ISSN: 2963-931X
International Conference Restructuring and Transforming Law 2023
Volume 2, Issue 2, Maret 2024
(icrtlaw@ums.ac.id)

DEVELOPMENT OF LAND LEGAL POLICY IN THE REFORM ERA REVIEWED FROM THE PERSPECTIVE OF AGRARIAN JUSTICE

Muhammad Farrel Haristyanto[1], Moh. Indra Bangsawan[2]
[1] Fakultas Hukum, Universitas Muhammadiyah Surakarta (C100190072@student.ums.ac.id)
[2] Fakultas Hukum, Universitas Muhammadiyah Surakarta (mibsambi@gmail.com)

ABSTRACT

Law Number 5 of 1960 concerning Basic Land Regulations or what we know as the Basic Land Law (UUPA) is one of the general policies in the form of statutory regulations that have been implemented for approximately 48 years. Land policy in Indonesia viewed from the perspective of agrarian justice is still not appropriate because in all social, political, legal and economic institutions, justice is the basic structure of society; because the regulation of social institutions has a fundamental impact on the prospects of an individual's life, the implementation of the UUPA has undergone various changes due to differences in the sequence of visions, missions, strategies, policies and government programs. Seeing that the human values embedded in land legislation are decreasing. The need for reform in the field of land law continues to emerge and continues to be carried out by the community, but the government has so far maintained the legitimacy of the UUPA by trying to adapt to the conditions that are developing in the current reform. This study aims to find out how land law policies in Indonesia and how land law policies are viewed from the perspective of agrarian justice. Then these problems are examined using descriptive-qualitative research methods using descriptive research types and secondary data sources.
Keywords: Legal Policy; Land; Justice

INTRODUCTION

The reform era demands changes, including in the legal field, more specifically in the field of land legislation or the land sector. The public still feels and encourages the need for land law reform, but so far the government has maintained the effectiveness of land law by working to adapt to conditions that have developed amidst the reform in its progress. when Article 33(3) and Article 18b of the 1945 Constitution were born as a result of changes regarding the community's right to customary nudity. UUPA is still used as a special law that regulates agricultural problems, but was changed with the issuance of TAP MPR Number IX/MPR/2001 concerning Land Law and Natural Resources Management.

Boedi Harsomo believes that agriculture is one of the most important sources of survival and livelihood of all time and can achieve human prosperity with a just and just society. Then the land will be cultivated or used to meet actual needs. Related to this is that supply, allocation, control, use and maintenance to ensure legal determination in control and utilization, and provide legal protection for the community (especially farmers), while maintaining ongoing support for sustainable development activities (1).

Since independence until now, the Indonesian government has gone through various systems from the old order to the reform order which also has an impact on legislative arrangements, including in the land sector where policies are determined according to the conditions of society, people and the government in power. In practice, national government policy in the agricultural/land sector is based on Law no. 4. 5 of 1960 concerning Land Principles. The National Land Law Book which was ratified by President Soekarno from September 24 1960 until now is no longer valid for the current and future era. Changes in laws and regulations, including land policies, have also led to overlapping various regulations which have become one of the flash points for land disputes. To overcome the problem of overlapping land regulations, a new breakthrough has emerged through the concept of comprehensive government

law as a strategy and solution for structural land regulation.

However, after the passing of the Job Creation Law, it had a negative or bad impact on society, especially on communities with customary laws. One of them is agricultural work for the community, which is based on reducing regulations on bureaucracy which is very long and complicated, and will also only be profitable for investors who have invested their capital because it can endanger the economic aspects of the people, especially farmers who in the end only earn their living as sharecroppers (2). Does not support economically disadvantaged communities, including poor communities and customary law communities, and land reform is considered no longer very important, especially for the distribution of farmers' land and control over customary land by entrepreneurs in the agricultural and plantation sectors, which is a redistribution of income from farmers. residents and communities with high incomes to residents with low income communities. The land redistribution program serves the interests of those who work on the land and limits individual rights to land resources. Therefore, apart from being the realization of political goals, freedom and independence of the country, agrarian reform is also a tool for social change in economic development.

