic and important day in the life of law in Indonesia because, on the date, Act No. 5 of 1960 on Basic Regulation of Agrarian Principles (State Gazette of 1960 No. 104) was set and enacted. It is better known by the name "Agrarian Basic Law" aimed to change the fate of Indonesian citizens in relation with the acquisition and ownership of right to land. One of the important matters due to the enactment of the Basic Agrarian Law is related to the provisions of land reform (the introduction of land reform program), which includes the changes in the ownership and acquisition of land as well as the relationships concerned with the exploitation of land.

Article 2 of the Basic Agrarian Law states that: "The earth, water, and space, including the natural resources therein are controlled by the state ...". As the organization of people power, this statement may mean that the state has the authority to regulate and organize the allocation, usage, inventory, and maintenance of earth, water, and space. The authority on the state's rights to control means for the people's greatest prosperity.

Furthermore, Article 7 of the Basic Agrarian Law states: "In order not to harm public interest, so the ownership and acquisition of land beyond the limit is not allowed". Subject to the provisions of Article 7 and to achieve the community goals of independent, sovereign, just and prosperous, it is implemented in Article 17 of the Basic Agrarian Law which regulates the maximum and/ or minimum width of land that may be owned using one right by one family or a legal entity. As a follow up to the provisions of the Articles mentioned above, the government has issued the Government Regulation in Lieu of Law (Perpu) Number 56 of 1960 on the Determination of Agricultural Land Width on 29 December 1960 and started to apply on 1 January 1960.

This law essentially aims to set the maximum and/ or minimum limit of agricultural land that may be acquired and possessed in accordance with the state of the region, area, and population of the region concerned. The Government Regulation in Lieu of Law (Perpu) No. 56 of 1960 is then set into Act Number 56 Prp 1960 (LN. 1960 No. 174). The explanation is included in the State Gazette (TLN.) No. 5117 on the Determination of Agricultural Land Width. Act Number 56 Prp of 1960 is known as the implementation basis for land reform in Indonesia. The Act regulates three major problems as follows:¹

1. Determination of the maximum width of agricultural land ownership and acquisition.
2. Determination of the minimum width of agricultural land ownership and the prohibition to perform the acts that lead to the breaking of land ownerships into very small parts.
3. Return and redemption of mortgaged agricultural lands.

In the list of regional classification in accordance with the Decree of the Minister of Agrarian No. Sk. 978 / Ka / 1960 on the Affirmation of the Maximum Width of Agricultural Land. (T.L.N. NO. 2143), it establishes the classification of the areas which are not densely populated area to the densely populated one (less dense, quite dense, and highly dense). As stipulated in Article 1 paragraph (2) point 2 letter b of Act 56 Prp of 1960 on the Determination of Agricultural Land Width, it states that the acquisition and ownership of agricultural land in quite densely populated area are set: anyone may have the right to land on with the maximum width for dry land of 9 hectares and/ or rice field with the maximum of 7.5 hectares. Then, article 8 states that "the Government conduct the efforts in order that every farmer and his family has an agricultural land minimally 2 (two) hectares".

¹ Boedi Harsono, 1995, *Undang-Undang Pokok Agraria (Basic Agrarian Law)*, Hukum Tanah Indonesia, 1995, Jakarta: Djambatan, p. 355.

B. Problem Formulation

In the setting of the determination of maximum and minimum limits of the ownership and acquisition of agricultural land, it requires the basis of government authority in setting such limits as well as the juridical consequences of the acquisition and ownership of agricultural land which is beyond the limit.

C. Discussion

1. The Setting of the Determination of Maximum and Minimum Limit of the Ownership and Acquisition of Agricultural Land.

The laws are as follows:

- a. The Decree of the People's Consultative Assembly (MPR) Number IX/MPR/2001 on Agrarian Reform and Natural Resources Management. The provision is a guideline or guidance in land law reform in Indonesia. Although it is not a formal source of law, the provisions in the Decree can be used as a guide and foundation for the legislation on land law reforms in Indonesia. The land reform includes an ongoing process to reorganize the acquisition, possession, use, and agrarian resource utilization which are implemented in order to achieve legal certainty and protection as well as justice and prosperity for all Indonesian people².

