



Permanent Mission
of the Republic of Indonesia to the UN, WTO,
and Other International Organizations
in Geneva

No. 103/POL-II/VI/2013

The Permanent Mission of the Republic of Indonesia to the United Nations, WTO and Other International Organizations presents its compliments to the Office of the High Commissioner for Human Rights, Special Procedures Branch, and, with reference to the latter's Note dated 18 June 2013, has the honour to transmit the response of the Government of the Republic of Indonesia as attached.

The Permanent Mission of the Republic of Indonesia to the United Nations, WTO and Other International Organizations avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights, Special Procedures Branch, the assurances of its highest consideration.

Geneva, 28 June 2013



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**RESPONSES SUBMITTED BY THE GOVERNMENT OF INDONESIA
QUESTIONNAIRE ON SECURITY OF TENURE**

Legal Security of tenure, including from forced eviction

1. Laws/regulations recognizing or ensuring legal security of tenure:

Indonesia has laws/regulations that recognize or ensure legal security of tenure, as follows:

- a. Law No 5 Year 1960 on Basic Regulation on Agrarian Principles (UUPA)
- b. Government Regulation replacing Law No.51 Year 1960 on the Prohibition of the use of Land without the consent of the owner or the assigned authority.
- c. Law no. 20 Year 1961 on Revocation of Rights of Land and the Objects Over The Land
- d. Law No. 1 Year 2011 on Housing and Areas for Settlements.
- e. Law No 20 Year 2011 on Apartments
- f. Law No. 26 Year 2007 on Spatial Planning
- g. Law No. 2 Year 2012 on Land Acquisition for the Development of Public Infrastructure
- h. Government regulation No. 30 Year 1963 on the Appointment of Legal Entities that are Authorized to Obtain Land Ownership Rights.
- i. Government Regulation No. 40 Year 1996 on the Right of Exploitation, the Right of Building and the Right of Use of Land.
- j. Government Regulation No. 41 Year 1996 on the Ownership of Residence or Settlements by Foreigners that Reside in Indonesia.
- k. Government Regulation No. 24 Year 1997 on the Land Registration.

Different forms of tenure for houses/buildings that may ensure the security of tenure, are as follows:

- a. the right of ownership/property rights (*Hak milik*);
(article 20-27 of the Law No 5 Year 1960 on Basic Regulation on Agrarian principles (UUPA))
- b. the right of exploitation (*Hak guna usaha*)
(article 28-34 of the UUPA);
- c. the right of building (*Hak guna bangunan*)
(article 35-39 of the UUPA);
- d. the right of use (*Hak pakai*)
(article 41-43 of the UUPA);
- e. the right of lease (*Hak sewa*)
(article 44-45 of the UUPA);
- f. the right of opening-up land (*Hak membuka tanah*)
(article 46 of the UUPA);
- g. the right of collecting forest product (*Hak memungut hasil hutan*)
(article 46 of the UUPA).

2. Laws and regulations that offers protection from forced eviction or involuntary resettlement:

Forced eviction and involuntary resettlement

In the event where a settler is unable to provide recognized legal documentations on their land or property, they may be evicted or resettled into a new settlement. However,

such eviction and resettlement are conducted in accordance to the General Comment No.4 of the International Covenant of Economic, social and Cultural Rights (ICESCR), where Indonesia has ratified through Law No. 11 Year 2005. It clearly stipulates that forced eviction conducted by the government or private sector has to fulfill the following conditions, as follows:

- a. Ensure that prior to the eviction, all alternative efforts are communicated with the settlers, this is to minimize the occurrence of force during eviction;
- b. The government has to consider adequate compensation for the settlers that are effected from the eviction;
- c. Provide procedure and processes for human rights protection of the evicted settlers.

Such procedure includes:

1. Conducting dialogues with the victims of the eviction,
2. Sufficient notifications are given within a rationale time frame prior to the eviction,
3. Information regarding the eviction and if possible on the alternative use of the land that are to be evicted,
4. If it involves society groups, the government officials must be present during the process of eviction,
5. All personnel that are conducting the eviction process must be identified as having authority to do so,
6. The eviction process are prohibited during bad weather or in the evening,
7. Provide assurance that the settlers will be given legal assistance for claiming their compensation through courts.

3. The legislation mentioned in question 1 and 2, protects the following groups/individuals:

Law No. 5 Year 1990 stipulates that every citizen of Indonesia, both men and women, as well as national legal entities has equal entitlement and opportunity to obtain the right of land and to benefit thereof.

Data on those with insecure tenure

4. Data or estimated figure for the number of those with insecurity of tenure:

No.	Category	Data
1.	Household living in informal settlements	Comprehensive data not available
2.	Minorities living in informal settlements	Comprehensive data not available
3.	Internally Displaced Persons	Comprehensive data not available
4.	Undocumented migrants, refugees or asylum seekers	As of February 2013, there are 7,288 registered refugees in Indonesia by the UNHCR. These refugees originate

		from Afghanistan (49%), Iran (12%), Pakistan (8%), and Iraq (7%).
5.	Households that were evicted or are under eviction orders due to mortgage default	Comprehensive data not available

5. Tenure rights recognized in legal or administrative instruments for those informally occupying land:

- a. The right of building (Article 35 Law No. 5 Year 1990)
The right of building is a right to build or own properties on land that are owned by another person or other legal entities for a period of 30 years. With further permission of the owner, considering the purpose of the land and the condition of the building, the owner may extend the right to building for a maximum period of 20 years.
- b. The right of lease (Article 44 Law No. 5 Year 1990)
A person or legal entity may acquire the right of lease owned by another person or legal entity for the purpose of building with a sum of rental payment to the owner. The payment may be made periodically or once off before or after the land is utilized.

