

THE PRINCIPLES OF LAND LEASE AGREEMENT AND THE FORMULATION OF PROFIT SHARING IN THE FRAMEWORK OF BUILDING RIGHT TITLES AND THE RIGHT TO USE TITLES

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Abstract

This research is a formulation model of profit sharing principle in land lease agreement in the framework of giving Building Rights Titles / Right to Use Titles which aims to resolve land conflicts as a result of the imbalance of agrarian structure in Indonesia and to balance the rights and obligations in land lease the provision of Building Right Titles (HGB), as well as formulating the principle of profit sharing principle in the land lease agreement in the framework of awarding Building Right Titles (HGB) / Right to Use Titles above Freehold Titles.

This research used qualitative research method with symbolic interaction as research strategy, that is, reconstruct adjustment of action from three subject of legal relation that is holder of HGB / Freehold Titles, holder of Freehold Titles (HM) and National Land Agency. The conclusion of this research suggests that the HM holder agreement with the HGB winner as a tenant is required to interfere with government policy, which is to harmonize and protect the interests of holders of Freehold Titles and tenants in the form of profit sharing principles in the provision of HGB / Right to Use Titles on Freehold Titles. begins with a land lease agreement, with the profit sharing principle having to consider the dominant factors affecting the amount of land rent that is just and sustainable, such as the location of the land, the selling value of the tax object, the market price of the land, the operational cost, and the existing building.

Keywords: *Formulation, Profit sharing, Freehold Titles, Building Right Titles, Right to Use Titles*

INTRODUCTION

At the philosophical level, national land law does not justify the land used as a profit-seeking instrument (land not as a commodity). At the level of empirical in the era of liberalization, one of them through the provisions of the Asean Economic Community (MEA), through land-based investment (agriculture, forestry, and tourism) land function has shifted into commodity goods. According to Taylor and Bending (2009), commercial pressures will continue to occur through foreign direct investment, so there is a need to regulate and minimize the possibility of rent, unemployed profit from the production process.

The tourism industry which is the main attraction of Bali Province, requires land as one of its supporting land. To meet the need for the availability of land supporting the facilities and infrastructure of tourism and maintain the sustainability of the existing land in Bali so the existing lands in Bali are leased for a very long period of time. In Government Regulation No. 40/1996 on Right to Exploit, Building Right Titles, and Right to Use of Land, it is known to

grant the Right Right Titles (HGB) above Right to Land Exploit (HM). The granting of HGB above HM means that the natives of Bali who own HM land, may cooperate with another party (investor) through an initial HGB awarding agreement over HM or leases containing agreement of both parties that above ground HM which is promised will be burdened / given HGB.

The principle of the social function of land rights (Article 6 UUPA) provides a mandate for the regulation of legal relations concerning land use should provide a balanced profit for investors as holders of HGB and Bali residents as holders of HM. According to Deininger et al, (2010), to ensure that the lease of the land is profitable for investors and residents of Bali, a Code of Conduct for Responsible Investment is required, in the form of respect for the right to land and resources, ensuring food security, transparency, good governance and a conducive environment, consultation and participation, responsible agricultural investment, social and ecological sustainability of life.

This paper is intended to provide a model formulation of the principle of profit sharing of land lease agreements in the framework of the provision of sustainable of Prejudice on Right to Use HGB / Building Freehold Titles.

LITERATURE

1. The Right to Control the Country and the Freedom to Contract in Giving HGB above HM

Article 33 Paragraph (3) of the Constitution of 1945 constitutionally becomes the basis of the validity of the state's control over the earth, water and natural resources contained therein. This Article is often referred to as the basis governing the right to control or control by the state, but can not stand alone but has a relationship with the welfare of the people. In the general explanation II of Basic Agrarian Law Number 5 Year 1960 stated that: "a UUPA stem from the establishment of Article 33 paragraph (3) of the Constitution is not necessary and not in place that the Indonesian nation or the State acts as the owner of the land. It is more appropriate if the State, as an organization of power of all people (nation) acts as the governing body".

