

Legal Aspect of Use of Underground Space for Public Transportation (Legal Study of Jakarta Mass Rapid Transit Project)

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ABSTRACT

The development activities are things that every country to realize the fulfillment of the needs and welfare of the community. Limited land area is still one of the big problems in carrying out development. The land area that does not increase, followed by the need for land that continues to increase is the cause. The type of research used is the method normative and empirical juridical research which was finally analyzed using qualitative analysis methods. Regulation of the Governor of DKI Jakarta No. 167 of 2012 about underground space and the Regulation of the Minister of Public Works No. 02/PRT/M/2014 on Guidelines for Use of Space Inside the Earth, that exists today is sufficient and accommodate the implementation of the use of space underground for the construction of the Jakarta Mass Rapid Transit (MRT). However, as a step in the future use of underground space, required regulations on the use of space underground in the form of legislation that accommodates all the needs that have not been included in the current rules.

Keywords: Underground Space Utilization, MRT Jakarta, Legal Certainty.

I. INTRODUCTION

Land is a vital part that is needed by everyone in carrying out his life. The increasing need for land and the dwindling supply of land is one of the problems in the community. The existence of land in human life has meaning and at the same time has a dual function, namely social assets and capital assets. As a social asset, land is a means of binding social unity among the community to live and live. Soil functions

as capital assets that land is a capital factor in development and has grown as the object economy is very important as well as commercial material and object of speculation.¹

Along with developments, the use and utilization of land is not only limited to those above the ground, but also develops in the air space above the ground and into the underground. Utilization of the underground is generally used as a support building at the top or below ground level. Space under the ground is used as an alternative to the development of surface-up to underground development by the consideration of strategic, technical, and economical as a result of the limitations of land on top of ground surface.² However, it is also possible that the underground space is used for public and private purposes. Utilization of the underground for a variety of interests, it takes the law governing the use of the underground space is technical.

Vertical space utilization and space utilization within the earth are intended to improve the ability of space to accommodate the activities are more intensive, for example, can be a building high rise, both in the on the ground and in the earth. While the use of other spaces in the earth, among other things, for utility networks (power transmission network, telecommunication networks, pipelines

¹ Achmad Rubaie. Land Procurement Law for Public Interest, Malang: Bayumedia, 2007.

² Nurfakih Wirawan MSP. "Utilization of Dungeons." National Seminar on Thoughts on Drafting Laws on Land Use Rights, 2012.

clean water, and a network of gas, and others) and network rail railway or network path under the ground, this is stated in the Elucidation of Article 32 paragraph (2) of the Law on Spatial Planning.

The Provincial Government of Capital City of Jakarta (Jakarta Provincial Government), in conducting develop a means of public transport system mass has built a transport system fast train powered, which mean the MRT by utilizing the space underground as the station and the rail line in run as the Senayan road to the HI roundabout. MRT constructed, operated, managed and cared for by the Agency Enterprises Owned State (BUMN) shaped the company ben ama PT Mass Rapid Transit Jakarta (PT MRT Jakarta) which was established by Regulation Regional Province of DKI Jakarta No. 3 Year 2008.

In the construction phase I of the Jakarta MRT project, which began in 2014, a 16-kilometer railway line was built, which includes 10 kilometers of elevated lines and 6 kilometers of underground lines. Construction under the tan ah MRT Jakarta extends along approximately over 6 kilometers, consisting of underground MRT tunnels and six stations MRT underground. The six underground are stations Senayan, Istora, Bendungan Hilir, Setiabudi, Dukuh Atas, and the Roundabout Hotel Indonesia.

Although the construction of the MRT project has been completed and now the MRT has been in operation, but until now there is no regulation that regulates the use of underground space in the form of a law. Actually, the discourse on the enactment of the law has been around since 2017. In the construction phase II will be carried out for the construction of underground lines ranging from HI traffic circle to Kampung Bandan. However, until now, a regulation has not yet been issued which regulates the basis for the ownership of the underground space.

The legal protection of underground spaces and the coordination of underground spaces is very important. Direktour of PT MRT Jakarta, William P. Sabandar, says

this is necessary because the path MRT uses the access tunnel under the ground and the need to build other supporting facilities of a commercial nature. In addition, if there are no regulations governing this, the feared would occur a problem of law in the future that will come.

