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Comparison of the Concept of Property Rights in the Civil Code and the Basic Agrarian Law No. 5 Year 1960

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Abstract: Authority is all things that are able to cover the essential needs of every human being, which can be obtained from other persons. The idea of hak milik in civil law is the authority to freely grasp the benefits of each good and act freely over the goods in total, provided that they are in accordance with different regulations, public order and the authority of different persons. But in agrarian hak milik appears as a regenerational, solidest and most complete authority but limited by the role of society. This research uses a qualitative descriptive method with the type of library research data collection. The legal materials obtained are classified and analyzed by content analysis using the hak milik comparison method in private law and agrarian law. From the answer to the problem formulation, the result was obtained that both discussed extensively about hak milik, but had their own uniqueness as a consequence of the varied initial concept. The regulation of property rights in western private law is broader in scope (not only land ownership) although the regulation is not comprehensive, and the granting of authority is not balanced with obligations. In the agrarian law, property rights are regulated in detail, but the focus of hak milik on land is limited by community duties, there is a balance of obligations and authority.

Keywords: Property Rights, Civil Law, Agrarian Law

INTRODUCTION

Authority is all that can cover the essential needs of a person and can be handed over by another person. Authority can be broken down into two, namely absolute rights and relative rights. Absolute rights are rights that can be imposed on all persons, with competent checks, and all persons are obliged to honour that authority. In general, property rights are the right to enjoy the benefits of the object in total and to cultivate the object of property rights freely in the legal acts of selling, renting, granting, in the material acts of using, extracting, maintaining, destroying and disposing of, provided that the use of the object is in line with the regulations, the peace of the people and the obligations of each person in relation to other persons, and is open in case of withdrawal of the certificate for the needs of the people on the basis of regulation and compensation.

Divergent with the callusula in UUPA No. 5 of 1960 article 20 on immovable objects, especially land rights, namely: "property rights are regeneration rights, the most solid and complete inherent in the earth and the limits of community duties regulated in article 6 of UUPA

No.5 of 1960". The meaning of property rights here is not an absolute attribute of authority but is regulated for the needs of many people, namely public law.[1]

The idea of property rights is one element in the system of material rules. Goods (zaak) include all things that can be subjected to property rights as written in Article 499 of the Civil Code. In civil law, the rule of goods is an element that structures concrete and abstract (immaterial) material authority. The rule of goods organises the intertwining of rules between persons and goods, this legal intertwining will later produce material authority. 'Material authority bestows instant authority on every object of right and can be enforced against the public who intends to usurp that property right." [2]

With the previous explanation, the idea of property rights in Indonesia is not only the perspective of the Private Law Code itself, but actually requires discussion from the side of the Basic Agrarian Law. Because the issue of property rights in Indonesia is regulated in various regulations, seen from the needs of the person in a series of national activities. The emergence of two legal patterns is due to the emergence of personal interests to carry out management with the aim of controlling all activities. Each of these apparent patterns is determined by the doctrine believed, certainly a set of rules believed by the nation, namely customs, beliefs, civilisation, divinity, ethics, and outlook on life.

The author will examine the comparison of property rights in the Civil Code and the Basic Agrarian Law No. 5 of 1960 with the intention of understanding the comparison of property rights from the point of view of the Private Code and the Basic Agrarian Law No. 5 of 1960.

METHOD

The method used by the researcher is a qualitative method by thoroughly analysing the rules of civil and agrarian law, looking for the substantive meaning of property rights norms in two legal perspectives and revealing the narratives and norms contained to understand the object under study (property rights according to the Private Law Code and the Basic Agrarian Law) to find points of comparison, in order to produce descriptive data.

The sources of legal materials or secondary data include primary legal materials, namely the Civil Code, Agrarian Law, and secondary legal materials in the form of books and materials that are not relevant to the law, after collecting primary and secondary legal materials from the

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[1] Mariam Darus Badrulzaman, *Mencari Sistem Hukum Benda Nasional* (Bandung: Alumni, 1983), 52.

