

The Role of Land Law in the Politics of Land Procurement Law for National Development Between Public Interest and Land Ownership Rights

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Abstract

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Land is important for human life and on land humans make a living, besides that on land humans also build houses as shelter and build various other buildings for offices and so on. Land has a social function. Land in daily life has a very important role in human life because it can determine the existence and continuity of relationships and legal actions. Land also contains various kinds of natural wealth that can be utilized by humans. In essence, the meaning and strategic position of land in The life of Indonesian society not only contains physical aspects, but also social, economic, cultural, political, defense and security and legal aspects. Land for society has a multidimensional meaning. From an economic perspective, land is a means of production that can bring prosperity. Politically, land can determine a person's position in community decision making and as a culture it can determine the high or low social status of its owner. The role of land law in national development between public interests and ownership rights to land must be able to provide legal certainty, benefits in determining ownership of land rights and can avoid conflicts, because it is the basis of government policy in land acquisition in national development, so that land acquisition is determined for the public interest. Community land ownership rights determine whether a national development program can be implemented or not. Meanwhile, the legal politics of land acquisition in national development between the public interest and ownership rights to land is to be able to realize the objectives of the legal principles used as guidelines to realize the objectives already stated in the UUPA as the objectives and legal principles of article 33 paragraph (3) of the 1945 Constitution, but on the other hand The UUPA and its legal principles serve as a source for developing policies and legislation to ensure the realization of prosperity for all Indonesian people.

Keywords: Role of Law, Legal Politics, Land

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INTRODUCTION

Land is a treasure on the face of this earth which throughout the history of human civilization has continuously presented complex problems. This is logical, considering that the most important factor in determining production in each phase of civilization is land.

Soil is important for human life. On the land humans make a living. On the ground, humans also build houses as shelter and build various other buildings for offices and so on. Soil also contains various kinds of natural wealth that humans can use. In essence, the meaning and strategic position of land in the lives of Indonesian

people not only contains physical aspects, but also social, economic, cultural, political, defense and security and legal aspects. Land for society has a multidimensional meaning. From an economic perspective, land is a means of production that can bring prosperity. Politically, land can determine a person's position in community decision making and as a culture it can determine the high and low social status of its owner. This aspect is a central issue that is related as an integrated unit in the land law policy process carried out by the government.

Land in the legal sense has a very important role in human life because it can determine the existence and continuity of legal relationships and actions, both in terms of individuals and the impact on other people. To prevent land issues from causing conflicts of interest in society, it is necessary to regulate, control and use land, or in other words, land law.

In Indonesia, which has a very large land area, land issues have become one of the most urgent problems among other problems. So it is not surprising that, after Indonesia became independent, the first thing done by national leaders at that time was the "land reform" project, marked by the promulgation of Law No. 5 of 1960 concerning Basic Agrarian Regulations. A very revolutionary breakthrough was made by the UUPA, namely the abolition of the "Domain Verklaring" system. Verklaring Domain is a system that determines that land that cannot be authentically proven automatically becomes state property. Clearly, this is very contrary to the legal awareness of Indonesian society which is based on custom, where authentic evidence is not known beforehand and only relies on the principle of mutual trust.

In implementing these provisions, Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA) was promulgated. With the promulgation of UUPA, it means that since then Indonesia has had a National Agrarian Law which is a legacy of independence after Dutch colonial rule.

This was followed up by providing a basis for legal authority to act in regulating everything related to land, as formulated in the 1945 Constitution of the Republic of Indonesia (UUD RI) which is the basic reference in regulating national and state life.

For the Indonesian people, land has a very important position so that it must be allocated and used for the greatest prosperity of the people, both individually and through mutual cooperation. It is stated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia that:

"Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people."

What needs to be underlined from the sound of the article above is the word mastered. At first glance the word controlled shows that the state is the owner. In the general explanation of UUPA it is stated that the state (government) is declared to control "only" land. The meaning of "controlled" land does not mean "owned" but is an understanding that gives certain authority to the state as a power organization. A problem that then arises in connection with the above state authority is the issue of land acquisition for public purposes and property rights,

Property rights in the life of the nation and state are strictly protected and stated in Indonesian basic law. The 1945 Constitution of the Republic of Indonesia provides certainty, guarantees and protection of property rights for every citizen.