2. Article 2 Paragraph (2) of the UUPA states that the right to control from the state as a power organization of the Indonesian nation further in paragraph (3) states that the authority deriving from the right of control of this country is used to achieve the greatest prosperity of the people. The regulatory function through provisions made by the legislature and the regulation by the executive, the function of management is carried out by the executive by utilizing his control over the natural resources for the greatest prosperity of the people, and the supervisory function is to supervise and control so that the implementation is correct for the greatest prosperity of the people (Sodiki, 2013). At the empirical level there is a need to balance Balinese freedom with investors. States may enact legislation to protect and protect and attach certain obligations to land use agreements. Based on Friedmann (1960), freedom of contract is still regarded as an essential aspect of individual freedom, but no longer has an absolute value.

3. Principles of Social Functions Land Rights and Theory of Justice

According to Article 6 of the UUPA all rights to land have a social function. The existence of the social function of land rights means that the land is also not a commodity trade, although it is possible that the land owned is sold if there is a need. Thus the land should not be the object of investment solely (Boedi Harsono, 2003: 304).

Agus Surono in his writing on the social function of the land states that the implementation of the concept of social functions of land rights can not be separated by the implementation of the concept of the welfare state (welfare state). According to Surono (2013) the welfare state concept, the purpose of the state is for the general welfare. The state is seen as only a means to achieve the common goal of prosperity and social justice for all the people of that country).

RESEARCH METHODOLOGY

This research used qualitative research method with symbolic interaction as research strategy, that is, reconstruct adjustment of action from three subject of law relation that is HGB / Right to Use holder, HM holder and National Land Agency (BPN). To achieve an integrative solution of an order capable of solving land issues in a fair way bridging, in other words, researchers position themselves as bridges or facilitators for the three subjects of legal relationships. In the midst of these three subjects, the researcher is the fourth subject that serves as a consensus bridge / facilitator: for the first year, the balance of rights and obligations in the land lease agreement in the framework of granting HGB / Building Freehold Titles. As for the second year research on model formulation of profit sharing principle in land lease agreement in the framework of giving HGB / Right to Use on Land Freehold Titles.

RESULT AND DISCUSSION

To know the existence of justice in legal relationship between holders of HM and HGB holders can be seen from the process of making and the rights and obligations of the parties in the deed of lease, preliminary agreement, and deed of granting HGB above HM.

1. HGB Granting Process on HM

According to Article 24 of Government Regulation No. 40 of 1996, the provision of HGB on HM land occurs when the Deed of HGB is made on HM Land by Land Deed Officials (PPAT). The registration made at the land office is solely for binding on a third party, and the validity of the grant. This Regulation Actually mandates that for the procedure of granting and registration of HGB on HM land will be further regulated by Presidential Decree. But until such a rule has not been there so in its implementation often cause problems.

According to the Notary-PPAT of Paramita Rukmi (Interview dated August 3, 2015) which is further reinforced by Notary-PPAT Lumasia (interview 15 August 2016), four deeds become

the legal basis of the relationship between holders of HGB and HM Rent Rental Act, Giving HGB on HM land.

1. Rights and Obligations of HGB Holders and Holders of HM

From the series of HGB agreements above HM, it can be seen that the obligations of HGB holders are as follows.

a. Pay the rent as much as has been agreed upon.

b. Maintain and manage the building including its objects and targets as well as possible and if it is abandoned then the HGB holder will deliver and authorize HM holders to manage and maintain up to the term of grant of rights granted by this deed.

The rights of HGB holders are:

a. Using the leased land to construct a building and place of business, in which the business is not contrary to applicable law, either formal or customary law, in the local village,

b. The building that the tenant has established after the lease term ends up being the property of the lease without any obligation to pay any compensation to the lessee.

c. With the written approval of the HM holders placing or selling the HGB land according to the length of the HGB.

While the obligations of holders of HM are:

a. Ensure that HGB holders can exercise their rights as payee from the land without being harmed by other parties.

b. Provide power to the lessee to administer and establish the building in question on behalf of the tenant. The obligation here is to give its own power.

c. Willing to lend HM certificate mentioned above for the handling of the application of HGB above HM land.

d. During the term of the HGB upon the land, the HGB holders consent to exercise all rights and obligations including to raise or sell the HGB in accordance with the laws and regulations applicable to the HGB holders.