The Decree expressly assigns the House of Representatives of the Republic of Indonesia (DPR RI) with the President to immediately organize further implementation of agrarian reform and natural resource management as well as to repeal, amend, and/ or replace all of the legislation and its implementing regulations which are not in line with the provision. In addition, Article 7 of the Decree assigns the President to immediately carry out agrarian reform and natural resource management, and report the implementation in the annual session of the People's Consultative Assembly (MPR).

- b. Act No. 56 Prp of 1960 on the Determination of Agricultural Land.

This law is a follow up of the provisions of Article 7 and Article 17 of the Basic Agrarian Law. Pursuant to the general explanation of the law, it is stated that the need for the determination of agricultural land width is based on the following facts:

- 1) The state of Indonesian agricultural society today is that approximately 60% of the farmers are landless farmers. Some of them are farm workers and others work on other's land as tenants or workers with profit sharing agreement.

Meanwhile, the farmers who have land only control the land (rice fields and/ or dry land), most of each land smaller than one hectare, which is obviously insufficient for a decent living. Besides, the farmers who do not have land in contradictory sides partially control the land which covers dozens of hectares to thousands of hectares. It is necessary to know that the lands are not all possessed by them with ownership rights, but mostly acquired by liens or lease. The owners who control vast land that can not work their own land; there some with profit sharing to landless farmers, and even the spacious lands are not cultivated (left stranded). Thus, it is in contradiction with the effort of agricultural productivity.

- 2) That there are people who have excess land, while some others do not have land or enough land. It is clearly contrary to the principles of socialism upheld by Indonesian nation who intend to uniform distribution over farmer's livelihoods in order that there is a fair share of the results of lands. Then, it is considered necessary to stipulate a maximum limit of the acquisition and ownership of agricultural lands. In addition, the Basic Agrarian Law also requires determining the minimum width of agricultural land ownership with the aim to achieve a more decent living standard. Therefore, the determination of the minimum limit is also intended to prevent the further partition of lands.

- c. The Decree of the Minister of Agrarian No. Sk. 978 / Ka / 1960 on the Affirmation of Maximum Agricultural Land Width (T.L.N. No. 2143)

The stipulation of maximum limit in this law is based on the classification of the types of regions and lands acquired. The determination of the maximum width deliberately uses the regional benchmark level II considering the circumstances of each region and the factors of the availability of the lands that can still be shared, as well as population density, the types of crops, and land fertility.

- d. The Government Regulation (PP) No. 224 of 1961 on the Implementation of Land Distribution and Provision of Compensation

Article 1 of PP No. 224 of 1961 regulates the lands being the object of reform which include the lands that exceed the maximum limit provisions as stipulated in Law No. 56 Prp of 1960, the absentees taken by the Government, the autonomous region lands and the lands of ex-autonomous regions that has been returned to the state, and other lands controlled directly by the state. The lands which are directly controlled by the state are: the lands of the former private, the lands with the rights to use that have been expired, terminated or canceled, the lands of forests turned over its control by the relevant department to the state, and so forth. Furthermore, the lands will be distributed to landless farmers. In addition, it establishes the supporting landreform institutions such as the agricultural cooperatives in which the existence of the cooperatives is intended to regulate land tenure, to help the cultivation, to seek credit, and to provide the guidance in managing the farms.

² Murhaini, Suriasyah, 2009, *Kewenangan Pemerintah Daerah Mengurus Bidang Pertanahan (Regional Government Authority in Managing Lands)*, First Edition, First Printing, Laks Bang Justitia, Surabaya. p. 73

Thus, the provisions of the regulation on the supporting institutions of landreform prove that the landreform program in Indonesia is not just a redistribution of land to farmers, but it also sets a the follow-up of land division. Therefore, the goal is not only to equalize, but the most important it is also to improve the welfare of farmers.

- e. The Government Regulation (PP) No. 41 of 1964 on the Amendments and Adendum to PP No 224 of 1961, along with the explanation.
- f. The Regulation of the Minister of Domestic Affairs (Permendagri) Number 15 of 1974 on the Guidelines for Follow-up Implementation of Land Reform.

In Article 2 of this law, it states that the acquisition of land in excess of the maximum limit and not controlled by the government must be reported by the parties that control it within 6 (six) months from the time when this law applies to the Regent/ Mayor represented by the Head of Sub Directorate of Agrarian (which is now in the District/ City Land Office). Furthermore, the land owners who control the lands that exceed the maximum limit, no later than within 1 (one) year from the entry into force of this regulation, are required to terminate the excess land tenure.

