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Lease Agreement of "Surat Ijo" Land in Surabaya in Relation to Law Number 5 of 1960 on the Basic Agrarian Law.

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Abstrak: *This journal examines the legal implications of lease agreements involving "Surat Ijo" land in Surabaya in the context of Law Number 5 of 1960 on the Basic Agrarian Law (UUPA). "Surat Ijo" is a type of land document in Indonesia that holds significant legal standing for land ownership and usage rights. The study aims to explore how lease agreements concerning "Surat Ijo" land align with the UUPA's regulations, specifically addressing the issue of land rights, legal certainty, and the protection of both lessors and lessees. Through a normative juridical approach, the research highlights key legal provisions in the UUPA that govern land use, transfer, and lease, and discusses their relevance to "Surat Ijo" land transactions in Surabaya. The analysis reveals the complexities surrounding the lease of such land, particularly concerning its long-term leaseability, legal risks, and the need for clearer regulations to ensure the protection of parties involved. The journal concludes with recommendations for improving legal clarity and the enforcement of land rights to strengthen the legal framework surrounding "Surat Ijo" land leases in Indonesia.*

Keywords: *Lease Agreement, "Surat Ijo" Land, Law Number 5 of 1960, Basic Agrarian Law, Land Rights, Legal Certainty.*

INTRODUCTION

The Surabaya City Government, as the holder of land management rights, has the authority to grant portions of the land it manages to third parties, in this case, the citizens of Surabaya, by issuing a Land Use Permit (SIPT), which is commonly referred to as a "Green Letter" (Surat Hijau) in Surabaya society, although this is not a juridical term. The authority of the Surabaya City Government over the land it manages is in accordance with the definition of land management rights stated in Article 1, paragraphs 1 and 2, of the Minister of Home Affairs Regulation Number 1 of 1977 concerning Procedures for Application and Settlement of Granting Rights to Parts of Land Under Management Rights and its Registration.

Upon the issuance of the Land Use Permit, the Surabaya City Government collects a certain amount of money as compensation, which is then deposited into the regional treasury. According to data from the Surabaya City Government, the total area of land with the Land Use Permit (IPT) status is 8,043,679.17 m^2, spread across 47,672 parcels. [1]The Surabaya City Government has also issued Regional Regulation Number 1 of 1997 on Land Use Permits to regulate the issuance of these permits. The definition of a Land Use Permit itself is outlined in Article 1, point f, of the regulation.

Every individual or legal entity wishing to use the land must first obtain a Land Use Permit by submitting an application to the Mayor of Surabaya or an authorized official.

The ownership or control of land in Surabaya is marked by a unique phenomenon of land using the Land Use Permit (IPT) or commonly known as "green letter" land. Between 1966 and 1977, the Surabaya City Government regularized informal settlements and homeless people by providing very simple

[1] Badan Pembentukan Peraturan Daerah, *Rancangan Peraturan Daerah kota Surabaya Tentang Perubahan Atas peraturan Daerah Kota Surabaya Nomor 16 Tahun 2016 Tentang Pelepasan Tanah Aset Pemerintah Kota Surabaya*. 2024. Hal. 3.

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houses (RSS) with a maximum size of 50 square meters.

With population growth, land status issues arose, especially regarding land without certificates. To address this, the government carried out land redistribution as part of the land reform policy under the Basic Agrarian Law (UUPA). However, many citizens only received leasehold rights, not ownership rights. This situation led to the emergence of "green letters," affecting hundreds of thousands of Surabaya residents living on 47,000 parcels of land claimed by the city government. Despite an agreement to grant ownership rights, the leasing system continued until 1971. In 1977, the lease system was replaced with a retribution system, but in practice, it was not much different. Residents who had lived on the land for more than 20 years were trapped in the retribution system, and those who refused to pay continued to receive bills.

Citizens who obtained the Land Use Permit or Green Letter did not receive any land ownership certificates other than the green letter itself. However, holders of the land use permit can apply for Ownership Rights, Building Use Rights, or other rights as stipulated under the Basic Agrarian Law (UUPA) related to the land under the Land Use Permit status. Based on this, the research titled "Juridical Analysis of Lease Agreements on Green Letter Land in Surabaya in Relation to Law No. 5 of 1960 on the Basic Agrarian Law" was conducted.