6. Policies, projects, or programmes in place or being developed to recognize, record, or regularize tenure rights of urban poor living in informal tenure arrangements, including in informal settlements.

The government recognizes several instruments other than the certificate of land ownership to provide legal evidence for the right of ownership to land. These instruments comprise of: (i) deed of sale, (ii) deed of transfer, (iii) deed of exchange, (iv) bequest, (v) designation of purchase in an auction, (vi) implementation of a court verdict, (vii) gift that are legally certified by the notary with the issuance of a deed, (viii) other traditional documentations which informs the right to ownership of land, such as C letter/*Girik/Pethok D* that are recognized by the authoritative officials in the village or sub-districts or districts. Those who are able to provide the abovementioned evidence documentations may register their land to the Head of Land Agency in their region or cities.

The government is currently implementing programs aiming to recognize, record, or regularize tenure rights of urban poor living in informal tenure arrangements, including in informal settlements, these include:

- a. Land consolidation program (targeting people living in slum areas)
- b. Flats with right of ownership (targeting people living in slum areas by providing them easy access to ownership)
- c. Flats with right of lease (to accommodate societies living in informal settlements)
- d. Asset legalization (mass land registration and certification).

7. Land reform programme or policy

The government is currently developing the implementation of Law No. 2 Year 2012 on Land Acquisition for the Development of Public Infrastructure as a part of measures in realizing land reforms.

Furthermore, as an effort to recognize and register the right of urban poor, the government is developing Low Rental Flats projects (*Rumah Susun Sederhana Sewa/Rusunawa*) to provide the urban poor an adequate housing with a secure tenure.

For those States with international development aid agencies/programmes

8. Programme/assistance aiming to support the development of security tenure programmes/policies/projects for the urban poor.

The National Land Agency in cooperation with the World Bank implemented the Land Management Policy Development Program (LMPDP) through the legalization of assets of the urban and rural poor across Indonesia (registration of land and certification).

Urban Planning and housing policies

9. Pro poor land use instruments

In efforts to strengthen the access to justice and legal assistance, the programme 'Justice for the Poor' has supported the drafting and implementation of many important government policies and initiatives that are aimed to support the poor. These include:

- a. National Strategy for Access to Justice. This strategy comprise of a set of measures that are aimed to guide the authorities working towards providing a strengthened access to justice in Indonesia.
- b. Law No. 16 Year 2011 on Legal Assistance. This law has created a national system to provide legal assistance funds that are aimed to support the poor in struggling for their rights in disputes, both through formal and informal legal mechanisms, which also supports the poor in settling tenure disputes.

Legal instruments relating to city planning in the national and local levels have implemented pro-poor initiatives for projects such as LMPDP, redistribution of land reform objects, land consolidation, flats with right of ownership (*Rumah Susun Sederhana Milik/Rusunami*), flats with right of lease (*Rusunawa*), Inventory of ownership, control, use and utilization of land programme.

10. Housing policies or programmes aimed at promoting forms of tenure

Policies/housing programs that are aimed to promote different forms of tenure as an alternative of the right of ownership are policies in the implementation of a communal/collective ownership to land/building through the development of affordable subsidized flats namely the *Rusunawa* and the *Rusunami*.

These programmes are accelerated by the Presidential Decree No. 22 of 2006 on Coordinating Team on the Acceleration of the Development of Flats in Urban Areas (PPRSKP), which is followed up by the establishment of Executing Team and Working

Group in Central Government and Regional Coordinating Team in various provinces and municipalities/districts. The PPRSKE Program is well known as the 1000-Tower-Development, which started in 2006.

ACT NO. 5 OF 1960

CONCERNING

BASIC REGULATIONS ON AGRARIAN
PRINCIPLES

THE PRESIDENT OF THE REPUBLIC OF
INDONESIA

CONSIDERING:

- a. that in the State of the Republic of Indonesia, of which the structure of its society including its economic system is especially of an agrarian nature, its earth, water and air space being the gift of God, have a very important function in the Construction of a just and prosperous society;
- b. that the Agrarian law which is still valid today, is partly based on aims on principles of the colonial government and partly influenced by her, and is thus in conflict with the interest of the people and the State in the completion of the present National Revolution and the over-all development;
- c. that the above mentioned Agrarian law is dualistic in regard to the validity of the Adat (Customary) Law, existing besides the mentioned Agrarian law, which is based on western law;
- d. that for the "autochthonous" population the aforementioned colonial law does not guarantee legal security.

IS OF THE VIEW:

- a. That in connection with the considerations as mentioned above, it is deemed necessary that a National Agrarian law is established, based upon the Adat-law concerning land which law should be simple and should be simple and should guarantee legal security for the whole of the people of Indonesia, without neglecting elements based on religious law;
- b. that the National Agrarian law shall enable the functioning of the earth, water and air space as mentioned above, and shall be in line with the interest of the people of Indonesia and, at the same time meet the needs which is required at present in all matters pertaining to agriculture,
- c. that this National Agrarian law must be a realization of the spiritual fundamentals of the State and ideals of our Nation, as is laid down in the Preamble of the Constitution, i.e. Belief in the One and Supreme God, Humanity, Nationalism, Democracy and Social Justice;
- d. that this National Agrarian law shall be an implementation of the Presidential Decree of July 5th, 1959, of the provision in Article 33 of the Constitution, and of the political Manifesto of the Republic of Indonesia, as has been stressed in the address of the President on August 17, 1960, which obliges the State to regulate land property and to guide its utilization so that all land throughout the Nation's sovereign territory be used for the maximum prosperity of the people, individually as well as mutually;

- c. that in connection with all that it is deemed necessary to lay down the principles and to compose new basic provisions in the form of an Act, which will become the basic in composing the above mentioned National Agrarian Law.

