

REVIEW ARTICLE

TRANSFER FROM LAND RIGHTS BECOME A RIGHT TO BUILDING USE OF LAND FROM STOCK CAPITAL IN THE LIMITED LIABILITY COMPANY

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ABSTRACT

In establishing Limited Liability Company, capital stock in the form of land is usually used. This is because the land has an economic value that continues to increase and has never decreased in certain period time. In this journal, author wants to analyze legal consequences of transfer of ownership rights to land to building rights on land from status of land ownership as result of inclusion of share capital in Limited Liability Company and legal reasons for not permitting ownership of land as condition for establishing Company. In this journal, author uses juridical and normative research method, which is legal writing which is carried out by analyzing secondary legal materials or library materials to find solution to legal problem that arises and uses problem approach based on law statute approach or general legal rules regarding land ownership that currently apply and problem approaches that are based on conceptual basis. The results of writing show that legal reasons do not allow and permit Limited Liability Company to control land with property rights relationship.

Keywords: *Capital Income in Limited Liability Company; Ownership Right; Right to Build*

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INTRODUCTION

At present, the State of Indonesia has experienced very large developments in carrying out development and development programs, particularly development and development programs in the business and economic fields. The development process in the development program in the field of business and economy is seen from the increase in entrepreneurs who want to form a company in shape from legal entity or Limited Liability Company for carry out various business activities. This is because company in shape from legal entity or Limited Liability Company has several advantages compared to a company that is not legal entity (Budiarto, 2002). Companies in form from legal entities or limited liability companies are in great demand by entrepreneurs because they have the ability to develop themselves, are able to carry out activities in the form of capitalization capital and are able to obtain their own greater benefits when compared to a company that is not a legal entity or company limited. Therefore, at this time many entrepreneurs want to establish a Limited Liability Company (Hartono, 2002).

Judging from its activities, a limited liability company has a very broad influence in the economic field. Meanwhile, when viewed from an institution, a company in shape from legal entity or Limited Liability Company tends for be attractive to entrepreneurs because of some special characteristics. Some of these special characteristics are as follows:

- 1) The form of liability that arises in activities within a Limited Liability Company is only charged for assets from legal entity, not to the assets of individuals.

- 2) Assets and investment assets in Limited Liability Company can be easily transferred from one legal entity to another legal entity so that the assets and investment assets are mobility.
- 3) The existence of a corporate organ that specifically has certain duties to deal with a business activity that is in Limited Liability Company (Prasetya, 1996).

In process from construct Limited Liability Company, legal actions or agreements carried out by two or more founders not only create a binding nature between them but can also create a binding nature in all founders and all corporate organs in a Company The aforementioned. By the legal actions or agreements that have been made, the founders have the right to receive share capital and have the obligation to make full deposit from capital stock to Limited Liability Company that had been constructed (Tumbuan, 2007).

In connection with activities of a share capital deposit in Limited Liability Company, this matter had been arranged in Article 34 paragraph (1) from Act Number 40 the Year 2007 regarding Limited Liability Company that reads: "Deposits from share capital can be done in form from money and or other forms." Therefore, from this article, it can be explained that the type of share capital in Limited Liability Company does not always have to be in form from money. A deposit of share capital can be done by using movable objects, immovable objects, real objects, or unreal objects that can be rated in real money and can be accepted with Limited Liability Company concerned.

A result of these rules, entrepreneurs in establishing Limited Liability Company always use share capital in form from land. This is because the land has an economic value that continues to increase and has never decreased in a certain period time. Acts or legal events in the form of depositing land as share capital in Limited Liability Company can be referred to *inbreng*. In the case of doing this check-in usually, the deposit of land used as share capital must be adjusted in advance with the price in general or the opinions of scholars who have no legal relationship to a relevant Limited Company.