The rights of HM holders are:

a. Accept rent / compensation / compensation for HGB granting of HM.

b. Holders of HM may transfer land owned on the other party and this lease agreements will continue and continue with new HM holders.

c. If the lease term of this contract has been canceled or canceled, and what has been built by the lessee becomes the right of the leasing party, the tenant is required to vacate the building from all residents and furniture items within 1 (one) month, calculated from the day of the expiration or the cancellation of these leases and assigns the land and the building to the lessee in good condition.

The amount of rent / compensation / compensation for 30 years can be seen in the table below.

Table 1. Building Rights to Use (HGB) in the Building Freehold Titles (HM) of Badung Regency 2015

No	HGB Holders	Square (m2)	Used for	Use of Rent
1	PT. AB	1.350	Tourism Accomodation	1.000.000.000,-
2	PT. DII	1.975	Tourism Accomodation	1.000.000.000,-
3	PT. DPS	2.090	Tourism Accomodation	627.000.000,-
4	PT. WPK	2.362	Tourism Accomodation	150.400.000,-
5	PT. WPK	2.362	Tourism Accomodation	151.168.000,-
6	PT. SSW	280	Tourism Accomodation	563.640.000,-
7	PT. SSW	1.267	Tourism Accomodation	2.616.900.000,-
8	PT. BJP	3.900	Tourism Accomodation	9.016.200.000,-
9	PT. BJI	11.630	Tourism Accomodation	38.280.000.000,-
10	PT. SBP	3.515	Tourism Accomodation	1.053.000.000,-
11	PT. SVB	10.000	Tourism Accomodation	8.550.000.000,-
12	PT. DPS	4.910	Tourism Accomodation	1.473.000.000,-
13	DPG	4.951	Tourism Accomodation	11.844.000.000,-

Source : National Land Agency Office Badung Regency , 2015

Table 2. Rents in HGB of HM Regency of Badung and Gianyar Interview Result

No	HGB holders	Period of Time	Year of Agreement	Squared (m2)	Use of Rent
1	PT. DII	30 Thn	2002	1.975	1.000.000.000,-
2	PT. JBV	25Thn	2007	1.550	2.000.000.000,-
3	PT, DVT	25 Thn	2009	2000	2.700.000.000,-

4	IKA	40 Thn	2012	10.670	4.040.000.000,-
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Source: Authors, 2016

The results of the analysis of the contents of land lease agreement documents, preliminary agreements, and deeds of HGB of HM and interviews with Notary-PPAT conducted in 2015 can be seen that there are indications of injustice to certain owners of property rights (although not experienced by all holders of Freehold Titles) in legal relationship with the land tenant as the holder of Right to Build. Interviews to some Notaries-PPAT and holders of the HGB, it is known that in certain locations in the 10th to 12th year there are investors as holders of the HGB have break even point (BEP) or return on capital) and enjoy great benefits in the remaining 18-20 years of utilization time the land of the HGB.

The results of interviews to some accommodation / accommodation service management companies conducted in 2016, the moratorium on the permission of hotel accommodation providers indicates not all experience success because of over-bidding. Experience one of the resource persons, with the location of the hotel not far from the beach and shopping center, quite strategic and managed by the professional management in fact the hotel has been operating for more than 12 years, but it is estimated that only 2-3 years ahead BEP reached. This is due to quite a lot of obstacles experienced by investors that have an impact on swell investment costs and the pullback time of operation of hotels and occupancy levels that do not fit the target. In fact, sometimes have to deal with brokers that resulted in these obstacles have occurred at the start of the search location, land preparation, licensing, petition deed granting Rights of Building, weather, quality of building work and added work less building, economic atmosphere, political and security stability a state which is absolutely an investment risk. On the other hand, the risks faced by the investor can be said to be not experienced by the holder of Building Freehold Titles (HM) whose land has been leased. In the beginning of operation, the cost incurred by investors began preparations, permits, land maturation, development of buildings, procurement of infrastructure, including launching, promotion and operation is not comparable with the number of occupancy or income of the hotel especially at the beginning of the operation of the bloody event of the Second Bali Bombing. Therefore the owner represented by the hotel management has started to analyze break even point and initiate the Right holder to provide certainty of extension of lease 25 years for the second phase in accordance with one of the articles in land lease agreement. Currently, the

management actually has a strategy and lease scheme in the second stage later, but of course not the authority of the resource person to convey in detail to the researcher because before it is legalized in the contract / lease agreement of the land before the Notary, it is still the company's secret. Initially the resource persons simply stated that the lease scheme to be offered to holders of Hak Milik must be bigger than the first phase rental or maybe rent when the transaction is done at this time. However, after being persuaded by reason of academic research and will not be exposed to the mass media then, diplomatically informant adds information that at the time of lease extension later, management will consider the ratio of declining value of rupiah, increasing selling price of object agreement in surrounding area, NJOP, rehabilitation cost building as initiation material to holders of Buildings Freehold Titles.

