

FOREIGNERS LAND RIGHTS REGULATIONS: INDONESIA'S PRACTICE*

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Abstract

The issue of the sales of Indonesian Islands to non-Indonesian Citizen has seized the attention of Indonesian people nationally. It is thought that such sales will affects the sovereignty of Indonesia's territory. This article will focus on two main issues, namely how the rule of law regulates acquisition and management of areas that go to the sovereignty of a country and how or what the main problems faced by Indonesia in maintaining the territorial integrity of the Republic of Indonesia, especially the business of selling some islands to non-Indonesian citizens.

Keywords: land territory, sovereignty, international law.

Intisari

Isu penjualan beberapa pulau di Indonesia kepada warga Negara asing telah menyita perhatian masyarakat Indonesia secara nasional. Diperkirakan bahwa penjualan tersebut akan mempengaruhi kedaulatan wilayah Indonesia. Artikel ini akan fokus pada dua isu utama, yaitu bagaimana aturan hukum mengatur dalam hal perolehan dan pengelolaan kawasan yang masuk dalam kedaulatan suatu negara dan bagaimana atau apa masalah utama yang dihadapi oleh Indonesia dalam menjaga keutuhan wilayah Republik Indonesia, khususnya bisnis penjualan beberapa pulau kepada pihak asing.

Kata Kunci: wilayah darat, kedaulatan, hukum internasional.

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A. Introduction

At the beginning of September 2012, the news and debate on “sale” island crowded made by the majority of the Indonesian people. The media, both print and electronic, aggressively to provide information about the business “selling” some islands in Indonesia to foreigners carried by www.privateislands.com site. There are at least two islands offered for “sale” on the site, namely the Gambar Island and Gili Nanggu Island. Gambar Island is located in the Java Sea has an area of approximately 2.2 hectares. The island is offered at a price of USD725.000 or about Rp 6.8 billion. While the Gili Nanggu Island is located in the Bali Sea has to offer with a price of Rp 9.9 billion, with an area of 4.9 hectares of the island.¹

The general public via social media too busy debating these issues which likely to blame the government that seems to fail to defend the Republic of Indonesia (NKRI) for “allowing” an attempt to reduce the territory of Indonesia. Such issues do not just happen recently. In 2007, the two islands of Panjang Island and Meriam Island located in West Nusa Tenggara province reported sold to foreign investors and developed as an exclusive resort.² From the fact that occurs in the community, an important question is whether it is possible that the island was under the sovereignty of the Republic of Indonesia sold to foreigners?

In the research of this legal issues in Indonesia, the assessment can be done in two aspects, namely the law of international law and national law becomes very important. The acquisition of territory by the state is a major topic in international law. In other words, international law provides specific requirements for the state to acquire territory to be recognized by the international community. Furthermore, since the existence of the islands to be sold is situated in the territory of Indonesia, then

to consider how the legal regulation of the islands according to Indonesian land law.

This article will focus on three main issues as problem statement, namely, first, how the rule of law, both international law and national law of Indonesia, in terms of acquisition and management of areas that go to sovereignty of a country; second, how the main problems faced by Indonesia in maintaining the territorial integrity of Republic of Indonesia, especially the business of selling some islands to foreigners, especially the islands which were rumored to be sold to foreigners; and third, the strategic plan of Indonesia in maintaining its territory especially the business of selling islands to foreigners.

B. Research Methodology

This article is using legal normative of law regulation in both international law and national law. More or less, this article uses qualitative method on knowing the legal understanding of land properties and land management of Indonesian's stakeholders involved. Other than that matter, this article also focus on the necessity of conform regulation and maintenance concerning islands, especially outermost islands, in Indonesia.

The source of the data consisted from primary data and secondary data. The primary data are acquired from in-depth interview with Local Government where the islands are located, namely, Government of West Kalimantan for Gambar Island and Government of West Nusa Tenggara for Gili Island. On the other hand, secondary data are acquired from international law analysis, for instance, international treaty, customary international law and state practices. Data analysis in national level is collected from Indonesia Acts, Government Regulation, President Decree, Minister Decree and Minister Regulation.

¹ Pikiran Rakyat Online, “Dewan Selidiki Penjualan Pulau di NTB (Boards Investigate the Sales of Island in West Nusa Tenggara)”, www.pikiran-rakyat.com/node/202292, accessed on 5 September 2012.

² Nograhan Widhi K, “Pulau-pulau di Indonesia yang Pernah Diisukan Dijual (Indonesian Islands Which have Been Rumored Sold)”, <http://news.detik.com/read/2012/09/05/132459/2008624/10/pulau-pulau-di-indonesia-yang-pernah-diisukan-dijual?9911012>, accessed on 5 September 2012.

C. Discussion

1. Sovereignty of Territory State in International Law

In discussing international law, we cannot separate the position of the state as the main subject of international law. This understanding implies that the State acts as the holder of all rights and obligations under international law in full.³

According J.G. Starke, state is the institution that is the system that regulates the relations established by and among humans themselves, as a means to achieve the goals of the most important of which such an order that houses the human system in performing its activities. Similar opinion was also raised by Briery which said that the state as an institution (institution) is a place where humans achieve their goals and be able to carry out its activities.⁴

Article 1 of the 1933 Montevideo Convention on the rights and obligations of the state to mention the elements which must exist in a state as follows:

a. A Permanent Population

Population is a collection of individuals consisting of diverse tribes, languages, religions and cultures, which live in a society and which bound in a State through juridical and political relations which manifested in the form of citizenship.

b. A Defined Territory

The existence territory is an absolute must for the establishment of a State. Territory of a country consists of land, sea, and air above it.⁵ Terms of territory can be categorized as part of a State in the form of the presence of boundaries, the territory above applies the same jurisdiction and the region is able to sustain the life cycle of that State.

c. Government

In international law, a territory which has a rule is not considered as a State within the meaning of the word. This provision clearly affirmed the International Court in the case of Western Sahara.⁶ What is meant by government entities typically consists of the executive, legislative or judicial branches. A government can be recognized normally have to qualify a stable government, effective and adhered to by the entire population of the territory.⁷

d. Capacity to enter into relations with the other State

Capability of a state to establish relations of cooperation in the international arena is synonymous with the recognition gained by the nascent state of the other state. Such recognition may be a *de facto* recognition (reality) and *de jure* recognition (legal). In a statement of the international community regarding the *de facto* recognition by a government is likely to be a purely political decision, which is contained therein regarding the reluctance or caution towards effective governance.⁸ While *de jure* recognition is the recognition given to a new country in which there has been recognition of the substance contained legal and permanent.⁹

Territorial sovereignty such as Max Huber described earlier is the freedom to carry out all the functions of a State or State interference apart from others in its territory. In other words, the Authority owned by a State to exercise exclusive jurisdiction over its territory. So, in discussing the sovereignty, the role of the State is governed by public international law.