In the regulation concerning the national land current, Act No. 5 of 1960 on the Regulation of Basic Principles of Agricultural (UUPA) were made 15 years after independence and now aged 61 Year, a lot of new things that arise along with developments but are not recognized in the law. Including the right to the underground as well as the management of space below ground.

Regulations used as a basis for PT MRT Jakarta to the construction of the MRT project has been to use regulations governor (gubernatorial) Province of DKI Jakarta No. 53 on Assignment of PT MRT Jakarta for the implementation of infrastructure and means of MRT and Governor Regulation Number 140 of 2017 on the Assignment of PT MRT Jakarta as operator main area of Transit Oriented Development (TOD). Meanwhile, to carry out developments that makes use of the underground space, PT MRT Jakarta using the gubernatorial regulation No. 167 of 2012 on Underground Space.

But that needs to be known is, in regulation at the level of legislation is not no rules regarding the procedures utilizing the space below the ground and use of space under the ground that are used for the benefit commercially. In here only regulated on the utilization of space underground in general.³ Whereas the underground space used by the MRT as a station requires commercial support facilities, as said by the Director of PT MRT Jakarta. To provide legal certainty regarding the use of underground space for both public and commercial interests, very necessary

³ Sovia Hasanah. Ground Space Utilization Procedure www.hukumonline.com/klinik/detail/ulasan/t588c4057e9:ff9/prosedur-pemanfaatan-ruang-bawah-tanah.>. accessed on 10 October 2019.

arrangements regarding the use of space under the ground is technical.

II. RESEARCH METHOD

Research methods were used in the research of this is the study of juridical normative and empirical research or commonly known as the law of non doctrinal. It is called non- doctrinal legal research because in this study the author emphasizes research using social theories about law and psychosocial theories about law.⁴ In this study, normative and empirical juridical methods were used to analyze the problems that became the object of research, namely "The Indonesian Government's Policy on Utilization of Underground Space for the Construction of the Jakarta MRT Project".

The specifications in this study use the Analytical Descriptive method⁵ The study was conducted using descriptive analytical also tried to describe the theories and practices of the law regarding the object of the problems were investigated. In order to become research that is descriptive analytical, collecting data used in this study conducted a study of data of primary, secondary and tertiary and then all data obtained from the results of the study were collected and analyzed using qualitative analysis methods.⁶

III. DISCUSSION

A. Regulations governing the Utilization of Underground Spaces for the Construction of the Jakarta MRT Project (*Ius Constitutum*)

Development activities are things that are carried out in every country to realize the fulfillment of community needs and welfare. In practice, development is certainly closely related to land needs. The

limitation of land area is still one of the big problems in carrying out development. The land area that does not increase, followed by the need for land that continues to increase is the cause.

In the development project of MRT Jakarta, the underground into a solution for the problems of limited land in Jakarta. The utilization of this underground is the right solutions given land in Jakarta are almost not available at all.

The construction of the MRT project, which is a form of transportation development, was triggered by traffic density due to population growth and the dynamics of big cities which tend to move towards mass rapid transportation systems. This can be seen in a number of world cities in Europe, America, and even in Asia.⁷ As is the case in London as the first city in the world to operate mass transit subway, which was then followed in other cities such as New York, Paris, Moscow, Shanghai, Singapore, and New Delhi.

Utilization of space below ground for the construction project of MRT Jakarta is a breakthrough and innovation of new in the development of the means of transportation in Jakarta, even in Indonesia. However, the construction of the Jakarta MRT project is not the first to utilize underground spaces. Previously has been no examples of the use of space underground, for example in Block-M which is in the area of South Jakarta, there is a region of space under the ground which is used as a place of commerce as well as an exit for passengers. Not only that, the use of the underground is also done in Makassar to build a building under Field Karebosi are used for the benefit of business or center shopping.

The number of underground space utilization in various regions in Indonesia raises the question, whether the law in Indonesia has been quite adequate to be used as the basis of the use and management of space under the ground? Such that we

⁴ Hilman Hadikusuma. *Methods of Making Working Papers or Legal Thesis*. Bandung: Mandar Maju, 1995. p.61.

⁵ Ronny Hanitjo Soemitro. *Legal and Jurimetric Research Methodology*. Jakarta: Ghalia Indonesia, 1982. p. 67.

⁶ Dewi Utari Hadi and Vishnu Juwono. *Challenges of Implementation of a Collaborative Governance Model in Mass Rapid Transit Development in Jakarta. Sustainable Economic Development and Application of Innovation Management*, p.7701.

