1. **Introduction**

Although a portfolio on Indonesian Land Laws had already existed within the Land Portal and some issues had been identified as well, there are still some gaps within the report that can be addressed. Specifically, the issue revolving around the discrimination and difficulty of acquiring land ownership of particular minority groups in Indonesia had not been acknowledged nor resolved. This issue is, unfortunately, still being faced by Indonesian citizens all over the state on a daily basis, thus making it a crucial topic that must be brought to light.

Indonesia had only established its national land law in September 1960 in the form of Law No. 5 of 1960 (UU5/1960), which is also referred to as the Basic Agrarian Land Act or Undang-Undang Pokok Agraria (UUPA). Before 1960, Indonesian land laws are made up of a mixture of traditional laws or hukum adat, Dutch colonial laws, Western civil law, and laws enacted by the Indonesian government from the time of its independence in 1945. This new piece of legislation ended the pluralistic nature of the previous land law and formed a sole national land law based on traditional adat laws, making it authentically Indonesian in nature.

A recent issue that had surfaced in Jogjakarta was the rejection of land ownership applications of citizens with Chinese-Indonesian descent. This arise due to a gubernatorial regulation which was formed in 1975 which had established that Chinese Indonesians do not have land ownership rights in Jogjakarta. By applying the gubernatorial regulation, which is being used as a legal basis, the State Land Agency in Jogjakarta rejected all the registration of land ownership status transfers requested by Chinese-Indonesians since 2016.

1. **Overview of Important Land Legislation and Regulations**

The Indonesian Constitution of 1945 provides basis for the disapproval of the actions of the State Land Agency. Firstly, in Article 33 of the Constitution it is stated that “The land, the waters and the natural resources within shall be under the powers of the State and shall be used to the greatest benefit of the people”. Furthermore in Article 28H (4), it is established that “Every person shall have the right to own personal property,” while in Article 28I (2) it states that “Every person shall have the right to be free from discriminative treatment based on any grounds whatsoever and shall have the right to protection from such discriminative treatment”. This provides the legal basis that the gubernatorial regulation is unconstitutional as it violates the rights of the citizen.

Article 7(1) in the Act on the Making of Laws and Regulation, also known as Law No 10 of 2004, established the hierarchy of Laws and Regulations as follows; first and foremost, the 1945 Constitution, Law/Government Regulation in Lieu-of-Law, Government Regulation, Presidential Regulation and then finally, Regional Regulation. The nature of Indonesian laws follows the lex superior principle by which a superior law supersedes an inferior law. From this, it can be inferred that the constitutional provision is higher than the regional gubernatorial regulation created by the Jogjakarta governance, as stated above.

Therefore, the gubernatorial regulation does not constitute a valid legal basis for the granting of land ownership for citizens. The Basic Agrarian Act has provided the basis for this as such is the aim of the legislation, to provide all the rules and regulations concerning all matters involving land rights. The aim of providing legal certainty for the benefit of the people in a modern state and in context of building relations with the international community can be found within the elucidation of the Act itself.

1. **Land Transfer, Allocation, and Lease**

Within Article 19 of the Basic Agrarian Land Act, it is established that a registration of all lands within the state is required by the government to ensure legal certainty. This registration includes measuring and mapping the land, registration of the ownership rights over the land and the transfer of those rights, as well as the submission of land title deeds or other documents deemed as strong evidence of ownership. In Indonesia, a Land Title Deed is known as a Sertifikat Tanah, and is always accompanied by a Survey Certificate known as Surat Ukur, which documents the location and dimensions of the land. Furthermore, in Article 23 it establishes that any sale, lease, removal or transfer of land ownership must go through the same form of registration as described within Article 19. Land transfers and land title deeds are drafted by a Land Deed Official known as Pejabat Pembuat Akte Tanah (PPAT). This process of registering every change in ownership of land has the objective of providing legal certainty in the area of land rights.

Unfortunately, this is not the case as the vast majority of land in Indonesia is in fact not registered at the State Land Agency and is held under traditional title or hak adat. This brings forth all sorts of issues, such as the issue of purchasing unregistered land rights. Therefore, while there is certainty in theory, this is still not being practiced in reality leading to some vagueness.

1. **Land tenure classifications**

There are three types of land ownership in Indonesia. First, it is the ownership right of an Indonesian citizen. Secondly, there is the right of the state to own. The third is the communal right to own a land, which is derived from traditional law. Within Article 1 of the Basic Agrarian Land Act, it can be inferred that the highest form of land ownership is the right of an Indonesian citizen to own. This is because the relationship between an Indonesian citizen with the Indonesian land is considered to be immutable. The ownership right of an Indonesian citizen can then be divided into primary & secondary land ownership, security right over a land, ownership of a unit within a building and waqf or waka, a traditional Islamic land ownership right. On the other hand, the state is the organization with the highest power and competence to rule over the citizens. Through this competence, the state is the one who will decide and regulate which lands can be owned by the citizens and the rules regarding it.

In terms of the land types, the ownership right of an Indonesian citizen is allocated to private land while the state has the right to own state lands. Finally, the communal right to own is allocated to public lands. The process of the registration of these lands needs to follow, again, Article 23 of the Basic Agrarian Act. This means registering the land deed title with the State Land Agency. However, as stated above, this faces some difficulty in practice, as many lands are still being held under traditional titles. The process of registering land rights is a challenging topic with the more traditional community as many of them own a family land on the basis of extended families which often leads to confusion as to the concrete owner of the land.