METHODOLOGY

This legal research employs a normative juridical study type by analyzing legal provisions regulated in the Basic Agrarian Law. The research utilizes several approaches, including the statutory approach, analytical approach, case approach, and historical approach. In line with the use of both primary and secondary data in this study, data collection is conducted by gathering, reviewing, and systematically processing relevant bibliographic materials and documents. Secondary data, particularly regarding secondary legal materials, is obtained from literature, taking into account the principles of updating and relevance.

RESULT AND DISCUSSION

If we observe in our country, the term commonly used is "land reform." Literally, the word "landreform" comes from the English language, with "land" meaning land and "reform" meaning change or overhaul. Land reform refers to an overhaul of the land ownership structure; however, what is actually meant is not just the restructuring of land control, but also the transformation of human relationships concerning land in order to increase the income of farmers.[2]

Agrarian reform, particularly the restructuring of land control, has been recognized since ancient Roman times, although its form and nature have varied throughout history, depending on the demands of the era and the goals of the ruling elites. Briefly, the historical background of the idea of land reform dates back to the 6th century BCE, as mentioned by Ella H. Tuma in her book "*The Twenty-Sixth Century of an Agrarian Reconstruction*." A more specific starting point for land reform is around 133 BCE, when two Roman brothers, Tiberius Gracchus and Gaius Gracchus, proposed to the Roman Senate the creation of a law to limit the ownership of agricultural land. Although they were eventually killed by the landowners (their opponents), this significant moment became a pivotal event in history, eventually bringing justice, prosperity to the common people, and elevating human dignity.[3]

This idea was later referred to by Lenin as land reform, a concept now widely used by countries across the world for political, social,

[2] Sri Sudaryatmi, Penentuan Hak dan Pemanfaatan Tanah Timbul dalam Kaitannya dengan Pengembangan Ekonomi Wilayah Pantai (Studi Kasus di Desa Bulumanis Kidul, Kecamatan Margoyoso, Kabupaten Pati). Tesis Magister Ilmu Hukum, Program Sarjana, Hal. 42.

[3] Sri Sudaryatmi, Penentuan Hak dan Pemanfaatan Tanah Timbul dalam Kaitannya dengan Pengembangan Ekonomi Wilayah Pantai (Studi Kasus di Desa Bulumanis Kidul, Kecamatan Margoyoso, Kabupaten Pati). Tesis Magister Ilmu Hukum, Program Sarjana, Hal. 42.

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economic, and even defense and security purposes.[4]

Literally, the term "land reform" comes from the English language, with "land" meaning land and "reform" meaning change or overhaul. Therefore, the meaning of land reform is an overhaul of the land structure. However, this does not only refer to changes in the structure of land control, but also to the transformation of the relationship between humans and land in order to increase the income of farmers. This transformation is fundamental in nature, not just a patchwork solution.[5]

As previously explained, the land reform program includes both land reform in a broad sense and in a narrow sense. In this regard, Peter Doner states that: "Land reform in a narrow sense refers to actions aimed at redistributing land for the benefit of farmers, while in a broader sense, it can include land consolidation and registration.[6]

As mandated in the Basic Agrarian Law (UUPA), Law Number 56 PRP of 1960, Government Regulation Number 41 of 1964, and various implementing regulations were issued. Literally, the term "land reform" comes from the English language, consisting of the word "land," meaning land, and the word "reform," meaning overhaul. Therefore, land reform can be simply understood as the reorganization of land. However, in its true concept, land reform is not that simple; it refers not only to the reorganization of land or the restructuring of land control but also to transforming the relationship between humans and land, and between humans in relation to land, in order to increase farmers' income. This transformation is fundamental in nature. Therefore, to understand the true concept of land reform, there are various expert opinions on land reform, which can be found in several agrarian literature sources.

From the statement above, it can be understood that the meaning of land has various interpretations, which depend on the field of study from which it is viewed. From a legal perspective, land can be understood as ownership (property rights), but from other disciplines, the definition of land is not the same. It could represent a source of power or political strategy, a factor of production, or a part of a social system related to or indicating land in agricultural sciences, among other meanings. However, in general, the social stratification of land refers to its use. The term "reform" clearly refers to an overhaul, to change or reshape something for improvement. Thus, land reform is related to the institutional structural changes that govern the relationship between humans and land.