⁷ Irwan Ibrahim. "Technical Preparation for Mass Rapid Transport Development in Jakarta". *Journal of paine day Technology Indonesia* 12, 2010, p. 197.

know that Indonesia is a country of law, therefore the law must be placed as the cornerstone of the organization of the State. Given that the function and purpose of law is to create order (peace), certainty, justice and benefit, law is an important instrument in the implementation of development activities for the welfare of the community.

As with the use of space on the earth surface, the use of underground space can also have a negative impact if the development and management is not in accordance with the conditions that should be. By because of the use of space in the underground is in need of reference in its implementation so it can be implemented in an optimal and impact negatively as well as the risks that may arise can be minimized.⁸

UUPA has explained that included in the space sphere of agrarian are matters which relate to the areas of land covering the earth, the water, the room space and the wealth that it contains. While in terms of the scope of the earth, including the surface of the earth, the earth and the body parts of the room that there are in below the surface of the water.

In normative authority of the government to regulate land in Indonesia rests on Article 33 Paragraph (3) Legal Basis of State of the Republic of Indonesia of the 1945 which says "Earth, water, and natural riches are contained in it controlled by the State to be used for at - big yes for the prosperity of the people".

As in Article 2 paragraph (2) of the UUPA, the authority the right to master the state on the ground that arrange, organizes, usage, inventory, and maintance the earth, water, and living space. In addition, regulation of the legal relationship between the people with the earth, water, and room space has been specified in the article mentioned.

Right to control of the state over the land as stipulated in Article 33 Paragraph (3) of the 1945 Constitution in its implementation may be delegated in terms

⁸ Based on the Attachment to the Regulation of the Minister of Public Works Number 2/PRT/M/2014. p.1.

of management to establish a plan for the allocation and use of land, use of land to be adapted to the purposes of the implementation of its work, hand over some parts of the land that the so-called by a third party and/or may also do so in the form of working together with the third. As the provisions in Article 2 paragraph (4) UUPA mentioning that, the right of control of the State that its implementation can be delegated to the regions of the Autonomous and communities' customary law, a necessary and not contrary to the interests of national, according to the provisions of Rule Government. In this case Article 14 Paragraph (2) also stipulates that Regional Governments have the authority to regulate the supply, designation and use of earth, water and space for their respective regions, in accordance with the conditions of their respective regions.

Later on, the delegation of authority the right to master the state on the ground in i is also supported by the rise of the Regulation of the Minister of Agrarian Number 9 of the 1999 on Procedures How Granting and Cancellation Rights and the State Land Management Rights. Regulation of the Minister mentioned in Article 67 explained that the management rights can be granted to the institutions of government, including government area, the Agency Enterprises Owned State (BUMN), Regional owned enterprises (BUMD), PT Persero, legal entities or other government appointed by the government, or entity other which dtberi delegation of authority to the implementation of most of the rights to master of the state on the ground. Based on the legal subjects who can be given the authority to exercise control over state land as described in the ministerial regulation, thus the implementation of the right to control over land can be authorized to the regional government.⁹

Haris Sibuea in the journal suggests that every entity that will utilize the

⁹ "Utilization of Land Management Rights by Third Parties." *Jurnal State law* 5 No. 1, 2007, p. 78.

underground space must first obtain the permit to use the underground. The permit for the use of the underground space is given to be able to utilize the space under the ground with certain limits and areas as a control over the utilization of the underground space. Government areas are referred is the governor and the device may areas as elements penyelenggaraan government area.¹⁰

As one of the government areas that receive the authority of the central government related to land management rights, the Government of the Province (Provincial) Jakarta has the authority to manage the interests of the region that is associated with land use or land in the territory.¹¹ The Provincial Government of DKI Jakarta is delegated authority in the implementation of regional autonomy over the right to control land by the state based on the authority for concurrent government affairs which is delegated to the regions.

As an institution that have autonomy in setting policy in the conduct of the affairs of government, the Government of the Regional Province of DKI Jakarta using the theory of the source of authority in the attribution or by delegation. It is based on the consideration that the position of the government area not as a subordinate of the government center, but rather as sub parts.¹² In accordance with the provisions of the Minister of Agrarian Regulation No. 9 Year of the 1999 on Procedures How Granting and Cancellation of Rights Over Land State and Right Management, the Jakarta government in terms of the implementation of the new powers have the authority to manage the area region to make the provision and implementation of policies in the field of governance space territory.¹³

¹⁰ Harris Y.P. Sibuea. *Juridical Overview of Underground Space Utilization.* Rule of Law 4, No. 1 (2013).