The use from land that is use as initial capital in constructing Limited Liability Company is also caused by the existence of various kinds of land rights, namely among others: ownership rights, building rights, use rights, and management rights over land. In general, ground ownership status in form from ownership rights can only be owned by individuals or individuals who have Indonesian citizenship. This has been arranged in Article 21 paragraph (1) and (2) from Act Number 5 Year 1960 regarding Basic Regulations on Agrarian Principles which read: "Property rights to land can just be controlled with an Indonesian citizen and various legal unities which has been determined by Government from Indonesia as the holder and ruler of these land rights." This has been arranged in Article 1 from Government Regulation Number 38 of 1963 regarding Appointment from Legal Unities that Can Have Ownership Rights over State Ground and Management Rights are regulated regarding legal entities that can have ownership rights, namely as follows:

- 1) Bank institutions established by the State.

- 2) Association groups established by the Agricultural Cooperative. This is specifically regulated in Act Number 79 and Number 139 of 1958.
- 3) Religious institutions appointed with Minister from Religion or Minister from Agrarian after receiving advice and advice from the Ministry of Religion.
- 4) Charitable institutions and foundations referred by the Minister of Agriculture after receiving advice and advice from the Ministry of Social Welfare (Santoso, 2011).

Of the four types of legal institutions that have been described, Limited Liability Company cannot be legal entity that can own and control land ownership rights. This can cause problems if the land which is used to share capital in constructing Limited Liability Company still has status from ownership rights. This is because land that has been use in share capital in constructing Limited Liability Company, as a whole has become an asset or has become assets of a relevant Limited Liability Company and separate from assets from company's organs.

METHOD

In writing this scientific journal, the author uses a research method that is normative and juridical. Various legal materials that can be used are Laws and Regulations as the main legal materials or main basic materials and also used other legal materials, such as literature and also scientific works in field from Agrarian Law. While various secondary legal materials or various supporting legal materials that have a function as a complement and to supplement a scientific journal, legal dictionaries and also general dictionaries can provide an explanation of the notions related to what is in this journal. Various legal materials that have been collected and then analyzed descriptively and juridical to provide a general picture from problem to be explained and a conclusion from an explanation of the results to solve various problems in the scientific journals (Soekanto, 2006).

LEGAL CONSEQUENCES ARISING OF TRANSFER FROM OWNERSHIP RIGHTS OF LAND INTO LAND USE RIGHTS FOR BUILDINGS FROM LAND OWNERSHIP STATUS AS A RESULT OF THE INCLUSION OF EQUITY CAPITAL IN LIMITED LIABILITY COMPANY

In process from constructing Limited Liability Company, Limited Liability Company concerned must have its assets and be separated from the assets owned by the company's organs and the founders of the relevant limited company. Assets from Limited Liability Company are obtained from the initial capital investment in the form of shares from its founders. These assets are needed to achieve the

objectives of the limited company concerned. A Limited Liability Company cannot be established if it does not meet the minimum capital requirements. The fulfillment of the minimum capital requirement has several purposes, namely to be used as initial capital, capital to be deposited, and capital to be placed. The three minimum capital requirements must be met to provide a legal guarantee to a third party in a Limited Liability Company (Prasetya, 1996).

A deposit on share capital is usually done by cash, but in Article 34 paragraph (1) from Act Number 40 the Year 2007 regarding Limited Liability Company that reads: "Deposit on a share capital can be done in shape from money and or in other shapes." In general, a handover of authorized capital can be done in form from money. However, at a specific time, a handover from share capital can be done by using movable objects, immovable objects, real objects, or unreal objects that can be rated with money and can be accepted with Limited Liability Company concerned. Deposits to share capital that is not in form from money must be accompanied with specifications or details that explain price, type, status, and place of residence required in the process of depositing capital stock. This has the purpose of providing assets in form from share capital to Limited Liability Company and separating it from assets owned by company organs and the founders of a Limited Liability Company concerned. Another form of deposit for share capital is capital income or goods/*inbreng* (Budiyono, 2001).

