

BASIC AGRARIAN LAW

(UUPA)

**Act No. 5 of 1960 re the Basic Provisions
concerning the Fundamentals
of Agrarian Affairs**

BASIC AGRARIAN LAW
(*UNDANG-UNDANG POKOK AGRARIA -- UUPA*)

**[ACT NO. 5 OF 1960 RE THE BASIC PROVISIONS CONCERNING
THE FUNDAMENTALS OF AGRARIAN AFFAIRS]**

Third Printing

**THE DIRECTORATE GENERAL OF AGRARIAN AFFAIRS
OF THE DEPARTMENT OF HOME AFFAIRS**

1976

ACT NO. 5 OF 1960
RE
BASIC PROVISIONS CONCERNING
THE FUNDAMENTALS OF AGRARIAN AFFAIRS

THE PRESIDENT OF THE REPUBLIC OF INDONESIA

considering :

- a. that in the State of the Republic of Indonesia, the structure of whose society and economy is primarily of agrarian nature, the *bumi* (soil), *air* (water), and *ruang angkasa* (airspace) --which are the gifts of the Only One God-- have very important functions in the development of a just and prosperous society;
- b. that the agrarian law which has remained effective up to the present moment was developed partly on the basis of the purposes and principles of the colonial government and partly out of the influences of the said government and is, therefore, in conflict with the people's and State's interests in the completion of the current national revolution and in the implementation of overall development;
- c. that the said agrarian law is dualistic in nature, given that *adat* (customary) law is also effective in addition to the former, which is based on western law;
- d. that to the indigenous people, the colonial agrarian law does not guarantee any legal certainty;

opining:

- a. that in view of what is described in the considerations above, it is deemed necessary to establish a national agrarian law which is based on *adat* land law, which is simple, and which guarantees legal certainty for all Indonesian people, without neglecting the elements which hinge on religious law;
- b. that the national agrarian law shall open up possibilities for the soil, water, and airspace to carry out their functions as meant above, shall be consistent with the interests of the Indonesian people, and shall fulfill on a timely basis the needs existing in all agrarian-related matters;
- c. that the national agrarian law shall bring into reality the spiritual principles of the State --namely Belief in the Only One God, Humanity, Nationalism, Democracy, and Social Justice-- as well as the ideals of the Nation as laid down in the Preamble of the Constitution;
- d. that the national agrarian law shall also provide for the implementation of the 5 July, 1959 Presidential Decree, of the provisions contained in Article 33 of the Constitution, and of the Political Manifesto of the Republic of Indonesia, which --as asserted in the President's 17 August, 1960 speech-- obliges the State to regulate land ownership and to manage land use so as to ensure that all land existing within the territory under the sovereignty of the Nation will be used, either on an individual basis or on a *gotong royong* (mutual help) basis, to bring about the upmost prosperity for all the people;

- e. that in connection with all that has been described above, it is deemed necessary to lay the necessary principles and to develop new basic provisions in the form of an act which shall serve as a foundation for the development of the said national agrarian law;

paying attention to:

the proposal of the Provisional Supreme Advisory Board of the Republic of Indonesia No. 1/Kpts/Sd/II/60 on the Restructuring of Land Rights and Land Use;

bearing in mind :

- a. the 5 July 1959 Presidential Decree;
- b. Article 33 of the Constitution;
- c. Presidential Decree No. 1 of 1960 (State Gazette No. 1960-10), which declares the Political Manifesto of the Republic of Indonesia dated 17 August 1959 as the state's policy guidelines, and Presidential Message dated 17 August 1960;
- d. Article 5 in conjunction to Article 20 of the Constitution;

and with the approval of the *Gotong Royong* (mutual help) DPR [House of the People's Representatives]

RESOLVES

to revoke :

- 1. *Agrarische Wet* (S. 1870-55) [Agrarian Act (State Gazette No. 1870-55)] as contained in Article 51 of *Wet op de Staatsinrichting van Nederlands Indie* (S. 1925-447) [Act re Arrangements of Nederlands East Indies] and the provisions contained in the other paragraphs of the said article;
- 2.
 - a. *Domeinverklaring* (Declaration of the State as Owner of Land) as meant in Article 1 of *Agrarisch Besluit* (S. 1870-118) [Agrarian Decree (State Gazette No. 1870-118)];
 - b. *Algemene Domeinverklaring* (General *Domeinverklaring*) as meant in S. 1875-119a (State Gazette No. 1875-119a);
 - c. *Domeinverklaring untuk Sumatera* (*Domeinverklaring* for Sumatra) as meant in Article 1 of S. 1874-94f (State Gazette No. 1874-94f);
 - d. *Domeinverklaring untuk Keresidenan Menado* (*Domeinverklaring* for the Regency of Manado) as meant in Article 1 of S. 1877-55 (State Gazette 1877-55);
 - e. *Domeinverklaring untuk Residentie Zuider en Oosterafdeling van Borneo* (*Domeinverklaring* for the Regencies in the Southern and Eastern Parts of Kalimantan) as meant in Article 1 of S 1888-58 (State Gazette No. 1888-58);
- 3. *Koninklijk Besluit* (Decree of the Dutch Kingdom) dated 16 April 1972 [S. 1872-117 (State Gazette No. 1872-117)] and the regulations concerning its implementation;

4. Book Two of the Civil Code of the Republic of Indonesia insofar as it pertains to soil, water, and the natural resources contained therein, to the exclusion of the provisions concerning *hypotheek* (mortgage) which are still effective at the time this act comes into effect;

and to stipulate :

ACT RE BASIC PROVISIONS CONCERNING THE FUNDAMENTALS OF AGRARIAN AFFAIRS.

FIRST

**CHAPTER I
THE FUNDAMENTALS AND THE BASIC PROVISIONS**

Article 1

- (1) The entire territory of Indonesia is the totality of the motherland of the whole Indonesian people, who are united as the Indonesian nation.
- (2) All the earth, water, and airspace, including the natural resources contained therein, which exist within the territory of the Republic of Indonesia as gifts from the Only One God, are the Indonesian nation's earth, water, and airspace and constitute the nation's wealth.
- (3) The relationship of the Indonesian nation to the earth, water, and airspace referred to in paragraph (2) of this article is eternal.
- (4) What is meant by earth includes not only the surface of earth but also the mass existing thereunder and the mass existing under the water.
- (5) What is meant by water includes not only the water found inland but also the water existing in the seas within the territory of Indonesia.
- (6) What is meant by airspace is the space over the soil and water as meant in paragraphs (4) and (5) of this article.

Article 2

- (1) On the basis of the provisions contained in Article 33 paragraph 3 of the Constitution and of the matters referred to in Article 1 of this Act, the earth, water, and airspace, including the natural resources contained therein, are at the highest hierarchical level controlled by the State in its capacity as the whole people's organisation of powers.
- (2) The State's right of control as referred to in paragraph (1) of this Article confers the authority:
 - a. to regulate and administer the allocation, use, supply, and maintenance of the earth, water, and airspace;

- b. to determine and regulate legal relationships between people and the earth, water, and airspace;
 - c. to determine and regulate legal relationships among people as well as legal acts concerning the earth, water, and airspace.
- (3) The powers which are derived from the State's right of control as referred to in paragraph (2) of this article shall be used to achieve the utmost prosperity --in terms of democracy, welfare, and freedom for the society and legal State of Indonesia which is independent, sovereign, just, and prosperous.
 - (4) The authority to implement the State's right of control referred to above can be delegated, as required, and provided that it is not contrary to the national interest, to Autonomous Regions and to *adat*-law communities by way of a Government Regulation..

Article 3

In view of the provisions contained in Articles 1 and 2, the implementation of the *ulayat* rights and other similar rights of *adat*-law communities --as long as such communities in reality still exist-- must be such that it is consistent with the national interest and the State's interest and shall not contradict the laws and regulations of higher levels.

Article 4

- (1) On the basis of the State's right of control referred to in Article 2, it is necessary to determine the types of rights to the surface of earth, which is called *tanah* (land), that can be granted to, and held by, persons, either individually, jointly with others as well as bodies corporate.
- (2) The land rights referred to in paragraph (1) of this article confers authority to use the land in question as well as the mass of the earth and the water existing under its surface and the space above it to a point which is essentially required to allow for the fulfillment of the interests that are directly related to the use of the land in question, such a point being within the limits imposed by this Act and by other legislation of higher levels.
- (3) In addition to the land rights as meant in paragraph (1) of this article, there are to be determined water rights and rights in relation to airspace.

Article 5

The agrarian law applicable to the earth, water, and airspace is *adat* provided that it is not contrary to the national interest and the interest of the State, which are based on national unity, to Indonesian socialism, to the provisions stipulated in this Act, nor to other legislation, all with due regard to elements which are based on religious law.

Article 6

All land rights have a social function.

Article 7

To prevent the public interest from being harmed, excessive land ownership and possession is forbidden.

Article 8

On the basis of the State's right of control referred to in Article 2, the acquisition of the natural resources which are contained in the earth, water, and airspace is to be regulated.

Article 9

- (1) Only Indonesian citizens can have the most complete relationship with the earth, water, and airspace, within the limits stipulated in the provisions of Articles 1 and 2.
- (2) Every Indonesian citizen, both men and women, has an equal opportunity to acquire a land right and to obtain the benefits and yields thereof for himself/herself or for his/her family.