Another resource person whose land object is located in the Pecatu area reveals that the hotel business tends to attract more investors, not only in destinations that are well known to tourism objects but also in new areas to be developed. This is because the hotel business is more secure, its long term and can last long. The main income of the hotel / villa / cottage business comes from overnight customers, workshops and events hosted by vendors, both private and government agencies, seminars and the last few years of couples' outdoor marriages are increasingly in demand. The profits of the hotel business will be felt when the owner owns his land with the Property right, the profit will double due to the increase in land selling price, compared to the first time to buy the land. Especially for Bali, in addition there are standing on their own land, in fact quite a lot of investors set up hotels with HGB of HM because investors do not meet the requirements of owning land with Hak Hak's right. By not fulfilling the requirement to become a Property Owner holder the investor establishes the hotel on the land of the Property of another by preceded by a land lease agreement in the medium-long term. Based on the land lease agreement, the investor submits a deed of Right to Use Land. Different conditions if the hotel entrepreneur own land, where the cost of land is enough issued at the beginning of investment , hotel entrepreneurs with Hak Guna Bangunan above HM will incur land costs (rent) many times by way of lease extension. Hotel entrepreneurs by means of this land rent do not enjoy the benefits of the increase in land prices but instead bear the burden of increasing land rent as a logical consequence of the effect of land price increase, environmental quality improvement, rising NJOP

and increasingly dense surrounding environment. Even in strategic areas in the city of Denpasar and Badung regency rent the land is already very high compared with other areas, the rent of the land there is almost equal to the sale value of land with ownership status.

Based on the above reasons it can be understood that the hotel entrepreneurs with the provision of HGB of the new property rights will reach the BEP after the 15 years the hotel operates, and some even over 18 years after the hotel operates. But never heard of any entrepreneur experiencing BEP before the expiry of HGB / Rights to Use or not experiencing BEP until the end of land lease agreement. Difficulties, obstacles and challenges experienced by this hotel entrepreneur are never felt or experienced by holders of Freeholder Titles (HM).

1. The results of interviews with the holder of the Land Ownership on the leased land, clearly visible differences in viewpoint and interests. A tenure holder whose land was rented for 30 years and now built the hotel using HGB 13 years ago, assumes that currently most likely the land tenant has experienced BEP or at least the capital back is already above 90%, so the remaining 16 - 17 the years ahead are already pure tenant profits, while the owner can only wait until the end of the lease agreement and the value of the hotel building is very low due to depreciation (the age of the building is equal to the old land lease agreement of 30 years).

2. The calculation given by the holder of the Property Right as follows

1. Estimated capital to set up the Hotel including the lease of land until it operates approximately Rp 50.000.000.000, -
2. Number of occupied rooms per Day / night = 40 rooms
3. Average cost per room is Rp 400.000, - minus operational cost and employee salary Rp100.000, - = Rp 300.000, -
4. Simple count of BEP $50.000.000.000 / (40 \times \text{Rp}300.000) = 4.167 \text{ days} / 360 = 11.5 \text{ years}$

The hotel operates 2 years after the lease agreement, thus the BEP can take place after 13 years of land lease agreement.

The result of the confirmation to one of the hotel management / entrepreneurs, diplomatically explains that the holders of the Hak Milik may calculate the operational expenses only the salaries of employees, accommodation, power subscriptions and services only but the calculation and analysis of BEP is not that simple, especially in Indonesia, - unpredictable costs at the earliest,

