

Rearranging Agrarian Law Politics in the Land Regulation System in Indonesia

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Abstract

Resetting agrarian law is considered urgent, severe, and effectively managed. This is due to political, and regime changes and is intended so that social welfare and human values can be well constructed. The land has a significant role in the life of all people, such as the role in housing, plantation businesses, agricultural businesses, mining businesses, and others. Land law politics is a government policy in the field aimed at the designation and use of the ruler or land owner, the appointment of land use to ensure legal protection and improve welfare and encourage economic activity through the enactment of the Land Law and its implementing regulations which are the main themes of this research. This research methodology uses normative studies or literature studies because the studies obtained are based on references from books, articles, and regulations related to agricultural law or land policy. The results of the study can be concluded that the agricultural law policy that was formed through the UUPA No. 5 of 1960 concerning the Principles of Agrarian Law, which is already sixty years old, needs to be reformulated to avoid the distortion effect that can have such consequences both on the sociological and philosophical side. One of the reformulation concepts is within the corridor of the concept of regional autonomy.

Keywords: Legal Politics, Agrarian Law, Land, Rearrangement, Regional Autonomy.

A. INTRODUCTION

Regarding the understanding of legal politics in Indonesia, there are 2 (two) schools of opinion. First, legal politics is understood as a policy on the law. Second, legal politics is understood as a political product. In the first stream, several legal experts adhere to it, such as Radhie (1982), stating legal politics as a statement of the will of the state authorities regarding the law that applies in their territory and regarding the direction in which the law is to be developed". Sudarto (1981) who gives the understanding that: "Legal politics is the policy of the state through the authorized bodies to determine the desired regulations, which are estimated and used to express what is contained in society and to achieve what is aspired.

Adherents of the second legal, political school of thought are Moh. Mahfud MD said that talking about legal politics means that we talk about the reciprocal relationship between politics and law. Therefore, it cannot be denied that specific political configurations will affect the character of legal products (Mahfud MD, 1998).

Strictly speaking, he formulated his definition as follows: Legal politics can be formulated as a legal policy that will be or has been implemented nationally by the government; It also includes an understanding of how politics affect the law by looking at the configuration of power behind the making and enforcing of the law. In Mahfud's view, the law cannot only be seen as imperative articles or imperatives that are *das sol/en*. Still, it must be seen as a sub-system that, in reality (*dasein*), is not impossible to be determined by politics, both in the formulation of materials and articles as well as in their implementation and enforcement (Mahfud MD, 1998).

The land has a significant role in the life of all people, such as the role in housing, plantation businesses, agricultural businesses, mining businesses, and others. Indonesia is well known as a farming country, so land is one of the essential factors in the life of the Indonesian people (Wiradi, 2009). The arrangement of land use needs to pay attention to the people's rights to land, the social function of land rights, and the maximum limit of land ownership, including various efforts to prevent the concentration of land tenure, which is detrimental to the interests of the people (Dewi, 2002). Land institutions are perfected so that an integrated, harmonious, effective, and efficient land management system can be realized, which includes an orderly administration of life. Land administration development activities must be improved and supported by better land analysis and information tools (Hajati et al., 2020).

The regulations regarding land in Indonesia have been listed in Law number 5 of 1960 concerning Basic Agrarian Regulations or mediated by the *Logga*, which contains the main points of the Indonesian National Land Law. Indonesia's population growth is increasing rapidly every year, and the community's land needs also increased. The existence of land cannot grow, but Indonesia can carry out coastal reclamation methods so that land can increase. Many people make the land an investment because land prices are increasing (Prasetya & Sunaryo, 2013). Some problems that often occur in Indonesian society are unequal ownership or control over land, land tenure without a permit and problems related to land acquisition for development purposes which are entitled or their proxies (Nurjannah, 2014).

Law number 5 of 1960 concerning Basic Agrarian Regulations (UUPA) has entered its sixty years, a legal age that allows for a serious assessment of its substance and effectiveness. Along with its relatively long age, it cannot be separated from a series of distortions (Sutedi, 2020). The distorting effect of the law has far-reaching consequences. At least on two things. On the sociological side, it weakens its authority, and on the philosophical side, it will destroy the idea of substantive justice to be realized through this law (Aziza, 2009).

The legal politics that led to the birth of the UUPA revolves around two levels. First, to realize a unique agrarian law throughout Indonesia as a logical consequence of the existence of an independent republic and justice (Fitzpatrick, 1997). Second, it is intended to realize a dignified community building, especially for farmers, whether sharecroppers, farm laborers, and others. Through this law, smallholders and farm laborers can gain access to economic resources, in this context, which means island, so

that distortions in the structure of land ownership and control can be eliminated. The hope is to create a just and dignified society (Lipton, 2009).

