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# LEGAL RELATIONSHIP OF THE PARTIES IN GRANTING CONTROL OF LAND WITH RIGHTS TO RIDE

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#### **ABSTRACT**

This study aims to analyze the legal relationship between parties in granting land control with the right to ride and its implications for protecting the rights of the parties involved. The research employs a qualitative descriptive methodology with a normative approach, utilizing secondary data from laws and regulations, customary law, and expert opinions to analyze the legal issues under study.

The legal relationship between parties in granting land control with the right to ride manifests through agreements or verbal contracts between landowners and holders of the right to ride. This relationship involves land utilization according to the needs of the right holder, with the landowner's permission, and without monetary payment to the landowner. The right to ride is based on customary law, as there are no specific regulations governing this right. The agreements made are typically unwritten because the relationships are established based on kinship and mutual assistance. The holder of the right to ride is expected to help the landowner with work when needed.

This legal relationship is inherently weak because the land use agreement can be unilaterally terminated by the landowner at any time if the owner needs the land or encounters problems with the right holder, without any obligation to compensate the right holder. Regarding the protection of parties in granting land control with the right to ride, the benefits obtained by the parties should provide mutual protection. The potential for disputes between parties arises from the weak basis of control and reliance on trust. Therefore, there should be a formal land control agreement. Although the right to ride is granted based on kinship and compassion, the land use arrangement should be formalized in a written agreement. A written agreement would provide certainty and legal protection for both parties.

**Keywords:** Protection of rights, Legal relations, Right to ride, Land control

#### 1.0 INTRODUCTION

The Indonesian Constitution mandates that the earth, water, and natural resources be utilized for the greatest prosperity of the people. This utilization is realized through, among other things, the granting of land rights to legal subjects to own, control, and use or utilize land optimally. Land rights derived from the state's right to control land can be granted to individuals

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(both Indonesian citizens and foreign citizens), groups of people, and legal entities (both private and public legal entities)<sup>1</sup>.

One type of land right mentioned in Article 53 of Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA) is the right to ride. The UUPA categorizes the right to ride as a temporary right, meaning it is expected to be eliminated in the short term because it has characteristics that are not in accordance with the UUPA as formulated in Article 53 paragraph (1). There are no further clear regulations regarding this right to ride.

More than half a century since the UUPA, the right to ride is still widely used in society. The Right to Ride is a customary right in which someone gets permission to build and live in a house on land owned by someone else, the holder of the right to ride is not required to pay anything (rent) to the landowner, but generally the holder of the right to ride when needed is required to help the landowner with light daily work<sup>2</sup>. According to Boedi Harsono, the right to ride is a right that gives someone the authority to build and occupy a house on land belonging to another person<sup>3</sup>.

In the Yogyakarta area, the right to ride is termed "ngindung" (residential accommodation), which is the practice of staying and occupying a house on someone else's property. Historically, the majority of residents are descendants of workers or employees of wealthy landowners. The term "ngindung" in Javanese means an agreement whereby the landowner gives permission to another person to use part or all of their land for free based on the principle of mutual assistance<sup>4</sup>. There is also the term "magersari" mentioned in the Explanation of Article 32 paragraph (4) of Law Number 13 of 2012 concerning the Special Status of the Special Region of Yogyakarta, referring to non-palace land used by residents/institutions with rights (magersari, ngindung, usage rights, forests, campuses, hospitals, etc.) and land used by residents without legal basis.

In practice, not all land rights holders, such as property owners, can make optimal use of their land according to the nature of their rights. The UUPA and its implementing regulations, in addition to granting rights, also place obligations on rights holders not to abandon land by intentionally not using or utilizing claimed land. The legal consequence of land abandonment is that the land can be converted into state land. Therefore, the right to ride can be used to prevent land ownership from being categorized as abandoned land. Additionally, some people use the right to ride based on a sense of mutual assistance to help other parties who need land

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<sup>&</sup>lt;sup>1</sup> Boedi Harsono, 2013, Hukum Agraria Indonesia, Jilid 1, Jakarta, Penerbit Universitas Trisakti. P. 24.

<sup>&</sup>lt;sup>2</sup> Muhammad Firdaus Zahroni, 2022, Kepastian Hukum Penguasaan Hak Menumpang Atas Tanah Sekolah Dasar Nahdlatul Ulama Bahrul Ulum Berdasarkan Pasal 53 Undang-Undang Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria (Studi di Yayasan Mabarot Sunan Giri), Jurnal Dinamika, Volume 28 Nomor 5 Bulan Januari Tahun 2022, p. 3782, https://jim.unisma.ac.id/index.php/jdh/article/view/14551, akses tanggal 20 Desember 2024.