Article 10

- (1) Every individual and corporate body which holds a right to agricultural land is in principle obliged to actively till the land or work on it themselves while avoiding any methods of human exploitation.
- (2) The implementation of the provision contained in paragraph (1) of this article is to be regulated further by way of legislation.
- (3) Exemptions from the principle as meant in paragraph (1) is to be regulated by way of legislation.

Article 11

- (1) Legal relationships between people, including bodies corporate, and the earth, water, and airspace and the authorities derived therefrom are to be regulated so as to achieve the purpose referred to in paragraph (3) of Article 2 and that excessive control of other people's lives and occupations is prevented.
- (2) Differences in social conditions and the legal needs of societal groups shall, wherever necessary, be taken into account by providing guaranteed protection for the interests of the economically weaker groups, provided that this is not contrary to the national interest.

Article 12

- (1) All joint enterprises in the area of agrarian affairs are to be based on the common interest within the framework of the national interest and are to be undertaken in the form of cooperatives or other methods of *gotong royong* (mutual help).
- (2) The state can, in cooperation with other parties, undertake enterprises in the area of agrarian affairs.

Article 13

- (1) The Government shall seek to regulate enterprises in agrarian affairs in such a way that these enterprises can improve the people's production and prosperity as meant in Article 2 paragraph (3) and ensure a standard of living which measures up with human dignity for every Indonesian citizen and his/her family.
- (2) The Government shall prevent any enterprises of private-monopolistic nature by organizations and individuals in the area of agrarian affairs.
- (3) Any monopolistic enterprises by the Government in the area of agrarian affairs can only be implemented by way of an act.
- (4) The Government shall seek to advance social certainty and security, including the field of labor affairs, through enterprises in agrarian affairs.

Article 14

- (1) In view of the provisions contained in paragraphs (2) and (3) of Article 2, paragraph (2) of Article 9, and paragraphs (1) and (2) of Article 10, the Government shall --within the context of Indonesian socialism-- devise a general plan concerning the supply, allocation, and use of the earth, water, and airspace as well as the natural resources contained therein:
 - a. for the State's purposes;
 - b. for worship and other sacred purposes in line with the principle of Belief in the Only One God;
 - c. for purposes related to the development of public-life centers, socio-cultural centers, and other forms of prosperity;
 - d. for purposes related to the development of agricultural production, animal husbandry, and fishery, and the likes; and
 - e. for purposes related to the development of industry, transmigration, and mining.
- (2) On the basis of the general plan referred to in paragraph (1) of this article and in line with the relevant regulations, Regional Governments shall regulate the supply, allocation, and use of the earth, water, and airspace in their respective areas by taking into consideration their respective local circumstances.
- (3) The Regional Government regulations referred to in paragraph (2) of this article shall not come into effect until they have been legalized by the President in the case of regulations of level-1 regional governments, by the Governor in the case of regulations of level-2 regional governments, and by the *Bupati* (District Chief) or *Walikota* (Mayor) in the case of regulations of level-3 local governments.

Article 15

It is the duty of every individual, corporate body, or institution which has a legal relationship with land to take care of the land, to improve its fertility, and to prevent it from damage by taking into consideration the interests of the economically weak.

CHAPTER II RIGHTS TO LAND, WATER, AND AIRSPACE AND LAND REGISTRATION

Section I: General Provisions

Article 16

- (1) The rights on land as meant in paragraph (1) of Article 4 are as follows:
 - a. *hak milik* (right of ownership),
 - b. *hak guna-usaha* (right of cultivation),
 - c. *hak guna-bangunan* (right of use of structures),
 - d. *hak pakai* (right of use),
 - e. *hak sewa* (right of lease),
 - f. *hak membuka tanah* (right to clear land),
 - g. *hak memungut-hasil-hutan* (right to collect forest produce), and
 - h. rights other than those mentioned above which shall be stipulated by way of an act and rights of provisional nature which are mentioned in Article 53.
- (2) The rights to water and airspace as meant in paragraph (3) of Article 4 are as follows:
 - a. *hak guna-air* (right of use of water);
 - b. *hak pemeliharaan dan penangkapan ikan* (right to cultivate and catch fish);
and
 - c. *hak guna-ruang-angkasa* (right of use of airspace).

Article 17

- (1) In view of the provisions contained in Article 7, the objective referred to in paragraph 3 of Article 2 shall be achieved by regulating the maximum and/or minimum limits on the area of land which can be held by a family or a corporate body under one of the rights mentioned in Article 16.
- (2) The maximum limits referred to in paragraph 1 of this article shall be stipulated by way of legislation in the near future.
- (3) Lands in excess of the limits referred to in paragraph (2) of this article shall be taken by the Government with compensation provided and shall subsequently be redistributed to the people who need land in accordance with the provisions of a Government Regulation.

- (4) The achievement of the minimum limits referred to in paragraph 1 of this article, which shall be stipulated by way of legislation, shall be implemented in a staged manner.

Article 18

In the interests of the public as well as of the nation and of the state and in the collective interests of the people, land rights can be revoked by providing appropriate compensation and in accordance with the procedure which is to be stipulated by way of an Act.

Section II: Land Registration

Article 19

- (1) To guarantee legal certainty, the Government is to implement land registration throughout the whole territory of the Republic of Indonesia in accordance with provisions which are to be stipulated by way of a Government Regulation.
- (2) The registration referred to in paragraph 1 of this Article includes the following:
 - a. the surveying, mapping, and recording of land in a book;
 - b. registration of rights on land and of transfers of the said rights; and
 - c. granting documentary instruments of evidence of right, which shall serve as strong instruments of evidence.
- (3) Land registration is to be implemented by taking into account the condition of the State and of the society, the needs for socio-economic movements, and the possibility of implementing it, according to the Minister of Agrarian Affairs' considerations.
- (4) The fees pertaining to the land registration referred to in paragraph (1) shall be regulated by way of a Government Regulation with a provision exempting the financially incapable from the said fees.

Section III: *Hak Milik* (Right of Ownership)

Article 20

- (1) A *Hak milik* (right of ownership) is the inheritable right, the strongest and fullest right on land which one can hold, subject to the provision contained in Article 6.
- (2) A *Hak milik* can change hands and be transferred to other parties.

Article 21

- (1) Only Indonesian citizens can have a *hak milik*.
- (2) The Government is to determine which corporate bodies can have a *hak milik* and the conditions thereof.

- (3) A foreigner who, following the entry into force of this Act, acquires a *hak milik* by way of inheritance without a will or by way of joint ownership of property resulting from marriage and an Indonesian citizen holding a *hak milik* who, following the entry into force of this Act, loses Indonesian citizenship is obliged to relinquish that right within one year following the date the *hak milik* is acquired in the case of the former or following the date upon which Indonesian citizenship is lost in the case of the latter. If following the expiry of the said time periods, the right is not relinquished, then the said right is nullified for the sake of law and the land falls to the State with the proviso that the rights of other parties which encumber the lands remain in existence.
- (4) As long as one with Indonesian citizenship concurrently holds foreign citizenship, he/she cannot have land with the status of a *hak milik*, and to him/her the provision as meant in paragraph 3 of this article shall apply.

Article 22

- (1) The creation of a *hak milik* according to *adat* law is to be regulated in a Government Regulation.
- (2) In addition to the method as meant in paragraph (1) of this article, a *hak milik* can come into existence by way of :
 - a. a determination of the Government in accordance with the manner and conditions stipulated in a Government Regulation, and
 - b. the provisions of an act.

Article 23

- (1) A *hak milik*, every transfer affecting a *hak milik*, the nullification of a *hak milik*, and the encumbering of a *hak milik* with other rights must be registered in accordance with the provisions referred to in Article 19.
- (2) The registration referred to in paragraph (1) shall serve as a strong instrument of evidence concerning the nullification of a *hak milik* and concerning the validity of the transfers and encumbrances affecting the said right.

Article 24

The use of land having the status of a *hak milik* by a party other than the owner is to be limited and regulated by way of legislation.

Article 25

A *hak milik* can be used as debt collateral by encumbering it with a *hak tanggungan* (security title).

Article 26

- (1) The sale/purchase, exchange, gifting, bequest by a will, grant under *adat* and other acts which are intended to transfer a *hak milik* and the control of such acts are to be regulated by way of a Government Regulation.
- (2) Every sale/purchase, exchange, gift, and bequest by a will and every other act which are intended to either directly or indirectly transfer a *hak milik* to a foreigner or to a person of Indonesian citizenship who concurrently holds foreign citizenship or to a corporate body other than those stipulated by the Government in line with paragraph (2) of Article 21 shall be nullified for the sake of law and the land in question shall go to the State with the understanding that any other parties' rights which encumber the land shall remain in existence and that all the payments which the owner of the land may have received cannot be reclaimed.

Article 27

A *hak milik* is nullified if:

- a. the land in question falls to the State:
 1. because the right in question is revoked on the basis of Article 18;
 2. because of a voluntary surrender by the owner;
 3. because land has been abandoned; and
 4. because of the provisions of paragraph (3) of Article 21 and paragraph 2 of Article 26 apply;
- b. the land vanishes.

Section IV : *Hak Guna-Usaha* (Right to Cultivate)

Article 28

- (1) A *hak guna-usaha* is a right to work on land directly controlled by the State for a period of time as referred to in Article 29 which for use by an agricultural, fisheries or animal husbandry company.
- (2) A *hak guna-usaha* is to be granted on land whose area is at least five (5) hectares, with the proviso that, in the case where the area of the land is 25 hectares or more, adequate investment shall be made and good corporate management techniques shall be adopted as appropriate, in accordance with the developments of the times.
- (3) A *hak guna-usaha* can change hands and be transferred to another party.