Whereas, if the habit of talking about rights

³ I. A. Shearer, 1994. *Starke's International Law*, Butterworth & Co., London, p. 85.

⁴ *Ibid.*

⁵ *Ibid.*, pp. 85-86.

⁶ Boer Mauna, 2001, *Hukum Internasional: Pengertian, Peranan dan Fungsi Dalam Era Dinamika Global (International Law: The Definition, Role and Function in a Global Dynamic Era)*, Penerbit Alumnus, Bandung, p. 21.

⁷ *Ibid.*, p. 23.

⁸ *Ibid.*

⁹ *Ibid.*

related to such as lands property rights, land use rights or the right to rent it, the party whose role is the state with private individuals or legal entities whose relationship is governed by national law. Furthermore, when an individual natural person or legal entity has a right to land, for example a piece of land property rights, individual individuals or legal entities have the right to set everything on his property. But this right must not be contrary to the law of the state where the land is located.

So it can be concluded, that the territorial sovereignty on the territory was setting in full without the intervention of other parties while customs related to land rights is the right to manage the land as allowed by the law of the state where the land is located. In other words, the provision of land by natural or legal individuals was limited solely to the economic interests of the backwardly material. Meanwhile, the political interests or other interests and its sovereignty over the territory in question are retained by the state in which the land is located where.

Possession of territory by the state is only valid to the extent that the territory has been recognized or determined. Under the Convention on the Law of the Sea in Article 2 recognized that sovereign territory covers an area of land, sea and air.

1. Sea Territory

Land area will be faced with boundaries of the state. If the look at the sea area we refer to the law of the sea convention 1982. It is interesting to study the law of the sea, is the state claims the state claims over the sea before the signing of the Convention on Law of the Sea 1982. In detail based on the Law of the Sea 1982 (UNCLOS) maritime territory is divided into several parts, namely: (1) internal water, (2) territorial waters, (3) contiguous zone, (4) exclusive economic zone; (5) continental shelf; (6) high seas, and (7) special archipelagic waters for the State in the form of islands known

archipelagic waters. Rules regarding archipelagic waters contained in section IV of UNCLOS. Archipelagic waters measured from archipelagic baselines in accordance with the provisions of article 47. In archipelagic waters recognized right of innocent passage and archipelagic waters right of passage.

2. Airspace Territory

In the airspace territory sovereignty is recognized by the principle *est solum est usque ad Caelum et ad inferos*. This principle is the concept of the Latin term "whoever owns the soil, it is theirs up to heaven and down to hell."¹⁰ Power ruling a territory beyond boundaries of to the air chamber that is above or below the existing ground space.

Paris Convention 1919 on Flights in Article 1 says that the principle of sovereignty is intact and full over the air space above the land and water with the formula: "The high contracting parties recognize that every Power has complete and exclusive sovereignty over the air space above its territory. For the purpose of the present Convention, the territory of a state shall be understood as including the national territory, both that of the mother country and of the colonies, and the territorial waters adjacent thereto". The inclusion of the principle of sovereignty over the airspace above the land and waters is in accordance with the assignment of the International Air Navigation Commission. The Air Navigation Commission is directed to enter on the land the principle of state sovereignty and jurisdiction over the waters and airspace. "Each member state recognizes the exclusive sovereignty over the airspace above the state of its territory".

Then on Chicago Convention 1944, sovereignty over its airspace re-affirmed. At the Chicago Convention 1944, in Article 1 states that every state has complete sovereignty and full (complete and exclusive sovereignty) over the air space above its territory. The article provides a view of that embodiment of full and complete sovereignty

¹⁰ US Legal, "Cuius Est Solum Eius Est Usque Ad Coelum At Ad Inferos Law & Legal Definition", <http://definitions.uslegal.com/c/cuius-est-solum-eius-est-usque-ad-coelum-et-ad-inferos/>, accessed on 5 September 2012.

over the air space over the territorial area, are: (1) every state has the right to manage and control fully and completely over the national air space, (2) none of the activities or business in national air space without prior permission or as provided in an agreement between the country air with other countries both bilaterally and multilaterally.

2. The acquisition of Territory in International Law

Traditionally, international law has some way acquisition along with its sovereign territory namely:

a. Discovery

In practice discovery is usually followed by a symbol of action, plant a flag, or the like.¹¹ In the 15th century the Pope has the power to govern the discovery and acquisition of territory, which is literally in Europe which is considered as an area that has not been discovered and previously unknown.¹² One example of the discovery that continues to be an effective control of the region by its inventors is the discovery of America by Christopher Columbus who continues in occupation over the region by Europeans.

b. Occupation

Enforcement of sovereignty over the territory that is not under the authority of another country newly discovered, not *terra nullius*. The principle of effectiveness is the basis of the existence of an occupation. In the Eastern Greenland case, a permanent international court established that the effectiveness of an occupation there after met the two elements of a will or desire to act as a sovereign and implement and demonstrate a sufficient sovereignty.¹³ One example is the case between Norway and Denmark on the

right to the Eastern Greenland. In this case Denmark was able to prove circumstances which prove the existence of the two elements mentioned above.

c. Annexation

This concept is the enforcement of sovereignty over a territory through violent way. In this case, the Territory was conquered by the annexed country annexed. Territory annexed actually is in a position lower than the state at the time of the annexation announcement did state that does mean annexation. In the case of annexation, then the annexation of the country that does have to do a formal declaration of his will to annex. One example case is when Korea was annexed by Japan in 1910. In practice due to the acquisition of territorial sovereignty through violence is contrary to the charter of the United Nations should not be recognized by other countries.

d. Accretion

A territory rights through the addition of new state added through natural causes such as a river or other movements (e.g. sand pile because of the wind)¹⁴, no need with acquisition statement.

e. Prescription

Rights acquired by prescription (namely acquisitive prescription) is the result of the implementation of the de facto sovereignty peacefully for very long periods of time over the territory subject to the sovereignty of other countries and this prescription may be as a result of the implementation of such sovereignty that has been running for a long time (eg due to dispel the impression that period sovereignty by the predecessor state.¹⁵ How to prescriptions:

¹¹ Ian Brownlie, 2008, *Principles of Public International Law*, Oxford University Press, Oxford, p. 136.

¹² *Ibid.*, p. 137.

