



RESEARCH ARTICLE

Land Rights as Shares in a Mining Business License-Holding Company

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ABSTRACT

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This study examines and further analyzes land ownership as shares in positive law in Indonesia. The research method used is normative legal research, namely legal research conducted by examining library or secondary legal materials. At the same time, the problem approach is carried out using the statutory and conceptual approaches. The study results indicate that the provisions of Article 34 of Law Number 40 of 2007 concerning Limited Liability Companies state that share capital deposits can be made in the form of money and other forms. Suppose the deposit is made in other forms. In that case, the capital deposit on shares is assessed based on the fair value determined by the market price or experts not affiliated with the company.

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INTRODUCTION

Natural resources such as minerals and coal are Indonesia's natural wealth; this natural wealth is not artificial. Therefore, humans are burdened with a responsibility to manage and utilize it for the benefit of humanity (Ismi, 2014). Natural resources are essential in economic activities (Muh. Iqbal & Susyanti, 2020). One of the activities that utilize natural resources is mining. Due to the nature of its activities, mining itself is a business sector that always impacts the natural environment (Hidayat, 2017). Mining is also part or all of the stages of activities in the context of research and management and business of minerals or coal, including general investigation activities, exploration, feasibility studies, construction, mining, management and refining, transportation and sales, and post-mining activities. In addition to generating foreign exchange and absorbing jobs, the mining industry is also prone to environmental damage (Salim, 2014) .

Mining management, the authority is given by the government to a mining company which is carried out by providing a Mining Business Permit (from now on abbreviated as IUP), in addition to having to have an IUP, it must also obtain approval from the holder of the land rights to be used as its mining land. Therefore, the mining company must immediately resolve the ownership of land rights with the previous rights holder, as regulated in Article 135 and Article 136 of the Minerba Law . Legally, in order to carry out mining land acquisition, the mining industry must first obtain an Exploration IUP. This is because land acquisition can begin when entering the exploration stage. In this case, the mining industry must already have an Exploration IUP.

Article 134 of the Minerba Law states that the Rights to WIUP, WPR, or WIUPK do not include rights to the surface of the earth. Article 138 of the Minerba Law also states that IUP, IPR, and IUPK do not include rights to the earth's surface. Therefore, the mining industry is required to procure land. Then, Article 135 of the Minerba Law states that holders of Exploration IUP or Exploration IUPK can only carry out their activities after obtaining approval from the holder of land rights. This means that the mining industry must obtain approval and reach an agreement regarding the land. Then, in the mining preparation stage, the mining industry must complete the transfer of land rights to the holder of land rights. This is regulated in Article 136 of the Minerba Law. If both procedures are completed, according to Article 137 of the Minerba Law, the mining industry can be granted land rights. The forms of obtaining land rights include: (a) If the holder of land rights is the state, then the acquisition is a Permit; (b) If the holder of land rights is a customary community, then the acquisition is a permit/agreement; (c) If the holder of land rights is private, then the acquisition is through buying and selling, borrowing, cooperation, rental, and/or exchange.

The companies that can be granted IUP or IUPK are private business entities, state-owned enterprises (BUMN), and Regional-owned Enterprises (BUMD). While individuals can be individuals, firms, and limited partnerships (Azheri, 2016). The management of these forms of companies must be based on the principle of family, state control rights, and economic democracy to achieve its goals, namely public welfare. One measure to determine whether the form of the company listed in the Minerba Law adheres to the principles contained in Article 33 of the 1945 Constitution must see the contents of the law governing these forms of business. Viewed from its legal form, companies or business entities are classified into legal entities and companies that are not. There are legal entities owned by the private sector, namely Limited Liability Companies (PT) and Cooperatives. There are also those owned by the state, namely public companies (serum) and limited liability companies (person). Companies that are legal entities of limited liability companies and cooperatives are always in the form of partnerships, while companies that are not legal entities can be in the form of sole proprietorships and partnerships and are only owned by private parties. Based on this classification, it can be determined that there are three types of legal forms of companies: sole proprietorships, non-legal entities, and legal entities (Muhamad, 2006).