The process of ownership of land that is made into a capital in a company can make the ownership status of the land rights experience a transfer or transfer. The forms of ownership transfer to land are as follows:

- 1) The switch is the transfer from ownership rights for land from original ruler or owner to another party that does not act as the buyer or renter of the land through an act or legal event. If the landowner dies, the right of ownership of the land concerned is transferred directly and legally to his heirs as long as the heirs are still eligible as subjects of land rights.
- 2) Transferred is the transfer from ownership rights for land from original owner to another party acting as the buyer or renter of the land through an act or legal event. Examples include act grants, buying and selling, auctions, leases, and exchanges (Santoso, 2010).

In the process of transfer and from ownership rights for land, legal subject of object from the law must be seen first. In the process from transferring ownership rights for land from the original ruler or owner to another party acting as a buyer or tenant of land, for example, that is, among other things: the act of grants, buying and selling, auctioning, leasing, and swapping which is binding on the law governing an agreement. Therefore, process from transfer from ownership rights for land must be linked to Article 1320 from Civil Code which regulates terms from legal agreement in advance.

In the process from transfer from ownership rights to land, legal subject must comply with the requirements as regulated and specified in Act Number 5 Year 1960 regarding Basic Regulations on Agrarian Principles. If these laws are not fulfilled, then

the right of ownership to the said land may be canceled by the State and may change its status to State Land. In Article 104 from Regulation from Minister from Agrarian Affairs or Head from National Ground Agency Number 9 Year 1999 regarding Procedures to Giving and Revocation from State Ground Rights and Management Rights, are regulated and determined as follows:

- 1) Cancellation from land rights consists from cancellation of decisions on granting of rights, decisions on granting of rights in terms of control from land, and certificates from land rights.
- 2) Cancellation from land rights described above is due to administrative errors in the issuance of regulations on granting rights, regulations on granting rights in terms of control of land, and certificates of land rights that have been decided by a court decision and have obtained legal force binding and fixed.

In Article 107 from Regulation from Minister from Agrarian Affairs or Head from the National Ground Agency Number 9 Year 1999 regarding Procedures to Giving and Revocation State Ground Rights and Management Rights, is regulated and determined regarding administrative-legal defects, as follows:

- 1) There are errors in the procedure.
- 2) There are errors in applying laws and regulations.
- 3) There are errors in the rights held by legal subjects.
- 4) There are errors in the rights held by legal objects.
- 5) There are errors in the rights held by various types of land rights.
- 6) There are errors in the calculation of land area.
- 7) There is an overlap with land rights.
- 8) Physical or juridical data that is not true or false.
- 9) There are errors in other administrative fields.

The process of canceling land rights can lead to legal actions or events, for example, where the rights for land can be canceled with State and the land can become State Land. If it is associated with the inclusion from land as share capital in a Limited Liability Company, then land rights can be canceled with State and land can become State Land. This is because Limited Liability Company is not by the requirements as ruler or owner of land ownership rights, so changes must be made or decreased to the ownership status of land rights from ownership rights to land to building use rights over land.

Property rights for land can be reduced and increased with interests from holders from these land rights. Decrease in land rights can be done by old land rights holders to meet the interests of new land rights holders who do not qualify as the relevant land rights holders.

Regarding on Decree from State Minister for Agrarian Affairs or Head from National Ground Agency Number 16 Year 1997 regarding Change from Ownership Right into Building Use Rights or Use Rights and Building Use Rights into Use Rights, two types of ground rights can be derived, as follows:

- 1) Ownership rights for land can be reduced for building use rights over land or use rights for land within grace period of 25 years and 30 years.

- 2) State Land granted with building use rights over ground or management rights to land owned to individuals or legal entities can be transferred or demoted to land use rights within 25 years for the new holder of land rights.

The activity of submitting application for transferring ownership rights for ground into building use rights for ground or use rights for ground and to transfer building use rights for ground to use rights to ground is carried out a registration process to the Head of Ground Office in the area concerned first accompanied by accompanied some documents, which are as follows:

- 1) An auction deed made by an authorized auction official if the land rights are owned and controlled by another party in form from legal entity in public tender event.
- 2) Deed of ownership of land or building use rights on land that has been petitioned regarding the transfer or reduction of its rights or title to the relevant land that has not been registered.
- 3) The agreement that has been mutually agreed from the party that holds and has a mortgage right on the land, if there is a mortgage right in the land concerned.
- 4) Curriculum vitae from the applicant for the rights to the land concerned.