¹³ PCIJ Series A/B, No 53, 1993

¹⁴ See Hyde, "International Law", *Little, Brown and Company*, Vol. 1, 1947, pp. 355-356.

¹⁵ See I. A. Shearer, *Op.cit.*, p. 153.

Immemorial Possession; whereby sovereign states claiming a territory has been running so long that the old state sovereignty there may have been “forgotten” or Adverse Possession; where countries have sovereignty over the territory formerly known, but other state have run its sovereignty in a long time thus eliminating the sovereignty of the old owner.

f. Cessie

Cessie is an important method of obtaining territorial sovereignty. This method is based on the principle that the right of transfer of territory is a fundamental attribute of sovereignty of a state. Cessie a territory may be voluntary, or it may be done by force as a result of the war was completed successfully by state to take delivery of the relevant area. Indeed, a transfer of territory following the defeat in war is more prevalent than in the annexation. A cessie through treaty is void if the formation of the treaty resulting from the threat or use of force is contrary to the principles of international law contained in the charter of the United Nations; see Article 52 of the 1969 Vienna Convention on the law of treaties.¹⁶

3. The Practice of States in The Acquisitions of Territory

As an example of a voluntary handover of sovereignty territory is between the sales of Alaska by Russia to the United States in 1867. Alaska for sale by Russia to the United States at a price per square meter is two cent.¹⁷ The total number of Alaska is 586.000 square miles. The total paid by the U.S. To Russia were valued at U.S. \$ 7.2 billion.

In addition, there is also a case about the

ownership status of Hong Kong. This case though is a famous event but negotiators from both sides between the Chinese-English do not really give information on the ownership of Hong Kong negotiations. Nevertheless, according to the Xinhua news agency “The Chinese Government’s position on the recovery of the sovereignty of the whole region of Hong Kong is unequivocal and known to all”.¹⁸ At first, the dispute began appearing to the public when there is an exchange of opinions through the media between the two governments in 1982.¹⁹ On the one hand, the British declared that no agreement regarding the ownership of Hong Kong and the UK still holds fast to the existing agreement. Agreement in question is the Treaty of Nanking (1842) and the Convention of Peking in 1860 and 1898.²⁰

While on the other hand, the Chinese government responded to the statement by stating that Britain Hong Kong is part of China and the agreement between the UK and China made during the Qing Dynasty is an agreement between unequal parties and this agreement was never accepted by the Chinese people.²¹ The ongoing controversy over the ownership of it has happened a long time. But when viewed in the context of sovereignty residing in Hong Kong itself as a disputed territory then there is a symbiotic relationship between the setting of the UK and China.²² So there are two views of conditions that occur in Hong Kong, first that the sovereignty owned Chinese or English and secondly, sovereignty over Hong Kong is divided between the two systems through rent.²³

When talking about sovereignty within the scope of international law would be difficult to define. China basing its claim on historical

¹⁶ *Ibid.*

¹⁷ James R. Gibson, “Why the Russian Sold Alaska”, *Wilson Quarterly*, Vol. 3, No. 3, Summer 1979, p. 179.

¹⁸ Reported by Reuter (Beijing) in *South China Morning Post*, 25 September 1982

¹⁹ Anthony Dicks, “Treaty, Grant, Usage or Sufferance? Some Legal Aspects of the Status of Hong Kong”, *The China Quarterly*, Vol. 95, September 1983, p. 427.

²⁰ *Ibid.*

²¹ Quoted from Frank Ching, “China Repudiates Thatcher’s View on Key Treaties”, *Asian Wall Street Journal*, 1 October 1982, and in Ta Kung Pao, 7 October 1982.

²² Anthony Dicks, *Op.cit.*, p. 428.

²³ *Ibid.*, p. 431.

sovereignty as a source of rights and the principle of peaceful coexistence for a long time as proving the existence of effective control of on the territory Hong Kong.²⁴ Besides the China based its position by Unequal Treaty Doctrine so that agreement on Hong Kong to the UK are considered null and void (not applicable). While England bases its claim to the Hong Kong based factual manifestation of the formation government system and legal practice in Hong Kong is based on the adoption of the UK for the Hong Kong government.²⁵ In the end, the concept of divided sovereignty is the most appropriate context to describe the condition of the ownership of Hong Kong between China and Britain. Whatever the legal disabilities that accompanied the agreement between China and Britain, China cannot deny that the UK has implemented its power over Hong Kong, if it cannot be viewed as the sovereignty of the action is classified as similar actions.²⁶

After 1945, the transition territory by force has been heavily criticized and banned by international law. In addition because of the hegemony after the end of the second world war, as well as the tendency of the international community to begin to attach great importance to the stability of the world through the principle of equality.

One concept the transition territory at this time there is the concept of trusteeship. Trusteeship Regions are regions that after the Second World War are taken care of by some countries under the supervision of Trusteeship Council (Board of Trustees) of the UN. This form of state was a result of the conference in San Francisco in October 1945.²⁷ The purpose of the trusteeship supervision is to enhance the progress of political, economic, social and educational areas towards people of their own independence. The criteria for the areas included in trusteeship area mentioned in Article 77 of the UN Charter. One example is the state trusteeship Papua

New Guinea, a former British colony that is under UN trusteeship until 1975.

Furthermore, it can be seen that the transfer of the territorial sovereignty of a state is an inherent right of the state concerned. Sovereignty includes the air space above the sea and the seabed and its subsoil. This suggests that there is a possibility that a territory can be transferred to the ownership status of the other party without having to relinquish their sovereignty.

4. Indonesian National Law Regarding Land Tenure or Territory

The MPR of the Republic of Indonesia through the Decree Number IX/MPR/2001 on Agrarian Reform and Natural Resources Management mandates the need for agrarian reform and natural resource management principles based national unity, rule of law, democracy, justice, respect for the rights adat law rights, the balance of rights and obligations between the state, the government and the people. This has been translated in the form of Law No. 5 of 1960 on Basic Regulation Agrarian Principles (hereinafter referred to as UUPA) provides the basic rules contain the basic and fundamental about the policy direction of the national agrarian law, in particular human relationships with the land that contains the rights and obligations of citizens and residents, communities, and countries.

Understanding of the concepts of meaning and substance of state controls over land rights is important to align the existing authority for this in the form of set up, take care of/manage and supervise to avoid confusion and arbitrariness. Similarly, in this current era of reform, the insistence in the case of political assertion land law legislation. As well as the attitude of the government acts to ensure the acceleration of the increase in wealth by considering aspects of regionalism, pluralism legal community, including adat laws and the guarantee

²⁴ *Ibid.*, p. 434

²⁵ *Ibid.*, p. 435.