WITH DUE REGARD TO:

The proposal of the Provisional Supreme Advisory Council of the Republic of Indonesia No. I/KPTS/SD/II/60, concerning landform and land use

IN VIEW OF:

- a. the Presidential Decree on July 5th, 1959
- b. Article 33 of the constitution
- c. the Presidential 1960 (State Gazette 1960-10) concerning the sanctioning of the Political Manifesto of the Republic of Indonesia of 17th August 1959 as the Main Lines of our State Policy and the Presidential Message of 17th August 1960;
- d. Article 5, jo 20 of the Constitution; with the approval of the Gotong-Royong House of Representative;

HAS DECIDED:

To revoke:

1. "Agrarische Wet, (S. 1870-55) as contained in Article 51 "Wet op de Staatsinrichting van Nederlands Indië" (S. 1925-447) and the provisions in other paragraphs of that Article;
2. a. "Domein Verklaring" (Declaration of Lands as belonging to the State) mentioned in article 1 "Agrarisch besluit" (Agrarian Decree) mentioned State Gazette 1870 No. 118;
- b. "Algemene Domein Verklaring" (General declaration of Lands as belonging to the State) mentioned State Gazette 1875 No. 119a;
- c. "Algemene Domein Verklaring voor Sumatera" mentioned in Article 1 of State Gazette 1874 No. 94 f;
- d. "Domein Verklaring voor de Residentie Manado mentioned in Article 1 of S. 1877-55;
- e. "Domein Verklaring voor Residentie Zuiden en Oosten Afdeling van Vorneo" mentioned in Article 1 of S. 1888-58;
3. Koninklijk Besluit of 16 April 1872 No. 29 (S.1971-117) and the regulation for its implementation;

4. Volume 11 of the Civil Code of Indonesia so far as it is related to earth, water and natural resources contained there in, except the provisions related to mortgage which are still valid at the moment of the coming into force of this Act;

TO SANCTION:

THE ACT CONCERNING BASIC REGULATIONS ON AGRARIAN PRINCIPLES

**FIRST
CHAPTER I
BASIC PRINCIPLES AND PROVISIONS**

Article 1

- (1) The entire territory of Indonesia is a unified motherland of the whole of the Indonesian people who are united as the Indonesian Nation.
- (2) The entire earth, water and airspace, including the natural resources contained therein, in the territory of the Republic of Indonesia as the gifts of God Almighty are the earth, water and airspace of the Indonesian nation and constitute the wealth of the nation.
- (3) The relationship between the Indonesian Nation and the earth, water as well as air space meant in paragraph (2) of this Article is of an eternal nature.
- (4) Earth is to be understood not only its surface, but also the ground beneath its surface as beneath the water.
- (5) Water is to be understood the in land waters as well as the territorial sea of Indonesia.
- (6) Air space is understood the space above the earth and water mentioned in paragraph (4) and (5) of this Article.

Article 2.

- (1) Based on the provision Article 33, paragraph (3) of the Constitution and matters meant in Article 1, the earth, water and airspace, including the natural resources, contained therein are in the highest instance controlled by the State being an Authoritative Organization of the whole People.
- (2) The rights of controlled by the State meant in clause 1 of this Article provides authority:
 - a. to regulate and implement the appropriation, the utilization, the reservation and the cultivation of that earth, water and air space as mentioned above;
 - b. to determine and regulate the legal relations between persons concerning the earth, water and air space;

- c. to determine and regulate the legal relations between persons and legal acts concerning the earth, water and air space.

- (3) The Authority based on the State's rights of control mentioned in paragraph (2) of this Article is exercised in order, achieved the maximum prosperity of the people in the sense of happiness, welfare and freedom in the society and constitutional State of Indonesia which is independent, sovereign, just and prosperous.
- (4) The implementation of above mentioned right of control by the State may be delegated to the autonomous region and adat Law Communities, if deemed necessary and not being in conflict with the National interest in accordance with the provisions of Government Regulation.

Article 3.

Considering the provision in Article 1 and 2, the implementation of the "Hak-Ulayat" (The Communities, in so far as they still exist, shall be adjusted as such as to fit in the National and Property right of communal property of an Adat -Community) and rights similar to that of Adat-State's interests, based on the unity of the Nation, and shall not be in conflict with the acts and other regulations of higher level.

Article 4.

- (1) Based on the State's right of control as it is meant in Article 2, several kinds of rights are determined concerning the surface of the earth, which is called land which may be granted to and owned by persons and by Corporations.
 - (2) The rights on land meant in paragraph (1) of this Article gives authority to utilize the land concerned, and similarly also the body of the earth and the water as well as the space above it which is deemed necessary for the interest directly connected with the use of land concerned seemed such in conformity with the restrictions laid down in this Act and in other legislative regulations of a higher level.
 - (3) Besides the rights on land as meant in paragraph (1) of this Article, the on water and airspace are also stipulated.