¹¹ Muhammad Bakri. *Land Rights by the State: Bam's Paradigm for Agrarian Reform.* Jakarta: Citra Media, 2007. p. 37.

¹² Murhaini, S., & Siswanto, B. "Local Government Authority to Manage Land Sector". *LaksBang Justitia.* (2009). p. 85.

¹³ Triasita Nur Azizah, Iwan Rachmad Soetijono and Rosita Indrayati. "Authority for Granting Permits to Use Underground Space in the Jakarta Mass Rapid Transit Project ." *Lantern Law* 5.2 (2018). p. 293.

On the basis of the city government with the authority of autonomy assigned PT MRT Jakarta to carry out all activities that relate directly to the MRT, including such for the utilization and development of infrastructure and means of MRT Jakarta, operation and maintenance (O&M) of infrastructure and facilities MRT Jakarta, as well as the development and management of property/business in the station and surrounding area, Depok and the surrounding region. Delegation of the assignment is first made the establishment of PT MRT Jakarta as Agency Business Local Owned (ROE) at June 17, 2008 by the Regulation of Regional DKI Jakarta No. 3 Year 2008 on the Establishment of enterprises PT MRT Jakarta.

In the procurement of land and land owned by the regional government needed for the construction of MRT Jakarta, it is carried out by the Regional Government of the DKI Jakarta Province. In fulfillment of the procurement needs of the land and the land is with the enactment of Decree of the Governor of DKI Jakarta No. 104 of the 2005 on Control Planning/Designation Field of Land for Implementation of Development Trace Line MRT corridor Lebak Bulus - Kampung Bandan, Municipality of Jakarta Selatan, Central Jakarta, West Jakarta and the municipality of north Jakarta and also Regulation Governor DKI Jakarta number 18 of 2008 on the Control Plan / Designation field of Land for Implementation of Development Share Interests General Trace Line MRT corridor Lebak Bulus - Dukuh Atas State Administration north Jakarta.¹⁴ With this regulation, it can be concluded that the DKI Jakarta Provincial Government has given written land use rights to PT MRT Jakarta in the form of management rights. This means that the right of control over land is control over state land with the intention of being used alone by the winner of the right can give a right to a third party with the authority to plan the designation and use of

¹⁴ Ibid p. 293.

the land right, use the land for the purposes of carrying out his duties, and hand over part of the land for third parties Properties, leasehold, right to Build, and the right to Use the titling of the land portion are carried out by officials of the authorities.¹⁵

Based on the results of an interview with Damai Ria, a staff of Urban Spatial Planning (PPRK), Department of Human Settlements, Spatial Planning and Land Affairs of the DKI Jakarta Provincial Government, regarding the permit for the control of the use of underground space by PT MRT Jakarta, it is as follows:

*“The permit (the construction of the Jakarta MRT Project) is carried out directly to the Governor through an assignment letter (Regulation of the Governor of the Special Capital City Region of Jakarta Number 18 of 2008 concerning Assignment of Planning/Allocation of Land Sector for the Implementation of Development for the Public Interest of the Mass Rapid Line Trajectory). Because it is also an acceleration project, so in terms of licensing, everything is done in an accelerated manner”.*¹⁶

On a national scale, the regulation regarding the use of underground space is regulated in Law Number 26 of 2007 concerning Spatial Planning. The consideration for the establishment of the Law on Spatial Planning is to realize the mandate of Article 33 Paragraph (2) of the 1945 Constitution of the Republic of Indonesia and Article 2 of the UUPA.

In DKI Jakarta, the rules for the use of underground money are regulated in DKI Jakarta Governor Regulation Number 167 of 2012 concerning Underground Space which is a follow-up to the provisions of Article 198 paragraph (5) of DKI Jakarta Regional Regulation Number 1 of 2012

concerning Regional Spatial Planning of 2030. The underground space used for the construction of the Jakarta MRT project is contained in Table 6 Attachment II of DKI Jakarta Regional Regulation Number 1 of 2012 concerning the 2030 Regional Spatial Plan, which states that the line stretches for 6 kilometers with a depth of 17,5 — 28 meters below ground level.