Land is an asset of the Indonesian nation which is the basic capital for development towards a just and prosperous society. Therefore, its use must be based on principles that grow and develop in Indonesian society. In this case, efforts must be avoided to make land into merchandise, an object of speculation and other things that are contrary to the principles contained in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia.

in the NAWACITA program which contains the agrarian reform agenda and Indonesia's development strategy from the periphery, starting from the regions and villages. In Presidential Regulation no. 2 of 2015 concerning the 2015-2019 RPJMN states that the Jokowi Government is targeting the implementation of agrarian reform on 9 million hectares and social forestry on 12.7 million hectares. In general, the aim of this program is to reduce poverty, reduce inequality in land control and ownership, and resolve tenure conflicts. Of course, this policy not only addresses land ownership but also looks at ownership rights to land, especially customary land. In the prolematics, the political role of land law for national development and community welfare must be taken into account, not only for national development but ignoring community welfare.

This is formulated explicitly in Article 2 paragraph (2) of the UUPA which confirms that the state's authority is:

- a. Arrange and organize its allocation, use, supply or maintenance;
- b. Determine and regulate the rights that can be had over (part of) the earth, water and space;
- c. Determine and regulate legal relationships between people and legal acts concerning earth, water and space, all with the aim of achieving the greatest prosperity of the people in a just and prosperous society.

The problems identified are how the role of land law in national development is between public interests and land ownership rights and how the legal politics of land acquisition in national development is between public interests and land ownership rights.

METHOD

The approach method used in this research is normative juridical, namely a method that focuses on research on library data, a research that begins deductively with an analysis of the articles in the statutory regulations that regulate the above problems. Juridical legal research means research that refers to existing literature studies or secondary data used. Meanwhile, normative means legal research which aims to obtain normative knowledge regarding the application of the Employment Wage system.

RESULT

The Role of Land Law in National Development Between Public Interests and Land Ownership Rights

Land is a very vital source of life for humans, both in its function as a means of earning a living (supporting livelihoods) in various fields such as agriculture, plantations, animal husbandry, fisheries, industry, as well as being used as a place to live with the establishment of housing as a residence. In the agrarian

scope, land is a part of the earth called the earth's surface. What is meant here is not regulating land in all its aspects, but only regulating one aspect, namely land in the juridical sense, which is called rights.

Property rights in the life of the nation and state are strictly protected and stated in Indonesian basic law. The 1945 Constitution of the Republic of Indonesia provides certainty, guarantees and protection of property rights for every citizen. As stated by Adrian Sutedi in his book entitled *Transfer of Land Rights and Registration*, which states that Indonesia is "a legal state that provides guarantees and provides protection for the rights of citizens, including the rights of citizens to obtain, own and enjoy rights. owned by." Property Rights in this scope are Land Ownership Rights. In providing justice to society for the sake of national development, Indonesia must refer to Pancasila as the Indonesian Nation's Way of Life. As stated in MPR Decree No. II/MPR/1979, then Pancasila is the soul of all Indonesian people, the way of life of the Indonesian people and the basis of our country to guarantee justice for all Indonesian people, Pancasila are values that are actually implemented in real daily life, both in social, national and state life. In terms of land law, there are principles 1 to 5 in particular, the concept of social justice contained in the 5th principle of Pancasila, So it would be most appropriate to apply the principles of social justice. Justice itself is universal, deep inside everyone's heart, there is an agreement about what is seen as fair and unfair.

The management and use of land in national development must also be considered so that it is in accordance with the principles contained in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The principles referred to in Article 33 paragraph (3) of the Constitution of the Republic of Indonesia Indonesia in 1945, stated that "Earth, water and natural resources contained therein are controlled by the State and used for the greatest prosperity of the people". It can be concluded that everything on earth and everything contained therein is controlled by the State and the State in this case uses it for the welfare of the people.

Land is not only important for humans but also for other legal subjects, namely legal entities, legal entities, such as the state, central government and regional (city/district) and even village governments. Moreover, in the era of globalization and regional autonomy, the existence of legal entities has become very important in realizing accountability and community protection.