[2] Mohammad Govinda Khan, *"Implementasi Hukum Benda/Kebendaan Terhadap Anak Menurut Hukum Perdata," Lex Crimen 6, No. 5 ,2017, Hlm. 128–136.*, n.d., 128–36.

library, then analysing contentanalysis of the two regulations, then comparing property rights from the perspective of private law and the Basic Agrarian Law. Among others, the source of the Dutch Colonial Civil Code and the source of the UUPA 1960 nationalisation of land law, the nature of absolute ownership, individualism, limited nature, social-functional, the nature of individual rights (individuals), the nature of individuals, legal entities and the state.

RESULTS AND DISCUSSION

1. Objects and Property Rights in the Private Code.

a. Definition of Property Rights

In Article 570 of the Civil Code, the definition of the authority of property rights is the right to taste the use of goods in total to act freely on the object, with the petition that there is no conflict with the applicable regulations nor does it cause distress to the authority of foreign persons, and it is possible to cancel the authority for the needs of the public based on the regulations with a compensation fee.

The authority of property rights based on regulation is a complete and resilient authority and is the authority of regeneration. The study of the authority of property rights is closely related to the position of power, because it is a pair of authorities that organise ownership and goods, a pair of authorities over the object that receives pleasure. Based on the previous description, the substance is that the authority of property rights is the first authority when compared to the authority of different goods.[3]

Itemised authority is the power to divide unqualified authority for each item, which can be retained by each person. The rules of goods and material authority are organised around a number of rules, namely: Book II of the Civil Code, 1. Law No. 4 of 1996 on Mortgage Rights, 2. Law No. 5 of 1960 (Basic Agrarian Law) specifically regulates land, 3. Law No. 42 of 1999 on Fiduciary Guarantee. Property rights are related to the legal object, namely the link between the person as the owner of the object and the goods will give birth to authority over the goods.

Material authority is the unrestricted authority that the rules confer on persons and legal entities to take possession of goods without intermediation at any place where the goods are found. There are several characteristics of material authority over goods, namely: 1. Droit de suit, meaning that the material authority is accompanied by the goods wherever they are.2. Absolute right. 3. Enforceable against any person.

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[3] Tjitrosudibio. R and Subekti,R, *Kitab Undang-Undang Hukum Perdata* (Jakarta: PT Pradya Pratama, 2021), 171.

b. Classes of Property Authority

Material authority can vary to a number of classes, among others: [4]

1. Full material authority, namely the authority of property rights. The authority of property rights from a regulatory perspective is the most solid and total authority and is the authority by registration.
2. Specific material authority, i.e. other material authority different from the authority of property rights, for example: legal authority to use state land, authority to build on land that does not belong to him, authority to use, authority to excavate land, contractual authority and different authority.
3. Material authority that shares protection (about bortogh if by way of fiduciary for goods that are not stationary is further laid out in Law No. 42 of 1999 and about bortogh of goods that are stationary is laid out in Law. No. 4 of 1996 on Mortgage, and guarantee or pand.
4. Material authority that shares happiness, namely the authority of property rights and the position of power.

2. The Concept of Property Rights in the Private Law Code

Authority is all that can cover the principle needs that a foreign person can share. Authority can be divided into a pair, namely unlimited authority and limited authority, unlimited authority is the authority that can be imposed on all persons, through the control of competent persons, and there is a necessity for all persons to respect that authorityUnlimited authority consists of three parts, namely : [5]

1. Personality authority, which is the authority of individuals over their activities, physicality, and reputation.
2. Family authority, i.e. authority relating to the family such as: domination of father and mother, domination of man over wife, maintenance and supervision, and marital assets. This authority is exercised in line with the emergence of obligations to different persons.
3. Material authority is the authority over goods such as property rights, following which there is a separation of authority for goods that can be perceived by the five senses or that have a form and those that cannot be perceived by the five senses or that have no form, for example: intellectual property rights.

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[4] Marta Eri Safira, *Hukum Perdata* (CV Nata Karya, 2017), 57.
[5] Yulia, *Hukum Perdata* (Lhokseumawe: Biena Edukasi, 2015), 63.