²⁶ *Ibid.*, p. 437.

²⁷ Academy of sciences of the U.S.S.R. Institute of State and Law, *International Law*, trans.: Dennis Odgen., Institute of State and Law, Moscow, pp. 106-107.

of legal protection for rights holders to land. In the era of the free market of the 21st century, demanding legal preparedness in every area of development,²⁸ because development in itself contains major changes, which include changes in economic structure, changes in the physical region, changes in the natural resources and the environment, changes in technology and changes in the value system, not absolutely impossible people will be left behind.²⁹

a. Concept of State Can Own Land

State can make legal act as individual objects with human owners. Relationship with the state laws and the land is in the category of objects or land used for public (*res publicae*).³⁰ Thus, public roads and the like are the property of the state. Some of the reasons stated:

- 1) The existence of a special relationship between the law of the state and the lands are categorized as *res publicae in usu publico*, which is a deviation from the *res publicae in patrimonio* (objects that become public property);³¹
- 2) Legal powers to is run the state, especially the land used by the public, has the same contents as the power that carried the state against other lands uses are unlimited. The contents of this power has the same character with the power of private property in the private law;³² and,
- 3) Land used for the benefit of public services such as buildings, government offices, including *res publicae in publico usu* that belongs to the state.³³

Thus, the sense of belonging to the

state not only by the authority prescribed by law, but also includes the competence with the ability to assume the rights and obligations. State thus can be seen as the same with legal person of a human nature.

b. Regulation the State to Rights To Control According to Law Number 5 of 1960 on Basic Regulations on Agrarian Principles (UUPA)

UUPA stems to the establishment, that in order to achieve what is specified in Article 33 paragraph (3) of the Constitution 1945 the Indonesian nation state or an organization acting as the power of all the people who act as Authority Agency. From this angle must be viewed with Article 2 paragraph (1) UUPA which states that:

Based on the provision Article 33, paragraph (3) of the Constitution and matters meant in Article 1, the earth, water and airspace, including the natural resources, contained therein are in the highest instance controlled by the State being and Authoritative Organization of the whole People. (On the basis of the provisions of Article 33 paragraph (3) of the Constitution and the matters referred to in Article 1, earth, water, and space, including natural riches contained therein that at the highest levels controlled by the State, as the organization of power all the people).

State has the right to control the land that belonged to the Indonesian nation embodied in the UUPA is³⁴ organize and hold allocation, use, supply and maintenance of the earth, the water and the space, determine

²⁸ Sri Soemantri M, 1996, *Permasalahan Hukum Tata Negara (dan Politik) dalam Perspektif Penelitian, Pengembangan dan Pendidikan Hukum di Indonesia* (Problems of Constitutional Law (and Politic) in the Perspective of Research, Development and Education of Law in Indonesia), Thesis, FH-UNDIP-DIKTI-DEPDIBUD, Bandung Ambarawa, p. 8.

²⁹ Koesnadi Hardjasoemantri, 1966, *Hukum Tata Lingkungan (Environmental Administrative Law)*, Gadjah Mada University Press, Yogyakarta, p. 44.

³⁰ According to N. E. Algra, 1985, the word "kompeten" is similar to *bekwaam* and *bekvougd*, see N. E. Algra, *Inleiding tot het Nedherlands Privaatrecht*, W.E.J. Tjeenk Willink, Zwolle, achiende druk, p. 36.

³¹ *Ibid.*

³² *Ibid.*

³³ *Ibid.*

³⁴ Art. 2 par. (2) Law No. 5 of 1960 on Basic Regulations on Agrarian Principles (State Gazette of Republic of Indonesia Year 1960 Number 104, Supplement to State Gazette of Republic of Indonesia Number 2043).

and regulate legal relations between the people with the earth, water and space, and determine and regulate legal relations between persons and legal actions regarding the earth, air and space.

In accordance with the base of the establishment, based on the General Explanation (II-2), the word “controlled” in article 2, paragraph (1) is not means “owned”, but is understanding, which gives authority to the state, as the organizational power of the Indonesian nation that, to the greatest possible degree. The purpose of manifestation right to control the land is to create the greatest prosperity in the form of happiness, prosperity, and freedom.³⁵ The implementation of the right to control of that state, is authorized to Swantantra regions and communities of indigenous law, if necessary and not contrary to the national interest.³⁶ Meanwhile, in the Explanation of article 2, paragraph (4) states that the provisions in Article 2 paragraph (4) is related to the principle of autonomy and *medebewind* in the regional administration.

c. Types Land Rights According to the Indonesian National Law

Prior to the entry into force UUPA, there is a dualism of agrarian law in Indonesia, namely adat land law and west land law. Dualism of this new agrarian law expires after the entry into force the UUPA from the date of 24 September 1960 and since then for the entire territory of the Republic of Indonesia there is only one land law, land law is based on Law Number 5 of 1960 (UUPA).

The substance of state control is turned right, power or authority granted to the state

contained the state’s obligation to use and utilize the land as an economic resource for the greatest welfare of the people. Here is the type or types of land tenure by an Indonesian citizen:

- (1) Customary rights, from indigenous and tribal peoples, as long as there is still a reality, are the customary rights of land tenure with particular indigenous and tribal peoples.³⁷
- (2) Individual rights that give authority to wear, in the sense of control, use, and or a particular benefit of a particular parcel of land, consisting of:
 - (a) Land rights, such as property rights, the right to build, right to cultivate, right to use, the property of an apartment, leases, rights of open land and forest usufruct principles principally contained in UUPA, as well as other rights in law local custom, which is the right of tenure to be able to give authority to the right holder, in order to put on a certain parcel of land that was granted to meet personal needs or business purposes.³⁸
 - (b) *Waqf* of land rights, which is possession over a particular land parcel, the former property (*Waqf*) which by their owners and are separated from their wealth for ever instituted for the sake of worship, or other public purposes according to the teachings of Islam.³⁹

³⁵ Art. 2 par. (3) Law No. 5 of 1960 on Basic Regulations on Agrarian Principles (State Gazette of Republic of Indonesia Year 1960 Number 104, Supplement to State Gazette of Republic of Indonesia Number 2043).

³⁶ Art. 2 par. (4) Law No. 5 of 1960 on Basic Regulations on Agrarian Principles (State Gazette of Republic of Indonesia Year 1960 Number 104, Supplement to State Gazette of Republic of Indonesia Number 2043).

³⁷ Art. 3. Basic Regulations on Agrarian Principles (State Gazette of Republic of Indonesia Year 1960 Number 104, Supplement to State Gazette of Republic of Indonesia Number 2043).