One measure of whether the UUPT is genuinely based on the principle of kinship is by looking at the contents of its articles, especially concerning the rights and authorities granted to capital owners or shareholders. The provisions regarding shareholder rights include the right to a share of profits and the right to manage the PT (Sarjono, 1998). The right to a share of profits is formulated in Article 71 of the UUPT. In their implementation, deposits of shares made in other forms, especially land, must comply with applicable provisions, including the provision regarding the transfer of land rights. The transfer of land rights must be registered with the local Land Office to carry out a name change based on a deed of entry into the company made by an authorized Land Deed Making Officer (from now on, abbreviated as PPAT). Proof that the land rights have been transferred must be proven by a deed made by and before the PPAT (Maharani et al., 2022). Article 4, paragraph (1) states that the holder of the land rights in question is given a land rights certificate. A certificate is a document that proves rights to land, management rights, land ownership for apartment units, waqf land, and mortgage rights, each of which has been recorded in the relevant land book, as stated in Article 2 point (21) of the PP on Land Registration.

The relationship between humans and land can be viewed as a legal fact, namely a truth or reality regulated and given consequences by law, so it can also be called *Rechtsfeiten*. *Rechtsfeiten* is interpreted as legal events, namely events that occur in a society that are regulated and given consequences by law. Land is an asset for everyone to carry out life (Ayustini et al., 2023). The relationship between humans and land, including in Indonesia, is always regulated by law. The law governing the relationship between humans and land in Indonesia before independence, on the one hand, is regulated by customary law and, on the other hand, is also controlled by Dutch colonial land law, which is based on *Agrarische Wet Staatsblad* 1870 No. 55 (Zein, 1995).

The relationship between humans and land is based on rights as the basis for control. One of the rights to land, as stated in Article 16, paragraph (1) of the UUPA, is the Right to Ownership. According to Lili Rasjidi,

the Right to Ownership is the relationship between a person and an object that forms the right to ownership of the object (Rasjidi, 1987). In the land law applicable in Indonesia, the definition of the Right to Ownership is emphasized in Article 20 paragraph (1) of the UUPA, namely, "The right to ownership is the hereditary, strongest and most complete right that a person can have over land by considering the provisions in Article 6."

Hereditary means that the right to land ownership can continue as long as the owner is still alive, and if the owner dies, the right to land ownership can be continued by his heirs as long as they meet the requirements as a subject of ownership rights. The strongest means that the right to land ownership is more vital than other land rights, does not have a specific time limit, is easy to defend from interference from other parties, and is not easy to erase. The complete means that the right to land ownership gives the owner the most authority compared to other land rights, can be the parent of other land rights, is not a parent of other land rights, and the use of the land is more comprehensive compared to other land rights. (Harsono, 2008) .

The transfer of land ownership rights is regulated in Article 20 paragraph (2) of the UUPA, namely that ownership rights can be transferred and assigned to other parties. The transfer of land ownership rights must be registered with the local District / City Land Office, while the transfer of land ownership rights due to being transferred / transfer of rights must be proven by an authentic deed made before the PPAT or by an Auction Minutes if the acquisition was through an auction process. Land ownership rights can only be transferred to Indonesian citizens (from now on, abbreviated as WNI) or legal entities as stipulated by PP 38/1963. The transfer of land ownership rights, either directly or indirectly to foreigners, to someone who has dual citizenship or to a legal entity not appointed by the government is void by law, and the land falls to the state, meaning the land returns to being land directly controlled by the state. (Prayogi & Sesung, 2018)

Problems occurred on Wawonii Island, Southeast Sulawesi, precisely at PT Gema Kreasi Perdana (from now on abbreviated as GKP), a subsidiary of Harita Group, on Wawonii Island, Konawe Islands Regency, Southeast Sulawesi, threatening the safety of residents, displacing agricultural and plantation land and potentially polluting the sea. Both are the primary sources of income for more than 37,000 residents of Wawonii Island . Not only threatening the safety and living space of residents, mining activities carried out by PT. GKP are illegal because many violations of the law and human rights were found, starting from mining activities on small islands. Expired Forest Area Borrowing Permits (IPPKH), criminalization efforts against dozens of residents who reject mining to directing security forces to intimidate residents. The repeated land grabbing carried out by PT. GKP is said to have built a mining road to the mining location. As a result, residents' productive plantation crops were severely damaged, while residents who resisted were intimidated and criminalized until they languished in detention cells and in prison. In 2019, as many as 28 residents who opposed mining in Roko-Roko Raya were criminalized, six of whom were detained at the Southeast Sulawesi Regional Police and two of whom were sentenced to criminal charges, namely La Idris Ladiri with a prison sentence of 3 years and six months.

