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Uncertainty in Land Rights for Non-Public Cemeteries

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ABSTRACT

This article examines the legal determination of land rights over non-public cemeteries managed by religious and social legal entities in Indonesia. The issue arises from the ambiguity and inconsistency of norms concerning whether non-public cemetery land may be granted Right of Use, Waqf-owned Right of Ownership, or Right of Ownership for religious and social bodies. This research uses normative juridical method with statutory and conceptual approaches. Legal materials were collected through library research by examining agrarian law, land registration regulations, regulations on cemetery land, and legal doctrines concerning legal certainty, land rights, property law, and administrative decisions. The findings show that the regulation of land rights over non-public cemeteries contains vague norms and disharmony between Government Regulation Number 9 of 1987 and Government Regulation Number 38 of 1963. The study concludes that granting ownership rights to religious and social bodies may provide legal certainty and protection for organizational assets, but its use must remain limited to cemetery purposes and the social function of land

INTRODUCTION

Land has a strategic position in Indonesian society because it is closely related to social, religious, economic, and legal interests. Article 33 paragraph (3) of the 1945 Constitution emphasizes that land, water, and natural resources are controlled by the state and used for the greatest prosperity of the people. In this context, land is not merely an economic object, but also has a social function, including its use for cemetery purposes. The increasing population growth in Indonesia has created greater demand for cemetery land, while the availability of land, especially in urban areas, continues to decline. Several regions have experienced limited cemetery capacity, causing the need for alternative cemetery management outside public cemeteries administered by local governments.

One form of alternative cemetery management is the non-public cemetery, or *Tempat Pemakaman Bukan Umum* (TPBU), which is managed by social and/or religious bodies. The existence of TPBU becomes important because religious and social organizations often manage cemetery areas that are connected with religious, historical, cultural, or community-based functions. In practice, these organizations require legal certainty over the land they manage so that cemetery land can be protected as an organizational asset and used continuously for social and religious purposes. However, the legal determination of land rights over TPBU still creates problems because the applicable regulations do not provide a uniform and clear standard regarding the type of land right that may be granted (Liely Phinesia, 2024).

Government Regulation Number 9 of 1987 provides that land for non-public cemeteries is generally granted the status of Right of Use, except for waqf land used for cemetery purposes, which may have the status of Right of Ownership. On the other hand, Government Regulation Number 38 of 1963 allows religious and social legal entities to hold Right of Ownership over land used for purposes directly related to religious and social activities. This creates a legal issue because TPBU managed by religious and social bodies may be understood as land used for religious and social purposes, but it is not expressly classified as an activity that directly supports religious or social functions. As a result, there is a vague norm and disharmony between the

regulation on cemetery land and the regulation on legal entities that may own land (Adniah, n.d.).

The problematic reality can be seen in the different types of land rights granted to cemetery areas managed by religious or social bodies. Some TPBU areas are registered as Right of Ownership, while others are registered as Right of Use. This inconsistency shows that the implementation of land registration for TPBU has not fully reflected the principle of legal certainty. The absence of a clear classification may create different interpretations among land administration authorities, religious or social bodies, and the community. It may also affect the legal protection of cemetery land as an asset used for public, social, and religious interests (Scurrow, n.d.).

Previous studies have discussed land ownership by foundations, the granting of land rights for non-public cemeteries, and the legal status of commercial cemetery land. However, the novelty of this article lies in its focus on the legal determination of land rights over TPBU specifically for religious and social bodies, particularly in relation to the conflict between Government Regulation Number 9 of 1987 and Government Regulation Number 38 of 1963. This article also examines the legal implications when Right of Ownership is granted to religious and social bodies for TPBU land, especially from the perspective of legal certainty, property law, the social function of land, and the validity of administrative decisions.

Based on this background, this article aims to analyze the legal regulation concerning the determination of land rights over non-public cemeteries for religious and social bodies under Indonesian land registration law. It also aims to examine the legal implications of granting Right of Ownership over TPBU land to religious and social bodies, particularly in ensuring legal certainty, protecting organizational assets, and maintaining the proper use of cemetery land according to its social and religious function (Oyeleke & Oloukoi, n.d.).