Article 29

- (1) A *hak guna-usaha* can be granted for a term of at most 25 years.

- (2) In the case of a company which requires more time, it can be granted a *hak guna-usaha* with a term of at most 35 years.
- (3) Upon request of the right holder and having regard to the circumstances of the company, the terms of a *hak guna-usaha* as referred to in paragraphs (1) and (2) of this article can be extended for at most 25 years.

Article 30

- (1) Those who may obtain a *hak guna-usaha* are:
 - a. Indonesian citizens, and
 - b. bodies corporate incorporated under Indonesian law and domiciled in Indonesia.
- (2) A person or corporate body which holds a *hak guna-usaha* and no longer fulfills the conditions referred to in paragraph (1) of this article is obliged to relinquish the *hak guna-usaha* in question or to transfer it to another party which does fulfill the conditions. This provision also applies to a party who acquires a *hak guna-usaha* if he does not fulfill. If the said *hak guna-usaha* is not relinquished or transferred within the said period of time, it is nullified for the sake of law --with the proviso that any other parties' rights shall be given attention in accordance with provisions that are to be stipulated in a Government Regulation.

Article 31

A *hak guna-usaha* is created by a determination by the Government.

Article 32

- (1) A *hak guna-usaha*, including the conditions attaching to its grant, every transfer of such a right, and the nullification of such a right shall be registered in accordance with the provisions as meant in Article 9.
- (2) The registration as meant in paragraph (1) shall serve as a strong instrument of proof concerning the transfer and nullification of a *hak guna-usaha*, except in the case where such a right is nullified because its term has expired.

Article 33

A *hak guna-usaha* can be used as debt collateral by encumbering it with a *hak tanggungan* (security title).

Article 34

A *hak guna-usaha* is nullified because:

- a. the term has expired;
- b. it is terminated before its term has expired because a certain condition is not fulfilled;

- c. it is relinquished by the holder before its term has expired;
- d. it has been revoked in the interests of the public;
- e. the land has been abandoned;
- f. the land has vanished; and
- g. the provisions referred to in paragraph (2) of Article 30 applies.

Section V: *Hak Guna-Bangunan* (Right of Use of Structures)

Article 35

- (1) A *hak guna-bangunan* is a right to construct and possess buildings on land which is not one's own for a period of at most 30 years.
- (2) Upon request of the right holder and in view of the needs and of the condition of the buildings, the term referred to in paragraph (1) can be extended for at most 20 years.
- (3) A *hak guna-bangunan* can change hands and be transferred to another party.

Article 36

- (1) Those eligible for a *hak guna-bangunan* are as follows:
 - a. Indonesian citizens, and
 - b. bodies corporate incorporated under Indonesian law and domiciled in Indonesia.
- (2) A person or body corporate which holds a *hak guna-bangunan* but no longer fulfills the conditions which are referred to in paragraph (1) of this article is obliged to relinquish the *hak guna-bangunan* in question or to transfer it to another party which is eligible for such a right within one year. This provision applies also to parties who obtain a *hak guna bangunan* if he doesn't fulfill the said conditions. If the *hak guna-bangunan* in question is not relinquished or transferred within the said period of time, it is nullified for the sake of law -- with the proviso that the rights of other parties given attention, in accordance with-- provisions that are to be stipulated in a Government Regulation.

Article 37

A *hak guna-bangunan* comes into existence:

- a. in the case of land directly controlled by the State, a determination by the Government;
- b. in the case of land having the status of a *hak milik*, by an authentic agreement has been made by the relevant land owner with the party who will acquire the *hak guna-bangunan* with the purpose of giving rise to the intended right.

Article 38

- (1) A *hak guna-bangunan*, including the conditions of the granting of the right, every transfer concerning such a right, and the nullification of such a right shall be registered in accordance with the provisions referred to in Article 19.
- (2) The registration referred to in paragraph 1 serves as a strong instrument of evidence concerning the nullification of a *hak guna-bangunan* and the validity of the transfer of such a right, except in the case where such a right is nullified because its term has expired.

Article 39

A *hak guna-bangunan* can become debt collateral by encumbering it with a *hak tanggungan* (security title).

Article 40

A *hak guna bangunan* is nullified because:

- a. its term has expired;
- b. it is terminated before the expiry of its term on the ground that a condition has not been fulfilled;
- c. it is relinquished by the right holder before the expiry of its term;
- d. it is revoked in the public interest;
- e. it has been abandoned;
- f. the land has vanished;
- g. the provisions of Article 36 paragraph (2) apply.

Part VI Hak Pakai

Article 41

- (1) A *hak pakai* is a right to use, and/or to collect produce from, land directly controlled by the State or land owned by another individual (*tanah milik*) which grants authority and obligations as determined in the relevant right-granting decree by the official who is authorized to grant it or as determined in the agreement with the owner of the land, where the agreement is not a land-lease agreement (*perjanjian sewa-menyewa*) or land-exploitation agreement, given that everything is possible as long as it does not contradict the spirit and provisions of this Act.
- (2) A *hak pakai* can be granted:
 - a) for a definite term or for as long as the land is used for a specific purpose;
and
 - (b) for free, for a certain payment, or for any kind of service.

- (3) The granting of a *hak pakai* can not be entailed with conditions which contain elements of exploitation.

Article 42

Those eligible for a *hak pakai* are:

- a. Indonesian citizens,
- b. foreign citizens domiciled in Indonesia;
- c. corporate bodies incorporated under Indonesian law and domiciled in Indonesia, and
- d. foreign corporate bodies having representation in Indonesia.

Article 43

- (1) In the case of land directly controlled by the State, a *hak pakai* can be transferred to another party only with the approval of the authorized official.
- (2) A *hak pakai* on *tanah milik* can be transferred to another party only in the case where such a transfer is possible under the relevant agreement.

**Section VII : *Hak Sewa untuk Bangunan*
(Right of Lease for Buildings)**

Article 44

- (1) An individual or a corporate body has a *hak sewa atas tanah* (right of lease of land) when the individual or corporate body in question is entitled to using land owned by another party for purposes related to structures by paying to the owner of the land a certain sum of money as rent.
- (2) The payment of the rent can be made (a) either on a once-and-for-all basis or on a certain-interval basis and (b) either before or after the use of the land in question.
- (3) An agreement on land lease as meant in this article shall not be accompanied by conditions which contain elements of human exploitation.

Article 45

Those eligible for a *hak sewa atas tanah* (right of lease on land) are as follows:

- a. Indonesian citizens,
- b. foreign citizens residing in Indonesia;
- c. corporate bodies established under Indonesian law and domiciled in Indonesia, and
- d. foreign corporate bodies having representatives in Indonesia.

**Section VIII : *Hak Membuka-Tanah* (Right to Clear Land) and
Hak Memungut Hasil Hutan (Right to Collect Forest Produce)**

Article 46

- (1) A *hak membuka-tanah* and a *hak memungut hasil hutan* can be acquired only by Indonesian citizens and is to be regulated by way of a Government Regulation.
- (2) Using a *hak memungut hasil hutan* legally does not of itself amount to a *hak milik* (right of ownership) on the land in question.

Section IX : *Hak Guna-Air* (Right of Use of Water) and *Hak Pemeliharaan dan Penangkapan Ikan* (Right to Cultivate and Catch Fish)

Article 47

- (1) A *hak guna-air* is a right to obtain water for a certain purpose and/or to flow water above another person's land.
- (2) A *hak guna-air* and a *hak pemeliharaan dan penangkapan ikan* is to be regulated by way of a Government Regulation.

Section X : Hak Guna-Ruang-Angkasa (Right of Use of Airspace)

Article 48

- (1) A *hak guna-ruang-angkasa* provides its holder with the power to use the energy and other elements existing in the airspace for the implementation of efforts at maintaining and developing the productivity of soil, water, and natural resources contained therein and for other purposes related to such efforts.
- (2) A *hak guna-ruang-angkasa* is to be regulated by way of a Government Regulation.

Section XI : Land Rights for Sacred and Social Purposes

Article 49

- (1) A *hak milik* (right of ownership) to land held by religious and social bodies shall be recognized and protected for as long as such rights are used for purposes related to religious and social activities, and such bodies are to be assured of acquiring enough land to build structures and to implement their activities in the area of religious and social affairs, recognized, and protected.
- (2) For worship and other sacred purposes as referred to in Article 14, land directly controlled by the State can be granted with the status of a *hak pakai* (right of use).
- (3) The *perwakafan* (edification) of land having the status of a *hak milik* is to be protected and regulated by way of a Government Regulation.

Section XII : Other Provisions

Article 50

- (1) Subsequent provisions concerning the *hak milik* (right of ownership) are to be regulated by way of an Act.
- (2) Subsequent provisions concerning the *hak guna-usaha* (right to cultivate), *hak guna-bangunan* (right of use of structures), *hak pakai* (right of use), and *hak sewa untuk bangunan* (right of lease of land for structures) are to be regulated by way of legislation.

Article 51

The *hak tanggungan* (security title) --which can encumber a *hak milik*, *hak guna-usaha*, and *hak guna bangunan* as meant in Articles 25, 33, and 39-- shall be regulated by way of an Act.

CHAPTER III : CRIMINAL PROVISIONS

Article 52

- (1) Whoever purposefully violates the provisions of Article 15 shall be criminally punished with incarceration of at most three (3) months and/or with a fine of at most Rp 10,000.
- (2) The Government Regulations and legislation as meant in Articles 19, 22, 24, 26(1), 46, 47, 48, 49(3), and 50(2) can stipulate threats against violations of their provisions with incarceration of at most three (3) months and/or a fine of at most Rp 10,000.
- (3) The criminal deeds as meant in paragraphs (1) and (2) of this article are offenses.

