

# The Settlement of Management Rights Dispute or Utilization of Legal Certainty on the “Surat Ijo” Land Status

*By Karim\_Tatien KarimJamil*



## The Settlement of Management Rights Dispute or Utilization of Legal Certainty on the “*Surat Ijo*” Land Status

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**Abstract:** The land is one of the natural resources essential for human life. However, the land area is decreasing and limited because of the high population, natural conditions, and land area ownership. In Surabaya, land with *Surat Ijo* (green certificate) status has caused controversy between the government and Land Use Permits (IPT) holders. This study discusses the management and utilization of *Surat Ijo* land in Surabaya. This study uses normative legal methods with descriptive analysis. The data collection technique used in this study was a literature study. The results show that the concepts of land and management rights have been recognized by law in Indonesia. *Surat Ijo* or land use permits (IPT) holders only have management rights over the land they occupy but not the rights over the land. They can involve a third party to use the land, but the right still belongs to the Surabaya Government. Thus, it can be concluded that land with *Surat Ijo* status belongs to the Surabaya government, which residents with official IPT manage.

**Keywords:** surat ijo; land ownership; land management right; retribution

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## 1. Introduction

The land is one of the natural resources that function as community prosperity and welfare, especially for Agrarian countries. It is not only used as a building but also as an agricultural area. However, the use of land nowadays is limited and reduced. Most of the land is controlled and owned by the private sector, leading to decreased state-owned land. The problems in land management and utilization are triggered because of the increasing population, changes in natural conditions, and land size area. In land use and management, Surabaya Government had the designation of "Surat Ijo" (green certificate) for land status. It is a permit for land use or the granting of land management rights owned by the Surabaya people, which color is green (David, 2021); thus, people call it *Surat Ijo*.

However, this certificate leads to different opinions between the Government and the *Surat Ijo* holder. It happens because of the community's assumption that ownership of the ex-private land of *Gementee Soerabaja* is free land that they can claim for land ownership (in the form of a certificate) to the Land Office without a recommendation from the Surabaya Government and the Head of the Surabaya's Land and Building Management Office. Meanwhile, according to the Surabaya Government, the former *Gementee Soerabaja* land is state-controlled land that the Government has the authority to control, manage, and reuse for the prosperity and welfare of the Surabaya people.

In the *particuliere landerijen* (private land) system, landlords can collect income and services from residents who occupy the land area (Kurniawan, 2012; Nola, 2013). The government then issued Law Number 1 of 1958 concerning the Elimination of Particle Lands whereby the rights of private landowners to land and landlords are entirely erased and become the State land.

Problems arose when the Surabaya Government issued a policy that required holders of *Surat Ijo* or Land Use Permits (IPT) to pay land fees/rents. However, many residents who hold *Surat Ijo* oppose this policy because the fees increase yearly. The residents hope to certify the land because they have lived and inhabited it for a long time. For them, *Surat Ijo* needs to be deleted because it does not have a solid legal basis. Therefore the Government issued a regional regulation on land use permits by charging retribution or rent fees to the third party who use the land (Kurniawan, 2012). As in Regional Regulation No. 1 of 1997 that the permission given to the third party is not as a granting of a land right but as a land use permit that can be taken over at any time without compensation.

However, the Mayor of Surabaya Regulation No. 51 of 2015 concerning the Release of *Surat Ijo* Land contains provisions for the conditional transition of the green letter into a certificate; that is, the residents are required to buy the land following the price determined by the Surabaya Government to apply for land ownership. Thus, this study aims to explain how the regulation of land management rights and the legal certainty of using and managing *Surat Ijo* in Surabaya. This research is expected to understand better the management and utilization of *Surat Ijo* in Surabaya.

## 2. Literature Review

### 1. Land Rights

Land rights are the state-granted control rights over land that can be authorized or given to individuals, groups, or legal entities. It is the right to use the land to control, use, and benefit from the land (Santoso, 2012). The National Land Agency issued a certificate as proof of land rights that provides legal certainty and protection to the holder. However, in its application, the land rights certificate is not absolute proof in Indonesia; it is considered an evidentiary value (Margareta & Huda, 2023). According to the Basic Agrarian Law (UUPA), land rights recognized after the abolition of Western rights are the right of ownership, the right to cultivate, the right to build, the right to use, and the right to collect forest products.

### 2. Land Management Rights

The definition of management rights is regulated in Government Regulation No. 19/1996 Article 1 No 2 and Government Regulation No. 24/1997 Article 1 No 4 as the right to control the state whose implementation authority partly delegated to the holder. The term management right is mentioned in the Regulation of the Minister of Agrarian Affairs Number 9 of 1965, which regulates the implementation of the Conversion of Tenure Rights over State Land and Subsequent Policies (called PMA No. 9/1965). Article 2 PMA No. 9/1965 states that "If State land is given to Departments, Directorates, and Autonomous Regions, other than used for the benefit of the agencies themselves, it is also intended to be granted with a right to a third party, then the right to control over the State land is converted into a Management Right" (Sidiq, 2023).