METHODS

This research uses a normative juridical method, which examines legal issues based on applicable legal norms, legal principles, legal doctrines, and relevant statutory regulations. This method is appropriate because the main issue discussed in this article concerns the ambiguity and

disharmony of norms in determining land rights over non-public cemeteries managed by religious and social bodies. The research focuses on the legal regulation of land rights determination, the classification of non-public cemetery land, and the legal implications of granting Right of Ownership to religious and social legal entities(Hariri, n.d.).

The research instruments consist of statutory regulations, legal doctrines, legal concepts, and relevant legal literature. The primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law Number 5 of 1960 concerning Basic Agrarian Principles, Government Regulation Number 9 of 1987 concerning the Provision and Use of Land for Cemetery Purposes, Government Regulation Number 38 of 1963 concerning Legal Entities that May Hold Right of Ownership over Land, Government Regulation Number 24 of 1997 concerning Land Registration, Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration, and relevant ministerial and regional regulations. Secondary legal materials include books, journals, previous research, legal opinions, and academic writings related to agrarian law, land registration, religious and social legal entities, cemetery management, and legal certainty. Tertiary legal materials include legal dictionaries, language dictionaries, and supporting sources used to clarify legal concepts(Murti, n.d.).

The data collection process was conducted through library research. Legal materials were collected by identifying, reading, classifying, and mapping statutory provisions and legal literature relevant to the determination of land rights over non-public cemeteries. The collected materials were then organized according to the research problems, namely the regulation of land rights over non-public cemeteries for religious and social bodies and the legal implications of granting Right of Ownership over such land.

The data were analyzed using descriptive and systematic legal interpretation. Descriptive analysis was used to explain the content and meaning of the relevant legal provisions, while systematic interpretation was used to examine the relationship between Government Regulation Number 9 of 1987 and Government Regulation Number 38 of 1963. The analysis also applies the principle of legal certainty, the principle of *lex specialis derogat legi*

generali, property law theory, and the theory of validity of administrative decisions. Through this analysis, the research identifies vague norms, disharmony between regulations, and the legal consequences of different types of land rights granted over non-public cemetery land(Bennett & Davies, n.d.).

The results of the analysis are displayed descriptively in the form of structured legal arguments. The discussion is presented by connecting statutory provisions, legal theories, and practical findings regarding the inconsistency of land rights granted to non-public cemeteries. This presentation aims to provide a clear explanation of the current legal regulation and to formulate a normative basis for determining the proper land right status for non-public cemeteries managed by religious and social bodies.

RESULTS AND DISCUSSION

Legal Regulation on the Determination of Land Rights over Non-Public Cemeteries for Religious and Social Bodies.

The research finds that the legal regulation concerning land rights over non-public cemeteries, or *Tempat Pemakaman Bukan Umum (TPBU)*, is still unclear and inconsistent. Under Government Regulation Number 9 of 1987, TPBU is defined as land provided for burial purposes whose management is carried out by social and/or religious bodies. This definition contains two essential elements: the land is used for burial purposes, and the management is conducted by a religious or social body. Therefore, TPBU is not merely private land, but land that has a social and religious function(Wahanisa, Suhadi, & Niravita, n.d.).

However, the problem arises in determining the proper type of land right for TPBU. Article 3 paragraph (2) of Government Regulation Number 9 of 1987 provides that land for TPBU is granted the status of Right of Use, except for *waqf* land used for burial purposes, which may be granted Right of Ownership. This provision shows that the general legal construction for TPBU land is Right of Use, while Right of Ownership is only recognized in the context of *waqf* land. On the other hand, Government Regulation Number 38 of 1963 allows religious and social legal entities to hold Right of Ownership over land used for purposes directly related to religious and social activities. This creates a legal conflict

because TPBU managed by religious and social bodies can also be understood as land related to religious and social purposes.

The disharmony between these two regulations creates uncertainty in land registration practice. Government Regulation Number 9 of 1987 specifically regulates cemetery land, while Government Regulation Number 38 of 1963 generally regulates legal entities that may hold Right of Ownership. From the perspective of the principle of *lex specialis derogat legi generali*, the more specific regulation should prevail over the more general one. Therefore, in the context of TPBU, Government Regulation Number 9 of 1987 should be prioritized because it specifically governs the provision and use of land for cemeteries. Based on this reasoning, TPBU land managed by religious and social bodies should generally be granted Right of Use, unless the land is waqf land that qualifies for Right of Ownership (Nalle & Moeliono, n.d.).