- g. The Presidential Decree Number 55 of 1980 on the Organization and Work Procedure of the Implementation of Land Reform.

That in order to implement the provisions, it is necessary to carry out the "reorganization, control, use, and ownership of land", so the implementation of land reform needs to be improved, it is considered necessary to have the rearrangement of the organization and working procedures for the implementation.

2. Juridical Consequences on the Agricultural Land Acquisition and Ownership Exceeding the Maximum and Minimum Limit

The determination of the maximum width of agricultural land that can be owned by farmer's family is set for each district/ city by taking into account the circumstances of each region and factors such as:

- a. the availability of land that can still be divided;
- b. population density;
- c. type and fertility of the lands (there is the distinction between rice fields and dry lands whether with regular irrigation or not);
- d. the best farmsize according to the ability of the family, by employing some farm workers;
- e. and the advancement of agricultural technology³.

Therefore, the list of regional classification is held which is defined through the Decree of the Minister of Agrarian Number Sk. 978 / Ka / 1960 on the Affirmation of the Maximum Size of Agricultural Land, (T.L.T. No. 2143). In the regional classification list, there are the differences between densely populated area and non-densely populated area. For the densely populated area, it is differentiated into: very dense, quite dense and less dense, accompanied by the type of lands such as rice fields and dry lands. For more details, it can be seen in the table as referred to in Act Number 56 Prp of 1960 on the Determination of Agricultural Land Width, as follows:

Table 1
Criteria of Population Density and Regional Group

Population density for each square kilometer	Regional Group
> 50	Not dense
51 – 250	Less dense
251 – 400	Quite dense
< 401	Very dense

Source : The Decree of the Minister of Agrarian No. Sk. 978/Ka/1960 on the Affirmation of the Maximum Width of Agricultural Land

Article 1 (2) of Act No. 56 Prp of 1960 determines that a person or persons which are one family in livelihoods, they have the rights collectively to be allowed to control an agricultural land, either their own or the others', or his own with another person with the size that does not exceed the maximum referred to in table 2 below:

³ Pendastaren Tarigan, 2008, *Arah Negara Hukum Demokrasi Memperkuat Posisi Pemerintah Dengan Delegasi Legislasi Namun Terkendali (The Direction of the State of Democratic Law to Strengthen the Position of the Government Using Controlled Legislation Delegation)*, Medan: Pustaka Bangsa Press, p. 307.

Table 2
Population Density and the Maximum Size of
Agricultural Land Acquisition and Ownership

No	Density	Type of Land	
		Rice Field (hectar)	Dry Land (hectar)
1	Not Dense	15	20
2	Dense :		
	a. Less Dense	10	12
	b. Quite Dense	7,5	9
	c. Very Dense	5	6

Source : The Decree of the Minister of Agrarian No. Sk. 978/Ka/1960 on the Affirmation of the Maximum Width of Agricultural Land

It can be seen in the table above that the areas where the population is not dense acquired 15 hectares of rice fields and 20 hectares of dry land. For the less densely populated areas, the maximum areas owned were 10 hectares of rice field and 12 hectares of dry land. Then, for a quite dense population, the maximum areas owned were 7.5 hectares of rice fields and 9 hectares of dry land. For the highly dense population, the maximum lands owned were 5 hectares of rice fields and 6 hectares of small ground.

Article 1 paragraph (2) stipulates that in order to calculate the maximum area, rice area is summed with the area of dry land to assess dry land equal to rice field plus 30% in the areas which are not congested and 20% in dense areas with the provision that the agricultural land acquired as the whole must not be more than 20 hectares.⁴

Furthermore, to determine whether the maximum area exceeds or not, it is not limited to his own land but the whole farm under his control, including the lands belonging to others under his control in fiduciary relationships, lease (annual rent), and so forth. Yet, the lands acquired by the rights to use or other rights which are temporary and limited obtained from the government (eg the land of the right to use, the land of *bengkok*/ given by official title). The lands held by legal entities are not subject to the provisions on the maximum area⁵.