Agrarian reform involves elements that, either fully or partially, include the redistribution of land to landless people, appropriate financing arrangements for land purchases, guarantees for land tenure and fair access, improved farming methods through technical assistance, sufficient credit, marketing facilities through cooperatives, and so on.[7]

In Indonesia, the concept of land reform is encapsulated in the Basic Agrarian Law (UUPA), which, according to several experts, including Boedi Harsono[8], Efendy Perangin[9], and Mustafa[10], is divided into two parts: in a broad sense and in a narrow sense. In the broad sense, it includes the following programs: (1) agrarian law reform, (2) the abolition of foreign rights and colonial land concessions, (3) gradually ending feudal exploitation, (4) the reorganization of land ownership and control, as well as the legal

[4] A.P. Parlindungan, Landreform di Indonesia suatu Perbandingan, Mandar Maju, Bandung, 1987, Hal 58.
[5] Hustiati, Agraria Reform di Philipina dan Perbandingannya dengan Landreform di Indonesia, Mandar Maju, Bandung, 1990, Hal. 31-32.
[6] Koen Soebakti, Landrefom Catat-catat di Dalam Struktur Agraria sebagai Hambatan bagi Perkembangan Ekonomi, Jakarta Pusdiklat, Jakarta, 1975, Hal. 12.
[7] Ladejinsky W, Agrarian Reform in Asian, Leiden, 1980, Hal. 33.
[8] Boedi Harsono dalam Abdurrahman, Beberapa Masalah tentang Landreform. Pusat Studi Hukum Tanah. Fakultas Hukum. Universitas Lambung Mangkurat, Banjarmasin, 1990, Hal. 2
[9] [9]Efendy Parangin, Hukum Agraria di Indonesia. Suatu Telaah dari Sudut Pandang Praktisi Hukum, Rajawali, Jakarta, 1986, Hal. 121.
[10] Mustafa, Hukum Agraria dalam Perspektif, Remaja Karya, Bandung, 1988, Hal. 27.

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relationships related to land control, and (5) the planned planning, allocation, and utilization of land, water, and natural resources based on their capacity and capability. In contrast, land reform in the narrow sense only includes the fourth point: the reorganization of land ownership and control and the legal relationships related to land control.

In essence, the redistribution program is not a distribution program, because the land subject to land reform, which is already state land, could originate from two possible sources:[11]

a. State land (free land) refers to land that originated from former foreign private plantations or large plantations during the Dutch colonial era, which were nationalized under the Basic Agrarian Law (UUPA). For example, land that was once under *erfpacht* rights (similar to HGU land).
b. State land as a result of expropriation refers to land that has been compensated for excess land, abandoned land, and neglected land.

The use of land by the Surabaya City Government was originally regulated by the Regional Regulation of Surabaya Municipality No. 3 of 1987 concerning the Use of Land or Places Controlled by the Surabaya Municipality Government. This regulation was later repealed by the Regional Regulation of Surabaya Municipality No. 12 of 1994 concerning the Use of Land or Places Controlled by the Surabaya Municipality Government. Subsequently, the Regional Regulation of Surabaya Municipality No. 12 of 1994 was also repealed by the Regional Regulation of Surabaya Municipality No. 1 of 1997 concerning Land Use Permits. The regulation implementing the Regional Regulation of Surabaya Municipality was initially carried out by the Decree of the Mayor of Surabaya No. 202 of 1987. This decree was later repealed by the Decree of the Mayor of Surabaya No. 22 of 1993 concerning the Procedures for the Settlement of Land Use Permits or Places Controlled by the Surabaya Municipality Government. The Decree No. 22 of 1993 was further repealed by the Decree of the Mayor of Surabaya No. 1 of 1998 concerning Procedures for the Settlement of Land Use Permits.

The definition of Land Use Permit is outlined in Article 1, letter f of the Regional Regulation of Surabaya Municipality No. 1 of 1997 in conjunction with Article 1, letter h of the Decree of the Mayor of Surabaya No. 1 of 1998. The Land Use Permit is a permit granted by the Mayor or an appointed official to use land and does not constitute the granting of land use rights or other land rights as regulated in Law No. 5 of 1960.