CHAPTER IV : TRANSITIONAL PROVISIONS

Article 53

- (1) The provisional rights referred to in Article 16(1)(h) are a *hak gadai* (right of security), *hak usaha-bagi-hasil* (right of production-sharing endeavour), *hak menumpang* (right of transient occupancy), and *hak sewa tanah pertanian* (right of lease of agricultural land), and they shall be regulated in order to put restrictions on their characteristics which contradict this Act while efforts shall be made to nullify the existence of such rights within a short time.
- (2) The provisions contained in Article 52(2) and (3) shall apply to the regulations as meant in paragraph (1) of this article.

Article 54

In connection with the provisions contained in Articles 21 and 26 of this Act, an individual of Indonesian citizenship and, concurrently, of Chinese citizenship who has made a declaration of relinquishing his/her Chinese citizenship and whose declaration of relinquishing his/her Chinese citizen ship has been legalised under the applicable legislation shall be regarded as having only Indonesian citizenship as referred to in Article 21(1).

Article 55

- (1) The foreign rights which, under the provisions of Articles I, II, II, IV, and V concerning conversion, are converted into a *hak guna-usaha* (right to cultivate) and *hak guna-bangunan* (right of use of structures) shall be temporarily valid for the remaining terms of the rights in question, which shall not exceed 20 years.
- (2) The possibility for the granting of a *hak guna-usaha* and *hak guna-bangunan* to corporate bodies whose capital is partly or wholly foreign is open only in the case where it is deemed necessary to grant such rights to such corporate bodies in the light of an act which regulates *pembangunan nasional semesta berencana* (well-planned total, national development).

Article 56

For as long as an Act re *hak milik* (right of ownership) referred to in Article 50(1) has not been established, local *adat*-law provisions and other regulations concerning land rights which provide powers as meant in, or similar to those referred to in, Article 20 apply, provided that such local *adat*-law provisions and other regulations do not contradict the spirit and provisions of this Act.

Article 57

For as long as an Act re *hak tanggungan* (security title) referred to in Article 51 has not been established, the provisions concerning *hypotheek* (mortgage) referred to in the Indonesian Civil Code and those concerning *Credietverband* (credit security) as meant in S.1908-542 (State Gazette No. 1908-542), which has been replaced with S.1937-190 (State Gazette No. 1937-190), apply.

Article 58

For as long as the regulations concerning the implementation of this Act have not been established, the regulations --both written and unwritten-- concerning earth, water, and natural resources therein and concerning land rights which already exist at the time this Act comes into effect remain effective, provided that such regulations do not contradict the spirit and provisions of this Act and are given new interpretations in line with the spirit and provisions of this Act.

SECOND

PROVISIONS CONCERNING CONVERSION

Article I

- (1) A *hak eigendom* (right of ownership under Dutch Law) to land which already exists at the time this Act comes into effect becomes a *hak milik* (right of ownership under this Act) at the time this Act comes into effect, except in the case where the holder does not meet the criteria referred to in Article 21.
- (2) A *hak eigendom* held by a foreign government which is used for purposes related to the residence of the head of the representative delegation and to the embassy building, at the time this Act comes into effect, become a *hak pakai* (right of use) as referred to in Article 41(1), which will remain valid for as long as the land is used for the said purposes.
- (3) A *hak eigendom* held by a foreign citizen, by an Indonesian citizen who concurrently holds foreign citizenship, or by a corporate body which is not designated by the Government as meant in Article 21(2) shall, at the time this Act comes into effect, become a *hak guna-bangunan* (right of use of structures) as meant in Article 35(1) with a term of 20 years.

- (4) In the case where the *hak eigendom* as meant in paragraph (1) of this article is encumbered with a *hak opstal* (right of use of structures under Dutch Law) or *hak erfpacht* (right of long-term lease under Dutch Law), the *hak opstal* or *hak erfpacht* in question, at the time this Act comes into effect, becomes a *hak guna-bangunan* (right of use of structures) as meant in Article 35(1) of this Act, which shall encumber the *hak milik* in question for the remaining term of the *hak opstal* or *hak erfpacht*, which shall not exceed 20 years.
- (5) In the case where the *hak eigendom* as meant in paragraph (3) of this article is encumbered with a *hak opstal* or *hak erfpacht*, the relationship between the holder of the *hak eigendom* and that of the *hak opstal* or *hak erfpacht* is to be settled on the basis of guidelines which are to be stipulated by the Minister of Agrarian Affairs.
- (6) Such rights as *hypotheek*, *servituut*, *vruchtgebruik*, and others which are encumbering a *hak eigendom* shall continue encumbering a *hak milik* or *hak guna-bangunan* as meant in paragraphs (1) and (3) of this article while such rights shall become rights which are stipulated in this Act.

Article II

- (1) Land rights providing their holders with powers as meant in, or similar to those as meant in, Article 20(1) --i.e. such land rights as *hak agrarisch eigendom*, *milik*, *yayasan*, *andarbeni*, *hak atas druwe*, *hak atas druwe desa*, *pesini*, *grant Sultan*, *landerijenbezitrecht*, *altijddurende erfpacht*, *hak-usaha atas bekas tanah partikelir*, and other land rights by any names which are to be subsequently confirmed by the Minister of Agrarian Affairs-- which already exist at the time this Act comes into effect shall, at the time this Act comes into effect, become a *hak milik* as meant in Article 20(1), except in the case where the holder does not meet the criteria as meant in Article 21.
- (2) In the case where the land rights as meant in paragraph (1) are held by foreign citizens or by Indonesian citizens concurrently holding foreign citizenship or by corporate bodies which are not designated by the Government as meant in Article 21(2) shall become a *hak guna-usaha* (right to cultivate) or *hak guna-bangunan* (right of use of structures), depending on what the land in question has been allotted for, as shall be subsequently confirmed by the Minister of Agrarian Affairs.

Article III

- (1) A *hak erfpacht* for a large-scale plantation company which already exists at the time this Act comes into effect shall, at the time this Act comes into effect, become a *hak guna-usaha* as meant in Article 28(1) for the remaining term of the *hak erfpacht* in question, which shall not exceed 20 years.
- (2) A *hak erfpacht* for a small-scale agricultural undertaking which already exists at the time this Act comes into effect shall, at the time this Act comes into effect, be nullified and be subsequently settled in accordance with the provisions which are to be stipulated by the Minister of Agrarian Affairs.

Article IV

- (1) The holder of a *concessie* (concession) and that of a *sewa* (lease) for a large-scale plantation undertaking shall, within one year following the coming into effect of this Act, forward a request to the Minister of Agrarian Affairs that the right in question be changed into a *hak guna-usaha* (right to cultivate).
- (2) In the case where the holder of a *concessie* or of a *sewa* fails to forward such a request within the said period of time, the *concessie* or *sewa* in question shall stay being valid for the remaining part of its term, which shall not exceed five years, upon the end of which the right in question shall automatically become extinct.
- (3) In the case where the holder of a *concessie* or of a *sewa* forwards a request as meant in paragraph (1) of this article but is not willing to accept the conditions stipulated by the Minister of Agrarian Affairs or the request is rejected by the Minister of Agrarian Affairs, the *concessie* or *sewa* in question shall stay being valid for the remaining part of its term, which shall not exceed five years, upon the end of which the right in question shall automatically become extinct.

Article V

A *hak opstal* or *hak erfpacht* for a housing complex which already exists at the time this Act comes into effect shall, at the time this Act comes into effect, become a *hak guna-bangunan* (right of use of structures) as meant in Article 35(1) for the remaining term of the *hak opstal* or *hak erfpacht* in question, which shall not exceed 20 years.

Article VI

Land rights providing their holders with powers as meant in, or similar to those as meant in, Article 14(1) --i.e. such land rights as *vrughgebruik*, *gebruik*, *grant controlleur*, *bruikleen*, *ganggam bauntuik*, *anggaduh*, *bengkak*, *lungguh*, *pituwat*, and other land rights by whatever names which are to be subsequently confirmed by the Minister of Agrarian Affairs-- which already exist at the time this Act comes into effect shall, at the time this Act comes into effect, become a *hak pakai* (right of use) as meant in Article 41(1), which provides the holders with the same powers and obligations which they already have at the time this Act comes into effect, provided that such powers and obligations do not contradict the philosophy and provisions of this Act.

Article VII

- (1) Such land rights as *gogolan*, *pekulen*, and *sanggan* which are permanent and which already exist when this Act comes into effect shall, at the time this Act comes into effect, become a *hak milik* (right of ownership) as meant in Article 20(1).

- (2) Such land rights as *gogolan*, *pekulen*, and *sanggan* which are provisional and which already exist when this Act comes into effect shall, at the time this Act comes into effect, become a *hak pakai* (right of use) as meant in Article 41(1), which shall provide the holders with the same powers and obligations which they already have when this Act comes into effect.
- (3) In the case of doubts as to whether a certain *gogolan*, *pekulen*, or *sanggan* is permanent or provisional, the Minister of Agrarian Affairs shall make a decision.

Article VIII

- (1) In the case of a *hak guna-bangunan* (right of use of structures) as meant in Article I(3) and (4), Article II(2), and Article V, the provisions as meant in Article 36(2) shall apply.
- (2) In the case of a *hak guna-usaha* (right to cultivate) as meant in Article II(2), Article III(1) and (2), and Article IV(1), the provisions as meant in Article 30(2) shall apply.