³⁸ Art. 4, Art. 9, Art.16. Basic Regulations on Agrarian Principles (State Gazette of Republic of Indonesia Year 1960 Number 104, Supplement to State Gazette of Republic of Indonesia Number 2043).

³⁹ Art. 49 jo. Art. 1 Government Regulation Number 28 of 1977 on the Waqf of Land Ownership.

- (c) Security Rights, as the only guarantee of land rights institutions in the national law of the land, a land tenure rights that authorize certain creditors auction to sell certain parcels of land as collateral for the repayment of certain debts in terms of debtors in default and take repayment from the sale proceeds, the rights from the rights precede creditors (*rechts prevelijk*) others.⁴⁰

Land tenure systems in Indonesia, which is the right of individuals recognize the land rights following the property described as “the most full rights and most powerful that can be held above the ground and can be inherited from generation to generation”. A property can be transferred to other parties. Only Indonesian citizens (people) who can get the property, whereas when it comes to corporations, the government will determine where the corporation is entitled to receive land titles and requisite requirements must be met by the corporation to get this right.⁴¹

The occurrence and how to get the property could be caused by:⁴²

- (1) Transition, be transferred as inheritance, buying and selling, and grants.
- (2) Under adat law, because the determination of the government and the law (in the form of conversion).

d. Land Ownership Rights entitled for Foreigners on the Land in Indonesia

UUPA were born in 1960 meets the needs of foreigners and foreign legal entities with offices in Indonesia to be holders of land rights. UUPA provides the agency the right to land use rights called.⁴³ Opportunities provided by UUPA are reaffirmed with the Flats Act which gives the possibility for foreigners to own apartments/units of flats built over the right to use the land.⁴⁴

In principle, UUPA expressly prohibits foreign nationals or foreign corporations to have rights to the land, as a reflection from principle of nationalities embraced therein.⁴⁵ There is a close relationship between Indonesian citizenship status with rights over land in the UUPA, because only Indonesian citizens who have rights to land.⁴⁶

Arrangements regarding right of use in article 41 and 42 of UUPA,⁴⁷ which is described further in that Government

⁴⁰ Art. 57 jo. Art. 1 Law Number 4 of 1996 on Encumbrance Right over Land and Land-Related Objects (State Gazette of the Republic of Indonesia Year 1996 Number 42, Supplement to State Gazette of the Republic of Indonesia 3632).

⁴¹ Art. 16 Law Number 4 of 1996 on Encumbrance Right over Land and Land-Related Objects (State Gazette of the Republic of Indonesia Year 1996 Number 42, Supplement to State Gazette of the Republic of Indonesia 3632).

⁴² Art. 20 (2) Law Number 4 of 1996 on Encumbrance Right over Land and Land-Related Objects (State Gazette of the Republic of Indonesia Year 1996 Number 42, Supplement to State Gazette of the Republic of Indonesia 3632).

⁴³ Maria S.W. Sumardjono, 2006, *Kebijaksanaan Pertanahan, Antara Regulasi dan Implementasi* (Land Policy, between Regulation and Implementation), Kompas Publisher, Jakarta, p. 115.

⁴⁴ *Ibid.*, p. 116.

⁴⁵ Aslan Noor, 2006, *Konsep Hak Milik Atas Tanah Bagi Bangsa Indonesia (The Rights of Ownership of Land Concept for Indonesia)*, Mandar Maju, Bandung, p. 262.

⁴⁶ Sudargo Gautama, 1961, *Tafsiran Undang-Undang Pokok Agraria (Interpretation of Agrarian Law)*, Penerbit Alumni, Bandung, p. 62

⁴⁷ Article 41 Law Number 5 of 1960 on Basic Regulations on Agrarian Principle, determine that:

- (1) The right of use is the right to use and/or to collect the product, from land directly controlled by the State, or land owned by other persons which gives the rights and obligations stipulated in the decision upon granting this right by the authorized official, or in the agreement to work the land, as far as it not conflict with the spirit and the provision of this law.
 - (2) The right of use may be granted:
 - a. for a certain period of time as long as the land is utilized for a specific purpose;
 - b. gratis, against payment, or against services in whatever form.
 - (3) The granting of the right of use may not be accompanied of conditions bearing elements of extortion.
- Article 42 determined that:
Those who may obtain the right of use are:
- a. Indonesian citizen;
 - b. Foreigner residing in Indonesia;

Regulation Number 40 of 1996 on Government Regulation Number 40 of 1996 on Land Cultivation Rights, Right to Build, and Right of Use over the Land. Based on the provisions of Article 41 and 42, the right to life is the right to use and pick up the results from the land that was not his. The status of land use rights can be derived from the state or property of another.

Use rights for a certain period of time given for the use of the land or granting function freely, with payment in the form of money or services to the landowner. The use rights may be granted to foreigners or legal entities domiciled in Indonesia.⁴⁸ Legal entities are granted right of use must be established under Indonesian law or with offices in Indonesia (where foreign legal entities). Reasons for granting right of use to foreigners or foreign corporations, because these rights are limited or restricted to authorized owners.⁴⁹ In addition, Article 43 determines the right of use that comes from the land the state, can only be transferred to another party with the permission from competent authority. Right of use from the land ownership rights, to the transfer of rights must be based on an agreement that allowed for it.

In Government Regulation Number 40 of 1996, compounded parties may obtain right of use, i.e. departments, government agencies and non-ministerial ministry; religious bodies and social, as well as representatives of foreign countries and representatives of international agencies.⁵⁰ It can also be given

the right to use from the land management rights.⁵¹ Regarding the period of granting right of use is 25 years. Extension and renewal right of use are:

- (1) Rights of use from the ground the state, can be extended for a period of 20 years and can be renewed for a period of 25 years.
- (2) Rights of use from management rights, and the extension of its right proposal right holder.
- (3) Rights of use from property rights, cannot be extended but can be renewed according to the agreement between the holder right of use the property rights holders.⁵²

Thus UUPA and its implementation regulations, does not clearly identify the forms of business activity or a right of use the designation from use. The use, possession and use of right of use must not conflict with the provisions and spirit of the UUPA, must be in accordance with the license agreement in the administration or agreement made for it. Therefore, the government or private parties to build housing on the land right of use, and then sold to the general public, including if the buyers are from foreign nationals. Likewise, the foreign nationals who obtained the rights to use, can use it to build a residential or business activities according to permit the granting from rights or by agreement from both parties agreement.

As a follow-up UUPA provision on the right to the land that can be acquired by foreigners and in order to provide

c. Corporation which have been established according to Indonesian Law and having they domicile in Indonesia;

d. Foreign corporations having a representation in Indonesia.