Mining conflicts related to land rights occurred between the community holding land rights and the company holding the IUP. In addition to what happened in Konawe Islands, a problem occurred at PT Ifishdeco, Tinanggea District, South Konawe Regency during the March 1, 2023 incident. The community is called Rumpun Suka, Tinanggea District, and the mining company PT Ifishdeco . Rumpun Suka said that the location of Lalo Ndowua in Roraya village is currently included in the PT Ifishdeco business use rights (HGU) area , which is ancestral land covering 140 hectares, so the Rumpun asked the company not to carry out mining activities there . In the mining conflict, 13 residents of North Konawe were named suspects. 13 residents in Landawe District , North Konawe Regency, Southeast Sulawesi, were arrested by the police and named suspects after an action demanding accountability from the mining company. Residents burned a bridge in the action because the company had not kept its promise. The arrest of 13 Landawe residents occurred on April 23, 2021, at around 16.00 WITA . Residents took action to demand responsibility from the nickel mining company for the land and the impact of mining activities (Yunus, 2021).

These conflicts are a reaction to mining activities. Of course, a systematic and integrated pattern is needed and supported by consistent supervision to ensure that all mining efforts remain within the corridor that has been determined by the provisions of laws and regulations related to community land that can be used as shares for investment in mining areas. It is hoped that through this method, it will be a solution for the community who own land rights to also get ownership of the mining, meaning that when this mining activity starts to produce, not only the IUP holding company will get the material benefits, but the community will also feel it. So further and in-depth research is needed regarding "Land Rights as Shares in Companies Holding Mining Business Permits."

METHODOLOGY

This research is written and analyzed using normative legal research methods. This method was chosen because the object of the research study is the principles and principles of law, legal rules, legal theories, and doctrines from legal experts. To sharpen the analysis, there are several approaches to normative research that are used to support the argument, namely: The conceptual approach approach): is done by understanding and reviewing the principles, principles, doctrines, theories and legal philosophies of the development of legal science and the debate on the dichotomy and dualism of legal research methods. In addition, in writing this dissertation, a historical approach is also used (historical approach). This approach is carried out to trace the existence of legal research from time to time. So that history in this context not only describes the story but also tries to reveal the meaning.

The type of data used in this study is primary data obtained through interviews with communities who have land rights that conflict with PT GKP. In addition, secondary data is also used as a source of data that is aggregated from individuals to community group levels. In this study, the secondary data used are from community documents and data collected from a series of previous surveys, aiming to identify the factors that caused the conflict. Data is collected based on facts according to the type of data used. Interview techniques and field observations are used to collect primary data. Documentation review techniques are used for secondary data.

According to Soejono Soekanto, his research is usually known as a type of data collection technique, namely document study or library materials. Given that the legal kind of material used in this study is secondary legal material obtained from library materials, the appropriate legal material collection technique used in this study is a library study. This library material research includes: (1) Inventory or collection of laws and regulations related to IUP and harmonization between the community and the company; (2) Identification of legal norms related to legal certainty for the community in the mining area; (3) Reviewing legal doctrines obtained through law books related to legal regulations related to land rights, IUP, land for investment, and government accountability in supervising mining activities, as well as other books that are comprehensive with this research; (4) Interviews about mining conflicts on community land in Mosolo Village, Wawonii, Konawe Islands Regency.

Data analysis is formulated as a systematic and consistent decomposition of certain symptoms. To produce more rational and objective research information, the materials obtained are analyzed in a perspective manner, namely interpreting and describing legal principles, legal norms and legal theories. Qualitative analysis methods are used to analyze legal materials. Legal materials that lead to theoretical studies in the form of principles. Concepts, legislation, legal doctrines, and the contents of legal rules are analyzed qualitatively.

RESULT AND DISCUSSION

Realizing the importance of the benefits of land for humans, as well as being a non-renewable natural resource, the government, in various policies, has attempted to regulate the utilization, designation, and use of land for the benefit of humanity in Indonesia. Therefore, the founders of this country specifically regulated it in the constitution of this country, namely Article 33 paragraph (3) of the 1945 Constitution, namely: "The land and water and the natural resources contained therein are controlled by the State and

used for the greatest prosperity of the people". As a continuation, it is regulated in the UUPA, which is the basic law on land matters.