B. METHOD

So that an article based on research can be said to meet the criteria as a scientific work, a method is needed. In this regard, in the preparation of this paper, the author uses a normative juridical method, namely statutory research and analysis of literature and other legal materials such as books and legal journals. This study uses a normative juridical legal research type to examine and analyze legal materials and issues based on statutory regulations. This research was conducted to solve legal problems that arise while the results to be achieved are prescriptions about what should be done. In this case, the research *Rearranging the Politics of Agrarian Law in Indonesia*.

C. RESULT AND DISCUSSION

Legal politics is a political articulation developed by the state against the aspirations and demands of the community for everything related to their lives. These aspirations and demands are the material basis of legal politics. If this material basis changes, the political articulation to be formulated as legal politics will also change (Koskenniemi, 2006).

So far, the structure of land tenure and ownership has not undergone drastic changes. The phenomenon of complete control and ownership of land by a few economic elites dealing with ordinary people can still be found everywhere. However, that does not mean that the strategic environment as the material basis of law has not changed. So that its reformulation is something that cannot be postponed any longer. Changes in law become significant when the two elements meet at a point of tangency. The two elements in question are the existence of new conditions and the awareness of the need for change in the community in question (Salim & Utami, 2020).

The current social environment and political system are, to a certain extent, really something different from the old regime's environment and political system. Although it is debatable, what is happening now shows the nuances of adequate democracy. A very pyramidal hierarchy in the structure of land tenure and ownership, a situation philosophically believed by Myren (1993) to have the potential to lead to a reduction in the ideals of justice guaranteed and realized through legislation. The reduction in justice will be enlarged when the law itself cannot play the role of control effectively. The effect can be comprehensive because Friedman (2005) believes the law as a system to be part of the social control system, even though the legal system can function secondary or subordinate to a social system.

The reconstruction of social and political structures is marked by opening public political participation through political channels (political parties). Reformulation of the functions and roles of several institutions, which have been believed to have contributed to weakening the role of law, including agrarian law, reconstruction of the role of the rule of law, and the reconstruction of regional

autonomy must be looked at comprehensively to indicate how the politics of agrarian law in this era needs to be reformulated (Savitri, 2013). The problem is how to determine and agree on the direction and substance of the reformulation. In this context, several points of view require special attention.

First an understanding of the agrarian concept. Etymologically, the agrarian concept introduced into the LoGA and the developed discourses have been limited in that its meaning is equated with the land. Even though etymologically, the concept of agrarian is an elaboration of the concept of acres in Latin, which means not only land but what is in it, as well as water and space. The urgency to understand the concept is linked to formal conceptualization within the framework of reformulating agrarian law politics in the future. Correctly understand the concept to determine the formal restrictions on its use in the law. Indeed, the Latin concept does not have to be transformed as is into law. Therefore. An agreement is needed to choose whether, for example, to use only the agrarian concept but strictly limited to the land sector or to use the agrarian concept without any restrictions. The agreement on using the concept relates to regulating related fields, mining and forestry, and the environment, for example. Suppose you use the agrarian concept as it is. In that case, the regulations on mining, forestry, and the environment, for example, cannot be separated from the agrarian law because they are related. This is important to create legal harmony both vertically and horizontally. The contribution of the legal system is the integration and comprehensiveness of agrarian law politics so that it can provide more assurance of certainty. Legal certainty is essential, not because of the law itself. However, in a state of law, legal certainty is essential for the community to plan a legal action without fear and anxiety about the arrogance of the state, which can suddenly intervene in people's lives (Rachman, 1999).

Second is the concept of the right to control the state and the delegation of authority in its regulation. The centralization of regulatory authority to the central government, which is still espoused in the LoGA, now seems feasible to be reformulated. Of course, if regional autonomy is really to be implemented. If this is the case, there must be a change in the construction of regulatory authority in the land sector. In order to be in harmony with the spirit of regional autonomy, the regulatory authority in the land sector should also be autonomous to the autonomous regional government. There is no guarantee that the autonomy of the regulatory authority in the land sector to the autonomous regional government can immediately eliminate the tendency for central people or people in a particular area to own land in another area as their own.

Another problem is if the control is carried out within the framework of investment; of course, the rights granted or obtained are not property rights but rights to cultivate or use. More or less, this potential can be prevented through the quality of the openness of the bureaucracy in the autonomous region. This quality is also very dependent on the democratic capabilities that develop in the region (Fitri, 2018).