Therefore, the role of land law is very important, to provide legal certainty for ownership of land rights because it is the basis of government policy in procuring land for development. In its very strategic position, national land law as contained in the UUPA and its implementing regulations must function as a means of development.

With the promulgation of Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA). To prevent land issues from causing conflicts of interest in society, it is necessary to regulate, control and use land or in other words it is called land law, meaning that since then Indonesia has had a National Agrarian Law which is a legacy of independence after Dutch colonial rule.

In the preamble to Law Number 5 of 1960 concerning Basic Agrarian Regulations, it emphasizes the key role of land, that earth, water and space have very important functions for building a just and prosperous society. In this context,

control and recognition of land is primarily between public interests and land ownership rights.

One of the goals of the Indonesian State contained in the preamble to the 1945 Constitution is the welfare of all Indonesian people. Development is a means for the welfare of the people, therefore every country, including Indonesia, is always active in carrying out development activities, one of which is development for the public interest. Development for the public interest is basically carried out to meet the needs of the wider community in order to achieve prosperity for all Indonesian people, where the responsibility for implementing this lies on the shoulders of the Government.

In the beginning, development activities for the public interest were carried out using state land, but due to limited state land, then there began to be a policy of using community land which had attached land rights. One of the lands used for the implementation of development for the public interest and which most often causes conflict between the government and the community holding land rights is land that is attached to property rights.

The definition of property rights is contained in Article 20 paragraph (1) of the UUPA which states that "Ownership rights are hereditary, strongest and fullest rights that people can have over land, bearing in mind the provisions in Article 6, namely that all rights to land have a social function.

Land ownership rights are one of the strongest, most complete and hereditary rights to land. Strongest means that land ownership rights are stronger compared to other land rights, do not have a specific time limit, are easy to defend against interference from other parties, and are not easily erased. Full means that ownership rights over land give the owner the broadest authority compared to other land rights, can be the parent of other land rights, are not parented by other land rights, and the use of the land is wider compared to land rights. another. Hereditary means that ownership rights to land can continue as long as the owner is still alive and if the owner dies, the ownership rights can be continued by his heirs as long as they meet the requirements as a subject of ownership rights. Furthermore, according to Article 18B paragraph (2) of the 1945 Constitution, it states:

"The state recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in law."

UUPA as a derivative of article 33 paragraph 3 of the 1945 Constitution contains the principle that all rights to land are controlled by the state, and the principle that ownership rights to land "can be revoked for the public interest". This principle is stated in article 2 and article 18 of the UUPA. Based on article 2 of the UUPA, the state becomes a substitute for all parties who claim to be the legal owners of the land.

Land has a large role in the dynamics of development, so in the 1945 Constitution Article 33 Paragraph 3 states: "That the earth and water and the natural resources contained therein are controlled by the State and used for the greatest prosperity of the people.

Property rights in a nation are very important, especially for communities that are developing towards industrial development. Of course

What is meant is ownership rights to land. Land, which is a basic thing for humans, faces several kinds of problems, including:

- a. Limited land, both in quantity and quality compared to the needs that must be met;
- b. Shifting patterns of relationships between land owners and land as a result of changes brought about by the development process and social changes in general;
- c. On the one hand, land has grown as a very important economic object, on the other hand it has grown as a material for commerce and an object of speculation;
- d. On the one hand, land must be used and exploited for the greatest possible welfare of the people physically, mentally, fairly and equally, while on the other hand its sustainability must be maintained.

The problems described above are very relevant to the current situation in society, such as the role of land law in public interests and property rights in developing the nation's ideals, namely a just and civilized humanity. The legal role of UUPA and other land laws is very important in providing legal certainty, justice and being the basis for demanding land ownership rights, both government and community, and assisting development and avoiding conflict problems with the Government and communities who have ownership rights to land, which The land is used for national development.

Legal Politics of Land Acquisition in National Development Between Public Interest and Land Ownership Rights.

Whereas in principle Indonesian agrarian law recognizes 2 (two) forms of land acquisition, namely carried out by releasing or handing over land rights (liberation of land rights); Presidential Decree No. 36/2005 defines land acquisition as releasing the legal relationship between the holder of land rights and the land they control by providing compensation on the basis of deliberation.