The authority of hak milik is the most absolute authority, goods that are under the authority of hak milik can be used for everything, by the owner, but with restrictions that have been made and this authority of hak milik can be enforced against all persons. But in accordance with Article 26 paragraph (3) that the authority of property rights has a societal role, the person is not allowed to use the authority of property rights with the consequence of causing distress to foreign persons. Because if such an event arises, it is certainly worth ordering to provide compensation for the party who has been harmed. According to Subketi, the power of eminent domain is a right that is plenary to an item. The person who has the authority of property rights in one thing can behave freely with that thing, but it should not conflict with the regulations and authority of a different person.[6]

The reason for the regulation or order that explores the authority of property rights is located in Book II of the Private Law Code, the authority of property rights belongs to the explanation of the rules of goods, namely the rules that regulate the regulatory links between persons and goods and the regulation of persons with foreign terms of regulations that regulate between subjects and objects. Materil (zaak) is each item and authority that can be regulated by the authority of property rights or in short, goods are all that can be used as the subject of property rights authority. Material authority (Zaak) described by Book II of the Private Law Code can be seen in Article 528 of the Private Law Code which is written that all persons have material authority (zaak), among others: Bezit (physical possession of the goods)

1. Power of attorney authority
2. Authority of family members
3. Authority to use
4. Authority of immovable property
5. Authority of natural loyalties
6. Authority of collateral [7]

In Article 570 of the Code of Private Law, the definition of the power of property is 'the power to enjoy the benefits of a property in its entirety and to act freely with respect to it, subject to the restriction that it does not conflict with the regulations or rules of the public determined by the authority competent to form and determine them, nor does it cause distress to the authority of a foreign person, and there can be a cancellation of the authority for the

[6] Nugrahaningtyas, 23.
[7] Marta Eri Safira, *Hukum Perdata* (Lhokseumawe: CV. Nata Karya, 2017), 69.

needs of the public on the basis of the provisions of the regulations and there is compensation'.[8]

The authority of property rights based on regulations is the total and most solid authority and is the authority by regeneration. The discussion of the power of property should not be separated from physical possession, because it is a pair of powers that organise the power of property and the power of matter, and it is a pair of material powers that acquire happiness. [9] In view of the preceding definitions, it can be established that the power of property rights is a special power when compared to foreign material powers. There are three distinctive characteristics of the power of property: the power is special, the power is permanent and cannot be lost, and the power is not diminished and complete. [10]

1. Special power, called special power because the power of property is the first power to be realised in comparison with other powers. There is no proprietary power without different material powers over different goods.
2. Permanent and immutable, meaning that the power of property will not be lost due to different material powers. The authority of title will only be lost if the thing on which the title is based is transferred to the purchaser after the passage of time.

According to Sri Sudewi, the character of the authority of property rights will be described next :[11]

1. The title authority remains the central parent authority to the different material authorities, even though the different authorities are of a special character and rank as authorities to the title authority.
2. The power of property in terms of quantity is the most perfect power.
3. The power of property has a consistent character. This means that it does not vanish when linked to different material authorities, although different property rights authorities will slowly be destroyed.
4. The power of property contains the seeds of all foreign material powers, whereas different material powers are only sub-titles of the power of property.

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[8] Soedaryo Soimin, *Kitab Undang – Undang Hukum Perdata* (Jakrta: Sinar Grafika, 1996), 168.

[9] Andika Mopeng, "Hak-Hak Kebendaan Yang Bersifat Jaminan Ditinjau Dari Aspek Hukum Perdata," 9, 5 (2017).

[10] Nugrahaningtyas, *Kepemilikan Atas Virtual Property Dalam Hukum Benda Di Indonesia*, 196.

[11] Sri Sudewi Masjchoen Sofwan, *Hukum Perdata*, 4th ed. (Yogyakarta: Liberty, n.d.), 48.

3. Property Rights in the Basic Agrarian Law

Property rights is outlined in Articles 20-27 of Law Number 5/1960 on the Basic Regulation of Agrarian Principles. The definition of Property rights based on the provisions of Article 20 paragraph (1) of the UUPA is a regenerative, solid and comprehensive authority that can be owned by a person over the earth by taking into account the provisions of Article 6 of the UUPA. The most solid and comprehensive authority in the above definition does not mean that Property rights is an authority with an absolute, free and inviolable character, as referred to in Property rights but to show that the interruption of Property rights is the most solid and comprehensive authority.

Property rights are said to be a regenerative authority because property rights can be passed on by the testator to family members. Property rights as the most solid authority means that the authority is difficult to lose and easy to enforce against obstacles from different people. Comprehensive means that property rights confer unlimited rights analogous to different authorities. This means that property rights can be central to foreign authorities, for example: the owner of property rights can contract out to a salty person, as long as the regulations allow, then the owner's rights become broad. In addition to being characterised by regeneration, solidity and comprehensiveness, property rights can also be transferred and transferred to a different person.