There are two ways to obtain management rights from the Regional Government: confirmation of conversion and granting of rights (Santoso, 2013). Confirmation of conversion is a change in state land tenure owned by the regional government into usufructuary rights or management rights. Meanwhile, granting rights is a Government stipulation that grants rights to State land, extends the rights, renews the rights, and changes the rights – including the granting of rights over management rights. Its form is a decree letter issued by the National Land Agency (BPNRI) or the BPNRI officials.

### 3. Land Use Permit

According to the Regional Regulation of the Municipality of the Level II Region of Surabaya, Number 1 of 1997 concerning Land Use Permits Article 1 Letter f, a land use permit is an access to use land granted by the Mayor, Regional Head or appointed official. It is not a grant of usufructuary rights or other land rights as stipulated in Law Number 5 of 1943. A land use permit does not mean giving usufructuary rights or other land rights according to Law Number 5 of 1960 because the UUPA does not explicitly regulate management rights.

In the Regional Regulations on Land Use Permits Articles 7 and 8, it is stated that IPT holders are obligated to pay rent every year for the use of land belonging to the regional government, comply with all the provisions stipulated, and use the land according to its designation (Savitri & Sujatmoko, 2020). Thus, IPT has limitations, periods, obligations, and prohibitions. The issuance of IPT is divided into three categories (Santoso, 2010), including:

1. The category of inauguration or issuance of IPT for which a permit was previously issued,
2. The category of renewal or issuance of a new IPT to replace an IPT whose validity period has expired, and
3. The category of rights transfer or issuance of a new IPT due to the transfer of rights because of sale/purchase, grants, or inheritance.

### 3. Methodology

This research used a normative legal approach with a descriptive qualitative methodology. It examines the land rights management arrangements and their legal certainty for using and managing *surat to* documents. The collection of legal

materials used in this research is library-based. The primary data was obtained directly through media documentation from the official website of the Sub-Division of Legal Aid at the Regional Secretary of the Surabaya City Government. In contrast, the secondary data was gathered through some regulations, such as Basic Agrarian Regulations (UUPA), Government Regulation, Regulation of the Minister of Agrarian Affairs, and the Regulation of the Minister of Home Affairs. As for tertiary legal material, the data is obtained from several articles and journals about *Surat Ijo* in Surabaya. Legal materials are collected through inventory procedures, identification of laws and regulations, and classification and systematization of legal materials according to research problems.

## 4. Results and Discussion

### 4.1. The Status of Surat Ijo

Land rights are tenure rights over land which contain a series of authorities, obligations, and prohibitions for the right holders to do something about the land being claimed (Sari, 2017). According to the law, land rights are the rights over the earth's surface that do not include the rights of objects on the land and its natural resources. Land with land management rights in Surabaya is given to the community with proof of a land use permit (IPT) or *Surat Ijo*. The role of land management rights in national law is seen below;

a. Land management right is a state-control right over the land.

Some laws and regulations state that land management right a state-control right over the land; those are

1. Article 2 Paragraph (3) Law number 20 of 2000,
2. Article 1 Point (2) of Government Regulation number 40 of 1996,
3. Article 1 Point 4 of Government Regulation number 24 of 1997,
4. Article 1 of the Government Regulation Number 11 of 2010,
5. Article 1 Point 3 of the Minister of Agrarian Affairs or the Head of National Land Agency Regulation number 9 of 1999, and
6. Article 1 Letter c of the Minister of Agrarian Affairs or the Head of the National Land Agency Decree number 9 of 1999

b. Land management right is equal to land rights.

The land management right has an equal position with the right of other land based on the applicable laws and regulations, such as:

1. Article 7 Paragraph (1) Law number 16 of 1985
2. Article 9 of the Government Regulation number 24 of 1997
3. Article 2 of the Government Regulation number 11 of 2010
4. Article 2 Paragraph (1) of the Minister of Home Affairs Regulation number 5 of 1974
5. Regulation the Minister of the Agrarian Affairs or the Head of National Land Agency number 9 of 1999

#### 4.2. The Status of Management Right

The concept of state-control rights toward land is regulated on the legal basis of Indonesian treasury rights in Article 33, Paragraphs (2) and (3) of the 1945 Constitution:

- (2) Sectors of production that are important for the country and affect the life of the people shall be under the powers of the State
- (3) The land, the waters and the natural resources within shall be under the powers of the State and shall be used to the most significant benefit of the people.