Article IX

Matters which are necessary for the implementation of the provisions contained in the articles above shall be regulated further by the Minister of Agrarian Affairs.

THIRD

Changes in the structure of village administration which are to be made for the implementation of agrarian law reforms shall be regulated separately.

FOURTH

- A. The rights and powers of *Swaprajas* (autonomous regions) or of former *Swaprajas* which still exist when this Act comes into effect shall be nullified and transfer to the State.
- B. Matters related to the provision as meant point A above shall be regulated further by way of a Government Regulation.

FIFTH

This Act can be referred to as *Undang-Undang Pokok Agraria* (Basic Agrarian Law) and shall take effect as from the date it is enacted.

To make it known to everybody, this Act shall be enacted by placing it in the State Gazette of the Republic of Indonesia.

Ratified in Jakarta
on 24 September 1960

PRESIDENT OF THE REPUBLIC OF INDONESIA

(signature)

(*SUKARNO*)

Enacted on 24 September 1960

STATE SECRETARY

(signature)

(*TAMZIL*)

STATE GAZETTE NO. 1960-1-04

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This translation was edited and corrected by Warren Wright, Property Rights Adviser, East Timor Department of Infrastructure, Land and Property Unit, Dili, East Timor in May 2001.

No reliance whatsoever should be placed on this edited translation. The original Indonesian text of the Law as published in the Indonesian State Gazette must be referred to for all purposes.

ELUCIDATION

OF
ACT NO. 5 OF 1960 RE BASIC PROVISIONS CONCERNING
THE FUNDAMENTALS OF AGRARIAN AFFAIRS
(BASIC AGRARIAN LAW OR UUPA)

A. GENERAL ELUCIDATION

I. Objectives of UUPA

In the Republic of Indonesia, where the structure of the people's social and economic life is mainly agrarian, soil, water, and space are seen as gifts from the Only One God and have very important functions in the development of a **just and prosperous society** in line with our dream. Meanwhile, the currently applicable agrarian law, which should have served as **one important instrument** to develop such a just and prosperous society, has in many cases **provided an obstacle** to the achievement of the said dream. This has been caused primarily by the following:

- a. that the currently applicable agrarian law was established partly *on the basis of the purposes and fundamentals of the colonial government* and partly under the influences of the said government and, as a result, it runs counter to the interests of the people and the State in implementing all-encompassing development in the context of finalizing the current national revolution;
- b. that due to the colonial government's **politics of law**, the said agrarian law has a dualistic nature, providing for the application of regulations based on *adat* law in addition to those derived from and based on western law and, by so doing, the said agrarian law has given rise to various inter-societal group issues which are not only difficult to handle but also contradictory to the idealized National unity; and
- c. that for the indigenous people, the colonial government's agrarian law *does not guarantee legal certainty*.

In view of the above, it is necessary to have a new agrarian law which is national, which supplants the currently applicable agrarian law, which does not have a dualistic nature, which is simple, and which *guarantees legal certainty* for all Indonesian people.

The new agrarian law must enable soil, water, and space to serve their functions as mentioned above, must be consistent with the interests of the people and of the State, and must fulfill the needs of different eras in all aspects of agrarian affairs. Furthermore, the national agrarian law must materialize the State's spiritual principles and the Nation's dreams, namely the Only One God, Humanitarianism, Nationalism, Democracy, and Social Justice and, in particular, must implement the provisions of Article 33 of the 1945 Constitution as well as those of the State Policy Guidelines as stated in the 17 August 1959 Political Manifesto of the Republic of Indonesia and re-asserted in the 17 August 1960 Presidential Address.

In view of all that has been described above, the principles and underlying provisions of the new law need to be developed in the form of an *undang-undang* (an act), which shall serve as a basis for the development of other regulations. The act is formally not different from other acts in the sense that it is to be made by the Government upon approval of the *Dewan Perwakilan Rakyat* (House of People's Representatives). However, due to its nature as a basis for the new agrarian law, the act should contain only the **basic principles and issues** in a broad outline and, therefore, it should be referred to as *Undang-Undang Pokok Agraria* (Basic Agrarian Law). The implementation of the Basic Agrarian Law will be regulated by way of acts, government regulations, and other forms of legislation.

Thus, the **objectives** of UUPA are basically as follows:

- a. to provide bases for the formulation of **national** agrarian law, which shall serve as a means of bringing prosperity, happiness, and justice to the State and the people, especially farmers, in the context of establishing a just and prosperous society;
- b. to provide bases for the establishment of **unity** and **simplicity** in land law; and
- c. to provide bases for the provision of **legal certainty** concerning land rights for all the people.

II. Bases for National Agrarian Law

- (1) The first basis, i.e. nationality, is provided in Article 1(1), which says that “the entire territory of Indonesia is the totality of the land and water of all the Indonesian people, who stay united as the Indonesian nation,” and in Article 1(2), which says that “all the soil, water, and airspace, including the natural resources contained therein, which exist within the territory of the Republic of Indonesia as gifts from the Only One God, are the Indonesian nation’s soil, water, and airspace and provide national wealth.” This means that the soil, water, and airspace within the territory of the Republic of Indonesia, whose independence resulted from a struggle by the people as a whole, are the property of the Indonesian nation and not simply that of their owners. Similarly, lands in regions and islands are not simply the property of the natives of the area or island in question. In that sense, the relationship of the Indonesian nation to Indonesia’s soil, water, and airspace is a kind of *ulayat* relationship enhanced to the uppermost level, namely the level which encompasses all the territory of the State. The relationship of the nation to Indonesia’s soil, water, and airspace is by nature *eternal* [Article 1(3)]. This means that for as long as the Indonesian people who are united as the Indonesian nation still exists and for as long as Indonesia’s soil, water, and airspace still exist, not a single power will be able to, under any circumstances, break up or nullify that relationship. Thus, although Irian Barat (West Irian) --which constitutes part of Indonesia’s soil, water, and airspace-- is currently under the power of the colonizer, this part --under the provisions of this article-- also constitutes Indonesia’s soil, water, and airspace for the sake of law. The relationship of the nation to the soil, water, and airspace as described above does not mean that individual ownership rights to (parts) of the soil are no longer possible. As has been mentioned above, the relationship is some kind of *hak ulayat* (ulayat right) relationship and, as such, it is not a *hubungan milik* (ownership relationship). In the context of *hak ulayat*, individual ownership rights are recognized. Therefore, it can be asserted that the new agrarian law recognizes the existence of ownership rights which can be held by individuals either on their own or in togetherness with other individuals to parts of the Indonesian soil (Article 4 in conjunction to Article 20). Meanwhile, it is only the surface of the soil, which is referred to as *tanah* (land), which can be subject to individual rights.

In addition to the right of ownership, which is the hereditary, strongest, and fullest right that one can have to land, there have also been created such rights as *hak guna-usaha* (right to cultivate), *hak guna-bangunan* (right of use of structures), *hak pakai* (right of use), *hak sewa* (right of lease), and other rights which will be stipulated by way of other acts (Article 4 in conjunction to Article 16). How these rights relate to the *hak bangsa* (the nation’s right) [and *hak negara* or the state’s right] will be explained in #2 below.

- (2) The principle of “*domein*” (i.e. the principle of the state being the owner of land), which was used by the colonial government as a basis for agrarian legislation, is not recognized in the new agrarian law.

The principle of *domein* is contradictory to the Indonesian people’s legal consciousness and to the principle of the State being independent and modern. In view of the above, the principle of *domein* --which was confirmed in various statements of *domein*, e.g. Article 1 of *Agrarische Besluit* (S. 1870-118), S. 1875-119a, S. 1874-94f, and S. 1877-55, and S. 1888-58-- has been discarded and the various statements of *domein* have been revoked.

UUPA (the Basic Agrarian Law) is based on the position that in order to achieve what is stipulated in Article 33 (3) of the 1945 Constitution, it is not necessary and not appropriate for the Indonesian nation and State to act as land owner. It is more appropriate for the State, in its capacity as the people's organization of power, to act as *Badan Penguasa* (Authority Body). It is from this perspective that the meaning of the provision of Article 2(1), which says that "the soil, water, and airspace, including the natural resources contained therein, are at the highest level controlled by the State" should be seen.

In consistence with the underlying position as described above, the term "controlled" in this article does not mean "owned" but, rather, it means that the State, in its capacity as the Indonesian people's organization of power, has been given the authority to do the following at the uppermost level:

- a. *to regulate and administer the allotment, use, appropriation, and maintenance of the soil, water, and airspace;*
- b. *to determine and regulate what rights can be held to (parts) of the soil, water, and airspace; and*
- c. *to determine and regulate the legal relationships between people and legal acts concerning soil, water, and airspace.*

All this is intended to bring the largest possible prosperity to the people in the context of establishing a just and prosperous society [Article 2(2) and (3)].

The State's power as meant above concerns *all* the soil, water, and airspace, including parts of them which are already possessed by individuals under certain rights. The state's power over land which is already possessed by an individual under a certain right is defined by the contents of the right in question, and this means that the State's power over the land in question ends at the point to which it gives the individual in question authority to execute his right. The contents and limitations of the rights are stated in Article 4 and the following rights as well as in the articles of Chapter II.