It is written in Article 20 of the Basic Agrarian Law No. 5 of 1960 that hak milik is the most solid, comprehensive, regenerative authority that a person can have for the earth, taking into account the provisions of article 6. For example, when the needs of many people require the land should be released on the condition that the owner gets appropriate compensation. The stipulation is intended that property rights are only a social obligation. The method of obtaining property rights in the Basic Agrarian Law is based on Articles 22, 26, namely:

Based on customary rules laid out in Government Regulations: 1. Government stipulation, 2. Regulation stipulation: Article 21(1) of the UUPA stipulates that only Indonesian citizens may own a hak milik. But paragraph (2) of that provision reveals the possibility for special legal subjects to own a hak milik. Some of the legal subjects that may own a hak milik are government banks or religious and social bodies, as stipulated in Article 8 paragraph (1) letter b of Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 9 of 1999 on Procedures for Granting and Cancelling State Land Rights and Management Rights.

A Property rights cannot be owned by a foreign citizen or a person who has dual citizenship (an Indonesian citizen as well as a foreign citizen). For foreign nationals or persons with dual nationality who acquire property rights due to non-message transfer or marriage, they must relinquish their rights with a maximum time limit of one year after acquiring the property rights. When the limit is due and the right of ownership has not been released, of course the right of ownership will be lost due to regulation and the object becomes the property of the authorities while keeping in mind the authority of different persons over the land. The birth of a hak milik may be due to (Article 22 UUPA):

1. Habitual regulation, for example by cultivating new land.
2. Government stipulation, i.e. by a request addressed to the agency in charge of land.
3. Regulatory decree, which is based on the decree of change.

Property rights may be transferred to another person by means of trade, gift, exchange, division by trust and other behaviours intended to transfer property rights. It is important to note that a hak milik cannot be transferred to a foreign person or legal subject because foreign persons and legal subjects cannot be the subject of a Property rights. So that the transfer fails and the land becomes the property of the ruler. According to the provisions of Article 27 of the UUPA, hak milik ceases to exist due to:

a. The object belongs to the sovereign:
    1. Caused by the cancellation of the authority stipulated in Article 18 of the UUPA;
    2. Due to a sincere gift by the owner;
    3. Due to neglect;
    4. Due to the provisions of Article 21 paragraph (3) and Article 26 paragraph (2) of the UUPA.
b. The object is destroyed.

In addition, property rights are lost when there is cheating on the agrarian policy stipulations regarding the most extensive limits and not being allowed to own land but abandoning it.

4. Comparison of the Concept of Property Rights from the Perspective of the Civil Code and Agrarian Law

In fact, the highest regulation in this Republic has stipulated in Article 33 paragraph 3 of the 1945 Constitution which regulates the power of the State over the earth, water and the treasures stored in the bowels of the earth and utilised for the welfare of the nation. Although Article 33 paragraph 3 does not clearly record the obligations of the property rights

community regarding zamin, it can be clearly described that property rights are prohibited from being owned and held in the style of individuals who can trouble the community, as according to the private rules of property rights concerning goods that are not restricted but do not conflict with positive regulations due to social duties required restraints on freedom.

In civil law, the idea of property rights is included in the authority of goods and material authority, in this case the authority is divided into two parts, namely absolute authority and relative authority, and property rights are a sub title of absolute authority of material authority. Property rights are part of the absolute authority, goods that are property rights can be used for all the needs of the eigener as long as they are in accordance with the rules and property rights get recognition from every person.

Agrarian regulation No. 5 Year 1960 section 19 Basic Agrarian Law No. 5 Year 1960 Padal 16 recognises the authority of the person and non-human legal subjects over zamin, although all the authority is restrained by the availability of regulations in Article 6 regarding all zamin has community obligations. In the realisation, development for the needs of the community, the authorities also carry out techniques by changing the community's zamin in line with Article 6 of the UUPA that all authority over zamin has community obligations, in the form of a positive rule basis. This means that the authority over each zamin is united with the subject, it is prohibited if the zamin is used or not used only for private needs, especially behaviour that causes public distress, the use of zamin must be in line with the basis of its authority, so that it is useful for the public interest, the people and the authorities, precisely in the regulation is really for the development of society.