Article 5.

The Agrarian law which applies to the earth, water and air space is Adat- Law as far as it is not in conflict with the National and State's interests based on the unity of the Nation, With Indonesian Socialism as well as with the regulations stipulated in this Act and with other legislative regulations, all with due regard to the elements based on the elements based on the Religious Law.

Article 6.

All rights on land have a social function.

Article 7

In order not to harm the public interest, excessive ownership and control of land are not permitted.

Article 8.

Based on the State's right of control as meant in Article 2, the exploitation of the natural resources contained in the earth water and air space shall be regulated.

Article 9.

- (1) Only Indonesian citizens may have the fullest relation with the earth, water and air space within the limits mentioned in Article 1 and 2.
- (2) Every Indonesia citizen, wither men or women has equal opportunity to obtain a certain right on land to acquire its benefits and yields thereof for himself/herself as well as his/her family.

Article 10.

- (1) Every person and every corporate body having a certain right on agricultural land, is in principle obliged to cultivate or to exploit it actively by himself whole avoiding violation methods.
- (2) The implementation of the provision in paragraph (1) of this Article shall be further regulated by legislative regulation.
- (3) Exception to the principle mentioned in paragraph (1) of this Article shall be regulated by legislative regulation.

Article 11

- (1) The legal relations between persons, including corporation and the earth, water and air space, as well as their authorities originating from those legal relation shall be regulated in order to realize the aim as mentioned Article 2, paragraph (3); and to prevent excessive control over the livelihood and work of other persons.
- (2) Differences in the composition of die society and the legal needs of the groups of people, wherever necessary and not being in conflict with the National interests, shall be taken into consideration, while encoring the protection of the economically weak group.

Article 12.

- (1) All joint efforts the agrarian field are based on the common interest in die framework of the National interest, in form of cooperatives of other form of "Gotong Royong" (Mutual Assistance).
- (2) The State in cooperation with other parties can establish joint undertakings in the agrarian field.

Article 13

- (1) The government shall see to it that all undertakings in the agrarian field be regulated in such a way as to increase die production and the people's prosperity as is meant in Article 2, paragraph (3) and to guarantee every Indonesia citizen a living standard suitable to the dignity of man, for himself as well as for his family.
- (2) The government shall see to it that existence of undertakings in agrarian field from organizations and individuals bearing then nature of a private monopoly.
- (3) Government undertakings which are of a monopolistic nature in the agrarian field can only the carried out by Act.
- (4) The government shall endeavor to promote social guarantees and securities, including the field of labor, in agrarian undertakings.

Article 14.

- (1) Taking into consideration the provision laid down in Article 2 paragraph (2) and (3), Article 9 paragraph (2) and Article 10 paragraph (1) and the government in the framework of Indonesian socialism, shall draw up a general plan concerning reservation, appropriation and use of the earth, water and airspace and the natural resources contain therein
 - a. for the needs of the State;
 - b. for religious and other sacred needs in Line with the principle of the Belief in One, Supreme God;
 - c. for the needs of centers of livelihood, as social, cultural and other branches of welfare;
 - d. for the needs of developing agricultural production, cultural breeding and fisheries and other similar undertaking;
 - e. for the needs of developing industries, transmigration and mining.
- (2) Based on the general scheme mentioned in paragraph (1) of this Article and considering the regulations concerned, the Regional Government shall regulate the reservation, appropriation and use of the earth, water and airspace for their regions in line with conditions in the respective regions.
- (3) The Regional Government Regulations as meant in paragraph (2) of this Article shall come into force after having been sanctioned as for First Level Regions by the Presidential, for the Second Level Region by Governor/Head of the Region concerned and for the Third level Region by the Bupati (Regent)/Walikota (Mayor) of the Region concerned.

Article 15.

The cultivation of land, including the increase of its fertility as well as the prevention of its damage is the duty of every person corporation of organization having legal relations with mentioned land, with due consideration to the economically weak party.

**CHAPTER 11
THE RIGHTS ON LAND WATER AND AIR
SPACE, AND LAND REGISTRATION**

**PART 1:
GENERAL PROVISIONS**

Article 16.

- (1) The rights on land as meant in Article 4, paragraph (1) include:
- a. the right of ownership (*Hak milik*)
 - b. the right of exploitation (*Hak guna usaha*)
 - c. the right of building (*Hak guna bangunan*)
 - d. the right of use (*Hak pakai*);
 - e. the right of lease (*Hak sewa*)
 - f. the right of opening-up land (*Hak membuka tanah*)
 - g. the right of collecting forest product (*Hak memungut hasil hutan*)
 - h. Other right not included in the above mentioned right which shall be regulated by law and rights of a temporary nature as mentioned Article 53.
- (2) The rights on water and airspace as meant Article 4, paragraph 3 include:
- a. The right of using water (*Hak guna air*)
 - b. The right of breeding and catching fish.
 - c. The right of using airspace (*Hak guna ruang angkasa*)

Article 17.

- (1) With due regard to the provision in article 7 and in other to achieve the aim meant in Article 2, paragraph (3) the maximum and/or minimum area of land which may be owned by a family or a corporation wider any right mentioned in Article 16, shall be regulated.
- (2) The fixing of the maximum limit meant in paragraph (1) of this Article shall be executed by legislative regulation within a short time.
- (3) The land in excess of the maximum limit meant in paragraph (2) of this Article, shall be taken by the Government against compensation and shall be further distributed among the people who need it according to provisions provided by Government Regulation.
- (4). The attainment of the minimum limit meant in paragraph (1) of this Article to be regulated by legislative regulation, be done.