In terms of land ownership, the national land law concept states that land throughout Indonesia belongs to the Indonesian people, which is also a symbol of unity for the integrity of the nation and state. Therefore it cannot be bought or sold or traded, and cannot be used as an object of control that causes national disintegration. The UUPA states that in the concept of ownership there is a communalistic religious element, meaning that Indonesian legal provisions see that land is a shared property given by the Creator for the welfare of the community, meaning that Indonesia regulates the principle of a welfare state. The right to control land if it has been linked to a certain land, then what is meant by the right to control land is the right to control which is based on a right or a power which in reality gives the authority to carry out legal acts as befits a person who has the right. Therefore, in this context it is possible for someone to only control it legally, without physical control.

In the National Land Law there are various kinds of land ownership rights, namely: (1) The Rights of the Indonesian Nation referred to in Article 1 of the UUPA, as the highest land ownership rights, with civil and *public aspects*; (2) The Right to Control from the state referred to in Article 2 of the UUPA, has purely public aspects; (3) The Customary Rights of Customary Law Communities referred to in Article 3 of the UUPA, has civil and public aspects; (4) Individual Rights, all of which have civil aspects, consisting of: a. Land rights as individual rights, all of which directly or indirectly originate from the rights of the nation, as referred to in Article 16 of the UUPA and Article 53 of the UUPA. b. Waqf, namely ownership rights that have been endowed as in Article 49 of the UUPA. c. Security Rights on land referred to as mortgage rights, as in Article 25, Article 33, Article 39, and Article 51 of the UUPA.

Land Ownership Rights are also regulated in Article 16 paragraph (1) of the UUPA, which states that there are rights to land, including:

- a) Ownership rights are hereditary, strongest and most complete rights that can be owned by a person over land. Ownership rights can last continuously, be inherited from one person to another who meets the requirements as an heir, have no time limit, are not easily removed, and are easy to maintain. Those who can become owners of land ownership rights are native Indonesian citizens, or certain legal entities determined by the government can also have ownership rights. Ownership rights occur due to inheritance, customary law, land clearing, the emergence of land tongues, and government determination;
- b) Cultivation rights are the rights to cultivate land controlled by the government for the benefit of fisheries, agriculture, and livestock businesses. The term of the HGU is 35 years and can be extended for 25 years. Cultivation rights can be transferred and assigned to other people. Cultivation rights can be owned by Indonesian citizens and legal entities established under Indonesian law and domiciled in Indonesia. HGU is granted with a minimum area of 5 hectares. If it is more than 25 hectares, then it must use capital investors, be managed properly in accordance with technology and developments. HGU occurs due to government regulations;
- c) Building use rights are the rights to construct buildings on land that is not owned by oneself for a maximum period of 30 years and can be extended for 20 years. Just like HGU, HGB can also be transferred. HGB can only be owned by Indonesian citizens and legal entities based on Indonesian law. The occurrence of HGB is also due to government regulations;
- d) Right of use: The right to use and/or collect proceeds from land directly controlled by the state or owned by another person for an indefinite period. The decision to grant the right of use is given by an authorized official or land owner with an agreement that is not a lease agreement or land management agreement that does not conflict with the UUPA. Those who can have the right of use are Indonesian citizens and foreign nationals and Indonesian legal entities and foreign legal entities;
- e) Lease rights are the rights to rent land owned by others for building purposes by paying rent to the landowner. Lease rights are obtained by paying a certain amount of money for a certain period of

time to the landowner. Those who can have lease rights include Indonesian citizens, foreign nationals, and Indonesian legal entities or foreign legal entities.

- f) **The Right to Clear Land and Collect Forest Products** This is a right derived from customary law in connection with the existence of customary rights. This right can only be owned by Indonesian citizens and is regulated by Government Regulation. Although it is possible to collect forest products legally, it does not mean that the owner of the right to clear land and collect forest products obtains ownership rights to the land.

Regarding the transfer of rights through transfer of rights, whether through sale and purchase, exchange, grant, participation in company capital (*inbreng*), auction or other legal acts that have the nature of transferring rights, they will be bound by contract law and will be guided by the terms of the validity of the agreement stated in Article 1320 BW.