The Basic Agrarian Law continues to be concerned with the needs of the person, for example, the right to property in land continues to be honoured, so as not to come into conflict with the rules or customs that are observed. Not unlike western private law, property rights to certain goods are not restricted to conform to positive regulations. The needs of the public and the person are both aligned to the point of succeeding in the main intention, which is to be utilised for the sake of obtaining a maximally peaceful society that is meaningful, a nation that comfortably recognises human rights and a free, impartial and independent judiciary, where all people have equal rights and standing before the law and government and are at peace.

There are variations in the definition of property rights according to the Civil Code and the Basic Agrarian Law. In the Civil Code, property rights are classified as part of the rules of goods (material) and material authority, namely authority (authority) is divided into a

pair, namely total authority (full) and relative authority and property rights are a component of the full authority of material authority. Property rights include the fullest authority, goods that have the basis of property rights can be utilised for all the needs of the owner to comply with the rules, property rights can be enforced for each person, to comply with positive regulations. The pillar of property rights in Western civil law is absolute (unlimited), the ownership of the person is fully determined, the needs of the person in the highest position, negating the role of society with property rights against zamin such as the authority of property rights in Western law has less authority in balance with obligations.

But it is in the UUPA that the restriction of property rights is not utilised for the needs of the person but for the needs of the community, not causing distress to other persons, must be maintained properly. The ruler controls the levering of property rights and the authority of domination over zamin. Property rights are not a symbol of absolute authority but are restrained by the interests of society which are organised by popular regulation. The pillars of authority are restrained by the least and most limits (broad), group authority such as ulayat rights must be legalised as long as it does not conflict with the needs of the nation, natural resources cannot be forgotten as a special authority. The implication is that all authority over zamin has a social duty.

5. Analysis

The concept of property rights in the Civil Code and the Basic Agrarian Law, based on the author's analysis that the pair of legal systems have the same legal basis, namely recognising property rights as rights to objects that give the owner the power to control and utilise these objects, the pair of legal systems have the same characteristics, namely that property rights are absolute in the sense that they have the right to use, enjoy and transfer their objects, both legal systems provide the same legal protection against property rights from third party interference.

The difference is that this pair of legal systems has a different scope. The Civil Code focuses on property rights in general including land, as well as regulations governing civil and agrarian transactions more specifically on property rights to land and natural resources, and regulates the use of land management in accordance with agrarian principles. In the Civil Code, social functions are not emphasised, while agrarian functions are explicitly emphasised. The Civil Code emphasises the agreement aspect and the transfer of rights through sale and purchase or grant, while agrarian considers provisions regarding land use, including the obligation to maintain environmental and community balance. The Civil Code plays a passive

role as a legal guarantor and regulates individually in the context of agreements and agrarian is regulated by laws and active government institutions as regulators and land authorities that prioritise social aspects and community welfare.

CONCLUSIONS

A comparison of the concept of property rights in the Indonesian Civil Code (KUHPerdata) and the Basic Agrarian Law (UUPA) No. 5 of 1960 reveals fundamental differences in their philosophical and social orientations. The Civil Code, rooted in the Western legal tradition, views property rights as absolute and individualistic. This perspective grants the owner full autonomy to use, enjoy, and transfer ownership of property, as long as such actions do not contravene prevailing positive laws.

In contrast, the UUPA conceptualizes property rights—particularly land ownership—as inherently tied to a social function. Ownership is not merely a tool for fulfilling individual interests, but must also align with broader societal needs, environmental sustainability, and national development objectives. The UUPA underscores that control and utilization of land by individuals must be exercised with social responsibility and must not harm the public interest.

Thus, the divergence between these two legal frameworks lies in their treatment of ownership: while the Civil Code upholds the primacy of individual rights over property, the UUPA promotes the principles of social justice and collective benefit. This contrast reflects a paradigmatic shift in Indonesia's agrarian law—from an exclusive model of private ownership toward a socially embedded conception of property rights, in accordance with Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. Accordingly, in the context of national legal development, the regulation of property rights must strive to achieve a balanced relationship between individual entitlements and communal interests in order to realize equitable and sustainable agrarian justice.

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