

State Policy's Analysis in the Redistribution of Reformed Agrarian Lands From Forest Areas in Indonesia (Study of Presidential Regulation Number 86 Year 2018 Regarding Agrarian Reform)

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Abstract-Agrarian reform is a development priority in Nawa Cita and set forth in Presidential Regulation No. 2 of 2015 concerning the National Medium-Term Development Plan (RPJMN). It is known in the RPJMN that the target for implementing an agrarian reform policy is 9 million hectares, consisting of a policy of legalizing land totaling 4.5 million hectares and redistribution of land totaling 4.5 million hectares. Where 4.1 million hectares of land to be redistributed, comes from forest land. In order to facilitate the achievement of these agrarian reform targets, the Government then established norms in the form of Presidential Regulation Number 86 Year 2018 on Agrarian Reform, which regulates land originating from forest areas to resolve existing problems and anticipate other problems. Related to the state's authority in redistributing land originating from forest areas as an object of agrarian reform, of course, in accordance with the mandate of the Constitution and TAP MPR Number IX / MPR / 2001 which has given the authority to manage the land to the state. Then the change in the function of the forest area as a TORA Object is deemed appropriate as long as it aims to achieve Agrarian Reform. Then the types of forest areas that are the object of agrarian reform based on Article 1 Paragraph (3) of the 2018 LHK Ministerial Regulation, namely: a. non-productive HPK area, b. production forest areas or protected forest areas that have been controlled, owned, used and utilized for settlements, public facilities and / or social facilities, arable land.

Keywords- *state control, land redistribution.*

I. INTRODUCTION

The phrase "Life Without Owning Land Is Like Eating Without Rice" can be interpreted as a non sense expression, because it is judged not to contain any meaning. For a certain group of people, life without owning land like eating does not need rice is not a matter of life. For some community groups, the important thing is not to own the land, but there is land that can be rented from the owner or there is vacant land regardless of who owns and can be used to construct residential buildings or places of business activity. This group also felt that they did not need to own land but there were enough buildings that could be used as a place to live or a place of business activities so that they could maintain their survival.[1]

But for the majority of people, owning land as well as eating rice or foodstuffs containing carbohydrates is such

a necessity. Owning land is related to self-esteem (social value), source of income (economic value), power and rights of privilege (political value), and a place to worship the Creator (sacred-cultural value). [2]Agrarian reform is a mandate affirmed in the Decree of the People's Consultative Assembly Number IX / MPR / 2001 concerning Agrarian Reform and Natural Resource Management. Agrarian reform (MPR Decree No. IX/ MPR / 2001 refers to it as Agrarian Reform), is a continuous process with regard to restructuring the control, ownership, the use and utilization of agrarian resources, which is carried out in order to achieve legal certainty and protection and justice and prosperity for the people. [2]

In the era of President Joko Widodo's administration, agrarian reform became one of the development priority agendas set forth in Nawa Cita and subsequently set forth in Presidential Regulation No. 2 of 2015 concerning the National Medium-Term Development Plan (RPJMN) for 2015-2019. The RPJMN targets the implementation of an agrarian reform policy covering 9 million hectares, which consists of an asset legalization (land) policy of 4.5 million hectares and land redistribution of 4.5 million hectares. Where 4.1 million hectares of land to be redistributed came from forest land.

In an effort to facilitate the achievement of the above agrarian reform targets, specifically Land Agrarian Reform Objects (TORA) originating from forest land, the norms are designed by firstly solving existing problems and anticipating another followed problems, it is known that the norms of the policies themselves has been regulated in Presidential Regulation of the Republic of Indonesia Number 86 Year 2018 Concerning Agrarian Reform.

But what's interesting is about the release of forest areas or the decision to change forest area boundaries,[4] as Land Objects of Agrarian Reform (hereinafter referred to as TORA) in Article 7 Paragraph (1) letter d, which is further explained in Article 7 Paragraph (4) of Perpres 86/2018, namely land redistribution can come from the release of state forest areas and / or the results of changes in forest area boundaries determined by the Minister of

Environment and Forestry as the source of TORA, including:[3]

1. Land in a forest area that has been released in accordance with the law becomes TORA; and
2. Land within the forest area that has been controlled by the community and has been taken over in accordance with the provisions of the legislation.

The explanation regarding this matter is stated further in Article 7 Paragraph (4) of Perpres 86/2018, which confirms that:

Land redistribution of objects as referred to in paragraph (1) letter d shall be made after the Minister of Environment and Forestry issues a decree on the determination of the boundary area for the release of forest area or the decision to change the boundary of the forest area.