THEORETICAL BASIS

Theory of Transformation of Private Law to Public Law

Theory of Transformation of Private Law to Public Law is a legal action of the government based on public law that can be integrated (merged) into civil acts carried out by private legal entities. In this case, state assets that are capital in the form of shares of the business entity are no longer state assets, but has changed its legal status to become the assets of the business entity.

A relevant example is when the state establishes a civil legal entity, such as a BUMN in the form of a limited liability company and then the government becomes its shareholder. In this situation, the state assets that become capital are no longer considered state assets, but as assets of a business entity with the status of a private legal entity. The legal status of government officials who sit as shareholders or commissioners is also no different from the legal status of ordinary people or other private shareholders. Their public immunity as a governing body no longer applies, and they are subject to and fully apply to private law, even though the company's shares are 100% state-owned.

Thus, this theory suggests that the transformation of public law into civil law can occur when the government participates in business through private legal entities, such as state-owned enterprises. In this situation, state assets are no longer considered state assets, but as assets of private legal entities operating within the framework of civil law.

CONCEPTUAL BASIS

Definition of Limited Liability Company

A legal entity of a company in Indonesia is a legal entity that has the ability to carry out legal actions as other legal subjects. These legal actions include signing a contract agreement with a third party where the company is represented by the board of directors. Legal actions of the company represented by the board of directors as the company's management may deviate from what has been determined by the company's articles of association, which are approved by the GMS. With the note that the action is carried out for the benefit and good of the company and is not an unlawful act or other act that is subject to criminal penalties (Sutedi, 2015) a .

In law, the term *person* includes individual beings, namely humans (*natural beings*). *persoon*) and legal entity (*persona moralis*, *legal person*, *legal entity*, *rechtspersoon*). Both are legal subjects, so both bear legal rights and obligations. Because a legal entity is a subject, it is an independent or autonomous body from the founders, members, or investors of the body. This body can conduct business activities on its own behalf like a human being. The law creates a creation of "something" which is considered or recognized by law as an independent subject, then "something" is called a legal entity by legal science. In order for the legal entity to act like a natural person, an organ is needed as a tool for the legal entity to establish legal relations with third parties (Khairandy, 2007) . There is still some uncertainty regarding when a limited liability company begins to have the status of a legal entity. uniformity . On the one hand, some argue that a limited liability

company begins to have the status of a legal entity after the deed of establishment of the limited liability company is ratified by the Minister of Law and Human Rights of the Republic of Indonesia. On the other hand, there are also those who argue that a limited liability company has the status of a legal entity not only with the ratification of the Minister, but must be added to the registration and announcement of the limited liability company (Khairandy, 2007).

Responsibility of Shareholders

In order to improve the upholding of justice and prevent unfairness, in certain circumstances and events, the principle of the separation of the company from the shareholders, in a case by case basis, needs to be removed and eliminated by penetrating the wall or veil of the company over the limited liability shield. The legal consequences of revealing the veil over the wall of protection, which is commonly called piercing the corporate veil is the loss or removal of the limited liability protection of shareholders as outlined in Article 3 paragraph (1) of the UUPT, and the shareholders automatically bear the risk together with the company in paying the company's debts from the personal assets of the shareholder concerned. (Harahap, 2021).

Piercing the corporate veil refers to the company's shareholders being jointly responsible for the company's debts as a form of exception to the application of the legal principle of the company as an independent and/or limited legal entity liability. *Piercing doctrine the corporate veil* refers to an exception to the legal principle that ignores the separation between shareholders and the company regarding the shareholders' responsibility for the company's legal actions, so that shareholders must be responsible for the company's legal actions that are as if carried out by the shareholders themselves (Gunawan, 2023). *Piercing lawsuit the corporate veil* This veil has become the most litigation in corporate law. However, until now, *piercing the corporate veil* still leaves debate regarding the consistency of court decisions in various *piercing cases the corporate veil* (Sulistiowati, 2013).

Land Rights

Land rights by definition are rights that authorize a person who has the right to use or take advantage of the land. Land rights are characterized by a person who has the right to the land that is his right. Each land right gives the authority to use a certain area to meet certain needs. The authority to use in the sense of controlling, using and taking advantage of a certain area of land that is entitled. In order to use the land contains an obligation to maintain the land including increasing its fertility and preventing its damage.

