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THA DEVELOPMENT OF AGRARIAN LAW

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Abstract

In Indonesia, agrarian law gets a place of attention for all circles, this is because of various kinds of problems that are directly related to the location of the Indonesian state which is an agrarian country. So that the eyes of the world are fixed on how to take part in the benefits of natural resources owned by Indonesia. So it is necessary to strengthen laws that are directly related to agrarian in Indonesia, the development of agrarian law is undeniable that the progress of the times has changed the pattern of handling conflicts that often occur which involve the community as the aggrieved party. Therefore, the development of agrarian law needs to be a concern, especially the government to be able to provide legal certainty and it is also hoped that there will be a concept based on social justice in handling agrarian affairs in Indonesia. This research was conducted using a normative juridical approach that focuses on the study of literature and legislation related to the development of agrarian law in realizing justice in the agrarian sector in Indonesia.

Keywords: Agrarian Law. Development

1. Introduction

Since the 15th century, Indonesia has become a center of world trade through the sale of spices. The sale of plantation products clearly indicates that Indonesia is an agricultural country. This is what attracted Europeans, especially the Dutch, to come to Indonesia, and conduct trade. Along with the development of the trading system, the livelihood system of farming and plantations also developed, thus meaning that people's attention and knowledge in the land sector was also growing. It was at this stage that Agrarian Law began to emerge even though it was not yet formally or materially or it could be said that it was still very primitive. This is of course because in the Agrarian Law the regulation of reciprocal rights and obligations between rulers and citizens is still not harmonious.

Along with the changing times, Agrarian Law is also growing, undergoing various improvements and renewals step by step until now. The historical history of Agrarian Law as well as other fields of law, was born and developed through a long and lengthy evolution. This development begins with the knowledge and human initiative to create a harmonious life through laws relating to land, which in this case we can consider as the embryo of Agrarian Law it.

When the Indonesian economy entered a new phase, namely a change towards a liberal economy, which was marked by the passing of the Agrarian Law and Sugar Law in the 1870s, it was clear

that the Agrarian Law became a fundamental factor in economic development because the Agrarian Law was used as a guarantor of ownership rights and private party operation[1].

Agrarian law has an important influence in the formation of legal politics in Indonesia, this is because the problems faced by the community regarding agrarian need to undergo renewal in order to support the increasing development of the era, the influence of policy reform sometimes has an inhibiting factor, but this is where it is already becoming our joint task is to analyze each other carefully whether the basic purpose of The state in making a renewal, the basis is of course to provide welfare and prosperity for the people based on the lawBasic 1945[2].

Talking about the renewal of the National Agrarian Law policy in Indonesia, first the author would like to describe the history of the development of the National Agrarian Law, Legislation from the independence era, the current regulations to the upcoming renewal of the Agrarian Law Legislation. As stated by Boedi Harsono, "Efforts to carry out a complete overhaul of agrarian law will take a long time, for that reason, the old agrarian law must be used, but its implementation is based on new policies and uses a different interpretation.New ones that are in accordance with the principles of Pancasila"[3]. The transitional rule of the 1945 Constitution, which stipulates that the laws and regulations left by the Dutch colonialists can still be enforced as long as the government has not been able to produce new laws that are in accordance with the spirit of independence.

In 2020, the findings of the Agrarian Reform Consortium revealed that there were 241 cases of agrarian conflict, a total of which occurred in 359 regions in Indonesia with 135,332 families (KK) affected. The highest agrarian conflicts occurred in the plantation sector with 122 cases. This number is up 28 percent compared to 2019, which was 87 cases. Furthermore, the second highest agrarian conflict occurred in the forestry sector, which was 41 cases.

This figure even skyrocketed 100 percent from 2019 which amounted to 20 cases. Other agrarian conflicts occurred in the infrastructure sector as many as 30 cases, property 20 cases, mining 12 cases, military facilities 11 cases, marine coastal 3 cases and agribusiness 2 cases. In terms of numbers, agrarian conflicts can be said to have decreased by 14 percent, but the decline was not significant and not comparable to the minus of economic growth

Portraits of agrarian conflicts like this certainly remind again that the system and the practices of large-scale plantations in Indonesia contain many acute and systematic structural problems. This does not only happen in 2020, even in the last five years the plantation sector has always been the cause of the highest contributor of agrarian conflicts. "In addition, the 2020 situation also shows

[1] Yudi Latif, *Negara Paripurna*, 2012, PT Gramedia Pustaka Umum, Jakarta, p. 507.
[2] Nurlani, M. 2019. *Pengaruh Pembaharuan Hukum Agraria Nasional Terhadap Politik Hukum Di Indonesia*. Jurnal Thengkyang, *2*(1 Desember), p.106-124
[3] Boedi Harsono, 1978. *Undang-undang pokok agrarian : sejarah penyusunan isi, dan pelaksanaan hukum agraria Indonesia*. Jakarta : Djambatan. p. 55

that the two classic sectors, namely plantations and forestry, have again reaped the highest conflict rate of 69 percent[4].