as rising prices are also affected by declining value / rupiah exchange rate. Other components, which affect operational costs such as hotel taxes, development taxes, maintenance, hotel room supplies and accessories, replacement of damaged or lost items, including fluctuations in occupancy rates and promotional costs as well as regional minimum wage increases, all become operational cost variables. The higher the room rent will usually the higher the service should be given and it also affects the operational costs. The operational costs experienced by resource persons for occupancy rates below 60% are never less than 35% of the average room rental rates. The smaller the percentage of occupancy will be the greater the percentage of operational costs incurred, the greater the occupancy rate then the percentage of operational costs will be smaller. For occupancy rates above 60%, operating costs will be less than 35% of the average room rental rates. Taking the example predicted by the holder of the Property Right above, assuming an average of 32.5% of the cost incurred from the room lease, the net rent of the clerk is $67.5\% \times \text{Rp}400.000, - = \text{Rp}250.000, - \times 40 \text{ rooms}$, so income per day / night = $\text{Rp}10.000.000, -$. Thus on paper BEP is estimated to occur on the 5000th day or after 13 years 10 months the hotel operates or approximately 16 years since the lease contract is signed. The above assumption applies to room occupancy rates above 50% but below 60%. With the BEP achieved after 16 years of lease contract, it still means that there are about 14 years remaining, the management must still take serious efforts and with the tips to have / accumulated funds / capital in order to extend the new contract (second phase) or find other land considered more profitable. The second-tranche lease contract is actually the advantage of the holder of the Property Right, since the rental price will be much higher compared to the rental price at the first contract and since the building is considered to be owned by the Holder of the Land Owner, the tenant's (HGB Holders) .

Based on the results of interviews with beberapaanara sources, in addition to less precise analysis of BEP, Property Ownership Holder also forgot that the advantage of the holder of property rights is quite a lot and small risks, among others

- a. Special lease land for strategic areas of Bali, can occur in the range of 60-80 percent of the market price of land (land area 3900 m² leased for 30 years of Rp 9.016.200.000 or average Rp 2.300.000 / meter), where at that time the market price of land in the area ranged from Rp3.250.000, - s / d Rp 4.000.000, - or Rp.300 - Rp.400 million / are even more than 80% of land area 11.630 m² leased for 30 years of Rp 38,280,000,000 or an average of Rp3.300.000 /

meter, where at that time the market price of land in the area ranged from Rp 4.000.000 - Rp5.000.000, - or Rp.400 - Rp.500 million / are.

- b. Such high rental rates can occur because many foreign investors only fulfill the requirements of controlling the land with HGB and have a value of money / exchange rate much higher than the rupiah (1 USD = Rp13.000) but rarely happens when hired by investors who have the requirements as holders of Land Ownership Rights because investors who have the requirement of owning land with HM, tend not to rent but buy the land.
- c. Rightsholders are very likely to utilize the land lease results for businesses / businesses that are earning such as transportation / travel bureaus, shops, restaurants, and other tourism support businesses.
- d. The Rightsholder may utilize the land lease proceeds to purchase another potentially new land area.
- e. The value and the price of land leased are getting higher, much higher than at the time of new lease and price increases will be enjoyed at the end of the lease agreement.
- f. Rightsholders and family members get a kind of "privilege" or privilege to work on tenants according to their expertise while indirectly supervising the land.
- g. The second tranche will be adjusted to the conditions at the end of the lease agreement.
- h. Buildings constructed by land tenants are usually included in the calculation of the second phase lease increase.

These benefits should be considered by the holder of the Property Right to be less demanding and a priori to the profits of the hotelier. Investors who invest their money in hospitality basically turn the wheels of the economy of the tourism area, and if too many demands are not impossible to cause the withdrawal of capital and decreased interest of hotel entrepreneurs, the landowners and communities around will also feel the impact first.

The results of interviews with two landowners hired for the construction of hotels in Pecatu and Kuta area, sportively revealed that the landowners did not have the capability of both capital and experience to develop the land as it is now. Without an investor renting the land, it may still be a cotton plantation and some unkempt coconut plantations and the results are few.

Assumptions about the magnitude of the profits gained by the hotel owner (investors) that arise when looking at the development of occupancy rates last 2-3 years or after nearly ten years the hotel operates. This view or assumption by the landowner (representative) of the landowner

in Pecatu village whose land was leased by Anantara in 2008. Initially the area of 16,200 m² located beside the steep beach belonging to this family did not have access (access road) only contained some plants kapok tree belongs to big family. When a land lease deal reaches nearly 20 billion with investors, the family sets aside part of the lease to buy the yard land that goes to the highway so that the land owned by this family has access (entrance) to the current location of the hotel.