⁴⁸ Maria S.W. Sumardjono, *Op.cit.*, p. 85.

⁴⁹ Sudargo Gautama, *Op.cit.*, pp. 149-151.

⁵⁰ Art. 39, Government Regulation Number 40 of 1996 on Land Cultivation Rights, Right to Build, and Right of Use Land, (State Gazette of the Republic Indonesia Year 1996 Number 58, Supplement to State Gazette of the Republic Indonesia Number 3643).

⁵¹ Art. 41, Government Regulation Number 40 of 1996 on Land Cultivation Rights, Right to Build, and Right of Use Land, (State Gazette of the Republic Indonesia Year 1996 Number 58, Supplement to State Gazette of the Republic Indonesia Number 3643).

⁵² Arts. 46 *jo.* Art. 49 Government Regulation Number 40 of 1996 on Land Cultivation Rights, Right to Build, and Right of Use over the Land, (State Gazette of the Republic Indonesia Year 1996 Number 58, Supplement to State Gazette of the Republic Indonesia Number 3643).

legal certainty regarding the ownership or occupancy of a dwelling house for foreigners, issued Government Regulation Number 41 of 1996 on Home Ownership Housing Occupancy by a Foreigners or domiciled in Indonesia. Government Regulation No. 41 of 1996 is followed up by the Minister of State Agrarian/Head of National Land Agency Regulation No.7 of 1996 and Ministry of Agraria/Head of National Land Agency 8, 1996.

Both the Ministerial Regulation issued an interval of one week of the date of October 7 and October 15, 1996. Broadly speaking, Government Regulation Number 41 of 1996 contains the following provisions:

- (1) In principle, foreigners domiciled in Indonesia has allowed one dwelling house, can be a stand-alone house or apartment units built over right of use;
- (2) The house that stood on the land can be built on State Land Right of Use or Right of Use derived from Property Rights the land given by the holder of the deed Land Deed Official Property Rights;
- (3) Agreement on the provision of Right of Use Property Rights shall be recorded in a book and certificate Property Rights the land is concerned. Term of the above Right of Use the Property Rights should not be longer than 25 (twenty five) years, the time period can not be extended, but can be renewed for a period of 20 (twenty) years, on the basis of an agreement set forth in the new agreement, with a note that foreigners still domiciled in Indonesia;
- 4) When a foreigner who has a house built on top of the State Land Right of Use, or by agreement with the rights holder is not domiciled in Indonesia, within a period of one (1) year shall release or divert over the house and land to others who qualify;
- 5) When the term of land rights has not been released or transferred to another qualified.

With regard to the category of foreign-

ers who can own home in Indonesia, the BPN Circular No.110-2871 on the implementation of Government Regulation Number 41 of 1996 on Home Ownership Housing or Shelter by Foreigners in terms of its position in Indonesia can be divided into 2 (two) categories, namely:

- (1) Foreigners who resides permanently in Indonesia;
- (2) Foreigners who do not live permanently in Indonesia, but only when the time is in Indonesia.

This distinction is related to the documents which must be presented when undertaking legal action to get home, namely:

- (1) For foreigners settled: Permanent Residence permit, and
- (2) For other foreigners: Visit permits or other immigration permits shaped sign that is attached to a passport or other immigration document are owned by foreigners are concerned.

Restrictions regarding the house belongs to a foreigner, in Circular Head of BPN mentioned that the stranger can have a home, a stranger to it then was asked to make a statement that the person concerned does not have a residence or dwelling house in Indonesia at the time of the legal acts to acquire the house.

Inside the Head of BPN Regulation No. 7 of 1996 states that foreigners who buy homes in Indonesia no longer eligible domiciled in Indonesia, if the person concerned no longer have and maintain economic interests in Indonesia. As per the prevailing developments, the legal relationship that ended when the requirements are not met the requirements of immigration foreigners anymore or have fallen under Government Regulation No. 32 of 1994 namely:

- (1) Because foreigners relinquish Permanent Stay Permit or Limited Stay Permit of their own accord;

- (2) Located outside the territory of the Republic of Indonesia and has continuously exceeded the time limit permit re-entry into the Indonesian territory; and
- (3) Subjected immigration measures.

If these three things are not met, the foreign national concerned may no longer be lawfully in the territory of Indonesia. In Article 40 of Government Regulation 40 of 1996 stated that if the Rights of holder is no longer eligible, within one (1) year shall release or transfer the right to other parties who qualify. If within a period of one year are not released or transferred its rights, the right to remove due to the provision of legal rights related parties on the land remain unnoticed.

Government Regulation Number 40 of 1996 is the laws and regulations of a general nature, particularly against foreigners, in Article 6 of Government Regulation Number 41 of 1996 stated that within period of 1 (one) year right to land and buildings not released to any other party or qualified, then there are two possibilities that can occur are:

- 1) When the house was built on state land using Right of Use, the land and buildings controlled by the State to be auctioned;
- 2) When the house was built on the land under an agreement with the holders of land rights, then the house belongs to the holder of the right to land, then the house belongs to the holder of the rights to the land in question.

However, because of upcoming regulations are based on a different concept with Government Regulation Number 41 of 1996, which is the deciding factor is the building ownership rights to the land and building to the other parties who are eligible should be amended/added as follows:

- (1) If the Right of Use occurs on State Land, rights to land and buildings

owned by State;

- (2) If the Right of Use occurs on land by treaty rights to land and buildings belong to the holder of the rights to the land in question.
- (3) If the Right of Use occurs on land management rights under the agreement, the right to land and buildings owned by State (holder of Rights of Management) to be auctioned.
- (4) If the Right of Use occurs on land management rights based on agreements between the Developer with strangers, the land and buildings occupied by the Management Shareholders to be auctioned.
- (5) Regulations of the Rights of Island in Indonesia

UUPA, in addition to regulating land rights that could be used by Indonesian and foreign nationals, also implicitly mentioned the possession of the islands in Indonesia. This is seen by the mention of the word "islands" within the UUPA explanation. However, this is still a big question mark in the absence of a specific setting over control of the island. The question mark be missed with the Government Regulation Number 40 of 1996 on Land Cultivation Rights, Right to Build, and Right of Use over the Land which provides that possession of the island can only be granted rights to cultivate, right to build, or the rights of use. Regulation on right of the island in the form of lease rights, land rights, or rights of use shall be further regulated in the regulation of its own government. Until now, the government regulation has not been established and published by the government. This makes the confused of its own for the Indonesian people because there is no clear regulation on the possession of the island itself. Though, Indonesia is an archipelago consisting of tens of thousands of islands from Sabang to Merauke and Miangas to the Rote Island.