<sup>&</sup>lt;sup>3</sup> Urip Santoso, 2012, Hukum Agraria Kajian Komprehensif, Kencana Prenada Media Group, Jakarta, p.148.

<sup>&</sup>lt;sup>4</sup> Antonio Tilman, 2018, Pendaftaran Tanah Megersari Menjadi Tanah Kasultanan Setelah Berlakunya Undang-Undang Nomor 13 Tahun 2012 Tentang Keistemewaan Daerah Istimewa Yogyakarta, Tesis, Universitas Atma Jaya Yogyakarta dikutip dalam https://e-journal.uajy.ac.id/26799/2/180513162\_bab%201.pdf, p. 7, akses tanggal 19 Desember 2024.

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for their survival. The complementary interests or mutual symbiosis of this right to ride should not cause losses to either party.

Granting rights to another party to use land owned by someone else without paying rent or other forms of compensation often causes disputes between the landowner and the party using the land. The legal relationship in the right to ride is weak, as it can be terminated at any time by the landowner if they need the land<sup>5</sup>. The absence of a written land use agreement and reliance on verbal agreements can create uncertainty regarding the legal protection of the rights of parties who use the land with the right to ride, especially if the land has been used for a long period by the holder of the right to ride.

There are limited referenced studies related to the right to ride. One study by Muhammad Firdaus Zahroni entitled "Legal Certainty of Control of the Right to Ride Over the Land of Nahdlatul Ulama Bahrul Ulum Elementary School Based on Article 53 of Law Number 5 of 1960 Concerning Basic Agrarian Principles (Study at the Mabarot Sunan Giri Foundation)" (2022) focuses on the weak legal relationship of the right to ride, noting that it can be terminated at any time by the landowner if they need the land. This research focuses on the form of legal relationship certainty as a form of legal protection for the parties in granting the right to ride.

#### 2.0 RESEARCH METHODS

This study employs normative research, which emphasizes the study of legal science and attempts to analyze the position of the parties in granting the right to ride, the form of legal relationship, and legal protection that can be provided to the parties. The type of data used is secondary data obtained from literature sourced from laws and regulations and relevant literature. Data sources consist of primary legal materials, secondary legal materials, and tertiary legal materials. The data required in this study includes both primary and secondary data. Secondary data is obtained by examining sources related to the study's title. Further analysis is conducted descriptively and qualitatively.

#### 3.0 RESULTS AND DISCUSSION

#### 3.1 Legal Relationship of the Parties in Granting Land Control with Right to Ride

The right to ride is one type of right that can be granted control rights as mandated by Article 2 of the UUPA. There are two patterns of land control and ownership in Indonesia: control by community groups referred to as customary land, and individual or private customary land. Customary rights ownership is grouped into formal legal control, while individual customary land is always actively controlled by its owner through real actions on the land, such as building structures, planting, and similar activities. This right gives the holder the opportunity to cultivate their land for their welfare; however, control over this land must not conflict with legal provisions.

National land law regulates various types of land ownership rights, namely:

<sup>&</sup>lt;sup>5</sup> Op. Cit. Muhammad Firdaus Zahroni, p. 3776,

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- 1. The rights of the Indonesian people as stated in Article 1 of the UUPA, as the highest right to control land, with civil and public aspects.
- 2. The State's right to control as referred to in Article 2 of the UUPA, which has purely public aspects.
- 3. The customary rights of customary law communities referred to in Article 3 of the UUPA, which have civil and public aspects.
- 4. Individual rights, all of which have civil aspects, consisting of:
- a) Land rights as individual rights, all of which directly or indirectly originate from the rights of the nation, as referred to in Article 16 of the UUPA and Article 53 of the UUPA. The types of land rights in Article 16 of the UUPA, determine that:
- (1) The rights to land that can be owned by individuals include:
  - (a) Right of ownership
  - (b) Cultivation Rights
  - (c) Building Use Rights
  - (d) Usage Rights
  - (e) Rental Rights
  - (f) Right to Clear Land
  - (g) Right to Collect Forest Products
  - (h) Other rights included in the above-mentioned rights, to be determined by law, as well as temporary rights as stated in Article 53 of the UUPA.
- (2) The rights to water and space as referred to in Article 4 paragraph (3) are:
  - (a) Water use rights
  - (b) Fish maintenance and fishing rights,
  - (c) Space use rights
  - (d) Waqf, which is a property right that has been endowed as stated in Article 49 of the UUPA.
  - (e) Land security rights referred to as mortgage rights in Article 25, Article 33, Article 39, and Article 51 of the UUPA<sup>6</sup>.