RESEARCH METHODS

In his research, the author used a descriptive legal research method, which aims to describe and present data as accurately as possible about land law policies in Indonesia from an agrarian justice perspective so that it is much easier to understand and draw conclusions. In this research, the analysis is carried out descriptively-qualitatively, while data processing is carried out by systematizing materials or books. There are several approaches to legal research, this approach provides information about answering questions sought from different perspectives. The approach used by the author in this research is a normative method which uses two approaches, namely the ontological basis of UU regulations, the Statute approach which examines the philosophical basis of UU regulations, because this research examines the legal principles of law. principles, legal principles and regulations of Indonesian land rights policy in the era of religious reform and a conceptual approach explains objects that are interesting from the perspective of practical knowledge so that they can determine their meaning in an accurate way and can be used for stages of thinking to identify existing views, principles and doctrines to generate new ideas (3). The source of information used by researchers is legal methods and the information obtained is secondary information. According to legal documents, legal documents are all things that are used or needed to carry out analysis of existing law, so the data source is called a legal document.

RESULTS AND DISCUSSION

Land Law Policy Viewed from the Perspective of Agrarian Justice

Starting with the UUPA which he made into National Agrarian Law, he attempted to lay the foundation for the utilization of agrarian law objects, namely water, space, earth, and also the natural resources contained therein. The purpose of having a national agrarian law is actually inseparable from the objectives contained in the 1945 Constitution of the Republic of Indonesia as a legal basis for protecting the entire nation, as well as participating in implementing world order based on eternal peace, independence and justice.

Policies regarding regulations formed by the government cannot be separated from the pros and cons of the public's views. However, in line with the increasingly widespread interest in agrarian law, the formation of new policies is urgently needed. As long as the policy is prepared in accordance with the principles implicitly stated in the UUPA. In this way, the policies formed by the government will impact justice and legal certainty for all parties involved.

Apart from that, justice is where the community and government work together to realize the welfare and prosperity of the community in terms of land. For example, when the government plans

development that is intended to be in the public interest, it must also give rise to the release of people's land rights, so that the government is obliged to provide appropriate and fair compensation for the parties who are entitled and based on the social function of land.

Recently, controversy arose regarding the Job Creation Law relating to agrarian affairs. The existence of the Job Creation Law could cause problems in agrarian affairs. This law is contrary to the implementation of agrarian reform. These conflicting matters concern management rights, housing rights for foreigners, land banks, as well as the legalization of corporate operations which so far do not have business permits (4). The Job Creation Law could also exacerbate agrarian and environmental conflicts.

Apart from that, in the case of customary land belonging to indigenous communities, as regulated in the regulations that are still in force, the government is obliged to respect these rights. Public interests involving community customary land must be discussed with local traditional stakeholders in order to provide legal certainty and justice to both parties concerned.

This policy creates injustice towards society. Likewise, this policy is not in accordance with the principles implied in the UUPA. So it is necessary to have other regulations that provide justice and legal certainty to residents and communities who have the right to fulfill the goals of creating a prosperous, just and prosperous society.

Even though the 1945 Constitution has been amended 4 (four) times, the provisions of Article 33 have not undergone any changes and have even been strengthened with the addition of 2 paragraphs which strengthen the provisions of paragraphs 1, 2 and 3 as an economic ideology or understanding of economic democracy. This means that all national economic activities must still be placed in the context of realizing social welfare (5). This includes economic activities originating from or using agrarian resources to support economic activities, as emphasized in Article 33 paragraph (3) of the 1945 Constitution.

Community access to agrarian resources is the core of the problem of agrarian justice and agrarian reform is the key to opening this access to end agrarian injustice, which has been going on for a long time throughout the history of the UUPA itself, even since the Dutch colonial era. Agrarian reform is based on a fair distribution process of assets (land), because land for the community is an identity that attaches its status to a person, the UUPA even calls it an eternal relationship as a nation's right (Article 1 UUPA). This shows that the relationship between the Indonesian people and their land has a large and significant impact on the welfare, prosperity, social justice of the community and its sustainability as an agrarian resource. If agrarian reform is carried out well, it can be interpreted that the government has encouraged the process of upholding agrarian justice as a form of social justice as stated in the preamble to the 1945 Constitution as a state goal. In this understanding, in order for agrarian reform to be effective, it must be based on 4 (four) principles, namely:

1. Land must contribute significantly to improving people's welfare;
2. Land must contribute significantly to improving a just order of life;
3. Land must contribute significantly to ensuring the sustainability of the Indonesian social and national system;
4. Land must contribute significantly to organizing a harmonious life and overcoming various social conflicts.