The determination of maximum width is stipulated in Article 7 and Article 17 of the Basic Agrarian Law that refers to all lands, while the promulgation of Act No. 56 Prp of 1960 is a special regulation to agricultural lands. However, this law does not give the explanation of what is meant by "agricultural land, rice field, and dry land". In relation with it, the Joint Instruction of the Minister of Domestic Affairs and Regional Autonomy and the Minister of Agrarian dated January 5, 1961 No. Sekra 01/09/12 give the explanation as follows:

"the definition of agricultural land is also all lands of plantation, ponds or fisheries, the land to graze livestock, the fallow land of ex-thicket, and the forest as the livelihood to those who are entitled. In general, agricultural lands are all lands on which the rights of people, other than the land for residential and enterprise"⁶

In general, to determine whether a piece of land is included into the rice field or dry land and so on, the characteristics can be seen from the fact of their uses, such as ponds for fisheries. In accordance with the practice of the Bureau of Crop Tax, they are included into the class of dry land. To set the maximum width of the acquisition and ownership of agricultural land, it deliberately uses the baseline of "one family" although the one entitled to the land may only individuals in the family. The important matter is the total of all lands owned by one family that will determine their maximum limit. This is in line with the provisions of Article 17 of the Basic agrarian Law because in Act No. 56 Prp of 1960 does not give the formulation or not confirm on the notion of "family". Therefore, the total width of the lands acquired by the members of a family determines the maximum width of the lands for the family.

For the avoidance of doubt in implementing the provisions of Article 1 of Law No. 56 Prp of 1960, the Joint Instruction of the Minister of Domestic Affairs and Regional Autonomy and the Minister of Agrarian explains that the definition of "family" is a group of people in a living entity with an element of consanguinity or marriage.

On the other hand, for the families with more than one wife, the regulation does not explain about it. Article 3 states that people and the heads of family whose members acquire agricultural land with the width of exceeding the maximum width, they are obliged to report it to the head of the Agrarian in their regency/ municipality (now: the head of the District Land Office / City) within 3 months from the entry into force of this regulation. When it is considered necessary, the period may be extended. Thus, if a person has a land exceeding the maximum limit, the excess land will be taken by the government by providing the compensation to the former owners of the land. As set forth in Article 2 of the Decree of the Minister of Domestic Affairs on the Implementation Guidelines of Compensation Payment and Maximum Excess Land Price and the Absentee of Land Reform Redistribution Object, the compensation payments set to the former landowners of maximum excess land is carried out as follows:

- a. The government provides in the form of cash amounting to the value of the calculation results of the amount of compensation as provided for in Article 6 of the Government Regulation (PP) No. 224 of 1996 as determined by the Municipal Land Reform Committee.

⁴ Ruchiyat, Eddy, 1983, *Landreform, dan Jual Gadai Tanah (Land Reform and Land Pawn Selling)*, Bandung: C.V. Armico, p. 29

⁵ Chidir Ali, 1979, *Yurisprudensi Indonesia tentang Hukum Agraria (Indonesian Jurisprudence on Agrarian Law)*, Bandung: Bina Cipta, p. 9.

⁶ *Ibid*, p. 28

- b. Direct payments from the farmer of redistribution beneficiaries to the former owners of land in accordance with the provisions in point a.

With regard to the opinion of the Land Reform Balancing Committee OF Regencies/ Municipalities by Regents/ Mayors with a decree that stipulates the average net yield each hectare each year to the lands of landreform redistribution object in their regions.

The old owners are prohibited to acquire or move the excess land to other parties from the maximum which is allowed. Only the state is entitled to retain and remove the excess land to others. The original owners are not entitled to determine to whom the land is to be given.

The owners of excess land can only choose which lands of theirs that they want to remain under their control and which one that will be given to the state. The excess land is then distributed to farmers, especially the landless ones or those who have narrow agricultural land. It is stipulated in the Government Regulation (PP) No. 224 of 1961 on the Implementation of Land Distribution and Provision of Compensation (LN 1961 No. 280). The Government Regulation is subsequently supplemented and amended by the Government Regulation No. 41 of 1964. The Government Regulation includes the provisions on the lands to be divided, commonly known as the redistributed land, not limited to the lands exceeding the maximum limit being taken by the government, but also the lands taken by the government as the owner is "absentee", the lands of autonomous regions (swapraja) and ex-autonomous regions, and the other lands directly acquired by the state to be confirmed by the Minister of Agrarian, for example, the lands of ex-large plantations and the lands of ex-private land.

People and the heads of families whose members dominate agricultural lands that exceed the maximum limit are technically-legally obliged to report to the Land Office for the excess land they own. The obligation to report is accompanied by sanctions, in the form of confinement for three months at the longest and/ or a fine of up to IDR 10,000, - if the excess is not reported. In addition to criminal sanctions, it is also determined; when the criminal act in the form of a violation of Article 3 of Act No. 56 Prp of 1960 occurs, the land exceeding the maximum limit is taken by the state without any compensation, when the land concerned entirely belongs to the inmate and/ or his family.