The State's power over land which is not possessed under a certain right by an individual or another party is broader and full. With reference to the objectives mentioned above, the State can grant such land to an individual or corporate body under a certain right, e.g. *hak milik* (right of ownership), *hak guna-usaha* (right to cultivate), *hak guna-bangunan* (right of use of structures), or *hak pakai* (right of use) according to the allotment or the need or grant it to a certain Power Body [e.g. a Department, *Jawatan* (Service), or *Daerah Swatantra* (Autonomous Region)] under a right of management for use by the latter to facilitate the implementation of its duties [Article 2(4)]. Meanwhile, the State's power over such land is also defined, more or less, by the *hak ulayat* of *masyarakat-masyarakat hukum* (law communities) as long as the *hak ulayat* in question, in reality, still exists. This will be elaborated on in point #3 below.

- (3) In connection with the relationship of the nation to the soil and water and with the State's power as meant in Articles 1 and 2, certain provisions have been made available in Article 3 and they are intended to place the said right (i.e. *hak ulayat*) in its proper position in the current atmosphere of the nation-state. Article 3 stipulates that "the *implementation* of the *ulayat* rights and other similar rights of law communities --as long as such communities in reality still exist-- shall be such that it is consistent with *national interests and the State's interests on the basis of national unity and* shall not contradict the laws and regulations of higher levels."

This provision first of all rests on the new agrarian law's recognition of the existence of *hak ulayat*. As may have been known, even if the *ulayat* right --in reality-- still exists, is still effective, and is taken into account in the making of court decisions, the said right has never been officially recognized in law. The lack of such recognition has resulted in the fact that during the period of colonization, the implementation of agrarian regulations frequently neglected the existence of *hak ulayat*. The fact that *hak*

ulayat is mentioned in UUPA (the Basic Agrarian Law) basically means that the said right is recognized. Therefore, in principle, *hak ulayat* will be taken into consideration as long as the said right in reality still exists in the law community in question. For example, in the granting of a land right (e.g. *hak guna-usaha* or a right to cultivate), the relevant law community will first be heard and given some “*recognitie*” (recognition) to which they are entitled in their capacity as holder of the *hak ulayat* in question.

On the other hand, however, it would not be justifiable for the relevant law community to block the granting of the *hak guna-usaha* in question on the pretext of their *hak ulayat* in the case where the granting of the *hak guna-usaha* is indeed required in support of broader interests. Similarly, it would not be justifiable for a law community, on the pretext of their *hak ulayat*, to --for example-- reject a plan on clearing forests in a big way and on an on-going basis which is required to support the implementation of large-scale projects on the production of food and the relocation of people. Experience shows that in many cases, the development of regions is impeded by problems related to *hak ulayat*. This is what constitutes the second rational behind the provisions of Article 3 as mentioned above. The interests of a law community should be subordinated to the broader interests of the nation and of the State, and the implementation of the *hak ulayat* should also be consistent with the broader interests. It would not be justifiable for a law community, in the current atmosphere of the nation-state, to stick with the contents and implementation of their *hak ulayat* on an absolute basis as if the law community in question were disengaged from other law communities and other regions in the context of the State as a unity. Such a attitude would clearly contradict the underlying principle mentioned in Article 2 and would, in practice, have adverse impact on the implementation of great efforts at achieving prosperity for all the People.

However, as is clear from the description above, this does not mean that the interests of the law community in question will be totally disregarded.

- (4) The fourth basis is provided in Article 6, which says that “all land rights have social functions.”

This means that whatever land right one has, it is not justifiable for the individual in question to use (or not to use) his land exclusively for his own interests, much less so if this disadvantages the people. Land use should be adjusted to the condition of the land in question and to the nature of the land right in question so that it can improve the welfare and happiness of the owner as well as benefit the people and the State.

However, the said provision does not mean that the interests of an individual should be pushed completely aside by those of the public (the people). UUPA also has regards of individuals’ interests.

Public interests and individual interests should balance each other so that, in the end, the primary objectives can be achieved: prosperity, justice, and happiness for all the people [Article 2(3)].

Due to its social functions, it is only appropriate that land should be well taken care of so as to improve its fertility and to prevent it from damage. The obligation to take care of land is imposed not only on the owner or the right holder but also on everyone, every corporate body, or every institution which has a legal relationship with the land in question (Article 15). In the implementation of this provision, the interests of economically weak people will be taken into consideration.

- (5) In line with the principle of nationality as meant in Article 1, Article 9 in conjunction to Article 21(1) provides that only Indonesian citizens can have a *hak milik* (right of ownership) to land. Expatriates are prohibited from having a *hak milik* [Article 26(2)]. Expatriates can only have a *hak pakai* (right of use) to land of limited dimensions. Similarly, corporate bodies basically cannot have a right of ownership [Article 21(2)] on the consideration that that corporate bodies do not need to have a right of ownership but another right will do for them as long as it is equipped with an adequate guarantee for the fulfillment of their specific requirements (e.g. *hak guna-usaha*, *hak guna-*

bangunan, or *hak pakai* according to Articles 28, 35, and 41). Thus, any efforts at avoiding the maximum limits on land ownership can be prevented (Article 17).

Although corporate bodies basically cannot have a *hak milik* to land, a certain “escape clause” has been made available which makes it possible for certain corporate bodies to have a *hak milik* in view of the existence of public needs that are closely related to religious beliefs, social notions, and economic relations. This “escape clause” is adequate in that it enables the Government, in the event in which a certain corporate body requires a *hak milik* to land, to provide it with some dispensation by designating the corporate body in question as one eligible for a *hak milik* to land [Article 21(2)]. Corporate bodies dealing in social and religious affairs are designated as ones that can have a *hak milik* to land (Article 49), but they can have it only for as long as the land is used to support their activity in social and religious affairs. In matters that are not directly related to social and religious affairs, they are to be considered ordinary corporate bodies.

- (6) Still in connection with the principle of nationality as meant above, it is provided in Article 9(2) that “*every Indonesian citizen, be it male or female, shall have equal opportunities to acquire a land right and to obtain benefits and yields thereof, either for himself/herself or for his/her family.*”

Meanwhile, it is necessary to provide protection for economically weak groups against economically strong citizens. In view of this, Article 26(1) stipulates that “*the sale/purchase, exchange, granting, conveyance with a will, conveyance under adat (customs), and other acts which are intended to transfer a hak milik and how to oversee such acts shall be regulated by way of a Government Regulation.*” It is this provision that will serve as an instrument to protect economically weak groups as meant above.

In this connection, it may also be necessary to note the provisions of Article 11(1), which are aimed at preventing the occurrence of excessive control of other people’s living and jobs in agrarian-related business lines because such control contradicts the principle of humanity-based social justice. All joint enterprises in the area of agrarian affairs should be based on common interests which are consistent with national interests [Article 12(1)], and the Government is required to prevent the existence of any enterprises of private-monopolistic nature by organizations or individuals in the area of agrarian affairs [Article 13(2)]. However, it is not only monopolistic enterprises by the Private sector but also monopolistic enterprises by the Government which are to be prevented so that the people will not be disadvantaged. Therefore, any monopolistic enterprises by the Government in the area of agrarian affairs can be organized only by way of an act [Article 13(3)].

- (7) In Article 10(1) and (2), a principle is formulated which currently serves as a basis for changes that are taking place in the structure of land affairs nearly throughout the world, especially in countries which have been administering what is called “land reform” or “agrarian reform,” and the principle is that “agricultural land shall be tilled or worked upon by the owner himself.”

To ensure the achievement of this principle, certain provisions have to be made available. One is a provision concerning the minimum limits on land ownership by a farmer in order that he can earn enough income to enable him and his family to lead a decent life (Article 13 in conjunction to Article 17). Another one is a provision concerning the maximum limits on land that can be possessed under a *hak milik* (Article 17) in order that the accumulation of land in the hand of strong groups. In this connection, Article 7 states a very important principle: that excessive land ownership and possession shall be forbidden because that harms public interests. Finally, the principle stated in Article 10(1) and (2) should be accompanied with a provision concerning the provision of credit, seeds, and other forms of assistance under soft conditions so that the land owner will not find himself compelled to transfer the possession of his land to another party and to work in another walk of life.

Meanwhile, in view of the current structure of our agricultural community, it is necessary --at least for the time being-- to keep opportunities open for the use of

agricultural land by parties other than the owners by way of *sewa* (lease), *bagi-hasil* (output sharing), *gadai* (pledge/pawn/security), and others. However, all this should be administered in line with other legal provisions and regulations so as to prevent oppression/exploitation of the weak by the strong (Articles 24, 41, and 53). Thus, the use of land by way of lease, output sharing, *gadai*, and the likes should not be left to agreements made by interested parties on the basis of the principle of “free fight,” but the authorities shall make provisions concerning the procedures and conditions so as to fulfill the principle of justice and to prevent “*exploitation de l’homme par l’homme*.” As an illustration, the provisions in Act No. 2 of 1960 re “Output Sharing Agreements” (State Gazette No. 2 of 1960) can be referred to in this regard.

The provisions of Article 10(1) constitute a principle of which the implementation requires further regulations (paragraph 2). In our current social structure, regulations concerning the implementation of the principle should give room for dispensations. As an illustration, a civil servant who has one hectare or so of land to provide for him when he is already old and, due to his current job, cannot work on the land on his own should be allowed to keep having the land. In the meantime, he should be allowed to hand over the land to another person for the latter to work upon on the basis of a lease, output sharing, or another agreement but, when he is no longer in the civil service as a result of, for example, retirement, he should actively work upon the land on his own (paragraph 3).