Based on the paragraph above, it can be interpreted as granting the state the right to control (known as state-control rights), which the constitution explicitly grants to the country/state over the land, water, natural resource and everything beneficial to the welfare and prosperity of the Indonesian people. The concept of state-control rights started from the customary law regulated before Indonesia became a country (Kusumadara, 2013). Customary law puts the community's interests ahead of personal and group interests. The community can control and own public property, such as natural resources, water, land, and knowledge. Hence, even though customary law also acknowledges the individual rights of property rights, it still prioritizes the principle of mutual protection.

After independence, following Article 33 Paragraph (3) of the 1945 Constitution, the government led by President Soekarno issued Law Number 5 of 1960 concerning the UUPA to regulate the use and ownership of land in Indonesia. However, the UUPA rejects the application of state property rights to land (Hariri

et al., 2022). The General Explanation Part II (2) of the UUPA explains that Article 33 Paragraph (3) of the 1945 Constitution does not give the state the right to own the land but only gives the right to control the land. The state has the authority to control the earth, water, and space – including the natural resources inside. While Article 2 Paragraph (2) of UUPA defined the state-control rights as authorities for:

1. Organize and perform the allocation, usage, supply, and maintenance of the earth, water, and space.
2. Set up and control the legal relationship of people to the land, water, and space.
3. Set up and control legal rules governing interactions between people and legal activities involving the earth, water, and space.

Thus, according to the UUPA, the state's right to control land is a right to manage and maintain the land. This concept is correlated to customary rights that do not prioritize the absolute individual rights on land and only recognize the land's communal rights.

The UUPA approves the concept of customary law on land, known as *hak ulayat/ulayat* rights (a legal term connoting communal rights of an (ethnic) community to land based on the custom or tradition) (Bakker, 2008). However, the customary law and *ulayat* rights are not simply accepted by the UUPA without conditions; that is, both customary law and *ulayat* rights are not opposed to the state interest and do not violate the government regulation – Article 2 Paragraph (4), Article 3, Article 5, and General Explanation Part II (3) of UUPA. Article 6 of the UUPA stipulates that land rights serve a social purpose, demonstrating its socialist orientation. As a result, the state has the authority to revoke all land rights while benefiting the general population, the country, and the state (Article 18).

### 4.3. Legal Certainty from Surat Ijo

The regional government has the authority to manage and arrange the region based on the principle of autonomy and the principle of assistance to make the region has authority to manage everything, including financial matters. The regional government needs financial support from the Regional Revenue and Expenditure Budget (APBD), which consists of a revenue budget, expenditure budget, and financing. The regional expenditure will produce goods and services called regional property.



51 Article 1 Paragraph (2) of Government Regulation 27 of 2014 on managing state and regional property stated that regional property is a property bought from the APBD or other valid revenue. Valid here means that the property is obtained from a grant or donation, an agreement or contract, and the court decree with absolute legal power.

18 scope of regional property management is regulated in Article 3 Paragraph (2) Government Regulation number 27 of 2014 on State/Regional Property Management including:

- 16 1. Planning and Budgeting
2. Procurement
3. Application
4. Utilization
5. Security and Maintenance
6. Assessment
7. Transfer
8. Eradication
9. Abolishment
10. Management
11. Development, Supervision, and Control

15 Then the explanation of utilization is regulated in Article 1 Paragraph (10) of Government Regulation Number 27 of 2014 on the management of State/Reg 15 property as utilization of state/region property that is not used as the implementation of duties and functions of regional officers and to optimize the state/region property by not changing the ownership. The kinds of utilization based on Article 7 are written below:

1. Rent
2. Lease
3. Cooperation in utilization
4. Build-Operate-Transfer or Build-Transfer-Operate
5. Cooperation of infrastructure provider

Therefore, the Land Use Permit granted by the Surabaya Government to residents, which is then regulated in Regional Regulation Number 3 of 2016 concerning Land Use Permits, is valid.

The certificates of legal construction issued from land registration with State status has constitutive characteristics. Constitutive characteristic refers to a result of decisions or stipulations from State Administrative officials (Zainuddin & Ulya, 2018). The National Land Agency (BPN) stipulates granting land rights to individuals or legal entities applying for land rights with State land status. The function of the decision letter is as physical evidence of ownership of the individual or legal entity that obtains the right to a plot of land (Atikah, 2022). The BPN decrees serve as a legal basis for state tenure rights to individuals or legal entities over the land they control. Individuals or legal entities must have physical evidence that is legal for the occupancy of their land due to obtaining legality over land.

Establishing a legal relationship between residents and the Surabaya Government results in legal consequences for both parties, i.e., every citizen holding *Surat Ijo* is required to manage, maintain, and pay retribution for the object to the Government of Surabaya. However, the Surabaya Government can revoke the IPT or *Surat Ijo* at any time because it is not a grant of ownership rights to land. The land ownership in Surabaya is shown in the controversial phenomenon of land with IPT or *Surat Ijo* status.