One of the temporary rights mentioned in Article 16 paragraph (1) letter h of the UUPA is the right to ride. Apart from the UUPA, the right to ride is also regulated in the Civil Code in Article 711 regarding material rights to own buildings, structures, or plants on other people's land. The right to ride occurs when a landowner who lives on that land (has a house on that land) gives permission to another person to build a house which they then occupy on that land. A right to ride transaction occurs when a landowner allows another person to build a house to live in on their property<sup>7</sup>. This permission is realized through an oral agreement made by the parties in oral or unwritten form.

The right to ride is a right that authorizes a person to build and occupy a house on a plot of land owned by another person. On that land, there may already be another house owned by the landowner, but it is also possible that the land is an originally empty plot<sup>8</sup>.

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<sup>&</sup>lt;sup>6</sup> Op. Cit., Boedi Harsono, p. 24, 208.

<sup>&</sup>lt;sup>7</sup> Hilman Hadikusuma, 1994, Hukum Perjanjian Adat, PT Citra Aditya Bakti, Cetakan 5, Bandung, p. 6-8.

<sup>&</sup>lt;sup>8</sup> Op. Cit., Boedi Harsono, p. 321.

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The temporary nature attached to the right to ride in the UUPA, intended to limit its characteristics that are contrary to the law and can be immediately removed in a short time, does not cause this right to cease existing in society. The right to ride still exists and is applied based on customary law and social customs. This aligns with Article 58 of the UUPA, which states that as long as the implementing regulations of the UUPA have not been formed, the written regulations regarding the earth, water, and natural resources contained therein, and land rights that exist at the time the UUPA comes into effect, remain in effect as long as they do not conflict with the spirit of the UUPA provisions and are interpreted accordingly.

The community's need for land often causes various problems because the amount of land that can be accessed and owned by the community is increasingly limited. On the other hand, there are people who own land but cannot cultivate, use, or utilize the land according to its intended use properly, so it is not uncommon for these landowners to allow other people who need land to use their land rights. The typical Indonesian sense of close family relationships also sometimes gives rise to compassion for the hardships of others who need land to meet their life needs.

In the right to ride, there is an element of mutual help and family nature because there is a feeling of compassion from the landowner towards someone who is given the right to ride on the land<sup>9</sup>. Need, compassion, and ensuring that land is properly utilized are some of the reasons why the right to ride is still applied in society. The absence of monetary payment as rent for land ownership with the right to ride further strengthens the existence of this right.

The implementation of the right to ride is based on customary law because there are no specific regulations regarding the right to ride. The legal relationship established between the parties—namely the landowner and the holder of the right to ride—is an oral agreement on land control with utilization according to the needs of the right holder and with the landowner's permission. The agreement made is an unwritten agreement because the relationship established is based on kinship and mutual assistance. Therefore, the holder of the right to ride is also expected to help the landowner with work when needed.

The object of granting land control with the right to ride is usually land with ownership status. Ownership rights give authority and power to the rights holder to use and benefit from the owned land according to their wishes, as long as it does not conflict with laws and regulations.

The landowner is the party who has the right to the land, and the holder of the right to ride is the party who is given permission to control the land from the landowner. This can be a family member or another party according to the landowner's consent. With the landowner's permission, the right holder can control land owned by another person by utilizing it for activities such as building non-permanent houses, land processing through gardening, farming, or rice cultivation, among others.

Some of the characteristics and features of land ownership with the right to ride include:

a. No clear time period; it could be terminated at any time.

<sup>&</sup>lt;sup>9</sup> Op. Cit., Muhammad Firdaus Zahroni, p. 3782.

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- b. Weak legal relationship, meaning it can be terminated at any time by the landowner if they need the land.
- c. The holder of the right to ride is not obliged to pay rent to the landowner.
- d. Only occurs on residential land (land for building).
- e. Not mandatory to register with the District/City Land Office
- f. Hereditary, meaning it can be continued by heirs.
- g. Cannot be transferred to another party who is not the heir<sup>10</sup>.