In the early days of land lease agreements, large families felt very fortunate to never imagine that land that was once unlikely to benefit would be beneficial because it was rented with such a value, moreover coupled with oral agreements, the ability of management to recruit 40 percent of the labor local and family members according to their expertise and education. Although recruited local personnel are still dominated by security personnel and family members are recruited as accounting and housekeeping supervisors, the realization of the agreement makes Anantara management in 2015 appreciated by the Pecatu Adat Village Chief.

After 7 (seven) years hotels operate, began to show feelings of injustice from temporary family members. The feeling arises because it never imagines that hotels with rates above 5 (five) million rupiah per night but currently occupancy rate average 50-60 percent. Persoalah persikalah is the emergence of injustice after seeing the success of the hotel manager and this condition was never imagined at all by the land owner. When the feeling of injustice arises, the landowner can no longer do anything because everything is set in the land lease agreement. Moreover, none of the tenants who ignore their obligations where the informant acknowledged that the late anticipation of these unfair feelings was also the landowner's fault since most of the landlord's family members were unwilling to set aside a part of the land rent to buy the hotel's stock. The family finally agreed not to buy the hotel shares because it is not sure the hotel will be solid customer even with a fairly high rate as now. Confirmation results to hotel management, if seen from the current conditions it is understandable if the family landowners feel the injustice, but there are some things that need to be reminded that;

1. Land that is now a hotel is unproductive land planted only a few kapok trees and coconut trees
2. The land is on a steep coastline and has no access (driveway)
3. Family once offered to join nadil by buying shares of company

4. Rates of hotels that can be seen by the public is the rate that in publish (published rate), but management is rarely even to be said never to rate tariffs as in the publish. The rate that gets into the finance of the hotel is always smaller than the published rate because the rooms are sold through a third party or partners which of course apply discount and corporate rate.

5. For the size of raw land located in newly developed areas, the rent of land received by the land owner is actually quite high.

The realization of the land lease agreement as presented by the Chief of Customary Village of Jero Kuta Pejeng Gianyar at the time of preparation of the agreement did experience a bit of resistance from one or two members of traditional village who were suspicious of the village apparatus and assumed that the land rent would only be enjoyed by the village apparatus only and because it will be more secure and effective if it is self managed. However, when it is explained that the land to be leased to such investors is actually only rainfed fields with net harvests of no more than Rp50,000, - / are / year or Rp5,000,000 / ha / year. The village apparatus will be open to village finances and rental proceeds will be deposited for the benefit of traditional villages and traditional ceremonies. The village apparatus also provides equal opportunities to village members who have the capital to lease land but no one is interested and able to rent as offered by investors. The advantages of traditional villages to rent the land, among others

a. Villages have deposits that interest can be used for various needs

b. Traditional ceremonies do not burden the villagers, as all the financing of traditional ceremonies is financed by the interest on deposits

c. Village land does not disappear and even grows faster

d. The village's self-esteem is maintained, because the village does not need to sell the land to finance the village operations

e. Rental results can be used as venture capital if there is a safe and potential business

f. Villages get funding participation from tenant land

g. Added employment

It is also explained that in addition to customary village land will not be lost and at the time of lease again in the next stage of land rent will double from the first stage. In accordance with the agreement, if the land is not leased again then all the buildings established on the land will belong to the traditional village. The subsequent land lease will at least adjust to the percentage increase in the market price of the land, the Value of Tax Object, the Value of Building and the condition of the land (mature / immature / have and no facilities / infrastructure). As a simulation if the year 2012 land of 1 ha, rented for Rp 4,000,000,000, - with NJOP conditions Rp 400,000, - / meter or Rp 4,000,000,000 / ha with market price Rp 750.000, - / meter or Rp 75.000.000, - / are or Rp 7.500.000.000 / hectare land is not ready to build / not yet mature and has no building and infrastructure / infrastructure. So if the rent in the second phase of 2042, NJOP already amounted to Rp2.000.000, - / meter or 20.000.000.000 / hectare means an increase of 500 percent, then the market price of land Rp 5.250.000 / meter or Rp 52.500.000.000, - / hectare means a 700 percent% increase plus the value of buildings and infrastructure / infrastructure. The value of buildings and infrastructures / infrastructures is assumed to be equivalent to the value of new buildings at the time of agreement to be agreed upon by the age of the building, in other words if existing buildings and infrastructure / infrastructure at the time of agreeing the agreement for Rp 120,000,000,000, - but aged 30 years, then for the calculation of building variables and infrastructure / infrastructure is Rp 120,000,000,000, -: 30 = Rp 4.000.000.000, -. From the interviews and explanations the ground rent can be simulated through the charts and tables as below