This finding shows that the current regulation contains vague norms, particularly regarding whether TPBU can be classified as an activity that directly supports religious or social purposes under Government Regulation Number 38 of 1963. The absence of a clear classification creates different interpretations among land administration authorities and applicants. As a result, land rights granted over TPBU are not uniform. Some cemetery lands managed by religious or social bodies are registered as Right of Ownership, while others are registered as Right of Use. This inconsistency indicates that the legal framework has not fully fulfilled the requirement of legal certainty (Widiyono & Khan, n.d.).

From the perspective of legal certainty theory, legal norms must be clear, consistent, accessible, and predictable in their application. In this case, the regulation of TPBU land rights has not fully met these requirements because the relationship between the specific cemetery regulation and the general regulation on religious and social legal entities remains unclear. The lack of clarity may lead to subjective interpretation and different administrative decisions in similar cases. Therefore, the regulation needs to be harmonized to ensure that the determination of land rights over TPBU can be implemented consistently (Silviana, n.d.).

Inconsistency in the Practice of Land Rights Determination over TPBU

The research also identifies that the practice of land rights determination over TPBU has not been uniform. Several examples show that TPBU lands managed by religious or social bodies have been granted different types of land rights. The Sunan Ampel cemetery area in Surabaya, managed by the Yayasan Masjid Agung Sunan Ampel, is identified as Right of Ownership. The Husnul Khotimah Muhammadiyah cemetery in the Special Region of Yogyakarta is also identified as Right of Ownership. Meanwhile, the Sunan Bonang cemetery complex in Rembang, managed by Yayasan Mabarrot Sunan Bonang, is identified as Right of Use. This variation shows that similar objects with similar management characteristics may receive different legal treatment.

This situation demonstrates a gap between the normative framework and the practical implementation of land registration. Ideally, similar legal objects should receive similar legal treatment. If TPBU land is managed by a religious or social body and has the same function as cemetery land, the type of land right granted should be based on a clear and uniform legal standard. The absence of such a standard creates uncertainty for religious and social organizations seeking to certify their cemetery land (Firdausi, n.d.).

The inconsistency also affects the legal protection of organizational assets. If one TPBU is granted Right of Ownership while another is granted Right of Use, the legal strength and duration of the rights may differ. Right of Ownership is known as the strongest and fullest land right under Indonesian agrarian law, while Right of Use is limited by the purpose, period, and conditions stated in the granting decision. This difference may influence the long-term protection, management, and continuity of cemetery land. Therefore, a clearer legal basis is necessary so that the certification of TPBU land does not depend on different interpretations by land administration officials (Ekaputri & Sugiarto, n.d.).

Legal Implications of Granting Right of Ownership over TPBU Land

The second finding concerns the legal implications of granting Right of Ownership over TPBU land to religious and social bodies. When a religious or social body receives Right of Ownership over TPBU land, a property-law relationship is created between the land and the legal entity as the

subject of the right. This relationship provides stronger legal protection because Right of Ownership is the strongest and fullest right over land. It may protect the land as an organizational asset and provide certainty regarding control, use, and continuity of management(Rejekiningsih, n.d.).

However, the ownership is not absolute. Under Indonesian agrarian law, all land rights have a social function. Therefore, even if TPBU land is granted Right of Ownership, its use must remain consistent with its purpose as cemetery land. The religious or social body holding the right cannot freely change the land use, commercialize it beyond its legal purpose, or transfer it in a way that contradicts its social and religious function. The right must be exercised within the limits of agrarian law, land registration law, cemetery regulations, and regional regulations concerning cemetery management.

The principle of *nemo plus juris* is also relevant. This principle means that a person or legal entity cannot transfer more rights than they legally possess. If the land is granted for TPBU purposes, the legal entity may not use or transfer the land beyond the scope of that purpose. Thus, Right of Ownership over TPBU land must be understood as ownership attached to a specific function, namely cemetery management for social and religious purposes. This interpretation prevents the land from being treated purely as a commercial asset.

From the perspective of property law, the granting of Right of Ownership creates a stronger legal position for the religious or social body. The right follows the object and can be defended against third parties. Nevertheless, this property right remains limited by public law obligations. In other words, the private-law protection of ownership must be balanced with the public-law function of cemetery land. This balance is necessary to ensure that the land remains protected as a social and religious facility, not as an object of unrestricted private control(Usman, n.d.).