This Perpres stated, that the implementation of Agrarian Reform is carried out by the Central Government and Regional Governments of the Land of Agrarian Reform Objects (TORA) through stages, including:[4]

1. Agrarian Reform planning; and
2. The implementation of Agrarian Reform.

In matter of Agrarian Reform planning it includes: a. planning of structuring assets for the control and ownership of TORA; b. planning for Access Structuring in the use and utilization and production of TORA; c. legal certainty planning and legalization of TORA; d. planning for handling agrarian disputes and conflicts; and e. planning other activities that support Agrarian Reform.[5]

The government policy is certainly worthy of appreciation other than that it is the mandate of the Constitution stated in Article 33 paragraph (3) of the 1945 Republic of Indonesia State Constitution [6] and the Decree of the People's Consultative Assembly Number IX /MPR/2001 regarding Agrarian Reform and Natural Resource Management.

Specifically, in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (hereinafter referred to as UUPA) which is the main reference for agrarian reform policies and implementation. The 1960 UUPA has laid the foundations for land tenure, ownership, use, and use arrangements, especially with the intention of prioritizing the weak economic groups whose livelihoods depend on land, especially smallholders. Discourse on the position of the people in utilizing forest areas and people's welfare as forestry development goals has created momentum for the "forest for people" policy and in turn has strengthened the Ministry of Environment and Forestry (LHK) to accelerate social forestry programs in the form of licensing use of state forest areas for community groups and villages.[7]

As an orderly source of the UUPA, which is a national land law containing the joints and basic provisions, but

given its nature as a basic regulation, only the principles and outlines of agrarian reform include reform of the legal structure which includes an overhaul of the legal structure. Indonesian land and the development of national land law, as well as the principles and provisions of land reform which is an overhaul in land tenure and legal relations and requirements in land tenure. Based on the provisions of the 1960 UUPA, landreform legislation is also issued, namely Law Number 56 Prp of 1960 concerning the Determination of Agricultural Land Area, which aims to organize land tenure and increase income and welfare of the people, especially small scale farmers in a fair and equitable manner.

In order to follow up on this goal at that time the government had implemented Land Reform in a narrow sense, one of which was the land redistribution project activity.[8] Land redistribution is the distribution of lands controlled by the state and has been confirmed as objects of land reform. Which aims to improve the socio-economic situation of the people by means of equitable and equitable distribution of land over the livelihoods of the peasants in the form of land, so that with this division a fair and equitable distribution of results can be achieved.

Based on the explanation above, hence this article will review the authority of the State in terms of land redistribution from forest areas by reviewing and analyzing Presidential Regulation No. 86 of 2018 on Agrarian Reform, and aims to determine the characteristics of forest areas that are used as objects of agrarian reform by analyzing the Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number P.17 / MENLHK / SETJEN / KUM.1/ 5/2018 concerning Procedures for the Release of Forest Areas and Changes in the Limits of Forest Areas for Land Resources for Agrarian Reform Objects.

II. RESEARCH METHOD

This research is a normative legal research which is also often referred to as doctrinal research with the object or target of research in the form of regulations, laws and other legal materials.[9] In normative legal research, data processing is essentially an activity to systematize legal material. Systematization means making a classification of the legal materials to facilitate the analysis and construction work.[10]

III. FINDINGS AND DISCUSSION

1. State Ownership of Land Based on the 1945 Constitution

Article 33 paragraph (3) of the 1945 Constitution mandates the state to exercise control over the earth, water and natural resources contained therein. Article 33 paragraph (3) of the 1945 Constitution is a political milestone in the law of managing Indonesia's natural resources. Then Bagir Manan formulates the scope of the

definition of "controlled by the state" or the right to control the state, as follows:[11]

- a. Such control is owned by the state, meaning that the state through the Government is the sole authority to determine the authority over it, including here the earth, water and wealth contained therein;
- b. Regulate and supervise the use and utilization; and
- c. Equity participation and in the form of state enterprises for certain businesses.

The linkage of control by the state for the prosperity of the people, according to Bagir Manan will realize the obligations of the state in terms of:[12]

- a. All forms of utilization (earth and water) and the results obtained (natural resources), must significantly increase the prosperity and welfare of the community;
- b. Protect and guarantee all people's rights contained in or on the earth, water, and various natural resources that can be directly or indirectly enjoyed by the people;
- c. Prevent all actions from any party that will cause people to not have the opportunity or will lose their rights in enjoying natural resources.