In the DKI Jakarta Regional Regulation Number 1 of 2012 concerning the 2030 Regional Spatial Plan which regulates the technical requirements for the use of underground space, however, there is no master statutory regulation that regulates the basis of rights regarding the use of underground space which is used as evidence underground ownership.

If you look at Law number 26 of 2007 concerning Spatial Planning, the term underground is referred to as space in the earth. In this law, it is stated that the use of space in the earth includes electricity transmission networks, telecommunications networks, clean water and gas pipelines, railway networks, and underground road networks. However, this Spatial Planning Law does not stipulate the category of depth level of underground space utilization or other technical matters regarding the utilization and management of underground space. Meanwhile, in the DKI Jakarta Governor Regulation Number 167 of 2012 concerning Underground Spaces, the use of underground spaces is classified into 2 (two) categories, namely shallow underground and deep undergrounds.

In accordance with Law Number 32 of 2009 concerning Environmental Protection and Management, Government Regulation Number 27 of 2012 concerning Environmental Permits, and DKI Jakarta Governor Regulation Number 157 of 2013 concerning Environmental Permits. The most important thing that PT MRT Jakarta did before the construction of the MRT project was the Environmental Impact Analysis (AMDAL) which can be used as the basis for carrying out the entire process of developing the Jakarta MRT project,

¹⁵ Heru Nugroho. "Jakarta MRT Development Project." Seminar on Introduction and Basics of Tunnel Engineering, Directorate of Bridges - Ministry of Public Works and Public Housing of the Republic of Indonesia. Jakarta, 2015.

¹⁶ Damai Ria, Personal interview, City Spatial Planning (PPRK) staff, Department of Human Settlements, Spatial Planning and Land Affairs of DKI Jakarta Provincial Government. 16 December 2019.

especially related to underground construction.¹⁷

This is in line with the statement made by the staff of the City Spatial Planning Division (PPRK), the Department of Human Settlements, Spatial Planning and Land Affairs of the DKI Jakarta Provincial Government. In an interview conducted, he said that:

"PT MRT Jakarta will definitely prepare an AMDAL study (and other permits related to the environment) there must be, the technical studies needed for that are indeed hiring and cooperation with Japan, so technically there must be a feasibility study." for licensing norinatifnya if the governor directly assigned PT MRT. From our existing technical team, from the Department of spatial planning (first name is still the zoning office) dan offices other (Department of Public Works and services related lain nya) assessed the feasibility study-nya, Is it really safe? Is there a bad possibility? After that, the construction will only be carried out. So, the DKI Jakarta Provincial Government's Cipta Karya, Spatial Planning and Land Service is a technical team that helps PT MRT Jakarta in discussing the study section by section, is it safe and so on".¹⁸

Quoted from the Annual Report PT MRT Jakarta in 2017, for the sake of preserving the environment, activities development before the construction work. In the stage of preparing for the construction (pre-construction) of the MRT project that utilizes underground space, two preparatory activities were carried out, namely Soil Investigation and Test Pit. These two activities are testing the characteristics and quality of the soil layer where the MRT Jakarta project will be built, as well as investigating utilities buried underground.

This process is the basis, both for the design and construction of construction and

for monitoring the environmental impacts of project development.¹⁹ Furthermore, at this stage, relocation of public facilities was also carried out in order to continue to prioritize the rights of city residents, such as relocating the utility of the public transportation stop on Sisingamangaraja road, South Jakarta.

Issuance Pergub DKI Jakarta number 167 of 2012 on Space below land as a form of discretion is the decision of the law. This is because the use of the underground for the construction of mass transportation such as MRT Jakarta is needed to support the mobility of society, but yet there are rules that regulate concerning the use and management of the cellar. Utilization of space underground for Jakarta MRT project development is something that needs to be done as an alternative because of land in Jakarta are dense and can arguably already do not exist. The use of discretion in decision-making law in the context of this was taken by the governor, as the organizer of the government, aims to expedite development for the benefit of the general, to fill the void the law because not any rules in the form of laws that regulate concerning the utilization of space below ground, as well as providing legal certainty in the construction of the Jakarta MRT project. This is in accordance with what is stated in Article 22 paragraph (2) along with an explanation, Law Number 30 of 2014 concerning Government Administration.