2. Method

This research was conducted using a normative juridical approach that focuses on the study of literature and legislation related to the development of agrarian law in realizing justice in the agrarian sector in Indonesia.

3. Findings And Discussion

a. History of Agrarian Law

The term land (agrarian) comes from several languages, in Latin ager means land or a plot of land. Agrarius means rice fields, cultivation, agriculture. In Dutch it is known as acre which means agricultural land. In Greek it is known as Agros which also means agricultural land. In English, the word agrarian means land for agriculture. According to the Big Indonesian Dictionary, agrarian means land affairs or agricultural land as well as land ownership affairs, while in the UUPA it has a very broad meaning, which includes earth, water and within certain limits also space and the natural resources contained therein.

The meaning of the earth is covering the surface of the earth, the body of the earth, below it, and what is under water. The surface of the earth in question is also known as land. It can be concluded that the meaning of land is covering the surface of the earth that is on land and the surface of the earth that is under water, including seawater. From these conclusions, the agrarian scope can be described as follows:

b. The earth also includes the continental boundary of Indonesia. The continental shelf is the seabed and subsoil thereof outside the territorial waters of the Republic of Indonesia as regulated by Law Number 4 prop. 1960 to a depth of 200 meters or more, where it is still possible to carry out exploration and exploitation of natural resources
c. The definition of water is all water found on, above, or below the ground surface. Included in this definition is surface water, ground water, rain water, and sea water on land.
d. The natural wealth contained in the earth includes oil, natural gas, minerals, and coal. Crude oil is the product of a natural process in the form of hydrocarbons under atmospheric pressure and temperature in the form of a liquid or solid phase, including asphalt, mineral wax or ozokerite, and bitumen obtained from the mining process, but excluding coal or other hydrocarbon deposits in solid form obtained from the mining process. That is not related to oil and gas business activities. Meanwhile, natural gas is the result of a natural process in the form of hydrocarbons under conditions of atmospheric pressure and temperature in the form of a gas phase obtained from the oil and gas mining process.

[4] https://www.kompas.com/properti/read/2021/01/06/160000521/sepanjang-2020-konflik-agraria-241-kasus-tertinggi-sektor-perkebunan. dikases pada tanggal 9 Desember 2021 pukul 10.56 Wib.

e. The wealth contained in the water is fish and their environmental resources. Fish are all kinds of organisms that all or part of their life cycle is in the aquatic environment.
f. In relation to natural wealth in the body of the earth and water, there is an area known as the Exclusive Economic Zone, namely the Indonesian Exclusive Economic Zone, which is a path outside and bordering the Indonesian territorial sea as determined based on the applicable law concerning Indonesian waters which includes the seabed., the land below and the water above it with an outer limit of 200 nautical miles measured from the baseline of the.
g. The definition of agrarian in the logo is essentially the same as the notion of space. The definition of space is a container that includes land space, sea space, and airspace, including spaces within the earth as a unified territory, where humans and other creatures live, carry out activities, and maintain their survival.

Boedi Harsono distinguishes the notion of agrarian in three perspectives, namely the meaning of agrarian in the general sense, government administration and the notion of agrarian based on the Basic Agrarian Law[5]. First in a general perspective, agrarian comes from the Latin ager which means land or a plot of land. Agrarian means farming, rice fields, agriculture. According to the Big Indonesian Dictionary[6].

In terms of enacting, Agrarian Law in Indonesia can be divided into 2 types:(Two), namely:
1. The colonial agrarian law that was in effect before Indonesia's independence even existed before the promulgation of the UUPA, namely September 24, 1960; and
2. The national agrarian law that applies after the promulgation of the UUPA.

From the preamble of the logo under the word "consider", it can be seen several characteristics of colonial agrarian law in letters b, c and d, as follows:
1. The agrarian law that is still in effect today is partly structured based on the goals and principles of the colonial government and partly influenced by it, thus contradicting the interests of the people and the state in completing the current national revolution and universal development.
2. The agrarian law has a dualistic nature, with the application of customary law in addition to agrarian law based on western law
3. For the original people, the colonial agrarian law did not guarantee legal certainty.