In fact, the Constitutional Court has made decisions on the results of a judicial review of several laws in the field of natural resources that are considered contrary to the 1945 Constitution over the interpretation of the phrase "controlled by the state". The Court stated that the concept of state control must be interpreted to include the meaning of control by the state in a broad sense which originates from the conception of the sovereignty of the Indonesian people over all sources of wealth "the earth and water and natural resources contained therein".[13]

Yance Arizona in his study said that the Constitutional Court's interpretation of Article 33 of the 1945 Constitution must be interpreted that there was a rule mandating to provide the greatest possible prosperity to the people. Yance Arizona's interpretation is based on the results of the interpretation contained in the Constitutional Court's Decision in Case Number 001 / PUU-I / 2003, 021/PUU-I / 2003, and 022 / PUU-I / 2003 concerning testing of Law Number 20 of 2002 concerning Electricity and 02 / PUU-I / 2003 concerning the testing of Law Number 22 Year 2002 concerning Oil and Gas, dated December 1, 2004, which states that the conception of control by the state is a conception of public law relating to the principle of popular sovereignty embraced in the 1945 Constitution 1945, both in politics (political democracy) and economics (economic democracy). In understanding the sovereignty of the people, it is the people who are recognized as the source, owner and at the same time the highest authority in the life of the state, in accordance with the doctrine of the people, by the people, and for the people. In that sense, the definition of public ownership by the people collectively is also covered.[14]

In addition to interpreting state control over natural resources, MK also indirectly provides the authority possessed by the state in the management of natural

resources, namely to hold policies (regulations) and management actions (*bestuursdaad*), arrangements (*regelendaad*), management (*beheersdaad*), and supervision (*toezichthoudensdaad*).[15]

Rule Action (regelendaad)

The authority related to regulations owned by the state is exercised by the government and regional governments. This can be started from the making of laws, government regulations, regional regulations, and regulations and decisions that govern the legal relationship between the government, the private sector and the community regarding land and other natural resources. [16]

Control Action (beheersdaad)

The exercise of authority to regulate, manage and oversee this land is then delegated to the Government and /or Regional Governments carried out by institutions that carry out governmental tasks in the land sector, namely the Ministry of Agrarian Affairs and Spatial Planning / National Land Agency.[17]

Administrative Action (bestuursdaad)

Arrangement is carried out by the government with its authority to issue and revoke licensing facilities (*vergunning*), licenses (*licenties*), and concessions (*concessie*). Arrangements can also be made by the government by establishing legal relations in the form of land rights to individuals, legal entities and in the form of establishing customary land rights of customary communities. [18]

Act of Supervision (toezichthoudensdaad)

Supervision carried out by the state should be carried out by the ministry that deals with land issues, namely the Ministry of Agrarian Affairs and Spatial Planning/ National Land Agency (ATR / BPN). However, until now the supervision conducted by the Ministry of ATR / BPN has not been able to be implemented properly. This was revealed in the Strategic Plan of the Ministry of ATR/ BPN as stipulated in Minister of ATR / BPN Regulation Number 25 of 2015 concerning the Strategic Plan of the Ministry of Agrarian Affairs and Spatial Planning/ National Land Agency for 2015-2019 which states that there are no regulations on how to monitor, evaluation, and reporting, there is no specific criteria for the determination of the problem, where at this time, special supervision is analogous / functioned as an investigation/ collection of material and information conducted by the Civil Servant Investigator (PPNS). [19]

2. *State's Control of Land Based on UUPA*

In Article 2 paragraph (2) of the UUPA which states that the right to control the state is to give authority to: [20]

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

The elaboration of Article 2 of the UUPA mandates the state to control and manage, first, to regulate and administer the designation, use, supply and maintenance of the earth, water and space. Article 4 paragraph (1) of the UUPA states that on the basis of the right to control from the state, it is determined that there are various rights on the surface of the earth, called land, which can be given to and owned by people, both alone and together with others. as well as legal entities.

In addition to giving authority to the Government to control land by registering ownership of a person's land rights, the 1960 UUPA also gives authority to the owner of land rights to manage and utilize the land. This is regulated in Article 4 paragraph (2) of the 1960 UUPA which states that it grants authority to the recipient of the right to use the land concerned, as well as the whole part of the earth and water as well as the space above it, is only needed for interests directly related to the use of the land within the limits under this law and other legal regulations are higher.