In 2007, was published a new juridical

powers in managing islands of Indonesia. Law no. 27 of 2007 on the Management of Coastal Areas and Small Islands. In it are set on the technical provisions relating to the coastal areas and small islands management in Indonesia. According to Law Number 27 of 2007, the small island is an island with an area of less than or equal to 2,000 km² (two thousand square kilometers) and the unity of its ecosystem.⁵³ This is reinforced by Government Regulation Number 62 of 2010 concerning utilization Minor Outlying Islands, in Article 1, point (1). However, the Government Regulation No. 62 of 2010 added a definition of small islands that outermost small islands that have fundamental points of geographic coordinates that connects the islands of the sea baselines in accordance with international law and national law.⁵⁴ In Article 23, paragraph (7) of Law Number 27 of 2007, that any use of the small islands and their surrounding waters by foreign, must be approved by the Ministry of Maritime and commitments. However, the form of utilization of the island is still unclear. The absence of regulation of the right to the island to make arrangements Article 60 of Government Regulation Number 40 of 1996 with Law Number 27 of 2007 is not in harmony. That means, when foreigners wants to use the islands in Indonesia, it must first obtain permission approval to the Minister of Marine and Fisheries, not to the BPN as organs of state in issuing permits to land management in Indonesia. Government regulations are urgently needed in the management of the island became the command of Government Regulation Number 40 of 1996 to make the legal situation over the islands and their use

becomes clear.

From the explanation described above, that the management of the island by foreigners does not necessarily make the island into a foreign-owned and the disintegration of the Republic of Indonesia. However, these islands remain the property of Indonesia which in turn controlled by the state, and its use is being done by foreigners. Thus, there is no need to worry excessively over fear of society to move the island to foreign hands. Same with the land, when the land is used by foreigners, does not mean the land is split with the state. Island was so. Moreover, the use of the island by foreigners should do prior permission to the Minister of Marine and Fisheries.

Therefore, it does not need to be an even longer debate because there is no transfer of ownership and sovereignty over the island to foreign sales, existing transitional land rights are limited only to foreign citizens who have the right to use such time limits in accordance with UUPA.

5. Case Study Involving Two Island in Indonesia

As mentioned earlier, at the beginning of September 2012, the news and debate on "sale" island crowded made by the majority of the Indonesian people. The media, both print and electronic, aggressively to provide information about the business "selling" some islands in Indonesia to foreigners carried by www.privateislandsonline.com site. There are at least two islands offered for "sale" on the site, namely the Gambar Island and Island. Gambar Island located in the Java Sea has an area of approximately 2.2 hectares. The island is offered at a price of USD 725 000 or about Rp 6.8 billion. While the Gili Nanggu Islands are located

⁵³ Art. 1 (3) Law Number 27 of 2007 on Management of Coastal Zone and Small Island (State Gazette of the Republic Indonesia Year 2007 Number 84, Supplement to State Gazette of the Republic Indonesia Number 4739).

⁵⁴ Art. 1 (2) Government Regulation Number 62 of 2010 on Utilization of Outermost Small Islands (State Gazette of the Republic Indonesia Year 2010 Number 101, Supplement to State Gazette of the Republic Indonesia Number 5151).

in the Bali Sea has to offer with a price of Rp 9.9 billion, with an area of 4.9 hectares of the island.⁵⁵

On the basis of reports, this study conducted a field study related to local government whether or not aware of the existence of these activities and how the actual situation in the field.

a. **Gambar Island**

Gambar Island, are also offered for sale in <http://www.privateislandsonline.com> site, still in virgin condition. This site mentioned that the Gambar Island is in the Java Sea region with an area of 2.2 hectares. Gambar Island has beautiful beaches that surround it and deserve to be a private residence. The sea water around the island is relatively calm and shallow. The visitors can dive, snorkeling and fishing. A number of fish and lobster can be found on the beach. Island Images are mostly of rocks, uninhabited, little sandy beach.

Based on interviews with Ir. Teddy, Head of Spatial Planning of the City and the Cleanliness Local Government, Kubu Raya regency, West Kalimantan, main tasks or functions of this field is primarily related to the licensing of building permits. In connection with the license rights to land ownership, zoning is a party that has the authority to give building permits which are required for the administration of land ownership status. Further, the informant revealed that the licensing process in terms of the building, there is a coordinative relationship between the field of spatial and cleanliness of the city and the local BPN. Coordination relationship is intended to provide a Verification of facts regarding ownership of land used for building requested by the applicant. One form of data verification is the legalization provided by BPN.

Based on the explanation of the speaker, there is space utilization control program, that which regulates the provision of periodic inspection of the permissions that have been granted. Furthermore, it is explained that it is not allowed to erect buildings in areas such as ditches or banks of the river. In the

area of Kubu Raya itself according to speakers on a small island of the surrounding islands have not given significant attention. Special to the authority of Sector Urban Spatial own informants said that the licensing arrangements in the form of island development in the area or areas of the island are not the same. Furthermore, informants revealed that there was no difference in treatment for an applicant who is a citizen of Indonesia or applicant who is a foreign citizen.

According to the informant, on the issue of the sale of the island that is not the discretion of City Spatial field. Based on the opinion of the speaker, sales practices of and island is not full because there are parts of the island that cannot be sold, such as a river worth. Worth this river cannot be sold because it is part of the public space that is regulated in Law No. 26 of 2007 on Spatial Planning.

The conclusions obtained from interviews with sources in terms of setting the land that borders the beach or fully islands is that for areas adjacent to the coast or islands are entirely public space. The public areas as stated in the Law on Spatial Planning are not possible to be sold. Thus it is not possible to rule the practice of selling the island as a whole.

In another interview with Mr. H. Firdaus, the Head of National Land Agency (BPN) Kubu Raya, West Kalimantan, Main functions of Kubu Raya District Head of BPN based on the Head of BPN's Decision Perkaban Number 4 of 2006 and Number 5 of 2008, namely:

- (1) Preparation of plans, programs and budgets in order to land a task;
- (2) Services, lisencing and recommendations in land;
- (3) Survey implementation, measurement and basic mapping, surveying and mapping fields, bookkeeping land, thematic mapping and land surveying potential;
- (4) Implementation of land use, land reform, land consolidation and structuring coastal areas, small islands,

⁵⁵ Pikiran Rakyat Online, "Dewan Selidiki Penjualan Pulau di NTB (Boards investigate the sales of island in West Nusa Tenggara)", <http://www.pikiran-rakyat.com/node/202292>, accessed on 5 September 2014.