This is carried out by revoking land rights. Based on the general explanation of Law no. 20/1961 concerning revocation of rights to land and objects on it, it can be understood that in fact revocation of rights to land is the authority given by law to the government, in this case the president. The form of authority granted by law is to take action by forcibly taking and controlling someone's land for the public interest

The prominent difference between revocation of land rights and land acquisition is that, if revocation of land rights is carried out by force, then land acquisition is carried out based on the principle of deliberation. Previously, Presidential Decree No. 36 of 2005 stated explicitly that the form of land acquisition was carried out by releasing land rights and by revoking land rights. However, with the issuance of Presidential Decree No. 65 of 2006, it only emphasized that land acquisition was carried out by means of acquisition, but the method of revoking land rights was not explicitly stated in Presidential Decree No. 65/2006 does not mean to completely eliminate the method of revocation, but rather to give the impression that revocation is the last method that can be taken if deliberation fails. This is interpreted as an imperative where the land acquisition route must be taken first before taking the route of revoking land rights. If in Presidential Decree no. 36/2005

there is an impression of alternatives between the methods of release and revocation, so in Presidential Decree No. 65/2006 the methods of release and revocation are standard priority. This is so that the government does not take arbitrary and easy actions in relation to land acquisition. This means that from a human rights perspective, Presidential Decree No. 65/2006 is more humane than previous regulations.

Technically, Presidential Decree No. 65/2006 states that land release is carried out with the assistance of the land procurement committee. The land procurement committee is tasked with conducting research regarding the legal status of the land whose rights will be released or surrendered and the documents that support it as well as carrying out an inventory of the land and buildings standing on the land. Next, the land procurement committee will determine the amount of compensation for the land whose rights will be released or handed over.

A small breakthrough provided by Presidential Decree No. 65/2006 is the inclusion of Article 18 A. Article 18 A determines if the person entitled to land or objects on it whose rights have been revoked is not willing to receive compensation as stipulated, because it is deemed that the amount is insufficient. appropriate, then the person concerned can request an appeal to the High Court to determine compensation in accordance with Law Number 20 of 1961 concerning Revocation of Rights to Land and Objects on It and Government Regulation Number 39 of 1973 concerning Procedures for Determining Compensation by the High Court in connection with the revocation of rights to land and objects on it. The provisions of Article 18 A reinforce the provisions of Article 8 of Law no. 20/1961.

Even though this complaint has been previously determined by Law no. 20/1961 but does not provide legal certainty because the existing Presidential Regulations only emphasize submitting objections to the Regent/Mayor, Governor or Minister of Home Affairs. This means providing space to minimize arbitrariness by the executive bureaucracy, which incidentally is the party with the most interest in this matter. The enactment of Presidential Decree No. 65/2006 has provided some legal certainty and more democratic land acquisition regulations. And there is little room for government officials to act arbitrarily and work as long as they don't get things right. One thing that must be watched out for is that it often happens in the field where the term "in the public interest" is used as a cover by businessmen who are having an affair with the government to undermine people's land. Here the people must be astute in understanding the meaning of the public interest as limitedly determined in Presidential Decree No.65/2006.

Providing an understanding of the public interest is not an easy thing. Apart from being very vulnerable in its interpretation, because the assessment is very subjective it is also too abstract to understand. So if it is not regulated strictly, it will give rise to multiple interpretations which will certainly result in legal uncertainty and be prone to arbitrary action from the relevant officials.

But this was answered in Presidential Decree No. 36 of 2005 which was then streamlined by Presidential Decree 65 of 2006 where the definition of public interest was limited and concrete, namely:

- a. Public roads and toll roads, railway tracks (on the ground, in the ground or in the basement), drinking water/clean water channels, water and sanitation channels;

- b. Reservoirs, dams, irrigation dams and other water structures;
- c. Ports, airports, train stations and terminals;
- d. Public safety facilities, such as embankments to prevent floods, lava and other disasters;
- e. Garbage dump;
- f. Natural and cultural reserves;
- g. Generation, transmission, distribution of electric power.