Article 18.

In the public interest, including the interests of the Nation and State as well as the common interest of the people, the rights on land may be annulled, with due compensation and according to a procedure laid down by act.

**PART II:
THE REGISTRATION OF LAND**

Article 19.

- (1) In order to guarantee legal security the Government shall conduct land registration throughout the territory of the Republic of Indonesia according to provisions laid down by Government Regulation.
- (2) The registration mentioned in paragraph (1) of this Article covers:
 - a. The measuring, mapping and recording of land;
 - b. The registration of the rights on land transfer of these rights;
 - c. The issue of certificates of rights on land, which will be valid as strong evident.
- (3) The registration of land shall be conducted, with due consideration to the condition of the States and the society, the needs of social and economic activities and its implementation possibilities according to the consideration of the Minister of Agrarian Affairs.
- (4) The expenses related to the registration meant in paragraph (1) mentioned above shall be regulated by Government Regulations, with the provision that those who are without meant shall be exempted from those expenses.

**PART III:
RIGHT OF OWNERSHIP**

Article 20.

- (1) The right of ownership is *hereditary right* and be strongest and fullest right one can have on land that may be possessed by citizen, considering the provision laid down in Article 6.
- (2) The right of ownership may go over to and transferred to another party.

Article 21.

- (1). Only an Indonesia citizen may have rights of ownership.
- (2). Corporations which may possess the right of ownership and its requirements shall be determined by Government.

(3) Any foreigner, who after the coming into force this Act has obtained the right of ownership through inheritance, without a will or through communal marital property and any Indonesian citizen too, having the right of ownership and losing nationality after the coming into force of this law, are obliged to relinquish that right within a period of one year after the obtaining of that right of after losing that nationality. If after expire of that period the right of ownership is not relinquished, then it becomes invalid by the provision that the right of other parties, incumbent hereon, endure.

(4) As long as person possesses a foreign nationality in addition to his Indonesian nationality he/she may not possess any land with ownership right and the provision in paragraph (3) of this Article is applicable to him/her.

Article 22.

- (1) Origin of the right of ownership according to the Adat-law shall be regulated by Government Regulation.
- (2) Apart from the procedure as meant in paragraph (1) of this Article, the origin of the right of ownership is caused by:
- a decision of the Government, in accordant with the requirements laid down by Government Regulation;
 - Provision laid down by Act.

Article 23.

- (1) The right of ownership and likewise each transfer, annulment and encumbrance with other right shall be registered in accordance with the stipulations as mentioned in Article 19.
- (2) The registration meant in paragraph (1) constitutes as strong evidence with regard to the annulment of the right of ownership and the legal validity of transfer and the encumbrance of the said right.

Article 24.

The use of land with the right of ownership by another than the owner shall be restricted and
Regulated by legislative regulation.

Article 25.

The right of ownership may be used as a security of a debt by meant of lien (*hak tanggungan*).

Article 26

- (1) Sales, and purchases, exchanges, gift and bequest by will, bequest according to customary law and other act which are meant to transfer the right of ownership and its control shall be regulated by Government Regulation.
- (2) Each sale and purchase, exchange, gift, bequest by will and other acts which are meant to transfer the right of ownership directly or indirectly to a foreign, to a national

possessing a foreign nationality in addition to his/her Indonesian nationality in addition to his/her Indonesian nationality, or to a corporation, except those which have been by the Government as meant in Article 21, clause (2) are not valid by law the provision that rights of another party incumbent therein remain valid and that all payments which have been received by the owner may not be reclaimed.

Article 27.

The right of ownership is annulled if:

- the land fall back to the State;
 - because of the revocation of the right based on Article 18;
 - because of voluntary transfer by its owner;
 - because of the land is lying fallow;
 - because of the provisions in Article 21, clause (3) and Article 26 clause (2);
- the land is destroyed.

PART IV: THE RIGHT OF EXPLOITATION

Article 28.

- (1) The right of exploitation is the right to cultivate the land which is directly controlled by the State for a period of time as stipulated in Article 29 for enterprises in the field of agriculture, fishery or cattle breeding.
- (2) The right of exploitation is granted on land which size at least 5 hectares with the provision that, if its size is 25 hectares or more, a reasonable investment of capital shall have to be used coupled with a good *management* technique in line with the development of time.
- (3) The right of exploitation may go over and be transferred to another party.

Article 29.

- (1). The right of exploitation is granted for a period of not longer than 25 years.
- (2). To an enterprise that needs a longer period, a right of exploitation for not longer than 35 years may be granted.
- (3). At the request of the holder of the right and considering the situation of his enterprise the period of time as meant in paragraph (1) and (2) of this Article, may be extended with a period of not longer than 25 years.

Article 30.

- (1) Those who may have the right of exploitation are:
- Indonesian citizens;
 - Corporation which has been establish according to the Indonesian law and have their seat in Indonesia.
- (2) Persons or corporations possessing the right of exploitation and who do not any longer meet the terms as mentioned in clause (1) of this Article are obliged within a period of 1 year to relinquish or to transfer that right to another party meeting these terms. This

provision is also applicable to a party which has obtained the right of exploitation if his party does not meet the meant terms. If the right of exploitation concerned is not relinquished or transferred within the mentioned period of time, then that right become not valid by the law, with the provision that the rights of the other party shall be observed according of the provision laid down by Government Regulation.