LEGAL REASONS FOR NOT ALLOWED TO OWN THE RIGHT TO LAND TO OWN AND CONTROL BY LIMITED LIABILITY COMPANY

One from rights to land that has been regulated in Article 16 paragraph (1) from Act Number 5 Year 1960 regarding Basic Regulations on Agrarian Principles is right from ownership for land. According to Lili Rasjidi, the right to ownership of land is a legal event that is experienced by someone on an item or thing that can give the status of ownership rights to the object or thing concerned. In the regulations governing land law in Indonesia, the understanding of property rights for land has been arranged in Article 20 paragraph (1) from Act Number 5 Year 1960 regarding Basic Regulations on Agrarian Principles, which read: "Property rights for land is hereditary, strongest, and most fully accepted right that can be owned by individuals or individuals by taking into account the regulations contained in Article 6."

Inheritable means that the right from ownership from ground can be valid as long as owner of the ground is still alive and if owner of ground concerned dies, then the ownership rights can be transferred or transferred to his heirs as long as the heirs concerned are still eligible as persons of ownership rights over soil. Strongest means that the ground rights are stronger when contrast for other ground rights, for example, right for build, right for use, right for use, and management rights, do not have a certain grace period set by the Government, right for control land is not easily abolished, and right for control land is easily defended against interference arising from other parties. The most complete means that land rights have broader authority when compared to other land rights and use or control from land from property rights

is also wider when compared to the use or control of land from other land rights (Harsono, 2008).

According to Samun Ismaya, the characteristics of property rights to land are transferable or transferable to other parties, can be released or released legally, can be use collateral to debt with existence from mortgage rights, can be used as collateral, and can be represented (Ismaya, 2011). Meanwhile, regarding for Boedi Harsono, land rights, in general, can only be owned and controlled with Indonesian citizens who have single citizenship or only one. This is included in the scope of the land that was built, the land that was cultivated, the land that was used, and the land that was managed (Harsono, 2008).

The process of transfer from ownership rights to ground is arranged in Article 20 paragraph (2) from Act Number 5 Year 1960 regarding Basic Regulations on Agrarian Principles that read: "Ownership rights for land can be transferred and transferred for other parties." Transfer from title to land concerned must be registered with relevant local Regency or City Land Office and evidence must be in the form from authentic deed that has been issued by the Land Deed Making Officer or the Auction Deed Making Officer if the transition or transfer process ownership rights for land are carried out through an auction process. Apart from individuals or individuals, a legal entity can be the subject of ownership rights for land. This has been arranged in Article 21 paragraph (2) from Act Number 5 Year 1960 regarding Basic Regulations on Agrarian Principles which reads: "Government can establish legal entities that can be subject to ownership rights along with the conditions." So that any individual or legal entity that has ownership rights to land cannot carry out process from transferring ownership rights for land that he owns and conquers.

In Article 21 paragraph (2) from Act Number 5 Year 1960 regarding Basic Regulations on Agrarian Principles, it is explained that only certain legal entities can be subject to ownership rights to land with their conditions that must be fulfilled. In Article 49 paragraph (1) from Act Number 5 Year 1960 regarding Basic Regulations on Agrarian Principles, it was explained that status from ownership from land in form from ownership rights for land can only be owned and controlled with religious institutions and social institutions, as long as right from ownership from land is used as a form of business activity in the religious and social fields which is recognized, guaranteed, and protected by the Government itself (Murjiyanto & Wibawanti, 2013).

In Article 1 from Government Regulation Number 38 Year 1963 regarding Appointment from Legal Unities that Can Have Ownership Rights over State Ground and Management Rights is regulated regarding legal entities that can have ownership rights over ground, as follows:

1. Bank institutions established by the State.
2. Association groups established by the Agricultural Cooperative. This is specifically regulated in Act Number 79 and Number 139 Year 1958.
3. Religious institutions appointed with Minister from Religion or Minister from Agrarian after receiving advice and advice from Ministry from Religion.