Furthermore, the right to ride can be terminated in the following circumstances:

- a. The landowner can end the legal relationship between the owner of the right to ride and the land in question at any time.
- b. Ownership rights to the land in question are declared for public purposes.
- c. Land ownership rights are released by the land owner for the benefit of another party.
- d. The holder of the right to ride voluntarily relinquishes the right to ride.
- e. The land is destroyed<sup>11</sup>.

The authority to use land owned by others in the right to ride is part of the implementation of the horizontal separation principle applied by national land law. The horizontal separation principle adopted by customary land law states that buildings, plants, and other economic objects on the land are not part of the land. In other words, land ownership does not include ownership of the buildings on it; the building belongs to the party who built it<sup>12</sup>. Based on this principle, the landowner can authorize their land to be used by another party. The land belongs to the landowner, and its use through cultivation or erecting buildings belongs to the right holder.

#### 3.2 Protection of the Parties in Granting Control of Land with the Right to Ride

The right to ride, which is based on customary law, relies more on trust as part of mutual assistance between parties who own and need the land. The agreement between the parties formed through unwritten agreements in granting land control with the right to ride results in a weak legal relationship between the parties. The land use agreement can be terminated unilaterally by the landowner at any time if the owner needs the land or encounters problems with the holder of the right to ride.

The absence of monetary payment or other forms of compensation for land use can also cause the landowner to position themselves as a party who can act without considering all the costs, efforts, and hard work of the right holder in utilizing the land. According to Urip Santoso, in its development, the right to ride has an extortionist nature, whereby the person who has the right to ride does not want to leave or vacate the house they occupy unless they are given compensation or severance pay by the landowner on the grounds that they have built the house

<sup>&</sup>lt;sup>10</sup> Urip Santoso, 2017, Hak Atas Tanah, Hak Pengelolaan, Dan Hak Milik Atas Satuan Rumah Susun, Depok: Kencana, p. 163.

<sup>&</sup>lt;sup>11</sup> Ibid, p. 163-164.

<sup>&</sup>lt;sup>12</sup> Dyah Devina Maya Ganindra dan Faizal Kurniawan, 2017, Kriteria Asas Pemisahan Horizontal Terhadap Penguasaan Tanah dan Bangunan, Jurnal Yuridika, Volume 32 No. 2, Mei 2017, p. 229, https://doi.org/10.20473/ydk.v32i2.4850, akses tanggal 24 Desember 2024.

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at their own expense or have maintained the house they have occupied for a long period, even though the house is occupied by their descendants (heirs)<sup>13</sup>. This is part of the interpretation of temporary rights in Article 53 of the UUPA, namely that the right to ride should be limited from characteristics that are contrary to the UUPA, particularly those containing extortion.

Long-standing land ownership with the right to ride also causes difficulties for rights holders when they want to reclaim their land rights. Although according to customary law as the basis for the right to ride, the holder of the right to ride must relinquish ownership of their land when the rights holder wants to use their land, in practice, the landowner has difficulty removing the right holder from the land, especially if during the period of ownership, the right holder has established a business or residence on the land with the right to ride.

The costs incurred by the right holder during the period of land control with the right to ride cannot be claimed for replacement by the landowner who will reclaim it. In accordance with the horizontal principle that separates the land from the objects above it, however, in the right to ride, although the land is separated from the objects above it, there is no obligation for the landowner to replace all costs for those objects.

The horizontal separation principle of land rights, which is the original nature of rights in customary law, is maintained but adjusted to the reality of today's society's needs. Land rights do not include ownership of buildings on them. Buildings, plants, and other objects on a plot of land belong to the party who builds or plants them, whether that party holds the rights to the land itself or not, unless there is an agreement to the contrary. Legal acts regarding land do not automatically include buildings, plants, and/or other objects on it unless this is expressly stated<sup>14</sup>. The horizontal separation principle explains that the legal subject who holds ownership rights to objects on land is different from the legal subject who holds ownership rights to the land, where the existence of objects on land owned by other people has a clear time period in accordance with legal provisions or agreements<sup>15</sup>.

The parties who enter into a legal relationship granting land control with the right to ride do so essentially because there is a mutual need between the two parties. The landowner grants permission for another party to control and utilize their land because they do not have the opportunity to use it themselves. This action not only helps other parties who need land but also prevents the landowner from potential suspicion of land abandonment. Referring to Government Regulation Number 20 of 2021 concerning the Control of Abandoned Areas and Land, every rights holder, management rights holder, and holder of basic land control is obliged to cultivate, use, utilize, and/or maintain the land they own or control. Land that is not cultivated, used, utilized, and/or maintained can be categorized as abandoned land—namely land rights, management rights land, and land obtained based on basic land control that is intentionally not cultivated, used, utilized, and/or maintained. Land designated as abandoned land is converted into state land. Meanwhile, other parties as holders of the right to ride gain benefits by utilizing land owned by others without having to pay money, and the land can be used to meet the needs of the right holder.