Article 31.

The right of exploitation is established by Government verdict.

Article 32.

- (1) The right or exploitation, including the requirements of its issues, as well as each transfer and annulment of this right must be registered according to provisions meant in Article 19.
- (2) The registration meant in paragraph (1) constitutes a means of string evidence concerning the transfer as well as the annulment of the right of exploitation except in the case that the aforementioned right is annulled due to the expiration of its period.

Article 33.

The right of exploitation may be made a security for a debt by means of right of security (lien).

Article 34.

The right of exploitation is annulled because of:

- a. Expire of its period;
- b. Its termination before its date of expiration due to non fulfillment of a requirement;
- c. The abandonment by the holder of the right before its date of expire;
- d. Its annulment in the public interest;
- e. Its being neglected;
- f. The destruction of the land;
- g. The provisions of Article 30 paragraph (2).

PART V: THE RIGHT OF BUILDING

Article 35.

- (1) The right of building is the right to build and to own buildings on land which is not one's property for a period of not longer than 30 years.
- (2) At the request of the holder of the right and considering the necessity as well as the condition of the building, the period of time meant in paragraph (1) can be extended by a period not longer than 20 years.
- (3) The right of building may go over to and be transferred to another party.

Article 36.

- (1) Those who may posses the right of building are:

- a. Indonesian citizen;
- b. Corporation established according to Indonesia Law and having their domicile in Indonesia.

- (2) Person or corporation who posses the right of building and do not linger meet the requirements mentioned in paragraph (1) of this Article are obliged within a period of one year to relinquish or to transfer that tight to another party that meets the requirements. This provision also applies to the party that obtains the right of building, if does not meet the said requirements. If the right of building concerned is not relinquished or transferred in the period as mentioned above the right becomes not valid by law with the provision that right of the other parties shall be transferred, according to the provisions to be laid down by Government Regulation.

Article 37.

The right of building is originated:

- a. with regard to land which is directly controlled by the States because of the Government verdict.
- b. with regard to land under right property; because of an agreement of authored nature between the owner of the land building, aiming at the establishment of the above-mentioned right.

Article 38.

- (1) The right of building including its requirements of granting as well as its transfer and annulment of that right must be registered according to provisions, mentioned in Article 19.
- (2) The registration meant in paragraph (1) constitutes a means of strong evidence concerning the annulment of the right of building as well as the validity of the transfer of above mentioned right, except in the case that those right are annulment because of expire of the period.

Article 39.

The right of building is annulled because of.

- a. expire of its period;
- b. its termination before the expiration of its period due to non fulfilment of certain requirements;
- c. its abandonment by the holder of the right before expire of its period;
- d. its annulment in the public interest;
- e. of is lying fallow (being neglected);
- f. destruction of the land;
- g. the provision in Article 38 paragraph (2)

**PART VI:
THE RIGHT OF USE**

Article 41.

- (1) The right of use is the right to use and/or to collect the product, from land directly controlled by the State, or land owned by other persons which gives the rights and obligations stipulated in the decision upon granting this right by the authorized official, or in the agreement to work the land, as far as it not conflict with the spirit and the provision of this law.
- (2) The right of use may be granted:
 - a. for a certain period of time as long as the land is utilized for a specific purpose;
 - b. gratis, against payment, or against services in whatever form.
- (3) The granting of the right of use may not be accompanied of conditions bearing elements of extortion.

Article 42.

Those who may obtain the right of use are:

- a. Indonesian citizen;
- b. Foreigner residing in Indonesia;
- c. Corporation which have been established according to Indonesian Law and having they seat in Indonesia;
- d. Foreign corporations having a representation in Indonesia.

Article 43.

- (1) As far it concerns land directly controlled by the State, the right of use may only be transferred to another party with the permission of the authorized official.
- (2) The right of use of land with right of ownership may only be transferred to another party, if this is possible in the agreement concerned.

**PART VII:
THE RIGHT TO LEASE LAND FOR
BUILDING**

Article 44.

- (1) A person or a corporation has the right to lease land, if he is entitled to utilize land owned by another for the purpose of building, by paying to its owner an amount of money as rent.
- (2) The payment of rent may be effected:
 - a. Once or at intervals;
 - b. Before or after use of the land.

- (3) Agreement for the lease of land meant in this Article may not be accompanied by conditions having the elements of extortion.

Article 45.

Those who may become holders of the right to lease are:

- a. Indonesian citizens;
- b. Foreigner residing in Indonesia;
- c. Corporation which has been established according to Indonesia law and having their seats in Indonesia;
- d. Foreign corporation having a representative in Indonesia;

**PART VIII:
THE RIGHT OF OPENING-UP LAND OF
COLLECTING FOREST PRODUCT**

Article 46.

- (1) The right of opening-up land and of collecting forest products may only be possessed by Indonesian citizens and is regulated by Government Regulation.
- (2) By using right to collect forest products legally, it does not naturally simply ownership with regard to that land.

**PART IX:
THE RIGHT OF USING WATER, OF
BREEDING AND OF CATCHING FISH**

Article 47

- (1) The right of using water is the right to obtain water for a specific purpose and/or to flow it over another person's land.
- (2) The right of using water and breeding and catching fish shall be regulated by Government Regulation.

**PART X:
THE RIGHT OF USING AIR SPACE**

Article 48.

