

## ABSTRAK

### **PENYIMPANGAN TERHADAP KEPEMILIKAN HAK ATAS TANAH OLEH WARGA NEGARA ASING MELALUI PERJANJIAN *NOMINEE* DI KABUPATEN LOMBOK BARAT**

Tanah dikuasai oleh negara dan dipergunakan untuk sebesar-besarnya kemakmuran rakyat Indonesia, hal ini tercantum dalam Pasal 33 ayat (3) UUD NRI 1945. Pasal 21 ayat (1) UUPA, menyatakan bahwa hanya warga negara Indonesia yang dapat memiliki hak milik. Ketentuan tersebut disimpangi oleh WNA guna memperoleh kepemilikan hak atas tanah di Kabupaten Lombok Barat. Penyimpangan dilakukan dengan membuat perjanjian *nominee*, pengakuan utang dan melalui perkawinan campuran.

Permasalahan yang muncul adalah mengapa terjadi penyimpangan terhadap kepemilikan HAT oleh WNA baik melalui perjanjian dibawah tangan maupun perjanjian notariil dan bagaimana konsekuensi dari penyimpangan terhadap kepemilikan HAT oleh WNA baik melalui perjanjian dibawah tangan maupun perjanjian notariil.

Metode pendekatan yang digunakan adalah pendekatan *socio legal*, yang melakukan penelitian terhadap dua aspek yaitu aspek *legal research*, yakni objek penelitian yang berupa hukum dalam arti *norm* (peraturan perundang-undangan) dan aspek *socio research*, yaitu digunakannya metode dan teori ilmu-ilmu sosial tentang hukum untuk membantu peneliti dalam melakukan analisis.

Hasil penelitian adalah terjadinya penyimpangan terhadap kepemilikan HAT oleh WNA disebabkan oleh faktor hukum dengan melanggar otoritas negara dan kurangnya pengetahuan terhadap hukum, faktor ekonomi dimana penyimpangan memberikan keuntungan bagi WNI maupun WNA, faktor administratif dimana prosedur untuk memperoleh hak pakai sangatlah rumit, dan faktor lemahnya aparaturnegara dimana negara kurang melakukan pengawasan dan penyuluhan. Konsekuensinya adalah perjanjiannya batal demi hukum dan sejak awal dianggap tidak pernah terjadi serta tanah tersebut jatuh kepada negara.

Rekomendasi yang penulis berikan adalah agar pemerintah melakukan pengawasan terhadap pelaksanaan pemberian dan/atau pengalihan HAT dan memberikan sanksi yang tegas atas penyimpangan terhadap kepemilikan HAT oleh WNA. Bagi BPN agar membuat peraturan yang membatalkan sertipikat yang terindikasi sebagai milik WNA.

Kata Kunci: Penyimpangan, Warga Negara Asing dan Hak Atas Tanah

## ABSTRACT

### **VIOLATION AGAINST THE OWNERSHIP OF RIGHTS TO LAND BY FOREIGN CITIZENS THROUGH NOMINEE AGREEMENT IN WEST LOMBOK REGENCY**

*Land is controlled by the state and used greatly for the welfare of Indonesian people. It is included in Article 33 paragraph (3) of the 1945 Constitution. Article 21 paragraph (1) of Agrarian Basic Law states that only Indonesian citizen who has the ownership. The provision is violated by foreign citizens to get the ownership of right to land in West Lombok Regency. The violation was performed by making nominee agreement, debt recognition, and through mixed marriage.*

*The problem appeared was why the violation occurred against the ownership of right to land by foreign citizens both through individual agreement and notary agreement; and how the consequence of the violation against the ownership of right to land by foreign citizens both through individual agreement and notary agreement.*

*The approach method used was socio-legal approach by conducting a research to two aspects; i.e. legal research with the object research in the form of laws and in terms of norm (legislation), and socio research by using social science method and theories on law to help the researcher in conducting analysis.*

*The research result is that the violation against the ownership of right to land by foreign citizens was caused by legal factor by violating state authority and lacked of knowledge on law. In addition, it was the economic factor in which the violation provided benefits for both Indonesian and foreign citizens. Then, the administrative factor dealing with the procedures to obtain the right to use highly complicated as well as the factor of state official weakness in which the state had less control in performing supervision and education. The consequence was that the agreement was cancelled by law and since the beginning it has been considered as never happened and the land was owned by the state.*

*The author recommended that the government should perform supervision to implementation of provision and/or transfer right to land and provide strict sanctions of the violation against the ownership of right to land by foreign citizens. For the National Land Agency (BPN), it is suggested to make a regulation that cancels the certificates indicating as the ownership of foreign citizens.*

*Keywords: Violation, Foreign Citizens and Right to Land*