Figure1. Chart of Simulation of Profit Sharing Principle Formulation

Table 3. Simulation of Land Lease Calculation

No	Variable	Land Agreement Batch I	Land Agreement Batch II	Note/ % Increased
1	Surface Area	10.670		-
2	Land of Status	Customary Rights	Freehold Titles	Increase in ownership status
3	Location	Traditional Village of Pejeng Kawan Tampak Siring Gianyar, Bali		Outside the Village
4	Land Conditions	Farm field	Mature soil	development
5	NJOP	400.000,-/M	2.000.000/M	500 percent
6	Market price	750.000/M	5.250.000/M	700 percent
7	Value of Building Facilities	0	120.000.000.000	estimation
8	Infrastructure	N/A	Transportation access, electricity, water system	development
9	Land of Prospects	Development of tariff, potential village or not		N/A

Source: Author, 2016

Analysis of interview result and land rent quantity data, it is concluded that the dominant factor that greatly influences small size of land rent is land location reflected on land condition, NJOP, land

market price and operational cost, while the value of buildings is reflected in the elements of facilities, and infrastructure around the land.



Figure 2. The Dominant Factors Affecting Rent / Land Prices

CONCLUSION

Based on the discussion, we concluded that in protecting the interests of its citizens, Indonesia impressed embrace the concept of the minimal state role because the contents of land lease agreements are left entirely to the parties who will make the agreement. Beside that, the principle of profit sharing must consider the dominant factors

affecting the amount of land rent that is just and sustainable, such as land location, tax object selling value, land market price, operational cost, existing building with the following 3 (three)

a. Formulation of raw soil / vacant land, firstly developed not yet have sarpras, facilities, infrastructure and others:

Batch I paid at the beginning of the agreement

$$(NJOP \times \text{Surface area}) - 5\%$$

Batch II paid after the completion of 1/3 of the time of the agreement

$$\frac{NJOP \times \text{surface area}}{1/3 \times \text{remaining time of agreement}}$$

Batch III paid after the completion of 2/3 of the time of agreement

$$\frac{\text{NJOP} \times \text{surface area}}{1/3 \times \text{remaining time of agreement}}$$

a. Mature soil formulations that already have buildings (sarpras, facilities, infrastructure and others:

Batch I paid at the beginning of the agreement

$$\frac{(\text{NJOP} + \text{market price}) \times \text{surface area}}{2} + \frac{\text{Building price}}{\text{age of building}}$$

Batch II paid at the after completion of 1/3 agreement

$$\frac{\text{NJOP} \times \text{surface area}}{1/3 \times \text{remaining time of agreement}} + \frac{\text{Building Value and Facilities}}{\text{Age of building}}$$

Bach III paid after 2/3 of the time of the agreement

$$\frac{\text{NJOP} \times \text{surface area}}{1/3 \times \text{remaining time of agreement}} + \frac{\text{Building Value and Facilitie}}{\text{Age of Building Existing}}$$

Meanwhile the HGB / Right to Use (privilege) holders who rented the subsequent land will be offset by the right to privilege the participation of the Right holders in the management of the HGB / Freehold Titles holders or the ownership of the tenant company's shares. In relation to the provision of HGB / Rights to Use of HM, there is no indication of the owners of land rights that neglect the social function of land rights.

Therefore Presidential Regulation shall be issued immediately regulating the granting of HGB or Right to Use of Freehold Titles. The Presidential Regulation can realize the legal relationships of land use so as to ensure a sustainable justice system. Another way, that Government policy, which is required to harmonize and protect the interests of the holder of land ownership and tenant in the form of profit sharing principle in the provision of HGB / Right to Use of HM which begins with the land lease agreement. And, it is also necessary to regulate the transparency of the management (balance sheet) of the company and the participation (shares) of the landowner in the land tenant company.

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