No less essential to be reformulated is the construction of the existence of customary law communities, which has implications for the recognition of their

territory (customary land). The construction must be made more concrete, not as Articles 3 and 5 of the current UUPA only regulate the principles. However, it must be acknowledged that this weakness is correlated with the emergence of legal conflicts between indigenous peoples and the state when the state requires an area of land for various reasons. Giving acknowledgment and regulation of customary law community lands does not mean that the state land concept is no longer relevant to be regulated. There are two which is noteworthy in this context. First, there is a balance between the two concepts. Second, the normative parameters must be concrete to avoid the tyranny of interpretation from both the state and the indigenous peoples (Fakih, 1997).

In addition to the problems above, Fakih (1997) also notes other problems. The issue Fakih is referring to is the maximum and minimum ownership limits. UUPA, following Law no. 56 of 1960, only regulates the maximum and minimum limits for agricultural land. Outside of that, there are no settings. Is this policy still relevant to be maintained, or on the contrary, does it needs to be revised. What about land ownership for housing in urban areas. Shouldn't there be a setting regarding the maximum limit? This allows the townspeople, especially those in slum areas, to gain access to land ownership. At the very least, limiting the maximum ownership of land in urban areas will help reduce the concentration of land for housing in the urban elite, which is one of the causes of widening inequality in urban areas, especially in the housing sector.

So far, no political signs have led to reformulation or revision of the LoGA. Except some time ago, when the economic crisis was at the peak of the Republic's state life, it was widely heard that the government was partially handling the agrarian sector. The partiality is indicated through the object of its handling. Is not that what is being handled only limited to abandoned lands controlled by developers, which of course had time to be identified, along with certificates of land controlled for decades by the community, but once again only aimed at land for housing, and that too only takes place in urban areas. . In sis! Other forests are controlled with concession rights instruments; those that have not been exploited are also handled.

The handling carried out by each department, regardless of the lack of coordination, shows how the handling in the agrarian sector is carried out partially and is very ad hoc. This situation is understandable because the environment and bureaucracy developed during the New Order Regime made this possible. Moreover, the reduction in agrarian law politics is already so severe. What is interesting is that there is not the slightest sign from the national unity cabinet at this time to touch the agrarian sector (land) unless there is a critical public discussion on the existence of the National Land Agency. Is it deleted or even maintained. This polemic becomes even more interesting when placed within a legal, political framework, particularly agrarian or land politics. The exciting thing is that there is no formulation, let alone complete and comprehensive, regarding the politics of agrarian law. Of course, suddenly, land affairs were about to be autonomous. Autonomy or not is not a particular issue. Within the legal framework, the issue becomes complicated because

there is no legal or political mainstream. It must be remembered that until now, the centralization of agrarian authority introduced in the LoGA has not changed. So the regulatory authority in the land sector is normatively still held by the central government.

Moreover, the Law on Regional Autonomy does not provide any regulation on this matter. The exclusion of agrarian law politics at this time may be motivated by the assumption that agrarian politics is subordinated to the politics of autonomy that is developing at this time. However, now is the right time to discuss the politics of agrarian law in an integrated manner with various new developments. However, there has not been any discourse, for example, at the parliamentary level, regarding the politics of agrarian law. The experience of implementing the UUPA during the New Order Regime should be a stimulus to start paying attention to this issue (Erwiningsih, 2000)

There is something fundamental in this context that relates to the law-making process. The preparation or making of a too hasty law does not guarantee the good substance and structure of the law. Moreover, to respond to the legal feelings of the community. This is related to the formation or development of legal culture, not only in the community but also in the legal apparatus, the state. Understanding and articulating the community's legal feelings is a prerequisite for forming legal culture. The legal culture of the people, related to their perception of value, the environment in which they live, ideas about morality, rights, obligations, and so on, the variability becomes unavoidable, and this must be well articulated. What would happen if such varied problems were perceived and then formulated suddenly by the drafters of the law. The interplay between the legal structure and culture contributes to law enforcement's effectiveness. Consistency, thus, becomes absolute to be held if you want to realize an integrated legal politics to give birth to laws with a democratic character, guaranteeing substantive and procedural justice.

D. CONCLUSION

Land law politics in Indonesia have their roots in the country's colonial past, even before the country gained its independence. On August 17, 1945, Indonesia attained its independence; nevertheless, the country did not have any land regulations in place at that time. As a result, the concept of concordance that is outlined in Article II of the transitional provisions of the Constitution of 1945 must be adhered to. The mining legislation and a number of other laws have been modified to include the flaws that are present in the UUPA. These flaws include the systematic ignoring of one's rights to land, amongst other things. The importance of this reformulation of agricultural law politics has been elevated as a result of the changing nature of the strategic environment and the emergence of new requirements. It is not necessary to make a significant shift in the paradigm of reformulation of agrarian law politics since the populist orientation of the BAL may still be considered very important. Is it still employing the notion of land or agricultural, for example, except for the conceptualization of the knowledge that is employed in the law.

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