Based on the several meanings or definitions above, it can be stated that the meaning or definition of land or agrarian law politics is legal policy or official lines (policies) regarding law that will be enforced either by making new laws or by replacing old laws, in order to achieve the State's goals in land or agrarian sector. Agrarian politics is the outline of policies adopted by the state in maintaining, preserving, allocating, cultivating, taking advantage of, administering and distributing land and other natural resources including the results for the benefit of the welfare of the people and the state, which for the Indonesian state is based on Pancasila and the Constitution. -1945 Constitution (UUD).

The enactment of Law Number 5 of 1960 concerning basic agrarian regulations on September 24 1960 was a milestone in the history of agrarian/land development in Indonesia and land law in particular.

Land law is an independent branch of law in the national legal system whose substance is a collection of written and unwritten regulations regarding land control rights as legal institutions and as concrete legal relations with public and civil aspects that can be prepared and studied systematically to as a whole, it becomes a single unit which is a system that cannot be separated from state power and individual land ownership rights.

The politics of Indonesian land law is based on the existence of Article 33 of the 1945 Constitution which mandates that the control of land, water and the wealth contained therein by the state be used to the greatest extent of the people's prosperity. So that the direction of Indonesia's land development policy is towards utilizing domestic potential for the benefit of the people. Yahya Harahap believes that law controls justice. The justice desired by law must achieve the values: equality of individual human rights, truth, propriety and protecting society. Apart from that, according to him, law is not something that stands alone, it cannot be separated from the culture, history and time in which we are living. Every historical and social development will be followed by legal developments, because every social change will influence legal developments.

The politics of land law in the sense of the choice of objectives, legal principles that are used as guidelines to realize the objectives are stated in the UUPA. On the one hand, the UUPA serves as the legal objectives and principles of article 33 paragraph (3) of the 1945 Constitution, but on the other hand the UUPA and its legal principles serve as a source for developing national land policies and legislation. The aim is to ensure the realization of prosperity for all Indonesian people. To realize this goal, UUPA contains the principles of land control and utilization to encourage progress in the economic, industrial and other fields whose implementation depends on the availability of land.

In Article 2 paragraphs (1), (2) and (3) of the UUPA it is stated that the earth, water and outer space, including the natural resources contained therein, are at the highest level controlled by the state as the ruling organization of all the people. According to Article 2 paragraph (2) UUPA, the state is given the authority to:

- a. Regulate and administer the allocation, use, supply and maintenance of the earth, water and space;
- b. Determine and regulate legal relationships between people and earth, water and space;
- c. Determine and regulate legal relationships between people and legal actions concerning earth, water and space.

Revocation of land rights has been confirmed in Article 18 of the UUPA which states that: "For the public interest, including the interests of the nation and the State as well as the common interests of the people, land rights can be revoked by providing adequate compensation in accordance with the method regulated in law. -invite." The provisions of Article 18 of the UUPA are a guarantee for the people regarding their rights to land whose land has been revoked, but is bound by conditions, namely the provision of adequate compensation. Including the removal of property rights due to revocation of rights. The provisions of Article 18 of the UUPA outline that in the interests of the nation and state as well as the common interests of the people, land rights can be revoked by providing adequate compensation. Revocation of land rights is the last resort to obtain land and/or other objects needed for the public interest, which cannot be separated from the individual's right to own land.

The large number of agrarian disputes that arise is not due to the weakness of the UUPA, but because its full implementation is difficult due to the strong sectoral arrogance of various parties and the large number of overlapping rules and regulations regarding land. To provide justice in land acquisition between public interests and human rights.

CONCLUSION

The role of land law in national development between public interests and land ownership rights has provided legal certainty, benefits in determining ownership of land rights and can avoid conflicts, because it is the basis of government policy in land acquisition in national development, so that land acquisition is determined for the public interest with Ownership rights to community land determine whether a national development program can be implemented or not.

The legal politics of land acquisition in national development between the public interest and property rights to land is to realize the objectives of the legal principles used as guidelines to realize the objectives already stated in the UUPA as the objectives and legal principles of article 33 paragraph (3) of the 1945 Constitution but on the other hand The UUPA and its legal principles serve as a source for developing policies and legislation to ensure the realization of prosperity for all Indonesian people.

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