In the context of agrarian reform, society must be understood as the people who live around the area where the agrarian resources are located. This includes customary law communities as long as these customary law communities still exist according to the provisions of Article 3 of the UUPA in conjunction with the Decree of the Minister of State for Agrarian Affairs/Ka. BPN No. 5 of 1999. This community has the main right to obtain and utilize the agrarian resources around its territory. Maria Sumardjono categorizes this community as a group of people who obtain primary rights, namely individuals who have lived in areas where agrarian resources are located for at least 5 (five) years and have had social networks in that place, and have expended energy and costs. in controlling and utilizing existing agrarian resources (6).

The need to strengthen community access to agrarian resources is a manifestation of the principle of justice which underlies the principle of control by the state. The UUPA as an implementing regulation of the provisions of Article 33 paragraph (3) of the 1945 Constitution has outlined fair and populist land regulations, as seen in Articles 2, 3, 5, 6, 7, 10, 17 of the UUPA. In the context of Indonesia as a rule of law state as in Article 1 paragraph (3) of the 1945 Constitution, the third amendment, through the principle of the right to control the state, the UUPA does not view the rule of law as merely a tool for development (7), but instead makes it a development goal, so it should not be This understanding is placed dichotomously.

However, at an empirical level, the provisions in the UUPA are not implemented consistently and consistently. This is due to the strong current of Indonesian land politics which is more oriented towards the interests of investors, adaptive to market mechanisms without considering the people's access to natural resources. This of course gives rise to injustice.

Justice is one of the goals of law, so separating justice and law is difficult because law is empty of justice. Some experts even believe that the law does not reflect justice. Discussions about law cannot be separated from discussions with humans, and discussions with humans cannot be separated from discussions of justice. Every discussion (obvious and obscure) about law is always a dialogue about justice (8). Discussing law is not enough as a formal building, but must also be considered as an ideal expression of social justice.

Aristotle stated that, "justice is a political policy whose rules are the basis of state regulations and these rules are a measure of what is right and what is not". Therefore, justice is created if someone obtains benefits in ways that are right. reasonable, because justice is the most important moral. With this understanding, Aristotle categorized the meaning of justice into several meanings (9), including:

1. Distributive Justice (distributive justice); directs the distribution of goods and honors to reach according to his place in the community
2. Corrective Justice (corrective justice); is essentially the measure of the technical principles which govern the administration of law. In regulating legal relations a general standard of redressing the consequences of actions must be found, without regard to the person, and for that purpose actions and objects must be measured by an objective standard.
3. Justice according to law (legal justice); derives its force from being laid down as law, whether just or unjust, it explains the diversity of positive laws.
4. Natural Justice (natural justice); derives its force from what is based on human nature everywhere and at all times.
5. Abstract Justice (abstract justice); the law is necessarily generalizing (abstract) and often harsh in application to the individual case.
6. *Equity; mitigates and corrects its harshness by considering the individual case. All discussions of the problem of equity of statute of precedent are derived from this fundamental statement of the problem.*

The six meanings of justice above have become Aristotle's important ideas for the development of legal elements, especially in terms of the difference between positive law and natural law (legal and natural justice). Active law has the right to propose natural law from its legal determination, so that it can obtain the power of appointment based on eternal human nature.

John Rawls, argues that in essence, justice is fairness, namely "a theory of justice that generalizes and carries to a higher level of abstraction the traditional conception of the social contract" (10).According to Rawls, efforts to generalize and elevate the traditional concept of the social contract are carried out to redistribute wealth to those who are poor and disadvantaged, and protect their interests from unjust actions. In line with the meaning of fairness above, Marua Sumardjono put forward the basic ideas of justice, including:

1. People must be treated equally in the same things or cases;
2. Good things must be rewarded, and vice versa;
3. Morally, everyone has the right to obtain and defend their basic rights. (11)

These three basic ideas of justice hold control, ownership and use of land and agricultural resources, because the right to agricultural resources is a basic right of all people.