The 1960 UUPA also mandates the state must form a new legal product to regulates the legal relationship between people and the earth, water and space. This is an order for the legislators who in this case the Government and the House of Representatives of the Republic of Indonesia (DPR RI) to form or enact various laws and regulations relating to land, water and space related to their management or use. Land management already has various laws and regulations, but the implementation of these laws and regulations does not have the same perception or have the same goals as the UUPA.

Furthermore, the 1960 UUPA also authorizes the government to determine and regulate legal relations between people and legal actions concerning earth, water and space intended to regulate all activities that can be carried out on natural resources.

3. *Government's Authority in Land Redistribution for Communities Originating in Forest Areas*

State control over land that has been mandated in the 1945 Constitution and the 1960 UUPA. In addition, this mandate was also reaffirmed in the Constitutional Court Decision, namely to make arrangements (*regelendaad*), management (*beheersdaad*), policy (*beleid*), administration (*bestuursdaad*), and supervision (*toezichthoudensdaad*).

Boedi Harsono stated that the 1960 UUPA was a law that carried out agrarian renewal because it contained 5 (five) programs known as the Five Indonesian Agrarian Reform Program, one of which was to reform the ownership and control of land as well as the legal relationship concerned with land tenure in realizing equality of prosperity and justice.

Land reform is a series of actions in the context of Indonesia's agrarian reform. The basic principles and provisions of land reform are found in the UUPA. The landreform program itself includes: [21]

- a. Limitation of maximum area of land ownership;
- b. Prohibition of land ownership by so-called "*absantee*" or *guntai*;
- c. Redistribution of land that is more than the maximum limit, land affected by the prohibition of "*absantee*", former *Swapraja* land and state land;
- d. Arrangement about the return and redemption of pawned agricultural land;
- e. Rearrangement of agricultural land-sharing agreements; and
- f. Determination of the minimum area of ownership of agricultural land, accompanied by a prohibition on actions that result in the breakdown of ownership of agricultural land into narrower part.

Landreform mandates to rearrange the control, ownership, use and utilization of land that is just with regard to land ownership for the people. The definition of land reforms mandated by the constitution is not as simple as the definition of land reforms that have been carried out by various countries in the world. The definition of land reform must be interpreted to mean that the land must be able to be utilized by the community to provide welfare to the community.

In the case of state redistribution of land originating from the release of forest area, we need to know the meaning of forests, we can see that in the Minister of Environment and Forestry Regulation of the Republic of Indonesia Number P.17 / MENLHK / SETJEN / KUM.1/ 5/2018 According to the Minister of Regulation in article 1 Paragraph (1) the definition of forest is:

"Forest is an ecosystem unit in the form of a land area containing biological natural resources which is dominated by trees in a natural environment and cannot be separated from one another."

Therefore, the state's policy on land redistribution for communities originating from forest areas as stipulated in Article 7 Paragraph (1) Letter d of Presidential Regulation Number 86 Year 2018 concerning Agrarian Reform is deemed to reflect state authority in terms of policy (regulation) as previously described.

4. *Characteristics of Forest Areas that are Used as Objects of Agrarian Reform*

According to Article 2 of the 2018 LHK Ministerial Regulation, the source area of the TORA consists of:

- a. TORA allocation of 20% of forest area release for plantations;
- b. Unproductive production forest;
- c. Government programs for reserved new ricefields;
- d. Transmigration settlements along with social facilities and public facilities which have already obtained principle approval;
- e. Housing, social facilities and public facilities;
- f. Arable land in the form of rice fields and people's ponds; or
- g. Dry land agriculture as the main source of livelihood for the local community.

Forest area for TORA sources as referred to in paragraph (1), in the form of:

- a. Unproductive production forest area; and
- b. Production forest areas or protected forest areas that have been controlled, owned, used and utilized for settlements, public facilities and/or social facilities, and arable land [21].

IV. CONCLUSION

Land management by state is a mandate from constitution. Therefore, this land management is not only a matter of recording or validating ownership of the land. So the change in the function of the forest area as the TORA Object is deemed very appropriate as long as it aims to achieve the Agrarian Reform mandated by the Constitution and TAP MPR No. IX / MPR / 2001. Therefore, the state policy regarding land redistribution to communities originating from forest areas as stipulated in Article 7 Paragraph (1) Letter d of Presidential Regulation Number 86 Year 2018 concerning Agrarian Reform is deemed to reflect state authority in terms of policy (*regulation*).

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