As a subject, the Surabaya government can have both the right to use and manage. If it is in the form of a Right to Use, then the right to the land is intended for personal use, which is valid as long as the land is used to carry out the duties. Meanwhile, if it is in the form of Management Rights, then the land is intended for personal use and can also be designated as meeting the personal needs of the Government of Surabaya. Some of the land, controlled by the Government as assets, are used for its own needs, such as for City Government Offices or District Offices.

The *Surat Ijo* land management system is indicated by a rent burden (besides the land and building tax burden), which regional regulations regulate. The amount of the rent fee depends on the location, road, land area, and the amount of the Tax Object Selling Value (NJOP) (Sukaryanto, 2013) that has been stipulated in the Notification of Tax Due - Land and Building Tax (SPPT-PBB).

The applicable national land law in Indonesia is based on customary law and, in its application, uses the principle of horizontal separation. According to this principle, an object that is one with the land can become an independent part of the land. Therefore, every legal action concerning land rights does not necessarily include the objects on it. It is similar to Andari & Purwoatmodjo (2019), who said the land right does not include the objects above it. However, applying these principles is not absolute, but always focuses on and adapts to the realities and needs of development and citizens' daily lives.

The horizontal separation principle has consequences if the above land and buildings are owned by different legal entities, as in the relationship between the Government of Surabaya and the *Surat Ijo* holders. However, there is no legal certainty regarding the status of the *Surat Ijo* land due to the obligation of the Surabaya Government to pay taxes.

Thus, the IPT or *Surat Ijo* is a permission form allowing third parties to use the land of the Surabaya Government. In the land with *Surat Ijo* status, the holder did not have the rights on land and only obtained the usufructuary rights over the land. The holder is also not getting legal certainty because the IPT is not registered. The compensation cost is imposed on the IPT holder, issued by the Surabaya Government, as a form of agreement for paying the rent that violates the UUPA.

The lease of land controlled by the Surabaya Government is contrary to the UUPA because the land rights that can be rented to the other parties are only the land with ownership status. The Surabaya Government is not the actual subject of the ownership right but a subject of the rights on use. The horizontal separation principle applied in Indonesia only considers *Surat Ijo* holders as owners of buildings on land owned by the Surabaya Government.

It is found that the right on land is not the guarantee object, but the building above is the guarantee object with a fiduciary guarantee institution. Thus, it can be confirmed that the legal certainty of the land status from Land Management Right or *Surat Ijo* in Surabaya is the Government as the owner or the one who controls the land, and the Surabaya community is the building owner. As is written in the regulations below:

1) The right to control state land in Article 2 of Law Number 20 of 1960 concerning Basic Agrarian Regulations, which is the implementation of Article 33 Paragraph (3) of the 1945 Constitution. Then confirmed in Law Number 22 of 1999

concerning Regional Government, followed up in Presidential Decree Number 34 of 2003 concerning National Policy in the Land Sector.

2) Granting of Land Use Permits (IPT) or *Surat Ijo* as State/Regional Property has legal certainty following Government Regulation 27 of 2020 concerning the Management of State/Regional Property. Furthermore, the Government issued Regional Regulation Number 3 of 2016 concerning Land Use Permits to provide legal certainty in Surabaya.

## 5. Conclusion

This study discussed legal certainty in land management with *Surat Ijo* status. Land management rights is a State control rights in which implementation authority is partly delegated to the holder of the management rights. The management rights that use and utilize the whole or a part of the land for private or cooperative use with other parties can be given the land rights in the form of rights of use and building rights. These rights are obtained above the management rights based on its role and function, that is, the holder of the management rights along with its regulation in Government Regulation; if the Management right land operates with a land use agreement, then the right management certificate cannot be used as collateral for debts burdened with mortgage rights. Also, it cannot be transferred and switched to other parties. Management rights can only be released as ownership rights, for public necessity, or other provisions regulated in constitutions. The released management right is a state/region-owned land created before the authorized officer and reported to the minister.

Establishing a legal relationship between residents and the Surabaya Government has legal consequences for both parties. The legal consequences arising from *Surat Ijo* land are that every citizen holding a *Surat Ijo* must manage, maintain, and pay retribution or rent for the land to the Surabaya Government. In addition, the Surabaya Government can revoke the IPT or *Surat Ijo* at any time because it is not a grant of ownership rights to land.

Further research can be carried out with a deeper focus on *Surat Ijo* and its impact on the urban community. It is also suggested to compare the *Surat Ijo* land system in other areas in Indonesia or other countries to determine the effectiveness and efficiency of land management.

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