- (1) The right of using air space authorizes the utilization of energy and elements in the air space for the purpose of maintaining the developing the fertility of the earth, water and natural resources contained therein and other matters relating thereto
- (2) The right of using air space shall be regulated by Government Regulation.

**PART XI:
THE RIGHT ON LAND FOR RELIGIOUS
AND SOCIAL PURPOSES**

Article 49

- (1) The right of ownership on land of religious and social institutions as far as it is utilized for purpose in the social and religious fields, is recognised and protected. Those institutions are also guaranteed to obtain sufficient land or buildings and for undertakings the social and religious fields.
- (2) For religious and other sacred Purposes as meant in Article 14, land under direct control of the State may be granted with the right of use.
- (3) Land for religious purposes ("*Tanah perwakafan*") with the right of ownership shall be protected and regulated by Government Regulation.

**PART XI I:
OTHER PROVISIONS**

Article 50.

- (1) Further provisions concerning the right of ownership shall be regulated by Act.
- (2) Further, provisions concerning the right of exploitation, the right of occupation and the right of lease for the purpose of constructing buildings shall be regulated by legislative regulation.

Article 51

The right of security which may be encumbered on the right of ownership, the right of exploitation and the right of budding, meant article 25, 33 and 39 shall be regulated by Act.

**CHAPTER III
PENAL PROVISIONS**

Article 5.

- (1) Those who deliberately violate the provision in Article 15 shall be punished with imprisonment for not longer than three months and/or a fine of not more than 10.000 Rupiah.
- (2) The Government regulation and legislative regulation as meant in Article 19, 22, 26 paragraph (1), Article 46, 47, 48, 49 paragraph (3) and Article 50 paragraph (2), may provide sanctions for offences against this regulations with imprisonment for not longer than 3 months and/or a fine not more than 10.000,- Rupiah.

- (3) Offences meant in paragraphs (1) and (2) of this Article are misdemeanours.

**CHAPTER IV
TRANSITIONAL PROVISIONS**

Article 53.

- (1) Right which are of a temporary is meant in Article 16, paragraph (1), letter i.e. the right of mortgage, the right of share crop, the right to temporary occupation ("*hak menumpang*") and the right of lease of a agricultural land shall be regulated in order to limit aspects which are in conflict with these laws and endeavours shall be made to abolish these rights within a short time.
- (2) The provisions in Articles 52 paragraphs (2) and (3) are valid for the regulations meant in paragraph (1) of this Article.

Article 54.

In connection with the provisions in Article 21 and 26 it is understood that, if a person who, besides possessing the Indonesian citizenship also possesses the citizenship of the People's Republic of China which has been legalized according to the provisions laid down in the law concerned is regarded as having only the Indonesian citizenship such according to Article 21, paragraph (1).

Article 55.

- (1) Foreign rights, rights, According to the conversions Article 1, 11, III, IV, and IV have been converted into rights of exploitation and of budding, are only temporarily valid for the duration of the remaining time of those rights which is not longer than 20 years.
- (2) The possibility of granting the right of exploitation and the right of budding to corporations, having party or wholly foreign owned capital only exist if such is required by the Act that regulates the planned National Over-all Development.

Article 56.

As long as the Act regarding the right of ownership meant in Article 50, paragraph (1.) has not yet been established, the provisions of the local Adat (customary) law and other regulation regarding right on land which give rights corresponding or similar to those meant in Article 22 apply, as long as they are not in conflict with the spirit and the provisions of this law.

Article 57.

As long as the Act concerning the right of security meant in Article 51 has not yet been established, the provision concerning mortgage mentioned in Civil Code of Indonesia and

"Credietverband" meant in State Gazette 1908 No. 542 as amended in State Gazette 1937 No. 190 are valid.

Article 58.

AS long as the regulations for the execution of this law has not yet been established the written as well as unwritten provision concerning the earth and the water and the natural resources contained therein and the right on land, existing at the time of the coming into force of this law, shall remain in force as long as they are not in conflict with the spirit of the provisions in this law, and are interpreted accordingly.

**SECOND
CONVERSION PROVISION**

Article I.

- (1) Proprietary right on land, which exists at the time of the coming into force of this Act is converted into a right of ownership, except if the owner does not comply with the requirement mentioned in Article 2 1.
- (2) Proprietary possessed by a foreign Government which is used for the purpose of residence of the head of the Diplomatic Mission and the Chancery building from the time of the enforcement of this Act, is converted into a right of use as meant in Article 41, clause (1), and shall be valid as long as that land is used for the above-mentioned purpose.
- (3) The Proprietary right possessed by a foreigner, or a citizen having a foreign citizenship next to his/her Indonesian citizenship and of corporation which are not indicated by the Government as meant in Article 21, paragraph (2), from the time of the "Sanctioning" of this law is converted into right of building as meant in Article 45, paragraph (1) for a period of 20 years.
- (4) If the proprietary meant in paragraph (1) of this article is encumbered with, the right of building "Opstal" (premises) and the right of "Erfpacht" (long lease), those rights of "Opstal" and of "Erfpacht" are converted at the time of the coming into force of its law - into a right of building meant in Article 35 paragraph (1), which encumbered die relative right ownership concerned for the remaining period of the right of building "Opstal" for the right of "Erfpacht" (long lease) mentioned above, but not longer than 20 years.
- (5) If die proprietary right mentioned in paragraph (3) of this Article is encumbered with the right of "Opstal" or to the right of "Erfpacht", the relationship between the holder of the property right and the holder of the right of "Opstal" or the right of "Erfpacht" shall further be settled according to a directive to be sanctioned by the Minister of Agrarian Affairs.
- (6) The rights of mortgage, servitude, usufruct and other rights encumbering to the proprietary right remain encumbered to the right of ownership and the right of building meant in paragraph (1) and (3) of this Article, whereas those rights shall be converted into a certain right according to this law.