In addition to regulation Provincial Jakarta, there are other government policies whose existence is aimed weeks to strengthen legal certainty in terms of the utilization of space in the underground, namely the Regulation of the Minister of Public Works of the Republic of Indonesia Number 02/PRT/M/2014 on Guidelines for Use of Space on in the Earth. This Regulation of the Minister of Public Works is a legal product issued by the Minister of Public Works in 2014 which specifically

¹⁷ Annual report PT MRT Jakarta 2017.

¹⁸ Damai Ria. Personal interview, City Spatial Planning (PPRK) staff, Department of Human Settlements, Spatial Planning and Land Affairs of DKI Jakarta Provincial Government. 16 December 2019.

¹⁹ Annual report PT MRT Jakarta 2017.

regulates the use of underground space. The Minister of Public Works who in this case is responsible for spatial planning, including national strategic areas, realizing integration between activities as well as maintaining and improving the quality of space and environmental sustainability in order to create optimization of the use of space in the earth as a solution to the limited land on the earth's surface.

Regulation of Minister of Public Works on Guidelines for Space in In Earth incurred due to the utilization of space inside the earth are in need right reference in its implementation so it can be in implemented in an optimal and impact negatively as well as the risks that may arise can be minimized. Regulation Menteri is intended as a reference for the Government, the Government of the Province, the Government of Regency/City, as well as stake holders interests of others in carrying out the utilization of space in the earth. It also aims to make use of space inside bu noodles according to the principles of spatial planning to support the development of efficient and effectiveness f so as to realize a space that is safe, comfortable, productive and sustainable.

In line large, the rules it contains provisions common utilization of space in the earth, the technical provisions of the utilization of space in the earth, and the planned utilization of space within the earth. The rules of the common utilization of space in the earth according to this regulation provides that the use of space within the earth can be below the space of public and space private to consider the ownership of space (land) on its surface. Would but for the utilization of space in the bum i for the benefit of public as the construction of MRT Jakarta project, construction wherever possible or prioritized located in the bottom of the room public.

As is known that all forms of tenure and use of land are based on the pedestal of land rights that exist under national law in accordance with the designation of the use

of the land. The currently available land rights, as regulated in Article 4 of the UUPA, are only limited to regulating the two dimensional basis of land rights, while the use of underground space utilizes land in three dimensions. Rights so that rights on land that is regulated in Article 4 UUPA is not be construed to ownership of space in the earth.

From the above description, the authors argue that the existence of regulations of the Governor of DKI Jakarta No. 167 Year 2012 on Space Down Land and the Regulation of the Minister of Works No. 02/PRT/M/2014 on Guidelines for Space Inside Earth exists to deal with the situation that exists today, peratur second late is felt is sufficient to justify the use of space under the ground in the construction project of MRT.

In general, the substance in the two regulations is sufficient and accommodates the implementation of the use of underground space for the construction of the Jakarta MRT. Although the two regulations are not yet accommodating the provisions of the pedestal rights governing the possession of a room in the underground, in the use of the underground for the construction of MRT Jakarta, the right base used is still accommodated in the rights on land that is provided in Article 4 UUPA. This is because of the current national land law for the use of underground space, the ownership rights used are the same as the main building rights on the ground surface. The underground space used for MRT Jakarta is the same as the rights used on the surface of the land, namely in the form of Management Rights.

Indonesia still needs regulations on the use and management of underground space in which govern all underground space utilization needs are not accommodated in the current regulations to ensure legal certainty and legal protection of the right to control, use, utilization and management of the cellar.

B. Projection of Regulations on the Use of Underground Space in the Future (*Ius Constituendum*)

Development is a matter that is dynamic, supported with rapid technological developments, the establishment of a building is not only limited to the use of land two dimensions on the surface, but has developed into a three-dimensional space by using the underground. Regulation governing on the use underground space in the form of the Act is a requirement that is important and urgent, because the current legislation is not sufficient to accommodate all matters relating to the use and management of space below ground. Meanwhile, the use of underground space has been widely carried out in various regions in Indonesia.

Indeed, the urgency and background of the enactment of the Law on the use of underground spaces is important for its existence. This can be seen in its current state. A vacuum in the law because it has not the right base regulating the use of underground space will be permasalahannya in the future that will come, even be inhibiting the development as yet no certainty of law.