Before 1870 During the VOC (Vernigde Oost Indische Compagnie) era. The VOC was founded in 1602-1799 as a trading body in an effort to avoid competition between Dutch traders at that time. The VOC did not change the structure of land tenure and ownership, except for income taxes and forced labor. Some of the agricultural, political policies that were very oppressive to the Indonesian people were set by the VOC, among others:

[5] Boedi Harsono, 1999, *Hukum Agraria Indonesia Sejarah Pembentukan Undang-undang Pokok Agraria, Isi dan Penjelasannya*, Djambatan, Jakarta, Jilid 1, p. 4
[6] Kamus Besar Bahasa Indonesia, 2005, Balai Pustaka, Departemen Pendidikan Nasional, Jakarta, Edisi Ketiga, p. 13

1) *Contingenten.*
   The yield tax on agricultural land had to be submitted to the colonial rulers (company). Farmers had to surrender part of their agricultural produce to the Company without being paid a penny.
2) *Verplichte leveranten.*
   A form of stipulation that was decided by the Company and the kings regarding the obligation to surrender all the crops with a payment whose price had also been determined unilaterally. With this provision, the peasants really could not do anything. They have no power over what they produce.
3) *Roerendiensten*
   This policy is known as forced labor, which is imposed on the Indonesian people who do not own agricultural land.

The reign of Governor Herman Willem Daendels (1800-1811). The beginning of the change in the structure of land tenure and ownership with the sale of land, to the creation of private land. His policy was to sell the lands of the Indonesian people to the Chinese, Arabs and the Dutch themselves. That land is then called private land. Private land is eigendom soil that has special characteristics and features. What distinguishes it from other agenda lands is the existence of state rights to their owners, which are called landheerlijke written or lordship rights. Ownership rights, for example:

a. The right to appoint or certify ownership and dismiss village/village heads;
b. The right to demand forced labor or collect compensation for forced labor from residents;
c. The right to collect levies, both in the form of money and agricultural products from the population
d. The right to establish markets;
e. The right to collect fees for use of roads and crossings;
f. The right to require residents to mow the grass once every three days for the landlord's purposes, one day a week to look after their houses or warehouses and so on.

The reign of Governor Thomas Stamford Raffles (1811-1816). At the time of Rafles, all lands under the control of the government were declared as agenda governments. On this basis every land is subject to land tax. From the results of Rafles' research, the ownership of land in self-governing areas in Java concluded that all land belonged to the king, while the people only used and worked on it.

Agrarian Law for the period of independence until 1960. The proclamation of Indonesian independence on August 17, 1945 by Soekarno-Hatta on behalf of the Indonesian nation resulted in the Indonesian nation gaining sovereignty in its own hands. At that time the occupation of land by the community had become a very complex matter because people who had not had the opportunity to occupy plantation land in a short time tried to occupy the land.Since the recognition of sovereignty by the Dutch over the Indonesian state, only then did the government begin to reorganize the occupation of land by the people.

b. The Development of Agrarian Law in Indonesia

In the life of the state, individuals, and society, land is an object that is very much needed. Current land issues are not only demands for land rights, but also involve the authority in the land sector between the central government, provincial governments, and district/city governments.

The government's authority in the land sector is as regulated in Article 2 of Law Number 5 of 1960 concerning the Basic Regulations on Agrarian Principles (UUPA), as a centralized authority. Based on the authorities contained in the national land law, it turns out that the formation of the national land law and its implementing regulations, according to the nature and in principle are the authority of the central government[7].

This means that in the land sector, the authority lies with the central government, while the regions only exercise authority by deconcentration or delegation of authority from the center to the regions and medebewind (assistance) is the assignment of the central government to the regions. This centralized authority creates difficulties for the provincial and district/city governments in dealing with land issues quickly and accurately. Meanwhile, the development of the need for land is increasing along with the increasing population[8].

Experts who base themselves on natural law believe that naturally to carry on one's life requires ownership of something. If someone has fulfilled his possessions, then life will be more orderly because there is no reason to interfere with each other. Land according to this flow is one of the objects of ownership by both individuals and communities. The state is not the owner (private) of the land, because the owner of the land is a natural human being.

Thomas Aquinas as quoted by Iman Soetiknjo[9]. Put forward the reasons why everyone prefers something to be his own, so there is no need to leave something to someone else. Because if something is in oneself, then there will be no chaos. People will live in peace because their interests have been fulfilled. Meanwhile, for no man's land or legal community land occupied by community members, this occurs as part of the regular nature of individual land ownership patterns. The revocation of individual rights to land by the state based on the law is an illustration of the strong recognition of individual rights to land, the problem is what is the position of the state of the land.