Article II.

- (1) The rights on land which give authority corresponding and similar to rights as meant in Article 20 paragraph (1), as they have been mentioned by names below, are: The right of "Agrarisch eigendom" (Agricultural property), *milik yayasan* (foundation property), *andarbeni*, right on *druwe*, right on *desa* (village), *pasini*, grand, Sultan, *landerlebezitrecht* (landlord's leasehold), *erfpacht* (long lease), the right of use on former private land and other rights wider whatever name, which shall be further explained by the Minister of Agrarian Affairs, since the coming into force of this Law are converted into the right of ownership as meant in Article 20 paragraph (1), except if the owner has not met the requirements meant in Article 2 1.
- (2) The right mentioned in paragraph (1) belong to a foreigner, or a citizen who has a foreign citizenship and a corporation which is not appointed by the Government as is meant in Article 21 paragraph (2) will be converted into right of exploitation or right of building in line with the use of the land, as will be further determined by the Minister of Agrarian Affairs.

Article III.

- (1) Long lease right for large estate, existing at the moment of the coming into force of this law, are converted into right of exploitation as mentioned above in Article 28 paragraph (1), which shall continue for the remaining period of the meant long lease, but for not longer than 20 years.
- (2) Long lease right for small scale agriculture, existing at the moment of the coming into force of this Act, are annulled and shall be further seeded according to provision to be laid down by the Minister of Agrarian Affairs.

Article IV.

- (1) The holder of a concession and lease for a large estate enterprise shall within a period of one year since the coming into force of this Act submit a request to the Minister of Agrarian Affairs to have this right changed into the right of exploitation.
- (2) If, after expire of that period no request is submitted the concession and the lease concerned will endure for the remaining period of time but for not longer than 5 years and after that period it will expire automatically.
- (3) If the holder of the concession or lease has submitted a request meant in paragraph (1) of this Article, but is not willing to accept the conditions fixed by the Minister of Agrarian Affairs, then the concession or lease continues for the remaining term, but for not longer than 5 years and after that period it will expire automatically.

Article V.

The right of building and long lease right of using, existing at the coming into force of this law are momentarily converted into the right of buildings mentioned in Article 35 paragraph (1) continuing for remaining term of the mentioned right of building and long lease but for not longer than 20 years.

Article VI.

The rights on land which authorize corresponding or similar rights as-meant paragraph (1), in Article 41, as mentioned by names below, which exist at die time of fruit, right of use land grand controleur, bruikleen ganggambantuik, anggadah, bengkok, lungguh Pituwas, and other rights under whatever name which shall be further classified by the Minister of Agrarian Affairs, shall be further classified by the Minister of Agrarian Affairs, shall, since the Coming into force of this Act be converted into right of use as meant in Article 41, paragraph (1) which gives authority and duties similar to those enjoyed by the holders of the rights at the beginning of the coming into force of this Act as long as they are not in conflict with spirit and provisions of this Act.

Article VII.

- (1) The right of "gogolan", "pekulen", or "sanggan" of a permanent nature, existing at the coming into force of this Act, shall be converted into right of Ownership mentioned in Article 20, paragraph (1).
- (2) The right of "gogolan", "pekulen", or "Sanggan" is of a permanent nature, existing at the coming into force of this Act shall be converted into right of use mentioned in Article 41, paragraph (1) which gives authorities and duties similar to those enjoyed by the holder of the rights at the coming into force of this Act.
- (3) Should there any doubt whether a right of "gogolan", "pekulen", or "sanggan", is of a Permanent nature or blot, the Minister of Agrarian Affairs shall decide there upon.

Article VIII

- (1) With regard to the right of building meant in Article 1, paragraphs (3) and (4), Article I paragraph (2) and Article V, the provision in Article 36, paragraph (2) in applicable.
- (2) With regard to the right of exploitation meant in Article 11, paragraph (2), Article III, paragraph (1) and (2), Article IV, paragraph (1), the provision applicable 'On in Article 30, paragraph (2)

Article IX

Matters necessary for the implementations of the provisions in the above-mentioned Articles, shall be further regulated by the Minister of Agrarian Affairs.

THIRD

The reorganization of the Village administration for the implementations of the radical change of the agrarian law, according to this Act, shall be regulated separately.

FOURTH

- A. Rights and authorities on the earth and water of Swapradjas or ex-swapradjas (princedom) existing at the of the coming into force of this Act are annulled and transferred to the State.

- B. Matters relating to the provision in letter A as mentioned above, shall be further regulated by Government Regulation.

FIFTH

This Act may be called Basic Agrarian Laws and Conies into force on the date of its promulgation.

In order that people take knowledge of it this Act shall be published in the state Gazette of the Republic of Indonesia.

Sanctioned in Jakarta
On 24th September 1960

THE PRESIDENT OF THE
REPUBLIC OF INDONESIA

SOEKARNO

Promulgated :
On 24th September 1960

STATE SECRETARY

TAMZIL

STATE GAZETTE 1960, No. 104