Validity of Administrative Decisions Granting Land Rights over TPBU

The determination of land rights over TPBU is carried out through an administrative decision issued by the competent land authority. Therefore, the validity of the decision is important in assessing the legal implications of granting Right of Ownership. Based on the theory of administrative decision validity, a decision is valid if it is issued by the

authorized institution, follows proper procedures, is based on applicable laws, and has a lawful purpose and content.

In the context of TPBU land, if the land authority grants Right of Ownership to a religious or social body, the decision is presumed valid under the principle of presumption of legality. This means that the decision must be regarded as legally valid and binding until it is revoked or annulled by the competent authority or court. Therefore, even if there is a debate regarding the proper type of land right, the certificate and administrative decision still produce legal consequences as long as they have not been legally cancelled(Yusran, n.d.).

However, the principle of presumption of legality does not eliminate the need to evaluate the accuracy of the legal basis used in granting the right. If the granting of Right of Ownership is based on an unclear interpretation of the relationship between Government Regulation Number 9 of 1987 and Government Regulation Number 38 of 1963, then the decision may still raise normative concerns. This is why harmonization of regulation is necessary. Clearer rules will help land authorities issue decisions that are legally certain, consistent, and less vulnerable to future disputes.

Discussion on Legal Certainty and Norm Harmonization

The findings show that the main issue in the determination of land rights over TPBU is the absence of legal certainty. Legal certainty requires not only written rules, but also clarity, consistency, and uniform implementation. In this case, the law already regulates cemetery land and the ability of religious and social bodies to hold land rights. However, the relationship between these rules has not been formulated clearly. This creates vague norms and disharmony that may lead to inconsistent implementation.

The principle of *lex specialis derogat legi generali* provides an analytical solution. Since Government Regulation Number 9 of 1987 specifically governs cemetery land, it should become the primary basis for determining land rights over TPBU. Government Regulation Number 38 of 1963 may still be used to recognize the legal capacity of religious and social bodies to hold Right of Ownership, but it should not automatically override the specific rule that TPBU is generally granted Right of Use. Therefore, the ideal construction is to

distinguish between the subject of rights and the object or function of land. Religious and social bodies may be subjects capable of holding Right of Ownership, but TPBU as a cemetery object is specifically regulated and generally directed toward Right of Use unless it falls under waqf land or another clearly regulated exception.

This interpretation provides a more consistent and balanced legal approach. It protects religious and social bodies by recognizing their legal capacity, while also preserving the special character of cemetery land as land with a social and religious function. It also prevents TPBU land from being used beyond its intended purpose. The regulation should therefore be clarified through technical guidelines or regulatory harmonization by the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency. Such clarification is necessary to provide uniform standards for land offices, religious and social bodies, and the community.

Overall, the research finds that the current regulation of land rights over TPBU for religious and social bodies still contains normative ambiguity and disharmony. The granting of Right of Ownership may provide strong legal protection for organizational assets, but it must be limited by the social function of land and the specific purpose of cemetery management. To ensure legal certainty, the government needs to clarify the classification of TPBU, harmonize the relationship between relevant regulations, and establish a consistent standard for determining land rights over cemetery land managed by religious and social bodies.

CONCLUSION

The regulation of land rights over non-public cemeteries managed by religious and social bodies still contains normative ambiguity and disharmony. Government Regulation Number 9 of 1987 specifically regulates cemetery land and generally directs non-public cemetery land to be granted Right of Use, except for waqf land used for cemetery purposes, while Government Regulation Number 38 of 1963 allows religious and social legal entities to hold Right of Ownership over land used for activities directly related to religious and social purposes. The absence of a clear classification regarding whether non-public cemetery land can be categorized as land directly supporting religious or social activities creates different interpretations in land registration

practice and results in inconsistent determination of land rights. The granting of Right of Ownership over non-public cemetery land may provide stronger legal protection for religious and social organizations because it creates a property-law relationship between the land and the legal entity as the subject of the right. However, such ownership is not absolute because it remains limited by the social function of land, the purpose of cemetery management, and applicable cemetery regulations. Therefore, the government, particularly the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency, should harmonize the relevant regulations and issue technical guidelines to clarify the relationship between both regulations, distinguish the legal capacity of religious and social bodies from the special function of cemetery land, and establish uniform standards for land offices. Future research may examine the implementation of these standards in different regions and evaluate the role of regional cemetery regulations in maintaining the social and religious function of non-public cemetery land.

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