According to the opinion of the flow of natural law, it does not appear firm in the sense that the state cannot own land in the sense of possessing (eigendom) which contains absolute power over the land, but the state can control land (without having to own it) for the public interest. Contrary to the notion of natural law, Ulpianus and Vegting as quoted by Ronald Z. Titarelu state that the

[7] Arie Sukanti Hutagalung, Markus Gunawan, 2008, *Kewenangan Pemerintah Dibidang Pertanahan*, PT Rajagrafindo, Jakarta, p. 112

[8] Fitri, R. (2018). Hukum Agraria Bidang Pertanahan Setelah Otonomi Daerah. *Kanun Jurnal Ilmu Hukum*, *20*(3), 421-438

[9] Iman Soetiknjo, 1992, *Politik Agraria Nasional, Hubungan Manusia dengan Tanah Berdasarkan Pancasila*, Gajahmada University Press, Yogyakarta, p. 11

state based on a special relationship can own land (even if it is superficial in nature). The ownership of the land is used for the public (res publica). The legal relationship that occurs can be ownership or control[10]. Its implementation is that lands that are used directly by the state can be owned by the state. The state also has the authority to regulate land used for the public which is considered to provide more benefits than being owned by the community.

The above opinion is reinforced by an opinion based on the theory of community contract law put forward by Jean Jacques Rousseau and M. Kaser and P.B.J. Wubbe. This opinion states that the individual owner of the land is handed over based on a community agreement which is incarnated by law. In state life, all wealth in the state is public property which is controlled by state law. This also applies to every state legal relationship, so that the state has legal authority over state property[11].

Thus, the ownership of land by the state contains the following categories: First, the state does not own land, but specifically has relations with land, especially those related to public interests. Second, the state as the sole owner of the land both in the full sense and in the sense of owning. Third, the state owns land in addition to being owned by individuals. Fourth, the state exercises power over land owned by the community as if the land is theirs

Land tenure in the state in Indonesia is authorized to regulate all legal relations over the land so that various dimensions of community needs individually and in groups can be met. The state as an organization of a state is given power by the people based on the law (the constitution) to regulate any power in society. State power over land is based on the main idea of the second paragraph of the Preamble to the 1945 Constitution, namely: "A sovereign state based on deliberation".

This formulation implies that deliberation/representation based on wisdom in decision-making is the best way to administer the state. The basic assumption is that through this method, there will be a form of mutual interest and benefit that fulfills the nobility of dignity and worth.

Shared interests and benefits based on human values (formally embodied in law) in order to realize social justice for all Indonesian people and to protect the entire nation and the entire homeland of Indonesia based on unity as something that will be regulated by the state. What is put forward is a pattern of legal relations between humans, families, communities and nations related to land by placing the state as an organ that is given the power to regulate it.

The legal basis that can be used in regulating land issues in Indonesia is Article 33 paragraph (3) of the 1945 Constitution, which states that: "Earth, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people". The meaning of the

[10] Ronald Z. Titarelu, 2004, *Penetapan Asas-Asas Hukum Umum dalam Penggunaan Tanah untuk Sebesar-Besar Kemakmuran Rakyat*, Disertasi, Pascasarjana Universitas Airlangga, Surabaya, p. 105-106
[11] Mr. F.B.J. Drt M-Wubbe Kaser, *Romeins Privaatstrecht, N.V.Uitgeverijmaatschappij W.E.J Tjeenk Willink*,

contents of the article can only be understood from the overall intent and purpose. Theoretically, the interest to achieve the greatest prosperity of the people is the basis for the control of land by the state. It is expressly stated that the land sector must be controlled by the state for the sake of creating a people's prosperity[12].

The prosperity of the people cannot be achieved if each other does not have the same perception about how to live a good or prosperous life. With regard to soil, a good life requires an orderly pattern of ways to fulfill life well. In order for the pattern of regularity to be incarnated, it is necessary to have skill or power. This power is given to the state as the highest community organization in a region.

Giving full power to the state will result in a centralized government that tends to be authoritarian. Such a government can weaken the foundations of the social order, such as democracy, equity and justice. Therefore, in order to avoid arbitrariness, decentralization of power must be carried out, in the sense of forming lower government units which are given the right to self-regulate some government (state) affairs as their household affairs, but remain in a unitary state with the task of each although it is recognized that there can be a tug of war between the two

4. CONCLUSION

In the development of agrarian law in Indonesia, there have been many long upheavals from the colonial era to the era of independence, and to this day, post-reformation there are still many problems that need to be fixed. Of course, all government policies must also be accompanied by a firm attitude regarding the many land mafias that are detrimental to the community. the presence of the government not only provides legal certainty, but also must participate in controlling the development of agrarian law itself, through the ministries and related agencies. Today's agrarian developments in Indonesia experience many ups and downs of dynamics, so the government needs to create a service concept in terms of providing certificates based on programs that have been made, and legal supervision based on social justice so that people can be protected and avoid various agrarian conflicts in Indonesia.

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[12] Ria Fitri, 2015Potensi Konflik Pemerintah Aceh dan Pusat dalam Bidang Pertanahan, KANUN Jurnal Ilmu Hukum, No. 66, p. 231

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