Surabaya City is unique in terms of land management. In Surabaya, there is a land status referred to as "surat ijo" (green letter). The "surat ijo" phenomenon represents a contractual relationship between two parties with mutual needs: the residents and the Surabaya City Government. The Surabaya City Government considers the land from the colonial era or the "surat ijo" land as state-owned land used for the welfare of the people.

The Surabaya City Government issued the Surabaya City Regional Regulation No. 3 of 2016 concerning Land Use Permits (IPT). This regulation provides certainty regarding the "surat ijo," which is considered an asset of the Surabaya City Government, and allows the Surabaya City Government to collect fees or rental payments from tenants, in this case, the residents holding the surat ijo.

The issuance of Land Use Permits is divided into three categories:

1. Inauguration category, which involves the issuance of a Land Use Permit for land that has previously been granted permission;
2. Extension category, which involves the issuance of a new Land Use Permit to replace the expired one;
3. Transfer of rights category, which involves the issuance of a new Land Use Permit due to a transfer of rights resulting from a sale, gift, or inheritance.[12]

According to the Surabaya City Regional Regulation No. 1 of 1997 and the Decree of the

[11] Ibid. Hal 162 – 163.

[12] Urip Santoso, "Pengelolaan Tanah Asset Pemerintah Kota Surabaya," Jurnal Yuridika 25, no. 1 (April 2010): Hal 4.

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Mayor of Surabaya No. 1 of 1998, a third party wishing to use land owned or controlled by the Surabaya City Government must first obtain permission from the Mayor of Surabaya or an appointed official, which is the Head of the Land and Building Management Office, in the form of a Land Use Permit (IPT). The land issued with a Land Use Permit (IPT) is land owned or controlled/managed by the Surabaya City Government. A Land Use Permit (IPT) may be granted to individuals or legal entities established under Indonesian law and domiciled in Indonesia. To obtain a Land Use Permit (IPT), the applicant must submit a written request to the Mayor of Surabaya or the appointed official, which is the Head of the Land and Building Management Office. The Land Use Permit (IPT) is issued for requests that have met the requirements in accordance with the provisions of the Surabaya City Regional Regulation No. 1 of 1997 and the Decree of the Mayor of Surabaya No. 1 of 1998.

Based on the Surabaya City Regional Regulation No. 1 of 1997 and the Decree of the Mayor of Surabaya No. 1 of 1998, Land Use Permits are classified into three categories:

1. Classification I: Long-term Land Use Permit, valid for 20 (twenty) years and may be extended for up to 20 (twenty) years each time, specifically for business and residential purposes;
2. Classification II: Medium-term Land Use Permit, valid for 5 (five) years and may be extended for up to 5 (five) years each time;
3. Classification III: Short-term Land Use Permit, valid for 2 (two) years and may be extended for up to 2 (two) years each time.

Legal consequences are the outcomes arising from a legal event. [13]Since a legal event is caused by a legal act, and a legal act may create a legal relationship, legal consequences can also be understood as the outcomes resulting from a legal act and/or legal relationship. More specifically, according to Syarifin, legal consequences are all outcomes that occur as a result of legal actions performed by a legal subject toward a legal object or other consequences arising due to specific events, which have been determined by law or are considered legal consequences.[14]

Based on the explanation above, to determine whether legal consequences have arisen, the following matters need to be considered:

a. The existence of an act performed by a legal subject toward a legal object or the occurrence of a specific consequence of an act, which has been regulated by law;

b. The occurrence of an act that immediately engages the rights and obligations that have been regulated by law (legislation).

In the case of the "surat ijo," the legal consequence of the Land Use Permit (Surat Ijo) is that every resident holding the Surat Ijo is obligated to manage the land and pay retribution to the Surabaya City Government. The Surabaya City Government may revoke the Land Use Permit (Surat Ijo) at any time since the Surat Ijo does not constitute the granting of ownership rights over the land.

According to the author, if the holders of the "surat hijau" (green certificate) do not release the land as required by Regional Regulation No. 16 of 2014, the residents of Surabaya will still be subject to the provisions regarding the "surat hijau" as outlined in Regional Regulation No. 1 of 1997 on Land Use Permits. This is what leads to the legal consequences of this "surat hijau" leasing arrangement being potentially disadvantageous for the residents.