The use and utilization of land cannot be separated from the status of land rights attached to the land used. Based on Article 4 Paragraphs (1) and (2) of Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA) it is determined that there are various types of rights to the earth's surface called land, which are attached to the authority over rights to land. the land for holders of rights to use the land in question, as the land and water as well as space on it than is necessary for the sake of which directly relates to the use of land within the boundaries of the UUPA and regulations according to the rules of law are much higher.²⁰

²⁰ Afifah, Siti Sarah, Nia Kumiati, and Yusuf Saepul Zamil. The use of underground s for buildings in terms of applicable laws and regulations. Bandung: Environmental Law Development (2018). p. 50.

It should be noted that the provisions in Article 4 UUPA are only a limited set of the pads right on the ground that dimension two. When use of land is done in three dimensions by utilizing underground space, it will be a problem because there is no right of governing board. The absence of the right base regulating the ownership of underground space is a legal vacuum, and if left will trigger the occurrence of problems due to the legal uncertainty over the ownership of a space underground. In fact, these problems have started to emerge, as submitted by Alen Saputra, Secretary General of the Land Acquisition, the interviews were conducted²¹ he said that:

“Even the problems have started to emerge. Maybe not for MRT, because it uses public land. However, the use of the underground space has been carried out in several places, such as in Makassar. When compared to foreign countries such as Tokyo, China, India, all of them already have regulations (which regulate the utilization and management of underground spaces). But in Indonesia it doesn't exist yet. For example (using the underground) in Makassar, it has caused problems, because there is no legal basis that regulates, (it is not clear) who rents it to, in the end, it is the people who rent it out”.

The land law currently used adheres to the principle of horizontal separation, meaning that there is a separation between the land and the buildings on it. Currently, the use of space in the earth that can still be accommodated by the rights on the ground that there is a building in the body in the earth below the surface and in the space of buildings on the land which is part of building the parent who is on top of the ground. In this case, the allotment of underground space utilization must have a physical relationship with buildings on the surface, such as foundations, basements, and utility networks to support buildings on the surface. It is different if the building that

²¹ Alen Saputra. Personal Interview, Secretary of the Directorate General of Land Acquisition, Ministry of Agrarian Spatial Planning/National Land Agency. 17 December 2019.

require the use of space under the ground, which is physically not related to the building located at the surface of the earth on it, for example the construction of MRT Jakarta project. The dynamics of development does not rule out the possibility that the construction of the Jakarta MRT project, or other public interests, requires the construction of privately owned underground.

Legal considerations on the right to the underground will be used as one of the rights over the space of the legislation would be very useful as well as the opinion of Hendricus Andy Simarmata observer Urban University of Indonesia, which states that the basement can be used for 5 (five) main activities, namely: transport of mass, the activities of production, the activity of commercial activities of warehousing and activities of others such as the development of the science of earth.²² MRT only is one of the utilizations of space under the ground. Developing MRT should be integrated with the layout of space below the ground that appropriate vision of the development of Jakarta period ahead.²³ All activities that utilize the underground space need to be supported by a right base that provides legal certainty to carry out all these activities.

Land ownership rights in the earth has not set his right pedestal so that anyone can use either rent from the agency that relates well to the way that is illegal, namely paying money rent to the person. This condition is called a legal vacuum which if left unchecked will lead to conflict because of the legal uncertainty over the ownership of a space in the underground.²⁴

As the idea put forward by Prof. Boedi Harsono, Indonesia requires the institution the right new accommodate the ownership of space at the bottom of the ground in order to complement the repertoire of the Law of Land national

which is named the Right to Use the Underground Space (HGBRT). All types of land ownership rights will certainly give rise to rights, limitations and obligations. For that, it takes also the rules governing the obligations and restrictions about the authority of the holder of rights and the holders of rights over the land on top of it in order to provide certainty of law for holders of rights and also parties others whose interests may be affected by the presence of such buildings.

In the Draft Law of the Land, there are provisions concerning the rights of space above and below the ground, this is a new provision that is not accommodated in the UUPA.

If seen from Article 39 Draft Law Land, there are a kind of new rights that were previously not regulated in the UUPA, namely the Right to Build (HGB) in the underground of Land and Right to Use space under the Land. These two bases of rights will fill the legal vacuum that has occurred so far. In addition, the regulation concerning the use of the underground of the future will also need laws that regulate concerning the rights of ownership of land in the space below the ground that may be used as collateral debt with burdened Right Mortgage.