- borders and certain regions;
- (5) Proposing the establishment of implementation and establishment of land rights, land rights registration, maintenance of land records and land administration of government assets;
 - (6) Implementation of land management, the management of state lands, wastelands and degraded soils, increasing community participation and empowerment;
 - (7) Handling conflicts, land disputes and cases;
 - (8) Coordinating land use stakeholders; and
 - (9) Management of national land management information system (SIMTANAS).

Based on information from informants, land ownership rights are contained in BPN Regulation Number 3 of 1999. Furthermore, foreign ownership of land rights for only a right to use that where the licensing procedures equivalent Indonesian citizen. In terms of management of coastal areas and small islands, linked by Law No. 27 of 2007, discrepancies in the rules concerning licensing which case of the use of small islands and their surrounding waters by foreigners must obtain the approval of the minister of marine and fisheries not to BPN as organs of the government, sources said that the BPN based on Presidential Decree Number 32 of 1990, regional regulation should have settings specifically for each region to set the rules of discrepancies. Unfortunately, according to the speaker until now there is no regulation is concerned that these discrepancies Completion has not met in practice. Furthermore, the speakers stressed that it is the land regulation has many discrepancies between the one and the other rules.

In terms of the stipulation in Article 60 in the Government Regulation Number 40 of 1996 on a parcel of land that is wholly or islands bordering the beach itself regulated by government regulation, interviewees stated that government regulation is desirable, it has not been established until now.

Informant in this case argued that the

current rules fail to accommodate the protection of Indonesian territory and yet also protect the property rights of society as sufficient. According to one informant sectoral ego causes is contained in their respective fields of government in Indonesia itself. A resource for future parties expects policy makers to be more conscientious and competent in issuing policies, especially in the land sector.

b. Gili Nanggu Island

Gili Nanggu Island is a small island in the Strait of Lombok or exactly on the east coast of the island of Lombok, Gili adjacent to Tangkong. The administration, including the District of Central Sekotong, West Lombok, West Nusa Tenggara. Gili has an area of 4.99 hectares Nanggu and has managed to be one of the destinations. On this island there are facilities owned bungalows and cottages with private parties the right to use status. This small island has a charm of white sand beaches and coral reefs in the surrounding waters.

Gili Nanggu is managed as a tourist with the concept of 'natural island and private' that offers every visitor to feel the privacy without being distracted by the merchant or other visitors while enjoying the beauty of the island. This is because living in this island resort is just managers and staff

Mr. Pudji Utomo, the Head Office Land Affairs of West Lombok, explains that to the ownership of the island of Gili Nanggu still in the hands of Indonesian citizens. He ensures that the legal basis and the land administration, management and control of the island of Gili Nanggu cannot be taken by foreign nationals or foreign legal entity with the status of property rights. According to him, the rule of law we are leaning to the Law. 5 of 1960 on Agrarian Principles close loopholes foreign nationals or foreign corporations to control the land in Indonesia with property rights.

When mentioned about further regulation on the right to the island on Article 60 of Government Regulation Number. 40 of 1996, he stated until now no one any legal rules that accommodate the 60 chapters. As the head of the Land Office land

West Lombok Island, he just provides management with land rights. This is because that is requested by the parties at first is the right to land on the island of Gili Nanggu. Then, BPN staff namely Mr. Ramli added that mastery Nanggu Gili is from the beginning dominated by Indonesian citizens for a long time. Then land on the island of Gili Nanggu passed on from generation to generation. And on the island of Gili Nanggu there are also members of the Navy personnel that it is impossible to master foreign Nanggu Gili islands. Arguments presented by Mr Ramli's field survey results that he did in September 2012 at the behest of the National Land Agency BPN Regional Office of West Nusa Tenggara Province.

The ownership of the Nanggu Gili, a team of researchers to obtain data that is based on a list of the ownership of small islands in West Lombok district and the Land Book, Gili Nanggu intended to moor and emplacement. In the first data, the list of ownership of small islands in West Lombok district, Nanggu Gili islands controlled by two Indonesian nationals, namely:

- (a) Ni Nyoman Raka with Right to Build. The area of 60,000 m² and on August 5, 1997 has been issued a certificate of land and bookkeeping with the number B.20.
- (b) I Ketut Sumertayasa with Right to Build. The area of 63,300 m² and on August 5, 1997 has been issued a certificate of land and bookkeeping with the number B.21.

In the second data the Land Book, showed a shift of land rights of Indonesian citizens to legal entities domiciled in Indonesia. This can be seen:

- (a) In accordance with the Sale and Purchase Agreements No. 324/2005 on August 29, 2005 made by PPAT Mochamman Aziz, SH, registration on 27 April 2006, the land area of 60,000 m² belongs to PT. Istana Cempaka Raya, located in the Mataram, with

rights to build.

- (b) In accordance with the Sale and Purchase Agreements No. 325/2005 on August 29, 2005 made by PPAT Mochamman Aziz, SH, on the date of registration of 3 April 2006, the land area of 60,000 m² belongs to PT. Istana Cempaka Raya, located in the Mataram, with rights to build.

From the results of field studies on the island of Gili Nanggu can be concluded that the acquisition of land on the island of Gili Nanggu up to now is still held by the subject of law in Indonesia, namely PT Istana Cempaka Raya, legal entities domiciled in Mataram. Up to now, there is still no legal regulations governing the implementation of the delegated rights to the island of Article 60 of Government Regulation Number 40 of 1996 on Right to Cultivate, Right to Build, and Right of Use Over Land.

C. Conclusions

Ownership territory in the international law clearly regulated both in terms of international treaties and customary international law. Only the state can have sovereignty and its territory so that it indicates that an individual cannot have a territory along with its own sovereignty. On the domestic side of the law, based on the research that has been done, the ownership of land in Indonesia has clear provisions. Especially for land ownership for foreigners shall be further regulated by Law no. 5 1960; Government Regulation no. 40 in 1996, and Law no. 27 in 2007. Land ownership by foreigners will be severely limited by the authority of the land and the length of the control of the island.

Especially with regard to the two islands, Gili Nanggu Island and Gambar Island, both still owned by Indonesian citizens with strata ownership rights to land, property rights. Therefore, the debate about the sale of the island or land adjacent to the beach is no longer necessary. Concerns about the loss of sovereignty of the Homeland can be minimized by

means of the Indonesian government socialization campaign fully to all walks of life for the people of Indonesia will be informed of existing regulations. However, although the ownership of land rights on an island or land adjacent to the beach is possible by

the foreigners, the Indonesian government should keep doing the examination or inspection regularly and consistently to maintain the right to use the land in accordance with their distribution.

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