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<sup>&</sup>lt;sup>13</sup> Op. Cit., Urip Santoso, p. 163.

<sup>&</sup>lt;sup>14</sup> Op. Cit., Santoso dalam Cicilia Putri Andari, Djumadi Purwoatmodjo, p. 706-707.

<sup>&</sup>lt;sup>15</sup> Ibid, p. 707.

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The benefits obtained by the parties in a legal relationship should protect the parties themselves. The potential for disputes between the parties arises from the weak basis of land ownership. Although the right to ride is given because of kinship, compassion, helping, and trust in others, the land ownership agreement made by the parties should be stated in a written agreement. A written agreement agreed upon by both parties will guarantee certainty and legal protection. The shift from oral to written agreements does not eliminate the substance of the right to ride because it is only intended to protect the rights of the parties.

Land, from a legal perspective in its relationship with a person/legal entity, requires legal certainty regarding its rights. The legal certainty referred to is legal certainty regarding legal protection concerning the rights to the land in question—namely protection of its legal relationship and protection regarding the implementation of its authority<sup>16</sup>. Making a written agreement between the parties will prevent future problems because as a temporary right that does not have formal regulations, the right to ride on land does not have legal existence in its provisions. The right to ride is only given for certain interests, and the legal relationship is weak, meaning it can be terminated at any time by the landowner if they need the land<sup>17</sup>.

Written agreements made by the parties can take the form of private agreements and agreements with notarial deeds (authentic deeds). Private agreements, often referred to as private deeds, are documents made by the parties concerned themselves upon agreement without intervention from authorized public officials. Agreements with notarial deeds, known as authentic deeds, are agreements in the form of authentic deeds made by or before a notary according to the form and procedures stipulated by applicable regulations<sup>18</sup>.

The agreement to grant land control with the right to ride, in addition to protecting the parties, provides a guarantee of legal certainty and aligns with the objectives of the UUPA to provide legal certainty. The substance that can be regulated in the agreement to grant land control with the right to ride includes the agreement of the parties, the identity of the parties, the identity of the land area to be given control with the right to ride, the term of land control, the form of land use, the rights and obligations of the parties, the method of dispute resolution, and other matters.

The need to make a written agreement on granting the right to ride will also provide greater security for the parties, where the landowner's ownership rights to the land are maintained and the rights holder remains protected for all land uses that have been carried out. From a legal aspect, the parties are guaranteed protection and legal certainty, and from a social aspect, social relations in the community based on customary law, tolerance, and family relationships will be maintained.

#### 4.0 CONCLUSION

1. The legal relationship between the parties in granting land control with the right to ride is realized through agreements or verbal contracts between the parties. The right to ride is based

<sup>&</sup>lt;sup>16</sup> Nia Kurniati, 2016, Hukum Agraria, Sengketa Pertanahan, Penyelesaianya Melalui Arbitrase Dalam Teori Dan Praktik, Bandung: Refika Aditama, p. 115.

<sup>&</sup>lt;sup>17</sup> Op. Cit., Muhammad Firdaus Zahroni, p. 3789.

<sup>&</sup>lt;sup>18</sup> Ibid, p. 3791-3792.

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on customary law because there are no specific regulations governing this right. The legal relationship established between the parties—namely the landowner and the holder of the right to ride—is an oral agreement on land control with utilization according to the needs of the right holder, with the landowner's permission, and without monetary payment to the landowner. The agreement made is an unwritten agreement because the relationship established is based on kinship and mutual assistance. Therefore, the holder of the right to ride is also expected to help the landowner with work when needed. However, this legal relationship is weak because the land use agreement can be unilaterally terminated by the landowner at any time if the owner needs the land or encounters problems with the holder of the right to ride, without any obligation to compensate the right holder.

2. Protection of the parties in granting land control with the right to ride requires that the benefits obtained by the parties in the legal relationship should protect the parties themselves. The potential for disputes between the parties arises from the weak basis of land control. Although the right to ride is given because of kinship, compassion, helping, and trust in others, the land control agreement made by the parties should be stated in a written agreement. A written agreement agreed upon by both parties will guarantee certainty and legal protection for both parties.

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