Construction of buildings, both of which are above or that is in the underground (of the body of the earth), must meet the requirements that are cumulative as requisite administrative are in it included concerning rights to land and aspects of licensing. Against the right to land, before the establishment of the building the building must be ascertained first advance the rights on land, both concerning the kind or type of rights, is also the subject as well as the certainty spacious and land boundaries.²⁵

²² Harris Y.P. Sibuea. *Juridical Overview of the Utilization of Underground Space*. State of Law 4, No. 1 (2013). p. 26.

²³ DKI Needs Underground Spatial Planning. <http://www.bkpm.org/v2/subpage.php?id=205>, accessed on 12 January 2020.

²⁴ Sibuea, H. Y., *Op.Cit.* p. 19.

²⁵ Ires Amanda Putri. "Horizontal Segregation Principle in the Utilization of Underground Space Based on Indonesian Land Law (Juridical Review of Supreme Court Decision No. 740/K/PDT/2009, Supreme Court Decision No. 292 PK/PDT/2009, Supreme Court Decision No.2030/PDT /2003)" (2013).

In addition to the proprietary board in the underground, another thing that needs to be accommodated in the regulations on the use and management of space under the ground is on the utilization of space below ground for commercial purposes. It is necessary to know that the regulations that specifically regulate the use of underground spaces, namely the DKI Jakarta Governor Regulation Number 167 of 2012 concerning Underground Spaces and the Minister of Public Works Regulation Number 02/PRT/M/2014 concerning Guidelines for the Utilization of Space in the Earth, only mention a little about the utilization of underground space for commercial purposes. Even in Regulation Governor of DKI Jakarta on Space below land only be regulated on the utilization of space below ground for the benefit of the public and did not regulate the use of the underground for the commercial.

Arrangements concerning the utilization of space below ground for commercial purpose is certainly also an important thing, considering the building for commercial purposes will be used by many people. In the future does not rule out the things that are commercially such as for example home sick, hotels, supermarkets, and other so on will be built in the space under the ground.

From the description, the author argues that there had been no legislation governing the use and management of space under the ground, therefore the urgency of the establishment of a regulation on space underground in the form of a law is an important matter.

As previously explained that in the Draft Land Law there is an article that accommodates provisions that have not been regulated in the previous regulation, namely on the basis of ownership rights for underground space. However, this case is only in the form of a Draft Law which is not necessarily ratified. Later, if the Draft Law is enacted and regulates such provision, the rules governing on the use of space under the ground in the form of legislation is not

hal urgent but enough with the issuance of Government Regulation as the implementing regulations of Law Act.

On the other hand, if the Draft Law is ultimately not ratified, or ratified but the provisions are not accommodated in it, then regulations on the use of underground space in the form of a law need to be made in order to provide legal certainty for both rights holders and other parties whose interests could be affected by their use of space under the ground it.

IV. CLOSING

A. CONCLUSION

Based on the research conducted, it can be concluded as follows:

1. Regulation today, namely DKI Jakarta Governor Regulation Number 167 of 2012 concerning Underground Spaces and Minister of Public Works Regulation Number 02/PRT/M/2014 concerning Guidelines for the Use of Space in the Earth, it is considered sufficient to be used as the basis for implementing the use of space under the land for the construction of the MRT project by PT MRT Jakarta. In general, the substance in the two regulations is sufficient and accommodates the implementation of the use of underground space for the construction of the Jakarta MRT.
2. Projection setting on the utilization of space under the ground in the future that is required regulations on the use of space underground in the form of legislation that accommodates all the needs that have not been included in the current rules. In the future, the regulation on the use of underground space needs to regulate the basis of rights governing the ownership of underground space to fill the current legal vacuum. In addition, the regulation regarding the use of the underground in the future will also require a law that regulates the rights of land ownership in the space below the ground that may be used as collateral for debts with

encumbrances of Mortgage Rights. This arrangement is needed in order to provide legal certainty for both rights holders and other parties whose interests can be affected by the use of underground space.

B. Suggestion

1. For the Government as a Regulator; based on the results of this study suggested that immediately establish the rules that regulate concerning the utilization of underground space, especially those that regulate the basis for the ownership of the of underground space. This is very much needed in order to provide legal certainty for both rights holders and other parties whose interests such as investors, banking institutions so that the use of underground space becomes an attractive thing for them to invest in infrastructure development and help national economic growth.
2. For PT MRT Jakarta; preferably for the development MRT Jakarta projects that utilize the underground space was not done at the lower space land private property before the regulations on the use and management of space under the ground as a solid legal basis so as not to cause conflict in the future that will come.

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