The main issue raised by the researcher regarding legal consequences involves the lease agreement between the Surabaya City Government and the residents holding land use permits, where the Constitutional Court has ruled in its decision (Civil Case No. 62/PUU-XIII/2015) that the lease agreement is valid and has binding legal force. Therefore, the Constitutional Court acknowledged this agreement as a legal source for both parties, which must be adhered to.

In accordance with the Constitutional Court's ruling, the main issue raised by the

[13] Ishaq, *Dasar-Dasar Ilmu Hukum*, Cetakan I, Sinar Grafika, Jakarta, 2008, Hal. 86.

[14] Ishaq, *Dasar-Dasar Ilmu Hukum*, Cetakan I, Sinar Grafika, Jakarta, 2008, Hal. 86.

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researcher is that the decisions made in this case represent the legal consequences arising from the lease agreement between the Surabaya City Government and the residents of Surabaya holding land use permits. The lease agreement is considered valid and legally binding, with the following considerations by the judges:

1. That before further considering the applicants' petition, the Court needs to cite Article 54 of the Constitutional Court Law, which states: "The Constitutional Court may request information and/or meeting minutes related to the petition under review from the People's Consultative Assembly, the House of Representatives, the Regional Representative Council, and/or the President" when conducting a review of a law. In other words, the Court may choose whether or not to request information and/or meeting minutes related to the petition under review, depending on its urgency and relevance. Since the legal issues and the petition in question are already clear, the Court will decide the case without hearing information and/or meeting minutes from the People's Consultative Assembly, the House of Representatives, the Regional Representative Council, and/or the President.

2. That one form of land reform in Indonesia relates to the prohibition of land ownership and control exceeding certain limits as stipulated in Article 7 of Law No. 5/1960, which is further emphasized in Article 17, paragraph (1) of Law No. 5/1960, which mandates the regulation of the maximum and/or minimum area of land that may be owned by a family or legal entity.

3. That the regulation of the maximum and/or minimum area of land is part of implementing the authority based on the state's right to control land. Articles 1, paragraph (3) and 2, paragraph (1) of Law No. 5/1960 state that the relationship between the Indonesian people and the land, water, and space, including the natural resources contained therein, is a perpetual relationship, and at its highest level, it is controlled by the state as the organization of the power of all the people of Indonesia. Therefore, the state's authority to control land is aimed at achieving the greatest possible prosperity for the people, granting the state the authority to:

   a. To regulate and administer the allocation, use, availability, and maintenance of land, water, and space;
   b. To determine and regulate the legal relationships between individuals and the land, water, and space;
   c. To determine and regulate the legal relationships between individuals and legal acts regarding land, water, and space [refer to Article 2, paragraph (2) of Law No. 5/1960].

4. This authority is in line with the interpretation of "controlled by the state" in the Constitutional Court Decision No. 001-021-022/PUU-I/2003, dated December 15, 2004. In the decision, the Court expanded the meaning of "controlled by the state" not only as the right to regulate, but more importantly, as the people's granting of power to the state to carry out a series of resource management actions aimed at the greatest possible prosperity for the people. This includes five functions of state control: policy function (beleid), management function (bestuurdaad), regulatory function (regelendaad), control function (beheerhaad), and supervision function (toezichthoudensdaad).

5. Based on the above, in the context of regulating the maximum and/or minimum area of land that can be owned with a land right by a family or legal entity as stated in Article 17, paragraph (1) of Law 5/1960, there is no constitutional issue regarding the validity of the aforementioned article. In other words, the issue faced by the petitioners is a concrete problem that is not related to the constitutionality of

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the article. Regarding the petitioners' request for the article to be interpreted in the current context, the Court considers that such a request would lead the Court to create a new norm, which is not within its authority.

6. The Court finds that, in addition to aligning with the concept of "controlled by the state" as adopted by the 1945 Constitution, the article in question is fair, non-discriminatory, and does not cause legal uncertainty because it applies equally to every family or legal entity that possesses land rights as stipulated in Article 16 of Law 5/1960. Therefore, if land is not owned under the basis of those rights, it is controlled by the state.