Besides, landowners are given the opportunity to express their wishes regarding the piece of land which will be handed over to the state. The provisions of this kind were made so that those who violate the maximum compliance will not try to transfer the lands by means of smuggling or taking the weak points of the applicable law. If such provisions are still violated, the sanction is that the removal that has been done becomes null and void and it does not require further decision of the judge (court). On the other hand, the land in question is taken over by the state without the right to sue for compensation. Likewise, in the rules concerning the pawn to traditional agricultural lands, the sanction is same as the description above.

Furthermore, under the Regulation of the Minister of Domestic Affairs (P.M.D.N) Number 15 of 1974 on the Follow-Up Guidelines for Implementing Land Reform mentions that the compulsory for reporting the maximum excess is converted into six months after the enactment of the P.M.D.N, and at the latest within one year from the enactment of the legislation the owner must have completed the acquisition of the maximum excess land by means of:⁷

- a. Moving the acquisition or the excess land rights to those who qualify;
- b. The submission of new rights which is justified in accordance with the applicable law in accordance with the allocation and use.

Due to the fact that the majority of Indonesian people's livelihood is mainly in agriculture and, on the other hand, as regulated in Article 8 of Act No. 56 Prp of 1960 which states "the Government attempts the efforts so that every farmer's family has an agricultural land of the minimum of 2 hectares", it obviously means that the Government hopes farmer's families own agricultural land in the form of rice field or dry land of the minimum of 2 hectares as the owners, not as workers or tenants.

Such provision shall also apply to the ownership of land of more than 2 hectares. The owner is prohibited to divert it if it will cause the landholding of smaller than 2 hectares. It will be a different case when the recipient has at least 2 hectares of agricultural land, while the rest is diverted with the width of smaller than 2 hectares. For example, the agricultural land owned of 3 hectares may be sold 1 hectare to another person who owns 1 hectare as well. Then, the rest of the agricultural land sold is still 2 hectares (not to exceed the minimum limit). The transfer prohibition shall exclude the division of inherited land since both the inheritance division and the width are regulated by a Government Regulation.

If they, referred to in Article 9 paragraph (2), do not carry out the obligations under the provisions of the prohibition on the ownership of a the minimum limit, they are considered as violating the law. To the offense, it can be the subject to criminal sanctions in the form of penalties and fines, which is further stated that the transfer is null and void, and the land is owned by the State without the right to sue for compensation in any form. Thus, to the agricultural lands owned by the state due to the violation of the minimum limit, it also includes the land of land reform object and turns into the state's land.

D. Conclusion

The basis of the government authority in setting the maximum and minimum limits of the acquisition and ownership of agricultural land is based on Act No. 5 of 1960 on Basic Agrarian Law (BAL), Act No. 56 Prp of 1960 on Determination of Agricultural Land Size, and the Government Regulation No. 224 of 1961 on the Implementation of Land Distribution and Provision of Compensation, which is the manifestation of the provisions of Article 33 paragraph (3) of the 1945 Constitution.

⁷ Chadidjah Dlimunthe, 2008, *Politik Hukum Agraria Nasional Terhadap Hak-Hak Atas Tanah (Politics of Law of National Agrarian Law Against the Rights to Land)*, Medan: Yayasan Pencerahan Mandailing, p. 76.

The juridical consequences to the acquisition and ownership of agricultural land exceeding the maximum limit and/ or below the minimum limit raise criminal charge of violation which resulted in imprisonment or fines. In addition to criminal sanctions, the excess of the maximum limit of land and/ or the land below the minimum limit will be taken over by the state (to be land reform object) without receiving any form of compensation. Similarly, to the transfer of rights over agricultural land through divisions that result in the width of smaller than 2 hectares, the transfer of rights is stated null and void, and the land is owned by the state without the right to claim the compensation. With the exception in the framework of the implementation of the stewardship of land, hence, the division of land use changes must meet the requirements of the "Standard Operating Procedure of the Regulation and Services of Certificate Division Service", with the permission of the Head of the Land Office through an application of dividing the land use changes (if it remains an agricultural land with "Patuah" and if it is changed into residential land with aspect).

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