Justice itself is general, it is a dynamic thing that always moves on various factors that adapt to developing conditions. But in fact, according to Maria SW Sumardjono, compared to other people, each person's abilities or services and their needs are different. In the case that more and more people need something (especially for basic human needs), but do not have the ability to get it, then equal treatment will actually lead to injustice. As long as you can consider special treatment exceptions, special treatment can be carried out. This is usually called judicial or active corrective discrimination. Maria Sumardjono's thoughts are in line with Satjipto Rahardjo's opinion regarding progressive law, which essentially states that law enforcement cannot rely solely on regulations in an-sich legislation because law is not a sterile vacuum of non-existent concepts. -law (12).

Referring to the thoughts of the two legal experts above, to achieve agrarian justice you must also pay attention to other things besides the laws and regulations themselves. Perhaps the results of implementing the law do not meet the legal certainty factor, but if this is to provide justice for people who have been prevented by agricultural resources, to realize those who are guided by justice in agrarian to improve justice to make it even better. This is in accordance with the thoughts of Gustav Radbruch who states that "the basic values of law (justice, legal certainty and expediency) in reality have the potential to conflict with each other (spannungsverhaltnis)." The conflict between the elements of legal certainty and the elements of justice can be described as the more precise and sharp a rule is formulated, the more the rule will be legally established. But also, a rule like this will be increasingly pressing for the element of justice. In relation to Gustav Radburgh's thoughts, it can be concluded that progressive law in realizing justice must pay attention to the legal awareness that exists in society as a driver of development in the law itself.

CONCLUSION AND SUGGESTION

Land policy in Indonesia viewed from the perspective of agrarian justice is not yet appropriate because in all social, political, legal and economic institutions, justice is the basic structure of society; because the setting of social institutions has a fundamental impact on an individual's life prospects. The main problem of justice is how to apply a set of principles that must be realized by all levels of society. Seeing that the human values embedded in land legislation are decreasing, there is indeed a shift towards a low point of justice in the implementation of the omnibus law. The national spirit contained in the National Land Law has been replaced by the materialistic spirit of the Comprehensive Law. Therefore, the law does not regulate aspects of state legal order. The Omnibus Law does not adopt the values contained in the fifth principle of Pancasila, thereby causing degradation of agrarian justice in the Omnibus Law.

REFERENCES

1. Harsono B, Menuju Kesempurnaan Hukum Tanah Nasional. Jakarta: Universitas Trisakti; 2013. 4 p.
2. Suriadinata V, Penyusunan Undang-Undang Di Bidang Investasi: Kajian Pembentukan Omnibus Law Di Indonesia, Refleksi Hukum: Jurnal Ilmu Hukum ,2019;4(1):115–32.
3. Muhammad A, Hukum dan Penelitian Hukum. Bandung: PT. Citra Aditya Bakti; 2004.
4. Antari LPS, Undang-Undang Cipta Kerja di Bidang Agraria,Yusthika Mahasaraswati.2021;01 (1): 11-22.
5. Maria S.W. Sumardjono, Pluralisme Hukum di Bidang Pertanahan, dalam Nindyo Pramono: Permasalahan Seputar Hukum Bisnis: Persembahan kepada Sang Maha Guru, Gitama Jaya, Jakarta: 2007. 50 p.

6. Myrna A, Safitri ,Moeliono T. Hukum Agraria dan Masyarakat di Indonesia, HuMA, Van Vollenhoven institute. Jakarta: KITL; 2010. 13 p.
7. Rahardjo S, Ilmu Hukum. Bandung : Citra Aditya Bakti ; 2006.159 p.
8. Lawrence M. Friedmann, American Law: an Introduction, second edition; diterjemahkan Wishnu Basuki, Hukum Amerika: Sebuah Pengantar. Jakarta: Tata Nusa, ;2001. 10-11 p.
9. Rawls J, Theory of Justice, terjemahan Uzair Fauzan dan Hern Prasetyo, Teori Keadilan: Dasar-dasar Filsafat Politik untuk Mewujudkan Kesejahteraan Sosial dalam Negara.Yogyakarta : Pustaka Pelajar; 2006.
10. Maria S.W. Sumardjono, Transitional Justice atas Hak Sumber Daya Alam, dalam Komnas HAM, Keadilan dalam masa Transisi, Jakarta: 2006. 3 p.
11. Rahardjo S, Membedah Hukum Progresif. Jakarta: Kompas; 2010. 13 p.