7. The Court asserts that land reform is not about land redistribution, but as a country based on Pancasila, land reform is aimed at the greatest prosperity for the people, following the applicable legal framework. To ensure that land reform is carried out with consideration for land ownership for the people and to address agrarian conflicts, the Court reminds the lawmaker of the existence of the People's Consultative Assembly Decree No. IX/MPR/2001 on Agrarian Renewal and Natural Resource Management, which serves as the foundation and direction for improving all laws and regulations related to agrarian matters and the reorganization of land control, ownership, use, and benefits. This should be done in a fair manner, ensuring legal certainty, protection, justice, and prosperity for all the people of Indonesia.

Based on the assessment of the facts and law as described above, the Court concludes:

a. The Court has the authority to adjudicate the request at hand;
b. The Petitioners have legal standing to submit the request;
c. The main issues raised by the Petitioners are not legally valid in their entirety.

This is in accordance with the Constitution of the Republic of Indonesia 1945, Law No. 24 of 2003 concerning the Constitutional Court as amended by Law No. 8 of 2011 on Amendments to Law No. 24 of 2003 concerning the Constitutional Court (State Gazette of the Republic of Indonesia 2011 No. 70, Supplementary State Gazette of the Republic of Indonesia No. 5226), and Law No. 48 of 2009 concerning Judicial Power (State Gazette of the Republic of Indonesia 2009 No. 157, Supplementary State Gazette No. 5076).

The IPT land that is leased to the people of Surabaya and subsequently used to build structures gives rise to a land right, namely the Right to Build (HGB) on the land under the Management Rights (HPL). The term of HGB is a maximum of 30 (thirty) years. Considering the needs of the users, the HGB holders can apply for an extension for a period not exceeding 20 (twenty) years. After this period expires, the former right holder can apply for a renewal of the Right to Build on the same land. In order to extend or renew the right, a request must be made, subject to the applicant fulfilling obligations and there being no changes in the spatial planning of the area.

The application for an extension of HGB must be approved by the holder of the land management rights. The application for extension must be submitted no later than 2 (two) years before the expiration of the HGB. In the case of an extension or renewal of HGB, it must be recorded in the land book by the Land Office, in accordance with Article 27, paragraph (3) of Government Regulation No. 40 of 1996 on Procedures for the Application of Extension or Renewal of the Right to Build.

The position of the Surabaya City Government over the IPT land with HPL status is as the asset manager, not the landowner. Therefore, if the status of the IPT land is to be upgraded to ownership rights, it must first undergo a release process, returning the land to the state, thereby changing its status to state land. The release of the land to state ownership must be done legally by the Ministry of

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Agrarian Affairs and Spatial Planning (ATR) and/or the National Land Agency (BPN).

Subsequently, the state land can be upgraded to ownership rights according to the provisions in Article 45, paragraph (2) of Law No. 1 of 2004 on State Treasury, which emphasizes that "the transfer of state/regional property can be done through sale, exchange, donation, or as government capital after receiving approval from the DPR/DPRD (People's Representative Council/Regional People's Representative Council)."

The release of government-owned land assets in Surabaya has been regulated by Regional Regulation No. 16 of 2014 on the Release of Surabaya City Government Land Assets, and the procedures for this process are stipulated in the Mayor's Regulation No. 51 of 2015 on the Procedure for the Release of Surabaya City Government Land Assets

CONCLUSION

From the perspective of the basic agrarian law, the core objective is the equitable distribution of land to its citizens. However, the existing regulations in the region make it difficult for the goals of the Basic Agrarian Law (UUPA) to be achieved. This situation necessitates a revision of the regulations that have been implemented regarding the green land certificate or land use permit (IPT). Upon examining the considerations in the Regional Regulation (Perda) on IPT, which still references the Government Regulation on the control of state land, it becomes apparent that the foundational principles used by the Regional Regulation on IPT are in conflict with the UUPA. This is because the Government Regulation on the control of state land adheres to the domain principle, whereas the UUPA has already rejected this principle and removed it from the Indonesian land law system. The contradiction between the Perda IPT and the UUPA indicates that the Perda IPT should no longer be applied. Therefore, it is time for the Surabaya City Government to relinquish the use of the permitting system for the utilization of land assets.

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