The use of the land must be in accordance with the purpose of granting and the contents of the land rights and according to its designation as stipulated in the RTRW applicable in the Regency/City Region. The definition of land is the surface of the earth. The existence of land is an important element for Indonesian society as emphasized by Van Dijk, namely "Land is the main capital and for the largest part in Indonesia (Hadiyati, 2019). Indonesia is an archipelagic country with many natural resources that can be utilized. Article 2 paragraph (1) of the UUPA, regulates that the earth, water, and space, including the natural resources contained therein, are at the highest level controlled by the state, as an organization of power for all the people (Arthur et al., 2013).

The scope of the earth according to UUPA is the surface of the earth below it and what is under water including land on the seabed and what will be disputed is land. Control means having the right to use, manage, but does not necessarily have the meaning of physical control also in the legal sense also has private and legal aspects. The mention of community control can be found in various regulations. The community in question does not mean referring to a crowd of people in a certain place or area. However, the community in question is a group of people or individuals who are bound and subject to certain laws, have the same legal interests and the same goals.

Scope of Land Rights

Land rights as regulated in Article 16 of the UUPA, include: Ownership Rights, Cultivation Rights (hereinafter abbreviated as HGU), Building Rights (hereinafter abbreviated as HGB), Leasehold Rights, Land

Opening Rights, Forest Product Collection Rights and other rights not included in the rights mentioned above as stipulated by Law and temporary rights as stated in Article 53 of the UUPA. The Republic of Indonesia has the right to control, including the right to manage natural resources in Indonesia, one of which is in determining the type of land ownership rights that can be given to and owned by people, either alone or together with other people and legal entities. Ownership rights are the most fundamental and strong land ownership rights that people can have over land. This right can be transferred and assigned to other parties. By having this right, a person has full power over the land that belongs to him.

Ownership rights can be owned by individuals or legal entities. Legal entities that can own land with ownership rights can be seen in Government Regulation No. 38 of 1963 concerning the Appointment of Legal Entities That Can Have Ownership Rights to Land. While individuals who can own ownership rights are only Indonesian citizens and certain legal entities determined by the government based on Government Regulation No. 38 of 1963 concerning the Appointment of Legal Entities That Can Have Ownership Rights, as long as someone besides foreign citizenship, then he also cannot own land with ownership rights. Although only certain legal entities can obtain ownership rights to land, it does not mean that other legal entities such as private companies, cooperatives, foundations and other legal entities do not get recognition of the land.

Land As Investment

The term investment is equated with the term capital investment, especially referred to in Law Number 25 of 2007 concerning Capital Investment (hereinafter referred to as the Capital Investment Law). Capital investment is any form of capital investment activity, either by domestic investors or foreign investors, to conduct business in the territory of the Republic of Indonesia. Capital investment in a country, the investment activity will be related to people, institutions, and even corporations. Many parties are involved in capital investment. However, with the complexity of the relationship depicted, at least the parties (subjects) in capital investment consist of at least capital investors, capital recipients and supporting parties (steaks holder). Especially investors/capital owners, consisting of three large parts, namely individuals, groups/corporations and the state. All of these investment subjects have interdependence, function, and role in realizing an ideal investment climate. By making community land as shares in the mining area, it can create community economic growth.

A number of studies on the function and role of investment in a country show a level of balance and interdependence regarding the excesses it causes. In relation to this investment function, it was stated by Soemantoro (1984) that investment it functions profitably, such as: increasing job opportunities, influencing modernization, generating profits, etc. The philosophy of investment is basically to change potential economy into real economic power. If the land owned by the community is used as shares for investment in mining activities in order to overcome the economic decline of the community and increase the prosperity of the community.

CONCLUSION

Land ownership as shares in Indonesian positive law is regulated in Article 34 of the UUPT, UUPA and Government Regulation Number 24 of 1997 concerning Land Registration. The practice of entering land into a company must basically be carried out with a GMS, announcement, assessment by an independent team, made with a deed of an authorized PPAT, and registration of the transfer of land rights. Registration of the transfer of land rights serves as a guarantee of protection for the legal certainty of the rights holder, in this case the company, so that the land used as capital can become part of the company's assets.

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