- (8) Finally, to achieve the nation’s and State’s dreams in agrarian affairs as mentioned above, it is necessary to make plans on the allotment, use, and supply of the soil, water, and airspace in support of the various living interests of the people and the State. A National Plan should first be made, which covers all the territory of Indonesia, and -- subsequently-- it should be translated into regional plans, one for each of the regions (Article 14). With such planning, land use can proceed in guided and orderly manners so that it can produce utmost benefits for the State and the people.

III. Bases for unity and simplicity of law

The bases for the achievement of these objectives are obvious from the provisions contained in Chapter II.

- (1) As has been explained above, our current agrarian law is dualistic in nature as it distinguishes between land rights based on adat law and those based on western law. Such a distinction rests on the provisions of Book II of the Indonesian Civil Code. UUPA (Basic Agrarian Law) seeks to do away with such a distinction and, wittingly, to create legal unity in line with the wish of the people, who live as one nation, and with economic interests.

Inevitably, the new agrarian law should be consistent with the legal awareness of the common people. Since most Indonesian people adhere to *adat* (customary) law, the new agrarian law will also be based on the provisions of adat law, which is the indigenous law, with the latter being improved and adjusted to the interests of the people of a modern State which connects with the international community as well as to Indonesian socialism. As may have been understood, adat law --in its growth-- could not have been spared from the influences of the capitalistic politics of the colonizer and from those of the feudalistic *swapraja* (self-governing) communities.

- (2) In the implementation of the unified law, UUPA does not keep a closed eye on the fact that there are differences in circumstances and in legal needs among different societal groups. In view of this, Article 11(2) stipulates that “differences in circumstances within the society and in legal needs amongst societal groups shall --where necessary-- be taken into account, provided that *this does not run counter to national interests*. What is meant by differences amongst different societal groups is such differences as,

for example, those in legal needs between urban people and rural people and between economically strong people and economically weak people. Hence, Article 11(2) subsequently provides that the interests of the economically weaker groups shall be guaranteed.

- (3) With the differences between adat law and western law having been discarded in the new agrarian law, the purpose of achieving simplicity of law will basically be achieved. As has been explained earlier, in addition to *hak milik* as the hereditary, strongest, and fullest right which one can have to land, the new agrarian law basically recognizes the existence of adat-based land rights as enumerated in Article 16(1)(d) through (g). Besides, in order to fulfill the needs which are beginning to become obvious in our society, the new agrarian law has created two new land rights, and they are *hak guna-usaha* (right to cultivate, i.e. a right intended for companies dealing in agriculture, fishery, and animal husbandry) and *hak guna-bangunan* (right of use of structures, i.e. a right enabling one to build/have a building on someone else's land) [Article 16(1)(b) and (e)].

As for the rights which are already in existence at the time the new agrarian law (UUPA) comes into effect, all of them will be converted to any of the new rights stipulated in this law.

IV. Basis for establishing legal certainty

That this law seeks to provide legal certainty concerning land rights is evident from the provisions in it which regulates *land registration*. Articles 23, 32, 38 are meant for *land-right holders* and intended to enable them to obtain *legal certainty concerning their rights*. On the other hand, Article 19 is meant to be an instruction for *the Government* that land registration in the nature of “*rechts-kadaster*” (legal cadastre) be administered throughout Indonesia in order to provide *guaranteed legal certainty*.

The registration will be implemented by taking into account the interests and condition of the State and the people, the needs for socio-economic movements, and the possibilities open in terms of personnel and equipment. In view of this, the cadastre will be implemented first in cities and subsequently, on a gradual basis, throughout Indonesia.

In line with its purpose, namely to provide legal certainty, the registration is compulsory for every land-right holder. Otherwise, the implementation of land registration --which obviously requires manpower, equipment, and money in high quantities-- would be meaningless at all.

B. ELUCIDATION OF ARTICLE BY ARTICLE

Article 1

Elucidation has been given in General Elucidation [II (point 1)]. UUPA makes a distinction in meaning between “*bumi*” (soil, earth) and “*tanah*” (land) as found in Article 1(3) and Article 4(1). What is meant by *tanah* (land) is the surface of the soil.

The concept of “soil” and “water” has been broadened to include the airspace in view of the current technical advancements and of the future possibilities.

Article 2

Elucidation has been given in General Elucidation [II (point 2)]

The provision of paragraph (4) concerns the principles of autonomy and *medebewind* (co-governing; auxiliary assignment) in the implementation of regional administration. Agrarian affairs are by nature and in principle the duty of the Central Government [Article 33(3) of the 1945 Constitution]. Thus, the delegation of authority over the implementation of the State's right of control to land is a form of *medebewind*. All will be implemented as required and in

ways which should not contradict national interests. Authority over agrarian affairs can provide a source of income for the region in question.

Article 3

What is meant by “*hak ulayat*” and other similar rights is what in the literature on adat (customs) is referred to as “*beschikkingsrecht*.” For further elucidation, see General Elucidation [II point (3)].

Article 4

Elucidation is given in General Elucidation [II point (1)].

Article 5

This article asserts that adat law is used as a foundation for the new agrarian law. For further elucidation, see General Elucidation [III point (1)].

Article 6

Not only *hak milik* (right of ownership) has social functions; all land rights do. This is elaborated on in General Elucidation [II point (4)].

Article 7

This article confirms the principle which bans excessive land ownership and possession as has been elaborated on in General Elucidation [II point (7)]. As for the limitations, they are regulated in Article 17. The said principle knows no exceptions.

Article 8

Since Article 4(2) provides that land rights entitle the holder only to the surface of the soil/earth, the powers generated from land rights do not affect the natural resources found inside the earth, water, and airspace. Hence, the taking of such natural resources requires separate regulations. The said provision serves as a basis for mining and other legislation.

Article 9

Paragraph (1) has been elaborated on in General Elucidation [II point (5)]. The provision of paragraph (2) results from the provisions of Article 1(1) and (2).

Article 10

Elucidation is given in General Elucidation [II point (7)]. The phrase “in principle” refers to the likelihood of exceptions being made as illustrated in the General Elucidation. However, such exceptions need to be regulated by way of legislation (see the elucidation on Article 7 for comparison). The use of land by a party other than its owner is allowed for by Article 24, but such use is subject to limitations and is to be regulated.

Article 11

This article carries the principle of the economically weak having to be protected against the economically strong. The economically weak can be native Indonesian citizens and those of foreign origin, and the reverse is also true. See General Elucidation [III point (2)].

Article 12

The provision of paragraph (1) is related to that of Article 11(1). The types of joint enterprises which are consistent with this provision are cooperatives and other forms of *gotong royong* (mutual assistance). The provision of paragraph (2) allows for the creation of “joint enterprises” between the State and the private sector in the area of agrarian affairs. What is meant by “other parties” is regional governments, private businessmen with national capital, and private companies with “domestic capital” which are progressive.

Article 13

Elucidation on paragraphs (1), (2), and (3) is given in General Elucidation [II point (6)]. The provision of paragraph (4) concerns the implementation of the principle of humanity-driven social justice in the area of agrarian affairs.

Article 14

This article regulates the issue of planning on the supply, allotment, and use of the soil, water, and airspace as has been described in General Elucidation [II point (8)]. In view of the future model of the State’s economy, in which industry and mining will play important roles, planning should be conducted not only of agriculture but also of industry and mining [paragraph (1)(d) and (e)]. Such planning is intended not simply to provide land for agriculture, animal husbandry, fishery, industry, and mining but also to develop them. Regulations made by regional governments should be legalized within the context of General Plans made by the Central Government and in consistence with the Central Government’s policies.

Article 15

Elucidation is given in General Elucidation [II point (4)]. It is mandatory to take good care of land by maintaining it in ways that are common to respective regions and in consistence with directions provided by the relevant *Jawatans* (offices/bureaus).

Article 16

This article concerns the implementation of the provision of Article 4. In line with the principle stated in Article 5, namely that national land law is based on adat law, the rights to land and water stipulated in this article are also based on the systematics of adat law. Meanwhile, *hak guna-usaha* (right to cultivate) and *hak guna-bangunan* (right of use of structures) have been created to respond to the needs of modern society in the current era. It is necessary to assert that *hak guna-usaha* is not *hak erfpacht* (right of long-term lease) as stipulated in the Civil Code. Similarly, *hak guna-bangunan* is not *hak opstal* (right to construct a building). The *erfpacht* and *opstal* institutions have been eliminated with the revocation of the provisions contained in Book II of the Indonesian Civil Code.

Meanwhile, the adat rights which are by nature contradictory to the provisions of this law (Articles 7 and 10) but which, due to the current social circumstances, cannot be discarded as yet, will be treated as temporary rights and will be regulated [paragraph (1) point h in conjunction to Article 53].

Article 17

This article concerns the implementation of what is stipulated in Article 7. The fixing of maximum limits on ownership will be shortly done by way of legislation. Land in excess of

the maximum limits will not be confiscated but will be acquired by the Government with some indemnity. Such land will subsequently be re-distributed among the needy. Basically, the indemnity for such land --which has to be paid to the former owner-- is to be paid by those who receive it. However, since the recipients mostly cannot afford to pay the price of the land in a short time, the Government will make available some credit and make other efforts so that the former owner will not have to wait for too long before receiving the said indemnity.

The fixing of the minimum limits on ownership does not mean that those having less land than the minimum limits will be forced to relinquish their land. Rather, the fixing of such minimum limits is primarily intended to prevent land from further subdivision. In addition, efforts will be made --such as *transmigrasi* (resettlement), large-scale land clearance off Java, and industrialization-- so that the minimum limits can be achieved on a gradual basis.