4. Charitable institutions and foundations referred with Minister from Agriculture after receiving advice from Ministry from Social Welfare.

According to R. Murjiyanto and Erna Sri Wibawanti, the cause of a legal entity is not permitted and allowed to own and control land rights is to prevent acts of embezzlement against the maximum limit of ownership of the land and to provide equal rights for all citizens Indonesia in terms of owning and controlling land rights. This has also been regulated in Article 17 from Act Number 5 the Year 1960 regarding Basic Agrarian Regulation.

In Common Explanation section II Number 5 from Act Number 5 the Year 1960 regarding Basic Regulations on Agrarian Principles it has been explained that legal entity may not have ownership rights over land. This is because a legal entity does not need to have ownership rights to land and only needs to have other rights to land, for example, right for build, right for use, right for use, and management rights which are also accompanied by guarantees of the right to the relevant land specifically and specifically. So with this, businesses that have the objective to violate regulations concerning the maximum extent of land that can be owned and controlled by property rights can be overcome and prevented. Although initially a legal entity was not permitted and allowed to own and control land ownership rights, because of the need for community institutions that are closely related to the religious, economic, and social fields, a program called the Freeing Clause was implemented. This Escape Clause Program allows a legal entity that has certain specifications to own and control land ownership rights. The granting of ownership rights overland to a particular legal entity is done by the Government by giving dispensation as legal entity that can have ownership rights over the land. In Article 49 from Act Number 5 Year 1960 regarding Basic Regulations on Agrarian Principles, it is explained that the status from ownership from land in form from ownership rights for land can only be owned and controlled by religious institutions and social institutions, as long as the ownership rights to land the person concerned is use as form from business activity in the religious and social fields which the Government itself recognizes, guarantees and protects. If a legal entity concerned does not have business activities in the religious and social fields, then the legal entity concerned is referred for as an ordinary legal entity.

As a company in form from legal entity, Limited Liability Company has rights and obligations that are independent and separate from the rights and obligations of the company organs contained therein. This has been arranged in Article 1 from Act Number 40 the Year 2007 regarding Limited Liability Company that reads: "Limited Liability Company which is generally referred for Company is legal entity in shape from capital or company partnership, carrying out a business activity with authorized capital in the form of shares, and was constructed based on agreement made by the founders from Limited Liability Company concerned by regulations arranged in law and its implementing regulations."

So it can be deduced that Limited Liability Company that become legal subject always can manage finances better when compared to other legal subjects, such as,

individuals or individuals. The ability to manage finances better can make a limited liability company have greater purchasing power when compared to the purchasing power of individuals or individuals. That is what causes a company in shape from legal entity such as Limited Liability Company for permitted and allowed to have ownership status of land in form from land ownership rights.

CONCLUSION

Ownership rights to land used as share capital in Limited Liability Company must be transferred for right for use building on land or use rights for land in advance so that Limited Liability Company concerned can become legal subject by conditions set out in law and its implementation rules as the holder and ruler of the relevant land rights. If the conditions arranged in the law and the implementing laws are not fulfilled, then Limited Liability Company cannot be legal subject that owns and controls the relevant land rights, ownership of the said land rights can be canceled with State, and land's status can be changed from ownership rights to land to State Land. The legal reason is not permitted and permitted ownership of land to be owned and controlled by Limited Liability Company is because Limited Liability Company that become legal subject always can manage finances better when compared for other legal subjects, such as, namely individuals. The ability to manage finances better can make Limited Liability Company have greater purchasing power when compared for the purchasing power from individuals. It is feared that this will lead to a monopoly event in terms from ownership from land rights. Also, the reason legal entity is not permitted and allowed for own and control land ownership rights is for prevent acts from embezzlement against the maximum extent from ownership from land and for provide equal rights for all Indonesian citizens in terms from owning and controlling property rights for land.

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QUOTE

Justice in the life and
conduct of the State is
possible only as first it
resides in the hearts and
souls of the citizens.

Plato
A Greek Philosopher