What is meant by “*keluarga*” (family) is the husband, wife, and their unmarried children who are still their dependents, all of whom total around seven (7) persons. Either a man or a woman can be head of the family.

Article 18

This article constitutes a guarantee for the people concerning their land rights. Although right revocation is possible, it is subject to certain conditions, e.g. that it should be accompanied with some decent indemnity.

Article 19

Such land registration will be administered in simple, easy-to-understand ways and implemented by the relevant people (see General Elucidation IV).

Article 20

This article mentions the characteristics of *hak milik* (right of ownership) which make it different from other rights. *Hak milik* is the “strongest and fullest” right which one can have to land. However, that *hak milik* have such characteristics does not mean that it is a land right which is “absolute, unlimited, and indefeasible” like the right of *eigendom* (i.e. right of ownership under western law) in its true sense. These characteristics (“absolute, unlimited, and indefeasible”) is evidently contradictory to adat law and to the principle that every land right has social functions. The word “strongest and fullest” is used to distinguish the right (i.e. *hak milik*) from *hak guna-usaha* (right to cultivate) and *hak guna-bangunan* (right of use of structures), *hak pakai* (right of use), and other rights. It serves to show that amongst the rights which one can have to land, it is *hak milik* which is the strongest and fullest.

Article 21

Paragraphs (1) and (2) are elaborated on in General Elucidation [II point (5)]. In paragraph (3), only two ways are mentioned of acquiring a *hak milik*, given that other ways are forbidden by Article 26(2). As for the methods of acquiring a *hak milik* mentioned this paragraph, they are ways of obtaining a right without taking a positive act which is purposefully aimed at making the right in question transfer. It is only appropriate, therefore, that for as long as Indonesian citizens concurrently holds foreign citizenship, they should be treated differently from other Indonesian citizens in terms of land ownership.

Article 22

One example of how a *hak milik* comes into existence under adat law is land clearance. Ways of acquiring a *hak milik* under adat law will be regulated so as to prevent the occurrence of things which disadvantage the interests of the public and the State.

Article 23

Elucidation is given in General Elucidation (point IV).

Article 24

This article serves as an exemption from the principle stated in Article 10. The forms of relationship between the owner and tiller/user include lease, output sharing, and *hak guna-bangunan* (right of use of structures).

Article 25

Land with the status of a *hak milik* which is encumbered with a *hak tanggungan* (security title) remains in the hand of the owner. In the case where the owner requires some cash, he can *menggadaikan* (i.e. pledge or pawn) the land --on a temporary basis-- in accordance with the provisions of Article 53. In this regard, the land transfers to the holder of *hak gadai* (right of pledge).

Article 26

The provision of paragraph (1) is described in General Elucidation [II point (6)] as having the purpose of giving protection to economically weak groups. In this Basic Law, distinction is made not between indigenous and non-indigenous citizens but between economically strong and weak groups. The economically strong can be Indigenous and non-indigenous citizens. Meanwhile, what paragraph (2) says results from the provision in Article 21 concerning who is non-eligible for land ownership.

Article 27

Land is abandoned when it is deliberately not used in line with its condition or with the nature and purpose of the right on it.

Article 28

This type of right is specially intended to enable companies dealing in agriculture, fishery, and animal husbandry to work on land which they do not own. It differs from *hak pakai* (right of use) in that the former can be granted only for purposes related to agriculture, fishery, and animal husbandry and only on land of at least five (5) hectares. Unlike a *hak pakai*, a *hak guna-usaha* can change hands and be transferred to another party and can be encumbered with a *hak tanggungan*. A *hak guna-usaha* can not be granted to foreigners. As for corporate bodies operating with foreign capital, they can be granted with a *hak guna-usaha* only with reference to the limitations stipulated in Article 55.

To encourage efficient use and exploitation of the land, it is stipulated that in the case of land whose area is 25 hectares or more, adequate investment must be available and good corporate management techniques must be adopted. However, this does not mean that land whose area is less than 25 hectares can be treated badly because, in that case, the *hak guna-usaha* can be revoked (Article 34).

Article 29

Due to its nature and purpose, a *hak guna-usaha* is a right with a limited term. A term of 25 or 35 years with a possibility for a 25-year extension is seen as long enough to purposes related to the cultivation of plants with a long lifespan. The term of 35 years, for example, has been fixed in view of the lifespan of oil palms.

Article 30

Foreigners are not eligible for a *hak guna-usaha*.

Corporate bodies which are eligible for a *hak guna-usaha* are those which have progressive national capital, be they indigenous or non-indigenous. As for corporate bodies operating with foreign capital, the possibility to grant them with a *hak guna-usaha* is open only in the case where it is deemed necessary to do so in light of an act which regulates *pembangunan nasional semesta berencana* (well-planned, all-encompassing national development) [Article 55].

Articles 31 through 34

Self-explanatory. As for the provision of Article 32, elucidation is given in General Elucidation (point IV).

Article 35

Unlike *hak guna-usaha* (right to cultivate), *hak guna-bangunan* (right of use of structures) has nothing to do with agricultural land. Because of this, a *hak guna-bangunan* can be granted not only on land possessed by the State but also on land owned by private individuals.

Article 36

See elucidation on Article 30.

Articles 37 through 40

Self-explanatory. As for what is stipulated in Article 38, it is already elaborated on in General Elucidation (point IV).

Articles 41 and 42

Hak pakai (right of use) is the “collective definition” of the rights which are known in land law by different names, all of which --with slight differences due to differences in circumstances amongst regions-- provide the holder with powers as meant in this article. In the context of simplification as described in the General Elucidation, the new agrarian law uses the same term (i.e. *hak pakai*) to refer to these rights.

Foreign embassies can be granted with a *hak pakai* because this right can be valid for as long as the land is used for that purpose. Foreign individuals and foreign corporate bodies can be granted with a *hak pakai* because this right only provides limited powers.

Article 43

Self-explanatory.

Articles 44 and 45

Since *hak sewa* (right of lease) is *hak pakai* with special characteristics, it is treated separately. In view of the provision of Article 10(1), a *hak sewa* is available only for structures. A *hak sewa* to agricultural land is by nature transient [Article 16 in conjunction to Article 53]. The state cannot lease out land because the State does not own land.

Article 46

Hak membuka tanah (right to clear land) and *hak memungut hasil hutan* (right to collect forest produce) are land rights under adat law. These rights need to be regulated by way of a Government Regulation in the interests of the public which are broader than the interests of the individual in question or those of the adat-law community in question.

Article 47

Hak guna-air (right to use water) and *hak pemeliharaan dan penangkapan ikan* (right to cultivate and catch fish) have something to do with water which does not exist on one's own land. In the case of water existing on one's own land, these two rights are inherent to the content of *hak milik atas tanah* (right of ownership to land).

Hak guna-air is a right to obtain water from a river, canal, or spring which exists outside of one's own land, e.g. for purposes related to the irrigation of one's own land, to household use, or to other uses. In many cases, the water which one requires needs to be flowed in through land belonging to another person and, when it is no longer required, to be flowed out (disposed) through land belonging to still another person. These persons are not supposed to block the land owner from flowing such water into and out of the latter's land through their respective land parcels.

Article 48

Hak guna ruang angkasa (right to use airspace) has been created in view of the current advancements in technology and of the possibilities that may be open in the future.

Article 49

To remove any doubt and skepticism, this article asserts that the new agrarian law will pay attention as required to matters related to worship and other sacred purposes. See also Article 5 and Article 14(1)(b).

Articles 50 and 51

This is a consequence to the fact that this Act contains only the fundamentals of the new agrarian law.

Article 52

To make sure that the regulations and measures serving to implement the UUPA are carried out in the best possible manners, the criminal sanctions stipulated in this Article are required.

Article 53

See elucidation on Article 16.

Article 54

This article has been created in view of the provisions of Articles 21 and 26. One who has declared his rejection of Chinese citizenship but whose rejection of Chinese citizenship has not been legalized when this Act comes into effect shall be subject to the Provisions concerning Conversion as meant in Article I(3), Article II(2), and Article VIII. However, when his rejection of Chinese citizenship has been legalized, a possibility is open for him to acquire a land right as one with single Indonesian citizenship. This also applies to individuals as meant in Article 12 of Government Regulation No. 20 of 1959, that is in the case where no confirmation from the authorities has been obtained.

Article 55

See elucidation on Article 30.

Paragraph 1 refers to foreign capital which already exists, and *paragraph 2* to new foreign capital. As has been asserted in the elucidation on Article 30, the granting of a new right under paragraph 2 is possible only in the case where it is deemed necessary to do so in light of an act which regulates *pembangunan nasional semesta berencana* (well-planned, all-encompassing national development).

SECOND - According to the Provisions concerning Conversion, all the rights which have by now existed should become new rights under UUPA. The conversion of such rights into *Hak guna-usaha* (right to cultivate) and *hak guna-bangunan* (right of use of structures) as meant in Articles I, II, III, IV, and V shall proceed with reference to the general conditions as meant in Article 50(2) and to the special conditions, i.e. those related to the condition of the land in question as well as those enumerated in the right conversion deed in question, provided that this does not contradict the new regulation.

THIRD -- The structure of the village administration needs to be revised if agrarian-law reform is to be implemented in the best possible manner under this Act. The village administration will play a very important role in implementing the new agrarian law.

FOURTH -- This provision is intended to remove rights which are feudalistic and, hence, are not in line with the provisions of this Act.

SUPPLEMENT TO STATE GAZETTE NO. 2043